

Court Vacates SEC's New Share Repurchase Disclosure Rules

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On December 19, 2023, the US Court of Appeals for the Fifth Circuit vacated the Securities and Exchange Commission's (SEC) share repurchase disclosure rules, which were adopted in May 2023 and became effective on July 31, 2023. As discussed in our [previous viewpoint advisory](#), these new rules would have required increased quantitative data and expanded narrative disclosure regarding share repurchases by an issuer.

In October 2023, the court issued an [opinion](#) in the US Chamber of Commerce's challenge of the repurchase rules, which found the SEC enacted the new rules without a proper cost-benefit analysis in violation of the Administrative Procedure Act and remanded the rules to the SEC to make corrections by November 30, 2023. On December 1, 2023, the SEC notified the court that it was unable to timely revise the repurchase rules to cure the identified "defects" by the court's deadline, which deadline the court refused to extend after a request by the SEC to do so. As a result, the court [vacated](#) the new repurchase rules on December 19, 2023. The SEC had previously issued an order postponing the effective date of the repurchase rules as a result of the October 2023 opinion.

As a result, issuers no longer need to comply with the new share repurchase disclosure rules, including the need to (i) provide quarterly disclosure of daily quantitative repurchase data, (ii) indicate whether any Section 16 officers or directors purchased or sold any of the issuer's equity securities subject to a share repurchase plan if the trade occurs within four business days before or after the announcement of the repurchase plan or an increase of an existing share repurchase plan, (iii) provide narrative disclosure about their share repurchases, including the objectives and rationales for each repurchase plan, and (iv) disclose whether any Rule 10b-5 trading arrangement was adopted, modified, or terminated by the issuer during the relevant quarter and describe the material terms of such trading arrangement.

It is not clear whether the SEC will appeal the decision or work to adopt new share repurchase disclosure rules that address the deficiencies the court found in the vacated rules.

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