

CLIENT ALERT

Navigating Compensation Governance

SEC Indefinitely Delays New Share Buyback Rule's Effective Date

The Securities and Exchange Commission (SEC) has indefinitely delayed the effective date of its new share buyback disclosure rules.

A successful legal challenge to the SEC's rulemaking process is forcing the SEC to conduct a "proper cost-benefit analysis" of the disclosure rule prior to its implementation.

For now, companies have been given a reprieve from complying with the share buyback disclosure rules.

Background

The share buyback disclosure rules will require public companies to disclose information concerning corporate share buybacks on a quarterly basis in a prescribed format and with a prescribed narrative, including details about the rationale for the share buybacks.¹ The new disclosure rules were slated to go into effect for the first fiscal quarter beginning on or after October 1, 2023 for domestic public companies (April 1, 2024 for foreign private issuers).

Challenge by U.S. Chamber of Commerce

On May 12, 2023, the U.S. Chamber of Commerce ("Chamber") filed suit in federal court to stop the SEC from implementing the share buyback disclosure rules.² The Chamber claimed that the new rule violated the First Amendment by compelling corporate speech (i.e., mandating companies disclose their rationale for a share buyback) and the SEC failed to conduct a proper cost-benefit analysis of its disclosure rule thereby violating the Administrative Procedures Act. On October 31, 2023, the Fifth Circuit Court of Appeals dismissed the Chamber's First Amendment claim but agreed with the Chamber that the SEC had failed to (i) adequately respond to comments on the economic implications of the SEC's proposed share buyback disclosure rule or (ii) conduct a proper cost-benefit analysis of the rule. Consequently, the Court directed the SEC to correct these failures by November 30, 2023.

¹ For full details about the requirements of the Repurchase Rule, see Meridian's Client Alert dated May 15, 2023. Available at: <https://www.meridiancp.com/insights/sec-issues-new-disclosure-rules-on-corporate-share-buybacks/>.

² See Meridian Client Alert dated June 6, 2023. Available at <https://www.meridiancp.com/insights/u-s-chamber-of-commerce-sues-sec-to-stop-implementation-of-new-disclosure-rules-on-corporate-share-buybacks/>.

SEC Indefinitely Postpones Effective Date of Share Buyback Disclosure Rule

On November 22, 2023, the SEC announced the effective date of the new share buyback disclosure rules would be delayed until further notice. Not unexpectedly, the SEC subsequently acknowledged that it would be unable to correct the deficiencies in its rulemaking by the court-imposed November 30, 2023 deadline. The SEC has provided no indication as to when it will be able to address these deficiencies.

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