

Share Repurchase Disclosure Modernization



The Securities and Exchange Commission adopted amendments requiring disclosures related to issuers' share repurchases that will provide investors with enhanced information to assess the purposes and effects of the repurchases. The amendments will require issuers to:

- Disclose daily repurchase activity quarterly or semiannually;
- Check a box indicating if certain directors or officers traded in the relevant securities within four business days before or after the public announcement of an issuer's repurchase plan or program;
- Provide narrative disclosure about the issuer's repurchase programs and practices in its periodic reports; and
- Provide quarterly disclosure in an issuer's periodic reports on Forms 10-K and 10-Q related to an issuer's adoption and termination of 10b5-1 trading arrangements.

Background

Before the adoption of this rule, Regulation S-K required corporate issuers that file on domestic forms to disclose, on a quarterly basis, any purchase made by or on behalf of the issuer of shares or other units of any class of the issuer's equity securities that are registered under Section 12 of the Exchange Act aggregated on a monthly basis. The same disclosure was required on an annual basis for foreign private issuers (FPIs) and on a semi-annual basis for registered closed-end management investment companies that are exchange traded ("Listed Closed-End Funds").

What's Required

The amendments will require tabular disclosure of an issuers' repurchase activity aggregated on a daily basis and disclosed either quarterly or semi-annually. The table will include, for each day:

- The class of shares;
- Average price paid per share;
- Total number of shares purchased, including the total number of shares purchased as part of a publicly announced plan;

- Aggregate maximum number of shares (or approximate dollar value) that may yet be purchased under a publicly announced plan;
- Total number of shares purchased on the open market; and
- 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).

Corporate issuers that file on domestic forms will file on a quarterly basis the daily repurchase data in an exhibit to their Form 10-Q and Form 10-K. Listed Closed-End Funds will include the data in their annual and semi-annual reports on Form N-CSR. FPIs reporting on the FPI forms will disclose the data in a new Form F-SR, which must be filed within 45 days after the end of an FPI's fiscal quarter.

The amendments will also eliminate the current requirements in Regulation S-K, Form 20-F, and Form N-CSR to disclose monthly repurchase data in periodic reports.

Issuers will also be required to include a checkbox preceding its tabular disclosures indicating whether certain officers and directors purchased or sold shares that are the subject of an issuer share repurchase plan or program within four business days before or after the announcement of that plan or program.

The amendments will expand the requirements for narrative disclosures of repurchases in Regulation S-K, Form 20-F, and Form N-CSR to require an issuer to disclose (1) the objectives or rationales for its share repurchases 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 issuer's securities during a repurchase program by its officers and directors, including any restriction on such transactions.

Finally, the amendments will add new Item 408(d) of Regulation S-K to require quarterly disclosure in periodic reports on Forms 10-Q and 10-K about an issuer's adoption and termination of Rule 10b5-1 trading arrangements.

This disclosure will be reported using a structured data language.

What's Next

FPIs that file on FPI forms will be required to comply with the amendments in new Form F-SR beginning with the Form F-SR that covers the first full fiscal quarter that begins on or after April 1, 2024. The Form 20-F narrative disclosure that relates to the Form F-SR filings will be required starting in the first Form 20-F filed after the FPI's first Form F-SR has been filed. Listed Closed-End Funds will be required to comply with the amendments beginning with the Form N-CSR that covers the first six-month period that begins on or after January 1, 2024. All other issuers will be required to comply with the amendments on Forms 10-Q and 10-K (for their fourth fiscal quarter) beginning with the first filing that covers the first full fiscal quarter that begins on or after October 1, 2023.