Cravath, Swaine & Moore LLP

Worldwide Plaza
825 Eighth Avenue
New York, NY 10019-7475

TELEPHONE: +1-212-474-1000
FACSIMILE: +1-212-474-3700

CITYPOINT
ONE ROPEMAKER STREET
LONDON EC2Y 9HR
TELEPHONE: +44-20-7453-1000
FACSIMILE: +44-20-7860-1150

JOHN W. WHITE
EVAN R. CHESLER
STEPHEN L. GORDON
ROBERT H. BARON
CHRISTINE A. VARNEY
PETER T. BARBUR
MICHAEL S. GOLDMAN
RICHARD HALL
STEPHEN L. BURNS
KATHERINE B. FORREST
KEITH R. HUMMEL
DAVID J. KAPPOS
DANIEL SLIFKIN
ROBERT I. TOWNSEND, III
PHILIP J. BOECKMAN
RONALD E. CREAMER JR.
WILLIAM V. FOGG
FAIZA J. SAEED
THOMAS E. DUNN
MARK I. GREENE
DAVID R. MARRIOTT
MICHAEL A. PASKIN
ANDREW J. PITTS
MICHAEL T. REYNOLDS
ANTONY L. RYAN
GEORGE E. ZOBITZ
GEORGE A. STEPHANAKIS
GARY A. BORNSTEIN

TIMOTHY G. CAMERON
KARIN A. DEMASI
DAVID S. FINKELSTEIN
RACHEL G. SKAISTIS
PAUL H. ZUMBRO
ERIC W. HILFERS
GEORGE F. SCHOEN
ERIK R. TAVZEL
CRAIG F. ARCELLA
LAUREN ANGELILLI
TATIANA LAPUSHCHIK
ALYSSA K. CAPLES
MINH VAN NGO
KEVIN J. ORSINI
MATTHEW MORREALE
JOHN D. BURETTA
J. WESLEY EARNHARDT
YONATAN EVEN
BENJAMIN GRUENSTEIN
JOSEPH D. ZAVAGLIA
STEPHEN M. KESSING
LAUREN A. MOSKOWITZ
DAVID J. PERKINS
J. LEONARD TETI, II
D. SCOTT BENNETT
TING S. CHEN
CHRISTOPHER K. FARGO
DAVID M. STUART

AARON M. GRUBER
O. KEITH HALLAM, III
OMID H. NASAB
DAMARIS HERNÁNDEZ
JONATHAN J. KATZ
DAVID L. PORTILLA
RORY A. LERARIS
MARGARET T. SEGALL
DANIEL K. ZACH
NICHOLAS A. DORSEY
ANDREW C. ELKEN
JENNY HOCHENBERG
VANESSA A. LAVELY
G.J. LIGELIS JR.
MICHAEL E. MARIANI
LAUREN R. KENNEDY
SASHA ROSENTHAL-LARREA
ALLISON M. WEIN
MICHAEL P. ADDIS
JUSTIN C. CLARKE
SHARONMOYEE GOSWAMI
C. DANIEL HAAREN
EVAN MEHRAN NORRIS
LAUREN M. ROSENBERG
MICHAEL L. ARNOLD
HEATHER A. BENJAMIN
MATTHEW J. BOBBY
DANIEL J. CERQUEIRA

ALEXANDRA C. DENNING
HELAM GEBREMARIAM
MATTHEW G. JONES
MATTHEW M. KELLY
DAVID H. KORN
BRITTANY L. SUKIENNIK
ANDREW M. WARK
ANDREW T. DAVIS
DOUGLAS DOLAN
SANJAY MURTI
BETHANY A. PFALZGRAF
MATTHEW L. PLOSZEK
ARVIND RAVICHANDRAN

PARTNER EMERITUS
SAMUEL C. BUTLER

OF COUNSEL
MICHAEL L. SCHLER
CHRISTOPHER J. KELLY
KIMBERLEY S. DREXLER
LILLIAN S. GROSSBARD
KIMBERLY A. GROUSSET
ANDREI HARASYMIAK
JESSE M. WEISS
MICHAEL J. ZAKEN

March 31, 2022

File No. S7-21-21
SEC Release No. 34-93783

Ladies and Gentlemen:

We write in response to the request by the Securities and Exchange Commission (the "Commission") for comments on the proposed amendments published in Release No. 34-93783, IC-34440, File No. S7-21-21, *Share Repurchase Disclosure Modernization* (the "Issuer Share Repurchase Proposal").

We generally support the Commission's efforts to improve disclosure with respect to issuer share repurchases to reduce information asymmetries between issuers and the investing public around such corporate actions. However, we respectfully submit that several elements of the Issuer Share Repurchase Proposal would adversely affect the ability of issuers to engage in legitimate share repurchase activity and thereby impose additional costs on issuers and their shareholders. We respectfully propose several alternatives to further the Commission's goals while minimizing these potential adverse consequences.

We are today also submitting comments on the proposed rule amendments published in Release No. 33-11013, 34-93782, File No. S7-20-21, *Rule 10b-5 and Insider Trading* (the "Rule 10b5-1 Proposal"). We refer to certain of those comments in this letter. Given the significant interrelationship between the two rule proposals, we encourage the Commission to harmonize the two proposals as they relate to issuer repurchase activity to avoid duplication and unnecessary complexity. We also note here the discussion in those comments of the distinction between "plans" under Rule 10b5-1(c)(A)(3), on the one hand, and "contracts" and "instructions" under Rule 10b5-1(c)(A)(1) and (2), respectively, on the other hand, all of which potentially are entitled to the affirmative defense under Rule 10b5-1(c) but which operate very differently in practice. Consistent with those comments, we will use the term "Rule 10b5-1 plan" to

refer to a "plan" under clause (3) as that term is conventionally understood in the marketplace. Under current law, there is no reason for issuers to draw any legal distinction between these alternative paths to the safe harbor. If the Commission moves ahead with amendments along the lines contemplated in the Issuer Share Repurchase Proposal, we suggest that the final rules clarify that references to "plans" or "Plans" are intended to refer to arrangements that are intended to qualify for the safe harbor as "plans" under clause (3) and would not qualify as "contracts" or "instructions" under clauses (1) and (2).

As a preliminary matter, we would note that in our experience boards of directors of reporting companies — whether domestic or foreign — exercise a great deal of care in both high-level decisions with respect to share repurchases and in the delegation of authority to members of management or other employees to execute repurchase strategies. Boards of directors and management routinely seek advice from law firms and other advisors to ensure that potential share repurchase activity complies with applicable fiduciary duties as well as relevant corporate and securities laws, particularly the prohibitions on trading while in possession of material non-public information. As we note in our comments to the Rule 10b5-1 Proposal, the Commission cites no evidence of abuse in the context of share repurchases pursuant to Rule 10b5-1 plans by issuers, but rather suggests that corporate insiders may be able to obtain personal advantage (potentially in violation of fiduciary duties to their employers) as a result of issuer repurchase activity. We respectfully submit that the investing public would be better served by efforts on the part of the Commission to identify and punish rogue individuals directly rather than by introducing costly and complex limitations and disclosure obligations on share repurchase activity by issuers, whether in reliance on Rule 10b5-1 or otherwise.

Our responses to select requests for comment in the Issuer Share Repurchase Proposal follow.

Discussion of Proposed Amendments

A. Proposed Form SR.

Question 1 —

We believe that new Form SR should be required to be furnished within four business days of the end of any calendar month in which an issuer has executed one or more share repurchases. We believe that essentially real-time disclosure of repurchase activity (particularly if Form SR requires specific disclosure of whether such repurchases were made in reliance on Rule 10b-18 or in accordance with a Rule 10b5-1 plan) will permit certain market participants to use this information to the detriment of the issuer, its long-term shareholders and other market participants.

In our experience, the overwhelming majority of Rule 10b5-1 plans are established by issuers using more or less detailed trading algorithms that impose pricing and volume limits on the repurchasing brokers. Consistent with Rule 10b5-1, issuers

adopting such Rule 10b5-1 plans do not expect to amend them during their operative lives, so the trading algorithms are effectively set for the duration of the plans. As it relates to Rule 10b5-1 plans, the data proposed to be included in Form SR will allow certain investors, with access to substantial computing power, to "reverse engineer" the issuer's trading algorithms and "trade against" the issuer to the detriment of the issuer and its long-term shareholders, including its smaller and more passive shareholders. We also note that cessation of routine repurchases may signal to the market that the issuer has determined that it is in possession of material non-public information (or, relatedly, is considering a material transaction) and the resumption of repurchase activity may signal the opposite. Any such trend data, particularly if there are concurrent rumors in the market regarding a potential material transaction, such as an acquisition or divestiture, may be used by opportunistic traders to disadvantage the issuer and its long-term shareholders.

We believe that requiring Form SR to disclose daily repurchase activity on a monthly basis will provide the Commission and investors with important information regarding repurchase activity (including the ability to compare the timing of issuer repurchase activity with insider share transactions) while avoiding the potentially negative consequences of a next-day filing regime. This approach should reduce the number of inadvertent errors made by issuers in Form SR submissions, which may arise as a result of the significant time pressure that would be introduced by a next-day filing regime, especially as we expect completion of a Form SR to require detailed input from and interaction between issuers, their legal and compliance advisors and the third parties who have facilitated or executed the relevant purchases. Additionally, our proposed approach also will eliminate the invariable "clutter" associated with the volume of Form SR filings that would result from requiring a separate report for each day's repurchases.

Finally, we note that the furnishing of Form SR, whatever the required frequency may be, is unlikely to convey any information about the "motivations" behind issuer share repurchases. For example, if a share repurchase is made pursuant to a Rule 10b5-1 plan, the individual daily update will not (and cannot) reflect any motivation for a particular repurchase as of the date of that repurchase. We respectfully submit that the Commission's desire for additional information concerning "motivations" is grounded in a misunderstanding of issuer decision-making regarding share repurchases. A board's decision to repurchase shares starts with (1) a determination that the business has cash beyond that necessary for the business and that cannot efficiently be reinvested in the business (which is a fundamental business decision that goes to the heart of the board's role), then moves to (2) a decision to return the cash to shareholders rather than repay debt or hold the cash as a reserve (which is a capital structure and risk-allocation decision), then moves to (3) a decision to return the cash to shareholders through share repurchases rather than enhanced regular or special dividends (which is a capital markets decision, informed by judgments as to the objectives and constraints of the issuer's shareholders) and then moves to (4) a decision about whether to implement share repurchases through a 10b5-1 plan, a self-tender offer, an accelerated share repurchase

structure or opportunistic purchases (which is a capital markets execution decision).[1] We respectfully suggest that it may be extremely difficult to infer "motivations" on most of these decisions merely from the fact of a repurchase disclosed on proposed Form SR. We also do not believe that there is a benefit to investors to know what securities law compliance framework (*e.g.*, purchases made in reliance on Rule 10b-18 or pursuant to a Rule 10b5-1 plan) was relevant to specific repurchase. If the Commission is of the view that shareholders would benefit from enhanced disclosures on these subjects, we would suggest the Commission consider amendments to the liquidity and capital resources disclosure required by Regulation S-K Item 303 (Management's discussion and analysis of financial condition and results of operations) in an issuer's periodic reports.

Question 2 —

We believe that issuers routinely make a public announcement of the approval of share repurchase authorizations by their boards of directors. The requirement in Rule 703 that an issuer identify which repurchases were made pursuant to publicly announced plans reflects this market practice. However, issuers may authorize repurchases that are clearly immaterial. Therefore, we do not believe it would be appropriate to require a public announcement by press release or by filing a Form 8-K of board approval of a share repurchase authorization. If the Commission does adopt such a requirement, we believe that it will be very important to distinguish between approval of a share repurchase authorization and board or management approval of any particular repurchases (whether through a "program" or otherwise). We do not believe that a requirement to disclose approval of particular purchases in advance or contemporaneously is necessary or appropriate.

We respectfully, but strongly, disagree with the idea of proposing a 30-day delay for the first repurchase transaction if the Commission requires public disclosure of the adoption of a share repurchase authorization. While we understand the suggestion that a cooling-off period may provide further assurance that trading activity should be entitled to the benefit of the Rule 10b5-1(c)(1) affirmative defense (and, as noted in our comment letter to the Rule 10b5-1 Proposal, support a cooling-off period for current officers and directors), we believe that any cooling-off period for issuer repurchases would greatly hamper issuer flexibility and allow opportunistic traders to take advantage of an issuer at the expense of its long-term shareholders and other market participants. As just one example, we note that, consistent with Regulation M, issuers frequently repurchase shares in connection with Rule 144A/Regulation S issuances of convertible debt. Typically, issuers prepare for such offerings, monitor the market for what they perceive to be a favorable market backdrop for an offering and then execute a transaction

[1] Because so many of these considerations relate to the U.S. capital markets, we respectfully suggest that the Commission should not rely on data from other capital markets in making determinations as to the potential effects in the U.S. capital markets of these proposals. As has been well-documented, U.S. domestic issuers (as compared to issuers in other major capital markets) tend to return less cash to shareholders in the form of dividends and more in the form of share repurchases. While that difference may be explained in terms of differing legal and tax frameworks, it may also be explained by differing investor characteristics and preferences.

following an often brief marketing process. We believe that an advance notice requirement would meaningfully impair an issuer's ability to conduct such an offering and concurrent repurchase by constraining timing flexibility and allowing opportunistic market participants to "trade against" the transaction.

More fundamentally, we respectfully suggest the Commission reconsider the kinds of "share repurchase programs" it believes should be covered by any enhanced disclosure requirement. In our experience, most issuers do not describe as "share repurchase programs" (1) any arrangements they may implement to acquire shares in the market to deliver to shareholders participating in dividend reinvestment plans, to employees participating in employee share purchase programs or to 401(k) or other retirement accounts in satisfaction of "stock match" commitments, (2) any arrangements they may implement to facilitate the operation of employee equity incentive plans, (3) self-tender offers, (4) net share settlement and other transactions where a holder forfeits an entitlement to an issuer's shares, such as in connection with settlement of an option, forfeiture of shares upon separation or similar events or (5) cash settlement of transactions that reference an issuer's shares, such as derivative transactions. However, because "share repurchase program" is not currently a legal term of art, it may be that different issuers or commentators use the term very differently. If the Commission's concerns are with informational asymmetry in trading, then we suggest any enhanced disclosure should be limited to cash purchases by issuers in the market for their own account and not for the purpose of immediately delivering those shares to a third party in satisfaction of a pre-existing obligation.

Question 3 —

If the Commission determines not to adopt proposed Form SR, revision of Item 703 to require the filing of an exhibit to an issuer's periodic reports disclosing daily share repurchase activity would provide incremental information to investors, the Commission and other market participants. If the Commission adopts Form SR (including the inline XBRL tagging requirement), this information will already be publicly available and we believe an exhibit requirement would be duplicative and create unnecessary costs for issuers.

Question 4 —

We believe that the date of execution rather than the date of settlement is the most relevant date for share repurchase disclosure. One of the stated goals of the Issuer Share Repurchase Proposal is to permit a better understanding by investors, the Commission and other market participants of the impact of share repurchases on the trading market. Execution is the relevant time to facilitate such analysis.

If, as we suggest, Form SR is only required to be furnished within four business days of the end of any calendar month in which an issuer has executed one or more share repurchases, we believe that the risk of failed trades or other reporting errors will be significantly reduced. Nevertheless, we strongly encourage the Commission to include a safe harbor to permit issuers to correct Form SR errors without liability. In this

regard, we note that Form SR would be an element of an issuer's disclosure controls and procedures (as defined in Exchange Act Rule 13a-15) and therefore subject to annual evaluation and certification requirements.

Assuming a Form SR requirement is adopted, we believe that it is very important that the Commission clarify that for purposes of transactions, such as accelerated share repurchases that may require counterparty performance over time, execution is the time at which the contract is entered into regardless of whether settlement occurs at a later date or on multiple dates. If the number of shares ultimately purchased pursuant to the transaction differs from the number contemplated at the time of execution, a correction or update would be required as discussed in response to Question 7.

Question 5 —

As noted in response to Question 1, we believe that new Form SR should be required to be furnished within four business days of the end of any calendar month in which an issuer has executed one or more share repurchases. We respectfully submit that requiring issuers to furnish Form SR on a next-day basis would result in increased administrative burden and expense and position opportunistic market participants to "trade against" the issuer, increasing issuer repurchases costs and disadvantaging long-term shareholders and other market participants.

Question 6 —

We believe that Form SR only should require disclosure of (i) the total number of shares repurchased, (ii) the average price paid per share, (iii) the number of shares repurchased in open-market transactions and (iv) the number of shares repurchased in other transactions. We do not believe that an issuer should be required to provide additional disclosure identifying the number of shares repurchased in reliance on the Rule 10b-18 safe harbor or pursuant to a Rule 10b5-1 plan. We do not believe that the additional proposed disclosures would provide additional relevant information to investors, the Commission and other market participants, and we expect they would add significantly to the administrative burden associated with the proposed reporting requirement.

Question 7 —

We believe that it is appropriate to require issuers to furnish an amended Form SR to correct material changes to previously reported transactions. We would recommend that issuers be required to disclose material changes to a previously furnished Form SR in a Form SR within four business days of the end of the calendar month in which the changes occur or are identified. In this way, an issuer would be able to report corrections and other updates on a timely basis and, assuming the issuer repurchased shares during the month in which the change occurred or was identified, in its next required Form SR rather than in an additional Form SR.

Question 8 —

We believe that foreign private issuers should only be required to furnish a Form SR to report shares purchased in the open market in the United States. Reporting of share repurchases outside of the United States should be subject to local law requirements only, consistent with the Commission's general approach to foreign private issuer regulation.

Question 10 —

We do not believe the Commission should exempt non-accelerated filers, smaller reporting companies or emerging growth companies from the Form SR reporting requirements. We believe that Form SR disclosure will provide relevant information to investors, the Commission and other market participants regardless of the filing status of the issuer. However, if the Commission adopts a next-day reporting regime, we would recommend that smaller reporting companies be provided additional time to furnish Form SR.

Question 11 —

As indicated above, we are very concerned about the costs and burden of the proposed Form SR filing requirements. We believe the Commission should act to reduce those potential costs and burdens by requiring less frequent filings, by requiring less information in the filings and by more narrowly defining the types of repurchase transactions that are subject to Form SR. If reporting is required on a less frequent basis, we do not believe the Commission should provide a *de minimis* exception to the Form SR reporting requirements.

Question 12 —

We support the Commission's proposal to require the Form SR to be furnished rather than filed. We do not believe that furnishing a Form SR late should jeopardize Form S-3 or Form F-3 eligibility or reliance on Rule 144. We do not believe that the difference between the treatment of furnished material and filed material for liability purposes—even if the same information may be disclosed in a furnished document and a filed document—supports treating Form SR differently than other furnished disclosure. The same phenomenon arises if an issuer initially discloses information pursuant to Item 8.01 of Form 8-K and subsequently includes the same information in a periodic report.

B. Proposed Revisions to Item 703, Form 20-F and Form N-CSR

Question 13 —

We do not believe there is a need to clarify what constitutes a public announcement for purposes of the disclosure requirement. We also do not believe that all open market share repurchase plans should be publicly announced. We believe that each issuer can determine, based on the specific facts and circumstances, whether a share

repurchase plan is material so that it should be disclosed publicly. As noted in our response to Question 2, we believe that issuers routinely make a public announcement of the approval of share repurchase authorizations by their boards of directors. However, issuers may authorize repurchases that are clearly immaterial. Therefore, we do not believe it would be appropriate to require a public announcement by press release or by filing a Form 8-K of board approval of a share repurchase authorization. If the Commission does adopt a public notice requirement, it should only apply to board approval of a share repurchase authorization. As is the case today, an issuer should be able to determine whether any particular repurchase pursuant to a board authorization is itself material. For example, we believe that many issuers conclude that day-to-day Rule 10b-18 repurchases are not material but almost universally conclude that the commencement of an accelerated share repurchase program is material. If a Form SR requirement is adopted, the information regarding actual repurchases will become publicly available more frequently than quarterly, thus facilitating market awareness of the issuer's repurchase activity.

Question 14 —

We believe that the securities law enforcement bar currently tracks the trading activity of Section 16 insiders vigorously. If Form SR is adopted, the structured data reporting format will allow interested parties to analyze the timing of trading activity by insiders relative to issuer share repurchase activity within any timing parameters they wish to apply. Accordingly, we see little value to investors to a 10-day checkbox requirement. Additionally, such a requirement may have the unintended consequence of implying that trading outside the checkbox window (11 days or more) is always permissible. If a checkbox requirement is adopted, we believe that insider purchase or sale activity pursuant to a Rule 10b5-1 plan implemented outside the checkbox window should be excluded from the disclosure requirement.

We do not believe that the proposed checkbox requirement would discourage issuers from publicly announcing plans or programs. We also do not believe that a checkbox requirement is appropriate in the context of repurchase plans that are not publicly announced. Here again, we emphasize the importance of defining what constitutes a "plan or program" and emphasize the distinction between board authorization of share repurchases and individual transactions effected from time to time pursuant to such an authorization. If any such requirement is adopted, "initiation" also will need to be defined. For example, we see no value in requiring an issuer to publicly disclose that insiders purchased or sold shares within a 10-day window around the adoption of an unannounced repurchase program where no repurchases will occur pursuant to that program within the 10-day window.

We note also that the proposed amendments to Form 20-F include the checkbox requirement despite the fact that foreign private issuers are exempt from Section 16. We assume this was an inadvertent error.

Question 15 —

As discussed in response to Question 14, we believe that if Form SR is adopted, the structured data reporting format will allow interested parties to analyze the timing of trading activity by insiders relative to issuer share repurchase activity within any timing parameters they wish to apply. The duration of any specified checkbox window will be inherently random and we do not believe the checkbox requirement will provide meaningful information to the Commission, shareholders or other market participants. If Form SR is adopted with a one-day reporting requirement, we believe it is not practicable to add a checkbox requirement to Form SR.

Question 16 —

If a checkbox requirement is adopted, we believe that the issuer should be able to rely on Section 16 filings by its officers and directors for purposes of complying with the checkbox requirement. We do not believe that issuers should have any affirmative duty to investigate or validate the information reported in Section 16 filings, nor do we believe that issuers should be responsible for "dating" trades under Rule 10b5-1 plans or other trading plans if that information is not apparent on the face of the relevant Section 16 filings.

Question 17 —

We believe that this proposed requirement will almost certainly result in boilerplate disclosure. Accordingly, we do not believe such disclosure will provide useful information to investors. We also reiterate our earlier discussion as to the complexity of boards' decision-making that leads to a decision to repurchase shares. It is very hard to imagine meaningful disclosure of a board's decision that the issuer had excess cash and equally hard to imagine useful disclosure of a board's decision to return that cash to shareholders in the form of share repurchases rather than dividends. If the Commission believes investors would benefit from enhanced disclosure regarding boards' views on optimal capital structure, we do not believe that it should require prescriptive requirements, such as the disclosure of the source of funds or impact on leverage ratios or cost of capital. We believe that permitting issuers to determine what information is material to investors in the context of share repurchases will result in far more meaningful disclosure than a "one size fits all" list of mandatory disclosure items. In addition, we believe that any such disclosure requirement would be more appropriately added to the liquidity and capital resources disclosure required by Regulation S-K Item 303 (Management's discussion and analysis of financial condition and results of operations), as that disclosure presumably would be relevant to investors whether or not an issuer in fact is implementing share repurchases (*e.g.*, it would also affect decisions to finance through equity versus debt and decisions to pay dividends versus reduce debt).

Questions 18 and 19 —

As set forth in our response to Question 6 above, we do not believe that disclosure identifying the number of shares repurchased in reliance on the Rule 10b-18

safe harbor or pursuant to a Rule 10b5-1 plan would provide useful information to investors, the Commission and other market participants. For the same reason, we do not support requiring similar disclosure with respect to "other pre-arranged trading plans" which, as the Commission notes, is not a defined concept.

Questions 20 and 21 —

It is not clear to us how investors would use the proposed disclosure regarding policies and procedures relating to purchases and sales of the issuer's securities by its officers and directors during a repurchase program or the potential impact of repurchases on executive compensation metrics. If the Commission nevertheless determines to require such disclosure, we respectfully submit that it would fit better with the disclosure of an issuer's insider trading policies and procedures contemplated by proposed Regulation S-K Item 408(b) and it would therefore be more efficient to omit any such new requirements from Item 703 and include them in Item 408(b).

Question 22 —

As discussed in our response to Question 1, we believe that new Form SR should be required to be furnished within four business days of the end of any calendar month in which an issuer has executed one or more share repurchases and that the form should provide disclosure of the number of shares purchased and the average purchase price for each day on which purchases occurred. If this approach is adopted, we believe that Item 703 should be revised only to require aggregated repurchase data for the relevant quarter. In this way, material information regarding all daily repurchase activity would be available on a monthly basis on Form SR and aggregated data would be available on a quarterly basis in a domestic issuer's periodic reports.

Question 23 —

We do not believe that different requirements should apply to classes of issuers, although we note that foreign private issuers are not required to report as frequently as domestic issuers and we would not propose a different regime for repurchase related disclosure.

Question 24 —

We support the clarifying amendments for the reasons set forth in the Issuer Share Repurchase Proposal.

Questions 25 and 26 —

We do not see any benefit to block-tagging narrative disclosure and would limit tagging to quantitative repurchase disclosures.

Question 28 —

We do not believe that different requirements should apply to different classes of issuers.

Question 30 —

We do not believe that issuers routinely engage in inefficient repurchase activity. As discussed above, we believe that board repurchase authorization decisions typically involve significant deliberation by corporate fiduciaries as to the most appropriate management of a company's liquidity and capital structure.

* * *

We would welcome the opportunity to discuss any of the above issues further with the Commission. Please direct any inquiries to Richard A. Hall (rhall@cravath.com; 212-474-1293), Andrew J. Pitts (apitts@cravath.com; 212-474-1620) or Michael L. Arnold (marnold@cravath.com; 212-474-1664).

CRAVATH, SWAINE & MOORE LLP

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090