

Alert

November 29, 2023



SEC Orders Stay of New Share Repurchase Disclosure Modernization Rule Until Further Notice

On November 22, 2023, the Securities and Exchange Commission (SEC) issued an order to stay the effective date of its Share Repurchase Disclosure Modernization rules adopted in May 2023. The rules, which became effective on July 31, 2023, significantly changed the disclosure regime around share repurchase activity by a public company.

The stay order follows on the heels of a decision by the U.S. Court of Appeals for the Fifth Circuit, dated October 31, 2023, granting the U.S. Chamber of Commerce's petition for review of the new rules and remanding to the SEC to correct certain "defects" in its rulemaking by a November 30, 2023 deadline. In making its decision, the Fifth Circuit held that, among other things, the SEC failed to provide the appropriate cost-benefit analysis required under federal law.

Prior to the stay order, public companies were getting ready to provide new quantitative and narrative disclosures concerning any share repurchase activity in their periodic filing for the first full fiscal quarter ending on or after October 1, 2023. For calendar year-end companies, this disclosure would have been made in the upcoming Annual Report on Form 10-K for fiscal year 2023. An overview of the rule changes, which are now in flux, is available in our prior alert.

What's Next?

For now, the SEC stay order means that public companies are not required to comply with the new disclosure obligations until further direction by the Fifth Circuit or the SEC. With the stay order being issued just a few days before the Fifth Circuit's deadline, we believe the SEC is unlikely to be able to address the shortcomings highlighted by the Fifth Circuit by November 30, 2023. It remains to be seen whether the Fifth Circuit ultimately vacates the rule entirely or whether the rule or its compliance date will be revised or modified.



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