

SEC Adopts New Share Repurchase Disclosure Rules

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On May 3, 2023, the Securities and Exchange Commission (SEC) adopted [final rules](#) requiring increased quantitative data and expanded narrative disclosure regarding share repurchases by an issuer.

Overview of New Disclosures

In summary, the new requirements include:

- Quarterly Disclosure of Daily Quantitative Repurchase Data: Domestic issuers^[1] must disclose, on a quarterly basis, daily quantitative share repurchase data regarding any class of the company's publicly traded equity securities repurchased by or on behalf of the company or any "affiliated purchaser."^[2] The final rules relax the stringent requirements contained in the SEC's 2021 [proposed rules](#) by eliminating the proposed Form SR, which would have required daily reporting of share repurchases and would have been deemed furnished to the SEC. The new disclosure must be presented in an exhibit to the company's Forms 10-Q and 10-K, as applicable, which is deemed filed with the SEC as opposed to furnished. The information must be presented in the following tabular form for each day on which repurchases were executed:

(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 Units)	Total Number of Shares (or Units) Purchased as Part of Publicly Announced Plans or Program	Aggregate Maximum Number (or Approximate Dollar Value) of Shares (or Units) that May Yet Be Purchased Under the Publicly Announced Plans or Program	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)

- **Check the Box:** Above this new table, issuers must include a checkbox indicating whether any Section 16 officers or directors purchased or sold any of the issuer's equity securities subject to a share repurchase plan or program if the trade occurs within four business days before or after the announcement of the repurchase plan or an increase of an existing share repurchase plan or program.
- **Expanded Narrative Disclosure:** Under revised Item 703 of Regulation S-K, the monthly repurchase disclosure table has been eliminated, and issuers must now provide certain new narrative detail about their share repurchases listed in the new table, as well as any related share repurchase plans or programs, including the objectives and rationales for each repurchase plan or program, the criteria used to determine the amount of repurchases, information regarding repurchases made other than pursuant to a repurchase plan or program, and information about any policies and procedures relating to the purchases and sales of the company's securities during a repurchase program by its officers and directors, including whether there are any restrictions on such transactions. In addition, issuers will still have to disclose information currently required to be disclosed in footnotes to the eliminated monthly repurchase table for publicly announced repurchase plans or programs in the new narrative disclosure.
- **Rule 10b-5 Quarterly Disclosure:** Pursuant to new Item 408(d) of Regulation S-K, issuers must disclose whether any Rule 10b-5 trading arrangement^[3] was adopted, modified, or terminated by the issuer during the relevant quarter and describe the material terms, other than terms with respect to price, of such trading arrangement, including the date adopted or terminated, the duration, and the aggregate number of securities to be repurchased. These new disclosure requirements are similar to the disclosure requirements regarding the adoption, modification, and termination of trading plans by officers and directors adopted by the SEC in December 2021 and discussed in an earlier [Mintz advisory](#).
- **XBRL Tagging:** Issuers must tag the new disclosures using Inline XBRL.

Compliance Dates

The new rules will become effective 60 days following publication of the adopting release in

the Federal Register.^[4] Compliance with the new rules is required by domestic issuers^[5] beginning with the first Form 10-Q or 10-K filing that covers the first full fiscal quarter that begins on or after October 1, 2023 (the fourth quarter ended December 31, 2023 and the associated Form 10-K for the year ended December 31, 2023 for calendar-year issuers). It is important to note that the amendments do not provide any disclosure exemptions for emerging growth companies, smaller reporting companies, or non-accelerated filers.

FOOTNOTES

^[1] The final rules require similar disclosure regarding repurchases by (i) foreign private issuers (FPIs) on the new Form F-SR, due 45 days after the end of each of the FPI's fiscal quarters, and (ii) listed closed-end funds on a semi-annual basis in their annual and semi-annual reports on Form N-CSR.

^[2] "Affiliated purchaser" is defined in Rule 10b-18(a)(3) as (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, directly or indirectly, controls the issuer's purchases of such securities, whose purchases are controlled by the issuer, or whose purchases are under common control with those of the issuer; provided, however, that "affiliated purchaser" shall not include a broker, dealer, or other person solely by reason of such broker, dealer, or other person effecting Rule 10b-18 purchases on behalf of the issuer or for its account, and shall not include an officer or director of the issuer solely by reason of that officer or director's participation in the decision to authorize Rule 10b-18 purchases by or on behalf of the issuer.

^[3] Item 408(a) of Regulation S-K defines a "Rule 10b5-1 trading arrangement" as any contract, instruction, or written plan for the purchase or sale of securities of the company that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c).

^[4] On May 12, 2023, however, in an effort to prevent implementation of the new rules, the US Chamber of Commerce (US Chamber), along with the Texas Association of Business and the Longview Chamber of Commerce, filed a petition in the Fifth Circuit asking the court to review the SEC's adoption of the new rules. In its related [press release](#), the US Chamber claims that the disclosure required by these rules regarding issuers' share buyback decisions and policies violates the Administrative Procedure Act and the First Amendment of the US Constitution.

^[5] FPIs will be required to comply with the new disclosure requirements in the 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 first Form F-SR has been filed. Listed closed-end funds will be required to comply with the new disclosure requirements in their periodic reports under the Securities Exchange Act of 1934, as amended, beginning with the Form N-CSR that covers the first six-month period that begins on or after January 1, 2024.

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