



CLIENT ALERT

Navigating Compensation Governance in Uncertain Times

SEC Issues New Disclosure Rules on Corporate Share Buybacks

The Securities and Exchange Commission adopted final rules that require publicly traded companies to make new periodic disclosures on share repurchases.

Current Disclosure Requirement on Share Repurchases

Currently, public companies are required to disclose on a quarterly basis certain information on share repurchases. This disclosure requirement applies to both open market and private transactions. Companies are required to report share repurchases made during the first three fiscal quarters in Form 10-Q and repurchases made during fourth fiscal quarter in Form 10-K. The newly adopted rules will require public companies to substantially increase the amount of information that must be disclosed about share repurchases.

New Disclosure Requirements on Share Repurchases

The SEC's stated purpose for adopting the new disclosure requirements is "to help investors assess the efficiency, purposes and impacts of a company's share repurchases." Accordingly, the new disclosure rules require companies to disclose the following:

- **Tabular Quarterly Disclosure of Daily Repurchase Activity.** In a new exhibit to Forms 10-Q and 10-K, companies will be required to disclose (in a tabular format) its repurchase activity aggregated on a daily basis.
- **Additional Narrative Disclosures.** Companies will be required to include narrative detailing the structure of the company's repurchase program and share repurchases.
- **Disclosure of Rule 10b5-1 Trading Arrangements.** Companies will be required to disclose in Forms 10-Q and 10-K(i) whether the company adopted, materially modified or terminated any Rule 10b5-1 trading regarding the trading in their own securities during the covered quarter and (ii) material terms of such trading plan, other than pricing terms. Executive maintained 10b5-1 trading plans are subject to separate disclosure requirements.

The new disclosure rules will apply to both domestic public companies (effective for the fiscal quarter beginning on or after October 1, 2023) and foreign private issuers (effective for fiscal quarter that begins on or after April 1, 2024).

The Attachment to this Client Alert provides additional details on the new disclosure requirements.

Attachment – Details on New Disclosure Requirement on Share Repurchases

Summarized below are the key requirements of the new disclosure rules on share repurchases.

Tabular Quarterly Disclosure of Daily Repurchase Activity

Domestic public companies will be required to include as a new exhibit to Forms 10-Q and 10-K1 a tabular disclosure of their daily repurchase activity occurring over a fiscal quarter. This table must include the following information:

- Date on which the purchase was executed
- Class of securities
- Total number of shares purchased on the date
- Total number of shares purchased on the date as part of a publicly announced company purchase plan or program
- Average price paid per share (excluding brokerage commissions and other costs of execution)
- Aggregate maximum number (or approximate dollar value) of shares that may yet be purchased under the publicly announced company purchase plan or program
- Total number of shares purchased on the open market
- Total number of shares purchased on the date intended by the company to qualify for the safe harbor in Rule 10b-18 of the Exchange Act²
- Total number of shares purchased on the date intended by the company to qualify for the affirmative defense conditions of Rule 10b5-1(c) of the Exchange Act³

In a footnote to the table, a company must disclose the adoption or termination date of any Rule 10b5-1(c) trading plan covering the shares purchased under the last bullet above.

The final rules also require a company to include a checkbox in the new exhibit to indicate whether directors or Section 16 officers purchased or sold in company securities that are the subject of a company share repurchase plan within four business days before or after the announcement of (i) the plan or program or (ii) an increase in the size of an existing share repurchase plan or program.

¹ Foreign private issuers (FPIs) filing will have to disclose the same daily repurchase data at the end of every quarter on a new Form F-SR.

² Rule 10b-18 provides an issuer a safe harbor from liability under certain market manipulation rules and Exchange Act Rule 10b-5 when repurchases of the issuer's common stock satisfy the rule's conditions.

³ Rule 10b5-1(c) provides a safe harbor from liability for trades made under a Rule 10b5-1 trading plan.

The SEC provided this example table in the final rules:

(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)
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 10b-18	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)
[insert additional rows for each day on which a repurchase was executed]								
Total								

Narrative Disclosures

In addition to the new tabular disclosure requirement, public companies will be required to disclose the following items concerning any share repurchase:

- The objective or rationale for its share repurchases and process or criteria used to determine the amount of repurchases.⁴
- The number of shares purchased, other than through a publicly announced share repurchase plan and the nature of such transaction(s) (e.g., open market transactions, tender offers, in satisfaction of a company’s obligation upon exercise of outstanding put options or other transactions).
- For publicly announced repurchase plans or programs:
 - Date each plan was announced
 - Dollar amount (or share or unit amount) approved
 - Expiration date (if any) of each plan
 - Each plan that has expired during the period covered by the table
 - Each plan the company has determined to terminate prior to expiration, or under which the public company does not intend to make further purchases
- Any policies and procedures relating to purchases and sales of the company’s securities by its officers and directors during a repurchase program, including any restrictions on such transactions.

⁴ In its release of the final rules, the SEC notes that although the disclosure requirements “should convey a thorough understanding of the [company’s] objectives or rationales for the repurchases, and the process or criteria it used in determining the amount of the repurchase the final rules do not require companies “to provide disclosure at a level of granularity that would reveal any competitive or sensitive information beyond what may already be gleaned from other disclosures regarding the business and financial condition of the [company].”

Disclosure of Rule 10b5-1 Trading Arrangements

Public companies will be required to disclose in Forms 10-Q and 10-K the following information:

- Whether the company adopted, materially modified or terminated any Rule 10b5-1 trading plans (“Trading Plan”) regarding their own securities during a covered quarter.
- A description of the material terms of such Trading Plan, such as (i) the date on which the company adopted or terminated the Trading Plan, (ii) the duration of the Trading Plan and (iii) the aggregate number of securities to be purchased or sold under the Trading Plan.

Compliance Timeline

The following is the compliance time-frame applicable to domestic public companies and foreign private issuers:

- **Domestic Public Companies.** The new disclosure requirements are effective for the first fiscal quarter beginning on or after October 1, 2023. For companies with calendar year end reporting periods, the new disclosures will first be included in the fiscal year 2023 Form 10-K filed in 2024 (with tabular disclosures covering any repurchases made in the fourth quarter ending December 31, 2023).
- **Foreign Private Issuers.** New Form F-SR is required for the first full fiscal quarter that begins on or after April 1, 2024. For foreign private issuers with calendar year end reporting periods that file Annual Reports on Form 20-F, the required tabular disclosure will first be included in a Form F-SR for the second quarter ending June 30, 2024. The additional narrative disclosures will be required starting with the first Form 20-F filed after the foreign private issuer’s first Form F-SR has been filed. Accordingly, for foreign private issuers with calendar year end reporting periods, such narrative disclosure will be first included in the Form 20-F filed in 2025 for the 2024 fiscal year.

* * * * *

The **Client Alert** is prepared by Meridian Compensation Partners’ Governance and Regulatory Team led by Donald Kalfen and Ron Rosenthal. Questions regarding this Client Alert or executive compensation technical issues may be directed to Donald Kalfen at 847-235-3605 or dkalfen@meridiancp.com or Ron Rosenthal at 847-235-3621 or rosenthal@meridiancp.com.

This report is a publication of Meridian Compensation Partners, LLC, provides general information for reference purposes only and should not be construed as legal or accounting advice or a legal or accounting opinion on any specific fact or circumstances. The information provided herein should be reviewed with appropriate advisors concerning your own situation and issues.

www.meridiancp.com