



January 10, 2023

By Email

Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090  
Attention: Vanessa Countryman, Secretary

**Re: *Share Repurchase Disclosure Modernization (File No. S7-21-21)***

Dear Ms. Countryman:

Publix Super Markets, Inc. (“Publix,” the “Company,” “our,” or “we”) appreciates the opportunity to provide the Securities and Exchange Commission (the “Commission”) with its perspective on the Commission’s rule proposal (the “Proposal”) to modernize disclosure about repurchases of issuer equity securities registered under the Securities Exchange Act of 1934 (the “Exchange Act”), and specifically on the proposed requirement to furnish a new form disclosing purchases of equity securities for each day that an issuer makes a share repurchase.

Publix is the largest employee-owned company and one of the largest supermarket chains in the United States, with retail sales in 2021 of \$48.0 billion. We operate more than 1,300 retail food supermarkets in seven southeastern states, with plans to expand into Kentucky in 2023.

Our common stock is not listed or quoted for trading on any securities exchange, over-the-counter market, or other established securities market, or readily traded on a secondary market or the substantial equivalent thereof. Newly issued common stock is made available only to employees and members of our board of directors through certain company equity incentive plans (together the “Equity Plans”) that prohibit the stock from being sold without first being offered to Publix. We currently repurchase stock at stockholders’ request in accordance with the terms of the Equity Plans, and expect to continue to repurchase stock, as offered by stockholders from time to time, at its then-current value. Substantially all sales of our common stock are directly between Publix and a current or former employee or director, their family member or a family trust, or an Equity Plan. The amount of common stock offered to us for repurchase is not within our control, but is rather at the discretion of our stockholders.

As a result of our common stock not having an established securities market, our board of directors determines the value of our common stock on a quarterly basis. This quarterly determination by our board of directors of the price of our common stock is disclosed quarterly in conjunction with the Company’s release of its quarterly financial results. As part of the process to determine the market price, an independent valuation is obtained. The process includes comparing the Company’s financial results to those of comparable companies that are publicly traded. The purpose of the process is to determine a value for the Company’s common stock that is comparable to the stock value of comparable publicly traded companies by considering both the results of the stock market and the relative financial results of comparable publicly traded companies.<sup>1</sup>

The Proposal would require every issuer with a class of equity securities registered pursuant to Section 12 of the Exchange Act to furnish a Form SR with the Commission one business day after execution of an issuer’s share repurchase order. We urge the Commission to include in the final rules an exemption from this requirement for

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<sup>1</sup> See the description of the valuation process under Part II, Item 5 of the Company’s Annual Report on Form 10-K for its most recently completed fiscal year.

companies such as Publix, the securities of which (a) are not traded on any established securities market as defined in 26 CFR 1.7704-1(b)<sup>2</sup>, or in the alternative, (b) have no ready market within the meaning of Rule 15c3-1(c)(11)(i) under the Exchange Act. Failure to exempt such companies would exact a significant burden on such companies without providing any additional useful information or disincentivizing opportunistic repurchases, and therefore would not serve the Commission's stated goals or policy objectives.

First, contrary to the Commission's stated goals, requiring companies whose securities are not traded on any established securities market or that have no ready market to furnish Forms SR would fail to provide stakeholders with any additional useful information. Because there is no established securities market, Publix's stock price is set quarterly after an independent valuation as opposed to fluctuating with every trade, so daily information regarding Publix's repurchase activity would not allow stockholders to assess the impact of repurchases on Publix's stock price and Form SR would not reveal information about Publix's outlook on its future share price. For the same reason and because the only existing market for Publix stock is between stockholders and the company, Publix stockholders would not be able to use more detailed and timely disclosure to monitor or evaluate the effects of repurchases on the price of Publix securities.

Second, contrary to the Commission's stated goals, requiring companies whose securities are not traded on any established securities market or that have no ready market to furnish Forms SR would fail to disincentivize engagement in opportunistic share repurchases. In fact, for these companies, there is no opportunity to make opportunistic share repurchases because there is no established market for the shares. Without an established market, pricing must be set by some means other than through regular investor bids and asks and third-party market maker quotations, such as the quarterly independent valuation mechanism used by Publix. The price of stock set in such a manner therefore would not be subject to undue influence by timed repurchases. In addition, for companies like Publix that repurchase their own stock outside of an established trading market, stockholders and not the company dictate the amount of shares available or offered for repurchase, so there is no opportunity to time a repurchase plan announcement to affect short-term upward price pressure. Finally, for Publix specifically, executive incentive compensation is tied to revenue and profit as opposed to earnings per share, so there is no opportunity to influence executive compensation through the use of share repurchases.

On December 7, 2022, in reopening the comment period for the Proposal, the Commission indicated that it was seeking additional comment on the impact of the excise tax on share repurchases recently signed into law as part of The Inflation Reduction Act of 2022. Publix is not subject to the tax, as it applies only to domestic corporations the stock of which is traded on an "established securities market" as defined under the Internal Revenue Code, and our securities are not traded on an established securities market. Publix believes that the rationale for exempting it from the excise tax should similarly apply to the daily Form SR requirement under the Proposal.

Finally, Publix has more than 214,000 stockholders of record and as of October 14, 2022 had more than 3.35 billion shares of common stock outstanding. In the third quarter of 2022 alone, Publix repurchased almost 27 million shares of its common stock – an average of more than 295,000 per day – all at the then board-established stock price. The Proposal would require Publix and other similarly situated issuers that regularly repurchase shares to establish extensive new internal procedures and controls, including new validation processes and procedures, in order to comply with the requirements of Form SR. These new requirements would impose meaningful and ongoing economic burdens that would ultimately be passed on to stockholders, without any value in return, as discussed above. In other words, the Proposal would place an onerous, virtually continuous additional daily burden on Publix and similarly situated issuers, notwithstanding the lack of any corresponding benefit to stockholders.

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<sup>2</sup> We propose that "established securities market" be defined as in 26 CFR 1.7704-1(b) – the definition used to determine applicability of the excise tax on share repurchases imposed by The Inflation Reduction Act of 2022 – to include (i) a national securities exchange (a) registered under Section 6 of the Exchange Act or (b) exempt from such registration because of the limited volume of transactions, (ii) a foreign securities exchange satisfying regulatory requirements analogous to those of the Exchange Act described in (i), (iii) a regional or local exchange, and (iv) an interdealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers by electronic means or otherwise.

For these reasons, we respectfully request that the Commission exempt from the obligation to furnish Form SR any issuer the securities of which are not traded or quoted on an established securities market or, in the alternative, do not have any ready market.

Thank you for the opportunity to comment on this proposed rule. We hope that you will consider our input before adopting final rules. If there are questions regarding any of our comments, we would welcome an opportunity for further discussion. Please do not hesitate to contact me at [REDACTED].

Sincerely,



Merriann M. Metz  
Senior Vice President, General Counsel and Secretary

cc: John Beckman and Nick Hoover, Hogan Lovells US LLP