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Wells Fargo Leaders Reach Deal in Hiring Practices Suit (1)

Sept. 16, 2025, 1:19 PM PDT; Updated: Sept. 16, 2025, 2:27 PM PDT

Summary by Bloomberg AI

AI Generated



- Wells Fargo & Co. and shareholders have agreed to end a lawsuit against company leaders for their alleged role in a scandal over diversity hiring practices.
- The parties have reached a settlement in principle in the shareholder derivative suit, and the investors and leaders have asked the court to pause the suit while they finalize their documentation.
- A request for preliminary approval of the settlement is expected by Oct. 13, according to the investors and leaders.

Wells Fargo & Co. and shareholders have agreed to end a lawsuit against company leaders for their alleged role in a scandal over diversity hiring practices, according to a federal court filing.

The parties have reached a settlement in principle in the shareholder derivative suit, they told Judge Trina L. Thompson of the US District Court for the Northern District of California.

The suit parallels allegations in a class action before the same judge that Wells Fargo touted a policy of considering a diverse slate of job candidates while conducting sham interviews with minority applicants. Thompson granted class status to Wells Fargo investors in that suit in April, and the US Court of Appeals for the Ninth Circuit rebuffed the bank's request for immediate review in July. The denial of review sets the stage for the costly discovery stage of litigation in the class action—and pressure for a classwide settlement.

Here, the investors suing on behalf of the company allege the directors and some executives breached their fiduciary duties. Those breaches allegedly opened the company to the costs of the class action and other expenses, including addressing criminal investigations, conducting internal investigations, and implementing changes in hiring and financial oversight.

The derivative suit should be paused while the parties finalize their documentation, the investors and leaders told the court, joined by nominal defendant Wells Fargo. A request for preliminary approval is expected by Oct. 13, they said.

An attorney for the investors declined to comment. An attorney for the directors and officers didn't immediately respond to an email requesting comment.

Bleichmar Fonti & Auld LLP, Motley Rice LLP, and Cotchett, Pitre & McCarthy LLP are lead counsel for the investors. Sullivan & Cromwell LLP represents Wells Fargo. Willkie Farr & Gallagher LLP represents most of the directors and officers, and Cleary Gottlieb Steen & Hamilton LLP represents CEO Charles Scharf, who is also a director.

The case is *In re Wells Fargo & Co. Hiring Pracs. Deriv. Litig.*, N.D. Cal., No. 3:22-cv-05173, notice 9/15/25 .

(Updates story with response from investors' attorney in sixth paragraph.)

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Securities Litigation

2nd Circuit Panel Nixes Investor Attempt at Making Banks Pay for Archegos Capital Losses

A unanimous three-judge panel said on Tuesday that the inside trading case couldn't work, as neither Morgan Stanley, Goldman Sachs nor Archegos Capital Management LP—a nonparty to the suit—were corporate insiders who were banned from misusing private information.

September 16, 2025 at 04:01 PM By **Alyssa Aquino**



The U.S. Court of Appeals for the Second Circuit in New York. Photo: Ryland West/ALM

Morgan Stanley and Goldman Sachs beat an insider trading suit arising from Archegos' \$36 billion wipeout, convincing the U.S. Court of Appeals for the Second Circuit to drop claims that they used inside information to shield themselves from Archegos' fall.

A unanimous three-judge panel said [on Tuesday](#) that the inside trading case couldn't work, as neither Morgan Stanley, Goldman Sachs or Archegos Capital Management LP—a nonparty to the suit—were corporate insiders who were banned from using private information for their own gain.

“Appellees were not legally obliged to refrain from trading their Archegos-related positions, or from sharing information about Archegos’ financial state,” Circuit Judge Maria Araújo Kahn wrote on behalf of a unanimous appeals panel.

Morgan Stanley was represented by Davis, Polk & Wardwell and Goldman Sachs was represented by Cleary, Gottlieb, Steen & Hamilton.

The circuit court decision covers seven lawsuits that were filed after Archegos’ March 2021 collapse.

The firm, owned by Sung Kook “Bill” Hwang, had been able to acquire massive positions in ViacomCBS Inc., Discovery Inc., and other companies through total return swaps, or TRS, contracts. The contracts allowed Archegos to indirectly buy shares through brokers, such as Morgan Stanley and Goldman Sachs, leaving issuing companies and federal regulators in the dark of Archegos’ overexposure.

But the scheme unraveled once the companies’ stocks began dropping in March 2021. The banks called for collateral to cover their losses, only for Archegos to default.

The firm’s failure sparked a wave of litigation, including from investors in the issuing companies. Represented by The Hall Firm and Johnson FisteL, the shareholders sued Morgan Stanley and Goldman Sachs, which purchased their own stocks to hedge against the risks of their TRS contracts.

The shareholders alleged that Archegos tipped the banks on its impending doom, and they used that information to dump their own stocks, sparing themselves billions of dollars of losses, at the expense of unwitting investors.

They argued what the circuit called a “classical” insider trading claim, in which they cast Archegos as the corporate insider who owed a fiduciary duty to the issuing companies not to share their information with the brokers. The investors also argued a separate misappropriation insider trading claim, in which Morgan Stanley and Goldman Sachs were the insiders who misused Archegos’ information.

U.S. District Judge Jed Rakoff was unswayed by both theories, dismissing the litigation with prejudice in May 2024. The circuit agreed with Rakoff on both counts.

The circuit found that Archegos wasn't an insider of the companies, as it hadn't actually owned their shares. Morgan Stanley and Goldman Sachs did, under the TRS contracts, the circuit said.

"Appellants' own allegations support a conclusion that Archegos was not a controlling shareholder of any Issuer. There is no allegation in the [second amended complaint] that Archegos had access to any Issuer's internal corporate information or exercised control over any Issuer's corporate affairs so as to render it a corporate insider," the circuit said.

It also rejected the misappropriation theory, saying the investors hadn't alleged that the brokers and Archegos entered in agreement that established a fiduciary relationship.

"Rather, the [second amended complaint] alleges only that Appellees offered Archegos various brokerage services. More importantly, the SAC acknowledges that Appellees were contractually entitled to sell their Archegos-related positions upon Archegos' default," the circuit said.

Judges Eunice Lee and Sarah Merriam also sat on the appeals panel.

Representatives for Morgan Stanley, Goldman Sachs and the investors didn't respond to requests for comment.

Page printed from: <https://www.law.com/newyorklawjournal/2025/09/16/2nd-circuit-panel-nixes-investor-attempt-at-making-banks-pay-for-archegos-capital-losses/print/>

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VNet Investors Advance Class Suit Over Co-Founder's Loan Default

Sept. 16, 2025, 8:38 AM PDT

Summary by Bloomberg AI

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- A federal court ruled that US investors in VNet Group Inc. can proceed with proposed class claims that the company concealed a controlling shareholder's loan default and its potential effect.
- The investors adequately alleged false or misleading statements in Securities and Exchange Commission filings and an earnings call, and showed the necessary level of intent for securities fraud, Judge Dale E. Ho said.
- The judge denied VNet's request for dismissal, rejecting arguments that the statements were "pure omissions" and that there was never a real risk of change in control, but trimmed a claim for scheme liability as duplicative.

US investors in VNet Group Inc. can proceed with proposed class claims that the data center company concealed a controlling shareholder's loan default and the default's potential effect, a federal court ruled.

The investors adequately alleged false or misleading statements in Securities and Exchange Commission filings and an earnings call, Judge Dale E. Ho said Monday for the US District Court for the Southern District of New York. They also showed the necessary level of intent for securities fraud, Ho said.

The suit on behalf of holders of American depositary shares in the Chinese company alleges co-founder Josh Sheng Chen, who had 29% of the aggregate voting power and served as chairman of the board, entered into a "facility agreement" for a more than \$50 million loan through his personal holding company. Chen guaranteed the loan with his VNet shares as collateral, and the company and its senior leadership knew about that, the plaintiffs said.

In late 2021, a drop in ADS prices triggered the default provisions, but VNet soon afterwards took on more than \$250 million in debt on the condition that Chen maintain his level of control of the company, the investors said. The company allegedly made statements concealing that the creditor was in a position to seize Chen's stake, which would threaten the company's financing. The misrepresentations inflated the stock price until revelations over the course of a week in February 2023 brought the ADS price down 32%, they said.

The statements weren't inactionable "pure omissions," as VNet argued, Ho said. Redactions in a particular SEC filing were "so precisely targeted to material information in the Facility Agreement as to render the filed documents misleading," he said.

Ho also rejected VNet's argument that there was never a real risk of change in control. "The fact that, ultimately, a change in control never came to pass does not mean that Plaintiffs have failed to state a claim with respect to Defendants' concealment of the risk" of that event, the judge said.

Ho trimmed a claim for scheme liability as duplicative, but otherwise denied VNet's request for dismissal.

Pomerantz LLP is lead counsel for the investors. Skadden, Arps, Slate, Meagher & Flom LLP represented VNet.

The case is *In re VNET Grp., Inc. Sec. Litig.*, 2025 BL 328302, S.D.N.Y., No. 1:23-CV-11187, 9/15/25.

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STMicroelectronics Set to Fight Investor Suit Over Cooled Demand

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Summary by Bloomberg AI

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- Investors plausibly pleaded STMicroelectronics NV and two top executives knowingly misrepresented its demand, rising inventory levels, and “channel-stuffing”, Judge Alvin K. Hellerstein said.
- The investors sufficiently pleaded the level of intent to deceive or recklessness to carry securities fraud claims as a result of executive assertions of monitoring inventory closely, the judge said.
- Investors can also proceed with claims that a Securities and Exchange Commission report was misleading, since it portrayed risks that had actually materialized at STM as hypothetical.

STMicroelectronics NV failed to shake shareholder allegations that the semiconductor chipmaker concealed waning demand as the pandemic wound down.

Investors plausibly pleaded STM and two top executives knowingly misrepresented its demand, rising inventory levels, and “channel-stuffing,” Judge Alvin K. Hellerstein said Monday. A former employee serving as a confidential witness allegedly called out CEO Jean-Marc Chery “in senior staff meetings for misleading investors by stating that demand and growth at STM were on the rise, when the opposite was true,” and objected to a practice of over-sending inventory to distributors to boost an appearance of demand—channel-stuffing—he said.

The investors sufficiently pleaded the level of intent to deceive or recklessness to carry securities fraud claims as a result of this and executive assertions of monitoring inventory closely, the US District Court for the Southern District of New York judge said.

Many alleged misstatements were about present semiconductor market conditions, not future ones, and are thus actionable, Hellerstein said. And, relying on confidential witness testimony, investors adequately alleged even the “genuinely forward-looking statements as to STM’s growth and inventory were made with actual knowledge of their falsity.” Boilerplate warnings weren’t sufficiently meaningful cautionary language to toss the claims.

Investors can also proceed with claims that a Securities and Exchange Commission report was misleading, “since it portrayed risks that had actually materialized at STM as hypothetical, including a reduction in demand, high inventory levels and broader downturns in the semiconductor industry at-large,” he said.

Shareholders alleged that STM boasted continued growth prospects as the semiconductor industry overall chilled at the end of 2022. Rejected Chery allegedly touted that market demand was strengthening, led by the automotive sector, and an inventory backlog was shrinking, but neither was true. STM purportedly reorganized its product segments in the 2024 fiscal year “to mask the scale and extent of the deterioration in the Company’s business by mixing profitable offerings with unprofitable ones,” the complaint said, citing a confidential witness.

The class would include those who got STM stock or sold put options from March 14, 2023, through Oct. 30, 2024. On Oct. 31, STM said it expected to finish the 2024 fiscal year with underwhelming revenue and initiated cost-saving measures. This and prior disappointing financial news allegedly weighed down share prices.

Pomerantz LLP is lead counsel for the investors. Sullivan & Cromwell LLP represents STM, Chery, and Chief Financial Officer Lorenzo Grandi. Neither law firm nor STM immediately responded to emails seeking comment.

The case is *In re STMicroelectronics N.V. Sec. Litig.*, S.D.N.Y., No. 1:24-CV-06370, 9/15/25.

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US financial regulation**SEC allows public companies to block investors from class-action lawsuits**

Chair Paul Atkins pledges to ‘make IPOs great again’ as US regulator fulfils deregulation drive



Paul Atkins, chair of the Securities and Exchange Commission © Bloomberg

Stefania Palma in Washington and **Stephen Foley** in New York

Published 2 HOURS AGO



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The US Securities and Exchange Commission on Wednesday gave public companies a powerful new tool to curb shareholder lawsuits, as chair Paul Atkins pledged to “make IPOs great again”.

The [regulator](#) said it will no longer block companies from the public markets if they banned shareholders from filing class-action lawsuits, ripping up a decades-old policy as it seeks to ease compliance requirements and fulfil President Donald Trump’s deregulation drive.

The new policy, which allows listed companies to require arbitration of shareholder claims, would move disputes out of the limelight of the court system. Commissioner Hester Peirce, supporting the change, said “the market will do a better job than we can of assessing” their use.

Atkins vowed to make public listings “an attractive proposition for more firms by eliminating compliance requirements that yield no meaningful investment protection, minimising regulatory uncertainty and reducing legal complexity throughout the [SEC](#) rule book”.

He said the SEC’s next steps would include further support for newly public or smaller businesses as well as “expanding post-IPO companies’ ability to easily access public markets to raise additional capital”. The agency would prepare recommendations on each of these topics, he added.

The moves come as regulators appointed by the Trump administration embrace a more business-friendly stance, rowing back regulation as well as tough enforcement agendas adopted under ex-president Joe Biden.

Democratic lawmakers and investor advocacy groups have sounded the alarm over curbing shareholders’ ability to sue companies. Democratic senators Elizabeth Warren and Jack Reed in a [letter to the SEC](#) warned it “would be a significant mistake, putting investors and markets at risk”.

Shareholder advocates argue this could reduce transparency and tilt the balance of power to corporations in ways that could undermine the perks that have historically drawn investors to the world’s biggest capital markets.

A change of policy would not immediately open the floodgates to the use of mandatory arbitration, however. The state of Delaware, where the majority of US public companies are incorporated, specifically bans the use of arbitration for federal securities claims.

But Delaware is also locked in a battle for supremacy with rival states including Texas and Nevada to which an increasing number of companies have moved in recent years.

US-listed companies paid a total of \$3.7bn in settlements of securities class-action suits in 2024, according to a tally by Stanford Law School and Cornerstone Research. The number of settlements has ranged from a low of 72 to a high of 105 over the past decade, with the total payouts to shareholders ranging between \$1.9bn and \$7.4bn.

SEC commissioner Caroline Crenshaw, a Democrat appointee who objected to the new policy, contrasted the sums won by shareholders through class-action suits with the amount returned to harmed investors as a result of the agency's own enforcement actions, which totalled \$345mn last year. Some companies could be expected to prefer mandatory arbitration, she said, because they "would rather keep their ill-gotten gains".

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US SEC hands victory to IPO issuers who want to avoid class-action lawsuits



reuters.com/sustainability/boards-policy-regulation/us-sec-hands-victory-ipo-issuers-who-want-avoid-class-action-lawsuits-2025-09-17

Douglas Gillison

September 17, 2025

The seal of the U.S. Securities and Exchange Commission (SEC) is seen at their headquarters in Washington, D.C., U.S., May 12, 2021. Picture taken May 12, 2021. REUTERS/Andrew Kelly/File Photo [Purchase Licensing Rights, opens new tab](#)

- SEC had blocked IPOs for firms banning class-action suits
- Three Republicans on SEC voted to change rule; Democrat voted no
- Corporations back rule change, shareholder advocates oppose it

WASHINGTON, Sept 17 (Reuters) - The U.S. securities regulator on Wednesday said it would allow companies seeking to go public to require that investors resolve claims of fraud or other false statements through arbitration rather than court litigation, handing a victory to companies and weakening investor rights.

The Securities and Exchange Commission voted 3-1 along party lines to reverse a long-standing but unwritten SEC policy in which the agency blocked the Wall Street debuts of companies that want to ban shareholder class action lawsuits in their charters and bylaws.

"The commission is not a merit regulator that decides whether a company's particular method of resolving disputes with its shareholders is good or bad," SEC Chair Paul Atkins said at a public meeting.

The SEC issued a policy statement, rather than a formal rule, meaning it is not subject to public notice and comment.

Caroline Crenshaw, the commission's lone remaining Democrat, lambasted the new policy, saying it would "open the floodgates" to mandatory arbitration, denying many shareholders their rights while allowing companies to keep their alleged misconduct in the shadows. If harmed investors cannot band together in a class action, thereby sharing their legal costs, many simply won't sue at all, she added.

Corporate interest groups and Republicans have long complained about what they see as the frivolous filing of shareholder class action suits, saying companies should be able to protect themselves. During President Donald Trump's previous administration, the agency [considered such a change](#) but [ultimately took no action](#).

Consumer advocates and plaintiffs' lawyers say court action helps hold companies to account, gives small investors the chance to recover damages they otherwise couldn't, and gives the public access to evidence and legal reasoning that helps build case law and inform public policy.

EFFECT OF CLASS ACTIONS

In a Tuesday letter to the SEC, CalPERS, the California public pension fund, said forced arbitration would also "diminish the deterrent effect" of class actions.

Ann Lipton, a former class action litigator now at the University of Colorado law school, said the change would be damaging to the public interest, noting lawsuits can expose corporate misconduct among other things.

"From a public policy perspective, this is horrific," said Lipton, adding that law suits can expose corporate misconduct among other things. "It halts all development of the law and it halts all insight into what companies are really doing."

The issue first gained prominence in 2012 when the SEC signaled it would oppose an IPO planned by the private equity fund Carlyle Group, which sought to require future shareholders to resolve disputes in arbitration.

Erik Gerding, former director of the SEC's division of corporation finance now in private practice at Freshfields, said he expected a "sudden upsurge" in companies seeking to benefit from the change.

"Today's action most immediately impacts IPOs but established public companies will also be interested in reducing litigation exposure," he said.

In a separate matter on Wednesday, the SEC also extended [for a second time](#) the deadline for private investment funds to comply with Biden-era regulations requiring enhanced disclosures.

Reporting by Douglas Gillison in Washington; Editing by Chizu Nomiya, David Gregorio and Nick Zieminski

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Douglas Gillison covers financial regulation for Reuters, focusing on securities regulation, consumer finance and prudential oversight. He was previously a Congo-focused anticorruption investigator for a transparency organization and has covered war crimes trials and human rights. His reporting has sparked a foreign bribery probe of a publicly traded mining company.

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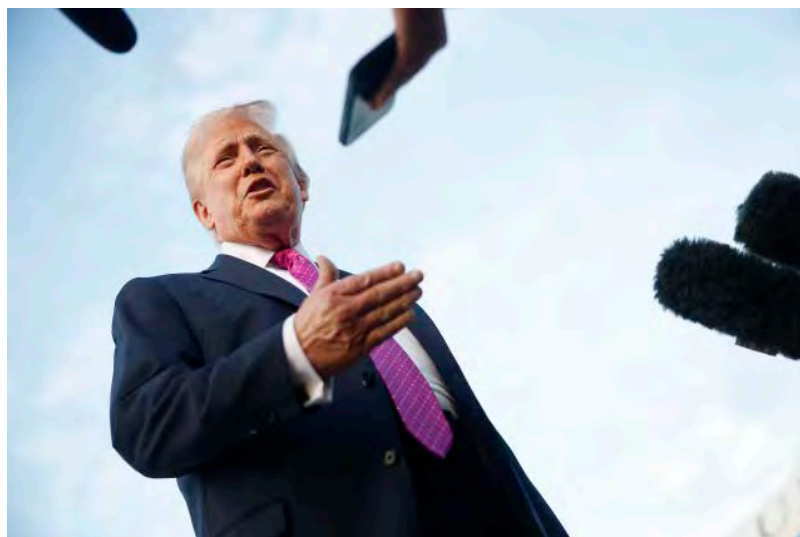
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What Investors Get Out of Quarterly Earnings

Trump proposal to reduce frequency of corporate reporting would lead to less information and riskier markets

By [Jonathan Weil](#) [Follow](#)

Sept. 16, 2025 5:30 am ET



President Trump favors requiring public companies to report financial results every six months. PHOTO: KEVIN DIETSCH/GETTY IMAGES

A push for greater opacity in America's capital markets is gathering steam.

President [Trump](#) has advocated for [ending the federal requirement](#) that public companies report financial results quarterly. Every six months should suffice, he said Monday in a social-media post, echoing an idea from his first term that ultimately went nowhere.

Yet there isn't a groundswell of investors demanding change to the Securities and Exchange Commission's quarterly disclosure regime. Rather, for investors, the proposal would mean less access to information and more exposure to risk.

Ultimately, it will be up to those investors to decide whether to play along, and there are many reasons they shouldn't.

The point of requiring timely, standardized financial reporting is to lower companies' cost of capital. The more transparent and reliable a company's reporting is, all other things being equal, the lower its costs will be to borrow money or raise equity from outside investors.

Nobody wants to wait an extra three months to find out bad news, such as that a once-profitable company has begun losing money. Nor do investors want to miss out when a company's fortunes change suddenly, such as what happened at [Nvidia](#).

Not coincidentally, the cost of capital for U.S. companies historically has been among the world's lowest.

It's foreseeable, too, that less frequent financial reporting would result in greater volatility in securities prices. Fewer updates mean there is more information for investors to catch up on each time a company reports results.

And just because information goes unreported for long stretches doesn't mean it ceases to exist. Insiders will still have it, and act on it.

Institutional investors with large research budgets and access to management might have an even greater edge over individual investors. Timely financial reporting levels the playing field.

Reducing the frequency of reporting defies common sense in other ways. The business cycle is getting shorter, not longer.

Today's hot theme is artificial intelligence, which was barely on most investors' radar three years ago before ChatGPT's unveiling. A six-month wait between financial reports is an eternity for this industry—and for the many industries it is disrupting.

None of this should be confused with the common practice by corporate managers of providing quarterly financial forecasts. In [a 2018 op-ed](#) for The Wall Street Journal, [Warren Buffett](#) and [Jamie Dimon](#) encouraged public companies to consider moving away from providing quarterly earnings-per-share guidance, saying it often leads to an unhealthy focus on short-term profits at the expense of long-term strategy.

However, the [Berkshire Hathaway](#) and [JPMorgan Chase](#) chiefs added: "Our views on quarterly earnings forecasts should not be misconstrued as opposition to quarterly

and annual reporting. Transparency about financial and operating results is an essential aspect of U.S. public markets.”

In the event the SEC carries out Trump’s wish, it wouldn’t mean an end to quarterly financial reporting—only to the requirement. Some companies would voluntarily report on a quarterly basis. Rivals would have to consider whether the reputational and other costs of skipping quarters is worth it.

To be sure, it remains to be seen whether there would be a great backlash from the investing public about the sudden decline in timely access to financial information.

Passive investors seeking to match market returns through index investing might not care much; they’re not reading a lot of financial reports anyway. However, active investors—the ones on which the passive investors are piggybacking for price discovery—certainly would take notice.

All of this is part of a continuum. After the accounting-fraud scandals of the early 2000s, led by Enron and WorldCom, Congress and the SEC passed stricter financial reporting and governance requirements for public companies. Then came the backlash, and Congress loosened many of those requirements for small public companies.

Later came an SEC push for more disclosures on environmental and other matters that many investors saw as having little connection with financial performance. Then the pendulum swung the other way with business and finance leaders calling for lighter-touch regulation.

If the SEC goes this route, it is possible a future group of commissioners might reverse the decision and require quarterly reporting again. And that is the sort of herky-jerky regulation that drives investors and corporate managers, alike, crazy.

Markets hate uncertainty, as the saying goes. But what they really dislike is the needless uncertainty of not knowing whether a company’s bosses are going to tell them what’s going on in a timely manner.

Write to Jonathan Weil at jonathan.weil@wsj.com

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Videos

Guest Post: The End of Quarterly Reporting?



dandodiary.com/2025/09/articles/securities-laws/guest-post-the-end-of-quarterly-reporting

Kevin LaCroix

September 17, 2025

Sarah Abrams

In a social media post earlier this week, President Trump [proposed](#) eliminating quarterly reporting for public companies. In the following guest post, Sarah Abrams, Head of Claims Baleen Specialty, a division of Bowhead Specialty, takes a look at the President's proposal and considers its prospects and potential implications. I would like to thank Sarah for allowing me to publish her article as a guest post on this site. I welcome guest post submissions from responsible authors on topics of interest to this site's readers. Please contact me directly if you would like to submit a guest post. Here is Sarah's article.

If the SEC heeds President Trump's [call](#) to eliminate quarterly reporting, the implications for D&O underwriting exposure could be significant. Specifically, the President wants to change the long-standing requirement under the Securities Exchange Act of 1934 that public companies file a [Form 10-Q](#) with the SEC quarterly, in addition to a [Form 10-K](#) annually. If corporate financial reporting decreases, will shareholder scrutiny over each disclosure increase? Also, will longer intervals between public reports complicate causation arguments, affecting plaintiffs' ability to meet pleading requirements under the Private Securities Litigation Reform Act of 1995 (PSLRA). The following considers whether the recent push to change public company reporting to the SEC from every three to six months creates risk for D&O insurers.

An SEC spokesperson has [confirmed](#) that "[a]t President Trump's request, Chairman [Paul] Atkins and the SEC [are] prioritizing this proposal to further eliminate unnecessary regulatory burdens on companies." Of note – the SEC's [Spring 2025 Reg Flex Agenda](#) states that: "[t]he Division is considering recommending that the Commission propose rule amendments to rationalize disclosure practices to facilitate material disclosure by companies and shareholders' access to that information."

With the SEC signaling an end to mandatory quarterly earnings reports may be in sight, the following briefly reviews what would need to happen at the SEC for that change to take place, including how the same proposal failed in 2018, as well as the potential impact biannual corporate filings may have on D&O exposure.

Implementation

First, I will consider what would likely need to happen at the SEC to modify the current quarterly reporting requirement in the context of an identical 2018 initiative. This context may help anticipate whether public companies can prepare to scale back Form 10-Q filings in the near term and how quickly D&O underwriters may need to prepare for a risk shift.

Either the Chair, Commissioners, or SEC staff may prepare a rule proposal to amend the existing requirements under the Securities Exchange Act of 1934 (particularly Section 13) and related regulations. In 2018, President Trump asked the SEC to study the possibility of moving from quarterly to semi-annual reporting for public companies. In November 2018, the SEC signaled in its regulatory agenda that it would solicit input on quarterly reporting and earnings releases, and in December 2018, it [issued](#) a 31-page Request for Comment on the topic.

The SEC would also likely open a public comment period on changing reporting, during which issuers, investors, analysts, auditors, trade associations, and others can submit written feedback. Empirical studies, cost/benefit analyses, and international comparators (Europe's semiannual reporting framework) may also be reviewed. Notably, in 2018, despite [receiving comments and support from business leaders](#) during the public comment period, the SEC did not change the rule mandating quarterly reporting.

In July 2019, the SEC held a roundtable on short-term/long-term management of public companies, the periodic reporting system, and regulatory requirements. The SEC's efforts did not result in a rule proposal to change reporting frequency, [but the topic remained on the SEC's Reg Flex Agenda](#) until the rulemaking plans were dropped in the June 2021 version. However, 2025 is a different time, and given the Atkins SEC signaling prioritization of the rule proposal, the likelihood of a change in reporting timing appears more likely than in 2019.

Even so, the SEC [may also consider](#) whether shifting from quarterly to biannual reporting conflicts with existing law. Therefore, it may be months until a proposed rule is approved. And because public companies may need to adapt systems, internal reporting, audit, as well as governance, and stock exchanges may need to adjust listing rules, the SEC may prescribe a transition period for compliance. If and when regulatory filings become biannual, however, there may be an immediate impact on D&O insurance exposure.

Implications

As [D&O Diary readers](#) are aware, quarterly 10-Qs can provide public insight into a company's financial condition, operations, and, as has been the case for much of 2025, the impact of geopolitical factors, like tariffs. If reporting frequency decreases to biannually, D&O-related risk factors may also change significantly in between filings, affecting the potential severity of loss and proving loss causation.

Information Lag and Shareholder Scrutiny

Lengthening the time between public filings may potentially lengthen the information gap between required public disclosures. This may lead to shareholder claims that adverse developments went undisclosed for longer, particularly if no [8-Ks](#) are filed in the interim. This may increase the severity of alleged securities violations once material information is disclosed. A recent [putative securities class action complaint](#) filed against Super Micro Computer in the Northern District of California in August 2024 demonstrates the potential for immediate negative impact to a company's share price resulting from alleged erroneous and delayed public filings.

Investors in Super Micro Computer, Inc. (SMCI) alleged that SMCI and its senior executives misled the market about its internal controls and failed to disclose material related-party transactions. These alleged omissions, combined with allegations of improper revenue recognition practices, came under scrutiny in August 2024 when [Hindenburg Research published a report](#) accusing SMCI of accounting manipulation and undisclosed dealings. MCI's stock allegedly fell following the Hindenburg report and declined 22% when the company disclosed that it would delay filing its annual Form 10-K.

For the SMCI plaintiff shareholders, the company's delayed SEC filing purportedly served as market confirmation of the Hindenburg report's allegations, resulting in claims under Section 10(b) and Rule 10b-5. The SMCI case highlights a potential D&O underwriting concern when planned reports end up derailed by a short seller like Hindenburg. And, if biannual disclosure obligations come under pressure due to unforeseen events, a longer delay between filings may magnify shareholder suspicion of securities fraud.

Causation and the PSLRA

[As D&O Diary readers may](#) recall, the PSLRA imposes heightened pleading standards, including a requirement that plaintiffs plead loss causation with particularity. [Courts](#) have emphasized the need for plaintiffs to link a corporate disclosure to the alleged economic loss. In a biannual reporting regime, that causal chain may become more contested: if six months of events accumulate before a company files its 10-Q, it may be challenging to parse intervening market factors from a delayed report as the reason for a subsequent stock drop. This may result in motion practice over loss causation, requiring additional discovery and expenses incurred.

Conclusion

Whether the SEC ultimately moves from quarterly to biannual reporting appears more likely than not. However, for D&O underwriters, fewer mandated disclosures may not necessarily mean less litigation risk, and may result in more scrutiny over disclosure timing, loss

causation, and shareholder suspicion when negative developments surface. Extending the reporting cadence to six months could magnify these exposures, and therefore, D&O carriers may want to monitor how the SEC's latest initiative unfolds.

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Crypto Class Action Key Decisions and Trends in 2025

This year has already been a busy one in the crypto class action litigation landscape. Dozens of new crypto class action cases have been filed, auguring a continued trend of further development in this area.

September 17, 2025 at 09:31 AM By **Justin R. Donoho**



Justin Donoho of Duane Morris. Courtesy photo

This year has already been a busy one in the crypto class action litigation landscape. It has seen several significant court decisions that have continued to shape the law in this growing area, including decisions on dispositive motions and motions for class certification. There have also been several multimillion-dollar crypto class action settlements. In addition, dozens of new crypto class action cases have been filed, auguring a continued trend of further development in this area.

For example, courts in the U.S. Court of Appeals for the Second Circuit issued key decisions holding that whether the operator of a crypto exchange may be held liable under federal securities laws for the sale of unregistered securities turns, as an initial matter, on whether the exchange is “centralized,” meaning that it intermediates and transacts between the buyer and seller, or is “decentralized,” meaning that the operator merely develops automated computer codes (aka

“smart contracts”) that facilitate the transfers. See *Risley v. Universal Navigation*, 2025 WL 615185, at *1 (2d Cir. Feb. 26, 2025); *Underwood v. Coinbase Global*, 2025 WL 438547 (S.D.N.Y. Feb. 7, 2025). These decisions found that a decentralized exchange was not plausibly alleged to be a statutory seller under Section 12(a)(1) of the Securities Act, whereas a centralized exchange was plausibly alleged to be a statutory seller. The district court ordered bifurcated discovery and front-loaded resolution of the latter issue, subsequently ruling on a motion to compel and providing guidance as to what types of documents from both sides are pertinent to the question of whether a centralized exchange acted as a statutory seller with respect to users of the exchange who transacted in tokens. See *Underwood v. Coinbase Global*, 2025 WL 1984293 (S.D.N.Y. July 17, 2025).

Although some courts such as the ones deciding the cases mentioned above continue to punt on the issue of whether the transaction at issue is the sale of an unregistered “security,” instead focusing on other potentially dispositive issues, the issue of whether a crypto asset or transaction is a “security” continues to remain hotly contested. This issue is also an open one with respect to a wide variety of crypto assets and transactions, although 2025 saw a bit of clarity pronounced on the issue by Congress, two federal court decisions, and the SEC, as follows:

- Congress passed the GENIUS Act, which provides that fiat-backed stablecoins (as opposed to crypto-backed stablecoins or algorithmic stablecoins) are not securities. The GENIUS Act does not provide that any transactions cannot be securities, however. As a federal decision issued in 2025 observed, anything of value—from digital assets to citrus groves—may or may not be sold pursuant to “investment contracts,” a form of security.
- A district court found that the sale of fiat-backed stablecoins during a de-pegging incident when the stablecoin became untethered to the fiat did not count as a security, pursuant to the multifactor test enunciated by the U.S. Supreme Court in *SEC v. W.J. Howey*, 328 U.S. 293 (1946), for what constitutes an investment contract, a type of security. The *Howey* test continues to frame many district courts’ analyses of whether crypto transactions are securities.
- Another district court issued a Rule 62.1 indicative ruling that reaffirmed its prior finding on summary judgment that a seller’s sale of bridge tokens to institutional investors was the sale of an unregistered security, rejecting the parties’ citation to a change in SEC policy as a justification for the court to vacate its prior-issued injunction and reduce a \$125 million civil penalty.
- The SEC issued informal guidance offering its views that: transactions in fiat-collateralized stablecoins are not securities so long as they are not either investment contracts under the *Howey* test or notes, another type of security, under the multifactor test in *Reves v. Ernst & Young*, 494 U.S. 56 (1990); although “typical” meme coin transactions are not securities,

any meme coins or transactions with “unique features” may be a security under the *Howey* test; and certain proof-of-work network protocol mining activities and certain proof-of-stake blockchain protocol staking activities are not securities.

Two district courts issued crypto class certification decisions in 2025, granting them in part on the claims for sales of unregistered securities, thus demonstrating another reason that claims for the sale of unregistered securities in violation of federal and state securities laws continue to be popular with the plaintiffs bar. Specifically, in addition to not needing to prove fraud, plaintiffs bringing claims for sales of unregistered securities also do not have all the commonality and predominance issues that usually accompany fraud claims and other claims. For example, these same decisions denied class certification on plaintiffs’ claims brought consumer protection statutes and claims for unjust enrichment.

This year has also seen several large settlements reached in crypto class actions, ranging from about \$3 million to \$13 million.

Finally, in the first eight months of 2025, dozens of class actions involving crypto assets, technologies, and ecosystems were filed against token issuers, promoters, and sellers; developers and operators of blockchains, crypto software, and fintech platforms; centralized and decentralized crypto exchanges; bitcoin ATM operators and more, alleging sale of an unregistered security in violation of federal and state securities laws (a popular claim that allows for rescission and does not require proof of fraud but proof of a security); many types of misstatements and omissions in violation of state consumer protection laws, federal and state securities laws, and allegedly amounting to common-law fraud; data breaches and invasions of privacy; and numerous miscellaneous claims including breach of contract, unjust enrichment, negligence, replevin, conversion, violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), and other claims.

In sum, with crypto assets continuing to proliferate and the current presidential administration reducing enforcement priorities relating to sales of crypto assets, crypto class action litigation is multiplying. We should expect to see an upward trend of key decisions and new cases in the remainder of this year and beyond, as this burgeoning area of the law continues to unfold.

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Litigation

Manage Newsletters

SPACs, Executives Beat Investor's Shell Company Accusations (1)

Sept. 17, 2025, 7:54AM PDT; Updated: Sept. 17, 2025, 9:34AM PDT

Summary by Bloomberg AI

AI Generated



- A US District Court judge dismissed an investor's lawsuit alleging securities fraud claims against Ocean Biomedical Inc. and two special purpose acquisition companies.
- The judge said the complaint was "devoid of facts" and lacked details to allege deceptive conduct, and declined to take up the plaintiff's state law claims.
- The plaintiff, RSN Associates LLC, can file an amended complaint within two weeks of the judge's order, but is ordered not to omit contract documents that appear to be highly relevant to the matter.

A pair of blank-check company affiliates defeated an investor's lawsuit alleging they lured about \$3.5 million for a sham startup.

Allegations against Ocean Biomedical Inc. and two special purpose acquisition companies that raised funds for it failed to sufficiently plead securities fraud claims, Judge William F. Jung said. The complaint was "devoid of facts," contained vague accusations of intent or recklessness to defraud, and lacked details to allege deceptive conduct to further a scheme, the US District Court for the Middle District of Florida judge said Tuesday.

"Plainly stated, Plaintiff has failed to specify any one specific statement that is alleged to have been misleading, and even less so the reasons why such a statement was misleading," Jung said.

Jung declined to take up plaintiff RSN Associates LLC's state law claims, having dismissed the federal ones.

RSN accused SPAC manager Suren Ajjarapu, Ocean Biomedical Executive Chairman Chirinjeev Kathuria, and its CEO Elizabeth Ng of functionally controlling blank-check companies OceanTech Acquisitions I Sponsors LLC and Aesther Healthcare Sponsor LLC plus the biomedical startup. The investor alleged the executives misrepresented Ocean Biomedical's legitimacy to raise and pocket investments.

The Nasdaq suspended the trading of OceanTech's securities and the company wound down in 2024. Aesther successfully combined with Ocean Biomedical, bringing it public in 2023. The Nasdaq delisted Ocean Biomedical this year.

"The demanding pleading requirements in securities fraud claims rightly prevent evidence-free shakedowns filed solely to de-risk lost investments in a risky market. We believe the court correctly applied those pleading requirements in this case," said Paul Thanasides, the chair of Complex Litigation at McIntyre Thanasides Bringgold Elliott Grimaldi Guito PA, who represents Aesther and Ajarapu.

"The dismissal of all claims is a decisive victory for our clients. The court made clear the allegations were insufficient to move forward, and ruling confirms our arguments that the allegations were not supported by the facts required under the law," said Brian Cummings, a partner at Stinson LLP, who represents Ocean Biomedical, Kathuria, and Ng.

RSN can file an amended complaint within two weeks of Jung's order. But RSN is "specifically ordered not to abjure or elide the contract documents between the parties that appear to be highly relevant to the matter before the Court—specifically the non-reliance clauses," Jung said.

RSN's president Darshan Ram signed subscription agreements with OceanTech and Aesther containing an identical non-reliance clause. "On its face, Clause Q would seem to bar Plaintiff from alleging fraudulent misrepresentations and omissions outside the four corners of the agreements," Jung said, but courts appear to be split. Looking to the US Court of Appeals for the Sixth Circuit, as the Eleventh Circuit lacked a direct precedent, Jung said the clause didn't "per se" bar RSN from making such allegations.

Southron Firm PA represents RSN. Attorneys didn't immediately respond to emails seeking comment.

The case is RSN Assoc. LLC v. Ajarapu , M.D. Fla., No. 8:25-cv-00047, 9/16/25 .

(Updates with a comment from an attorney for Ocean Biomedical in the eighth paragraph.)

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Investors move to disqualify Quinn Emanuel over conflict claims

DJ[dailyjournal.com/articles/387649-investors-move-to-disqualify-quinn-emanuel-over-conflict-claims](https://www.dailyjournal.com/articles/387649-investors-move-to-disqualify-quinn-emanuel-over-conflict-claims)

Sep. 17, 2025

Investors seek to disqualify Quinn Emanuel over alleged conflict involving attorney Michael Swartz, claiming he previously advised them and misused confidential information in a suit now led by Masimo Corporation.

U.S. District Judge James V. Selna

Attorneys defending investors against conspiracy claims moved to disqualify opposing counsel at Quinn Emanuel Urquhart & Sullivan LLP, alleging the plaintiff's lead attorney had previously advised them on securities matters and later used that advice to sue them.

Despite the law firm's denial, RTW Investments - represented by Michelman & Robinson LLP - argued in a reply brief Monday that Quinn Emanuel partner Michael E. Swartz's prior work at Schulte Roth & Zabel LLP created an "irreconcilable conflict of interest" in the case.

While at Schulte Roth, Swartz filed the underlying action for Masimo Corporation in New York, which was transferred to California in April. The firm's attorneys were removed from the case days later, according to the court docket.

Masimo's counsel at Quinn Emanuel opposed the disqualification motion, calling it "a poster child of tactical abuse," and asserted neither Swartz nor anyone at the firm had ever represented the investor defendants or possessed the disputed material.

The investors' request, filed in July by Michelman & Robinson partner Warren A. Koshofer, asks U.S. District Judge James V. Selna to remove Quinn Emanuel from the case. A hearing is scheduled for Sept. 22 in Santa Ana.

Koshofer did not respond to an email or voicemail by press deadline Tuesday.

Swartz declined to comment aside from Masimo's court filings.

In a declaration, Swartz claimed his move to Quinn Emanuel in March was unrelated to Masimo's case and he neither participated in nor had access to the disputed sensitive information. Additionally, he claimed a "thorough" conflicts check found no attorney-client relationship or ethical issues when he told Quinn Emanuel he was bringing Masimo's case with him.

"My decision to join Quinn Emanuel was based on professional and career consideration entirely unrelated to this litigation," Swartz wrote in the declaration.

"I did not participate in the initial client intake or conflicts analysis when RTW entities retained Schulte in November 2021. I was not involved in structuring the engagement or negotiating the terms of representation and, throughout Schulte's representation of RTW, I had no knowledge of the legal advice provided to RTW."

Despite the investors' contention, Swartz claimed an ethical wall, imposed months before Masimo's suit, barred him from receiving RTW-related information or contacting its personnel.

Last October, Masimo accused its company's founder and ex-CEO of colluding with the RTW investors in an "empty voting" scheme to sway a board election. The case survived a dismissal bid last month after Selna found the allegations made reasonable conclusions that an alleged secret shareholder group could have been illegally formed. *Masimo Corporation v. Kiani et al.*, 2:25-cv-03188 (C.D. Cal., filed April 11, 2025).

The founder, Joe Kiani, was voluntarily dismissed by Masimo as an individual defendant to streamline the case.

In the meantime, RTW's counsel found issue with Swartz's legal history. In their motion to disqualify, they claimed the attorney "saw fit to sue" them after allegedly accessing material on RTW's regulatory and security matters.

Specifically, RTW claims Swartz engaged in "professional misconduct" by signing briefs with "demonstrably false narratives" and disclosing sealed confidential information.

"The law is clear: the RTW Defendants need only establish a likelihood that while Swartz was at Schulte he was in a position to obtain confidential information about the RTW Clients that would be material to this action - and he most certainly was," RTW's counsel claimed in Monday's reply brief.

In Masimo's opposition, counsel for the medical technology company claimed Schulte Roth obtained an advance waiver from RTW, which permitted concurrent representations.

They also said the investors' request would unduly prejudice their case due to Swartz's experience in complex commercial litigation and the "appearance of impropriety" was an insufficient standalone basis for disqualification.

RTW disputed Masimo's legal interpretations and argued California's "automatic disqualification rule" and "hot potato" doctrine prevents Swartz from escaping the conflict by changing firms.

These ethical attorney-client relationship rules are mandated under California's Rules of Professional Conduct 1.7 and 1.9.

"Swartz could have walled himself off and transferred the case file to an untainted litigation team from the many capable attorneys at Quinn. Instead, Swartz remains on the case and consequently has tainted all of Quinn," the investors claimed in their reply brief.

"Simply put, Plaintiff only has Swartz to blame for this motion."

#387649

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Bloomberg Law

Manage Newsletters

Hedge Funds Seek to Ease Short Seller Rule on Public Offerings

Sept. 16, 2025, 1:04PM PDT

Summary by Bloomberg AI

AI Generated



- A hedge fund trade group is asking the Securities and Exchange Commission to scale back short seller regulations that it says impede public offerings.
- The Managed Funds Association wants the SEC to tweak rules that prohibit hedge funds from buying shares in public offerings they recently sold short, and to revise the definition of a "restricted period".
- The group is also asking the SEC to give the industry greater clarity on the timing of pricing for offerings, as the current ambiguity makes it difficult for fund managers to participate in public offerings.

A hedge fund trade group is asking the Securities and Exchange Commission to scale back short seller regulations that it says impede public offerings, arguing the approach has kept firms needlessly on the sidelines of some stock sales.

The Managed Funds Association said the markets regulator should tweak rules that prohibit hedge funds and other investors from buying shares in public offerings they recently sold short.

While the rule is meant to prevent manipulative short selling to push down offering prices, the agency has in recent years "taken a draconian approach" to enforcing it by blocking fund managers from participating in public offerings if they sold the stock short before an offering was publicly announced, according to a letter sent Tuesday to the SEC.

The SEC didn't immediately respond to a request for comment about the letter.

The MFA asked the agency to revise the definition of a "restricted period" to mean only after an offering is announced. They also asked the SEC to give the industry greater clarity on the timing of pricing for offerings.

"It is often very difficult to secure information concerning the exact moment of 'pricing,'" the group said.

That ambiguity adds to fund managers' difficulty in figuring out if a short sale might have occurred prior to pricing, preventing them from participating, the MFA said.

The ask comes as the regulator is weighing a broader rethink of a number of rules related to short selling and stock lending. Chairman **Paul Atkins** has called to review Biden-era changes to disclosures for those activities, which a [federal appeals court remanded](#) back to the SEC for further consideration.

Atkins has also asked staff to [review Form PF](#), which requires private funds to submit confidential information to the SEC about their trading. The additional disclosures added under former SEC Chair Gary Gensler were meant to help regulators get a faster handle on activities in the private funds space that could pose or exacerbate systemic risks to the financial system.

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Bloomberg Law

Manage Newsletters

Husch Blackwell Hit With Class Suit Over 401(k) Contributions

Sept. 16, 2025, 9:58 AM PDT

A former Husch Blackwell LLP partner filed a proposed class action saying the law firm mismanaged the retirement benefits of about 400 employees by failing to promptly forward their salary withholdings to its 401(k) plan.

The law firm held onto employees' 401(k) salary deferral contributions for months at a time and used these amounts to pay the firm's operating expenses, according to a complaint filed Tuesday in the US District Court for the Western District of Missouri.

This constitutes unlawful self-dealing in violation of the Employee Retirement Income Security Act and its implementing regulations, which require employee retirement plan contributions to be deposited by the 15th business day of the month following the month in which they were withheld, former partner Tyler Paetkau alleged.

"Instead of remitting all employee contributions to the Plan in a timely manner as required by ERISA, the Husch Blackwell Defendants retained the funds for themselves and used them to pay the Firm's general operating expenses," Paetkau said in the complaint.

The six-count lawsuit, which brings ERISA claims on behalf of a proposed class of about 400 people, seeks restoration of plan losses, lost profits, and removal of plan fiduciaries who've breached their duties. The Missouri-headquartered firm and attorneys on its executive board are named as defendants.

The firm didn't immediately respond to an inquiry about the allegations.

Sanford Heisler Sharp McKnight LLP and Fell Law PC represent Paetkau and the proposed class.

The case is Paetkau v. Husch Blackwell LLP , W.D. Mo., No. 4:25-cv-00721, complaint 9/16/25 .

To contact the reporter on this story: Jacklyn Wille in Washington at jwille@bloombergindustry.com

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Husch Blackwell sued for alleged ERISA breaches over withheld 401(k) funds

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[dailyjournal.com/articles/387651-husch-blackwell-sued-for-alleged-erisa-breaches-over-withheld-401-k-funds](https://www.dailyjournal.com/articles/387651-husch-blackwell-sued-for-alleged-erisa-breaches-over-withheld-401-k-funds)

Sep. 17, 2025

A Bay Area attorney filed a class complaint in the Western District of Missouri accusing Husch Blackwell LLP and its executive board of diverting employees' 401(k) contributions into firm operating accounts for months--conduct alleged to violate ERISA's anti-inurement rule, fiduciary duties of loyalty and prudence and the statute's ban on prohibited transactions.

Charles Field of Sanford Heisler Sharp McKnight and Fell Law

A Bay Area attorney has accused Husch Blackwell LLP and its executive board of diverting employees' 401(k) contributions, holding the funds in the firm's operating accounts for months, and using them to cover routine expenses.

A class complaint, filed in the Western District of Missouri, claims the law firm's alleged conduct violates ERISA's anti-inurement rule and fiduciary duties of prudence and loyalty and constitutes prohibited transactions.

"The Husch Blackwell Defendants' breaches of fiduciary duty arise from a deliberate scheme to use their employees' retirement plan contributions for the Firm's own benefit," states the complaint that was filed by Sanford Heisler Sharp McKnight and Fell Law.

A spokesperson for Husch Blackwell could not be reached for comment. The full-service law firm has more than 1,100 attorneys in 21 cities in the United States including Los Angeles, San Diego and San Francisco.

Tyler M. Paetkau, a labor and employment specialist who was attached to the San Francisco office, brought the complaint on behalf of himself and a proposed class of roughly 400. Paetkau is no longer with the firm and referred a request for comment on the case to his attorneys.

The lawsuit seeks relief for assets allegedly diverted from timely investment.

"ERISA's fiduciary duties are the highest known in the law. Employees should be able to trust that when their employer withholds retirement plan contributions from their paycheck, those funds will go directly to their retirement savings, not into the employer's pocket," Charles Field, Sanford Heisler's co-vice chairman and counsel for plaintiff and the proposed class, said in a statement. "To divert employees' retirement plan contributions to pay for operating expenses is a total betrayal of that trust."

"Law firms should not be able to shift the financial burden of their operations onto their employees. We hope lawsuits such as Mr. Paetkau's are able to reverse and rectify such practices," echoed Bibi Fell, founder of Fell Law PC and counsel for plaintiff and the proposed class.

#387651

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Bloomberg Law

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Northeastern University, Workers Settle Retirement Plan Lawsuit

Sept. 16, 2025, 7:53 AM PDT

Northeastern University plans to settle a proposed class action by workers challenging their retirement plan's fees and investment options.

The parties reached an agreement after a full-day mediation session and plan to file paperwork for court approval by Oct. 15, they told Judge Nathaniel M. Gorton. Their three-page status report, filed Monday in the US District Court for the District of Massachusetts, didn't include details about the terms of the agreement.

The lawsuit says the Boston-based school filled its \$1.9 billion retirement plan with high-cost and underperforming investments and allowed the plan to pay excessive administrative fees

Gorton previously allowed the bulk of the case to advance, pointing out that multiple courts within the First Circuit have allowed similar cases to advance against Biogen Inc., Liberty Mutual Group, MITRE Corp., PTC Inc., and several health systems

Last year Gorton rejected the school's request to appeal that decision directly to the US Court of Appeals for the First Circuit

Groom Law Group and Nixon Peabody LLP represent Northeastern. Fair Work PC represents the plan participants.

The case is *Brookins v. Ne. Univ.*, D. Mass., No. 1:22-cv-11053, status report 9/15/25 .

To contact the reporter on this story: Jacklyn Wille in Washington at jwille@bloombergindustry.com

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Class Action

Manage Newsletters

Save Mart Cleared for \$20.5 Million Retiree Health Settlement

Sept. 17, 2025, 9:04AM PDT

Save Mart Supermarkets finalized a class settlement worth more than \$20.5 million to resolve litigation by non-union workers who said the grocer terminated their health benefits after misleading them about those available to unionized workers.

The deal covers 669 workers and retirees who said Save Mart failed to honor its promise to provide them with lifetime medical benefits. They say the deal represents about 46% of the present value of those benefits.

Magistrate Judge Robert M. Illman granted final approval to the deal and awarded class counsel 30% of the settlement amount as attorneys' fees in orders issued Tuesday in the US District Court for the Northern District of California

The plaintiffs said the company discouraged them from joining a union by promising that retiree health benefits for non-union workers would be at least as good as the benefits available under the union contract

But the company announced in 2022 that these benefits would end for non-union workers, according to the lawsuit, which advanced in 2023

The plaintiffs are represented by Lieff Cabraser Heimann & Bernstein LLP; Bolt Keenley Kim LLP; and Matern Law Group PC. Save Mart is represented by Kirkland & Ellis LLP.

The case is Baker v. Save Mart Supermarkets , N.D. Cal., No. 1:22-cv-04645, 9/16/25 .

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'A Warning': State Court Fines Lawyer \$10,000 for AI-Generated Fake Quotes in Briefs

The Second District Court of Appeal held that multiple instances of AI-fabricated case quotations in submitted briefs rendered an appeal frivolous.

September 15, 2025 at 05:50 PM By  Cheryl Miller



Photo: Julia/Adobe Stock

In an apparent first, a California state appellate panel has sanctioned a Pacific Palisades lawyer and reported him to the bar for submitting AI-generated fabrications in his opening and reply briefs.

A Second District Court of Appeal, Division Three panel wrote Friday that 21 of 23 case quotations appellant counsel Amir Mostafavi of Mostafavi Law Group included in his opening brief in [Noland v. Land of The Free](#) were fake. The reply brief contained "many more" errors, the court said.

"Although the generation of fake legal authority by AI sources has been widely commented on by federal and out-of-state courts and reported by many media sources, no California court has

addressed this issue," Presiding Justice Lee Smalley Edmon of Division Three wrote.

"We therefore publish this opinion as a warning," Smalley continued. "Simply stated, no brief, pleading, motion, or any other paper filed in any court should contain any citations— whether provided by generative AI or any other source—that the attorney responsible for submitting the pleading has not personally read and verified."

Smalley was joined in the opinion by Associate Justice Anne Egerton and Riverside County Superior Court Judge Kira Klatchko, who sat on the panel by assignment.

The court in its opinion fined Mostafavi \$10,000 and reported him to the State Bar of California for possible discipline.

In an interview Monday, Mostafavi acknowledged his briefs contained fabrication but insisted he did not know generative AI platforms can hallucinate at times, creating inaccurate and fictitious content.

"I didn't mean it. I didn't have any intent to do it," Mostafavi said, adding that he thought the court's sanction was too severe.

"They made an example out of me," he said.

Instances of lawyers getting caught including AI-generated errors in their filings go back to at least 2023, shortly after OpenAI released ChatGPT. Courts and legal regulators have warned lawyers to review AI platforms' produced content for errors, and judges have ordered those who don't to pay thousands of dollars.

The citation fabrications continue to surface, however.

Legal research fellow Damien Charlotin maintains a [database](#) that has identified 371 court cases through Sept. 12 where attorneys and pro se litigants have submitted generative AI-produced hallucinated content. The list includes 22 instances just this month.

In 2023, California's state bar issued guidance to lawyers using generative AI, warning they "must critically review, validate, and correct both the input and the output of generative AI to ensure the content accurately reflects and supports the interests and priorities of the client in the matter at hand." A state bar spokesperson said Monday that the agency has yet to publicly discipline any attorney for misuse of AI.

Mostafavi said he was new to ChatGPT when he decided to use the tool to "enhance" the writing in his opening appellate brief in a wage-and-hour case. The employment lawyer said he wrote the

original brief in Microsoft Word, checked all the citations for accuracy in that format and verified the margins and word count fell within the appellate court's requirements.

When ChatGPT produced a revised brief, Mostafavi said he reviewed the document again for compliance with court rules. He said he had never heard of AI hallucinating, so he did not check the quoted material from the cases he had cited. He then filed the document with the court.

Opposing counsel submitted a response that argued the merits of the case but did not note the inaccurate case quotations. Mostafavi then filed his reply brief, which also contained AI-generated errors. The court reached out to attorneys on both sides asking if they wanted to waive oral arguments in the case.

Shortly after that, Mostafavi said he received an order to show cause from the court, asking why he should not be sanctioned for the fabrications the court's lawyers had discovered in his briefs.

In response, Mostafavi said he created a chart comparing the brief he had written to the ChatGPT-crafted document with fake case quotations.

"I did not do this to defraud anyone," he said.

But the appellate panel said all attorneys have a "fundamental duty" to read cited authorities for accuracy. Not doing so in this case created what the court called a "frivolous appeal."

Citing Mostafavi's remorse and his insistence that inclusion of the fabricated material was unintentional, the justices settled on a "conservative" \$10,000 sanction.

The court did not award sanctions to opposing counsel, noting that they did appear to detect the hallucination and did not submit a declaration of their specific fees and costs.

Mostafavi said he has no plans to challenge the court order. He said he is devastated and "pushed on to the edge of leaving the profession."

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State Court of Appeal issues 1st opinion sanctioning lawyer for AI 'hallucinations'

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[dailyjournal.com/articles/387652-state-court-of-appeal-issues-1st-opinion-sanctioning-lawyer-for-ai-hallucinations](https://www.dailyjournal.com/articles/387652-state-court-of-appeal-issues-1st-opinion-sanctioning-lawyer-for-ai-hallucinations)

Sep. 17, 2025

More than 200 documented instances of U.S. legal decisions have involved legal hallucinations to date, according to a database maintained by a Stanford Law School researcher. Last year Chief Justice John G. Roberts warned that "a shortcoming known as 'hallucination'" in AI tools can lead to citations to nonexistent cases.

Presiding Justice Lee Smalley Edmon

A lawyer's failure to check the delusional ChatGPT output he folded into his pleadings has cost him \$10,000 in sanctions and made him the target of a state appellate panel's withering opinion of first impression regarding hallucinations in legal drafting.

Plus, he lost the case, he's being reported to the State Bar, he must show the opinion to his client and he must certify to the court that he has done so.

"We conclude by noting that 'hallucination' is a particularly apt word to describe the darker consequences of AI," wrote Presiding Justice Lee Smalley Edmon of the 2nd District Court of Appeal's Division 3.

The attorney who ran afoul of the panel, Amir Mostafavi of Mostafavi Law Group APC in Los Angeles, on Monday declared himself "devastated" by the opinion. He explained that after he drafted his appeal for a client in an employment case, he ran it through ChatGPT as a final step. "I asked it to enhance the writing, the wording, to make it look more professionally written," he said. "I didn't know such a thing as hallucinations existed.

"When it came out, I looked at the format, not the content, and then I put it in PDF and filed it."

A message seeking comment from ChatGPT's parent, OpenAI Inc., received no response as of Tuesday.

Aside from the hallucinations, Edmon and colleagues noted, the appeal in question concerned an affirmance of summary judgment in an otherwise unremarkable case that would ordinarily never have led to a published opinion.

Wrote Edmon, "The AI tools [Mostafavi used] created fake legal authority--sometimes referred to as AI 'hallucinations'--that were undetected by plaintiff's counsel because he did not read the cases the AI tools cited."

And although the misuse of AI in legal drafting has gotten a lot of attention, Edmon added, no California court has addressed this issue.

"We therefore publish this opinion as a warning." *Noland v. Nazar et al.*, B331918 (Cal. App 2nd, filed June 25, 2025).

Lawyers have been warned before. "AI hallucinations are here to stay," emailed law professor Daniel E. Ho of Stanford Law School, the co-author of several studies on the reliability of leading AI legal research tools.

More than 200 documented instances of U.S. legal decisions have involved legal hallucinations to date, according to a database maintained by a researcher Ho endorses.

Added Ho: "Recent advances (such as retrieval augmented generation and agentic systems) can reduce hallucinations, but our research shows that widely marketed tools must always be checked by lawyers, as there is no known solution. That's fundamentally what the appeals court got right. "

The panel wrote that nearly all the quotations in Mostafavi's briefing were fabricated, even though most of the cases he cited do exist. Even so, "many of the cases plaintiff cites do not support the propositions for which they are cited or discuss other matters entirely, and a few of the cases do not exist at all."

One 2011 case, *Schimmel v. Levin*, 195 Cal. App. 4th 81, appeared in Mostafavi's briefing to discuss abuse of the summary judgment procedure and the legislative purpose behind Section 437c(f)(2) of the Civil Code, the panel said, adding, "In fact, *Schimmel* does not contain a single reference to either summary judgment or section 437c."

Describing the consequences of such fakery, the panel wrote, "AI hallucinates facts and law to an attorney, who takes them as real and repeats them to a court. This court detected (and rejected) these particular hallucinations. But there are many instances--hopefully not in a judicial setting--where hallucinations are circulated, believed, and become 'fact' and 'law' in some minds. We all must guard against those instances."

When it scrutinized Mostafavi's briefing, the appellate court spotted the fabrications. Then it sent him an order to show cause why he should not be sanctioned and scheduled a hearing on the issue.

Mostafavi's opposing counsel, Michael Yadegari, acknowledged that he was fooled by the bogus quotations from real cases that infected Mostafavi's appeal. Then the appellate panel sent him a copy of the order to show cause it had issued to Mostafavi

"I was too busy writing my own appeal briefs, so I never thought to check his cites," Yadegari said. "When I got the order, I was shocked. I was working my ass off, and he was using a robot to write shit."

Because Yadegari failed to detect the fabricated citations, the panel declined to order sanctions payable to him.

Although it's a case of first impression in California state court, it's hardly the first-time hallucinations have marred litigation locally. In a federal civil matter currently pending in the Central District, fake cases and fabricated legal language were found to have appeared in briefs filed by Hagens Berman Sobol Shapiro LLP.

That firm last week said the briefs were drafted by co-counsel outside the firm. And Hagens also faulted opposing counsel at Skadden, Arps, Slate, Meagher & Flom LLP for delaying notification that they had discovered the fake material. *N.Z. et al. v. Fenix International Ltd. et al.*, 8:24-cv-01655 (C.D. Cal., filed July 29, 2024).

In August, a federal judge in Arizona imposed severe sanctions on a lawyer who filed an opening brief replete with non-existent or inapposite or misquoted cases for a Social Security claimant. The brief's deficiencies were "consistent with artificial intelligence generated hallucinations," the judge wrote. *Mavy v. Commissioner of Social Security Administration*, 2:25-cv-00689 (D. Ariz., filed Feb. 28, 2025).

The judge removed the lawyer from the case, revoked her pro hac vice status, struck her opening brief, reported her to her bar association in Washington state, required her to write letters to three judges to whom she attributed fictitious cases and, going forward, ordered her to send a copy of his order to every judge presiding over any case in which she is counsel of record.

Last year Chief Justice John G. Roberts warned in his annual report that "a shortcoming known as 'hallucination'" in AI tools can lead to citations to nonexistent cases.

"Always a bad idea," the chief remarked dryly.

Some judges move beyond fines to keep lawyers' AI errors in check



reuters.com/legal/government/some-judges-move-beyond-fines-keep-lawyers-ai-errors-check-2025-09-16

Sara Merken

September 16, 2025

A message reading "AI artificial intelligence", a keyboard, and robot hands are seen in this illustration taken January 27, 2025. REUTERS/Dado Ruvic/Illustration [Purchase Licensing Rights, opens new tab](#)

- Judges seek creative deterrents for AI 'hallucinations' in court filings
- Lawyers ordered to report conduct to other judges, clients
- "Modest fines" aren't enough, Alabama judge says

Sept 16 (Reuters) - As [more](#) and [more](#) phony case citations and other artificial intelligence errors show up in legal filings, some judges are experimenting with alternatives to traditional court sanctions to deter lawyers from relying on chatbots and other AI tools without checking their work.

After two defense lawyers at law firm Cozen O'Connor admitted to filing a document with AI-generated material in Nevada state court, District Judge David Hardy in Washoe County offered them a choice. They could pay \$2,500 apiece in monetary sanctions and face removal from the case and referral to the state bar. Or, the judge [ruled, opens new tab](#) last week, they could resolve the issue by writing to their former law school deans and bar officials explaining what happened and volunteering to speak on topics like AI and professional conduct.

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Cozen represents internet services provider Uprise in the civil case, which stemmed from a failed fiber optic project. The order came after Hardy identified at least 14 case citations submitted by the lawyers that appeared fictitious, and others that were misquoted or misrepresented.

The attorneys and Cozen O'Connor apologized to the judge and explained that one of the lawyers, associate Daniel Mann, used ChatGPT to help draft and edit the document and accidentally filed an early, uncorrected draft.

Mann has been terminated from the firm, according to a filing. He and the other Cozen lawyer, Jan Tomasik, did not immediately respond to requests for comment.

A Cozen spokesperson said the firm doesn't comment on employee status. The firm said it has a "strict and unambiguous" AI policy that includes a ban on publicly-available AI tools for client work, technology training and a requirement that lawyers verify their work.

"We take this responsibility very seriously and violations of our policy have consequences," the firm said. Uprise did not immediately respond to a request for comment.

Judges have [issued warnings and sanctions](#), including hefty fines, fee awards to opposing counsel and disciplinary referrals, in [dozens of cases](#) against lawyers whose filings contained made-up citations, misquoted material and other so-called "hallucinations" produced using AI.

Professional conduct rules don't bar lawyers from using AI, but attorneys in every state can be disciplined for failing to vet court submissions.

"There's this increased frustration by many judges that these continue to occur and proliferate," said Gary Marchant of Arizona State University's law school, who gives talks to judges and lawyers about AI. Judges may be "looking for creative ways to really, not only punish the lawyers involved, but to send a strong message that would hopefully deter others from being so sloppy."

Hardy isn't the first judge to try new approaches. In at least two cases, courts have required lawyers to alert judges whom they [falsely cited](#) as authors of non-existent cases. In August, an Arizona federal judge said warning her counterparts about the AI hallucination would "minimize potential harms of those fictitious cases to those jurists." The judge also removed the lawyer from the case.

In another recent case, Alabama U.S. District Judge Anna Manasco not only reprimanded three lawyers at law firm Butler Snow for misusing AI and disqualified them from the case she was overseeing, but also [ordered](#) them to share a copy of her decision with their clients and the judges and opposing counsel in their other cases pending anywhere in the country, and also to every lawyer at Butler Snow.

Fabricating legal authority "demands substantially greater accountability than the reprimands and modest fines that have become common as courts confront this form of AI misuse," Manasco said in the July [order](#), [opens new tab](#), "As a practical matter, time is telling us – quickly and loudly – that those sanctions are insufficient deterrents."

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Litigation

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Anthropic Tries to Keep Reddit Scraping Row in Federal Court (1)

Sept. 17, 2025, 7:39 AM PDT; Updated: Sept. 17, 2025, 8:44 AM PDT

Summary by Bloomberg AI

AI Generated



- Reddit Inc.'s lawsuit against Anthropic PBC implicates federal copyright law and must remain before a federal court, Anthropic said.
- Anthropic wrote that Reddit's claims are a "quintessential" copyright claim, but Reddit "artfully plead its copyright-like claims in contract and tort" because it doesn't own the copyrights to user content.
- A Reddit spokesperson said the case "isn't about copyright at all", and that Anthropic is trying to "distract from their misconduct" by claiming the lawsuit is about copyright.

Reddit Inc.'s lawsuit against Anthropic PBC implicates federal copyright law and must remain before a federal court, the AI developer said.

Reddit's allegation that Anthropic scraped the platform's user posts to train its large language model is a "quintessential" copyright claim—but because Reddit doesn't own the copyrights to user content, it "artfully plead its copyright-like claims in contract and tort," Anthropic wrote Tuesday in an opposition to Reddit's motion to send the the action back to state court from the US District Court for the Northern District of California.

"These mere labels do not and cannot change the gravamen of Reddit's suit or the proper forum for it," Anthropic wrote.

Reddit's lawsuit, filed in June in San Francisco Superior Court, includes claims of breach of contract, unjust enrichment, tortious interference, and unfair competition. Anthropic removed the case to federal court in July.

In its motion to remand the case earlier this month, Reddit insisted its claims aren't completely preempted by US copyright law because each of them contains an extra element that isn't required for a copyright claim.

Anthropic shot back Tuesday that there's "no qualitative difference" between the copyright and state law claims. Although Reddit said complete preemption is "rare," Anthropic said several courts including California's Northern District have found such claims "completely preempted where they do not implicate rights that are qualitatively different from those protected by the Copyright Act."

"This case isn't about copyright at all," a Reddit spokesperson said in an emailed statement Wednesday. "Anthropic is claiming that (and attempting to mischaracterize our complaint) to distract from their misconduct and the point of this lawsuit: Anthropic is mistaken if it thinks it can breach Reddit's terms and ignore our users' privacy rights with impunity."

Morrison & Foerster LLP and Conrad Metlitzky Kane LLP represents Anthropic. Quinn Emanuel Urquhart & Sullivan LLP represents Reddit.

The case is Reddit Inc. v. Anthropic PBC , N.D. Cal., No. 3:25-cv-05643, opposition filed 9/16/25 .

(Updates with Reddit comment in sixth paragraph.)

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Insight

Anthropic's AI Training Settlement Offers Tech Sector an IP Map

Sept. 17, 2025, 1:30 AM PDT

Summary by Bloomberg AI

AI Generated



- The artificial intelligence industry felt a seismic moment when Anthropic PBC agreed to pay \$1.5 billion to settle the largest copyright lawsuit in US history, involving roughly 500,000 works that were allegedly pirated for AI training.
- The proposed settlement offers crucial insights into how the tech sector must navigate intellectual property rights, and sets a practical framework for how AI companies must approach training-data acquisition.
- The settlement structure reflects sophisticated legal thinking, preserving authors' rights while allowing Anthropic to move forward with a clean slate, and may accelerate development of a mature licensing market for AI-training data.

The artificial intelligence industry felt a seismic moment earlier this month when Anthropic PBC agreed to pay \$1.5 billion to settle the largest copyright lawsuit in US history.

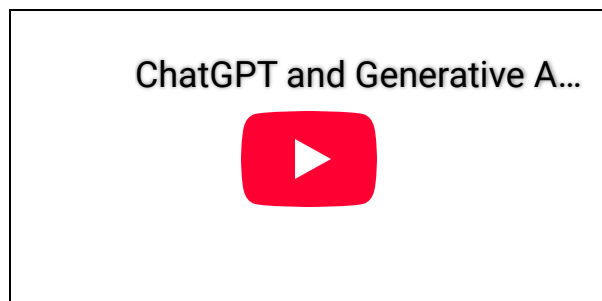
While Judge William Alsup initially denied the proposed agreement as “nowhere close to complete,” the landmark deal—involving roughly 500,000 works that were allegedly pirated for AI training—offers crucial insights into how the tech sector must navigate intellectual property rights.

Why It Matters

The proposed Anthropic settlement is more than a monumental payout—it sets a practical framework for how AI companies must approach training-data acquisition.

Alsup had ruled in June that using copyrighted books to train AI models constitutes transformative fair use but said that downloading pirated copies from shadow libraries violates copyright law. The ruling drew a nuanced distinction: How AI companies acquire data matters as much as what they do with it, if not more.

Although Alsup's initial rejection focused on procedural concerns, including undefined claim processes, the underlying settlement structure remains instructive. With similar copyright lawsuits pending nationwide against AI developers, including *Disney Enterprises v. Midjourney Inc.* and *Kadrey v. Meta Platforms Inc.*, this framework plots a potential roadmap for resolution.



WATCH: Will copyright law stop generative AI?

Settlement Structure

Under the proposed agreement's principal terms, Anthropic would pay about \$3,000 per work to the authors, destroy all copies of works obtained from pirate libraries, and crucially receive only a limited release covering past training behavior.

The company would gain no license for future training and thus remain exposed to potential lawsuits over AI-generated outputs that might infringe existing works.

This structured approach reflects sophisticated legal thinking. By limiting the release to historical conduct, the settlement would preserve authors' rights while allowing Anthropic to move forward with a clean slate—if it legitimately sources training data.

Economic Reality

The proposed settlement reveals the harsh economic calculus facing AI developers who rely on shady data sources.

Anthropic could have faced statutory damages up to \$150,000 per work, potentially exceeding \$1 trillion in total exposure, so the \$3,000-per-work settlement represents a massive discount. But it would come at the cost of extensive litigation and existential business risk.

AI companies still in development or scaling phases should invest in legitimate data acquisition upfront. The cost of negotiating licensing agreements or buying content legally pales in comparison with the litigation exposure and reputational damage of using pirated or otherwise illicit training materials.

Companies that proactively establish legitimate data pipelines will avoid Anthropic's predicament entirely.

Licensing Evolution

Perhaps most significantly, the settlement—if approved—could accelerate development of a mature licensing market for AI-training data.

Industry observers are already drawing parallels to how the music industry evolved after Napster, ultimately creating sustainable licensing frameworks that compensated rights holders while enabling technological innovation.

We'll likely see the emergence of collective licensing organizations, similar to performance rights organizations in the music industry, that can aggregate content efficiently and negotiate blanket licenses for AI training.

This development would help both sides, as AI companies gain legal certainty and scalable access to high-quality content while creators receive compensation and maintain control over their works.

Practical Takeaways

For attorneys advising AI companies, several considerations emerge from both the proposed settlement and its initial rejection:

Due diligence is paramount. Document all data sources meticulously and maintain clear chain-of-custody records. The court's focus on how data was acquired means that procurement methods will face intense scrutiny in future litigation.

Fair use remains viable but narrow. Alsup's ruling confirms that AI training can qualify as transformative fair use, but only when the underlying materials are lawfully obtained. This creates a safe harbor for companies that invest in proper licensing.

Class action exposure is real. The potential for massive statutory damages poses an existential risk to companies that rely on questionable data sources.

Looking Ahead

Whether or not this specific settlement gains approval, it fundamentally signals how the landscape is changing.

Caution should come to companies intending to hide behind fair use while using pirated content. The path forward requires investment in legitimate data acquisition, proactive licensing negotiations, and careful documentation of all training materials.

For an industry built on learning from existing creative content, that shouldn't be viewed as a limitation. It should be the foundation for sustainable innovation that helps both creators and technologists.

The case is *Bartz v. Anthropic PBC*, N.D. Cal., No. 24-cv-5417, hearing 9/8/25.

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Write for Us: Author Guidelines

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Google Faces New Antitrust Claims Alleging AI Search Training 'Misappropriation'

Plaintiff Penske Media Corp. "seeks to hold Google responsible for the millions of dollars of harm it is causing and illicit profits it is reaping by misappropriating PMC's unique and valuable works, and to protect the public's continued access to high-quality and trustworthy online information," Susman Godfrey alleged in a complaint filed on behalf of PMC against Google.

September 16, 2025 at 05:59 PM By 



Susman Godfrey office in Manhattan, New York. Photo: Ryland West/ALM

The owner of Rolling Stone, Variety and other digital properties has filed a lawsuit alleging Google uses its unlawful internet search monopoly to train generative artificial intelligence and display Google AI overviews without third-party publishers' permission.

Susman Godfrey on behalf of plaintiff Penske Media Corp. seeks treble damages and a court order to end Google's alleged misappropriation of digital publishers' content in violation of the Sherman Act and common law principles of unjust enrichment.

“The law does not permit Google’s systematic anti-competitive conduct,” counsel for PMC alleged in a [101-page complaint](#) filed Sept. 12 in the U.S. District Court for the District of Columbia.

“By this action, PMC seeks to hold Google responsible for the millions of dollars of harm it is causing and illicit profits it is reaping by misappropriating PMC’s unique and valuable works, and to protect the public’s continued access to high-quality and trustworthy online information,” the plaintiff alleged in the complaint.

The case is assigned to U.S. District Judge Amit P. Mehta of the District of Columbia, who in [August 2024 ruled](#) Google violated the Sherman Act by monopolizing online search.

PMC cites Mehta’s liability ruling in its complaint alleging Los Angeles-based PMC has “suffered an antitrust injury as a result of Google’s illegal monopoly maintenance in the General Search Services market.”

According to the allegations in the complaint, Google scans third-party content by crawling the web and forces third-party publishers to “acquiesce to this misappropriation of their content” that Google leverages to display AI overviews and featured snippets in search engine results pages.

Mehta in a [Sept. 2 decision](#) ordered behavioral remedies but rejected the U.S. Department of Justice’s proposed divestiture solution in Google’s search engine monopoly case, ruling the government overreached in seeking a forced sale of Google’s Chrome web browser and Android mobile operating system.

In addition to citing Mehta’s liability ruling, PMC’s complaint also mentions the [advertising monopoly case](#) where U.S. District Judge Leonie M. Brinkema of the Eastern District of Virginia in April found Google liable for alleged Sherman Act violations in the ad tech markets.

“Google itself recently admitted in briefing to the [U.S.] District Court for the Eastern District of Virginia that ‘today, the open web is already in rapid decline,’” counsel for PMC wrote in the complaint. “Google is driving that decline, by siphoning referral traffic with AI Overviews.”

Mountain View, California-based Google filed a “corrected memorandum” on Sept. 8, arguing “open-web display advertising is already in rapid decline” and that the DOJ’s proposed divestiture remedies for ending Google’s alleged monopolization of the ad tech markets [would only make matters worse for publishers](#).

“With AI Overviews, people find Search more helpful and use it more, creating new opportunities for content to be discovered,” a Google spokesperson said Tuesday in a statement. “Every day, Google sends billions of clicks to sites across the web, and AI Overviews send traffic to a greater diversity of sites. We will defend against these meritless claims.”

Counsel as of Tuesday have not entered an appearance for Google in the *PMC* case.

This action was surfaced by Law.com Radar, which delivers real-time alerting on new litigation across more than 2,900 state and federal courts. [Click here](#) to get started and be first to act on opportunities in your region, practice area or client sector.



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Bloomberg Law

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Meta Loses Bid to Overturn Menstrual-Data Wiretapping Verdict

Sept. 16, 2025, 10:33AM PDT

Summary by Bloomberg AI

AI Generated



- Judge James Donato denied Meta's motion for judgment as a matter of law, finding that the jury had sufficient evidence to determine that Meta violated section 632 of the California Invasion of Privacy Act.
- Donato also denied Meta's motion to decertify the class and its motion for a new trial, which were based on what Meta said were improper jury instructions and evidentiary rulings.
- Meta is now on the hook for a potentially hefty damages award to a state-specific class consisting of every user of the app from between late 2016 and early 2019, with the California Invasion of Privacy Act carrying a \$5,000 penalty per violation.

Meta Platforms Inc. failed to toss out a jury's finding that it violated California privacy law by secretly recording the sensitive menstrual health data of millions of people who used the popular period-tracking app Flo.

Judge James Donato of the US District Court for the Northern District of California denied Meta's motion for judgment as a matter of law in a Monday order, finding that the jury had sufficient evidence to determine that the social-media company violated section 632 of the California Invasion of Privacy Act when it gathered the personal information of Flo users.

Donato's ruling comes six weeks after the jury ruled against Meta in the first major privacy verdict against a big-tech company. That verdict was followed a month later by a \$425.7 million verdict against Google LLC in a separate privacy lawsuit over the company's collection of data from users after they had indicated they didn't want their data to be tracked.

Donato also denied Meta's motion to decertify the class and its motion for a new trial on the basis of what it said were improper jury instructions and evidentiary rulings.

Meta is now on the hook for a potentially hefty damages award to a state-specific class consisting of every user of the app from between late 2016 and early 2019. The California Invasion of Privacy Act carries a \$5,000 penalty per violation. Donato will determine damages in the coming months.

Flo Health Inc. reached an eleventh-hour settlement with the plaintiffs the day before the case was sent to the jury, and Google, a co-defendant in the lawsuit, settled weeks before the the start of the two-week-long trial. Another co-defendant, Flurry Inc., agreed to pay \$3.5 million in a settlement earlier this year.

Meta argued in its post-trial motion that the plaintiffs didn't provide evidence to support the elements of its CIPA claims, but Donato disagreed.

The jury had enough evidence to conclude that Meta eavesdropped on their communications, used an electronic recording device as required under CIPA, intended to record their information, didn't have the plaintiffs' consent, and that the communications were "confidential," Donato said.

The company's motion for decertification of the class failed because it was nothing more than an improper attempt to seek reconsideration of the original order certifying the class, and it wasn't based on evidence admitted at trial or on new facts or law that might warrant reconsideration, he said.

Labaton Keller Sucharow LLP, Lowey Dannenberg PC, and Spector Roseman & Kodroff PC represent the plaintiffs and the class. Latham & Watkins LLP and Gibson, Dunn & Crutcher LLP represent Meta.

The case is *Frasco v. Flo Health Inc.*, N.D. Cal., No. 3:21-cv-00757, order 9/15/25 .

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Class Action

Manage Newsletters

NCAA Gets Final Approval of \$49.3 Million Coach-Pay Settlement

Sept. 17, 2025, 6:26 AM PDT

Summary by Bloomberg AI

AI Generated



- The NCAA won final approval for a \$49.3 million deal to settle antitrust claims that it conspired to avoid paying Division I college volunteer baseball coaches.
- The average class member will receive \$36,000, which will be allocated based on the number of years worked and the school for which each member worked under the deal.
- The case is among dozens of lawsuits brought by plaintiffs claiming the NCAA's various rules and bylaws are anticompetitive.

The NCAA won final approval for a \$49.3 million deal to settle antitrust claims that it conspired to avoid paying Division I college volunteer baseball coaches, freeing the organization from litigation dating to 2022.

The average class member will receive \$36,000, which will be allocated based on the number of years worked and the school for which each member worked under the deal approved by Judge William B. Shubb of the US District Court for the Eastern District of California in a Tuesday order.

The five-figure payout "represents a strong result for the class," Shubb said.

At issue in the case is a since-repealed NCAA bylaw that prevented volunteer coaches from being paid since the rule was enacted in 1992.

Plaintiffs Taylor Smart and Michael Hacker sued in 2022, alleging the NCAA fixed the compensation of an entire category of college baseball coaches at zero.

Smart was a volunteer coach at the University of Arkansas from 2018 to 2020. Hacker volunteer-coached at the University of California, Davis from 2019 to 2021.

The coaches worked alongside and performed the same job duties as paid coaches, yet were barred from receiving salaries, insurance, housing, or other benefits due to the NCAA's bylaw, they claimed.

The case is among dozens of lawsuits brought by plaintiffs, including former and current athletes, claiming the NCAA's various rules and bylaws are anticompetitive.

In June, the NCAA gained final approval for a \$2.8 billion settlement designed to quell future suits over name, image, and likeness.

In his order, Shubb also approved \$14.8 million in attorneys' fees and awarded Smart and Hacker \$7,500 each.

Shubb also oversees a similar suit in which he granted a group of volunteer coaches, excluding baseball coaches, class certification.

The plaintiffs are represented by Korein Tillery LLC. The NCAA is represented by Munger Tolles & Olson LLP.

The case is Smart v. Nat'l Coll. Ath. Ass'n , E.D. Cal., No. 2:22-cv-02125, 9/16/25 .

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Bloomberg Law

Manage Newsletters

Tesla Settles Another Fatal Crash Suit Ahead of Jury Trial (1)

Sept. 16, 2025, 4:05 PM PDT

Summary by Bloomberg AI

AI Generated



- Tesla Inc. reached a confidential deal to resolve a lawsuit by the family of a teenager who was killed in a 2019 California crash involving a Model 3 on Autopilot.
- The settlement marks the latest move by the electric-vehicle maker to avoid a jury trial over a fatal wreck, and comes after the automaker has struck secret settlements in several other cases that blamed defective technology for deadly accidents.
- Tesla is challenging a \$200 million verdict imposed by a federal jury in Miami, and faces three more trials over fatal Autopilot crashes in the next six months in California, as well as other lawsuits and an administrative complaint by California's Department of Motor Vehicles.

Tesla Inc. reached a confidential deal to resolve a lawsuit by the family of a teenager who was killed in a 2019 California crash involving a Model 3 on Autopilot.

The settlement disclosed in court filings marks the latest move by the electric-vehicle maker to avoid a jury trial over a fatal wreck. A trial was scheduled to start in about a month in Alameda County Superior Court.

The accord comes after after the automaker has struck secret settlements in several other cases that blamed defective technology for deadly accidents. Tesla prevailed in two California trials in 2023 over Autopilot crashes, but suffered its [first significant setback](#) in July when a federal jury in Miami found the company partially responsible for a fatal collision with a parked SUV and imposed \$200 million in punitive damages. Tesla is challenging the verdict.

In the most recently settled case, Benjamin Maldonado and his 15-year-old son Jovani were driving home from a soccer tournament in their Ford Explorer on Interstate I-880 in Alameda County. Traffic was starting to slow, and Maldonado activated his blinker before moving right. Seconds later, his car was struck from behind by a Tesla Model 3 using Autopilot driver-assistance software and Jovani was ejected from the passenger seat and died.

Representatives of Tesla and lawyers for the family didn't immediately respond to requests for comment.

Before Impact

Data from the Tesla shows that, in the moments before impact, the driver did not have his hands on the steering wheel and was traveling approximately 70 miles (113 kilometers) per hour, according to the lawsuit filed by the Maldonados.

The family claims defects in the Tesla's driver-assistance software caused the car to fail to react to conditions on the roadway. They also accused the company of misrepresenting the self-driving capabilities of its cars and failing to install key safeguards to warn drivers to remain focused on the road. Those allegations are a common feature in several suits against Tesla across the country.

Tesla had argued in court filings that its technology functioned as designed and that there was no evidence that the Model 3 driver's decision to take his hands off the wheel was influenced by public statements made by Chief Executive Officer Elon Musk that Teslas can drive themselves.

The company has recently been settling crash suits despite Musk previously claiming an aversion to settling "unjust" cases in a 2019 social media post.

Aaron Davis, a Florida-based personal injury lawyer, said there's no downside for Musk to say he doesn't like to settle.

"Ultimately, the decisions that he's going to make through his company, or that his company makes on his behalf, are going to be based on the facts of any individual cases," Davis said.

Model X

In a case that [settled](#) in April 2024 just before trial, Tesla was set to face off against the family of a driver whose Model X veered off a California freeway into a highway barrier in 2018 while he was playing a video game on his phone and relying on Autopilot.

The next month, Tesla reached a [deal](#) days before a trial with the family of a Model S passenger who died in a 2016 wreck that the company had argued was solely the fault of the driver, who police had said was driving with a blood-alcohol level more than twice the legal limit.

Just before the Miami trial got under way, Tesla quietly [settled](#) another case over a 2019 fatal crash in Florida, in which a Model 3 driver using Autopilot collided with a tractor-trailer crossing a Florida highway.

It is not uncommon for car manufacturers to settle crash cases rather than take their chances with a jury. In fact, the vast majority of all personal injury cases never reach a trial. Several cases against Tesla have been dropped by plaintiffs or dismissed by judges.

Stock Battered

Musk has been working to win back [investor confidence](#) after the company's stock was battered, first by his close affiliation with President Donald Trump, and then by his dramatic falling out with the president and declining sales. Musk has made clear that Tesla's future hinges on autonomous driving and the company is in the midst of launching a robotaxi business.

Tesla faces three more trials over fatal Autopilot crashes in the next six months in California. It's also set to go to trial in Houston in November over a case alleging that five police officers were severely injured on the side of a freeway when a Tesla on Autopilot plowed into a parked squad car at 70 mph.

The company is also fighting an [administrative complaint](#) by California's Department of Motor Vehicles accusing Tesla of falsely marketing its driver-assistance software as more capable than it really is. A hearing was held in July but no ruling was immediately issued.

Other Tesla crash settlements disclosed in court filings include:

A woman who had both legs amputated after she was crushed in 2021 loading groceries in a Maryland parking lot by a Model 3 that allegedly detected her presence with its forward collision warning system but failed to stop accelerating or deploy emergency braking.

A man who claimed Autopilot failed to perceive a merging vehicle in dense traffic on the Long Island Expressway in 2017, causing his Model X to strike vehicles in the next lane when trying to avoid accelerating into the vehicle in front.

A man who died from blunt-force trauma and burns in 2021 when his Model Y allegedly suddenly accelerated, went off the road, ran into a pillar at an Ohio gas station and burst into flames.

A woman who suffered a brain injury 2019 when her Model 3 airbags allegedly failed to deploy in a Maryland highway guardrail crash.

The case is Escudero vs. Tesla, RG21090128, Superior Court of California (Alameda County)

(Updates with allegations in lawsuit starting in sixth paragraph.)

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Tesla under investigation after parents say faulty door handles trapped their kids in the back



[courthousenews.com/tesla-under-investigation-after-parents-say-faulty-door-handles-trapped-their-kids-in-the-back](https://www.courthousenews.com/tesla-under-investigation-after-parents-say-faulty-door-handles-trapped-their-kids-in-the-back/)

Associated Press

September 16, 2025

The Tesla company logo is seen on the hood of an unsold vehicle at a dealership. (AP Photo/David Zalubowski, File)

(AP) — Federal auto safety regulators opened an investigation Tuesday into possible defects in Tesla doors that have reportedly left parents with children trapped in the back seat and forced to break windows to get them out.

The National Highway Traffic Safety Administration said the preliminary probe is focused on 2021 Tesla Model Ys after receiving nine reports of electronic door handles not working possibly due to low battery voltage.

The company run by billionaire Elon Musk has installed manual door releases inside the vehicles but NHTSA noted that a child may not be able to reach or know how to operate the releases. In four cases, the parents had to break the windows to get inside.

The investigation into Tesla's most popular model comes after numerous reported incidents in recent years of other problems with opening Tesla doors, sometime trapping drivers in burning vehicles after accidents and a loss of power.

In April, a college basketball recruit said he was [“fighting time”](#) trying to get out of his Tesla Cybertruck that had caught fire after he had crashed into a tree and was unable to get the doors open. The University of Southern California player, Alijah Arenas, who was induced into a temporary coma after the accident, said he stayed alive by dousing himself with a water bottle as smoke filled the vehicle.

Last year, relatives of the driver of a Tesla Model 3 who was trapped in his car and burned beyond recognition sued Musk's company for negligence and fraud for failing to fix what they called a design flaw in the doors despite what they said were 200 fires involving its cars. The case is pending in Los Angeles Superior Court.

NHTSA said the investigation is only focusing on the operability of the electronic door locks from outside of the vehicle, not inside, as that's the only instance in which there is no manual way to open the door. But it also said it will continue to monitor reports of people stuck on the inside — what it calls “entrapment” — and will take further action as needed.

The current agency investigation covers approximately 174,300 of the midsize SUVs.

The agency said the incidents appear to occur when the electronic door locks receive insufficient voltage from the vehicle. It said that available repair invoices indicate that batteries were replaced after such incidents took place. Of those who reported incidents, none saw a low voltage battery warning before the exterior door handles became inoperative.

NHTSA said that its preliminary evaluation will look at the scope and severity of the condition, including the risks that come from the conditions that have been reported to them.

The agency's investigation will also assess the approach used by Tesla to supply power to the door locks and the reliability of the applicable power supplies.

Tesla is also under investigation by NHTSA for a "summon" technology that allows drivers to tell their cars to drive to their location to pick them up, a feature that has reportedly led to some fender benders in parking lots. A [probe into driver-assistance features](#) in 2.4 million Teslas was opened last year after several crashes in fog and other low-visibility conditions, including one in which a pedestrian was killed. Another investigation was launched by NHTSA in August looking into why Tesla apparently [has not been reporting crashes promptly](#) to the agency as required by its rules.

Musk is under pressure to show that the latest advances in its driver-assistance features have not only fixed such reported glitches but have made them so good drivers don't even need to look out the window anymore. He recently promised to [put hundreds of thousands of such self-driving Tesla cars and Tesla robotaxis](#) on roads by the end of the next year.

That effort has become more urgent as [a plunge in Tesla sales](#) that began earlier this year shows [little sign of abating](#). Musk has angered the traditional environmentally conscious Tesla customer base by supporting U.S. President Donald Trump and far-right politicians in Europe and their policies. On Saturday, he told [protestors](#) at an anti-immigration rally in London that "violence is coming to you" and "you either fight back or you die."

Tesla stock rose more than 2% to \$419.25 in afternoon trading Tuesday following a jump the day before on news Musk [had bought \\$1 billion worth of shares](#).

—

By MICHELLE CHAPMAN and BERNARD CONDON AP Business Writers

Categories / [Business](#), [Consumers](#)

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Securities

KPMG Dismissed Red Flags at Regional Banks, Senate Review Finds

Sept. 17, 2025, 2:00 AM PDT

KPMG LLP dismissed financial warning signs at Silicon Valley Bank and two other regional banks before they collapsed in 2023, Senate Democrats found in a new report detailing what they see as critical gaps in auditor oversight.

KPMG issued clean audit reports for Silicon Valley Bank, Signature Bank, and First Republic Bank in the weeks before the lenders failed as rising interest rates slashed the value of capital the banks had available to cover steep customer withdrawals. Auditors told congressional investigators that it wasn't their job to assess the lenders' risky business strategies, according to the report that Democrats on a Senate Homeland Security and Governmental Affairs subcommittee released Wednesday.

KPMG took a narrow view of which threats could hit the banks' financial statements, according to the lawmakers' report. Lawmakers also challenged the firm's decades-long tenure working with the three banks and found that a revolving door of employees between them strained the auditor's objectivity.

KPMG called the report "a misguided and erroneous opinion that stands as an outlier from the multiple investigations that have been conducted on these banks, none of which point to an auditor role in the failures." The firm, in a statement, said it adhered to US audit standards and stood by its audit opinions.

The report acknowledges that none of the regulator reviews of the bank failures suggested that the firm played a role. The lawmakers did not judge whether KPMG met US audit requirements in its audits of the three banks.

The congressional report recommended a slate of proposals to ensure the audit industry responds to market and governance risks that could sink stock values and topple companies, such as requiring companies to periodically hire a new auditor.

KPMG ignored signs that the three regional banks were "unstable" before issuing their audit opinions, Sen. Richard Blumenthal of Connecticut, the subcommittee's top Democrat, said in a statement. The report "exposes KPMG's willful blindness and stresses that significant reforms to the auditing industry are needed" to protect consumers, he said.

In the short-term, the Democrats' report is unlikely to result in any meaningful action by the industry's regulator, the Public Company Accounting Oversight Board. The Republican-led Congress attempted to dismantle the board earlier this year and the Enron-era regulator remains in limbo as the Securities and Exchange Commission prepares to name a new slate of board members.

Audits Under Spotlight

The report scrutinized KPMG's audits for the three banks. Among the findings, the firm didn't discuss interest rate risks with the board of Silicon Valley Bank despite auditors raising those risks among themselves.

KPMG also ignored ongoing risks as it evaluated Silicon Valley Bank's ability to remain in business, the report said. These included a \$15 billion drop in value for certain long-term assets, the departure of the bank's risk officer, regulator concerns about the bank's governance and risk management, and a steep drop in its stock price.

The auditor also didn't share with First Republic's board of directors concerns about assumptions underpinning the lender's assessment that it would continue as a viable business over the next year, according to the report.

KPMG didn't investigate whistleblower allegations of fraud involving Signature's commercial real estate portfolio, among other problems that the report raised.

The report also described a revolving door between the firm and the three banks. Ten leaders and employees of the banks previously worked for KPMG, including the CEOs of First Republic and Signature banks. One KPMG staff member assigned to work on First Republic's audit had previously worked at the bank.

KPMG, in its statement, argued that the lawmakers' report suggests auditors should go beyond what US audit rules require, potentially undermining the role of regulators, corporate management, and corporate boards in countering risks.

Bank regulators cited mismanagement as the cause of the failures of SVB and Signature Bank and blamed First Republic's management strategies. Reports from the regulators did not mention KPMG.

KPMG has rolled out a series of reforms meant to improve the quality of its audits after struggling for years to meet basic standards. The firm touted its latest published regulatory inspection after achieving its best outcome in 15 years.

New Tools Proposed

Congress should mandate that companies rotate auditors to guard against client relationships that could influence an auditor's objectivity, the Democrats said. Currently, lead audit partners must step down after five years but the firm itself can continue working with the same company to vet its accounting for decades.

The Democrats recommended that lawmakers give the audit board other new tools to hold auditors accountable. For example, Congress should create a whistleblower office at the PCAOB to reward tipsters who provide details about auditor wrongdoing, the report said.

In addition, active enforcement cases involving audit violations should be made public sooner, the report from the Permanent Subcommittee on Investigations said.

When Congress created the PCAOB in 2002, lawmakers opted to keep enforcement probes and preliminary charges confidential—a move that protects auditor reputations if charges were dropped or dismissed. But investigations and appeals can leave the public in the dark for years after problems first surface.

“This deprives investors, audit committees, and corporate boards of critical information needed to evaluate auditor performance and accountability,” the report said.

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<https://www.wsj.com/articles/kpmg-ignored-flaws-at-regional-banks-before-2023-crisis-senate-report-finds-e30bc988>

CFO JOURNAL

KPMG Ignored Flaws at Regional Banks Before 2023 Crisis, Senate Report Finds

Auditing industry reform is needed, Sen. Richard Blumenthal says; KPMG calls the report 'misguided.'

By [Mark Maurer](#) [Follow](#)

Sept. 17, 2025 12:51 pm ET



KPMG identified no risks to Silicon Valley Bank's ability to continue operating over the next year just 14 days before its collapse, the Senate report said. PHOTO: REUTERS



Quick Summary



- A Senate report says KPMG ignored flaws at Silicon Valley Bank, Signature Bank and First Republic Bank before their collapse.

[View more](#)

KPMG ignored several flaws at Silicon Valley Bank and two other banks before their collapse in 2023, signs of shortcomings in their auditing oversight, according to a report from Senate Democrats.

The Big Four accounting firm had yearslong awareness of problems at SVB, [Signature Bank](#) and [First Republic Bank](#) before they failed, but it [provided clean audit reports](#) for the regional banks, Democrats on a Senate Homeland Security and Governmental Affairs subcommittee said Wednesday. The banks were unprepared for higher interest rates, which weakened the value of their securities and loans and led depositors to seek higher rates.

The report “exposes KPMG’s willful blindness and stresses that significant reforms to the auditing industry are needed to promote transparency and better protect consumers,” said Sen. Richard Blumenthal (D., Conn.), ranking member of the U.S. Senate Permanent Subcommittee on Investigations.

A KPMG spokesman said the report is a “misguided and erroneous opinion” and omits critical context, adding that the firm stands by its audit opinions. KPMG previously told the subcommittee that it isn’t responsible for assessing a client’s “risky or even reckless business strategy.”

The subcommittee cited several areas in which it said KPMG ignored concerns or justified risky actions at the banks. KPMG identified no risks to Silicon Valley Bank’s ability to continue operating over the next year just 14 days before its collapse, the report said. Auditors are required to raise any issues that present substantial doubt about a company’s ability to continue as a going concern.

At Signature Bank, KPMG dismissed credible allegations of widespread fraud and justified shortcomings in the bank’s record-keeping, the report said. The subcommittee also said KPMG didn’t alert First Republic Bank’s board of directors to concerns the auditor had about its ability to survive just before its failure.

Silicon Valley Bank, Signature Bank and First Republic each had between roughly \$100 billion and \$200 billion in assets. Some bankers have called for the expansion of deposit insurance, particularly in the wake of the bank failures. Meanwhile, the Trump administration has been fast-tracking [broader deregulatory efforts](#) in the banking industry and elsewhere.

The subcommittee declined to take a stance on whether KPMG’s audits of the banks violated auditing standards. “No regulatory assessment suggested that KPMG played a role in the failures of the banks,” the report said. The U.S. audit regulator, the Public Company Accounting Oversight Board, declined to comment.

PCAOB leadership is undergoing a shake-up in President Trump’s second term, as Chair Erica Williams [stepped down](#) in July at the request of Securities and Exchange

Commission Chairman Paul Atkins.

Write to Mark Maurer at mark.maurer@wsj.com

Bloomberg Law

Manage Newsletters

Matt Levine's Money Stuff: Insider Trading Is Not About Fairness

Sept. 16, 2025, 11:43 AM PDT

Archegos

The [basic story](#) of Archegos Capital Management is that it borrowed billions of dollars from banks to buy huge positions in like seven stocks, pushing up the prices of those stocks and creating huge paper gains for Archegos, which it then used to borrow more money to buy more of the stocks, pushing up the prices some more, etc. This was nice while it lasted, but it couldn't last. Eventually, in March 2021, one of the stocks went down a bit, the banks sent Archegos some margin calls, it had no extra money, the banks foreclosed, the stocks went down and the whole thing collapsed. Archegos went to zero, its founder got 18 years in prison, and some of the banks lost billions of dollars.

Not all of them. At some point, the banks all discovered that Archegos (1) owned huge levered positions in like seven stocks (with exposure to "anywhere from 30-70%" of each stock), (2) had borrowed from multiple banks to buy those positions and (3) was in the process of collapsing. They arguably [did not know](#) any of those things until [the collapse was well underway](#) . But there was a brief window of time in which:

1. The banks knew this, but
2. The market did not.

In particular, the banks held lots of shares of Archegos's seven stocks (ViacomCBS Inc., Baidu Inc., Discovery Inc., etc.), which served as collateral for their loans to Archegos. They knew that Archegos would not pay back their loans, so each bank knew that it – and every other bank – would have to sell the collateral. They knew that all of this selling would crash the prices of the stocks. If news came out like "hey, Archegos is collapsing, it owns a zillion dollars worth of Viacom and Baidu and its banks are going to be liquidating those positions," then the stocks would drop *before* the banks sold: Everyone would know that big sales were coming, so nobody would want to buy the shares.

But if the banks sold *before* the news came out, they might get away with it: They could sell quietly before the market caught on to the problem, and they could perhaps sell the shares for more than Archegos owed them. And in fact some banks [moved quickly and did fine](#) , and other banks moved slowly and lost billions of dollars. (Basically the fast banks' sales alerted the market that something was going on, and the market caught on before the slow banks could sell.)

This might trouble you. When the banks were selling out of their Archegos positions, they knew some pretty important information that the buyers didn't know. (They knew about Archegos's positions, and its collapse.) When the news came out, those stocks fell; the people who bought the stocks from the fast banks lost a lot of money, while the fast banks avoided those losses. Is that ... insider trading?

Well! Insider trading, I [like](#) to [say](#) around [here](#) , is not about fairness; it's about theft. It is generally legal, in the US, to trade on information that *no one else has*. What is illegal is *misusing someone else's information*. A chief executive officer who trades on inside information about her own stock is misappropriating that information from her shareholders ; a therapist who trades on what the CEO tells him in a therapy session is misappropriating that information from his patient. But if Warren Buffett knows that his purchases of a stock will move the stock up, he is allowed to buy the stock without first disclosing his plans to buy it: Trading on *your own* secret information is fine. (Not legal advice!)

What about here? The banks were trading on material nonpublic information *about Archegos*. Did they have a duty not to trade on it? Some investors sued to find out, "alleging that they traded in the Issuers' stocks at the same time the [banks] were selling their Archegos-related positions," that they lost money to the banks, and that the banks were doing insider trading.

Today they lost in a federal appeals court. Here is the opinion. To be insider trading, the court writes, there has to be evidence that "either (1) Archegos owed a fiduciary or fiduciary-like duty to the Issuers' shareholders or (2) [the banks] owed a fiduciary or fiduciary-like duty to Archegos." The first is clearly not true: Archegos was an outside shareholder of its companies, and had no special relationship or inside information.

The second possibility – that the banks had some duty to Archegos not to trade on their information about its collapse – is more plausible, but the court rejected that too:

Even assuming, without deciding, that the news of Archegos' collapse constituted material non-public information, Appellants' claim still fails because [the banks] did not owe any fiduciary duties to Archegos. ...

The [complaint] does not allege that [the banks] entered into an agreement with Archegos to act in its best interest or that [the banks] ever agreed to serve as Archegos' fiduciaries. Rather, the [complaint] alleges only that [the banks] offered Archegos various brokerage services. More importantly, the [complaint] acknowledges that [the banks] were contractually entitled to sell their Archegos-related positions upon Archegos' default. This type of commercial arrangement between adverse parties indicates that [the banks] negotiated with Archegos at arm's length.

This strikes me as completely correct. The whole point of lending money to a hedge fund collateralized by its stock positions is that, if you send the hedge fund a margin call and it doesn't post more money, you can blow out of the stock before it collapses. If you had to disclose "hey our customer is collapsing and we gotta sell its stock," the stock would be worthless as collateral.

Still it is quite harsh on the buyers! They bought stock for way more than it was worth, because the banks knew something that they didn't. Doesn't seem fair. But the lesson is that insider trading isn't about fairness.

FABN

My high-level model of private credit is:

1. Banks have [short-term, unpredictable liabilities](#) . (They get money from depositors, who can ask for it back at any time.) Banks also make long-term, illiquid loans: They make business loans with terms of years, or mortgage loans with terms of decades. That's traditional, but also [kind of weird and risky](#) : If the depositors all ask for their money back, the bank will have a hard time getting it.
2. Life insurance companies, meanwhile, have long-lived, fairly predictable liabilities: They sell life insurance (they get money now and pay it out in a lump sum when the customer dies) and annuities (they get money now and pay it out over time, perhaps until some fixed end date, or perhaps until the customer dies).
3. So shouldn't [the life insurance companies make the loans](#) ?
4. "Private credit" is [the hot modern way](#) to say "the life insurance companies make the loans." Sometimes this takes the form of an alternative asset manager like Blackstone Inc. raising money from life insurance companies (in funds or separately managed accounts) and making long-term, illiquid loans. Sometimes it takes the form of an alternative asset manager like Apollo Global Management *owning* a life insurance company (Athene, in Apollo's case) and using its money to make long-term, illiquid loans. But the basic point of private credit is to make the long-term illiquid loans with life-insurance premiums rather than bank deposits.

This is all very sloppy and oversimplified in ways that I will summarize in a footnote, but I do think it captures the essential points.

One limit on this, for an insurance company, is that you can only invest as much money as you have. If you have \$100 of policyholder cash to invest, you might invest \$100 in private credit (ignoring capital requirements, etc.). If you earn 10% on your private credit and have a 4% cost of capital on your policies, that's a great trade. You might want to scale it up. Why not get \$500 of policyholder cash, so you can invest \$500 in private credit and earn more money? But that has problems: You have to hire salespeople to go out and find customers to buy annuities, etc.; your costs scale up with your assets.

What you really want is to sell a *huge* annuities: If you sell a billion-dollar annuity, then you can massively scale up this trade. Probably none of your customers need a billion-dollar annuity. But what if you found *institutional* investors to buy annuities? Sell the billion-dollar annuity to, like, Pimco. Of course you will tweak the terms of the annuity for Pimco (it's not going to die?), but the basic structure – "you give us money today, we give you back money over time for some fixed period" – is annuity-like. Say, "you give us \$1 billion today, we give you back \$50 million per year for five years and then \$1 billion at the end." That kind of sounds like an annuity! You sell a big annuity to Pimco and you get back a billion dollars to invest in private credit. If the annuity costs you 5% and the private credit yields 10%, it's a great trade.

Of course, that trade also sounds like a *bond*, which is why Pimco will buy it. To Pimco, paying \$1 billion today to get back 5% per year for five years, and the principal at maturity, is a pretty normal trade. (A bond trade.) And if you are a good stable highly-rated insurance company, it will be happy to do that trade with you.

And then there are some regulatory boxes to check. It turns out that, for insurance regulatory and ratings purposes, it is better to “sell annuities to customers” than it is to “sell bonds to investors,” so you want this trade to be classified as an insurance liability (like an annuity). Pimco’s preferences are more subtle: It wants to own a bond, not an insurance policy, but it also wants a senior claim on your assets, and it turns out that your insurance policyholders get repaid before your bondholders. So Pimco wants something like “an insurance policy wrapped in a bond.”

At the Financial Times, Lee Harris reports on funding agreements:

Enter funding agreement-backed notes (FABNs), the largest of a booming class of so-called institutional spread products with their roots in guarantees pioneered by the co-founder of Apollo’s in-house insurer, Athene.

At its heart, a funding agreement is a simple arbitrage: it is treated like an insurance liability for ratings purposes but raises capital like a bond.

Insurers such as Athene use FABNs to offer a guaranteed return to big investors such as Pimco. Asset managers such as Apollo, which fully merged with Athene in 2022, can increase the assets on which they earn management fees, and write more loans. In June, Apollo chief financial officer Martin Kelly praised funding agreements as a source of “really cheap financing”.

“It’s Apollo’s asset sourcing engine that’s driving its FABN issuance,” said Thomas Gallagher, an insurance analyst at Evercore.

The “asset sourcing engine” means that it makes a lot of private-credit loans, and to get the money to make those loans it sells FABNs. Harris explains:

To issue an FABN, a life insurance company sets up a shell company and sells it a “funding agreement” which provides for principal and interest payments.

The shell company then sells smaller notes to institutional investors such as banks. The notes promise a modest rate of return and mature after a fixed period, typically three to five years.

The funding agreements that back the notes are unsecured obligations of the insurance company, meaning the insurer typically does not set aside collateral to back them. Investor prospectuses also stipulate that the notes are not “guarantees”.

But rating agencies have taken the view that, in the event of default, the funding agreement would have a senior claim on insurance company assets – equivalent to an insurance policyholder, and ahead of general creditors. ... Moody's has treated the agreements as equivalent to insurance obligations – in effect rating the insurers as though they were selling more policies, rather than issuing corporate debt.

Right, it's just selling an annuity to Pimco. Wrapped in a bond.

Private distribution

I [wrote the other day](#) that “the basic situation in asset management is that the alternatives managers have the products and the traditional managers have the customers.” If you manage private credit assets, you are pretty happy with your business, which is quite hot and charges high fees, but you would like to grow by selling to more individual investors. If you manage traditional mutual funds, you have millions of individual investors as customers, which is nice, but they are all getting sick of paying for mutual funds and you're looking for some way to keep them (and charge them high fees). The benefits of a combination are obvious – the alternatives managers have the products people want, the traditional managers have the people to buy the products – and so there have been many combinations. Traditional managers have started private-assets businesses, or acquired private-asset managers, or signed up for distribution deals with private-asset managers.

They don't always work. Bloomberg's Loukia Gyftopoulou and Silla Brush [report on the problems](#) :

Traditional fund houses such as Franklin Resources Inc., Invesco Ltd. and State Street Corp. also are trying to find ways to sell hotter products that generate higher fees, through acquisitions or otherwise – but it's not easy. Some have been left contending with wide gaps in executive pay or cultural divides in the ranks. Salesforces built to pitch plain-vanilla products proved slow to move riskier private-market offerings. And the competition is formidable, with incumbents such as Blackstone Inc., Apollo Global Management Inc. and Ares Management Corp.

For instance, Franklin Resources now owns alternatives managers including Benefit Street Partners, but the combination is awkward:

Franklin lets the boutiques it buys operate independently. Most still have their own CEOs, and some their own offices. In interviews, people who have worked in those outposts said they had little to no contact with Franklin, and a couple couldn't remember the name of its CEO, Jenny Johnson, of the founding family.

In tense meetings attended by Franklin staffers, executives from Benefit Street openly expressed dissatisfaction over the pace of progress in the first few years after their merger, people who were present said. Benefit Street executives complained that Franklin's sales fleet wasn't doing enough to sell their funds to the multitrillion-dollar market of wealthy clients. Some executives even mentioned the millions of dollars they were earning a year, underscoring their clout to Franklin managers earning much less, witnesses said.

Right, obviously the Benefit Street people would make even more millions of dollars if the Franklin salespeople could find more investors for them, but I'm not sure why that would motivate the salespeople. "To spur sales, Franklin at one point upped the commissions for those funds," which I guess makes more sense.

Musk trade errata

I [wrote yesterday](#) about Elon Musk (1) buying \$1 billion worth of Tesla Inc. stock and (2) thereby increasing the value of his Tesla stake by \$17 billion. Nice trade! I added that Musk probably isn't *cashing out*, though: "He moves his stock price for fun, not for profit." But I said two careless things about this.

First, I wrote: "If Musk files a disclosure *tomorrow* saying that he sold \$17 billion of stock today, I'll be impressed." To be clear, I was saying that he *wouldn't* do that, but if he did it would be funny and cool. But of course that's wrong: Musk is a Section 16 insider of Tesla, meaning that if he went and sold stock so soon after buying it, he would have to disgorge his profits. So it would not actually be an impressive trade.

Second, I wrote that "Musk has pledged some of his shares to secure personal borrowing, and I guess today's stock pop increases his borrowing capacity." Again, I was saying that Musk probably *didn't* plan to use that increased borrowing capacity, but in fact it seems that his capacity did not increase. Tesla "has a policy that limits pledging of Tesla stock by our directors and executive officers," and it limits Musk's borrowing to "the lesser of \$3.5 billion or twenty-five percent (25%) of the total value of the pledged stock." I don't know how much Musk has borrowed against his Tesla stock, but the point is he's not allowed to borrow more than \$3.5 billion against his \$170+ billion of Tesla stock, so an extra \$17 billion doesn't actually increase his borrowing capacity.

Things happen

Franklin Templeton predicts slowdown in investment management deals. Fed ' [Third Mandate](#) ' Forces Bond Traders to Rethink Age-Old Rules. Robotics Startup [Figure AI](#) Valued at \$39 Billion in New Funding. Can Tokyo tempt finance workers to manage its trillions? 'Culling of the herd': Consulting could be headed for a decadelong shift that'll make it harder to climb its career ladder. Tesla Faces US Auto Safety Investigation Over [Door Handles](#) . Bessent Jokes About [Hamilton-Burr Duel](#) When Asked About Pulte.

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1. Not quite. The banks actually wrote total return swaps to Archegos on those names, and held the shares in their own accounts as "hedges" to the total return swaps, not as "collateral." Economically, though, that's

roughly the same as a collateralized loan, with the exception that doing it as a swap makes it a bit easier for the banks to blow out of the position.

2. It's not especially relevant to my points here, but one reason some banks moved slowly might be that the banks had some discussions about coordinating their sales (rather than all rushing for the exit at once).

Which arguably [raises some antitrust issues](#) .

3. Actual insider trading connoisseurs won't like this phrasing, since that is "classical theory insider trading" (abusing a fiduciary duty to shareholders) rather than "misappropriation theory insider trading" (abusing a duty of trust and confidence).

4. Quickly: (1) Private credit managers raise money from lots of long-term investors (endowments, pensions, sovereign wealth funds, wealthy individuals, etc.), not just insurance companies. Insurance seems to me in some way paradigmatic, but it is in fact a minority of private-credit assets; pensions actually are the biggest class of investor. (Pensions *are* annuities, so the basic point stands.) (2) Private credit managers are increasingly pushing to [invest retail retirement savings](#) , which again have [annuity-like characteristics](#) (your retirement savings really *should* have predictable, long-term withdrawals) but are not actually insurance money. (3) Private credit funds in fact get [a certain amount of leverage](#) from banks and other lenders, so they are not purely investing their long-term investors' equity. (4) Life-insurance liabilities are not in fact perfectly predictable and locked up. For one thing, insureds could die earlier or later than expected, but also policies tend to have early withdrawal features that make them somewhat runnable.

5. Directionally plausible numbers. Athene reported a "5-year FABN Secondary Credit Spread-to-US Treasury" of 120 basis points last August, which translates to about a 4.8% yield today. That compares to a 3.68% "Cost of Funds on In-Force" today. So I use a 4% cost of capital for the "real" insurance liabilities and 5% for funding agreements.

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Securities

Manage Newsletters

Matt Levine's Money Stuff: Don't Take the Auditor to the Club

Sept. 17, 2025, 10:34 AM PDT

Cabaret

A few months ago, [I wrote that](#) "one of the main problems in finance is the principal-agent problem, and one of the main forms that it takes is steak dinners." You know the deal. You want something from a company or government agency, but you negotiate with that company or agency in the form of a *person*, some particular executive or official who decides whether to give you the thing. The company or agency has purposes of its own, but the person is a person, and he enjoys a steak dinner. If you discuss your issue with him over a nice steak dinner that you pay for, he might be grateful to you personally and give you what you want. Ordinarily I use feminine pronouns for generic hypothetical people but here, for reasons that will soon become apparent, our hypothetical agent is a man.

When I wrote about this, I was describing the modern, and perhaps somewhat euphemistic, form of the problem. Within living memory, I could easily have written that "one of the main problems in finance is the principal-agent problem, and one of the main forms that it takes is visits to the strip club." You know the deal! The agent whose favor you want might like steak, but he might also like lap dances, particularly after his fourth martini at the steakhouse. If you buy him a steak, he might be vaguely grateful to you. But if you buy him a lap dance, he will be grateful to you and also *afraid of you*. You are not merely friendly business acquaintances; you are seedy co-conspirators. You have seen him do stuff that he would not want his boss or his wife to know about. He'd better give you that contract.

That's not any sort of advice! Hoo boy. And my sense of the financial industry in the US in 2025 is that vanishingly few deals get sealed at the strip club. That is from the bad old days; it is not current best practices. (Current best practices are steak and golf and also, like, the sauna?)

But there is one industry in which the strip-club form of the principal-agent problem is apparently alive and well. Can you guess what it is? It's the strip club industry. Come on with this!

New York Attorney General Letitia James [yesterday] announced the indictments of top executives of RCI Hospitality Holdings, Inc. (RCI), a company that owns and operates strip clubs throughout the country, for their roles in a major, multimillion dollar criminal tax fraud and bribery scheme. An investigation by the Office of the Attorney General (OAG) revealed that RCI executives bribed an auditor with the New York Department of Taxation and Finance (DTF) to avoid paying over \$8 million in sales taxes to New York City and the state from 2010 to 2024. ...

The OAG's investigation revealed that RCI and its top executives bribed a former DTF auditor and supervisor, in exchange for favorable treatment during at least six different sales tax audits spanning over a decade. The auditor received at least 13 complimentary multi-day trips to Florida where he was given up to \$5,000 per day for private dances at RCI-owned strip clubs, including Tootsie's Cabaret in Miami. RCI executives paid for the auditor's hotels and restaurant visits during these trips as well. Additionally, on at least 10 occasions since 2010, Timothy Winata, RCI's controller and accountant, traveled to Manhattan from Texas to provide the auditor with illegal bribes at RCI's three Manhattan clubs, Rick's Cabaret, Vivid Cabaret, and Hoops Cabaret and Sports Bar.

Here is the indictment, which alleges that the bribes both concerned, and were paid in, "Dance Dollars." The Dance Dollars are what they sound like; New York takes the position that they are subject to sales tax, but allegedly RCI didn't collect enough tax on them:

At all relevant times, the RCI New York Strip Clubs sold "Dance Dollars" to their customers. Dance Dollars are and were redeemable at the RCI New York Strip Clubs for entertainment and amusement and for use of the facilities, including private dances. The RCI New York Strip Clubs also charged their customers a service charge of 20 to 25 percent in addition to the face value of the Dance Dollars. As such, both the sale of Dance Dollars and the service charge imposed by RCI qualified as an "admission charge" to a "place of amusement" and were subject to a combined sales tax rate of 8.875 percent for the City and State of New York and the Metropolitan Commuter Transportation District surcharge. The conspirators willfully failed to and caused the RCI New York Strip Clubs to fail to collect from their customers and pay to the State of New York sales tax on such sales despite being aware that the collection and payment of such taxes were legally required.

So an auditor from the New York Department of Taxation and Finance (who has since retired, and whose name is redacted in the indictment) came to the clubs to check up on whether RCI was properly paying taxes on its sales. RCI's first thought about this was apparently that they should keep the auditor out of the clubs as much as possible, presumably because the more time he spent in the club, the more taxable transactions he would witness and the worse that would be for their audit. So, steak dinners:

On June 15, 2016, Winata texted [*RCI director of operations Ahmed*] Anakar: "Ed, can i have \$300 payouts? I plan to take him out for dinner after this to minimize time in club."

On second thought, though, RCI apparently realized that the more time he spent in the club, the more lap dances he would witness and the better that would be for their audit. So they allegedly started spending more time with him in the club:

On June 15, 2017, Winata texted Anakar: "Ed, we are at Rick's, just finished preliminary discussions on audit scope and lunch. They said they would work with me, but at the same time, gave me copies of court rulings??? He has his staff with him. He had to play tough, I guess. He would stay after his staff left. We may need to pamper him more this time." ...

On April 10, 2018, Winata texted Anakar: "Ed, good evening! I made a mistake informing [*the auditor*] that I got here today so I am here at Rick's with him. Would you approve \$1000 for tonight? I will try not to use it all. Whatever leftover, I will use it tomorrow." ...

The auditor apparently got used to this sort of treatment. I feel like tax auditors and the companies they audit are normally somewhat antagonistic, but when RCI settled an audit, the auditor started making plans to celebrate with them:

On December 12, 2018, [*the auditor*] texted Winata: "Congratulations to you my friend, you have done a wonderful job. Thanks for your consent and today we received your down payment check. That's the way people do business in this country. Everyone is happy. You deserve a promotion .. keep the good work and we will Clebrate in Florida early next year. Thanks for your cooperation."

One gets the sense that the RCI executives did not particularly want to ... celebrate the settlement of a tax audit ... with their tax auditor ... but I suppose a deal is a deal:

On February 13, 2019, Winata texted [RCI Chief Executive Officer Eric] Langan: "Eric, [*the auditor*] (NY sales tax auditor) asked if we can go to FL at end of month. He reminded me that I have been too quiet after the settlement. I told him I have been busy with K and Q. Is it OK? Please inform."

On February 13, 2019, Langan texted Winata: "Whatever you think is fine."

On February 16, 2019, Winata rented and paid for hotel rooms for himself and [*the auditor*] in Hollywood, Florida for February 26, 2019, to March 1, 2019. ...

On February 27, 2019, [*the auditor*] texted Winata: "I am back from dancing . I need some more dancing dollars."

This continued for years!

On February 23, 2022, [the auditor] texted Winata, in part: "This was the best trip I had in Florida. The girls were very beautiful and nice. On Thursday night there so many beautiful women. That's why I do many lap dances instead of going to the room. I hope we can have another trip before the Summer. Thanks again for making making the trip great and better before."

RCI was allegedly doing all of this to save money on sales taxes, but it's pretty clear that they did not *enjoy* any of it:

On June 15, 2018, [Rick's manager Shaun] Kevlin texted Anakar: "Hopefully he really makes something happen" and "So many sketchy people in the public sector." ...

On or about September 1, 2023, at 6:44 p.m., [RCI Chief Financial Officer Bradley] Chhay emailed Langan and Anakar with the subject line "Fwd: NY Sales Tax Audit" and wrote: "Wow. Tim is clutch. But it did come with conditions. I'll tell you when I talk to you. Tim asked if this can be his last one. No more dealing with this type."

On or about September 1, 2023, at 6:44 p.m., Chhay texted Langan and Anakar: "Tim got the guy to \$47k in vivid New York. But owes him a couple trips ed. And he said he has to keep his word. I'll update ya."

Yeah one problem is that if you bribe your auditor with trips to the strip club, that seems like a crime. But another problem is that you have to go to the strip club with your auditor.

Morning news

The Dallas Morning News

is "Texas' leading daily newspaper with an excellent journalistic reputation, intense regional focus and close community ties." It is also a public company, DallasNews Corp., with an equity market capitalization of about \$85 million. It has dual-class stock and is controlled by its founder's family. In this case, Robert Decherd – a newspaper guy and the great-grandson of the founder – owns 12.5% of the economic interest in the company, but controls 55% of the votes.

This arrangement is pretty common in media companies, and it is normally framed as a way to insulate the journalists from the pressures of the market. The New York Times and News Corp. have similar structures, and the Times explains:

Central to our governance is our dual-class capital structure that includes Class A stock, which is publicly traded, and Class B stock, which is controlled by the Ochs-Sulzberger family trust. The primary objective of this trust is to maintain the editorial independence and the integrity of The New York Times and to perpetuate it "as an independent newspaper, entirely fearless, free of ulterior influence and unselfishly devoted to the public welfare."

In 2022, Elon Musk, the world's richest man, decided he wanted more control over public discourse, so he lobbied in an offer to buy Twitter Inc. at a premium. Twitter's management and employees had some doubts about what Musk would do to their product, but those doubts had *absolutely no weight*: Twitter's board considered *only* whether Musk's offer was a good deal for shareholders, decided that it was, and [signed a deal](#). The shareholders enthusiastically agreed that Musk's deal was better for them than remaining independent, and about 99% of them voted in favor of the merger. And now Musk owns Twitter, and gets to do what he wants with it, and does.

He paid about \$44 billion for Twitter. The market capitalization of the Times is only about \$9.5 billion. If he wanted further control over public discourse, the Times would be a relatively cheap target. But he can't buy the Times: The whole point of the dual-class structure is to prevent that. The point is that, if some bidder offered to buy the Times at a large premium, the Ochs-Sulzbergers could say no, even if it was a good deal for shareholders, even if all the other shareholders wanted to sell. The family trust can vote down any merger it doesn't like, and in making its decision it can – and has said it will – consider mainly "the editorial independence and the integrity of The New York Times," *not* shareholder value maximization.

Same with the *Dallas Morning News*, except that the Dallas Morning News is actually in the middle of a takeover battle. Not with Elon Musk. But late last year, DallasNews's board of directors started thinking about selling the company. Pretty much the first thing they did was talk to Decherd, who "indicated that he would support a sale transaction only if he believed that the Company's commitment to distinguished journalism would continue under new ownership."

So they went out and talked to a few potential buyers, including Hearst Newspapers and "a high net worth individual, Party A, whom Mr. Decherd believed had journalistic values similar to those of the Company." Eventually they reached a deal with Hearst, and in July they announced the merger. The price was \$14 per share in cash, "a premium of 219% based on the closing price of DallasNews' common stock of \$4.39 per share on July 9, 2025," and more importantly:

Robert W. Decherd, DallasNews Corporation's former board chairman, president and chief executive officer during a career spanning 50 years, and current owner of a majority of the voting power of DallasNews Corporation stock, said, "*The News'* 140-year commitment to distinguished journalism has been extraordinarily important to the evolution of Dallas as one of America's greatest cities. We have generations of *News* employees to thank for this. I'm confident that the path forward with Hearst Newspapers assures *The News'* ability to continue informing and strengthening North Texas for many years to come."

Two weeks later, MediaNews Group, a newspaper company owned by Alden Global Capital, lobbied in a bid at \$16.50. Which is more than \$14. But Alden has a ... certain reputation. The *Times* said at the time:

MediaNews Group is a subsidiary of Alden Global Capital, an investment firm that has bought dozens of newspapers around the country, often cutting costs by shrinking newsrooms through layoffs.

"A Secretive Hedge Fund Is Gutting Newsrooms: Inside Alden Global Capital" is an *Atlantic* headline from 2021. MediaNews said nice things about preserving the *Dallas Morning News*, but Decherd wasn't buying it. From the merger proxy:

On July 25, 2025, Mr. Decherd delivered a letter to the Board stating, among other things, that (i) from his perspective, the terms and conditions of the [Hearst] Merger are superior to any alternative scenario he can envision, (ii) he plans to honor the agreement he made to vote in favor of the Merger and looks forward to the Merger being consummated at the soonest possible time and (iii) there are no circumstances under which he would vote for or support the Alden Proposal. Mr. Decherd indicated that he is focused on the well-being of The Dallas Morning News, the quality of its journalism, and The News' role in the city of Dallas.

The board went back to Hearst and got some more money out of them, but it brushed off Alden:

In reaching its determination to reject the Alden Proposal, the Board noted that because the transaction contemplated by the Alden Proposal could not be consummated without Mr. Decherd's support, and Mr. Decherd had stated that there was no scenario in which he would vote in favor of a sale of the Company to Alden, the Alden Proposal was not reasonably likely to be consummated and, as a result, the Alden Proposal did not constitute a Superior Proposal and was not reasonably likely to lead to a Superior Proposal. In addition, the Board recognized its ability to consider other factors under Texas law and additionally determined to reject the Alden Proposal because of its belief that, based on Alden's history of acquiring and operating other newspapers across the United States, a sale to Alden or an affiliate of Alden would harm both the Company and the Dallas-Fort Worth and North Texas communities, as the Company would be unable to maintain the traditions of journalistic excellence that it has upheld over its 140-year history.

Since then, both sides have raised their bids again. The Hearst deal is currently at \$16.50, and yesterday Alden raised its bid to \$20, saying:

Our proposal speaks for itself with a whopping approximately 21% premium to Hearst's "best and final" proposal. The path to maximizing value and preserving the future of The Dallas Morning News is clear, and there is no further reason for delay. ...

As the largest private newspaper company in the United States, we understand the unique role of The Dallas Morning News in North Texas, and we remain committed to maintaining the print edition and protecting the paper's editorial freedom so this iconic institution continues to serve its community with independence and integrity.

But the basic situation hasn't changed. The Alden deal would clearly be better for shareholder value – \$20 is more than \$16.50 – but Decherd thinks it would be worse for journalism, and he gets to say no. "Having retired from the Board in September 2023 and having had no formal role related to the Company since then, I have no fiduciary responsibility," he told the board: He doesn't have to maximize shareholder value. He's a yes on Hearst and a no on Alden, so there's no Alden deal.

That doesn't necessarily mean there's a Hearst deal. The awkward fact is that, to get any merger done, the company needs the approval of two-thirds of the regular, low-voting shares; Decherd only owns 1.6% of those. Presumably most of the public shareholders care more about the extra \$3.50 than they do about Decherd's journalistic preferences. They don't get to vote on the \$20 Alden deal; they only get to vote on the \$16.50 Hearst one. They *could* vote against it, but DallasNews has said that, if the Hearst deal is voted down, then there's no deal: "If the Hearst Merger is not approved by shareholders, we will continue to operate DallasNews as an independent organization."

You don't *have* to believe that; you might bet that, if the shareholders vote no on Hearst, the board might go back to Alden. But that seems like a risky bet. "To be clear," says the company, "Mr. Decherd has stated that there is *no* scenario involving Alden or its affiliates as a buyer for DallasNews which he would support." Glass Lewis, the proxy advisory firm, also recommended that shareholders vote for the Hearst deal, saying that "rejection here would functionally be a matter of principle, and would not chart a particularly clear path to securing greater value from Hearst or any other party, including Alden." The stock is trading below \$16, suggesting that nobody expects to do better than the Hearst deal. The shareholders know that shareholder value is not all that's important here.

ARK ETF IPO trade

In general it is good to invest in a hot initial public offering. If a hot tech startup goes public and prices its IPO at, say, \$40 a share, it will probably trade up when it opens for trading the next day. (This is called an "IPO pop.") If you buy shares at the IPO price (\$40), you can sell them the next day at a higher price (say, \$45) and make a quick profit. This is not a risk-free profit – some IPOs trade down – but it usually works.

The problem, for you, is how to get shares of the hot IPO. The shares of the hot IPO are allocated (by the tech company and its bankers) to favored investors. What investors are favored? Traditionally, hot IPO shares go mostly to *institutional* investors, though that is changing, [as we have discussed](#), because retail investors are becoming more important. As we have [also discussed](#), traditionally hot IPO shares go mostly to *long-term* investors, asset managers who plan to hold the shares for years and be long-term partners for the company. If you're a hedge fund and you're like "my business is to get IPO shares and flip them the next day for a quick profit," you're not going to get a lot of IPO shares.

What can you do if you don't get a call from the bankers? Well, you can invest in professionally managed mutual funds, because they are the sorts of long-term institutional investors who get allocations in hot IPOs. Or for that matter you can invest in exchange-traded funds. For instance, Cathie Wood runs ARK Invest, an exchange-traded-fund firm, and is a popular celebrity investment manager; she seems to be able to get allocations of hot IPOs for her ETFs. You can buy an ARK ETF – like ARK Innovation, the flagship fund (ticker ARKK), or ARK Fintech Innovation (ARKF), a smaller and more specialized fund – and participate in the IPO upside.

That is not a perfect solution, though, as the ARK funds *mostly* own other stuff, besides the hot IPOs, and, uh, they do not have an unmixed record of picking only stocks that go up. If you buy shares of an ARK fund ahead of a hot IPO, you get, like, 1% exposure to that hot IPO and 99% exposure to other stuff that you might not want.

The ARK ETF's holdings are public, though, which suggests a trade. Buy \$100 of an ARK ETF ahead of a hot IPO, sell \$100 worth of the underlying assets, and you are left with *only* the ETF's exposure to the hot IPO. Then, the day after the IPO prices, the ETF will go up by just a bit more than the other underlying assets, because now the ETF will hold the old underlying assets *plus* a bit of the hot IPO, which will probably trade up. And then you reverse the trade: You sell the ARK ETF and buy back the underlying assets, leaving you with just a synthetic form of the IPO pop.

This seems like a lot of trouble to go to. Here's a more efficient version. ETFs generally allow investors to create new shares in-kind: If you deliver \$100 worth of the ETF's underlying assets, the ETF will hand you back \$100 worth of its shares. And vice versa for redemptions: If you deliver \$100 of ETF shares, you can get back \$100 of underlying assets. (ETFs do this directly only for certain "authorized participants," big market makers like banks and proprietary trading firms, so it helps if you are an AP; if not, maybe an AP will intermediate this trade for you.)

So let's say that an ARK fund – say ARKF, the fintech one – has \$1 billion of assets under management. (The actual number is about \$1.3 billion as of this morning.) You think that it will get a \$20 million allocation in a hot fintech IPO, representing about 2% of assets under management. You call up ARKF a couple of days before the IPO and say "hey, I will give you \$1 billion of your underlying assets in exchange for \$1 billion of new shares." ARKF says "sure" – that's life in the ETF business – and you do the trade. Now ARKF has \$2 billion of assets (\$1 billion from before, \$1 billion from you) and you own 50% of it.

Where did you get that \$1 billion of underlying assets? Well one possibility is that you spent \$1 billion buying them, but it seems like there should be a better answer. The better answer is: You *borrowed* them. You went to the securities lending market, posted \$1 billion of cash collateral, and borrowed \$1 billion of fintech stocks to deliver to ARKF. You are effectively *short selling* those fintech stocks to ARKF, only instead of getting back cash (as you would if you sold them) you are getting back ARKF shares.

This is a better answer for two reasons. One is that you don't have to buy any stocks, so you don't push up the prices: You get your stock in the stock lending market, not in the stock market. The other is that you're not long any stocks: You don't *own* the \$1 billion of fintech stocks; you just borrowed them for a bit.

Then the IPO happens, ARKF gets \$20 million of IPO shares, and the shares double on their first day. That leaves ARKF with \$2.02 billion of assets (the \$2 billion it had already, plus \$20 million of gains on the IPO pop). Your shares are now worth \$1.01 billion. You go back to ARKF the next day and redeem your \$1.01 billion of shares for \$1.01 billion of underlying stuff (including \$20 million of hot IPO shares). You deliver \$1 billion of underlying stuff back to your securities lenders, leaving you with a \$10 million profit.

(This process of creating a bunch of shares of the ETF, only to redeem them a day or so later, is sometimes called a " [heartbeat](#) ," and is normally done to [defer taxes](#) on the ETF's own trading. Here, though, there's a different purpose.)

If ARKF's other trades went wrong in those few days, that doesn't affect you. If the underlying stuff fell 10%, then your shares are only worth \$910 million (\$1 billion minus 10% plus that IPO profit), but you only have to deliver back \$900 million of underlying stuff, so you still have your profits. You are exposed *only* to the IPO – to the risk of ARKF getting an allocation, and to the risk of the IPO going down rather than up – and not to the rest of ARKF's assets. You are perfectly hedged, because you borrowed ARKF's assets.

This seems to be a real trade now. At the Financial Times, Robin Wigglesworth and Costas Mourselas reported last week:

ARK Invest's flagship fund has abruptly ballooned by \$3.5bn ahead of the initial public offering of payments company Klarna, echoing a similar phenomenon around last month's flotation of cryptocurrency exchange Bullish.

The assets of the ARK Innovation ETF – an exchange traded fund managed by the investment manager's head Cathie Wood – have jumped from \$7.3bn at the start of the week to \$10.8bn at the end of Thursday, according to Bloomberg data. ...

Traders said the moves appear to be tied to the long-awaited IPO of Klarna on Wednesday, with one or several investors jumping into the ARK ETF on the hopes of securing some of the resulting windfall before likely exiting again in the coming days. The payments company's shares rose almost 15 per cent on their debut.

"This ETF trade is one of the sharpest, bare-knuckled trades I've seen," said Victor Haghani, the founder and chief investment officer of Elm Wealth, which sponsors the Elm Market Navigator ETF. "Non-professional active investors should be in no doubt about the smarts and sophistication of who is likely doing the other side of their trade."

Wigglesworth also discussed the Bullish trade at FT Alphaville last month :

It looks like someone in practice managed to finagle a large synthetic allocation to the Bullish IPO by aggressively creating shares in ARKK. And once the windfall materialised they immediately redeemed those shares to crystallise the gain, sending ARKK back to earth.

By the way. The very purest form of this trade would be to leave out the borrowing. Like:

1. Go to ARKF a microsecond before the IPO and say "I will give you \$1 billion of your underlying assets in exchange for \$1 billion of your stock." (Advanced move: "\$1 trillion" instead of "\$1 billion.")
2. ARKF is like "sure, done, we'll [settle up tomorrow](#)."
3. The IPO prices, the stock trades up and the ARKF shares go up more than the underlying shares do.
4. A microsecond after the IPO, you go back to ARKF and say "I will give you back \$1.01 billion of your shares in exchange for \$1.01 billion of your underlying assets."
5. ARKF is like "sure, done, we'll settle this trade tomorrow too."
6. You never borrow the underlying assets.
7. Instead, tomorrow comes and you settle Trade 1 and Trade 4 simultaneously, getting the ARKF shares and immediately returning them and getting back the underlying assets before you have to deliver them.

This locks up no capital and costs you nothing. Is it too cute? Probably? (You can tell because the *actual* ARK ETF heartbeat trades are for, like, half the fund, not 99.99% of the fund.) It is "naked shorting," and you probably can't do it.

It does feel like a *crypto* trade, though. One genuinely novel aspect of crypto market structure is that you can use smart contracts, decentralized exchanges and the batch-based nature of blockchain execution to put together a series of trades that happen (1) more or less simultaneously and (2) conditional on each other. The trick in my trade above is "getting back the underlying assets before you have to deliver them," and crypto manages that. People regularly use this for various weird crypto exploits, some of which we [have talked about](#). Conceptually the trades have the form:

1. Borrow \$X on a Decentralized Lending Platform P.
2. Use the \$X to buy Crypto A on Exchange Q.
3. Use the Crypto A you bought in Step 2 as collateral for your borrowing in Step 1.
4. Sell Crypto A for \$Y ($Y > X$) on Exchange R.
5. Return \$X to Platform P.
6. Keep the change.
7. Only do any of this if you can do all of it: Put all of these instructions in smart contracts on the blockchain that only execute if the entire procedure executes.

Sometimes this involves very briefly pumping a lot of value into one particular protocol, and then withdrawing it immediately, to extract a tiny bit of value. It's hard to do that in traditional financial markets. But someone found a way.

Things happen

[Tricolor](#) Bankruptcy Sets Up Fight for Auto Lender's Assets After Alleged Fraud. Why Trump's Bid to End Quarterly Earnings Is No Sure Bet. U.S. Investors, Trump Close In on TikTok Deal With China. [Ray Dalio](#) Embraces Family Office Life as CIO: 'I'm the Guy' Now. Ben & Jerry's Co-Founder Quits After 47 Years, Cites Loss of Independence Under Unilever. Bessent, Like Fed Governor, Made [Contradictory Mortgage Pledges](#). Infamous Fyre Festival Sells for Fire-Sale Price of \$245,000. Center for the Alignment of AI Alignment Centers. Disney Springs Robber Suspected Of Escape by Scuba Diving.

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1. DallasNews also owns a marketing agency called Medium Giant.
2. Not really, in that about 40% of the shares didn't vote. But 453.1 million shares (59.2% of the shares outstanding) voted in favor, versus 4.1 million against.
3. This timeline, and the quotes in this paragraph and the next one, come from the "Background of the Merger" section of the merger proxy.
4. Does the board? Ordinarily, if the board of directors of a Delaware public company decides to sell the company for cash, it has "Revlon duties" to maximize the sales price. But (1) those duties are relaxed in the case of a company with a controlling shareholder (who after all can block the board's preferred deal), (2) the board's conclusion here is that the Alden deal **won't** maximize the sales price because no sale will get done and (3) DallasNews is a Texas company anyway, so who knows.
5. Not that the banks/companies don't want any of that: Some people need to flip their shares on the first day if the stock is going to trade. But **most** of the shares will go to expected long-term holders. And meanwhile everyone happily **would** take shares to flip them for a profit, so there's a lot of competition to be in that small sliver of flippers.
6. Or down by less.
7. If you are an authorized participant in the ETF; otherwise you have to find an AP to do this trade with you.
8. Assume it was 1% in cash already and used the cash to buy the IPO shares. Or maybe it traded out of other stuff; not important.
9. Again (see previous note), if you're tidy-minded you'll notice that you borrowed \$1 billion of non-IPO stocks and now have only \$990 million of those stocks. The simplest fix here is to assume that the ETF was partly in cash before the IPO, and you delivered a creation basket of \$990 million of stocks and \$10 million of cash; otherwise there is some modest slippage but it's not that important.
10. That post suggests doing the trade by **buying** the underlying assets and also **shorting** them (against the box). A follow-up post proposes the simpler mechanism of borrowing the underlying assets.
11. Get it? If no assets change hands you can just inflate the trade arbitrarily to give yourself 99.99% of the fund.

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Rick's Cabaret parent, executives indicted in New York tax fraud and bribery case



reuters.com/world/ricks-cabaret-parent-executives-indicted-new-york-tax-fraud-bribery-case-2025-09-16

Jonathan Stempel

September 16, 2025

The exterior of Rick's Cabaret & Steakhouse is seen in New York City, U.S. October 7, 2017. Picture taken October 7, 2017. REUTERS/Stephanie Keith/File photo [Purchase Licensing Rights, opens new tab](#)

- RCI allegedly bribed auditor to avoid sales taxes
- Shares of RCI fell 15.9% on indictment
- Defendants deny 'overreaching' allegations

NEW YORK, Sept 16 (Reuters) - The parent company of Rick's Cabaret and other strip clubs, as well as five executives, have been indicted over their alleged roles in a 13-year bribery scheme to avoid paying millions of dollars in New York sales taxes, state Attorney General Letitia James said on Tuesday.

RCI Hospitality Holdings ([RICK.O](#)), [opens new tab](#), officials including Chief Executive Eric Langan, and three of the company's Manhattan clubs together face nearly 80 charges in a New York state court including criminal tax fraud, bribery and conspiracy.

The defendants "deny the allegations and will take all necessary action to defend themselves against these overreaching charges," their lawyer Daniel Horowitz said in a statement. "As a publicly traded and audited company, RCI has a policy of paying all legitimate and non-contested taxes."

Shares of Houston-based RCI tumbled after the indictment was announced, and closed down \$5.46, or 15.9%, at \$28.79. They fell to \$26.26 in after-hours trading.

James said that between September 2010 and January 2024, RCI and its executives bribed a former auditor with New York's Department of Taxation and Finance to obtain favorable treatment in six audits.

She said this enabled RCI to avoid more than \$8 million of state and city sales tax on "Dance Dollars," an in-house currency that clubs sold to customers for various services, including private dances.

The auditor, whose name is redacted from the indictment, allegedly received at least 13 complimentary trips to RCI-owned strip clubs in the Miami area, including up to several thousand dollars per day of private dances.

Manhattan clubs charged in the indictment include Rick's Cabaret, Vivid Cabaret and Hoops Cabaret and Sports Bar.

One defendant, RCI controller Timothy Winata, allegedly delivered the bribes. The indictment included dozens of emails and text messages allegedly related to the scheme.

"Wow. Tim is clutch," RCI Chief Financial Officer Bradley Chhay, who is also a defendant, allegedly texted Langan on September 1, 2023. "Tim got the guy to \$47k in vivid New York. But owes him a couple trips."

Nineteen days later, Chhay agreed to settle an audit of Vivid Cabaret for \$47,343, the indictment said.

James said a sixth person was also indicted but has not been arraigned.

Langan and Winata each face a top charge of first-degree criminal tax fraud, which carries a maximum 25-year prison term. Chhay's top charge of second-degree bribery carries a maximum 15-year prison term.

Reporting by Jonathan Stempel in New York; Editing by Leslie Adler and Jamie Freed

Our Standards: [The Thomson Reuters Trust Principles.](#), [opens new tab](#)

Strip Club Issuer Charged With Bribing Tax Official With Lap Dances (Among Other Things)



fcpprofessor.com/strip-club-issuer-charged-with-bribing-tax-official-with-lap-dances-among-other-things

September 17, 2025

RCI Hospitality Holdings Inc. is a publicly traded Texas corporation with shares traded on the NASDAQ exchange. Through its subsidiaries, RCI owns and operates more than 60 strip clubs and restaurants throughout the U.S. including three located in New York.

As an issuer, RCI is subject to the FCPA including the books and records and internal controls provisions.

The books and records provisions generally require issuers to “make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.”

The internal controls provisions generally require issuers to “devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that” among other things transactions are properly authorized and accounted for and that access to assets is permitted only in accordance with management’s general or specific authorization.

Earlier this week RCI, various subsidiaries, and various executives were [criminally charged](#) in New York on various state charges alleging conspiracy, bribery and criminal tax fraud among other crimes.

The indictment may also draw the interest of the SEC (and perhaps the DOJ) as it alleges conduct which would seem to implicate the FCPA’s books and records and internal controls provisions as well.

In summary fashion, the indictment alleges:

“Beginning from at least on or about September 6, 2010, through on or about January 14, 2024, the defendants and others operated and devised a scheme in which RCI, RCIMS, Rick’s Cabaret, Vivid Cabaret, and Hoops Cabaret (collectively the “RCI Companies”) and their officers, employees, and agents conspired and schemed with [an auditor and supervisor of sales tax audits with the NY State Department of Taxation and Finance] each other, and others to provide illegal bribes to [auditor] while [auditor] conducted and supervised tax audits of Rick’s Cabaret, Vivid Cabaret, and Hoops Cabaret (collectively the “RCI New York Strip Clubs”). The object of the conspiracy was to induce [auditor] to aid the RCI Companies’ prior and continuing commission of criminal tax fraud in which the RCI New York Strip Clubs failed to collect from their customers and pay to the State of New York the full amount of sales tax that should have been collected and paid on sales at strip clubs located in New York County.

At all relevant times, the RCI New York Strip Clubs sold “Dance Dollars” to their customers. Dance Dollars are and were redeemable at the RCI New York Strip Clubs for entertainment and amusement and for use of the facilities, including private dances. The RCI New York Strip Clubs also charged their customers a service charge of 20 to 25 percent in addition to the face value of the Dance Dollars. As such, both the sale of Dance Dollars and the service charge imposed by RCI qualified as an “admission charge” to a “place of amusement” and were subject to a combined sales tax rate of 8.875 percent for the City and State of New York and the Metropolitan Commuter Transportation District surcharge. The conspirators willfully failed to and caused the RCI New York Strip Clubs to fail to collect from their customers and pay to the State of New York sales tax on such sales despite being aware that the collection and payment of such taxes were legally required.

To conceal and perpetuate their ongoing sales tax fraud, the conspirators agreed with each other and with others to provide bribes to [auditor] and for [auditor] to receive such bribes. The object of the conspiracy was to induce [auditor] to not assess and penalize the RCI New York Strip Clubs for their failure to collect and pay sales tax during pending and future audits conducted by DTF. In furtherance of the conspiracy, the defendants agreed with each other and others to provide [auditor] with complimentary admission to and private dances at the RCI New York Strip Clubs and Tootsies Cabaret in Miami, Florida, which is also owned and operated by RCI. From 2012 through 2023, the RCI Companies and their officers, employees, and agents provided [auditor] with at least 13 different complementary multi-day trips to its strip clubs in and around Miami, Florida, including Tootsie’s Cabaret. Winata [a controller and accountant at the company] traveled from Texas and from New York to meet [auditor] in Florida for such trips. During these trips, Winata accompanied [auditor] to RCI-owned strip clubs and provided with complimentary hotel stays, restaurant meals, and up to several thousand dollars’ worth of private dances per day at RCI-owned strip

clubs. Additionally, on at least 10 occasions from 2010 through 2021, Winata traveled to New York County from Houston, Texas to provide [auditor] with illegal bribes in the form of complimentary restaurant meals and admission to and private dances at the RCI New York Strip Clubs. Langan, Anakar, and Chhay [other RCI executives] authorized and directed Winata to travel to New York County and Florida for the purpose of bribing [auditor]. Anakar, Langan, and Kevlin provided and authorized and directed employees and managers of RCI-owned strip clubs in New York County and Florida to provide Winata with cash and Dance Dollars to give to [auditor]. As part of the conspiracy, the conspirators agreed with each other and others to falsify the business records of the RCI New York Strip Clubs and RCI-owned and operated strip clubs in Florida to record the bribe payments to as “promo,” “promotion,” “promotional,” “misc.,” or “miscellaneous” expenses.

In exchange for the illegal benefits provided to him, [auditor] agreed to and did aid and further the ongoing commission of criminal tax fraud in which the conspirators and the RCI New York Strip Clubs failed to collect from their customers and pay to the State of New York over \$8 million in sales taxes that should have been collected and paid on the sales of Dance Dollars during the course of the conspiracy. As part of the conspiracy, the conspirators agreed with each other and others that during sales tax audits that [auditor] conducted and supervised for DTF of the RCI New York Strip Clubs, he would assess substantially less in unpaid sales taxes, interest, and penalties than were due. The conspirators also agreed with each other and others that [auditor] would improperly take official action to prevent and impede DTF from conducting additional routine sales tax audits of Rick’s Cabaret, RCI’s most profitable strip club in New York County.”

Bloomberg Law

Manage Newsletters

'Nutrient-Infused' Water Company Defrauded Investors, SEC Says

Sept. 16, 2025, 5:41AM PDT

A "nutrient-infused" water company and its founder defrauded investors through an offering scheme that raised \$10.3 million over five years, the SEC said.

Todd O'Gara and his company Wanu Water Inc. raised the money from more than 50 investors through fraudulent sales of Wanu securities from January 2019 to August 2024, the Securities and Exchange Commission alleged in a complaint Monday in the US District Court for the District of New Jersey.

The defendants made material misrepresentations about Wanu's business with a prominent retailer, falsely claimed negotiations with private equity firms for investments, misrepresented O'Gara's wealth and credentials, and misstated how investor money would be used, according to the SEC's complaint.

The complaint alleges violations of the anti-fraud provisions of the federal securities laws and seeks permanent injunctions, disgorgement of ill-gotten gains plus interest, civil penalties, and an officer-and-director bar against O'Gara.

The US Justice Department brought parallel criminal charges against O'Gara in December.

Lawyers who represented O'Gara in the DOJ case didn't immediately respond to a request for comment on the SEC suit.

The case is SEC v. O'Gara , D.N.J., No. 2:25-cv-15535, complaint filed 9/15/25 .

This story was produced by Bloomberg Law Automation.

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Gemini, SEC Near Settlement in Crypto Lending Case

The proposed settlement shows the U.S. Securities and Exchange Commission has "not entirely left the crypto field of play," according to an expert not involved in the matter.

September 16, 2025 at 02:58 PM By  **Michael A. Mora**



Tyler Winklevoss, chief executive officer and co-founder of Gemini Space Station Inc., left, and Cameron Winklevoss, president and co-founder of Gemini Space Station Inc., right, during the company's initial public offering (IPO) at the Nasdaq MarketSite in New York, on Sept. 12, 2025. Photo: Michael Nagle/Bloomberg

The cryptocurrency exchange known as Gemini Space Station reached a settlement in principle to resolve its unregistered securities trading claims in New York federal court brought by the U.S. Securities and Exchange Commission.

The deal marks a potential win for Gemini founders Tyler and Cameron Winklevoss, 44, and highlights the agency's growing preference for negotiated resolutions over precedent rulings, according to Nicolle Lafosse, of counsel at the international law firm [Diaz Reus](#).

"While this approach may provide regulatory certainty for Gemini," Lafosse said, "it leaves unresolved the fundamental need for judicial and statutory clarity regarding the application of securities laws to digital assets."

The Biden administration's SEC under [Chair Gary Gensler](#) sued Gemini and Genesis Global in January 2023, alleging that the companies bypassed disclosure requirements for Gemini Earn that were intended to protect investors. Gemini Earn allows customers to lend bitcoin and other crypto assets to Genesis Global Capital in exchange for interest payments.

While Genesis agreed to a \$21 million fine to settle the case without admitting wrongdoing, Gemini has denied the allegations. However, the Trump administration's SEC has drastically changed its [leadership and priorities](#), including the recent release of a [166-page report](#) pressing policymakers to develop a crypto-friendly legal framework.

Monday's joint letter to U.S. District Judge Edgardo Ramos of the Southern District of New York said the commission must still approve the agreement, which would "completely resolve" the litigation. The parties asked the court to stay all deadlines and said they would file a status update by Dec. 15 if the paperwork is not finalized by then.

Mark Bini, a partner at [Reed Smith](#) in its New York and Miami offices, represents companies and individuals in complex financial disputes. Bini said the proposed Gemini settlement signals further proof of an evolution in the SEC's crypto enforcement posture.

"That said, it also indicates that the SEC has not entirely left the crypto field of play," Bini observed. "It appears to be an implicit admission that yield-bearing crypto products like this one will be viewed as within the SEC's jurisdictional reach."

Page printed from: <https://www.law.com/nationallawjournal/2025/09/16/gemini-sec-near-settlement-in-crypto-lending-case/print/>

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Ann M. Lipton

@annmlipton.bsky.social

very much what observers are rightly recognizing is becoming a scam economy. we're really communicating that the road to riches is a quick scam or internet fame that can be fleetingly monetized

it's having a distortionary effect on everything

Poppy Alexander @poppyalexander.whistleblower.law · 3h

The merging of gambling, sports betting, crypto "investing," and securities trading continues apace and as @molly.wiki rightly points to, the risk is that the merge will result in a race to the regulatory bottom

September 17, 2025 at 8:05 AM Everybody can reply

6 reposts · 1 quote · 18 likes



3



7



18



Write your reply



Andrew Jennings @andrewkjennings.com · 3h

I've been wondering if our growing scam culture is paradoxically an effect of decreasing social trust.



5



Rosanna Landis Weaver @landisweaver.bsky.social · 2h

Agree. And yet have thought this before. When I get stressed about the future I plant a fruit tree on our property. We now have 3 apples, 2 apricots, and a peach tree.



Poppy Alexander @poppyalexander.whistleblower.law · 2h

Sometimes I think about how future high school students are going to have to learn about Gamestop as a turning point in the US economic system



1



Travelling Will @airelbonia.bsky.social · 3h

I've gotten ads for an app that lets you bet on the price of eggs or localized gas prices... It's impressive how rapidly that merger is spreading and diversifying.



1



Prediction markets are booming. Oversight is barely there.



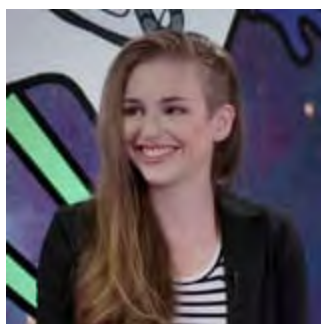
citationneeded.news/prediction-markets-oversight

Molly White

September 16, 2025

A portion of [Ackman's tweet](#)

Prediction markets once lived on the academic fringe. Now they're trading billions on politics, sports, and celebrity gossip — under rules never designed for retail gamblers.

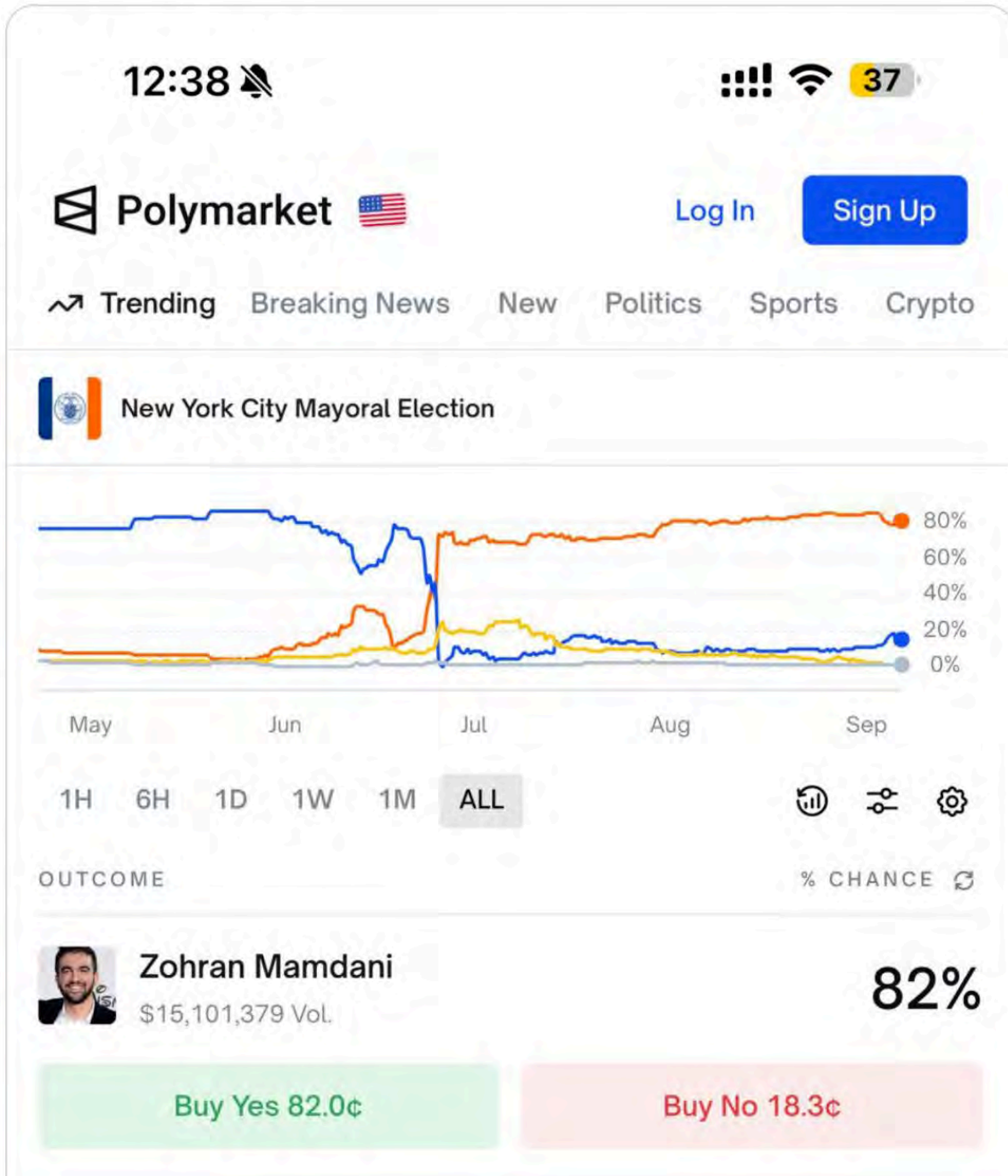


September 16th 2025, 3:24 pm — 16 min read

Prediction markets are booming. Oversight is barely there.

When billionaire Bill Ackman suggested on Twitter that Eric Adams could “place a large [Polymarket] bet on Andrew Cuomo and then announce [his] withdrawal” from the New York City mayoral race, he described something that *fee/s* profoundly illegal. A politician profiting from non-public knowledge of their own withdrawal from an election surely crosses some line — insider trading? Market manipulation? Election interference? Illegal gambling? Ackman ended his tweet: “There is no insider trading on Polymarket”¹ — not because it doesn't happen, but because it won't be charged. He's right: the Securities and Exchange Commission's insider trading rules don't apply here. But that leaves the question: what rules, if any, do?

And to fund your future, you could place a large bet on Andrew Cuomo and then announce your withdrawal from the race. There is no insider trading on Polymarket.



A portion of [Ackman's tweet](#)

As Ackman says, prediction markets fall outside the SEC's jurisdiction,^a living in a different regulatory world than stock markets where executives get prosecuted for trading on non-public earnings or tipping off friends about upcoming mergers. Unlike crypto's ongoing turf

wars between regulators, prediction markets have a clear home: the Commodity Futures Trading Commission, which oversees futures, swaps, and other derivatives trading. A farmer worried about a poor wheat harvest can buy futures contracts that rise in value if wheat prices increase, helping to offset the money lost from selling less grain. An airline can buy oil-based futures contracts to offset the risk of jet fuel costs rising, effectively letting them budget fuel at today's prices even if market rates climb before delivery. Some derivatives markets more closely resemble prediction markets, dealing in events rather than commodities — for instance, ski resorts can hedge against poor snowfall by trading weather-based contracts.

While farmers hedging wheat prices serves a clear economic purpose, prediction markets operate in murkier territory. When people trade on sports games or celebrity relationships, are they engaging in legitimate derivatives trading deserving the same regulatory treatment? Or are platforms like Kalshi and Polymarket essentially gambling sites operating under the veneer of financial markets? And with participants potentially losing big money to better-informed insiders, who's ensuring these markets stay fair? What happens when prediction markets collide with other issues — from market manipulation to gambling addiction to election integrity?

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The history of prediction markets

Prediction markets — platforms where people trade contracts that pay out based on whether specific events happen — have enjoyed a surge in popularity over the last few years as they've dramatically expanded their operations in the United States. While they have existed for decades, they were long confined to strictly academic exercises — operating as small-scale non-profits that carefully constrained their operations to avoid running afoul of the CFTC. The pioneers were university-affiliated non-profits like [Iowa Electronic Markets](#), which capped trades at modest dollar amounts, and later [PredictIt](#), which followed a similar model. The CFTC allowed their elections- and economy-related markets by issuing [no-action letters](#), recognizing there was value in studying whether crowdsourcing predictions through financial markets could outperform traditional polling and forecasting methods.

In 2020, the US-based Polymarket began allowing customers to use cryptocurrency to trade events contracts, though they made no effort to certify their contracts with the CFTC. In 2021, Kalshi emerged as the first fully regulated prediction market in the US, following a hard-won CFTC approval. That platform allowed traders to stake up to \$25,000 on outcomes ranging from COVID-19 vaccination rates to record-breaking temperatures.

The CFTC cracked down on prediction markets in 2022. First, they hit the unregistered Polymarket with a \$1.4 million fine and ordered it to stop offering unregistered event contracts to US customers, effectively shutting the platform out of the American market.² Then they revoked PredictIt's no-action letter,³ apparently concluding the platform had expanded beyond its academic purpose into a commercial enterprise. PredictIt challenged this decision in court, winning a preliminary victory in 2023 and a final one in 2025. In 2023, the CFTC ordered Kalshi to stop offering markets on which party would control Congress after the upcoming elections, citing the Commodity Exchange Act's prohibition on "gaming". Kalshi also mounted an aggressive legal challenge, and when a district court ruled in Kalshi's favor in 2024, the company swiftly reinstated the contested markets [[166](#)].

The regulatory landscape shifted further after Trump took office. The CFTC's interim leadership began championing prediction markets as "an important new frontier",⁴ and dropped both their appeal in the Kalshi case and an ongoing investigation into Polymarket's continued accessibility to US users [[189](#)]. Polymarket acquired a CFTC-regulated derivatives exchange, and a no-action letter from the agency greenlighted their re-entry into the US [[192](#)]. With the administration's deregulatory stance and a nominee for CFTC Chair who sits on Kalshi's board [[190](#)], this permissive approach is likely to accelerate in the coming years. More companies are eager to join the fray, with Crypto.com, Robinhood, and even the sports betting company FanDuel adding event contracts to their offerings. Eyeing this lucrative market, they're likely to follow their predecessors' lead in pushing regulatory boundaries even if it means expensive litigation. Following the crypto industry playbook, they may also lobby Congress for special exemptions.

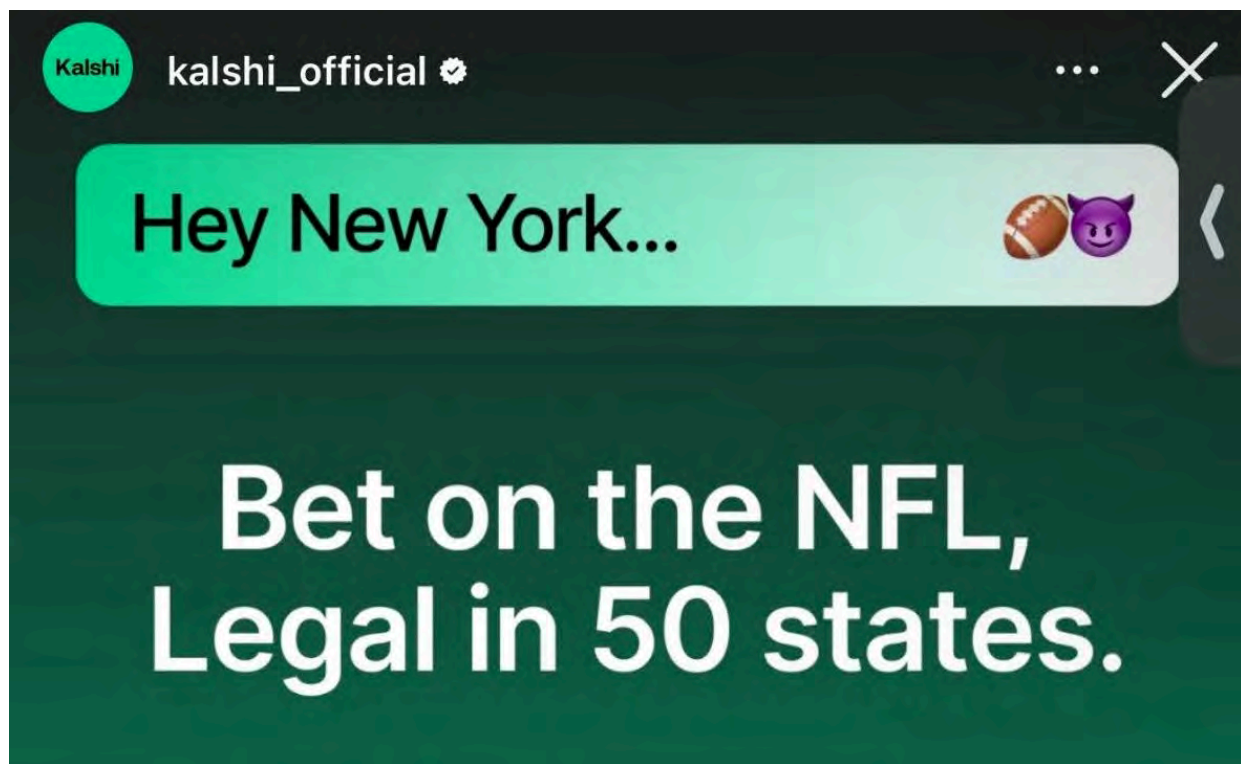
The regulatory landscape

The US financial regulatory landscape is divided among several agencies, with the Securities and Exchange Commission (SEC) overseeing stock markets and various other securities. The SEC aggressively pursues unlawful insider trading cases when people trade securities based on material non-public information. Former SEC official John Reed Stark explains, "The rationale for policing unlawful insider trading is that for the markets to work efficiently and fairly, everyone needs to be working with the same basic information, or at least, that those with special access to nonpublic information are prevented from taking advantage of it before other investors."

But with the Commodity Futures Trading Commission (CFTC), which oversees prediction markets, it's a different world. Trading based on non-public information is built into the system: a cattle rancher can use early calving data to hedge against future beef prices, even though others lack access to that information. Laurian Cristea, a lawyer specializing in financial services and CFTC exchanges, explains, "it's not wrong to trade on information you properly know or developed through your business." Nevertheless, rules against fraud or

market manipulation still prohibit trading based on illegally acquired private information, or making false or misleading statements that impact markets, and CFTC-regulated exchanges like Kalshi are required to establish and enforce their own rules to maintain fair markets.

Some states and tribal governments have also brought cases against Kalshi under state or federal gambling laws, arguing that it is skirting licensing, tax, and consumer protection requirements that apply to sportsbooks and casinos. In court filings, Kalshi insists it's not a casino or sportsbook but rather a venue for traders to engage in "legitimate hedging", similar to how farmers and airlines use futures markets to manage risk. However, their public messaging tells a different story, with their advertising and social media regularly inviting customers to come "bet".



Kalshi has repeatedly argued in court that they are not a betting platform, though their advertising tells a different story (via [Event Horizon](#))

When fighting the CFTC in court over their election-related markets in early 2024, Kalshi insisted that Congress's "gaming" restrictions were aimed specifically at sports betting, not election predictions. Their lawyers argued, "'sporting events such as the Super Bowl, the Kentucky Derby, and Masters Golf Tournament' were precisely what Congress had in mind as 'gaming' contracts".⁵ A year later, Kalshi launched markets on these very same sporting events.

Kalshi has since argued they can't be classified as a gambling platform since traders bet against each other rather than against a "house". Andrew Kim, a lawyer specializing in gaming law and contributor to the [Event Horizon](#) newsletter, acknowledges that some of Kalshi's arguments against state gambling oversight may be valid under a strict reading of the law, but that this particular defense is weak. "There are a number of exchange wagering outlets... generally covered by state level gambling law." He adds: "if you play poker, the house takes a rake, but it doesn't participate. That's still gambling."

Kalshi has also argued that, as a CFTC-regulated Designated Contract Market, the Commodity Exchange Act gives the agency exclusive jurisdiction over its event contracts. This claim of [federal preemption](#) has been disputed by state gambling regulators, and courts have not yet resolved the question.

Old rules, new markets

Though prediction markets aren't a new phenomenon, their growing accessibility to retail traders is. Unlike the SEC, which prioritizes protecting retail investors, the CFTC's mandate is centered on market integrity and preventing fraud or manipulation — not on consumer protection. Its regulations were designed for businesses hedging wheat and oil, not retail traders betting on album releases and how many times Elon Musk tweets in a month. Is a regulatory framework designed for commercial hedgers adequate for these retail-heavy markets? Should regulators try to protect retail traders who are consistently outmaneuvered by insiders with private information or other participants with structural advantages?

Some experts think the CFTC's oversight could work. Lee Reiners, a lecturing fellow at the Duke Financial Economics Center, explains that "any insider trading on these contracts would clearly implicate the anti-fraud provisions of the Commodity Exchange Act," potentially triggering both CFTC enforcement action and a referral for criminal charges from the Department of Justice.

When I asked Cristea about the CFTC's ability to oversee retail markets, he pointed to the CFTC's track record regulating Futures Commission Merchants (FCMs), which facilitate trading of futures and derivatives. While institutional clients still dominate these markets, retail participation has grown significantly in recent years. However, he notes a key difference in consumer protections: "FCMs don't have the same sort of requirement for a customer suitability analysis that applies to broker-dealers in the securities context." Broker-dealers are obligated to assess whether specific investments are appropriate for specific customers. For example, if a 65-year-old retiree with limited savings tried to make a substantial investment in a high-risk stock, a broker-dealer would need to evaluate whether the investment suited her financial situation and could refuse inappropriate trades.

Cristea also expressed concerns about enforcement capacity. “The current administration takes a more free market, *caveat emptor*-type approach. That said, even when the CFTC got jurisdiction over a very large swaps market the agency’s budget was not increased much. And together with this deregulatory trend, agencies getting smaller in size, where agencies are being told to do more with less, I am not sure the CFTC will necessarily come out with [additional retail] protections unless the agency sees that as a necessary step for credibility and for the market to thrive.” The CFTC has yet to bring any enforcement actions pertaining to market manipulation on events contracts, and it’s not clear they have much appetite to begin doing so.

Other industries that deal with outcome-based bets, like sports wagering, have evolved robust integrity systems both to protect consumers and to preserve trust in the games themselves. Kim explains, “The reason for [these rules] is because of the mob, because of the history of gambling and the mob fixing matches. You have a rather sketchy history of criminal influence on the outcome of matches, and so you want to prevent that by just having very strict rules, like if you’re involved in the event, you can’t play, period.”

Today, sports betting platforms work to screen out athletes, referees, and sports program employees to ensure they’re not betting on games they could potentially influence, and employ monitoring programs to detect suspicious bets. This vigilance has proven effective: recent scandals involving illegal betting by Iowa State football staff and the University of Alabama’s baseball coach were first flagged by the platforms’ monitoring systems. Their vigilance is likely because, as Kim says, “the penalties for the operator can be severe. It might be a fine. It might be the license getting pulled.”

Kalshi imposes similar prohibitions on its sports-related markets, using the same IC360 platform that’s used by betting platforms like Caesars Sportsbook. Kim says he doesn’t believe this type of monitoring is something the CFTC explicitly requires of prediction markets. Cristea agreed that it may not be specifically mandated, but noted that CFTC-regulated prediction platforms must demonstrate they can effectively police their markets against manipulation. For Kalshi, implementing monitoring systems like IC360 likely helps prove to the CFTC they’re upholding their licensing obligations.



Trading prohibitions



The following are prohibited from trading this contract:

- Current and former players, coaches, and staff of the league, association, or organization(s) governing the event. For college leagues/associations specifically, or where otherwise appropriate (as identified by the Exchange), this applies to current and former players/coaches/staff of the specific teams in <event> rather than the league/association as a whole (e.g., if the Division I Gonzaga Men's Basketball Team is playing in <event>, this prohibition will restrict trades by current/former players of that team, rather than all current/former players/coaches/staff in any NCAA sport).
- Paid employees of the league and league participants
- Owners of teams and the league
- and household members and immediate family of all above

Kalshi trading prohibitions on a sports-related bet

While Kalshi imposes strict trading restrictions on its presidential election market — barring politicians, campaign staff, pollsters, election officials, and foreign nationals — many of its other markets lack any such prohibitions. This includes election-related markets identical to the type of bet Ackman suggested Adams could place on Polymarket about his own mayoral campaign withdrawal.

Polymarket, which does not yet serve US customers, does no such screening. The platform merely asks users to self-certify they aren't US-based, with additional basic geofencing that users regularly circumvent. Polymarket doesn't require any additional identity verification, and its cryptocurrency-based trading allows users to remain largely anonymous. It remains to be seen whether, and how, the platform will implement more rigorous screening as it looks to re-enter the US — potentially alienating a crypto-native user base often resistant to identity verification requirements.

With markets on such a wide range of events, these platforms can intersect with multiple regulatory frameworks: gambling law, securities regulations, and election integrity rules. Election markets in particular have sparked intense debate, with the CFTC initially opposing them outright. When moving to prohibit Kalshi's Congress-related markets, then-Chairman Rostin Behnam argued they would force the agency to become an "election cop". This would mean "monitoring elections, candidates, and countless participants in the political machinations that proliferate in the media and cyberspace in an effort to prevent manipulation and false reporting within the political system" — a role Behnam said the CFTC "currently lacks the mandate to do."⁶ But after losing its court battle with Kalshi, the agency had little choice but to allow these markets, and Kalshi has since dramatically expanded its election-related offerings.

The stakes of prediction markets

Platforms like Polymarket and Kalshi have already grown far beyond niche experiments, sometimes reporting over a billion dollars in monthly trading volume with hundreds of thousands of active traders. Regulators and lawmakers now face questions: Should these platforms face the same oversight as gambling operations? What obligations do they have to protect vulnerable users from addiction and financial harm? And can CFTC oversight alone prevent market manipulation and other misconduct?

The gambling question has become particularly contentious when it comes to sports markets, which dominate trading activity on prediction platforms like Kalshi.⁷ State regulators have argued these offerings violate state-level gambling laws, with Massachusetts being the most recent to file a lawsuit against Kalshi on September 12. In a statement, Attorney General Andrea Joy Campbell stressed, “sports wagering comes with significant risk of addiction and financial loss and must be strictly regulated to mitigate public health consequences.”⁸

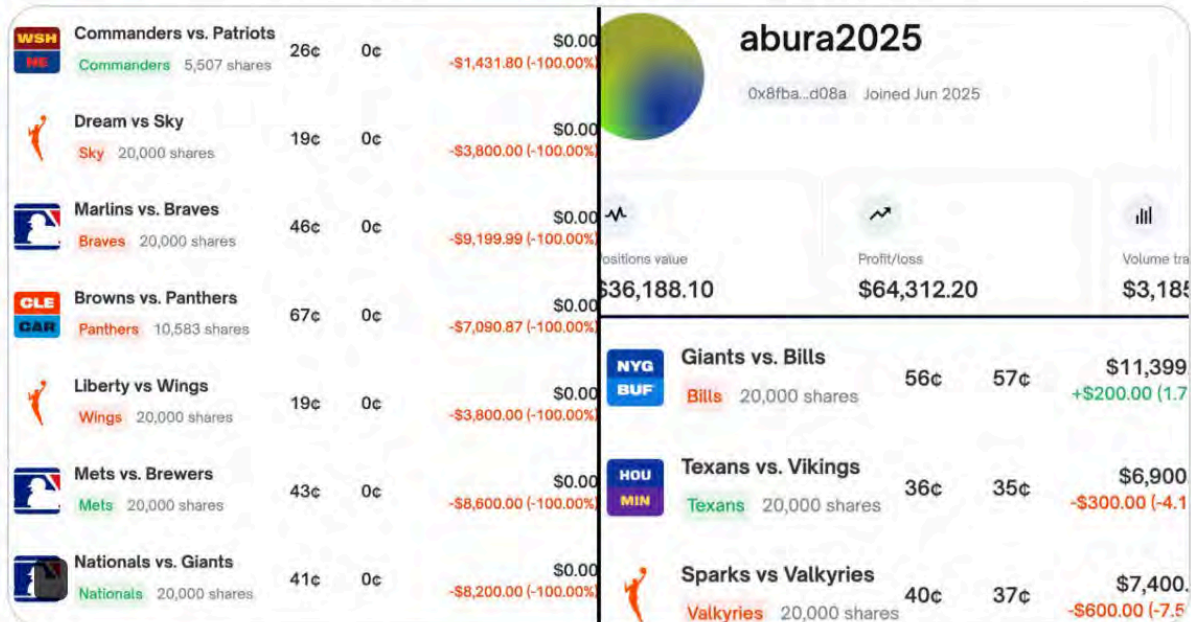
State gambling laws vary but typically require operators to pay special taxes, implement rigorous age and location verification, and establish addiction prevention programs. While Kalshi prohibits users under 18, this falls short of some state requirements — Massachusetts, for instance, sets the minimum age for sports betting at 21. And though Kalshi offers voluntary self-exclusion for problem gamblers, they lack the automated safeguards required by some states, such as notifications or even forced cooling-off periods when users show signs of addictive behavior like rapid deposits or erratic bets.

Platforms like Polymarket have even fewer restrictions. Without identity verification requirements, anyone with access to cryptocurrency can trade, including minors. The platform lacks even basic voluntary self-exclusion options, let alone more proactive safeguards. And problem gambling experts have called out the platform’s troubling attitude toward addiction.⁹ In one incident, an official Polymarket Twitter account highlighted a trader who had lost more than \$40,000 on sports bets over two days, and publicly ridiculed them: “Now he’s chasing losses on Bills & Texans. ... Are we watching a historic meltdown?”



Polymarket user 'abura2025' just torched \$42K in 48H on MLB, WNBA & NFL preseason.

Now he's chasing losses on Bills & Texans. All user profiles are public—are we watching a historic meltdown? 🤖



From poly.market

1:23 PM · Aug 9, 2025 · 39.9K Views

([Tweet](#))

These platforms maintain that they offer financial services that shouldn't be considered wagers. But are they really so different? "Pragmatically, I think for the retail individual, they don't see a difference," says Kim. "I think retail individuals trading on these platforms are not thinking of it as not gambling. They're just thinking of it as one more outlet for them to participate in the opportunity to put money on an event." Recent research supports this, with a study from the American Gaming Association finding that most Americans view sports-related prediction markets as a form of gambling.¹⁰ But at the same time, Kim sees some legitimate arguments from these platforms that they are offering swaps and not wagers, at least when it comes to a strict reading of the law.

... Nearly All Americans Recognize Sports Events Contracts as Gambling, Not a Financial Instrument

What are prediction markets most like?

Thinking specifically about sports related prediction contracts now. Imagine a scenario where you pay 50 cents to buy a contract that the New York Yankees will win tonight's game. If the Yankees win, you'll be paid \$1, if they lose you would lose your 50 cents and have nothing. Would you consider this specific type of sports prediction market to be:

- A form of gambling, like sports betting
- A financial instrument, like options or commodity futures
- Not sure



Base: Among total (2,025)

AMERICAN GAMING ASSOCIATION

3

(via the [American Gaming Association](https://www.aga.com))

I posed the same question to Cristea. “What’s the difference between gambling and trading? The difference is likely whether certain activity is done on a federally-regulated market, like a CFTC or SEC registered exchange.” He acknowledged that, particularly for unsophisticated investors, the line between gambling and trading can be blurry regardless of where they’re placing their bets or trades. “If you have a gambling addiction, could you satisfy it by going and trading an oil future or a gas contract or a Microsoft stock? Maybe. ... I mean, there are people who are day trading, right? And if you talk to anybody about day trading, especially people who work in finance, they will likely say, ‘oh no, I invest in ETFs, money market or mutual funds. Day trading is like gambling all the way.’”

When Kalshi self-certifies each contract to the CFTC, it attests that these markets serve a legitimate economic purpose, such as hedging, price discovery, or risk management. But many of its offerings have no plausible connection to those functions. Sure, there are probably more sports fans recreationally placing trades on who’s going to make it to the later rounds of March Madness, but one could argue that a bar operator might theoretically use these markets to hedge against uncertain revenue if their local team fails to advance. But this kind of rationale is harder to find across many of Kalshi’s other contracts, such as who will serve as a bridesmaid at the wedding of Travis Kelce and Taylor Swift, or whether a popular YouTuber will cut his hair on stream. Polymarket, which does not yet answer to the CFTC, has even more egregious examples: Will Hailey Bieber get pregnant this year? Will the Obamas divorce? Will Trump say the word “pizza” in September? These markets seem

far removed from the original purpose of futures trading — under the Commodity Exchange Act, the justification for letting futures markets exist outside gambling law has always been that they serve an economic function by giving commercial actors tools to manage risk.

Election integrity presents another major concern, as prediction markets create new financial incentives that some fear could (further) distort democratic processes. When defending its ban on Kalshi's Congressional contracts in court, the CFTC found support from consumer rights advocacy groups like Public Citizen, whose Lisa Gilbert warned that "layering in gambling on our elections will take our democracy in precisely the wrong direction."¹¹ In an amicus brief, the financial reform group Better Markets argued these markets threaten both investors and democratic institutions.¹² "Evidence is fast emerging that these types of election wagering contracts may already be serving as instrumentalities of either election manipulation for political gain, market manipulation for financial gain, or both," they wrote, citing a *Wall Street Journal* article suggesting that Polymarket traders might have been artificially pumping up contract prices on a Trump election victory.¹³

Going back to Ackman's idea: directly paying a candidate to drop out of a race is likely illegal, but it's not clear if laws aimed at maintaining election integrity could be applied to prediction markets. Public Citizen's government ethics expert Craig Holman is skeptical. "I do not see how that type of unethical election gambling would be illegal, even if you could prove deceptive intent," he explains.

Finally, there's the question of whether the CFTC is equipped to handle these surging markets, and the demographic they attract. Unlike state gambling commissions, the CFTC's primary focus is on fraud and market integrity, not addiction or financial harm to amateur traders. Will it need to expand its mandate to address these consumer protection issues, or will some other regulator need to step in? Cristea says there isn't a clear right answer. "Maybe there does need to be some sort of retail protection in there."

Stark offers a different possibility: "I just don't know if anyone cares if the Polymarket marketplace is completely corrupt — that is the sole reason to police that sort of conduct. If uninformed participants don't care that betting in Polymarket becomes like betting on a World Wrestling championship match outcome, then regulators won't care either."

When Bill Ackman casually suggested Eric Adams could "fund his future" by betting on his own withdrawal from the mayoral race, he inadvertently highlighted some of the thorny questions around prediction markets. The industry's growth under Trump's deregulatory agenda is likely just beginning, and more companies are entering the space — from crypto exchanges to gambling platforms. Some will probably follow Kalshi's playbook of aggressive litigation to expand the range of permissible contracts. Others may copy Polymarket's approach of trying to skirt regulatory authority with crypto-denominated trades. Some

gambling platforms may attempt a version of regulatory arbitrage, particularly if the outcomes of ongoing court cases suggest that such companies can dodge heavy taxes and onerous compliance burdens by reinventing themselves as trading platforms.

Without much oversight, these markets are ripe for manipulation. The gambling-like nature of many markets, combined with limited addiction prevention programs, likely puts vulnerable users at risk. And election markets create concerning new financial incentives that could further corrupt democratic processes.

Can the CFTC, traditionally focused on institutional traders and commercial hedgers, effectively oversee retail-heavy prediction markets? Should these platforms face the same strict integrity requirements as sportsbooks, barring insiders from trading on events they can influence? Should betting on political outcomes be allowed, or will it inevitably create perverse incentives that could undermine democracy? What types of events should be eligible for trading? Weather events and inflation rates might seem relatively uncontroversial, but what about [contracts that could incentivize harmful real-world actions](#)? And how should regulators balance consumer protection against personal responsibility when it comes to retail traders who may be, essentially, gambling beyond their means?

With prediction markets already handling billions of dollars in trades and more platforms launching every month, regulators need to grapple with these questions before the industry grows too big to effectively control. The cryptocurrency industry has shown how difficult it becomes to implement meaningful oversight once a poorly regulated industry accumulates enough money and political influence to push back — and the devastating cost to everyday people who get caught in the fallout.

Have information? Send tips (no PR) to molly0xfff.07 on Signal or molly@mollywhite.net ([PGP](#)).

I have [disclosures](#) for my work and writing pertaining to cryptocurrencies.

Footnotes

1. With the caveat that the SEC could theoretically bring a case if they decided these markets were influencing securities markets. [↩](#)

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this is no doubt going to make sense to some people, but I remain happy to be blissfully ignorant of whatever *this* is:



Eric Balchunas

@EricBalchunas

Tuttle just filed for a Bonk Income Blast ETF, which will invest in the meme boin Bonk (or an ETF tracking it) then employ a put credit spread using FLEX options to generate income. Also SUI and Litecoin getting the 'Blast' treatment..

Tuttle Capital Bonk Income Blast ETF
Tuttle Capital Litecoin Income Blast ETF
Tuttle Capital SUI Income Blast ETF

PROSPECTUS

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September 17, 2025 at 5:50 AM Everybody can reply

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9



18



44





Quantian @quantian.bsky.social · 3h

Eric has never met a dumb as shit crypto product packaged into an ETF he didn't think was a great idea even once in his life



7



Shadow Hedgie @shadow.hedgie.social · 3h

going back in time and showing 2010 Balchunas this tweet to make him reconsider his career choices



7



Paolo Bernardi @paolobernardi.bsky.social · 3h

As much as I like his book about Bogle, I roll my eyes every time he shows up pumping some ETFs...



2



Tuffy @smtuffy.bsky.social · 3h

all those ETF twitter posters becoming so crypto-pilled is a really wild development



3



Shadow Hedgie @shadow.hedgie.social · 3h

some of them are at least getting that bag



3



Tuffy @smtuffy.bsky.social · 3h

I would hope so, otherwise it's just sad



3



Shadow Hedgie @shadow.hedgie.social · 3h

yeah not sure what's in it for Eric



2



Tuffy @smtuffy.bsky.social · 3h

Contact high and that sweet, sweet social media dopamine



3



Tuffy @smtuffy.bsky.social · 3h

All I know is that if the SEC lets meme coins, which they've expressly said aren't securities or commodities, into ETFs then all bets are off.



6



Bloomberg Law

Manage Newsletters

Private Equity Pours Billions Into Troubled Firms That Fail: S&P

Sept. 16, 2025, 9:57AM PDT

Summary by Bloomberg AI

AI Generated



- Private equity firms have injected more than \$2.5 billion in total capital into at least 165 distressed portfolio companies over the past five years.
- The median sponsor contribution is around \$10 million, usually extending a company's liquidity runway by seven months – a temporary relief.
- More than a third of these firms go on to default and less than a quarter manage to improve their ability to service their debt over the long term.

Private equity firms are doubling down on pouring funds into struggling companies but only a handful of them see meaningful or lasting improvement in their credit quality, according to S&P Global Ratings.

The sponsors have injected more than \$2.5 billion in total capital into at least 165 distressed portfolio companies in the middle market over the past five years, analysts including **Denis Rudnev** wrote in a Monday report. The research found the median sponsor contribution to be around \$10 million, usually extending a company's liquidity runway by seven months – a temporary relief – even though in some cases joint efforts by sponsors and lenders can extend the cushion over a few more years.

"Although these solutions can buy time for operations to stabilize and avert imminent default, they seldom alter our assessment of a borrower's debt-servicing capability over longer periods," the analysts wrote.

More than a third of these firms go on to default and less than a quarter manage to improve their ability to service their debt over the long term, the analysts wrote. About 40% saw their debt ratings remain at triple C, indicating a high risk of default.

Without a turnaround strategy, the new funds from sponsors often fail to avert the root causes of distress, which can vary from excessive leverage to a shift of consumer preferences, and "merely postpone inevitable losses," they wrote.

Buyout firms' involvement in debt talks often includes increasingly complex [maneuvers](#), sometimes putting companies at increased risk of bankruptcy. While equity injections offer lenders a cushion, recent deals have indicated that sponsors can be aggressive – including shoving creditors ever further back in the line and prioritizing bigger lenders over smaller ones.

Private credit deals usually have maintenance covenants that facilitate a sponsors' rescue plan, which is not the case for aggressive broader-syndicated-loan deals, the S&P analysts noted.

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Securities

Private Markets' Exposure Rises at Top Pension Funds (Correct)

Sept. 16, 2025, 9:04 AM PDT

Regulation and compliance have driven an unprecedented wall of US retirement money into private assets, a new report by Bloomberg Intelligence shows, casting new light on the real-world risks from finance's continued push into areas beyond the traditional oversight of regulators.

The top 20 US pension funds alone hold about half a trillion dollars of private market exposure, the analysts found, with some having doubled their allocations to unlisted investments over the past decade. Exposures across the broader \$43.4 trillion of US retirement assets are also rising, against a backdrop of declining numbers of US publicly-traded companies and evermore privately-held unicorns worth more than \$1 billion apiece.

"Investors are gaining exposure to private firms through 401(k)s, mutual funds and ETFs — often without knowing it," analysts including **Andrew Silverman** wrote in the report, describing how "regulatory requirements, the availability of private equity financing and acquisitiveness of large companies have put a damper on initial public offerings."

The findings echo concerns from policymakers across the globe who have been tracking the migration from public markets to private ones with increasing urgency. It also comes weeks after the Trump administration announced it wants to make it easier for individuals to put their retirement cash into alternative assets.

Officials from the Securities & Exchange Commission have long called out the potential risks from markets "going dark" as companies favor staying private over a public listing, allowing them to bypass traditional disclosure and governance requirements.

At the same time, the Financial Stability Board and other watchdogs have been tracking the shift from traditional lending to private credit. That growth has already pushed \$1.7 trillion of loans beyond the purview of regulators and could multiply to \$22 trillion in the coming years.



Tobias Adrian of the IMF

Photographer: Kent Nishimura/Bloomberg

“There’s some pockets where more sunshine could be valuable,” said Tobias Adrian, head of financial stability at the International Monetary Fund, describing the potential for a “cliff effect” where direct loans went from appearing healthy to distressed overnight as “the biggest concern”.

Policy Clampdown

The migration toward private assets has been strongest in the US, where private funds oversee \$22.8 trillion.

That helped drive a 50% slump in the number of publicly traded companies in the US from 1996 to last year, in part because private equity bought up firms. The rise of venture capital also allowed companies to fund themselves for longer without turning to initial public offerings, helping to increase the number of unicorns there to 796 at the end of August, including 33 companies valued at more than \$10 billion.

Private Markets (USD, Millions)/Percent of Total AUM				
State Pension Funds	06/30/2015	AUM %	06/30/2023	AUM %
California Public Employees' Retirement System	\$28,808.84	9.12%	\$71,065.46	14.43%
California State Teachers' Retirement System	\$24,243.50	11.16%	\$92,731.20	25.63%
Florida Retirement System	\$ 9,104.96	5.53%	\$20,965.55	11.05%
Massachusetts Pension Reserves Investment Management Board	\$ 6,980.42	10.73%	\$16,864.91	16.46%
Minnesota State Board of Investment	\$ 4,729.92	7.47%	\$17,470.66	20.40%
New York State Common Retirement Fund	\$14,247.37	7.20%	\$36,976.57	13.19%
Oregon Public Employees Retirement System	\$13,412.46	19.50%	\$40,215.68	45.07%
State of Michigan Retirement System	\$ 2,016.69	15.74%	\$ 4,400.27	22.28%
Teacher Retirement System of Texas	\$16,411.25	10.96%	\$33,768.07	15.82%
Teachers' Retirement System of the City of New York	\$ 6,002.26	8.59%	\$19,591.38	18.02%
Virginia Retirement System	\$ 7,940.49	11.06%	\$34,201.50	30.40%
Washington State Retirement System	\$18,457.13	21.69%	\$45,925.86	25.86%
Michigan Public School Employees Retirement System	\$ 7,721.39	15.62%	\$17,703.80	22.54%
Los Angeles County Employees Retirement Association	\$ 4,346.85	8.46%	\$13,894.50	18.25%

Source: Bloomberg Intelligence

Bloomberg
Intelligence 

Source: Bloomberg

Still, the Bloomberg Intelligence report said that the rising tide of retirement money flowing into private assets increases the chances of an eventual policy clampdown across the sector.

"A failure within US retirement accounts linked to closely held investments — and the possible burden to taxpayers — would be the most likely catalyst for federal action to expand visibility," the analysts wrote.

The opacity of the investments had "raised alarms regarding the inherent investment risk" for underlying holders who "may not be as sophisticated as investors who are more accustomed to investing in private enterprises," they added.

Direct lending, meanwhile, has drawn regulatory scrutiny after capital rules curbed banks' corporate lending appetite, helping to fuel the rapid growth of private credit. While there is appreciation that the asset class can fill funding gaps in some markets, policymakers are also trying to get ahead of risks there.

"Nobody would say we're trying to stifle innovation, they would say we're trying to foster safe innovation," said **John Schindler**, secretary general at the Financial Stability Board. "We want to make sure if there's a new innovation, a new way of doing business, that it does have the proper safeguards in place," he added.

(Corrects erroneous figure for US pension fund exposure to private markets in headline and second paragraph.)

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Securities

Banks Push US Accounting Board to Streamline Hedging Guidance

Sept. 16, 2025, 1:43 PM PDT

The banking industry is calling on the US accounting standard-setter to put improvements to notoriously complex hedge accounting on its to-do list.

Public feedback on the Financial Accounting Standards Board's agenda outreach effort indicates that risk management and hedge accounting are top priorities, including for banking groups, FASB Deputy Technical Director Rosemarie Sangiuolo said Tuesday during remarks at a banking conference in Maryland held by AICPA & CIMA, professional bodies for accountants.

Businesses looking to minimize exposure to swings in interest rates or raw material prices buy futures, options, or swaps to offset risks. Some strategies can qualify for hedge accounting, a specialized method allowing companies to shield earnings from fluctuations.

The American Bankers Association and other groups pushed for the board to streamline its hedge accounting guidance in comment letters due June 30. The model leads to "unnecessarily restrictive qualification limitations on straightforward risk management activities," JPMorganChase wrote.

Board members in March advanced to final steps a targeted project that aims to simplify certain aspects of the guidance. FASB's staff is separately researching how to improve hedge accounting, with the goal of arriving at preliminary suggestions to share with the public for input.

A larger look at the model could take time, FASB board member Frederick Cannon said Tuesday. Still, Cannon said he thinks "the majority of the board does feel like we need to address the core pillars of hedge accounting in order to continue to move forward."

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Bankruptcy**Tricolor collapse sparks concern about health of US subprime auto sector**

Texas lender's rapid failure leaves trail of losses and questions in a fast-growing Wall Street market



Mexican and American flags fly from vehicles at a Tricolor dealership in Houston on September 11 © Mark Felix/Bloomberg

Amelia Pollard in Dallas and **Akila Quinio, Antoine Gara** and **Jamie John** in New York

Published SEP 15 2025



Lucia Hernandez, who works for a loan servicing company outside San Antonio, was thrilled in July to purchase a used Chevrolet Trailblazer, a sport utility vehicle that looked new, for \$30,000 from the car dealer Tricolor Holdings.

The terms seemed fair. She put down \$3,500 and would make biweekly payments of \$357 to repay the loan. But a few weeks after buying the car, the transmission broke, forcing her to take it to the repair shop, which Tricolor also owned.

For days, she received regular text updates about the repair. Then the messages stopped. She went to the repair shop with her husband last Monday to discover that it was closed down. There was not even a sign in the window.

“We’re expected to make payments for a vehicle we don’t even have,” she said. “Everybody’s just trying to find answers.”

The collapse last week of the [subprime auto lender](#) in Texas has left a trail of losses and questions from Wall Street to low-income immigrant communities throughout the American south-west. The US Department of Justice is investigating Tricolor over fraud allegations, the [Financial Times has reported](#).

Tricolor Holdings, which sold used cars and offered financing to primarily Hispanic immigrants with little credit history, unravelled in a matter of days.

The regional bank [Fifth Third](#) last Tuesday disclosed it would write down the bulk of a \$200mn loan after it unearthed “fraudulent activity” by one of its corporate clients. The Financial Times reported that this client was Tricolor. Less than 24 hours later, the auto lender filed to liquidate through bankruptcy court.

Its failure has prompted questions about the health of the \$1.7tn auto finance sector, a niche but fast-growing part of Wall Street’s securitisation market. Trillions of dollars in debts backed by assets such as car loans, farm equipment and aircraft are bundled annually by banks into securities and sold off to investors such as insurance companies and pension funds managing the savings of retirees.

In subprime auto loans, Tricolor had emerged as a fast-growing lender, bundling and selling \$1.4bn of debt across 14 bond offerings, quadrupling in size over the past five years. Its growth was funded by five lenders led by JPMorgan Chase, the largest bank in America, who collectively gave Tricolor about \$1bn in revolving credit that it could draw on to make loans and then repay when they were packaged into securities.

“There is no doubt there are problems in subprime auto, and the problems have been growing for years,” said Rod Dubitsky, an independent consultant who formerly worked at Moody’s rating agency and Credit Suisse. “This is just an extreme example of what’s affecting the entire subprime and prime auto market.”

Tricolor was founded in 2007 by Daniel Chu, who led the company as chief executive and was its majority owner until it shut down last week. Chu did not respond to requests for comment.

Tricolor first hired bankruptcy advisers in August for a Chapter 11 restructuring, which would have allowed it to continue operating, said people familiar with the matter. High interest rates over the past couple of years had put pressure on the company and its auto loan borrowers.

Tricolor's customers were mostly immigrant workers in the "cash economy", who worked in jobs such as construction without citizenship, and borrowers with limited credit histories, according to S&P Ratings, which rated its bonds. Tricolor made most of its loans to customers who do not carry a credit score and about half did not have a social security number. Most borrowers also did not provide a driver's licence.

Tricolor was able to win over Wall Street investors despite its financially precarious customer base by asking car buyers to post unusually high down payments of 11 per cent of vehicle price and charging interest rates of around 17 per cent, on average.

Customers' interest payments were made biweekly instead of monthly and in the event a customer defaulted, vehicles were equipped with GPS devices to help lenders quickly repossess them, S&P said in a June report. Tricolor also employed an army of mechanics called "reconditioning" workers to refurbish cars from defaulted loans and sell them to the next buyer.

But mass deportations and US Immigration and Customs Enforcement raids under the Trump administration compounded that existing financial stress, putting even more pressure on Tricolor's primary customer base. S&P's most recent ratings included extra modelling to account for "changes in immigration policies and enforcement . . . that could lead to higher delinquency and loss levels".

"Once the Trump administration started we started having a lot of problems with these customers not being able to make a payment or too afraid to go outside home and being deported," said a worker who was let go this month. "We did have a lot of customers being deported back to Mexico and they abandoned the vehicles."

Jesse Edwards, an administrative assistant at a California subsidiary of Tricolor, told the Financial Times that sales there had slowed substantially this year and its lots were filled with unsold cars.

He suggested the business model was predatory as Tricolor would sell a car to someone who might struggle to make the loan's repayments, repossess the vehicle and resell it, pocketing lucrative downpayments and interest along the way from a single vehicle.

JPMorgan began probing suspicious activity at Tricolor at the end of August, according to people familiar with the matter. One area of concern was whether Tricolor pledged the same collateral on multiple loans, said two other people familiar with the matter.

The bank contacted Tricolor about the potential problems. Tricolor then notified its restructuring lawyers at Sidley Austin that something was awry.

JPMorgan quickly hired FTI Consulting to run a forensic analysis of the company, according to two people familiar with the matter. It also alerted the Department of Justice, the Financial Times previously reported.

Sidley Austin and the company's other advisers — including consultants at Alvarez & Marsal — rushed to launch their own inquiry. Yet before they could determine who was culpable, and what had exactly taken place, the company ran out of cash.

At the start of September, it became clear Tricolor would need to liquidate instead of going through an orderly bankruptcy. This month it laid off nearly all of its roughly 1,500 employees.

"It was so crazy when we realised the scale of it," said one person who worked closely with the company in its final days. "We had a fraction of the money we were told we had. Creditors were beating down the doors. It was all around a very stressful situation."

Some of Wall Street's most credible lenders and rating agencies had given the company an implicit seal of approval in recent months.

Tricolor's biggest lenders — JPMorgan, Barclays and Fifth Third — lent hundreds of millions of dollars to the company in recent years. Other secured lenders listed in Tricolor's bankruptcy filings include an entity affiliated with MassPRIM, the Massachusetts state pension fund which manages \$115bn, and Triumph Financial, a community bank with about \$6.5bn in assets.

Triumph said it was “working to secure its vehicle collateral” on a \$61mn loan facility, of which it holds approximately \$23mn. It declined to comment further. JPMorgan and regional bank Fifth Third have about \$200mn worth of exposure each, the FT previously reported.

The subprime auto lender also soon became a darling of the rush into environmental, social and governance investments. BlackRock put \$90mn behind Tricolor in 2021, touting it as one of the asset manager's first commitments in its “impact opportunities” strategy and for its use of artificial intelligence.

“It's nonsense that it's so heavily touted as an ESG” investment, said Dubitsky. “It's either a neutral product or a predatory product.”

This year, Tricolor also had its bonds rated by firms like Kroll Bond Rating Agency and S&P Global Ratings, which both blessed the least risky tranches with triple A and double A ratings, respectively.

Wall Street quickly ingested those bonds. Major asset managers like Charles Schwab, Pimco and Capital Group snapped them up for their funds, according to regulatory filings.

Like Hernandez, the borrower for the Chevrolet Trailblazer sitting in a reconditioning lot, the banks and investors who had taken part in Tricolor's lending machinery are now left to wonder how severe their losses will be. KBRA, the rating agency, said last week it had been unable to reach the company in its efforts to quantify the wreckage.

JPMorgan, BlackRock, Sidley Austin, Pimco, Capital Group and FTI declined to comment. Tricolor, Alvarez & Marsal and Charles Schwab were not immediately available for comment.



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Rebutting Price Impact In Securities Class Actions

By **Kevin Broughel, Sarah Eichenberger and Zoe Lo** (September 16, 2025, 4:32 PM EDT)

Defendants litigating securities cases historically faced long odds in defeating class certification. This stems in part from the U.S. Supreme Court's 1988 decision in *Basic v. Levinson*, which created a rebuttable presumption of classwide reliance on a defendant's alleged misrepresentations.[1]

For years, *Basic*'s presumption was rebuttable in name only. That paradigm began to shift with the Supreme Court's 2014 decision in *Halliburton Co. v. Erica P. John Fund Inc.*, which allowed defendants to present evidence that the alleged misrepresentations did not affect the issuer's stock price.[2]

The true seeds of a course correction, though, came four years ago in the Supreme Court case of *Goldman Sachs Group Inc. v. Arkansas Teacher Retirement System*, or GSG, which **identified** the type of price impact evidence courts should consider at the class certification stage.[3]

The U.S. Court of Appeals for the Second Circuit's August 2023 **decision** in *Arkansas Teacher Retirement System v. Goldman Sachs Group Inc.*, or ATRS, sharpened GSG's application to reinvigorate the rebuttable aspect of *Basic*'s presumption.[4] While ATRS creates a blueprint for defeating class certification, as the U.S. Court of Appeals for the Third Circuit recently made clear in its July 30 **decision** in *San Diego County Employees Retirement Association v. Johnson & Johnson*, ATRS' framework is not a one-size-fits-all defense.[5]

An examination of cases post-ATRS illustrates how its successful application turns on the evidence in each case.

The Post-ATRS Legal Framework

Plaintiffs alleging securities fraud under Section 10(b) of the Securities and Exchange Act must establish that they bought or sold a security in reliance on a material misstatement. *Basic v. Levinson* created a classwide rebuttable presumption that when purchasing stock, investors rely on publicly available material information, including alleged misstatements, which are reflected in the stock price.[6]

In 2014, the *Halliburton* court held that "defendants should at least be allowed to defeat the [*Basic*] presumption at the class certification stage through evidence that the misrepresentation did not in fact affect the stock price." [7] Successfully applying the *Halliburton* decision, however, remained difficult, as few defendants could sever the link between the alleged misrepresentation and its presumptive effect on stock price.

The GSG court changed that dynamic by invigorating the price impact defense.

First, the GSG court held that although defendants bear the burden of persuasion, the allocation of that burden is "unlikely to make much difference," as courts must "assess all the evidence of price impact" irrespective of its proponent,[8] even if the evidence overlaps with merits-based inquiries.[9] Second, the Supreme Court expressed doubt about the long-standing assumption that a "back-end price drop" after a corrective disclosure evidences price impact, especially when "there is a mismatch



Kevin Broughel



Sarah Eichenberger



Zoe Lo

between the contents of the misrepresentation and the corrective disclosure." [10]

After remand, the Second Circuit in ATRS amplified the GSG court's instructions by mandating a "searching price impact analysis" when: (1) the challenged statement is generic and there is a considerable gap between it and the corrective disclosure; (2) the corrective disclosure does not directly reference the alleged misstatement; and (3) a generic risk disclosure was purportedly misleading by omission. [11]

Applying this framework to the evidence, the Second Circuit in ATRS decertified the class, holding there was "an insufficient link between the corrective disclosures and the alleged misrepresentations." [12] Accordingly, while ATRS did not ease defendants' burden, it showed how defendants could effectively rebut Basic's presumption.

Broadening the Mismatch Analysis

The Evolution of the Matching Spectrum

One of the ATRS court's most impactful contributions was its endorsement of a meaningful mismatch analysis, that is, a close comparison of the alleged misstatements and the corrective disclosures. [13] While this analysis is not new, the ATRS court revitalized the assessment by encouraging courts to apply both common sense and empirical evidence.

Matching exists on a spectrum, ranging from perfect matches and strong matches, to, in a post-ATRS world, weak or no matches.

A perfect match is self-evident. The so-called strong match, though, can be nebulous. It is exemplified by the Second Circuit's 2016 decision in *In re: Vivendi Universal S.A. Securities Litigation*, where, although the defendant's semigeneric statements about its comfortable liquidity situation were not perfectly aligned with later reports of massive refinancing needs, there was enough of an overlap to infer that the subsequent price declines corrected earlier price inflation. [14] For many years, this category was a catchall, even for statements with a loose connection.

The ATRS court broadened the mismatch spectrum by adding a category for generic statements with an attenuated link to the corrective disclosures, i.e., what can be thought of as a weak or no-match category.

The alleged misstatements in ATRS comprised platitudes: "[w]e are dedicated to complying fully with the letter and spirit of the laws"; "[i]ntegrity and honesty are at the heart of our business"; and "[w]e have extensive procedures and controls that are designed to identify and address conflicts of interest." [15] These generic statements were ill-matched to the more specific corrective disclosure that the U.S. Securities and Exchange Commission was investigating a transaction, [16] thereby severing the proverbial link and defeating the plaintiffs' price impact argument. [17]

Exploring The Weak-to-No-Match End of the Spectrum

Some courts have embraced ATRS' application of GSG to build out the weak-to-no-match end of the spectrum.

In *In re: Concho Resources Inc. Securities Litigation*, for example, the U.S. District Court for the Southern District of Texas, after considering expert testimony and applying its own commonsense analysis, [18] concluded on April 7, 2025, that the defendants had severed the link between corrective disclosures and certain of the alleged misrepresentations. [19] In reaching this conclusion, the court adopted the defendants' categorization of the challenged statements and analyzed each category's relationship to the purportedly corrective disclosures. [20]

One category involved ATRS-type platitudes best exemplified by this statement: "Our operational and financial performance demonstrated our ability to consistently execute, control costs and capitalize on opportunities that strengthen our competitive position." [21] Analogizing these to the generic statements in GSG, the Concho court held that the alleged misstatements did not match corrective disclosures concerning financial results; revised production targets; and oil well manufacturing and project management, thus severing "the link between back-end price drop and front-end

misrepresentation." [22]

A second category juxtaposed alleged misstatements about financial projections for fiscal year 2018 — including statements that investors could expect "more of the same in '18" — with corrective disclosures revealing "disappointing ... results for the second quarter of 2019," according to the Concho court. [23]

Although this category was arguably more specific than the first, the Concho court nonetheless held that the mismatch was too great to support price impact because a "statement to expect 'more of the same' in one year cannot be corrected by a statement regarding the results in a different year." [24] In contrast, corrective disclosures "that suggest[ed] that the manufacturing mode [for well projects] was not as efficient or proven as previously publicized" were not a substantive mismatch and did support price impact. [25]

In *In re: Kirkland Lake Gold Ltd. Securities Litigation*, the U.S. District Court Southern District of New York compared a mining company's statements about prioritizing organic growth with its corrective announcement of acquiring a mine. [26] Although the challenged statements were somewhat less generic than in *ATRS*, the Kirkland court in March 2024 nonetheless identified a mismatch between misleading statements about an organic business growth strategy and a corrective disclosure concerning a specific mine acquisition with "unique characteristics" and "a particular valuation." [27]

In reaching this determination, the Kirkland court held that none of the contemporaneous analyst reports referred to the alleged misstatements, "let alone drew the inference that Kirkland was not considering acquisitions." [28]

The court also relied on testimony from two defense experts — a mining industry expert and an economics expert — to sever the link between the challenged statements and stock price movements. [29] The industry expert opined that the alleged misstatements would not have inflated the price because investors understood that long-term growth relies on both exploration and acquisitions. [30] And the economics expert offered alternative explanations for the price decline after the corrective disclosure. [31]

Another of *ATRS*' progeny, *Shupe v. Rocket Companies Inc.*, bolstered the weak-to-no-match end of the spectrum. There, the plaintiffs alleged that the company's CEO falsely stated that Rocket was "seeing strong consumer demand," didn't "see interest rates going up or down," and that direct-to-consumer and partner business channels were "all growing." [32] The company revealed the alleged truth when it disclosed an expected decrease of \$18.5 billion in closed loan volume, and the fact that rising interest rates had diverted its focus to a less-profitable partner-network channel. [33]

In **determining** there was a mismatch between the alleged misstatements and the "corrective" disclosures, the U.S. District Court for the Eastern District of Michigan in September 2024 relied on the defendants' proffered expert, who noted that:

- At the same time that the CEO made optimistic statements about the company's future, the company disclosed a weaker financial performance relative to the previous quarter;
- Contemporaneous SEC filings and risk disclosures discussed how rising interest rates were adverse to the company's business; and
- "[A]t least 50" sell-side analyst reports from 17 different analysts during the putative class period did not mention the CEO's alleged misstatements. [34]

In denying class certification, the court held that these facts were "largely dispositive" and demonstrated a "considerable mismatch ... between the generic nature of the alleged misrepresentations and the specific revelation." [35] As such, the facts rebutted the Basic presumption of reliance. [36]

The Perfect-to-Strong End of the Spectrum

Although the ATRS court paved the way for meaningful change, the Basic presumption remains a significant hurdle when the allegations gravitate toward the perfect-to-strong-match end of the spectrum. This is illustrated in a recent Third Circuit decision, *San Diego County Employees Retirement Association v. Johnson & Johnson*.

In this case, a majority of the three-judge panel ruled on July 30 that the company failed to show there was a mismatch between the alleged misrepresentations and the company's subsequent disclosures.[37] While the court acknowledged that a mismatch could rebut the presumption of reliance, there was "no mismatch between the subject of the alleged misrepresentation" — the company's denials of purported product contamination and associated safety and liability issues — and the content of corrective disclosures largely from public trials, which allegedly contradicted the company's representations.[38]

Thus, the court held that the misrepresentations had resulted in a price impact, and that each corrective disclosure "was followed by a stock price decline for which there was no other explanation but the disclosure itself." [39] This case therefore is a reminder that the mismatch analysis will not always be successful in rebutting price impact.

The Zillow Appeal and What It Could Mean for the ATRS Framework

Another circuit case that could have meaningful ramifications for the ATRS framework is the *Jaeger v. Zillow Group Inc.* appeal **pending** before the U.S. Court of Appeals for the Ninth Circuit.[40]

Jaeger concerns an August 2024 decision by the U.S. District Court for the Western District of Washington to **certify** a class of shareholders challenging the company's alleged misrepresentations about the accuracy of its home-pricing algorithm. The plaintiffs argued that the company corrected prior representations when it disclosed that it was pausing home acquisitions due to backlogs, employee layoffs and overpayments for some homes.

On appeal, the company **argued**, among other things, that the district court had failed under ATRS to consider evidence of a mismatch, because a corrective disclosure must "expressly and specifically negat[e]" the misstatement to establish price impact.[41] Whether, and to what extent, the Ninth Circuit adopts the company's arguments remains to be seen.

Takeaways

As reflected in the above cases, ATRS has ushered in a more searching analysis of price impact. For defendants wishing to take advantage of this emerging standard, ATRS and its progeny offer several important lessons.

Mismatching involves a two-pronged attack aimed at both genericism and substance.

Defendants leveraging the mismatch defense will be best positioned to demonstrate a weak match or no match by attacking alleged misstatements as generic.

For defendants using this approach, a commonsense comparison of the statements to the corrective disclosures can provide a compelling price impact rebuttal. Defendants may also rely on a lack of public reports referencing the alleged misstatements as evidence that they were not incorporated in the stock price.

Even defendants faced with purported misstatements that have a stronger, but still tangential, relationship to corrective disclosures can argue that the corrective disclosures are misnomers if they contained references to specific events unrelated to the purported misstatements.

Early expert involvement can be critical.

Defendants should strongly consider engaging industry and economic experts who can help rebut the presumption of reliance.

Industry experts can explain relevant commercial dynamics and provide alternative explanations for stock price movements. Similarly, economic experts can review market data to prepare event studies

and other analyses disassociating disclosures from stock price movements, including by highlighting confounding facts or events.

Market commentary and analyst reports matter.

ATRS and its progeny also illustrate the importance of carefully reviewing available market commentary and analyst reports.

Several recent cases have relied on the presence — or, in the case of Shupe and ATRS, the absence — of market commentary in determining whether market participants viewed the alleged misstatements as generic. Moreover, analyst reporting and other public market disclosures can be used as evidence that the corrective information was already in the marketplace before its alleged disclosure, undermining any argument that investors reacted to new material information.

Conclusion

In sum, courts that before ATRS treated a back-end price decline as de facto evidence of price impact now undertake a searching price impact analysis that can defeat class certification. A rigorous review and comparison of all relevant disclosures, combined with a thorough analysis of market reporting and opinions from economic and industry experts, can provide a viable pathway for defeating class certification.

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Katten summer associate Jessica Violone contributed to this article.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] **Basic v. Levinson** , 485 U.S. 224, 248 (1988).

[2] **Halliburton Co. v. Erica P. John Fund Inc.** , 573 U.S. 258 (2014).

[3] **Goldman Sachs Grp. Inc. v. Arkansas Tchr. Ret. Sys.** , 594 U.S. 113 (2021).

[4] **Arkansas Tchr. Ret. Sys. v. Goldman Sachs Grp. Inc.** , 77 F.4th 74 (2d Cir. 2023).

[5] **San Diego Cty. Emps. Ret. Assoc. v. Johnson & Johnson** , No. 24-1409, 2025 WL 2176586 (3d Cir. July 30, 2025).

[6] **Basic**, 485 U.S. at 248 (1988).

[7] **Halliburton Co.**, 573 U.S. at 279.

[8] **Id.** at 126-27.

[9] **Goldman Sachs Grp. Inc.**, 594 U.S. at 122.

[10] **Id.** at 123.

[11] **Arkansas Tchr. Ret. Sys.**, 77 F.4th at 102. The plaintiffs in ATRS relied on an inflation-maintenance theory of price impact where they argued the alleged misstatements maintained an already inflated stock price. Under that theory, price impact "must be measured via stock price decreases occurring after the alleged misstatements were revealed to be false." **In re: Goldman Sachs Grp. Inc. Sec. Litig.** , 579 F. Supp. 3d 520, 527 (S.D.N.Y. 2021).

[12] **Arkansas Tchr. Ret. Sys.**, 77 F.4th at 105. The Second Circuit relied on expert evidence in

reaching this conclusion. Among other things, the court examined the news coverage and market commentary surrounding the alleged "corrective disclosures" and found it unpersuasive evidence of price impact, noting that "commentary touching upon only the same subject matter" as the corrective disclosures "cannot be enough." Id. at 104. The court further noted that on the "other side of the ledger" was an analysis by defendants' expert of "880 analyst reports published during the Class Period," "none of which reference[d]" the challenged disclosure. Id.

[13] Id. at 100.

[14] *In re: Vivendi Universal, S.A. Sec. Litig.*, 838 F.3d 223, 235-37 (2d Cir. 2016).

[15] *Arkansas Tchr. Ret. Sys.*, 77 F.4th at 82.

[16] Id. at 83.

[17] Id. at 105.

[18] The defendants' expert opined in part that certain alleged misstatements were generic because no equity analysts referred to them in their reports or made a connection between the alleged misstatements and the "corrective" disclosure. The court observed that while the lack of analyst commentary was some evidence of the statements being generic, it was not dispositive. *In re: Concho Res. Inc. Sec. Litig.*, No. 4:21-cv-2473, 2025 WL 1040379 *13-14 (S.D. Tex. Apr. 7, 2025).

[19] *Concho*, 2025 WL 1040379 at *13-14.

[20] Id. at *10.

[21] Id. at *14; *In re: Concho Resources Inc., Sec. Litig.*, No. 4:21-cv-2473, Dkt. 25 at ¶ 169.

[22] *Concho*, 2025 WL 1040379 at *14.

[23] Id. at *17.

[24] Id.

[25] Id. at 16.

[26] *In re: Kirkland Lake Gold Ltd. Sec. Litig.*, No. 20-cv-4953(JPO), 2024 WL 1342800 (S.D.N.Y. Mar. 29, 2024).

[27] Id. at *8.

[28] Id. at *9.

[29] Id.

[30] Id.

[31] Id.

[32] *Shupe v. Rocket Cos. Inc.*, 752 F. Supp. 3d 735, 756, 778 (E.D. Mich. 2024).

[33] Id. at 758.

[34] Id. at 779.

[35] Id. at 779, 781.

[36] Id. at 782. Subsequent to *Shupe*, the Southern District of New York applied ATRS to a series of disclosures concerning an issuer's investment in a fund, finding that only two out of thirteen alleged

misstatements were an appropriate match to the corrective disclosures about the purported diversion of money from the fund. *Sjunde AP-Fonden v. Goldman Sachs Grp., Inc.*, 2024 WL 1497110 (S.D.N.Y. Apr. 5, 2024), Report & Recommendation Adopted, 18-cv-12084-VSB-KHP, Slip OP. (S.D.N.Y. Sept. 4, 2025) (Dkt. 355).

[37] San Diego Cty. Emps. Ret. Assoc., No. 24-1409, 2025 WL 2176586 at *4.

[38] Id.

[39] Id.

[40] *Jaeger v. Zillow Group Inc.* , 746 F.Supp.3d 1025 (W.D. Wash. 2024).

[41] Appellant's Opening Brief at 26-27, *Jaeger v. Zillow Grp. Inc.* , No. 24-6605 (9th Cir. Jan. 8, 2025).

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AT&T Wants Lead-Lined Cables Investor Suit Gone For Good

By **Nadia Dreid**

Law360 (September 16, 2025, 9:02 PM EDT) -- AT&T says it's time for a Texas federal court to dismiss an investor suit accusing the mobile behemoth of misleading investors about the removal of lead-covered copper cables from its network, for good.

The mobile titan came out swinging Monday, calling the shareholders' second amended complaint the investors' "third attempt to convert a series of sensationalized Wall Street Journal articles into a viable securities-fraud case."

However, they failed to fix the problems U.S. District Judge David C. Godbey identified in their allegations when he dismissed the case three months ago, the company said.

"Most glaringly, plaintiffs still haven't alleged facts sufficient to create any inference of scienter, much less the strong inference required," AT&T said. "They continue to rely heavily on improper group pleading."

The motives that the shareholders have put forth as evidence of intent or knowledge of wrongdoing are too generalized to "support or enhance any inference of scienter," AT&T said, such as a desire to reduce costs.

The complaint also doesn't state whether any specific person was aware of the environmental contamination or employee health risk of keeping the lead cables, the company said.

"Plaintiffs rely heavily on publicly available information to argue that risks related to century-old telecommunications infrastructure were clear," AT&T said. "But they do not attempt to explain why, if those risks were so obvious, no one — not the market, nor other observers, nor defendants themselves — recognized them at the time."

The investors also never "grapple with the fact that — more than two years after the Journal's articles — none of those purported risks has come to fruition," AT&T said.

Judge Godbey booted the first amended complaint in June, saying the investors didn't properly plead knowledge of wrongdoing when they accused AT&T of failing to tell shareholders the truth about the presence of lead in their network of now-obsolete telephone cables. The suit instead relied too much on group pleading and generalized allegations, the court found.

This proposed class action is the lead action in a sprawling multidistrict litigation against AT&T. The suit has been kicking around since 2023, when the investors first accused the company of hiding the lead problem until a series of Wall Street Journal articles about the impacts of lead-covered cables on telecom workers blew the lid off the issue. AT&T's stock dropped by 7% on "unusually high" trading volume following the news breaking, according to the proposed class.

The investors are represented by Jeremy A. Lieberman and Justin D. D'Aloia of Pomerantz LLP and Willie C. Briscoe of The Briscoe Law Firm.

AT&T and the other defendants are represented by John B. Lawrence, Kirstie Wallace and James J. Beha II of Baker Botts LLP.

The case is In re: AT&T Securities Litigation, case number 3:24-cv-01196, in the U.S. District Court for the Northern District of Texas.

--Additional reporting by Jared Foretek and Katryna Perera. Editing by Drashti Mehta.

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Semiconductor Co. Must Face Pandemic Demand Suit

By **Sydney Price**

Law360 (September 16, 2025, 6:41 PM EDT) -- Semiconductor manufacturer STMicroelectronics cannot escape a putative investor class action accusing it of failing to acknowledge pandemic-related demand declines, with a New York federal judge ruling the suit plausibly alleges that the company omitted material facts in its public statements.

In an order denying STM's **motion to dismiss** the suit on Monday, U.S. District Judge Alvin Hellerstein said the investors have sufficiently shown at this stage in the litigation that STM misled the public about growth, and that the suit's confidential witnesses corroborate those claims.

The suit alleges STM's shares fell 15% in July 2024 when the company released its second-quarter earnings and downwardly revised its revenue guidance for the remainder of the year. Several months later, shares declined by 6% when STM again announced "poor" financial results and "signaled that the deterioration in the business and the industry would continue through the fourth quarter of 2024 and the beginning of 2025," the suit claims.

In addition to STM, its CEO Jean-Marc Chery and Chief Financial Officer Lorenzo Grandi are named individual defendants in the suit.

The suit alleges that Chery was warned by a confidential witness — the former president of STM's automotive division — that STM was not immune to the semiconductor market slowdown, and not to misrepresent STM's prospects to investors.

According to Monday's order, the witness alleges he was fired in 2023 for objecting to STM's channel stuffing, which involved STM providing excessive discounts to customers to artificially inflate sales and offload inventory.

STM argued in its motion to dismiss the suit that descriptors like "very clear," "solid" and "very strong" used to describe automotive demand and backlog are too vague to give rise to a securities claim.

But Judge Hellerstein said the witness testimony helps establish that the defendants knowingly made false forward-looking statements regarding growth and inventory, and many of STM's statements were not covered by the safe harbor provisions of securities law because they "concerned market conditions in the present, not the future."

"[A] generic, boilerplate or 'kitchen-sink disclaimer, listing garden-variety business concerns that could affect any company's financial well-being' is insufficient to trigger the statutory safe harbor," the order states.

Counsel for the parties did not immediately respond to requests for comment Tuesday.

The investors are represented by Omar Jafri, Joshua B. Silverman, Brian O'Connell, Diego Martinez-Krippner, Jianan Jiang, Jeremy A. Lieberman, J. Alexander Hood II and Thomas H. Przybylowski of Pomerantz LLP, Adam M. Apton and Devyn Glass of Levi & Korsinsky LLP, and Eitan Kimelman of Bronstein Gewirtz & Grossman LLC.

STM and the individual defendants are represented by Robert J. Giuffra Jr., David M.J. Rein, Julia A. Malkina and Maxwell F. Gottschall of Sullivan & Cromwell LLP.

The case is In Re STMicroelectronics N.V. Securities Litigation, case number 1:24-cv-06370, in the U.S. District Court for the Southern District of New York.

--Editing by Emily Kokoll.

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Wells Fargo Brass Reach Settlement In 'Sham' Hiring Suit

By **Katryna Perera**

Law360 (September 16, 2025, 8:37 PM EDT) -- Wells Fargo investors and executives have told a California federal judge they've reached a settlement in a derivative suit claiming the bank's leadership failed to address the company's discriminatory lending and hiring practices.

The parties filed a **joint notice** to the court Monday stating an agreement in principle was reached Friday after "extensive arms-length negotiations," and that a motion for preliminary approval will be filed by mid-October. Terms of the settlement were not immediately available. The notice also requested that the court stay all pending deadlines in the suit.

The settlement comes about eight months after Wells Fargo urged the court to **dismiss three executives** from the suit, arguing there were no allegations explaining why a presuit demand to the board would have been futile.

The suit stems from reporting by The New York Times in 2022 that some Wells Fargo bank employees were faking interviews for positions that had already been filled in order to meet a company target on diversity. The news led to an 8.6% price decline in Wells Fargo's stock price.

The operative complaint, filed last year, alleged breaches of fiduciary duty and related causes of action, claiming the bank's board failed to "meaningfully monitor Wells Fargo's discriminatory lending and hiring practices."

The bank itself is facing a class action over the alleged hiring practices. In July, the Ninth Circuit said it **would not hear** the **bank's appeal** of the **class certification** granted in April.

The investors are represented by Lesley E. Weaver, Anne K. Davis, Joshua D. Samra, Nancy A. Kulesa and Derrick B. Farrell of Bleichmar Fonti & Auld LLP, Marlon E. Kimpson, William S. Norton, Joshua C. Littlejohn and Vanessa A. Davis of Motley Rice LLC, and Mark C. Molumphy, Tyson Redenbarger and Gia Jung of Cotchett Pitre & McCarthy LLP.

The defendants are represented by Todd G. Cosenza, Charles D. Cording and Alexander L. Cheney of Willkie Farr & Gallagher LLP.

Nominal defendant Wells Fargo is represented by Brendan P. Cullen, Sverker K. Hogberg, Christopher M. Viapiano and Leonid Traps of Sullivan & Cromwell LLP.

The case is In Re Wells Fargo & Company Hiring Practices Derviative Litigation, case number 3:22-cv-05173, in the U.S. District Court for the Northern District of California.

--Additional reporting by Jessica Corso. Editing by Lakshna Mehta.

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Goldman, Morgan Stanley Beat Archegos Suit At 2nd Circ.

By **Jessica Corso**

Law360 (September 16, 2025, 8:41 PM EDT) -- The Second Circuit on Tuesday upheld the dismissal of a lawsuit accusing Goldman Sachs and Morgan Stanley of profiting off insider knowledge that the investment firm Archegos Capital Management was about to collapse, ruling that the companies had no duty to withhold from trading on the information.

A three-judge panel of the court said that suing investors failed to prove a key element of insider trading: the existence of a fiduciary duty. The ruling upheld U.S. District Judge Jed S. Rakoff's **dismissal of the case** last year.

"Appellants contend that the district court erred by dismissing their claims arising under both the classical and misappropriation theories of insider trading," the court wrote in a published opinion authored by Circuit Judge Maria Araújo Kahn. "We disagree and hold that appellants have failed to plausibly allege that appellees engaged in insider trading."

The case consolidated seven different proposed class actions filed against Goldman Sachs and Morgan Stanley by shareholders in the companies in which Archegos invested. Those companies included several small- to mid-cap Chinese corporations as well as ViacomCBS Inc.

Archegos' investments came in the form of total return swap contracts, allowing them to indirectly hold a large percentage of shares in publicly traded companies by borrowing the shares from brokers like Goldman Sachs and Morgan Stanley, according to the Second Circuit's recitation of the facts.

In order to hedge their risks, Goldman Sachs and Morgan Stanley purchased an equal number of shares in the same companies so that they could pay Archegos should the price of the contracted stocks go up.

But suing investors said that when the brokerage firms were privately asked by Archegos to hold off on margin calls as the price of the stocks dipped in 2021 and Archegos was struggling with liquidity issues, they sold off their stock in the publicly traded companies and left the remaining shareholders holding the bag.

They alleged that Goldman and Morgan Stanley committed insider trading by shedding their stock before Archegos' financial difficulties **became publicly known**.

But the Second Circuit said those allegations failed for two reasons, both of which dealt with whether the parties owed any fiduciary duties.

First, although the suits claimed that Archegos owned anywhere between 30% and 70% of each issuers' stock, it was not an insider of the companies and therefore had no duty to shareholders, the circuit court said.

"Archegos' beneficial ownership of stock in the issuers did not empower it to vote its shares, influence corporate decisions, or access internal corporate information," the court said.

And neither Goldman Sachs nor Morgan Stanley had a duty to keep the information that Archegos gave to them confidential because they never agreed to serve as fiduciaries to the investment firm, the Second Circuit said.

"The investors' complaint acknowledges that appellees were contractually entitled to sell their Archegos-related positions upon Archegos' default," according to the court. "This type of commercial arrangement between adverse parties indicates that appellees negotiated with Archegos at arm's length."

The court also rejected allegations that Goldman and Morgan Stanley tipped off preferred clients about the imminent collapse by saying that the claims were based on circumstantial evidence.

A representative for Goldman declined to comment Tuesday. Representatives for Morgan Stanley and suing investors didn't immediately respond to a request for comment.

The investors are represented by Michael I. Fistel Jr. of Johnson Fistel PLLP, David W. Hall of the Hall Firm Ltd., Brian Calandra of Pomerantz LLP, Daniel Lawrence Berger of Grant & Eisenhofer PA, Max Raphael Schwartz of Scott + Scott Attorneys at Law LLP, Alan L. Rosca of Rosca Scarlato LLC, and Michael Dell'Angelo of Berger Montague PC.

Goldman Sachs is represented by Carmine D. Boccuzzi Jr. of Cleary Gottlieb Steen & Hamilton LLP.

Morgan Stanley is represented by Charles S. Duggan and Daniel J. Schwartz of Davis Polk & Wardwell LLP.

The case is In re: Archegos 20A Litigation, case number 24-1162, in the U.S. Court of Appeals for the Second Circuit.

--Editing by Emily Kokoll.

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Avalara Investors' Claims Pass Muster After 9th Circ. Revival

By **Katryna Perera**

Law360 (September 16, 2025, 7:10 PM EDT) -- A Washington federal judge has allowed a proposed class action to proceed accusing tax software company Avalara Inc. of misleading investors ahead of an \$8.4 billion deal to take the company private, but said the suit failed to adequately allege negligence by individual board members, giving investors one week to amend those claims.

U.S. District Judge Marsha J. Pechman issued an **order** Friday primarily denying the defendants' renewed dismissal motion after the Ninth Circuit **revived** some of the suit's claims in March.

Judge Pechman threw out the lawsuit **last year**, declining to give plaintiff Martin Sohovich another chance at amending the suit that accuses Avalara of downplaying its future profitability to win investor approval of its \$8.4 billion buyout by investment firm Vista Equity Partners Management LLC **in 2022**.

The appellate court revived the suit's claims that Avalara misled investors by omitting that inorganic growth was not included as part of the company's valuation and that the defendants cherry-picked positive information from a report issued by Institutional Shareholder Services about the acquisition.

On Friday, Judge Pechman agreed with the Ninth Circuit that the exclusion of inorganic growth from future revenue projections in Avalara's valuation was material to investors. According to the order, the complaint included "substantial allegations" that "Avalara had always included inorganic growth in its guidance, and when it did not, it 'explicitly stated as such.'"

Avalara was also known to be an "acquisition-heavy" business, and the "drumbeat" of executives was that "M&A was in Avalara's DNA," the order said.

Therefore, the omission, or lack of notice of the omission, about the exclusion of inorganic growth could materially mislead a reasonable investor, Judge Pechman said.

"Given how central M&A had been to Avalara's strategy and historical growth, its omission from the [future revenue projections] is adequately alleged to have been material to representations made to investors about the fairness of the sale to Vista and the valuation of Avalara," the order said.

The judge also agreed with the Ninth Circuit that statements made about the ISS report were both false and misleading and material.

"Sohovich adequately alleges that the Schedule 14A Proxy Supplement filed by Avalara was objectively false and misleading because it cherry-picked ISS's positive views on the merger, while omitting its criticism," the order said. "The court finds that a reasonable investor would have found material the statements ascribed to ISS, particularly given that it is alleged to be a trusted, neutral proxy advisory firm."

On remand, the Ninth Circuit directed the district court to consider whether Sohovich had adequately pleaded subjective falsity and negligence by each board member defendant, except for Avalara CEO and Board Chair Scott McFarlane.

Judge Pechman found the subjective falsity and negligence allegations sufficient as to the misleading omission of inorganic growth, but inadequate as to the ISS misrepresentations.

According to the order, Sohovich argued that the Schedule 14A Proxy Supplement shows how each director participated in the filing's creation and, therefore, they knew or should have known about the misleading omissions and the full ISS report.

"But the proxy supplement only states that 'Avalara and its directors, [and] executive officer ... may be deemed to [be] participants in the solicitation of proxies from the shareholders of Avalara in respect of the proposed transaction.' That a director 'may be deemed a participant' is not a sufficiently cogent allegation that the directors here knew anything about the full ISS report or the selective quotation of the ISS report in the proxy supplement," the order said.

There also aren't any allegations about board meetings where the ISS report may have been discussed, the judge added, and Sohovich is essentially asking the court to infer negligence by the board members when the complaint fails to provide any supporting evidence.

The suit claimed that Avalara and its board of directors made multiple misleading statements in order to get shareholders to approve a deal that would see them bought out for \$93.50 per share, compared to the \$109 per share target price allegedly set by the company's own financial adviser.

Avalara said the price was fair because the sale of its business came after a 50% decline in its stock price over the previous two years and the loss of its most significant European business partner, according to court filings.

The Ninth Circuit ruled that many of the company's statements in the lead-up to the purchase, including those on the damage that its European business had sustained, were puffery and not objectively false or misleading.

Representatives for the parties did not immediately respond to requests for comment on Tuesday.

Sohovich and the investors are represented by Jeremy A. Lieberman and Tamar A. Weinrib of Pomerantz LLP and Duncan C. Turner of Badgley Mullins Turner PLLC.

Avalara and the individual defendants are represented by Christopher B. Durbin, Patrick E. Gibbs, Shannon M. Eagan, Ziwei Xiao, Taylor Boyle and Ephraim McDowell of Cooley LLP.

The case is Sohovich v. Avalara Inc. et al., case number 2:22-cv-01580, in the U.S. District Court for the Western District of Washington.

--Additional reporting by Jessica Corso. Editing by Rich Mills.



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BrainStorm Can't Shed Investors' ALS Treatment Trial Claims

By **Emilie Ruscoe**

Law360 (September 16, 2025, 7:07 PM EDT) -- Biopharmaceutical company BrainStorm Cell Therapeutics Inc. must face a proposed investor class alleging it misrepresented feedback from the U.S. Food and Drug Administration regarding clinical trials for an ALS product candidate that failed to get approval, though a Manhattan federal judge has tossed the suit's insider trading allegations and certain fraud claims.

In a Monday opinion and order, U.S. District Judge Dale E. Ho said he would dismiss investor fraud allegations centered on the company's claims about certain trial data related to so-called biomarkers. Judge Ho also dismissed fraud allegations involving BrainStorm statements of opinion about the regulatory prospects for its stem-cell-based product, NurOwn, a proposed treatment for certain neurodegenerative disorders, including Lou Gehrig's Disease.

The judge also axed claims premised on forward-looking statements and puffery, which are protected forms of corporate speech under the safe harbor provision of the Private Securities Litigation Reform Act.

Judge Ho also tossed insider trading allegations, finding, among other things, that the complaint does not include "sufficient factual allegations that would support the conclusion that [trades made by BrainStorm CEO Chaim Lebovits] were unusual."

Judge Ho otherwise kept the suit's claims intact. The remaining claims include the investors' assertion that the company mischaracterized the FDA's views on the design of its relevant clinical trials and a claim that BrainStorm inaccurately described certain clinical subgroup analyses as "pre-specified" when they were not.

The court also left in place a claim that the company distorted FDA feedback it received about what BrainStorm had described as a "floor effect" in its clinical trials. And the company cannot shed the claim it downplayed safety concerns, Judge Ho said Monday, noting that the complaint cites the FDA's safety concerns about the relevant studies.

"In sum, the court concludes that Plaintiffs have sufficiently alleged false or misleading statements with respect to the FDA's views on trial design; pre-specification; the FDA's views on floor effects; and safety," Judge Ho said Monday.

"But defendant's statements regarding biomarker data and any other opinion statements regarding defendants' own interpretation of their clinical trial, as well as any statements properly characterized as forward-looking or puffery regarding the likelihood of FDA approval, are not actionable," he added.

In the latest version of the investor suit, investors took aim at BrainStorm, CEO Lebovits, its former co-CEO Stacy Lindborg and its former Chief Medical Officer Ralph Kern over the alleged drop in the company's share price following certain disclosures about its stem-cell treatment candidate.

According to the investors, trading prices for the company's shares collapsed from 82 cents to about 20 cents per share in September 2023, when the FDA released a briefing document citing, among other things, "the larger number of deaths" seen in a group of patients in a BrainStorm trial receiving the company's NurOwn stem-cell therapy in comparison to death numbers in the trial's placebo group.

An 18-member FDA committee subsequently voted almost unanimously against approving NurOwn, the complaint states.

In March 2024, Judge Ho declined to consolidate the case with shareholder derivative litigation premised on the same misconduct allegations. The derivative suits, which have been consolidated separately, were stayed pending further developments in the proposed investor class action.

Representatives for the parties did not immediately respond to requests for comment on Tuesday.

Defendants BrainStorm Cell Therapeutics Inc., Chaim Lebovits, Stacy Lindborg, and Ralph Kern are represented by Douglas H. Flaum, Molly L. Leiwant and Dina Ljekperic of Goodwin Procter LLP.

Lead plaintiff George Colby and named plaintiffs Eli Sporn and Brett Shirley are represented by Laurence M. Rosen, Phillip Kim and Sara Fuks of The Rosen Law Firm PA.

The case is Sporn v. Brainstorm Cell Therapeutics Inc. et al., case number 1:23-cv-09630, in the U.S. District Court for the Southern District of New York.

--Editing by Vaqas Asghar.

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Influencers Walk Back Claim Of Capital One Settlement

By **Sydney Price**

Law360 (September 16, 2025, 6:23 PM EDT) -- Attorneys for a proposed class of social media influencers on Tuesday withdrew a notice of settlement in their suit accusing Capital One of stealing commissions from creators, saying no settlement exists and that they signed the notice on Capital One's behalf without permission.

In the withdrawal notice, counsel for the proposed class said that the settlement notice was filed Monday night "in error."

"The parties have not reached a settlement and have not executed a term sheet resolving this litigation, and Plaintiffs did not have authority to affix Capital One's counsel's signature to the Notice of Settlement filed yesterday evening," the filing states.

U.S. District Judge Anthony J. Trenga signed an order Tuesday acknowledging the settlement withdrawal and stating that all previously scheduled pre-trial deadlines remain in effect.

The lawsuit, filed in January, alleges that Capital One's coupon-search browser extension steals commissions from social media creators who drive customers to affiliated merchants.

In June, U.S. District Judge Anthony J. Trenga **partially denied** Capital One's motion to dismiss the suit and determined that the creators have plausibly alleged their claims for unjust enrichment, interference with prospective economic advantage, intentional interference with contractual relations and computer abuse under the Computer Fraud and Abuse Act.

The creators also plausibly alleged the existence of valid and ongoing contractual agreements with various merchants, including Best Buy, Nordstrom, Target and Walmart, and plausibly alleged that, absent Capital One's conduct, they would have earned commissions, the judge said in June.

However, Judge Trenga did grant Capital One's motion over the claims of conversion and violations of New York General Business Law, California's Unfair Competition Law and California's Comprehensive Data Access and Fraud Act.

The creators are represented by Steven T. Webster of Webster Book LLP, Norman E. Siegel of Stueve Siegel Hanson LLP, E. Michelle Drake of Berger Montague PC, Douglas J. McNamara of Cohen Milstein Sellers & Toll PLLC and James J. Pizzirusso of Hausfeld LLP.

Capital One is represented by Connor Kelley, Valerie Hletko, Andrew Soukup, Stephen Petkis, Jeffrey Huberman and Amee Frodle of Covington & Burling LLP.

The case is In re: Capital One Financial Corp. Affiliate Marketing Litigation, case number 1:25-cv-00023, in the U.S. District Court for the Eastern District of Virginia.

--Editing by Rich Mills and Michael Watanabe.

Update: This article has been updated to include the plaintiffs' notice of withdrawal and Judge Trenga's order.



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Texas AG Says Glass Lewis Misled Investors With ESG Advice

By **Spencer Brewer**

Law360 (September 16, 2025, 9:55 PM EDT) -- The Texas Office of the Attorney General launched an investigation into Glass Lewis & Co. and Institutional Shareholder Services Inc., claiming Tuesday the proxy advisory firms misled public companies and institutional investors to push for left-wing social causes.

The Texas Attorney General's Office claimed it would investigate whether the proxy advisory firms violated state consumer protection laws by issuing proxy voting recommendations that push "radical political agendas rather than sound financial principles."

The companies sued in July to block a new state law that requires proxy advisory firms to disclose when their advice stems from factors such as diversity and inclusion, saying the recently signed Senate Bill 2337 **violates the First Amendment** by compelling the firm to "broadcast the government's contrary viewpoint and publicly condemn itself" when its advice contradicts a Texas company's management or board, or when the firm provides different advice to different clients.

In August, a Texas federal judge **sided with the companies**, finding the proxy advisory companies have standing and met the bar for a temporary court order blocking the law. The order explicitly bans Texas Attorney General Ken Paxton or anyone in the Texas attorney general's office from taking any action to enforce the law against Glass Lewis or Institutional Shareholder Services.

In a statement, Glass Lewis claimed the attorney general's press release "mischaracterizes Glass Lewis's advice and business practices." The Texas federal court has already barred the Texas Attorney General from targeting Glass Lewis for its constitutionally protected speech, the spokesperson said.

"Our recommendations to clients are grounded in decades of research on promoting long-term shareholder value," the company said. "Glass Lewis provides independent, research-driven proxy advice exclusively to highly sophisticated institutional investors — not to the general public — who select the considerations important to them based on their fiduciary duties, investment strategies, and risk tolerances."

ISS is confident that it has complied with all state laws and will defend itself from any allegations brought by the state, said Subodh Mishra, global head of communications for the company.

In its press release, the Texas Office of the Attorney General claimed Glass Lewis and ISS collectively occupy more than 95% of the international market for proxy advisory services. The two companies also frequently issue guidance at odds with the financial interests of their fiduciaries, the Texas Attorney General claimed.

"Proxy advisors play a massive role in shaping corporate governance decisions in our country, affecting tens of billions of dollars," said Paxton. "My office has zero tolerance for these woke corporations smuggling radical, liberal ideology into the companies they advise and into the entirety of America's financial system."

Both companies instruct their proxies to generally vote for public companies to make management decisions to "implement DEI, gender-based hiring quotas and aggressive climate activist policies. Neither Glass Lewis nor ISS seem to support their radical guidelines with any economic analysis, only a word salad of corporate lingo," the Texas attorney general said in the release.

A representative for the Texas attorney general didn't immediately respond to a request for comment.

Glass Lewis & Co. LLC is represented by Bryce L. Callahan, Grant B. Martinez, Lily E. Hann and Jared LeBrun of Yetter Coleman LLP.

Institutional Shareholder Services Inc. is represented by Jessica L. Ellsworth, David M. Foster, James Yates, Dana A. Raphael, Sam Zwingli, J. Andrew Mackenzie and Bruce D. Oakley of Hogan Lovells.

The Texas Office of the Attorney General is represented by its own Brent Webster, Ralph Molina, Austin Kinghorn, Kimberly Gdula and C. Lee Winkelman.

The cases are Institutional Shareholder Services Inc. v. Paxton and Glass, Lewis & Co., LLC v. Paxton, case numbers 1:25-cv-01160 and 1:25-cv-01153, in the U.S. District Court for the Western District of Texas.

--Additional reporting by Sarah Jarvis. Editing by Emily Kokoll.

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BlackRock Blames Coal Production Cuts On Falling Demand

By **Matthew Perlman**

Law360 (September 16, 2025, 5:15 PM EDT) -- BlackRock Inc. told a Texas federal court that coal production has declined because demand from coal-fired power plants has been falling for years, not because asset managers conspired to pressure the producers.

BlackRock made the assertion on Monday in its answer to a case from Texas and several other states alleging the asset manager worked with State Street Corp. and Vanguard Group Inc. to use their holdings in publicly held coal producers to **reduce output** in the name of environmental stewardship.

Enforcers contend the scheme inflated the price of coal starting in 2019, but the answer said this ignores that coal production has been falling steadily since at least 2008 due to a 70% drop in electricity generated by coal-fired power plants in the U.S.

"Among other flaws, this lawsuit presents an incomplete and misleading picture of the U.S. coal market," the answer said. "Outside of this lawsuit, it is recognized that the decline in coal production is the result of the wide availability of cheaper natural gas and increased environmental regulation."

Texas and a coalition of Republican-led states accuse BlackRock, State Street and the Vanguard Group of using their holdings in the nation's largest coal producers, including Peabody Energy and Arch Resources, to pressure them into reducing output in order to meet carbon emission reduction goals.

The states have **received the backing** of the U.S. Department of Justice and Federal Trade Commission, which issued a statement in the case saying that while the antitrust laws typically allow for shareholder advocacy, they don't allow activism that harms competition.

U.S. District Judge Jeremy D. Kernodle refused to toss the case early last month, rejecting arguments from the asset managers that they were merely passive investors and had no agreement concerning the operation of the coal producers.

The judge relied on allegations that the asset managers joined climate initiatives and publicly pledged to use their stock holdings to take action on climate change, including through a goal of completely ceasing coal production to achieve net-zero emissions.

The answer on Monday argued that the coal companies themselves have been saying for the last decade that demand was falling because of cheaper natural gas and noted that 50 U.S. coal companies filed for bankruptcy between 2010 and 2019, including the top three producers.

BlackRock also pointed to a ruling in Missouri federal court in 2020 granting the Federal Trade Commission's request to block **a planned joint venture** between Peabody Energy and Arch Resources. The answer said the judge in that case explained that coal had steadily ceded ground to natural gas and renewables over the previous 20 years.

The state of Wyoming even acknowledged when opposing **the merger challenge** that coal is declining and will continue to decline as investment in renewable energy increases and as coal-fired power plants near the end of their lifecycles without being replaced, the answer said.

The case also contends that output from privately held coal companies, as opposed to publicly

traded, increased in 2021 and 2022. But the answer said the only two private producers that increased production in those years were emerging from bankruptcy.

"The increases in production at those mines in 2021 and 2022 highlighted in the amended complaint simply reflect a return to levels nearer to, but still significantly below, prebankruptcy production levels," The answer said. "In other words, the amended complaint ignores the real drivers of coal output, which are not BlackRock or its competitors."

Vanguard and State Street also both filed answers to the complaint on Monday denying the allegations. A representative for Vanguard told Law360 in a statement that the "baseless" lawsuit contorts the law in a way that risks hurting individual investors and coal companies.

"Vanguard is a passive asset manager, owned by the investors in our funds, with the singular purpose of helping more than 50 million people, and their families, achieve their financial goals," the statement said. "Our proxy voting policy and record reflects this mission. "

Representatives for State Street and the Texas Attorney General's Office did not immediately respond to requests for comment Tuesday.

BlackRock is represented by Gregg Costa, Prerak Shah and Rachel Brass of Gibson Dunn & Crutcher LLP and Thomas Mueller, Jennifer Milici, Perry Lange, John O'Toole, David Gringer and Lauren Ige of WilmerHale.

State Street Corp. is represented by Jason M. Powers, Stacey Neumann Vu, George M. Kryder, Megan Cloud, Stephen M. Medlock and Mackenzie G. Newman of Vinson & Elkins LLP.

The Vanguard Group is represented by Robert D. Wick, John S. Playforth and Shadman Zaman of Covington & Burling LLP and Bradley C. Weber and Chase T. Cobb of Troutman Pepper Locke LLP.

Texas and Montana are represented by their respective attorneys general and David H. Thompson and Brian W. Barnes of Cooper & Kirk PLLC.

Texas is also represented by Anthony G. Buzbee and Christopher J. Leavitt of the Buzbee Law Firm.

The other states are represented by their own attorneys general.

The case is Texas et al. v. BlackRock Inc. et al., case number 6:24-cv-00437, in the U.S. District Court for the Eastern District of Texas.

--Additional reporting by Jessica Corso and Christopher Cole. Editing by Patrick Reagan.



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Casino Giant Urges Fla. Court To Toss Bahamas Fraud Suit

By **David Minsky**

Law360 (September 16, 2025, 6:09 PM EDT) -- U.S.-based casino operator Genting Americas Inc. has urged a Florida federal court to dismiss a lawsuit alleging that it used a resort in the Bahamas to obscure fraudulent activities, saying the suing real estate company failed to deliver a proper amended derivative complaint ordered by a judge.

Genting Americas filed its **motion to dismiss** Friday in the U.S. District Court for the Southern District of Florida, saying RAV Bahamas Ltd. failed to follow requirements by including BB Entertainment Ltd. as a nominal defendant in its lawsuit alleging that the casino operator coordinated a "massive and coordinated fraud" by dumping more than \$800 million worth of debt into Resorts World Bimini.

In addition to saying RAV's claims are time-barred, Genting Americas said in its filing that the real estate company failed to get permission from a Bahamian court to pursue its derivative claims, failed to specify its fraud claims and left its racketeering claims unchanged.

"RAV used its one opportunity to file an amended complaint that fails to comply with the straightforward directives of this court's decision on the motion to dismiss," Genting Americas said. "Accordingly, RAV has failed to cure the deficiencies that required dismissal of RAV's initial complaint, compelling dismissal of the amended complaint on the same bases."

RAV **brought its complaint** to Miami federal court in October 2024, alleging fraud, constructive fraud, conspiracy to defraud, tortious interference with an advantageous business relationship and negligence.

The Bahamian real estate company said in its complaint that it co-founded BB Entertainment Ltd., or BBE, with Malaysia's Genting Group, the parent company of Genting Americas, in 2012 and transferred more than 20 acres of valuable property in Bimini to BBE for use as a vacation destination.

But RAV alleged that Genting Americas began recording debt and fraudulent expenses in BBE's financial statements in 2013. The defendant used parent company subsidiaries to "conceal its control" over BBE's finances, including by denying access to financial statements and requests for an independent audit, RAV said in its complaint.

BBE's financial reports were audited and allegedly revealed nearly a billion dollars in liabilities and other irregularities, which RAV said resulted from systemic fraud or incompetence. RAV claimed that Genting Americas' president admitted in 2020 to dumping millions of dollars of fraudulent expenses and debt into BBE's accounting records, but never remedied the situation as promised, saying that the defendant used BBE as its "financial wasteland."

In July, the court dismissed RAV's complaint, ruling that the lawsuit couldn't proceed as pleaded and gave the plaintiff one opportunity to refile a corrected version to address jurisdictional issues, court records show.

More than two months after the court's order, Genting Americas stated in its motion to dismiss the amended complaint that RAV's allegations "remain substantively the same" despite the production of more than 100,000 documents through discovery. RAV again alleged that BBE wrongly accrued \$890

million in liabilities as of 2022, although the defendant said RAV still hasn't explained to the court how any of the liabilities are fraudulent.

Additionally, the defendant said in its motion to dismiss that RAV contributed only land in the joint venture but contributed no cash and that BBE had to borrow hundreds of millions of dollars, including from Genting Group entities, to construct and operate the resort. Genting Americas added that RAV knew BBE had accrued millions of dollars in liabilities by October 2020.

The plaintiff hasn't identified any new financial information since October 2020 that can support fraud or support a delay in filing its complaint until 2024, according to Genting Americas.

"RAV has now had the benefit of full document discovery and was on notice of Genting Americas' argument that these claims are time-barred," the defendant said. "Yet the amended complaint does not plead that RAV learned any new relevant information within the last four years about BBE's financial statements or financial condition that provides a basis for its claims."

RAV Bahamas is represented by Alexander Esteban, Armando Rosquete, Javier A. Reyes and Veronica M. Vicente of Bell Rosquete Reyes Esteban PLLC.

Genting Americas is represented by Patricia M. Patino, Joy Spillis Lundeen and Philip R. Stein of Bilzin Sumberg Baena Price & Axelrod LLP and Roger A. Cooper, Boaz S. Morag, Maria E. Manghi and Ayushe Misra of Cleary Gottlieb Steen & Hamilton LLP.

The case is RAV Bahamas Ltd. v. Genting Americas Inc., case number 1:24-cv-23874, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Rae Ann Varona. Editing by Rich Mills.

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Starbucks Resolves Swipe Fee Claims With BofA, Mastercard

By **Gina Kim**

Law360 (September 16, 2025, 8:01 PM EDT) -- Starbucks is the latest retailer to settle claims in an antitrust action Tuesday in New York federal court alleging Mastercard, Bank of America and several other financial institutions were part of an illegal scheme forcing merchants to pay excessive fees when shoppers pay with their credit or debit cards.

In a **brief notice**, attorneys for the Seattle-based coffee chain told U.S. District Judge Alvin K. Hellerstein that the company has fully settled all its claims in the sprawling, years-old antitrust case against Mastercard, Bank of America, JPMorgan Chase, Paymentech, Citigroup and Wells Fargo.

Starbucks said it is dismissing its claims permanently, and both sides will pay for their own legal fees and costs.

Tuesday's notice comes two months after Judge Hellerstein signed off on another stipulation and order that said Starbucks fully settled its claims against Visa in the action.

Since 2005, Mastercard and Visa have been battling retailers who alleged the credit card companies conspired to maintain a set of rules that allowed them to overcharge retailers whenever customers use their cards. The cases are widely seen to pose potential liability in the tens of billions of dollars to the card companies.

Starbucks joined in on the lawsuit — led by 7-Eleven Inc. — back in 2013. The plaintiffs hail from nearly all sectors, such as home improvement, online shopping, books, jewelry, giftware, auto dealers and vehicle services, hospitality, membership warehouses, luxury goods, movie theaters, restaurants, arts and crafts, health and wellness, home appliances, cosmetics, apparel, footwear, sporting goods and more.

The merchants, including 7-Eleven and Starbucks, brought their suit days after revealing they **opted out** of a \$7.25 billion settlement in a related multidistrict litigation filed 20 years ago in late 2005. The convenience store chain settled its claims against the defendants in January 2024.

The merchants claimed Visa and Mastercard executed the massive schemes in 2004 among each association's owner and member banks that agreed to illegally restrain competition, according to the amended complaint.

The cartels' "twin conspiracies" and other conduct harmed the merchants and customers alike to the tune of hundreds of billions of dollars from 2004 through 2012, according to the 7-Eleven Inc. group's amended August 2013 complaint.

"Throughout the damages period, Visa and MasterCard were the instrumentalities through which the competing banks that issued Visa and Mastercard general purpose payment cards agreed not to compete with respect to merchant acceptance of those cards and fixed the interchange fees that merchants paid for acceptance of those cards," the retailers said.

The two digital payments companies have maintained the case isn't legitimate since the stores "do not pay such fees directly, and instead pay them to intermediaries in the payments chain." That would make them indirect buyers who lack standing, Visa and Mastercard argued.

Target Corp. led a parallel action that was filed in May 2013. In late March, Target **settled its claims** against Visa and dismissed them with prejudice, with each side paying their own attorney fees and costs. Target's stipulation followed office supply retailer Staples Inc.'s **own settlement** with Visa and Mastercard over the alleged overcharging fee scheme.

Judge Hellerstein established a structure for trial involving different retailers from both the Target and 7-Eleven retailer groups, according to court filings, to ensure manageability. A first trial is **set to take place next month**, and two more trials are set for next spring and next fall.

The merchants headed for trial next month — including Marathon Petroleum, Circle K and the Gap — have also accused Citigroup, Bank of America, JPMorgan Chase, Wells Fargo and other institutions of antitrust violations.

Owen Glist of Constantine Cannon LLP, one of the attorneys for Starbucks, told Law360 in a statement Tuesday afternoon that the company has no comments.

Starbucks is represented by A. Owen Glist of Constantine Cannon LLP, and Jeffrey I. Shinder and David Scupp of Shinder Cantor Lerner LLP.

Mastercard is represented by Nina Kovalenko, Brette Tannenbaum, Kenneth A. Gallo and Donna M. Ioffredo of Paul Weiss Rifkind Wharton & Garrison LLP.

Bank of America and FIA Card Services NA are represented by Natalie A. Fleming Nolen and Michael B. Miller of Morrison Foerster LLP, and Jantra Van Roy and David B. Chenkin of Ziechner Ellman & Krause LLP.

JPMorgan Chase & Co, Paymentech LLC and JPMorgan Chase Bank N.A. is represented by Boris Bershteyn and Kamali P. Willett of Skadden Arps Slate Meagher & Flom LLP.

Citigroup is represented by Benjamin R. Nagin and Thomas A. Paskowitz of Sidley Austin LLP.

Wells Fargo is represented by Amy N. Vegari and William F. Cavanaugh of Patterson Belknap Webb & Tyler LLP.

The case is 7-Eleven Inc. et al. v. Visa Inc. et al., case number 1:13-cv-04442, in the US District Court for the Southern District of New York.

--Additional reporting by Pete Brush and Rae Ann Varona. Editing by Lakshna Mehta.