

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.

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

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

share) by or for the issuer or any affiliated purchaser (including riskless principal transactions);

“(B) includes a purchase described in subparagraph (A) that is effected during a transaction described in subparagraph (C)(iv) in which the consideration is solely cash and there is no valuation period; and

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

“(i) during the applicable restricted period of a distribution that is subject to section 242.102 of title 17, Code of Federal Regulations, or any successor regulation;

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

“(iii) as a fractional share purchase (a fractional interest in a security) evidenced by a script certificate, order form, or similar document;

“(iv) during the period from the time of public announcement, as defined in section 230.165(f) of title 17, Code of Federal 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

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

(iv) An eligible worker who was employed, or otherwise engaged, to perform services for the covered issuer, perform services or provide goods pursuant to a contract described in subsection (a)(10)(A)(iv)(I)(cc), or perform services for an employer described in subsection (a)(10)(A)(v) for not fewer than 1,560 hours during the covered year shall receive 100 percent of the amount calculated under paragraph (1).

(B) FORM 10-Q.—Each covered issuer that is required to issue payments under subparagraph (A) with respect to a covered year shall certify, in the first Form 10-Q submitted by the covered issuer after the date on which the 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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