

December 21, 2021

# SEC Proposes Amendments to Share Repurchase Disclosures

On December 15, 2021, the SEC proposed amendments (available [here](#)) to improve the “quality, relevance and timeliness” of issuer share repurchase disclosures. These amendments would require additional disclosures by issuers when repurchasing their shares, including:

- daily disclosures by issuers of share repurchases, within one business day of the repurchase, on a new Form SR that would be furnished to the SEC; and
- greater detail about the structure of the issuer repurchase program (including details about trading by officers and directors around the time of issuer repurchases) to be provided quarterly.

## Daily Repurchase Disclosures on Proposed New Form SR

Currently, issuers are required to disclose information about repurchases quarterly in their Form 10-Q or Form 10-K. To address “information asymmetries” that might exist between issuers and affiliated purchasers on the one hand, and other investors on the other as a result of the delayed reporting under these requirements, the SEC has proposed new Form SR, which would require issuers to furnish daily reports of any purchases by or on behalf of the issuer or any affiliated purchaser. Issuers would be required to furnish the Form SR to the SEC, via EDGAR, on the business day following any purchase. In the Form SR, issuers would be required to disclose:

- 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 Rule 10b-18 safe harbor; and
- the aggregate total number of shares (or units) purchased pursuant to a Rule 10b5-1 plan.

## Amendments to Item 703 of Regulation S-K

Under the proposal, Item 703 of Regulation S-K, which requires disclosures regarding issuer share repurchases, would be amended to require additional disclosure regarding:

- the objective or rationale for the issuer’s 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 the issuer made its repurchases pursuant to a Rule 10b5-1 plan, and if so, the date that the plan was adopted or terminated;
- whether purchases were made in reliance on the Rule 10b-18 non-exclusive safe harbor; and
- whether any officers or directors required to file reports under Section 16(a) of the Exchange Act purchased or sold the shares (or units) that are the subject of the repurchase program within 10 business days before or after the announcement of the program (this last disclosure would be made by checking a box).

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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