

# Memorandum

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## SEC Postpones Effective Date of Share Repurchase Disclosure Modernization Rule

November 27, 2023

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On November 22, 2023, the SEC issued an order indefinitely postponing the effective date of its Share Repurchase Disclosure Modernization Rule, initially adopted on May 3, 2023. The postponement comes after a unanimous panel of the U.S. Court of Appeals for the Fifth Circuit found the rule “arbitrary and capricious” and ordered the SEC to correct certain defects the court identified by November 30, 2023.

The Share Repurchase Disclosure Modernization Rule, a series of amendments to the SEC’s existing issuer share repurchase disclosure rules, would have required greater public transparency regarding share repurchases by U.S. and foreign reporting companies, as well as registered closed-end management investment companies that are exchange traded. These enhanced requirements would have included, among other changes:

- quarterly disclosure of daily quantitative share repurchase data,
- narrative disclosure regarding the objectives and rationales for each repurchase plan or program, and disclosure of the number of shares purchased other than through a publicly announced plan or program, and
- quarterly disclosure of whether a domestic issuer has adopted or terminated any Rule 10b5-1 trading plan and description of the material terms of any such plan.

The Share Repurchase Disclosure Modernization Rule initially became effective on July 31, 2023. Domestic issuers were initially required to comply with the amendment in the first Form 10-Q or Form 10-K covering the quarter beginning on or after October 1, 2023. For more information regarding the rule, see [our Memorandum](#), “*SEC Requires More Share Repurchase Data*,” previously published on May 5, 2023.

Immediately after the rule was announced, the Chamber of Commerce of the United States, the Longview Chamber of Commerce and the Texas Association of Business filed a petition for review in the Fifth Circuit. On October 31, 2023, the Fifth Circuit issued a decision agreeing with certain of the petitioners’ arguments and finding that the SEC had acted arbitrarily and capriciously in violation of the Administrative Procedure Act when it adopted the rule by not considering the petitioners’ comments and not conducting a proper cost-benefit analysis. The Fifth Circuit remanded the rule with a direction to the SEC to correct those defects within 30 days of its decision.

On November 22, 2023, rather than revise the rule, the SEC announced the postponement of the effective date of the rule and provided no indication of any further steps. As the rule is stayed pending further action by the SEC, reporting companies will not be required to comply with the rule in their future periodic reports. Instead, such companies should continue to comply with existing disclosure requirements regarding share repurchases.

Simpson Thacher will continue to monitor any further actions or rulemaking by the SEC in this area of significant focus.

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For further information regarding this memorandum, please contact one of the following authors:

NEW YORK CITY

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**John C. Ericson**  
+1-212-455-3520  
[jericson@stblaw.com](mailto:jericson@stblaw.com)

**Joseph H. Kaufman**  
+1-212-455-2948  
[jkaufman@stblaw.com](mailto:jkaufman@stblaw.com)

**Karen Hsu Kelley**  
+1-212-455-2408  
[kkelley@stblaw.com](mailto:kkelley@stblaw.com)

**Charles Mathes**  
+1-212-455-2258  
[charles.mathes@stblaw.com](mailto:charles.mathes@stblaw.com)

**Lesley Peng**  
+1-212-455-2202  
[lpeng@stblaw.com](mailto:lpeng@stblaw.com)

**Kenneth B. Wallach**  
+1-212-455-3352  
[kwallach@stblaw.com](mailto:kwallach@stblaw.com)

**David J. Turitzin**  
+1-212-455-3774  
[david.turitzin@stblaw.com](mailto:david.turitzin@stblaw.com)

WASHINGTON, D.C.

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**Joshua Ford Bonnie**  
+1-202-636-5804  
[jbonnie@stblaw.com](mailto:jbonnie@stblaw.com)

**Jonathan H. Pacheco**  
+1-202-636-5876  
[jonathan.pacheco@stblaw.com](mailto:jonathan.pacheco@stblaw.com)

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**William B. Brentani**  
+1-650-251-5110  
[wbrentani@stblaw.com](mailto:wbrentani@stblaw.com)

**Kelli Schultz-Panas**  
+1-650-251-5148  
[kschultz@stblaw.com](mailto:kschultz@stblaw.com)

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