



SEC Stays Climate Disclosure Regulations in Response to Consolidated Eighth Circuit Challenges

By Farzad Damania, Ryan Lilley

On April 4, the Securities and Exchange Commission (SEC) issued an [order](#) staying the implementation of the recently finalized [climate disclosure rules](#) (Final Rules) in response to the consolidated legal challenges in the US Court of Appeals for the Eighth Circuit. The SEC has discretion to stay its rules pending judicial review and the SEC stated that a stay would “allow the court of appeals to focus on deciding the merits [of the cases].” However, this voluntary stay should not be taken as a sign that the SEC intends to abandon the Final Rules, as the SEC said it will “continue vigorously defending the Final Rules’ validity in court and looks forward to expeditious resolution of the litigation.”

The Final Rules have faced a slew of legal challenges since adoption and the SEC also noted that the stay avoids potential uncertainty if registrants were to become subject to the Final Rules during the pendency of the legal challenges.



100% Pure, Natural False Advertising Litigation

By Michael Justus

One of the worst-kept secrets among the plaintiffs’ bar is that claims like “pure” and “natural” on consumer-product labels can lead to class-action claims. Two recent court decisions denying motions to dismiss underscore the continued risk. In *Winans v. Ornuo Foods North America Inc.*, the Eastern District of New York

partially denied the defendant’s motion to dismiss claims that butter products were misbranded as “pure Irish butter” despite allegedly containing artificial “forever chemicals” known as PFAS. [Read about “natural” false advertising litigation.](#)

Court Dismisses Textile Greenwashing Class Action Against Nike

In a recent decision, the United States District Court for the District of Missouri dismissed a putative class action complaint against Nike, in which the plaintiff had alleged that over 2,000 products in Nike's "Sustainability Collection" of garments were not sustainable and that the class representative alleged to have purchased some of them had been misled. *Ellis v. Nike, et al.*, No. 4-23-cv-00632 (E.D. Mo. 2024). The decision reaffirms the pleading standard for plaintiffs in greenwashing cases: plaintiffs cannot satisfy their burden by making conclusory allegations that products advertised with "green" attributes are not actually green; they must cite specific facts as to what they were exposed to, why those products are not green and importantly, how they would know that this is so. [Read about the class action dismissal.](#)



The Cybersecurity Administration of China Issues Relaxed Rules for Cross-Border Data Transfers

By Trisha Sircar

On March 22, the Cybersecurity Administration of China (CAC) issued the long-awaited new [Regulations on Promoting and Regulating Cross-Border Data Flows](#), effective immediately, for compliance with China's Personal Information Protection Law, the Data Security Law and their implementing regulations. In addition, the CAC issued second editions of the Guide to the Application for Security Assessment of Outbound Data Transfers and the Guide to the Filing of Standard Contract for Outbound Transfer of Personal Information. The new regulations and guides ease numerous compliance requirements and promote cross-border data transfers for data handlers. [Read about key changes provided by the new regulations and guides.](#)

NYDFS Cybersecurity Regulation Deadlines Approaching on April 15 and April 29

By Trisha Sircar

On November 1, 2023, the New York State Department of Financial Services (NYDFS) amended its cybersecurity regulation, 23 NYCRR 500 (or Part 500). NYDFS has published guidance on the implementation timeline for key compliance dates for the various categories of entities impacted, as well as training materials and FAQs regarding the new requirements. [Read about the next major deadlines for compliance with the amended sections of Part 500.](#)



Corporate Transparency Act Found Unconstitutional (for Specific Plaintiffs)

By Scott Vetri, Walter Weinberg, Andrew Jagoda, Eddy Park, Kenneth Jacobson, Joel Naiman, Michael Sherlock

The Corporate Transparency Act (CTA) — a summary of which can be found [here](#) — became effective January 1, 2024. However, a federal court in Alabama found the Corporate Transparency Act (CTA) unconstitutional for specific plaintiffs, permanently barring the Treasury Department from enforcing the Act against them. The ruling is specific to the plaintiffs (National Small Business Association and a member business owner), and its broader impact remains uncertain. [Read Katten's advisory.](#)



Supreme Court Rejects ‘Pure Omissions’ Liability Under Rule 10b-5

By Sarah Eichenberger, Kevin Broughel

On April 12, a unanimous Supreme Court held that issuers are not liable under Rule 10b-5(b) for “pure omissions.” The Court’s decision ends a long-standing circuit split and, most importantly

for public companies, narrows the grounds for Section 10(b) and Rule 10b-5 liability. Under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5(b) thereunder, it is unlawful for securities issuers “[t]o make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.” Securities plaintiffs have, in some cases, alleged Rule 10b-5(b) claims based on omissions that are not tied to affirmative statements, proceeding under a so-called “pure omissions” theory of liability. [Read about the Supreme Court's decision.](#)

Challenges to Advance Notice Bylaws Are Spiking

By Jonathan Rotenberg, Thomas Artaki

The last three months have seen a jump in shareholder lawsuits challenging “advance notice” provisions in company bylaws. Advance notice provisions are ubiquitous among Delaware public companies. They exist to promote the legitimate corporate purpose of conducting orderly stockholder meetings and election contests.

Among other things, these provisions commonly require that nominations for director be formally submitted a certain number of days in advance of the annual meeting and be accompanied by certain categories of information about the proposing stockholder and the nominee. Delaware courts have historically permitted the exclusion of director nominations that fail to adhere to such provisions. However, context is key, and advance notice bylaws that are adopted during or in anticipation of a proxy contest will be subject to enhanced scrutiny and face a greater risk of being struck down. [Read about advance notice bylaws lawsuit trends.](#)



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