

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 232, 240, 249, and 274

[Release Nos. 34-97424; IC-34906; File No. S7-21-21]

RIN 3235-AM94

Share Repurchase Disclosure Modernization

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (“Commission”) is adopting amendments to modernize and improve disclosure about repurchases of an issuer’s equity securities that are registered under the Securities Exchange Act of 1934. The amendments require additional detail regarding the structure of an issuer’s repurchase program and its share repurchases, require the filing of daily quantitative repurchase data either quarterly or semi-annually, and eliminate the requirement to file monthly repurchase data in an issuer’s periodic reports. The amendments also revise and expand the existing periodic disclosure requirements about these repurchases. Finally, the amendments add new quarterly disclosure in certain periodic reports related to an issuer’s adoption and termination of certain trading arrangements.

DATES: This final rule is effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: John Fieldsend, Special Counsel, Office of Rulemaking, at (202) 551-3460, Division of Corporation Finance; and, with respect to the application to investment companies, Quinn Kane, Special Counsel, at (202) 551-6792, Investment Company Regulation Office, Division of Investment Management; U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting amendments to the following rules and forms:

Commission Reference		CFR Citation (17 CFR)
Regulation S-K	Item 10 through 1305	§§ 229.10 through 229.1305
	Item 408	§ 229.408
	Item 601	§ 229.601
	Item 703	§ 229.703
Regulation S-T	Rule 10 through 903	§§ 232.10 through 232.903
	Rule 405	§ 232.405
Securities Exchange Act of 1934 (“Exchange Act”) ¹	Rule 13a-21	§240.13a-21
	Form F-SR	
	Form 20-F	§ 249.220f
	Form 10-Q	§ 249.308a
	Form 10-K	§ 249.310
	Form N-CSR	§§ 249.331 and 274.128

Table of Contents

I.	INTRODUCTION	4
A.	Summary of the Proposed Amendments.....	4
B.	Consideration of Comments	6
C.	Summary of Final Amendments	9
II.	BACKGROUND	12
A.	Share Repurchases	12
B.	Purpose of the Amendments	19
III.	DISCUSSION OF FINAL AMENDMENTS.....	26
A.	Disclosure of Share Repurchases.....	26
1.	Proposed Amendments.....	26
2.	Comments on the Proposed Amendments.....	28
a.	Comments on the daily share repurchase disclosure requirement	28
b.	Comments on exemptions for certain issuers	36
c.	Comments on repurchases intended to satisfy Rule 10b5-1(c) and intended to qualify for the Rule 10b-18 safe harbor	40
d.	Comments concerning requests for clarification	41
e.	Other comments	42
3.	Final Amendments	44
B.	Narrative Revisions to Item 703 of Regulation S-K, Form 20-F, and Form N-CSR Additional Disclosure	67
1.	Proposed Amendments.....	67
2.	Comments on the Proposed Amendments.....	68

¹ 15 U.S.C. 78a *et seq.*

a.	Comments on objective or rationale for share repurchases, and process or criteria used to determine the amount of repurchases	68
b.	Comments on policies and procedures relating to purchases and sales of the issuer's securities by its officers and directors during a repurchase program	70
c.	Comments on checkbox requirement.....	71
3.	Final Amendments	74
C.	Clarifying Amendments.....	85
1.	Proposed Amendments.....	85
2.	Comments on the Proposed Amendments.....	85
3.	Final Amendments	86
D.	New Item 408(d).....	86
1.	Proposed Amendments.....	86
2.	Comments on the Proposed Amendments.....	87
3.	Final Amendments	90
E.	Structured Data Requirement.....	93
1.	Proposed Amendments.....	93
2.	Comments on the Proposed Amendments.....	94
3.	Final Amendments	94
F.	Compliance Dates	96
IV.	OTHER MATTERS.....	97
V.	ECONOMIC ANALYSIS	97
A.	Baseline and Affected Parties	99
1.	Affected Parties	99
2.	Baseline	102
B.	Benefits	119
1.	General Benefits of the Disclosures	119
2.	Additional Quantitative Repurchase Disclosure	124
3.	Additional Qualitative Repurchase Disclosures.....	127
4.	Inline XBRL	132
C.	Costs.....	133
1.	General Costs of the Disclosures.....	133
2.	Additional Quantitative Repurchase Disclosure	135
3.	Additional Qualitative Repurchase Disclosures.....	140
4.	Inline XBRL	143
D.	Efficiency, Competition, and Capital Formation.....	143
E.	Reasonable Alternatives.....	146
1.	Alternative Reporting Frequencies and Disclosure Granularity	146
2.	Alternative Scope of the Disclosure.....	148
3.	Exemptions for Certain Issuer Categories.....	149
4.	Alternative Implementation Approaches.....	152
5.	Structured Disclosure	154
6.	Compliance Dates.....	155
VI.	PAPERWORK REDUCTION ACT.....	155
A.	Summary of the Collections of Information	155
B.	Summary of Comment Letters.....	157
C.	Summary of Collections of Information Requirements.....	157

1. Estimated Paperwork Burden for Daily Quantitative Share Repurchase Disclosures	158
2. Estimated Paperwork Burdens of the Narrative Share Repurchase Disclosures in Item 703 of Regulation S-K, Form 20-F, Form N-CSR, and Form F-SR	162
3. Estimated Paperwork Burdens of New Item 408(d)	165
D. Incremental and Aggregate Burden and Cost Estimates	167
VII. FINAL REGULATORY FLEXIBILITY ANALYSIS	170
A. Need for, and Objectives of, the Final Amendments	170
B. Significant Issues Raised by Public Comments	170
C. Small Entities Subject to the Final Amendments	172
D. Projected Reporting, Recordkeeping and Other Compliance Requirements	173
E. Agency Action to Minimize Effect on Small Entities	176
STATUTORY AUTHORITY	178

I. INTRODUCTION

A. Summary of the Proposed Amendments

On December 15, 2021,² the Commission proposed amendments to the disclosure requirements regarding purchases of classes of equity securities registered under 15 U.S.C. 78I (“Exchange Act Section 12”) made by or on behalf of an issuer or any affiliated purchaser.³ The proposal was intended to modernize and improve the disclosure currently required by Item 703 of Regulation S-K, Item 16E of Form 20-F, and Item 14 of Form N-CSR about repurchases of an issuer’s equity securities.⁴ Specifically the Commission proposed to:

- Require quantitative daily repurchase disclosure on a new Form SR, which would be furnished to the Commission one business day after execution of an issuer’s share repurchase order;

² *Share Repurchase Disclosure Modernization*, Release No. 34-93783 (Dec. 15, 2021) [87 FR 8443 (Feb. 15, 2022)] (“Proposing Release”).

³ For purposes of this release, the term “issuer” includes affiliated purchasers and any person acting on behalf of the issuer or an affiliated purchaser. The term “affiliated purchaser” as used in Item 703 is defined in 17 CFR 10b-18(a)(3). References throughout this release to “issuer repurchases” include purchases by an affiliated purchaser and purchases by any person acting on behalf of the issuer or an affiliated purchaser.

⁴ Subsequent to the proposal, the Commission adopted changes to Form N-CSR that, among other things, redesignated what had been Item 9 of Form N-CSR to be Item 14. *Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements*, Release No. IC-34731 (Oct. 26, 2022) [87 FR 72758 (Nov. 25, 2022)]. This change became effective January 24, 2023. *Id.*

- Amend Item 703 of Regulation S-K, Item 16E of Form 20-F, and Item 14 of Form N-CSR to require additional detail regarding the structure of an issuer’s repurchase program and its share repurchases; and
- Require that information disclosed pursuant to Item 703 of Regulation S-K, Item 16E of Form 20-F, Item 14 of Form N-CSR, and Form SR be reported using a structured data language (specifically, Inline eXtensible Business Reporting Language or “Inline XBRL”).

The Commission adopted Item 703 in 2003⁵ to require disclosure of any purchase, aggregated on a monthly basis, made by or on behalf of the issuer or any affiliated purchaser of shares or other units of any class of the issuer’s equity securities registered under Exchange Act Section 12. Currently, Item 703 share repurchase disclosure is required in Form 10-Q for the issuer’s first three fiscal quarters and in Form 10-K for the issuer’s fourth fiscal quarter.⁶ The same disclosure is required by Item 16E of Form 20-F on an annual basis for FPIs, and by Item 14 of Form N-CSR on a semi-annual basis for registered closed-end management investment companies that are exchange traded (“Listed Closed-End Funds”).⁷ The disclosure requirements

⁵ See *Purchases of Certain Equity Securities by the Issuer and Others*, Release No. 33-8335 (Nov. 10, 2003) [68 FR 64952 (Nov. 17, 2003)] (“2003 Adopting Release”). The Commission concluded that disclosure of an issuer’s actual purchases would inform investors whether, and to what extent, the issuer had followed through on its original plan.

⁶ Certain information regarding share repurchases is also required to be disclosed in an issuer’s financial statements, including in the statements of cash flows indicating the amount of cash paid for repurchased securities, *see* ASC 230-10-45-1 to -2 and ASC 230-10-45-15, and the statements of changes in shareholders’ equity indicating any reduction in securities outstanding, *see* ASC 505-30-5 to -10, and additional paid-in capital for the securities repurchased. *See* ASC 505-10-50-2 and Rule 3-04 of Regulation S-X. ASC 505-30-50 also requires footnote disclosure of state law restrictions on the availability of retained earnings for dividend payments as a result of these repurchases, if applicable. If securities are repurchased for purposes other than retirement, or if ultimate disposition has not yet been decided, the amount and cost of the repurchased securities may be shown separately on the balance sheets and statements of changes in shareholders’ equity as a deduction from the total of securities, additional paid-in capital, and retained earnings. *See* ASC 505-30-45-1.

⁷ Accordingly, unless the context otherwise requires, references in this release to “Item 703” should be read to include these parallel provisions of Form N-CSR and Form 20-F. In addition to the disclosures on Form N-CSR