

Fifth Circuit Vacates Newly Adopted SEC Share Repurchase Rules

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PRACTICES Capital Markets and Securities

On December 19, 2023, the U.S. Court of Appeals for the Fifth Circuit (the “Fifth Circuit”) vacated the [final rule](#) on share repurchase disclosures (the “Rule”) adopted by the Securities and Exchange Commission (the “SEC”) in May 2023, through which the SEC intended to modernize the disclosure requirements related to repurchases of a public company’s equity securities by a public company, an “affiliated purchaser” or any person acting on behalf of a public company or affiliated purchaser (collectively, an “Issuer”). Our prior Alert is available [here](#). Following the Fifth Circuit’s action, Issuers are not required to comply with the newly [expanded](#) disclosure requirements in connection with Issuer stock repurchases.

The U.S. Chamber of Commerce, joined by the Texas Association of Business and the Longview Chamber of Commerce (together, the “Petitioners”), challenged the Rule shortly after its adoption. On October 31, 2023, the Fifth Circuit held that the SEC acted arbitrarily and capriciously in adopting the Rule, in violation of the Administrative Procedures Act, when it failed to (i) respond to comments from the Petitioners and (ii) conduct a proper cost-benefit analysis of the Rule. Therefore, the Fifth Circuit directed the SEC to correct the Rule’s defects within 30 days. The SEC filed a letter stating that it would not be able to correct the defects within the allotted time after the Fifth Circuit denied the SEC’s prior motion for additional time to correct the defects. Accordingly, the Fifth Circuit vacated the Rule.

The vacated Rule was to require quarterly disclosure of daily share repurchase activity by Issuers in a tabular format, additional narrative disclosures on Issuer repurchases, as well as disclosures on Issuer-adopted Rule 10b5-1 trading plans and checkbox disclosure on certain purchases and sales of securities by company insiders immediately before or after the announcement of a repurchase plan. While it remains to be seen whether the SEC will appeal the Fifth Circuit’s ruling or take some other regulatory action, at present these disclosures are not required in periodic reports filed by public companies.

For further information, please contact a member of the Haynes Boone [Capital Markets and Securities Practice Group](#).