

Inside the Courts An Update From Skadden Securities Litigators

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District Court Applies *Lorenzo* in Securities Class Action Alleging Fraudulent Scheme

In one of the first decisions to interpret and apply the U.S. Supreme Court's recent decision in *Lorenzo v. Securities and Exchange Commission*, on April 11, 2019, the U.S. District Court for the Southern District of New York in *In re Longfin Corp. Securities Class Action Litigation*, 18-cv-2933(DLC), 2019 WL 1569792 (S.D.N.Y. Apr. 11, 2019), denied a motion to dismiss a claim that an underwriter defendant violated Section 10(b) of the Securities Exchange Act of 1934 by participating in an allegedly fraudulent scheme.

The complaint alleged that the defendants violated the securities laws by failing to disclose that Longfin's shares did not meet the registration requirements of the Securities Act of 1933. The underwriter (Network 1) moved to dismiss the Exchange Act claim on the ground that the complaint failed to allege that Network 1 was the maker of a false statement. Relying on the Supreme Court's recent *Lorenzo* decision, the court concluded that Network 1 may be liable "regardless of whether it 'made' any misrepresentations or omissions." The court held that allegations that Network 1 "facilitated" Longfin's offering and listing on NASDAQ, despite knowing that its shares were not validly issued, were adequate to state a claim that it "participated in a scheme cognizable under Rule 10b-5." The court further explained that "if Network 1 played a significant role in getting Longfin listed on NASDAQ when it knew that a significant number of shares were not validly issued ... then it violated Section 10(b) and Rule 10b-5."

The *Longfin* decision illustrates the ways in which *Lorenzo* could be applied to broaden potential liability under Section 10(b) beyond what *Janus* may have permitted.

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