DLA Piper LLP (US)
555 Mission Street
Suite 2400
San Francisco, California 94105-2933
www.dlapiper.com

Brad Rock
Brad.Rock@dlapiper.com
T 415.836.2598
F 415.659.7309

April 1, 2022
VIA EMAIL/ ELECTRONIC SUBMISSION

Securities and Exchange Commission
100 F Street, N E
Washington DC 20549-1090
Attn: Vanessa A. Countryman, Secretary

Re: Share Repurchase Disclosure Modernization
File Number S7 – 21 – 21

Ladies and Gentlemen**:**

We appreciate the opportunity to comment on the Securities and Exchange Commission's (the "Commission") proposed amendments intended to modernize and improve disclosure about repurchases of registrant's equity securities (the "Proposed Amendments"). We understand the intended goals to be to improve the quality, relevance and timeliness of information related to share repurchases, but without unduly burdening or disadvantaging companies. We respectfully submit these observations and recommendations regarding the Proposed Amendments, which we believe will improve them by easing administrative burdens, while clarifying and better aligning the proposed disclosures with the intended goals.

1. Proposed Form S-R, including frequency of reporting.

As noted in the release promulgating the Proposed Amendments, the Commission will need to balance the intended benefits from incremental disclosure with both the additional compliance efforts and costs required for more frequent disclosure and the potential negative effects on registrants. Within that framework, we believe that daily trading disclosure is not warranted. It does not strike a principled balance between materiality and cost. In many cases, next day trading disclosure would provide a flood of immaterial information and require compliance efforts that are out of balance with the potential benefit to investors. In other cases, while daily trading information may sometimes benefit some market participants (especially those who trade against the registrant), it could also harm the registrant and its long-term stockholders.

Since registrants generally announce the maximum amount and planned duration of their repurchase plans, and currently must report on a quarterly basis the number and value of shares repurchased by month, next day reporting would provide incremental information regarding daily execution of repurchase plans that in many situations would be unquestionably immaterial. For example, we know of registrants that implement long-term share repurchase plans by means of frequent, relatively nominal purchases of shares. These repurchases are made through instructions to a broker to purchase a fixed dollar amount of shares, or a set number of shares, every trading day. In such cases, the amount of repurchases each day is usually *de minimus*. Investors would quickly learn to ignore the daily trading report as immaterial, while the registrant and its broker would be burdened with the daily administrative tasks of collecting and reporting each day's trade. This in effect punishes registrants that implement their repurchase plans in the most benign and transparent manner. The negligible value of this daily reporting would be outweighed by the compliance burden and costs required for a registrant to incorporate new proposed filings into its disclosure controls and procedures, to ensure agreements with brokers to position the registrant to satisfy these reporting obligations within the specified time, and to prepare and make the

ongoing filings. These burdens may discourage routine repurchases. Alternatively, registrants could be expected to make fewer (but larger) share repurchases, which is not an intended goal.

In other cases, requiring daily trading data and linkage to a 10b5-1 plan would allow other market participants to reverse-engineer 10b5-1 plan pricing grids or other formulas used to determine the amount and timing of the purchases by registrants. That knowledge would reasonably be expected to benefit certain market participants (including those who trade against the registrant) over others, to the detriment of the registrant and its stockholders and other stakeholders. Rather than reducing "information asymmetries", in these instances the proposed rules would tilt the playing field against the registrant and other market participants. As an unintended consequence, this could be expected to increase usage of accelerated share repurchase plans or other alternative arrangements, with a resulting loss of transparency.

Rather than requiring daily reporting, we suggest that the intended beneficial effects of increased transparency could be substantially obtained by requiring reporting on a monthly basis, which would still provide accelerated disclosure of transactions, while greatly reducing both the registrant's compliance costs and the potential detriments of certain trading disparities such as front running, and while also providing investors with a reduced, more manageable number of more meaningful reports to monitor. Alternatively, the Commission could require reporting when the aggregate level of incremental repurchases has actually become material and exceeds specified share or dollar thresholds. We note that, in other situations, registrants and other market participants are required to disclose changes when they exceed 1% of the total outstanding shares. For example, Item 3.02 of Form 8-K is triggered by issuance of unregistered securities (in transactions where there may be similar information asymmetries for market participants) resulting in a 1% change (5% for smaller reporting companies) in the number of outstanding shares from the most recently reported amount. Similarly, holders are required to amend Schedule 13D filings in the event of a 1% change in ownership of the class of securities. Establishing a reporting trigger for Form SR at a level of a 1% change in the number of outstanding shares would apply similar, materiality-based disclosure standards to changes resulting from share repurchases.

Finally, while the proposed requirement to furnish a Form SR within the next day following "execution" of a share repurchase would be relatively clear for many kinds of transactions, we believe that in other situations (such as accelerated share repurchase arrangements) the daily transaction information is less available to registrants, and the transactions rarely settle within the next day. It is not clear under the Proposed Amendments how repurchases under an ASR should be reported, and whether registrants would need to insist on daily information regarding transactions by the counterparty to the ASR agreement (and resulting daily amendments to previously filed Forms SR) or whether there would be an initial report and a subsequent amendment on final "true up", up to several months later. These information and reporting differences could create unintended consequences favoring alternative arrangements for implementing repurchase plans.

2. Proposed Revisions to Regulation S-K Item 703 Disclosures.

We believe that requiring disclosure of the objectives or rationale for share repurchase plans is not likely to provide information of value to market participants. We understand that registrants typically engage in share repurchases for a relatively limited set of reasons, including that it is a tax-efficient means of returning excess capital to stockholders, or to offset dilution from equity compensation plans, or that it is an appropriate investment when shares are viewed as undervalued. We think it is unlikely that this additional requirement would provide meaningful disclosure.

We also note that requiring disclosure in Form 10-Q and Form 10-K filings (by checking a box) in the event of purchases or sales by officers or directors within 10 business days before or after announcement of a repurchase plan will not provide meaningful additional information to investors and is likely to result in "false positive" disclosures. It would appear these proposed disclosures would be triggered by insider transactions under long-established 10b5-1 plans that may occur around the time of a share repurchase plan announcement. In that event, companies would check the box even when insiders did not use information about the repurchase plan in connection with individual purchase or sale decisions. We believe it would be prudent to exclude transactions under 10b5-1 plans from transactions that would require the box to be checked in Form 10-Q and Form 10-K filings. Existing Form 4 disclosure requirements already provide investors with transparency and more detailed information regarding insider stock transactions that occur close in time to a repurchase plan announcement.

One of the stated reasons for the proposed additional disclosures is a potential concern that share repurchases are somehow used to inflate executive compensation. In our experience, many companies that routinely repurchase their shares exclude the effect of share repurchases from the performance metrics used to determine relevant portions of executive compensation. Companies should be allowed to note these adjustments to rebut any implication that share repurchases were used to influence executive compensation determinations.

The Commission has indicated that the proposed disclosures are intended to allow investors to better understand how a registrant has structured its repurchase plan and whether it has taken steps to prevent officers and directors from potentially benefiting from repurchases in a manner that is not available to regular market participants. Within this framework, we do not understand how an insider transaction that occurs after the public announcement of a share repurchase plan would provide benefits to insiders that are not available to regular investors. We therefore would suggest limiting the scope of transactions that would trigger a notation in the proposed box.

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We appreciate the opportunity to comment on the Proposed Amendments and respectfully request that the Commission consider these recommendations and observations in developing final rules. We are available to discuss these matters and respond to any questions. Any questions should be directed to the undersigned or to Douglas J. Rein at doug.rein@us.dlapiper.com.

Thank you,

DLA Piper LLP (US)

/S/ Brad Rock_____

Brad Rock
Partner
Brad.Rock@us.dlapiper.com

cc: Douglas J. Rein