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**Alberta E. Mills,**

Secretary, Consumer Product Safety Commission.

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**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 229, 232, 240, 249, and 274**

[Release Nos. 34-93783; IC-34440; File No. S7-21-21]

RIN 3235-AM94

**Share Repurchase Disclosure Modernization**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission is proposing amendments to modernize and improve disclosure about repurchases of an issuer's equity securities that are registered under the Securities Exchange Act of 1934. Specifically, the proposed amendments would require an issuer to provide more timely disclosure on a new Form SR regarding purchases of its equity securities for each day that it, or an affiliated purchaser, makes a share

repurchase. The proposed amendments would also enhance the existing periodic disclosure requirements about these purchases.

**DATES:** Comments should be received on or before April 1, 2022.

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (<https://www.sec.gov/regulatory-actions/how-to-submit-comments>); or

*Paper Comments*

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-21-21. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's website (<http://www.sec.gov/rules/proposed.shtml>). Comments also are available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549-1090, on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions

may limit access to the Commission's public reference room. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on our website. To ensure direct electronic receipt of such notifications, sign up through the "Stay Connected" option at [www.sec.gov](http://www.sec.gov) to receive notifications by email.

**FOR FURTHER INFORMATION CONTACT:**

Steven G. Hearne, Senior Special Counsel, Office of Rulemaking, at (202) 551-3460, Division of Corporation Finance; and, with respect to the application of the proposal to investment companies, Bradley Gude, Special Counsel, at (202) 551-6792, Investment Company Regulation Office, Division of Investment Management; U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** We are proposing to amend or add the following rules and forms:

Commission reference		CFR citation (17 CFR)
Regulation S-K .....	Item 10 through 1305 .....	§§ 229.10 through 229.1305.
	Item 601 .....	§ 229.601.
	Item 703 .....	§ 229.703.
Regulation S-T .....	Rule 10 through 903 .....	§§ 232.10 through 232.903.
	Rule 405 .....	§ 232.405.
Securities Exchange Act of 1934 (Exchange Act) <sup>1</sup> .	Proposed Rule 13a-21 .....	§ 240.13a-21.
	Proposed Form SR	
	Form 20-F .....	§ 249.220f.
	Form N-CSR .....	§§ 249.331 and 274.128.

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<sup>1</sup> 15 U.S.C. 78a et seq.

## I. Introduction

We are proposing changes to the requirements for disclosure of purchases of equity securities made by or on behalf of an issuer or any affiliated purchaser.<sup>2</sup> Issuers may repurchase their shares through, among other means, open market purchases, tender offers, private negotiated transactions, and accelerated share repurchases. Issuers typically disclose repurchase plans or programs at the time that the share repurchases are authorized by the board of directors. Most share repurchases are executed over time through open market purchases through such share repurchase plans or programs. Issuers are not required to, and typically do not, disclose the specific dates on which they will execute trades pursuant to an announced repurchase plan or program. Investors and other market participants normally do not become aware of an issuer's actual share repurchase-related trading activity until they are reported in an issuer's periodic reports, long after the trades have been executed.

The proposed amendments are intended to improve the quality, relevance, and timeliness of information related to issuer share repurchases. This proposal results from an ongoing, comprehensive evaluation of our disclosure requirements. As part of this evaluation, in April 2016, the Commission issued a Concept Release on the business and financial disclosure required by Regulation S-K, including disclosure pursuant to Item 703.<sup>3</sup>

The Commission adopted Item 703 in 2003 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 of the Exchange Act.<sup>4</sup> The disclosure

requirement applies to both open market and private transactions. When it adopted Item 703, the Commission noted that an issuer's stock price often increases following an issuer's public announcement of a repurchase plan or program and that some issuers publicly announce repurchase programs, but do not actually purchase any securities or purchase only a small portion of the announced amount.<sup>5</sup> The Commission concluded that disclosure of an issuer's actual purchases would inform investors whether, and to what extent, the issuer had followed through on its original plan.<sup>6</sup>

Currently, Item 703 share repurchase disclosure is required in Form 10-Q (17 CFR 249.308a) for the issuer's first three fiscal quarters and in Form 10-K (17 CFR 249.310) for the issuer's fourth quarter.<sup>7</sup> The same disclosure is required in Form 20-F on an annual basis for foreign private issuers and in Form N-CSR on a semi-annual basis for certain closed-end funds. In particular, Item 9 of Form N-CSR implements the requirements of Item 703 for certain registered closed-end investment management companies ("registered closed-end funds"), varying from Item 703 only to account for the different reporting period covered by Form N-CSR.<sup>8</sup> Similarly, Item 16E of Form 20-F applies the Item 703 requirements to foreign private issuers.<sup>9</sup> Accordingly, unless the context otherwise requires, references in this release to "Item 703" should be read to include these parallel provisions of Form N-CSR and Form 20-F.

More specifically, Item 703 currently requires an issuer to disclose in tabular format:

- The total number of shares (or units) purchased, regardless of amount and regardless of whether made pursuant to a publicly announced plan or program, by the issuer or any affiliated purchaser during the relevant period, reported on a monthly basis and

by class, including footnote disclosure regarding the number of shares purchased other than through a publicly announced plan or program and the nature of the transaction;

- The average price paid per share (or unit);
- The total number of shares (or units) purchased as part of a publicly announced repurchase plan or program; and
- The maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs.

Item 703 also requires footnote disclosure in the aggregate of the principal terms of all publicly announced repurchase plans or programs, including:

- The date each plan or program was announced;
- The dollar amount (or share or unit amount) approved;
- The expiration date (if any) of each plan or program;
- Each plan or program that has expired during the period covered by the table; and
- Each plan or program the issuer has determined to terminate prior to expiration, or under which the issuer does not intend to make further purchases.

We recognize that there are a number of reasons that issuers conduct share repurchases and that share repurchases can have a positive or negative impact on the market for an issuer's securities. The high dollar volume, nearly \$700 billion in 2020, of recent share repurchase activity has been accompanied by public interest in corporate payouts in the form of share repurchases.<sup>10</sup> Various studies address motivations behind corporate payouts and the choice of the form of payout (repurchases or dividends).<sup>11</sup>

Some studies have found that issuers often use repurchases in a manner aligned with shareholder value maximization, such as to offset share dilution after new stock is issued, to facilitate stock- and stock option-based employee compensation programs, to help signal the issuer's view that its stock is undervalued, or because the issuer's board has otherwise determined that a repurchase program is a prudent use of the issuer's excess cash.<sup>12</sup>

Other observers, however, have expressed concerns about issuers' uses of share repurchases. Some research has

<sup>2</sup> For purposes of this release, the term "issuer" includes affiliated purchasers and any person acting on behalf of the issuer or an affiliated purchaser. The term "affiliated purchaser" as used in Item 703 is defined in 17 CFR 10b-18(a)(3). References throughout this release to "issuer repurchases" include purchases by affiliates of the issuer and purchases by any person acting on behalf of the issuer or an affiliated purchaser.

<sup>3</sup> See *Business and Financial Disclosure Required by Regulation S-K*, Release No. 33-10064 (Apr. 13, 2016) [81 FR 23915 (Apr. 22, 2016)] ("Concept Release"). The release requested comment on, among other things, whether Item 703 disclosure is important to investors, whether the Commission should require more granular or more frequent repurchase disclosure, and whether there should be a *de minimis* monetary threshold for disclosure. We received approximately 30 comment letters that addressed Item 703 and we discuss these comments throughout this release, where relevant.

<sup>4</sup> See *Purchases of Certain Equity Securities by the Issuer and Others*, Release No. 33-8335 (Nov. 10, 2003) [68 FR 64952 (Nov. 17, 2003)] ("Adopting Release").

<sup>5</sup> *Id.* at 64963.

<sup>6</sup> *Id.*

<sup>7</sup> Certain information regarding share repurchases is also required to be disclosed in an issuer's financial statements, including in the statements of cash flows indicating the amount of cash paid for repurchased securities and the statements of changes in shareholders' equity indicating any reduction in securities outstanding and additional paid-in capital for the securities repurchased. If securities are repurchased for purposes other than retirement, or if ultimate disposition has not yet been decided, the amount and cost of the repurchased securities may be shown separately on the balance sheets and statements of changes in shareholders' equity as a deduction from the total of securities, additional paid-in capital, and retained earnings.

<sup>8</sup> See Adopting Release at 64963.

<sup>9</sup> See Adopting Release at 64962.

<sup>10</sup> See Section IV.A.2, *infra* and note 60 and accompanying text.

<sup>11</sup> See Section IV.A., *infra* for a more detailed discussion of the various studies.

<sup>12</sup> See Section IV.A.2, *infra*.

shown that repurchases can serve as a form of real earnings management (through decreasing the denominator of earnings-per-share (“EPS”)) and thus be subject to short-term earnings management objectives of an executive seeking to meet or beat consensus forecasts.<sup>13</sup> In addition, because announcements of repurchases and actual repurchase trades can also effect short-term upward price pressure, share price- or EPS-tied compensation arrangements could incentivize executives to undertake repurchases in an attempt to maximize their compensation.<sup>14</sup> Several commentators have highlighted what they viewed to be the opportunistic and harmful use of issuer share repurchases by issuer insiders.<sup>15</sup> Some 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.<sup>16</sup>

<sup>13</sup> For evidence on the use of repurchases as a method of real earnings management, see *infra* note 79. See also Rulemaking Petition 4–746 (June 25, 2019), Rulemaking Petition Requesting Repeal and Reform of Rule 10b–18 to Address Manipulative Repurchase Programs that Harm Workers, available at <https://www.sec.gov/rules/petitions/2019/petn4-746.pdf>, at 4 (expressing concern that repurchases can be used to inflate share price and EPS-linked executive compensation) (“Rulemaking Petition 4–746”).

<sup>14</sup> See, e.g., Chan, K., Ikenberry, D., Lee, I., & Wang, Y., *Share Repurchases as a Potential Tool to Mislead Investors*, 16 Corp. Fin. 137 (2010) (“Chan et al. (2010)”) (finding in 1980–2000 data that a limited number of managers may have used repurchases in a misleading way as “cheap talk”). For a discussion of the use of repurchases to influence compensation tied to per-share measures, see *infra* note 81.

<sup>15</sup> See *infra* note 82; Jackson, Jr., R.J., *Stock Buybacks and Corporate Cashouts*, Speech by Commissioner Jackson Before the Center for American Progress (June 11, 2018), available at <https://www.sec.gov/news/speech/speech-jackson-061118> (“Jackson Speech”); <https://www.cnbc.com/2021/03/02/elizabeth-warren-rips-stock-buybacks-as-nothing-but-paper-manipulation.html> (“Warren article”) (expressing Senator Warren’s view that share repurchases increase the price of an issuer’s shares through the issuer’s purchase of its securities on the market rather than investing in the issuer’s business); Palladino, L., *Do Corporate Insiders Use Stock Buybacks for Personal Gain?*, 34(2) Int’l Rev of Applied Econ. 152–174 (2020) (“Palladino (2020)”) (finding increased insider selling in quarters where buybacks are occurring); and Palladino, L. & Lazonick, W., *Regulation Stock Buybacks: The \$6.3 Trillion Question*, Roosevelt Institute Working Paper (May 2021), available at <https://rooseveltinstitute.org/publications/regulating-stock-buybacks-the-6-3-trillion-question/> (“Regulation Stock Buybacks Article”). See also Fried, J.M., *Testimony of Jesse M. Fried on Stock Buybacks before the U.S. House of Representatives Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets* (Oct. 17, 2019) available at SSRN: <https://ssrn.com/abstract=3474175> (“Fried Testimony”).

<sup>16</sup> See, e.g., Warren Article; and Lazonick, W., *Clinton’s Proposals on Stock Buybacks Don’t Go Far*

A further concern raised by some commentators is the potential for share repurchases to be used by issuers as a mechanism to inflate the compensation of their executives in a manner that is not transparent to investors or the market.<sup>17</sup> In addition, a number of commenters recommended expanding the disclosure required by Item 703 in response to the Commission’s request for comments regarding Item 703 in the Concept Release.<sup>18</sup> Some commenters also supported increasing the frequency of reporting share repurchases.<sup>19</sup>

We also received a rulemaking petition expressing general support for the current regulatory regime for issuer share repurchases, but recommending revisions to the Commission’s executive compensation disclosure requirements to require disclosure of whether issuer share repurchases have affected the calculation of the repricing of any options, stock appreciation rights, or option-like instruments.<sup>20</sup>

*Enough*, Harvard Business Review (Aug. 11, 2015) available at <https://hbr.org/2015/08/clintons-proposals-on-stock-buybacks-dontgo-far-enough>.

<sup>17</sup> See, e.g., Jackson Speech; Regulation Stock Buybacks Article; and Fried Testimony. Fried asserted that executives may use repurchases to enrich themselves at the expense of public investors by: Conducting a share repurchase when the issuer’s stock price is lower than the “stock’s actual stock value,” resulting in a value transfer from selling shareholders to non-selling shareholders pro rata; the manipulation of the stock price and earnings metrics in compensation arrangements; or repurchase announcements made solely to boost the stock price before sales by executives.

<sup>18</sup> See, e.g., letters in response to the Concept Release from SEC Investor Advisory Committee (Jun. 15, 2016); Council of Institutional Investors (Jul. 8, 2016) (“CII”); W. Klein and T. Amy (Jul. 19, 2016) (“Klein & Amy”); Domini Social Investments (Jul. 21, 2016) (“Domini”); California State Teachers’ Retirement System (Jul. 21, 2016) (“CalSTRS”); American Federation of State, County and Municipal Employees (Jul. 21, 2019) (“AFSCME”); AFL–CIO (Jul. 21, 2016) (“AFL–CIO”); California Public Employees’ Retirement System (“CalPERS”) (Jul. 19, 2016); Better Markets, Inc. (Jul. 21, 2016) (“Better Markets”); and Americans for Financial Reform (Aug. 10, 2016) (“AFR”). Other commenters, however, opposed expanding the disclosure required by Item 703. See, e.g., letters in response to the Concept Release from U.S. Chamber of Commerce (Jul. 20, 2016) (“Chamber”); FedEx Corporation (Jul. 21, 2016) (“FedEx”); Business Roundtable (Jul. 21, 2016); Securities Industry and Financial Markets Association (Jul. 21, 2016) (“SIFMA”); Fenwick West LLP (Aug. 1, 2016) (“Fenwick”); General Motors Company (Sept. 30, 2016) (“GM”); and Financial Executives International (Oct. 3, 2016) (“FEI”).

<sup>19</sup> See, e.g., letters in response to the Concept Release from Klein & Amy; and AFR. See also letter in response to the Concept Release from CalPERS supporting disclosure on Form 8–K of significant equity repurchases. Other commenters, however, supported maintaining the current frequency of reporting share repurchases on a quarterly basis. See, e.g., letters in response to the Concept Release from Chamber; SIFMA; and Fenwick.

<sup>20</sup> See Rulemaking Petition 4–772 (Apr. 21, 2021), Request to Amend Regulation S–K (17 CFR 229.402(d), instruction (7)), available at <https://www.sec.gov/rules/petitions/2021/petn4-772.pdf>

In light of the growth of issuer share repurchase plans in recent years and the concerns expressed by commentators, we believe investors could benefit from improving the quality, relevance, and timeliness of information related to issuer share repurchases. In particular, we are concerned that, because issuers are repurchasing their own securities, asymmetries may exist between issuers and affiliated purchasers and investors with regard to information about the issuer and its future prospects. This, in turn, could exacerbate some of the potential harms associated with issuer repurchases. To help address these information asymmetries, we are proposing a new disclosure form and additional disclosure requirements about issuer repurchases.<sup>21</sup>

The proposed amendments would require more detailed and more frequent disclosure about issuer share repurchases, and require issuers to present the disclosure using a structured data language, which could allow investors to:

- Better understand the extent of an issuer’s activity in the market, including potential impacts on the issuer’s share price;
- Better understand an issuer’s motivation for its share repurchases, and how it is executing its purchase plan; and
- Gain potential insight into any relationship between share repurchases and executive compensation and stock sales.

The proposed amendments could also improve the ability of investors to identify repurchases that are more likely to be driven by managerial self-interest (e.g., increasing the share price prior to an insider’s sale, meeting a threshold in an executive compensation arrangement, or meeting consensus earnings forecast) and thereby promote investor protection.

## II. Discussion of Proposed Amendments

We are proposing to modernize and improve the disclosure required about

[www.sec.gov/rules/petitions/2021/petn4-772.pdf](https://www.sec.gov/rules/petitions/2021/petn4-772.pdf) (recommending revisions to 17 CFR 229.402(d), instruction 7). We believe that the additional information relating to share repurchases that we are proposing would help meet the goals of the rulemaking petition by better enabling investors to determine whether issuer repurchases trigger higher payments to senior executives under performance-based compensation plans, such as by altering earnings per share calculations.

<sup>21</sup> In a separate release, we are proposing several rules and form amendments to address potentially abusive practices associated with 17 CFR 240.10b5–1 (“Rule 10b5–1”) trading arrangements, grants of options and other equity instruments with similar features and the gifting of securities. See Release No. 33–11013 Rule 10b5–1 and Insider Trading (Jan. 13, 2022) (“Rule 10b5–1 Proposing Release”).

repurchases of an issuer's equity securities by:

- Requiring daily repurchase disclosure on a new Form SR, which would be furnished to the Commission one business day after execution of an issuer's share repurchase order;
- Amending Item 703 to require additional detail regarding the structure of an issuer's repurchase program and its share repurchases; and
- Requiring information disclosed pursuant to Item 703 of Regulation S-K and pursuant to Form SR to be reported using a structured data language (specifically, Inline eXtensible Business Reporting Language or "Inline XBRL").

#### A. Proposed Form SR

We are proposing new Exchange Act Rule 13a-21 and Form SR that would require an issuer, including a foreign private issuer and certain registered closed-end funds, to report 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 that is registered by the issuer pursuant to Exchange Act Section 12.<sup>22</sup> The issuer would have to furnish a new Form SR before the end of the first business day following the day on which the issuer executes a share repurchase.<sup>23</sup> The Form SR would require the following

<sup>22</sup> 15 U.S.C. 781. Registered investment companies other than registered closed-end funds are not required to provide the repurchase disclosure under Item 703 (as implemented in Form N-CSR). Accordingly, proposed Form SR also would not be filed by registered investment companies other than registered closed-end funds. See proposed rule 13a-21(b). Business development companies ("BDCs"), which are not registered investment companies, provide the repurchase disclosure of Item 703 on Forms 10-K and 10-Q rather than Form N-CSR.

<sup>23</sup> "Execution" has a commonly understood meaning consistent with the Commission's explanation in *Interpretation of Section 206(3) of the Investment Advisers Act of 1940*, Release No. IA-1732, (July 17, 1998) [63 FR 39505 (July 23, 1998)] that the "ending point of a transaction is when the actual exchange of securities and payment occurs, which is known as 'settlement.' The date of execution (i.e., the trade date) marks an earlier point of a securities transaction at which the parties have agreed to its terms and are contractually obligated to settle the transaction." Release No. IA-1732 at notes 13-14 and accompanying text (citing *Radiation Dynamics, Inc. v. Goldmuntz*, 464 F.2d 876, 891 (2d Cir. 1972) with the explanation that the "court held that, for purposes of insider trading liability under Rule 10b-5 under the Exchange Act, the time of a 'purchase or sale' of securities is determined by reference to when the parties are obligated to perform the terms of the transaction, not when final performance occurs."). Similarly, in the security-based swaps context, 17 CFR 240.15Fi-1(f) defines "execution" as "the point at which the counterparties become irrevocably bound to a transaction under applicable law."

disclosure in tabular format, by date, for each class or series of securities:

- (1) Identification of the class of securities purchased;
- (2) The total number of shares (or units) purchased, including all issuer repurchases whether or not made pursuant to publicly announced plans or programs;
- (3) The average price paid per share (or unit);
- (4) The aggregate total number of shares (or units) purchased on the open market;
- (5) The aggregate total number of shares (or units) purchased in reliance on the safe harbor in 17 CFR 240.10b-18 ("Rule 10b-18"); and
- (6) The aggregate total number of shares (or units) purchased pursuant to a plan that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c).<sup>24</sup>

When adopting the Item 703 disclosure requirements, the Commission stated its belief that information about the equity securities an issuer has repurchased is important to investors.<sup>25</sup> The Commission also stated its belief that Item 703 would provide investors and the marketplace with information regarding an issuer's repurchase activity that would allow them to assess the impact of an issuer's share repurchases on the issuer's stock price, similar to periodic disclosure of issuer earnings and dividend payouts.<sup>26</sup> While we continue to believe that the existing Item 703 requirements provide useful information,<sup>27</sup> we believe that proposed Form SR could enhance transparency and enable more timely investor review of issuer share repurchases. Proposed Form SR would require issuer share repurchases to be reported on a daily basis before the end of the first business day following the day on which the repurchase

<sup>24</sup> The Commission adopted Rule 10b5-1 in 2000 to clarify the meaning of "manipulative or deceptive device[s] or contrivance[s]" prohibited by Exchange Act Section 10(b) and Rule 10b-5 with respect to trading on the basis of material nonpublic information. See *Selective Disclosure and Insider Trading*, Release No. 33-7881 (Aug. 15, 2000) [65 FR 51716 (Aug. 24, 2000)]. Rule 10b5-1(c) established an affirmative defense to Rule 10b-5 liability for insider trading in circumstances where it is clear that the trading was not based on material nonpublic information and the trade was pursuant to a binding contract, an instruction to another person to execute the trade for the instructing person's account, or a written plan.

<sup>25</sup> See Adopting Release at 64962.

<sup>26</sup> *Id.*

<sup>27</sup> See, e.g., Bonaimé, A., *Mandatory Disclosure and Firm Behavior: Evidence from Share Repurchases*, 90 *Acct. Rev.* 1333 (2015) ("Bonaimé (2015)") (stating that "[a]nalytists and investors alike are concerned with properly estimating repurchases since actual repurchase activity is linked to future operating and stock price performance").

transaction has been executed. Investors could use this more detailed and timely disclosure to monitor and evaluate issuer share repurchases, and their effects on the market for the issuer's securities.

The data currently required to be disclosed under Item 703 does not provide daily detail about such repurchases. Information asymmetries may exist between issuers and affiliated purchasers and investors, particularly due to the timing of the current Item 703 disclosures.<sup>28</sup> Because issuers are repurchasing their own securities, issuers and affiliated purchasers will typically have significantly more, and more detailed, information about the issuer and its future prospects. Proposed Form SR could provide investors with additional insight into the details of a share repurchase closer in time to the repurchase, which may diminish any informational asymmetry due to the timing of current Item 703 disclosure.

Generally, there are legitimate business reasons for issuers to repurchase securities; nevertheless, incentives also exist for issuers to engage in opportunistic share repurchases. For example, as noted above, 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.<sup>29</sup> The share price increase that often occurs in connection with an issuer share repurchase plan may raise certain financial ratios, such as EPS, that are often used as executive compensation targets.<sup>30</sup> Proposed Form SR, when combined with other information available about the issuer, could provide investors with additional insight into such possible behavior.

We are therefore proposing that Form SR include daily disclosure of the total number of shares purchased, class of securities, and the average price paid per share (or unit)<sup>31</sup> as well as the aggregate total number of shares

<sup>28</sup> One commentator emphasized the need to regulate consistently economically equivalent practices. See Grullon, G. & Ikenberry, D., *What Do We Know About Stock Repurchases*, J. App. Corp. Fin. 13 (2000) at 48 (referring to the requirement that a Form 4 Statement of Changes of Beneficial Ownership of Securities (17 CFR 249.104) be filed before the end of the second business day following the day on which a transaction resulting in a change in beneficial ownership has been executed). See also Fried Testimony (proposing a two-day disclosure rule, but suggesting that even more frequent disclosure would be preferable).

<sup>29</sup> See *supra* notes 16 and 17.

<sup>30</sup> *Id.* See also notes 80, 81, and 83, *infra*.

<sup>31</sup> The total number of shares purchased, class of securities, and the average price paid per share (or unit) correspond to information that is currently disclosed pursuant to Item 703.

purchased on the open market, the aggregate total number of shares purchased in reliance on the safe harbor in Rule 10b-18,<sup>32</sup> and the aggregate total number of shares purchased pursuant to a plan that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c), to enhance the repurchase information that would be available to investors. Requiring disclosure of the number of shares purchased on the open market would provide a clearer indication of the scale of the issuer's activity in the market for each day that repurchases are made. Requiring disclosure of the number of shares purchased in reliance on the non-exclusive safe harbor in Rule 10b-18<sup>33</sup> 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.

We are proposing to require issuers to furnish Form SR no later than one business day after execution of the issuer's share repurchase transaction order. The proposed daily detail would provide more granular information to investors that could enable them to better evaluate the market for the issuer's securities and the actions of the issuer's insiders. For example, when combined with existing executive compensation, Section 16 (15 U.S.C. 78p), and financial statement disclosures, the proposed Form SR disclosures may improve the ability of investors to identify issuer repurchases potentially driven by managerial self-interest, such as seeking to increase the share price prior to an insider sale<sup>34</sup> or to change the value of an option or other form of executive compensation.<sup>35</sup>

The proposed requirement to furnish the daily detail in Form SR on the Commission's Electronic Data

<sup>32</sup> The proposed disclosure would not provide a defense to manipulative conduct for purchases that are not in fact eligible to rely on the safe harbor.

<sup>33</sup> Rule 10b-18, which was adopted in 1982 and amended in 2003, provides a voluntary, non-exclusive "safe harbor" from liability for manipulation under Sections 9(a)(2) and 10(b) of the Exchange Act, and Rule 10b-5, when an issuer or its affiliated purchaser bids for or purchases shares of the issuer's common stock in accordance with the Rule 10b-18's manner, timing, price, and volume conditions. See Adopting Release. See also *Purchases of Certain Equity Securities by the Issuer and Others; Adoption of Safe Harbor*, Release No. 34-19244 (Nov. 17, 1982), [47 FR 53333 (Nov. 26, 1982)].

<sup>34</sup> See note 80 *infra* and accompanying discussion.

<sup>35</sup> See note 79 *infra* and accompanying discussion. In this regard, we note that share price- or earnings per share-tied compensation arrangements could incentivize executives to undertake repurchases, in an attempt to maximize their compensation.

Gathering, Analysis, and Retrieval ("EDGAR") system no later than one business day after execution of the share repurchase order could help alleviate information asymmetries and promote more informed investment decisions. Under the current rules, Item 703 disclosure about share repurchases is required in an issuer's periodic reports.<sup>36</sup> As noted above, some have expressed concern about the timeliness of this disclosure and the asymmetry of information available to the market while issuers are conducting share repurchase programs.<sup>37</sup> While existing Item 703 disclosure provides investors and market participants with a general understanding of issuer share repurchases over time, the disclosure relates to repurchases made several weeks or months earlier, resulting in a delay in such information being relayed to investors and absorbed by the market. This delay could contribute to an information asymmetry between the issuer and investors.

Several commenters on the Concept Release asked the Commission to require disclosure closer in time to share repurchases.<sup>38</sup> We additionally note that the disclosure deadlines for share repurchases in several foreign jurisdictions are shorter than in the U.S. For example, the Financial Conduct Authority in the United Kingdom and the Australian Securities Exchange provide listing standards requiring certain issuers to disclose share repurchases on the next business day.<sup>39</sup> In addition, to the extent a foreign private issuer files public reports pursuant to its home country

<sup>36</sup> For domestic issuers, this disclosure is required quarterly. However, for registered closed-end funds the disclosure is made semi-annually and for foreign private issuers is included in their annual reports. See *supra* note 8 and accompanying text.

<sup>37</sup> See discussion in Section I.

<sup>38</sup> See, e.g., letters in response to the Concept Release from Klein & Amy (recommending Form 8-K disclosure); CalPERS (recommending Form 8-K disclosure of significant repurchases in line with other significant corporate events); and AFR (recommending disclosure at the time the repurchase occurs because that is the time that any price manipulation would be occurring). *But see*, e.g., letters in response to the Concept Release from Chamber; FedEx; SIFMA; Fenwick; GM; FEI (supporting the current frequency of share repurchases).

<sup>39</sup> See, e.g., Australian Securities Exchange Listing Rule 3.8A requiring listed issuers to file a notification disclosing acquisitions before the commencement of trading on the business day after any day on which shares are bought back; and Financial Conduct Authority (United Kingdom) Listing Rule 12.4.6R requiring certain issuers to file a notification disclosing acquisitions no later than 7:30 a.m. on the business day following the day that the purchase occurred. See also Ontario Securities Commission (Canada) National Instrument 55-104 requiring certain issuers to file an insider trading report disclosing acquisition within 10 days of the end of the month.

requirements with respect to share repurchases, some of these issuers file those reports on 17 CFR 249.306 ("Form 6-K") where the issuer deems those reports material to investors.

While we are proposing that issuers provide this new daily detail disclosure one business day after execution of a share repurchase order, we recognize that the repurchases may not finally settle until two business days after the transaction.<sup>40</sup> However, we believe that issuers generally have access to details regarding their purchase orders that have been executed and that these executed orders typically are confirmed and accurately cleared and settled.<sup>41</sup> The proposed amendments would require an issuer to disclose material errors or changes to information previously reported on an amended Form SR. We believe that this provision would allow for timely and accurate disclosure the day after execution of the share repurchase order, with the ability to make corrections, if needed, in amended filings.

We are proposing to require issuers to furnish, rather than file, Form SR. As a result, issuers would not be subject to liability under Section 18 of the Exchange Act for the disclosure in the form, and the information would not be deemed incorporated by reference into filings under the Securities Act and thus would not be subject to liability under Section 11 of the Securities Act, unless the issuer expressly incorporated such information.<sup>42</sup> We believe that deeming the information provided on Form SR to be furnished rather than filed would alleviate some of the concerns about requiring this disclosure within a shorter timeframe without undermining the transparency objectives of the proposed disclosures.

#### Request for Comment

1. Should we adopt new Form SR to require daily repurchase disclosure, as proposed? Would less frequent disclosure of daily share repurchases (e.g., weekly, monthly, or quarterly disclosure) provide sufficiently timely information about issuer repurchases? Would less detailed disclosure (e.g., aggregated disclosure of repurchases on a weekly or monthly basis, rather than

<sup>40</sup> See 17 CFR 240.10b-10.

<sup>41</sup> See *supra* note 23.

<sup>42</sup> In addition, by requiring the Form SR to be furnished, a late submission of the form would not affect eligibility to use Form S-3 or to file a short-form registration statement under General Instruction A.2 of Form N-2. General Instruction I.A.3(b) to Form S-3 requires that all reports required to be filed with the Commission during the preceding 12 months have been filed; the same requirements apply under General Instruction A.2 of Form N-2.

daily), that is furnished more frequently than under current Item 703, provide sufficiently useful disclosure? Instead of adopting Form SR, should we amend Form 8-K or another existing form to require daily repurchase disclosure?

2. Should we instead require an issuer to disclose its share repurchase program and continue to report actual share repurchases on a periodic basis? If so, should we require the issuer to disclose its planned share repurchases at least 30 days prior to the first repurchase transaction? Would a different disclosure deadline be more appropriate? Should the disclosure specify the amount of securities that may be purchased or any additional information? How would the burden of complying with such requirements compare with the burdens of complying with proposed Form SR? In reporting actual share repurchases under this approach, should we require the periodic disclosure to be broken out on a monthly basis, as currently required under Item 703 of Regulation S-K, Item 16E of Form 20-F, and Item 9 of Form N-CSR, or should we expand the disclosure to require a breakout of repurchase activity on a more frequent basis?

3. Should we amend issuers' exhibit filing requirements to require issuers to provide daily, weekly, or biweekly repurchase disclosure in an exhibit to the issuer's periodic reports? If so, should such an exhibit requirement be in lieu of or in addition to reporting on Form SR?

4. Should we require disclosure of executed share repurchase orders on Form SR, as proposed? Are there concerns that executed orders may fail to settle and that issuers would not be able to accurately disclose the shares purchased on the next business day? How frequently do executed orders fail to clear and settle? Should we base the requirement on something other than order execution? For example, should we require issuers to furnish Form SR within one business day after the order clears and settles and the issuer receives trade confirmation?

5. Should we require an issuer to furnish disclosure on Form SR within one business day of execution of a share repurchase order, as proposed? Would issuers have sufficient time to prepare and furnish such disclosure? If not, how long should an issuer have to furnish Form SR? How would a longer time period to furnish Form SR impact the costs associated with preparing the disclosures and the benefits to investors of more timely disclosure? Would a longer period compared to the proposal (e.g., two days, five days, ten days or

more) still provide timely information about issuer repurchases? Would the proposed deadline for furnishing Form SR negatively impact issuers' ability to effectively conduct share repurchases, such as by increasing the price issuers may have to pay to repurchase their securities?

6. As discussed above, proposed Form SR would require daily reporting of the total number of shares repurchased, the average price paid per share, issuer share repurchases on the open market, shares purchased in reliance on the safe harbor in Rule 10b-18, and shares purchased pursuant to a plan that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c). Should we adopt these Form SR disclosure requirements, as proposed? Should we eliminate or modify any of these requirements? Should we add any disclosure requirements to Form SR, such as disclosure of the highest and lowest price paid per share for open market purchases or any other information?

7. Should we require issuers to furnish an amended Form SR to correct material changes to transactions previously reported on Form SR, as proposed? Alternatively, should we require all corrections to be made on an amended Form SR, regardless of materiality?

8. We have proposed that foreign private issuers would have the same Form SR filing obligations as domestic issuers. Should we exempt all foreign private issuers from the requirement to file a Form SR or provide different requirements? We note that some foreign private issuers are required to provide daily detailed disclosure in their home jurisdictions. To the extent these issuers file public reports pursuant to their home country requirements with respect to share repurchases, some also file those reports under Form 6-K where the issuer deems those reports material to investors. Should we exempt these foreign private issuers from the Form SR requirement?

9. Should we exempt or provide different requirements for registered closed-end funds from the Form SR requirements? Those funds already provide share repurchase disclosure less frequently than most other issuers subject to the disclosure requirement in that they disclose the information semi-annually rather than quarterly. Would less frequent disclosure continue to be appropriate for these issuers or, conversely, would investors benefit from the more frequent disclosure on Form SR? Alternatively, because the proposal would only apply to issuers with securities registered pursuant to

Section 12 of the Exchange Act, it would only apply to those registered closed-end funds with securities that trade on an exchange. Should we expand the scope of covered registered closed-end funds to more closely match the scope of corporate issuers subject to repurchase disclosure requirements by applying the requirements to registered closed-end funds that would be subject to Section 12(g) of the Exchange Act but for Section 12(g)(2)(B) (15 U.S.C. 78l(g)(2)(B)), which exempts them from the requirement to register their securities under that section unless they are listed on an exchange?

10. We have observed that smaller issuers generally conduct fewer issuer share repurchases, but that smaller issuers tend to trade in less liquid markets where share repurchases may have more pronounced impacts. Should we consider an exemption from the proposed Form SR reporting requirement for non-accelerated filers, smaller reporting companies, or emerging growth companies?

11. Should we provide a *de minimis* exception to the Form SR reporting requirement for share repurchases that are below a certain level? Should any such threshold be based on a dollar threshold, share number, a percentage of public float, or another metric? If so, what level would be appropriate and why?

12. Should we require that Form SR be furnished, as proposed? Alternatively, should we require the form to be filed? Should a late or missing Form SR filing affect an issuer's Form S-3 eligibility or eligibility to file a short-form registration statement on Form N-2? Alternatively, would extending the timeframe for providing Form SR (e.g., to one day after settlement, or two or more business days after order execution) alleviate concerns such that we should require the Form SR to be filed rather than furnished? As proposed, Form SR would be furnished to the Commission, but the Item 703 disclosure would be filed as part of the periodic report. Should repurchase information in the Form SR be subject to different liability than disclosure in issuer periodic reports?

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

We are proposing to revise and expand the disclosure requirements in Item 703, Form 20-F, and Form N-CSR to work in conjunction with proposed Form SR to provide investors with more detailed and timely information they can use to evaluate issuer share repurchases.

## 1. Additional Disclosure

We are proposing to revise Item 703, with corresponding changes to Form 20-F and Form N-CSR, to require additional disclosure about an issuer's share repurchases. Specifically, we propose to require an issuer to disclose:

- The objective or rationale for its share repurchases and process or criteria used to determine the amount of repurchases;
- Any policies and procedures relating to purchases and sales of the issuer's securities by its officers and directors during a repurchase program, including any restriction on such transactions;
- Whether it made its repurchases pursuant to a plan that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c), and if so, the date that the plan was adopted or terminated; and
- Whether purchases were made in reliance on the Rule 10b-18 non-exclusive safe harbor. We are additionally proposing 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.

In response to the Commission's request for comments regarding Item 703 in the Concept Release, many commenters recommended expanding the disclosure required by Item 703.<sup>43</sup> Some of these commenters specifically supported requiring disclosure of the objective or rationale for repurchases.<sup>44</sup> As noted above, other commentators have expressed concern that issuer share repurchases may be used to inflate executive compensation and cash out executives' securities.<sup>45</sup>

Based on these comments and concerns, we are proposing additional

<sup>43</sup> See, e.g., letters in response to the Concept Release from CII; Domini; CalSTRS; AFSCME; AFL-CIO; CalPERS; and Better Markets. Other commenters, however, opposed expanding the disclosure required by Item 703. See, e.g., letters in response to the Concept Release from Chamber; FedEx; Business Roundtable (Jul. 21, 2016); SIFMA; Fenwick; GM; and FEI.

<sup>44</sup> See, e.g., letters in response to the Concept Release from Klein & Amy; Domini; CalSTRS; AFL-CIO; CalPERS (indicating that more detailed disclosure of the issuer's share repurchase plan would enable analysis in light of the short and long-term ramifications of the repurchase).

<sup>45</sup> See discussion in Section I.

disclosure requirements intended to improve investor access to information regarding the rationale and objectives of any issuer repurchase plan. In addition, the proposed disclosure regarding whether the plan is expected to be in reliance on the Rule 10b-18 safe harbor or pursuant to a Rule 10b5-1 plan, as well as disclosures regarding any policies and procedures (including any restrictions) relating to purchases and sales imposed on officers and directors during a repurchase plan, should allow investors to better understand how an issuer has structured its repurchase plan and whether it has taken steps to prevent officers and directors from potentially benefiting from issuer repurchases in a manner that is not available to regular investors. Similarly, the proposed checkbox will obviate the need for investors to review Section 16(a) filings close in time to any announcement of an issuer purchase plan or program to see if any officer or director reporting pursuant to Section 16(a) of the Exchange Act has 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 close in time to the announcement. Together 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.

### Request for Comment

13. Many issuers voluntarily choose to announce their share repurchase plans or programs publicly. Item 703 currently requires disclosure of the date each plan or program was announced if the issuer did publicly announce it. Should we clarify what constitutes an announcement for purposes of the disclosure requirement? For example, should the announcement have to have been made in a Form 8-K, another existing form, or press release? Should we require all open market share repurchase plans to be publicly announced?

14. We have proposed requiring issuers to indicate via the proposed checkbox if any officer or director reporting pursuant to Section 16(a) of the Exchange Act purchased or sold the issuer's equity securities that are the subject of an issuer share repurchase plan or program within 10 business days before or after any announcement of an issuer purchase plan or program. How would investors use this

information? Would the proposed requirement discourage issuers from publicly announcing plans or programs? Is there other information in combination with, or instead of, this disclosure that could notify investors and help them process information regarding officer and director transactions made close in time to the issuer's share repurchase plan announcement? If an issuer doesn't publicly announce its repurchase plan, should the issuer be required to check the box if there are officer or director transactions within a certain time from the initiation of the repurchase plan or program (for example, within 10 business days of initiation)?

15. Is a 10-business-day period before or after the announcement an appropriate window for the proposed indication about officer and director transactions? Would a shorter or longer period provide more appropriate notice to investors and cover a sufficient time period where an insider may be most likely to trade in relation to the issuer's announcement of a share repurchase plan? Should we add a proposed checkbox to Form SR, in lieu of or in addition to Item 703, Form 20-F, and Form N-CSR?

16. Issuers would need to rely on representations from, or Section 16 reports filed by, their officers and directors to indicate whether any officer or director has purchased or sold the issuer's securities in the relevant time period. Should we provide guidance about the issuer's scope of inquiry and explain what an issuer may rely on for purposes of complying with the checkbox requirement?

17. Should we require issuers to describe the objective or rationale for their share repurchases and process or criteria used to determine the amount of repurchases, as proposed? How would investors use this information? Should we also require information regarding how share repurchases are financed or their anticipated or actual impact on leverage ratios or the cost of capital? Should we ask issuers to disclose if they specifically considered other uses for the funds being used for the share repurchase? Is there additional disclosure regarding the reasons for, or expected effects of a share repurchase plan that should be required? Would this proposed requirement result in boilerplate disclosure?

18. Proposed Item 703 and proposed Form SR would require issuers to disclose whether repurchases were made pursuant to a plan that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c). Does the proposal require an appropriate level of

detail regarding Rule 10b5-1 plans? Should this disclosure additionally contemplate repurchases made pursuant to “other pre-arranged trading plans” that issuers may seek to rely on in lieu of Rule 10b5-1 plans? How should we define “other pre-arranged trading plans” in this circumstance? How would investors use information regarding these plans?

19. Proposed Item 703, and proposed Form SR would require disclosure of whether shares were purchased in reliance on the safe harbor in Rule 10b-18. How would investors use this information? Is the use of the term “purchased in reliance on the safe harbor” sufficiently clear?

20. How would investors use the proposed disclosure regarding any policies and procedures relating to purchases and sales of the issuer’s securities by its officers and directors during a repurchase program, including any restriction on such transactions? Should we require disclosure of broader policies and procedures related to a repurchase program, for example, how material nonpublic information is controlled for or potential impacts, if any, on executive compensation metrics? Is there additional information about repurchase plans and trading by insiders that we should require to be disclosed?

21. In this release, we are proposing amendments to require an issuer to disclose whether it repurchased its securities pursuant to a Rule 10b5-1 plan, and if so, the date that such a plan was adopted or terminated. We also are proposing amendments to Item 703 to require disclosure of any policies and procedures the issuer has established relating to purchases and sales of its securities by its officers and directors, including any restriction on such transactions. In a separate release described in note 21 above, we are proposing new Item 408 under Regulation S-K and corresponding amendments to Forms 10-Q and 10-K to require: (1) Quarterly disclosure of the use of Rule 10b5-1 and other trading arrangements by a registrant, and its directors and officers, for the trading of the issuer’s securities; and (2) annual disclosure of an issuer’s insider trading policies and procedures. If the Commission adopts both the proposed Item 703 and Item 408 amendments, are there opportunities to streamline or simplify overlapping disclosure requirements that may apply to an issuer’s repurchase plan? If so, which provisions should we eliminate or how should we modify the proposed disclosure requirements?

22. As proposed, disclosure of issuer share repurchases would be required on a daily basis on Form SR. In addition, Item 703 would continue to require monthly summary disclosure of share repurchases that would be similar to, but not the same as, Form SR tabular disclosure. What are the costs and benefits of providing this disclosure as proposed? Do these different sets of share repurchase disclosures provide distinctly valuable information for investors and market participants? Should there instead be more alignment between Item 703 and Form SR tabular data? Alternatively, should we adopt a subset of the proposed disclosures, such as:

- Only Form SR;
- Form SR and Item 703 and Forms 20-F and N-CSR, amended as proposed, but without monthly data;
- No Form SR, but Item 703 and Forms 20-F and N-CSR, amended as proposed and including daily, weekly, or bi-weekly repurchase disclosure; or
- No Form SR, but Item 703 and Forms 20-F and N-CSR, amended as proposed, with an exhibit providing daily detail about share repurchases made during the period covered by the report?

23. We have not proposed exemptions or different requirements from the proposed revisions to Item 703, Form 20-F, and Form N-CSR for foreign private issuers, registered closed-end funds, non-accelerated filers, smaller reporting companies, or emerging growth companies. Should we exempt or provide different requirements from some or all of the proposed amendments for these or other classes of issuers?

## 2. Clarifying Amendments

In addition to the proposed amendments described above, we are proposing clarifying amendments to Item 703, Form 20-F, and Form N-CSR to simplify application of the rules and remove unnecessary instructions. Specifically, we are proposing:

- To relocate guidance in the *Instruction 1 to paragraph (b)(1)* about information to appear in the table and disclosure to appear in a footnote to the table to paragraph (b)(1) to a new paragraph (c);
- To consistently refer to “issuer” instead of “company”;<sup>46</sup>
- To remove *Instruction 1 and 2 in the Instructions to paragraphs (b)(3) and (b)(4)* and effectuate those instruction by adding “aggregate” to total number of

<sup>46</sup> In Form N-CSR only we would continue to refer to “registrants” rather than “issuer” or “company” for consistency with other provisions in Form N-CSR.

shares for all plans or programs publicly announced in paragraph (b)(3) in lieu of *Instruction 1* and adding proposed paragraph (c) to replace *Instruction 2*;

- To delete the *Instruction* to the affected requirements as they are clear that all purchases, including those that do not satisfy the conditions of Rule 10b-18, are included.

## Request for Comment

24. Do the changes we are proposing simplify and clarify Item 703 and the corresponding provisions in Forms 20-F and N-CSR? Are there other changes we should consider to clarify the share repurchase disclosure requirements?

## C. Structured Data Requirement

We are proposing to require issuers to tag information disclosed pursuant to Item 703 of Regulation S-K, Item 16E of Form 20-F, Item 9 of Form N-CSR, and Form SR in a structured, machine-readable data language. Specifically, we are proposing to require issuers to tag the disclosures in Inline XBRL in accordance with Rule 405 of Regulation S-T and the EDGAR Filer Manual.<sup>47</sup> The proposed requirements would include detail tagging of quantitative amounts disclosed within the tabular disclosures in each of the aforementioned forms, as well as block text tagging and detail tagging of narrative and quantitative information disclosed in the footnotes to the tables required by Item 703 of Regulation S-K, Item 16E of Form 20-F, and Item 9 of Form N-CSR.

In 2009, the Commission adopted rules requiring operating companies to submit the information from the financial statements (including footnotes and schedules thereto) included in certain registration statements and periodic and current reports in a structured, machine-readable data language using eXtensible Business Reporting Language (“XBRL”).<sup>48</sup> In 2018, the Commission

<sup>47</sup> This tagging requirement would be implemented by including cross-references to Rule 405 of Regulation S-T in each of the repurchase disclosure provisions, and by revising Rule 405(b) of Regulation S-T to include the proposed repurchase disclosures. Pursuant to Rule 301 of Regulation S-T the EDGAR Filer Manual is incorporated by reference into the Commission’s rules. In conjunction with the EDGAR Filer Manual, Regulation S-T governs the electronic submission of documents filed with the Commission. Rule 405 of Regulation S-T specifically governs the scope and manner of disclosure tagging requirements for operating companies and investment companies, including the requirement in Rule 405(a)(3) to use Inline XBRL as the specific structured data language to use for tagging the disclosures.

<sup>48</sup> *Interactive Data to Improve Financial Reporting*, Release No. 33-9002 (Jan. 30, 2009) [74 FR 6776 (Feb. 10, 2009)] (“2009 Financial Statement Information Adopting Release”)

adopted modifications to these requirements by requiring issuers to use Inline XBRL, which is both machine-readable and human-readable, to reduce the time and effort associated with preparing XBRL filings and improve the quality and usability of XBRL data for investors.<sup>49</sup> In 2020, the Commission adopted Inline XBRL requirements for registered closed-end funds and business development companies that will be effective no later than February 2023.<sup>50</sup>

Requiring Inline XBRL tagging of the repurchase disclosures would benefit investors by making the disclosures more readily available and easily accessible to investors, market participants, and others for aggregation, comparison, filtering, and other analysis, as compared to requiring a non-machine readable data language such as ASCII or HTML. This would enable automated extraction and analysis of granular data on actual repurchases, allowing investors and other market participants to more efficiently perform large-scale analysis and comparison of repurchases across issuers and time periods, including comparing repurchases to information on executive's compensation. At the same time, we do not expect the incremental compliance burden associated with tagging the additional information to be unduly burdensome, because issuers subject to the proposed tagging requirements are or in the near future will be subject to similar Inline XBRL requirements in other Commission filings.<sup>51</sup>

#### Request for Comment

25. Should we require issuers to include block text tagging of narrative disclosures, as well as detail tagging of quantitative amounts disclosed within the narrative and tabular disclosure

(requiring submission of an Interactive Data File to the Commission in exhibits to such reports); see also Release No. 33-9002A (Apr. 1, 2009) [74 FR 15666 (Apr. 7, 2009)].

<sup>49</sup> *Inline XBRL Filing of Tagged Data*, Release No. 33-10514 (June 28, 2018) [83 FR 40846, 40847 (Aug. 16, 2018)]. Inline XBRL allows filers to embed XBRL data directly into an HTML document, eliminating the need to tag a copy of the information in a separate XBRL exhibit. *Id.* at 40851.

<sup>50</sup> *Securities Offering Reform for Closed-End Investment Companies*, Release No. 33-10771 (Apr. 8, 2020) [85 FR 33290 (Jun. 1, 2020) at 33318].

<sup>51</sup> See *supra* notes 50 and 51. Inline XBRL requirements for registered closed-end funds and business development companies will take effect beginning August 1, 2022 (for seasoned issuers) and February 1, 2023 (for all other issuers). See *id.* If the proposed Inline XBRL requirements are adopted in the interim, they will not apply to registered closed-end funds and business development companies prior to the aforementioned effectiveness dates.

required by Item 703 of Regulation S-K, Item 16E of Form 20-F, Item 9 of Form N-CSR, and Form SR in Inline XBRL, as proposed? Are there any changes we should make to promote accurate and consistent tagging? If so, what changes should we make?

26. Should we modify the scope of the repurchase disclosures required to be tagged? For example, should we only require tagging of the quantitative repurchase disclosures?

27. Should we require issuers to use a different structured data language to tag repurchase disclosures? If so, what structured data language should we require? Should we leave the structured data language undefined?

28. We have not proposed exemptions or different requirements from the proposed structured data requirement for foreign private issuers, registered closed-end funds, non-accelerated filers, smaller reporting companies, or emerging growth companies. Should we exempt or provide different requirements from some or all of the proposed amendments for these or other classes of issuers?

### III. General Request for Comment

The Commission requests comment on the rule and form amendments proposed in this release, whether any changes to our rules or forms are necessary or appropriate to implement the objectives of our proposed rule and form amendments, and other matters that might affect the proposals contained in this release.

### IV. Economic Analysis

We are mindful of the costs imposed by, and the benefits obtained from, our rules. Section 3(f) of the Exchange Act<sup>52</sup> and Section 2(c) of the Investment Company Act of 1940 ("Investment Company Act")<sup>53</sup> require us, when engaging in rulemaking, to consider or determine whether an action is necessary or appropriate in (or, with respect to the Investment Company Act, consistent with) the public interest, and to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act requires the Commission to consider the effects on competition of any rules the Commission adopts under the Exchange Act and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or

appropriate in furtherance of the purposes of the Exchange Act.<sup>54</sup>

We have considered the economic effects of the proposed amendments, including their effects on competition, efficiency, and capital formation. Many of the effects discussed below cannot be quantified. Consequently, while we have, wherever possible, attempted to quantify the economic effects expected from this proposal, much of the discussion remains qualitative in nature. Where we are unable to quantify the economic effects of the proposed amendments, we provide a qualitative assessment of the potential effects and encourage commenters to provide data and information that would help quantify the benefits, costs, and the potential impacts of the proposed amendments on efficiency, competition, and capital formation.

As discussed in greater detail in Section II above, the Commission is proposing to require disclosure of repurchases, on a daily basis, on a new form. The proposed daily disclosure, which would be required to be structured using Inline XBRL, would include the number of shares repurchased by an issuer, the average price per share paid, the number of shares repurchased on the open market, the number of shares repurchased in reliance on the Rule 10b-18 non-exclusive safe harbor, and the number of shares repurchased pursuant to a Rule 10b5-1 plan.

The Commission is also proposing to require, on Forms 10-Q, 10-K, 20-F, and N-CSR, additional disclosure about the issuer's repurchase program and practices, including the objective or rationale for the share repurchases, the structure of an issuer's repurchase program, and whether purchases were made pursuant to a plan that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c), or in reliance on the Rule 10b-18 non-exclusive safe harbor. Further, the Commission is proposing to require disclosure of any policies and procedures relating to purchases and sales of the issuer's securities by its officers and directors during a repurchase program, including any restrictions on such transactions. The Commission is also proposing to require an issuer to indicate whether any officer or director reporting pursuant to Section 16(a) of the Exchange Act 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 issuer's

<sup>52</sup> 15 U.S.C. 78c(f).

<sup>53</sup> 15 U.S.C. 80a-2(c).

<sup>54</sup> 15 U.S.C. 78w(a)(2).

announcement of such repurchase plan or program.

We request comment on this economic analysis from all interested parties. With regard to any comments, we note that such comments are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

#### A. Baseline and Affected Parties

##### 1. Affected Parties

Repurchase disclosures are currently required by Item 703 of Regulation S-K (on Forms 10-Q and 10-K), Item 16E of Form 20-F, and Item 9 of Form N-CSR (for registered closed-end funds). The disclosure is required with respect to 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 that is registered by the issuer pursuant to Section 12 of the Exchange Act. Based on staff analysis of EDGAR filings for 2020, the proposed amendments would affect the same categories of filers, including approximately 5,900 filers of Forms 10-Q and 10-K and approximately 700 filers of Form 20-F with a class of securities registered under Section 12. In addition, based on staff analysis of Morningstar Direct data for 2020, approximately 500 registered closed-end funds are expected to be affected by the proposed amendments to Form N-CSR. We lack the data to estimate the number of affected “affiliated purchasers.”

Among the filers described above, filers that conduct repurchases today are most likely to be affected by the proposed amendments.<sup>55</sup> Based on data from Compustat and EDGAR filings for fiscal year 2020, we estimate that approximately 3,300 operating companies that conducted repurchases during fiscal year 2020 would be affected by the amendments (among them, approximately 250 Form 20-F filers).<sup>56</sup> In addition, based on staff analysis of Form N-CEN filings for 2020, approximately 100 registered

<sup>55</sup> Filers with no repurchases today could be affected by the proposed amendments to the extent they were planning future repurchases and such plans were affected by the costs of the additional disclosure requirements.

<sup>56</sup> As a caveat, a complete estimate of the number of affected filers is limited by data coverage. A source of data commonly used in existing studies, Standard & Poor’s Compustat, has limited coverage of small and unlisted registrants and Form 20-F filers. Therefore, we supplement data from Compustat with structured data from financial statement disclosures in EDGAR filings (with the caveat that variation in filer use of tags to characterize their repurchases may result in some data noise).

closed-end funds conducted repurchases.<sup>57</sup> Based on these estimates, most of the affected issuers are operating companies that file periodic reports on domestic forms.

Shareholders and prospective investors would also be affected by the proposed amendments to the extent that they receive additional and more timely insight into an issuer’s repurchase activity. Financial intermediaries that execute repurchases at the issuer’s instruction would also be affected by the proposed amendments to the extent that they have to prepare the information necessary for an issuer’s responsive disclosure, and indirectly, to the extent that the amendments affect the incidence of repurchases and thus demand for financial intermediaries’ services in connection with executing repurchases. To the extent that the proposed requirement to disclose any policies and procedures relating to purchases and sales of the issuer’s securities by its officers and directors during a repurchase program, including any restriction on such transactions, results in more issuers establishing such policies and procedures or imposing such restrictions, officers and directors would also be affected by the proposed amendments. We lack data to assess how many of these parties will be affected.

##### 2. Baseline

Corporate payout decisions have been extensively studied for decades.<sup>58</sup> In

<sup>57</sup> Based upon a staff review, we expect approximately 20% of registered closed-end funds to be affected by the proposal engage in share repurchases, as compared to approximately half of operating companies.

<sup>58</sup> For a more detailed discussion of the data and research on repurchases and other payouts, see SEC Staff Response to Congress: Negative Net Equity Issuance, December 2020, available at <https://www.sec.gov/files/negative-net-equity-issuance-dec-2020.pdf> (“2020 Staff Study”); and Farre-Mensa, J., Michaely, R., & Schmalz, M. *Payout Policy*, 6 Ann. Rev. of Fin. Econ. 75 (2014) (“Farre-Mensa et al. (2014)”). Staff reports, statistics, and other staff documents (including those cited herein) represent the views of Commission staff and are not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved the content of these documents and, like all staff statements, they have no legal force or effect, do not alter or amend applicable law, and create no new or additional obligations for any person. The Commission has expressed no view regarding the analysis, findings, or conclusions contained therein. The focus of the 2020 Staff Study was determined by the directive of Congress in its Joint Explanatory Statement accompanying the Financial Services and General Government Appropriations Act, which directed the staff to study the recent growth of negative net equity issuances with respect to non-financial issuers, including the history and effects of those issuers repurchasing their own securities, and the effects of those repurchases on investment, corporate leverage, and economic growth. The study provided data and statistics on share repurchases across different types of companies and

recent years the high dollar volume of repurchase activity has renewed interest in corporate payouts in the form of share repurchases. During 2020, share repurchases accounted for approximately \$670 billion.<sup>59</sup> Aggregate repurchases have grown significantly over the past four decades, but the increase relative to aggregate market capitalization has been significantly more modest due to the accompanying growth in aggregate market

time periods, as well as an extensive discussion of related evidence in existing research, which offers insight into the existing market baseline. For example, the study discusses the evidence on the favorable market reaction to repurchase announcements. Among its findings, the study notes that “[r]epurchases are an increasingly common way firms distribute cash to shareholders. There are several possible reasons firms conduct repurchases; some support efficient investment and for some the connection is less clear. The analysis below suggests that firms are more likely to conduct repurchases when they have excess cash and when they would benefit from increased reliance on debt financing.” The study further notes that “the data is consistent with firms using repurchases to maintain optimal levels of cash holdings and to minimize their cost of capital” and that “reasons for repurchases where the connection to efficient investment is less clear are unlikely to motivate the majority of repurchases since stock prices typically increase in response to repurchase announcements, suggesting that, at least on average, repurchases are viewed as having a positive effect on firm value.” In discussing one of the criticisms of share repurchases, the study notes “that insider sales may be timed to coincide with repurchase announcements. If insiders time sales to coincide with repurchase announcements and any resulting increase in stock price, executives may be incentivized to recommend repurchase programs to further their own gain.” However, the study notes, it is “difficult to ascertain the motivations underlying insider sales.” As a caveat, existing studies referenced in this release, including the 2020 Staff Study, are necessarily constrained by existing disclosure limitations. The low frequency and the unstructured nature of existing Item 703 data on repurchase activity limit the ability of existing studies to gauge the extent of information asymmetry between issuers and investors associated with the execution of repurchase programs and its economic effects. Existing disclosure has also limited the ability of existing studies to draw a causal connection between managerial incentives and day-to-day execution of repurchase programs as well as quantify its economic effects. Further, while public attention has focused on the aggregate trends in repurchases, the attribution of aggregate trends to specific drivers of repurchases is complicated due to the presence of confounding factors that cannot be readily isolated in existing data. The discussed data limitations should be considered in evaluating existing studies of the motivations of repurchases. Additional caveats, where applicable, are referenced in the discussion of individual strands of research and evidence on repurchases below.

<sup>59</sup> Based on staff analysis of Standard & Poor’s Compustat data related to share repurchases conducted during fiscal year 2020 by issuers listed on U.S. exchanges. This represented a significant decline from approximately \$1 trillion in share repurchases during fiscal year 2019, in line with the effects of the COVID-19 crisis. The sample for this estimate is defined more broadly than in the 2020 Staff Study (adding financial and U.S.-listed foreign issuers with Compustat data), resulting in larger aggregate totals.

capitalization; in addition, aggregate repurchases, both in absolute terms and relative to aggregate market capitalization, have exhibited considerable cyclical fluctuations (increasing during economic booms and declining during recessions).<sup>60</sup> Dividends fluctuate less than repurchases, consistent with dividends being viewed by the market as a commitment to regularly return cash to shareholders.<sup>61</sup> As a result, managers may endeavor to keep dividend payments stable, mainly avoiding dividend cuts, justifying the market's interpretation.<sup>62</sup> Firms that exclusively pay dividends are increasingly rare whereas the proportion of firms that regularly conduct repurchases has increased over time, consistent with repurchases being a partial substitute for dividends.<sup>63</sup>

Information about recent repurchases is expected to be valuable to investors. Various studies argue that an issuer conducts repurchases when it believes

its securities to be undervalued.<sup>64</sup> Corporate insiders likely have a superior understanding of their business and industry. Academic research has suggested managers can use increases in distributions, such as new repurchase programs, to signal their view that the stock is undervalued and is expected to increase in the future.<sup>65</sup> Several empirical studies show that on average share prices increase after actual share repurchases, suggesting that information about recent repurchases could be useful in predicting the trend of future share prices, above and beyond other market factors (while some other studies do not find this result).<sup>66</sup> A related

<sup>64</sup> See Farre-Mensa et al. (2014).

<sup>65</sup> For analysis of signaling with repurchases, see, e.g., Vermaelen, T., *Common Stock Repurchases and Market Signaling: An Empirical Study*, 9(2) J. Fin. Econ. 139 (1981); Vermaelen, T., *Repurchase Tender Offers, Signaling, and Managerial Incentives*, 19 J. Fin. & Quantitative Analysis 163 (1984); Constantinides, G. & Grundy, B., *Optimal Investment with Stock Repurchase and Financing as Signals*, 2 Rev. Fin. Stud. 445 (1989); Hausch, D. & Seward, J., *Signaling with Dividends and Share Repurchases: A Choice Between Deterministic and Stochastic Cash Disbursement*, 6 Rev. Fin. Stud. 121 (1993); McNally, W., *Open Market Stock Repurchase Signaling*, 28(2) Fin. Mgmt. 55 (1999). In some studies, authors find that repurchases send a stronger signal than dividends. See, e.g., Ofer, A. & Thakor, A., *A Theory of Stock Price Responses to Alternative Corporate Cash Disbursement Methods: Stock Repurchases and Dividends*, 42 J. Fin. 365 (1987); Persons, J., *Heterogeneous Shareholders and Signaling with Share Repurchases*, 3(3) J. Corp. Fin. 221–249 (1997).

<sup>66</sup> See, e.g., Dittmar, A. & Field, L. C., *Can managers time the market? Evidence using repurchase price data*, 115(2) J. Fin. Econ. 261–282 (2015) (“Dittmar and Field (2015)”); Ben-Rephael, A., Oded, J., & Wohl, A., *Do Firms Buy Their Stock at Bargain Prices? Evidence From Actual Stock Repurchase Disclosures*, 18 Rev. Fin. 1299 (2014) (“Ben-Rephael et al. (2014)”); Chan, K., Ikenberry, D., & Lee, I., *Do Managers Time the Market? Evidence from Open-Market Share Repurchases*, 31(9) J. of Banking & Fin. 2673–2694 (2007); Cook, D., Krigman, L., & Leach, J.C., *On the Timing and Execution of Open Market Repurchases*, 17(2) Rev. of Fin. Studies, 463–498 (2004) (“Cook et al. (2004)”) (finding that larger firms in the sample perform better than smaller firms in timing the price at which repurchases are executed). However, other studies do not find evidence that repurchases are driven by market timing. See, e.g., Obernberger, S., *The Timing of Actual Share Repurchases*, Working paper (2014) (concluding that contrarian trading rather than market timing ability explains the observed relation between returns and actual share repurchases); Dittmar and Dittmar (2008); Bonaimé, A., Hankins, K., & Jordan, B., *The Cost of Financial Flexibility: Evidence From Share Repurchases*, 38 J. Corp. Fin., 345–362 (2016) (finding that “actual repurchase investments underperform hypothetical investments that mechanically smooth repurchase dollars through time by approximately two percentage points per year on average”). The differences in the conclusions may be due to differences in empirical methodology and sample period. Because these studies utilize presently available, monthly data, their conclusions may be noisy and may not map fully to the effects associated with daily repurchase activity. As a general caveat, any working papers cited here have generally not undergone peer review and may be subject to revision. Studies

focused on returns following share repurchase announcements also find positive returns. See, e.g., Evgeniou, T., Junqué de Fortuny, E., Nassuphis, N., & Vermaelen, T., *Volatility and the Buyback Anomaly*, 49 J. Corp. Fin., 32–53 (2018); Bergeron, L., Kulchania, M., & Thomas, S., *The Timing and Source of Long-Run Returns Following Repurchases*, 52 J. Fin. & Quantitative Analysis 491 (2017); Peyer, U., & Vermaelen, T., *The Nature And Persistence of Buyback Anomalies*, 22 Rev. Fin. Stud. 1693 (2009). But see Fu, F. & Huang, S., *The Persistence of Long-Run Abnormal Returns Following Stock Repurchases and Offerings*, 62 Mgmt. Science 964 (2016) (documenting disappearance of long-run, post-repurchase abnormal returns during 2003–2012).

explanation for repurchases is that they are an effort to provide price support by supplying liquidity when selling pressure is high; thus, share prices would be lower during an issuer's repurchases and higher afterwards.<sup>67</sup> In all of these scenarios, actual repurchases would precede a rise in the share price. Timely disclosure about recent actual repurchases can thus contain valuable information about the future movement of the share price that is not revealed to the market otherwise, and a lack of timely disclosure could contribute to information asymmetries between investors and issuers/insiders. The benefit of the information contained in a disclosure of recent repurchase activity would be lower to the extent that large issuer repurchases already have a price impact, resulting in price discovery and indirect revelation of information to the market, even in the absence of daily disclosure. Nevertheless, to the extent that an issuer's purchases incorporate insiders' future outlook on the firm, they could be informative to investors (complementing the information in Form 4 filings). The value of information on recent repurchases is not subsumed by the information content of announcements of repurchase programs. In the data, this is supported by the evidence of share price trends after actual repurchases.<sup>68</sup> Importantly, after a repurchase announcement—which is voluntary for an issuer to make—an issuer retains considerable discretion on when to implement any repurchases and how much to repurchase at any point in time. Because, similar to information on individual insider trades, such information is likely to have a short-term component, its timely disclosure is expected to be relevant for

focused on returns following share repurchase announcements also find positive returns. See, e.g., Evgeniou, T., Junqué de Fortuny, E., Nassuphis, N., & Vermaelen, T., *Volatility and the Buyback Anomaly*, 49 J. Corp. Fin., 32–53 (2018); Bergeron, L., Kulchania, M., & Thomas, S., *The Timing and Source of Long-Run Returns Following Repurchases*, 52 J. Fin. & Quantitative Analysis 491 (2017); Peyer, U., & Vermaelen, T., *The Nature And Persistence of Buyback Anomalies*, 22 Rev. Fin. Stud. 1693 (2009). But see Fu, F. & Huang, S., *The Persistence of Long-Run Abnormal Returns Following Stock Repurchases and Offerings*, 62 Mgmt. Science 964 (2016) (documenting disappearance of long-run, post-repurchase abnormal returns during 2003–2012).

<sup>67</sup> See, e.g., Liu, H. & Swanson, E., *Is Price Support a Motive for Increasing Share Repurchases?*, 38 J. Corp. Fin. 77 (2016) (“Liu and Swanson (2016)”).

<sup>68</sup> The price effects of actual repurchases discussed above are additional to any price effects of repurchase announcements. Because repurchase announcements precede actual repurchases, the announcement effect is already incorporated into the baseline share price, against which the price effects of actual repurchases are analyzed.

<sup>60</sup> See, e.g., Campello M., Graham J., & Harvey, C., *The Real Effects of Financial Constraints: Evidence from a Financial Crisis*, 97 J. Fin. Econ. 470 (2010); Dittmar, A. & Dittmar, R., *The Timing of Financing Decisions: An Examination of the Correlation in Financing Waves*, 90 J. Fin. Econ. 59 (2008) (“Dittmar and Dittmar (2008)”); Floyd, E., Li, N., & Skinner, D., *Payout Policy through the Financial Crisis: The Growth of Repurchases and the Resilience of Dividends*, 118 J. Fin. Econ 299 (2015). See also 2020 Staff Study (observing that growth in aggregate repurchases has fluctuated over the past several decades, as demonstrated by a large decline and rebound following the financial crisis, and also observing that share repurchases net of equity issuances as a percentage of aggregate market capitalization of public companies have remained relatively stable over the past decade, within the longer trend of modest percentage growth over the last forty years).

<sup>61</sup> See, e.g., Brealey, R., Myers, S., & Allen, F., *Principles of Corporate Finance* (12th ed. 2017). Issuers generally announce dividend policies, and markets react strongly to increases and reductions in dividends. See, e.g., Healy, P. & Palepu, K., *Earnings Information Conveyed by Dividend Initiations and Omissions*, 21 J. Fin. Econ. 149 (1988). Market reactions to initiations and omissions are even more pronounced. See Michaely, R., Thaler, R., & Womack, K., *Price Reactions to Dividend Initiations and Omissions: Overreaction or Drift?*, 50 J. Fin. 573 (1995); Lee, B.S. & Mauck, N., *Dividend Initiations, Increases and Idiosyncratic Volatility*, 40 J. Corp. Fin. 47 (2016). These studies indicate that decreases in buybacks do not elicit the same negative market reaction as dividend decreases.

<sup>62</sup> For example, one survey of 384 CFOs and executives suggests that the ability to avoid reducing dividends was the top consideration of managers when determining dividend policy. See Brav, A., Graham, J., Harvey, C., & Michaely, R., *Payout Policy in the 21st Century*, 77 J. Fin. Econ. 483 (2005) (“Brav et al. (2005)”).

<sup>63</sup> See 2020 Staff Study. The partial substitution between dividends and repurchases has also been documented in academic studies. See, e.g., Skinner, D., *The Evolving Relation between Earnings, Dividends and Stock Repurchases*, 87 J. Fin. Econ. 582 (2008); Grullon, G. & Michaely, R., *Dividends, Share Repurchases, and the Substitution Hypothesis*, 57 J. Fin. 1649 (2002).

investors. Existing disclosures provide a significantly delayed, aggregated insight into the execution of announced repurchases. Thus, a large part of the information content of the day-to-day timing of issuer repurchases with regard to short-term share price movements may become obsolete and potentially obscured by aggregation by the time the disclosure is made under existing requirements.<sup>69</sup>

Various studies address motivations behind corporate payouts and the choice of the form of payout (repurchases or dividends).<sup>70</sup> In a number of instances, the use of repurchases can be efficient and aligned with shareholder value maximization. Sometimes issuers that have excess cash do not have profitable investment opportunities. In such instances, distributing the cash through dividends or repurchases can alleviate concerns that managers will spend the cash in sub-optimal ways, such as empire-building acquisitions.<sup>71</sup> Survey evidence supports this theory, with the second most cited reason for conducting a repurchase being the “lack of good investment opportunities.”<sup>72</sup> By returning excess cash to shareholders, repurchases free up that capital to be reinvested into businesses that lack the capital to pursue value-creating investment opportunities. Stock price reactions to announcements of new repurchase programs are higher for cash-rich issuers, which may be consistent with the creation of value when managers remove their discretion over how to invest excess cash and provide that cash to investors to redeploy as they see fit.<sup>73</sup> Issuers may choose repurchases if the excess free cash flow stems from a one-time windfall, or if they value financial flexibility and wish to avoid a costly, long-term commitment to higher dividends.<sup>74</sup> For instance, firms that

favor repurchases tend to have more volatile cash flows than dividend-paying firms.<sup>75</sup> Issuers with excess free cash flow may also choose repurchases over dividends as the method of payout because repurchases are more tax-efficient for shareholders.<sup>76</sup> Finally, repurchases may also be used to adjust an issuer’s leverage upward, as part of adjustment towards the target capital structure, or as part of a market timing approach to capital structure.<sup>77</sup>

Some commentators and studies have noted that opportunistic insider behavior and agency conflicts, rather than firm value maximization, can motivate repurchases. In particular, repurchases can serve as a form of real earnings management (through decreasing the denominator of EPS) and thus be subject to short-term earnings management objectives of an executive seeking to meet or beat consensus forecasts.<sup>78</sup> Announcements of

*between Dividends and Stock Repurchases*, 57(3) J. Fin. Econ. 355–384 (2000). See also *supra* notes 62–63 and accompanying text.

<sup>75</sup> See Hoberg, G. & Prabhala, N., *Disappearing Dividends, Catering, and Risk*, 22 Rev. Fin. Stud. 79 (2009) (showing that riskier firms are less likely to pay dividends).

<sup>76</sup> See, e.g., Feng, L., Pukthuanthong, K., Thiengtham, D., Turtle, H. J., & Walker, T. J., *The Effects of Cash, Debt, and Insiders on Open Market Share Repurchases*, 25(1) J. App. Corp. Fin. 55–63 (2013). The tax advantage of repurchases has been attenuated but not eliminated after the 2003 dividend tax cut. Outside of tax-exempt/tax-deferred accounts, all shareholders are subject to taxes on dividends for the year the dividend was paid. In the case of repurchases, only selling shareholders are subject to taxes on capital gains (the remaining shareholders do not pay taxes until they sell their shares).

<sup>77</sup> See, generally, Baker, M. & Wurgler, J., *Market Timing and Capital Structure*, 57 J. Fin. 1 (2002). Some other evidence suggests that firms tend to repurchase stock and issue debt when the cost of debt falls relative to the cost of equity. See Ma, Y., *Nonfinancial Firms as Cross-Market Arbitrageurs*, 74 J. Fin. 3041 (2019). See also Hovakimian, A., *Role of Target Leverage in Security Issues and Repurchases*, 77(4) J. Bus. 1041–1072 (2004) (finding that “equity issues and repurchases do not offset the accumulated deviation from the target and they are timed to market conditions”).

<sup>78</sup> For evidence on the use of repurchases as a method of real earnings management, see, e.g., Burnett, B., Cripe, B., Martin, G., & McAllister, B., *Audit Quality and the Trade-Off Between Accretive Stock Repurchases and Accrual-Based Earnings Management*, 87 Acct. Rev. 1861 (2012). CFO survey responses indicate that increasing EPS is an important factor affecting share repurchase decisions according to Brav et al. (2005). Investors may take this into account when evaluating EPS. For example, Hribar, P., Jenkins, N., & Johnson, W. B., *Stock Repurchases as an Earnings Management Device*, 41 J. Acct. & Econ. 3 (2006), find that the market discounts EPS announcements in situations in which EPS would have been shy of analyst expectations but for share repurchases (and where repurchases are disclosed along with quarterly earnings). Kurt (2018) studies the use of accelerated share repurchases (ASRs) for real earnings management and concludes investors “are not fooled” by managers’ use of ASRs as an earnings management device. See Kurt, Ahmet C., *Managing*

repurchases and actual repurchase trades can also affect short-term upward price pressure.<sup>79</sup> Share price- or EPS-tied compensation arrangements can thus incentivize executives to undertake repurchases, in an attempt to maximize their compensation,<sup>80</sup> even if such

*EPS and Signaling Undervaluation as a Motivation for Repurchases: The Case of Accelerated Share Repurchases*, 17(4) Rev. Acct. & Fin. 453–481. Nevertheless, earnings management-motivated repurchases can have negative real effects on the issuer and its shareholders. For example, one recent study finds that repurchases used to push EPS above analyst expectations are accompanied by a 10% decrease in capital expenditures and a 3% decrease in research and development. See, e.g., Almeida, H., Fos, V., & Kronlund, M., *The Real Effects of Share Repurchases*, 119(1) J. Fin. Econ., 168–185 (2016) (“Almeida et al. (2016)”). Note that these findings do not necessarily generalize to repurchases at issuers outside the range of EPS approaching the earnings target, or to repurchases unrelated to EPS manipulation. A 2016 McKinsey & Co. report states that share repurchases do not improve shareholder returns simply by increasing EPS because, under certain conditions, there may have been more preferable uses for those funds such as debt reduction and reinvestment in the firm. See also, e.g., Ezekoye, O., Koller, T., & Mittal, A., *How Share Repurchases Boost Earnings without Improving Returns*, McKinsey, April 29, 2016, available at <https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/how-share-repurchases-boost-earnings-without-improving-returns>.

<sup>79</sup> With respect to actual share repurchases, a recent study shows that price support provided by actual share repurchases improves price efficiency, even when manipulation concerns might be highest, such as those that occur prior to insider sales. Busch, B. & Obernberger, S., *Actual Share Repurchases, Price Efficiency, and The Information Content Of Stock Prices*, 30 Rev. Fin. Stud. 324 (2017) (“Busch and Obernberger (2017)”). With respect to share repurchase announcements, some have suggested that managers may take advantage of positive stock price reactions to non-binding repurchase announcements and use disingenuous repurchase announcements to manipulate share prices. See Chan et al. (2010) (finding in 1980–2000 data that a limited number of managers may have used repurchases in a misleading way as “cheap talk”). Such “cheap talk” may result in lower announcement returns. See, e.g., Alice Bonaimé, *Repurchases, Reputation, and Returns*, 47 J. Fin. & Quantitative Analysis 469 (2012) (“Bonaimé (2012)”); Bonaimé (2015). Some studies argue that “cheap-talk” repurchase announcements may correct mispricing by attracting additional market scrutiny. See Almazan, A., Banerji, S., & De Motta, A., *Attracting Attention: Cheap Managerial Talk and Costly Market Monitoring*, 63 J. Fin. 1399 (2008); Bhattacharya, U. & Jacobsen, S., *The Share Repurchase Announcement Puzzle: Theory and Evidence*, 20 Rev. Fin. 725 (2016).

<sup>80</sup> As an important caveat, the incentives would be weaker to the extent executive compensation plans and board committees that address executive compensation account for how repurchases would affect compensation targets and the value of incentive-based compensation. For evidence on the use of repurchases to influence compensation tied to per-share measures, see, e.g., Cheng, Y., Harford, J., & Zhang, T., *Bonus-Driven Repurchases*, 50 J. Fin. & Quantitative Analysis 447 (2015) (“Cheng et al. (2015)”) (finding that “when a CEO’s bonus is directly tied to earnings per share (EPS), his company is more likely to conduct a buyback,” with the effect being “especially pronounced when a company’s EPS is right below the threshold for a bonus award,” that “[s]hare repurchasing

<sup>69</sup> Under existing requirements, while the delay in reporting can be relatively short, for example, when a repurchase is conducted at the end of a first, second, or third fiscal quarter, by a domestic large accelerated filer, in all cases disclosure will lag actual repurchases by weeks or months and is aggregated on a monthly basis.

<sup>70</sup> For a more detailed summary of the related studies, see 2020 Staff Study and Farre-Mensa et al. (2014).

<sup>71</sup> See Jensen, M., *Agency Costs of Free Cash Flow, Corporate Finance, and Takeovers*, 76 Am. Econ. Rev. 323 (1986).

<sup>72</sup> See Brav et al. (2005).

<sup>73</sup> See Grullon, G. & Michaely, R., *The Information Content of Share Repurchase Programs*, 59 J. Fin. 651–680 (2004).

<sup>74</sup> See, e.g., Guay, W. & Harford, J., *The Cash-Flow Permanence and Information Content of Dividend Increases versus Repurchases*, 57(3) J. Fin. Econ. 385–415 (2000); Jagannathan, M., Stephens, C., & Weisbach, M., *Financial Flexibility and the Choice*

repurchases are not optimal from the shareholder value maximization perspective. Another instance of potentially inefficient repurchase behavior, which could have a negative effect on investors, involves insider incentives to raise the share price prior to insider sales.<sup>81</sup> Conversely, some

increases the probability the CEO receives a bonus and the magnitude of that bonus, but only when bonus pay is EPS based,” and further finding that “[b]onus-driven repurchasing firms do not exhibit positive long-run abnormal returns”); Kim, S. & Ng, J., *Executive Bonus Contract Characteristics and Share Repurchases*, 93 *Acct. Rev.* 289 (2018) (finding that “managers are more (less) likely to repurchase shares and spend more (less) on repurchases when as-if EPS just misses (exceeds) the bonus threshold (maximum) EPS level,” and that “[m]anagers making bonus-motivated repurchases do so at a higher cost”). A different study documented a link between EPS targets and repurchases but did not find evidence of a negative effect on shareholders: Young, S. & Yang, J., *Stock Repurchases and Executive Compensation Contract Design: The Role of Earnings Per Share Performance Conditions*, 86 *Acct. Rev.* 703–733 (2011) (finding “a strong positive association between repurchases and EPS-contingent compensation arrangements” but also finding “net benefits to shareholders from this association” (including “larger increases in total payouts”, a more pronounced “positive association between repurchases and cash performance” in the presence of surplus cash; greater likelihood of undervalued firms “signal[ing] mispricing through a repurchase,” and “lower abnormal accruals”) and “no evidence that EPS-driven repurchases impose costs on share-holders in the form of investment myopia”) Further, a different study examined the real cost of EPS-motivated repurchases outside the context of compensation. See Almeida et al. (2016) (finding that “[t]he probability of share repurchases that increase earnings per share (EPS) is sharply higher for firms that would have just missed the EPS forecast in the absence of the repurchase, when compared with firms that ‘just beat’ the EPS forecast” and that “EPS-motivated repurchases are associated with reductions in employment and investment, and a decrease in cash holdings” and concluding that “managers are willing to trade off investments and employment for stock repurchases that allow them to meet analyst EPS forecasts”). See also Rulemaking Petition 4–746. *But see* 2020 Staff Study (finding that, based on a review of compensation disclosures in proxy statements for a sample of 50 firms that repurchased the most stock in 2018 and 2019, “82% of the firms reviewed either did not have EPS-linked compensation targets or had EPS targets but their board considered the impact of repurchases when determining whether performance targets were met or in setting the targets”); Fields, R., *Buybacks and the Board: Director Perspectives on the Share Repurchase Revolution*, Sept. 20, 2016, available at <https://corp.gov.law.harvard.edu/2016/09/20/buybacks-and-the-board-director-perspectives-on-the-share-repurchase-revolution/> (concluding, based on interviews of “44 directors serving on the boards of 95 publicly traded US companies with an aggregate market capitalization of \$2.7 trillion” that “most directors said that their companies are aware of the relationship between buyback programs and compensation and that they make deliberate, informed choices to ensure that they reward executives for desired behavior rather than for financial manipulation of share prices. Anticipated buyback effects on EPS are usually factored into EPS targets, they say, and unanticipated effects can be adjusted out.”).

<sup>81</sup> See, e.g., Chan et al. (2010). See also Bonaimé, A. A. & Ryngaert, M. D., *Insider Trading and Share*

studies note that insider purchases of stock in conjunction with a repurchase announcement may strengthen the credibility of the repurchase signal.<sup>82</sup>

*Repurchases: Do Insiders and Firms Trade in the Same Direction?*, 22 *J. Corp. Fin.* 35–53 (2013) (“Bonaimé and Ryngaert (2013)”) (finding that repurchases that coincide with net insider selling may be related to price support and/or reasons related to option exercises); Cziraki, P., Lyandres, E., & Michaely, R., *What Do Insiders Know? Evidence from Insider Trading Around Share Repurchases and SEOs*, 66 *J. Corp. Fin.* 101544 (2021) (“Cziraki et al. (2021)”) (finding that “[h]igher insider net buying is associated with better post-event operating performance, a reduction in undervaluation, and, for repurchases, lower post-event cost of capital. Insider trading also predicts announcement returns and long-term abnormal returns following events.” They conclude their results suggest “insider trades before corporate events [repurchases and SEOs] contain information about changes both in fundamentals and in investor sentiment”); Palladino (2020) (finding increased insider selling in quarters where buybacks are occurring); Ahmed, W., *Insider Trading Around Open Market Share Repurchase Announcements*, Working paper, University of Warwick (2017) (finding that “insiders take advantage of higher post-[repurchase] announcement price and sell more heavily”, and that such selling is predictive of lower long-term returns). See also Rulemaking Petition 4–746, at 5 and note 17 (expressing concern and citing evidence of repurchases used to increase share prices at the time when insiders sell shares). See also, generally, Edmans, A., Goncalves-Pinto, L., Groen-Xu, M., & Wang, Y., *Strategic News Releases in Equity Vesting Months*, 31(11) *Rev. Fin. Stud.*, 4099–4141 (2018) (finding that “CEOs release 20% more discretionary news items in months in which they are expected to sell equity, predicted using scheduled vesting months” and that “[t]he increase arises for positive news, but not neutral or negative news, nor nondiscretionary news” and concluding that “[n]ews in vesting months generates a temporary increase in stock prices and market liquidity, which the CEO exploits by cashing out shortly afterwards”; as an important caveat, while the study includes buybacks among announcements, and based on other evidence, they are generally viewed as positive announcements, the study does not provide specific results for buybacks); Edmans, A., Fang, V., & Huang, A., *The Long-Term Consequences of Short-Term Incentives*, *J. Acct. Res.*, forthcoming (2021) (finding that “[v]esting equity is positively associated with the probability of a firm repurchasing shares” but that “it is also associated with more negative long-term returns over the 2–3 years following repurchases” and that “CEOs sell their own stock shortly after using company money to buy the firm’s stock, also inconsistent with repurchases being motivated by undervaluation”). *But see*, e.g., Liu and Swanson (2016) (finding that “[c]orporate insiders do not sell from personal stock holdings during the price support quarter.”); see also Busch and Obernberger (2017) (concluding, with respect to actual share repurchases, that price support provided by repurchases improves price efficiency, even when manipulation concerns might be highest, such as those that occur prior to insider sales). In the case of repurchase announcements, where such announcements coincide with earnings announcements, because issuers generally prohibit insiders from trading in the period leading up to earnings announcements as part of blackout periods, insider sales activity after the repurchase announcement may be the result of pent-up liquidity demand.

<sup>82</sup> Announcement returns are positively related to past insider purchases, especially for firms that are priced less efficiently. See, e.g., Dittmar & Field (2015) (finding that “repurchasing firms with

CFOs report considering the price of the stock when deciding whether to repurchase stock.<sup>83</sup> Further, academic studies have found that firms conduct repurchases when stock prices are low.<sup>84</sup> This trading, however, does not appear to degrade market quality, with several studies finding improved liquidity during repurchase programs.<sup>85</sup>

Presently, information about repurchases, aggregated at the monthly level, is provided in periodic reports (quarterly for most filers). While issuers may voluntarily announce future repurchase plans (typically on Form 8–K), they are not required to do so, nor are they required to provide timely updates to investors about incremental progress under the previously announced repurchase program. Generally, a lack of transparency, comprehensive disclosure, and timely information about repurchases may contribute to information asymmetries and thus make it harder for investors to value an issuer’s securities and make informed investment decisions.

Although some issuers announce details of their repurchase programs on a voluntary basis, issuers are not required to do so, or to disclose reasons for their repurchases. Further, issuers are not required to disclose whether they allow insiders to trade during repurchases. Thus, it can be difficult for investors to determine whether the undertaken repurchases were efficient and aligned with shareholder value maximization, or were at least in part driven by self-interested behavior of corporate insiders rather than shareholder interest. The last significant change to repurchase reporting was adopted in 2003, when the Commission required domestic filers to present

relatively high net insider buying have significantly lower relative repurchase prices” and concluding that firms with more net insider buying repurchase undervalued stock); Babenko, I., Tserlukevich, Y., & Vedrashko, A., *The Credibility of Open Market Share Repurchase Signaling*, *J. Fin. & Quantitative Analysis* 1059–1088 (2012); Bonaimé and Ryngaert (2013) (finding that net insider buying reinforces the undervaluation signal conveyed by repurchases while net insider selling weakens it); Cziraki et al. (2021) (showing that “pre-event insider trading contains information regarding future changes in the cost of capital for repurchasing firms”). Setting aside the signaling theory, purchases by insiders during an issuer’s repurchases if such insiders are in possession of material nonpublic information may represent unlawful insider trading that may harm other market participants. Similar to insiders, issuers that purchase their securities while in possession of material nonpublic information may be subject to Rule 10b–5 liability.

<sup>83</sup> Brav et al. (2005).

<sup>84</sup> See, e.g., Dittmar and Field (2015); Ben-Rephael et al. (2014). See also *infra* note 67.

<sup>85</sup> See, e.g., Busch and Obernberger (2017); Cook et al. (2004); Hillert, A., Maug, E., & Obernberger, S., *Stock Repurchases and Liquidity*, 119(1) *J. Fin. Econ.* 186–209 (2016).

monthly data on actual repurchases on a quarterly basis in Form 10-Q or 10-K (registered closed-end funds, on a semi-annual basis in Form N-CSR, and Form 20-F filers, on an annual basis in Form 20-F). One study examined the consequences of this change and found that “[f]irms announce significantly fewer and slightly smaller open market repurchase plans in the enhanced disclosure environment,” however, “completion rates (the amount of stock repurchased as a percentage of the announced amount) significantly increase.”<sup>86</sup> The study further states that “[m]ore conservative announcement strategies and more aggressive completion rates are consistent with a decline in false signaling . . . open market repurchase announcements are viewed as more credible, on average, in the enhanced disclosure environment.”<sup>87</sup> However, as the study notes, “[a]s with any analysis based on a regulatory change affecting all firms simultaneously, other unobservable, macroeconomic trends could have affected repurchase behavior.”<sup>88</sup>

A number of foreign jurisdictions require repurchase disclosure of greater frequency and timeliness, relative to current U.S. requirements. Studies have examined the resulting higher-frequency data on repurchase program and how repurchase trades affect investors and markets. Studies based on data from France and Hong Kong, which require repurchase disclosures at the beginning of the following month and following day, respectively, found that repurchases reduced market liquidity in periods in which repurchases took place but not in response to the disclosures.<sup>89</sup>

<sup>86</sup> See Bonaimé (2015).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> See Ginglinger, E. & Hamon, J., *Actual Share Repurchases, Timing, and Liquidity*, 31 J. Banking & Fin. 915–938 (2007), for a study of France; and Brockman, P. & Chung, D., *Managerial Timing and Corporate Liquidity: Evidence from Actual Share Repurchases*, 61 J. Fin. Econ. 417–448 (2001), for a study of Hong Kong. While the authors do not examine empirically the effects of different reporting frequencies, they compare their findings with those from a foreign regime with a different reporting frequency and extrapolate that “[t]he similarity of our results to the results for the Hong Kong market indicates that the choice of whether to require firms to disclose repurchases one day versus one month after execution does not affect the impact of share repurchases on liquidity”; while the study further concludes that this suggests “that there are limited benefits from requiring greater post-trade transparency of share repurchases,” the conclusion that greater disclosure of repurchases would have limited benefits, in our view, does not follow from the similarity of the effects of repurchases on liquidity in the two countries referenced in the study. As a further caveat, there are potentially significant comparability issues in evaluating data from different jurisdictions, which

These findings are consistent with potential adverse selection when a large informed trader (the repurchasing issuer) is in the market but do not suggest a negative impact from increased disclosure frequency. Other studies of disclosures required in Greece, which requires repurchase disclosures within seven days, and Hong Kong document that cumulative abnormal returns following disclosures of actual share repurchases are greatest for smaller firms as well as firms with higher book-to-market ratios. These are consistent with the studies finding that repurchase announcements may correct market undervaluation and do so especially for smaller firms, which may be subject to greater information asymmetry.<sup>90</sup>

While we could not find studies analyzing empirically how the introduction of more frequent disclosure affected buybacks in foreign countries, we also were not able to find evidence that such disclosure requirements adversely affected shareholder value or market participants. The broad application of a disclosure requirement to issuers in a given jurisdiction makes it hard to formulate an empirical setting, such as a quasi-natural experiment, that effectively addresses the question of how the introduction of the disclosure affected buybacks and issuers that undertake them. Moreover, there are potentially significant differences between jurisdictions with respect to other repurchase regulations, market structure, taxation, composition of the subset of issuers that undertake repurchases, and the subset of investors in such issuers, complicating cross-country comparisons or extrapolation from international studies to the U.S. setting.

In Sections IV.B and IV.C below we evaluate the anticipated costs and benefits of the final rule and the anticipated effects of the final rule on efficiency, competition, and capital formation.

## B. Benefits

The proposed disclosure could benefit investors (including existing shareholders contemplating a sale or

have varying legal and market conditions for repurchases.

<sup>90</sup> See Zhang, H., *Share Price Performance Following Actual Share Repurchases*, 29 J. Banking & Fin. 1887–1901 (2005), for a study of Hong Kong, and Droussia, A., Episcopos, A., & Leledakis, G., 74 Q. Rev. Econ. and Fin. 267–277 (2019), for a study of Greece. See also Bratli, D. & Rehman, O., *The Price Impact and Timing of Actual Share Repurchases in Norway*, Thesis (2016) (examining Norwegian data on daily repurchases and finding a small but positive price impact of such repurchases).

purchasing more securities) by enabling them to value the issuer’s securities more accurately, resulting in better informed investment decisions.<sup>91</sup> Specifically, the proposed daily disclosure of repurchases (compared to the existing Form 10-Q and 10-K quarterly disclosure of monthly repurchase activity, the semi-annual disclosure on Form N-CSR, and the annual disclosure on Form 20-F) could reveal time-sensitive information about the issuer’s evolving outlook on its future share price to investors in a much timelier manner.<sup>92</sup> To the extent issuers’ repurchase decisions tend to predict future price changes,<sup>93</sup> information about the timing of recent repurchases could be valuable to investors’ decisions to buy and sell the issuer’s securities. These benefits would be more modest to the extent that many issuers already make public announcements of repurchase plans, which alleviate some information asymmetries, and there is evidence that investors on aggregate draw accurate inferences about the likely program completion rate<sup>94</sup> (although they cannot gauge the timing of specific repurchase trades). The benefits would further be more modest to the extent that large issuer repurchases already have price impact in the absence of a daily disclosure. The disclosure could be of greater benefit to market participants that do not have the sophistication to uncover large repurchases from other trading data. Further, the benefits of repurchase disclosure may be lower if issuers restructure their repurchases in a manner intended to minimize the information content and associated front-running costs of the daily disclosure (see Section IV.C below) in response to the proposed disclosure requirement.

In addition, the proposed periodic disclosure of the reasons for, and the structure of, the issuer’s repurchase

<sup>91</sup> See *supra* notes 66–68 and preceding, accompanying, and following text.

<sup>92</sup> Timelier disclosure of repurchases was supported by several commenters on the 2016 concept release. See, e.g., letters in response to the Concept Release from Klein & Amy (supporting reporting of all repurchases on Form 8-K with no *de minimis* threshold); CalPERS (recommending reporting of significant repurchases on Form 8-K); AFR (recommending that share repurchases should be disclosed at the time that the repurchase occurs). *But see* letters in response to the Concept Release from SIFMA (arguing that more frequent reporting would not provide any material information to justify the increased cost to registrants and might prejudice a registrant’s execution of share repurchases). See also Letters from Chamber; FedEx; Fenwick; GM; and FEI (generally supporting the existing, quarterly frequency of repurchase reporting required in Item 703).

<sup>93</sup> See *supra* note 67.

<sup>94</sup> See *supra* note 78.

program could improve the ability of investors to assess the optimality of the issuer's repurchase policy. The benefits of the information about the rationale for repurchases could be limited in cases where issuers already provide such disclosures in voluntary repurchase program announcements, or if investors are able to infer the purpose of repurchases from other public information.<sup>95</sup> The benefits of the information about the rationale for repurchases could be limited if such disclosure is boilerplate and provides relatively little specificity to investors.<sup>96</sup>

In some cases, incentives for value-destroying or opportunistic repurchases may exist, as discussed in detail in Section IV.A.2 above. To the extent that some repurchases are inefficient, the additional transparency about repurchases under the proposed amendments could reduce such

opportunistic uses of buybacks. The daily disclosure of repurchases, combined with other existing disclosures (e.g., dates and terms of compensation awards, dates of insider trades, dates and details of earnings announcements and earnings forecasts), could improve the ability of investors to identify those instances of repurchases that may be driven by managerial self-interest (e.g., increasing the share price prior to an insider's sale, meeting a threshold in the compensation arrangement, or meeting/beating the consensus earnings forecast). Such market scrutiny could mitigate agency conflicts associated with repurchases and thereby enhance firm value, benefiting shareholders. Further, the proposed additional disclosure could make it easier for investors to timely identify repurchase announcements potentially motivated by short-term attempts to boost the share price (including cases where issuers announce repurchase programs but do not follow through), to the extent that daily information provides a more complete and timely picture than the monthly information presently reported on a quarterly (or for some filers, less frequent) basis.

The use of a structured data language (specifically, Inline XBRL) for the repurchase disclosures under the proposed amendments would enable automated extraction of granular data on issuers' repurchase programs and actual repurchases, which could allow investors, information intermediaries, and other market participants to efficiently perform large-scale analyses and comparisons of repurchases across issuers and time periods. Structured data on repurchases could also be efficiently combined with other information available in a structured data language in corporate filings (e.g., information on insider sales and purchases of securities) and with market data contained in external machine-readable databases (e.g., information on daily share prices and trading volume). The use of a structured data language could also enable considerably faster analysis of the disclosed data by investors and other market participants. The use of a new form for the daily disclosure of repurchase information could on the margin benefit investors manually reviewing repurchase filings of an individual issuer or a handful of issuers, relative to the reporting of such daily disclosure on an existing form (such as Form 8-K), by making the repurchase information relatively more salient and easier to find among an issuer's filings. However, in cases where

investors extract structured data underlying the disclosure, the use of a new form versus adding structured data to an existing form is unlikely to have a meaningful effect.

The proposed requirements to disclose any policies and procedures relating to purchases and sales of the issuer's securities by its officers and directors during a repurchase program, including any restriction on such transactions, as well as the proposed disclosure of whether any officer or director reporting pursuant to Section 16(a) of the Exchange Act purchased or sold shares or other units of the class of the issuer's securities that is the subject of an issuer share repurchase plan or program within 10 business days before or after the issuer's announcement of an issuer purchase plan or program, could also benefit investors. This information could help investors better interpret repurchase program announcements and disclosures of actual repurchase activity in formulating projections of an issuer's future share price. As one example, a lack of restrictions on insider selling during repurchases, alongside historical disclosures of insider selling, could help investors gauge whether a future repurchase announcement, or actual repurchases, may be motivated by price support for insiders' sales of their securities, rather than conveying a true signal of undervaluation or efficiently disbursing excess cash.<sup>97</sup> The magnitude of these benefits may be more limited to the extent that past insider selling activity, disclosed on beneficial ownership filings, around past repurchases, could be sufficiently representative of future insider selling behavior in such circumstances, even in the absence of a disclosure of restrictions. The magnitude of these benefits of reduced information asymmetry may further be limited to the extent that the existing repurchase and disclosure practices already sufficiently provide for price efficiency.<sup>98</sup> Besides providing information to investors, and thus enabling better informed investment decisions, the proposed disclosure requirements might also significantly affect the underlying behavior of insiders and issuers by drawing scrutiny of investors and market participants to insider selling during repurchases, potentially disincentivizing announcements of repurchases and actual repurchases

<sup>97</sup> See *supra* note 80.

<sup>98</sup> For example, one recent study shows that price support provided by actual share repurchases contributes to improved price efficiency, even when manipulation concerns might be highest, such as those that occur prior to insider sales. See Busch and Obernberger (2017).

<sup>95</sup> See, e.g., Bonaimé (2012) (tabulating, in Table 3, evidence on the stated motive of the announced repurchase program and program completion rates). The paper finds that "[f]ew stated motives for repurchases affect completion rates. Firms that mention undervaluation or general corporate purposes in their announcements have significantly lower completion rates, while firms that mention extending a prior plan or having a strong cash position have significantly higher completion rates on average. With the above exceptions, completion rates depend more on what issuers are doing (implied motives) than on what they are saying (stated motives)." As a caveat, data obtained from a voluntary regime may not fully generalize to the mandatory disclosure of the rationale for repurchases under the proposed amendments.

<sup>96</sup> In other contexts, see, e.g., Cazier, R., McMullin, J., & Treu, J., *Are Lengthy and Boilerplate Risk Factor Disclosures Inadequate? An Examination of Judicial and Regulatory Assessments of Risk Factor Language*, 96(4) *Acct. Rev.* 131–155 (2021) (finding that risk factor disclosures often remain "excessively long and boilerplate", "lengthier and more boilerplate risk factor disclosures are less likely to be considered inadequate under judicial and regulatory review," and "when risk factor language is assessed as adequate in judicial review, industry peers borrow that language more frequently, and that judicial assessments of risk factor disclosures prompt industry peers to lengthen their risk factor disclosures."). But see Nelson, K. & Pritchard, A. C., *Carrot or Stick? The Shift from Voluntary to Mandatory Disclosure of Risk Factors*, 13(2) *J. Empirical Legal Stud.* 266–297 (2016) (finding that "[f]irms subject to greater litigation risk disclose more risk factors, update the language more from year to year, and use more readable language than firms with lower litigation risk," and while "[t]hese differences in the quality of disclosure are pronounced in the voluntary disclosure regime, [they] converge following the SEC mandate as low-risk firms improved the quality of their risk factor disclosures."); Campbell, J., Chen, H., Dhaliwal, D., Lu, H., & Steele, L. B., *The Information Content of Mandatory Risk Factor Disclosures in Corporate Filings*, 19 *Rev. Acct. Stud.* 396–455 (2014) (finding that "firms facing greater risk disclose more risk factors . . . managers provide risk factor disclosures that meaningfully reflect the risks they face . . . [and that] the information conveyed by risk factor disclosures is reflected in systematic risk, idiosyncratic risk, information asymmetry, and firm value").

motivated by price support for insider selling, to the extent such activity exists, instead of shareholder value maximization.<sup>99</sup> The benefits of the disclosure of whether any officer or director has purchased or sold securities of the issuer around the repurchase announcement may be small to the extent the investors can obtain the same information from existing Section 16 beneficial ownership disclosures and public announcements of repurchases.

We expect the proposed amendments to have positive effects on efficiency and capital formation. In particular, any decrease in the information asymmetry between issuers and investors about the value of an issuer's securities as a result of the disclosure could lead to more informationally efficient prices, and more efficient capital allocation in investor portfolios. Decreased information asymmetries between investors and issuers as a result of the enhanced disclosure under the proposed amendments could also incrementally facilitate capital formation and reduce the cost of capital.<sup>100</sup> It is difficult to determine the incremental contribution of the proposed amendments and thus the magnitude of this potential benefit.

### C. Costs

The proposed disclosure would impose costs on issuers (and therefore existing shareholders). Such costs would include direct (compliance-related) costs to compile and report daily repurchase data, as well as to provide additional disclosure, such as a description of the rationale and structure of the repurchase program (including reliance on Rule 10b-18 and pursuant to a plan that is intended to satisfy the affirmative defense

conditions of Rule 10b5-1(c)).<sup>101</sup> The aggregate direct costs of compliance would be potentially significant and would be largest for issuers that repurchase more frequently and thus have to provide more disclosures. The direct costs of compliance with the daily disclosure requirement on Form SR could be partly alleviated by the provision that such disclosure would be furnished, rather than filed, which could result in an incrementally smaller legal cost of the new disclosure.<sup>102</sup> It is difficult to quantify how significantly the proposed timing of the daily disclosure requirement with respect to the timing of trade settlement (*i.e.*, daily disclosure within one day of trade execution, which would be prior to the settlement of the trade, as opposed to after trade settlement) would affect direct compliance costs. As proposed, issuers would have one business day from the trade execution to report repurchases. Thus, issuers would likely have fairly complete data based on trades that have been executed, although the disclosure would be required in most cases before trades have settled (since settlement typically occurs two business days after the trade execution). Where material changes occur after settlement, issuers would incur a cost to file an amended Form SR. In addition, issuers that do not presently gather and aggregate repurchase information on a daily basis, outside of the financial reporting cycle, would incur costs to implement such systems and processes.

The proposed requirement to report the additional quantitative repurchase disclosure on a new form will impose costs. Issuers will likely incur an initial upfront cost to train counsel or retain an outside service provider to assist with the preparation of the new form. On an ongoing basis, holding the scope of the disclosure and affected filers unchanged, we expect the direct costs of filing the data on a new form to be very similar to the direct costs of filing the data on an existing form (such as Form 8-K).

The proposed requirement to use a structured data language for reporting the repurchase disclosure will impose incremental compliance costs on

issuers. Such costs are expected to be modest as issuers affected by the amendments (including small and foreign filers) already are required to, or would be required to (in the case of certain closed-end funds—no later than February 2023<sup>103</sup>), use Inline XBRL to comply with other disclosure obligations. Moreover, the scope of the disclosure proposed to be reported using a structured data language is limited and would thus likely require a relatively simple taxonomy of additional tags, minimizing initial and ongoing costs of complying with the proposed tagging requirement.

The proposed qualitative disclosure requirements would also result in compliance costs for issuers. While issuers are likely to have most of the additional information readily available, these disclosures would require additional time of counsel and/or management to characterize the rationale for the repurchase program, and the program's structure, in the periodic report. The proposed requirement to disclose whether any Section 16 officer or director purchased or sold securities in the 10 business day before or after a repurchase announcement would involve costs associated with collecting information from Section 16 reporting officers and directors, in reliance on their Section 16 filings and/or representations about their trading activity.

The proposed requirements would also impose indirect costs. A key indirect cost of daily disclosure (proposed to be required one business day after the repurchase trade is executed) is that it may cause the stock price to rise more than it would absent such disclosure, making additional purchases more costly. These costs would be borne by the issuer and therefore its shareholders, but would be mitigated for shareholders selling part of their position. The reason that disclosure might have this effect is it could reveal the issuer's plans to repurchase additional stock to outside investors (to the extent repurchases are taking place over multiple days), as well as the issuer's positive outlook on the stock price (to the extent that participants infer this is a motivation for the repurchase).<sup>104</sup> This cost to issuers

<sup>99</sup> Studies have found evidence that changes in mandatory disclosure affect behavior. *See, e.g.,* Chuk, E. C., *Economic Consequences of Mandated Accounting Disclosures: Evidence from Pension Accounting Standards*, 88(2) *Acct. Rev.* 395–427 (2013); Bonaimé (2015).

<sup>100</sup> *See, e.g.,* Easley, E. & O'Hara, M., *Information and the Cost of Capital*, 59(4) *J. Fin.* 1553–1583 (2005); Botosan, C., *Disclosure and the Cost of Capital: What Do We Know?*, 36 *Acct. & Bus. Research* 31–40 (2006) (stating that “[t]he overriding conclusion of existing theoretical and empirical research is that greater disclosure reduces cost of capital”); Lambert, R., Leuz, C., & Verrecchia, R., *Accounting Information, Disclosure, and the Cost of Capital*, 45(2) *J. Acct. Research* 385–420 (2007) (showing, in a conceptual framework, that “increasing the quality of mandated disclosures should in general move the cost of capital closer to the risk-free rate” and “generally reduce the cost of capital for each firm in the economy” and further noting that “the benefits of mandatory disclosures are likely to differ across firms.”); *Accelerated Filer and Large Accelerated Filer Definitions*, Rel. No. 34–88365 (Mar. 12, 2020) [85 FR 17178 (Mar. 26, 2020)], at 17215, note 477.

<sup>101</sup> *See* Section V for a detailed description of the estimated burden of the proposed disclosure requirements for purposes of the Paperwork Reduction Act.

<sup>102</sup> *See, e.g.,* *Pay Ratio Disclosure*, Rel. No. 33–9877 (Aug. 5, 2015) [80 FR 50103 (Aug. 18, 2015)], at 50177; *Interactive Data to Improve Financial Reporting*, Rel. No. 33–9002 (Jan. 30, 2009) [74 FR 6775 (Feb. 10, 2009)], at 6794; and *Selective Disclosure and Insider Trading*, Rel. No. 33–7881 (Aug. 15, 2000) [65 FR 51715 (Aug. 24, 2020)], at 51723.

<sup>103</sup> *See supra* note 51 and accompanying text.

<sup>104</sup> This cost could be more pronounced for repurchases under a Rule 10b5-1(c) plan to the extent that such repurchases exhibit a greater degree of periodicity and occur over a period of time, enabling market participants to predict future repurchases to a greater extent based on historical daily data. To the extent that more timely disclosure enables some other investors to purchase securities before the issuer completes the

would be a wealth transfer to other market participants, which would have otherwise been less informed about the issuer's outlook on its future share price. The magnitude of such costs would vary across issuers and could evolve if issuers restructure their repurchase programs in an effort to minimize the price impact associated with the proposed disclosure requirement. For example, issuers that conduct open market repurchases over multiple days on a highly predictable periodic schedule (such as under a Rule 10b5-1 or a similar trading plan, or that conduct recurring trades outside of a trading plan) may face a higher cost of this type. Conversely, issuers that conduct open market repurchases over a period of only a couple of days, or over a longer period of time but at highly irregular intervals, or in irregular amounts (e.g., a series of smaller repurchases followed by a large repurchase day), may see lower costs of this type from the proposed disclosure requirement. However, issuers that bunch large repurchases into a compressed time period would likely experience greater price impact from large trades, and issuers that rely on the Rule 10b-18 safe harbor would also be limited by the safe harbor's provisions in the volume of daily repurchase activity. Further, issuers that conduct one-time repurchases outside the open market (such as in a privately negotiated transaction, as an accelerated share repurchase, or as a tender offer) may be less subject to these costs because the trade would be required to be reported after it is executed, and it would typically be executed at once. To the extent that repurchases convey information even in the absence of disclosure, if issuers were to limit repurchases due to cost, price efficiency may be reduced. To the extent that repurchases add liquidity in the absence of disclosure, limiting repurchases might also reduce liquidity.

Another potential indirect cost of the proposed disclosure is the risk of sharing sensitive information with competitors. It is unlikely that the rationale behind repurchases would reveal such proprietary information, above and beyond other disclosures about the business and financial condition of the issuer. Thus, we expect such costs to be relatively modest.

A further indirect cost of the proposed disclosure is the possibility of the proposed disclosure requirements

repurchase program, thus potentially at a lower price than they would have otherwise, those other investors may benefit from being able to front-run the issuer's trades.

leading issuers to deviate from an optimal payout policy (resulting in a negative effect on efficiency). For example, the described costs of the proposed disclosure might discourage some issuers from repurchases that would otherwise be optimal for shareholder value (e.g., as a more flexible and tax-efficient method of payout compared to dividends). Issuers might instead overweigh dividends or reduce overall corporate payouts and inefficiently retain excess cash within the firm. Further, if the costs of the proposed disclosure requirements cause issuers to decrease overall payouts, even if issuers lack positive-net present value investment opportunities, it would limit the ability of investors to efficiently reallocate cash to other, higher-net present value investment opportunities, potentially resulting in inefficiencies in the aggregate allocation of capital across issuers.

The described direct and indirect costs of the proposed disclosure for the affected issuers would decrease shareholder value and would thus be passed on to the issuer's existing shareholders (that do not sell securities during the repurchase).

The proposed disclosure requirements could also affect financial intermediaries involved in executing repurchases on behalf of issuers. Such intermediaries are likely to incur additional costs of consolidating information about repurchase trades on a daily basis for the issuer. Such information should be relatively readily available, thus direct costs could be incremental. Financial intermediaries may also incur indirect costs of the proposed requirements. Specifically, to the extent the proposed disclosure requirements lead to a decrease in repurchases, financial intermediaries may see a decrease in orders, resulting in lower revenue.

Some of the proposed disclosure requirements may also impose costs on corporate insiders. In particular, the requirement that issuers publicly disclose whether they have policies and procedures related to purchases and sales by officers and directors during repurchases, as well as the proposed disclosure of whether any officer or director reporting pursuant to Section 16(a) of the Exchange Act 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 issuer's announcement of such repurchase plan or program, could cause issuers to increasingly adopt such restrictions in anticipation of the market scrutiny

following such disclosure. The incremental costs of the requirement to disclose whether any officer or director reporting pursuant to Section 16(a) of the Exchange Act purchased or sold securities around the repurchase announcement may be small to the extent the investors can already obtain the same information from beneficial ownership disclosures and public announcements of repurchases. Any restrictions an issuer imposes on officer and director trading could limit the ability of corporate insiders to purchase or sell securities at issuers that conduct repurchases periodically over an extended period of times (such as open market repurchases under a multi-quarter program, or a Rule 10b5-1 plan). To the extent any new such restrictions limit insider sales, they could significantly decrease the liquidity of insiders' holdings of an issuer's securities, including securities obtained from equity-based executive compensation (which may in turn potentially lead insiders to attempt to reduce their equity exposure and negotiate more cash compensation, or negotiate larger compensation to compensate for the decreased liquidity). To the extent that the proposed requirement to disclose whether any officer or director has purchased or sold securities around the repurchase announcement leads some companies whose officers or directors trade securities within the specified period to forgo making a repurchase announcement to limit market scrutiny, the amount of information available to investors about companies' forward-looking repurchase plans could decrease.

To the extent that the proposed requirements affect small filers to a greater extent than large filers, they could result in adverse effects on competition. The fixed component of the legal costs of preparing the disclosure could be one contributing factor. The lower liquidity of smaller issuers' securities,<sup>105</sup> which could exacerbate the price impact of the proposed disclosure, could be another

<sup>105</sup> See, e.g., Amihud, Y. & Mendelson, H., *Liquidity and Stock Returns*, 42(3) *Fin. Analysts J.* 43-48 (1986) (noting that "[t]he stocks of small firms suffer from market 'thinness,' which impairs their liquidity"); Duarte, H., and Young, L., *Why is PIN priced?*, 91(2) *J. Fin. Econ.* 119-138 (2009) (in Table 6, showing that larger firm size is correlated with higher liquidity based on different measures); Collver, C., *A Characterization of Market Quality for Small Capitalization US Equities*, September 2014, available at [https://www.sec.gov/files/marketstructure/research/small\\_cap\\_liquidity.pdf](https://www.sec.gov/files/marketstructure/research/small_cap_liquidity.pdf) (2014) (finding that "[s]mall cap stocks had larger quoted and effective spreads and traded much lower volumes than mid cap stocks" and that "[l]iquidity improved with market capitalization").

factor contributing to the disproportionate effects of the disclosure on smaller filers. The latter effect could be mitigated by the lower incidence, and the lower average level (relative to issuer size), of repurchases among small issuers.<sup>106</sup>

#### D. Reasonable Alternatives

We could propose to increase the frequency of repurchase disclosure compared to existing Item 703, but implement a lower frequency compared to the proposal (e.g., monthly or weekly disclosure), instead of requiring daily disclosure. Compared to the proposal, requiring less frequent reporting would provide investors with less timely information about daily issuer purchases. Compared to the baseline, such an alternative would still benefit investors by enabling them to perform more timely and in-depth retrospective evaluation of an issuer's repurchase activity, independently or in conjunction with other disclosures (e.g., financial condition, risk factors, other corporate events, executive compensation, governance, and insider ownership disclosures) and gauge the extent to which recent repurchases, conducted at the specific point in time, were likely to be aligned with shareholder value maximization (as opposed to potential insider self-interest or other reasons), potentially informing future investment decisions. However, such benefits would be smaller than the benefits of the daily disclosure under the proposal, to the extent that information about actual repurchase is of a time-sensitive nature. In turn, while weekly or monthly reporting would increase issuer costs compared to the baseline, the additional cost is likely to be less significant than the cost of the daily disclosure under the proposal (particularly, with respect to the indirect costs considered in Section IV.C above).

We could also propose a different timing requirement for the reporting of daily repurchases (e.g., more or fewer days after the repurchase). We are proposing that issuers report a daily summary of repurchase transactions within one business day following the trade. As two alternatives, we could

require reporting within one business day after settlement (which typically occurs within two days following the trade), or allow issuers up to four business days to report on daily repurchases (consistent with the typical requirement for a Form 8-K). Generally, a longer time lag for filing the repurchase form would provide investors with less timely information about issuer purchases. In turn, it would also decrease costs for issuers described above compared to the proposal. In particular, the alternative of requiring daily reporting within one business day of the settlement could provide relatively timely information to investors, but it could also decrease costs for issuers and financial intermediaries that may lack final repurchase information until after settlement (to the extent that such costs are not already alleviated by the furnished, rather than filed, nature of the daily disclosure).

We could modify the scope of the proposed disclosure, for instance, omitting information about the use of Rule 10b-18 and/or Rule 10b5-1 in the proposed quantitative disclosure, or about any policies and procedures relating to purchases and sales of the issuer's securities by officers and directors during repurchases, including any restrictions on such transactions. Compared to the proposal, narrowing the scope of the required disclosure would reduce the costs to issuers that use these provisions to execute repurchases. However, this alternative would also provide less information to investors and result in greater information asymmetry, compared to the proposal. The effects of the alternative of omitting Rule 10b5-1 repurchase disclosures compared to the proposal could be partly mitigated if the Commission adopts additional disclosure requirements for insider and issuer Rule 10b5-1 plans under new Item 408 of Regulation S-K, which the Commission is proposing in a separate release.<sup>107</sup>

As another alternative, we could preserve the existing frequency of repurchase disclosure but require greater granularity of the disclosure (e.g., including daily detail in Forms 10-Q, 10-K, 20-F, and N-CSR). This would allow the investors to retrospectively evaluate the optimality of repurchases at a granular level. However, compared to the proposal, less frequent reporting would provide investors with significantly less timely information about issuer purchases and thus the outlook on its future share

price, resulting in less information asymmetry resolution. In turn, less frequent disclosure would also decrease the costs for issuers compared to the proposal.

We could provide exemptions from all, or some of the proposed disclosure requirements for smaller filers. As another alternative, we could provide a *de minimis* exemption to issuers whose repurchases are below a certain threshold. These alternatives could reduce the aggregate costs of the rule but also reduce the information available to investors, compared to the proposal. The economic effects of the alternative of excluding small filers are uncertain to the extent that the effects of the proposed disclosure on small filers are somewhat ambiguous. On the one hand, smaller issuers are more likely to be affected by the costs of additional disclosure, all else equal (holding constant the disclosure burden). On the other hand, smaller issuers are less likely to have repurchases,<sup>108</sup> which would limit the incremental burden of additional reporting under the proposed amendments for each small filer. Further, to the extent that small filers have relatively high information asymmetries because of lower analyst and institutional coverage, disclosure about their repurchases may be relatively more informative to investors.

As another alternative, we could provide exemptions or different requirements for foreign private issuers and/or registered closed-end funds. These alternatives would eliminate or reduce the costs for the affected issuers but also reduce the information benefits for investors in these issuers, compared to the proposal. For example, registered closed-end funds, in general, repurchase their shares less frequently than corporate issuers,<sup>109</sup> and not all of the motivations for corporate issuer share repurchases will apply to registered closed-end funds because of differences in the business model and organizational structure of a fund as compared to an operating company. Abuses can nevertheless occur when a registered closed-end fund engages in repurchases of its shares, including attempts to create an appearance that the value of the shares was steady or rising in an effort to influence the market to aid in the distribution of new shares or to manipulate the market value of securities involved in exchanges. A lack of disclosure would make it more difficult for investors to determine the extent to which the share price was being driven by such actions

<sup>106</sup> See, e.g., Dittmar, A., *Why Do Firms Repurchase Stock*, 73(3) J. Business 331-355 (2000) (finding that "large firms are the dominant repurchasers"); Cheng et al. (2015) (showing in Table 2 that repurchasing firms are significantly larger than nonrepurchasing firms); Jiang, Z., Kim, K. A., Lie, E., and Yang, S., *Share Repurchases, Catering, and Dividend Substitution*, 21 J. Corp. Fin., 36-50 (2013) (showing in Table 5 that firm size is positively related to the fraction of outstanding share purchase by firms on a monthly basis).

<sup>107</sup> See Rule 10b5-1 Proposing Release.

<sup>108</sup> See *supra* note 107 and accompanying text.

<sup>109</sup> See *supra* note 35.

of the fund's management.<sup>110</sup> Thus, we believe that investors would benefit from receiving timely details about a fund's repurchase activity so they can make an informed decision as to whether they believe the fund's share price has been influenced by this repurchase activity, which is difficult to do using the semi-annual reports on Form N-CSR. Exempting or providing different requirements for foreign private issuers may place them at a relative competitive advantage to domestic issuers. Further, it would reduce the amount of information available to investors, potentially reducing their ability to make informed investment decisions, compared to the proposal. The aggregate effects of these alternatives may be incremental as such issuers engage in relatively few repurchases as seen in Section IV.A.1 above.

We could modify some of the elements of implementation of the proposed disclosure requirements. For example, we could propose an additional requirement that a summary of daily disclosures be filed as an exhibit to the periodic report. This alternative could slightly decrease investor costs of retrieving and consolidating daily information from Form SR, compared to the proposal (because the consolidation of daily disclosures into a time series for the periodic report could require small, but not zero effort, particularly for investors that are not performing large-scale automated extraction of data on multiple issuers but are reviewing repurchase disclosure for one or a handful of issuers). This alternative also would impose incremental costs on filers, compared to the proposal (because the aggregation of such information from prior daily filings for an exhibit to a periodic report is likely to have a small, but not zero cost). As an alternative, we could require the daily disclosure to be reported on Form 8-K (and subject issuers that do not typically report on this form, such as registered closed-end funds, to this requirement) or another existing form rather than on the new form, as proposed. This alternative could incrementally lower the initial transition cost for filers, compared to the proposal. At the same time, this alternative could make it incrementally harder for investors to parse out the

daily repurchase disclosure from other current events, compared to the proposed use of a dedicated form. For filers that would be subject to the daily disclosure requirement under this alternative, this alternative is unlikely to impact ongoing disclosure costs, or benefits for investors, relative to the proposal. We are retaining the existing requirement to provide monthly breakdowns of repurchase activity in periodic reports. As an alternative, we could remove this requirement, and let it be superseded by the new daily disclosures. The costs and benefits of this alternative compared to the proposal are likely to be fairly incremental because aggregation of daily disclosures into a monthly breakdown is likely to be low-cost for filers, and of relatively little incremental importance to investors. Removing this information under this alternative could on the margin increase information costs for the subset of investors that only seek monthly information about repurchases and would in that case have to newly aggregate daily information from Form SR to reproduce the monthly figures.

As another alternative, we could scale the structured disclosure requirements compared to the proposal, for instance, by not requiring that the footnote disclosure in periodic reports, or the narrative disclosure of buybacks, be structured. These alternatives could incrementally increase the cost of the extraction and analysis of additional information about the structure and purpose of repurchase programs, compared to the proposal. At the same time, the incremental cost savings for issuers, compared to the proposal, would likely be modest since affected filers already tag various other disclosures in their filings with the Commission.<sup>111</sup>

#### Request for Comment

29. Do investors currently have sufficient information about issuers' repurchases to make an informed assessment of such repurchases and their effects on the future share price? In what areas, if any, is existing disclosure lacking such that it is limiting investor ability to make informed investment decisions? Would the proposed disclosure decrease any such information gaps?

30. Is existing disclosure about repurchases sufficient to enable investors to assess whether the issuer or its insiders are engaged in self-

interested or otherwise inefficient repurchases? Is such inefficient repurchase behavior common today? Would the proposed amendments sufficiently address any disclosure gaps? Would the proposed amendments decrease the likelihood of inefficient repurchase decisions?

31. How would investors benefit from the proposed new disclosure of daily repurchases? Would investors benefit from the proposed requirement to disclose additional detail about the number of shares repurchased on the open market, the number of shares repurchased in reliance on the safe harbor in Rule 10b-18, and the number of shares repurchased pursuant to a plan intended to satisfy the affirmative defense conditions of Rule 10b5-1(c)? Would investors benefit from a more streamlined disclosure, including some but not all of the proposed columns, or including only the total number of shares repurchased on a daily basis?

32. How would the proposed requirement to disclose daily repurchases affect issuers? What costs could issuers incur as a result of the proposed daily disclosures? Are issuers likely to incur front-running costs? How would the proposed timing of the new daily disclosures (one business day after the trade) affect issuers? In what ways could the proposed disclosure requirements be modified to mitigate costs to issuers?

33. Would investors benefit from alternative disclosure and reporting frequencies? For example, would the disclosure remain beneficial to investors if the daily repurchase filing were allowed to be made with a longer time lag, such as one or more business days after settlement? Alternatively, would reporting a summary of daily repurchase activity on a weekly, monthly, or quarterly basis provide valuable information to investors? Further, would reporting repurchase activity on a weekly or monthly basis still be beneficial to investors? Would the described alternatives result in a smaller increase in disclosure costs for issuers? Which alternative reporting frequency would be most beneficial in the case of foreign private issuers that presently report repurchases on an annual basis on Form 20-F and registered closed-end funds that presently report repurchases on a semi-annual basis on Form N-CSR?

34. How would investors benefit from the proposed qualitative disclosure requirements, including the rationale for, and the structure of, an issuer's repurchase program? Would investors benefit from the proposed new disclosure of any policies and procedures relating to purchases or sales

<sup>110</sup> See, e.g., Investment Trusts and Investment Companies, pt. 3, H.R. Doc. No. 279, 76th Cong., 1st Sess. (1939) and Division of Investment Management, Protecting Investors: A Half Century of Investment Company Regulation (1992), available at <https://www.sec.gov/divisions/investment/guidance/icreg50-92.pdf>.

<sup>111</sup> See 17 CFR 232.405(b) (setting forth structured disclosure requirements for, *inter alia*, operating companies and closed-end management investment companies).

of an issuer’s securities by officers and directors during the pendency of a share repurchase plan or program? How would investors benefit from the proposed new checkbox disclosure of whether any officer or director reporting pursuant to Section 16(a) of the Exchange Act has 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 issuer’s announcement of such repurchase plan or program? What are the anticipated costs of those requirements for issuers? In what ways could those requirements be streamlined to decrease costs to issuers, while still providing valuable information to investors? Would shareholders be disadvantaged by the disclosures, as proposed, and attendant costs?

35. Would investors benefit from different qualitative disclosure requirements? If so, which ones? What would be the costs of such alternatives for issuers?

36. Would investors benefit from the proposed requirement to use a structured data language for the repurchase disclosures? What would be the costs of the proposed requirement to issuers? Should we consider alternative structured disclosure requirements for repurchase disclosure, and what would be their benefits and costs?

37. Would investors benefit from an additional requirement to compile the daily repurchase information in an exhibit to periodic reports, in addition to reporting this information on new Form SR? What would be the costs of such an alternative to issuers?

38. Would investors benefit from keeping the existing monthly disclosure in the body of the periodic report, in

addition to the reporting of daily data on a new form? Would issuers realize cost savings if we eliminated the current Item 703 requirement to provide a monthly breakdown of repurchase activity?

39. What are the costs and benefits of requiring the reporting of daily data on new Form SR, as opposed to on Form 8-K or another existing form?

40. Would the proposed disclosure requirements have disproportionate effects on certain categories of issuers? How could such effects be mitigated? Should we exempt some issuers—for example, smaller reporting companies, issuers with few repurchases, registered closed-end funds, foreign private issuers—from all or some of the proposed requirements? What would be the effects of such exemptions on investors’ ability to make informed investment decisions?

**V. Paperwork Reduction Act**

*A. Summary of the Collection of Information*

Certain provisions of our rules and forms that would be affected by the proposed amendments contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).<sup>112</sup> The Commission is submitting the proposed amendments to the Office of Management and Budget (“OMB”) for review in accordance with the PRA.<sup>113</sup> The hours and costs associated with preparing and filing the forms constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid OMB control number.

Compliance with the information collections is mandatory. Responses to the information collections are not kept confidential and there is no mandatory retention period for the information disclosed. The titles for the affected collections of information are:

- “Form 10-K” (OMB Control No. 3235-0063);
- “Form 10-Q” (OMB Control No. 3235-0070);
- “Form 20-F” (OMB Control No. 3235-0288);
- “Form N-CSR” (OMB Control No. 3235-0570); and
- “Form SR” (a proposed new collection of information).

We adopted the existing forms pursuant to the Exchange Act and Investment Company Act and are proposing the new form pursuant to the Exchange Act. The forms set forth the disclosure requirements for periodic reports filed by issuers to help investors make informed investment and voting decisions. A description of the proposed amendments, including the need for the information and its proposed use, as well as a description of the likely respondents, can be found in Section II above, and a discussion of the economic effects of the proposed amendments can be found in Section IV above.

*B. Summary of the Estimated Burdens of the Proposed Amendments on the Collections of Information*

**1. Estimated Paperwork Burden for Proposed Form SR**

The following table summarizes the estimated paperwork burden associated with proposed new Form SR that affected issuers of equity securities registered under Section 12 of the Exchange Act would use to disclose a repurchase of their equity shares.

**PRA TABLE 1—ESTIMATED PAPERWORK BURDEN OF PROPOSED FORM**

Affected form	Estimated burden	Brief explanation of estimated burden
New Form SR .....	A new burden of 1.5 hours for each Form SR	This burden is the estimated effect of compiling the data elements, tagging the data using Inline XBRL, and preparing and submitting the Form SR.

We estimate a burden of approximately 1.5 hours for each Form SR. The burden includes the effect of compiling the six required data elements for each date that the form is required, tagging the data using Inline XBRL, and preparing and submitting the Form SR. Our proposed 1.5 hour estimate is for the average burden over the first three years of reporting. We

acknowledge that preparation of Form SR may initially entail a higher burden as issuers get accustomed to collecting data for, and preparing the new form, but we believe that the burden would be reduced with subsequent filings.

Based on data from Compustat and EDGAR filings for fiscal year 2020,<sup>114</sup> we estimate that approximately 3,400 issuers that conducted share

repurchases during fiscal year 2020 would be affected by the proposed new Form SR requirement (among them, approximately 250 foreign private issuers who reported share repurchases on Form 20-F and 100 registered closed-end funds who reported share repurchases on Form N-CSR). We additionally note that most issuers that conduct share repurchases do so over a

<sup>112</sup> See 44 U.S.C. 3501 *et seq.*

<sup>113</sup> 44 U.S.C. 3507(d) and 5 CFR 1320.11.

<sup>114</sup> See *supra* notes 56–57 and surrounding text.

period of time, rather than by making a single purchase or a few isolated purchases during the year. We conservatively estimate that issuers conducting share repurchases would purchase shares one day a week for the entire year, resulting in 52 Form SR filings per year. Based on the staff's findings relating to the number of

issuers conducting share repurchases and the estimate of the frequency of repurchases, we estimate 176,800 Form SR filings per year.

2. Estimated Paperwork Burdens of the Proposed Amendments to Periodic Reports

The following table summarizes the estimated paperwork burdens associated with the proposed amendments to the affected forms filed by issuers of equity securities registered under Section 12 of the Exchange Act.

PRA TABLE 2—ESTIMATED PAPERWORK BURDEN OF PROPOSED AMENDMENTS TO PERIODIC REPORTS

Amendments to Reg. S-K Item 703, Form 20-F and Form N-CSR, Reg. S-T Rule 405 and Proposed New Exchange Act Rule 13a-21	Estimated burden increase	Brief explanation of estimated burden increase
<ul style="list-style-type: none"> <li>Require additional disclosure regarding the structure of an issuer's repurchase program and its share repurchases;</li> <li>Require new checkbox to indicate if any of the issuer's officers or directors subject to the reporting requirements under Section 16(a) of the Exchange Act 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; and</li> <li>Require information to be reported using a structured data language</li> </ul>	An increase of 3 burden hours for each of the affected forms: Form 10-K, Form 10-Q, Form 20-F and Form N-CSR.	This increase is the estimated effect on the affected forms by the proposed amendments to include additional share repurchase disclosures, clarify the rules, and require the use of structured data for this information.

Considering the various revisions outlined in Sections II.B, II.C. and II.D. above, we estimate that proposed new Rule 13a-21, Item 703 of Regulation S-K, Item 16E of Form 20-F, Item 9 of Form N-CSR, and Rule 405 of Regulation S-T (interactive data file submission requirements) would increase the paperwork burden for filings on the affected forms that include share repurchase disclosure. However, not all filings on the affected forms include these disclosures because they are provided only when an issuer conducts share repurchases that trigger the disclosure requirement. Therefore, to estimate the increase in overall paperwork burden from the proposed amendments, we first estimated the number of filings that include share repurchase information. As indicated in paragraph B.1 of this section, we estimate that approximately 3,300 operating companies (among them, approximately 250 foreign private issuers filing on Form 20-F) and approximately 100 registered closed-end funds during fiscal year 2020 would be affected by the amendments. Based on the staff's findings, the table below sets forth our estimates of the number of filings on these forms that included share repurchase disclosure. We used this data to extrapolate the effect of

these changes on the paperwork burden for the listed periodic reports.<sup>115</sup>

PRA TABLE 3—ESTIMATED NUMBER OF AFFECTED FILINGS

Form	Current annual responses in PRA inventory	Number of filings that include share repurchase disclosure
10-K .....	8,292	3,050
10-Q .....	22,925	9,150
20-F .....	729	250
N-CSR .....	6,898	200

C. Incremental and Aggregate Burden and Cost Estimates

Below we estimate the incremental and aggregate changes in paperwork burden as a result of the proposed amendments. These estimates represent the average burden for all issuers, both large and small. In deriving our estimates, we recognize that the burdens will likely vary among individual issuers. The proposed amendments would create a new required collection of information and change the burden per response of existing collections of information, if adopted.

We calculated the burden estimates by adding the estimated additional burden to the existing estimated responses and multiplying the estimated

number of responses by the estimated average amount of time it would take an issuer to prepare and review disclosure required under the proposed amendments. For purposes of the PRA, the burden is to be allocated between internal burden hours and outside professional costs. PRA Table 4 below sets forth the percentage estimates we typically use for the burden allocation for each collection of information and the estimated burden allocation for the proposed new collection of information. We also estimate that the average cost of retaining outside professionals is \$400 per hour.<sup>116</sup>

PRA TABLE 4—ESTIMATED BURDEN ALLOCATION FOR THE AFFECTED COLLECTIONS OF INFORMATION

Collection of information	Internal (%)	Outside professionals (%)
Forms 10-K, 10-Q, N-CSR, SR .....	75	25
Form 20-F .....	25	75

PRA Table 5 below illustrates the incremental change to the total annual compliance burden of affected forms, in hours and in costs, as a result of the proposed amendments' estimated effect on the paperwork burden per response.

<sup>115</sup> The OMB PRA filing inventories represent a three-year average. Averages may not align with the actual number of filings in any given year.

<sup>116</sup> We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs would be an average of \$400 per hour. This estimate

is based on consultations with several issuers, law firms, and other persons who regularly assist issuers in preparing and filing reports with the Commission.

PRA TABLE 5—CALCULATION OF THE INCREMENTAL CHANGE IN BURDEN ESTIMATES OF CURRENT RESPONSES RESULTING FROM THE PROPOSED AMENDMENTS

Collection of Information	Number of estimated affected responses (A) <sup>a</sup>	Burden hour increase per response (B)	Change in burden hours (C) = (A) × (B)	Change in company hours (D) = (C) × 0.75 or 0.25	Change in professional hours (E) = (C) × 0.25 or 0.75	Change in professional costs (F) = (E) × \$400
10-K .....	3,050	3	9,150	6862.5	2,287.5	\$915,000
10-Q .....	9,150	3	27,450	20,587.5	6,862.5	2,745,000
20-F .....	250	3	750	187.5	562.5	225,000
N-CSR .....	200	3	600	450	150	60,000

The following tables summarize the requested paperwork burden, including the estimated total reporting burdens and costs, under the proposed amendments.

PRA TABLE 6—REQUESTED PAPERWORK BURDEN UNDER THE PROPOSED AMENDMENTS<sup>117</sup>

Form	Current burden			Program change			Requested change in burden		
	Current annual responses (A)	Current burden hours (B)	Current cost burden (C)	Number of affected responses (D)	Change in company hours (E)	Change in professional costs (F)	Annual responses (G)	Burden hours (H) = (B) + (E)	Cost burden (I) = (C) + (F)
Form 10-K .....	8,292	14,188,040	\$1,893,793,119	3,050	6,862.5	\$915,000	8,292	14,194,903	\$1,894,708,119
Form 10-Q .....	22,925	3,182,333	421,490,754	9,150	29,587.5	2,745,000	22,925	3,211,921	424,235,754
Form 20-F .....	729	479,261	576,824,025	250	187.5	225,000	729	479,449	577,049,025
Form N-CSR .....	6,898	181,167	5,199,584	200	450	60,000	6,898	181,617	5,259,584

PRA Table 7 summarizes the requested paperwork burden for the new Form SR collection of information, including the estimated total reporting burdens and costs, under the proposed amendments as described in Section II.A. For purposes of the PRA, we estimate that new Form SR will entail a 1.5 hour compliance burden per response with 176,800 annual responses.

PRA TABLE 7—REQUESTED PAPERWORK BURDEN FOR THE NEW COLLECTION OF INFORMATION

Collection of information	Requested paperwork burden		
	Annual responses (A)	Burden hours (A) × 1.5 × (0.75)	Cost burden (A) × 1.5 × (0.25) × \$400
Form SR .....	176,800	189,900	\$26,520,000

Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comment in order to:

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- Evaluate the accuracy of our assumptions and estimates of the frequency with which issuers conduct issuer share repurchases and of the initial and ongoing burden of the proposed collection of information;
- Determine whether there are ways to enhance the quality, utility, and

clarity of the information to be collected;

- Evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and
- Evaluate whether the proposed amendments would have any effects on any other collection of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information

requirements should direct their comments to the Office of Management and Budget, Attention: Desk Officer for the U.S. Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy to Vanessa A. Countryman, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, with reference to File No. S7-21-21. Requests for materials submitted to OMB by the Commission with regard to the collection of information requirements should be in writing, refer to File No. S7-21-21 and be submitted to the U.S. Securities and Exchange Commission, Office of FOIA Services,

<sup>117</sup> For purposes of the PRA, the requested change in burden hours (column H) is rounded to the nearest whole number.

100 F Street NE, Washington, DC 20549. OMB is required to make a decision concerning the collection of information requirements between 30 and 60 days after publication of the proposed amendments. Consequently, a comment to OMB is best assured of having its full effect if the OMB receives it within 30 days of publication.

## VI. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”),<sup>118</sup> the Commission must advise OMB as to whether the proposed amendments constitute a “major” rule. Under SBREFA, a rule is considered “major” where, if adopted, it results, or is likely to result, in:

- An annual effect on the economy of \$100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on whether the proposed amendments would be a “major rule” for purposes of SBREFA. We solicit comment and empirical data on: (a) The potential effect on the U.S. economy on an annual basis; (b) any potential increase in costs or prices for consumers or individual industries; and (c) any potential effect on competition, investment or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

## VII. Initial Regulatory Flexibility Analysis

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (“RFA”) <sup>119</sup> requires the agency to prepare and make available for public comment an Initial Regulatory Flexibility Analysis (“IRFA”) that will describe the impact of the proposed rule on small entities.<sup>120</sup> This IRFA has been prepared in accordance with the Regulatory Flexibility Act. It relates to proposed amendments or additions to the rules and forms described in Section II above.

### A. Reasons for, and Objectives of, the Proposed Action

The proposed amendments are intended to modernize and improve disclosure about repurchases of an issuer’s equity securities that are

registered under Section 12 of the Exchange Act. Specifically, the proposed amendments would require an issuer to (i) provide more timely disclosure on a new Form SR regarding purchases of its Section 12 registered equity securities for each day that it, or an affiliated purchaser, makes a share repurchase; (ii) provide additional periodic disclosures about these purchases; and (iii) tag the required information using Inline XBRL. The reasons for, and objectives of, the proposed amendments are discussed in more detail in Section II above.

### B. Legal Basis

The amendments contained in this release are being proposed under the authority set forth in the Exchange Act, particularly, Sections 12, 13, 15, and 23(a) thereof; and the Investment Company Act, particularly Sections 8, 23, 24(a), 30, 31, and 38.

### C. Small Entities Subject to the Proposed Rules

The proposed amendments would affect some issuers that are small entities. The RFA defines “small entity” to mean “small business,” “small organization,” or “small governmental jurisdiction.”<sup>121</sup> For purposes of the RFA, under 17 CFR 230.157 and 17 CFR 240.0–10(a), an issuer, other than an investment company, is a “small business” or “small organization” if it had total assets of \$5 million or less on the last day of its most recent fiscal year and is engaged or proposing to engage in an offering of securities not exceeding \$5 million. We estimate that there are approximately 717 issuers with a class of securities registered under Section 12 of the Exchange Act that file with the Commission, other than investment companies, that may be considered small entities and are potentially subject to the proposed amendments.<sup>122</sup> For purposes of Commission rulemaking in connection with the RFA, an investment company (including a BDC) is a small entity if, together with other investment companies in the same group of related investment companies, it has net assets of \$50 million or less as of the end of

its most recent fiscal year.<sup>123</sup> Commission staff estimates that approximately 23 registered closed-end funds and 9 BDCs are small entities.<sup>124</sup>

### D. Projected Reporting, Recordkeeping and Other Compliance Requirements

If adopted, the proposed amendments would require the filing of a new form along with enhanced disclosures and the use of Inline XBRL, which would increase the compliance costs for issuers conducting share repurchases. Further, the proposed amendments would expand the information provided on existing forms regarding an issuer’s share repurchases. In addition, compliance with the proposed amendments may require the use of professional skills.

The proposed amendments would apply to small entities to the same extent as other entities, irrespective of size. As noted in Section IV.D. above, while we acknowledge that smaller issuers are more likely to be affected by the costs of additional disclosure, smaller issuers are also less likely to have share repurchases, which would limit the incremental burden of additional reporting under the proposed amendments.<sup>125</sup> In addition, while we would expect larger registered closed-end funds and BDCs (“funds”), or funds that are part of a large fund complex, to incur higher costs related to this requirement in absolute terms relative to a smaller fund or a fund that is part of a smaller fund complex, we would expect a smaller fund to find it more costly, per dollar managed, to comply with the proposed requirement because it would not be able to benefit from a larger fund complex’s economies of scale. Nonetheless, we expect that the nature of any benefits and costs associated with the proposed amendments to be generally similar for large and small entities. Accordingly, we refer to the discussion of the proposed amendments’ economic effects on all affected parties, including small entities, in Section IV above.<sup>126</sup> Consistent with that discussion, we anticipate that the economic benefits and costs likely could vary widely among small entities, primarily based

<sup>121</sup> 5 U.S.C. 601(6).

<sup>122</sup> This estimate is based on staff analysis of issuers, excluding co-registrants, subsidiaries, or asset-backed securities, with EDGAR filings of Form 10-K and 20-F, or amendments thereto, filed during the calendar year of January 1, 2020, to December 31, 2020 or filed by September 1, 2021 that, if timely filed by the applicable deadline, would have been filed between January 1 and December 31, 2020. Analysis is based on data from XBRL filings, Compustat, Ives Group Audit Analytics, and manual review of filings submitted to the Commission.

<sup>123</sup> See 17 CFR 270.0–10(a).

<sup>124</sup> This estimate is derived from an analysis of data obtained from Morningstar Direct as well as data reported to the Commission for the period ending June 2021.

<sup>125</sup> See *supra* Section IV.D. In addition, in Section IV.C. above we further note that to the extent that the proposed requirements affect small filers to a greater extent than large filers, they could result in adverse effects on competition.

<sup>126</sup> We also discuss the estimated compliance burden associated with the proposed amendments for purposes of the PRA in Section V above.

<sup>118</sup> 138 Public Law 104–121, Title II, 110 Stat. 857 (1996).

<sup>119</sup> 5 U.S.C. 601 *et seq.*

<sup>120</sup> 5 U.S.C. 603(a).

on whether those small entities conduct share repurchases and how frequently they do so.

#### *E. Duplicative, Overlapping, or Conflicting Federal Rules*

We do not believe the proposed amendments would duplicate, overlap,<sup>127</sup> or conflict with other existing federal rules. As proposed, Form SR would require daily disclosure of issuer share repurchases. Issuer periodic reports would also continue to provide monthly breakdowns of such repurchase activity. We additionally note that in the Rule 10b5-1 Proposing Release, we are separately proposing certain disclosure requirements for issuers regarding trading plans. In connection with the potential adoption of these rules, we would plan to coordinate the two releases to avoid any duplication, overlap or conflict between the rules.

#### *F. Significant Alternatives*

The RFA directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered the following alternatives:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Clarifying, consolidating, or simplifying compliance and reporting requirements under the rules for small entities;
- Using performance rather than design standards; and
- Exempting small entities from all or part of the requirements.<sup>128</sup>

The proposed amendments are intended to improve disclosure about repurchases of an issuer's equity securities for investors to evaluate those activities and decrease any information asymmetry between issuers and

<sup>127</sup> The proposed checkbox to indicate if any officer or director reporting pursuant to Section 16(a) of the Exchange Act 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 issuer's announcement of such repurchase plan or program would require issuers to make this information more easily available to investors by working in conjunction with existing Section 16(a) disclosure to inform investors in periodic reports about an officer or directors trading activity.

<sup>128</sup> See *supra* Section IV.D.

investors. The additional disclosure, which would be provided in a machine-readable format, should permit investors to more quickly and efficiently evaluate information relating to issuer share repurchases, on a more timely basis. While we acknowledge that small entities are more likely to be affected by the costs of additional disclosure, all else equal (holding constant the disclosure burden), small entities are less likely to have share repurchases,<sup>129</sup> which would limit the incremental burden of additional reporting under the proposed amendments for each small entity. Also, to the extent that small filers have relatively high information asymmetries because of lower analyst and institutional coverage, the proposed additional disclosure about their repurchases may be relatively more informative to investors. Because small entities are less likely to conduct share repurchases and in the event that they do, are more likely to have relatively high information asymmetries, we do not believe it would be appropriate to provide simplified or consolidated reporting requirements, a delayed compliance timetable, or an exemption for small entities from all or part of these requirements.

We have used design rather than performance standards in connection with the proposed rules because we are seeking specific information relating to an issuer's repurchase activity with the goal of enabling investors to better analyze share repurchase activity. Thus, the objectives of the proposed rules are unlikely to be met using a performance standard.

#### *G. Request for Comment*

We encourage the submission of comments with respect to any aspect of this IRFA. In particular, we request comments regarding:

- The number of small entities that may be affected by the proposed amendments;
- The existence or nature of the potential impact of the proposed amendments on small entities discussed in the analysis;
- How the proposed amendments could further lower the burden on small entities; and
- How to quantify the impact of the proposed amendments.

Commenters are asked to describe the nature of any impact and provide

<sup>129</sup> See *supra* note 107 and accompanying text.

empirical data supporting the extent of the impact. Comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

#### **Statutory Authority**

The amendments contained in this release are being proposed under the authority set forth in Sections 12, 13, 15, and 23(a) of the Exchange Act, and Sections 8, 23, 24(a), 30, 31, and 38 of the Investment Company Act.

#### **List of Subjects in 17 CFR Parts 229, 232, 240, 249, and 274**

Reporting and record keeping requirements, Securities.

For the reasons set forth in the preamble, the Commission is proposing to amend title 17, chapter II of the Code of Federal Regulations as follows:

#### **PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K**

- 1. The authority citation for part 229 continues to read as follows:

**Authority:** 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j-3, 78l, 78m, 78n, 78n-1, 78o, 78u-5, 78w, 78ll, 78 mm, 80a-8, 80a-9, 80a-20, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a-38(a), 80a-39, 80b-11 and 7201 *et seq.*; 18 U.S.C. 1350; sec. 953(b), Pub. L. 111-203, 124 Stat. 1904 (2010); and sec. 102(c), Pub. L. 112-106, 126 Stat. 310 (2012).

- 2. Revise § 229.703 to read as follows:

#### **§ 229.703 (Item 703) Purchases of equity securities by the issuer and affiliated purchasers.**

(a) Provide the specified information in the following tabular format, and narratively with respect to any purchase made by or on behalf of the issuer or any "affiliated purchaser," as defined in § 240.10b-18(a)(3) of this chapter, of shares or other units of any class of the issuer's equity securities that is registered by the issuer pursuant to section 12 of the Exchange Act (15 U.S.C. 78l).

TABLE 1 TO PARAGRAPH (a)—ISSUER PURCHASES OF EQUITY SECURITIES

[Use the checkbox to indicate if any officer or director reporting pursuant to 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 ten (10) business days before or after the issuer's announcement of such repurchase plan or program.

Period	(a) Total number of shares (or units) purchased	(b) Average price paid per share (or unit)	(c) Total number of shares (or units) purchased as part of publicly announced plans or programs	(d) Maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs
Month #1 (identify beginning and ending dates).				
Month #2 (identify beginning and ending dates).				
Month #3 (identify beginning and ending dates).				
Total.				

(b) The table shall include the following information for each class or series of securities for each month included in the period covered by the report:

(1) The total number of shares (or units) purchased (column (a)), including all issuer repurchases whether or not made pursuant to publicly announced plans or programs;

(2) The average price paid per share (or unit) (column (b));

(3) The aggregate total number of shares (or units) purchased as part of publicly announced repurchase plans or programs (column (c)); and

(4) The aggregate maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs (column (d)).

(c) Disclose, by footnote to the table or narrative accompanying the table:

(1) The objective or rationale for each repurchase plan or program and the process or criteria used to determine the amount of repurchases;

(2) The number of shares purchased:  
(i) Other than through a publicly announced plan or program, and if so, the nature of the transaction (*e.g.*, whether the purchases were made in open-market transactions, tender offers, in satisfaction of the issuer's obligations upon exercise of outstanding put options issued by the issuer, or other transactions);

(ii) In reliance on the safe harbor in § 240.10b-18 of this chapter; and

(iii) Pursuant to a plan that is intended to satisfy the affirmative defense conditions of § 240.10b5-1(c) of this chapter, and if so, the date(s) the plan was adopted or terminated.

(3) For publicly announced repurchase plans or programs:

(i) The date each plan or program was announced;

(ii) The dollar amount (or share or unit amount) approved;

(iii) The expiration date (if any) of each plan or program;

(iv) Each plan or program that has expired during the period covered by the table; and

(v) Each plan or program the issuer has determined to terminate prior to expiration, or under which the issuer does not intend to make further purchases.

(4) Any policies and procedures relating to purchases and sales of the issuer's securities by its officers and directors during a repurchase program, including any restrictions on such transactions.

(d) Provide the disclosure required by this section in an Interactive Data File as required by § 232.405 of this chapter (Rule 405 of Regulation S-T) in accordance with the EDGAR Filer Manual.

#### PART 232—REGULATION S-T— GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 3. The general authority citation for part 232 continues to read as follows:

**Authority:** 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z-3, 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a-6(c), 80a-8, 80a-29, 80a-30, 80a-37, 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

\* \* \* \* \*

■ 4. Amend § 232.405 by:

■ a. Revising the introductory text and paragraphs (a)(2) and (4);

■ b. Removing the word “and” at the end of paragraph (b)(1)(i);

■ c. Removing the period at the end of paragraph (b)(1)(ii) and adding “; and” in its place.

■ d. Adding paragraph (b)(1)(iii);

■ e. Removing the word “and” at the end of paragraph (b)(3)(ii);

■ f. Removing the period at the end of paragraph (b)(3)(iii) and adding “; and” in its place.

■ g. Adding paragraphs (b)(3)(iv) and (b)(4); and

■ h. Revising Note 1 to § 232.405.

The revisions and additions read as follows:

#### § 232.405 Interactive Data File submissions.

This section applies to electronic filers that submit Interactive Data Files. Section 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S-K), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F-10 (§ 239.40 of this chapter), § 240.13a-21 of this chapter (Rule 13a-21 of the Exchange Act Rules), paragraph 101 of the Instructions as to Exhibits of Form 20-F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40-F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6-K (§ 249.306 of this chapter), General Instruction I of Form SR (§ 249.333 of this chapter), General Instruction C.3.(g) of Form N-1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N-2 (§§ 239.14 and 274.11a-1 of this chapter), General Instruction C.3.(h) of Form N-3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N-4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N-6 (§§ 239.17c and 274.11d of this chapter), and General Instruction C.4 of Form N-CSR (§§ 249.331 and 274.128 of this chapter) specify when electronic filers are required or permitted to submit an Interactive Data File (§ 232.11), as further described in note 1 to this section. This section imposes content, format, and submission requirements for an Interactive Data File, but does not change the substantive content requirements for the financial and other

disclosures in the Related Official Filing (§ 232.11).

(a) \* \* \*

(2) Be submitted only by an electronic form either required or permitted to submit an Interactive Data File as specified by § 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S-K), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F-10 (§ 239.40 of this chapter), Rule 13a-21 of the Exchange Act Rules (§ 240.13a-21 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20-F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40-F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6-K (§ 249.306 of this chapter), General Instruction I to Form SR (§ 249.333 of this chapter), General Instruction C.3.(g) of Form N-1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N-2 (§§ 239.14 and 274.11a-1 of this chapter), General Instruction C.3.(h) of Form N-3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N-4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N-6 (§§ 239.17c and 274.11d of this chapter), or General Instruction C.4 of Form N-CSR (§§ 249.331 and 274.128 of this chapter), as applicable;

\* \* \* \* \*

(4) Be submitted in accordance with the EDGAR Filer Manual and, as applicable, Item 601(b)(101) of Regulation S-K (§ 229.601(b)(101) of this chapter), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F-10 (§ 239.40 of this chapter), Rule 13a-21 of the Exchange Act Rules (§ 240.13a-21 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20-F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40-F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6-K (§ 249.306 of this chapter), General Instruction I to Form SR (§ 249.333 of this chapter), General Instruction C.3.(g) of Form N-1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N-2 (§§ 239.14 and 274.11a-1 of this chapter), General Instruction C.3.(h) of Form N-3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N-4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N-6 (§§ 239.17c and 274.11d of this chapter); or General Instruction C.4 of Form N-CSR (§§ 249.331 and 274.128 of this chapter).

(b) \* \* \*

(1) \* \* \*

(iii) As applicable, the disclosure set forth in paragraph (b)(4) of this section.

\* \* \* \* \*

(3) \* \* \*

(iv) As applicable, the disclosure set forth in paragraph (b)(4) of this section.

(4) An Interactive Data File must consist of the disclosure provided under 17 CFR part 229 (Regulation S-K) and related provisions that is required to be tagged, including, as applicable, the repurchase information required by:

(i) Section 229.703 of this chapter (Item 703 of Regulation S-K);

(ii) Item 16E of Form 20-F (§ 249.220f of this chapter);

(iii) Item 9 of Form N-CSR (§§ 249.331 and 274.128 of this chapter); and

(iv) General Instruction I to Form SR (§ 249.333 of this chapter).

\* \* \* \* \*

**Note 1 to § 232.405:** Section 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S-K) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to § 239.11 of this chapter (Form S-1), § 239.13 of this chapter (Form S-3), § 239.25 of this chapter (Form S-4), § 239.18 of this chapter (Form S-11), § 239.31 of this chapter (Form F-1), § 239.33 of this chapter (Form F-3), § 239.34 of this chapter (Form F-4), § 249.310 of this chapter (Form 10-K), § 249.308a of this chapter (Form 10-Q), and § 249.308 of this chapter (Form 8-K). Paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of § 239.40 of this chapter (Form F-10) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form F-10. Paragraph 101 of the Instructions as to Exhibits of § 249.220f of this chapter (Form 20-F) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form 20-F. Paragraph B.(15) of the General Instructions to § 249.240f of this chapter (Form 40-F) and Paragraph C.(6) of the General Instructions to § 249.306 of this chapter (Form 6-K) specify the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to § 249.240f of this chapter (Form 40-F) and § 249.306 of this chapter (Form 6-K). Section 240.13a-21 of this chapter (Rule 13a-21 of the Exchange Act Rules) and General Instruction I to § 249.333 of this chapter (Form SR) specifies the circumstances under which an Interactive Data File must be submitted, with respect to Form SR. Section 229.601(b)(101) (Item 601(b)(101) of Regulation S-K), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F-10, paragraph 101 of the Instructions

as to Exhibits of Form 20-F, paragraph B.(15) of the General Instructions to Form 40-F, and paragraph C.(6) of the General Instructions to Form 6-K all prohibit submission of an Interactive Data File by an issuer that prepares its financial statements in accordance with 17 CFR 210.6-01 through 210.6-10 (Article 6 of Regulation S-X). For an issuer that is a management investment company or separate account registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) or a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(48)), General Instruction C.3.(g) of Form N-1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N-2 (§§ 239.14 and 274.11a-1 of this chapter), General Instruction C.3.(h) of Form N-3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N-4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N-6 (§§ 239.17c and 274.11d of this chapter), and General Instruction C.4 of Form N-CSR (§§ 249.331 and 274.128 of this chapter), as applicable, specifies the circumstances under which an Interactive Data File must be submitted.

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 5. The general authority citation for part 240 continues to read as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78dd, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 *et seq.*, and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111-203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112-106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

\* \* \* \* \*

■ 6. Add § 240.13a-21 to read as follows:

### § 240.13a-21 Purchases of equity securities by the issuer and affiliated purchasers.

(a) Every issuer that has a class of equity securities registered pursuant to section 12 of the Act (15 U.S.C. 78l) must furnish a Form SR (§ 249.333 of this chapter) to report, as specified by the form, any purchase made by or on behalf of the issuer or any “affiliated purchaser,” as defined in § 240.10b-18(a)(3), of shares or other units of any class of the issuer’s equity securities that is registered by the issuer pursuant to section 12 of the Act, within the time period specified in General Instruction I to Form SR. Provide the information required by the form in an Interactive Data File as required by § 232.405 of this chapter (Rule 405 of Regulation S-T) in

accordance with the EDGAR Filer Manual.

(b) This section shall not apply to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), other than a registered closed-end investment company.

**PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934**

■ 7. The general authority citation for part 249 continues to read as follows:

**Authority:** 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; 12 U.S.C. 5461 *et seq.*; 18 U.S.C. 1350; Sec. 953(b) Pub. L. 111-203, 124 Stat. 1904; Sec. 102(a)(3) Pub. L. 112-106, 126 Stat. 309 (2012), Sec. 107 Pub. L. 112-106, 126 Stat. 313 (2012), Sec. 72001 Pub. L. 114-94, 129 Stat. 1312 (2015), and secs. 2 and 3 Pub. L. 116-222, 134 Stat. 1063 (2020), unless otherwise noted.

\* \* \* \* \*

■ 8. Amend Form 20-F, by revising Part II, Item 16E (referenced in § 249.220f) to read as follows:

**Note:** The text of Form 20-F does not, and this amendment will not, appear in the Code of Federal Regulations.

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION WASHINGTON, DC 20549**

**Form 20-F**

\* \* \* \* \*

**Part II**

\* \* \* \* \*

**Item 16E Purchases of Equity Securities by the Issuer and Affiliated Purchasers.**

(a) Provide the specified information in the following tabular format, and

narratively, with respect to any purchase made by or on behalf of the issuer or any “affiliated purchaser,” as defined in § 240.10b-18(a)(3) of this chapter, of shares or other units of any class of the issuer’s equity securities that is registered by the issuer pursuant to section 12 of the Exchange Act (15 U.S.C. 78l).

**ISSUER PURCHASES OF EQUITY SECURITIES**

Use the checkbox to indicate if any officer or director reporting pursuant to 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 ten (10) business days before or after the issuer’s announcement of such repurchase plan or program.

Period	(a) Total number of shares (or units) purchased	(b) Average price paid per share (or unit)	(c) Total number of shares (or units) purchased as part of publicly announced plans or programs	(d) Maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs
Month #1 (identify beginning and ending dates).				
Month #2 (identify beginning and ending dates).				
Month #3 (identify beginning and ending dates).				
Month #4 (identify beginning and ending dates).				
Month #5 (identify beginning and ending dates).				
Month #6 (identify beginning and ending dates).				
Month #7 (identify beginning and ending dates).				
Month #8 (identify beginning and ending dates).				
Month #9 (identify beginning and ending dates).				
Month #10 (identify beginning and ending dates).				
Month #11 (identify beginning and ending dates).				
Month #12 (identify beginning and ending dates).				
Total.				

(b) The table shall include the following information for each class or series of securities for each month included in the period covered by the report:

- (1) The total number of shares (or units) purchased (column (a)), including all issuer repurchases whether or not made pursuant to publicly announced plans or programs;
- (2) The average price paid per share (or unit) (column (b));
- (3) The aggregate total number of shares (or units) purchased as part of

publicly announced repurchase plans or programs (column (c)); and

- (4) The aggregate maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs (column (d)).
- (c) Disclose, by footnote to the table or narrative accompanying the table:
  - (1) The objective or rationale for each repurchase plan or program and the process or criteria used to determine the amount of repurchases;
  - (2) The number of shares purchased;

- (i) Other than through a publicly announced plan or program, and if so, the nature of the transaction (*e.g.*, whether the purchases were made in open-market transactions, tender offers, in satisfaction of the company’s obligations upon exercise of outstanding put options issued by the company, or other transactions);
- (ii) In reliance on the safe harbor in 17 CFR 240.10b-18; and
- (iii) Pursuant to a plan that is intended to satisfy the affirmative defense conditions of 17 CFR 240.10b5-

1(c), and if so, the date(s) the plan was adopted or terminated.

(3) For publicly announced repurchase plans or programs:

(i) The date each plan or program was announced;

(ii) The dollar amount (or share or unit amount) approved;

(iii) The expiration date (if any) of each plan or program;

(iv) Each plan or program that has expired during the period covered by the table; and

(v) Each plan or program the issuer has determined to terminate prior to expiration, or under which the issuer does not intend to make further purchases.

(4) Any policies and procedures relating to purchases and sales of the issuer's securities by its officers and directors during a repurchase program, including any restrictions on such transactions.

(d) Provide the disclosure required by this Item in an Interactive Data File as required by Rule 405 of Regulation S-T (17 CFR 232.405) in accordance with the EDGAR Filer Manual.

■ 9. Add § 249.333 to read as follows:

**§ 249.333 Form SR.**

This form shall be used for reporting of purchases by or on behalf of the issuer or an affiliated purchaser of equity securities registered by the issuer pursuant to section 12 of the Act (15 U.S.C. 781).

**PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940**

■ 10. The general authority citation for part 274 continues to read as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a-8, 80a-24, 80a-26, 80a-29, and 80a-37, unless otherwise noted.

\* \* \* \* \*

■ 11. Amend Form N-CSR (referenced in §§ 249.331 and 274.128) by revising Item 9 to read as follows:

**Note:** The text of Form N-CSR does not, and these amendments will not, appear in the *Code of Federal Regulations*.

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, DC 20549**

**Form N-CSR**

\* \* \* \* \*

**Item 9. Purchases of Equity Securities by Closed-End Management Investment Company and Affiliated Purchasers.**

(a) If the registrant is a closed-end management investment company, provide the specified information in the following tabular format, and narratively with respect to any purchase made by or on behalf of the registrant or any "affiliated purchaser," as defined in 17 CFR 240.10b-18(a)(3), of shares or other units of any class of the registrant's equity securities that is registered by the registrant pursuant to section 12 of the Exchange Act (15 U.S.C. 781).

**REGISTRANT PURCHASES OF EQUITY SECURITIES**

Use the checkbox to indicate if any officer or director reporting pursuant to 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 registrant's equity securities that is the subject of a registrant share repurchase plan or program within ten (10) business days before or after the registrant's announcement of such repurchase plan or program.

Period	(a) Total number of shares (or units) purchased	(b) Average price paid per share (or unit)	(c) Total number of shares (or units) purchased as part of publicly announced plans or programs	(d) Maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs
Month #1 (identify beginning and ending dates).				
Month #2 (identify beginning and ending dates).				
Month #3 (identify beginning and ending dates).				
Month #4 (identify beginning and ending dates).				
Month #5 (identify beginning and ending dates).				
Month #6 (identify beginning and ending dates).				
Total.				

(b) The table shall include the following information for each class or series of securities for each month included in the period covered by the report:

(1) The total number of shares (or units) purchased (column (a)), including all registrant repurchases whether or not made pursuant to publicly announced plans or programs;

(2) The average price paid per share (or unit) (column (b));

(3) The aggregate total number of shares (or units) purchased as part of publicly announced repurchase plans or programs (column (c)); and

(4) The aggregate maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs (column (d)).

(c) Disclose, by footnote to the table or narrative accompanying the table:

(1) The objective or rationale for each repurchase plan or program and the

process or criteria used to determine the amount of repurchases;

(2) The number of shares purchased:

(i) Other than through a publicly announced plan or program, and if so, the nature of the transaction (e.g., whether the purchases were made in open-market transactions, tender offers, in satisfaction of the registrant's obligations upon exercise of outstanding put options issued by the registrant, or other transactions);

(ii) In reliance on the safe harbor in 17 CFR 240.10b-18; and  
 (iii) Pursuant to a plan that is intended to satisfy the affirmative defense conditions of 17 CFR 240.10b5-1(c), and if so, the date(s) the plan was adopted or terminated.  
 (3) For publicly announced repurchase plans or programs:  
 (i) The date each plan or program was announced;  
 (ii) The dollar amount (or share or unit amount) approved;  
 (iii) The expiration date (if any) of each plan or program;  
 (iv) Each plan or program that has expired during the period covered by the table; and  
 (v) Each plan or program the registrant has determined to terminate prior to expiration, or under which the

registrant does not intend to make further purchases.  
 (4) Any 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.  
 (d) Provide the disclosure required by this Item in an Interactive Data File as required by Rule 405 of Regulation S-T (17 CFR 232.405) in accordance with the EDGAR Filer Manual.

By the Commission.  
 Dated: December 15, 2021.

**Vanessa A. Countryman,**  
*Secretary.*

**Note:** The following appendix will not appear in the Code of Federal Regulations.

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, DC 20549**  
**FORM SR**  
**ISSUER SHARE REPURCHASE REPORT**

(Exact name of registrant as specified in its charter)

(CIK number of registrant)

(Address of Principal Executive Offices)

(IRS Employer Identification No.)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading symbol(s)	Name of each exchange on which registered

Securities registered pursuant to section 12(g) of the Act:

(Title of class)

(Title of class)

**GENERAL INSTRUCTIONS**

**I. Repurchases to be Reported and Time for Filing of Report**

If purchases are made by or on behalf of the registrant or any "affiliated purchaser," as defined in § 240.10b-18(a)(3) of this chapter, of shares or other units of any class of the issuer's equity securities that is registered pursuant to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 781), furnish to the Commission in accordance with the requirements of § 240.13a-21 the information set forth below in an Interactive Data File as required by Rule 405 of Regulation S-T (17 CFR 232.405) in the manner provided by the EDGAR Filer Manual before the end of the first business day following the day on which the share repurchase order has been executed. If there are material errors in, or material changes to, the information, furnish an amended Form SR.

**II. Requirements for Use of Form SR**

(a) The class of shares (column (a)) should clearly identify the class, even if the issuer has only one class of securities outstanding.

(b) The total number of shares purchased (column (b)) includes all shares (or units) repurchased by the issuer, regardless of whether made pursuant to publicly announced plans or programs.

(c) The average price paid per share (or unit) (column (c)) shall be reported in U.S. dollars and exclude brokerage commissions and other costs of execution.

(d) Total Number of Shares Purchased on the Open Market (column (d)) includes all shares (or units) repurchased by the issuer in open-market transactions, and does not include shares (or units) purchased in tender offers, in satisfaction of the issuer's obligations upon exercise of outstanding put options issued by the issuer, or other transactions.

(e) Total Number of Shares Purchased in Reliance on the Safe Harbor in 17 CFR 240.10b-18 (column (e)) includes all shares (or units) repurchased in reliance on 17 CFR 240.10b-18.

(f) Total Number of Shares Purchased Pursuant to a Plan that is Intended to Satisfy the Affirmative Defense

Conditions of 17 CFR 240.10b5-1(c) (column (f)) includes all shares (or units) repurchased where the issuer intended to satisfy the affirmative defense conditions of 17 CFR 240.10b5-1(c).

**III. Preparation of Report**

This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report meeting the requirements of 17 CFR 240.13a-21. The report shall contain all columns of the table, and any columns for which there is no relevant information may be appropriately marked or left blank. The table may contain additional columns as necessary to provide disclosure responsive to the requirements of 17 CFR 240.13a-21 provided the answers thereto are prepared in the manner specified in Rule 12b-13 (17 CFR 240.12b-13). These General Instructions are not to be filed with the report.

**IV. Submission of the Form**

This form must be submitted in electronic format via our Electronic Data Gathering Analysis and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S-T (17 CFR part 232). You must provide the signatures required for the Form in accordance with 17 CFR 232.302.

## ISSUER PURCHASES OF EQUITY SECURITIES

Date	(a) Class of shares	(b) Total number of shares purchased	(c) Average price paid per share	(d) Total number of shares purchased on the open market	(e) Total number of shares purchased in reliance on the safe harbor in 17 CFR 240.10b-18	(f) Total number of shares purchased pursuant to a plan that is intended to satisfy the affirmative defense conditions of 17 CFR 240.10b5-1(c)

**SIGNATURES**

Pursuant to the requirements of the Act, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

(Registrant)

Date: \_\_\_\_\_

(Signature) \*

\* Print name and title of the signing officer under their signature.

[FR Doc. 2022-01068 Filed 2-14-22; 8:45 am]

**BILLING CODE 8011-01-P**

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**DEPARTMENT OF HOMELAND SECURITY**
**Coast Guard**
**33 CFR Part 165**

[Docket Number USCG-2022-0040]

RIN 1625-AA87

**Security Zone, Delaware River, Philadelphia, PA**

**AGENCY:** Coast Guard, Department of Homeland Security, (DHS).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a security zone for certain waters of the Delaware River. This action is necessary to provide protection of Very Important Persons (VIPs) while attending the Democratic National Caucus (DNC) on the Delaware River in the vicinity of Penns Landing located in Philadelphia, PA. This security zone will be enforced intermittently and only for the protection of VIPs when in the area and will restrict vessel traffic while the zones are being enforced. This proposed rulemaking would prohibit persons and vessels from being in the security zone unless authorized by the Captain of the Port Delaware Bay or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before February 23, 2022.

**ADDRESSES:** You may submit comments identified by docket number USCG-2022-0040 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Petty Officer Jennifer Padilla, Sector Delaware Bay, Waterways Management Division, U.S. Coast Guard; telephone 215-271-4889, email [Jennifer.L.Padilla@uscg.mil](mailto:Jennifer.L.Padilla@uscg.mil).

**SUPPLEMENTARY INFORMATION:**
**I. Table of Abbreviations**

CFR Code of Federal Regulations  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of proposed rulemaking  
§ Section  
U.S.C. United States Code

**II. Background, Purpose, and Legal Basis**

On January 12, 2022, the United States Capitol Police notified the Coast Guard that the Democratic National Caucus (DNC) is being held in the vicinity of Penns Landing located in Philadelphia, PA from 11 a.m. on March 9, 2022 through 11:59 p.m. on March 11, 2022. The DNC is being held adjacent to the Delaware River and this security zone is needed to provide protection and security of the VIPs attending the Democratic National Caucus in the vicinity of this waterway. The presence of these persons creates unique safety and security concerns. The Captain of the Port Delaware Bay (COTP) has determined that attendance of VIPs at the Democratic National Caucus March 9, 2022, through March 11, 2022, presents a potential target for terrorist acts, sabotage, or other subversive acts, accidents, or other causes of a similar nature.

The purpose of this rulemaking is to protect these persons, the public, and

the surrounding waterway, because the Democratic National Caucus is being held at Penns Landing which is a highly populated area, adjacent to the Delaware River. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

**III. Discussion of Proposed Rule**

The COTP is proposing to establish a security zone from March 9, 2022, through March 11, 2022, on certain waters of the Delaware River in Philadelphia, PA. Specifically, the security zone would cover all waters within the Delaware River contiguous to the Pennsylvania shoreline and extending out into the Delaware River approximately 250 yards, within an area bounded by a line connecting the following points: Beginning at the Pennsylvania shoreline at latitude 39°56.87' N, longitude 075°8.36' W, thence east to latitude 39°56.85' N, longitude 075°8.20' W, thence south to latitude 39°56.45' N, longitude 075°8.25' W, thence west to the Pennsylvania shoreline at latitude 39°56.47' N, longitude 075°8.41' W, thence north following the shoreline to the originating point.

This zone will be enforced intermittently during the effective dates. Enforcement of this zone will be broadcast via Broadcast Notice to Mariners on VHF-FM marine channel 16 as well as actual notice via on scene Coast Guard Personnel.

No vessel or person will be permitted to enter or transit these security zones without obtaining permission from the COTP or a designated representative and must proceed as directed by on scene enforcement vessels. Any vessel permitted to transit the zone will be required to continue through the zone without pause or delay as directed by on scene enforcement vessels.

The regulatory text we are proposing appears at the end of this document.

**IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and