Statement

Enhancing Transparency Around Stock Buybacks: Statement on Corporate Share Repurchase Proposal

Commissioner Allison Herren Lee

Dec. 15, 2021

In recent years, corporate share repurchases, or buybacks, have grown exponentially. Even amidst a relative slump in share repurchases in 2020, buybacks reached nearly $700 billion in volume.[1] And interest in, and the need to understand, these share repurchases has grown accordingly. Today's proposal would enhance transparency for investors and markets around share repurchases by requiring more detailed, timely, and structured disclosures.

Companies may determine to allocate capital towards share repurchases for a number of different reasons. However, one of those reasons should not be for the opportunistic, short-term benefit of executives. The proposal we consider today does not prescribe how or why companies may elect to engage in share repurchases. Rather it requires disclosures intended to enhance the ability of investors to evaluate how, why, and to what effect companies are engaging in buybacks. In other words, to help put investors on more equal informational footing with companies and their officers and directors who make the decisions to engage in these transactions.

The Commission last addressed disclosure requirements for share repurchases in 2003.[2] In recent years, amidst record high volumes of share repurchases and increased interest in that activity, there have been calls for the Commission to revisit its rules to ensure they are keeping pace with market developments and getting investors timely and relevant disclosures.[3] Indeed, in comments in response to the Commission's 2016 Regulation S-K concept release, commenters favored enhanced share repurchase disclosure requirements by a margin of nearly two to one.[4]

Today, based on thoughtful analysis by the staff, the Commission is proposing rules that would require more detailed and more frequent disclosures of share repurchase activity and would provide greater insight into issuers' share repurchase programs. In particular, the proposal introduces new Form SR, which would require repurchase disclosure within one business day of the repurchase, thereby providing investors with more timely and more granular information on repurchases.[5] At present, investors may have to wait months to get repurchase data and then only in aggregated form.[6] In addition, the proposal would add new narrative disclosure requirements in periodic reports, including disclosure of the objective and rationale for repurchases, and any policies and procedures governing officer and director purchases or sales of a company's shares during a repurchase.[7]

Finally, and importantly, the proposal would require information under both new and existing disclosure requirements to be structured in a machine-readable data language.[8]

Share repurchases have increased by orders of magnitude in recent decades.[9] In fact, public markets have been described by one incisive commentator as a "place where companies return money to shareholders" rather than one where capital is raised.[10] This phenomenon should be thoroughly and accurately disclosed and well understood by investors and markets. To the extent companies are making smart and thoughtful choices regarding buybacks, this increased transparency will serve them well. On the other hand, if anticipated disclosure operates to dampen enthusiasm for buybacks, that may well arise from flaws in the strategy behind the practice at certain companies.

I hope the public will weigh in to help us get the final rules right. For instance, is the proposed timing of these disclosure what it should be? Is it appropriate to require furnishing rather than filing of Form SR as proposed? Is there additional information that investors need to understand share repurchase activity? I look forward to reviewing comments on these and other aspects of the proposal.

I'll conclude by thanking our staff for their excellent work. I'm happy to support publishing the proposal for comment.

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[1] *See* Share Repurchase Disclosure Modernization, Proposed Rule, Release No. 34-[] (Dec. 15, 2021) ("During 2020, share repurchases accounted for approximately $670 billion.") [hereinafter Proposing Release].

[2] The Commission adopted Item 703 of Regulation S-K in 2003 to require quarterly disclosure of share repurchase information. *See* Purchases of Certain Equity Securities by the Issuer and Others, Final Rule, Release No. 33-8335 (Nov. 10, 2003).

[3] *See, e.g.*, Letter from Council of Institutional Investors (Jul. 8, 2016) (expressing support for enhanced repurchase disclosures, noting that "[r]eturning cash to shareholders instead of reinvesting in the business may impact overall leverage, incentive-based compensation and long-term profitability"); Letter from the SEC Investor Advisory Committee (June 15, 2016) (observing that current Item 703 repurchase disclosure "does not result in the identification of information that many investors would likely find material"); 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) (suggesting that requirements should be tightened to require disclosure of share repurchases within two days).

[4] *See* Comments on Concept Release: Business and Financial Disclosure Required by Regulation S-K, File No. S7-06-16.

[5] *See* Proposing Release at 11.

[6] Current repurchase data is required in periodic reports aggregated at the monthly level. *See* 17 CFR § 229.703.

[7] *See* Proposing Release at 22.

[8] *See id*. at 29.

[9] The Proposing Release provides that "[a]ggregate 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 capitalization." Further "[f]irms 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." Proposing Release at 37-38; *see also* Karen Langley, Buybacks Hit Record After Pulling Back in 2020, Wall Street Journal (Dec. 12, 2021) ("S&P 500 buybacks plunged from nearly $199 billion in the first quarter of 2020 to just under $89 billion in the second, as companies

reeling from the onset of the pandemic moved to conserve cash. Share repurchases increased in each following quarter, approaching $199 billion again in the second quarter of 2021.”).

[10] Matt Levine, Money Stuff: Public Markets Don’t Matter Like They Used To, Bloomberg (August 5, 2020).