

# Share Repurchase Disclosure Modernization: Proposed Rules



On Dec. 15, 2021, the SEC will consider proposed amendments to its rules regarding disclosure about repurchases of an issuer's equity securities, often referred to as buybacks, that are registered under Section 12 of the Securities Exchange Act of 1934. The proposed amendments would require an issuer to provide more timely disclosure on a new Form SR regarding purchases of its equity securities for each day that it, or an affiliated purchaser, makes a share repurchase.

The proposed amendments would also enhance the existing periodic disclosure requirements about these purchases required to be provided in Form 10-K and Form 10-Q for domestic issuers, Form 20-F for foreign filers, and Form N-CSR for registered closed-end funds.

## Background and Current Requirement

In 2003, the Commission adopted disclosure requirements for any purchase made by or on behalf of the issuer or 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 required disclosure applies to both open market and private transactions and is included in an issuer's periodic reports. Under the current rules, issuers are required to disclose:

- The total number of shares (or units) purchased by the issuer or any affiliated purchaser during the relevant period, reported on a monthly basis and by class;
- The average price paid per share (or unit);
- The total number of shares (or units) purchased as part of a publicly announced repurchase plan or program; and
- The maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs.

The rules also require footnote disclosure of the principal terms of all publicly announced repurchase plans or programs, the number of shares purchased other than through a publicly announced plan or program, and the nature of the transaction.

The Commission's proposed changes would require more detailed and more frequent disclosure about issuer share repurchases and would require issuers to present the disclosure using a structured data language.

## Proposed Form SR Next Day Reporting

The proposed rules would require an issuer, including a foreign private issuer and certain registered closed-end funds, to report any purchase made by or on behalf of the issuer or any affiliated purchaser of shares or other units of any class of the issuer's equity securities that is registered by the issuer pursuant to Exchange Act Section 12. The issuer would have 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.

Proposed Form SR would require the following disclosure:

- 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 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 Exchange Act Rule 10b5-1(c).
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## Enhanced Periodic Disclosure

The proposed rules also would 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 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 Exchange Act Rule 10b5-1(c), and if so, the date that the plan was adopted or terminated; and
- Whether repurchases were made in reliance on the Exchange Act Rule 10b-18 non-exclusive safe harbor.

The proposed rules also would require the issuer to check a box indicating whether any of the issuer's officers or directors subject to the reporting requirements under Exchange Act Section 16(a) 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.

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### ***Additional Information:***

Visit [sec.gov](https://www.sec.gov) to find more information about the adopted amendments and the full text of the proposed rules. The proposed rules will be published on [SEC.gov](https://www.sec.gov) and in the Federal Register.