

Risk Factor Disclosures Should Not Create More Risk for Companies

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Article explores how risk factor disclosures by public company issuers have come under increased scrutiny in recent court decisions. Some courts have wrongly held that risk disclosures give rise to liability when the context, purpose and nature of such risk disclosures is to help reduce liability.

The issue is of increasing importance.

The scope, number and length of risk factors has increased since the Securities and Exchange Commission (SEC) amended its rules concerning risk factor disclosures in 2020. This has produced more such disclosures that are potentially subject to attack.

In addition, event-driven securities suits have become increasingly prevalent in recent years. These lawsuits often allege that an issuer has concealed or understated the risk of the "event" that gave rise to a stock price drop and the securities lawsuit. This has resulted in stockholders judging risk factors after a negative event has occurred to try find some inadequacy after the fact.

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