

# SEC Reporting & Compliance Alert

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## SEC Adopts New Share Repurchase Disclosure Requirements

On May 3, 2023, the U.S. Securities and Exchange Commission adopted rule amendments requiring enhanced disclosures pertaining to issuers' repurchases of equity securities. The new rules, prompted by a perception that some repurchases may be motivated by factors other than long-term value maximization, are intended to facilitate investor understanding of the purposes, effects and practices related to such repurchases.

### New Disclosure Requirements

The new rules reflect a more moderate version of the proposed rules, which called for the creation of a new SEC form to be filed within one business day after any issuer repurchase of shares. The rules as adopted require disclosure about daily repurchases on a quarterly basis for U.S. companies and foreign private issuers, and on a semi-annual basis for closed-end funds.

### Tabular disclosure of daily repurchase activity

Issuers must file an exhibit table containing tabular disclosure of their repurchase activity, aggregated on a daily basis, including the following for each day:

- The class of securities.
- Total number of shares repurchased.
- Average price paid per share.
- Total number of shares purchased as part of a publicly announced plan.
- Aggregate maximum number of shares that may yet be purchased under such a plan.
- The total number of shares purchased on the open market.
- The total number of shares purchased that are intended to qualify for the Rule 10b-18 safe harbor 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).

The location of disclosure is as follows:

- **For domestic issuers**, the table must be filed on a quarterly basis in an exhibit to the Form 10-Q and Form 10-K.
- **For foreign private issuers**, the data must be disclosed in a new Form F-SR on a quarterly basis.

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- **For listed closed-end funds**, the data must be disclosed in annual and semi-annual reports on Form N-CSR.

Given these new disclosure requirements, the SEC eliminated the existing requirements to disclose monthly repurchase data in periodic reports.

## Narrative disclosure regarding an issuer's repurchase programs and practices

The new rules impose narrative disclosure requirements of repurchases in Regulation S-K, Form 20-F and Form N-CSR addressing:

- The objectives or rationales for an issuer's share repurchases, and the process or criteria used to determine the amount of repurchases.
- 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.

## Checkbox disclosure regarding the trading of Section 16 officers or directors

The new rules require an issuer to include a checkbox above its tabular disclosures indicating whether Section 16 officers or 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.

## Quarterly disclosure regarding the adoption and termination of 10b5-1 trading arrangements

Under the new Item 408(d), issuers that file on Forms 10-Q and 10-K will now be required to make quarterly disclosure in these periodic reports about their adoption or termination (and, in many cases, modification) of Rule 10b5-1 trading arrangements.

## Application to foreign private issuers

Foreign private issuers will be required to provide tabular disclosure of their repurchase activity in a new Form F-SR, which must be filed within 45 days after the end of the issuer's fiscal quarter. The SEC's willingness to impose a new quarterly filing requirement on foreign private issuers represents a significant change to the longstanding approach of giving deference to foreign private issuers' home country reporting requirements in order to encourage capital formation in the U.S. markets.

With respect to the trading activity of a foreign private issuer's officers or directors, the new checkbox requirement applies to any director and member of senior management who would be

identified pursuant to Item 1 of Form 20-F, regardless of whether the issuer is reporting on the forms exclusively available to foreign private issuers or on domestic forms.

## Compliance Dates

The SEC established varying compliance dates for certain categories of issuers, as follows:

- **Domestic issuers** will be required to include the 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 beginning on or after October 1, 2023.
- **Foreign private issuers** that file on foreign private issuer forms will disclose the quantitative data in new Form F-SR beginning with the Form F-SR that covers the first full fiscal quarter beginning on or after April 1, 2024, and provide the narrative disclosure starting in the first Form 20-F filed after their first Form F-SR has been filed.
- **Registered closed-end management investment companies** that are exchange-traded will disclose the quantitative data and provide the narrative disclosure on Form N-CSR beginning with the Form N-CSR that covers the first six-month period beginning on or after January 1, 2024.

## Action Items for Issuers

We expect issuer repurchases to be subject to increased scrutiny as a result of the new disclosure requirements.

Issuers should begin preparing now by:

- Considering changes to their disclosure controls and procedures in order to collect the necessary information.
- Considering whether to adopt any new or revised policies or practices relating to share repurchases, including with respect to Rule 10b5-1 trading arrangements.
- Ensuring that ongoing or future repurchases are consistent with the issuer's disclosed objectives, rationales and policies.

Additionally, foreign private issuers should consider changes to their disclosure controls to comply with the new quarterly disclosure and tagging requirements on new Form F-SR. For foreign private issuers that are not currently required to report their financial results on a quarterly basis, these requirements present new logistical challenges and warrant early planning.

For additional information on the new rules, see the [press release announcing adoption of the final rules](#) and the [fact sheet](#) published by the SEC.

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