

SEC MODERNIZES SHARE REPURCHASE RULES WITH NEW REPURCHASE DISCLOSURES

Date: 4 May 2023

US Corporate Alert

By: Erin L. Fogarty

On 3 May 2023, the Securities and Exchange Commission (the SEC) adopted [amendments to modernize the disclosure requirements](#) relating to repurchases of an issuer's equity securities, including requiring issuers to provide information regarding daily repurchase activity. The disclosure must be provided on a quarterly or semi-annual basis, depending on the type of issuer. SEC Chair Gary Gensler stated the amendments "will increase the transparency and integrity of this significant means by which issuers transact in their own securities." While Chair Gensler notes that the disclosures will allow investors "to better assess issuer buyback programs," issuers that regularly conduct share repurchases will see increased recordkeeping and disclosure obligations as a result of these amendments.

WHAT MUST BE DISCLOSED?

The final amendments require issuers to disclose certain information on a quarterly basis. Such disclosures include:

- the reasons for the issuer's share repurchases and the process or criteria used to determine the amount of repurchases;
- the number of shares repurchased and the average price paid each day on which a repurchase was made;
- the aggregate maximum number (or dollar value) of shares that may be purchased if repurchases were conducted pursuant to a publicly announced plan;
- whether certain officers and directors traded in the relevant shares in the four business days before or after the announcement of the repurchase plan or any increase in the number of shares included in the plan;
- any policies and procedures relating to purchases and sales of the issuer's securities during a repurchase program by its officers and directors; and
- quarterly disclosure of an issuer's adoption or termination of a Rule 10b5-1 trading plan.

The quantitative data will be presented in the following form:

(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
Execution	Class	Total	Average	Total	Aggregate	Total	Total	Total

Date	of Shares (or Units)	Number of Shares (or Units Purchased)	Price Paid per Share (or Unit)	Number of Shares (or Units) Purchased as Part of Publicly Announced Plans or Programs	Maximum Number (or Approximat e Dollar Value) of Shares (or Units) that May Yet Be Purchased Under the Publicly Announced Plans or Programs	Number of Shares (or Units) Purchased on the Open Market	Number of Shares (or Units) Purchased that are Intended to Qualify for the Safe Harbor in Rule 10b18	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								

HOW ARE ISSUERS IMPACTED?

US Corporate Issuers

Issuers will be required to include the quantitative data as an exhibit to their Forms 10-Q and 10-K and provide the narrative disclosure in their Forms 10-Q and 10-K beginning with the first filing that covers a fiscal quarter that begins on or after October 1, 2023.

Foreign Private Issuers

Foreign private issuers that file on foreign private issuer forms will disclose the quantitative data quarterly in a new Form F-SR beginning with the first fiscal quarter that begins on or after April 1, 2024, and provide the narrative disclosure starting in the first Form 20-F filed after their first Form F-SR has been filed.

NEXT STEPS

Issuers should consider addressing the new disclosure obligations by developing reporting frameworks that reduce period-end burdens. Suggested best practices include preparing:

- Internal controls related to tracking and logging share repurchases during the applicable period.
- Policies and systems to monitor officers and directors' trading during the days surrounding the announcement of a repurchase plan or any increase in the number of shares included in such plan and any actual repurchase date, including possibly implementing "blackout" policies prohibiting trading by officers and directors during these windows.

Lawyers in the K&L Gates US Public Companies practice group have deep experience in matters involving Exchange Act reporting and other securities matters. For more information, please contact:

KEY CONTACTS



ERIN L. FOGARTY
PARTNER

MIAMI
+1.305.539.3385
ERIN.FOGARTY@KLGATES.COM

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