Committee on Securities Law
of the Business Law Section of the
Maryland State Bar Association

April 5, 2022

VIA EMAIL AT RULE-COMMENTS@SEC.GOV

Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Share Repurchase Disclosure Modernization (Proposed Amendments), File No. S7-21-21

Ladies and Gentlemen:

This letter expresses the views of the Committee on Securities Law (the "Committee") of the Business Law Section of the Maryland State Bar Association ("MSBA") with respect to the above-referenced proposing release, SEC Release Nos. 34-93783; IC-34440; File No. S7-21-21 (sometimes referred to herein as the "release") relating to the Securities and Exchange Commission's (the "Commission") proposed amendments regarding disclosure about repurchases of an issuer's equity securities that are registered under Section 12 of the Securities Exchange Act of 1934 ("Exchange Act"). The membership of the Committee consists of securities practitioners who are members of the MSBA and includes lawyers in private practice, business, government, and academia. The Business Law Section and the Board of Governors of the MSBA have not taken a position on the matters discussed herein, and individual members of the MSBA and the Committee, and their associated firms or companies, may not necessarily concur with the views expressed in this letter.

The Committee has a history of submitting comments to the Commission regarding rule proposals that are within its purview. When providing comments, we strive to focus on what the outcome of a rule proposal should be based on the purpose and intent of the federal securities laws and the Commission's mission of investor protection, facilitating capital formation, and maintaining fair, orderly, and efficient markets. We believe that a review of our prior comment letters would leave the reader unable to discern any political leanings of the Committee members involved in the drafting of such letters. We cannot recall a past instance where the Committee has asked the Commission to fully abandon

one of its proposals. In this letter, however, we request that the Commission abandon its proposal regarding disclosure about repurchases of an issuer's equity securities that are registered under Section 12 of the Exchange Act because the burdens associated with the proposed disclosure obligations outweigh any negligible benefit that would be associated with such disclosure, and the release provides little evidence of the need for this information on the scale that is proposed.

First and foremost, the release provides little evidence that the purported problems that the proposed disclosure requirements aim to address actually exist. The most prominent concern discussed in the release is that executives are using share repurchases as a way to inflate their compensation "in a manner that is not transparent to investors or the market." The release states that "some commentators have asserted that issuer repurchases could potentially be used to increase share prices in order to enhance executive compensation and insider stock value." The evidence that this is actually happening, however, at least to the extent discussed in the release, is inconclusive (at best). In this regard, we reference the Negative Net Equity Issuance report by the staff of the Commission dated December 23, 2020,[1] cited in note 58 of the release (the "Staff Report"), which set forth "[t]hree facts that suggest that the theories inconsistent with firm value maximization cannot account for the majority of repurchase activity." These facts include: (i) that stock price increases accompany repurchase announcements, which stock price increases do "not dissipate over time, as one would expect if repurchases were based on efforts to manipulate share prices"; (ii) that companies that spent the most on repurchases during the prior-two year period either did not link compensation to earnings per share ("EPS") targets or considered the repurchases when determining whether EPS-based performance targets were met or in setting them; and (iii) that stock option pay had declined in the past 20 years. The Staff Report went on to state that "[c]ollectively, these findings potentially suggest that most repurchase activity does not represent an effort to artificially inflate stock prices or influence the value of option-based or EPS-linked compensation."

Further, the complaint about using issuer repurchases to "enhance . . . insider stock value" is questionable. Absent some kind of dual-class structure where executives are made up of the founders of the issuer and their family members, which is not particularly common among public companies, insiders would hold the same stock as non-insiders. Therefore, any increase in stock value

[1] Available at https://www.sec.gov/files/negative-net-equity-issuance-dec-2020.pdf.

would be (generally) shared by the stockholders, whether "insider" or not. Increasing stock value is considered a positive development and something that management is supposed to accomplish—or at least attempt to accomplish. Thus, we cannot discern a logical basis for distinguishing "insider" stock value as opposed to stock value generally, let alone couching legally-permissible actions that insiders might take to increase it as a problem that needs to be addressed by Commission rulemaking.

We believe that it is strange for the Commission to propose onerous reporting obligations on issuers based on the fact that "some" persons have asserted that issuer stock repurchases "could" be used in an inappropriate manner, without conclusive evidence that this is actually happening. It is particularly concerning that the Commission clings to this idea even in the face of evidence to the contrary, and then uses it as a justification for the proposed disclosure obligations.[2]

To the extent that the Commission has serious concerns that insiders are using stock repurchase programs to increase their own compensation, we believe that requiring disclosure in this regard, including how an issuer's board of directors or compensation committee takes into account share repurchases when considering EPS-linked performance targets or other measures that impact compensation, as part of an issuer's compensation disclosure obligations pursuant to Item 402 of Regulation S-K, would both more directly address these concerns and be much less burdensome for issuers. Requiring, as proposed, that issuers provide daily disclosure about repurchases so that investors can analyze it, "combined with other information available about the issuer," to discern for themselves whether the issuer is indeed engaging in "such possible behavior," is a rather convoluted way to get information to investors about whether stock repurchases are being used to increase executive compensation when such a discussion could be addressed directly in the compensation disclosures that issuers already provide.

The Commission further provides in the release as justification for the proposed amendments that the proposed disclosure will help address certain "asymmetries [that] may exist between issuers and affiliated purchasers and

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[2] In this regard, we particularly note in Commissioner Allison Herren Lee's Statement, *Enhancing Transparency Around Stock Buybacks: Statement on Corporate Share Repurchases Proposal* (Dec. 15 2021), the assertion that while companies may conduct share repurchases for many reasons, "one of those reasons should not be for the opportunistic, short-term benefit of executives."

investors with regard to information about the issuer and [an issuer's] future prospects" in connection with issuers repurchasing their own stock versus investors in the market, and that these asymmetries "in turn, could exacerbate some of the potential harms associated with issuer repurchases." Again, we believe that imposing burdensome disclosure obligations based on theoretical or "potential" harms is inappropriate. More importantly, the disclosure provisions of the federal securities law are grounded in the concept that the disclosures that issuers are required to provide is that information that is "material,"[3] that is, information that is important to the reasonable investor.[4] Investors are *not* entitled to all information about an issuer or even all information that they might like to have about an issuer, because information is not "material" solely because it is something investors might like to know.[5] Therefore, informational asymmetries alone, without regards to materiality, do not merit the prescribed disclosure of such information. Further, to the extent that information about issuer stock repurchases is material, an issuer's further repurchases of or other trading in its securities prior to the disclosure of such repurchases would be prohibited by existing illegal insider trading provisions and, typically, an issuer's insider trading plan. Indeed, information about an issuer's repurchase of its securities is commonly acknowledged as potential material nonpublic information and as such, if not public, would prohibit trading by insiders (except to the extent covered by a trading arrangement in accordance with the affirmative defense set forth in Rule 10b5-1(c) of the Exchange Act).[6] Further, to

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[3] *See*, *e.g.*, Speech by Commissioner Allison Herren Lee, *Living in a Material World: Myths and Misconceptions about "Materiality"* (May 24, 2021) ("Materiality is a fundamental proposition in the securities laws and in our capital markets more broadly. The system for public company disclosure is generally oriented around providing information that is important to reasonable investors").

[4] *TSC Industries, Inc. v. Northway, Inc.*, 426 U. S. 438, 449 (1977) ("[A]n omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote… Put another way, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available.")

[5] *E.g.*, *Milton v. Van Dorn Co.*, 961F.2d 965 (1st Cir. 1992) ("[t]he mere fact that an investor might find information interesting or desirable is not sufficient to satisfy the materiality requirement").

[6] *E.g.*, Commission Release Nos. 33-7881, 34-43154, IC-24599, *Selective Disclosure and Insider Trading* (adopting Regulation FD) ("While it is not possible to create an exhaustive list, the following items are some types of information or events that should be reviewed carefully to determine whether they are material: …

the extent that issuers do not want to be prohibited from trading or having their insiders be able to trade in their securities in connection with issuer stock repurchases that constitute material nonpublic information, they can disclose the repurchases voluntarily on a Form 8-K. Again, imposing burdensome obligations on all issuers to address "potential" problems that "may exist" in particular situations when there are existing mechanisms in place to address those situations is unnecessarily burdensome.

Finally, the release provides little justification for the proposed expanded disclosure requirements. The justifications that it does provide are general and vague, consisting of little more than conjecture about a few possible benefits that such disclosure "could" provide investors, in many cases without even connecting such tenuous benefits to the purported harms the proposal seeks to

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"events regarding the issuer's securities -- e.g., defaults on senior securities, calls of securities for redemption, repurchase plans, stock splits or changes in dividends, changes to the rights of security holders, public or private sales of additional securities"); *See also*, *e.g.*, Nasdaq Stock Market Rule 5250(b), which requires "a Nasdaq-listed Company … make prompt disclosure … of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions," and IM-5250-1, which requires prior notice to Nasdaq if the release of material information includes, *inter alia*, "[e]vents regarding the Company's securities — *e.g.*, defaults on senior securities, calls of securities for redemption, repurchase plans, stock splits or changes in dividends, changes to the rights of security holders, or public or private sales of additional securities"). With respect to insider trading plans, *see*, *e.g.*, The General Motors Company Insider Trading Policy, available at https://investor.gm.com/static-files/90b9ec04-6926-4930-bc45-f5d8c3e22e78, Section 2.3, *Material Nonpublic Information* ("Although it is not possible to list all types of material information, the following are examples of the types of information that are particularly sensitive and should be treated as material: … stock splits and repurchases"); ADP Insider Trading Policy, available at https://www.adp.com/about-adp/corporate-social-responsibility/ethics/insider-trading-policy.aspx, Definition of Material Non-Public Information ("common examples of information that may be material include … ADP share repurchases"); and Universal Health Services, Inc., Inside Information and Trading of Company Stock, available at https://ir.uhsinc.com/inside-information-and-trading-company-stock, Section VI.A, *When Information is "Material"* ("Information that is or may be material includes (but is not limited to) the following … a pending or proposed repurchase or redemption of Company Securities").

address or how that information could possibly be material. For example, the release posits that "[r]equiring disclosure of the number of shares purchased in reliance on the non-exclusive safe harbor provided by Rule 10b-18 under the Exchange Act ("Rule 10b-18") and pursuant to a plan that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) could also enable investors to better understand how an issuer has structured its repurchase activity." But the release contains no discussion of how the proposed disclosure would accomplish this, why investors need such insight, or how this information could possibly be material. For example, the release does not suggest that the impact of an issuer's repurchase of its shares on its stock price is affected by whether the issuer structured its share repurchases to comply with the Rule 10b-18 safe harbor or to be able to take advantage of the Rule 10b5-1(c) affirmative defense, or any other rationale related to investor protection, facilitating capital formation, or maintaining fair, orderly, and efficient markets.

Given the little amount of justification provided for these unduly burdensome and overly-broad disclosure obligations, the lack of evidence that the justifications actually provided exist, and the scale of the proposed disclosure requirements (*i.e.*, imposing them on all issuers), the most logical conclusion is that the proposed amendments are primarily driven by political considerations, in particular, the "rage" surrounding share buybacks, resulting in the proposed imposition of "unnecessarily frequent disclosure obligations" with the result being decreased repurchase activity by issuers, as discussed in the dissenting statements issued by Commissioner Hester M. Peirce and former Commissioner Elad L. Roisman, respectively, with respect to the proposal. Although only subtly and briefly referred to in the release,[7] the goal of reducing issuer share repurchases cannot be ignored by anyone who has paid attention to the news in this regard. The use of the federal securities laws to address social concerns unrelated to their purpose, while more frequent as of late, is still inappropriate, particularly in this case when the social concerns are driven primarily by political concerns for which there is inconclusive evidence. While in the past the Commission had no choice but to go down this road at the direction of Congress (*e.g.*, in the case of pay ratio and conflict minerals disclosure), the current proposal was not at the direction of Congress— it was generated on the Commission's own accord. As a result, the Commission can walk away from this proposal, and we urge it to do so.

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[7] Specifically, the statement prior to note 16 that "[s]ome of these commentators view issuer share repurchases as a tool to raise the price of an issuer's stock in a way that allows insiders and senior executives to extract value from the issuer instead of using the funds to invest in the issuer and its employees."

We address below areas of particular concern regarding the proposal in greater detail.

I. Daily Disclosure

While not as problematic as the Commission's "Modernization of Beneficial Ownership Reporting" proposal, released in February, that proposes a one-day filing deadline for amendments to Schedule 13D and certain amendments to Schedule 13G (we will address our comments on that proposal by separate letter), we are still very much concerned with the proposed one-day period to report issuer share repurchases. We believe that any one-day reporting deadline that involves actual humans is simply unworkable.

The issuer's personnel who would be responsible for ensuring that the Form SR filing is made may not be the same person or persons who conduct the share repurchases; this will be particularly true when a third party is retained to conduct the issuer's repurchase program. Further, the dates that such share repurchases will be made will not necessarily be determined or known in advance. As a result, in many (if not most) cases the specific date of issuer share repurchases is not planned in advance and, therefore, the filing and the date thereof cannot be planned in advance to ensure that the Form SR is filed timely—unlike, for example, entry into a material agreement that must be reported on a Current Report on Form 8-K within four business days of entry into the agreement, which will often have a long lead time during which the filing can be planned.

As a practical matter, repurchases made during the day will not be tallied and reported to the person responsible for the filing until the end of the trading day at the earliest, or even the next morning. While larger issuers may have two or more persons that are responsible for filing the required Form SR, smaller issuers often do not have the personnel to be able to do this. And while modern technology now allows (or, more correctly, requires) us to work from anywhere, including when on vacation, there are instances when people will simply be unavailable for an entire business day—a religious holiday, a medical procedure, taking a day off to mourn a loved one, or even because they are engaged in another work matter that cannot necessarily be abandoned at the drop of a hat. While, unlike Schedules 13D and 13G, it does not appear that the Form SR will require the regular engagement of counsel in order to get the form filed, in instances where legal questions do arise, the need to consult with counsel, who may also be unavailable for the day for similar reasons, makes it even less likely that the one-day filing deadline could be met. Although issuer personnel and outside counsel are likely to line up someone to handle matters that arise while

they are out of the office for an extended period of time, it is often not practicable to do so for a one-day absence and in connection with a filing for which they had no prior notice. In practice, to the extent issuers do not simply terminate their repurchase programs, the one-day filing deadline will result in the persons involved living under a cloud of dread from being in a situation in which they cannot take even one day off to attend to basic human needs. Reflecting the anger that surrounds stock repurchases generally, this part of the proposal is simply cruel.

We agree with the Commission's alternative suggestion, as reflected in Question 2 of the release, to instead require an issuer to disclose its share repurchase program (or, if not a formal program, board authorization in this regard) and continue to report actual share repurchases on a periodic basis. This would provide investors with the information they need without being overly burdensome to issuers. To the extent that the Commission deems this unacceptable, and to the extent that the information proposed to be reported on Form SR would be material, there is no reason that it should be reported on a separate form in one-quarter of the time that unquestionably material events, such as entry into an acquisition agreement or the delisting of an issuer's securities from a national securities exchange, are required to be reported on Form 8-K. To the extent that the proposal is adopted, we urge the Commission, in lieu of adopting Form SR as proposed, to instead amend Form 8-K so that the required information regarding share repurchases must be reported on Form 8-K within no less than four business days after such repurchases. In reality, however, we believe that reporting on no more than a monthly basis would be sufficient to impart this information to investors without overwhelming issuers or, for that matter, the amount of information in the market.

In addition, in response to question 11 of the release, we believe that, to the extent that the proposed disclosure requirements are adopted, there should be a de minimus exception to the reporting requirement for share repurchases that are below a certain level, as there will always be an amount below which a share repurchase is unquestionably immaterial. While this amount will differ among issuers, we believe that the thresholds set forth in Item 3.02(b) of Form 8-K below which a registrant is not required to report unregistered sales of equity securities, which is 1%, or 5% for smaller reporting companies, of the number of shares outstanding of the class of equity securities sold (in this case, repurchased), would be an appropriate starting point.

II. Proposed Disclosures

a. Repurchases under Rules 10b-18 and 10b5-1(c)

The Commission also proposes to amend Item 703 of Regulation S-K to require issuers to disclose, in connection with reporting their share repurchases, whether such repurchases were made (i) pursuant to a plan intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) and (ii) in reliance on the Rule 10b-18 non-exclusive safe harbor. Similar disclosure would be required to be reported in proposed Form SR. We are disappointed in the current focus on issuers' use of Rule 10b5-1(c) trading arrangements, which issuers use to ensure compliance with the insider trading prohibitions of the federal securities laws, extend into this release. No support or explanation is provided for why issuers should report this information, other than that it could "enable investors to better understand how an issuer has structured its repurchase activity." We discuss above the lack of any reasonable rationale for requiring issuers to include this disclosure. In addition, we are concerned that this disclosure unnecessarily exposes issuers to liability and implies that the use or non-use of these measures is itself non-compliant or otherwise problematic, which itself could be misleading.

Preliminary Note 1 to Rule 10b-18 states that it "provides an issuer (and its affiliated purchasers) with a 'safe harbor' from liability for manipulation under sections 9(a)(2) of the [Exchange] Act and [Rule] 10b–5 under the [Exchange] Act solely by reason of the manner, timing, price, and volume of their repurchases when they repurchase the issuer's common stock in the market in accordance with the section's manner, timing, price, and volume conditions." It further provides that, "[a]s a safe harbor, compliance with [Rule] 10b–18 is *voluntary*" (emphasis added). In addition, paragraph (d) of Rule 10b-18 provides that "[n]o presumption shall arise that an issuer or an affiliated purchaser has violated the anti-manipulation provisions of sections 9(a)(2) or 10(b) of the [Exchange] Act, . . . or [Rule] 10b–5 under the [Exchange] Act, if the Rule 10b–18 purchases of such issuer or affiliated purchaser do not meet the conditions specified" in the rule.

Despite the fact that Rule 10b-18 is a voluntary safe harbor, however, it is often not viewed that way. Broker-dealers that operate repurchase programs on behalf of issuers often require that any repurchases be made solely in compliance with the conditions set forth in the rule. We have, over the course of our practice, seen references to issuers "violating" Rule 10b-18. The practical effect of requiring issuers to disclose whether their share repurchases were made in compliance with Rule 10b-18 implies that, if they were not, such repurchases

could constitute market manipulation or otherwise be potentially problematic, despite language in the proposed revisions and in proposed Form SR that Rule 10b-18 is a "non-exclusive safe harbor" and contrary language in the rule itself. We are confident that this would be the result of requiring this disclosure under any circumstances, but would particularly be the case here because there is *no other logical reason* that this information should be required. While the Commission's staff and securities practitioners may well understand the nuances surrounding the difference between a voluntary safe harbor and a rule, the compliance with which is mandatory, many retail investors and the public in general do not, and it will not be difficult for plaintiffs' lawyers to make the case that an issuer that repurchased shares outside of Rule 10b-18 violated the anti-market manipulation provisions of the Exchange Act. Given that Rule 10b-18 contains conditions that are virtually impossible for issuers without an active trading market to comply with, this would, as a practical matter, unfairly prevent issuers with thinly-traded securities from repurchasing their shares, decreasing opportunities for liquidity for shareholders with already limited options therefor.

Given the current political climate surrounding the use of trading arrangements intended to satisfy the affirmative defense conditions of Rule 10b5-1(c)—in particular, that they are used by issuers and insiders to trade in violation of, rather than in compliance with, the insider trading prohibitions of the Exchange Act—requiring disclosure regarding whether repurchases were made under such an arrangement is similarly inappropriate, as requiring such disclosure would imply that the issuer is acting inappropriately even when that is unlikely to be the case, and the disclosure of this information provides no articulable benefit.

b. Policies and Procedures Related to Purchases and Sales by Officers and Directors

The proposed revisions to Item 703 of Regulation S-K would require issuers to disclose "[a]ny policies and procedures relating to purchases and sales of the registrant's securities by its officers and directors during a repurchase program, including any restrictions on such transactions." The Commission also proposes "to require that issuers disclose if any of their officers or directors subject to the reporting requirements under Section 16(a) of the Exchange Act (15 U.S.C. 78p(a)) 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 announcement of an issuer purchase plan or program by checking a box before the tabular disclosure of issuer purchases of equity securities."

The requirement to disclose "whether" an issuer has adopted the referenced policies and procedures implies that it should, and will have the practical effect of requiring issuers to adopt such policies. This requirement is similar to the requirement for registrants to disclose whether they have adopted a code of ethics (Item 406 of Regulation S-K), which, after enactment, resulted in the widespread, if not universal, adoption of such codes by issuers (even those not required to as a result of listing their securities on an exchange that required them to) and the adoption of Item 407(i) of Regulation S-K requiring registrants to describe their "practices or policies . . . regarding the ability of employees (including officers) or directors" to engage in hedging transactions led to the widespread adoption of such policies by registrants.

Unlike the code of ethics and hedging disclosures, however, there is no distinct rationale for why an issuer's officers and directors should be restricted from engaging in their own purchases and sales of the issuer's securities during a repurchase program. The reason provided in the release—that this information "should allow investors to better understand . . . whether [an issuer] has taken steps to prevent officers and directors from potentially benefiting from issuer repurchases in a manner that is not available to regular investors"—does not shed any light on the matter. Other than with respect to potentially trading while aware of material nonpublic information, which would be addressed by an issuer's insider trading policy and insider trading prohibitions, we do not understand how permitting officers and directors to engage in trading while a repurchase program is in effect benefits them in a manner that is not available to regular investors. In fact, by restricting their sale of the issuer's securities during a repurchase program, officers and directors would be prevented from benefitting from the issuer repurchases in a manner available to regular investors. Further, issuer repurchase programs can last for lengthy periods of time—many issuers' boards of directors authorize a certain amount of repurchases that are either open-ended or over a prolonged period of time, such as one year. We are unable to discern any purpose of this draconian measure, especially as it would prevent officers and directors from both participating in the issuer repurchase program and from purchasing or selling their securities while the issuer has a repurchase program in place, which would be unrelated to preventing officers and directors from benefitting "from issuer repurchases in a manner *not available to regular investors*" (emphasis added). We understand that this is not a technical requirement of the proposal, but we believe that it must be acknowledged that this will be a practical effect of the proposed disclosure, and that this is also the intent, else there would be no need to imply that such restrictions are appropriate by asking issuers to disclose them.

Although not set forth in the release, we surmise that the reference to issuers' "tak[ing] steps to prevent officers and directors from potentially benefitting from issuer repurchases in a manner that is not available to regular investors" may relate to fears that issuers might structure their repurchase programs in a manner that favors officers and directors to the exclusion of other investors. If that is the case, then that concern—assuming there is evidence that such concerns are viable—can be addressed by requiring disclosures about how the issuer determines from whom to repurchase shares or, more directly, steps that the issuer takes to ensure that repurchases of securities from officers and directors are not prioritized over the repurchase of securities from unaffiliated investors. Again, we urge the Commission to require disclosure that is tailored to address the particular concern or harm alleged —in other words, to avoid using a sledgehammer when a scalpel will suffice.

Similarly, we fail to see the significance of officers and directors purchasing or selling securities that are the subject of an issuer repurchase program within the 10-day period after the announcement of an issuer repurchase plan or program. Again, this implies inappropriate behavior when inappropriate behavior may not be present. From an insider trading perspective, we are unaware of any evidence that it takes 10 days for material nonpublic information to be absorbed by the market. In this regard, the release posits that "[t]ogether with the additional daily level detail that we are proposing to require on Form SR, we believe this additional information would help investors to assess whether the issuer or its insiders are potentially engaged in self-interested or otherwise inefficient repurchases and thereby help mitigate some of the potential harms associated with issuer repurchases." We are troubled by the idea set out here, as well as in the *Rule 10b5-1 and Insider Trading* proposal initially published the same day as the release, that appears to deputize investors as an informal policing force monitoring issuers for compliance with legal obligations and ensuring that issuers do not otherwise engage in "inefficient" or inappropriate behavior.

Requiring issuers to disclose information that investors need to make investment decisions within the definition of "materiality" as set out by the Supreme Court, and investors' analysis of such information in the context of making those investment decisions, is appropriate under the federal securities laws and is understood to be the proper purpose of the disclosure requirements thereunder. The concept of requiring issuers to disclose to investors all information that investors need to independently assess whether the issuer is

violating the federal securities laws or engaging in other behavior that may be inappropriate without any evidence or suspicion of such behavior is, as far as we are aware, a new concept. We are further unaware of any support for the assertion that this is a proper basis for requiring disclosure of information that would not be "material" as such word has been defined by Supreme Court precedent and has been understood in the context of issuer disclosure obligations under the federal securities laws. We urge the Commission to refrain from requiring the disclosure of information geared towards enabling investors to monitor and ensure issuers' general compliance with the law.

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We appreciate the Commission's consideration of the foregoing comments.

Very truly yours,

Committee on Securities Law of the Business Law Section of the Maryland State Bar Association

Penny Somer-Greif, Chair

Gregory T. Lawrence, Vice-Chair