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Spotlight

Materiality, Not 'Extreme Departure,' Governs Intra-Quarter Disclosure in 9th Circuit Securities Case

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To disclose or not to disclose is the question public issuers must ask when confronted with business developments every quarter. The 9th U.S. Circuit Court of Appeals recently issued an opinion setting the standards for intra-quarter disclosure obligations under the Securities Act of 1933 in the context of initial public offerings (IPOs).

In *Sodha v. Golubowski*, a divided panel ruled that the test governing the duty to disclose intra-quarter developments is whether the information is material. No. 24-1036, 2025 WL 2487954, at *11 (9th Cir. Aug. 29, 2025). The 9th Circuit's ruling aligns with the standard adopted by the 2nd U.S. Circuit Court of Appeals eight years ago, and deviates from the test followed by the 1st U.S. Circuit Court of Appeals for almost 30 years.

Section 11 of the 1933 Act imposes liability on defendants if “any part of the registration statement ... contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading.” 15 U.S.C. § 77k(a).

In *Shaw v. Digital Equipment Corporation*, the 1st Circuit held that plaintiffs stated a Section 11 claim by alleging that, at the time of a public offering, the defendant omitted but “was in possession of information about the company’s quarter-to-date performance (*e.g.*, operating results) indicating some substantial likelihood that the quarter would turn out to be an extreme departure from publicly known trends and uncertainties[.]” 82 F.3d 1194, 1211 (1st Cir. 1996).

District courts subsequently referred to this as the “extreme departure” test for assessing the disclosure of intra-quarter results. In *Golubowski*, the majority held that the “extreme departure” test is “not the law of this circuit.” 2025 WL 2487954, at *11. It vacated and remanded for the district court to apply “the proper test for the duty to disclose,” which “is the test for materiality.” *Id.*

In *Golubowski*, investors brought a putative class action against Robinhood Markets, Inc. (Robinhood), an online brokerage firm that targets retail investors, several of its officers and directors, and the underwriters to its IPO, asserting claims pursuant to Sections 11, 12, and 15 of the 1933 Act. *Id.* at *2.

Rather than charging fees when it executes trades, Robinhood uses a “payment for order flow” (PFOF) model pursuant to which it routes customers’ orders to market makers, and those market makers pay Robinhood. *Id.* at *3. “During 2020, over 90% of Robinhood’s transaction-based revenue came from conventional trading in stocks and options.” *Id.*

But in January 2021, retail investors used Robinhood to purchase shares in so-called “meme-stocks,” such as GameStop, AMC Entertainment, and Bed, Bath & Beyond, as well as the cryptocurrency Dogecoin. *Id.* By late January, Robinhood limited trading in GameStop shares, and by early February, the prices of GameStop and other “meme stocks” fell from their January highs. *Id.* As for Dogecoin, its value “skyrocketed” between January and April 2021, and then “plummeted in late April and continued to decline between May and July.” *Id.*

On July 1, 2021, Robinhood filed a draft registration statement, and on July 30, it filed the final prospectus with shares priced at \$38. *Id.* at *4. The offering documents discussed the first quarter of 2021, during which the company saw year-over-year transaction-based revenues increase by 340%. *Id.*

But the offering documents did not provide final results for the second quarter or the beginning of the third quarter of 2021. *Id.* Instead, it said that “its expectations for those periods were in line with the previous statements[.]” *Id.* It also provided information related to its Key Performance Indicators (KPIs). *Id.* It disclosed significant annual increases since 2018 and “estimated that these metrics would continue to increase in the second quarter of 2021.” *Id.* at *5. At the same time, the offering documents warned that the company “may not continue to grow on pace with historical rates.” *Id.* at *6.

On Oct. 26, 2021, Robinhood reported its financial results for the third quarter of 2021, with declines in each of the KPIs, as well as transaction rebates and PFOF revenue. *Id.* at *7. It warned of similar declines in its fourth quarter results. *Id.*

Following these reports, Robinhood’s stock price dropped about 10%. *Id.* Plaintiffs filed their initial complaint on Dec. 17, 2021, alleging that Defendants’ registration statement omitted information necessary to prevent existing disclosures from being misleading and violated Regulation S-K Items 303 and 105. *Id.* at *8.

The district court dismissed, concluding, among other things, that intra-quarterly financial results must be “extraordinary” to warrant disclosure. *Golubowski v. Robinhood Markets, Inc.*, No. 21-CV-09767-EMC, 2024 WL 269507 (N.D. Cal. Jan. 24, 2024). The district court found that plaintiffs failed to state a claim because the allegations, “when viewed against the proper baseline (the pre-frenzy company financials), do not reflect results so extraordinary as to warrant out-of-quarter disclosure.” *Id.* at *8.

The 9th Circuit rejected this reasoning and the 1st Circuit’s “extreme departure” test, and agreed with Plaintiffs that the standard for whether information must be disclosed “is simply the standard for materiality.” *Id.* In so holding, the 9th Circuit joined

the 2nd Circuit’s reasoning in *Stadnick v. Vivint Solar, Inc.*, 861 F.3d 31, 33 (2d Cir. 2017). Thus, there is a duty to disclose “whenever there is a substantial likelihood that disclosure of the omitted information would have been viewed by a reasonable investor as having significantly altered the total mix of information available.” *Id.*

In *Vivint Solar*, the 2nd Circuit concluded that the “‘extreme departure’ test of *Shaw* is not the law of [this] Circuit.” The plaintiff alleged that Vivint violated Section 11 by failing to disclose its 2014 third quarter financial information in its registration statement, which was issued the day after the third quarter ended. *Id.* at 36.

The *Vivint* court affirmed that the traditional materiality test applied. *Id.* at 37. It rejected the “extreme departure” test for three reasons: (1) courts’ familiarity with the classic materiality standard; (2) the “extreme departure” test leaves too many questions; and (3) it “can be analytically counterproductive.” *Id.* at 38. The court underscored the facts at hand to demonstrate the “unsoundness of the ‘extreme departure’ test.” *Id.*

The plaintiff pointed to changes in two financial metrics over three quarters to show an extreme departure. *Id.* The court agreed that those two metrics supported plaintiff’s claim, but noted that “the two metrics identified by [the plaintiff] are not fair indicators of Vivint’s performance.” *Id.*

The court characterized plaintiff’s view as “too myopic, both temporally and with regard to the number of metrics.” *Id.* It concluded that a “reasonable investor would not have viewed Vivint’s omission as ‘significantly altering the total mix of information made available’ and affirmed the dismissal. *Id.* In other words, even an “extreme departure” may not be material.

The 9th Circuit found the 2nd Circuit’s reasons for rejecting *Shaw*’s “extreme departure” test persuasive, and remanded for the district court to apply the materiality test. 2025 WL 2487954, at *11.

The full panel, however, agreed with the district court that plaintiffs had not stated a claim for violation of Item 105. Among other things, Item 105 requires registrants to “provide ... a discussion of the material factors that make an investment in the registrant or offering speculative or risky.” 17 C.F.R. § 229.105(a).

Plaintiffs argued that Robinhood violated Item 105 by “presenting risks as contingent when they [had] already come to fruition” and failing to disclose that “Robinhood’s revenues had become far more volatile than they had been historically[.]” 2025 WL 2487954, at *16.

As to the former theory, the panel noted that “presenting past harms as contingent future risks may be misleading” but does not, standing alone, “violate Item 105.” *Id.* As to the latter, the panel found that “Defendants did disclose the risk.” *Id.*

In a 60-page partial dissent, Judge Johnnie B. Rawlinson recited Robinhood’s “extensive disclosures and warnings,” and took issue with the majority’s treatment of Section 11’s “misleading” prong and Item 303. *See id.* at *24. She emphasized that the majority “collapses the requirements for interim and annual reports,” and “relies on out-of-circuit authority to support its analysis.” *Id.* at *38.

According to her, the proper analysis considers “the statements that were made, any disclaimers accompanying those statements, and the information available to the market,” as articulated in *Morris v. Newman (In re Convergent Techs. Sec. Litig.)*, 948 F.2d 507, 512, 515 (9th Cir. 1991), *as amended*. *Id.* at *24.

She underscored “the flexibility afforded by Item 303,” and faulted the majority for replacing that flexibility with uncertainty.

As for the “extreme departure” standard, she noted that “[t]his approach is much closer to the intent of the statute than collapsing the analysis for interim reports and annual reports into one mushy ‘materiality’ standard.” *Id.* at *40 n.5.

Key Takeaways

As *Vivint Solar* proved, the traditional “materiality” standard is not necessarily plaintiff-friendly and may not require greater disclosure than the “extreme departure” test.

Public companies are well advised to evaluate their disclosures under the requirements imposed by the 2nd and 9th Circuits. Public issuers and their counsel should carefully consider whether intra-quarter financial results and metrics are material under the traditional materiality standard.

Energy



Tennessee District Court Allows Claims re Safety and Reliability of Solar Products To Go Forward

In re Shoals Techs. Grp., Inc. Sec. Litig. (M.D. Tenn. Sept. 30, 2025)

What to know: The Middle District of Tennessee allowed significant portions of a securities class action to proceed against Shoals Technology Group, Inc. (Shoals) and certain of its executives based on allegations that they made false and misleading statements related to the safety and reliability of Shoal's products despite knowing about a critical product defect and resulting warranty costs.

Plaintiffs alleged that Shoals, a solar products manufacturer, and several of its executives made numerous materially false or misleading statements about product quality, installation benefits and warranty liabilities in quarterly filings and materials for secondary public offerings (SPOs). Plaintiffs claim that, despite knowing about a critical product defect in one of its core products and resulting mounting warranty liabilities, defendants falsely highlighted the reliability and safety of its products. After Shoals publicly disclosed the existence of the defect and the potential for substantial warranty claims, Shoals' stock price fell from \$40 to less than \$8.

Plaintiffs subsequently filed a putative class action complaint, asserting claims against Shoals and several officers under Sections 10(b), 15 and 20(a) of the Securities Exchange Act of 1934 (Exchange Act). Plaintiffs also asserted claims against Shoals, its officers and directors, and the underwriters of the SPOs under Sections 11 and 12(a) of the Securities Act of 1933 (Securities Act).

On September 30, 2025, the court granted in part and denied in part defendants' motion to dismiss. With respect to the Section 10(b) claim, the court found that plaintiffs sufficiently pled material misrepresentations, scienter and loss causation as to all but one individual officer, whose statements did not amount to material misrepresentations.

As to scienter, the court credited allegations that Shoals' founder and former CEO had engaged in unusually voluminous stock sales (totaling \$1 billion and \$4.3 million) around the time that Shoals learned of significant defects with the company's most profitable product. The court determined that the timing and scale of these sales supported a strong inference of motive to conceal and mislead investors.

The court rejected defendants' argument that Shoals' founder was no longer an insider at the time of his sales because he had resigned from his official role at the company prior to the class period. The court noted that his continued status as a controlling shareholder with over one-third of the company's voting power fit the "traditional concept of a corporate insider."

The court dismissed the Section 15 and 20(a) control-person claims as to most officers and directors due to insufficient allegations of control but allowed the Section 15 claim to proceed against Shoals and the founder, and the Section 20(a) claim to proceed against the former CEO and company president. The court also allowed the Section 20A insider trading claims to proceed against both Shoals' founder and former CEO.

With respect to the Securities Act claims, the court permitted the Section 11 claims to proceed as to all defendants, holding that the plaintiffs adequately identified material omissions in the registration statements and prospectuses, particularly with respect to undisclosed warranty costs. But the court dismissed the Section 12(a)(2) claims both because some of the defendants were not statutory sellers and because the plaintiffs made no effort to trace their stock purchases to any particular statutory seller.

Engineering and Construction



2nd Circuit Reverses Dismissals, Holding Claims Were Timely and Facts Were Alleged With Particularity

Sherman v. Abengoa S.A. (2d Cir. Oct. 6, 2025)

What to know: The Second Circuit affirmed in part, vacated in part and reversed in part the Southern District of New York’s grant of defendants’ motion to dismiss against a class of investors who purchased shares in the defendant corporation, as well as the district court’s denial of leave to amend against the CEO to allege scienter.

Plaintiffs brought claims under Sections 11 and 15 of the Securities Act, Sections 10(b) and 20(a) of the Exchange Act and the Securities and Exchange Commission Rule 10b-5. Plaintiffs alleged that Abengoa, S.A., an engineering and construction company, “manipulated its financial records to conceal the company’s liquidity crisis, thereby contributing to the firm’s bankruptcy.” Specifically, plaintiffs alleged that Abengoa inflated profit margins by recognizing revenue prematurely while shifting losses to future, yet unmaterialized projects — practices inconsistent with the accounting methodology in the defendant corporation’s registration statement.

Judge Edgardo Ramos of the Southern District of New York dismissed with prejudice plaintiffs’ third amended complaint as to all defendants for failure to state a claim, and denied plaintiffs leave to amend the complaint against the CEO to allege scienter.

Second Circuit Judge Richard J. Sullivan, writing for Judges Debra Ann Livingston and Steven Menashi, affirmed in part, vacated in part, and reversed in part. The circuit court affirmed only the denial of leave to amend the scienter claim against the CEO, stating that suspiciously-timed resignations alone do not imply scienter.

In reversing the dismissals on other claims, the Second Circuit held that plaintiffs timely brought the claim under Section 11 and made sufficient allegations under Section 11 and Section 10(b) relying on whistleblowers and foreign proceedings involving the same matter. On timeliness, the appellate court found that the event the district court said triggered a plaintiff’s duty to investigate was not related to plaintiffs’ cause of action.

The Second Circuit further held that the plaintiffs alleged with sufficient particularity both widespread accounting fraud and scienter. The Second Circuit noted that the plaintiffs relied on reliable confidential whistleblowers and foreign proceedings adjudicating the same matter, both of which the district court failed to credit.

The circuit court vacated the dismissal of the plaintiffs’ Section 15 claims because the survival of those claims was predicated on the Section 11 claim.

Financial Services



9th Circuit Rules That SEC Need Not Show Pecuniary Harm to Investors To Obtain Disgorgement

SEC v. Sripetch (9th Cir. Sept. 3, 2025)

What to know: On September 3, 2025, the Ninth Circuit affirmed an order granting the SEC’s motion for disgorgement against an individual, holding that the SEC may obtain disgorgement under 15 U.S.C §§ 78u(d)(5) and (d)(7) without showing that investors suffered pecuniary harm.

Ongjaruck Sripetch was one of 15 defendants sued by the SEC in 2020 for alleged participation in fraudulent schemes involving at least 20 penny stock companies. The SEC alleged that the defendants obtained at least \$6 million in illicit sale proceeds. The SEC moved for an order requiring Sripetch to disgorge his profits. Sripetch opposed the motion, arguing that the court should adopt the Second Circuit’s position that disgorgement under Section 78u(d) requires the SEC to show investors suffered pecuniary harm — a showing it failed to make.

The district court granted the SEC’s motion in part, ordering Sripetch to disgorge an adjusted amount of profits. It assumed the SEC needed to show pecuniary harm but concluded that it made such a showing. Sripetch appealed, arguing the SEC failed to do so.

The Ninth Circuit affirmed. In doing so, it aligned with the First Circuit and rejected the Second Circuit’s approach as contrary to common law and the Supreme Court’s decision in *Liu v. SEC*, 591 U.S. 71 (2020). *Liu* held that the SEC could obtain disgorgement under Section 78u(d)(5), but that the remedy would retain its common law principles and limitations. After *Liu*, Congress enacted Section 78u(d)(7), providing an express statutory basis for disgorgement in SEC enforcement actions. Given that Sripetch offered no justification for treating Section 78u(d)(7) differently from Section 78u(d)(5), the Ninth Circuit applied *Liu*’s reasoning to Section 78u(d)(7).

Relying on *Liu*, the Ninth Circuit stressed that disgorgement is a common law remedy intended to eliminate a wrongdoer’s profit, not to compensate investors for financial loss. It is not a penalty; its purpose is deterrence. Under these principles, the court reasoned, disgorgement should not require a showing of pecuniary harm. Moreover, the court concluded that it would undermine Congress’s statutory scheme to require a showing of loss in SEC enforcement actions because Congress imposed the loss requirement in private securities actions to curb abusive litigation — a concern not present here. Accordingly, the Ninth Circuit held that the SEC may obtain disgorgement without showing investors suffered pecuniary harm as long as it can show the defendant interfered with investors’ “legally protected interests,” a term the court left undefined.

9th Circuit Rules That IPO Issuers Must Disclose Material Intra-Quarter Declines in Performance in Registration Statements To Avoid Sections 11 and 12 Liability

Sodha v. Golubowski (9th Cir. Aug. 29, 2025)

What to know: On August 29, the Ninth Circuit vacated in part the dismissal of a Securities Act class action against a brokerage firm, holding that issuers may violate Sections 11 and 12(a)(2) by disclosing past financial results in offering materials without also disclosing current, intra-quarter data that materially differs from the past results.

Robinhood Markets, Inc. is an online brokerage firm that profits by matching retail investors of stocks, ETFs and cryptocurrencies with market makers.

Robinhood launched its IPO on July 29, 2021, before finalizing its second-quarter results. Its registration statement disclosed only (1) its 2021 first-quarter results, (2) limited second-quarter information, and (3) warnings that, for example, Robinhood did “not know whether, over the long term,” new users would trade at the same rate as earlier users.

After its IPO, Robinhood announced second- and third-quarter results that revealed sharp declines in Robinhood’s revenue and key performance indicators. Investors sued under Sections 11, 12(a)(2), and 15 of the Securities Act, alleging that Robinhood intentionally misled investors when it selectively included its favorable first-quarter results in its registration statement yet characterized the ongoing, known declines merely as hypothetical risks, especially when Item 303 required it to disclose known trends reasonably likely to have a material impact on financial results.

The district court dismissed the complaint, holding that (1) issuers need not disclose intra-quarter results unless they represent an “extreme departure” from prior performance — the test adopted by the First Circuit; and (2) a “trend” under Item 303 need not be disclosed unless it “reflect[s] persistent conditions.”

The Ninth Circuit vacated and remanded as to both holdings. First, the Ninth Circuit rejected the “extreme departure” test. It held that an issuer must disclose intra-quarter results whenever a reasonable investor would consider the results *material* such that their omission renders past financial results misleading. It also held that presenting already-materialized declines as future risks may be materially misleading, but it remanded for the district court to apply this test to the allegations at hand.

The court also rejected the defendant’s argument that a “trend” under Item 303 must reflect “persistent” conditions. Instead, it held that whether a pattern constitutes a “trend” is a fact-specific inquiry that turns on whether the pattern supports “conclusions” about the issuer’s “business environment.” The court further clarified that, when a trend must be disclosed under Item 303, the issuer should quantify its effects to the extent reasonably practicable. It remanded for the district court to determine whether the declines at issue constituted a trend that should have been quantified.

3rd Circuit Holds That Omission of Historical Loss Data May Have Been Materially Misleading

In re Maiden Holdings, Ltd. Sec. Litig. (3d Cir. Aug. 20, 2025)

What to know: On August 20, 2025, the Third Circuit vacated summary judgment for a reinsurer, holding that failing to disclose historical loss data to investors can render announcements of loss reserves misleading, even when historical loss data is only one of many factors that a reinsurer considers when setting its loss reserves.

Maiden Holdings, Ltd. is a publicly traded reinsurance company. Maiden’s largest client, AmTrust, accounted for over 70% of Maiden’s premiums earned. From 2012 to 2017, the percentage of claims Maiden paid out for AmTrust, *i.e.*, Maiden’s losses, relative to the premiums paid by AmTrust rose from 48.6% to 82.2%. However, during this time, Maiden announced loss reserves indicating that Maiden predicted its overall loss ratios to be in the 50% to 60% range. Despite the fact that AmTrust had a significantly higher loss ratio than 60%, Maiden repeatedly stated that “historic loss development” was “indicative of future loss development and trends.”

After Maiden disclosed mounting losses in its AmTrust segment, investors sued under Section 10(b), alleging that Maiden’s loss-reserve announcements were misleading because they functioned as opinions about future losses, yet Maiden did not disclose that its historical loss data contradicted the basis for those opinions. The district court disagreed, granting summary judgment for Maiden on grounds that Maiden did not need to disclose the data since it was just one factor that went into determining the loss reserves, and the factor did not “totally eclipse” all the other factors.

The Third Circuit vacated summary judgment, holding that Maiden's failure to disclose its historical loss data for AmTrust may have been a material omission that misled investors about Maiden's future profitability. The court rejected the district court's "total eclipse" standard, as loss reserve announcements operate as opinions about future losses, and opinions may be misleading if the issuer omits known, *material* facts underlying those opinions.

Here, the court held that reasonable factfinders could conclude Maiden's omission was material because (1) Maiden told investors that historical experience was one of the most significant factors in calculating loss reserves; (2) AmTrust accounted for more than 70% of Maiden's premiums, so losses on the AmTrust segment disproportionately affected Maiden's profitability; and (3) Maiden's data showed that losses on the AmTrust segment rose steadily over several years. The court noted that failing to disclose one fact "cutting the other way" does not necessarily render loss reserve announcements misleading. Rather, whether an omission is material is context-specific.

Delaware Chancery Denies Motion To Dismiss Where Oversight Claims Relied on Former In-House Counsel's Whistleblower Complaint

Brewer, on behalf of Regions Fin. Corp. v. Turner
(Del. Ch. Sept. 29, 2025)

What to know: Where the plaintiff in a derivative suit against directors relied on a whistleblower complaint submitted by the corporation's former deputy general counsel, the Delaware Court of Chancery in large part denied a motion to dismiss, finding that the complaint adequately alleged a *Caremark* oversight claim based on directors' conscious disregard of red flags regarding unlawful overdraft fee practices that led to a \$191 million settlement.

Regions Financial Corp., a Delaware company operating Regions Bank (together, Regions), paid \$191 million under a 2022 Consumer Financial Protection Bureau (CFPB) consent order finding that the bank knowingly used manipulative processing methods to charge illegal overdraft fees between 2018 and 2021.

Before the consent order, Regions received letters from U.S. Senators urging it to stop charging overdraft fees during the COVID-19 pandemic. Regions also received a draft whistleblower complaint in 2019 from its former deputy general counsel that detailed an alleged history of legal violations by Regions related to its overdraft fees, and alleged that Regions executives purposefully delayed changes to maintain fee revenue. Regions hired a law firm to review its overdraft practices, but took no immediate action.

A stockholder brought derivative claims against Regions' directors. Plaintiff alleged that the directors breached their fiduciary duties of oversight by ignoring "red flags" of wrongdoing about Region's noncompliance (*Caremark* claims) and by intentionally pursuing illegal action for profit (*Massey* claims), leading to the \$191 million payment under the CFPB consent order. The defendants moved to dismiss the complaint.

Addressing only the *Caremark* claims, the Court of Chancery denied the motion to dismiss because it concluded that plaintiff had adequately pleaded that a majority of the board (nine out of 14) faced a substantial likelihood of liability under plaintiff's *Caremark* theory. The court found it reasonably conceivable that the whistleblower complaint in 2019 alerted the board to the illegal nature of Regions' overdraft practices.

Although the board retained outside counsel to investigate Regions' overdraft practices, the court stated that merely retaining counsel to investigate was insufficient and counsel's advice was redacted from documents before the court, and it emphasized that the board failed to take any immediate action. Thus, the court found it reasonable to infer, based on the pleadings, that the Regions directors had knowingly permitted the overdraft practices to continue until a replacement revenue source could be found, consistent with the conclusion of the CFPB. These allegations were therefore sufficient at the pleading stage, and the court denied the motion to dismiss as to the directors who were on the board at the time it received the whistleblower complaint.

The court dismissed claims against current and former directors who were not on the board at the time it received the whistleblower complaint because plaintiff failed to plead that they violated their oversight duties by consciously ignoring red flags of Regions' violations.

Health Care and Life Sciences



9th Circuit Holds That ‘Snappy Slogan’ Is Not Misleading Under Section 10(b) Where Additional Disclosures Made in Investor Materials

Sneed v. Talphera, Inc. (9th Cir. Aug. 20, 2025)

What to know: On August 20, 2025, the Ninth Circuit affirmed the dismissal of a securities class action against a pharmaceutical company, holding that (1) the company’s slogan “Tongue and Done” did not misleadingly imply that the company’s product did not have to be administered by medical professionals because investor materials accompanying the slogan adequately described the drug’s regulatory restrictions and (2) confidential witness statements do not show scienter if the witnesses never interacted with executives.

Talphera, Inc. developed DSUVIA, an opioid tablet administered below the tongue. Because other opioids cannot be administered so easily, Talphera created the slogan “Tongue and Done,” which it used in marketing materials and, with slight variation, in an investor speech. The Food and Drug Administration (FDA) required DSUVIA to have a Risk Evaluation and Mitigation Strategy (REMS) plan, which limited its administration to medically-supervised settings like hospitals and surgical centers. In Talphera’s marketing materials, speech and SEC filings, Talphera disclosed the REMS plan.

The FDA issued Talphera a warning letter asserting that the slogan was “false or misleading” under the Food, Drug and Cosmetic Act (FDCA). Using this letter as support, investors sued under Section 10(b), alleging the slogan misled them because it oversimplified DSUVIA’s administrative complexity and implied that it did not have to be administered by medical professionals. To show scienter, the investors relied on confidential witnesses, one of whom claimed that he or she told executives that the “Tongue and Done” slogan oversimplified DSUVIA’s administration.

The Northern District of California dismissed the complaint, holding that the investors failed to show the executives knew or recklessly disregarded that the slogan would mislead investors.

The Ninth Circuit affirmed, holding that the investors failed to plead both falsity and scienter. The court explained that falsity is based on a reasonable investor standard and reasonable investors heed a statement’s context. Here, reasonable investors would take into account Talphera’s REMS disclosures in its marketing materials and investor speech stating that DSUVIA could only be administered by medical professionals. The court also rejected the investors’ reliance on the FDA’s warning letter because the FDCA imposes a lower bar: It looks to patients’ and prescribers’ perspectives, not reasonable investors’.

Regarding scienter, the investors failed to show the executives intended to defraud. The investors relied on confidential witnesses, but most witnesses never interacted with the executives and therefore lacked personal knowledge of the executives’ decision-making.

Minnesota District Court Finds Claims Failed To Meet ‘Heightened Specificity’ Requirement and Alleged Misstatements Were Opinions or Corporate Optimism

Trs. of the Welfare and Pension Funds of Local 464A – Pension Fund v. Medtronic PLC (D. Minn. Sept. 30, 2025)

What to know: The District of Minnesota dismissed a securities fraud class action against Medtronic PLC and several current and former executives, holding that the plaintiffs failed to plead their claims with heightened specificity and because the alleged misstatements regarding product approval timelines and FDA compliance were inactionable opinions or statements of corporate optimism.

Judge Laura M. Provinzino of the District of Minnesota dismissed with prejudice an amended class action complaint against Medtronic PLC, a global healthcare company that manufactures (among other things) insulin pumps for the treatment of diabetes, and several of its current and former executives.

The plaintiffs alleged that the defendants engaged in deceptive conduct and made materially false statements for the purpose of covering up product quality issues at Medtronic’s insulin pump manufacturing facility. The plaintiffs alleged that this created an inaccurate and overly optimistic picture of the state of Medtronic’s Diabetes Group, causing the price of Medtronic stock to trade at artificially inflated levels.

The court divided the plaintiffs’ allegations into two time periods: before and after the FDA launched an investigation into Medtronic’s manufacturing facility. Prior to the investigation, the plaintiffs alleged that the defendants participated in a scheme to cover up problems at the facility. Specifically, they alleged that Medtronic released studies showcasing positive health outcomes for users of particular pumps, used erroneous risk calculations in its studies to downplay the risk of harm from the pumps, failed to report cybersecurity malfunctions to the FDA and downplayed the severity of any product issues that eventually came to light.

In November 2019, Medtronic recalled certain insulin pumps. The FDA launched an investigation into the reasons behind the recall and inspected Medtronic’s manufacturing facility. At the time, Medtronic was seeking FDA approval for a new and advanced pump model. The plaintiffs alleged that, during and after the FDA investigation, the defendants made several additional misrepresentations about the status of the FDA’s approval of Medtronic’s new pump and its general compliance with FDA regulations.

The plaintiffs alleged that Medtronic further misled its investors by failing to identify in its Form 10-Qs the potential delay in the FDA’s approval of its new pump that might arise as a result of the ongoing investigation. Market analysts initially projected that approval of the new pump would come by the end of 2021. When Medtronic announced in May 2022 that the pump would not be approved before April 2023, its stock fell 5.8%. Ultimately, it was approved by the FDA on April 21, 2023.

The court, applying the heightened pleading standard for securities fraud, granted the defendants’ motion to dismiss. The court held that the plaintiffs failed to meet the particularity requirement for the pre-investigation scheme allegations because they made only general allegations about “the Diabetes Group” and did not identify specific deceptive acts by any specific individuals. The court further found that none of the alleged misrepresentations made during and after the investigation were actionable, because the statements made were optimistic opinions or puffery, not concrete assurances about the timeline or status of the FDA’s approval process.

California District Court Says Short-Seller Report May Qualify as Corrective Disclosure

Peters v. Twist Bioscience Corp. (N.D. Cal. Sept. 3, 2025)

What to know: On September 3, 2025, the U.S. District Court for the Northern District of California denied in part a biotechnology company’s motion to dismiss a securities class action, holding that a short seller report may serve as a corrective disclosure when coupled with significant market reaction and analyst corroboration.

Twist Bioscience Corp. is a biotechnology company specializing in the manufacture of synthetic DNA for use in academia, healthcare and agriculture.

In 2022, Scorpion Capital, a short seller, published a report accusing Twist of inflating its gross margins and misrepresenting its error rates, customer satisfaction and the extent to which its processes were automated. Investors sued Twist, its CEO and its CFO under Section 11 of the Securities Act and Section 10(b) of the Exchange Act, alleging that the report served as a corrective disclosure alerting investors to numerous false statements, such as “customer experience is excellent,” “we ship perfect DNA,” and “[w]e have automated everything.”

The Northern District of California held that these statements were objectively verifiable and thus actionable and that the investors adequately alleged scienter as to the CEO but not the CFO. The court also held that the complaint plausibly alleged that the Scorpion Capital report was a corrective disclosure for purposes of pleading loss causation.

The court reasoned that a short-seller's financial interest alone does not preclude its report from serving as a corrective disclosure if the market reasonably perceives it as true and reacts accordingly. The court applied the Ninth Circuit's "flexible approach," which allows corrective disclosures to come from external sources, be it whistleblowers, analysts or investigative reporters. However, the court reiterated that plaintiffs

must still allege facts plausibly suggesting that a corrective disclosure revealed the truth; the revelation of truth must have caused the company's stock price to decline. Thus, whether a short-seller's report can serve as a corrective disclosure remains context-dependent.

Here, Twist's stock price fell 20% the day of the report and 35% within three days. In addition, analysts from three firms attributed the drop to the report. A fourth analyst concluded the same weeks later. With the sharp drop in the stock price, the immediate analyst corroboration and the fact that there were no non-fraud-related factors that might have moved Twist's stock price, the court concluded that Scorpion Capital's report could plausibly serve as a corrective disclosure.

Real Estate



3rd Circuit Affirms Dismissal Because Tenant's Fraud, by Itself, Did Not Render REIT's Oversight and Diligence Statements Actionable

Handal v. Innovative Indus. Props., Inc. (3d Cir. Oct. 15, 2025)

What to know: On June 17, 2025, the Third Circuit affirmed the dismissal of a securities class action against a real estate investment trust (REIT), holding that its statements about its due diligence before signing a tenant, its monitoring of the tenant and its praise for the tenant were not actionable merely because the tenant defrauded the REIT.

Innovative Industrial Properties, Inc. is a publicly-traded REIT that acquires facilities from cannabis operators and leases them back. Innovative sometimes agrees to reimburse a tenant for capital improvements if the tenant submits certified and substantiated “draw requests.”

Innovative paid one such tenant, Kings Garden, over \$48 million for improvements before it noticed a missing signature and mismatched dollar values. Innovative then discovered that Kings Garden falsified its construction invoices. Innovative sued, claiming that Kings Garden exhibited Ponzi-scheme “red flags.”

Innovative disclosed its lawsuit to investors, and the investors sued under Section 10(b), alleging that Innovative was willfully ignorant of Kings Garden’s fraud and therefore misled shareholders when it assured them that it conducted due diligence, continuously monitored the tenants, praised Kings Garden and made reimbursements that related to only “verified, qualified improvements.” They argued that Innovative’s “turn[ing] a blind eye to red flags” demonstrated intent to defraud.

The district court dismissed and the Third Circuit affirmed, holding that most statements were not false, and that in any case, the investors failed to plead scienter because they only showed that executives were negligent, which was not sufficient.

Regarding falsity, the court held that most statements were not false or misleading because they were qualified in some way. For example, Innovative stated its agreements were “typically subject to closing conditions, including satisfactory completion of due diligence.” This was not false because no facts showed this was *not* typical portfolio-wide. Similarly, Innovative’s statement that, “in some instances, we monitor our tenants,” made no promises to investors regarding Innovative’s monitoring of Kings Garden in particular. Moreover, statements praising Kings Garden were opinion statements and investors pled no facts showing actual knowledge.

However, one statement was plausibly false. Innovative stated that its “reimbursements relate only to verified, qualified improvements,” but Kings Garden’s reimbursements were evidently not verified. Nevertheless, the court affirmed dismissal because the investors still failed to plead scienter. While an “egregious refusal to see the obvious” can sometimes demonstrate scienter, here, Innovative promptly investigated Kings Garden once it noticed the missing signature. Thus, no facts showed the executives willfully turned a blind eye to Kings Garden’s alleged fraud.

Retailing



3rd Circuit Upholds Dismissal Because There Was No Duty To Disclose Preliminary Government Investigation as a ‘Reasonably Possible Liability’

In re Walmart Inc. Sec. Litig. (3d Cir. Aug. 29, 2025)

What to know: On August 29, 2025, the Third Circuit affirmed dismissal of a securities fraud class action against Walmart Inc., holding that the retailer did not mislead investors by failing to disclose an ongoing preliminary government investigation related to its opioid dispensing practices.

Walmart operates roughly 5,000 pharmacies nationwide. In 2016, the Drug Enforcement Agency raided a Texas Walmart seeking records concerning two doctors under investigation for overprescribing opioids. In 2017, federal prosecutors issued search warrants and subpoenas to Walmart for communications about “dispensing controlled substances generally,” and one prosecutor commenced a civil investigation. During this time, Walmart’s filings contained only its standard “Contingencies” disclosure — “where a liability is reasonably possible and may be material, such matters have been disclosed” — without note of the preliminary investigations.

In March 2018, a prosecutor informed Walmart that her office intended to pursue criminal charges. It ultimately declined to do so, but in the interim, Walmart filed a 2018 10-Q that disclosed it was “responding to subpoenas” and “investigations” related to its “sale of opioids” and that it could “provide no assurance as to the scope and outcome of these matters.”

In 2020, investors sued in the District of Delaware, arguing that (1) Walmart’s “Contingencies” disclosure misleadingly concealed the fact that Walmart was facing these investigations, and (2) Walmart’s 2018 reference to subpoenas and investigations was misleading because it concealed the extent of, and the risks posed by, the investigations. The district court dismissed the complaint, holding that Walmart adequately disclosed the investigation when it needed to, which was after the prosecutor informed Walmart of her office’s intentions.

The Third Circuit affirmed. It reasoned that when Walmart received warrants and subpoenas in 2017, Walmart’s “Contingencies” disclosure was not misleading because being subject to an investigation, particularly one at an early stage, was not a “reasonably possible” material liability. Regarding Walmart’s 2018 10-Q, Walmart’s statements were not misleading because Walmart disclosed the truth: Walmart faced “subpoenas” and “investigations.” Though the investors preferred more granularity, securities laws do not require disclosure of all facts, nor do they require companies to disclose they are engaging in the conduct under investigation. Moreover, Walmart need not have disclosed the possibility of a criminal penalty because not every criminal indictment leads to a criminal penalty.

Southern District of New York Dismisses Case Where Statements Were Mere ‘Puffery’ and Scienter Allegations Were Insufficient

In re Farfetch Ltd. Sec. Litig. (S.D.N.Y. Sept. 30, 2025)

What to know: The Southern District of New York dismissed securities fraud claims against Farfetch Ltd., an e-commerce luxury goods retailer, and certain of its executives for failure to adequately plead actionable misstatements or scienter.

Judge Edgardo Ramos of the Southern District of New York dismissed putative class action claims under Sections 10(b), 10b-5, and 20(a) of the Exchange Act against Farfetch and certain of its officers. Plaintiffs alleged that the defendants made false and misleading statements regarding the company’s financial controls, business prospects and the integration of its New Guards Group (NGG) acquisition.

The complaint relied in part on confidential witness accounts and pointed to the defendants’ subsequent disclosures of ongoing material weaknesses in internal controls, as well as a significant decline in the company’s share price following negative news. The court classified the complaint as a “puzzle pleading,” much of which consisted of block quotes from various disclosures that lacked any form of analysis indicating which statements were misleading or fraudulent.

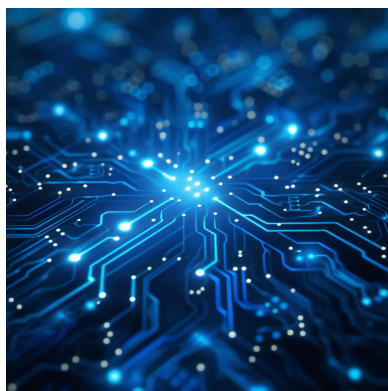
The court found that the majority of the challenged statements were non-actionable puffery, corporate optimism and forward-looking statements protected by the Private Securities Litigation Reform Act’s (PSLRA’s) safe harbor. The court noted that generalized positive statements about business prospects, growth and integration efforts, such as those regarding the China market, the beauty segment and the NGG acquisition, were not actionable absent specific allegations that defendants did not genuinely believe them or that they omitted material facts rendering the statements misleading.

The court further noted that one of the confidential witnesses did not have a sufficient relationship with the named defendants to opine on the requisite falsity of certain statements.

With respect to scienter, the court held that the plaintiffs failed to plead facts giving rise to a strong inference that defendants acted with intent to deceive or recklessness. The court found that the allegations based on confidential witnesses were too vague and not probative of the individual defendants’ state of mind.

With respect to the plaintiffs’ scheme liability claims under Rule 10b-5(a) and (c), the court held that the complaint did not allege a deceptive scheme distinct from the alleged misstatements and omissions.

Technology



Southern District of New York Denies Motion To Dismiss Where Allegations Supported Claim That Defendants Knew Forward-Looking Statements Were False

In re STMicroelectronics N.V. Sec. Litig. (S.D.N.Y. Sept. 11, 2025)

What to know: The Southern District of New York denied a motion to dismiss a putative class action complaint alleging securities fraud claims against STMicroelectronics N.V. (STM), its CEO and CFO, finding that plaintiffs adequately pled certain forward-looking and opinion statements were actionable and made with scienter.

Plaintiffs, on behalf of a putative class of investors who traded stock of STM between March 14, 2023, and October 30, 2024, alleged that the electronics manufacturer and its senior executives made materially false and misleading statements about the company's demand, inventory and growth prospects, particularly in the automotive sector, while they were aware of deteriorating business conditions. The complaint relied heavily on detailed accounts from confidential witnesses, including the former president of STM's automotive division, who reported that he directly warned the CEO that demand was declining and inventory was rising, contrary to public statements.

Plaintiffs further alleged that STM engaged in "channel stuffing" by offering excessive discounts to artificially inflate sales and mask weakening demand, and that STM's public filings, including its 2023 annual report, described certain risks as hypothetical even though they had already materialized.

Judge Alvin K. Hellerstein denied a motion by STM and certain of its officers, to dismiss Section 10(b) and 20(a), and Rule 10b-5 claims brought under the Exchange Act.

The court found that plaintiffs' allegations, supported by high-level confidential insider accounts, were sufficient to meet the heightened pleading standards of the PSLRA. The court rejected STM's arguments that its statements were protected forward-looking statements because, even though they may have been forward-looking, Plaintiffs adequately pled that they were made with actual knowledge of their falsity and without meaningful cautionary statements, prohibiting application of the PSLRA's safe harbor provisions. The court also held that the statements were not non-actionable opinion statements because they omitted materials facts or included false facts.

The court also found a strong implication of scienter based on, among other things, direct warnings provided to STM's CEO, allegations of channel stuffing, delayed disclosure of a policy change allowing order cancellations, pressure on the CEO to report positive results and significant insider stock sales during the class period.

Delaware Chancery Finds Removal of Senior Executives Was Invalid Where Board's Special Meeting Agenda Was 'Deceptive'

Ghatty v. Mudili (Del. Ch. Oct. 21, 2025)

What to know: The Delaware Court of Chancery invalidated a board resolution removing two executive directors from their executive roles because the agenda for the special board meeting failed to identify the removal as a topic.

Defendants Rajesh Mudili and Alireza ZQ Naderi sat on Altumind Inc.'s five-person board of directors and served as senior executives of Altumind. Plaintiffs, including Bhargava Ghatty, the co-CEO and president, occupied the other three board seats. Although Altumind was incorporated in December 2021, it did not hold its first board meeting until March 20, 2025.

On March 7, 2025, Ghatty circulated a notice and agenda for the March 20 meeting, which included certain corporate items and the desire to address purported "governance shortfalls," as well as "proposed recognition and [a] role expansion for [Naderi]." The following week, Naderi accused Ghatty of self-dealing and offered an ultimatum: Either Ghatty accept a buyback offer or Naderi would withdraw from Altumind and file for its dissolution. Ghatty denied any misconduct. On March 19, defendants Naderi and Mudili informed the board that they would not be able to attend the March 20 meeting.

The March 20 meeting went forward with the three plaintiffs attending. They adopted a resolution that removed the defendants as officers. Defendants contended that the removal resolution was invalid. Plaintiffs filed litigation under Section 225 of the Delaware General Corporation Law, seeking a summary determination that the removal resolution was validly adopted. An expedited trial followed.

The Delaware Court of Chancery stated that the "core equitable question" presented here was "whether all directors are entitled to fair and non-misleading notice of the agenda for a special meeting." The court found that they are, citing to Delaware Supreme Court precedent for the proposition that Delaware law values the "collaboration that comes when the entire board deliberates on corporate action and when all directors are fairly accorded material information."

Here, the court found that plaintiffs' "misdirection" deprived defendants of a "meaningful opportunity to prepare a response, consult counsel, or attempt to persuade their fellow directors." Because Delaware law "disfavors such 'sandbag[ging] among directors,'" the court issued judgment for defendants and invalidated the board resolution that removed defendants from the senior executive roles.

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