

*From the Public Company Advisory Group of Weil, Gotshal & Manges LLP*

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## What's the Status of SEC's New Share Repurchase Disclosure Rule?

*By Howard Dicker*

On November 22, 2023, the U.S. Securities and Exchange Commission (SEC) [stayed](#) its share repurchase modernization rule, pending further SEC action – essentially delaying the effective date of the rule and placing compliance on hold. This is the rulemaking, previously approved by the SEC, which would have required new detailed disclosures in Forms 10-K and 10-Q of daily issuer share repurchases, among other things. Compliance was scheduled to begin for many issuers with their first filing that covers the first full fiscal quarter that begins on or after October 1, 2023 (for a calendar year company, that would be in the upcoming 10-K). The SEC stay came about after the Chamber of Commerce and two others business groups [petitioned](#) the U.S. Court of Appeals for the Fifth Circuit, and the court [held](#) on October 31, 2023, that SEC's adoption of the rule was "arbitrary and capricious," violating the Administrative Procedure Act. However, instead of vacating (or undoing) the rule at that time, the court gave the SEC 30 days to correct its defects. The SEC did not meet this deadline and was not granted a requested extension. On December 7, 2023, the petitioners filed a motion with the court to vacate the rule. According to the motion, the petitioners notified the SEC in advance that they would be filing the motion and sought the SEC's position and that counsel to the SEC responded that the SEC takes no position on it

We expect the court to vacate the rule, but it has yet to do so. So far the SEC has been silent. Subject to further guidance, while the SEC stay is in place and when the "new" rule is vacated, we believe the pre-existing rule should be in effect. The pre-existing rule (which has been around for 20 years) requires issuers to provide certain information about their quarterly equity repurchases on an aggregated, monthly basis. Likewise, foreign private issuers, who also would have been affected by the "new" rule, should be following their pre-existing disclosure requirements. Stay tuned for further developments.

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If you have questions concerning the contents of this Alert, or would like more information, please speak to your regular contact at Weil or to any of the following authors:

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