



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. (FPIs 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requirement in Form 10-Qs and 10-Ks for a table of monthly repurchase information with accompanying footnotes has been replaced by a requirement for narrative disclosures, including: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.

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