

Inside the Courts

A Quarterly Update From Skadden Securities Litigators

2 / Spotlight

AI-Related Claims and Other Securities Litigation Trends to Watch

5 / Spotlight

Could Mandatory Arbitration Spell the End of Securities Class Actions?

7 / Recent Cases of Note

7 Consumer Goods and Retailing

Dismissal Affirmed in Case re Risks of Celebrity Marketing Partnership (9th Cir.)
77 of 80 Alleged False Statements About New Business Dismissed (N.D. Ill.)

9 Cryptocurrency

Cryptocurrency Software Product Was Not a Security (D. Del.)

10 Energy

No Section 11 Liability for Audit Based on Reasonable Investigation (9th Cir.)
Claims re Prospects of Building a Nuclear Microreactor Dismissed (S.D.N.Y.)

12 Health Care and Pharmaceuticals

'Novel' Fraud-on-the-Board Claim Dismissed Where No Information Withheld (D. Ch.)

13 Technology

Dismissal of Channel Stuffing Claims Affirmed (2nd Cir.)
Leave to File Amended Complaint Denied for Failure to Allege Fraud (S.D.N.Y.)

15 Governance

Delaware Supreme Court Reinstates Musk's Tesla Compensation Package (Del.)

18 SEC Enforcement

Enforcement Action Judgment Upheld re Shell Company IPOs (11th Cir.)

Spotlight

AI-Related Claims and Other Securities Litigation Trends to Watch

Contributing Partners

Jay B. Kasner

Scott D. Musoff

Susan L. Saltzstein

Contributing Counsel

William J. O'Brien III



Key Points

- The rapid evolution of artificial intelligence is fueling a surge in AI-related securities claims.
- Plaintiffs are increasingly testing the limits of when expert opinions and short-seller reports can be credited at the motion-to-dismiss stage.
- Plaintiffs are starting to target private credit lenders under Rule 10b-5, focusing on alleged misstatements about portfolio performance and asset values.
- Tracing requirements for claims under the Securities Act are likely to become a focal point in 2026, as parties grapple with the aftermath of the U.S. Supreme Court’s decision in *Slack Technologies, LLC v. Pirani*.

New Filings Shift Toward AI-Related Claims

Securities class action filings remained elevated in 2025, signaling that robust activity will likely persist into 2026. According to economic and financial consulting company Cornerstone Research, 207 new securities class actions were filed in federal and state courts in 2025.¹

Notably, only four cases under the Securities Act of 1933 (Securities Act) were brought in state court in 2025, on track to be the lowest annual total since the U.S. Supreme Court’s 2018 decision in *Cyan, Inc. v. Beaver County Employees Retirement Fund*, 583 U.S. 416 (2018), which confirmed the concurrent jurisdiction of state courts over ’33 Act claims.

Beyond the numbers, AI-related class actions have outpaced other categories and are set to shape the litigation landscape in the coming year. For example, plaintiffs have filed a number of complaints based on allegations of “AI-washing” — misrepresentations about AI capabilities or revenues.

Plaintiffs also claim companies have:

- Overstated AI-driven efficiencies.
- Misleadingly rebranded legacy technology as AI (so-called AI-washing).
- Concealed licensing or performance issues.
- Exaggerated the pace and feasibility of AI integration.

¹ Cornerstone Research, *Securities Class Action Filings: 2025 Year in Review*, at 1.

Expert Reports at the Pleadings Stage After NVIDIA

Lower courts continue to wrestle with plaintiffs' use of expert opinions to support their allegations at the pleading stage. This strategy of using expert opinions gained traction after the U.S. Court of Appeals for the Ninth Circuit's decision in *E. Ohman J.:or Fonder AB v. NVIDIA Corp.*, 81 F.4th 918 (9th Cir. 2023), which credited falsity allegations based partly on a *post hoc* expert analysis of NVIDIA's reported revenues.

The Supreme Court initially granted *certiorari* to review the Ninth Circuit's decision but ultimately dismissed the case as improvidently granted after oral argument. Since then, most district courts have declined to credit expert opinions unless they are grounded in particularized facts.

With no Supreme Court guidance, this area remains unsettled and further developments are likely as courts and litigants explore the boundaries of what is permissible at the motion-to-dismiss stage.

Short-Seller Reports: Ongoing Challenges for Plaintiffs

Plaintiffs are increasingly relying on allegations drawn from reports issued by short-sellers — investors with an incentive to drive the issuer's stock price lower. In assessing the elements of falsity and scienter, courts have generally been reluctant to credit "short report" allegations unless corroborated by independent, well-pled facts, such as company admissions.

Loss causation has proven to be another hurdle, as illustrated by the U.S. Court of Appeals for the Fourth Circuit's recent decision in *Defeo v. IonQ, Inc.*, 134 F.4th 153 (4th Cir. 2025). There, the plaintiffs alleged that IonQ, a quantum computing company, made materially false statements about its technology and prospects, relying on a report by Scorpion Capital LLC, an activist short-seller.

The report accused IonQ of running a "quantum Ponzi scheme" and misleading the public about its technology and revenues. After the report's publication, IonQ's stock price fell and plaintiffs claimed this decline established loss causation.

The Fourth Circuit affirmed the district court's dismissal of the complaint for failing to plead loss causation. The court held in part that because Scorpion Capital's report had relied on anonymous sources, included disclaimers of accuracy, and disclosed a self-interested financial motive, it was not a plausible corrective disclosure for loss causation purposes.

In reaching its conclusion, the court echoed the Ninth Circuit's observation in *In re Nektar Therapeutics Securities Litigation*, 34 F.4th 828 (9th Cir. 2022), that plaintiffs face a "high bar ... in relying on self-interested and anonymous short-sellers" when attempting to plead loss causation.

The Fourth Circuit, like the Ninth Circuit, left open the possibility that, under the right circumstances, a short-seller report might support loss causation. Still, the Fourth Circuit's decision is a notable win for corporate defendants and signals that plaintiffs will face significant challenges when relying on similar reports.

Emerging Issues: Litigation Against Private Credit Lenders and Securities Act Tracing

Looking ahead, several other trends warrant attention. Private credit lenders may become targets in securities class actions arising from capital raises involving retail investors. Plaintiffs have thus far treated private credit vehicles like traditional issuers under Rule 10b-5, focusing on alleged misstatements about portfolio performance and asset values.

Traceability — the requirement that plaintiffs "trace" their securities to a specific registration statement or prospectus for Securities Act claims — may also become a flashpoint. In *Slack Technologies, LLC v. Pirani*, 598 U.S. 759 (2023), the Supreme Court held that Section 11 plaintiffs must plead that their shares can be traced to a particular registration statement.

On remand, the Ninth Circuit rejected the plaintiffs' statistical analysis as legally insufficient to establish traceability. The Ninth Circuit also concluded that Section 12(a)(2) imposes the same tracing requirement as Section 11. This requirement may prove difficult to satisfy at the pleading stage in cases involving direct listings, post-lock-up expirations or follow-on offerings, where shares are held in fungible bulk by The Depository Trust Company. Tracing may also complicate class certification by making the putative class unascertainable and introducing individualized issues.

Final Thoughts

As we look to 2026, the securities litigation arena is poised for continued evolution. The intersection of emerging technologies, regulatory shifts and evolving pleading strategies will present both challenges and opportunities for companies, investors and practitioners alike. Monitoring these trends will be essential for navigating the year ahead.

Associate **James M. Johnston** contributed to this article.

Spotlight

Could Mandatory Arbitration Spell the End of Securities Class Actions?

Contributing Partners

Brian V. Breheny

Raquel Fox

Scott D. Musoff

Susan L. Saltzstein

Contributing Counsel

Andrew J. Brady

Joshua Shainess



Key Points:

- The SEC has reversed a longstanding policy under which the agency would not accelerate the effectiveness of a securities registration statement for a company with a mandatory arbitration clause covering shareholder claims.
- The reversal eliminates one obstacle that has deterred public companies from adopting mandatory arbitration provisions, which potentially could curb costly shareholder class action litigation.
- But there are potential legal obstacles as well as practical reasons companies may prefer to litigate shareholder claims in court.

What Changed

On September 17, 2025, the Securities and Exchange Commission (SEC) announced that the presence of a mandatory arbitration provision in a company's governing documents will not impact the agency's decisions about whether to approve the effectiveness of a securities registration statement.

The change represents a sharp break with the SEC's practice. For decades, it took the position that mandatory arbitration clauses could potentially violate federal securities laws by preventing investors from vindicating their rights in the courts, including via class actions. The SEC has now concluded that the federal securities laws do not guarantee the right to pursue claims in court or on a classwide basis. SEC Chairman Paul S. Atkins called the change one step toward delivering on his goal to "make IPOs great again."

Arbitration agreements that require shareholders to pursue claims in individualized proceedings rather than class actions could help curb abuses of the class action mechanism, where the expense of defending against claims involving thousands of shareholders and the potentially huge exposure to damages can force companies to enter multi-million-dollar settlements even where the claims are meritless.

Factors to Weigh in Deciding Whether to Adopt a Mandatory Arbitration Clause

Some are predicting that the SEC's decision will prompt more companies to consider adopting mandatory arbitration provisions. But the choice may not be clearcut.

Possible Legal Obstacles

The laws of the state where a company is incorporated could prevent enforcement of a mandatory arbitration provision in a corporation's charter or bylaws applying to shareholders.

And, while the Supreme Court has held that arbitration provisions in agreements between investors and their financial advisors do not violate federal securities laws, SEC Commissioner Caroline Crenshaw, who was critical of the change in policy, suggested that if provisions governing shareholder claims against companies are draconian (for example, if they eliminate claims, remedies or shorten limitations periods), they might still violate Supreme Court precedent. And some within the plaintiffs' bar have already opined that companies adopting mandatory arbitration provisions would be "buying a lawsuit" challenging such provisions.

Investor Sentiment

Public companies should consider the reaction of investors and, in certain cases, proxy advisory firms. CalPERS has already expressed its opposition to the change in the SEC's policy and to mandatory arbitration provisions. On the other hand, some investors would prefer to avoid the cost and distraction of shareholder litigation.

Advantages of Litigating in Court

In addition, there are procedural and other benefits to proceeding in court. The Private Securities Litigation Reform Act of 1995 (PSLRA) created protections for defendants. For example, no discovery can take place while a motion to dismiss is pending, and the law sets a high bar for complaints. Plaintiffs must spell out their allegations in greater detail than is required for other types of suit, which makes it easier for defendants to win dismissals. Arbitration provisions can, however, be drafted to try to include various protections, including some of those found in the courts.

Moreover, many judges are experienced at adjudicating federal securities law claims and applying a well-developed body of precedent. And courts presiding over securities class actions have in recent years granted motions to dismiss in full (with or without allowing the plaintiffs to amend) 62% of the time.²

Classwide settlements in court also provide classwide releases, and defending multiple arbitrations could become costly. The cost-benefit analysis will depend on the company, its investor base and the potential claims that may be brought.

Other Reasons

There are other considerations, as well, that might affect the decision calculus. For example: Would a non-appealable arbitration finding of securities fraud compromise insurance coverage or applicable indemnities? Also, can an arbitration provision be drafted to encompass other potential defendants that would be entitled to indemnity from the company, such as directors, officers and underwriters? If not, the company might still be exposed to class action liability indirectly because it might be forced to indemnify those parties as they defend class actions in the courts while defending itself in arbitrations.

Conclusion

In short, while the change at the SEC could set the stage for companies to install significant new protections to curb abuses of shareholder litigation, boards need to understand that the choice isn't as simple as it might appear at first. This is not a one-size-fits-all proposition. Each company will have to analyze the factors and weigh the cost-benefit analysis.

² National Economic Research Associates, Inc., *Recent Trends in Securities Class Action Litigation: 2025 Full-Year Review*, at 18 (2026), available [here](#).

Consumer Goods and Retailing



Dismissal Affirmed for Failure to Plead Material Misrepresentation Regarding Celebrity Marketing Risks

HRSA-ILA Funds v. Adidas AG, et al. No. 24-6655 (9th Cir. Dec. 3, 2025)

What to know: The Ninth Circuit affirmed the dismissal of a class action against Adidas on the ground that the plaintiff failed to adequately plead material misrepresentations or scienter related to a marketing partnership with a celebrity and his company.

The Ninth Circuit affirmed the dismissal of a securities fraud class action against Adidas, holding that the plaintiffs failed to adequately plead material misrepresentations, scienter or control person liability related to disclosures by Adidas regarding its partnership with Ye (formerly known as Kanye West) and his shoe company, Yeezy.

Adidas terminated a marketing partnership with Ye and Yeezy in late 2022 following public fallout from Ye's antisemitic statements and other behavior, which led to a drop in Adidas' share price. HRSA-ILA Funds, an Adidas shareholder, brought a putative class action alleging that Adidas and its executives had long been aware of Ye's problematic conduct but did not adequately warn shareholders. Plaintiff specifically challenged two sets of statements: (1) Adidas' "business partners risk" disclosure, which stated that "improper behavior of individual athletes, influencers or partners in the entertainment industry could have a negative spill-over effect on the company's reputation, lead to higher costs or liabilities or even disrupt business activities" and (2) statements indicating that Adidas was in compliance with the EU's Global Reporting Initiative (GRI) standards.

The Ninth Circuit held that plaintiff failed to plead an actionable material misrepresentation or omission. With respect to the business partners risk disclosure, the appellate court concluded that "a reasonable investor would know that a partnership with a celebrity partner like Ye would come with inherent risks relating to improper behavior and that a reasonable investor would not be misled by the Business Partners Risk disclosures." With respect to the GRI compliance statements, the Ninth Circuit held that Adidas' statements were not objectively verifiable and thus not actionable.

Additionally, the Ninth Circuit held that plaintiff failed to plead scienter, as there were no particularized facts showing Adidas or its agents acted recklessly. Because there was no primary violation of securities law, the Ninth Circuit also affirmed dismissal of the control person liability claim under Section 20(a). The district court's dismissal was therefore affirmed in full.

77 of 80 Alleged False Statements About New Business Dismissed

In re Walgreens Boots Alliance. Securities Litig., No. 1:24-cv-05907 (N.D. Ill. Jan. 5, 2026)

What to know: The Northern District of Illinois dismissed a complaint in part, holding that 77 of 80 allegedly fraudulent statements about an investment in a new business line were not false or misleading, amounted only to inactionable puffery, or were protected future projections, and that plaintiffs failed to sufficiently plead scienter for two additional statements.

Judge Mary M. Rowland of the U.S. District Court for the Northern District of Illinois granted in part and denied in part Walgreens' and its current and former officer co-defendants' motion to dismiss a putative class action alleging securities fraud. The complaint centered on allegations regarding Walgreens' \$5.2 billion October 2021 investment in VillageMD to roll out full-service primary care clinics in Walgreens stores throughout the U.S.

Specifically, plaintiffs alleged that Walgreens and certain of its officers made 80 materially false or misleading statements about the alleged success and viability of the VillageMD investment, including with respect to clinic openings, clinic performance, milestones and guidance, and the clinic's acceptance of Medicaid. Plaintiffs assert that the truth was revealed in July 2024, when Walgreens announced that it was abandoning its health care strategy and unwinding its investment in VillageMD, causing a 22% drop in Walgreens' stock price.

The court analyzed the alleged misstatements categorically. It first determined that plaintiffs had failed to allege facts to support a belief that most of the representations regarding plans to open clinics were misleading. Plaintiffs claimed that these statements were false and misleading because defendants failed to also disclose that the clinics were underperforming or not fully

operational. The court held that representations made before any clinic opened could not be fraudulent because no stores had yet underperformed.

Even after the clinics opened and allegedly began to underperform, most statements about opening clinics were still not false or misleading because merely stating that clinics had been opened did not create a duty to disclose facts related to the clinics' performance, unless, absent disclosure, the statements would be otherwise misleading. The court allowed to move forward just two later-in-time representations regarding an intent to open more clinics, both of which were made after Walgreens allegedly internally abandoned the Village MD venture.

The court also determined that plaintiffs had failed to support their assertion that statements regarding certain metrics, and forecasted growth, projections, and milestones were actionable under the securities laws. With respect to metrics reported by Walgreens, the court held that plaintiffs had failed to allege that defendants did not in fact believe that number of clinics opened was a key performance indicator and that speaking about one metric did not create an obligation to disclose other, less flattering ones. As to the statements regarding forecasted growth, projections and milestones, the court held that they amounted to inactionable puffery or protected forward-looking projections.

The court did hold, however, that plaintiffs had sufficiently alleged that false and misleading representations were made about the clinics not experiencing labor issues and about VillageMD accepting Medicaid. As to the Medicaid statements, however, the court determined that plaintiffs had failed to adequately plead scienter because they had not alleged any facts to support an intent to deceive the market with respect to insurance coverage.

Ultimately, just three statements survived the motion to dismiss, resulting in the dismissal of two of the individual defendants. Although plaintiffs were granted leave to amend the complaint consistent with the court's order, it came with an instruction "not to waste judicial resources by alleging ... that straightforward factual statements are actionable under the PSLRA absent a coherent argument regarding why they are misleading."

Cryptocurrency



District of Delaware Holds That Cryptocurrency Software Product That Made Recommendations Was Not a Security Under *Howey*

Pasquinelli v. HUMBL, LLC, No. 23-743-JLH (D. Del. Dec. 19, 2025)

What to know: On December 19, 2025, the District of Delaware granted the defendant’s motion to dismiss, holding that plaintiffs failed to allege the sale of an unregistered security under *Howey* because defendant’s BLOCK ETX service, unlike mutual funds, was not a standalone asset capable of being bought or sold.

HUMBL, LLC is an early-stage technology startup that offers digital-commerce products and services. Plaintiffs purchased HUMBL’s former BLOCK ETX service. Plaintiffs sued HUMBL, asserting securities fraud claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (Exchange Act) and an unregistered securities claim under Sections 5 and 12(a)(1) of the Securities Act. The District of Delaware granted HUMBL’s motion to dismiss, holding that the plaintiffs failed to plead that their transactions in BLOCK ETX qualify as securities.

The Securities Act defines a “security” to include an “investment contract.” Under *SEC v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946), a transaction qualifies as an “investment contract” if it “involves [1] an investment of money [2] in a common enterprise [3] with profits to come solely from the efforts of others.”

The U.S. District Court for the District of Delaware held that plaintiffs failed to plead that their BLOCK ETX transactions qualified as “investment contracts” under *Howey* because the complaint did not allege a common enterprise. The court rejected plaintiffs’ analogy of BLOCK ETX to an exchange traded fund or mutual fund, noting that, unlike a mutual fund in which investors purchase shares, plaintiffs did not allege that they purchased shares in the BLOCK ETX service. The BLOCK ETX service was not a standalone asset capable of being bought or sold. Rather, the BLOCK ETX trades plaintiffs challenged reflected multiple individual cryptocurrency transactions, not transactions in BLOCK ETX itself.

Instead, the BLOCK ETX service functioned solely as a recommendation service, identifying which cryptocurrency assets subscribers should purchase. Subscribers independently held each of the underlying cryptocurrency assets in their own digital wallets. Each subscriber to the service could turn the BLOCK ETX software on or off at will and transact using the underlying cryptocurrency assets. In other words, investors’ assets remained in their own accounts. The court concluded that it was irrelevant that HUMBL pooled BLOCK ETX subscription fees to maintain the service because the investor assets were not the subscription fees, but rather the cryptocurrency tokens.

Energy



9th Circuit Holds No Section 11 Liability for Accountant's Audit Opinion Based on Reasonable Investigation

Hunt v. PricewaterhouseCoopers LLP, No. 24-3568 (9th Cir. Nov. 10, 2025)

What to know: On November 10, 2025, the Ninth Circuit affirmed the dismissal of a securities class action against an accounting firm, holding that accounting firms are not subject to strict liability under Section 11 for allegedly false or misleading information in a registration statement simply because the accounting firm certified the financial statements therein, as long as the firm had reasonable grounds to believe, and did believe, that the statements were true and not misleading.

Bloom Energy, a fuel-cell server company, uses sale-leaseback arrangements known as managed services agreements (MSAs). MSAs may be classified as operating or capital leases under applicable accounting standards. Bloom Energy classified its MSAs as operating leases. When it decided to go public, it engaged PricewaterhouseCoopers LLP (PwC) to audit its financial statements reflecting that classification. PwC identified no accounting issues and concluded, “[i]n our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company.” Bloom Energy included the audit opinion in its IPO registration statement.

After going public, PwC identified an accounting issue related to the treatment of the leases that it had not previously identified, leading Bloom Energy to revise its financial statements, after which its stock price fell by 13.8%.

Plaintiffs sued PwC, alleging that it made false or misleading statements in Bloom Energy’s registration statement in violation of Section 11 of the Securities Act of 1933. A district court judge in the Northern District of California dismissed the claims against PwC, reasoning that “PwC’s certification of the financial statements was not a guarantee that they were accurate but rather was limited to the conclusions of the audit opinion.”

The Ninth Circuit affirmed. The court first rejected the plaintiffs’ argument that when accountants certify an issuer’s financial statements, they become strictly liable for any material misrepresentations or omissions contained in those financial statements. Instead, the court held that accountants may be liable for audit opinions only when they failed to conduct a reasonable investigation or lacked reasonable grounds to believe those opinions. The court held that the plaintiffs failed to plead that PwC did not in fact audit Bloom Energy’s financial statements in accordance with generally accepted accounting principles (GAAP), or that PwC did not believe its audit opinion, and thus failed to state a Section 11 claim against PwC.

The court also held that, even if the plaintiffs had pled some basis for liability against PwC, their claim still failed because Bloom Energy’s classification decisions for its MSAs were themselves statements of opinion, and the plaintiffs failed to allege that Bloom Energy did not believe its classification decisions or had reason to know they were incorrect.

Dismissal Granted to Nuclear Microreactor Company Regarding Claims About Its Prospects of Building a Facility

Xie v. Nano Nuclear Energy, No. 23CV-6057 (JMF)
(S.D.N.Y. January 8, 2026)

What to Know: A district court judge in the Southern District of New York dismissed claims against an early-stage nuclear energy company for failing to plead actionable misrepresentations or adequate scienter, or to overcome the PSLRA safe harbor provision and the “bespeaks caution” doctrine in a case involving statements about the company’s management and prospects.

Judge Furman dismissed putative class action claims brought under Sections 10(b) and 20(a) of the Exchange Act and SEC Rule 10b-5 against an early-stage nuclear energy company and several of its officers and directors alleging material misstatements about (1) the company’s leadership team, (2) the company’s prospects for bringing a nuclear microreactor to market, and (3) the company’s prospects for building an operational fuel fabrication facility.

Plaintiff alleged that defendants’ characterizations of the company’s leadership team as “world class” was misleading for touting the presence of certain individuals and the employment of a certain auditor, despite those entities’ allegedly questionable backgrounds. Plaintiff further alleged that statements related to

defendant’s progress in bringing a nuclear microreactor to the market were misleading because of defendant’s doubtful finances and lack of progress. Plaintiff finally alleged that statements related to defendant’s future prospects for bringing a microreactor to the market were also misleading for the same reasons.

Judge Furman dismissed without prejudice all of plaintiff’s claims. First, many of plaintiff’s claims failed to qualify as actionable misrepresentations because plaintiff failed to establish the falsity of the claims in the first place, acknowledging the possibility that some of the statements may be true. Second, Judge Furman held that statements related to the “world class” leadership team were inactionable puffery. Third, Judge Furman held that plaintiff did not explain how the alleged omissions led to defendants’ statements being materially misleading, failing to make a sufficient close connection between the omissions and the alleged misstatements.

Further, plaintiff’s allegations failed to adequately plead scienter, failing to demonstrate that defendant had the motive or opportunity to commit fraud, or strong circumstantial evidence of conscious misbehavior and recklessness. Judge Furman was also not persuaded by plaintiff’s invocation of the “core operations” doctrine, as plaintiff failed to identify core operations of defendant in the first place.

Finally, Judge Furman held that defendant’s forward-looking statements were accompanied by meaningful cautionary language and, even if defendant used no cautionary language, the PSLRA’s safe harbor doctrine and “bespeaks caution” doctrine applied.

Pharmaceuticals



Delaware Court of Chancery Dismisses ‘Novel’ Fraud-on-the-Board Claim

DrugCrafters, L.P. v. Loh, No. 2024-0111-PAF (Del. Ch. Nov. 26, 2025)

What to Know: The Delaware Court of Chancery dismissed a breach of fiduciary duty action under the *Corwin* doctrine and rejected stockholder-plaintiffs’ “novel” fraud-on-the-board argument.

Paratek Pharmaceuticals, Inc. was a publicly traded Delaware corporation that owned a product to counter antimicrobial resistance, NUZYRA. Defendants were five officers of Paratek, including Evan Loh and Michael Bigham, who also served as directors. To incentivize management to market NUZYRA, Paratek’s compensation committee approved a revenue performance incentive plan (RPIP), with defendants eligible to earn up to \$50 million under the RPIP.

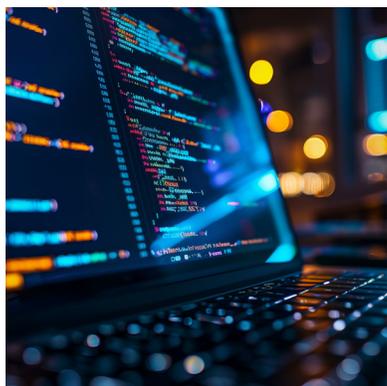
In 2022, Paratek began merger discussions with MannKind and Gurnet Point. In May 2022, Paratek’s board formed a transaction committee composed of independent directors, and after multiple rounds of negotiations, the transaction committee unanimously approved Gurnet Point’s proposal to acquire Paratek. As part of the merger, some defendants retained their employment. The majority of Paratek’s disinterested stockholders approved the merger.

Plaintiffs, former Paratek stockholders, filed suit alleging that defendants breached their fiduciary duties as officers and/or directors. Plaintiffs alleged that defendants perpetrated a fraud-on-the-board by (i) delaying the sale process to increase RPIP incentives, (ii) steering a transaction toward the bidder willing to honor the RPIP and provide post-merger employment, and (iii) withholding or misrepresenting material information to the board and transaction committee. Defendants moved to dismiss for failure to state a claim.

The Delaware Court of Chancery granted the motion to dismiss. The court rejected plaintiffs’ fraud-on-the-board theory, which it characterized as “novel” because it was “essentially the inverse of the common factual scenario in which fiduciaries seek an early transaction to facilitate liquidity needs.” The court held that plaintiffs failed to plead that any material information was withheld, or that the board or transaction committee was deceived or misled. As a result, the court rejected plaintiffs’ request to review the transaction under Delaware’s “entire fairness” standard of review.

The Court of Chancery then held that the “irrebuttable” business judgment rule applied under *Corwin* because the proxy statement issued in connection with the merger disclosed all material information regarding the merger negotiations, defendants’ alleged conflicts, and the role that the allegedly conflicted defendants played in transaction negotiations. Because the business judgment rule applied, the Court granted defendants’ motion to dismiss in full.

Technology



Dismissal Affirmed Where ‘Channel Stuffing’ Claims Failed to Identify Actionable Material Misrepresentations

In re: Mobileye Global Securities Litigation, No. 25-1292 (2d Cir. December 16, 2025)

What to know: The Second Circuit affirmed the dismissal of a securities fraud class action against Mobileye Global Inc. that included both Exchange Act claims based on allegations that Mobileye’s reported revenues were misleading because they reflected “channel stuffing” that jeopardized future sales. On appeal, the court held that the plaintiff had not identified any actionable and misleading statements by Mobileye.

The Second Circuit affirmed the dismissal of securities fraud class action claims against Mobileye Global Inc., which sells driver-assistance systems. Plaintiffs alleged that Mobileye made material misstatements and omissions regarding the company’s use of minimum commitment contracts with customers, purported “channel-stuffing” practices and related disclosures in securities filings. The claims were brought under Sections 10(b) and 20(a) of the Exchange Act, as well as Sections 11 and 15 of the Securities Act, and centered on the assertion that Mobileye’s reported revenues were misleading because they were allegedly achieved by compelling customers to purchase more EyeQ chips than needed, thus “cannibalizing future growth.”

The Second Circuit agreed with the Southern District of New York that the plaintiffs failed to identify any actionable material misrepresentations or omissions. The appellate court found that Mobileye’s public filings adequately disclosed the existence of minimum commitment contracts with certain Tier 1 customers, the accumulation of inventory by those customers and the expectation that customers would use accrued inventory before placing new orders. The Second Circuit held that the absence of more granular detail, such as the specific products or volumes subject to these contracts, did not render the disclosures misleading. Statements by Mobileye executives regarding the stabilization of orders and inventory levels were not adequately alleged to be materially false or misleading, as there were no allegations that these statements were untrue or omitted material facts necessary to make them not misleading.

The Second Circuit further held that many of the challenged statements were non-actionable because they constituted forward-looking statements, statements of corporate puffery or opinions, or protected under the PSLRA’s safe harbor. The Second Circuit also rejected plaintiffs’ “scheme liability” claims under Rule 10b-5(a) and (c), holding that the alleged conduct did not amount to a deceptive scheme beyond the purported misstatements and omissions, and that the minimum commitment contracts were not alleged to be unlawful.

With respect to the Securities Act claims, the Second Circuit held that the offering documents for Mobileye’s June 2023 secondary public offering sufficiently disclosed the relevant risks, including the dependence on a small number of customers, order volume fluctuations, and the impact of minimum commitment contracts and accrued inventories. The Second Circuit concluded that plaintiffs’ preference for more detailed disclosure did not amount to an actionable omission under Items 303 or 105 of SEC Regulation S-K.

Because plaintiffs failed to plead a primary violation under either the Exchange Act or the Securities Act, the accompanying control person claims under Sections 20(a) and 15 were also dismissed. The Second Circuit affirmed the district court’s dismissal of all claims in full.

Leave to File Second Amended Complaint Denied Where Statements About a Product and a Competitor Were Not Actionable

In re Adobe Inc. Securities Litigation, No. 23-cv-9260 (JGK) (S.D.N.Y. Nov. 7, 2025)

What to know: The Southern District of New York denied plaintiffs leave to file a second amended complaint in a putative securities class action based on alleged misrepresentations regarding the threat posed by a competitor, the strength of one of the defendant's products and the defendant's merger plans. The court held that the alleged misrepresentations were either accurate, or inactionable puffery.

Judge Koeltl of the Southern District of New York denied plaintiffs' motion for leave to file a second amended complaint (SAC) in a putative securities class action against Adobe Inc. and several executives. The court previously dismissed the first amended complaint (FAC) for failure to state a claim, holding that plaintiffs did not sufficiently allege false or misleading statements or scienter.

Judge Koeltl evaluated the new motion under the futility standard. Plaintiffs largely restated facts from the FAC, alleging that Adobe and its executives made materially false or misleading statements about the competitive threat posed by competitor Figma, the viability of Adobe XD (a tool for creating interactive user interfaces) and Adobe's merger plans. In the proposed SAC, plaintiffs also challenged statements regarding Adobe's total addressable market (TAM), arguing that Adobe's TAM disclosures were misleading because they allegedly overstated the company's market opportunity in light of Figma's competitive position.

Judge Koeltl held that none of the challenged statements were actionable. In particular, the court concluded that statements about TAM were not misleading because no reasonable investor would interpret a TAM disclosure alone as a commitment by Adobe to capture any specific portion of the market. Judge Koeltl also held that statements about competition, product viability and merger strategy were either accurate or inactionable puffery, and that Adobe had no duty to "tout a competitor's product" or to "depict facts in a negative or pejorative light."

Judge Koeltl also concluded that plaintiffs failed to allege scienter where the individuals' alleged stock purchases were part of long-term compensation plans and stock sales were made pursuant to structured 10b5-1 trading plans or to cover tax obligations. Judge Koeltl also rejected the argument that an executive's motivation to heighten his reputation through a high-profile transaction could, without more, support a strong inference of scienter.

Governance



Delaware Supreme Court Reinstates Musk's Tesla Compensation Package

In re Tesla, Inc. Derivative Litig., No. 2018-0408 (Del. Dec. 19, 2025)

What to know: On December 19, 2025, the Delaware Supreme Court reversed the Court of Chancery and reinstated Elon Musk's \$56 billion compensation package with Tesla, Inc., holding that the Court of Chancery erred in rescinding the package because (i) it would deprive Musk of consideration for work that was successfully performed and (ii) his prior stock ownership could not serve as compensation for future work.

Plaintiffs sued Elon Musk and the rest of the Tesla, Inc. board of directors in Delaware, arguing that Musk's 2018 compensation package was unfair to the company and its stockholders. The package granted Musk the opportunity to secure 12 total tranches of options, each representing 1% of Tesla's total outstanding shares. The tranches could vest upon achievement of ambitious market capitalization and operational milestones and had fully vested by trial and were worth approximately \$56 billion.

After trial, the Delaware Court of Chancery found that Musk was a controlling stockholder of Tesla, and that he and the other Tesla directors breached their fiduciary duties in negotiating and approving an unfair compensation package. The Court of Chancery rescinded the entire compensation package as a remedy for the breaches, finding that rescission was available since none of the options had been exercised. In doing so, the Court of Chancery rejected defendants' argument that rescinding the package effectively meant that Musk had been working for free for the last six years, stating that Musk was already fairly compensated for his work done for Tesla because he owned a large percentage of the company and benefitted as his pre-existing equity stake increased in value through his own efforts.

On appeal, the Tesla board argued that the Court of Chancery erred by (i) finding that Musk was a controlling stockholder, (ii) finding the package was unfair, and (iii) granting rescission of the package.

The Delaware Supreme Court reversed the Court of Chancery's decision to rescind the compensation package and reinstated it. The court noted that its justices had "varying views" on whether a breach of fiduciary duty occurred, but they unanimously agreed that rescission was neither possible nor equitable under the circumstances of the case for two primary reasons. First, Delaware courts could not restore all the parties substantially to their pre-2018 positions: Musk could not undo the work he put into Tesla, and Tesla stockholders could not return the benefits they received in the ensuing six years. Second, Musk was not required to work for free, and his pre-existing equity stake could not serve as consideration for the 2018 compensation package because he already owned those shares and therefore would be receiving nothing new as compensation for his work.

Defendants also argued that if plaintiff was awarded nominal damages, then his counsel—which was awarded \$345 million by the Court of Chancery—would only be entitled to a fee award based on *quantum meruit* for the reasonable value of their services. Tesla's counsel submitted that plaintiff's counsel should receive four times their lodestar, and the Supreme Court agreed and awarded that amount, about \$54 million.

SEC Enforcement



11th Circuit Upholds Enforcement Action Judgment Because Nonpublic Misrepresentations Were Accessible to Investors and Enabled Shell Company IPOs

SEC v. Spartan Securities Group, Ltd., No. 22-13129 (11th Cir. Jan. 16, 2026)

What to know: On January 16, 2026, the Eleventh Circuit affirmed the judgment in an SEC enforcement action against two sister companies — a broker-dealer and a transfer agent — holding that their misrepresentations concerning 19 shell companies they took public were (i) material, despite not being publicly available, because investors could obtain the statements upon request, and (ii) made “in connection with the purchase or sale of securities” because they were integral to enabling securities transactions.

Spartan Securities Group, Ltd., a broker-dealer, and Island Capital Management (Island), a transfer agent, took 19 shell companies public. Spartan submitted Form 211 applications to the Financial Industry Regulatory Authority (FINRA) that enabled public quotations on securities. Island secured eligibility for electronic trading through the Depository Trust Company (DTC).

The SEC brought an enforcement action against Spartan, Island and officers of both companies, alleging that defendants made material misrepresentations to obtain FINRA clearance and DTC eligibility, in violation of Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder. Following a jury verdict for the SEC in the Middle District of Florida, defendants moved for renewed judgment as a matter of law, challenging the sufficiency of the evidence supporting the jury’s finding that defendants made material misrepresentations in connection with securities transactions.

The district court denied the motion, reasoning, among other things, that defendants made materially false statements by representing that issuers maintained active operations or tangible assets and by concealing the use of “straw officers,” and that those statements were made in connection with securities transactions because they enabled the securities to be publicly quoted and thereby facilitated their purchase or sale. At the remedies stage, the court imposed injunctive relief and civil penalties, and ordered disgorgement to the U.S. Treasury.

Defendants appealed, renewing their sufficiency challenge and arguing that the remedies were time-barred and improperly imposed. The Eleventh Circuit affirmed. It held that defendants’ misrepresentations in Form 211 applications and in seeking DTC eligibility were material because information about a company’s business operations and control bears directly on the company’s future and would be important to a reasonable investor. The court rejected defendants’ argument that the misrepresentations could not affect investment decisions because they were not publicly available, reasoning that it was sufficient that investors could access that information upon request.

The court also rejected defendants’ argument that the misstatements were not made “in connection with” the purchase or sale of securities because they did not coincide with a transaction. The court held that obtaining FINRA clearance and DTC eligibility “opened the door” to public trading and that the misrepresentations were an integral step in enabling those transactions.

As to remedies, the Eleventh Circuit held that they were timely under Section 21(d)(8), which applies a 10-year statute of limitations to Section 10(b) violations. It also held that disgorgement to the Treasury is permissible under Section 21(d)(7) even where such relief does not directly benefit investors.

Contacts

New York

One Manhattan West
New York, NY 10001
212.735.3000

Alexander C. Drylewski*

212.735.2129
alexander.drylewski@skadden.com

Lara A. Flath

212.735.3717
lara.flath@skadden.com

Robert A. Fumerton

212.735.3902
robert.fumerton@skadden.com

Michael C. Griffin

212.735.2844
michael.griffin@skadden.com

Jay B. Kasner

212.735.2628
jay.kasner@skadden.com

David Meister

212.735.2100
david.meister@skadden.com

Daniel Michael

212.735.2200
daniel.michael@skadden.com

Scott D. Musoff*

212.735.7852
scott.musoff@skadden.com

Patrick G. Rideout

212.735.2702
patrick.rideout@skadden.com

Susan L. Saltzstein*

212.735.4132
susan.saltzstein@skadden.com

Tansy Woan

212.735.2472
tansy.woan@skadden.com

Boston

500 Boylston St.
Boston, MA 02116
617.573.4800

James R. Carroll

617.573.4801
james.carroll@skadden.com

Christopher G. Clark

617.573.4868
christopher.clark@skadden.com

Eben P. Colby

617.573.4855
eben.colby@skadden.com

Michael S. Hines*

617.573.4863
michael.hines@skadden.com

Alisha Q. Nanda

617.573.4804
alisha.nanda@skadden.com

Chicago

320 S. Canal
Chicago, IL 60606
312.407.0700

Matthew R. Kipp

312.407.0728
matthew.kipp@skadden.com

Marcie Lape (Raia)*

312.407.0954
marcie.lape@skadden.com

Houston

1000 Louisiana St., Suite 6800
Houston, TX 77002
713.655.5100

Abby Davis (Sheehan)

713.655.5120
abigail.sheehan@skadden.com

Noelle M. Reed

713.655.5122
noelle.reed@skadden.com

Los Angeles

2000 Avenue of the Stars
Los Angeles, CA 90067
213.687.5000

Zachary Faigen

213.687.5273
zack.faigen@skadden.com

Winston P. Hsiao*

213.687.5219
winston.hsiao@skadden.com

Virginia Milstead

213.687.5592
virginia.milstead@skadden.com

Peter B. Morrison*

213.687.5304
peter.morrison@skadden.com

Jason D. Russell

213.687.5328
jason.russell@skadden.com

Palo Alto

525 University Ave.
Palo Alto, CA 94301
650.470.4500

Jack P. DiCanio

650.470.4660
jack.dicanio@skadden.com

Mark R.S. Foster*

650.470.4580
mark.foster@skadden.com

Washington, D.C.

1440 New York Ave., N.W.
Washington, DC 20005
202.371.7000

Anita B. Bandy

202.371.7570
anita.bandy@skadden.com

Bradley A. Klein*

202.371.7320
bradley.klein@skadden.com

Wilmington

One Rodney Square
920 N. King St.
Wilmington, DE 19801
302.651.3000

Arthur R. Bookout

302.651.3026
art.bookout@skadden.com

Cliff C. Gardner

302.651.3260
cgardner@skadden.com

Joseph O. Larkin

302.651.3124
joseph.larkin@skadden.com

Paul J. Lockwood

302.651.3210
paul.lockwood@skadden.com

Edward B. Micheletti*

302.651.3220
edward.micheletti@skadden.com

Jenness E. Parker

302.651.3183
jenness.parker@skadden.com

Hong Kong

42/F, Edinburgh Tower, The Landmark
15 Queen's Road Central, Hong Kong
852.3740.4700

Steve Kwok

852.3740.4788
steve.kwok@skadden.com

London

22 Bishopsgate
London EC2N 4BQ
44.20.7519.7000

Andrew M. Good

44.20.7519.7247
andrew.good@skadden.com

Ryan D. Junck

44.20.7519.7006
ryan.junck@skadden.com

*Editors

This communication is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This communication is considered advertising under applicable state laws.