

# SEC Issues Order Postponing Effective Date of Share Repurchase Rules

November 27, 2023

On November 22, 2023, the U.S. Securities and Exchange Commission (the “SEC”) issued an order postponing the effective date of its Share Repurchase Disclosure Modernization rules (the “Share Repurchase Rules”) pending further SEC action. This followed an October 31, 2023 decision by the Fifth Circuit in *Chamber of Commerce of the USA vs. SEC* that the SEC violated the Administrative Procedure Act in its rulemaking process by failing to (a) adequately respond to the Chamber of Commerce’s comments and (b) substantiate the Share Repurchase Rules’ benefits. The Fifth Circuit directed the SEC to “correct the defects” in the Share Repurchase Rules by November 30, 2023.

In a motion filed with the Fifth Circuit on November 22, 2023, the SEC stated that complying with the Fifth Circuit’s order would require additional time and requested an extension of an additional 60 days to provide an update on the status of the SEC’s efforts to remedy the defects in the Share Repurchase Rules noted in the Fifth Circuit’s decision. On November 26, 2023, the Fifth Circuit denied the SEC’s request for an extension.

As a result, the original deadline of November 30, 2023 imposed by the Fifth Circuit to remedy the defects in the Share Repurchase Rules continues to apply, and the fate of the Share Repurchase Rules remains uncertain. If the SEC does not adequately respond by November 30, 2023, the Fifth Circuit could decide to vacate the Share Repurchase Rules.

As of the date of this update, the SEC’s order postponing the effective date of the Share Repurchase Rules continues to be in effect. The Share Repurchase Rules had been scheduled to apply beginning 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 or Form 20-F to be filed in early 2024). However, it is now unclear when the Share Repurchase Rules will begin to apply, and we expect that there will be a delay in implementation – possibly extending into 2024. We will keep you updated on any further developments on the Share Repurchase Rules.

For more information about *Chamber of Commerce of the USA vs. SEC*, please see our [Debevoise Debrief—Fifth Circuit Gives SEC 30 Days to Fix Share Repurchase Rules](#). For

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more information about the Share Repurchase Rules, please see our [Debevoise Update—SEC Adopts Share Repurchase Disclosure Rules](#). For a list of key considerations public companies should keep in mind this year when preparing their annual reports on Form 10-K or Form 20-F, including the Share Repurchase Rules, please see our [Debevoise In Depth—Key Considerations for the 2023 Annual Reporting Season](#).

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Please do not hesitate to contact us with any questions.



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