

[Securities Regulation Daily Wrap Up, CORPORATE GOVERNANCE—SEC adopts rules to increase disclosures for stock buybacks, \(May 3, 2023\)](#)

Securities Regulation Daily Wrap Up

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By [Lene Powell, J.D.](#)

The rules will require more detailed disclosures on stock buybacks, though on a delayed rather than real-time basis.

The SEC has adopted new final rules to require new disclosures for share repurchases by issuers. Although the Commission backed off on an original proposal for disclosure within one business day, the requirements will require more detailed data and will highlight if company insiders traded in an issuer's stock shortly before or after a share repurchase. The new rules will also put buybacks in context by requiring issuers to provide narrative disclosure about their repurchase programs and practices in periodic reports (*Share Repurchase Disclosure Modernization*, [Release No. 34-97424](#), May 3, 2023).

"I think the final rule will improve investors' visibility into buyback programs and their transaction history," said SEC Chair [Gary Gensler](#). "That's good for investors, issuers, and the markets."

The rules were [adopted](#) 3-2, with Gensler and Commissioners [Caroline Crenshaw](#) and [Jaime Lizárraga](#) voting in support. Commissioners [Hester Peirce](#) and [Mark Uyeda](#) dissented.

Rationale. Supporters say the new rules will increase transparency and integrity for share buybacks.

"Through these disclosures, investors will be able to better assess issuer buyback programs. The disclosures also will help lessen some of the information asymmetries inherent between issuers and investors in buybacks," said Gensler.

According to Crenshaw, share buybacks of U.S.-listed companies amounted to \$950 billion in 2021, and the amount of disclosure available to investors has been limited. More detailed disclosures will shed more light on corporate value, she said.

In Lizárraga's view, the amendments will allow investors to distinguish between repurchases aiming to increase shareholder value and those motivated by other reasons, such as short-term attempts to boost share price.

[Better Markets](#) and [Americans for Financial Reform](#) welcomed the rules, but expressed disappointment that the Commission backed off on requiring near real-time disclosure.

Dissent. The rule fails to demonstrate a problem in need of a solution, said Peirce. Share repurchases are not inherently problematic and the contextless volume of data could confuse investors, she said.

Uyeda called the rule a "misguided effort" that signals to the rest of the world that the Commission will sacrifice principles of mutual recognition and international comity to impose its own views. This could ultimately impose higher costs on U.S. consumers and investors, he said.

Tom Quaadman, executive vice president, Center for Capital Markets Competitiveness (CCMC) at the U.S. Chamber of Commerce, [said](#) the group opposes the rule and will pursue litigation if it "looks at all like the proposed rule."

Current disclosures. Under current Regulation S-K, corporate issuers that file on domestic forms must quarterly disclose purchases made by or on behalf of the issuer of shares or other units of any class of the issuer's equity securities that are registered under Section 12 of the Exchange Act, aggregated on a monthly basis. Foreign private issuers (FPIs) must make this disclosure annually. Registered closed-end management investment companies that are exchange-traded must make this disclosure semi-annually.

The [original proposal](#) would have required issuers to disclose buybacks within one business day. The SEC briefly [reopened the comment period](#) last December.

New disclosures. The new final rules will require issuers to disclose their daily repurchase activity in tabular form on a quarterly or semi-annual basis. For each day, the table will include:

- The class of shares;
- Average price paid per share;
- Total number of shares purchased, including the total number of shares purchased as part of a publicly announced plan;
- Aggregate maximum number of shares (or approximate dollar value) that may yet be purchased under a publicly announced plan;
- Total number of shares purchased on the open market; and
- Total number of shares purchased that are intended to qualify for the safe harbor in Rule 10b-18 and separately the total number of shares purchased pursuant to a plan that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c).

In addition to the tabular information, issuers will have to make other new disclosures:

- 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.

Issuers will disclose this information in a structured data language in forms according to issuer, including a new Form F-SR for FPIs.

The amendments will eliminate the current requirements in Regulation S-K, Form 20-F, and Form N-CSR to disclose monthly repurchase data in periodic reports.

Political undercurrent. The rulemaking takes place against a broader political backdrop. Prominent Democrats including Senate Majority Leader Chuck Schumer (D-NY) and Sen. Bernie Sanders (D-Vt) [say](#) buybacks enrich company executives and maximize short-term shareholder earnings at the expense of workers and long-term company strength. Senator Elizabeth Warren (D-Mass) has [said](#) buybacks are a market manipulation to boost executive pay, and a poor use of corporate profits that could instead be reinvested in a business or workers.

Similarly, a White House [fact sheet](#) accompanying the Inflation Reduction Act said a 1 percent tax on buybacks would "encourage businesses to invest instead of enriching CEOs or funneling profits tax-free to shareholders." The Biden Administration aims to [increase the tax to 4 percent](#) in the FY24 budget. Similar legislation has been [introduced](#) by Senate Banking Committee Chair Sherrod Brown (D-Ohio) and cosponsors.

Some Republicans dispute an anti-buyback take. House Ways and Means Republicans [said](#) the buyback tax will ultimately harm retirees, since so many Americans hold company stocks in their 401k accounts.

Next steps. The rule amendments will become effective 60 days after publication in the Federal Register.

This is [Release No. 34-97424](#).

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