

SEC Proposes Rule Amendments to Improve Disclosures Relating to Share Repurchases

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On December 15, the Securities and Exchange Commission (SEC) proposed rule amendments regarding disclosure about repurchases of an issuer's equity securities, or issuer stock buybacks. Under the current rules, in its periodic reports, an issuer is required to disclose information about purchases made by, or on behalf, of the issuer or any affiliated purchaser, of shares or other types of equity securities registered under Section 12 of the Exchange Act of 1934, as amended (the Exchange Act), whether in open market or private transactions. The proposed amendments would require an issuer to provide next day disclosure on a new Form SR regarding any purchases of its equity securities. The proposed amendments also require additional periodic report disclosure about the structure of an issuer's repurchase program and its share repurchases.

The proposed amendments, available [here](#), will have a 45-day public comment period following publication in the Federal Register.

An issuer typically repurchases shares of its equity securities through various methods, including privately negotiated transactions, open market repurchases, and tender offers. Often share repurchases are made over time through open market repurchases pursuant to a board authorized share repurchase plan. While an issuer typically announces its adoption of a stock repurchase plan at the time it is authorized by its board of directors, such issuer is not required to disclose in real time when it executes trades pursuant to the previously announced share repurchase plan. Accordingly, investors and other market participants typically do not become aware of an issuer's share repurchase activity, until after the fact when it is reported in the issuer's periodic reports.

The proposed rule amendments are the result of the SEC's ongoing comprehensive evaluation of disclosure requirements and are intended to improve the quality, relevance, and timeliness of information related to issuer share repurchases. The proposing release references the SEC's concern about information asymmetries between issuers and investors with regard to information about the issuer and its future prospects.

If approved as proposed, the new and revised rules would include many significant changes, including:

Proposed Form SR Next Day Reporting

Proposed new Rule 13a-21 under the Exchange Act, and Form SR would require an issuer, including a foreign private issuer and certain registered closed-ends funds, to report any purchase made by or on behalf of the issuer

(or any affiliated purchaser) of shares or other types of equity securities registered by the issuer pursuant to Section 12 of the Exchange Act. The issuer would be required 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.

If adopted as proposed, Form SR would require the following disclosure in tabular format, by date, for each class or series of securities purchased:

- Identification of the class of securities purchased;
- The total number of shares (or units) purchased, whether or not made pursuant to publicly announced plans or programs;
- The average price paid per share (or unit);
- The aggregate total number of shares (or units) purchased on the open market;
- The aggregate total number of shares (or units) purchased in reliance on the safe harbor in Rule 10b-18 under the Exchange Act (Rule 10b-18); and
- The aggregate total number of shares (or units) purchased pursuant to a plan intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) under the Exchange Act (Rule 10b5-1(c)).

Enhanced Periodic Disclosure

The proposed rule amendments would revise and expand the current periodic disclosure requirements in Item 703 of Regulation S-K (applicable to Form 10-K and Form 10-Q), Form 20-F, and Form N-CSR, and are intended to work in tandem with new Form SR to provide investors with more detailed, timely information they can use to evaluate issuer share repurchases. Specifically, the proposed rule would require an issuer to disclose:

- The objective or rationale for its share repurchases and the process or criteria used to determine the amount of its repurchases;
- 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 restriction on such transactions;
- Whether repurchases were made pursuant to a plan that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c), and, if so, the date the plan was adopted or terminated; and
- Whether purchases were made in reliance on the Rule 10b-18 non-exclusive safe harbor.

The proposed rules also would require the issuer to check a box prior to the tabular disclosure of repurchases indicating whether any of the issuer's officers or directors subject to the reporting requirements of Section 16(a)

under the Exchange Act purchased or sold shares or other units of the class of the issuer's equity securities that is the subject of an issuer share repurchase plan or program within 10 business days before or after the announcement of such plan or program.

Inline XBRL Tagging Requirement

The proposed rules would also require issuers to tag the relevant disclosures in Inline XBRL in accordance with Rule 405 of Regulation S-T and the EDGAR Filer Manual. The proposed structured data requirement is consistent with the SEC's recent adoptions regarding Inline XBRL requirements to improve the quality and usability of data for investors.

If adopted, reporting companies should review and update their disclosure controls and procedures to ensure that they are able to timely comply with the new Form SR filing requirement and enhanced periodic disclosure contemplated by the proposed rules. In addition, reporting companies should familiarize themselves with the proposed new Form SR which can be found on pages 91-95 of the proposed rule release.

As it currently stands, the proposed rule currently has the support to pass on a 3-2 vote. The two dissenting Commissioners disapproved of adopting an "overly burdensome" approach to an issue that would be better addressed through a "more tailored requirement to disclose buyback announcements and terminations." The dissenting Commissioners also criticized the proposal for discounting a recent study conducted by the SEC Staff containing analysis and findings running counter to the release's premise that "company insiders are using buybacks to manipulate companies' stock prices as a way to increase the value of their own equity compensation." One dissenting Commissioner argued for an alternative disclosure approach in which companies may provide relevant buyback information in a current report on Form 8-K.

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