BrilLiquid

March 28, 2022

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1020

Re: Share Repurchase Disclosure Modernization, File S7-21-21

Dear Ms. Countryman,

On behalf of BrilLiquid, a capital markets advisory boutique, I appreciate the opportunity to comment on proposed amendments to modernize and improve disclosure about repurchases of an issuer's equity securities registered under Section 12 of the Securities Exchange Act of 1934 (the "Share Repurchase Proposal"). I applaud the Commission for seeking to modernize important and complex disclosures. Approximately half of all U.S. listed companies have established share repurchase programs.

While commendable, new disclosure requirements in the Share Repurchase Proposal may result in too many boilerplate disclosures and too many new filings that will limit their utility. The Share Repurchase Proposal does not sufficiently improve the quality of issuer disclosures considering equity market structure and changes in capital markets practice in recent decades. I make the suggestions herein with great humility, given the complexity and interconnectedness of securities markets. To that point, I consider the Share Repurchase Proposal in conjunction with several of the Commission's other proposed rule changes, specifically,
Rule 10b5-1 and Insider Trading, File S7-20-21 (the Insider Trading Proposal) and
Updating EDGAR Filing Requirements, File S7-16-21 (the EDGAR Proposal).

Overview and General Comments

Since the adoption of Rule 10b-18 in 1982, there has been a steady shift in U.S. corporate financial policy away from returning capital to shareholders via dividend payments and public tender offers to open market share repurchase strategies. To many, the double taxation of dividends may justify issuer share repurchases. Rationalizing the shift from public tender offers to open market repurchases is less obvious. I have suggested that the changes in market structure and the composition of equity market participants have significantly inflated share trading volumes since the adoption of Rule 10b-18 and consequently make open market repurchases more appealing to corporate executives.[1] Many market participants also have nagging concerns that open market issuer share repurchases tend to nudge share prices higher. These concerns are more acute at companies where executives receive significant stock compensation.

Since adopting Rule 10b-18, the so-called efficient markets hypothesis (EMH) has been the established doctrine. EMH is often called upon to justify open market issuer share repurchases regardless of price. Equity markets have evolved dramatically over the past three decades. Academics consider derivatives, exchange-traded funds (ETFs), and structured notes a benefit contributing to market liquidity. Today, some practitioners find the Inelastic Market

[1] See, *Stock Buybacks: Equity Market Structure Considerations,* Andrew MacInnes (2016).
Available at: Amazon.com

Hypothesis (IMH) more realistic in describing markets as inelastic![2] This work suggests that the market impact of orders and other information may be more long-lasting than the EMH implies.

Trustworthy, accurate, and timely disclosures are the cornerstone of a fair market. Effective markets and capital formation also require securities offerings that minimize information asymmetries and misinformation, conflicts of interest, and cheating. A market structure should provide orderly secondary markets and ensures prices reflect prevailing investor opinions! The Commission has yet to modernize many securities offering rules to reflect market structure changes in recent decades.

With market structure changes in recent decades, many issuers undertaking traditional marketed public offerings suffer unreasonable price share price impact during the marketing process. Many rules designed to ensure fair markets, for example, under Regulation M are not practical (e.g., Rule 104 stabilizing bids) or are rarely enforced or not applicable (e.g., Rule 105) since the advent of electronic trading and the explosion of derivatives trading activity.

Some issuers raise capital through a confidentially marketed public offering or a registered direct offering. Many issuers increasingly rely on At-The-Market (ATM) offerings, sometimes referred to as "reverse repurchase" programs, to avoid the price impact and critical scrutiny associated with marketed public offerings.[3] More than 330 U.S. companies (approximately 9% of all listed U.S. companies) and over 100 non-U.S. companies announced ATM programs or transactions in 2021. Many issuers conducting public offerings of equity and other securities consider Rule 10b-18 volume limitations when seeking to thread the needle between classification as ordinary brokerage transactions or distributions.

While many of these programs are legitimate forms of capital raising, significant and persistent ATM offerings by biotech companies, REITs, natural resources and energy companies, and penny stock companies may raise red flags as to whether disclosures accurately reflect the issuer's business and financial position. Today REITs are among the most active issuers using ATMs to sell equity, debt, and preferred securities. REITs often use forward equity sale agreements to minimize current share dilution in transaction structuring that mimics the Accelerated Share Repurchase agreement in reverse.

Some smaller issuers, including highly leveraged below investment grade financial service firms, also use ATM programs to sell equity securities in the public markets. Recently some of these same issuers are using ATM programs to target retail investors with offerings of senior notes and preferred securities listed on Nasdaq or the NYSE.[4] It is often difficult for ordinary investors to evaluate the appropriate terms of such securities because most issuers offer debt securities to institutions in transactions exempt from registration, for example, under Rule 144A. In the case of various preferred securities, most issuers would struggle to find many institutional investors willing to purchase securities with the same terms as those sold to retail investors. Lack of disclosure about institutional placements hurts ordinary investors.

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[2] See, for example, *The Inelastic Market Hypothesis: A Microstructural Interpretation,* Jean-Philippe Bouchaud (2021).
Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3896981

[3] ATM offerings typically seek to avoid being considered "distributions" and one mechanism often recommended is to restrict sales to the Rule 10b-18 volume limitations. A common rule of thumb often suggested to issuers is that they could sell 10-20% of the average daily trading volume in ordinary brokers' transactions without impacting the share price. This rule of thumb is often wrong, liquidity in individual markets varies widely.

[4] See,
https://www.nasdaq.com/search?q=senior%20notes&page=1&sort_by=relevence&filters=symbol&langcode=en

Complex and highly leveraged financial entities present challenges for public market investors and regulators of the broader financial system alike.[5] Not least because changes in equity valuations can directly impact an institution's ability to conduct business but also because of potential systemic effects in credit and financial markets more broadly. Many large financial institutions used ATMs during the Global Financial Crisis (GFC) to raise equity capital quickly and quietly. Since the GFC, many financial institutions have taken advantage of market conditions to offer equity-linked structured notes via their medium-term note programs. These notes are usually not listed on a national securities exchange, and most market participants would consider them high fee structures.[6] Beyond providing low-cost financing, these securities may allow derivatives dealers to trade listed equity securities more aggressively and circumvent other trading restrictions (e.g., option position limits and short sale limitations). Additional share trading volume will tend to raise the 10b-18 volume limitation in an individual class of securities, possibly providing dealers ancillary benefits marketing to issuers for share repurchase transactions or additional value from options embedded in issuer repurchase orders (e.g., VWAP pricing in open market repurchase or ASR and collared ASR repurchase transactions).

I suggest the Commission consider consolidating disclosures about activity by an issuer and its affiliates and insiders affecting its capital structure within the issuer's Exchange Act filings. Disclosures should include actions of the issuer and its affiliates involving share repurchase, share issuance, share distributions, dividend payments, debt issuance, debt repayments, debt repurchases, and issuer activity related to stock-based compensation. Aggregate disclosures in quarterly financial reports and annual reports, as is currently done for share repurchases, should be supplemented with cumulative activity totals for the year-to-date. Exhibits of each quarterly filing and annual filing under the Exchange Act should include summary terms of material sources of capital (e.g., convertible debt, bond offerings, bank loans) and any agreements in place that could be a source or a use of funds (e.g., Accelerated Share Repurchase (ASR) agreements, At-The-Market (ATM) distribution agreements, and equity credit lines). A version of Form SR for other issuer and affiliate actions will provide the Commission and other market participants with valuable insight. Issuers generally disclose share issuance under an ATM program in the subsequent quarterly filing. Providing daily (or weekly) disclosures like those proposed in Form SR on a Form SI (Stock Issuance) would provide investors symmetry in terms of issuer disclosures.

In recent years, many private equity and venture capital firms have opted to distribute shares of companies that have become public to limited partners in their funds. Such unorganized distributions do not seek to generate investor interest through the traditional book-building underwritten public offering. Selling shareholders use public offering mechanisms less often for a variety of reasons. Fees are an obvious deterrent. The price impact of a public offering, regardless of the enthusiasm of new investors, is also a consideration. If prospects for the business are less robust, insiders may seek to avoid the critical scrutiny and regulation associated with a public offering.[7] Some combination of the market impact and delayed liquidity event diluting the fund's realized returns has led many investment firms to choose, and possibly coordinate, the unorganized distribution option.

Ordinary investors may be unaware of the potential price impact of distribution strategies of private equity and venture capital investors. The Commission should require companies to include shares eligible for future sale

[5] This is also true of sectors that directly cause social harm (e.g., gambling and casino companies, gun manufacturers, weapons manufacturers, prison operators) and why some index investors eliminate such companies active in these sectors from benchmarks and portfolios.

[6] The Commission has long recognized potential pitfalls with these securities for investors publishing investor bulletins in 2011 and 2015.
Available at: https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins/investor-bulletins-76
Available at: https://www.sec.gov/investor/alerts/structurednotes.htm

[7] For example, insider purchases or writing glowing articles on the Internet ahead of a share distribution are less likely to attract the scrutiny of regulations

information, traditionally included in offering prospectuses, in Exchange Act filings and potentially require that companies announce and file an 8-K before affiliates and 10% shareholders make significant distributions.

Having detailed disclosures from each registrant will help guide the Commission when considering changes to rules governing securities offerings and other disclosure documents that will improve the integrity of U.S. capital markets, making them more effective and encouraging capital formation. Structured data disclosures (e.g., XML) provide investors an aggregate picture of issuer and investor disclosures. More than that, however, the Commission should consider additional upgrades to EDGAR to make such aggregated disclosure information available to be displayed online for ordinary investors. EDGAR's structured data is currently most valuable to financial data providers who generally bundle data services to professional users. The cost of such data services has been rising.[8] Many market participants, including ordinary investors, would benefit from making individual company data readily available and immediately accessible on EDGAR. The simple presentation of structured data on the EDGAR website for each company would help investors avoid expensive data subscriptions and keep a lid on prices charged by financial data providers. While there are many valuable financial data Internet sites, many are subscription and advertising-based Internet sites that use incomplete or inaccurate data to lure users seeking low-cost financial data solutions.[9]

Form 4 filings required under Section 16 of the Exchange Act provide insight into the potential design of Form SR and variations thereof. The rollout of Form SR is an excellent opportunity to consolidate various disclosures and redesign and make much-needed formatting changes to Forms 3, 4, and 5. Form 4 is a legacy paper form design that has been digitized rather than purpose-built for electronic distribution. There were approximately 465,000 Section 16 filings on EDGAR in 2021 available for download. Besides Section 16 plaintiffs, few market participants ascribe great value to the current daily Form 4 filings. The financial media has a long history of reporting selected insider purchases and sales. Some data subscriptions claim that the information portends future price changes.

I suggest the Commission consider requiring monthly disclosures of share grants and stock compensation for all employees and directors in Exchange Act filings. Presenting the information in a format like Form SR would be helpful to ordinary investors and data vendors alike. This disclosure would be more practical than expanding the universe of Section 16 filers and would force investors and companies to rationalize levels of stock compensation and determine appropriate targets and benchmarks for rewarding executives.[10] Making compensation disclosure in this manner would allow investors and other interested parties to scrutinize issuer and affiliate activity close to stock award and vesting dates.

[8] Under fair access rules imposed by the Commission, bulk downloads of EDGAR filings are subject to a maximum request rate of 10 requests per second. In some cases, two (or more) requests per target file may be required to determine the specific filename of the target file. Thus, accessing EDGAR data is time-consuming and inefficient. There is a strong public policy argument to make EDGAR a user-friendly source of information for ordinary investors instead of a repository for corporate and investor filings primarily used by financial data providers.

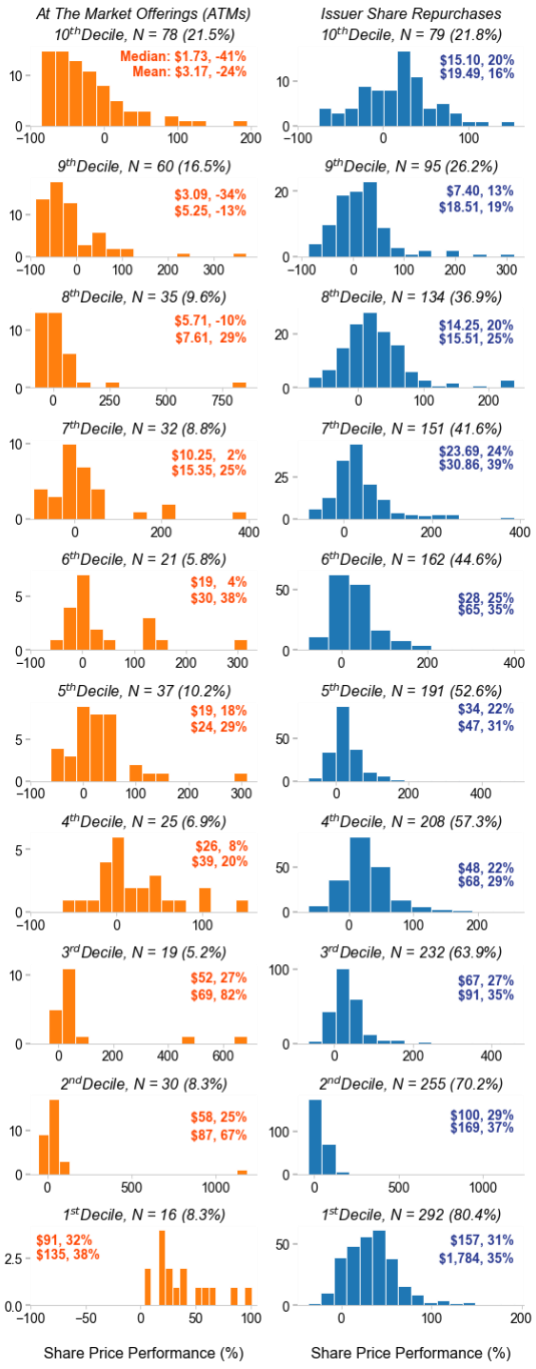
[9] Internet websites and marketplaces operated by unregistered (and registered) professionals deserve much greater scrutiny to ensure investor protections are appropriate.

[10] Exchange Act filings should include disclosures such as the CEO Pay Ratio and other executive compensation information. Soaring executive compensation is often evidence of poor corporate governance. With the extreme bifurcation of market capitalizations between the handful of the largest companies and the rest of the market, there is little justification for broad equity index-linked benchmarks for determining executive compensation. Also, if issuers are not making value-based decisions when repurchasing stock, there may be little rationale for using market prices in determining executive compensation.

Figure 1

Frequency Distribution of 2021 Share Price Performance of U.S. Issuers with At-The-Market (ATM) and Share Repurchase Programs by Market Capitalization Decile.

(Median and mean yearend share price ($) and 2021 share price performance (%).)



Some ATM issuers include forward sale agreements in their public offerings. The sole purpose of these contracts is to delay recognition of the share dilution in the issuer's financial statements. Such agreements are diametrically opposed to Accelerated Share Repurchase (ASRs) some issuers use to accelerate recognition of the reduction in shares outstanding in the presentation of the company's financial statements.

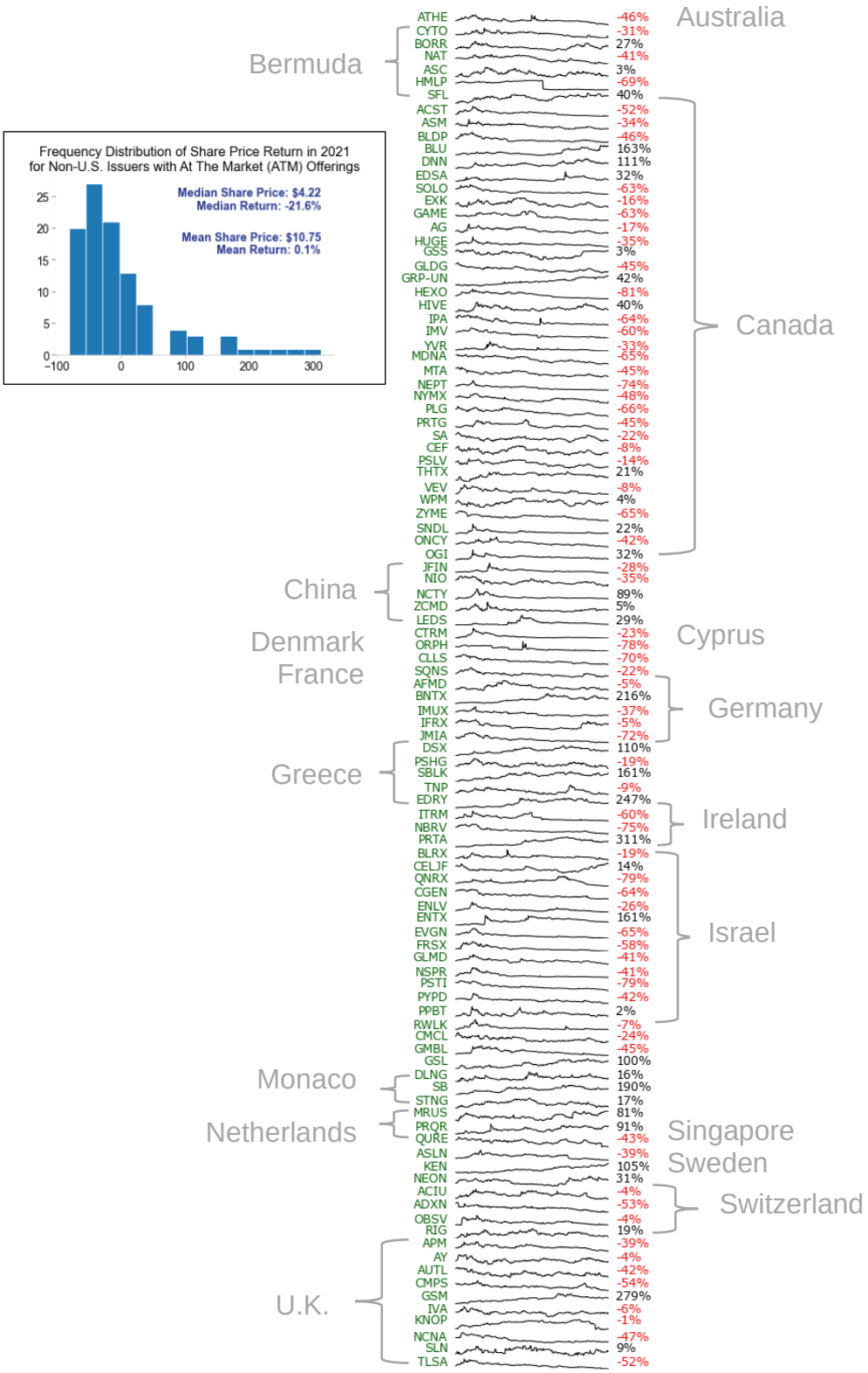
Note. The S&P Total Market Index is a float-adjusted market capitalization weighted index.

As of January 2022, the S&P Total Market Index includes approximately 3,638 eligible equity securities.

Source: BrilLiquid estimates based upon analysis of EDGAR filings on Form 8-K in 2021 for ATM programs and 10-K and 10-Q filings in Q4, 2021 for share repurchase programs.

Figure 2

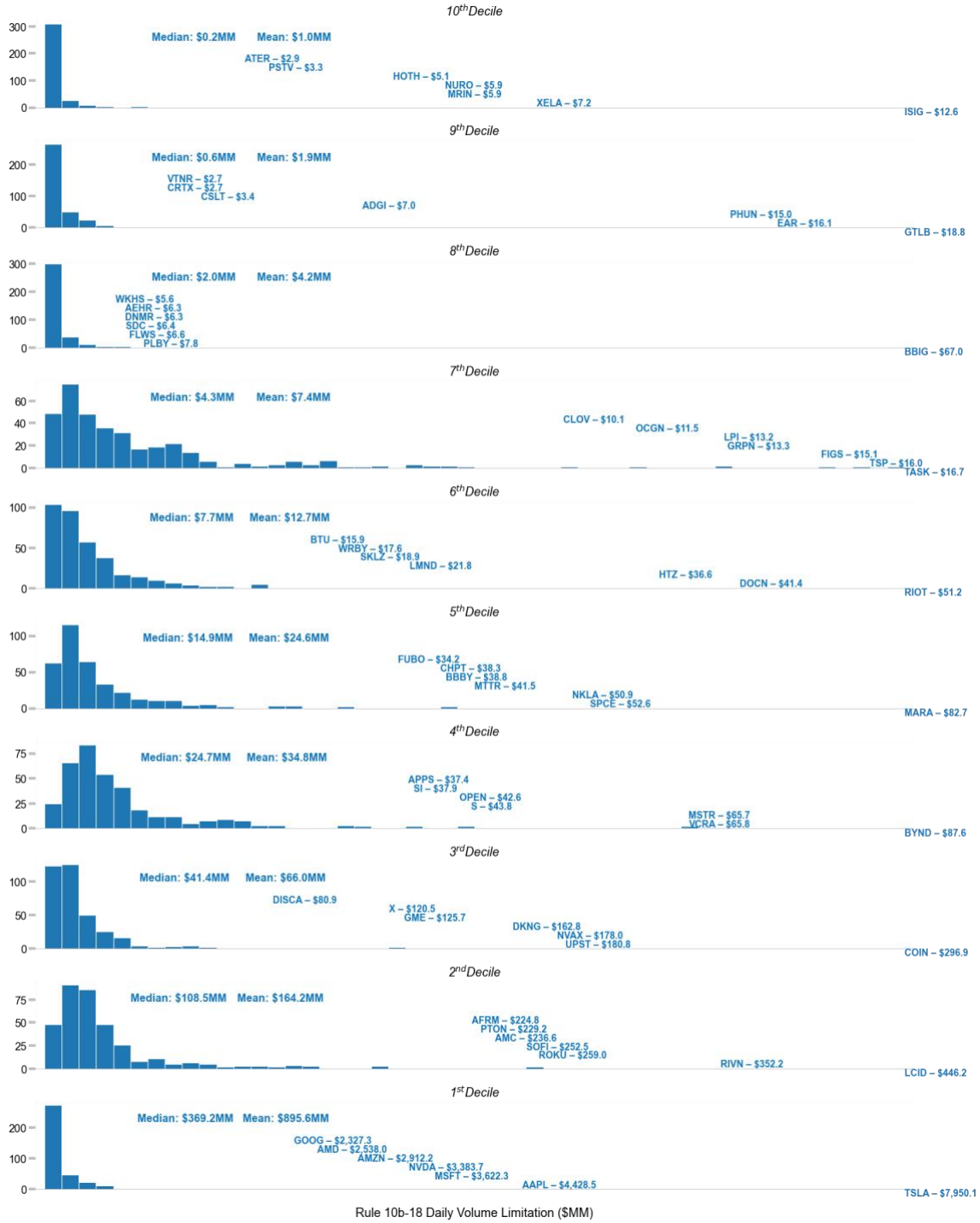
Share Price Performance of Non-U.S. Issuers with At-The-Market (ATM) Programs, 2021.



Source: BrilLiquid.

Figure 2

Frequency Distribution of Individual Company Rule 10b-18 Daily Volume Limits by Market Capitalization Deciles, Jan 2022



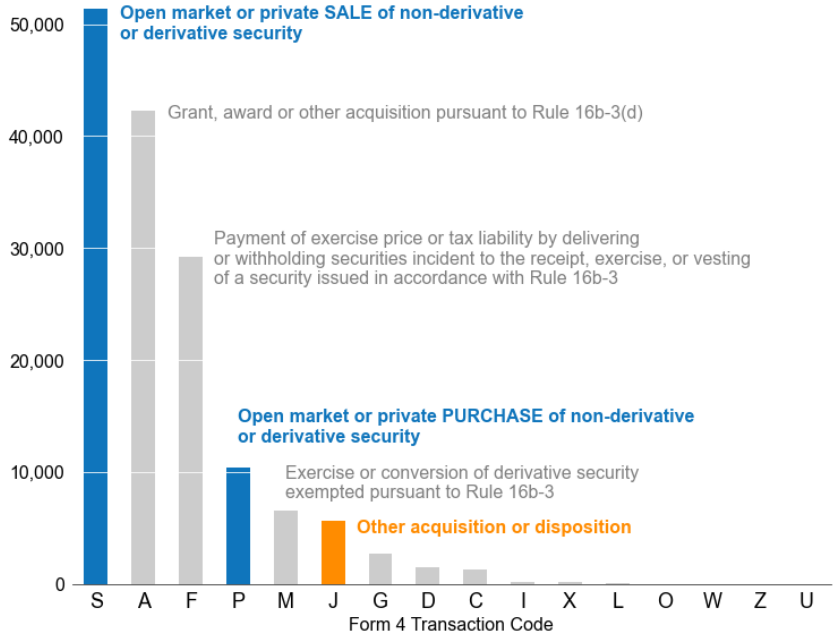
Note. Deciles based upon market capitalization of companies in the S&P Total Market Index.

Rule 10b-18 daily volume limitation estimated using the average daily dollar volume traded for the four weeks ending January 28, 2022.

Source: BrilLiquid.

Figure 3

Form 4 Filings by Transaction Code, 2021



Buy and sell transactions by a comprehensive group of "internal" investors provides potential valuable information and liquidity to "outside" public investors.

Today's electronic markets provide the ability to match internal investor liquidity in regular market-based auctions with a level-playing field for all investors.

Issuer transactions may alternatively be reported on a version of the new Form SR to provide investors a complete picture of capital allocation activity via: share repurchase, dividends, stock compensation, and other forms of share issuance.

Large distributions and gifts by affiliates of the issuer, and 10% shareholders, may warrant additional disclosures (e.g., distributions to limited partners by venture capital and private equity firms).

Note. Filings for issuers included in the S&P Total Market Index.

Figure 4.1

Share Price Performance of Select Companies with Transaction Code "J" Reported on Form 4 by Ten Percent Holders, by Market Capitalization Decile, 2021

D Disposition or Acquisition by Ten Percent Holder
H 52-week High
L 52-week Low
Symbol
— Share Price
% Change 2021
— Average Price

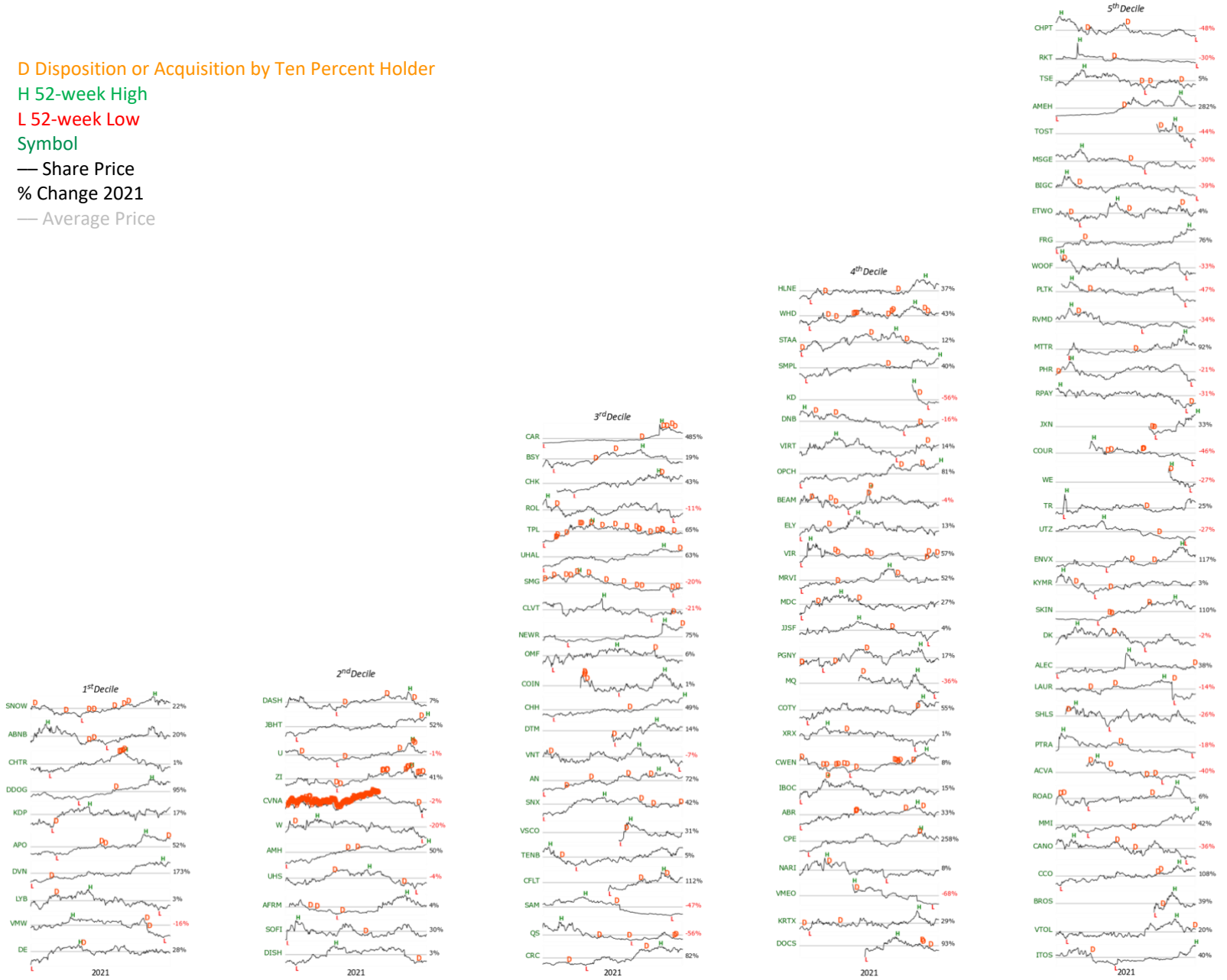
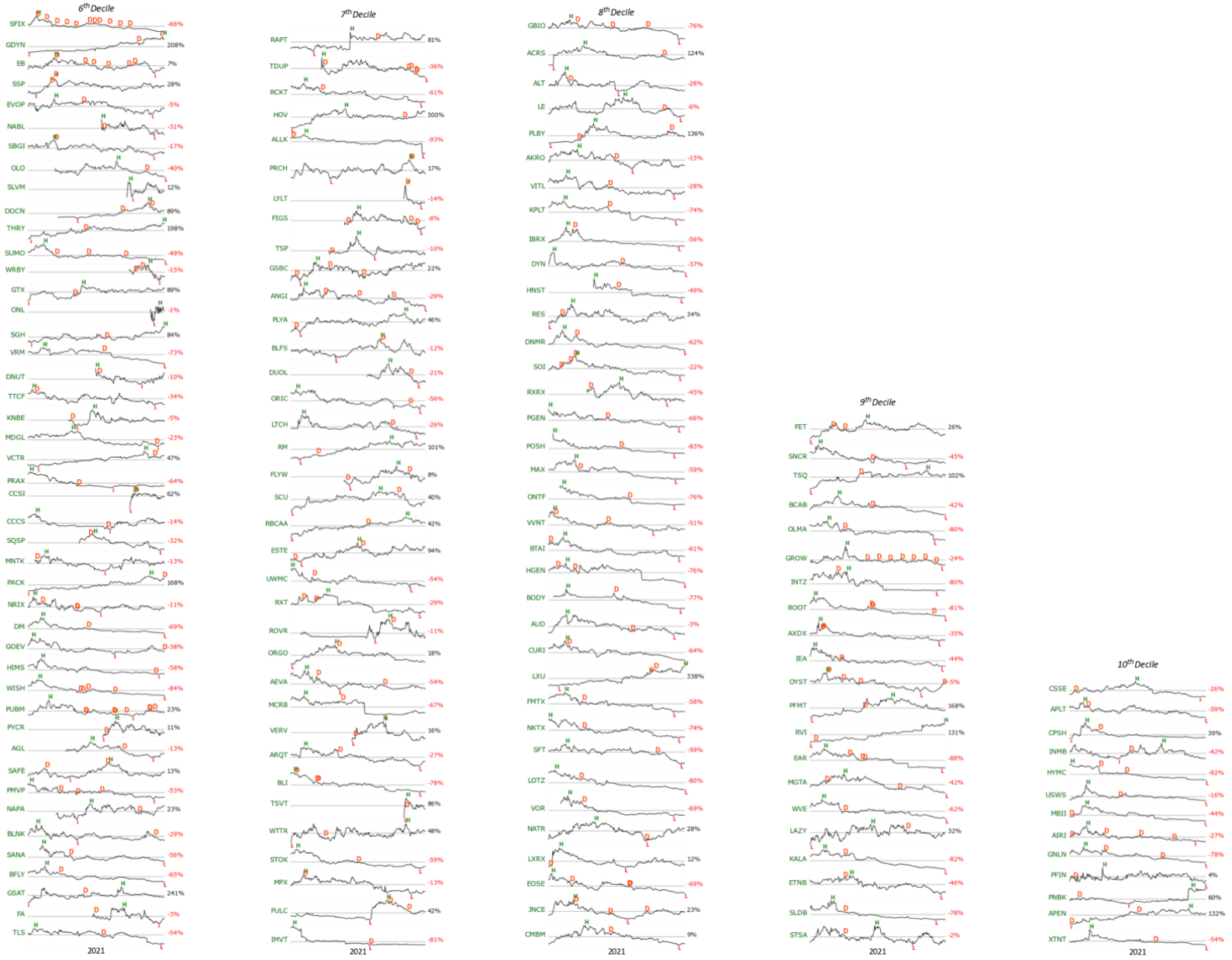


Figure 4.2

Share Price Performance of Select Companies with Distributions Reported on Form 4 by Ten Percent Holders, by Market Capitalization Decile, 2021



Note. Filings for issuers included in the S&P Total Market Index.

I appreciate the opportunity to submit comments to the Commission on the Share Repurchase Proposal. For ease of reference, requests for comment are in boldface in the Annex. [11]

Sincerely,

Andrew MacInnes

Managing Director

[11] *This document is for discussion purposes only and does not constitute advice of any kind, including tax, accounting, legal or regulatory advice, and BrilLiquid LLC is not and does not hold itself out to be an advisor as to tax, accounting, legal or regulatory matters. This communication is for informational purposes only and nothing herein should be construed as a solicitation, recommendation, or an offer to buy or sell any securities or product. The information contained herein was obtained from public sources and was relied upon by BrilLiquid LLC without assuming responsibility for independent verification as to the accuracy or completeness of such information. Any estimates are publicly available, and involve numerous and significant subjective determinations, which may not be correct. No representation or warranty, express or implied, is made as to the accuracy or completeness of such information and nothing contained herein is, or shall be relied upon as, a representation or warranty, whether as to the past or the future. BrilLiquid LLC assumes no obligation to update or otherwise revise these materials.*

Annex

A. Request for Comment – Form SR

1. Should we adopt new Form SR to require daily repurchase disclosure, as proposed? Would less frequent disclosure of daily share repurchases (e.g., weekly, monthly, or quarterly disclosure) provide sufficiently timely information about issuer repurchases? Would less detailed disclosure (e.g., aggregated disclosure of repurchases on a weekly or monthly basis, rather than daily), that is furnished more frequently than under current Item 703, provide sufficiently useful disclosure? Instead of adopting Form SR, should we amend Form 8-K or another existing form to require daily repurchase disclosure?

There are pros and cons of granular and summary disclosure. I believe a combination of weekly filings of Form SR type disclosure that is then aggregated into quarterly Exchange Act filings would be a good starting point. Similar disclosure of transactions by insiders (e.g., form 3, 4, and 5 filings) should be included in the issuer's Exchange Act filings.

2. Should we instead require an issuer to disclose its share repurchase program and continue to report actual share repurchases on a periodic basis? If so, should we require the issuer to disclose its planned share repurchases at least 30 days prior to the first repurchase transaction? Would a different disclosure deadline be more appropriate? Should the disclosure specify the amount of securities that may be purchased or any additional information? How would the burden of complying with such requirements compare with the burdens of complying with proposed Form SR? In reporting actual share repurchases under this approach, should we require the periodic disclosure to be broken out on a monthly basis, as currently required under Item 703 of Regulation S-K, Item 16E of Form 20-F, and Item 9 of Form N-CSR, or should we expand the disclosure to require a breakout of repurchase activity on a more frequent basis?

Daily purchases disclosed on a weekly basis as described above is a good compromise and allows investors to see the "forest and the trees" of share repurchases. Announcing a share repurchase program authorization at least 30 days prior to the first purchase. Additionally, the issuer's share repurchase strategy should be reconfirmed by the Board and details updated as necessary in the issuer's quarterly filings on 10-Q and 10-K (or 6-K and 20-F).

3. Should we amend issuers' exhibit filing requirements to require issuers to provide daily, weekly, or biweekly repurchase disclosure in an exhibit to the issuer's periodic reports?

If so, should such an exhibit requirement be in lieu of or in addition to reporting on Form SR?

Weekly disclosure in addition to providing as a structured (XML) exhibit in periodic reports.

4. Should we require disclosure of executed share repurchase orders on Form SR, as proposed? Are there concerns that executed orders may fail to settle and that issuers would not be able to accurately disclose the shares purchased on the next business day? How frequently do executed orders fail to clear and settle? Should we base the requirement on something other than order execution? For example, should we require issuers to furnish Form SR within one business day after the order clears and settles and the issuer receives trade confirmation?

I don't believe settlement failure should be a major consideration. Weekly disclosure instead of daily may reduce any risk that does exist.

5. Should we require an issuer to furnish disclosure on Form SR within one business day of execution of a share repurchase order, as proposed? Would issuers have sufficient time to prepare and furnish such disclosure? If not, how long should an issuer have to furnish Form SR? How would a longer time period to furnish Form SR impact the costs associated with preparing the disclosures and the benefits to investors of more timely disclosure? Would a longer period compared to the proposal (e.g., two days, five days, ten days or more) still provide timely information about issuer repurchases? Would the proposed deadline for furnishing Form SR negatively impact issuers' ability to effectively conduct share repurchases, such as by increasing the price issuers may have to pay to repurchase their securities?

See above.

6. As discussed above, proposed Form SR would require daily reporting of the total number of shares repurchased, the average price paid per share, issuer share repurchases on the open market, shares purchased in reliance on the safe harbor in Rule 10b-18, and shares purchased pursuant to a plan that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c). Should we adopt these Form SR disclosure requirements, as proposed? Should we eliminate or modify any of these requirements? Should we add any disclosure requirements to Form SR, such as disclosure of the highest and lowest price paid per share for open market purchases or any other information?

Daily share purchases and repurchase price (specifying commissions included or not). Keeping the disclosures on Form SR as simple as possible is desirable. Issuers should be required to keep details of purchases made under Rule 10b-18 or pursuant to 10b5-1 trading plans. However, other than plaintiff's counsel, I am not sure investors are necessarily better off having this information included on Form SR or in quarterly reports.

7. Should we require issuers to furnish an amended Form SR to correct material changes to transactions previously reported on Form SR, as proposed? Alternatively, should we require all corrections to be made on an amended Form SR, regardless of materiality?

Filers often do not file corrections according to the Commission's instructions as can be seen from Form 13F filings. Ideally, corrected forms could replace previously filed forms. With respect to Form SR, the need for filing corrections may be mitigated by the availability of quarterly disclosures (presumably correct).

8. We have proposed that foreign private issuers would have the same Form SR filing obligations as domestic issuers. Should we exempt all foreign private issuers from the requirement to file a Form SR or provide different requirements? We note that some foreign private issuers are required to provide daily detailed disclosure in their home jurisdictions. To the extent these issuers file public reports pursuant to their home country requirements with respect to share repurchases, some also file those reports under Form 6-K where the issuer deems those reports material to investors. Should we exempt these foreign private issuers from the Form SR requirement?

At a minimum, foreign filers that are listed on a U.S. exchange (and not on a domestic home market exchange) only should be required to file Form SR (and make other suggested disclosures covering insider transactions, corporate debt transactions, etc.,). However, there is a strong argument to require all foreign issuers to make similar disclosures if transactions by the issuer and affiliates are being consummated in U.S. capital markets.

9. Should we exempt or provide different requirements for registered closed-end funds from the Form SR requirements? Those funds already provide share repurchase disclosure less frequently than most other issuers subject to the disclosure requirement in that they disclose the information semi-annually rather than quarterly. Would less frequent disclosure continue to

be appropriate for these issuers or, conversely, would investors benefit from the more frequent disclosure on Form SR? Alternatively, because the proposal would only apply to issuers with securities registered pursuant to Section 12 of the Exchange Act, it would only apply to those registered closed-end funds with securities that trade on an exchange. Should we expand the scope of covered registered closed-end funds to more closely match the scope of corporate issuers subject to repurchase disclosure requirements by applying the requirements to registered closed-end funds that would be subject to Section 12(g) of the Exchange Act but for Section 12(g)(2)(B) (15 U.S.C. 78l(g)(2)(B)), which exempts them from the requirement to register their securities under that section unless they are listed on an exchange?

I see little reason to exempt closed end funds, business development corporations, and SPACs from any other these disclosure obligations or reducing the frequency of disclosures compared to corporate issuers.

10. We have observed that smaller issuers generally conduct fewer issuer share repurchases, but that smaller issuers tend to trade in less liquid markets where share repurchases may have more pronounced impacts. Should we consider an exemption from the proposed Form SR reporting requirement for non-accelerated filers, smaller reporting companies, or emerging growth companies?

The Commission has long paid insufficient attention to the effectiveness of U.S. capital markets for smaller issuers. Exemptions and loopholes to regulations and disclosures are relentlessly promoted by some of the Commission's Advisory Committees and other lobbyist groups only to be exploited by certain market participants. As outlined above, many smaller issuers are active "reverse repurchasers" of equity via At-The-Market (ATM) offerings. Disclosures of such transactions are sorely lacking.

11. Should we provide a de minimis exception to the Form SR reporting requirement for share repurchases that are below a certain level? Should any such threshold be based on a dollar threshold, share number, a percentage of public float, or another metric? If so, what level would be appropriate and why?

No. The market for each company's shares is unique and exempting some transactions from being disclosed unnecessarily reduces investor protections.

12. Should we require that Form SR be furnished, as proposed? Alternatively, should we require the form to be filed? Should a late or missing Form SR filing affect an issuer's Form S-3 eligibility or eligibility to file a short-form registration statement on Form N-2? Alternatively, would extending the timeframe for providing Form SR (e.g., to one day after settlement, or two or more business days after order execution) alleviate concerns such that we should require the Form SR to be filed rather than furnished? As proposed, Form SR would be furnished to the Commission, but the Item 703 disclosure would be filed as part of the periodic report. Should repurchase information in the Form SR be subject to different liability than disclosure in issuer periodic reports?

Furnishing reports without additional liability increases likelihood these rule changes are implemented. The goal is to improve disclosure and in doing so enhance investor protections not to increase potential liabilities (and thus legal expense).

B. Request for Comment – Proposed Revisions to Item 703, Form 20-F, and Form N-CSR

13. Many issuers voluntarily choose to announce their share repurchase plans or programs publicly. Item 703 currently requires disclosure of the date each plan or program was announced if the issuer did publicly announce it. Should we clarify what constitutes an announcement for purposes of the disclosure requirement? For example, should the announcement have to have

been made in a Form 8-K, another existing form, or press release? Should we require all open market share repurchase plans to be publicly announced?

Share repurchase, and other corporate financing transactions, approved by the Board should be announced in a Form 8-K. The status of existing repurchase programs and At-The-Market (ATM) programs should be disclosed in quarterly disclosures.

14. We have proposed requiring issuers to indicate via the proposed checkbox if any officer or director reporting pursuant to Section 16(a) of the Exchange Act purchased or sold the issuer's equity securities that are the subject of an issuer share repurchase plan or program within 10 business days before or after any announcement of an issuer purchase plan or program. How would investors use this information? Would the proposed requirement discourage issuers from publicly announcing plans or programs? Is there other information in combination with, or instead of, this disclosure that could notify investors and help them process information regarding officer and director transactions made close in time to the issuer's share repurchase plan announcement? If an issuer doesn't publicly announce its repurchase plan, should the issuer be required to check the box if there are officer or director transactions within a certain time from the initiation of the repurchase plan or program (for example, within 10 business days of initiation)?

I am not sure how disclosure by the limited universe of officers and directors reporting pursuant to Section 16(a) will be helpful to investors.

15. Is a 10-business-day period before or after the announcement an appropriate window for the proposed indication about officer and director transactions? Would a shorter or longer period provide more appropriate notice to investors and cover a sufficient time period where an insider may be most likely to trade in relation to the issuer's announcement of a share repurchase plan? Should we add a proposed checkbox to Form SR, in lieu of or in addition to Item 703, Form 20-F, and Form N-CSR?

No comment.

16. Issuers would need to rely on representations from, or Section 16 reports filed by, their officers and directors to indicate whether any officer or director has purchased or sold the issuer's securities in the relevant time period. Should we provide guidance about the issuer's scope of inquiry and explain what an issuer may rely on for purposes of complying with the checkbox requirement?

No comment.

17. Should we require issuers to describe the objective or rationale for their share repurchases and process or criteria used to determine the amount of repurchases, as proposed? How would investors use this information? Should we also require information regarding how share repurchases are financed or their anticipated or actual impact on leverage ratios or the cost of capital? Should we ask issuers to disclose if they specifically considered other uses for the funds being used for the share repurchase? Is there additional disclosure regarding the reasons for, or expected effects of a share repurchase plan that should be required? Would this proposed requirement result in boilerplate disclosure?

Issuers should be required to disclose the objectives of a share repurchase program. Requiring the issuer to describe a narrative for the program will result in boilerplate legalese. I suggest that issuers include any narrative in the MD&A and not on Form SR or related disclosures in the quarterly filings. Within the issuer's quarterly filings, it may be appropriate for issuers to select one or more of the following checkboxes to describe the rationale and objectives for any share repurchase activity:

(1) return of excess capital to shareholders in lieu of dividends,
(2) repurchase to offset share dilution of stock compensation and awards,
(3) opportunistic repurchase due to market conditions,
(4) repurchase in conjunction with other capital markets transaction,
(5) repurchase to provide liquidity to investors in the public market,
(6) repurchase from employees, insiders, and affiliates in private transactions,
(7) other, describe in less than 140 characters.

The issuer's narrative should articulate why one or more of the checkboxes has been selected.

18. Proposed Item 703 and proposed Form SR would require issuers to disclose whether repurchases were made pursuant to a plan that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c). Does the proposal require an appropriate level of detail regarding Rule 10b5-1 plans? Should this disclosure additionally contemplate repurchases made pursuant to "other pre-arranged trading plans" that issuers may seek to rely on in lieu of Rule 10b5-1 plans? How should we define "other pre-arranged trading plans" in this circumstance? How would investors use information regarding these plans?

I don't believe that detailed information about trading plans is appropriate to be disclosed. Issuers are often able to transact in the capital markets during trading blackout windows imposed on employees, officers, and directors.

19. Proposed Item 703, and proposed Form SR would require disclosure of whether shares were purchased in reliance on the safe harbor in Rule 10b-18. How would investors use this information? Is the use of the term "purchased in reliance on the safe harbor" sufficiently clear?

This is sufficiently clear. Rule 10b-18 volume limitations may need to be updated to better reflect the current equity market structure as outlined above.

20. How would investors use the proposed disclosure regarding any policies and procedures relating to purchases and sales of the issuer's securities by its officers and directors during a repurchase program, including any restriction on such transactions? Should we require disclosure of broader policies and procedures related to a repurchase program, for example, how material nonpublic information is controlled for or potential impacts, if any, on executive compensation metrics? Is there additional information about repurchase plans and trading by insiders that we should require to be disclosed?

Employee stock compensation is so prevalent in corporate America such that company disclosures should reflect the granting of options and stock awards to employees and the purchase and sales of shares or options by employees in aggregate. The Commission should satisfy itself that companies have appropriate internal controls to prevent the misappropriation of material non-public information by employees, executives, directors, and affiliates.

21. In this release, we are proposing amendments to require an issuer to disclose whether it repurchased its securities pursuant to a Rule 10b5-1 plan, and if so, the date that such a plan was adopted or terminated. We also are proposing amendments to Item 703 to require disclosure of any policies and procedures the issuer has established relating to purchases and sales of its securities by its officers and directors, including any restriction on such transactions. In a separate release described in note 21 above, we are proposing new Item 408 under Regulation S-K and corresponding amendments to Forms 10-Q and 10-K to require: (1) quarterly disclosure of the use of Rule 10b5-1 and other trading arrangements by a registrant, and its directors and officers, for the trading of the issuer's securities; and (2) annual disclosure of an issuer's insider trading policies and procedures. If the Commission adopts both the proposed Item 703 and Item 408 amendments, are there opportunities to streamline or simplify

overlapping disclosure requirements that may apply to an issuer's repurchase plan? If so, which provisions should we eliminate or how should we modify the proposed disclosure requirements?

I do not see the merit of disclosing an issuer's insider trading policies. If the Commission wants to see them, they can ask for them and evidence they are being enforced.

22. As proposed, disclosure of issuer share repurchases would be required on a daily basis on Form SR. In addition, Item 703 would continue to require monthly summary disclosure of share repurchases that would be similar to, but not the same as, Form SR tabular disclosure. What are the costs and benefits of providing this disclosure as proposed? Do these different sets of share repurchase disclosures provide distinctly valuable information for investors and market participants? Should there instead be more alignment between Item 703 and Form SR tabular data? Alternatively, should we adopt a subset of the proposed disclosures, such as:

- **Only Form SR;**
- **Form SR and Item 703 and Forms 20-F and N-CSR, amended as proposed, but without monthly data;**
- **No Form SR, but Item 703 and Forms 20-F and N-CSR, amended as proposed and including daily, weekly, or bi-weekly repurchase disclosure; or**
- **No Form SR, but Item 703 and Forms 20-F and N-CSR, amended as proposed, with an exhibit providing daily detail about share repurchases made during the period covered by the report?**

I suggest weekly disclosure on Form SR of daily repurchases and weekly and monthly tabular summaries in quarterly filings. Quarterly filings should include cumulative repurchases (and other transactions) by month. 10-K and 20-F filings should include monthly summaries for the entire year.

23. We have not proposed exemptions or different requirements from the proposed revisions to Item 703, Form 20-F, and Form N-CSR for foreign private issuers, registered closed- end funds, non-accelerated filers, smaller reporting companies, or emerging growth companies. Should we exempt or provide different requirements from some or all of the proposed amendments for these or other classes of issuers?

No exemptions necessary.

Request for Comment – Clarifying Amendments to Item 703, Form 20-F, and Form N-CSR to simplify application of the rules and remove unnecessary instructions

24. Do the changes we are proposing simplify and clarify Item 703 and the corresponding provisions in Forms 20-F and N-CSR? Are there other changes we should consider to clarify the share repurchase disclosure requirements?

No comment.

Request for Comment – Structured Data Requirement

25. Should we require issuers to include block text tagging of narrative disclosures, as well as detail tagging of quantitative amounts disclosed within the narrative and tabular disclosure required by Item 703 of Regulation S-K, Item 16E of Form 20-F, Item

9 of Form N-CSR, and Form SR in Inline XBRL, as proposed? Are there any changes we should make to promote accurate and consistent tagging? If so, what changes should we make?

No comment.

26. Should we modify the scope of the repurchase disclosures required to be tagged? For example, should we only require tagging of the quantitative repurchase disclosures?

No comment.

27. Should we require issuers to use a different structured data language to tag repurchase disclosures? If so, what structured data language should we require? Should we leave the structured data language undefined?

XML files are very useful and relatively easy for ordinary investors to use.

28. We have not proposed exemptions or different requirements from the proposed structured data requirement for foreign private issuers, registered closed-end funds, non-accelerated filers, smaller reporting companies, or emerging growth companies. Should we exempt or provide different requirements from some or all of the proposed amendments for these or other classes of issuers?

No exemptions necessary.

29. Do investors currently have sufficient information about issuers' repurchases to make an informed assessment of such repurchases and their effects on the future share price? In what areas, if any, is existing disclosure lacking such that it is limiting investor ability to make informed investment decisions? Would the proposed disclosure decrease any such information gaps?

Information about issuer repurchases (and ATM programs) is wholly inadequate to make to understand the issuer's intentions or potential share price impact. The suggestions included herein represent a significant improvement in disclosures and will decrease many information gaps.

30. Is existing disclosure about repurchases sufficient to enable investors to assess whether the issuer or its insiders are engaged in self-interested or otherwise inefficient repurchases? Is such inefficient repurchase behavior common today? Would the proposed amendments sufficiently address any disclosure gaps? Would the proposed amendments decrease the likelihood of inefficient repurchase decisions?

The suggested disclosures will allow investors to scrutinize issuer repurchase transactions and potential impact on stock compensation of employees and executives. Forcing issuers to provide a simple rationale for their repurchase programs (and other interconnected capital markets activity) will also encourage them to consider the secondary market impact of their activity and that of other insiders. With the replacement of most traditional market-making firms by algorithmic market-making firms, there is less capital committed in the markets today to provide liquidity. Issuers stand alone in their ability to commit capital to provide liquidity when other market participants do not. Educating issuers by improving their own disclosures will hopefully increase their willingness to commit capital prudently on behalf of shareholders when appropriate.

31. How would investors benefit from the proposed new disclosure of daily repurchases? Would investors benefit from the proposed requirement to disclose additional detail about the number of shares repurchased on the open market, the number of shares repurchased in reliance on the safe harbor in Rule 10b-18, and the number of shares repurchased pursuant to a plan intended to satisfy the affirmative defense conditions of Rule 10b5- 1(c)? Would investors benefit from a more streamlined disclosure, including some but not all of the proposed columns, or including only the total number of shares repurchased on a daily basis?

Investors are necessarily helped by these disclosures relating to 10b-18 or 10b5-1. Those disclosures are required if the Commission is going to continue to rely on plaintiff's bar to enforce regulation.

32. How would the proposed requirement to disclose daily repurchases affect issuers? What costs could issuers incur as a result of the proposed daily disclosures? Are issuers likely to incur front-running costs? How would the proposed timing of the new daily disclosures (one business day after the trade) affect issuers? In what ways could the proposed disclosure requirements be modified to mitigate costs to issuers?

Weekly disclosures of daily repurchases would mitigate the cost to issuers.

33. Would investors benefit from alternative disclosure and reporting frequencies? For example, would the disclosure remain beneficial to investors if the daily repurchase filing were allowed to be made with a longer time lag, such as one or more business days after settlement? Alternatively, would reporting a summary of daily repurchase activity on a weekly, monthly, or quarterly basis provide valuable information to investors? Further, would reporting repurchase activity on a weekly or monthly basis still be beneficial to investors? Would the described alternatives result in a smaller increase in disclosure costs for issuers? Which alternative reporting frequency would be most beneficial in the case of foreign private issuers that presently report repurchases on an annual basis on Form 20-F and registered closed-end funds that presently report repurchases on a semi- annual basis on Form N-CSR?

See above.

34. How would investors benefit from the proposed qualitative disclosure requirements, including the rationale for, and the structure of, an issuer's repurchase program? Would investors benefit from the proposed new disclosure of any policies and procedures relating to purchases or sales of an issuer's securities by officers and directors during the pendency of a share repurchase plan or program? How would investors benefit from the proposed new checkbox disclosure of whether any officer or director reporting pursuant to Section 16(a) of the Exchange Act has purchased or sold shares or other units of the class of the issuer's equity securities that is the subject of an issuer share repurchase plan or program within 10 business days before or after the issuer's announcement of such repurchase plan or program? What are the anticipated costs of those requirements for issuers? In what ways could those requirements be streamlined to decrease costs to issuers, while still providing valuable information to investors? Would shareholders be disadvantaged by the disclosures, as proposed, and attendant costs?

Discussed above.

35. Would investors benefit from different qualitative disclosure requirements? If so, which ones? What would be the costs of such alternatives for issuers?

Discussed above. Incremental costs for issuers are not material.

36. Would investors benefit from the proposed requirement to use a structured data language for the repurchase disclosures? What would be the costs of the proposed requirement to issuers? Should we consider alternative structured disclosure requirements for repurchase disclosure, and what would be their benefits and costs?

Discussed above.

37. Would investors benefit from an additional requirement to compile the daily repurchase information in an exhibit to periodic reports, in addition to reporting this information on new Form SR? What would be the costs of such an alternative to issuers?

No comment.

38. Would investors benefit from keeping the existing monthly disclosure in the body of the periodic report, in addition to the reporting of daily data on a new form? Would issuers realize cost savings if we eliminated the current Item 703 requirement to provide a monthly breakdown of repurchase activity?

Discussed above.

39. What are the costs and benefits of requiring the reporting of daily data on new Form SR, as opposed to on Form 8-K or another existing form?

Form SR disclosure is more easily searchable by investors.

40. Would the proposed disclosure requirements have disproportionate effects on certain categories of issuers? How could such effects be mitigated? Should we exempt some issuers–for example, smaller reporting companies, issuers with few repurchases, registered closed-end funds, foreign private issuers–from all or some of the proposed requirements? What would be the effects of such exemptions on investors' ability to make informed investment decisions?

Large share repurchasers are likely active in the market far more frequently than the once per week the Commission estimates. Many issuers have dormant share repurchase programs. Requiring more frequent disclosure of the status of such programs will be useful to investors and the Commission.