

116TH CONGRESS  
1ST SESSION

# S. 2391

To amend the Securities Exchange Act of 1934 to impose requirements relating to the purchase of certain equity securities by issuers, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 31, 2019

Mr. BROWN introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To amend the Securities Exchange Act of 1934 to impose requirements relating to the purchase of certain equity securities by issuers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Stock Buyback Reform  
5 and Worker Dividend Act of 2019”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Over the last several decades—

1           (A) the volume and value of stock  
2           buybacks have increased significantly, with par-  
3           ticularly large increases occurring in the 15  
4           years preceding the date of enactment of this  
5           Act; and

6           (B) the wealth gap in the United States  
7           has widened drastically, as corporate profits  
8           and executive compensation have skyrocketed,  
9           but, for workers, salaries and wages have barely  
10          increased and purchasing power has remained  
11          the same.

12          (2) Between 2004 and 2013, some of the larg-  
13          est companies in the United States spent at least  
14          100 percent of their net income on stock buybacks  
15          and, between 2010 and 2017, companies in the  
16          United States spent more than \$3,000,000,000,000  
17          on those buybacks. After the enactment of changes  
18          to the tax laws of the United States in December  
19          2017, companies in the United States further in-  
20          creased stock buyback activity.

21          (3) In 2018—

22                (A) companies listed in the S&P 500 index  
23                spent \$806,400,000,000 purchasing their own  
24                stock, an amount that is 55 percent higher than

1           in 2017 and 36 percent higher than in 2007,  
2           the year that—

3                   (i) had previously held the record for  
4                   the largest total buyback amount; and

5                   (ii) marked the beginning of the most  
6                   significant financial crisis since the Great  
7                   Depression; and

8           (B) companies spent more money on stock  
9           buybacks than on debt payments, capital ex-  
10          penditures, research and development, or divi-  
11          dends.

12          (4) Stock buybacks benefit large shareholders  
13          and corporate executives, the pay packages of whom  
14          include significant stock compensation. Those  
15          buybacks can also increase the earnings per share  
16          for a company and nearly ½ of the companies listed  
17          in the S&P 500 index link executive compensation to  
18          earnings per share.

19          (5) Compared to the typical worker, the com-  
20          pensation for a chief executive officer (referred to in  
21          this paragraph as a “CEO”) has increased signifi-  
22          cantly. In 1989, the ratio of CEO-to-worker com-  
23          pensation was 58 to 1, but, in 2017, that ratio was  
24          312 to 1. Over roughly the same period of time, the  
25          wealth gap in the United States has widened consid-

erably. Between 1989 and 2016, the share of wealth in the United States held by the top 1 percent of individuals in the United States with respect to annual income increased from just below 30 percent to nearly 39 percent, while the share of wealth held by the bottom 90 percent of individuals in the United States with respect to annual income dropped from slightly more than 33 percent to less than 23 percent.

(6) Since 2000, corporate profits, as a percentage of total income in the United States, have increased by nearly 5 percentage points while workers' salaries, as a percentage of that total income, have decreased by 4 percentage points.

(7) The economic strength of the United States is undermined by the wealth gap described in this section. According to the Organisation for Economic Co-operation and Development, increasing income inequality in the United States between 1990 and 2010 reduced the per capita gross domestic product of the United States by approximately 5 percentage points.

(8) Left unaddressed, the patterns of corporate excess and growing wealth inequality described in this section will worsen and workers will continue to

1 contribute to corporate profits without sharing in  
2 those profits.

3 **SEC. 3. REPURCHASE OF COMMON STOCK.**

4 (a) REPEAL OF SAFE HARBOR.—Section 240.10b–18  
5 of title 17, Code of Federal Regulations, shall have no  
6 force or effect.

7 (b) DISCLOSURE AND OTHER REQUIREMENTS.—The  
8 Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.)  
9 is amended by inserting after section 9 (15 U.S.C. 78i)  
10 the following:

11 **“SEC. 9A. ISSUER COMMON STOCK REPURCHASES.**

12 “(a) DEFINITIONS.—

13 “(1) IN GENERAL.—Except as provided in para-  
14 graph (2), in this section, the definitions of terms in  
15 section 240.10b–18(a) of title 17, Code of Federal  
16 Regulations, as in effect on the day before the date  
17 of enactment of this section, shall apply to any such  
18 term that appears in this section.

19 “(2) COVERED PURCHASE.—The term ‘covered  
20 purchase’—

21 “(A) means a purchase (or any bid or limit  
22 order that would effect such purchase) of the  
23 common stock of an issuer (or an equivalent in-  
24 terest, including a unit of beneficial interest in  
25 a trust or limited partnership or a depository

1 share) by or for the issuer or any affiliated pur-  
2 chaser (including riskless principal trans-  
3 actions);

4 “(B) includes a purchase described in sub-  
5 paragraph (A) that is effected during a trans-  
6 action described in subparagraph (C)(iv) in  
7 which the consideration is solely cash and there  
8 is no valuation period; and

9 “(C) does not include a purchase described  
10 in subparagraph (A) that is effected—

11 “(i) during the applicable restricted  
12 period of a distribution that is subject to  
13 section 242.102 of title 17, Code of Fed-  
14 eral Regulations, or any successor regula-  
15 tion;

16 “(ii) by or for an issuer plan by an  
17 agent independent of the issuer;

18 “(iii) as a fractional share purchase (a  
19 fractional interest in a security) evidenced  
20 by a script certificate, order form, or simi-  
21 lar document;

22 “(iv) during the period from the time  
23 of public announcement, as defined in sec-  
24 tion 230.165(f) of title 17, Code of Federal  
25 Regulations, or any successor regulation,

of a merger, acquisition, or similar transaction involving a recapitalization, until the earlier of the completion of that transaction or the completion of the vote by target shareholders;

“(v) pursuant to section 240.13e–1 of title 17, Code of Federal Regulations, or any successor regulation;

“(vi) pursuant to a tender offer that is subject to or specifically excepted from section 240.13e–4 of title 17, Code of Regulations, or any successor regulation; or

“(vii) pursuant to a tender offer that is subject to section 14(d), and any rules or regulations prescribed by the Commission relating to that section.

“(b) REQUIREMENT.—

“(1) IN GENERAL.—Except as provided in paragraph (2), it shall be unlawful as a fraudulent, deceptive, or manipulative act or practice under section 9(a)(2) or 10(b) of this Act or section 240.10b–5 of title 17, Code of Federal Regulations, or any successor regulation, for an issuer or affiliated purchaser of the issuer to effect a repurchase of the common stock of the issuer unless the issuer or af-

1        affiliated purchaser, as applicable, complies with the  
2        requirements under this section.

3            “(2) EXCEPTIONS.—Paragraph (1) shall not  
4        apply—

5            “(A) to an issuer or affiliated purchaser of  
6        an issuer if—

7            “(i) a violation of the requirements  
8            under this section occurred solely by rea-  
9            son of the conduct of a broker, dealer, or  
10          other person acting for the issuer or affili-  
11          ated purchaser;

12          “(ii) the issuer or affiliated purchaser  
13          did not know or have reason to know that  
14          the broker, dealer, or other person was en-  
15          gaging or would engage in that conduct;  
16          and

17          “(iii) the issuer or affiliated purchaser  
18          had taken reasonable steps to ensure that  
19          the broker, dealer, or other person would  
20          comply with the requirements under this  
21          section; or

22          “(B) to a broker, dealer, or other person  
23          acting for an issuer or affiliated purchaser of  
24          the issuer if—



1 “(i) a violation of the requirements  
2 under this section occurred solely by rea-  
3 son of the conduct of the issuer or affili-  
4 ated purchaser; and

5 “(ii) the broker, dealer, or other per-  
6 son did not know or have reason to know  
7 that the issuer or affiliated purchaser was  
8 engaging or would engage in conduct that  
9 would violate the requirements under this  
10 section.

11 “(c) DISCLOSURE.—

12 “(1) IN GENERAL.—Any issuer or affiliated  
13 purchaser of the issuer that seeks to effect a plan  
14 or program to repurchase common stock of the  
15 issuer shall, on or before the date on which the  
16 issuer or affiliated purchaser begins repurchasing  
17 common stock under the plan or program, disclose  
18 to the Commission on a Form 8-K a filing that in-  
19 cludes—

20 “(A) the economic rationale, long-term  
21 benefits, and reason for the repurchase;

22 “(B) the minimum and maximum number  
23 (if any) of shares of common stock to be repur-  
24 chased, and the dollar value to be spent, under  
25 the plan or program;

1           “(C) the manner and method of repur-  
2 chase, including any price guidelines or limita-  
3 tions, or contractual plan or arrangement;

4           “(D) the intended disposition or treatment  
5 of the repurchased common stock;

6           “(E) whether any executive officer of the  
7 issuer or affiliated purchaser is purchasing  
8 common stock during the pendency of the re-  
9 purchase;

10           “(F) whether any executive officer of the  
11 issuer or affiliated purchaser is permitted, or  
12 intends, to sell common stock during the pend-  
13 ency of the repurchase;

14           “(G) a summary of any communications  
15 between the issuer and any holders of common  
16 stock of the issuer regarding the scope and im-  
17 plementation of the plan or program; and

18           “(H) the source of funds for the repur-  
19 chase, specifying if any debt will be incurred by  
20 the issuer or affiliated purchaser.

21           “(2) WEEKLY DISCLOSURE.—

22           “(A) IN GENERAL.—In addition to the re-  
23 quirement under paragraph (1), each issuer  
24 that effects a repurchase of common stock of  
25 the issuer in any calendar week shall, not later

1           than the last business day of the following  
2           week, file with the Commission a public disclo-  
3           sure filing (in such form and manner as the  
4           Commission shall, by rule, establish) that iden-  
5           tifies—

6                   “(i) the number of shares of common  
7                   stock of the issuer that the issuer repur-  
8                   chased;

9                   “(ii) the average price paid per share  
10                  during the week covered by the filing; and

11                  “(iii) the identity of any broker-dealer  
12                  that effected the purchase during the week  
13                  covered by the filing.

14               “(B) NO REPURCHASE.—An issuer shall  
15               not be required to submit a filing under sub-  
16               paragraph (A) with respect to any calendar  
17               week in which the issuer does not repurchase  
18               the common stock of the issuer.

19               “(3) DEFINITION.—In this subsection, the term  
20               ‘executive officer’ has the meaning given the term in  
21               section 240.3b–7 of title 17, Code of Federal Regu-  
22               lations, as in effect on the day before the date of en-  
23               actment of this section.

24               “(d) PURCHASING REQUIREMENTS.—

25                   “(1) ONE BROKER OR DEALER.—

1           “(A) IN GENERAL.—Except as provided in  
2           subparagraph (B) and paragraph (2)(B)(ii), a  
3           covered purchase shall be effected from or  
4           through only 1 broker or dealer on any single  
5           day.

6           “(B) EXCEPTION.—Subparagraph (A)  
7           shall not apply to a covered purchase that is  
8           not solicited by or on behalf of an issuer or an  
9           affiliated purchaser of the issuer.

10          “(C) SAME BROKER OR DEALER.—If a  
11          covered purchase is effected by or on behalf of  
12          not less than 1 affiliated purchaser of an issuer  
13          (or the issuer and not less than 1 of the affili-  
14          ated purchasers of the issuer) on a single day,  
15          the issuer and all affiliated purchasers shall use  
16          the same broker or dealer.

17          “(D) LIMITED ACCESS TO LIQUIDITY.—If  
18          a covered purchase is effected on behalf of an  
19          issuer by a broker-dealer that is not an elec-  
20          tronic communication network or other alter-  
21          native trading system, that broker-dealer can  
22          access electronic communication network or  
23          other alternative trading system liquidity in  
24          order to execute a repurchase of common stock

1 on behalf of the issuer or any affiliated pur-  
2 chaser of the issuer on that day.

3 “(2) TIME OF PURCHASES.—

4 “(A) IN GENERAL.—A covered purchase  
5 effected by an issuer or an affiliated purchaser  
6 of an issuer shall not be—

7 “(i) the opening (regular way) pur-  
8 chase reported in the consolidated system;

9 “(ii) except as provided in subpara-  
10 graph (B), effected during the 10 minutes  
11 before the scheduled close of the primary  
12 trading session in the principal market for  
13 the security, and the 10 minutes before the  
14 scheduled close of the primary trading ses-  
15 sion in the market where the purchase is  
16 effected, for a security that has an average  
17 daily trading volume reported for that se-  
18 curity during the 4 calendar weeks pre-  
19 ceding the week in which the purchase is  
20 to be effected of not less than \$1,000,000  
21 and a public float value of not less than  
22 \$150,000,000; or

23 “(iii) effected during the 30 minutes  
24 before the scheduled close of the primary  
25 trading session in the principal market for

1 the security, and the 30 minutes before the  
 2 scheduled close of the primary trading ses-  
 3 sion in the market where the purchase is  
 4 effected, for all other securities.

5 “(B) PURCHASE FOLLOWING CLOSE OF  
 6 PRIMARY TRADING SESSION.—

7 “(i) IN GENERAL.—A covered pur-  
 8 chase may be effected following the close of  
 9 the primary trading session until the ter-  
 10 mination of the period in which last sale  
 11 prices are reported in the consolidated sys-  
 12 tem if—

13 “(I) the covered purchase is ef-  
 14 fected at a price that does not exceed  
 15 the lower of—

16 “(aa) the closing price of the  
 17 primary trading session in the  
 18 principal market for the security;  
 19 or

20 “(bb) any lower bids or sale  
 21 prices subsequently reported in  
 22 the consolidated system; and

23 “(II) all other applicable require-  
 24 ments under this section are met.

1                   “(ii) DIFFERENT BROKERS AND  
 2                   DEALERS.—An issuer or an affiliated pur-  
 3                   chaser of an issuer may use 1 broker or  
 4                   dealer to effect a covered purchase during  
 5                   the period described in clause (i) that is  
 6                   different from the broker or dealer that the  
 7                   issuer or affiliated purchaser used during  
 8                   the primary trading session.

9                   “(iii) LIMITATION.—A covered pur-  
 10                  chase effected during the period described  
 11                  in clause (i) may be not be the opening  
 12                  transaction of the session following the  
 13                  close of the primary trading session.

14               “(3) PRICE OF PURCHASES.—Any covered pur-  
 15               chase shall be effected at a purchase price that—

16               “(A) does not exceed the highest inde-  
 17               pendent bid or the last independent transaction  
 18               price, whichever is higher, quoted or reported in  
 19               the consolidated system at the time the covered  
 20               purchase is effected;

21               “(B) for securities for which bids and  
 22               transaction prices are not quoted or reported in  
 23               the consolidated system, does not exceed the  
 24               highest independent bid or the last independent  
 25               transaction price, whichever is higher, displayed

1 and disseminated on any national securities ex-  
2 change or on any interdealer quotation system,  
3 as defined in section 240.15c2-11 of title 17,  
4 Code of Federal Regulations (or any successor  
5 regulation), that displays not less than 2 priced  
6 quotations for the security, at the time the cov-  
7 ered purchase is effected; and

8 “(C) for any other security not described  
9 in subparagraph (B), is not higher than the  
10 highest independent bid obtained from 3 inde-  
11 pendent dealers.

12 “(4) VOLUME OF PURCHASES.—The total vol-  
13 ume of covered purchases effected by or for an  
14 issuer and any affiliated purchaser of the issuer on  
15 any single day shall not exceed 15 percent of the av-  
16 erage daily trading volume reported for that security  
17 during the 4 calendar weeks preceding the week in  
18 which the covered purchase is to be effected.

19 “(5) ALTERNATIVE CONDITIONS.—The condi-  
20 tions of paragraphs (1) through (4) shall apply in  
21 connection with a covered purchase effected during  
22 a trading session following the imposition of a mar-  
23 ket-wide trading suspension, except that—



1           “(A) the time of covered purchases condi-  
2           tion under paragraph (2) shall not apply ei-  
3           ther—

4                   “(i) from the reopening of trading  
5                   until the scheduled close of trading on the  
6                   date on which that suspension is imposed;  
7                   or

8                   “(ii) at the opening of trading on the  
9                   next trading day until the scheduled close  
10                  of trading that day, if a market-wide trad-  
11                  ing suspension was in effect at the close of  
12                  trading on the preceding day; and

13                  “(B) the volume of covered purchases con-  
14                  dition under paragraph (4) shall be modified so  
15                  that the amount of covered purchases may not  
16                  exceed 100 percent of the average daily trading  
17                  volume for that security.

18           “(e) PROHIBITION ON SALES BY EXECUTIVE OFFI-  
19   CERS.—

20                   “(1) IN GENERAL.—Except as provided in para-  
21                  graph (2), upon the announcement by an issuer of  
22                  the initiation, continuation, or increase in size of a  
23                  repurchase plan for the common stock of the issuer,  
24                  an executive officer of the issuer may not sell shares

1 of the common stock of the issuer during the 7-day  
2 period beginning on the date of the announcement.

3 “(2) EXCEPTION.—An executive officer of an  
4 issuer may sell shares of the common stock of the  
5 issuer during the 7-day period described in para-  
6 graph (1) if the sale of the shares involves a sale of  
7 common stock that satisfies the conditions under  
8 section 240.10b5–1(c) of title 17, Code of Federal  
9 Regulations, or any successor regulation.

10 “(f) ADDITIONAL REGULATION.—The Commission  
11 may, by rule, establish further disclosures, conditions, or  
12 requirements to increase the information provided by  
13 issuers with respect to repurchases of common stock.”.

14 (c) FORM 8–K.—Not later than 1 year after the date  
15 of enactment of this Act, the Securities and Exchange  
16 Commission (referred to in this section as the “Commis-  
17 sion”) shall revise the form described in section 249.308  
18 of title 17, Code of Federal Regulations, or any successor  
19 regulation (commonly known as “Form 8–K”), to require  
20 the disclosure of the information described in section  
21 9A(c) of the Securities Exchange Act of 1934, as added  
22 by subsection (b).

23 (d) STUDY.—Not later than 1 year after the date of  
24 enactment of this Act, the Commission shall submit to  
25 Congress—

1           (1) the results of a study conducted by the  
 2           Commission regarding the impact of this section,  
 3           and the amendments made by this section, on thinly  
 4           traded securities; and

5           (2) recommendations regarding any changes to  
 6           paragraph (4) of section 9A(d) of the Securities Ex-  
 7           change Act of 1934, as added by subsection (b) of  
 8           this section, that the Commission determines to be  
 9           necessary.

10 **SEC. 4. WORKER DIVIDEND.**

11           (a) DEFINITIONS.—In this section—

12           (1) the term “Commission” means the Securi-  
 13           ties and Exchange Commission;

14           (2) the term “covered issuer”—

15           (A) means an issuer, a class of equity se-  
 16           curities of which is registered pursuant to sec-  
 17           tion 12 of the Securities Exchange Act of 1934  
 18           (15 U.S.C. 78l); and

19           (B) includes a consolidated subsidiary of  
 20           an issuer described in subparagraph (A);

21           (3) the term “eligible worker”, with respect to  
 22           a covered issuer, means a worker with respect to the  
 23           covered issuer who, in a fiscal year—

24           (A) performs services for the covered  
 25           issuer for not fewer than 30 days;

1 (B) as part of carrying out a contract de-  
2 scribed in paragraph (10)(A)(iv)(I)(cc), per-  
3 forms services or provides goods pursuant to  
4 that contract for not fewer than 30 days; or

5 (C) performs services for an employer de-  
6 scribed in paragraph (10)(A)(v) for not fewer  
7 than 30 days;

8 (4) the terms “employ”, “employee”, “em-  
9 ployer”, and “goods” have the meanings given those  
10 terms in section 3 of the Fair Labor Standards Act  
11 of 1938 (29 U.S.C. 203);

12 (5) the terms “exchange” and “issuer” have the  
13 meanings given those terms in section 3(a) of the  
14 Securities Exchange Act of 1934 (15 U.S.C. 78c(a));

15 (6) the term “executive officer”, with respect to  
16 a covered issuer, means—

17 (A) the president of the covered issuer;

18 (B) any vice president of the covered issuer  
19 who is in charge of a principal business unit, di-  
20 vision, or function of the covered issuer, such as  
21 sales, administration, or finance;

22 (C) any other officer of the covered issuer  
23 who performs a policymaking function for the  
24 covered issuer; and

1 (D) any other individual who performs a  
2 similar policymaking function to that described  
3 in subparagraph (C);

4 (7) the term “Form 10–K” means the form de-  
5 scribed in section 249.310 of title 17, Code of Fed-  
6 eral Regulations, or any successor regulation;

7 (8) the term “Form 10–Q” means the form de-  
8 scribed in section 249.308a of title 17, Code of Fed-  
9 eral Regulations, or any successor regulation;

10 (9) the terms “franchisee” and “franchisor”  
11 have the meanings given those terms in section  
12 436.1 of title 16, Code of Federal Regulations, as in  
13 effect on the date of enactment of this Act; and

14 (10) the term “worker”—

15 (A) means, with respect to a covered  
16 issuer—

17 (i) an employee who is employed by  
18 the covered issuer;

19 (ii) an individual, other than an em-  
20 ployee described in clause (i), who is en-  
21 gaged by the covered issuer to perform  
22 services, including by working as an inde-  
23 pendent contractor, without regard to—

24 (I) the label or classification as-  
25 signed to the individual, or used to

1 refer to the individual, by the covered  
2 issuer; and

3 (II) whether the individual has  
4 established, and is the sole owner of,  
5 a single-member limited liability com-  
6 pany;

7 (iii) an employee who is—

8 (I) employed by an employer—

9 (aa) other than the covered  
10 issuer; and

11 (bb) that is privately held;  
12 and

13 (II) supplied by the employer de-  
14 scribed in subclause (I) to perform  
15 services for the covered issuer;

16 (iv) an employee who—

17 (I) is employed by an employer—

18 (aa) other than the covered  
19 issuer;

20 (bb) that is privately held;  
21 and

22 (cc) with which the covered  
23 issuer enters into a contract,  
24 under which that employer per-

1 forms services for, or provides  
 2 goods to, the covered issuer; and

3 (II) performs services or provides  
 4 goods pursuant to the contract de-  
 5 scribed in subclause (I)(cc); and

6 (v) an employee who is employed by  
 7 an employer—

8 (I) other than the covered issuer;

9 (II) that is privately held; and

10 (III) that has a relationship or  
 11 arrangement with the covered issuer  
 12 such that the employer is a franchisee  
 13 and the covered issuer is a franchisor;  
 14 and

15 (B) does not include an executive officer of  
 16 a covered issuer.

17 (b) REQUIREMENTS.—

18 (1) CALCULATION OF WORKER DIVIDEND.—For  
 19 the purposes of the requirements of this section, for  
 20 a fiscal year (referred to in this section as the “cov-  
 21 ered year”), the payment described in paragraph  
 22 (3)(A) shall be calculated as follows:

23 (A) Adding the following amounts:

24 (i) In that covered year, the total  
 25 amount spent by the covered issuer on the

1 purchase of common stock (or an equiva-  
 2 lent interest, including a unit of beneficial  
 3 interest in a trust or limited partnership or  
 4 a depository share) of the covered issuer,  
 5 without regard to the means or method  
 6 used by the covered issuer to effect that  
 7 purchase.

8 (ii) The total amount of any increase  
 9 in ordinary dividends declared and paid by  
 10 the covered issuer in the covered year with  
 11 respect to the common stock of the covered  
 12 issuer, as compared with that amount in  
 13 the fiscal year preceding the covered year.

14 (iii) The total amount spent by the  
 15 covered issuer in the covered year on spe-  
 16 cial or 1-time dividends with respect to the  
 17 common stock of the covered issuer.

18 (B) Dividing the sum obtained under sub-  
 19 paragraph (A) by 1,000,000.

20 (2) REPORTING.—Each covered issuer shall—

21 (A) in each Form 10-K submitted by the  
 22 covered issuer, disclose, with respect to the cov-  
 23 ered year to which the submission applies—

24 (i) each component of the calculation  
 25 described in paragraph (1), and the total



1 amount of that calculation, if that calcula-  
2 tion results in an amount that is greater  
3 than zero; and

4 (ii) the number of eligible workers  
5 with respect to the covered issuer, which  
6 the covered issuer shall identify by type of  
7 worker and employer; and

8 (B) not later than 30 days after the last  
9 day of a covered year, provide to each worker  
10 with respect to the covered issuer a document,  
11 in physical or electronic form, that discloses the  
12 number of hours that the worker worked during  
13 the covered year.

14 (3) PAYMENT AND VERIFICATION.—

15 (A) IN GENERAL.—Not later than the last  
16 day of the first fiscal quarter that begins after  
17 the end of a covered year, if the calculation  
18 under paragraph (1) with respect to that cov-  
19 ered year results in an amount that is greater  
20 than zero, each covered issuer shall issue to  
21 each eligible worker with respect to the covered  
22 issuer for that covered year a cash payment as  
23 follows:

24 (i) An eligible worker who was em-  
25 ployed, or otherwise engaged, to perform

1 services for the covered issuer, perform  
2 services or provide goods pursuant to a  
3 contract described in subsection  
4 (a)(10)(A)(iv)(I)(cc), or perform services  
5 for an employer described in subsection  
6 (a)(10)(A)(v) for fewer than 520 hours  
7 during the covered year shall receive 25  
8 percent of the amount calculated under  
9 paragraph (1).

10 (ii) An eligible worker who was em-  
11 ployed, or otherwise engaged, to perform  
12 services for the covered issuer, perform  
13 services or provide goods pursuant to a  
14 contract described in subsection  
15 (a)(10)(A)(iv)(I)(cc), or perform services  
16 for an employer described in subsection  
17 (a)(10)(A)(v) for not fewer than 520 hours  
18 and fewer than 1,040 hours during the  
19 covered year shall receive 50 percent of the  
20 amount calculated under paragraph (1).

21 (iii) An eligible worker who was em-  
22 ployed, or otherwise engaged, to perform  
23 services for the covered issuer, perform  
24 services or provide goods pursuant to a  
25 contract described in subsection

1 (a)(10)(A)(iv)(I)(cc), or perform services  
 2 for an employer described in subsection  
 3 (a)(10)(A)(v) for not fewer than 1,040  
 4 hours and fewer than 1,560 hours during  
 5 the covered year shall receive 75 percent of  
 6 the amount calculated under paragraph  
 7 (1).

8 (iv) An eligible worker who was em-  
 9 ployed, or otherwise engaged, to perform  
 10 services for the covered issuer, perform  
 11 services or provide goods pursuant to a  
 12 contract described in subsection  
 13 (a)(10)(A)(iv)(I)(cc), or perform services  
 14 for an employer described in subsection  
 15 (a)(10)(A)(v) for not fewer than 1,560  
 16 hours during the covered year shall receive  
 17 100 percent of the amount calculated  
 18 under paragraph (1).

19 (B) FORM 10-Q.—Each covered issuer that  
 20 is required to issue payments under subpara-  
 21 graph (A) with respect to a covered year shall  
 22 certify, in the first Form 10-Q submitted by  
 23 the covered issuer after the date on which the  
 24 covered issuer is required to make the pay-

1           ments, that the covered issuer made the pay-  
 2           ments.

3           (C) INABILITY TO MAKE PAYMENTS.—If a  
 4           covered issuer is required to issue a payment  
 5           under subparagraph (A) and is unable to issue  
 6           the payment because the individual to whom the  
 7           payment relates is, as of the date on which the  
 8           payment is due, no longer a worker with respect  
 9           to the covered issuer, the covered issuer shall—

10                 (i) in a manner that the Commission  
 11                 shall, by rule, establish, deposit in an es-  
 12                 crow account the amount of the required  
 13                 payment; and

14                 (ii) in the submission under subpara-  
 15                 graph (B) to which the payment relates,  
 16                 describe the efforts of the covered issuer to  
 17                 issue the payment.

18           (c) ENFORCEMENT.—With respect to a covered  
 19           issuer that is required to issue the payments described in  
 20           subsection (b)(3)(A) and fails to issue those payments—

21                 (1) the covered issuer—

22                         (A) for the 5-year period beginning on the  
 23                         date on which the covered issuer was required  
 24                         to issue the payments, may not make a pur-  
 25                         chase to which section 9A of the Securities Ex-

1 change Act of 1934, as added by section 3(b)  
 2 of this Act, applies, except to account for com-  
 3 mon stock that is issuable under an employee  
 4 stock or option award in any such year; and

5 (B) for each of the first 5 fiscal years after  
 6 the covered year with respect to which the cov-  
 7 ered issuer was required to issue the payments,  
 8 shall issue those payments in the amount re-  
 9 quired with respect to the covered year; and

10 (2) the Commission may, in accordance with  
 11 applicable laws and regulations, bring an enforce-  
 12 ment action against the covered issuer.

13 (d) PROTECTIONS FOR WORKERS.—

14 (1) PROHIBITION.—No covered issuer may dis-  
 15 charge or in any manner discriminate against any  
 16 worker with respect to the covered issuer with re-  
 17 spect to the compensation, terms, conditions, or  
 18 other privileges of employment of the worker because  
 19 the worker is eligible to receive a payment from the  
 20 covered issuer under subsection (b)(3)(A).

21 (2) PRIVATE RIGHT OF ACTION.—

22 (A) IN GENERAL.—Any covered issuer that  
 23 fails to issue a payment to a worker with re-  
 24 spect to the covered issuer that is required  
 25 under subsection (b)(3)(A) shall be liable to

1           that worker in the amount of that payment and  
2           in an additional amount as liquidated damages.

3           (B) JURISDICTION.—An action to recover  
4           the liability described in subparagraph (A) may  
5           be maintained against a covered issuer de-  
6           scribed in that subparagraph in any Federal or  
7           State court of competent jurisdiction by any 1  
8           or more workers described in that subparagraph  
9           for and on behalf of that worker or workers and  
10          other workers similarly situated, except that no  
11          worker shall be a party plaintiff to any such ac-  
12          tion unless the worker gives consent to become  
13          such a party and that consent is filed in the  
14          court in which the action is brought.

15          (C) ATTORNEY'S FEES.—The court in  
16          which an action is brought under subparagraph  
17          (B) shall, in addition to any judgment awarded  
18          to the plaintiff or plaintiffs in the action, allow  
19          a reasonable attorney's fee to be paid by the de-  
20          fendant and the costs of the action.

21          (D) ARBITRATION.—Notwithstanding any  
22          other Federal or State law, rule, or regulation,  
23          any agreement to arbitrate any dispute involv-  
24          ing a covered issuer and a worker with respect  
25          to the covered issuer shall not apply with re-

1           spect to the right of the worker to bring an ac-  
 2           tion under this paragraph.

3       (e) RULES OF CONSTRUCTION.—

4           (1) IN GENERAL.—Nothing in this section may  
 5       be construed to—

6           (A) supersede any provision in any collec-  
 7           tive bargaining agreement to which a covered  
 8           issuer is a party; or

9           (B) prevent an individual from receiving  
 10          multiple payments under subsection (b)(3)(A)  
 11          for a covered year if the individual is an eligible  
 12          worker with respect to more than 1 covered  
 13          issuer in that covered year.

14       (2) OTHER PROFIT-SHARING AGREEMENTS.—

15       No other profit-sharing agreement between a cov-  
 16       ered issuer and any worker with respect to the cov-  
 17       ered issuer, other than as specifically described in  
 18       this section, may be construed to satisfy the require-  
 19       ments of this section.

20   **SEC. 5. COMMISSION REQUIREMENTS.**

21       (a) DEFINITION.—In this section, the term “Regula-  
 22       tion S–K” means part 229 of title 17, Code of Federal  
 23       Regulations, or any successor regulations.

24       (b) UPDATES.—Not later than 1 year after the date  
 25       of enactment of this Act, the Securities and Exchange

1 Commission shall make any updates to Regulation S–K  
2 that are required as a result of this Act and the amend-  
3 ments made by this Act.

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