

## **Securities Regulation Daily Wrap Up, PUBLIC COMPANY REPORTING AND DISCLOSURE—5th Cir.: U.S. Chamber of Commerce seeks court review of SEC stock buyback rule, (May 15, 2023)**

By [Lene Powell, J.D.](#)

A new petition seeks review of recently adopted SEC rules imposing new disclosure requirements for stock buybacks.

The U.S. Chamber of Commerce has brought a court action challenging new SEC rules that require additional disclosures on stock buybacks. The SEC rule “puts the thumb on the scale to discourage buybacks,” a Chamber official said in a statement ([Chamber of Commerce of the United States of America v. SEC](#), May 12, 2023).



“The Chamber’s lawsuit seeks to protect returns for investors as well as the ability of companies to make decisions free from government micromanagement,” the Chamber said in a [statement](#).

**New stock buyback disclosures.** The SEC [adopted rule amendments](#) by a 3-2 vote on May 3 to require issuers to provide more detailed data on share repurchases. Under the new rules, issuers will have to disclose daily repurchase activity on a delayed basis and provide information on buyback policies and trading by directors and officers.

According to SEC Chair [Gary Gensler](#), the new disclosures will allow investors to better assess issuer buyback programs and help lessen information asymmetries between issuers and investors.

**Petition for review.** The Chamber filed a Petition for Review on May 12 in the U.S. Court of Appeals for the Fifth Circuit. The petition seeks review of the SEC’s order in issuing a final rule in [Share Repurchase Disclosure Modernization](#). The Longview Chamber of Commerce and Texas Association of Business also joined as plaintiffs.

**Chamber: rule curtails buybacks.** According to the Chamber, share repurchases promote strong U.S. capital markets and benefit everyday Americans and retirement account holders, as well as the broader economy.

The Chamber describes the SEC disclosure rule as “curtailing” stock buybacks and said that “limiting or eliminating” share repurchase plans would weaken U.S. capital markets. The Chamber cautions on proposals that “limit or prohibit” buybacks.

“[P]roposals that would limit or prohibit stock buybacks risk interfering with company governance, planning and decision-making, thereby reducing the ability of companies to manage value,” the Chamber stated.

The Chamber does not detail how the new disclosure requirements “curtail,” “limit,” “prohibit,” or “eliminate” buybacks.

A senior Chamber official suggests that the new rules “discourage” buybacks.

“The SEC’s stock buyback rule doesn’t protect investors,” [said](#) Neil Bradley, U.S. Chamber executive vice president and chief policy officer. “Instead, it puts the thumb on the scale to discourage buybacks despite the fact that the repurchasing of shares improves returns for savers and investors across the economy.”

**Political tug of war.** The SEC rule challenge is playing out against a broader political backdrop.

A Chamber official asserted that the SEC rules “disincentivize” share repurchases for political purposes.

“Market regulations should reflect economic realities, and it is unfortunate that the SEC chose to prioritize political

policies over American investors and the best interests of our economy,” said Tom Quadman, executive vice president of the Chamber’s Center for Capital Markets Competitiveness.

Last year, a White House [fact sheet](#) accompanying the Inflation Reduction Act said a 1 percent tax on buybacks would “encourage businesses to invest instead of enriching CEOs or funneling profits tax-free to shareholders.” The Biden Administration aims to [increase the tax to 4 percent](#) in the FY24 budget. Similar legislation has been [introduced](#) by Senate Banking Committee Chair Sherrod Brown (D-Ohio) and cosponsors.

House Ways and Means Republicans [said](#) the buyback tax will ultimately harm retirees, since so many Americans hold company stocks in their 401k accounts.

The [case](#) docket number was not available at time of publication.

Attorneys: James Burnham (Jones Day) for Chamber of Commerce of the United States of America, Longview Chamber of Commerce and Texas Association of Business.

Companies: Chamber of Commerce of the United States of America; Longview Chamber of Commerce; Texas Association of Business

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