



SEC Adopts Amendments Regarding Share Repurchase Disclosure

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Update: On October 31, 2023, the Fifth Circuit granted the US Chamber of Commerce's petition for review of the SEC's share repurchase disclosure rules, holding that the SEC acted arbitrarily and capriciously in violation of the Administrative Procedure Act. The court directed the SEC to correct the defects within 30 days of the opinion. On December 1, 2023, the SEC informed the Fifth Circuit that it was unable to correct the rule's defects within 30 days of the opinion. On December 19, 2023, the Fifth Circuit vacated the SEC's share repurchase disclosure rules.

On May 3, 2023, the Securities and Exchange Commission (SEC) adopted amendments requiring disclosure related to issuers' share repurchases.

Item 703 of Regulation S-K currently requires issuers to disclose information about share repurchases including a monthly breakdown in tabular format of (i) the number of shares repurchased by the issuer or an affiliate, (ii) the average price paid per share, (iii) the total number of shares purchased as part of a program and (iv) the maximum number of shares that can be repurchased under the program or plan in the future, as well as narrative disclosure regarding the principal terms of publically announced repurchase plans. Corporate issuers that file on domestic forms are required to disclose this information on a quarterly basis, listed closed-end funds are required to disclose this information on a semi-annual basis, and foreign private issuers (FPIs) are required to disclose this information on an annual basis.

The adopted amendments will instead require issuers to provide tabular disclosure of their repurchase activity aggregated on a daily basis and disclosed either quarterly or semi-annually. The table will require disclosure, for each day on which a repurchase was conducted, of (i) the date of the repurchase, (ii) the class of securities repurchased, (iii) the total number of shares repurchased, (iv) the average price paid per share, (v) the total number of shares repurchased on the open market and (vi) the total number of shares repurchased that are intended to qualify for the safe harbor in Rule 10b-18 and separately the total number of shares repurchased pursuant to a Rule 10b5-1 plan.

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

In addition, issuers will be required to include a checkbox above the tabular disclosure indicating whether certain officers and directors purchased or sold shares that are the subject of an issuer share repurchase plan within four business days before or after the announcement of that plan.

The amendments will also 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 objective or rationale for the share repurchases and the criteria used to determine repurchase amounts and (2) any policies, procedures or restrictions followed by the officers and directors in carrying out the share repurchase plan.

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.

FPIs 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.

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