

Top 10 Practice Tips: Stock Repurchase Programs

A Practical Guidance® Practice Note by Anna Pinedo and Brian Hirshberg, Mayer Brown LLP



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repurchase agreements. The document emphasizes the importance of compliance with both federal and state laws, as well as the need for careful planning and documentation to mitigate legal and financial risks associated with stock buybacks.

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This practice note provides a comprehensive overview of key considerations for legal counsel and companies implementing stock repurchase programs. It begins by contextualizing the rise in repurchase activity among U.S. public companies, particularly following tax reforms and despite public criticism post-COVID-19. It outlines the legal framework under Rule 10b-18 of the Securities Exchange Act, detailing the four conditions—manner, timing, price, and volume—that must be met to qualify for the safe harbor against manipulation claims. The document also discusses the implications of repurchases on insider trading, disclosure obligations under Regulation S-K, and the impact of the CARES Act on companies receiving government aid. It explores various repurchase structures, including open market repurchases and accelerated stock repurchase (ASR) programs, explaining their mechanics and regulatory nuances. Additional topics include board authorization requirements, potential conflicts with loan agreements, tax and accounting considerations, and the negotiation of

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Anna Pinedo represents issuers, investment banks and other financial intermediaries as well as investors in financing transactions, including public offerings and private placements of equity, equity-linked and debt securities. She also advises on structured products and derivatives matters.

Anna works closely with financial institutions to create and structure innovative financing techniques, including new securities distribution methodologies and financial products. She has particular financing experience in certain industries, including technology, telecommunications, healthcare, financial institutions, REITs and consumer and specialty finance. Anna has worked closely with foreign private issuers in their securities offerings in the United States and in the Euro markets. She also works with financial institutions in connection with international offerings of equity and debt securities, equity- and credit-linked notes, and hybrid and structured products, as well as medium term note and other continuous offering programs.

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Brian Hirshberg represents US and foreign private issuers, sponsors, and investment banks in registered and unregistered securities offerings, including:

- Initial public offerings
- Follow-on offerings
- Private placements (including Rule 144A and PIPE transactions)
- At-the-market offerings
- Registered direct offerings
- Liability management transactions
- Preferred stock and debt offerings
- Secondary offerings on behalf of issuers in a variety of industries

Brian serves clients on specialty finance, real estate and real estate investment trusts (REITs), business development companies (BDCs), and life sciences company deals. He also assists public company clients with ongoing securities law compliance requirements, listing standards of the major US stock exchanges, SEC public reporting obligations, shareholder-related disputes, and governance matters.

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