

SEC Adopts New Repurchase Disclosure Rules

Update

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The US Securities and Exchange Commission has adopted a package of amendments, originally proposed in late 2021, to the disclosure requirements for corporate issuers' share repurchases. The SEC stated that the new rules are designed to provide investors with more information about the purposes and effects of share buybacks.

The amendments will require issuers to include a table with daily share repurchase data in their periodic reports. The information that issuers will need to provide includes the class of shares repurchased, the total number of shares repurchased, and the average price paid per share. The new daily repurchase data requirement will replace the monthly repurchase data disclosures currently required by Regulation S-K (or Form 20-F, for foreign private issuers).

Domestic corporate issuers will be required to attach this table as an exhibit to their Forms 10-Q and Forms 10-K. Foreign private issuers will provide their data on the new Form F-SR, which will need to be submitted within 45 days after the end of every fiscal quarter.

The quarterly reporting requirement is a significant improvement from the proposed rules, which would have required issuers to report repurchases within one business day. However, foreign private issuers that were used to reporting only annually will now be required to report quarterly.

In addition to this tabular disclosure, issuers will be required to include a checkbox on the cover of the form indicating whether certain officers or directors purchased or sold shares subject to a repurchase plan or program within four business days before or after the announcement of the issuer's share repurchases.

In an effort to provide investors with more insight into the rationale behind share repurchases, issuers will be required to explain the reasoning behind their

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share repurchases, recount how they determined the number of shares to repurchase, and describe any policies the issuer has for officer and director share purchases or sales that occur during a share repurchase program.

Notably, the new rules do not include any accommodations for smaller reporting companies or emerging growth companies.

The new rules include a phase-in period for all issuers, with compliance deadlines determined by the issuer's classification. Domestic issuers will be required to comply with the new disclosure requirements on the first Form 10-Q or 10-K that covers a full fiscal quarter that begins on or after October 1, 2023 (for companies with a calendar year-end, this will be the Form 10-K for the year ending December 31, 2023).

Foreign private issuers will be required to adhere to the new disclosure requirements starting with the Form F-SR that covers the first full fiscal quarter period that begins on or after April 1, 2024. These issuers will then be required to comply with the new narrative disclosure requirements on the first Form 20-F they file after their first Form F-SR is filed.