

“Managing the New Buyback Disclosure Rules”

Wednesday, May 24, 2023

Course Materials

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2 to 3 p.m. Eastern [archive and transcript to follow]

Stock buybacks are more popular than ever among public companies, but with the SEC's adoption of new disclosure rules intended to promote more transparency about corporate repurchases, the compliance issues associated with them are about to become a lot more complicated. Join our panel of experts as they address the issues arising under the new disclosure requirements and their implications for public companies.

- **Era Anagnosti**, Partner, DLA Piper LLP
- **Robert Evans**, Partner, Locke Lord LLP
- **Allison Handy**, Partner, Perkins Coie LLP
- **Dave Lynn**, Partner, Morrison Foerster LLP and Senior Editor, TheCorporateCounsel.net

Among other topics, this program will cover:

- Overview of the New Rules
- Compliance Challenges for Public Companies
- Implications for ICFR and Disclosure Controls and Procedures
- Impact on Insider Trading Policies
- Practical Consequences of Heightened Buyback Disclosures

“Managing the New Buyback Disclosure Rules”

Course Outline / Notes

1. Overview of the New Rules
2. Compliance Challenges for Public Companies
3. Implications for ICFR and Disclosure Controls and Procedures
4. Impact on Insider Trading Policies
5. Practical Consequences of Heightened Buyback Disclosures

“Managing the New Buyback Disclosure Rules”

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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.

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May 5, 2023

Share Buyback Disclosure: Getting to the “Why?”

I was so focused in the [blog](#) yesterday on the actual share repurchase disclosure requirements that the SEC adopted on Wednesday that I did not get a chance to address the obvious question that comes to mind when considering the Commission action: “Why would the SEC remove disclosure of monthly share repurchase information from the body of periodic reports and now require daily share repurchase data in an exhibit to those same periodic reports?” The outcome, which is of course is less bad than requiring daily reporting of share repurchase activity as was originally proposed, still leaves practitioners scratching their head as to whether we are moving in the direction of “data dump” disclosure – *i.e.*, where we get away from carefully crafted quantitative and qualitative disclosure that is filtered by materiality in the body of periodic and current reports toward providing datasets that can be readily crunched by analysts, academics and the SEC to serve their own purposes.

In getting to the “why?” it should first be noted that, in recent years, politicians, institutional investors, the media, academics, and governance experts have all criticized share repurchase programs for a wide variety of reasons, and the criticism has only mounted in the past few years amidst the COVID-19 pandemic and the current economic malaise. The focus on share repurchases culminated in the imposition of an excise tax on repurchases in last year’s Inflation Reduction Act of 2022, and the criticism of share repurchases always made it highly likely that the current Commission would act in some manner on the topic. However, in the [adopting release](#) for the final share repurchase disclosure rules, the SEC acknowledges:

Existing studies, including a review by Commission staff in 2020, have considered the rationales and effects of repurchases. As our staff concluded, repurchases are often employed in a manner that may be aligned with shareholder value maximization. Together with dividends, repurchases provide an avenue for returning capital to investors, which may be efficient if the issuer has cash it cannot efficiently deploy. Such returns of capital may also send signals to investors that managers are operating the issuer efficiently rather than retaining excess cash for potentially suboptimal use.

Despite these conclusions, there is still mistrust of why repurchases are conducted. The Commission goes on to note in the adopting release:

At present, because issuers are not required to report daily repurchase transactions or provide additional qualitative disclosures about those transactions, it can be difficult to determine whether repurchase timing may have been motivated, at least in part, by factors other than long-term value maximization. For example, issuer repurchases may be influenced, in part, by a desire to achieve certain accounting metrics or for other potentially suboptimal reasons. Some research has found that issuers that would have narrowly missed an earnings per share (“EPS”) target were more likely to have engaged in repurchases, which through their mechanical effect of decreasing the denominator of that measure help such issuers to meet their target.

The fact that repurchases can significantly impact executive compensation for some issuers may also affect how managers choose to employ repurchases. Like all investors, executives who

receive equity-linked compensation stand to benefit from repurchases that improve their employer's long-term stock price, but in some cases executives may realize additional gains unavailable to other investors because of trading by executives or the structure of compensation to those executives. Some studies have found personal trading by insiders close in time to predictable changes in share price caused by repurchases or repurchase-plan announcements, such as concentrated sales in the period immediately following the issuer's repurchase. Issuers may also adjust the timing of their repurchases or repurchase announcements to increase the returns on insider equity sales. In these cases, by timing their sales to closely follow issuer purchases, executives can benefit in ways that confer a personal benefit to executives without necessarily increasing the value of the firm. Thus, equity-based or EPS-tied compensation arrangements could potentially be one factor that may influence some executives' decisions to undertake repurchases. Shareholders may not have sufficient information about all of these possible purposes and impacts of issuer repurchases.

In explaining the rationale for replacing the monthly repurchase data with daily repurchase data and enhancing the required disclosure around objectives or rationales for the company's share repurchases, the Commission notes:

The current reporting regime, in which investors receive information only about the monthly aggregate repurchases of issuers, fails to provide enough detail for investors to draw informed conclusions about the purposes and effects of many repurchases. In contrast, the amendments we are adopting will provide investors with data about the daily repurchase activity of an issuer and additional qualitative disclosures that investors can combine with other disclosures, such as the timing of compensatory awards or executive equity transactions, to observe whether a given repurchase was apt to affect executive compensation. Data on daily transactions and the additional qualitative disclosures would also reveal patterns in which repurchases were undertaken at times or under conditions that were likely to affect imminent accounting metrics, or prior to the release of material nonpublic information by the issuer. Investment advisers may use this data in assisting investors in assessing the purposes and effects of share repurchases.

Thus, the rationale here seems to be that the data dump of daily repurchase activity will facilitate speculative analysis as to the rationale for share repurchases based on the relative timing of those repurchases. That seems to me to be a significant departure from the usual approach to SEC disclosure, and hopefully this is not a harbinger of things to come.

– **Dave Lynn**

Posted by David Lynn

Permalink: <https://www.thecorporatecounsel.net/blog/2023/05/share-buyback-disclosure-getting-to-the-why.html>

[← Share Repurchase Amendments: A New Form for Foreign Private Issuers!](#) | [Main](#) | [Keeping Up with Our Continuing Coverage](#) →

May 4, 2023

SEC Adopts Share Repurchase Disclosure Amendments: It Could Have Been Worse

Yesterday, by a 3 to 2 vote, the SEC [adopted amendments](#) to the share repurchase disclosure requirements. As originally [proposed](#) back in December 2021, the amendments would have required that a company furnish a new Form SR before the end of the first business day following the day on which the company executes a share repurchase. As adopted, the amendments require disclosure of daily repurchase data, but only on a quarterly basis and, for domestic issuers, in an exhibit to their periodic reports. The changes from the proposal prompted Commissioner Peirce to note in her [statement](#): “The final rule is not as bad as it could have been, but better-than-it-might-have-been is not my standard for supporting a final rule.”

As noted in this [fact sheet](#) describing the rule changes, under these amendments domestic companies will be required to:

- Disclose daily quantitative repurchase data at the end of every quarter (rather than on a daily basis as proposed) in an exhibit to their periodic report on Form 10-Q and Form 10-K (for a company’s fourth fiscal quarter);
- Include a checkbox above the tabular disclosures indicating whether certain officers and directors purchased or sold shares or other units of the class of the company’s equity securities that are the subject of a company share repurchase plan or program within four business days before or after the announcement of a company share repurchase plan or program.
- Disclose in each periodic report on Form 10-Q and Form 10-K the objectives or rationales for the company’s share repurchases and the process or criteria used to determine the amount of repurchases and any policies and procedures relating to purchases and sales of the company’s securities during a repurchase program by its officers and directors, including any restriction on such transactions.
- Disclose in periodic reports on Forms 10-Q and 10-K (for the company’s fourth fiscal quarter) the company’s adoption and termination of Rule 10b5-1 trading arrangements.

Further, the amendments eliminate the current requirements in Item 703 of Regulation S-K to disclose monthly repurchase data in periodic reports. In a change from the proposal, the daily quantitative repurchase data required by the final amendments will be treated as “filed” instead of “furnished.” Information required pursuant to these disclosure requirements must be tagged using Inline XBRL.

Domestic companies will be required to comply with the new disclosure and tagging requirements in their periodic reports 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. As a result, a company with a December 31, 2023 fiscal year end will be required to begin complying with the new disclosure and tagging requirements in their Form 10-K for the fiscal year ending on December 31, 2023 as it relates to repurchases made during the quarter ending December 31, 2023.

We will be posting memos regarding the new rules in our [“Stock Repurchases” Practice Area](#) and we have updated [TheCorporateCounsel.net Cheat Sheet](#) to reflect the adoption of the final rules.

– **Dave Lynn**

Posted by David Lynn

Permalink: <https://www.thecorporatecounsel.net/blog/2023/05/sec-adopts-share-repurchase-disclosure-amendments-it-could-have-been-worse.html>

[← Our Upcoming Webcast: “Managing the New Buyback Disclosure Rules”](#) | [Main](#) | [SEC Adopts Share Repurchase Disclosure Amendments: It Could Have Been Worse](#) →

May 4, 2023

Share Repurchase Amendments: A New Form for Foreign Private Issuers!

In adopting the [final amendments](#) to the share repurchase disclosure requirements, the SEC did not let the fact that foreign private issuers do not file quarterly reports stand in the way of quarterly reporting of daily share repurchase data. In a distinct departure from the historical approach to Exchange Act reporting by foreign private issuers, the SEC adopted new Form F-SR, which will require the disclosure of repurchase information within 45 days after the end of a foreign private issuer’s fiscal quarter. The move prompted Commissioner Mark Uyeda to note in his [statement](#):

However, in the future, these amendments may be remembered as the beginning of the end for the Commission’s approach to foreign private issuers (“FPIs”). For more than 55 years, the Commission has allowed FPIs to satisfy their Exchange Act reporting requirements by (1) filing an annual report with information comparable to disclosure provided by domestic companies and (2) furnishing a Form 6-K for any material information disclosed by the FPI under its home country laws, reported pursuant to stock exchange requirements, or provided to its shareholders. Today’s amendments will require FPIs to make quarterly filings to report share repurchases regardless of their home country’s disclosure requirements. This change fundamentally upends the Commission’s long-standing and bipartisan approach of largely deferring to the disclosures made by FPIs pursuant to their home country reporting requirements. Given the significance of this shift in regulatory philosophy, the Commission should have undertaken a separate rulemaking on the issue, instead of including this change as part of a rulemaking focused on share repurchase disclosure.

Foreign private issuers that file on the foreign private issuer forms (e.g., Form 20-F) will be required to comply with the new disclosure and tagging requirements 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, which is required by Item 16E of Form 20-F, and the related tagging requirements will be required starting in the first Form 20-F filed after their first Form F-SR has been filed.

– Dave Lynn

Posted by David Lynn

Permalink: <https://www.thecorporatecounsel.net/blog/2023/05/share-repurchase-amendments-a-new-form-for-foreign-private-issuers.html>

10 MAY 2023 • 13 MINUTE READ



SEC increases disclosure requirements for issuer equity repurchases

Written by: [Era Anagnosti](#), [Andrew Ledbetter](#), [Larry Nishnick](#), [Brent Bernell](#), [Jordyn Giannone](#)

On May 3, 2023, the Securities and Exchange Commission (the SEC or the Commission) adopted new disclosure requirements related to repurchases of a public company's equity securities that are registered under the Securities Exchange Act of 1934, as amended (the Exchange Act).

The amendments will become effective 60 days after publication in the Federal Register and require more detailed and frequent disclosure about an issuer's share repurchases, including requiring issuers to provide disclosure of daily repurchase activity on a quarterly or semi-annual basis, depending on the type of issuer.

The new rules at a glance

- The new rules apply to *all issuers*, regardless of reporting status – this includes smaller reporting companies (SRCs), emerging growth companies (EGCs) and foreign private issuers (FPIs).
- Compliance dates:

- **Domestic issuers** – Compliance required for the first full fiscal quarter that begins on or after October 1, 2023
- **FPIs** – Compliance required for the first full fiscal quarter that begins on or after April 1, 2024 and
- **Exchange traded registered closed-end management investment companies (Funds)** – Compliance required for the first six-month period that begins on or after January 1, 2024.
- *Quarterly* (rather than daily) disclosure of a corporate issuer’s daily quantitative share repurchase information (Daily Repurchase Data):
 - **Domestic issuers** – New Exhibit 26 filed with Form 10-Q and Form 10-K (for the last fiscal quarter of the year) and
 - **FPIs** – New Form F-SR due 45 days after the end of an FPI’s fiscal quarter.
- For Funds, semi-annual disclosure of Daily Repurchase Data on Form N-CSR, which is generally due ten days after a Fund disseminates its annual or semi-annual report to stockholders.
- Daily Repurchase Data disclosure will be *filed* instead of furnished, and thus subject to the liability provisions of Section 18 of the Exchange Act, as well as Section 11 of the Securities Act of 1933, amended (the Securities Act) when deemed incorporated by reference into Securities Act filings.
- Daily Repurchase Data disclosure will include a new checkbox indicating whether certain officers and directors traded in the relevant securities in the four business days before or after the announcement of the repurchase plan or program.
- Enhanced disclosure requirements, including new requirement for disclosure of the objectives or rationales for a company’s share repurchase plans.
- New Item 408(d) to Regulation S-K, requiring quarterly disclosure in periodic reports of an issuer’s adoption and termination of any Rule 10b5-1 trading arrangements.
- New disclosure must be reported using Inline XBRL.

Background

In 2003, the SEC adopted Item 703 of Regulation S-K to require disclosure of an issuer’s share repurchases on a quarterly basis (currently in Forms 10-Q and 10-K). When the rule was first adopted, the disclosure was intended to inform investors whether, and to what extent, issuers had followed through on proposed plans for repurchases.

On December 15, 2021, the Commission proposed amendments to the disclosure requirements regarding share repurchases to require, among other things: (i) quantitative daily repurchase disclosure on a new Form SR that would be furnished no later than the business day following execution of each share repurchase, (ii) additional detail regarding the structure of an issuer's repurchase program and its share repurchases, and (iii) that information disclosed pursuant to Item 703 of Regulation S-K be reported using a structured data language (specifically, Inline XBRL).[1]

New disclosure requirements

Quarterly and semi-annual disclosures of daily repurchase data

The new rules will require corporate issuers to disclose daily quantitative information relating to any share buybacks on a quarterly basis, with semi-annual reporting for Funds. The issuer must disclose this information for each day a share buyback occurred. In response to comments, including those from [DLA Piper](#), the final rules eliminated the proposed next business day disclosure obligation. Instead, the final rules require that Daily Repurchase Data be filed:

- For corporate issuers reporting on domestic forms, **quarterly** by filing a new Exhibit 26 to their Forms 10-Q and 10-K (for issuer's fourth fiscal quarter)
- For FPIs, **quarterly** by filing a new Form F-SR due 45 days after the end of each fiscal quarter and
- For Funds, **semi-annually** on Form N-CSR.

There are no exemptions for any category of issuers, such as EGCs or SRCs. In a departure from the proposed rules, the information in this exhibit will be considered filed, not furnished, making such disclosures subject to the liability provisions of Exchange Act and the Securities Act, as applicable.

All companies must report the following information in a tabular format:

- the class of shares
- the average price paid per share
- the total number of shares purchased
- the aggregate maximum number of shares that may yet be purchased under a publicly announced plan
- the total number of shares purchased on the open market

- the aggregate total of shares purchased in reliance on the Rule 10b-18 safe harbor and
- the aggregate shares purchased under a 10b5-1 plan.

“Check-the-box” requirement for trades by insiders

The applicable exhibit or form reporting the issuers’ Daily Repurchase Data must also include a checkbox indicating whether certain officers and directors traded in the relevant securities in the four business days before or after the announcement of the repurchase plan or program. The SEC originally proposed a ten-business-day period for this requirement, but the period was reduced in the final rules.

- A domestic corporate issuer may rely on Forms 3, 4, and 5 filed with the Commission by Section 16 insiders in determining if it should check the box, provided that the reliance is reasonable (for example, it would not be reasonable to rely on forms that issuer knows were filed inappropriately).
- The checkbox requirement for FPIs will apply to any director and member of senior management who would be identified pursuant to Item 1 of Form 20-F, and an FPI is permitted to rely on written representations from its directors and senior management provided that the reliance is reasonable.

Disclosure of issuer 10b5-1 trading arrangements

Further, the amendments add a new Item 408(d) to Regulation S-K, which will require disclosure of an issuer’s adoption and termination of a contract, instruction, or written plan to purchase or sell its own securities that is intended to satisfy the affirmative defenses conditions of Rule 10b5-1(c). In a departure from the proposal, new Item 408(d) will not require disclosure of non-Rule 10b5-1 trading arrangements (as the term is defined in Item 408(c)). While an issuer will be required to disclose the material terms of a Rule 10b5-1(c) arrangement, in response to comments, including those from DLA Piper, new Item 408(d) will not require disclosure of the price at which the party executing the trading arrangement is authorized to trade.

To prevent duplicative disclosures, the new rules allow disclosure provided pursuant to Item 703 of Regulation S-K which satisfies the disclosure requirements of Item 408(d)(1) to be crossed referenced to such item.

Enhancement of and changes to existing disclosure

Amended Item 703(a) of Regulation S-K and Item 16E(a) of Form 20-F expand the current disclosure requirements for share repurchase programs by requiring issuers to disclose:

- the objectives or rationales for its share repurchase and the process or criteria used to determine the amount of repurchases

- the number of shares purchased other than through a publicly announced plan or program and the nature of the transaction
- information about each plan or program announced (date of announcement, dollar or share amount, expiration date, plans expired during the period, and plans terminated or under which the issuer does intend to make further purchases) and
- any policies or procedures relating to trading of issuer securities by its officers and directors during a repurchase program (including any restrictions on such transactions).

The Commission noted that, as part of an issuer’s discussion of the objectives and rationales for its share repurchases, issuers should not rely on boilerplate disclosures and could discuss, among others:

- factors driving the repurchase, including whether their stock is undervalued
- economically viable prospective internal growth opportunities
- attractive valuation of potential targets and
- sources of funding for the repurchase, where material, such as in the case where the course of funding results in tax advantages that would not otherwise be available for a repurchase.

Finally, considering the more detailed daily aggregated information requirements, the amendments also eliminate the current requirements in Regulation S-K, Form 20-F, and Form N-CSR to disclose monthly repurchase data in periodic reports.

Inline XBRL

Issuers are also required to tag information disclosed pursuant to Items 601 and 703 of Regulation S-K, Item 16E of Form 20-F, Item 14 of Form N-CSR and Form F-SR in inline XBRL in accordance with Rule 405 of Regulation S-T and the EDGAR Filer Manual. The requirements include detail tagging of quantitative amounts disclosed within the required tabular disclosures and block text tagging and detail tagging of narrative and quantitative information disclosed in the footnotes to the tables required by such forms.

Compliance dates

Corporate issuers reporting on domestic forms must include the Daily Repurchase Data as an exhibit to, and provide the necessary 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 calendar-year companies, this means the fourth quarter of 2023 must be included in the 2023 Form 10-K filed in 2024.

FPIs must comply with these requirements by filing a Form F-SR for periods beginning with the first full fiscal quarter that begins on or after **April 1, 2024**, which for calendar year companies will be the second quarter of 2024.

Funds must comply with these requirements in their Form N-CSR that covers the first six-month period that begins on or after **January 1, 2024**.

Practical considerations

With compliance deadlines only a few months away for most issuers, registrants are encouraged to start preparing by taking the following actions:

- **Enhancing data collection and review procedures** related to share repurchases to support disclosure of the Daily Repurchase Data, which includes tendering already outstanding shares as payment for stock option exercises.^[2] While companies routinely collect and summarize share repurchase data on a monthly aggregate basis, now repurchase data (including multiple repurchases on the same day) must be presented on a daily basis. Companies should assess whether they need to augment their disclosure controls and procedures to gather, organize and verify the information needed to disclose the Daily Repurchase Data. While the Commission did not address how the new rules may impact disclosure of accelerated share repurchase programs (ASRs), companies should assess the information they receive under existing ASRs and develop a plan for how future ASRs will comply with these new rules.
- **Considering how the enhanced disclosure requirements translate into disclosure of existing repurchase plans.** Amended Item 703(a) of Regulation S-K will require disclosure regarding both newly adopted plans and existing plans. Therefore, if an existing repurchase plan will still be in effect on the compliance date (applicable to that issuer), an issuer should revisit how that previously approved plan fits within the new disclosure regime, in particular whether it has well articulated objectives and rationales and the process or criteria used to determine the amount of repurchases, and supplementing prior determinations as needed.
- **Evaluating whether current share repurchase and executive compensation practices and procedures could result in heightened scrutiny** and, if so, whether any revisions to those practices are appropriate. For example, the timing of repurchase plan announcements may foreseeably overlap with equity award vesting schedules or with transactions the company's compliance officer knows will take place under established Rule 10b5-1 trading plans. Issuers can prepare by reviewing their existing practices and plans and considering modifications as needed to avoid unwanted allegations that repurchase plans are intentionally timed to boost the value of equity awards or transactions by insiders.
- **Considering whether to revise existing insider trading policies**, such as to add an automatic blackout of directors and officers during the four business days before and after the announcement of the repurchase plan, or to address whether directors and officers may sell shares during the pendency of a repurchase program.

- **Considering whether to update (or adopt) policies regarding a company’s own transactions in securities.** Under the new insider trading disclosure requirements of Item 408(b) of Regulation S-K, companies will soon be required to disclose whether they have adopted insider trading policies and procedures governing transactions by the registrant itself. Companies that have such policies can prepare by considering whether updates are appropriate in light of the new repurchase plan rules, such as changes to prohibit adoption of a repurchase plan until at least four business days have lapsed from a purchase by a director or officer, to require formal determinations of the plan’s objectives or rationales, or to mandate that repurchase plans are structured to comply with Rule 10b5-1 and/or Rule 10b-18. Companies that do not have policies applicable to their own securities transactions may wish to consider whether to adopt them.
- **Providing updated training** to officers and directors on the company’s policies and procedures related to share repurchases and insider trading, including timely filing of Section 16 reports to enhance the company’s reliance on such reports for purposes of complying with the new checkbox requirement. We expect the SEC to continue to focus on insider trading and company transactions in securities.

For more information and assistance in understanding and implementing the requirements, please contact the authors of this article or your DLA Piper relationship attorney.

[1] After the initial comment period closed on April 1, 2022, the Commission reopened the comment period in October 2022 in light of a technical error that may have impacted comments, and again on December 7, 2022 through January 11, 2023, to consider the potential economic effects of the new excise tax on share repurchases contained in the Inflation Reduction Act of 2022.

[2] Refer to Question 149.01 of the Commission’s Regulation S-K Compliance and Disclosure Interpretations available [here](#). Consistent with prior rules, “net” withholdings are not required to be included in the Daily Repurchase Data.

Related capabilities

SEC ADOPTS REVISED STOCK BUYBACK DISCLOSURE REQUIREMENTS

by Rob Evans, Gislar Donnenberg, Megan Foscaldi, Stan Keller and Eugene McDermott | May 5, 2023

On May 3, 2023, the SEC adopted final rules relating to corporate stock buybacks. The new rules have some significant differences from those the SEC proposed in December 2021. While the new rules do require significantly greater detail about daily stock repurchases in Inline XBRL format, they will only require filing of that information quarterly, in a new exhibit to the company's Form 10-K and Form 10-Q filings. Non-US companies that report on Form 20-F will now have a quarterly report requirement on new Form F-SR for buyback disclosures in the quarter. Closed-end funds will report semi-annually on Form N-CSR.

Calendar year domestic companies will have to comply with the new rules beginning with their Form 10-K for 2023 for any stock buybacks in the fourth quarter of 2023, non-US companies on Form F-SR for the second quarter of 2024, and closed-end funds on Form N-CSR for the first half of 2024.

Rule Changes

Disclosure of stock buyback details has been required of SEC reporting companies for years. The new rules change the level of detail that must be provided. They also add a new checkbox indicating whether any of the directors and officers traded in the stock within four business days before or after the public announcement of an issuer's stock buyback program.

In addition, the new rules will require more granular disclosure about the reasons for the buyback and the methods used to set the size of the buyback. They will also require disclosure of any policies and procedures relating to directors and officers trading in the stock during the buyback, including any restriction on directors and officers selling during a company buyback. This requirement appears to respond to a concern that somehow companies repurchase stock to facilitate sales by insiders, although the SEC did not provide any evidence of improper transactions related to sales during buybacks. Because company buybacks tend to happen in open market windows when insider sales are permitted, some overlap seems ordinary.


A new Item 408(d) in Regulation S-K will require companies to disclose, also in Inline XBRL format, the adoption or termination of issuer trading arrangements utilizing Rule 10b5-1. This largely mirrors the recently adopted rules requiring quarterly disclosure of the adoption or termination of Rule 10b5-1 arrangements by officers and directors.

Takeaways

- Companies should update their controls around stock buybacks to reflect the new rules, including preparing for reporting the daily stock buyback data in Inline XBRL.

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- Companies should consider whether to revise their blackout periods for insiders to ensure there are no trades that would cause the Company to have to check the box confirming insider trades during the 4 business days before or after public announcement of a stock buyback.
- Companies may want to consider other prophylactic measures to avoid potential criticism, such as avoiding stock buybacks and announcements coincident with incentive award measurement dates or stock option expiration dates.

If you have any questions about the new listing standards, please contact your regular Locke Lord contact or any of the authors to discuss these matters.

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Short Extension of Clawback Policy Deadline
Suggests Listed Companies Will Need to Adopt
Policies by early August

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SEC Adopts Share Repurchase Disclosure Rules: 7 Things to Know

By Allison Handy on May 4, 2023

Yesterday, the SEC **adopted** the share repurchase disclosure rules as part of its effort to bring more transparency to corporate stock buybacks. The SEC's proposal came out about 18 months ago, as we noted in **this blog**. Here's the **207-page adopting release** – and here's the **fact sheet**.

Here are seven things to know about the new share repurchase disclosure rules:

1. Quarterly Disclosure Required in Form 10-Q/10-K Exhibit. Under a new Item 601(a)(26) of Regulation S-K, most companies will be required to disclose daily share repurchase data on a quarterly basis as an exhibit to their Form 10-Qs and Form 10-Ks. (FPs will need to make the disclosure on a new Form F-SR within 45 days after the end of each fiscal quarter.) Fortunately, the SEC backed off the controversial timing in its proposal which sought nearly “real-time” reporting with Form SRs filed within one business day after a company's repurchase.

2. Disclosure Made in Tabular Format With Six Data Points. 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
- 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).

3. Checkbox Required for D&O Trading That Occurs Within 4 Days of Repurchase Plan Announcement. A checkbox must precede the table indicating whether Section 16(a) officers and directors traded in the relevant securities in the four business days before or after the announcement of the repurchase program. See page 183 of the adopting release to see what that checkbox – and the related table for any D&O trades – looks like.

4. Narrative Disclosures Required Too. In addition to the table, the existing disclosure requirement in Form 10-Qs and 10-Ks for a table of monthly repurchase information with accompanying footnotes has been replaced by a requirement for narrative disclosures, including:

- Objectives or rationales for its share repurchases and the process or criteria used to determine the amount of repurchases;
- Shares purchased other than through a publicly announced plan or program;
- Details regarding publicly announced repurchase plans or programs; and
- Any policies and procedures relating to purchases and sales of the company's securities during a repurchase program by its officers and directors, including any restriction on such transactions.

5. Rule 10b5-1 Plan Disclosure in Form 10-Qs and 10-Ks for Corporate Plans. New Item 408(d) of Regulation S-K requires quarterly disclosure in Forms 10-Q and 10-K about a company's adoption and termination of Rule 10b5-1 trading

arrangements.

6. Considered “Filed” for Liability Purposes (And Tag With XBRL). All of this new disclosure is treated as “filed” instead of “furnished,” the opposite of which was proposed. And this new disclosure must be tagged using Inline XBRL.

7. Compliance Starts In Less Than a Year. Most companies will be required to make these tabular and narrative disclosures beginning with the first filing that covers the first full fiscal quarter that begins on or after October 1, 2023. So 12/31 fiscal year-end companies will be required to begin complying in their next Form 10-K for repurchases made during the quarter ending December 31, 2023.

Public Chatter

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U.S. SEC Adopts Share Repurchase Disclosure Rules

15 May 2023

Capital Markets and Public Company Advisory & Governance

Client Alert

On May 3, 2023, the U.S. Securities and Exchange Commission (SEC) adopted amendments to its rules that will require additional detail regarding the structure of share repurchase plans or programs and share repurchases by corporate issuers and listed closed-end funds, require the filing of daily quantitative repurchase data on a periodic basis, and eliminate the requirement to disclose monthly repurchase data in an issuer's periodic reports.^[1] The amendments also expand the existing periodic disclosure requirements about share repurchases and, for certain issuers, will require periodic disclosure regarding an issuer's adoption and termination of Rule 10b5-1 trading arrangements.

Specifically, under the final amendments, issuers will be required to:

- disclose daily quantitative repurchase data at the end of every quarter (or semi-annually, in the case of a listed closed-end fund);
- include a checkbox above the tabular disclosures indicating whether certain officers and directors 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 program within four business days before or after the announcement of a share repurchase program or the announcement of an increase of an existing share repurchase program;
- disclose the objectives or rationales for the issuer's share repurchases and the process or criteria used to determine the amount of repurchases and any policies and procedures relating to purchases and sales of the issuer's securities during a share repurchase program by its officers and directors, including any restriction on such transactions; and
- disclose the issuer's adoption and termination of Rule 10b5-1 trading arrangements, depending on the type of issuer.

Further, the final amendments will eliminate current requirements to disclose monthly repurchase data in periodic reports. Information required pursuant to these new disclosure requirements must be tagged using Inline XBRL.

In December 2021, the SEC had proposed new Rule 13a-21 under the Securities Exchange Act of 1934, as amended (Exchange Act) and new Form SR, which would have required issuers, including domestic issuers, foreign private issuers and certain listed closed-end funds, to report any purchase made by or on behalf of an issuer or any affiliated purchaser of shares or other units of any class of the issuer's equity securities that is registered by the issuer pursuant to Section 12 of the Exchange Act. Under the proposed rules, the issuer would have had to furnish a new Form SR before the end of the first business day following the day on which the issuer executes a share repurchase. In the final amendments adopted in May 2023, the SEC determined that it was instead appropriate for issuers to "file" (rather than "furnish") aggregate daily repurchase data on a periodic basis and provide additional disclosure regarding share repurchases and depending on the type of issuer, the issuer's adoption and termination of Rule 10b5-1 trading arrangements.

The new share repurchase disclosure requirements adopted by the SEC will apply to companies that file periodic reports on Form 10-Q and Form 10-K, foreign private issuers and listed closed-end funds. Compliance with the new requirements will be phased in over the next year based on the type of issuer.

Background of the SEC's Share Repurchase Rulemaking

Share repurchase activity has received significant attention in the past several years, as politicians, institutional investors, the media, academics, regulators and governance experts have criticized share repurchase programs for a variety of reasons. This criticism has focused on the potential for share repurchases to, among other things: (i) promote the use of capital for short-term purposes to the detriment of long-term initiatives; (ii) manage reported per-share

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earnings metrics in an effort to meet or exceed consensus analyst estimates; (iii) benefit corporate insiders who sell their stock when share prices have appreciated after the announcement and implementation of a stock repurchase program; and (iv) allocate capital that could be used to benefit employees in the form of higher wages or enhanced benefits. The focus on share repurchase activity sharpened during the COVID-19 pandemic and the period of economic uncertainty that has followed the pandemic.

Prior to the SEC's most recent rulemaking action, public companies have been subject to reporting obligations relating to share repurchases in their periodic reports. In particular, Item 703 of Regulation S-K, Forms 10-Q and 10-K, Form 20-F (applicable to foreign private issuers) and Form N-CSR (applicable to listed closed-end funds) require detailed monthly disclosure of repurchases of the issuer's own equity securities along with information about share repurchase programs. Certain information regarding share repurchases is also required to be disclosed in an issuer's financial statements, including in the statements of cash flows indicating the amount of cash paid for repurchased securities and the statements of changes in shareholders' equity indicating any reduction in securities outstanding and additional paid-in capital for the securities repurchased. Companies often disclose share repurchase activity in the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section required in periodic reports under Item 303 of Regulation S-K and in the "Operating and Financial Review and Prospects" under Item 5 of Form 20-F.

On December 15, 2021, the SEC proposed amendments that would have required public companies to provide more timely disclosure of share repurchases on a new Form SR, which would have required the reporting of repurchases of the issuer's equity securities for each day, within one business day after execution of a share repurchase order.^[2] The proposed amendments would have also required additional detail regarding the structure of an issuer's share repurchase program and its share repurchases and would have required the information about repurchases to be reported using Inline XBRL.

The SEC indicated in the Proposing Release that these proposed amendments resulted from an ongoing, comprehensive evaluation of the SEC's disclosure requirements regarding share repurchases. In 2016, the Commission issued a Concept Release on the business and financial disclosures required by Regulation S-K, including disclosure required pursuant to Item 703 of Regulation S-K.^[3] That Concept Release requested comment on, among other things, whether Item 703 of Regulation S-K disclosure is important to investors, whether the SEC should require more detailed or more frequent disclosure regarding share repurchase transactions, and whether there should be a *de minimis* monetary threshold for disclosure of share repurchases. The SEC also noted that it received a rulemaking petition expressing general support for the current regulatory regime for issuer share repurchases but recommending revisions to the SEC's executive compensation disclosure requirements to require disclosure of whether issuer share repurchases have affected the calculation of the repricing of any options, stock appreciation rights, or option-like instruments.^[4]

The SEC stated in the Proposing Release that, given the growth of issuer share repurchase plans in recent years and the concerns expressed by commentators, "investors could benefit from improving the quality, relevance, and timeliness of information related to issuer share repurchases." The SEC expressed concern that, because companies are repurchasing their own securities, asymmetries may exist between companies and affiliated purchasers and investors with regard to information about the issuer and its future prospects. To help address these information asymmetries, the SEC proposed more comprehensive disclosure requirements regarding issuer share repurchases.

The SEC reopened the comment period for the share repurchase rulemaking twice. The first reopening occurred in October 2022 because certain comments on the Proposing Release were potentially affected by a technological error in the SEC internet comment form.^[5] The second reopening occurred on December 2022, when the SEC voted to reopen the comment period in connection with the addition to the comment file of a staff memorandum analyzing the potential economic effects of the new excise tax contained in the Inflation Reduction Act of 2022 (Inflation Reduction Act) on the proposed amendments.^[6]

After considering the comments received on the Proposing Release, the Commission ultimately determined to adopt a requirement for the reporting of daily share repurchase data on a periodic basis, rather than on a real-time basis. The SEC noted in the Adopting Release:

The current reporting regime, in which investors receive information only about the monthly aggregate repurchases of issuers, fails to provide enough detail for investors to draw informed conclusions about the purposes and effects of many repurchases. In contrast, the amendments we are adopting will provide investors with data about the daily repurchase activity of an issuer and additional qualitative disclosures that investors can combine with other disclosures, such as the timing of compensatory awards or executive equity transactions, to observe whether a given repurchase was apt to affect executive compensation. Data on daily transactions and the additional qualitative disclosures would also reveal patterns in which repurchases were undertaken at times or under conditions that were likely to affect imminent accounting metrics, or prior to the release of material nonpublic information by the issuer. Investment advisers may use this data in assisting investors in assessing the purposes and effects of share repurchases.

As adopted, the SEC’s final amendments will significantly increase the amount of detailed information about share repurchases that is available to investors after share repurchases have been completed, rather than requiring real-time disclosure of share repurchase activity as originally proposed.

Reporting Daily Repurchase Data

After considering commenters’ objections to the disclosure of detailed repurchase data on Form SR within one business day of executing a share repurchase as originally proposed, the final amendments require:

- corporate issuers, regardless of filer status, that file on domestic forms to disclose the total repurchases made each day for the quarter in an exhibit to their Form 10-Q and Form 10-K (for their fourth fiscal quarter);
- listed closed-end funds to disclose daily quantitative repurchase data in their semi-annual and annual reports on Form N-CSR; and
- foreign private issuers reporting on the foreign private issuer forms^[7] to disclose daily quantitative repurchase data at the end of every quarter in new Form F-SR, which will be due 45 days after the end of each of the foreign private issuer’s fiscal quarters (including the fourth fiscal quarter).^[8]

The SEC indicates in the Adopting Release that it believes providing the same level of detail about share repurchases that was proposed, but on a less frequent basis, would “avoid many of the costs that commenters noted while still providing important disclosures that address the informational deficiencies in current reporting that we have identified.”

The SEC has adopted a tabular disclosure format that companies will utilize for reporting, for the period covered by the applicable report, the total purchases made each day by or on behalf of the issuer or any “affiliated purchaser” as such term is defined in Exchange Act Rule 10b-18.^[9] of shares or other units of any class of the issuer’s securities that are registered pursuant to Section 12 of the Exchange Act. This new tabular disclosure will replace the monthly share repurchase disclosure currently required by Item 703 of Regulation S-K. The required tabular disclosure is formatted as follows:

(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
Execution Date	Class of Shares (or Units)	Total Number of Shares (or Units) Purchased	Average Price Paid per Share (or Unit)	Total Number of Shares (or Units) Purchased as Part of Publicly Announced Plans or Programs	Aggregate Maximum Number (or Approximate Dollar Value) of Shares (or Units) that May Yet Be Purchased Under the Publicly Announced Plans or Programs	Total Number of Shares (or Units) Purchased on the Open Market	Total Number of Shares (or Units) Purchased that are Intended to Qualify for the Safe Harbor in Rule 10b-18	Total Number of Shares (or Units) Purchased Pursuant to a Plan that is Intended to Satisfy the Affirmative Defense Conditions of Rule 10b5-1(c)
Total								

The final amendments require corporate issuers and listed closed-end funds to disclose, by footnote to the table, the date of adoption or termination of any plan for share repurchases that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c).

The final amendments require issuers to include a checkbox above its tabular disclosures indicating whether certain officers and directors 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 share repurchase plan or program announcement or the announcement of an increase of an existing share repurchase plan or program. For domestic corporate issuers and listed closed-end funds, this checkbox requirement applies to any officer or director subject to the reporting requirements under Section 16(a) of the Exchange Act. For foreign private issuers, this 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 foreign private issuer is reporting on the forms exclusively available to foreign private issuers or on domestic forms.

The amendments include a provision in new Item 601(b)(26) of Regulation S-K and new Item 14(a)(iii) in Form N-CSR that permits an issuer to rely on Forms 3, 4, and 5 filed pursuant to Section 16 of the Exchange Act in determining whether to check the checkbox that accompanies the tabular disclosure. Form F-SR contains an analogous provision for foreign private issuers, permitting a foreign private issuer to rely on written representations from its directors and senior management, provided that the reliance is reasonable.

In a change from the proposal, the daily quantitative repurchase data required by the final amendments will be treated as "filed" in Form 10-Q, Form 10-K, Form N-CSR, and Form F-SR, instead of as "furnished." As a result, the repurchase disclosure will be subject to liability under Section 18 of the Exchange Act and the information will be deemed incorporated by reference into filings under the Securities Act of 1933, as amended (Securities Act) which will be subject to liability under Section 11 of the Securities Act.

Narrative Disclosure Regarding Share Repurchases

In addition to the tabular disclosure of aggregated daily repurchase data and the accompanying checkbox, issuers will be required to provide expanded narrative disclosure regarding share repurchase plans and programs, including:

- the objectives or rationales for each repurchase plan or program and the process or criteria used to determine the amount of repurchases;
- the number of shares (or units) purchased other than through a publicly announced plan or program, and the nature of the transaction (e.g., whether the purchases were made in open-market transactions, tender offers, in satisfaction of the issuer's obligations upon exercise of outstanding put options issued by the issuer, or other transactions);
- for publicly announced repurchase plans or programs:
 - the date each plan or program was announced;
 - the dollar amount (or share or unit amount) approved;
 - the expiration date (if any) of each plan or program;
 - each plan or program that has expired during the period covered by the tabular disclosure; and
 - Each plan or program the issuer has determined to terminate prior to expiration or under which the company does not intend to make further purchases; and
- any policies and procedures relating to purchases and sales of the issuer's securities by its officers and directors during a repurchase program, including any restrictions on such transactions.

The issuer must disclose the specified information in narrative form with respect to the issuer's repurchases of equity securities disclosed in the table and refer to the particular repurchases in the table that correspond to the different parts of the narrative, if applicable.

Company Rule 10b5-1 Trading Arrangement Disclosure

The final amendments require issuersthat file on domestic forms to disclose whether, during the issuer's last fiscal quarter, the issuer adopted or terminated any Rule 10b5-1 trading arrangement, as that term is defined in Item 408(a)(1)(i) of Regulation S-K.**[10]**

In addition, the issuer must provide a description of the material terms of the Rule 10b5-1 trading arrangement (other than terms with respect to the price at which the party executing the Rule 10b5-1 trading arrangement is authorized to trade), such as:

- the date on which the issuer adopted or terminated the Rule 10b5-1 trading arrangement;
- the duration of the Rule 10b5-1 trading arrangement; and
- the aggregate number of securities to be purchased or sold pursuant to the Rule 10b5-1 trading arrangement.

If the required narrative disclosure regarding share repurchases described above would satisfy these new requirements regarding Rule 10b5-1 trading arrangements, the issuer may cross-reference that disclosure to also satisfy these requirements.

Structured Data Requirements

The final amendments require companies to tag the information disclosed pursuant to Items 601 and 703 of Regulation S-K, Item 16E of Form 20-F, Item 14 of Form N-CSR, and Form F-SR in a structured, machine-readable data language in accordance with Rule 405 of Regulation S-T and the EDGAR Filer Manual. In this regard, the final amendments require detail tagging using Inline XBRL of the quantitative amounts disclosed within the required tabular disclosures and block text tagging and detail tagging of required narrative and quantitative information.

Compliance Dates

Foreign private issuers that file on foreign private issuer forms will be required to comply with the new disclosure and tagging requirements in 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, which is required by Item 16E of Form 20-F, and the related tagging requirements will be required beginning with the first Form 20-F filed after a foreign private issuer's first Form F-SR has been filed.

Listed closed-end funds will be required to comply with the new disclosure and tagging requirements in their Exchange Act periodic reports 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 new disclosure and tagging requirements in their Exchange Act periodic reports 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.

[1] Release No. 34-97424, *Share Repurchase Disclosure Modernization* (May 3, 2023) (Adopting Release).

[2] Release No. 34-93783, *Share Repurchase Disclosure Modernization* (Dec. 15, 2021) (Proposing Release).

[3] Release No. 33-10064, *Business and Financial Disclosure Required by Regulation S-K* (Apr. 13, 2016) (Concept Release).

[4] Rulemaking Petition 4-772, *Request to Amend Regulation S-K* (17 C.F.R. § 229.402(d), instruction (7)) (Apr. 21, 2021).

[5] Release No. 33-11117, *Resubmission of Comments and Reopening of Comment Periods for Several Rulemaking Releases Due to a Technological Error in Receiving Certain Comments* (Oct. 7, 2022).

[6] Release No. 34-96458, *Reopening of Comment Period for Share Repurchase Disclosure Modernization* (Dec. 7, 2022).

[7] Multijurisdictional Disclosure System (MJDS) filers that file on Form 40-F are not subject to the final amendments. Release No. 33-6902, *Multijurisdictional Disclosure and Modifications to the Current Registration and Reporting System for Canadian Issuers* (Jun. 21, 1991).

[8] If a foreign private issuer's home country disclosures furnished on a Form 6-K satisfy the Form F-SR requirements, it can incorporate by reference its Form 6-K disclosures into its Form F-SR.

[9] Under Rule 10b-18, an "affiliated purchaser" is: (i) a person acting, directly or indirectly, in concert with the issuer for the purpose of acquiring the issuer's securities; or (ii) an "affiliate" who controls the issuer's purchases or whose purchases are controlled by or under common control with the issuer. An "affiliate" is any person who controls, is controlled by, or is under common control with the issuer. The definition of affiliated purchaser does not include a broker or dealer (solely by reason of that broker effecting purchases on behalf of the issuer), or any officer or director of the company (solely by reason of that officer's or director's participation in the decision to authorize Rule 10b-18 purchases on behalf of the issuer).

[10] For more information about the SEC's amendments to Rule 10b5-1 and related disclosures, please see the client alert, **U.S. SEC Adopts Amendments to Rule 10b5-1 and Requires Related Disclosures**.

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