

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

CHAMBER OF COMMERCE OF
THE UNITED STATES OF
AMERICA; LONGVIEW CHAMBER
OF COMMERCE; TEXAS
ASSOCIATION OF BUSINESS,

Petitioners,

v.

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Respondent.

No. 23-60255

**MOTION OF RESPONDENT SECURITIES AND EXCHANGE
COMMISSION TO EXTEND REMAND PERIOD**

Respondent Securities and Exchange Commission respectfully moves the Court to extend the current remand period in the above-captioned case.

1. On October 31, 2023, the Court granted the petition for review in the above-captioned case and remanded the matter with direction to the Commission to correct the defects that the Court identified in the rule on review¹ within 30 days of the Court's opinion.

¹ *Share Repurchase Disclosure Modernization*, Rel. No. 34-97424 (May 3, 2023), 88 Fed. Reg. 36002 (June 1, 2023).

2. Since the remand, the Commission's staff has worked diligently to ascertain the steps necessary to comply with the Court's remand order and has determined that doing so will require additional time.

3. Accordingly, the Commission requests that the Court extend the period of the remand without vacatur pending further action by the Commission to remedy the defects in the rule identified in the Court's October 31, 2023, opinion.

4. To facilitate this additional relief, the Commission has on this date entered an order staying the effectiveness of the rule pending further Commission action.²

5. If the Court grants the requested extension, the Commission will provide an update within 60 days of the Court doing so on the status of the Commission's efforts to remedy the rule's defects.

6. Following entry of the Commission's stay order, counsel for the Commission contacted petitioners' counsel and asked if petitioners are opposed to the requested extension. Petitioners' counsel indicated that petitioners are opposed to the requested extension.

² See Exhibit A.

Respectfully submitted,

MEGAN BARBERO
General Counsel

MICHAEL A. CONLEY
Solicitor

DOMINICK V. FREDA
Assistant General Counsel

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/s/ Ezekiel L. Hill
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November 22, 2023

CERTIFICATE OF SERVICE AND FILING

I certify that on November 22, 2023, I electronically filed the foregoing motion with the Clerk of the Court for the U.S. Court of Appeals for the Fifth Circuit through the Court's CM/ECF system. Service on counsel of record will be accomplished through the Court's CM/ECF system.

I further certify that this electronic filing is an exact copy of the paper document, that any privacy redactions have been made, and that this electronic filing was scanned for, and found to be free of, viruses.

/s/ Ezekiel L. Hill
Ezekiel L. Hill

Dated: November 22, 2023

CERTIFICATE OF COMPLIANCE

I certify that the foregoing motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 248 words, excluding the parts exempted by Fed. R. App. P. 32(f).

I further certify that the foregoing motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5)(A) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced, Roman-style, 14-point typeface.

/s/ Ezekiel L. Hill
Ezekiel L. Hill

Dated: November 22, 2023

Exhibit A

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 34-99011/November 22, 2023

File No. S7-21-21

In the Matter of Share Repurchase Disclosure
Modernization

ORDER ISSUING STAY

On October 31, 2023, the U.S. Court of Appeals for the Fifth Circuit issued an opinion in *Chamber of Commerce of the USA v. SEC*, 85 F.4th 760 (5th Cir. 2023), in which petitioners challenged the Share Repurchase Disclosure Modernization rule (“Repurchase Rule”), which became effective on July 31, 2023.¹ The Fifth Circuit granted the petition for review and remanded to the Commission “to correct the defects” the Court identified in the Repurchase Rule by November 30, 2023.

Section 705 of the Administrative Procedure Act provides that an agency may “postpone the effective date of action taken by it” pending judicial review when it finds that “justice so requires.” 5 U.S.C. § 705. In light of the Fifth Circuit’s decision, the Commission finds that it is consistent with what justice requires to stay the effectiveness of the Repurchase Rule pending further Commission action.

Accordingly, it is ORDERED, pursuant to Section 705 of the Administrative Procedure Act, that the Repurchase Rule is hereby stayed pending further Commission action.

By the Commission.

Christina Z. Milnor,
Assistant Secretary.

¹ *Share Repurchase Disclosure Modernization*, Rel. No. 34-97424 (May 3, 2023), 88 Fed. Reg. 36002 (June 1, 2023).