

Fifth Circuit Gives SEC 30 Days to Fix Share Repurchase Rules

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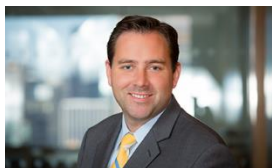
On October 31, 2023, the Fifth Circuit, in *Chamber of Commerce of the USA vs. SEC*,¹ found that the Securities and Exchange Commission (the “SEC”) violated the Administrative Procedure Act and directed the SEC to “correct the defects” in its Share Repurchase Disclosure Modernization rules (the “Share Repurchase Rules”) within 30 days. The Fifth Circuit agreed with the U.S. Chamber of Commerce (the “Chamber”) that the SEC, in its rulemaking process, failed to adequately respond to the Chamber’s comments and failed to substantiate the Share Repurchase Rules’ benefits. However, the Fifth Circuit stopped short of vacating the Share Repurchase Rules, in recognition of “at least a serious possibility” that the SEC will remedy these deficiencies. The Fifth Circuit also agreed with the SEC that the Share Repurchase Rules do not violate the First Amendment by compelling speech.

While the SEC’s response remains to be seen, we believe it is prudent for issuers to continue to prepare so that they are ready in the event there is no delay in the implementation of the Share Repurchase Rules. The Share Repurchase Rules begin to apply with the periodic report pertaining to the first fiscal quarter that begins on or after October 1, 2023 (i.e., for calendar year end issuers, the Form 10-K to be filed in early 2024). For more information about the Share Repurchase Rules, see our Debevoise Update available [here](#).

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¹ *Chamber of Commerce of the USA vs. SEC*, No. 23-60255 (5th Cir., October 31, 2023).

Please do not hesitate to contact us with any questions.



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