

SEC Share Repurchase Rules on Hold (For Now)

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As we previously [blogged](#) about, the Securities and Exchange Commission (SEC) adopted [final rules](#) intended to enhance public company disclosure regarding share repurchase programs. U.S. public companies were set to begin complying with the rules starting with the filing covering the first full fiscal quarter beginning on or after Oct. 1, 2023 (i.e., the 2024 Form 10-K for calendar year-end issuers), with a phased-in schedule for foreign private issuers and certain registered closed-end funds.

The rules became effective on July 31, 2023, but for now, it appears their implementation is on hold indefinitely.

Updates to Chamber of Commerce Lawsuit

In May 2023, the U.S. Chamber of Commerce, along with the Texas Association of Business and the Longview Chamber of Commerce, filed suit against the SEC in the U.S. Court of Appeals for the Fifth Circuit asking the court to review the SEC's order approving the final rules, with the goal of preventing their implementation. On Oct. 31, the court postponed implementation of the rules on the grounds that the SEC violated the Administrative Procedure Act in promulgating the rules and gave the SEC the opportunity to respond by Nov. 30. Last week, the SEC issued an order postponing the effective date of the rules and, as a result, the rules were stayed pending further SEC action. At the same time, the SEC filed a motion asking the Fifth Circuit for an extension of time to address the purported deficiencies, which the court rejected on Nov. 26.

In a Dec. 1 letter to the court, the SEC acknowledged that it was not able to timely address the deficiencies that the court highlighted in its October ruling, effectively leaving open the question of whether the SEC will appeal the court's decision or resubmit a rule proposal that complies with the court's ruling.

Next Steps

With the holidays and 10-K season bearing down on public companies, what is to be done as it

relates to buyback disclosure?

- With the new issuer share repurchase rules stalled (for now, at least), companies should prepare the usual disclosure for their upcoming annual reports, i.e., the disclosure of quarterly buybacks under Item 703 of Reg. S-K and, if material, the impact of any buyback programs in MD&A
- Notwithstanding the Fifth Circuit's decision, companies should consider reviewing their controls and procedures to confirm they are adequate to ensure the timely and accurate collection and disclosure of required information
- Continue to monitor developments in this area and be prepared to move quickly, if needed

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