



Securities Law ADVISORY ■

MAY 8, 2023

SEC Adopts Amendments to the Share Repurchase Disclosure Rules

On December 15, 2021, the Securities and Exchange Commission (SEC) proposed amendments to the rules governing issuers' disclosure of repurchases or buybacks of their equity securities. On December 7, 2022, the SEC reopened the comment period for the proposed amendments after the enactment of the Inflation Reduction Act of 2022.

On May 3, 2023, the SEC adopted the proposed amendments to the share repurchase disclosure rules in an open meeting, with minor modifications due to the comments received by interested parties.

Full Reporting Companies

New Form SR requiring quarterly or semiannual reporting

Issuers are required to disclose the repurchase activity aggregated on a daily basis made by or on behalf of the issuers or an affiliated purchaser of shares or units of any class of the issuer's equity securities registered under Section 12 of the Exchange Act.

Issuers are required to file a new Form SR quarterly or semiannually, as applicable, with the daily repurchase data in an exhibit to their Form 10-Q, Form 10-K, Form 20-F, and Form N-CSR, as applicable.

The new Form SR requires the tabular disclosure of the:

- Date of the repurchase.
- Identification of the class of securities purchased.
- Total number of shares or units purchased (including all issuer repurchases whether made pursuant to publicly announced plans or programs).
- Average price paid per share or unit.

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- Aggregate total number of shares or units purchased on the open market.
- Aggregate total number of shares or units purchased in reliance on the safe harbor in Rule 10b-18.
- Aggregate total number of shares purchased pursuant to a plan intended to satisfy the defense conditions of Rule 10b5-1(c).

Heightened periodic disclosures of repurchases on Form 10-K, Form 10-Q, Form 20-F, and Form N-CSR

Issuers are required to disclose:

- The objective or rationale for their share repurchases and process or criteria used to determine the amount of repurchases.
- Any policies or procedures relating to purchases and sales of the issuer's securities by its officers and directors during a repurchase program, including any restriction on such transactions.
- Whether, during its most recently completed fiscal quarter, the issuer adopted or terminated a contract or plan to purchase or sell its securities intended to satisfy Rule 10b5-1(c)'s affirmative defense conditions, and if so, provide a description of material terms.
- Whether repurchases were intended to qualify for the Rule 10b-18 nonexclusive safe harbor.
- The number of shares or units purchased other than through a publicly announced plan or program, and the nature of the transaction.

Elimination of monthly disclosure

Issuers will no longer need to follow the requirement in Item 703 of Regulation S-K, Form 20-F, and Form N-CSR to provide share repurchase disclosures on a monthly basis in its Form 10-Q or Form 10-K, as applicable.

Inline XBRL tagging

Issuers are required to Inline XBRL tag the quantitative amounts disclosed within the required tabular disclosures and narratives.

Checkbox for officer or director sales within four business days of repurchase announcement

Issuers are required to check a box above the tabular disclosure indicating whether any of their directors or officers that are subject to the Section 16(a) reporting requirements purchased or sold shares or other units of the class of the issuer's equity securities that are the subject of an issuer share repurchase plan or program within four business days before or after the announcement of the plan or program.

Foreign Private Issuers

New Form F-SR requiring quarterly reporting

Foreign private issuers will be required to disclose daily quantitative data at the end of every quarter in new Form F-SR and provide the narrative disclosure starting in the first Form 20-F. The Form F-SR is due 45 days after the end of the quarter.

Checkbox for issuer's share repurchase

For foreign private issuers, the checkbox requirement applies to any director and member of senior management who would be identified in its Form 20-F.

Compliance Dates

Full reporting companies

Full reporting issuers will be required to include the daily quantitative data as an exhibit to their Forms 10-Q and 10-K and provide the narrative disclosure in their Forms 10-Q and 10-K beginning with the first filing that covers the first full fiscal quarter that begins on or after October 1, 2023. For issuers whose fiscal year ends December 31, their Form 10-K for 2023 would be the first filing that requires these new disclosures.

Foreign private issuers

Foreign private issuers must begin filing the Form F-SR for the first full fiscal quarter that begins on or after April 1, 2024 and provide the narrative disclosure in the first Form 20-F filed after their first Form F-SR has been filed.

Closed-end funds

Listed closed-end management investment companies are required to disclose the daily quantitative repurchase data and provide the narrative disclosure in their annual and semiannual reports on Form N-CSR beginning with the Form N-CSR that covers the first six-month period that begins on or after January 1, 2024.

Next Steps

The final rule will become effective 60 days after the rule is posted in the *Federal Register*.

To best prepare for the new rules, companies should:

- Review disclosure controls and procedures to ensure that they comply with the new Form SR filing requirements and the enhanced periodic disclosures.
- For foreign private issuers, review disclosure controls and procedures to ensure that they comply with the new Form F-SR.
- Consider policies and procedures for officers and directors selling shares while the company is in the market repurchasing securities.

Differences Between Proposed and Final Amendments

No requirement to provide daily repurchase disclosure one business day after execution of share repurchase.

Corporate issuers to provide repurchase disclosure in their quarterly reports.

Listed close-end funds to disclose quantitative repurchase information in Form N-CSR.

FPIs to disclose quantitative repurchase information quarterly in new Form F-SR.

D&O checkbox for trades occurring within four business days of repurchase announcement.

For FPIs, requirement applies to D&O identified in Form 20-F.

Required repurchase data treated as filed in Form 10-Q, Form 10-K, Form N-CSR, and Form F-SR, instead of furnished.

No requirement to disclose adoption or termination of non-Rule 10b5-1 trading arrangement.

No requirement of price terms of the trading arrangement.

Inline XBRL for share repurchase information.

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