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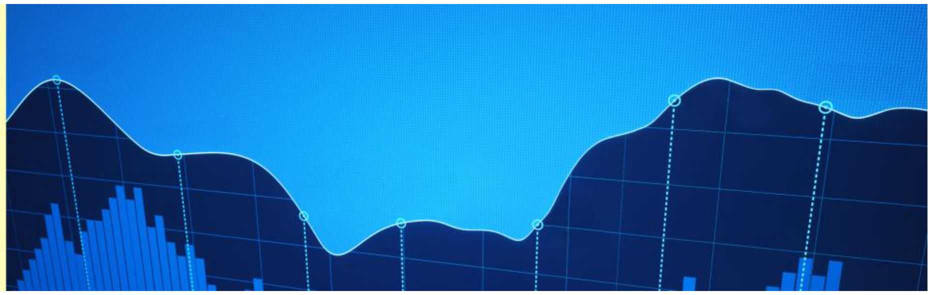

Securities Update

May 3, 2023

SEC Issues New Rules Regarding Company Stock Repurchase Disclosures

On May 3, 2023, the SEC adopted final rules relating to company stock repurchase (or buyback) disclosures, which differ in some significant ways from the initial proposals issued in December 2021, most significantly by requiring quarterly reporting of daily repurchase transactions as opposed to proposed Form SR reports within one business day of each transaction under the company's stock repurchase program. Nevertheless, the new rules require more detailed disclosures regarding stock buybacks than is required under the SEC's current rules, as well as iXBRL tagging. This alert describes the requirements for companies that file Annual Reports Form 10-K and Quarterly Reports on Form 10-Q and does not cover foreign private issuers.

Timing

Companies will be required to include the new disclosures (including applicable iXBRL tagging) in the first filing that covers the first full fiscal quarter that begins on or after October 1, 2023, which for many companies will be the Annual Report on Form 10-K for the year ending December 31, 2023.

Disclosure Requirements

The new rules require quarterly disclosures in Form 10-K and Form 10-Q filings relating to the following:

- ***Daily repurchase activity***: Companies are currently required to provide tabular disclosures regarding their stock repurchases on a monthly basis in their Form 10-Q and 10-K filings. The new rules replace that table with a new table disclosing aggregated repurchase activity on a **daily** basis, which is required to be filed as an exhibit to Forms 10-Q and 10-K. (The SEC did not adopt the proposed Form SR, which would have required daily repurchase information be filed by the end of the first business day following any stock repurchase transaction.)

  The new table requires substantially the same information as the table currently required, plus new disclosures regarding the class of shares purchased and total number of shares purchased (i) on the open market, (ii) in reliance on the Rule 10b-18 safe harbor for buybacks, and (iii) pursuant to a Rule 10b5-1 plan. The new table will be required to be filed as Exhibit 26 to Forms 10-Q and 10-K. The table will be in the following form:

Execution date	Class of Shares (or Units)	Total Number of Shares (or Units) Purchased	Average Price Paid per Share (or Unit)*	Total Number of Shares (or Units) Purchased as Part of Publicly Announced Plans or Programs	Aggregate Maximum Number (or Approximate Dollar Value) of Shares (or Units) that May Yet Be Purchased Under the Publicly Announced Plans or Programs	Total Number of Shares (or Units) Purchased on the Open Market	Total Number of Shares (or Units) Purchased that are Intended to Qualify for the Safe Harbor in Rule 10b18	Total Number of Shares (or Units) Purchased Pursuant to a Plan that is Intended to Satisfy the Affirmative Defense Conditions of Rule 10b5-1(c)

* Prices are required to exclude brokerage commissions and other costs of execution.

- ***Directors' and officers' trades in relation to repurchase programs***:
    - **Policies and procedures**. Companies will be required to disclose any policies and procedures relating to directors' and officers' purchases and sales of the company's securities while the company has a repurchase program in place, including any restrictions on such transactions.
    - **Checkbox regarding specific trades**. In addition, the new exhibit described above will include a checkbox to indicate whether any Section 16 officer or director purchased or sold any equity securities that are the subject of a company's publicly announced repurchase program within four business days before or after the company's announcement of such program or of an increase in an existing repurchase program. (This time period is shorter than the initial proposal, which would have required these disclosures for transactions during the 10 business days before or after any announcement.)
- ***Repurchase programs and practices***: Companies will be required to describe the objectives or rationales for stock repurchases and the process or criteria used to determine the amount of repurchases. Companies 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. Companies should refer to any corresponding repurchases described in the new exhibit as part of these descriptions.
- ***Adoption and termination of company Rule 10b5-1 trading arrangements***: Companies will also be required to disclose any adoption, modification or termination of Rule 10b5-1 trading arrangements during the quarter, including the material terms such arrangement (i.e., date of adoption or termination, duration of the arrangement, and aggregate number of securities to be purchased or sold; pricing information is not required). This information is similar to the disclosures now required for director and officer trading arrangements, which we discussed in more detail in a December 15, 2022 alert.

Structured Data Tagging

All of the disclosures described above are required to be tagged in iXBRL.

What's Next?

In light of these changes, companies should incorporate the new requirements into their disclosure committee practices and controls and procedures relating to company stock repurchases. Some coordination with brokers administering the company's stock repurchase program will be needed. Companies should also confirm that the board meeting minutes describe the discussion of the objectives of their stock repurchase programs and the process used to determine the amount of repurchases, and ensure that all public disclosures are consistent with the minutes and any other internal documentation and communications.

Companies should further consider revising their insider trading policies to include restrictions regarding trading before or after the announcement of repurchase programs. The turnaround times for quarterly and annual reports may also be somewhat impacted by the structured data requirements, and companies should coordinate with financial printers or other providers earlier in the filing timelines. Finally, companies suspending their stock repurchase programs in connection with mergers and acquisitions and other significant transactions should be prepared for the increased likelihood of speculation and stock price fluctuations, potentially triggering required disclosure of the transaction earlier than it would otherwise be required.

FOR MORE INFORMATION

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