



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
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Lyle W. Cayce
Clerk of Court
U.S. Court of Appeals for the Fifth Circuit
Office of the Clerk
F. Edward Hebert Building
600 S. Maestri Place
New Orleans, LA 70130

Via ECF

Re: *Chamber of Commerce of the USA v. SEC*, No. 23-60255

Dear Mr. Cayce,

I write on behalf of respondent Securities and Exchange Commission in response to petitioners' letter concerning the Supreme Court's grant of limited review in *NetChoice, LLC v. Paxton*, No. 22-555.

Contrary to petitioners' suggestion otherwise, this Court need not await a decision in *NetChoice* to decide this case. The circuit split at issue in *NetChoice* concerns whether content moderation by social-media platforms is "constitutionally protected expressive activity" that is "impermissibly burden[ed]" by the challenged statute's mandated disclosure of an individualized explanation for each content-moderation decision given the "sheer volume of content removal." Br. of United States, No. 22-555, at 12-13, 19. That issue is not presented here, as issuers repurchasing their own securities are engaged in purely commercial transactions, without any expressive component, and the repurchase rule's requirements for additional periodic disclosure do not burden protected speech. See SEC Br. 3, 18-19, 24-25. And no circuit split exists as to the relevant holding in *NetChoice, L.L.C. v. Paxton*, 49 F.4th 439 (5th Cir. 2022), that the "reason" for content-moderation decisions is "purely factual and uncontroversial information" reviewed under *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985). *NetChoice*, 49 F.4th at 485; accord *NetChoice, LLC v. Florida*, 34 F.4th 1196, 1227 (11th Cir. 2022).

This Court should also reject petitioners' suggestion to stay the repurchase rule *sua sponte*. Petitioners identify no justification for relieving them of their burden to file a stay motion establishing that such relief is warranted.

Finally, there is no merit to petitioners' suggestion that the grant of certiorari supports "vacat[ing] the Rule based on one or more of the Administrative Procedure Act ('APA') grounds advanced by Petitioners." As discussed (SEC Br. 32-52 & n.8), the Commission conducted a "reasonable and reasonably explained analysis" that addressed all significant points raised in

comments, “which is all the APA requires.” *Huawei Techs. USA, Inc. v. FCC*, 2 F.4th 421, 449-52 (5th Cir. 2021) (cleaned up).

Sincerely,

/s/ Ezekiel L. Hill

Ezekiel L. Hill

cc: Counsel of record (via ECF)