

Court Vacates SEC's Share Repurchase Rule

WRITTEN BY

Caitlin E. Oh | David I. Meyers | Heath D. Linsky | Mary Katherine Rawls | Jason L. Langford

On December 19, the U.S. Court of Appeals for the Fifth Circuit filed an [order](#) vacating the Securities and Exchange Commission's (SEC) [share repurchase rule](#). This action officially kills the share repurchase rule, at least for now.

As previously [discussed](#), the rule, which would have required SEC-registered reporting issuers to report daily share repurchase data and the reasons why issuers were repurchasing their stock, was challenged by plaintiffs, including the U.S. Chamber of Commerce, among others. The plaintiffs argued, among other reasons, that the SEC acted arbitrarily and capriciously in adopting the final rule.

In a [ruling](#) issued on October 31, the court agreed with the plaintiffs that the rule was arbitrarily and capriciously adopted as the SEC did not adequately respond to comments about the rule's economic implications or adequately substantiate the rule's benefits. The court gave the SEC 30 days to correct the defects identified. Following that, the SEC issued an [order](#) delaying the rule's effectiveness on November 22, and then [notified the court](#) on December 1, that it was unable to correct the defects in the rule within the prescribed time. Thereafter, the plaintiffs filed a motion asking the court to vacate the rule, which the SEC indicated it would not challenge.

The court's action, which was widely expected following the SEC's December 1 admission, officially ends the drama surrounding the share repurchase rule. Issuers no longer have to worry about complying with the mandate to report daily repurchase activity, which was scheduled to begin for quarters ending after October 1, 2023. Though the rule is dead for now, the SEC could appeal the court's decision (which appears unlikely), or repropose the rule in a way that addresses the concerns of the court.

Given the many recently effective rules proposed by the SEC, having one less new matter to worry about for the coming reporting season will doubtless be viewed as a nice holiday treat by most issuers.

RELATED INDUSTRIES + PRACTICES

- Capital Markets
- Corporate
- Corporate Governance
- Mergers + Acquisitions
- Securities Litigation