

SEC Postpones Effective Date of Share Repurchase Disclosure Modernization Rule

WRITTEN BY

[Heath D. Linsky](#) | [David I. Meyers](#) | [Mary Katherine Rawls](#) | [Caitlin E. Oh](#)

On November 22, the Securities and Exchange Commission (SEC) issued [an order](#) postponing the Share Repurchase Disclosure Modernization Rule (the Repurchase Rule). The SEC's announcement follows the U.S. Court of Appeals for the Fifth Circuit's [finding](#) that the Repurchase Rule was "arbitrary and capricious" and violated the Administrative Procedure Act.^[1] The Fifth Circuit demanded that the SEC "correct the defects" in the Repurchase Rule by November 30.

The Repurchase Rule was originally effective on July 31, and required companies to comply with the new rules in their Forms 10-Q and 10-K in the first full fiscal quarter beginning on or after October 1. It is now uncertain when companies will be required to comply, if at all.

Key Takeaways

For calendar year-end companies, the first filing affected would have been Form 10-K for the fiscal year 2023, which captures daily repurchases made in the fourth quarter of 2023. While the Repurchase Rule is stayed pending further SEC action, we recommend companies continue gathering the necessary information as though the new regulations are in effect, given the amount of information that would be required under the Repurchase Rule.

Please see our previous [client alert](#) for more information about the Repurchase Rule.

^[1] Chamber of Com. of the USA vs. SEC, No. 23-60255 (5th Cir. 2023).

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