March 31, 2022

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Proposed Rule Regarding "Share Repurchase Disclosure Modernization"
Release No. 34-93783; File No. S7-21-21

Proposed Rule Regarding "Rule 10b5-1 and Insider Trading"
Release No. 33-11013; File No. S7-20-21

Dear Ms. Countryman:

Vistra Corp. ("**Vistra**" and "**we**") appreciates the opportunity to submit its comments to the request by the Securities and Exchange Commission (the "**SEC**" or the "**Commission**") for public input on the proposals entitled "Share Repurchase Disclosure Modernization"[1] (the "**Share Repurchases Proposal**") and "Rule 10b5-1 and Insider Trading"[2] (the "**Rule 10b5-1 Proposal**" and, together with the Share Repurchases Proposal, the "**Proposals**"). While we applaud the Commission's intended purpose to improve the quality, relevance, and timeliness of information related to issuer share repurchases, as well as promote transparency and prevent insider trading and the unfair exploitation of material non-public information ("**MNPI**") and information asymmetries, we encourage the Commission to consider the substantial negative impact that we believe the significant new procedural and disclosure requirements under the Proposals would have on the use of efficient capital allocation.

As the Commission acknowledges in the Share Repurchases Proposal, share repurchases are one tool, in addition to other measures such as dividends, that public companies can use to return capital to their investors as part of a disciplined and coordinated capital allocation strategy. Furthermore, share repurchases are a legitimate use of capital allowing companies to invest in themselves, reduce shares outstanding, return capital in a tax-efficient manner, and provide liquidity to investors. In fact, Vistra, along with many other large publicly traded companies, regularly utilize share repurchase programs in order to support the value of its equity. In October 2021, Vistra announced its key strategic initiatives and capital allocation plan, in which a key component includes returning significant capital to shareholders by

[1] Share Repurchase Disclosure Modernization, Release No. 34-93783 (Dec. 15, 2021), https://www.sec.gov/rules/proposed/2021/34-93783.pdf.
[2] Rule 10b5-1 and Insider Trading, Release No 33-11013 (January 13, 2022; replacing publication of December 15, 2021), https://www.sec.gov/rules/proposed/2022/33-11013.pdf.

repurchasing its shares of common stock, which it believes are significantly undervalued, thereby reducing the total number of shares outstanding and over time accruing additional value to Vistra's remaining shareholders. Since the announcement of such plan through February 22, 2022, Vistra had already executed approximately $764 million of share repurchases providing liquidity to existing shareholders seeking to exit the stock and significantly reducing shares outstanding leading to higher value per share to remaining shareholders.

Vistra believes the Proposals will combine to have a significant negative effect on efficient capital allocation, as they do not adequately consider the resulting costs to the issuer (in exchange, in some instances, for a negligible or debatable benefit to investors) or the resulting practical limitations on the ability to structure and execute repurchase plans in a manner that is most economically beneficial for the issuer and its shareholders. Vistra believes that more frequent disclosures beyond the currently required quarterly disclosures of issuer repurchase activity are unnecessary and would result in an extensive burden to issuers, while also creating an overwhelming amount of daily information for investors such that the disclosures are likely to be confusing and not meaningful—and in certain circumstances may even be misleading. Additionally, the proposed limitations on the structure of Rule 10b5-1 plans would make the Rule 10b5-1 affirmative defense unworkable for repurchase programs in many cases and leaves open a number of questions about how such Rule 10b5-1 plans would work. Ultimately, the Proposals, if adopted, would collectively serve as a significant impediment and deterrent to issuer share repurchases as a capital allocation strategy, which would have material negative consequences for public companies and their shareholders.

I. Share Repurchases Proposal

The Share Repurchases Proposal would require issuers to furnish a new Form SR reporting detailed information about share repurchases on a daily basis. Vistra's most significant concern with the Share Repurchases Proposal is this potential new daily disclosure requirement. We strongly believe the proposed new Form SR would significantly increase the administrative burden and costs associated with share repurchases, making repurchases less attractive to issuers as a means of returning capital to shareholders, to the detriment of shareholder value. In addition, if executed orders fail to settle or any material changes occur to information previously reported on a Form SR, issuers would be required to amend the Form SR. Under the Share Repurchases Proposal, issuers who regularly utilize share purchase programs could be forced to prepare and submit multiple filings on Form SR per week, which would increase such issuer's monetary and time costs associated with such repurchases and introduce new legal and administrative complexity involved with such reporting. As proposed, the Form SR requirement could be so unreasonably burdensome as to deter potential capital allocation decisions. In addition, to the extent issuers conduct open-market repurchases over a short period on a periodic schedule (such as under a Rule 10b5-1 or similar plan) or trades outside of a trading plan, daily disclosure could boost their share price after the first disclosure and result in higher repurchase costs.

Daily disclosure following share repurchases, along with any subsequent amendments, would also likely result in information overload for investors and the marketplace, making the information difficult to digest and diminishing its meaningfulness to investors. Such information overload would defeat a primary purpose of the Share Repurchases Proposal—to better inform investors. Additionally, the proposed daily

disclosure requirement may introduce a layer of market speculation about any changes in expected issuer behavior (*e.g.*, if an issuer that usually repurchases regularly does not file a Form SR at an expected time, this may cause unwarranted speculation about the reason and possible material positive or negative undisclosed developments in the issuer's business) and investors may unwarrantedly rely on or attempt to manipulate the market based on any such speculation in making investment decisions. Such a result would be inapposite to the Commission's goal of increasing market transparency.

Daily disclosure would also likely contribute to and create information disparity between smaller institutional and retail investors and sophisticated investors, as only sophisticated investors are likely to have the experience, technical capabilities and resources to timely process and analyze the sheer amount of data and the substance thereof. This would allow large sophisticated investors who are able to quickly process and analyze daily disclosures to use such information to inform the timing of trades in ways that retail and smaller institutional investors could not, which would again be contrary to the Commission's stated goals. Relatedly, the increased disclosure would almost exclusively be used to speculate on stocks betting on trends and anomalies in the data and not the fundamental value proposition of the company.

The Share Repurchases Proposal would also require issuers to disclose whether any Section 16 officers or directors purchased or sold shares that are the subject of an issuer share repurchase plan or program within 10 business days before or after the announcement of such plan or program. This potential new requirement may lead investors to draw conclusions about insider purchase activity that is inaccurate.

Further, we note that while the SEC cites concerns about issuers potentially using repurchases to increase share prices in order to enhance executive compensation and insider stock value, the SEC's December 2020 study[3] ("SEC Study") found that "82% of the firms reviewed either did not have EPS-linked compensation targets or had EPS targets but their board considered the impact of repurchases when determining whether performance targets were met or in setting the targets." Since the SEC Study noted that this "potentially suggests that most repurchase activity does not represent an effort to influence the value of EPS-linked compensation," the SEC should consider the need for a new daily disclosure regime and the unnecessary burden this would place on issuers in light of the limited value to investors.

For the foregoing reasons, Vistra believes that the Share Repurchases Proposal would have an unnecessarily burdensome and negative effect on issuers that use share repurchase plans as part of their capital allocation strategy and could deter the use of share repurchases as a means for returning capital to shareholders. We strongly urge the Commission to not adopt the Share Repurchases Proposal as currently proposed.

II. Rule 10b5-1 and Insider Trading

The Rule 10b5-1 Proposal requires, among other things, a 30-day cooling-off period between adoption of a share repurchase program and commencement of trading under such program, as well as after modification of an existing trading program. Vistra believes this 30-day issuer cooling-off period

[3] Response to Congress, Negative Net Equity Issuance, as directed by the House Committee on Appropriations, H.R. Rept. No. 116-111 (Dec. 23, 2020), https://www.sec.gov/files/negative-net-equity-issuance-dec-2020.pdf.

would further disincentivize issuer share repurchases, as it would limit issuers in their ability to structure and execute in an economically beneficial manner plans that have been specifically designed to ensure compliance with federal securities laws. A 30-day cooling-off period is also likely to have significant adverse practical consequences for issuers, which we believe are unnecessary and unjustified in relation to the concerns the cooling-off period purports to resolve. As previously noted, Vistra uses share repurchases as part of its publicly announced capital allocation strategy which involves carefully executing repurchases while not in possession of MNPI for the targeted amount of shares and within the targeted range of stock prices at such time. The 30-day cooling-off period complicates these considerations and limits the time frames in which issuers can make capital allocation decisions in the best interest of investors.

Furthermore, many issuers repurchase shares pursuant to accelerated share repurchase programs ("ASRs"), which typically rely on Rule 10b5-1 plans and allow such issuer to immediately purchase a large number of shares all at once from an investment bank at a purchase price to be determined by an average market price over a fixed period of time less a discount. The practical problems associated with not knowing the exact trading price at the time an ASR is executed likely would substantially reduce the usefulness of this method of share repurchases. The 30-day cooling-off period, when combined with the proposed requirement that there not be overlapping Rule 10b5-1 trading arrangements for open-market transactions in the same class of securities, adds even more complexity. An issuer that ordinarily would follow its ASR with a traditional Rule 10b5-1 trading plan for repurchases (which would be conducted in compliance with Rule 10b-18) would not be able to establish that approach in advance of completion of the ASR, but instead would need to wait 30 days after the closing out of the ASR. All of the foregoing could result in issuers being deterred from using Rule 10b5-1 for share repurchases which may ultimately result in fewer share repurchases overall, even when in the best interests of long-term shareholder value.

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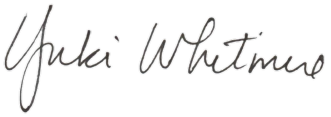
While Vistra commends the Commission for its ongoing efforts to promote market transparency and discourage insider trading and appreciates the opportunity to provide our input, we do not support the adoption of the Proposals as currently drafted and respectfully request the SEC to consider our views.

Respectfully submitted,

Kris Moldovan
Senior Vice President & Treasurer



Yuki Whitmire
Vice President, Associate General Counsel &
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