Blogs
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Public Chatter

SEC Proposes Real-Time Reporting of Company Buybacks: 3 Things to Know

Yesterday, the SEC **proposed** a new reporting regime for company share repurchases. The proposals are summarized in the **SEC's press release** (here's the **proposing release**) - and will be subject to a 45-day comment period. Here are three things to know about the proposal: **1. "Real-Time" Reporting on Form SR** - The proposed rule would require "real-time" reporting of share repurchase activity via a new Form SR required to be filed on Edgar within one business day after the company executes a share purchase. A single business day. For companies that regularly engage in regular share repurchase programs, this would significantly increase the reporting burden - essentially "Section 16" reporting for share repurchase programs. Form SR would require reporting a range of information in tabular format, including total number of shares repurchased, average price paid, total shares purchased in open market transactions, total shares purchased in reliance on Rule 10b-18, and total shares purchased under a Rule 10b5-1 plan.

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2. Additional Periodic Disclosures - In addition, disclosures in periodic reports would be updated to require disclosure of the rationale for the share repurchases and the process or criteria used to determine the amount of repurchases; any policies and procedures relating to purchases and sales of the company's securities by its directors and officers during a repurchase program; whether the repurchases were intended to qualify for Rule 10b5-1 safe harbor; and whether the repurchases were made in reliance on Rule 10b-18.

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3. What's This All About? - The press release and proposal state that the proposed amendments are intended to improve quality, relevance and timeliness of information about company share repurchases. The proposal notes that many company share repurchase programs are: "...aligned with shareholder value maximization, such as to offset share dilution after new stock is issued, to facilitate stock- and stock option-based employee compensation programs, to help signal the issuer's view that its stock is undervalued, or because the issuer's board has otherwise determined that a repurchase program is a prudent use of the issuer's excess cash." But the proposal goes on to indicate a view that increased, and more timely, disclosure is needed due to concerns about companies using share repurchase programs as an earnings management tool (such as decreasing the denominator of EPS calculations) or using announcements of share repurchase programs to effect short-term upward price pressure on the stock. On the other side of the coin, **SEC Commissioner Hester Pierce's dissenting statement** highlights another view of this proposal: "The release justifies a more burdensome approach by pointing to "opportunistic share repurchases" that may be designed to enhance executive compensation and insider stock value. However, as the footnotes in the economic analysis reveal, studies on the issue are decidedly mixed as to whether this is a real issue. Indeed, as noted in the release, last year the SEC staff reported the results of its study of the 50 firms that repurchased the most stock in 2018 and 2019 and concluded that '82% of the firms reviewed either did not have EPS-linked compensation targets or had EPS targets but their board considered the impact of repurchases when determining whether performance targets were met or in setting the targets.'" The SEC also proposed changes to Rule 10b5-1 plans for insiders - see **our blog** about that...

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