

Fifth Circuit Vacates SEC's Share Repurchase Rule

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On December 19, 2023, the Fifth Circuit vacated the Securities and Exchange Commission's (SEC) new share repurchase disclosure rule discussed in our prior blog posts available [here](#) and [here](#). The court acted on the plaintiffs' motion to vacate after the SEC failed to correct on remand the defects in the rule found by the court by the November 30, 2023 deadline, following the court's denial of the SEC's motion to extend the deadline.

The court vacated the challenged SEC rule, holding that the SEC acted arbitrarily and capriciously in violation of the Administrative Procedures Act (APA) when it failed to respond to the petitioners' comments and failed to conduct a proper cost-benefit analysis.

Accordingly, issuers will not need to comply with the new share repurchase disclosure rule adopted by the SEC. However, the SEC may appeal the court's decision and is free to repropose a share repurchase disclosure rule that complies with the APA. For the time being, issuers should continue to comply with the existing share repurchase disclosure requirements under Item 703 of Regulation S-K for domestic filers and Item 16E of Form 20-F for foreign private issuers.

Winston & Strawn's Capital Markets & Securities Law Watch and lawyers advising our public company clients will continue to monitor further developments and will provide updates to our readers as they become available.

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