OXFAM
America

April 1, 2022

Chair Gary Gensler
US Securities and Exchange Commission
100 F St NE
Washington, DC 20549-0609

Re: Comment on Share Repurchase Disclosure Modernization

Dear Chair Gensler,

Oxfam writes in response to the Securities and Exchange Commission's (SEC or the Commission) decision to open the comment period for its proposal to modernize and improve disclosures about repurchase of an issuer's equity securities registered under the Securities Exchange Act of 1934. Thank you for reviewing our comment.

Oxfam's Organizational Interest

Oxfam is a global organization working to end the injustice of poverty by leading humanitarian responses to conflicts and disasters, building resilience, and supporting local organizations that develop the capacity of communities in living in poverty to grow nutritious food, access land and clean water, and obtain decent work and fair wages. Oxfam also tackles the systems, policies, and practices that keep people trapped in poverty by advocating for human rights, climate justice, gender justice, the dignity of survivors of conflicts and disasters, and against inequities in the food chain.[1]

As part of this mission, Oxfam regularly engages with corporations and other investors to understand how their financial decisions impact marginalized and vulnerable communities. Our organization acts as a human rights risk advisor to firms with impact and ESG investing strategies, holds shares in numerous companies, and supports other stakeholders in the advancement of human rights and economic development objectives. We frequently support investors and companies in assessing companies' human rights risk management and advocate for improvements in disclosure and oversight of various issues that help companies improve their financial prospects through sustainability and long-term value. Since the 1980s when share repurchases (or share buybacks or buybacks) were first permitted, the surge in buybacks has been one of the key drivers of inequality and wage stagnation in the United States and globally. We hope the new rule proposed by the Commission is a first step in improving financial sustainability and helping curb the steadily widening income gap.

The Commission can address the harms of market distortion

Oxfam welcomes this rule and appreciates the Commission's effort to increase the transparency of a corporation's activities that will be useful to a range of stakeholders including investors, workers, policymakers and the broader public. We believe this is a vital first step to reduce information asymmetry and market manipulation. If adopted in its current form, the rule would allow market and other participations to glean insights into a company's allocation of capital in a timely manner. In addition, we would also like to recommend specific steps the SEC can take to strengthen the rule and ensure long-term growth and viability for investors and the broader economy.

- The rule should prohibit executives and directors from engaging in corporate insider trading before, during, and after open market share repurchases. As it stands now, the proposal leaves it up to businesses themselves to limit the potential for corporate insiders to personally gain from stock buyback activity. We appreciate the Commission's intent to propose a bright-line limit for ten days before and after buyback program announcements, but we believe the rule should also place limits on executives from selling shares before, during, and after a company executes buybacks. A study of share repurchases between 2005 to 2017 revealed that during quarters when a company executes a stock buyback program, insider sales of stock are more likely in comparison to those periods where share repurchases aren't announced.[1]
- The proposal calls for companies to disclose what policies and programs they have, if any, to restrict insider activity, leaving it to companies to police themselves to determine limits on corporate insiders' trading activities. We are concerned that the proposal could result in boilerplate language about restrictions; instead, the Commission should establish clear standards in the new rule. For instance, the Commission can establish a floor that issuers have to meet and, if they choose, voluntarily exceed. It should not be up to the company to determine what kind of policies to develop and limits to place on such activity.
- The Commission should consider repealing the Safe Harbor Rule 10b-18 17 C.F.R. § 240.10b-18, (Rule 10b-18) and proposing a rule that places limits on the volume, timing,

[1] Lenore M. Palladino. (2019, October). Do Corporate Insiders use Stock Buybacks for Personal Gains? Roosevelt Institute Working Paper. https://rooseveltinstitute.org/wp-content/uploads/2020/07/RI_Corporate-Insiders-use-Stock-Buybacks-for-Personal-Gain_Working-Paper-201910.pdf

manner, and price for open-market share buybacks. Currently, share repurchases falling outside of the safe harbor are not deemed or presumed to be market manipulation and have been subject to significant abuse. The limits within the safe harbor are not sufficient to curb the potential for market manipulation (and, currently, there is no presumption of liability if a company does not stay within the safe harbor limits). A new rule should ensure that share repurchases above a certain limit are unlawful.

Share repurchases exacerbate income inequality

In 1982, the SEC finalized Rule 10b-18, which provided companies with a “safe harbor” to undertake buyback programs without being subject to liability for manipulation under the Securities and Exchange Act of 1934. Since then, share repurchase programs have played an outsized role in corporate strategy. Below we lay out the numerous negative implications of Rule 10b-18 and the harms to long-term value creation.

Share repurchases have been used in most cases to inflate senior executives’ salaries.

Executive compensation in the US usually comprise stock options and stock awards and hence buying back company stock can benefit senior executives’ compensation packages.[2] The stock-based component of executive compensation can comprise almost 80% of pay.[3] Because of the compensation structure, senior executives have a direct and personal financial incentive to increase the short-term stock price or decrease the volume of outstanding shares to meet their performance goals. Since 1978, a CEO’s inflation-adjusted compensation has increased by 940%, due in large part to the emphasis on stock options and stock awards.[4] A company’s decision to buy back its shares also advantages opportunistic short sellers at the expense of long-term shareholders, and, in some instances, can lead to economic stagnation.[5] Stock repurchase programs artificially increase stock prices without altering the real value of the firm, or achieving improvements in profit, the quality of goods, customer relations, or efficiency, thereby contributing to the distortion of the market and valuation of the company.[6]

The US economy underwent financial hardship though CEOs at the top 350 firms in the US received an average of $24.2 million when measuring the value of stock options, which is much more than the $14.5 million figure reported in companies’ annual proxy statements.[7] In fact, despite promises to cut their own base salaries, proxy advisory firm Institutional Shareholder Services noted that CEOs salaries at S&P500 companies were at an all-time high in large part

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[2] David F. Larcker and Brian Tayan. (2019, January). CEO Compensation Data Spotlight. Stanford Graduate School of Business Corporate Governance Research Institute. https://www.gsb.stanford.edu/faculty-research/publications/ceo-compensation-data
[3] W. Lazonick, Ö. Tulum, M. Hopkins, M.E. Sakinç and K. Jacobson. (2019). Financialization of the U.S. Pharmaceutical Industry. Institute for New Economic Thinking (INET). https://www.ineteconomics.org/perspectives/blog/financialization-us-pharma-industry
[4] Lawrence Mishel and Julia Wolfe. (2019, August 14). CEO Compensation has grown 940% since 1978, typical worker compensation has risen only 12% during that time. Economic Policy Institute. https://www.epi.org/files/pdf/171191.pdf
[5] Robert Ayres and Michael Olenick. (2017). Secular Stagnation (or Corporate Suicide?). Insead Working Paper. Insead. http://www.shareholderforum.com/access/Library/20170711_Ayres-Olenick.pdf
[6] William Lazonick, Philip Moss, Hal Salzman, and Önew Tulum. (2014, December). Skill Development and Sustainable Prosperity: Cumulative and Collective Careers versus Skill-Biased Technical Change. Working Paper No. 15. Institute for New Economic Thinking. https://www.ineteconomics.org/uploads/papers/WP15-Lazonick-et-al.pdf
[7] Lawrence Mishel and Jori Kandra. (2021, August 10). CEO pay has skyrocketed 1,322% since 1978. Economic Policy Institute. https://www.epi.org/publication/ceo-pay-in-2020/

due to “long-term equity incentives”.[8] Empirical analysis of firm behavior reveals that repurchases are more likely at firms that would have just missed analyst earnings expectations.[9]

Share repurchases leave organizations unprepared during periods of economic downturn

The past decade has been extremely profitable for companies; between 2009 and 2019, Fortune 500 companies increase their profits by 156% - from $820bn to $2.1 tn.[10] However, during this period, instead of re-investing in better jobs or climate-friendly technologies and solutions, companies listed in the S&P 500 distributed over 91% of profits to shareholders--$9.1 trillion ($5.3 trillion in stock buybacks and $3.8 trillion in dividends).[11] That left less than 10 percent for research and development, plant modernization, raises for workers, and other more productive uses of profits. The four years before COVID-19, (2016-2019) Oxfam discovered that companies intensified distribution of profits to shareholders.[12] For instance, during this period the 59 most profitable companies globally distributed almost $2tn to their shareholders, equaling on average 83% of these companies’ net earnings. Several of these companies in fact went into debt or dipped into reserves to pay shareholders.[13]

Over-allocating firm capital to buybacks has left companies ill-equipped and under-resourced to weather external shocks. Companies’ lack of preparedness and coping mechanisms is a business model choice that has pushed them to focus on short-term profits, maximize efficiencies, limit worker and stakeholder power, and prioritize gains for senior executives and short-term investors. Companies that engage in share repurchases are doing so at the expense of liquidity that is extremely crucial when sales and profits decline in an economic downturn. This was evident especially during the last financial downturn that has followed COVID-19. By the time the pandemic hit, many companies failed to invest in a resilient workforce and build sufficient cash reserves to weather a temporary slump in revenue. Companies’ shareholder payout practices had a tangible effect on the response to COVID-19. Their shareholder first attitude in fact deepened the recession and increased government costs.[14]

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[8] Rachel Hendrick, David Kokell, Kevan Marvasi, Chris Scoular, Galen Spielman, Mete Tepe, Juliana Vaughn, Liz Williams. (2021, August 18). United States Compensation 2021 Proxy Season Review. Institutional Shareholder Services. https://insights.issgovernance.com/posts/2021-united-states-compensation-2021-proxy-season-review/

[9] Heitor Almeida, Vyacheslav Fox, & Mathias Kronlund. (2016). The Real Effects of Share Repurchases. Journal of Financial Economics. Pgs 168-185. https://econpapers.repec.org/article/eeejfinec/v_3a119_3ay_3a2016_3ai_3a1_3ap_3a168-185.htm.

[10] 2018 data obtained from Fortune: https://fortune.com/global500/, data obtained from CNN Money: https://money.cnn.com/magazines/fortune/global500/2009/full_list/index.html

[11] William Lazonick, Matt Hopkins. (2020, July 27). The $5.3 trillion question behind America’s COVID-19 failure. The American Prospect. https://prospect.org/coronavirus/americas-covid-19-failure-corporate-stock-buybacks/

[12] Uwe Gneiting, Nicholas Luisani, and Irit Tamir (2020, September). Power, Profits and the Pandemic: From corporate extraction for the few to an economy that works for all. Oxfam Briefing Paper. Oxfam. https://www.oxfamamerica.org/explore/research-publications/power-profits-and-pandemic-corporate-extraction-few-economy-works-all/

[13] Id.

[14] A. Baker, C. Haslam, A. Leaver, R. Murphy, L. Seabrooke, S. Stausholm and D. Wigan. (2020). Against Hollow Firms: Repurposing The Corporation For A More Resilient Economy. University of Sheffield Centre for Research on Accounting and Finance in Context. https://www.sheffield.ac.uk/polopoly_fs/1.892482!/file/Against-Hollow-Firms.pdf

The largest corporations could have had significant cash on hand to shield workers, adjust business models, and avoid costly public bailouts during the economic downturn. Cases from across the US highlight companies' prioritization of short-term profits over employees' safety during the pandemic. Food retailers have faced a backlash from employees for insufficient pay, long working hours, and poor health and safety protection.[15] Meat processing plants around the world were hotspots for COVID-19 infections. In the United States, an estimated 200,000-300,000 workers tested positive – over 4,000 have died.[16] The countless incidences repeated by workers at these companies clearly demonstrate that shareholder first strategies such as share buybacks have not only cost workers but investors alike.

Share repurchases divert resources away from much needed investment in the company

As demonstrated, over the past decade, many companies in the S&P500 did not reinvest profits in enhancing a company's productive capabilities, but instead used it excessively to enrich senior executives and opportunistic investors by buying back their own shares. In maximizing gains to shareholders at the expense of creating longer-term value, CEOs exercise short-term behavior and are driven by the market expectation of recent decades rather than the exercise of wise stewardship of the corporations they control. The over emphasis on stock related compensation by companies has been key to shaping corporate resource-allocation decisions.

Defenders of the shareholder-first model have long argued that shareholders receive profits only after the company has re-invested in its business.[17] The Tax Cuts and Jobs Act handed companies a massive tax windfall that was predominantly used to repurchase shares.[18] In 2018, the first full year after the tax cut, repurchases surged 64 percent over the previous year and topped $1 trillion overall.[19] Yet real wages for typical workers remained flat during that time. [20] Morgan Stanley cautioned that stock traders may be overvaluing companies by underestimating how much of tax savings will be passed on to shareholders; instead of reinvesting in growing operations, let alone wages.[21]

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[15] Leticia Miranda. (2022, Jan 14). 'We deserve more': Grocery workers lament extra work, lack of hazard pay as omicron decimates workforce. NBC News. https://www.nbcnews.com/business/business-news/-deserve-grocery-workers-lament-extra-work-lack-hazard-pay-omicron-dec-rcna11164; Leticia Miranda. (2021, April 13). Grocery workers died feeding the nation. Now, their families are left to pick up the pieces. NBC News. https://www.nbcnews.com/business/business-news/grocery-workers-died-feeding-nation-now-their-families-are-left-n1263693; Stephen Council and Jaewon Kang. (2022, January 13). Grocery Stores Cut Hours, Services as Omicron Infects Workers. Wall Street Journal. https://www.wsj.com/articles/supermarkets-cut-hours-services-as-omicron-infects-workers-11642078804

[16] Charles A. Taylor, Christopher Boulos, and Douglas Almond. (2020, November 19). Livestock plans and COVID-19 transmission. PNAS. https://doi.org/10.1073/pnas.2010115117.

[17] Joshua Bolton and Ken Bertsch. (2019, March 4). Restricting stock buybacks will hurt the economy. The New York Times. https://www.nytimes.com/2019/03/04/opinion/sanders-stock-buybacks.html

[18] Matt Egan (2018, February 16). Tax cut scoreboard: workers $6 billion; shareholders %171 billion. CNN Business. https://money.cnn.com/2018/02/16/investing/stock-buybacks-tax-law-bonuses/index.html; Kathryn Kranhold (2019, February 12). Big businesses promised wage hikes from Trump's tax cuts. What actually happened? NBC News. https://www.nbcnews.com/politics/congress/big-businesses-promised-wage-hikes-trump-s-tax-cuts-what-n970081

[19] Matt Egan. (2018, December 17). Corporate America gives out a record $1 trillion in stock buybacks. CNN Business. https://www.cnn.com/2018/12/17/investing/stock-buybacks-trillion-dollars/index.html

[20] Patrick W. Watson. (2018, September 25). Real Wage Growth Is Actually Falling, Forbes. https://www.forbes.com/sites/patrickwwatson/2018/09/25/real-wage-growth-is-actuallyfalling/#1e7c07697284

[21] Gary Rivlin. (2020, March 27). Stock buybacks are now banned. But the damage is done. Washington Post. https://www.newsday.com/opinion/commentary/stock-buybacks-coronavirus-covid-19-damage-economy-wall-street-o50399

Research demonstrates that executives' maximization of shareholder gains has led to a race to the bottom as companies are then forced to cut costs and raise product prices.[22] Based on an analysis of more than 400 global companies during the pandemic, Oxfam found that companies:

- Made little changes to long-term equity compensation programs;
- Laid off workers and failed to ensure employee safety and prevent labor violations;
- Shifted costs and risks down supply chains;
- Profited from government relief programs despite lacking merit or eligibility; and
- Lobbied governments for deregulation of environmental, tax, and social protections.[23]

Companies take on unsustainable debt to finance share repurchases

One of the root causes of massive corporate debt is the trillions of dollars that have been spent by companies on open market repurchases since the 2009 financial crisis. The International Monetary Fund highlighted that "debt-funded payouts can considerably weaken a firm's credit quality."[24] Debt taken to finance buybacks does not lead to enhanced productivity or returns. Between 2009 and 2018 465 companies in the S&P 500 Index spent $4.3 trillion on buybacks, which equals 52% of net income.[25] The drain on corporate treasuries has been massive. Between the summers of 2018 and 2019, buybacks exceeded free cash flow (cash earnings minus capital expenditures and interest payments). As a result, nonfinancial corporations drained their cash reserves by $272 billion.[26]

As the past two years have demonstrated, this strategy does not promote long-term value during periods of economic downturn. As demand for goods and services collapses, corporations must do everything to keep the business afloat while also servicing these debt obligations. Before the pandemic, more than a third of the largest global companies were highly leveraged - that is, they had at least $5 of debt for every $1 in earnings - which makes them vulnerable to any downturn in profits or increase in interest rates.[27] One in five companies have debt-service obligations that exceed cash flow.[28] While the pandemic might have lowered debt

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[22] William Lazonick and Jen Jacobson (2019, March 13). How stock buybacks undermine sustainable prosperity. The American Prospect. https://prospect.org/economy/stock-buybacks-undermine-sustainable-prosperity/

[23] Uwe Gneiting, Nicholas Luisani, and Irit Tamir (2020, September). Power, Profits and the Pandemic: From corporate extraction for the few to an economy that works for all. Oxfam Briefing Paper. Oxfam. https://www.oxfamamerica.org/explore/research-publications/power-profits-and-pandemic-corporate-extraction-few-economy-works-all/

[24] International Monetary Fund: https://www.imf.org/en/Publications/GFSR/Issues/2019/10/01/global-financial-stability-report-october-2019

[25] William Lazonick, Öner Tulum, Matt Hopkins, Mustafa Erdem Sakinç, and Ken Jacobson (2019, December 2). Financialization of the U.S. Pharmaceutical Industry; Institute for New Economic Thinking. https://www.ineteconomics.org/perspectives/blog/financialization-us-pharma-industry

[26] WSJ: Coronavirus Stimulus Should Bar Stock Buybacks; Large corporations have piled on debt, making themselves vulnerable to shocks. https://www.wsj.com/articles/coronavirus-stimulus-should-bar-stock-buybacks-11585088778

[27] Steven Pearlstein. (2018, June 10). The buyback economy and the next big bubble. The Washington Post, https://www.washingtonpost.com/business/economy/beware-the-mother-of-all-credit-bubbles/2018/06/08/940f467c-69af-11e8-9e38-24e693b38637_story.html

[28] Id.

levels and slowed down the pace of corporate buybacks as the industry received government bailout, it appears that share buybacks continue to be front and center on company agendas.[29]

Share repurchases negatively impact overall economic growth

Buybacks have become a major driver of inequality, going disproportionately to the already wealthy. In the US, the wealthiest 10% of Americans own 89% of all stocks, while the bottom 50% of Americans don't own even 1% of company equities.[30] Importantly, share ownership is skewed towards higher-income groups and along racial lines and exacerbate the racial gap. White Americans represent over 60% of the US population and own almost 90% of the total stock market value, while Black and Latinx populations hold 1.5% corporate shares and comprise over 30% of the population.[31] Between 2010 and 2019, companies spent more than 91% on paying back money to shareholders and in the four most recent years, these companies delivered almost 100% profits to the shareholders.[32] If corporate profits had been invested in strengthening workers and governments, both businesses and society as a whole would have been better prepared to weather the impacts of COVID-19.[33]

Stagnant wages and poor working conditions have remained a widespread global challenge.[34] The top 10 percent of earners in the US, according to economist Emmanuel Saez, make more than nine times as much as the bottom 90% and the top 0.1% make 196 times the income of the entire bottom 90%.[35] The bottom 50% have experienced an income drop from 19% in 1980 to 13% in 2021.[36] Almost one-third (31.9 percent) of the labor force in the United States earn less than $15 per hour as of 2022.[37] In February 2022, 12-month inflation reached 7.9% percent

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[29] Matt Phillips (2020, March 24). The Stock Buyback Binge May Be Over. For Now. The New York Times. https://www.nytimes.com/2020/03/24/business/coronavirus-stock-buybacks.html; Nicholas Megaw. (March 27, 2022). US companies buy back shares in record volumes. Financial Times. https://www.ft.com/content/e27975fc-a4f6-4e71-9ac8-af8a2418caca

[30] Federal Reserve Distributional Financial Accounts, Distribution of Household Wealth in the U.S. since 1989 at https://www.federalreserve.gov/default.htm

[31] QuickFacts, US Census Bureau: https://www.census.gov/quickfacts/fact/table/US/PST045221; and Distribution of Wealth Statistics at the Board of Governors of the Federal Reserve System: https://www.federalreserve.gov/releases/z1/dataviz/dfa/distribute/chart/#quarter:125;series:Corporate%20equities%20and%20mutual%20fund%20shares;demographic:race;population:all;units:shares;range:1989.3,2021.4

[32] Standard & Poor's Compustat database and company annual reports; calculations by Mustafa Erdem Sakinç and Emre Gömec of the Academic-Industry Research Network

[33] W. Ding, R. Levine, C. Lin and W. Xie. (2020). Corporate Immunity to the COVID-19 Pandemic. The National Bureau of Economic Research. Working paper. https://www.nber.org/papers/w27055

[34] ILO (2020). World Employment and Social Outlook – Trends 2020. https://www.ilo.org/global/research/global-reports/weso/2020/lang--en/index.htm; Tax Justice Network (2017). Tax avoidance and evasion - The scale of the problem. https://www.taxjustice.net/wp-content/uploads/2017/11/Tax-dodging-the-scale-of-theproblem-TJN-Briefing.pdf

[35] "Income Inequality in the United States," fact sheet, Inequality.org, visited January 18, 2022, https://inequality.org/facts/income-inequality/

[36] Thomas Piketty, Emmanuel Saez, and Gabriel Zucman (2022). World Inequality Report 2022. World Inequality Lab. https://wir2022.wid.world/

[37] Because Oxfam sourced data from the American Community Survey (ACS) and Current Population Survey (CPS), the racial markers used in our data reflect census racial markers. For gender, respondents to the survey self-identify their sex as either male or female. And for race/ethnicity, respondents can choose between "Asian American or Other Pacific Islander," "Black or African American," "American Indian or Alaskan Native," and "Hispanic, Latino, or Spanish origin" of any race. Whiteness is typically measured by those who check "white" in the racial box and "not of Hispanic, Latino, or Spanish origin" in the ethnicity box. This data is also a reflection of what people self-report as their income, their age, and their familial status.

above the previous year.[38] Under such conditions, and even with minimum wage increases, workers, especially front line workers and those in low-skill jobs have seen wage gains completely wiped out as they must grapple with higher prices of everything including housing, used vehicles, and food.[39] Among those struggling to make ends meet, women, especially women of color and racial minorities were more harshly impacted by rising prices because of income and wage gaps.[40] An economy that has high levels on inequality is one that is characterized as having less consumer spending and demand across the board, and hence one with ultimately lower GDP. A low-investment economy is a more sclerotic and less innovative one, and thus one with a lower GDP.

Conclusion

As the past decade has shown us, senior executives have benefited from market distortions driven by information asymmetry surrounding disclosure on share repurchases. Such a misalignment has come at the expense of all other stakeholders including investors in the economy. We believe increased information about the most effective use of a company's reserves will be beneficial for market participants and other interested stakeholders. We thank you for your time and consideration in reviewing our comment. If you have any questions, please reach out to us.

Respectfully,

Irit Tamir
Private Sector Department
Oxfam America

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[38] Bureau of Labor Statistics: https://www.bls.gov/news.release/cpi.nr0.htm
[39] Id.
[40] Robin Bleiweis, Jocelyn Frye, and Rose Khattar. (2021, Nov 17). Women of color and the wage gap. Center for American Progress. https://www.americanprogress.org/article/women-of-color-and-the-wage-gap/; Chris Morris (2021, March 30). Mind the wage gap: women, especially women of color, still earn less than men. Nasdaq. https://www.nasdaq.com/articles/mind-the-wage-gap%3A-women-especially-women-of-color-still-earn-less-than-men-2021-03-30; Morgan Smith. (2022, March 15). How the pandemic made the pay gap worse for low-wage workers and women of color. CNBC. https://www.cnbc.com/2022/03/15/the-pandemic-widened-the-pay-gap-for-low-wage-workers-and-women-of-color.html