

Publications

SEC Adopts New Share Repurchase Disclosure Requirements

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On May 3, 2023, the U.S. Securities and Exchange Commission (SEC) adopted a **final rule** that amends disclosure requirements for companies that repurchase their equity securities. The final rule has the effect of significantly expanding the detail of information a company must publicly disclose in connection with its share repurchase programs and transactions.

Overview

The final rule requires companies to:

- Report the details of daily repurchase activity in a tabular disclosure, generally on a quarterly basis;^[1]
- Include a checkbox above the tabular disclosure indicating whether certain directors or officers traded in the company's securities within four business days before or after the public announcement of a repurchase plan;
- Disclose the rationale for the company's share repurchases and the process or criteria used to determine the amount of repurchases;
- Describe any policies or procedures relating to the company's officers' and directors' purchases and sales of the company's securities while a repurchase program is in effect; and
- Report quarterly the company's adoption or termination of any Rule 10b5-1 trading arrangements.

New Requirements

Tabular Disclosure of Repurchase Activity

For each day on which a repurchase was executed, the tabular disclosure must include (1) the class of shares repurchased, (2) the number of shares repurchased, (3) the average price paid per share, (4) the number of shares repurchased as part of a publicly announced plan, (5) the maximum number of shares or dollar value that may yet be repurchased under a publicly announced plan, (6) the number of shares repurchased on the open market, (7) the number of shares

repurchased in transactions intended to qualify for the safe harbor in Exchange Act Rule 10b-18, and (8) the number of shares repurchased pursuant to a plan that is intended to satisfy the affirmative defense conditions of Exchange Act Rule 10b5-1(c). Companies are also required to disclose in a footnote to the tabular disclosure the date on which any Rule 10b5-1 plan was adopted or terminated. The data in the tabular disclosure must be tagged using Inline XBRL. With the new tabular disclosure requirement, the SEC is eliminating the obligation under Item 703 of Regulation S-K to disclose aggregated monthly repurchase data in periodic reports (while moving the obligation to disclose information regarding the period covered by and the size of publicly announced repurchase plans or programs from a footnote to the former monthly repurchase table to the main text of the narrative disclosure).

Checkbox Disclosure Regarding Director and Officer Transactions

The final rule also mandates the inclusion of a checkbox above the tabular disclosure to indicate whether certain officers or directors purchased or sold equity securities subject to the company's repurchase plan in the four business days before or after the company's public announcement of that plan (including an increase in the number or amount of securities to be purchased under an existing plan). No additional information is required to be disclosed about the insider purchase or sale, and a domestic corporate issuer may rely on Forms 3, 4 and 5 when determining whether to check the box so long as reliance is reasonable.

Narrative Disclosure Concerning the Company's Rationale and Policies

Companies will be required in Forms 10-K, 10-Q, 20-F and N-CSR to disclose (1) the objective or rationale for each share repurchase plan or program and the process or criteria used to determine the amount of repurchases, and (2) any policies and procedures relating to purchases and sales of the company's securities by its officers and directors during a repurchase program, including any restriction on such transactions.

Disclosure of Company Rule 10b5-1 Trading Arrangements

Pursuant to new Item 408(d) of Regulation S-K, companies will be required to provide a description of the material terms of any Rule 10b5-1 trading arrangement adopted or terminated by a company. Such terms include (1) the date on which the company adopted or terminated a Rule 10b5-1 trading arrangement, (2) the duration of such trading arrangement, and (3) the aggregate number of shares to be purchased or sold pursuant to such trading arrangement.

Compliance Dates

Domestic corporate issuers must comply with the new rules starting with the Form 10-Q or Form 10-K that covers the first full fiscal quarter beginning on or after October 1, 2023 (i.e., for calendar year companies, the 2023 Form 10-K). Foreign private issuers must file the new tabular disclosure within 45 days after each quarter end on a new Form F-SR beginning with the first full fiscal quarter that commences on or after April 1, 2024. For foreign private issuers, the narrative disclosures are required starting in the first Form 20-F filed after the foreign private issuer's first Form F-SR has been filed. Listed closed-end funds will be required to file the new disclosures in their semi-annual and annual reports on Form N-CSR that covers the first six-month period that begins on or after January 1, 2024.

^[1] Tabular disclosure of daily repurchase activity is to be filed and included (1) in Exhibit 26 to Form 10-Q and Form 10-K for domestic corporate issuers to be filed quarterly, (2) on new Form F-SR for foreign private issuers (“FPIs”) to be filed quarterly, and (3) on Form N-CSR for registered closed-end funds coinciding with their annual and semi-annual reports.