



February 23, 2022

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

Submitted via email: rule-comments@sec.gov

**Re: *Proposed Rule Regarding “Share Repurchase Disclosure Modernization”
(File Number S7-21-21)***

To Whom it May Concern,

The U.S. Chamber of Commerce’s Center for Capital Markets Competitiveness writes pertaining to the Securities and Exchange Commission’s (“SEC”) February 15, 2022, proposed rule regarding disclosures about repurchases of an issuer’s equity securities that are registered under Section 12 of the Securities Exchange Act of 1934 (“Proposed Rule”).¹ The Proposed Rule is currently subject to a 45-day comment period ending on April 1, 2022. Given the issues raised and the detailed responses the SEC is seeking – as well as the precedent set by the SEC and other financial regulators – we ask that the SEC extend this comment period by 45 days to allow stakeholders to fully digest the Proposed Rule and formulate feedback that will be of maximum utility to the agency.

The History of the Rulemaking and the Detailed Feedback the SEC is Seeking Warrants a Comment Period Extension

In November 2003, the SEC adopted Item 703 to require disclosure on a quarterly basis of any purchase made by or on behalf of the issuer or any affiliated purchaser of shares or other units of any class of the issuer’s equity securities registered under Section 12.² The SEC states that it is promulgating the present Proposed Rule to

¹ *Share Repurchase Disclosure Modernization*, 87 Fed. Reg. 8443 (Feb. 15, 2022) (hereinafter, “Proposed Rule”).

² *Purchases of Certain Equity Securities by the Issuer and Others*, 68 Fed. Reg. 64963 (Nov. 17, 2003).

“improve the quality, relevance, and timeliness of information related to issuer share repurchases.”³ The SEC adds that the Proposed Rule results from an “ongoing, comprehensive” evaluation of its disclosure requirements, which included an April 2016 “Concept Release” on the business and financial disclosure required by Regulation S-K, including disclosure pursuant to Item 703.⁴ In particular, the Proposed Rule would: (1) require an issuer to provide disclosures on a new Form SR regarding purchases of its equity securities for each day that it, or an affiliated purchaser, makes a share repurchase; and (2) expand existing periodic disclosure requirements about these purchases that are required to be provided on Form 10-K and Form 10-Q for domestic issuers, Form 20-F for foreign filers, and Form N-CSR for registered closed-end funds.

The Proposed Rule includes 40 specific questions – many with multiple parts – collectively addressing the substance of the proposal. The rule also features a “General Request for Comment”⁵ and requests for feedback on the SEC’s economic analysis, including its Regulatory Flexibility Analysis⁶ and evaluations pursuant to the Paperwork Reduction Act⁷ and Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).⁸ Pursuant to SBREFA, in particular, commenters are asked to address whether the Proposed Rule is a “major” rulemaking and, thus, subject to the Congressional Review Act. As the SEC acknowledges, such an assessment entails analysis of “empirical data and other factual support” on a range of complex issues.⁹ These include the potential effect of the Proposed Rule on the U.S. economy on an annual basis; any potential increase in costs or prices for consumers or individual industries; and any potential effect on competition, investment, or innovation.

Given the detail the SEC is seeking in response to the Proposed Rule, 45 days is simply inadequate for stakeholders to provide meaningful feedback on this updated – and increasingly burdensome – framework for share repurchase disclosures. Such a truncated timeline does not allow for the collection and development of the kind of empirical data and analysis the SEC is requesting – including information addressing the costs and benefits of the Proposed Rule’s provisions and hypothetical alternative approaches. To allow a meaningful comment period on the Proposed Rule, we request

³ Proposed Rule, *supra* note 1, at 8444.

⁴ *Business and Financial Disclosure Required by Regulation S-K*, 81 Fed. Reg. 23915 (Apr. 22, 2016) [hereinafter, “Concept Release”].

⁵ Proposed Rule, *supra* note 1, at 8451.

⁶ *Id.* at 8465.

⁷ *Id.* at 8462.

⁸ *Id.* at 8465.

⁹ *Id.*

that the Commission *immediately* announce a 45-day extension of the initial 45-day comment period.

Longer Comment Periods Are Not Unusual for Financial Regulatory Proposals

It is not unusual for financial regulations that require the collection and analysis of empirical data to have comment periods longer than 45 days. In 2021 alone, the SEC provided 60-day comment periods for its January 19 proposed rule to amend Rule 144¹⁰ and its October 15 proposed rule regarding Form N-PX and related amendments.¹¹ Moreover, in March 2021, when Acting Chair Lee requested public comment on the longstanding issue of climate disclosures, the public had 90-days to comment.¹² Even farther back, when the Obama-era SEC published a request for data and other information in 2013 to assist the Commission in considering whether to make new rules about the standards of conduct and regulatory obligations for broker-dealers and investment advisers dealing with retail customers, it allowed a 120-day comment period.¹³

Comment periods of such duration are not unique to the SEC. In October 2020, when the Federal Reserve published an advance notice of proposed rulemaking regarding the Community Reinvestment Act, it allowed a 120-day comment period.¹⁴ The OCC, Federal Reserve, and FDIC allowed a 90-day comment period on their January 12, 2021 joint proposed rule on *Computer-Security Incident Notification Requirements for Banking Organizations and Their Bank Service Providers*.¹⁵ In December 2019, the CFTC allowed 75-days when it re-opened the comment period for its proposed rule regarding *Capital Requirements of Swap Dealers and Major Swap Participants*.¹⁶ It is also very common for agencies to initially propose 60-day comment periods on financial regulations and then extend them to 90 days and beyond.¹⁷

¹⁰ *Rule 144 Holding Period and Form 144 Filings*, 86 Fed. Reg. 5063 (Jan. 19, 2021).

¹¹ *Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers*, 86 Fed. Reg. 57478 (Oct. 15, 2021).

¹² Public Input Welcomed on Climate Change Disclosures (March 15, 2021), *available at* <https://www.sec.gov/news/public-statement/lee-climate-change-disclosures>.

¹³ *Duties of Brokers, Dealers, and Investment Advisers*, 78 Fed. Reg. 14848 (March 7, 2013).

¹⁴ *Community Reinvestment Act*, 85 Fed. Reg. 66410 (Oct. 19, 2020).

¹⁵ 86 Fed. Reg. 2299 (Jan. 12, 2021).

¹⁶ 84 Fed. Reg. 69664 (Dec. 19, 2019).

¹⁷ See, e.g., Federal Reserve – [proposed rule](#) on *Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire (Regulation J)*, published June 11, 2021 subject to 60-day comment period ending Aug. 10, 2021, ultimately [extended](#) until Sept. 9, 2021; Federal Reserve – [proposed rule](#) on *Debit Card Interchange Fees and Routing*, published May 13, 2021 subject to 60-day comment period ending July 12, 2021, ultimately [extended](#) until August 11, 2021; OCC, Federal Reserve, FDIC, FCA, and NCUA – joint [proposed rule](#) on *Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance*, published July 6, 2020 subject to a 60-day comment period ending Sept. 4, 2020, ultimately [extended](#) until November 3, 2020; and FDIC – [proposed rule](#) on *Parent Companies of Industrial Banks and Industrial Loan*

In addition, it is important to note that the SEC’s December 2002 proposal to adopt Item 703 – the framework in which the Proposed Rule finds its roots – was subject to a 60-day comment period ending in February 2003.¹⁸ The SEC has failed to provide a justification for why the Proposed Rule should be subject to a shorter comment period, particularly given the expanded disclosure regime the agency is envisioning. Moreover, the SEC acknowledges that the Proposed Rule is based on an “ongoing, comprehensive” evaluation dating back at least as far as its April 2016 Concept Release.¹⁹ It is incongruous and indefensible to refer to this more than five-year-long rulemaking initiative as “comprehensive” if it culminates in a comment period that lasts only 45 days.

We also take issue with SEC Chair Gary Gensler’s recent remarks at a meeting of the Exchequer Club of Washington D.C. on January 19, 2022 during which Chair Gensler attempted to defend the SEC’s use of shorter comment periods for agency rulemakings.²⁰ Chair Gensler conceded that agencies “*can* do more” than the bare minimum when it comes to comment period durations, but pointed to the SEC’s use of fact sheets and posting of rule text on its website in advance of publication in justifying its current approach.²¹ This rationale is suspect, particularly given that rule text is not final until published in the *Federal Register* and providing the minimum possible response time fails to create an atmosphere conducive for input. SEC Commissioner Hester Peirce is among those who are similarly skeptical of Chair Gensler’s justification, arguing in a recent statement that “[f]or complicated rulemakings or at times when we have many rulemakings outstanding simultaneously, 90-day comment periods are likely more appropriate” to allow for proper analysis.²² These criticisms are particularly relevant in the context of the Proposed Rule and we continue to find the SEC’s rationale for providing unduly short comment periods lacking and unacceptable.

Companies, published March 31, 2020 subject to 60-day comment period ending June 1, 2020, ultimately [extended](#) until July 1, 2020.

¹⁸ *Rule 10b-18 and Purchases of Certain Equity Securities by the Issuer and Others*, 67 Fed. Reg. 77593 (Dec. 18, 2002).

¹⁹ Concept Release, *supra* note 3.

²⁰ See “Gensler Defends 30, 45-Day Comment Period for SEC Rulemaking Proposals,” THOMSON REUTERS (Jan. 24, 2022), available at <https://tax.thomsonreuters.com/news/gensler-defends-30-45-day-comment-period-for-sec-rulemaking-proposals/>.

²¹ *Id.* (emphasis added).

²² Statement of SEC Commissioner Hester Peirce, “Rat Farms and Rule Comments - Statement on Comment Period Lengths” (Dec. 10, 2021), available at <https://www.sec.gov/news/statement/peirce-rat-farms-and-rule-comments-121021>.

Finally, as Commissioner Peirce indicated in her comments above, the SEC has neither developed nor issued the Proposed Rule in a vacuum. The agency is simultaneously soliciting comments on several complex rulemakings. For example, on February 15, 2022 – the same day that the Proposed Rule was published – the *Federal Register* included a separate proposed rule from the SEC regarding “Rule 10b5-1 and Insider Trading.”²³ This separate proposal is similarly subject to an unnecessarily short 45-day comment period which is also set to expire on April 1, 2022. Moreover, the SEC has slated the overlapping comment periods for these two rules to overlap with the comment period for three other proposals the Commission has published in the last two weeks. The Commission has done this with full knowledge that many parties interested in commenting on the February 15th proposals are also working to comment on:

- The SEC’s February 2, 2022 notice re-opening the comment period on proposed “Pay Versus Performance” regulations on which comments are due March 4, 2022;²⁴
- The SEC’s February 4, 2022 proposed rule regarding security-based swap transactions on which comments are due March 21, 2022;²⁵ and
- The SEC’s February 8, 2022 proposed rule regarding “Money Market Fund Reforms” on which comments are due April 11, 2022.²⁶

The SEC’s decision to have unusually short, concurrent comment periods occur on five significant regulatory proposals calls into question its interest in receiving well-reasoned feedback informed by comprehensive data on any of these diverse rulemakings. The Commission’s choice to “flood the zone” by initiating so many overlapping comment periods in recent weeks, coupled with the short comment periods for these proposals, raises serious questions about the adequacy of the rulemaking process the Commission is pursuing.

²³ *Rule 10b5-1 and Insider Trading*, 87 Fed. Reg. 8686 (Feb. 15, 2022).

²⁴ *Reopening of Comment Period for Pay Versus Performance*, 87 Fed. Reg. 5751 (Feb. 2, 2022).

²⁵ *Prohibition Against Fraud, Manipulation, or Deception in Connection With Security-Based Swaps; Prohibition Against Undue Influence Over Chief Compliance Officers; Position Reporting of Large Security-Based Swap Positions*, 87 Fed. Reg. 6652 (Feb. 4, 2022).

²⁶ *Money Market Fund Reforms*, 87 Fed. Reg. 7248 (Feb. 8, 2022).

Conclusion

The SEC should immediately announce a 45-day comment period extension for the Proposed Rule to allow for more meaningful input on the share repurchase disclosure requirements it seeks to impose. Forty-five days is insufficient for interested parties to thoroughly review the proposal, gather the necessary data, and provide responses that will best inform the SEC's decision making. Failure to grant such an extension will not only deprive the SEC of valuable data and insights, but it will also raise questions about whether the SEC is approaching this rulemaking in a fair and transparent manner, particularly given the more burdensome reporting the SEC is proposing for many stakeholders.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Quaadman', with a stylized flourish at the end.

Tom Quaadman
Executive Vice President
Center for Capital Markets Competitiveness
U.S. Chamber of Commerce