

SEC Adopts Final Rules for Share Repurchase Disclosure

On May 3, 2023, the Securities and Exchange Commission (SEC) adopted [final rules](#) that significantly increase issuers' disclosure obligations by requiring more detailed periodic disclosure about repurchases and issuer trading plans. According to the SEC's adopting [press release](#), "The amendments will improve disclosure and provide investors with enhanced information to assess the purposes and effects of share repurchases."

The new rules apply to issuers, including foreign private issuers (FPIs) and certain registered closed-end funds that are exchange traded (Listed Closed-End Funds), that purchase shares or other units of any class of the issuer's equity securities that are registered pursuant to Section 12 of the Securities Exchange Act of 1934, as amended.

The final rules will require issuers to:

- Disclose daily repurchase activity quarterly;
- Check a box indicating if certain directors or officers traded in the relevant securities within four business days before or after the public announcement of an issuer's repurchase plan or program;
- Provide narrative disclosure about the issuer's repurchase programs and practices in its periodic reports; and
- Provide quarterly disclosure in an issuer's periodic reports on Forms 10-K and 10-Q related to an issuer's adoption and termination of 10b5-1 trading arrangements.

Disclosure of Repurchase Activity

The final amendments require corporate issuers that file on domestic forms to disclose the total repurchases made each day for the quarter in an exhibit to their Form 10-Q and Form 10-K (for the fourth fiscal quarter). New Form F-SR was adopted for FPI quarterly reporting and will be due 45 days after the end of an FPI's fiscal quarter (in addition to new narrative disclosure requirements in Form 20-F). Listed Closed-End Funds are to disclose daily quantitative repurchase data in their semiannual and annual reports on Form N-CSR. The new rules eliminate current requirements in Regulation S-K, Form 20-F, and Form N-CSR to disclose monthly repurchase data in periodic reports.

Director and Officer Trading Activity

Issuers will be required to disclose any policies and procedures relating to directors' and officers' purchases and sales of the issuer's securities while the issuer has a repurchase program in place, including any restrictions on such transactions. Additionally, the newly required exhibit and Form F-SR must include a checkbox indicating whether Section 16 officers and directors (or, for FPIs, directors and members of senior management who would be identified pursuant to Item 1 of Form 20-F) purchased or sold shares that are the subject of an issuer share repurchase plan or program within four business days before or after the announcement of that plan or program.

Repurchase Programs and Practices

Issuers will be required to describe the objectives or rationale for stock repurchases and the process or criteria used to determine the amount of repurchases. Issuers will also need to continue to include information currently required pursuant to Item 703 of the Regulation S-K, including the number of shares purchased other than through a publicly announced plan or program and the nature of such transactions and certain information regarding publicly announced repurchase programs. Issuers should refer to any corresponding repurchases described in the new exhibit as part of these descriptions.



Christopher J. Bellini

**Chair, Private
Equity
Co-
Chair, Capital
Markets &
Securities**

cbellini@cozen.com
Phone: (612) 260-9029
Fax: (612) 260-9080



Kevin Roggow

Member

kroggow@cozen.com
Phone: (212) 908-1294
Fax: (212) 509-9492

Related Practice Areas

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Adoption and Termination of 10b5-1 Trading Arrangements

New Item 408(d) will require an issuer to disclose whether, during its most recently completed fiscal quarter (the issuer's fourth fiscal quarter in the case of an annual report), the issuer adopted or terminated a contract, instruction, or written plan to purchase or sell its securities intended to satisfy the affirmative defense conditions of Rule 10b5-1(c). Issuers are also required to provide a description of the material terms of the contract, instruction, or written plan (other than terms with respect to the price at which the party executing the respective trading arrangement is authorized to trade), such as date of adoption or termination, duration of the arrangement, and aggregate number of securities to be purchased or sold.

Timing

Compliance dates vary depending on the type of issuer:

- Domestic issuers will be required to begin reporting in the first filing that covers the first full fiscal quarter that begins on or after October 1, 2023 (for calendar year end companies, this will be the Form 10-K for fiscal year 2023).
- FPIs that file on FPI forms will be required to comply with the amendments in new Form F-SR beginning with the Form F-SR that covers the first full fiscal quarter that begins on or after April 1, 2024 (with narrative disclosure required in the subsequent Form 20-F).
- Listed Closed-End Funds will be required to 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.

Next Steps

As these amendments go into effect, public companies, FPIs, and Listed Closed-End Funds will need to modify their disclosures, as described above.
