

LEGAL UPDATES AND NEWS

5th Circuit Vacates SEC's Enhanced Stock Buyback Disclosure Rule

On December 19, 2023, the U.S. Court of Appeals for the Fifth Circuit vacated the U.S. Securities and Exchange Commission's (the "SEC") rule mandating enhanced disclosure requirements related to an issuer's repurchase of its equity securities, also known as "share repurchases" or "buybacks." You can access the final rule as approved by the SEC [here](#). The U.S. Chamber of Commerce, among other petitioners, successfully challenged the rule, with the Fifth Circuit [holding on October 31st](#) that the SEC "acted arbitrarily and capriciously" by failing to respond to comments on the potential economic implications and failing to substantiate the purported benefits of the rule.

Contemporaneously with that holding, the Fifth Circuit gave the SEC a 30-day deadline to address, or cure, the rule's defects. With eight days remaining until that deadline, the SEC moved to extend the period indefinitely, but the motion was denied. On the 30th and last day of the cure period, the SEC filed a statement that it was unable to correct the rule's deficiencies. As a result, the Fifth Circuit [granted](#) the petitioners' motion to vacate the rule.

Next Steps

Pending any further action or appeal by the SEC, public companies have no obligation to comply with the stock buyback disclosure rule but must continue complying with the current disclosure requirements for issuer stock repurchases under Item 703 of SEC Regulation S-K.

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