UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

THE CHAIR

July 13, 2015

The Honorable Tammy Baldwin
United States Senate
717 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Baldwin:

Thank you for your letter dated April 23, 2015 expressing concern about the increasing volume of stock buybacks by issuers. You express concern that the prevalence of buybacks may create a corresponding reduction in the availability of issuer capital that could be used for other corporate purposes and about the adequacy of the Commission's rules governing such buybacks on the open market.

Rule 10b-18 under the Securities Exchange Act of 1934 (Exchange Act) is a "safe harbor" from liability for manipulation under Sections 9(a)(2) and 10(b) of the Exchange Act and Rule 10b-5 thereunder. Specifically, when an issuer engaging in a stock buyback of its common stock in the market complies with the rule's manner, timing, price, and volume conditions, the rule provides the issuer a safe harbor *solely* as to the manner, timing, price, and volume of the repurchases. As a safe harbor, compliance with Rule 10b-18 is voluntary. To come within the safe harbor, an issuer's repurchases must satisfy on a daily basis each of the rule's four conditions, and failure to meet any of the four conditions will remove all of the issuer's repurchases from the safe harbor for that day. The safe harbor, moreover, is not available for repurchases that, although made in technical compliance with the rule, are part of a plan or scheme to evade the federal securities laws.

An issuer may decide to conduct the buybacks through a variety of methods, including privately negotiated purchases, tender offers, or purchases on the open market. If the issuer determines to conduct the buybacks in the open market, it must comply with the anti-manipulation provisions of the securities laws, specifically Sections 10(b) and 9(a) of the Exchange Act, and Rule 10b-5 and Regulation M. This means that issuers may not engage in stock buybacks for the purpose of manipulating or otherwise artificially increasing the price of their securities.

Issuers must disclose in their quarterly[1] and annual[2] reports all issuer and "affiliated purchaser"[3] purchases of shares or other units of any class of the issuer's equity securities that is

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[1] Item 2(c) of Part II of Form 10-Q. There is no corresponding requirement for foreign private issuers in Form 6-K.

[2] Item 5(c) of Form 10-K and Item 16E of Form 20-F.

registered under Section 12 of the Exchange Act, regardless of the manner of purchase (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).[4] This information about the number and amount of purchases is disclosed in tabular format by month.[5] For all plans or programs publicly announced, the issuer must provide additional details about the plan or program, including information about when the program was announced, the amount to be repurchased, and the expiration of the program.[6] Issuers are required to disclose all purchases, including purchases that do not satisfy the conditions of the safe harbor of Rule 10b-18.[7]

Your letter asks for a list of all investigations undertaken by the SEC into possible violations of Rule 10b-18. Because Rule 10b-18 is a voluntary safe harbor, issuers cannot violate this rule. The Commission does, however, have a long history of bringing enforcement actions against persons alleged to have manipulated common stock prices. In particular, the Commission often brings enforcement actions alleging violations of Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder to address conduct intended to manipulate common stock prices. For example, the Commission actively pursues "pump and dump" cases in which the issuer either itself or indirectly through others touts its common stock through false and misleading statements to the market place.[8]

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[3] As defined in Rule 10b-18(a)(3).

[4] *See* Item 703 of Regulation S-K and Item 16E of Form 20-F. Generally, issuers that publicly announce a buyback program also file a current report on Form 8-K.

[5] An issuer must disclose in tabular format: the total number of shares (or units) purchased; the average price paid per share (or unit); the total number of shares (or units) purchased as part of publicly announced plans or programs; and the maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs. *See* Item 703 of Regulation S-K and Item 16E of Form 20-F.

[6] Specifically, for plans or programs publicly announced, an issuer must disclose: 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. *See* Item 703 of Regulation S-K and Item 16E of Form 20-F.

[7] Instruction to Item 703 of Regulation S-K and Instruction to Item 16E of Form 20-F.

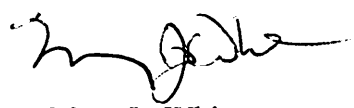
[8] *See, e.g., SEC v. Pagnano, et al.*, Civil Action No. 14-CV-7691 (VM) (S.D.N.Y.) (filed Sept. 23, 2014); *SEC v. Benou, et al.*, Civil Action No. 14-CV-7284 (PGS) (D.N.J.) (filed Nov. 21, 2014); *SEC v. Zenergy Int'l, Inc., et al.*, Civil Action No. 13-CV-5511 (JBG) (N.D. Ill.) (filed Aug. 1, 2013); *SEC v. Spongetech Delivery Systems, Inc., et al.*, Civil Action No. 10-CV-2031 (DLI) (E.D.N.Y.) (filed May 5, 2010). In addition, lists of SEC enforcement actions, including market manipulations, are published annually. *See, e.g.*, Select SEC and Market Data Fiscal 2014, *available at* http://www.sec.gov/about/secstats2014.pdf.

Manipulation also can involve trading to create a false or deceptive picture of the demand for a security. The Commission closely monitors and pursues through enforcement actions such manipulative misconduct. For example, the Commission has brought cases about schemes to manipulate stock prices by creating false or misleading appearances with respect to stock prices at the expense of retail investors. Such schemes may be effected by placing purchase orders at or near the close of the market to inflate the day's closing price, "painting the tape" by placing multiple small orders at successively high prices, or engaging in coordinated matched trading to create the appearance of legitimate investor demand through buy and sell orders for substantially the same amounts and prices.

SEC staff from the Division of Trading and Markets has consulted with economists in the Division of Economic and Risk Analysis (DERA) regarding the issue of buybacks as well as DERA's current and future role in analytic study in this area. Performing data analyses for issuer stock repurchases presents significant challenges because detailed trading data regarding repurchases is not currently available. Nevertheless, DERA staff would assist the Commission in evaluating the economic effects of any future rulemaking that concerns issuer buybacks or are otherwise related to the issues that you have raised.

Thank you again for your letter. Please do not hesitate to contact me at (202) 551-2100, or have a member of your staff contact Tim Henseler, Director of the Office of Legislative and Intergovernmental Affairs, at (202) 551-2010, if we can be of further assistance.

Sincerely,



Mary Jo White
Chair