

Solution in Search of a Problem? SEC Adopts Share Buyback Disclosure Rules

Over the dissents of two of the five commissioners, the Securities and Exchange Commission (SEC) adopted rules requiring extensive disclosure of reporting companies' buyback programs. Notwithstanding that rules have been in effect for decades covering buyback procedures and going-private transactions and that best practices for buyback programs disclosure have been equally long established, the SEC majority found it necessary to increase the expense, ultimately borne by investors, of these programs, while likely making U.S. capital markets less attractive to foreign companies and for IPOs, generally.

Specifically, the new rules require:

- Corporate issuers reporting on Forms 10-Q and 10-K to disclose information about adoption and termination of Rule 10b5-1 trading arrangements and daily quantitative repurchase data for each quarter on exhibits to those forms
- Listed closed-end funds to disclose detailed daily quantitative repurchase data in their annual and semiannual reports on Form N-CSR
- Foreign private issuers reporting on the FPI forms to disclose daily quantitative repurchase data quarterly on new Form F-SR within 45 days after quarter-end

Additionally, an issuer must disclose whether any executive officer purchased or sold the company's equity securities within four business days before or after its announcement of a repurchase plan or program or an increase in an existing program.

A reporting company also must disclose:

- The reasons for its share repurchases, and the process or criteria used to determine the amount of repurchases



- Any policies and procedures relating to purchases and sales of the issuer's securities during a repurchase program by the company's officers and directors, including any restriction on such transactions
- Whether it made its repurchases pursuant to a plan that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c), and the date that the plan was adopted or terminated, or whether its repurchases were intended to qualify for the Rule 10b-18 nonexclusive safe harbor

The new rules take effect 60 days after publication in the Federal Register.

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