

Governance & Securities Alert

Weil

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SEC Issuer Repurchase Disclosures: Be sure to look at the correct rules

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As we discussed in our prior alerts ([here](#), [here](#), and [here](#)), the U.S. Court of Appeals for the Fifth Circuit in December 2023, vacated the share repurchase modernization disclosure rules previously approved by the U.S. Securities and Exchange Commission in 2023. This is the rulemaking that would have required new detailed disclosures in Forms 10-K and 10-Q of daily issuer share repurchases, among other things (and similar disclosures for foreign private issuers). Consequently, as we previously discussed, companies should be drafting disclosure based on the pre-existing rule, which 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 preexisting disclosure requirements.

Unfortunately, many reference sources that companies use for SEC rules and forms updated them for the modernization disclosure rules but did not further update them to revert back. Recently, the SEC Staff (finally) [announced](#) the effect of the Fifth Circuit’s decision and, for convenience, furnished hyperlinks to the prior disclosure requirements, which we repeat below:

- [Item 703](#) of Regulation S-K
- [Form 10-K](#) (Item 5(c))
- [Form 10-Q](#) (Part II – Item 2(b))
- [Form 20-F](#) (Item 16E)

What is Old, is New Again.

Even without the “new rules,” companies should be mindful that share repurchases are of interest to investors and the SEC. Investors are keen on better understanding capital allocation strategies and rationales for company buybacks. The SEC is likely to maintain its focus on share repurchases, whether through comment letters, further rulemaking, or enforcement actions. For instance, the SEC settled charges against two companies in 2023 and 2020 for internal control violations in connection with buybacks ([Charter Communications, Inc.](#) and [Andeavor LLC](#)).

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