

Recent Cases Clarify When Risk Disclosures Trigger Liability

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Risk disclosures are a staple of public corporate filings. Governed by Item 105 of Regulation S-K, issuers must "provide under the caption 'Risk Factors' a discussion of the material factors that make an investment in the registrant or offering speculative or risky."¹

Item 105 further instructs that disclosed risks "must be organized logically with relevant headings and each risk factor should be set forth under a subcaption that adequately describes the risk."²

The presentation of so-called generic risk factors, while discouraged, is permitted so long as they convey substantive information and are disclosed as "general risk factors" at the end of the risk factor section.³

Item 105 risk factors fall into three broad categories: industry risk, which is dictated by the industry of the issuer; company risk, which is company-specific; and investment risk, which is particular to the security being offered.

As recently as 2024, in *US Securities and Exchange Commission v. SolarWinds Corp.*, the US District Court for the Southern District of New York observed that "[d]ecisions sustaining fraud claims based on the text of a cautionary risk disclosure are relatively uncommon."⁴ Nevertheless, there are discrete circumstances where claims challenging risk disclosures can survive motions to dismiss.

Several decisions within the last year provide clarity on what those circumstances are, how the Private Securities Litigation Reform Act's safe harbor and the common-law bespeaks caution doctrine apply to risk disclosures, and how publicly traded companies can better protect themselves against claims that their risk disclosures misrepresented potential risks that could affect their business.

Protections Afforded to Forward-Looking Statements

Risk disclosures, by their very nature, are generally forward-looking. As the US Court of Appeals for the Sixth Circuit aptly observed in *Bondali v. Yum! Brands Inc.* in 2015, risk disclosures "are inherently prospective in nature. They warn an investor of what harms may come to their investment. They are not meant to educate investors on what harms are currently affecting the company."⁵

As a consequence, forward-looking statements like risk disclosures can be insulated from liability under either the PSLRA statutory safe harbor or the bespeaks caution doctrine if certain criteria are satisfied.

The former shields a defendant from liability for a forward-looking statement if it was immaterial, was not made with actual knowledge that it was false or misleading, or — most relevant here — if it was identified as a forward-looking statement and was accompanied by meaningful cautionary statements.⁶

The bespeaks caution doctrine likewise instructs that an alleged misrepresentation is nonactionable if it is a forward-looking statement that also contains sufficient cautionary language.⁷

However, these protective doctrines are not foolproof. As described below, there are several circumstances where risk disclosures can constitute actionable misrepresentations.

Formulaic or Boilerplate Risk Disclosures

It is well settled that risk disclosures that would apply to any issuer or offering are insufficient to provide adequate notice to investors.⁸

Indeed, in *Slayton v. American Express Co.* in 2010, the US Court of Appeals for the Second Circuit instructed that to qualify for the PSLRA statutory safe harbor for forward-looking statements, "meaningful cautionary language" is required, and "defendants must demonstrate that their cautionary language was not boilerplate and conveyed substantive information."⁹

The bespeaks caution doctrine similarly dictates that the cautionary language must specifically relate to the risk being disclosed.¹⁰

Crafting ex ante risk disclosures that will qualify as meaningful cautionary language, rather than generic or boilerplate disclosures, can be difficult in practice — disclosures must anticipate and describe potential future risks without the benefit of hindsight that inevitably informs subsequent securities litigation.

On the one hand, courts like the Southern District of New York, partially quoting prior precedent in *SolarWinds*, have observed that "the anti-fraud laws do not require cautions to be articulated with maximum specificity," and have warned that, in some cases, cautions that are too specific can "mislead a reasonable investor" or "arm[] malevolent actors with information to exploit."¹¹

On the other hand, a generic warning about a generalized industrywide risk, such as "consumer demand may fall," would likely not be deemed meaningful.

A good guidepost for issuers to follow is this: Cases that have upheld risk disclosures as containing meaningful cautionary language usually convey company-specific information that is aligned with the risk identified, rather than garden-variety business concerns that all companies face.¹²

The Southern District of New York's April 30 decision in *Baxter v. MongoDB Inc.* is instructive in this regard.¹³

In *MongoDB*, the issuer was a database platform access provider that sold access to a critical database product called Atlas.¹⁴ The plaintiffs alleged that a stock price drop was caused by MongoDB's shift to a different pricing model that caused lower consumer subscriptions and growth rates that were allegedly inadequately disclosed.¹⁵

The court rejected the plaintiffs' allegations and dismissed the complaint, citing the issuer's "on-point" risk disclosures that "specifically warned of the risks associated with decreased consumption of MongoDB's platforms generally and Atlas specifically as disclosed by MongoDB throughout the Class Period."¹⁶

These disclosures included the following:

"[R]evenue growth could slow" for a "number of reasons, including slowing adoption or usage of MongoDB ... or our failure, for any reason, to continue to capitalize on our growth opportunities."

"[S]ome of our customers have elected not to renew their subscriptions with us or have not expanded their usage of our services over time for a variety of reasons, including as a result of changes in their strategic IT priorities, budgets, costs, and in some instances, due to competing solutions. ... As a result, we cannot assure you that customers will renew subscriptions or increase their usage of our software and related services."

"Demand for MongoDB Atlas is affected by a number of factors, many of which are beyond our control," and there "is a risk that customers will consume our MongoDB Atlas offering more slowly than we expect, and ... our future revenue may be less predictable going forward due to, among

other things, fluctuations in the rate of customer renewals and expansions and seasonality of, or fluctuations in, usage of MongoDB Atlas."¹⁷

From these and other disclosures, the court concluded that "MongoDB's risk disclosures were not mere boilerplate," and that its "cautionary language was meaningful because the risk disclosures conveyed substantive, company-specific information about factors that could cause consumption rates generally and Atlas consumption rates specifically to differ from the company's projections."¹⁸

Therefore, the company's forward-looking statements were protected by the safe harbor and were not actionable.

Misleading "Magnitude" Risk Disclosures

Another trap for the unwary involves so-called magnitude risk disclosures that either fail to accurately quantify the risk being described, or do not, when appropriate, quantify the risk at all.

In this regard, even a specific risk disclosure will not shield a defendant from liability if it omits essential facts that are necessary to fully understand the magnitude of the risk being described.¹⁹

The Southern District of New York's February decision in *Wong v. Hesai Group* illustrates this point.²⁰ The issuer, Hesai, is a maker of light detection and ranging, or LiDAR, vehicle technology for two categories of products: autonomous mobility applications, such as those found in driverless cars; and advanced driver-assistance systems, or ADAS.²¹

The plaintiff alleged that the issuer "emphasized its historically high gross margins from Autonomous Mobility products but failed to disclose that the Company's shift toward ADAS products would drastically reduce its profit margins."²²

While the offering documents touted gross margin as a competitive strength, Hesai did acknowledge declining historical gross margins. The risk disclosures in the prospectus also warned that the company "expect[s] the average selling price for our LiDAR units and our gross margin to decrease as our shipment volume increases."²³

They further explained that "LiDAR products for the ADAS market generally have much lower selling prices than the LiDAR products for the Autonomous Mobility market, and our changes in product mix that now starts to focus more on the LiDAR products for the ADAS market will decrease our average selling price."²⁴

The court found that these statements were not boilerplate risk disclosures because they "explicitly disclose a causal connection between declining gross margins and increasing, lower-priced LiDAR shipments."²⁵ Nevertheless, the court held that the risk disclosures were still misleading because they

omitted "the magnitude of the disparity between Autonomous Mobility margins and ADAS margins."²⁶ As the court explained:

In this circumstance, describing ADAS products as having "lower margins," without conveying the magnitude of that difference, could plausibly be viewed as materially incomplete. ... It is clear the Prospectus contains warnings that margins would decrease as LiDAR shipments increased. ... Those warnings go a long way toward informing investors of the direction of the risk and its general cause. But Plaintiff's theory is not that investors were unaware that margins might fall. It is that the Prospectus failed to disclose the magnitude of the existing disparity between Autonomous Mobility margins and ADAS margins — an alleged present fact bearing directly on how severe the shift's impact would be.²⁷

Accordingly, because the disclosures about the product shift allegedly did not adequately convey the magnitude of the resulting lower margins to investors, the court deemed the fraud claim adequately pled.

A Risk That Has Already Occurred

An already materialized risk can also render a risk disclosure misleading. Two circuit court cases — from the Second and Ninth Circuits — underscore this principle.

In the Second Circuit's 2025 decision in *City of Hialeah Employees' Retirement System v. Peloton Interactive Inc.*,²⁸ the issuer's disclosures stated that it may experience excess inventory that may result in discounted sales affecting revenue.²⁹

The Second Circuit held that such disclosures were actionable because the plaintiffs plausibly alleged that the issuer already had excess inventory, the issuer was already selling at discounts and revenue had already been affected.³⁰ In other words, the hypothetical risk was already a reality, which rendered the risk disclosures actionable in the court's view.

In February, the US Court of Appeals for the Ninth Circuit took a similar approach in *Construction Laborers Pension Trust of Greater St. Louis v. Funko Inc.*³¹

There, the plaintiffs alleged that the company's filings repeatedly warned that operational risks — including inventory management problems, and warehouse and IT system failures — could occur, even though those problems were allegedly unfolding in real time.³²

In sustaining the adequacy of the allegations, the Ninth Circuit held that the PSLRA safe harbor was inapplicable because the risk warnings implicitly conveyed information about the present state of

affairs — i.e., "that the circumstance posing the risk ha[d] not yet occurred" — and therefore were not entirely forward-looking.³³

Conclusion

Risk factor disclosures remain a fixture in an issuer's defensive arsenal. However, as the case law surveyed above demonstrates, the protections that risk disclosures afford are far from automatic.

Risk disclosures can be actionable where: (1) the cautionary language is so generic or boilerplate that it fails to convey meaningful, company-specific information; (2) the disclosure omits facts that are necessary to appreciate the magnitude of the risk described; or (3) the disclosed risk has already materialized at the time of the filing.

The practical takeaway for issuers and their counsel is straightforward: Draft risk factors that are specific, current and accompanied by meaningful cautionary language wherever possible.

Disclosures should also be regularly revisited to ensure that they remain accurate, and they should include an appropriate level of company-specific detail that is sufficient to distinguish them from boilerplate statements.

Finally, where a risk is quantifiable, providing investors with enough context to gauge its potential severity can help insulate a company from securities fraud claims.

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¹ 17 C.F.R. § 229.105(a).

² *Id.*

³ *Id.*

⁴ *SEC v. SolarWinds Corp.*, 741 F. Supp. 3d 37, 89 (S.D.N.Y. 2024).

⁵ *Bondali v. Yum! Brands Inc.*, 620 F. App'x 483, 491 (6th Cir. 2015). Courts have also recognized instances where risk disclosures are not framed solely as forward-looking, such as where they advise that a certain risk has already materialized, or cite to historical events regarding the disclosed risk. See, e.g., *Hawaii Pension Trust Fund v. AMC Entmt. Hldgs.*, 422 F. Supp. 3d 821, 839 (S.D.N.Y. 2019).

⁶ 15 U.S.C. § 78u-5(c). The PSLRA explicitly excludes statements made in connection with an IPO from the statutory safe harbor. See 15 U.S.C. §§ 77z-2(b)(2)(D), 78u-5(b)(2)(D).

[7](#) Iowa Pub. Emps.' Ret. Sys. v. MF Glob., Ltd., 620 F.3d 137, 141 (2d Cir. 2010). A more fulsome recitation of the PSLRA safe harbor and the bespeaks caution doctrine is contained in Baxter v. MongoDB Inc., 2026 WL 1192420, at *13-14 (S.D.N.Y. Apr. 30, 2026), discussed further herein.

[8](#) See, e.g., *Glazer Cap. Mgmt., L.P. v. Forescout Techs. Inc.*, 63 F.4th 747, 780 (9th Cir. 2023).

[9](#) *Slayton v. Am. Exp. Co.*, 604 F.3d 758, 772 (2d Cir. 2010) (citing H.R. Conf. Rep. 104–369, at 43 (1995)).

[10](#) *Gregory v. ProNAi Therapeutics Inc.*, 297 F. Supp. 3d 372, 398 (S.D.N.Y. 2018), aff'd, 757 F. App'x 35 (2d Cir. 2018).

[11](#) *SolarWinds*, 741 F. Supp. 3d at 92 (citing *In re Mylan N.V. Sec. Litig.*, 2018 WL 1595985, at *1 (S.D.N.Y. 2018) (providing an example that "a caution that 'input prices may rise next quarter' would not cause a reasonable investor to conclude that the prices of all inputs had remained flat or declined in the previous quarter. But a caution that 'the price of our primary input may rise above \$5 next quarter' could certainly cause a reasonable investor to conclude that the price was, at present, \$4.99 or less.")).

[12](#) *MongoDB*, 2026 WL 1192420, at *32 (quoting *In re Vivendi, S.A. Sec. Litig.*, 838 F.3d 223, 247 (2d Cir. 2016)).

[13](#) *Id.*

[14](#) *Id.* at *1-2.

[15](#) *Id.* at *1-4, *8.

[16](#) *Id.* at *31.

[17](#) *Id.* at *6-7.

[18](#) *Id.* at *32.

[19](#) See *Credit Suisse First Bos. Corp. v. ARM Fin. Grp. Inc.*, 2001 WL 300733, at *8 (S.D.N.Y. Mar. 28, 2001).

[20](#) 2026 WL 458135 (S.D.N.Y. Feb. 18, 2026).

[21](#) *Id.* at *1-2.

[22](#) *Id.* at *1.

[23](#) *Id.* at *14.

[24](#) *Id.*

[25](#) *Id.*

[26](#) *Id.* at *15.

[27](#) *Id.* at *15-16.

[28](#) 153 F.4th 288 (2d Cir. 2025).

[29](#) Id. at 301. The District Court held that this statement "clearly describe[d] future economic performance" and was a "paradigmatic forward-looking statement[] protected by the safe harbor." *Robeco Cap. Growth Funds SICAV - Robeco Glob. Consumer Trends v. Peloton Interactive Inc.*, 2024 WL 4362747, at *9 (S.D.N.Y. Sept. 30, 2024). However, the Second Circuit did not address whether the safe harbor applied.

[30](#) Peloton, 153 F.4th at 301.

[31](#) 166 F.4th 805 (9th Cir. 2026).

[32](#) Id. at 824, 827.

[33](#) See id. at 825 (holding what might hurt a business in the future contains an "implicit assertion ... that the risk identified has not happened yet.").

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