

November 15, 2023

Fifth Circuit Gives SEC 30 Days to Remedy Share Repurchase Rule

In its October 31, 2023, decision in *Chamber of Commerce of the USA v. SEC*, the U.S. Court of Appeals for the Fifth Circuit held that the SEC's recent adoption of its share repurchase disclosure rule requiring public companies to disclose their reasons for repurchasing shares, and to collect daily repurchase data and file it quarterly, violated the Administrative Procedure Act. The Fifth Circuit remanded the matter to the SEC and directed it to correct the noted deficiencies within 30 days (for a description of the SEC's recently adopted share repurchase rule, please see our prior [client alert](#)). Specifically, the Court found that the SEC's failure to respond to comments submitted by the Chamber of Commerce and to conduct a proper cost-benefit analysis rendered the SEC's adoption of the rule "arbitrary and capricious" within the meaning of the Administrative Procedure Act. The Court rejected the plaintiffs' arguments that the share repurchase rule violates the First Amendment by compelling speech and that the SEC did not provide the public with meaningful opportunity to comment upon the proposed rule. Assuming the rule remains effective, the share repurchase rule disclosures would be required commencing in periodic reports covering the first full fiscal quarter beginning on or after October 1, 2023.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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