

SEC Proposes Major Amendments to Share Repurchase Disclosures

December 17, 2021

On December 15, 2021, the U.S. Securities and Exchange Commission (the “SEC”) released a new proposed rule that would significantly expand required disclosures concerning an issuer’s repurchases of its equity securities listed on a U.S. stock exchange or otherwise registered under Section 12 of the Securities Exchange Act of 1934 (the “Exchange Act”). The proposed rules, if adopted, would:

- require daily repurchase disclosure on a new Form SR, which would be furnished to the SEC one business day after execution of the issuer’s share repurchase order;
- require additional detail regarding the structure of an issuer’s repurchase program and its share repurchases to be disclosed in periodic reports, by amending Item 703 of Regulation S-K under the Securities Act of 1933 (“Item 703”); and
- require information disclosed on Form SR or pursuant to Item 703 to be tagged with inline eXtensible Business Reporting Language (“Inline XBRL”).

The key provisions of these proposed amendments are further discussed below. The full text of these proposed amendments is available [here](#).

Background. Currently, an issuer is required to disclose in its periodic reports on Form 10-K and Form 10-Q, in tabular format, certain limited information about its purchases of equity securities, including the total number of shares purchased on a monthly basis, the average price per share, the number of shares purchased as part of a publicly announced repurchase plan or program and the maximum number or approximate dollar value of shares that may yet be purchased under the plan or program. The footnotes to the table must include more detailed information on the particular repurchase plans or programs disclosed. In addition to this required periodic disclosure, issuers typically publicly announce the adoption of a repurchase plan or program through a press release or Form 8-K. Current disclosure rules do not, however, require any contemporaneous disclosure of an issuer’s actual repurchases.

While the SEC acknowledged in the proposing release that share repurchases are generally implemented for legitimate business reasons, *e.g.*, reducing dilution from equity incentive plan issuances, the SEC expressed concerns about the use of share repurchases for earnings management or to increase management's compensation. The proposed rule would seek to address these concerns by providing investors with additional information to help them better understand the extent of an issuer's activity in the market and its motivation for share repurchases.

Proposed Form SR. The proposed rules would require issuers, including foreign private issuers, to report any purchase made by it or on its behalf or by any affiliated purchaser of shares or other units of any class of the issuer's equity securities registered under 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, which Form SR would require the following information:

- date of the repurchase;
- identification of the class of securities purchased;
- the total number of shares (or units) purchased, including all issuer repurchases 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; 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.

Revisions to Periodic Disclosure Requirements. In addition to the new Form SR, the proposed rules would require additional disclosure about an issuer's share repurchases in its periodic reports by revising Item 703 to require an issuer to disclose:

- the objective or rationale for its share repurchases and process or criteria used to determine the amount of repurchases;

- any policies or 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;
- whether the issuer's 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 that the plan was adopted or terminated; and¹
- whether purchases were made in reliance on the Rule 10b-18 nonexclusive safe harbor.

An issuer would also be required to disclose in its periodic reports (by checking a box) if any of its Section 16 officers and directors purchased or sold shares of any class of equity securities registered under Section 12 of the Exchange Act that is the subject of an issuer share repurchase plan or program within 10 business days before or after the announcement of an issuer repurchase plan or program.

Inline XBRL Tagging. The proposed rules would also require issuers to tag information on new Form SR and information disclosed pursuant to Item 703 using Inline XBRL, as is currently required for financial statements, to allow for easier access to and analysis of share repurchase information by investors.

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The public comment period for the proposed amendments will remain open for 45 days following publication of the relevant proposing release in the Federal Register.

Please do not hesitate to contact us with any questions.



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¹ See also the Debevoise Client Update regarding the SEC's proposed amendments regarding Rule 10b5-1 trading plans and related disclosures, available [here](#).



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