DAVID MACMILLAN
[redacted]

January 2, 2023

Via Email
Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

RE: File Number S7-21-21

Dear Secretary Countryman:

I write concerning the U.S. Securities and Exchange Commission's ("Commission") Share Purchase Modernization Proposal ("Proposal") which was recently reopened for comment following the publication of the Commission's Memorandum on December 7, 2022 ("Memo"). The new proposal, which involves changes to the way in which share repurchases are treated by certain issuers, raises concerns that issuers may alter their repurchasing strategy (for example, by taking dividends) in a way that alters or impacts the landscape for downstream investors. To the extent that concerns about the predictability of this landscape impact would caution against acceptance of the Proposal, I believe that the existing work performed by the Commission will allow sufficient scrutiny of its impacts, and I urge the acceptance of the Proposal.

Repurchase strategies employed by security issuers involve a number of financial and strategic considerations. Companies which elect to issue dividends do so to the benefit of all stockholders, while those favoring buybacks benefit only a self-selected group of stockholders. Companies may favor buybacks for a number of reasons, including perceived attraction among retail investors as well as tax considerations. Accordingly, a change in the treatment of stock repurchase changes the incentive landscape, resulting in a disparate impact between active and passive investors.

One of the limitations highlighted by the Commission's Memo is the significant difficulty in predicting these future impacts. The Memo notes:

> There are potential confounding macroeconomic and regulatory factors that may affect the composition of issuers and their

> propensity to undertake share repurchases at the same time as the new excise tax. . . . In addition, there is a lack of a directly comparable prior regulatory intervention that would have provided data on the effects of such a tax on domestic issuers' corporate payout behavior that could then be used to estimate the effects of the Act.

See Memo at 4. The Memo notes generally that analysis of the expected effects is particularly difficult because excise taxation "is only one factor affecting payout decisions." *Id.* at 8. Even if the Proposal is adopted, there may be an overall decrease in information because an overall decrease in share repurchases will offer less data, both for regulators and the market, concerning the company's "outlook on the future share price. . . ." *Id.* at 10.

Despite these uncertainties, I believe that the work conducted by the Commission in analyzing the impact of the rule is sufficient to allow for accurate and useful evaluation of the proposal's impact after it is put into place. The Memo outlines several different ways in which the rule change can impact the market, such that the actual impact can be qualitatively determined after the fact.

While I support the adoption of the rule, I also seriously encourage the Commission to conduct periodic review of the rule's impact following its adoption and the preparation of subsequent memoranda setting out the actual consequences to investors.

Respectfully,

/s/

David MacMillan
CUA Law 2023