



# SEC Adopts Share Repurchase Disclosure Amendments

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On May 3, 2023 the Securities and Exchange Commission (SEC) adopted amendments to modernize the disclosure requirements relating to share repurchases by issuers. The amendments include new tabular disclosures regarding daily transaction data, revisions to existing disclosures, and new disclosures regarding Rule 10b5-1 plans. All disclosures must be tagged using Inline XBRL. The new SEC rule on enhanced issuer repurchase disclosures was [published](#) in the Federal Register with an effective date set for July 31, 2023.

## New Tabular Disclosures

The new tabular disclosures will require corporate issuers that file on domestic forms to disclose daily quantitative repurchase data at the end of every quarter in an exhibit to their Quarterly Reports on Form 10-Q and Annual Reports on Form 10-K. Foreign private issuers (FPIs) reporting on FPI forms will have to disclose daily quantitative repurchase data at the end of every quarter in the new Form F-SR, due 45 days after the end of an FPI's fiscal quarter. Registered close-end management investment companies (Listed Close-End Funds) will disclose daily quantitative repurchase data in their annual and semi-annual reports on Form N-CSR.

The daily quantitative repurchase data to be disclosed is:

- The date on which the purchase of shares was executed;
- The class of shares purchased;
- The total number of shares purchased on the date;
- The average price paid per share;
- The aggregate maximum of shares that may yet be purchased under the publicly announced plan;
- The total number of shares purchased on the open market;
- The total number of shares purchased on the date that are intended to qualify for the safe harbor in accordance with Rule 10b-18; and
- The total number of shares purchased pursuant to a plan intended by the issuer to satisfy the

affirmative defense conditions of Rule 10b5-1(c).

The Final Rule contains the following example of the tabular disclosure:

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

In addition to the table, the SEC will require disclosure, by footnote, of the date any plan for the shares in column (i) was adopted or terminated.

## Disclosure Revisions

The SEC is also adopting amendments relating to the revision and expansion of the disclosure requirements in Item 703 of Regulation S-K, Form 20-F, and Form N-CSR. An issuer will be required to disclose:

- The objectives or rationales for each repurchase plan and process or criteria used to determine the amount of repurchases;
- Any policies and procedures relating to purchases and sales of its securities by its officers and directors during a repurchase program, including any restriction on such transactions; and
- Whether any of its directors and officers subject to certain reporting requirements, certain directors, or certain senior management purchased or sold registered securities subject to a publicly announced repurchase plan within four business days before or after the issuer's announcement of a repurchase plan or increase of an existing share repurchase plan by checking a box before the tabular disclosure.

Additionally, the monthly qualitative share repurchase disclosure table will no longer exist. As such, the information disclosed in the footnotes to the monthly table will instead be the main text of a narrative discussion.

## Rule 10b5-1 Plan Disclosures

Finally, the new amendments introduce new Item 408(d), requiring an issuer to disclose whether the issuer adopted or terminated any contract, instruction, or written plan to purchase or sell its securities intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) during its most recently completed fiscal quarter. Item 408(a) also requires disclosure of a description of the

material terms of the contract, instruction, or written plan such as:

- The date on which the registrant 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.

Issuers will not be required to disclose the price at which the party executing the trading arrangement is authorized to trade.

## Legal Challenge

On May 12, 2023, the U.S. Chamber of Commerce—along with co-plaintiffs the Texas Association of Business and the Longview Chamber of Commerce—filed suit against the SEC in the U.S. Court of Appeals for the Fifth Circuit, challenging the mandatory disclosure requirements under the Administrative Procedure Act and the U.S. Constitution. According to the U.S. Chamber of Commerce’s press release, the plaintiffs believe that the new mandatory disclosure requirements compel speech in violation of the First Amendment and risk the public airing of important managerial decisions. The challengers further argue that the new disclosures will discourage buybacks. A spokesperson for the SEC stated that the SEC “will vigorously defend the challenged rule.”

## Compliance

Most issuers must comply with the amendments on Forms 10-Q and 10-K beginning with the first filing that covers the first fiscal quarter that begins on or after October 1, 2023. FPIs that file on FPI forms must comply with the new disclosure requirements in the new Form F-SR beginning with the first Form F-SR that covers the full fiscal quarter that begins on or after April 1, 2024 with the related Form 20-F narrative disclosures in the issuer's subsequent Form 20-F. Listed Close-End Funds must 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.

In light of these new disclosure requirements, public companies should consider revisiting and documenting the rationale for repurchasing shares and establishing policies and procedures regarding transactions by directors and officers during repurchase programs.

Attorneys in Kelley Drye’s Corporate Practice Group are available to assist in navigating and preparing for compliance with these new 10b5-1 rules. For more information, please contact your current Kelley Drye attorney or any member of the [Corporate Practice Group](#).