



Insights: Alert

SEC Adopts New Share Repurchase Disclosure Rules

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On May 3, 2023, the Securities and Exchange Commission adopted amendments to modernize the disclosure requirements relating to repurchases of an issuer's equity securities. The amendments are intended by the SEC to "improve disclosure and provide investors with enhanced information to assess the purposes and effects of share repurchases."

Set forth below is a summary of the key aspects of the amendments, along with thoughts and considerations for companies to consider in advance of the amendments' effectiveness. A link to the adopting release is available [here](#), and a Fact Sheet published by the SEC can be found [here](#).

Quarterly Disclosure of Daily Quantitative Transaction Information

The amendments replace the existing reporting requirements under Item 703(a) of Regulation S-K, and will require all issuers to disclose, in their Forms 10-Q and 10-K, quantitative information on their daily share repurchases during each month of the previous quarter. The required disclosures will be set forth in tabular format in an exhibit to the Form 10-Q or 10-K, as applicable, and will include, for each day on which a repurchase was conducted:

- The class of shares;
- Average price paid per share;
- The total number of shares purchased, including the total number of shares purchased as part of a publicly announced plan;
- The aggregate maximum number of shares (or approximate dollar value) that may yet be purchased under a publicly announced plan;
- The total number of shares purchased on the open market; and
- The total number of shares purchased that are intended to qualify for the safe harbor in Rule 10b-18 and separately the total number of shares purchased pursuant to a plan that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c).

Check the Box Disclosure

Issuers will also be required to include a checkbox before the tabular disclosure indicating whether any Section 16(a) officers and directors purchased or sold shares that are the subject of a publicly announced plan or program within four business days before or after the company's announcement of that plan or program, or any

announcement of an increase in the number or amount of securities to be purchased under an existing plan or program.

Narrative Disclosure

In addition to the new tabular disclosure and related checkbox, the amendments impose additional narrative disclosure requirements relating to an issuer's repurchases and repurchase programs. Within the bodies of their Forms 10-Q and 10-K, issuers will be required to disclose the following information, with reference to the particular repurchases reported in their exhibit table:

- Objectives or rationales for its share repurchases and the process or criteria used to determine the amount of repurchases;
- Shares purchased other than through a publicly announced plan or program;
- Details regarding publicly announced repurchase plans or programs; and
- Any policies and procedures relating to purchases and sales of the company's securities during a repurchase program by its officers and directors, including any restriction on such transactions.

Disclosure of Company Rule 10b5-1 Plans

The amendments created new Item 408(d) of Regulation S-K, which will require quarterly disclosure in Forms 10-Q and 10-K about an *issuer's* adoption and termination of Rule 10b5-1 trading arrangements, similar to the rules adopted by the SEC in December 2022 that require issuers to disclose in their periodic reports whether any *executives* or *directors* have entered into or terminated Rule 10b5-1 trading plans. Under the new rule, an issuer will be required to disclose the date on which it adopted or terminated a Rule 10b5-1 trading plan, the duration of the plan, and the aggregate number of shares to be purchased or sold pursuant to the arrangement.

Compliance Deadlines

Most issuers will be required to make these tabular and narrative disclosures beginning with the first filing that covers the first full fiscal quarter that begins on or after October 1, 2023. As a result, issuers with a December 31, 2023 fiscal year end will be required to comply with the new requirements in their Form 10-K for their 2023 fiscal year with respect to repurchases made during the quarter ending December 31, 2023.

Foreign Private Issuers and Listed Closed-End Funds

The amendments also include similar disclosure requirements for foreign private issuers and listed closed-end funds. We refer you to the full text of the amendments, and the related Fact Sheet, for details of those requirements.

Takeaways and Next Steps

Fortunately for issuers, the SEC dialed back its original rulemaking proposal which sought nearly "real-time" reporting of share repurchases. However, the amendments that were adopted are significant, and issuers should begin working with their internal teams and outside advisors to prepare well in advance of the compliance deadline.

In particular, with respect to the required narrative disclosure around an issuer's objectives and rationale behind its share repurchases and programs, it will be important for issuers to think ahead to how they may craft tailored disclosure that is specific to their company's particular circumstances. Such disclosure will also need to be revisited and potentially updated each time share repurchases are required to be included in a periodic filing.

In addition, issuers with active repurchase programs should consider, with their treasury departments and brokers, whether changes to their reporting systems and disclosure controls and procedures will be required to be able to accurately track and report repurchase information on a daily basis. Issuers should also reevaluate whether to restrict transactions by insiders during the conduct of an issuer repurchase program, as those insider transactions may be subject to increased scrutiny when viewed in hindsight against the issuer's daily repurchase activity.

For more information on these amendments and the new disclosure requirements, we invite you to contact any member of our Securities Team.

Related People



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