

The Share Repurchase Disclosure Modernization Rule Has Been Stayed

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November 27, 2023

On October 31, 2023, the U.S. Fifth Circuit Court of Appeals (the “Fifth Circuit”) held in [*Chamber of Commerce of the USA v. SEC*](#), that when the SEC adopted the Share Repurchase Disclosure Modernization rule (the “[Repurchase Rule](#)”), the “SEC acted arbitrarily and capriciously, in violation of the APA, when it failed to respond to the petitioners’ comments and failed to conduct a proper cost-benefit analysis.” The Repurchase Rule (effective July 31, 2023) would have called for detailed share repurchase disclosures by issuers in upcoming annual reports on Form 10-K. On November 22, 2023, the [SEC issued an order](#) postponing the effective date of the Repurchase Rule pending further action by the SEC and petitioned the Fifth Circuit Court for an extension of time to correct the defects in the Repurchase Rule. On November 26, 2023, the Fifth Circuit refused to grant the SEC’s requested extension. Presumably, the SEC will repropose the Repurchase Rule, but if it is readopted, we do not expect that it would be effective for the upcoming 10-K filings related to fiscal 2023.

While the result of this flurry of activity is a pause on the requirement to disclose Rule 10b5-1 plans that issuers adopt to repurchase their own shares, companies will still be required to disclose Rule 10b5-1 plans adopted by directors and Section 16 officers. We expect that the quarterly disclosures regarding insider Rule 10b5-1 plans could have an adverse effect on stock prices, even when the shares are to be dribbled out over a long period of time.

[Click here](#) to view our previous Alert on the adoption of the Repurchase Rule.

For questions regarding the status of the Repurchase Rule, please contact your GableGotwals attorney or a member of our [Corporate & Securities Group](#).



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