

Class Action

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National Instruments Class Certified in Insider Trading Lawsuit

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Summary by Bloomberg AI

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- Investors can proceed as a class on allegations National Instruments Corp. engaged in insider trading and violated securities laws by not disclosing offers to buy the company.
- The class includes all people that sold National Instruments common stock between specific dates in 2022 and suffered alleged damages, according to Judge Denise L. Cote's order.
- The court said the investors demonstrated that damages are calculable on a classwide basis, and that National Instruments' alleged failure to disclose Emerson's offers constituted a material omission that affected investors' decisions.

Investors can proceed as a class on allegations National Instruments Corp. engaged in insider trading and violated securities laws by not disclosing offers to buy the company.

The plaintiffs showed common questions of law or fact predominate for class members, and the investors can attempt to demonstrate damages on a classwide basis, Judge Denise L. Cote of the US District Court for the Southern District of New York said in a Sept. 19 order.

The order said the class is all people that sold National Instruments common stock between Aug. 12, 2022, and Aug. 30, 2022, and/or between Sept. 12, 2022, and Sept. 28, 2022, and suffered alleged damages.

The investors claim National Instruments in 2022 repurchased its stock from investors without disclosing that it received an offer to buy the company from Emerson Electric Co.

Their complaint said Emerson, which ultimately acquired National Instruments in 2023, offered to purchase the automated test and measurement systems provider's stock at \$48 per share in May 2022, and tried again in June 2022 with an inducement of finding "additional value."

Emerson's efforts would have raised the stock price if the investors knew about them, according to the plaintiffs, who allege National Instruments' conduct violated the Securities Exchange Act and related rules.

Cote here granted the investors' motion for class certification, rejecting National Instruments' argument that investors didn't show questions of law or fact common to class members predominate over questions affecting individual members.

Evidence suggests, the court said, that National Instruments' alleged failure to disclose Emerson's offers constituted a material omission that affected investors' decisions. Whether alleged omissions are material is a question that's common to the entire class.

A reasonable investor may have decided to reject a \$48 offer, the court said, but "swift rejection" of that offer by National Instruments' board doesn't stop the offer from being found material.

The court also said the investors demonstrated that damages are calculable on classwide basis. Their expert showed \$48 is "the 'but-for' stock price that would have existed had the relevant truth been exposed," Cote said.

Robbins Geller Rudman & Dowd LLP is lead counsel for the class. Davis Polk & Wardwell LLP and Dowd Bennett LLP represent NI and Emerson.

The case is *In re Nat'l Instruments Corp. Sec. Litig.*, S.D.N.Y., 23-cv-10488, 9/19/25.

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Intraocular lens company, top execs fraudulently overstated product demand, suit says

2025 CORPGDBRF 3402 • By Douglas Montes

Westlaw Corporate Governance Daily Briefing • September 19, 2025

(September 19, 2025) - RxSight Inc. and two top executives overstated the demand for the intraocular lens company's product, which led to a significant decline in its stock price when the truth emerged, a shareholder says in a California federal court lawsuit.

Gémesi v. RxSight Inc. et al., No. 25-cv-2093, *complaint filed* (C.D. Cal. Sept. 16, 2025).

RxSight, CEO Ron Kurtz and Chief Financial Officer Shelley Thunen violated federal securities laws by making material misrepresentations to investors to artificially inflate RxSight's stock price, Olga Gémesi says in a complaint filed Sept. 16 in the U.S. District Court for the Central District of California.

Lens sales lag

RxSight focuses on the treatment of cataracts, and its light-adjustable lens system is the company's principal product, according to the complaint.

The system includes an intraocular light-adjustable lens and a light delivery device, the complaint says. A doctor implants the LAL in a patient's eye and two to three weeks later, customizes its shape using ultraviolet light from the LDD, according to the complaint.

Under the company's business model, RxSight sought to grow the installed base of high-priced LDDs to drive recurring, higher-margin sales of LAL procedures, the complaint says.

In May 2024, Kurtz touted "positive" trends the company was seeing with customers' adoption of LAL procedures and said the company "anticipate[d] continued strong adoption," according to the complaint.

Kurtz reiterated in August that the company continued "to see growth in monthly utilization across the installed base," the complaint says.

In January, RxSight issued revenue guidance from \$185 million to \$197 million for the year, according to the complaint. Kurtz claimed the next month that the company could "durably grow" through its business model, the complaint says.

On April 2, RxSight reported a 5% revenue shortfall from consensus estimates for the first quarter of 2025, according to the complaint. The company also disclosed a decline in LAL sales for the quarter and lowered its revenue guidance for 2025 to \$160 million to \$175 million, the complaint says.

The company's stock price declined nearly 38% to close at \$16.21 on April 3, according to the suit.

RxSight released its preliminary financial results for the second quarter July 8, showing a significant drop in LDD units sold from 73 in the first quarter to 40 in the second quarter, according to the complaint. The company also disclosed a decline in LAL units sold, the complaint says.

RxSight's stock price dropped almost 38% again to close at less than \$8 per share on July 9, according to the complaint.

Customer adoption slow

Gémesi asserts that RxSight, Kurtz and Thunen violated Section 10(b) of the Securities Exchange Act of 1934, [15 U.S.C.A. § 78j\(b\)](#), and SEC Rule 10b-5, [17 C.F.R. § 240.10b-5](#), which prohibit making materially misleading statements in connection with the sale of securities.

Although the company touted that newer customers were adopting their products as fast or faster than prior customers, in truth, they were adopting more slowly and needed more support than older customers, Gémesi alleges.

Those problems resulted in lower sales volume for LAL units than the company had forecast and the undermining of its growth model, Gémesi argues.

Gémesi, represented by Danielle S. Myers of Robbins Geller Rudman & Dowd LLP, seeks class certification, damages and attorney fees.

By Douglas Menten

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Securities

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Deep Dive

Investor Attorneys Slam SEC Curbing Court Access Over IPO Fraud

Sept. 22, 2025, 10:34 AM PDT

Summary by Bloomberg AI

AI Generated



- The SEC announced a new policy that allows companies to compel arbitration rather than litigation, which investor attorneys said removes a key legal tool holding startups accountable.
- The move could effectively preclude some class actions for alleged wrongdoing by startup companies, which is the most common and cost-effective way for small investors to protect their money.
- Institutional and retail investors could lose a key avenue to pursue claims, especially those brought as a class, if companies take the SEC's policy statement as a green light to adopt mandatory arbitration clauses.

A new SEC policy that allows companies to compel arbitration rather than litigation removes a key legal tool holding startups accountable, investor attorneys said.

The Securities and Exchange Commission announced Sept. 17 it will permit clauses in a company's registration statements that would force investors to resolve claims of fraud and other alleged misstatements through arbitration.

SEC Chairman Paul Atkins called it an initial step to "make IPOs great again," aimed at "eliminating compliance requirements that yield no meaningful investor protections."

But the move could effectively preclude some class actions for alleged wrongdoing by these startup companies, the most common—and, for small investors, cost-effective—way to protect their money.

"It's likely to prove catastrophic to investors, particularly to smaller retail investors," said Paul Bland, an attorney at Berger Montague who has challenged forced arbitration.

State-level frameworks governing corporate disclosures, including changes that took effect in Delaware last month, could still preempt the SEC's new permissive stance.

But the federal Wall Street regulator’s move, reversing course on decades of agency opposition to IPOs for companies seeking to curtail shareholder litigation, threatens to “open the floodgates” on mandatory arbitration clauses, Democrats including Sen. Elizabeth Warren (Mass.) and SEC Commissioner Caroline Crenshaw said.

Institutional and retail investors alike could lose a key avenue to pursue claims—especially those brought as a class—if companies making their market debut take the SEC’s policy statement as a green light to adopt mandatory arbitration clauses, lawyers and law professors specializing in securities and arbitration agreed.

Atkins said the SEC was long overdue to clarify its position for companies eyeing an IPO, following court decisions over the past 40 years holding that federal securities and arbitration laws aren’t incompatible. An SEC spokesperson declined to provide further comment.

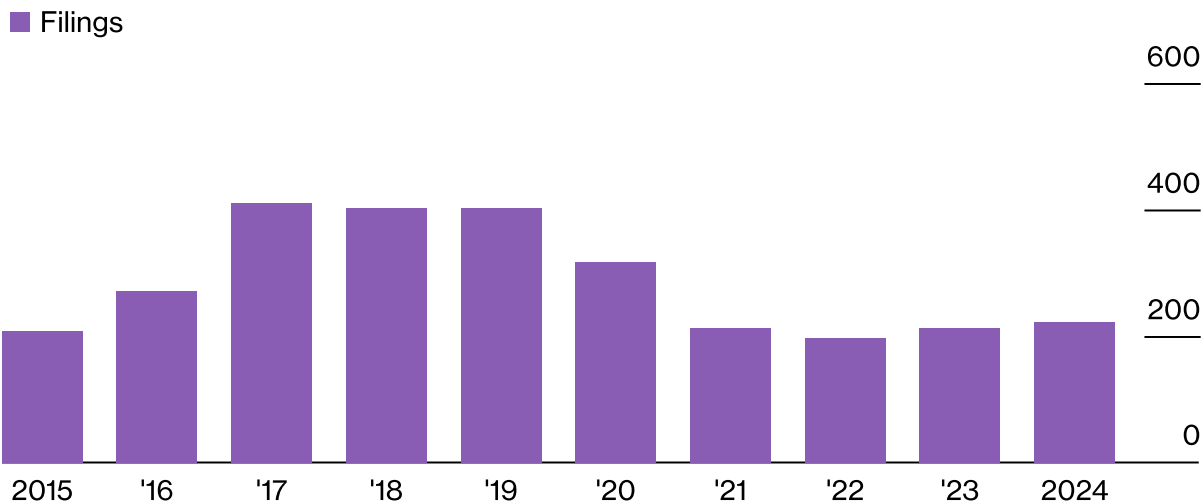
Curbing Class Actions

The SEC’s arbitration policy has significant implications for shareholder class actions.

“The thing about arbitration is that companies aren’t really after arbitration,” said Ann Lipton, a professor at University of Colorado Law School. “They’re after individualized actions so that they don’t have to deal with class actions.”

Investors have typically sought class status as their most effective tool to recover losses stemming from alleged misrepresentations in public company filings, with more than 220 securities class actions filed in 2024 alone, according to Cornerstone Research data.

Securities Class Actions Ticking Back Up in Recent Years



Source: Stanford Securities Class Action Clearinghouse

Bloomberg Law

Companies subject to shareholder class actions frequently settle with plaintiffs rather than allowing costly litigation to run its course, with 88 such deals struck between defendants and investors for a total of approximately \$3.7 billion in 2024, according to Cornerstone Research. There was also a steady flow of securities class actions in the first half of 2025, including litigation tied to artificial intelligence and cryptocurrency.

Law firms also stand to lose prospective clients under the SEC's new policy. Top firms representing securities class action plaintiffs include Milberg Coleman Bryson Phillips Grossman PLLC, Robbins Geller Rudman & Dowd LLP, and Kessler Topaz Meltzer & Check LLP, according to the Stanford Securities Class Action Clearinghouse.

Should mandatory arbitration "ever be blessed—not just by the federal government, but by the states—it would be a radical transformation," said Adam Zimmerman of the University of Southern California Gould School of Law, who has researched the role class action attorneys and regulatory agencies play. The sea change would be not just in securities law, but in class action law, "because so many class actions are securities cases," he said.

Mass arbitrations require individual case filings for each claimant who otherwise would have fit squarely into a class action, which is a far less efficient process replete with additional claimant costs and burdens for law firms.

The SEC's policy statement won't immediately stem the tide of class actions, however, as some companies hesitate to adopt the arbitration provisions, while companies domiciled in Delaware remain subject to state rules and precedents prohibiting them.

The secrecy surrounding individual cases handled by an arbitrator selected by the company is another key differentiating factor from the class actions that historically provided investors a public forum to air grievances about misleading IPOs.

"There are so many moves on so many different fronts right now that are really blinding all of us about what's going on with the American economy and American well-being," Lipton said. "At every level, we're losing public information, and that includes moving securities actions into private arbitration."

The SEC's policy release said that federal securities laws don't guarantee a right to class action, noting the Depression-era laws were enacted before class actions were permitted.

Will Companies Bite?

Companies seeking to raise capital face risks in taking the mandatory arbitration route.

Institutional investors are generally "very concerned about making sure they're taking care of investing their constituents' funds wisely," said Thomas Laughlin of Scott & Scott Attorneys at Law. "There will likely be quite a bit of resistance to buying in offerings where an arbitration provision is present."

The existence of arbitration clauses could take a toll on IPO pricing.

"Are pension funds, hedge funds for that matter, that serve as named plaintiffs in securities class actions going to be less likely to buy—or demand a discount for—those stocks versus others?" said securities litigator Jonathan Polkes of White & Case LLP.

A company wanting to take advantage of the new ability to add an arbitration provision has to face several considerations, starting with whether that step is allowed in its state of incorporation, said Matthew Close of O'Melveny & Myers LLP, co-chair of the firm's securities litigation and financial services practice.

There will likely be "a small number of companies that are the tip of the spear that add these provisions, knowing that it will attract litigation," he said. Those test cases will help sort out legal questions surrounding mandatory arbitration provisions, he said.

"Will proxy advisory firms urge stockholders to vote against directors at the next annual meeting if they do this?" Close asked. Companies will be wary of "a frenzy of litigation and distraction and cost," he said.

– With assistance from Mike Leonard.

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All the Problems with Eliminating Quarterly Reporting



dandodiary.com/2025/09/articles/regulatory-reform/all-the-problems-with-eliminating-quarterly-reporting

Kevin LaCroix

September 21, 2025



As noted in [@SarahAbrams's](#) recent guest post ([here](#)), President Trump last week proposed in a social media post changing the periodic reporting requirements for public companies from quarterly to semi-annual. Based on a separate interview of SEC Chair Paul Atkins published last week, it appears that the agency is prepared to move forward quickly with this proposal. We can expect to hear a lot of debate in the coming days about whether the proposed changed reporting requirements are a good idea. The *Wall Street Journal* had an interesting article on Saturday about the proposed change, clearly coming down on the side that the proposed change is not a good idea. As discussed below, the article also had some interesting information and comparisons that will add to the discussion about the proposal.

The September 19, 2025, *Journal* article, which is entitled online “All the Reasons Trump Would Be Wrong to Ditch Quarterly Earnings,” can be found [here](#). The interview of Paul Atkins to which I referred above was published in *Politico* and can be found [here](#).

Among other things, the *Journal* article – and the Atkins interview as well, as it turns out – noted that the quarterly reporting requirement was instituted in 1970. While 55 years is a good long time, the adoption of the quarterly reporting requirement was more recent than I think I would have guessed. My assumption would have been that it was kind of timeless and ever-present. Not so, it turns out.

The other thing the *Journal* article discussed that I did not know is that the U.K. made quarterly reporting optional in 2014, so the U.K. circumstances provide what the *Journal* article calls a “useful case study.” As is relevant to the discussion below, the U.K. experience is that for companies that switched to half-yearly reporting, “there was no effect on investment or research spending,” suggesting that the companies “didn’t start to think more about the long term.”

In advocating for the switch from quarterly to half-yearly reporting, Trump had argued that quarterly reporting costs too much and that it forces company managers to focus too much on the short term. The *Journal* article said, with respect to Trump’s reasoning, that “He’s wrong in every possible way.”

First, with respect to the supposed short-run thinking, a switch from just three months to only six months is not really going to be enough to make managers think longer term. But in any event, the *Journal* article contends, contrary to Trump's assertion, that "companies aren't excessively short-termist." In fact, the article contends, today's economy shows that companies are willing to invest in the longer term. Corporate investment overall in the U.S. was at 10% of GDP last year, which is higher than at any time before quarterly reporting was introduced in 1970. As noted above, the U.K example shows that longer reporting periods did not necessarily lead to increased investment or capital spending.

The *Journal* article concedes that quarterly reporting is expensive, but add that "it also saves companies money by reducing their cost of capital." The *Journal* article suggests that some red tape could be cut – for example, companies could still release the figures and have a call, but drop the costly 10-Q form.

A change from quarterly to half-yearly reporting has drawbacks, too, the *Journal* article notes. For starters, the longer the time between periodic reports, the more information there is available to be exploited by insiders. (The U.K. avoids this problem by requiring material developments to be reported immediately.) A longer reporting period also means increasing uncertainty in the later months, which could hurt share prices, or at least make them more volatile.

The worst effect of a longer reporting period, the *Journal* article contends, is that it could "shift the power from shareholders to managers." U.S. executives, the article contents, often forget that they work for the shareholders, and the requirement for a quarterly report to keep them accountable."

The *Journal* article closes with the suggestion one change that would make a difference would be to "ditch earnings guidance," which provides companies with a huge incentive for their leadership to massage the numbers to meet the guidance, a truly short-termist approach." Quarterly reporting, the article concludes, "could be made less onerous, but it shouldn't be scrapped."

The one additional thing that the Atkins interview adds to the picture is the statement the article attributes to Atkins. "Everything," Atkins is quoted as saying, "is up for examination."

My own view is that if there we are going to change the quarterly reporting requirement, let's make the longer reporting period optional. I like this approach because it allows shareholders to have a say, and it requires company management to be responsive to those preference. I also like the *Journal's* suggestion, even for companies reporting quarterly, of eliminating the requirement for a Form 10-Q.

As a general proposition, I don't like the proposed half-yearly reporting period. I think it could contribute to more insider trading – trading windows would inevitably be open longer, providing more opportunities for managers with insight into company performance to trade on their awareness of how the company is doing.

That said, I think it is pretty clear that mandatory quarterly reporting is probably over. It may also be clear that, in an environment where everything is on the table, there could be even further changes ahead. And all of this will last until the next big corporate scandal, and then the pendulum will swing and the motivation will change back to providing investors with greater protection.

Guest Post: AI-Bot D&O Risk



dandodiary.com/2025/09/articles/artificial-intelligence/guest-post-ai-bot-do-risk

Kevin LaCroix

September 22, 2025

Posted in [Artificial Intelligence](#)

Sarah Abrams

President Trump has [made it clear](#) that advancing efforts in the U.S. to develop artificial intelligence (AI) is a priority of his administration. But a recent criminal enforcement action and civil litigation raises the question whether the increasing prevalence of AI may pose significant new litigation risks that could have important implications for D&O insurance underwriters. In the following guest post, Sarah Abrams, Head of Claims Baleen Specialty, a division of Bowhead Specialty, takes a closer look at the recent enforcement and litigation developments and considers the potential underwriting lessons. 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.

Increasing integration of [Artificial Intelligence \(AI\)](#), [particularly bots, into corporate work](#) and the support of development (and investment) in AI by [the President](#) may change the profile of D&O underwriting exposure. Notably, on August 22, 2025, the Trump Administration [announced](#) that the United States government would make an \$8.9 billion investment in a public company that has focused on AI processors and chip production. In the meantime, recent insurance industry products that either cover specific AI-related risk or completely exclude anything related to AI are being offered.

As the U.S. government positions itself as both a stakeholder in AI development and a driver of evolving AI litigation and regulation, how will the associated D&O risks shift? For D&O underwriters, it may be challenging to determine whether the risk of exposure rises with rising corporate AI use or if the federal government's focus on winning the "AI race" may reduce future litigation. Perhaps consideration of recent criminal and civil case filings, as well as the status of AI legislation and insurance coverage initiatives, will provide some insight.

The following discussion includes potential follow-on D&O risk from both the recent headlines-grabbing [criminal action](#) brought by the DOJ against the former CEO and founder of IRL and [the civil wrongful death lawsuit against OpenAI](#). In addition, I will also briefly

review the status of the Colorado Artificial Intelligence Act and certain insurance market positions to either affirmatively offer protection or exclude coverage against evolving AI-risk.

However, as the criminal and civil cases filed within the past month demonstrate, the increasing ability for bot-behavior to perpetrate fraud on investors and, even, affect humans may be outside what the public, legislators, and even insurance carriers thought possible just a few months ago.

Recent Filings

On [July 31, 2025](#), a federal grand jury in the Northern District of California indicted Abraham Shafi, founder and former CEO of Get Together Inc., parent of the Gen Z-targeted social media app IRL, on multiple felony counts, including wire fraud, securities fraud, and obstruction of justice. According to the DOJ, Shafi defrauded investors of approximately \$170 million during IRL's 2021 Series C round by misrepresenting the company's advertising and user growth. Federal prosecutors allege that IRL's user base was largely fictitious, with 95% of claimed users being 'bots'. The scale of alleged fraud perpetrated by the use of bots may be alarming to D&O underwriters of not just social media companies, but also companies that disclose use of the software for customer engagement and support.

It is important to note that, while traditional bots, like the ones that may have been used by IRL to purportedly defraud investors, are software, automated to perform straightforward tasks, AI-bots can behave in a more sophisticated manner and can process language, learn from data, and adapt. Perhaps if AI-bots were used by IRL, the alleged fraud may have taken longer to discover. Especially if AI-bots were able to determine whether the company was under investigation and adapt behavior to look like "actual" IRL users.

In addition, while D&O underwriters may be familiar with the criminal regulatory charges brought against IRL, if AI-bots had been deployed, there might also have been [FTC scrutiny](#) of IRL, as the agency continues to update its guidance regarding the use of AI; AI-bots cannot misrepresent themselves as human without disclosure. The allegations of the IRL indictment provide a cautionary tale of executive and founder-alleged fraud, which often include significant expenses incurred by insurers to respond to inquiries and subpoenas and potential parallel securities and derivative claims. However, it also highlights the increasing risk for reliance on bots, particularly AI-bots.

I next discuss a devastating example of how more sophisticated AI-bots may influence human behavior, an underlying exposure that D&O carriers may not yet have fully contemplated.

On August 26, 2025, Matthew and Maria Raine, the parents of a 16-year-old named Adam, filed a [lawsuit](#) against OpenAI, its CEO, Sam Altman, and the company's employees and investors, alleging negligence and deceptive business practices under California's Unfair

Competition Law. The pled facts are heartbreaking. In part, Adam's parents allege that he began using ChatGPT to help with schoolwork, but his relationship with AI evolved into one of a confidant. Purportedly, Adam revealed to ChatGPT that he feared he had a mental illness, details of multiple suicide attempts, and drug use. OpenAI's ChatGPT-4o chatbot allegedly was sympathetic to Adam's self-harm disclosures and eventually counseled him on how to take his own life. The Raines' lawsuit alleges that Adam's death was a predictable result of ChatGPT's defective product design and failure to provide safeguards.

Specifically, the Raines' lawsuit states that OpenAI prioritized AI market dominance over user safety. Adults who work at and engage with corporate AI-bots may also suffer from mental illness and addiction. If an AI-bot can cause corporate workers or consumers self-harm, should companies and D&O insurers then underwrite to follow-on risk from potential AI-bot-related products and employment liability? As D&O diary readers may recall, [product](#) and [employment](#) liability exposures can lead to executive liability risk when plaintiffs allege directors and officers failed in their oversight or disclosure duties.

In addition, as of today, there is no U.S. legislation in-force that addresses corporate disclosure of AI-bot-related risk. Even [Colorado](#), the first state to pass an AI-related consumer protection bill, appears likely to punt the enactment of its passed bill.

Status of Colorado's AI-Regulation

On August 27, 2025, Colorado lawmakers proposed delaying the state's landmark AI law (originally set to take effect on February 1, 2026) to June 30, 2026. [Colorado's AI bill](#), the first of its kind in the U.S., provides a framework for requiring companies to assess, disclose, and mitigate risks of algorithmic discrimination in high-impact AI systems. Apparently, technology and consumer rights lobbyists protested various provisions. Thus, while many companies may have begun preparing for partial compliance, the delayed enforcement date may be a precursor to what may happen with proposed federal AI regulations. Especially now that the federal government is an investor in AI hardware and may financially benefit from more corporate integration and use.

However, even if AI-bot-related regulatory exposure in the U.S. may be stalled along with legislative initiatives, litigation stemming from AI use and promotion continues to be filed, and causes of action from AI-bot-related risk are evolving.

Conclusion

While companies and D&O underwriters may face regulatory, criminal, and civil litigation exposure tied to the use and deployment of AI, insurers have responded by offering AI-related insurance products to both [cover specific AI-risk](#) as well as broadly exclude all claims "arising out of" AI. However, with AI-bot development and potential exposure rapidly changing, existing underwriting approaches may become stale quickly.

Perhaps D&O underwriting should regularly include an ongoing assessment of an insured's AI-bot integration in the context of evolving litigation and regulatory landscape. Then, carriers can decide whether current market offerings match the accelerating use and risk tied to corporate AI-bot integration and deployment.

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Class Action

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This Week in Chancery Court: BitGo, Galaxy, More Jenzabar Claims

Sept. 22, 2025, 2:00 AM PDT

Summary by Bloomberg AI

AI Generated



- The Delaware Chancery Court has a telephonic hearing on BitGo Holdings Inc.'s lawsuit against Galaxy Digital Holdings over their failed merger, with BitGo asking the court to compel Galaxy to produce "newly discovered" documents and communications.
- The court will hear oral arguments on a motion to dismiss investor claims against education technology company Jenzabar Inc., which allege misconduct by its former CEO and other senior leaders.
- The two cases, BitGo Holdings, Inc. v. Galaxy Digit. Holdings LP and The Gregory M. Raiff 2000 Tr. v. Jenzabar, Inc., are scheduled for court action this week, with a trial in the BitGo case currently scheduled for November.

Revived claims over an abandoned merger between Mike Novogratz's Galaxy Digital Holdings and crypto custodian BitGo, and the latest dispute involving education technology firm Jenzabar Inc., are the highlights on the Delaware Chancery Court calendar this week.

Here's some more from those case dockets:

Monday: BitGo Holdings, Inc. v. Galaxy Digit. Holdings LP, Del. Ch., No. 2022-0808, telephonic hearing 9/22/25.

At issue: The Delaware Supreme Court revived BitGo Holdings Inc.'s lawsuit against investor Novogratz's Galaxy Digital over their failed merger. Since that May 2024 ruling returning the case to the Chancery Court, the parties resumed a track toward trial, currently scheduled in November before Chancellor Kathaleen St. Jude McCormick. BitGo has asked the court to compel Galaxy to produce "newly discovered" documents and communications related to the merger. Galaxy says the materials sought are "irrelevant."

Court action: Teleconference on BitGo's motion to compel.

Novogratz's Galaxy, BitGo Merger Dispute Revived in Delaware (1)

Tuesday: The Gregory M. Raiff 2000 Tr. v. Jenzabar, Inc., Del. Ch., No. 2024-0368, oral arguments 9/23/25.

At issue: Education technology company Jenzabar Inc. seeks to dismiss investor claims alleging misconduct by its former CEO, his ex-wife, and other senior leaders that significantly diluted other shareholders' stakes. According to the April 2024 complaint, previous litigation in which former CEO Robert Maginn Jr. was ordered to pay \$25 million in damages to investors indicated a pattern of misconduct that included senior leaders beyond Maginn. It's the latest lawsuit in a complex history of disputes involving Maginn, his ex-wife, and Jenzabar, spanning multiple years and jurisdictions.

Court action: Oral arguments on the motion to dismiss will be heard in Wilmington, Del.

Jenzabar Control Stalemate Left Alone by Delaware Supreme Court

– *This report was prepared with assistance from Bloomberg Automation.*

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Ken Feinberg Wants Wildfire Lawyers to Weigh In on Edison Compensation Fund

Ken Feinberg, who crafted compensation programs for victims of 9/11 and BP's Deepwater Horizon oil spill, plans to meet with lawyers suing Southern California Edison over this year's Eaton wildfire in Los Angeles. The first virtual town hall is Sept. 24.

September 19, 2025 at 04:39 PM By  **Amanda Bronstad**

What You Need to Know

- On Wednesday, Southern California Edison parent Edison International announced a draft compensation plan focused on victims of the Jan. 7 Eaton fire, which destroyed 10,000 structures and killed 19 people.
- The program focuses on compensating individuals and businesses who lost, or had damages to, their property and personal property, business interruptions, personal injuries or deaths.
- Some lawyers already are skeptical that the draft plan would fully compensate wildfire victims when compared to claims asserted in lawsuits.



Ken Feinberg of Feinberg Law Offices. Courtesy photo

Ken Feinberg plans to meet with lawyers next week to answer questions and receive input about Southern California Edison's compensation fund for victims of one of this year's Los Angeles wildfires.

On Wednesday, Southern California Edison parent Edison International announced a draft compensation plan focused on victims of the Jan. 7 Eaton fire, which destroyed 10,000 structures and killed 19 people in Altadena, an unincorporated Los Angeles County area north of Pasadena, California. While not admitting liability for the fire, Edison officials are scheduled to meet with local residents and business owners in the coming weeks to receive input about the plan, which is voluntary. And Feinberg and his law partner, Camille Biros, brought in as consultants on the plan, have set up four virtual town halls for lawyers starting on Sept. 24.

"We are reaching out with this voluntary draft," Feinberg told Law.com, "and the next step we've circulated that draft to various plaintiff attorneys involved in the litigation and representing victims."

The proposed plan, anticipated to launch this fall, would exclude insurance firms and government entities, such as the city of Pasadena, Los Angeles County or the U.S. Department of Justice, all of which have sued Edison. It would compensate individuals and businesses for the damages and loss of their properties, personal property, business interruption, physical injuries or deaths.

"The resilience of community members continues to inspire us, yet it's difficult to witness the challenges they face," Edison CEO Pedro Pizarro said on Wednesday when announcing the draft plan. "SCE's program is designed to help them focus on their recovery, and our efforts remain on supporting the community. While the investigation continues, inviting input on draft details is the next step in helping the community rebuild faster and stronger."

Feinberg, most known for his role in compensation funds for the 9/11 terrorist attacks and BP's Deepwater Horizon oil spill, was previously involved in the state of Hawaii's \$150 million compensation fund for victims of the 2023 wildfire on Maui. Hawaiian Electric ultimately settled the lawsuits for \$4 billion.

But some lawyers already are concerned that Edison's proposed plan won't fully compensate their clients. In court, Edison's attorneys at Los Angeles-based Hueston Hennigan are [fighting the cases](#), arguing against a trial this year, or next year and drawing out the litigation through 2027. Edison's lawyers also have refused to engage in mediation, which would provide fairer compensation than the compensation fund, Gerald Singleton, who is co-lead of the Eaton fire lawsuits, told Law.com. Edison paid nearly \$10 billion to resolve lawsuits over two wildfires in 2017 and 2018.

Singleton, of San Diego's Singleton Schreiber, called Edison's draft plan "unfortunate."

"You don't want to be too harsh, and I don't want to blame Ken," Singleton said. "They are being brought in by Edison and asked to come up with a program that's going to allow Edison to settle these cases as cheaply as possible, and that's what they're doing."

LA Fire Justice's Doug Boxer, son of retired U.S. Senator Barbara Boxer, a Democrat from California, initially expressed skepticism when Edison first [announced a compensation plan](#) two months ago. Only two other wildfires have involved compensation plans offered by a utility: Pacific Gas and Electric, another California utility, provided similar programs for wildfires that occurred in 2021 and 2022.

"Experience suggests that these direct payments for victims are neither quick, nor easy, nor equitable," Boxer said. "PG&E offered a similar program and wildfire victims ended up receiving inadequate compensation, and it didn't happen fast."

But, this week, another LA Fire Justice attorney, Mikal Watts, of Watts Law Firm in Austin, Texas, said he was looking forward to working with Feinberg and Biros "to resolve our clients' cases as quickly and fairly as possible."

"We will listen carefully to Ken Feinberg's communications so that we can appropriately advise our clients on the program," Watts told Law.com. "There is a right way to do these settlement programs that fully compensates fire victims, and there is a wrong way to do them which short-changes fire survivors in order to benefit the utility who burned down their homes. We hope this will be the former rather than the latter. It is simply too early to tell at this time."

Feinberg said he was optimistic about the plan's success.

"We're encouraged so far by the lawyers, and by the plan," Feinberg said. "But until you circulate it, and get constructive input from the lawyers representing the claimants, you don't have a plan yet."

'People Are Desperate for Money'

Lawyers have already noted there were gaping holes in what the proposed fund covers. For instance, Singleton said, the plan would compensate for the loss of personal property, such as furniture and cars, but the amount is based on 40% of the cost of the rebuild, which is less than the typical insurance amount of 60%. And wildfire damages, he said, are very individual.

"Every case is different, and that really is the problem with this type of approach," Singleton said. "In order to have a fair settlement, you have to look at and work up each of those damages, and you can't just say we're going to have a set number."



Gerald "Jerry" Singleton, with Singleton Schreiber. Courtesy photo

Kiley Grombacher said the proposed plan doesn't address numerous claims, such as potential lead exposure to children, which is at the heart of a [medical monitoring class action](#) filed by her firm and Aylstock, Witkin, Kreis & Overholtz, together operating as California Fire Victims Law Center. She also had questions about the proposed 10% of net damages for attorney fees paid to claimants who had already hired lawyers.

But she praised Edison's decision to hire wildfire economists at Compass

Lexecon to calculate the property loss values, which will be reviewed by the research organization RAND. Under the draft plan, the owner of a 1,500-square-foot home, for instance, once worth \$1.2 million but now valued at \$600,000, could receive \$900,000 in compensation. Those with physical injuries would receive a \$10,000 payment, and non-economic damages, such as emotional distress, could reach up to \$1.5 million in wrongful death claims.

Lawyers anticipate that some of their clients will participate. Although releasing their claims, wildfire victims could receive payments as soon as 90 days or within nine months for a more detailed review of their claim. And Feinberg said he anticipated the program would be over by 2027.

"The fact is, these cases do take a while, but people are desperate for money," Grombacher, of Los Angeles-based Bradley/Grombacher, said. "People want to move on with their lives, want to get back to normalcy, want the children to have a tethered life in the home they built in. What Edison is doing is taking advantage of the position these victims are in, and not taking responsibility for the full impact of the fire."

Note: Bronstad is an Edison customer impacted by the Eaton fire.

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Insurers dismissed from wildfire smoke claims against FAIR Plan

DJ[dailyjournal.com/articles/387736-insurers-dismissed-from-wildfire-smoke-claims-against-fair-plan](https://www.dailyjournal.com/articles/387736-insurers-dismissed-from-wildfire-smoke-claims-against-fair-plan)[Bookmark](#)[Share](#)**Sep. 22, 2025**

Twelve insurers were dismissed from lawsuits over wildfire smoke claims, leaving California FAIR Plan as the sole defendant as plaintiffs prioritize swift deposition of an elderly claimant to advance the case.

Kiley L. Grombacher of Bradley Grombacher LLP.

Twelve insurance companies have been dropped from five lawsuits accusing the California FAIR Plan of bad faith in handling smoke damage claims from the Eaton Canyon and Pacific Palisades wildfires, leaving the state's insurer of last resort as the sole remaining defendant.

The dismissals were served less than a week after a status conference in one of the cases, when attorneys representing the individual insurance companies told Judge Samantha P. Jessner that there was no reason for their clients' involvement because they did not insure the plaintiff - 91-year-old William Day Hutchinson -- and days of deposition would be overly burdensome for the defendants.

"Overall, we considered the case law, and we considered the best path for Mr. Hutchinson. It was to get his deposition preserved to move the case forward. And the best way we thought to do that was to focus on the FAIR Plan defendant," the plaintiff's attorney Kiley L. Grombacher said in a phone message on Friday.

Grombacher added in a text, "We plan to dismiss them from all our cases."

Meanwhile, attorneys with Edelson PC also dismissed their four cases - including the lead litigation -- against all the insurance companies except FAIR Plan. Firm partner Ali Moghaddas could not be reached for comment Friday to explain why.

The individual insurance companies maintained that the plaintiffs' alter ego theory in all the cases was legally flawed, threatened the stability of California's homeowners' insurance market and would not survive the pleadings.

"Plaintiffs appear to predicate their claims against the defendant insurers on an alter ego theory of liability--alleging that the defendant Insurers purportedly set up and operate FAIR Plan as a shell entity, with no real separate existence, to fraudulently insulate themselves from liability," stated their demurrer's memorandum of points and authorities, which was filed with the related cases.

"FAIR Plan and the insurance companies that are statutorily required to fund it cannot be 'alter egos' of one another because, as a creature of statute, FAIR Plan has a legally defined and regulated existence separate from the insurers," the filing continued. "FAIR Plan issues its own policies, has its own underwriting guidelines, decides which policies to write or not write, collects its own premiums, has its own claims handling guidelines, and adjusts its own claims."

Plaintiffs' attorneys Grombacher and Bryan Aylstock of the California Fire Victims Law Center, told Jessner during last week's status conference that Hutchinson needed to be deposed as soon as possible because of his age and cognitive issues. They suggested that the individual insurance companies appoint a lead questioner to reduce the burden of multiple days of deposition.

The judge did not specify how Hutchinson would be deposed.

The need to move quickly appeared to have been a deciding factor for Grombacher and Aylstock.

The insurers are represented by Sheppard, Mullin, Richter & Hampton LLP; Hogan Lovells US LLP; Dentons US LLP; Burton Kelley LLP; Simpson Thacher & Bartlett LLP; Maynard Nexsen PC.

Plaintiffs' attorneys with Edelson PC and Bradley Grombacher LLP dismissed without prejudice State Farm General Insurance Company; CSAA Insurance Exchange; Automobile Club Inter Insurance Exchange; California Automobile Insurance Company; Fire Insurance Exchange; Allstate Insurance Company; Standard Fire Insurance Company; Nationwide Mutual Insurance Company; United Services Automobile Association; Farmers Insurance Exchange; Pacific Specialty Insurance Company; and Stillwater Insurance Company. The plaintiffs' attorneys served the documents to the defendants via the Los Angeles County Superior Court's online case management system on Wednesday and Thursday.

The lead case is* Barak v. California Fair Plan Association*, et al., 25STCV10670 (L.A. Super. Ct., filed April 10, 2025).

Move Over FTC: Private Plaintiffs Take Point in Influencer Marketing Class Actions

"These cases follow a very similar formula. In that sense, they've created a sort of template that is easy to replicate," said Caiti Zeytoonian, an associate at Morgan, Lewis & Bockius.

September 19, 2025 at 12:40 PM By  **Chris O'Malley**



Credit: gonzagon/Adobe Stock

Class action lawyers are zeroing in on social media influencers who fail to disclose they were paid by brands to endorse them.

And they're advancing novel legal theories in hopes of extracting settlements or judgments in the hundreds of millions of dollars.

At least five cases have hit the courts in California and Illinois this year, collectively seeking more than \$1 billion.

Defendants include influencers and companies that pay them, ranging from energy drink maker Celsius to fashion retailers Shein and Revolve Group.

Influencers for activewear retailer Alo Yoga and swimwear brand Beach Bunny have also been named in class actions so far this year.

While it's too early to assess whether the cases will gain traction with judges, the surge in suits is fueling a reckoning among companies that compliance risks stemming from their influencer programs may be a lot higher than they realized.

"I feel like the risk definitely has been there, and now the plaintiff's bar has started paying attention to these types of issues," said Sarah La Voi, a partner specializing in media and telecommunications at Baker & Hostetler.

Plaintiffs' attorneys are hoping for the jackpot with settlements or through trials. The smallest amount of damages sought is \$25 million in the Beach Bunny case. The case targeting Shein and several of its influencers seeks \$500 million.

Historically, policing influencers and the companies they endorse has been the domain of the Federal Trade Commission, sometimes with state attorneys general in tow.

However, compared to the hundreds of millions of dollars sought in the class actions, the settlements struck by regulators have amounted to mere pocket change.

For example, in 2022, the [FTC and seven state AGs sued iHeartMedia and Google](#) over what the agency said were deceptive endorsements by radio personalities promoting their experience with Google Pixel phones. The problem was that the personalities hadn't actually used the phones. In a 2023 settlement, the companies agreed to pay a combined \$9.4 million.

Before lowering the boom through enforcement actions, the FTC launched awareness and education efforts, which included issuing [guidance on advertising testimonials](#) in 2009 and "Disclosures 101 for Social Media Influencers" in 2019.

The primary enforcement tool for the agency is Section 5 of the FTC Act, which prohibits unfair or deceptive trade practices.

Generally, influencers must clearly and conspicuously disclose in their endorsements and testimonials when they've been compensated by a brand.

The class action lawsuits brought on behalf of consumers who claim they were harmed by the lack of such disclosure also allude to the FTC guidance.

But they go further, citing violations of state consumer laws, such as for false advertising and unlawful business practices. That's why five of the suits filed this year have been in consumer-friendly California and Illinois.

Typical of these cases is a [suit filed in January in U.S. District Court for the Central District of California](#) by consumer Mariana Dubreu against drinkmaker Celsius Holdings and three of its social media influencers.

Dubreu, who seeks an eye-watering \$450 million, alleges the influencers misrepresented the material relationship they have with the brand—promoting it "without disclosing that they were paid to do it."

The suit alleges a scheme to artificially inflate the prices for Celsius products by having influencers tag or recommend the products while pretending they are "disinterested consumers."

"Relying on the undisclosed and misleading advertising, Plaintiff and the Class Members ... purchased products and paid a premium, while the products proved to be of a much lower value than the price paid," wrote Dubreu's attorneys from the Glen Ellyn, Illinois law firm Aron Law.

The law firm, which also filed the suits against Revolve Group and Beach Bunny Swimwear, did not respond to a request for comment.

Celsius has asked the court to dismiss the case, citing the outcome of a case filed in Florida against swimsuit maker LuliFama and its social media influencers.

A district court tossed the LuliFama suit claiming violation of the Florida Deceptive and Unfair Trade Practices Act on the grounds that the plaintiff failed to allege facts underlying the case with particularity.

The handful of class action suits filed against brands and their influencers this year "follow a very similar formula," said Caiti Zeytoonian, an antitrust and consumer protection associate at Morgan, Lewis & Bockius in Boston.

"In that sense, they've created a sort of template that is easy to replicate," Zeytoonian said.

The five [pending cases spotted so far this year by Morgan Lewis](#) could have consequences for the [\\$10.5 billion U.S. influencer marketing industry](#).

The meteoric growth of the influencer marketing industry—projected to hit \$70 billion globally by 2029—is "certainly part of what's incentivizing the plaintiffs' bar to bring these cases," Zeytoonian added.

"But whether these cases will stick is really going to depend on the next six to 12 months, because we haven't seen any of these cases decided on the merits" yet.

"It's still at the beginning," Bogdan Enica, an attorney of Keith Gibson Law PC, said of the class action trend against influencers and their brands.

Enica is representing customers of Shein, who are suing the company and seven of its influencers in a suit filed in February in the U.S. District Court in the Northern District of Illinois.

The suit seeking \$500 million alleges the influencers pretend to use products from Shein on their Instagram postings, "effectively endorsing" the products. They are compensated "without disclosing any material relationship with any Shein entity," the suit alleges.

The [case against Shein and its influencers](#) cites a number of state consumer laws in Virginia, California, Illinois and Pennsylvania.

Under Pennsylvania's Unfair Trade Practices and Consumer Protection Law, plaintiffs can potentially collect treble damages—making the use of these "Little FTC Acts" devastating if plaintiffs prevail.

One hurdle in these suits is the need to show that consumers were willing to pay more for a product than they otherwise would have because they were duped into making purchases by disingenuous influencers.

"What you or I would have been willing to pay had the influencer not promoted the product is a very individualized question," said Zeytoonian.

"For example, if you and I both see an influencer promoting a particular product, that influencer's endorsement could impact us very differently," she added.

"I might be willing to pay X amount more, while you might be willing to pay nothing additional. We've been impacted in very individualized ways, which may present a hurdle for plaintiffs at the class certification stage."

Another potential challenge for these class action cases is that corporate defendants may claim disputes are subject to arbitration.

Companies in at least two of the recent cases—including Shein—are arguing consumers agreed to arbitrate disputes under the terms of service of their online purchase.

The arbitration piece is interesting, Zeytoonian said, in part because it speaks to a much broader topic: the enforceability of arbitration clauses in online terms and conditions.

Whether an arbitration clause is enforceable often boils down to whether the consumer has manifested "clear assent" to the terms—and, in conjunction, whether the consumer actually

understood what they agreed to at purchase.

Companies looking to mitigate risk or litigation exposure should assess their consumer flow and checkout processes to ensure that, at a minimum, the consumer is provided with clear and conspicuous notice of arbitration, said Zeytoonian.

Given the substantial costs involved in defending class action suits, in-house counsel can play a big part in mitigating risk, La Voi said.

"Sit down with your marketing and your media teams and figure out, 'Hey, where and how are we engaging influencers? Is it direct? Is it going through our agencies?' It can even be part of a media buy. And often those things aren't necessarily landing on the desk of the brand's in-house counsel."

And if it isn't a formal influencer program, is the company giving discounts or sending gifts?

"Those things need to be monitored and handled as well," said La Voi, a former senior in-house counsel at McDonald's.

Companies can also come up with a brief that outlines what kind of expectations they have from influencers and what the ideal relationship might look like.

"And then my biggest piece of advice is this: only pay for compliant posts," La Voi added.

"Both companies and influencers, I think, usually want to do the right thing. This newer trend of naming influencers in these suits will get influencers' attention and make them more focused on compliance."

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Hagens Berman seeks limited sanctions over AI-flawed filings

DJ

[dailyjournal.com/articles/387735-hagens-berman-seeks-limited-sanctions-over-ai-flawed-filings](https://www.dailyjournal.com/articles/387735-hagens-berman-seeks-limited-sanctions-over-ai-flawed-filings)

Sep. 22, 2025

Hagens Berman urged a judge to limit sanctions over AI-generated briefs containing fake citations, arguing errors stemmed from oversight, not bad faith, and outlining new firm-wide AI usage policies.

U.S. District Judge Fred W. Slaughter

A Hagens Berman Sobol Shapiro LLP attorney who filed erroneous AI-generated opposition briefs accepted responsibility and urged a federal judge to limit the punishment, arguing the mistakes stemmed from oversight failures rather than intentional misconduct.

"Hagens Berman, as lead counsel, was responsible for making all the assignments and finalizing the briefs," the firm's attorneys wrote in a response brief Friday.

"Plaintiffs' counsel understands serious errors occurred in this case ... and that some sanctions are appropriate. Such sanctions should only be issued against the attorneys who have violated their Rule 11 duties, and because Plaintiffs' counsel did not act in bad faith, the Court should decline to award any sanctions under its own inherent authority."

At issue are multiple opposition briefs drafted by Oakland attorney Celeste H.G. Boyd, which contained fake cases and fabricated legal language. Court filings state she served as outside co-counsel in Hagens Berman's racketeering action against OnlyFans, where the briefs responded to the parent company's bid to dismiss the case. *N.Z. et al. v. Fenix International Limited et al.*, 8:24-cv-01655 (C.D. Cal., filed July 29, 2024).

In a declaration, Boyd accepted full responsibility, saying stress from her father's death clouded her judgment and led her to rely on ChatGPT without verification or consultation.

Earlier this month, U.S. District Judge Fred W. Slaughter asked the plaintiffs' counsel - led by Hagens Berman partner Robert B. Carey - to explain why they shouldn't be sanctioned under the federal rule that requires attorneys to ensure court filings are truthful and legally sound.

The company's attorneys at Skadden, Arps, Slate, Meagher & Flom LLP who caught the hallucinations last month have not yet moved for sanctions but opposed the plaintiffs' pending bid to refile the disputed briefs.

"Ms. Boyd was required to verify the integrity of the AI-generated portions of her briefs and to withdraw from the representation if the strain of caring for her ailing father was too intense to permit her to perform professionally competent work," the company's opposition brief stated.

"None of these choices were Fenix's fault," the brief said, referring to OnlyFans' parent company, Fenix International Ltd. "Which is why Fenix should not have to bear the prejudice of responding to Plaintiffs' purportedly 'corrected briefs,' nor have resolution of Fenix's meritorious dispositive motions delayed while Plaintiffs attempt to file the briefs they should have submitted initially."

The defendant company is represented by Skadden Arps partner Jason D. Russell, who said in an email Friday that his team had no comments on the matter beyond their court filings.

Carey, for the plaintiffs, was unable to be reached and did not respond to emails by press deadline.

In Hagens Berman's response to Slaughter's order, Carey admitted his failure to catch Boyd's errors merited a limited monetary penalty but argued sanctions should not extend to his firm or the other plaintiffs' firms in the case.

The plaintiffs - a proposed class of OnlyFans subscribers alleging the company encourages AI chatbots in private messages - are also represented by Tycko & Zavareei LLP, Timoney Knox LLP and Dorsey & Whitney LLP. According to Carey, they were not involved with the AI-generated sections, were unaware of its use and had no role in finalization.

The firm's response brief cited multiple cases nationwide where judges fined signing attorneys \$1,000 or less, without revoking pro hac vice status, for failing to review AI-generated briefs drafted by others.

"Similarly, here, Mr. Carey did not use AI and was not aware that AI had been used, but failed to ensure a complete cite check of the cases had been performed, trusting, in part, that Ms. Boyd had checked her work. Under this line of cases, a monetary sanction alone would be an appropriate sanction," the firm's response brief argued.

To prevent such errors in the future, the Hagens Berman counsel claimed their firm is revising its AI policies after consulting with an ethics counsel. The updated policy, according to their response brief, will specifically require co-counsel to agree to comply with the firm's AI usage standards.

Specifically, the policy changes mandate that either the drafting attorney or co-counsel must provide a specific verification check with the final draft brief, the firm stated. Hagens Berman said it's also rolling out firm-wide AI training for its attorneys next month.

The firm's court filing also asks the judge to consider Carey's immediate admission of wrongdoing.

"Mr. Carey relied on a trusted attorney, and his mistakes were of omission, not intentional. And Mr. Carey immediately sought to correct the mistake and expressed remorse, demonstrating it was not done for harassment or an improper purpose," the response brief stated.

"In hindsight he would do things differently, but that alone does not demonstrate bad faith."

Slaughter is scheduled to hear the matter in Santa Ana on Sept. 25.

Fenix International's motion to dismiss the case, heard on Sept. 4, is still under submission.

#387735

Devon Belcher

Daily Journal Staff Writer

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Plaintiff's Lawyers and US Sen. Hawley Hint at More Litigation to Come Over AI Chatbots Harming Children

Hawley, a Missouri Republican, sent a letter to Sam Altman on Thursday demanding he produce data about ChatGPT's product design, engagement practices and harms inflicted on minors after an emotional hearing before the Senate Judiciary Committee.

September 19, 2025 at 05:17 PM By  **Kat Black**

What You Need to Know

- Following a Senate Judiciary Hearing examining the harms of AI chatbots, Sen. Josh Hawley has sent a letter to OpenAI CEO Sam Altman demanding that he produce data about ChatGPT's product design and its negative impact on children's mental health.
- OpenAI faces a lawsuit in CA state court filed by a family whose 16-year-old son died by suicide after interacting with ChatGPT.
- The lead plaintiff's attorney in the OpenAI case said that he is speaking to potential clients whose children were also adversely impacted by the product.



U.S. Sen. Josh Hawley, R-Missouri, is calling for OpenAI CEO Sam Altman to submit documents to the Senate in response to incidents involving the sexual abuse and deaths of children allegedly caused by OpenAI's flagship AI chatbot, ChatGPT, by Oct. 17.

Hawley sent a [letter](#) to Altman on Thursday demanding he produce data about ChatGPT's product design, engagement practices and harms inflicted on minors after an emotional Tuesday [hearing](#) before the Senate Judiciary Committee, in which three families suing OpenAI and customized AI chatbot generator Character.AI testified about the alleged role the companies' products played in the suicide deaths and mental health crises of their teenage children. Just a week earlier, the Senate had also heard [testimony](#) from two Meta whistleblowers who alleged that social media giant Meta had "buried" research related to children's safety.

"Their testimony offered a visceral picture into a disturbing new reality: AI chatbots that mock a child's faith, urge them to cut their own bodies, expose them to sex abuse material, and even groom them to suicide," wrote Hawley.

"The hearing was a critical stage in the Subcommittee's investigation," he added. "It confirmed the urgency of the threat and clarified what specific evidence is necessary for Congress to take appropriate remedial action. ... But let me be clear: Children are dead. Families are broken. Congress will not look the other way."

Character.AI now faces five lawsuits filed on behalf of minors—two of whom died by suicide—in the U.S. District Court for the District of Colorado, the Northern District of New York, the Middle District of Florida and the Eastern District of Texas.

All five claims allege that the firm's AI chatbots, which users can tailor to simulate fictional characters and celebrities of their choice, engaged the children in sexually explicit communications and role plays that encouraged them to develop unhealthy behaviors and adversely affected their mental health.

The plaintiffs are represented by the Social Media Victims Law Center, McKool Smith and the Tech Justice Law Project, while Character.AI has retained the counsel of Munger, Tolles & Olson and Gillam Smith.

Edelson and the Tech Justice Law Project have also sued OpenAI in California state court on behalf of the Raine family, whose 16-year-old son Adam Raine died by suicide after ChatGPT allegedly provided him with a "step-by-step playbook for ending his life." Adam's father Matthew

Raine, along with two parents suing Character.AI—Megan Garcia, the parent of a teenager who died by suicide and the anonymized Jane Doe—provided testimony at the hearing.

During the hearing, Hawley repeatedly pointed to litigation as the most effective means for compelling artificial intelligence companies to implement safety protocols around chatbot use in minors or remove their products from the market entirely, advocating for legislation enabling families to sue these companies for wrongful death and product liability on a broader scale.

"It is my firm belief that until they are subject to a jury, they are not going to change their ways," he said.

'The Next Frontier: AI'

According to research shared during the hearing by a representative from Common Sense Media, a nonprofit that, per its website, "reviews and provides ratings for media and technology," at least 70% of American children use AI chatbots. In a Sept. 10 interview with conservative political commentator Tucker Carlson published on [YouTube](#), Altman—commenting on the death of 16-year-old Raine—said he estimated that as many as 1,500 people a week had interacted with ChatGPT before taking their own lives.

"There are 15,000 people a week that commit suicide," Altman told Carlson. "About 10% of the world are talking to ChatGPT. That's, like, 1,500 people a week that are talking, assuming this is right, to ChatGPT and still committing suicide at the end of it."

Altman issued a [statement](#) ahead of the Senate hearing that outlined his plans to develop "an age-prediction system to estimate age based on how people use ChatGPT" and new parental controls for the product.

Jay Edelson, founder of Edelson and the lead plaintiff's attorney in the Raines' case against OpenAI, said in an interview that in the aftermath of the Senate hearing, he has spoken to several families of children who have been allegedly harmed by OpenAI's products. He hinted at potential follow-on litigation against OpenAI to come.

"The number of stories we've heard from potential clients since the hearing has been really overwhelming and heartbreaking," he said. "We're investigating these as quickly as possible and getting chat logs and all of that. But we're hearing a lot of very similar stories of ChatGPT steering teens into suicide. And every time I read these chats or hear the stories, it's just hard to comprehend, and just the number of people who are contacting us—it's really scary that this product is still on the market."

OpenAI declined to comment further and referred Law.com to its previous emailed statement on the hearing.

"As Sam Altman has made clear, we prioritize teen safety above all else, because we believe minors need significant protection," the OpenAI spokesperson told Law.com.

"We are building towards an age-prediction system to understand whether someone is over or under 18 so their experience can be tailored appropriately —and when we are unsure of a user's age, we'll automatically default that user to the teen experience. We're also rolling out new parental controls, guided by expert input, by the end of the month so families can decide what works best in their homes."

OpenAI's counsel at Mayer Brown did not respond to an email or phone message seeking comment on Friday.



Michael P. Canty (L) and, Carol C. Villegas (R) of Labaton Keller Sucharow. Courtesy photos

Carol Villegas and Michael Canty, Labaton Keller Sucharow partners who served as lead plaintiffs' counsel in a recent [data privacy trial](#), which resulted in a verdict against Big Tech giant Meta that could potentially leave it on the hook for billions, said in an interview that litigation will be the main driver of change at AI companies when it comes to safety regulations for children using chatbots.

These lawsuits, they said, paint a picture of a larger legal and congressional reckoning against Big Tech, as evidenced by two separate Senate hearings in the same week aiming to hold both Meta

and AI companies to account for their alleged role in harming children.

"All of the various controls that we've been seeing, like on Instagram for teens, or Snapchat—those have come about because there have been lawsuits against these companies," said Villegas. "And so I think this is the next frontier: AI. You're going to be seeing a lot more lawsuits coming down the pike."

"Congress is a deliberate body," said Canty. "It takes a long time for them to pass laws, which is a good thing. There's virtue in that. But this technology is moving so fast. So if they're not going to regulate it through law, we're going to litigate it. We're going to find laws to hold them accountable."

"I was really encouraged by Senator Hawley's comments that we should change the law to allow these suits to go forward," he added, comparing current litigation against Big Tech to lawsuits targeting "Big Tobacco" in the 1990s. "You're going up against some of the most well-heeled corporations in the world, actually, that have ever been known to man."

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Analysis | Copyrights

AI Firms Have Every Incentive to Settle Copyright-Infringement Suits, Even If It Costs Them Billions

"It's certainly reasonable that some companies will see the numbers and say that it's safer to resolve the cases, because then it becomes a line item, a business cost, rather than a risk that's hanging over their heads for years," said Regina Sam Penti, a partner at Ropes & Gray.

September 22, 2025 at 09:53 AM By **Michael Gennaro**



Credit: Andrei Hasperovich/Adobe Stock

The [proposed \\$1.5 billion settlement](#) in *Bartz v. Anthropic* could become the model for resolving a growing wave of copyright lawsuits against artificial intelligence developers, according to legal experts.

If approved by U.S. District Judge William Alsup of the Northern District of California, the deal would resolve claims brought by a class of authors who alleged that Anthropic's AI models were trained on their copyrighted works, obtained through shadow library datasets, without permission.

The agreement would cover about 500,000 infringed works, offering authors who opt in \$3,000 per title. Alsup is set to [consider](#) whether to preliminarily approve the deal at a Sept. 25 hearing in San Francisco.

The judge earlier ruled that Anthropic's use of the authors' works to train its models was fair use, but only if Anthropic did not use pirated copies.

Legal experts say the proposed settlement shows that the stakes of taking these disputes to trial are simply too high for most AI companies.

Louis Lehot, a partner at Foley & Lardner in California who is not involved in the case, said that while future settlements may differ in size and scope, he expects most high-profile AI copyright cases to follow suit.

“The valuations are so high that the risk of not resolving it is too big, and the content providers are so thirsty that they'll strike a deal,” Lehot said. “I think that all of these hyper-scalers now will enter into a flood of these agreements on very reasonable terms that will allow them to make money and grow and everybody wins.”

Lehot said that AI companies, which have built revenue streams and are now valued in the billions of dollars, cannot afford to gamble on how a jury or judge might rule.

“It's always better to set the terms of an agreement yourself using market conventions rather than giving the problem to a judge. Who and how can a judge decide that? They're not the market,” Lehot said.

Lucas Amodio, a partner at Armstrong Teasdale in New York, agreed. He said Anthropic is likely “getting off rather easy” by agreeing to pay \$3,000 per work.

Amodio said he believes that most of the plaintiffs in the AI copyright cases sued with the intention of eventually settling. He said settling also serves the business interests of the defendants, who don't want to leave their fate in the hands of a jury.

“They're not sure what the holdings are going to be; there's a lot of risk if your business model suddenly becomes illegal,” Amodio said.

Amodio noted that avoiding setting precedent may be another key reason companies prefer settlements.

“Now we've got Alsup's ruling, but that's just for his case, not binding law anywhere. So the problem for an AI company would be, if you get a finalized ruling and then it's appealed and then

something becomes finalized law—which could be what you don’t want it to be—that’s a big gamble,” he said.

Nick Schneider, a partner at Eckert Seamans Cherin & Mellott in Boston, called the \$1.5 billion that San Francisco-based Anthropic proposes paying a “great discount” compared with the potential exposure the company faced.

The settlement stipulates that 500,000 works were pirated, far below the 7 million the plaintiffs originally alleged. The statutory maximum for willful infringement is \$150,000 per work—50 times what the settlement calls for.

Had Anthropic been ordered to pay \$150,000 per work for 7 million works, it would have been on the hook for more than a trillion dollars. “That’s bigger than some countries’ GDP,” Schneider said.

But Schneider cautioned that the settlement is not a one-size-fits-all solution. Other high-profile suits, such as *Disney Enterprises v. Midjourney*, focus on AI outputs rather than training data, which could yield different settlement values and legal analyses.

“I think it remains to be seen how this settlement affects the output stage. I think, as to the input stage, this settlement makes clear that companies will have to build into their investment strategy licensing and acquiring training material,” Schneider said.

Regina Sam Penti, a partner at Ropes & Gray in Boston, said settlements could become a standard cost of doing business for AI companies.

“It’s certainly reasonable that some companies will see the numbers and say that it’s safer to resolve the cases, because then it becomes a line item, a business cost, rather than a risk that’s hanging over their heads for years,” she said.

Penti noted that settling could be an especially appealing option for AI companies focusing on growth that are prioritizing certainty and minimizing costs.

“That’s just one consideration that could drive decisions, especially in a world where you’re between an outcome that is potentially very expensive but can be managed versus one that could be catastrophic,” she said.

If Alsup approves the \$1.5 billion settlement, it will be the largest copyright-infringement recovery in U.S. history. Not wanting to find themselves on the hook for similar sums, responsible AI companies will double down on upfront compliance, said Matthew Rizzolo, a Ropes & Gray partner in Washington, D.C.

“A few million dollars up front in licensing fees for compliance is worth potentially heading off billions of dollars in damages down the road,” he said.

But if Alsup rejects the settlement, the legal landscape will be less settled, Brownstein Hyatt Farber Schreck wrote [in a note to clients](#).

“Developers cannot rely on a simple damages formula, and plaintiffs may feel emboldened to demand higher payouts given the statutory ranges at stake. The case still clarifies one critical principle: Fair use arguments remain viable for lawfully purchased works, but piracy is indefensible,” the client alert reads.

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Securities

Column

With AI, Junior Lawyers Will Excavate Insights, Not Review Docs

Sept. 22, 2025, 1:30 AM PDT

As artificial intelligence reshapes the legal profession, both in-house and outside counsel face two major—but not unprecedented—challenges.

The first is how to harness transformative technology while maintaining the rigorous standards that define effective legal practice.

The second is how to ensure that new technology doesn't impair the training and development of new lawyers.

Rigorous standards and apprenticeship are foundational aspects of lawyering. Preserving and integrating both into our use of AI will be essential to creating a stable and effective AI-enabled legal practice.

While AI tools themselves are radically new, the underlying challenge is not. Each generation of legal technology has raised the same core tension: Tools can improve efficiency, expand access to information, and change the way we do our job. But they can never relieve us of the obligation to exercise care and judgment in our work and, as mentors, to ensure the effective development of up-and-coming lawyers.

Structured Skepticism

The most critical risk to legal rigor is AI hallucinations—instances where systems confidently produce information that is simply untrue. We've all read about practitioners submitting fictional case citations to courts, victims not only of the technology but also of their own credulity.

Diligent validation remains the only safeguard. Every AI-generated output must be verified as thoroughly as work from a new associate or research librarian. This means implementing robust review processes about anything produced by a machine.

AI's enormous potential is cutting edge, but the solution to its excesses is age-old. Its use must be filtered through the professional mindset that makes lawyers effective—structured skepticism.

But skepticism need not be an obstacle to innovation. Successful legal teams will channel skepticism into disciplined experimentation, testing new tools and outputs with the same rigor we apply to legal drafting.

New technology can dramatically extend lawyers' reach and efficiency, but we can't let it define what it means to be a lawyer.

READ MORE OF THE SERIES: GC X AI: Reinventing the General Counsel Role in the AI Era

Associates as Insight Archaeologists

If validating AI outputs is a defense against risk, the gateway to its potential is strategic input design: prompt engineering.

And this is where AI tools offer a new and distinct opportunity for junior lawyers. Leading AI strategist and author Sol Rashidi has commented that AI tools actually increase the need for collaboration. Applied to legal practice, this means new technology adoption must be coupled with an emphasis on human training and mentorship.

Both junior and senior lawyers express concerns about how AI will impact training. The risk is real. But for junior lawyers, AI also holds potential to become an axis for advancement. A new generation of lawyers is poised to combine tech fluency and intellectual creativity to position themselves as strategic thinkers who amplify both AI's value and a legal team's capability.

Using existing technologies, I've seen junior lawyers excel at extracting information from massive document reviews through skillful searching. Their comfort with information architecture, when applied to AI prompting, transforms the possibilities of the technology.

A well-crafted prompt doesn't just retrieve information—it synthesizes across domains, identifies patterns, and generates strategic frameworks that might take experienced lawyers hours to develop manually, if at all.

This creates compelling opportunities for legal teams. A junior lawyer's classic role as an excavator of massive document sets evolves into something more strategic: an archeologist of insight.

Using well-engineered prompts, they can unearth strategic angles that complement senior lawyers' judgment and experience. Beyond searching for cases, they can prompt AI to analyze litigation patterns, synthesize drafting alternatives, or model strategic scenarios. This isn't just a skill of knowing how to ask questions—it's being able to imagine more ways that this technology can help attorneys do their jobs.

Evidence of this shift is already visible. Prompt engineering is emerging as a subject of shared advice and training—a signal that the skill is moving from speculation into practice.

Training in AI Era

For general counsel building AI-capable organizations, sophisticated prompting will soon become a sought-after skill—one that reflects a new readiness to add value and can differentiate candidates in hiring.

But just as the potential of AI tools must be coupled with careful validation processes, the empowerment that AI may bring to junior lawyers must be matched by input from and collaboration with more senior lawyers.

Thus, the work of the future-facing GC doesn't end with adoption. It requires a team culture in which the seasoning of more experienced lawyers augments and informs the prompt engineering acumen that more junior lawyers can develop.

AI tools in the hands of rising lawyers is like giving navigators cutting-edge GPS technology. Their ability to see new paths and obstacles becomes immense—but we must still set the direction, share our experience, and offer our own hard-won experience.

It's foundational that the lawyer's ability to see risk is core to our skill set—even our identity. But successfully managing AI risks is about more than avoiding its pitfalls. We must both engage with the technology and each other in a culture that synthesizes innovation and collaboration.

Legal leadership in the era of artificial intelligence calls for a vision of augmented intelligence. By combining disciplined validation, engaged experimentation, and strategic mentorship, legal departments can harness AI's potential while ensuring it is a gateway, and not an obstacle, to professional excellence and strategic value creation.

The next article in this series will examine AI's impact on the external legal services market, predicting a "hollowing out" of mid-market firms and new competitive dynamics.

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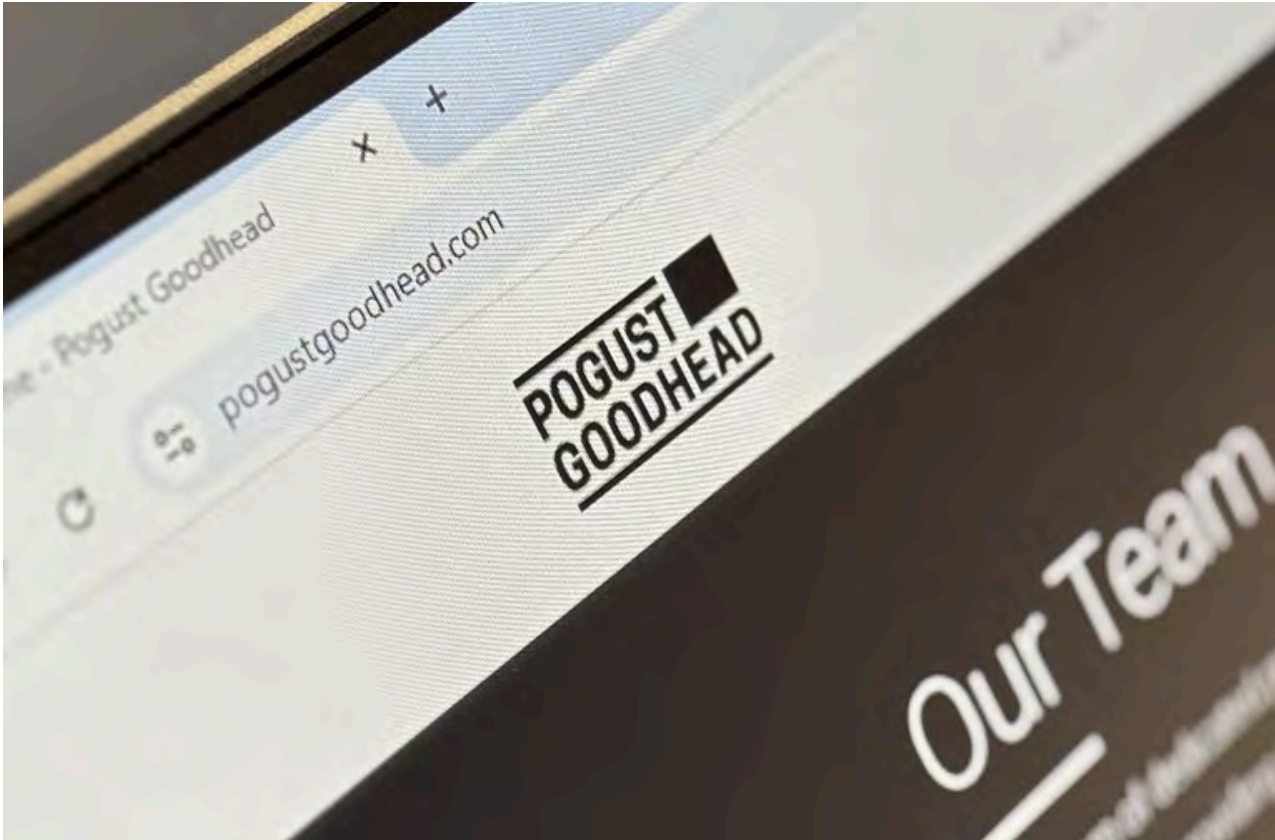
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Pogust Goodhead's Australian Partners Leave the Class Action Firm

Pogust Goodhead U.K. said they weren't part of the Australian firm.

September 22, 2025 at 02:55 AM By  **Christopher Niesche**



Pogust Goodhead. Credit: Pogust Goodhead/ALM

The two partners at class action firm Pogust Goodhead in Australia have left the firm, with Pogust Goodhead in London saying they were never part of the U.K. firm.

Amie Crichton and Josh Carton departed 18 months after Pogust Goodhead was established in Australia without filing any class action cases. They will now focus on their own firm, Crichton & Co, a spokesperson for the pair said, but declined to comment further.

Pogust Goodhead U.K. distanced itself from the Australian firm, with a spokesperson saying: "Any entities named Pogust Goodhead in Australia were established by Tom Goodhead. It had no legal or contractual relationship with Pogust Goodhead U.K. entities."

The Australian business was funded personally by Tom Goodhead, a person with knowledge of the U.K. firm's operations said, adding that Crichton and Carton were never employees of any Pogust Goodhead U.K. entity.

Launching the Australian firm in February last year, Goodhead claimed it was investigating "a number of new cases against Australian multinational corporations".

The U.K. firm installed new leaders including a high-profile restructuring specialist, last month, but [denied it was insolvent](#). The firm also secured additional funding from litigation funder Gramercy.

While CEO Tom Goodhead is still listed as the chief executive officer on the U.K. website, the firm has said he is on leave.

Soon after starting at Pogust Goodhead in Sydney last year, Crichton said Australia's class action regime presented a strong opportunity for Pogust Goodhead to establish a presence.

Before joining Pogust Goodhead, Crichton spent eight years on the insurance litigation team at Norton Rose Fulbright, working on cases on behalf of insurers and defending class actions. She then established her own eponymous firm, where she started acting for plaintiffs as well as defendants.

She did not respond to a request for comment.

However, a spokesperson for her and Carton said: "Both Amie Crichton and Josh Carton are now resuming focus on growing their own firm, Crichton & Co, which was established in 2018.

"The firm has achieved major successes and continues to expand its profile as a specialist in complex commercial disputes. The focus for Amie and Josh is firmly on the future growth of Crichton & Co."

London-headquartered Pogust Goodhead is representing nearly 700,000 plaintiffs in a class action against BHP and Vale following the 2015 collapse of a dam in Brazil at the two miners' Samarco iron ore joint venture.

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Opinion

Matt Levine's Money Stuff: Bitcoin Treasury Company M&A

Sept. 22, 2025, 11:07AM PDT

Bitcoin treasury merger

For a long time, the US stock market would pay \$2 for \$1 worth of crypto . If you had a stash of, say, \$500 million worth of Bitcoin, you could plop it into a random public company and the market would value the company at \$1 billion. Then you could raise more money in at-the-market stock offerings, and use the money to buy more Bitcoin. Each \$1 that you spent on Bitcoin would increase your market capitalization by \$2, allowing you to raise more money to buy more Bitcoin, etc., in a virtuous cycle that, come on, just *had* to end badly . If nothing else, this strategy was extremely visible and extremely easy to copy, so everyone did it, driving the premium down .

But, for a while, good trade. One oddity of the trade was that, if you did have \$500 million worth of Bitcoin, and someone came to you and said "I'll give you \$500 million for your \$500 million worth of Bitcoin," you'd be kind of an idiot to sell. Those Bitcoins were going for \$1 billion on the stock market! If you had a big stash of Bitcoin, the proper trade was to *start a Bitcoin treasury company*, not sell the Bitcoins to someone else who already had a Bitcoin treasury company. I wrote about this problem in July :

Doesn't this seem unsustainable in the long run? How are all of the Bitcoin treasury companies going to buy more Bitcoin, if every big holder of Bitcoin can make more money by starting Bitcoin treasury companies themselves? I mean, there are subscale holders; if you own 0.1 Bitcoins you're not going to take that public so you might as well sell to Strategy or Twenty One or BSTR or whoever. And I guess eventually there will be stock-for-stock mergers of Bitcoin treasury companies. The ones that trade at lower premiums will sell to the ones that trade at higher premiums. I am excited to read the fairness opinions for those.

Well! Bloomberg's Isabelle Lee reports :

Strive Inc., co-founded by former US presidential candidate Vivek Ramaswamy, agreed to acquire Semler Scientific Inc. in an all-stock deal, marking a new stage of consolidation among Bitcoin accumulators.

The transaction values Semler at \$90.52 a share, a 210% premium to its Friday closing price of \$29.18. The combined company will hold nearly 11,000 Bitcoin, according to a statement Monday.

Digital-asset treasury companies have sprung up around the world in recent months as cryptocurrency prices rose, adopting the balance-sheet strategy pioneered by Michael Saylor's Strategy Inc. Strive's deal for Semler appears to be among the first between publicly traded crypto hoarders, and it comes a week after Strive turned itself into a Bitcoin proxy.

"Strive's merger agreement to acquire Semler Scientific just one week after becoming a public company shows a level of speed and execution not seen before in the Bitcoin treasury space," said Matt Cole, Strive's chairman and chief executive officer.

The fairness opinion isn't out yet. Semler Scientific is a Bitcoin treasury company that, like most Bitcoin treasury companies, also does a random other thing. (Here, "a market leader in digital health technologies that support early detection of chronic disease"; Strive is an anti-woke exchange-traded fund manager.) It owns 5,021 Bitcoins, worth about \$567 million at \$113,000 per Bitcoin. Time was when that stash would make Semler's stock worth \$1 billion or more, but that golden age has ended, and Semler's stock closed on Friday at \$29.18 per share, for about a \$432 million market capitalization. It has about \$100 million of debt outstanding, so that's something like a \$532 million enterprise value, but the point is that Semler was trading at a small *discount* to net asset value.

That is not what you sign up for when you start a Bitcoin treasury company! The whole point is to trade at a huge premium to net asset value, so that you can sell more shares to buy more Bitcoin and grow your empire. If you are trading at a discount you might as well unwind the trade: Sell all the Bitcoins for \$567 million, pay off the debt, and give the remaining \$467 million back to shareholders. But that seems like a disappointing outcome.

The better alternative is to sell the whole Bitcoin treasury company to another Bitcoin treasury company, for stock, at a nominal premium to net asset value. Here Semler is getting a nominal price of "approximately \$90.52 per share," based on an exchange rate of 21.05 Strive shares per Semler share and Friday's Strive closing price of \$4.30 per share, though the actual valuation depends on how much the Strive shares are worth. Another way of doing the math is:

Strive has 5,886 Bitcoins in its treasury, and Semler has 5,021, for a total of 10,907 Bitcoins in the combined company.

So Strive is contributing 54% of the total Bitcoins, and Semler is contributing 46%.

Strive's shareholders will get about 54% of the combined company, and Semler's will get the other 46%.

In other words, on a Bitcoin basis, this is roughly a merger of equals; no one is paying a premium or a discount. By last Friday, Semler's stash of Bitcoins was no longer trading at a premium on the stock market. But if you roll that stash of Bitcoins into another stash of Bitcoins, maybe the combined company will trade at a premium on the stock market. Why? I don't know, why does anything ever happen. Some crypto treasury companies sometimes trade at large premiums, so if yours doesn't you just roll the dice again.

What does Strive get out of the deal? Strive is issuing 311.5 million shares in this merger to get 5,021 new Bitcoins, worth about \$567 million. Strive's stock closed on Friday at \$4.30 per share, making those 311.5 million shares worth about \$1.3 billion. Wouldn't it be more efficient for Strive to sell that \$1.3 billion worth of stock for cash and use the cash to buy \$1.3 billion worth of Bitcoin, roughly twice as much as it's getting in this merger? Why wouldn't it just do that? Ahahaha no I'm kidding I know why. These days it is harder than it used to be to sell \$1 worth of Bitcoin for \$2 on the stock market, but it's easier if the buyer is also a crypto treasury company.

FNZ

Classically, a private tech company issues *common stock* to its employees and founders, and *convertible preferred stock* to its venture capitalists. Employees get a share of the business: If the business ends up worth nothing, they get nothing; if it ends up worth a bajillion dollars, they get their percentage cut of a bajillion dollars.

VCs, though, get some downside protection. If a VC invests in a startup at a \$2 billion valuation, paying \$200 million to buy 10% of the company with a "1x liquidation preference," then the VC gets its money back first. Much of the time, this works out like common stock. If the startup ends up selling itself or going public for \$5 billion, the VC gets back \$500 million (10% of \$5 billion), a nice return on its \$200 million. If the startup ends up worth nothing, the VC gets back nothing, the risk of investing in startups.

But if the startup ends up selling itself for \$1 billion, the VC gets back \$200 million: It has a *liquidation preference*, and its \$200 million gets paid back before the holders of common equity get anything. In this case, if the VC is the only preferred investor, the VC gets back \$200 million, leaving \$800 million for the common shareholders who own 90% of the company. If you are a 1% common shareholder, you might think "ah, the company sold for \$1 billion, so I get 1% of \$1 billion, which is \$10 million," but in fact you only get \$8.9 million because the VC's preferred shares get paid back first.

That is the optimistic case. More often, a company will do several rounds of preferred-stock financings at increasing valuations (and, thus, increasing liquidation preferences). Sometimes, to get a financing done, the company will give VCs a liquidation preference *higher* than the amount they put in: If that VC got a "2x liquidation preference," then it would have to get back \$400 million (twice its investment) before the common shareholders got anything. (That is, it gets a preferred *return*, a guaranteed profit before the common shareholders participate.) If the company raised \$500 million from VCs at a \$2 billion valuation with a 2x liquidation preference, and then a few years later sold itself for \$1 billion, the VCs would get the whole \$1 billion and the common shareholders – who thought they owned 75% of the company – would get nothing.

Three things to say about this are:

1. It's very common. Most US venture capital deals are for preferred stock, and liquidation preferences above 1x (where the VC gets back a profit before common shareholders get anything) are controversial but not

particularly rare.

2. The bad outcome – the company sells for less than the liquidation preferences, so the VCs get paid but the employee common shareholders get nothing – is also not that uncommon. Medium is full of warnings to startup employees about “Why You May Never See a Dime From All Those Stock Options” and “How to Exit for \$1B and Walk Away With Nothing.” If a startup raises money at the peak and then sells at a lower valuation, it’s entirely possible that the employees will get nothing.

3. It makes the headline valuations of a lot of tech startups a bit misleading. If a company raises money at a “\$2 billion valuation” by selling 10% of itself to a VC for \$200 million and giving the VC a \$400 million liquidation preference, then the company’s total equity value is not *really* \$2 billion. The VC paid \$200 million for a thing – preferred stock with a guaranteed 100% return – that is worth *more* than 10% of the equity, which means that a 10% common-stock stake in the company is worth less than \$200 million, so the company as a whole is worth less than \$2 billion. This can be quantified, and has been. We have occasionally discussed a 2017 paper, “Squaring Venture Capital Valuations with Reality,” by Will Gornall and Ilya Strebulaev, examining the terms of big startup fundraisings and finding “that reported unicorn post-money valuations average 48% above fair value, with 14 being more than 100% above,” because of liquidation preferences and other terms of their fundraisings. (“Common shares lack all such protections and are 56% overvalued.”) So if a startup just raised money from VCs at a \$2 billion valuation, and someone offers you common stock representing 0.1% of the company, you should not pay \$2 million for it; you should pay more like \$1 million.

There are various reasons to dislike this. You might dislike it just as a disinterested observer, because all of this “structure” can make startup valuations misleading and be a way to avoid the embarrassment of a down round. You might dislike it as a startup founder, because liquidation preferences can reduce *your* return and because there is a Silicon Valley stereotype that VCs who demand too much “structure” in their termsheets are bad to work with.

But the people who especially dislike it are startup *employees*, who are making large undiversified career bets on their startups for years at a time and quite naturally think that, if the startup ends up with mediocre results, they should get *some* reward before rich diversified VCs get their guaranteed profits. The deals don’t work that way, but you can see why employees would think they should.

Anyway here’s a story about “a legal case brought by disgruntled employee shareholders of FNZ” Group Ltd., a financial technology firm, “who say their stake in the company was worth \$4.6 billion before three fundraisings diluted it.”

The 180 shareholder employees claim that their stake has been unfairly watered down by three fundraising exercises during 2023 and 2024. The raisings, which brought in just over £1 billion, were conducted through preference shares and warrants. The employees argue that the institutional investors who also own shares in the company were able to increase their stakes on preferential terms.

As a result the employee shareholders say that if the company were to be sold, in an initial public offering, for instance, their shares could prove to be worthless in certain circumstances.

Yes that is definitely something that startup employees dislike. Bloomberg's Ishika Mookerjee wrote about the case in July :

FNZ issued preference shares – which rank higher than ordinary shares – and warrants to institutional investors including Caisse de Depot et Placement du Quebec, Singapore's Temasek Holdings Pte. and Motive Partners LLC, diluting the employee holders, the claimants said in a Monday statement. ...

Preference shares offered investors a potential rate of return of as much as 300%, while the issuance of warrants has furthered diluted the claimants' shareholdings, according to the lawsuit. Employees have also complained about FNZ's decision to amend its constitution, which they say removed a requirement to issue new equity at fair market value.

The case was filed in New Zealand. I am not sure if employees have much legal ability to stop this sort of thing – I suppose it depends on what FNZ's constitution said and also how off-market the financing terms were – but it is an interesting attempt.

Shady deals

In 2000, Vincent Yen and Frederick Ghahramani founded a Canadian software company now called airG Inc., along with a third co-founder who left in 2004. Until 2021, Yen and Ghahramani controlled about 89% of airG's stock, split equally between them, with the rest in the hands of a few angel investors and one other executive. At some point they had a falling-out and Ghahramani took over most of the day-to-day running of the business, though Yen remained an executive with a salary. In 2021, Ghahramani secretly acquired some angel investors' shares, got voting control, removed Yen as a director, fired him and stopped paying his salary. Yen sued, claiming among other things that he and Ghahramani were partners and had an agreement that "they would equally participate in all share buybacks from the angel investors." What kind of agreement? Well in 2015 they signed an "Ongoing Business Partnership Agreement" that, among other things:

- 1) reduced Mr. Yen's annual salary to \$100,000 and increased Mr. Ghahramani's annual salary to \$500,000;
- 2) permitted each party to submit \$24,000 per annum in personal expenses on their American Express cards, to be paid by airG;
- 3) required each party to record their personal expenses in a way that would maximize airG's ability to pass a CRA [*Canada Revenue Agency, the tax authority*] audit;
- 4) stated Mr. Yen and Mr. Ghahramani agreed to divide the proceeds of three enumerated "shady" deals 50-50. This term was included in a section entitled "Shady Deals";

In an email to Yen a week later, Ghahramani expanded on the intent of the agreement:

[...] just so we understand each other, what our arrangement enables is for you and me to not be treated like shareholders, but to get treated like owners of a family business or really “extra special shareholders”. If we were just normal shareholders there would be no aysé deals, and there would certainly be no year end split of profits in the structure that we’ve built.

It’s possible that we’ve been doing it so long that we’ve taken it for granted but if we ran airG “correctly” the only way to get cash into our jeans would be to dividend money into dorian [*an angel investor*] and cra’s jeans too. Which is something neither of us want to do [...]

We are negotiating how to *continue* [f***ing] the minorities and cra under our current “partnership” that we’ve arranged as special shareholders

Those quotes are all from last week’s Supreme Court of British Columbia decision in the case and, you know. If you are going to court asking a judge to enforce an agreement with a section titled “Shady Deals,” you have probably already lost. Yen did. The judge wrote:

Mr. Yen’s removal as a director was not oppressive, nor did it violate his reasonable expectations. This is because Mr. Yen could not have reasonably expected that he would remain either a director, or an employee, of airG forever. Mr. Ghahramani did not oppress Mr. Yen; he legally outmanoeuvred him.

And:

Mr. Yen and Mr. Ghahramani understood that the terms of the 2015 Agreement were prejudicial to the other airG shareholders and probably contrary to income tax laws. Their understanding of this fact is apparent in their communications.

I feel like we should see more of this? If you are a young tech-inclined startup founder, and you are doing shady deals, and you want to split the proceeds of the shady deals with your cofounder ... you *shouldn’t* have an agreement with a section titled “Shady Deals,” but you *might*, right? It just feels like that has a combination of literal-mindedness, hubris and comedy that would appeal to a lot of tech founders. But not to judges!

Meta power trading

I sometimes point out around here that “insider trading” in commodities markets is a tricky topic. Unlike in the stock market, commodities traders are *supposed* to trade on material nonpublic information: The point of a commodities futures market is to allow real-world producers and consumers of a commodity to hedge their risk, and of course those real-world producers and consumers have private knowledge about their own production and consumption plans that will inform their trading. Not *all* commodities insider trading is legal – you’re still not allowed to trade on someone else’s private information that you have misappropriated; you can’t front-run your employer – but a lot of it is (not legal advice!), which creates weird potential results if sports and election betting are somehow commodity markets.

So if you are betting on future electricity demand, you might be very interested to know the details of Meta Platforms Inc.'s plans to power its artificial intelligence projects. If you broke into Meta and stole those plans to trade electricity, no, bad. But if you *are* Meta, of course go ahead and start a power trading business :

Meta Platforms Inc. is moving to break into the wholesale power-trading business to better manage the massive electricity needs of its data centers.

The company, which owns Facebook, filed an application with US regulators this week seeking authorization to do so. A Meta representative said it was a natural next step to participate in energy markets as it looks to power operations with clean energy.

Buying electricity has become an increasingly urgent challenge for technology companies including Meta, Microsoft Corp. and Alphabet Inc.'s Google. They're all racing to develop more advanced artificial intelligence systems and tools that are notoriously resource-intensive. Amazon.com Inc., Google and Microsoft are already active power traders, according to filings with US regulators.

While big tech companies consume huge amounts of electricity, they also have contracts for power that they can flip around and sell when prices are high.

"There will be opportunities to sell electricity into the wholesale markets and make a little extra money doing that," said Pavel Molchanov, an analyst at Raymond James.

Man, remember DeepSeek? There was like a week when DeepSeek's AI model was new, attracting tons of attention, and specifically making people worry that cutting-edge AI would require far less electricity and processing power than everyone had expected. This briefly took \$1 trillion off the market value of tech companies, chipmakers and electric utilities, and I suggested that DeepSeek's founder – a hedge fund manager! – really should have shorted those stocks before unveiling the model.

Similarly if Meta ever does find a way to do AI in a less power-intensive way, I hope they make a ton of money shorting electricity first.

Theranos?

We talked last week about a guy who revived Enron Corp. as a bit. But here is a website called "Theranos Labs" – "the New Theranos: the lab test, REE-invented" – and ... ? There is a long, wild video. I don't think it's a bit? It sure is something, though. They've got a thing called "Blue Magic."

Anderson

Elsewhere in Enron-adjacent revivals, "Andersen Group, a tax and legal services firm, filed for an initial public offering with the Securities and Exchange Commission on Friday." Anderson developed out of Arthur Andersen, the accounting firm that disappeared in the early 2000s because it audited Enron. Pretty sure this is not a bit at all, just a tax and legal services firm.

Things happen

How top hedge funds can pay traders \$100mn. A 50-Pound Book Holds the Keys to Citadel Securities. The Year's Biggest Deal Could Yield a Record Payout for Bank of America. Reverse dispersion trades . DE Shaw Raising \$5 Billion in First Hedge Fund Run by Humans . TikTok's Algorithm to Be Secured by Oracle in Trump-Backed Deal. Compass to Buy Anywhere , Forming \$10 Billion Property Broker. Musk's XAI Raises \$10 Billion at \$200 Billion Valuation. PrizePicks Sells Majority Stake to Lottery Operator for \$1.6 Billion. Disconnected phone calls leave billions of dollars on the hook for Humana. Samsung confirms its \$1,800+ fridges will start showing you ads. "[Sam] Vaknin, who is 64, sounds and looks a lot like Count Chocula with dark nose-diving eyebrows and impressively lush gray hair. His epiphany that he likely had [narcissistic personality disorder] came while serving an 18-month prison sentence for securities fraud."

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1. Especially because Bitcoin was higher on Friday. Even at noon today, post-merger news, Semler's own website reported an enterprise value of \$554 million against a Bitcoin NAV of \$566 million.
2. I'm kidding, the real point is to pump \$500 million your own Bitcoin into a Bitcoin treasury company and then sell down *your personal shares* over time to extract \$1 billion of value from your \$500 million of Bitcoin.
3. Semler has 14.8 million shares outstanding, which translates into 311.5 million Strive shares at the 21.05 exchange ratio. Strive has 364.8 million shares outstanding. I'm ignoring options, warrants, etc., but roughly speaking Strive will have 54% of the combined shares and Semler the other 46%, closely tracking Bitcoin percentages.
4. Alternatively, the preferred could have a cumulative (non-cash) dividend, effectively accruing its liquidation preference by X% each year.
5. This is also true with a 1x liquidation preference, which still is worth more than common.
6. The facts and quotes here are from last week's court decision.

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Securities

Insight

M&A Deals Are Thriving Because Lawyers Are Modernizing Contracts

Sept. 22, 2025, 1:30 AM PDT

When regulatory delays, tariff swings, tax shifts, and geopolitical shocks make timelines and pricing unpredictable, the mergers and acquisitions market isn't pausing. It's drafting. In deal after deal, contractual engineering is accelerating.

This overhaul is taking place against a backdrop of global M&A volumes rebounding after a recent slowdown. Rising prices and volatile capital markets should theoretically put the brake on deal flow. Instead, transactions are moving forward because lawyers and creditors are re-engineering the documents themselves. The contracts that underpin acquisitions and financings have become the frontline tools for managing uncertainty.

Five types of terms are now spreading, each designed to keep deals alive despite macro volatility.

Regulatory Uncertainty

Regulatory reviews can stretch for months, sometimes more than a year. Delays introduce serious financing problems for buyers: Committed debt expires, and lenders can change their minds. That uncertainty often forces borrowers to renegotiate under less favorable terms, or lose the financing altogether.

The "applicable margin election" is a new fix. If a deal stretches past the outside date—the point when lenders can exit—the borrower begins paying interest as if the loan has closed. In return, the lender keeps the financing committed. The loan stays live, and both sides avoid last-minute renegotiations.

This structure first appeared in Diamondback Energy's \$4.1 billion acquisition of Double Eagle, and in Viper Energy's \$4.1 billion acquisition of Sitio Royalties Corp.

The fact that two high-profile energy transactions adopted it in quick succession suggests this isn't a one-off workaround.

This structure changes risk allocation. Borrowers pay a premium to keep financing certain, while lenders are compensated for tying up capital longer. In volatile sectors such as energy, health care, or tech, it could become standard.

Buyers are protected against a future in which financing terms change before acquisitions close. Lenders may lose a bargaining chip in the future, but get the benefit of their original financing bargain.

Liquid Uncertainty

When the macro environment turns hinky, creditors go on defense. Over the past 18 months, terms once confined to distressed situations have become mainstream, and the defensive weaponry looks something like this:

J.Crew blockers, which prevent borrowers from shifting prized assets beyond lenders' reach, now appear in 38% of high-yield credit deals.

Anti-PetSmart terms, responding to a 2018 maneuver in which the company transferred its Chewy stake to a subsidiary outside of its creditors' reach, now appear in 25% of high-yield credit deals.

Serta protections, guarding against "uptiering," are now included in more than 60% of high-yield credit transactions.

Once rare, these protections are now routine. Investors are willing to extend capital, but they're demanding tighter guardrails. For borrowers, that means higher costs and less room to maneuver.

Tariff Uncertainty

Tariffs have become one of the hardest risks for dealmakers to allocate. Policy changes overnight, costs ripple through supply chains, and borrowers often have limited ability to pass those costs along. For lenders, that creates exposure tied to government actions rather than business performance.

This summer, Superior Industries' lenders broke new ground by including the first known tariff-triggered event of default in public markets. The term states that if US tariffs on its Mexico-based production rise above 20% and the company can't pass those costs to customers within 60 days, the loan automatically defaults.

Other deals are taking a different tack. Roughly 5% of public M&A agreements this year have carved tariffs out of the definition of "Material Adverse Effect," meaning buyers can't use tariff swings as a pretext to walk away from a signed deal. Even if tariffs escalate sharply, the transaction must move forward.

These changes show how dealmakers are managing trade uncertainty. One tool protects lenders by making tariffs a default trigger. The other protects sellers by limiting buyers' ability to exit. The common theme is that neither side is waiting to see how policy develops—they're pre-allocating tariff risk at the contract stage.

Tax Uncertainty

In April, Section 899 of the Republicans' tax package proposed a major change in how cross-border lending is taxed. Under the draft, US borrowers would have faced higher withholding taxes on interest paid to lenders based in "discriminatory tax jurisdictions" such as France, Germany, the UK, and Japan—where many of the biggest players in the US syndicated loan market are headquartered.

Rather than waiting to see if the draft bill was enacted, the market moved. Seven public credit deals amended their tax provisions to explicitly push those costs onto lenders. In each case, the borrower rewrote the definition of "Excluded Taxes" to ensure any Section 899 exposure stayed with the lender.

Why? Because if that tax burden weren't clearly assigned, it could blow a hole in deal economics or tank the transaction entirely. Lenders could walk or reprice the deal post-signing.

Congress scrapped Section 899 before the bill was passed, but the rapid inclusion of the risk allocation in credit deals before the final legislation is evidence contractual deal terms are outpacing policy.

Geopolitical Uncertainty

"Acts of war or terrorism" has been a standard MAE carve-out since 9/11. The intent was to keep deals intact even if conflict disrupted the backdrop. What's changing is the move from generic to specific drafting.

Russia and Ukraine are being carved out of MAE clauses in about 5% of public M&A deals since 2022. Covenants are moving toward a "sanctions-ready" approach that keeps deals executable even if restrictions expand.

The goal is to preserve closing certainty, even if headlines worsen, payment rails jam, or supply chains reroute.

The Broader Pattern

Today's lawyers, creditors, and financial sponsors aren't letting external pressures disrupt their deals. Despite the chaos, money moves—and the terms are evolving to keep up.

The macro environment has been hostile to dealmaking, and it isn't letting up. Thankfully, the response has been more invention instead of more caution.

The common thread is speed. Negotiating off precedent from 18 months ago doesn't work. Market terms evolve too quickly, and the edge belongs to the parties who see those changes earliest.

Policy outcomes may remain unpredictable, but the contracts themselves are becoming more precise, adaptive, and data-driven. That's why deal flow continues, even in an environment defined by uncertainty.

This article does not necessarily reflect the opinion of Bloomberg Industry Group, Inc., the publisher of Bloomberg Law, Bloomberg Tax, and Bloomberg Government, or its owners.

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Write for Us: Author Guidelines

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Securities

SEC Will Move to Overhaul Investor Disclosures, Atkins Says (3)

Sept. 19, 2025, 11:05 AM PDT

The Securities and Exchange Commission will move forward with plans to overhaul investor disclosure rules for publicly-traded companies, agency Chairman **Paul Atkins** said Friday.

The announcement comes the same week that President Donald Trump issued a social media post suggesting the SEC should move to semi-annual, rather than quarterly reporting.

"It's a good time to look at the whole panoply of ways that people get information, how it's disseminated and what's fit for purpose," Atkins said during an interview on CNBC.

He noted that many investors get more information from earnings calls rather than the quarterly reports.



Paul Atkins, chairman of the US Securities and Exchange Commission (SEC), during a House Appropriations Subcommittee on Financial Services and General Government hearing in Washington, DC, US, on Tuesday, May 20, 2025.

Photographer: Nathan Howard/Bloomberg

Atkins echoed Trump's criticism that quarterly reports have driven corporate executives and management to focus too much on short-term returns.

But the long-time Washington consultant and power player has been a perennial critic of the "overload" of disclosures both for investors and the companies that have to provide them.

Atkins has already made clear that he plans to reduce disclosures on executive compensation. Other disclosures, such as those related to conflict minerals, could also be targeted for fewer releases or even elimination.

During the CNBC interview, Atkins said the "huge cost" of complying with regulatory requirements is one of the leading reasons companies remain private.

Trump's remarks earlier this week revived an idea he touted during his first term. Then-SEC Chairman Jay Clayton had discussed the possibility at a three-hour roundtable in 2019 and it had been part of an agency request for comment in 2018. But the effort eventually petered out and the idea never made it to even the proposed rule stage, in part because there wasn't a groundswell of demand for the change.

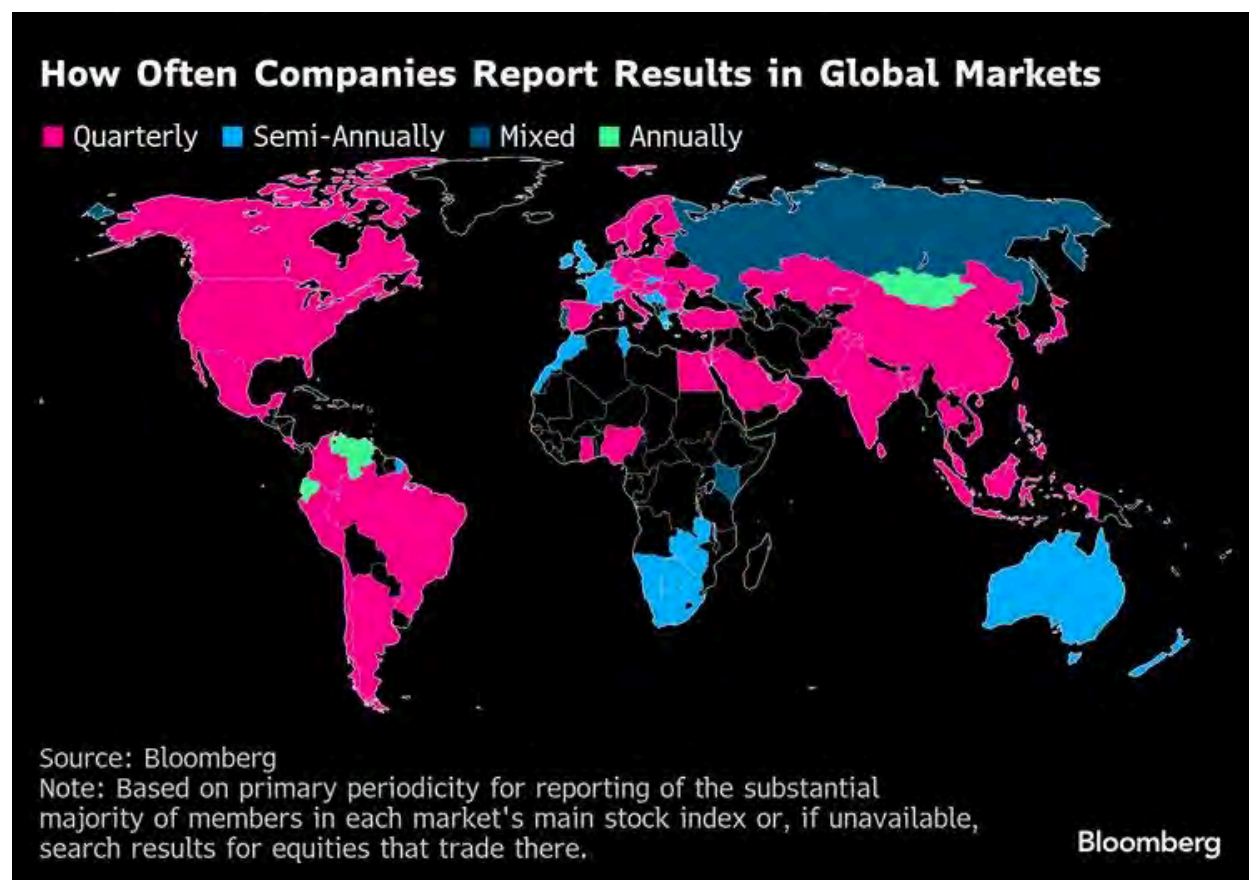
The SEC has required companies to issue quarterly reports since 1970. There have been tensions between investor seeking information and publicly traded companies seeking to shed what some see as unnecessary or overly burdensome reporting requirements ever since.

Read more: End Quarterly Earnings Reports? Here's the Debate: QuickTake

Many companies already produce quarterly data for internal oversight, so reducing public-facing reports may only modestly reduce" compliance costs, according to Andrew Jones, principal researcher at the Conference Board, a think tank whose members include hundreds of public and privately traded companies.

"Limiting disclosures also introduces risks related to reduced transparency and heightened market uncertainty," Jones said in an emailed statement.

While many of the world's largest economies operate on a quarterly disclosure basis, some only require semiannual reports, including France, the United Kingdom and Australia.



(Updates with dates in ninth paragraph)

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The S.E.C. Drops Efforts to Recoup Funds From Trump Clemency Recipients



static01.nyt.com/ads/tpc-check.html

Kenneth P. Vogel

September 19, 2025



From left, Trevor Milton, Devon Archer and Carlos Watson all allied themselves with President Trump as they pursued pardons for white-collar fraud.Credit...Photographs by Brittainy Newman/Associated Press, J. Scott Applewhite/Associated Press and Brendan McDermid/Reuters



Kenneth P. Vogel has covered the clemency grants issued by President Trump and former President Biden, and their effects.

The Securities and Exchange Commission this week dropped civil enforcement cases that could have led to penalties totaling hundreds of millions of dollars against three men who were previously granted clemency by President Trump.

The cases had been brought before Mr. Trump took office this year. Each involved people who later allied themselves with him as they pursued pardons for white-collar frauds that, according to juries in criminal cases, cheated victims out of huge sums.

- Devon Archer, who was convicted in connection with a scheme targeting pension funds and a Native American tribal entity, was ordered to pay nearly \$60 million in forfeiture and restitution.
- Trevor Milton was found guilty of lying about the supposed technical achievements of his electric truck maker Nikola. [Prosecutors recommended](#) that he pay more than \$660 million back to shareholders.
- Carlos Watson, who was convicted of defrauding investors in his digital media company Ozy Media, was assessed penalties of nearly \$97 million.

All were spared from serving prison time and paying the overwhelming majority of their criminal restitution obligations when Mr. Trump granted [pardons to Mr. Archer](#) and [Mr. Milton](#) and [commutations to Mr. Watson and Ozy](#).

And now, the S.E.C. action means that they will not have to pay any additional civil penalties to the government (though the dismissals leave open the possibility of private civil lawsuits from victims). Nor will they face restrictions that the commission had sought on their ability to work in securities-related positions.

The dismissals of the civil cases further underscore how Mr. Trump has used the levers of power to help affluent allies who have found themselves crosswise with the federal government he now leads.

A White House official said that the decisions were made by the S.E.C., and referred a request for comment to the commission.

An S.E.C. spokesman declined to comment on the moves. Instead, he pointed to the commission's [joint filings](#) with the [defendants' lawyers](#) that [cast](#) the [dismissals](#), which need to be approved by judges, as an "exercise of its discretion" that do "not necessarily reflect the commission's position on any other case."

Mr. Trump's clemency grants seemed to make the cases less desirable for the commission, which is [technically independent](#) but is headed by a Trump appointee and has reflected the president's [priorities](#) in its [enforcement](#) actions and [agenda](#).

Civil actions like those dismissed this week are typically brought in conjunction with related criminal cases and seek the return of the same ill-gotten funds that are the subject of criminal restitution and forfeiture orders. In settling such civil cases, the S.E.C. will often deduct payments made in connection with criminal sentences.

But Mr. Trump has [short-circuited that process](#) by pardoning people before they even begin their sentences or restitution payments. He has brushed aside Justice Department guidelines that prioritize clemency petitioners who have served their time, shown remorse and paid restitution to their victims.

Another [case the S.E.C. dismissed this week](#) was against Mark Kuhrt, who had been [convicted in 2012](#) for playing a supporting role in a \$7.2 billion Ponzi scheme. His sentence had been [commuted in December 2024](#) by President Joseph R. Biden Jr. But Mr. Kuhrt had already served years in prison and [faced only a \\$1,000 penalty](#) in connection with his criminal case.

To be sure, Mr. Biden also drew criticism for his late-term pardons — particularly his [far-reaching pardon](#) of his son Hunter — but Mr. Trump has more systematically used clemency to reward those who play to his sense of grievance and loyalty.

Mr. Archer's [pardon application](#) highlighted the [assistance he provided to prosecutors](#) and congressional Republicans in [investigations of his former business partner](#), Hunter Biden, a frequent target of Mr. Trump. Hunter Biden was not charged in the securities fraud case, and his lawyers [have said](#) he was not involved.

Mr. Archer expressed regret for not more carefully vetting the business partners involved in the scheme, while also casting himself as "a victim of financial fraud."

But his application did not mention the victims of the fraud scheme, a group that included South Dakota tribal entities. Those groups complained in a [letter to a judge](#) in 2017 during the sentencing of one of Mr. Archer's co-conspirators that the scheme had deprived a tribal community of more than \$500,000 upon which it was relying to finish building a community center and other buildings on a reservation. The tribal groups added that the accompanying "loss of hope is more devastating than monetary damage."

Mr. Archer's lawyer, Matthew L. Schwartz of Boies Schiller Flexner, praised the S.E.C. decision, noting that the district court judge presiding over the case had set aside a guilty verdict and ordered a new trial, citing concerns "that Archer lacked the requisite intent and is thus innocent of the crimes charged in this indictment."

While an appeals court later reversed the district court judge, reinstating the jury verdict, Mr. Schwartz said in a statement on Thursday that "as the president of the United States, a federal judge and now the Securities and Exchange Commission have all recognized, the cases against Devon Archer should never have been brought."

Mr. Archer, who is pursuing a cryptocurrency-adjacent business project that could have been hampered by the S.E.C. case, added that "with this page turned, I'm ready to humbly step forward and embrace the life I've earned, focused on the future with gratitude and purpose."

Mr. Milton hired Brad Bondi, the brother of Attorney General Pam Bondi, to help handle the criminal case and the S.E.C. complaint. And Mr. Milton and his wife donated a total of more than \$3.3 million to Mr. Trump's campaign and Republican Party committees in the weeks before the 2024 election.

While Mr. Milton [expressed remorse](#) at his sentencing hearing in 2023, saying that "my intent was not to harm others," he lashed out in a [social media post](#) after the S.E.C. ruling at "the evil men" he blamed for his legal troubles.

"They falsely indicted me, silenced me," he wrote, adding that the unnamed adversaries "stole my company, bankrupted my company, debanked me, targeted my friends and family, stole most my wealth and tried to put me in prison. But it's over now."

Mr. Watson [cultivated Trump allies](#) — including the White House pardon czar Alice Marie Johnson and lawyers with connections to the president — while casting himself as a victim of a "selective prosecution." The framing echoed Mr. Trump's claims about [his own prosecutions](#). Mr. Watson's lawyers did not respond to requests for comment.

Securities

SEC Ditches Allen Stanford Controller Case After Biden Reprieve

Sept. 19, 2025, 10:40 AM PDT

The US Securities and Exchange Commission is dropping its 16-year-old case against an executive convicted of aiding R. Allen Stanford's \$7 billion Ponzi scheme after former President Joe Biden cut short his prison term.

The agency moved Thursday to end its civil case against Mark Kuhrt, who had served as Stanford's controller and was found guilty of fraud by a jury in Houston in 2012 and sentenced to 20 years in prison. The regulator has abandoned a string of lawsuits since President Donald Trump took office.



Mark Kuhrt

Photographer: F. Carter Smith/Bloomberg

As part of Biden's clemency action for some 1,500 convicted criminals weeks before he left the White House, he commuted Kuhrt's sentence in December, as well as the 20-year term handed down to Stanford's former chief accounting officer, Gilbert Lopez.

A lawyer for Kuhrt didn't respond to requests for comment.

Federal prosecutors in 2009 said Kuhrt participated in a scheme involving fake certificates of deposit at Antigua-based Stanford International Bank Ltd. The SEC made parallel civil claims, saying Kuhrt and another executive made fraudulent financial statements.

In a two-paragraph statement, the SEC said it was seeking dismissal of the enforcement action against Kuhrt in northern Texas federal court "in the exercise of its discretion" — without elaborating on the circumstances of the case. SEC representatives didn't immediately respond to a request for further comment.

Allen Stanford is serving a 110-year sentence in a Florida federal prison.

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Musk's robotaxi plans for San Francisco alarmed, confused regulators, emails show



reuters.com/business/autos-transportation/musks-robotaxi-plans-san-francisco-alarmed-confused-regulators-emails-show-2025-09-22

Chris Kirkham

September 22, 2025

Item 1 of 2 Elon Musk attends the opening ceremony of the new Tesla Gigafactory for electric cars in Gruenheide, Germany, March 22, 2022. Patrick Pleul/Pool via REUTERS/File Photo

[1/2]Elon Musk attends the opening ceremony of the new Tesla Gigafactory for electric cars in Gruenheide, Germany, March 22, 2022. Patrick Pleul/Pool via REUTERS/File Photo

[Purchase Licensing Rights, opens new tab](#)

- Musk promised Bay Area robotaxis but Tesla's service does not involve autonomous vehicles
- Alarmed regulators pressed Tesla for answers and asked it to clear up 'public confusion'
- Musk's robotaxi promises underpin Tesla's \$1 trillion valuation and Musk's enormous proposed pay package

Sept 22 (Reuters) - Tesla ([TSLA.O](#)), [opens new tab](#) CEO [Elon Musk](#) tantalized investors in July with a robotaxi update: After a [small-scale test in Austin, Texas](#), Tesla would rapidly expand driverless cabs to markets including the San Francisco Bay Area, where it was "getting the regulatory permission to launch."

Musk posted on X earlier that month that Tesla would deploy robotaxis there "probably in a month or two."

The reality of Tesla's San Francisco plans did not include driverless taxis at all. The automaker had not applied for the needed permits, a process that can take [years of testing under state oversight](#). Instead, it planned pre-arranged trips in human-driven vehicles only for riders who received an invitation. And it would do this under a permit that is typically used for limousines and does not allow on-demand ride-hailing, according to state officials. News of Tesla's robotaxi plans surprised and alarmed regulators, according to emails among California and federal officials and a Tesla public-policy staffer, which Reuters obtained through a public-records request. After a media report that Tesla would deploy Bay Area robotaxis in late July, a senior state transportation official asked the Tesla employee whether the company would clear up the "public confusion."

The staffer did not directly respond, saying only that Tesla does not answer media inquiries and that customers would receive information when available. The following month, Musk

[posted on X, opens new tab](#) that the “Tesla Robotaxi service area is already larger than any competitors in Austin and the Bay Area.”

Musk and Tesla did not respond to requests for comment on this story. A spokesperson for the California Public Utilities Commission, which regulates autonomous ride-hailing, said Tesla is required to “properly and accurately” describe its service and ensure its communications “provide a clear distinction” between its human-driven operations in California and autonomous ride-hailing it offers elsewhere.

Tesla’s still-unproven robotaxis underpin its \$1 trillion-plus stock-market value and the [eye-popping compensation package](#) Tesla’s board of directors has proposed for Musk, which offers him potentially hundreds of billions of dollars in company stock tied to performance targets. Musk has promised the imminent arrival of robotaxis every year for a decade. So far, however, the EV maker has launched only the small-scale Austin test, with a limited number of riders and human safety monitors in the front-passenger seat.

On the July earnings call, Musk said Tesla had made “demonstrable progress” on autonomous driving “that a lot of naysayers said we would not achieve.”

“We’ve done what we said we were going to do,” he said. “Doesn’t mean we’re always on time, but we get it done. And our naysayers are sitting there with egg on their face.”

Now Musk’s promises are getting bigger as the billionaire CEO faces a November shareholder vote on his compensation and increased pressure to deliver robotaxis as Tesla’s electric-vehicle business declines. Musk told investors in July that robotaxis would expand at a “hyper-exponential rate,” serving “half the population of the U.S.” by year-end.

Meanwhile, as with the Bay Area episode, Musk and Tesla are increasingly using “robotaxi” to mean something less than a fully driverless cab. A September 13 post on the Tesla X account conflated the term with the “Full Self-Driving” (FSD) driver-assistance feature offered to customers, which requires an attentive human driver.

“\$99/mo to have your own supervised Robotaxi,” the post read, quoting the FSD subscription price.

Matthew Wansley, a professor at New York’s Cardozo School of Law who specializes in autonomous vehicles, said Musk’s Bay-Area claims show how Tesla wants all the benefits of marketing “robotaxis” and “self-driving” to customers and investors but none of the regulatory burden or legal risk of making the same claims to the government.

“They don’t want to tell regulators they have an automated-driving system,” he said, “because then they become subject to a lot more regulations in a lot of states.”

Tesla started its Austin service in June but has not opened it to the general public. It has started switching the passenger-seat safety monitors into the driver’s seat on rides that

include highways, [Tesla said on X, opens new tab](#).

Musk has said Tesla plans near-term expansions in Florida, Nevada and Arizona, which like Texas have few regulatory barriers to self-driving vehicles. Tesla secured a certificate this month to test autonomous cars in Nevada, according to state officials, who did not answer questions about whether Tesla has submitted paperwork to operate robotaxis. Tesla on Friday received permission from Arizona to test autonomous vehicles with a safety driver but is still awaiting approval to test and operate without drivers. Florida does not require specific operating permits.

Dan Crowley, portfolio manager at Nightview Capital, a Tesla investor, said it does not matter if Tesla hits every one of Musk's notoriously optimistic timelines as long as it ultimately delivers a transformational product. Still, he said, investors could eventually lose patience.

"If we're at the same place in two years," he said, "I wouldn't be ecstatic."

REGULATORS CAUGHT OFF-GUARD

News of Tesla's Bay Area robotaxi plans unsettled regulators at the California State Transportation Agency and the National Highway Traffic Safety Administration (NHTSA), according to the emails exchanged on July 25, which were seen by Reuters.

"Did your team meet with Tesla and discuss this weekend rollout?" wrote Kareem Habib, a NHTSA investigator, to California officials. A state staffer responded that Tesla did not have the required permits.

Emily Warren, a state deputy transportation secretary, emailed the Tesla public-policy staffer and top officials at two other state agencies overseeing autonomous vehicles, citing concern over public misconceptions about Tesla's Bay Area plans.

Tesla policy employee Noelani Derrickson said in an email reply that the company had informed the California Public Utilities Commission that it planned rides for Tesla employees' family and friends in non-autonomous vehicles.

Warren pressed Derrickson on how information about a "robotaxi" service had reached the public and suggested it might have stemmed from "a misinterpretation" of recent Tesla statements to staff and the public. Warren asked: "Do you have plans to publicly clarify the nature of Tesla's expanding Bay Area operations to dispel the confusion?"

Tesla's Derrickson did not directly answer but said: "As a general policy, Tesla does not respond to press inquiries," adding that customers would receive information about Tesla's ride-hailing operations "when they become available."

Derrickson did not respond to requests for comment.

OpenAI and NVIDIA Announce Strategic Partnership to Deploy 10 Gigawatts of NVIDIA Systems

News

OpenAI

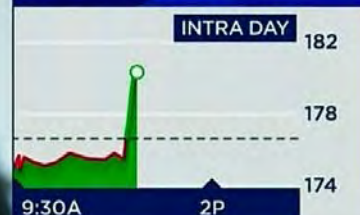
- Strategic partnership enables OpenAI to build and deploy at least 10 gigawatts of AI data centers with NVIDIA systems representing millions of GPUs for OpenAI's next-generation AI infrastructure.
- To support the partnership, NVIDIA intends to invest up to \$100 billion in OpenAI progressively as each gigawatt is deployed.
- The first gigawatt of NVIDIA systems will be deployed in the second half of 2026 on the NVIDIA Vera Rubin platform.

SAN FRANCISCO and SANTA CLARA, Calif., Sept. 22, 2025 (GLOBE NEWSWIRE) -- OpenAI and NVIDIA today announced a letter of intent for a landmark strategic partnership to deploy at least 10 gigawatts of NVIDIA systems for OpenAI's next-generation AI infrastructure to train and run its next generation of models on the path to deploying superintelligence. To support this deployment including data center and power capacity, NVIDIA intends to invest up to \$100 billion in OpenAI as the new NVIDIA systems are deployed. The first phase is targeted to come online in the second half of 2026 using the NVIDIA Vera Rubin platform.

LIVE



NVDA
NVIDIA



180.24

+3.57 +2.02%

BREAKING NEWS

NVIDIA TO INVEST UP TO \$100 BILLION IN OPENAI PROGRESSIVELY AS EACH GIGAWATT IS DEPLOYED



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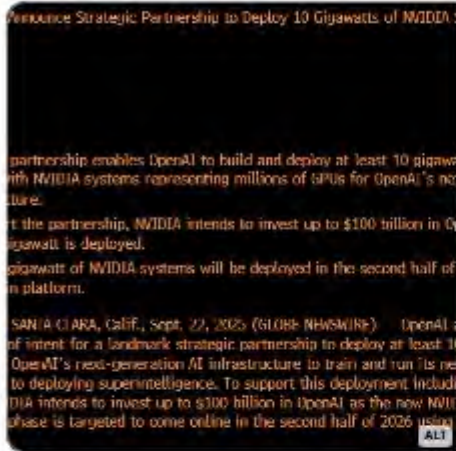
GOLD DEC

+66.2 +1.79%



George Pearkes
@peark.es

Okay we're there.



September 22, 2025 at 10:36 AM Some people can reply

51 reposts 13 quotes 225 likes 2 saves



18



64



225

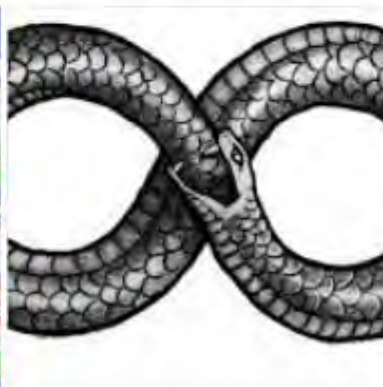


Ivan the K™ @ivanthek.bsky.social · 55m
Endorse.

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Ivan the K™ @ivanthek.bsky.social · 2h



2



20



Tim Trautmann @timtrautmann.com · 52m
Levi Strauss is investing in California gold miners.



10





Dumbstash @dnlrmssteh.bsky.social · 46m

We only need 1.2 gigawats to time travel and I still dont see what they can accomplish with 100 gigawats



1



Josh J Architect @jjarchitect.bsky.social · 47m

is this trickle down economics?



1



Yield Man @sexcoffeedead.bsky.social · 56m

How does this end



1



Jerry Roe @jerryroe.bsky.social · 58m

Gulp



1



mrsfrisbee @propensityforprose.bsky.social · 11m

I'm not at all a finance person, so trying to understand from a layperson's perspective. Is this running like an MLM, with them propping each other up and using regular investors as like a ponzi kind of situation. I can't find a real product to create real profit at the level they claim.



Sensual Kazoo @sensualkazoo.bsky.social · 20m

Oh so coreweave 2.0.



mwilbert.bsky.social @mwilbert.bsky.social · 54m

It's obviously somewhat different, but the Microstrategy vibes here are just very powerful. I'm not playing (and clearly that's been a mistake at least up until now). But it's not over until people decide it's over.



Securities

KPMG's Work for Silicon Valley Bank Exposes Audit Limits (1)

Sept. 22, 2025, 1:45 AM PDT; Updated: Sept. 22, 2025, 7:10 AM PDT

KPMG LLP considered 64 risks that could signal Silicon Valley Bank was in jeopardy of going out of business in early 2023. None applied to the regional lender, the auditor initially determined.

Two weeks later, the bank collapsed after customers tried to withdraw \$140 billion over the span of two days.

KPMG has since come under fire for failing to raise red flags prior to the bank's rapid collapse, and the criticism continued last week with the release of a new congressional report detailing the Big Four firm's work for SVB as well as two other regional banks. But the report also illustrates the mismatch between the expectations auditors face and the narrow scope of their work as outlined by regulators.

Investors have long sought earlier warnings from auditors when a company is at risk of failing. Auditors say, however, that many potential threats to their clients' viability—whether market dynamics or even internal governance risks—don't have a direct impact on the financial statements they're hired to vet.

"There are limits to what the auditor is responsible for," said Dan Goelzer, a former member of the Public Company Accounting Oversight Board, the US audit regulator. "You can't interpret an audit opinion on the financial statements as necessarily meaning that the company is stable and fine and isn't going to encounter any turbulence in its future."

KPMG issued clean audit reports before Silicon Valley Bank, Signature Bank, and First Republic Bank collapsed as rising interest rates curbed the value of long-term assets the lenders had on hand to back customer withdrawals. The Big Four firm dismissed a range of risks facing the lenders before the banks failed, the report from Democrats on a Senate Homeland Security and Governmental Affairs subcommittee found.

KPMG declined to comment, but previously said that it stands by its audits and complied with US standards. The firm told lawmakers their job wasn't to evaluate the risky strategies of its clients, according to the report.

The firm's auditors didn't consider changing dynamics as it weighed Silicon Valley Bank's ability to continue operating—including a \$15 billion drop in value for certain long-term assets, the report said.

KPMG contests that assessment, including the impact of a long-term asset class known as "held-to-maturity." The firm told committee staff that the temporary drop in unrealized value of those securities would reverse over time and that the decline did not impact cash flows.

The firm should have noted in its workpapers the steep drop in the bank's stock price through 2022 as part of its going concern review, calling it a "documentation error," it told the subcommittee.

Auditors' Role

The Democrats' report didn't opine on whether KPMG met US audit standards in its audits of the three banks.

The PCAOB pressed bank auditors on their response to shifting market conditions and found that some didn't reconsider risk evaluations or going concern assessments, the regulator said in its own review following the bank failures. The report released in September 2024 didn't specify which firms were included in the review.

In the case of Silicon Valley Bank, the institution detailed its risks in its annual filing with regulators, said Kris Bennatti, CEO of investment research platform Hudson Labs.

The role of auditors is to ensure that corporate accounting is reliable, she said, pointing to the requirements that auditors ensure reports detailing revenue and assets are free of significant misstatements because of an error or fraud.

"The Senate report reflects a misunderstanding of how capital markets work and what financial statements and audit reports are designed to do," Bennatti said.

'Going Concern' Dilemma

Annual assessments to determine whether a company is likely to stay in business over the coming year underpin US corporate accounting rules. But "going concern" warnings from auditors that a company might not meet its obligations can serve as a death knell for a shaky business as customers and suppliers flee.

Investors have long sought improvements to the rules governing auditors' going concern reviews. Bank regulators have also called on the PCAOB to update its rules in the aftermath of the regional bank crisis.

"History has repeatedly demonstrated that this is one of the areas and in fact it probably is the major area where accountants show the total lack of a spine," said Jim Cox, a Duke University corporate law professor. "If it's gone, it's gone. It's not going."

But efforts to update going concern rules have floundered in the past decade. Accounting rules in effect since 2017 require corporate managers to review quarterly their own ability to stay in business—an effective backstop to auditors' annual assessments.

The PCAOB declined to comment. The audit regulator remains in limbo as it waits for a slate of new leaders and what is expected to be a new agenda.

Auditors historically issue going concern warnings for a narrow set of circumstances. For financial institutions, the warnings could spark a run by customers seeking to withdraw their deposits.

Audit regulators could consider strengthening boiler-plate statements about a company's ability to survive the coming year to address the mismatch in risks and the scope of the audit, Cox said.

Auditors, for example, could list factors that support their finding that the business is viable along with any vulnerabilities that could undermine that assessment, he said.

"The debates always come up in hindsight," said Goelzer, who is also a former general counsel for the Securities and Exchange Commission. "In every audit you conduct you have to think about sort of where this line is drawn between business risk and financial statement reporting risk."

(Adds additional context from KPMG in 10th paragraph.)

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Securities

B. Riley Files 10-K but Overdue Reports Still Jeopardize Listing

Sept. 19, 2025, 3:36 PM PDT

B. Riley Financial Inc. filed its overdue audited results for 2024 but said it will miss Nasdaq's Sept. 29 deadline to file delayed quarterly reports for this year, leaving its listing by the stock exchange still in doubt.

In a filing Friday with the US Securities and Exchange Commission, B. Riley said it told Nasdaq's staff "it would be unable to file" the quarterly reports by Sept. 29. Nasdaq had told B. Riley last month the company needed to complete all its overdue filings by the deadline — the annual Form 10-K and this year's first and second-quarter 10-Qs to keep its listing.

The firm said it will request a hearing from Nasdaq if the exchange begins delisting proceedings on Sept. 29 or sooner, according to Friday's filing. At such a hearing, the Los Angeles-based firm would make the case as to why it should remain listed. B. Riley had said in an Aug. 22 release it needed 30 to 45 days after the 10-K to file the quarterly reports.

"The company is hopeful that a Nasdaq hearings panel will both grant its request to continue trading pending the hearing and then grant the company additional time to remain listed on Nasdaq until such time as it again becomes current in the SEC periodic public filings," according to the filing. "However, we cannot provide any assurances that Nasdaq will do so."

A Nasdaq representative declined to comment on B. Riley's status.

In its annual report, B. Riley posted a net loss to common shareholders of \$772 million for 2024, widening from \$108 million in 2023. The company had previously said it's dismissing its auditor, Marcum LLP, after the 2024 annual report was finished. The report also cited 10 "material weaknesses" in the company's controls.

Marcum completed the 2024 audit while preparing to hand over its duties to BDO USA, which is reviewing the 2025 filings. B. Riley has said it's made "substantial progress" on filings for this year's first two quarters.

--With assistance from Nicola M White.



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AmTrust Investors Seek Class Cert. After 2nd Circ. Revival

By **Katryna Perera**

Law360 (September 19, 2025, 8:40 PM EDT) -- AmTrust investors have asked a New York federal judge to certify three subclasses covering those who purchased stock in the insurer's \$320 million initial public offering, after the Second Circuit revived their case against the firm and its auditor BDO USA LLP over financial restatements AmTrust had to make.

The investors filed a **motion** on Thursday seeking certification of the November 2015 common stock subclass, the September 2016 Series F Preferred stock subclass, and the BDO subclass.

According to the motion, the November 2015 common stock subclass includes all purchasers of AmTrust common stock issued in or traceable to the company's IPO; the September 2016 Series F Preferred stock subclass includes purchasers of AmTrust's 6.95% noncumulative preferred stock, Series F, that was issued in or traceable to the company's 2016 IPO; and the BDO subclass includes those who purchased AmTrust common or Series F stock between March 3, 2014, and April 10, 2017.

The motion states the first two subclasses are asserting claims related to alleged financial misrepresentations that were made in connection with AmTrust's IPOs, and the BDO subclass is asserting securities fraud claims against BDO.

The suit accuses AmTrust of making a series of misstatements about its finances dating back to 2012 that required the insurer to restate its financials and ultimately sank the company's stock. BDO served as AmTrust's auditor during the relevant period.

Thursday's motion further asks that the court appoint Robbins Geller Rudman & Dowd LLP as class counsel, and Jupiter Capital as lead plaintiff for the November 2015 subclass. The motion also asks that the September 2016 subclass be led by the Living Trust, and that the BDO subclass be led by the Living Trust and the North Atlantic Funds.

In arguing for certification, the investors argue the subclasses meet all the necessary requirements, including numerosity, commonality and predominance.

Thursday's motion for class certification comes a little less than a year after the Second Circuit **reversed course** in the case and found BDO was not off the hook for certifying AmTrust's financial statements. The appeals court vacated a district court's **dismissal** of securities fraud claims against BDO, which the Second Circuit itself had **affirmed** in August 2023.

While the district court had found potential misstatements made in BDO's audit opinion of AmTrust's financials were immaterial, the Second Circuit said last October they "subjected unknowing investors to the risk that AmTrust's financial statements were unreliable."

BDO, in opposing a bid for a rehearing, **argued** the panel made the correct decision back in 2023 and pushed back against the U.S. Securities and Exchange Commission's "misdirected concern" that no auditor opinion can ever be found material to investors, which the auditor argued is not what the court said in this case.

Despite not being a party to the private litigation, the SEC filed an amicus curiae brief at the behest of the Second Circuit, which urged the agency to weigh in after three former SEC chief accountants and deputy chief accountants filed a brief backing AmTrust investors' calls to revive the claims

against BDO.

The agency urged the court to reconsider its materiality analysis on the BDO certification, arguing investors rely on such statements to make investment decisions and that the statements are not immaterial simply because the language is standardized.

In 2018, the SEC **temporarily barred** three former BDO accountants from auditing publicly traded companies, following the release of an AmTrust audit report before the underlying auditing work was completed. BDO is currently **petitioning** for the U.S. Supreme Court's intervention in the case.

Representatives for the parties did not immediately respond to requests for comment on Friday.

The investors are represented by Samuel H. Rudman, David A. Rosenfeld, Mark T. Millkey, Robert D. Gerson, Natalie C. Aranella and Joshua D. Forgy of Robbins Geller Rudman & Dowd LLP, Jeremy A. Lieberman of Pomerantz LLP, and Peretz Bronstein of Bronstein Gewirtz & Grossman LLC.

AmTrust Financial is represented by Steven M. Farina, Amanda M. MacDonald, Lydia A. Weiant and George A. Borden of Williams & Connolly LLP.

BDO is represented by Timothy E. Hoeffner and Jason D. Gerstein of McDermott Will & Schulte.

The case is *In re AmTrust Financial Services Inc. Securities Litigation*, case number 1:17-cv-01545, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Sarah Jarvis. Editing by Philip Shea.

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Dow Faces Suit Alleging Misleading Tariff Impact Claims

By **Danielle Ferguson**

Law360 (September 19, 2025, 7:05 PM EDT) -- Chemicals company Dow Inc. and several of its executives and board members have been hit with a shareholder derivative suit in Michigan federal court alleging that company leadership overstated its ability to navigate global economic challenges, harming the company and shareholders.

A suit led by shareholder Jereth Camacho alleges that Dow leaders represented to the investing public that it was well-positioned to ride out macroeconomic and tariff-related headwinds and overstated its ability to maintain its profitability and dividend, according to a **complaint** filed Thursday.

"The individual defendants highlighted various ostensible strengths and market advantages held by Dow, including, among other things, its purported 'differentiated portfolio,' its 'cost-advantaged footprint,' and its 'industry-leading flexibility to navigate global trade dynamics,'" the suit said. "The truth, however, was that Dow was experiencing significant difficulties achieving financial results in line with consensus estimates."

The complaint alleged breaches of fiduciary duties, unjust enrichment, gross mismanagement, waste of corporate assets and violations of federal securities laws.

The suit alleges that company executives and multiple members of the board of directors made misleading statements on the company's performance starting Jan. 30, when the company issued a press release announcing its financial results for the fourth quarter of 2024. That release stated that Dow delivered continued volume growth and that the company was "optimistic that we will see further demand growth" in various markets, according to the complaint.

The same day company leadership said in an earnings call with investors that Dow could still deliver "volume growth despite continued weak macroeconomic conditions," according to the complaint.

The company had continued to make false or misleading statements about its ability to navigate the fluid tariff and economic situation, including during an April earnings call during which company leaders downplayed the scope of the macroeconomic environment's impact on the company's business and financial health, according to the complaint. The call came a few weeks after President Donald Trump declared a national emergency regarding the national trade deficit and announced his plans to impose tariffs on several countries.

The truth about how Dow was really performing came to light in a July 24 press release reporting the company's financial results for the second quarter of 2025, according to the complaint.

The press release said that the company experienced a 7.3% year-over-year decline in net sales, missing estimates by \$130 million, and that the company would be halving its dividend from \$.70 per share to \$.35 per share, according to the complaint. After this news, the price of the company's common stock fell about 17.5%, according to the complaint.

Company leadership said the "disappointing results" were caused by the "lower-for-longer earnings environment that [Dow's] industry is facing, amplified by recent trade and tariff uncertainties," according to the complaint.

Camacho alleged that the company leaders breached their fiduciary duties by causing the company to make misleading statements regarding the company's business and prospects to the investing public.

"The conduct of the individual defendants complained of herein involves a knowing and culpable violation of their obligations as directors and officers of Dow, the absence of good faith on their part, or a reckless disregard for their duties to the company and its shareholders that the individual defendants were aware or should have been aware posed a risk of serious injury to the company," the complaint said.

The leaders' misconduct will likely lead to a loss of millions of dollars, including costs of legal fees associated with a securities fraud class action filed against the company because of the misconduct, Camacho alleged.

That suit, **filed earlier this month**, alleges that the company's decision to reduce shareholder payouts earlier this year contradicted its earlier claims of its ability to withstand economic uncertainty.

Representatives for the parties did not immediately respond to requests for comment Friday afternoon.

The plaintiff, Jereth Camacho, is represented by Timothy Brown of The Brown Law Firm PC.

Counsel information for Dow or the individual defendants was not available Friday.

The case is Camacho v. Fitterling et al., case number 1:25-cv-12968, in the U.S. District Court for the Eastern District of Michigan.

--Additional reporting by Sydney Price. Editing by Rich Mills.

Clarification: This story has been updated to clarify a share transaction.



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MongoDB Directors, Officers Sued In Del. Over Trading

By **Jeff Montgomery**

Law360 (September 19, 2025, 4:21 PM EDT) -- A stockholder of software venture MongoDB sued a dozen company directors and key officers in Delaware's Court of Chancery late Thursday, seeking to recover more than \$240 million allegedly lost in part to trading by insiders after the release of what the complaint said were unsupported, upbeat growth forecasts and business model changes.

Issues cited in the complaint included allegedly false and misleading statements citing confidence in the business "while downplaying the consequences of transitioning away from up-front commitments from customers" under a new business plan.

"Multiple directors and officers of the company sold thousands of their personally held shares of MongoDB common stock for proceeds totaling over \$240 million while in possession of material nonpublic information regarding the company's stagnant growth" and changed market strategy, the complaint said.

Complicating the picture was the company's development of a new "go-to-market" strategy based on pay-as-you-go activity rather than software-as-a-service billing normally used by "hyperscalers," which provide computing services via large, widely distributed data centers, according to the complaint.

The move meant transitioning away from MongoDB's usual "up-front" subscription service model that had been in effect since 2017, the complaint said.

By March 2024, according to the complaint, the company lowered its next-year guidance, dropping one key revenue source by nearly \$40 million and cutting overall forecast revenue growth nearly in half.

Included in the complaint are counts for breach of fiduciary duty tied to the revenue growth forecasts and against company officers for allegedly failing their duty of oversight.

A third count seeks recoveries from individuals who allegedly traded on inside information, selling stock based on "material, proprietary and nonpublic information before that information was revealed to the company's stockholders," the complaint said.

Among the rulings sought by the complaint is a finding that it would be futile to demand action on the claims by fiduciaries, who are allegedly themselves implicated in the contested actions and damage claims.

"Instead of abiding by the company's own purported policies, representations and respective laws and regulations, the individual defendants jumped at the prospect of keeping MongoDB's growth prospects high despite knowing" that the company's go-to-market transition down-shifted growth, the complaint said.

In addition to seeking damages for the company and a finding that those named breached their fiduciary duties, the suit asked the court to order restitution and disgorgement of gains from the violations.

Different shareholders sued the business directly last year in the U.S. District Court for the Southern

District of New York for damages caused by the allegedly unsupportable growth forecasts. That case is awaiting argument and action on dismissal motions before U.S. District Court Judge Gregory H. Woods.

The parties in the current suit did not immediately respond to requests for comment Friday.

Stockholder Anthony Sansone, acting derivatively on behalf of MongoDB, is represented by P. Bradford deLeeuw of deLeeuw Law LLC, Gustavo F. Bruckner, Samuel J. Adams and Ankita Sangwan of Pomerantz LLP, and Kip Shuman, Brett D. Stecker and Rusty E. Glenn of Shuman Glenn & Stecker.

Counsel information for those named was not immediately available Friday.

The case is Anthony Sansone, derivatively on behalf of MongoDB, case number 2025-1030, in the Court of Chancery of the State of Delaware.

--Editing by Melissa Treolo.

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Estée Lauder Faces Derivative Suit In Del. After Stock Drops

By **Jeff Montgomery**

Law360 (September 19, 2025, 8:15 PM EDT) -- An Estée Lauder Inc. stockholder filed a derivative lawsuit late Friday against the cosmetics giant's officers and directors in Delaware's Court of Chancery, seeking recoveries over a \$41 billion market capitalization plunge after a long-undisclosed reliance on "gray market" sales in China came to light.

The suit, led by Monica Sorinas Jimeno, named 19 directors, officers and controlling shareholders, alleging violations of law between Feb. 3, 2022, and Oct. 31, 2023. Sought are derivative recoveries stemming from monetary losses as well as damage to the New York-based company's reputation and goodwill, while also asserting liability for violation of state and federal laws.

Tangled in the case are key figures at the second-largest beauty products company in the world, including members of the Lauder family, who hold 84% of its voting stock.

A direct suit, filed in 2023 in the U.S. District Court for the Southern District of New York and focusing on many of the same facts, accused Estée Lauder, CEO Fabrizio Freda and Chief Financial Officer Tracey T. Travis of covering up the company's reliance on prohibited, duty-free "gray market" or "daigou" sales of its products in China. This was alleged to have propped up the company's financial health, particularly during the COVID-19 public health emergency.

Those named in the suit "misrepresented the underlying causes of sales growth within the company's Asia travel retail segment, attributing it to sustainable consumer demand and brand strength," the Chancery Court complaint said.

"The practice temporarily inflated the company's financial results, prompting the individual defendants to raise guidance for fiscal years 2022 and 2023," it added. Former employees confirmed the product movements, with executives described as "actively pushing product into gray market channels and incentivizing retailers" to participate.

"When China eventually cracked down on the illicit activity" in 2023, the suit alleged, "Estée Lauder sales and stock prices cratered," although insiders were able to sell and avoid big hits.

The conduct of those named, the complaint said, caused Estée Lauder to lose 57.51% of its market capitalization, amounting to about \$41 billion.

In the related suit seeking direct recovery of damages for stockholders in the U.S. District Court for the Southern District of New York, Judge Arun Subramanian on March 31 found company investors had sufficiently pled Estée Lauder and its executives made omissions and statements "mired in half-truths."

Included were alleged announcements of unrealistic expectations for growth and knowingly wrong statements, the Delaware complaint said, adding: "Rather than disclose the company's overreliance on the daigou market, insiders began selling their personally held company stock over the course of nearly two years."

The five-count complaint in Delaware alleges breach of fiduciary duty against Jane Lauder, an executive vice president, enterprise marketing and chief data officer since 2020; Ronald Lauder, chairman of Clinique Laboratories and a company director, on and off, from 1968 to January 2025;

and William P. Lauder, executive chairman and a company director since 1996.

Other individuals were accused, among other things, of "intentionally, recklessly or negligently" breaching or disregarding their "fiduciary duties to protect the rights and interests of Estée Lauder's shareholders."

A third count alleges misappropriation of material, nonpublic information against "insider selling" parties, with individuals named also accused of unjust enrichment and waste of corporate assets — long described as among the most serious, although hardest to prove, of corporate fiduciary failings.

Jimeno's suit seeks restitution from those named and an order for disgorgement of profits "including benefits, other compensation, or performance- or value-based compensation."

None of the directors named complied with the company's code of conduct, the suit said.

Those directors might be shielded from personal liability by director and officer liability insurance, if paid for with corporate funds, the complaint noted. In contrast, if those named had sued over the alleged breaches, "there would be no directors and officers insurance protection. Accordingly, the directors cannot be expected to bring such a suit."

Counsel for Jimeno and Estée Lauder did not immediately respond to requests for comment.

Monica Sorinas Jimeno is represented by Ryan M. Ernst of Bielli & Klauder LLC and Justin A. Kuehn and Molly J. Brown of Keuhn Law PLLC.

Counsel information for Estée Lauder in the Court of Chancery case was not immediately available.

The case is Monica Sorinas Jimeno v. Charlene Barshefsky et al., case number 2025-1039, in the Court of Chancery of the State of Delaware.

--Additional reporting by Katryna Perera. Editing by Philip Shea.



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BofI Directors Beat Investor Suit Over Whistleblower Probe

By **Katryna Perera**

Law360 (September 19, 2025, 10:05 PM EDT) -- A California federal judge has permanently dismissed a shareholder derivative suit against the top brass of BofI Holding Inc. accusing them of misconduct that led to a costly internal investigation into a whistleblower's allegations, finding the plaintiff failed to demonstrate that a pre-suit demand upon the board would have been futile.

U.S. District Judge Gonzalo P. Curiel issued an **order** Wednesday saying that none of investor Andrew Calcaterra's explanations as to why he didn't serve a pre-suit demand to the board are persuasive. The judge tossed the suit without leave to amend.

Calcaterra had argued that confronting the board of directors before filing suit, as federal rules require, would have been futile because the entire board was compromised and likely to face liability for forcing the termination of Charles Matthew Erhart, a former BofI internal auditor who filed a whistleblower suit against BofI.

"Plaintiff contends that the entire board is responsible for violating [the Sarbanes-Oxley Act] because it authorized and approved the firing of Erhart on June 9, 2015 after being 'fully informed' of Erhart's protected status as a whistleblower," the order states. "In addition, plaintiff argues the board also faces a substantial likelihood of liability for failing to rectify BofI's unlawful activities alleged by Erhart."

However, Judge Curiel said Wednesday that even if the claim that the board knew of Erhart's whistleblower complaint before firing him is taken as true, it is still unreasonable to infer that the whole board, or even a majority, collectively decided to fire Erhart.

"Plaintiff argues that the court can infer that the board fired Erhart, that the board deliberately disregarded or negligently did not investigate his audit findings, and that the board knowingly misled the public to believe that the company was on sound legal footing when in fact it was aware that Erhart was correct when he reported that illegal activity was rampant at the bank," the order states. "These conclusory allegations are neither particularized nor sufficient to support an inference that the board fired Erhart or that it ratified illegal conduct."

Calcaterra also argued that pre-suit demand would have been futile because the board would not have been able to act independently, given that they had violated their fiduciary obligations by approving false and misleading financial statements that the company had filed with the SEC.

"Specifically, the [operative complaint] avers that the entire board wrongly approved and signed the Form 10-Ks dated Sept. 3, 2013, Aug. 28, 2014, and Aug. 26, 2015, all of which contained false and misleading statements about BofI's compliance with securities and other laws," the order states.

However, Judge Curiel said Calcaterra has not adequately alleged that the board actually caused any false or misleading statements.

"Absent plausible allegations that a disclosure violation actually occurred, the court cannot conclude that the board faces a substantial likelihood of liability," the order states.

The judge also rejected Calcaterra's argument that the board was more motivated by their compensation and more interested in protecting themselves than BofI.

In 2015, BofI was hit with a spate of suits over allegations that the bank disregarded internal controls, lent to "off-limits" foreign nationals with questionable backgrounds, lied to the Office of the Comptroller of the Currency over accounts that lacked tax identification numbers and fired an internal auditor who sounded the alarm.

That auditor was Erhart, and he filed the first of those complaints in the form of a **whistleblower protection suit**, sparking Calcaterra's suit over the 30% stock drop that followed the next day. Later derivative actions followed and were consolidated with Calcaterra's.

In 2023, Erhart won his whistleblower case and won a \$4 million judgment, according to Friday's order. Calcaterra was instructed to file a third amended complaint in 2023 after the court lifted a stay on the case that had been put in place because of a parallel securities class action. According to the order, the class action settled for \$14 million in 2022.

Representatives of the parties did not immediately respond to requests for comment Friday.

Calcaterra is represented by Francis A. Bottini Jr., Albert Y. Chang and Aaron P. Arnzen of Bottini & Bottini Inc.

The board members are represented by John P. Stigi III, Polly Towill and Alejandro E. Moreno of Sheppard Mullin Richter & Hampton LLP.

Nominal defendant BofI is represented by Neal P. Panish of Seltzer Caplan McMahon Vitek.

The case is In Re: BofI Holding Inc. Shareholder Litigation, case number 3:15-cv-02722, in the U.S. District Court for the Southern District of California.

--Editing by Nick Petruncio.

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Nvidia Objects To Class Cert. In Former High Court Case

By **Sydney Price**

Law360 (September 19, 2025, 10:19 PM EDT) -- Nvidia has urged a California federal court to not grant class certification in a case that briefly went before the U.S. Supreme Court, arguing the plaintiffs' claims that the company failed to inform investors about its reliance on the volatile crypto market are too individualized to proceed as a group.

In a motion filed Thursday, Nvidia said the plaintiffs claim the proposed class of shareholders traded based on Nvidia's statements about the impact of crypto on its gaming business, but provide no evidence that these investors even knew about the statements when trading shares.

"During the class period, scores of putative class members 'purchased Nvidia common stock as part of a long-term AI-focused strategy, and thus for reasons unrelated to ... the allegedly concealed information,'" the motion states.

The shareholders claim in their suit that Nvidia and CEO Jensen Huang downplayed how many gaming chips were being sold to crypto miners, a truth they say came to light when the company was forced to twice cut its revenue projections in 2018.

But Nvidia also argued that at least some of the proposed class of investors would have purchased Nvidia stock at the same price even had they known the allegedly concealed information. Many retail investors during the proposed class period, which runs from August 2017 through Nov. 2018, invested in Nvidia based on its "massive growth potential" and continued to purchase Nvidia stock "after the crash of crypto mining," the plaintiffs' expert testimony reveals, according to Nvidia.

Nvidia also said there was no front-end or back-end price impact, meaning there is no evidence the alleged misrepresentations and omissions inflated stock prices, or that the alleged corrective disclosures made stock prices drop.

"Shareholders have enjoyed unprecedented growth, spurred by the long-term strategy that Nvidia disclosed all along," the motion states.

Nvidia investors alleged in a 2019 complaint that the company hid its \$1 billion exposure to the volatile crypto mining market due to the industry's position as a major purchaser of Nvidia's graphics processing units.

They said that the truth came to light in late 2018, when the company first announced a 2.2% drop in expected quarterly revenues followed three months later by an announced 7% year-over-year quarterly revenue decline as crypto markets struggled.

Suing investors said the announcements caused stock prices to drop by 5% and 28.5%, respectively.

The lawsuit was thrown out by U.S. District Judge Haywood S. Gilliam in 2021 before being partially revived by a split Ninth Circuit two years later.

The investors' **motion for class certification** in July was the first major movement forward for the litigation since the U.S. Supreme Court in December dismissed the case as improvidently granted.

During oral argument in November, some justices questioned whether any ruling they issued would

have a greater impact beyond the single lawsuit in front of them.

The circuit court said that suing investors had adequately alleged that Huang knowingly or recklessly made false or misleading statements regarding the company's crypto sales.

Nvidia told the high court that investors should have provided more detail about the internal documents Huang allegedly reviewed to demonstrate that he knew about the crypto sales figures even while publicly downplaying them.

The Supreme Court at first agreed to hear the issue of what internal documents needed to be provided to make it past a motion to dismiss in a securities case, as well as a second question on the role that expert analysis should play in overcoming a dismissal bid. The justices ultimately withdrew the suit, however, sending it back to the district court where it began.

Representatives of the parties did not immediately respond to requests for comment Friday.

Nvidia investors are represented by Matthew Mustokoff, Jamie McCall, Nathan Hasiuk, Nathaniel Simon and Stacey Kaplan of Kessler Topaz Meltzer & Check LLP and John Rizio-Hamilton, Jonathan Uslaner, Preethi Krishnamurthy and Michael Mathai of Bernstein Litowitz Berger & Grossmann LLP.

Nvidia and Huang are represented by Patrick Gibbs, Amanda Main, John Bostic, Brett De Jarnette and Sarah Lightdale of Cooley LLP and Scott A. Edelman, Jed M. Schwartz, Andrew B. Lichtenberg and Olivia S. Choe of Milbank LLP.

The case is In re: Nvidia Corp. Securities Litigation, case number 4:18-cv-07669, before the U.S. District Court for the Northern District of California.

--Additional reporting by Jessica Corso. Editing by Bruce Goldman.

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Hagens Berman Seeks To Limit Sanctions For AI Mistakes

By **Jack Karp**

Law360 (September 19, 2025, 4:04 PM EDT) -- A Hagens Berman Sobol Shapiro LLP partner should face only limited sanctions and the firm shouldn't be sanctioned at all over a contract attorney's use of artificial intelligence to generate legal briefs in a proposed class action against online platform OnlyFans since its attorneys did not act in bad faith, the firm told a California federal judge.

Sanctions may be warranted against attorney Robert B. Carey, but any fine should be limited to the least amount that's required to deter him from making a similar mistake in the future, the firm said in its response to an order to show cause Thursday.

Carey didn't actually use AI and wasn't aware that AI had been used to draft the briefs. He only failed to conduct a complete cite check of the briefs prepared by contract attorney Celeste Boyd, according to the response.

"Another important consideration is that Mr. Carey immediately admitted to the court his part in the errors, moved to correct the errors, apologized and expressed regret to the court and opposing counsel, and he is taking steps to ensure that these errors do not happen again," the firm said.

Judges have fined attorneys who've made similar missteps in other cases as little as \$1,000, according to the firm's response.

"Even if Mr. Carey's failure to check all the cites was reckless — it was not — there can be no showing that his decision was frivolous, done to harass any party, or done for an improper purpose," Hagens Berman added.

The court shouldn't sanction Hagens Berman or the other firm attorneys involved in the case at all since there's no evidence that those other attorneys acted in bad faith, the firm also told the court.

Those lawyers didn't draft or compile the briefing or use AI, and were unaware that it had been used. The firm already prohibits its attorneys from using generative AI for legal research or writing, and is taking steps to ensure that what happened in this case doesn't happen again, Hagens Berman said.

"Mr. Carey asked ethics counsel to review Hagens Berman's AI policy, given these issues, and to draft a revised AI policy, which he did. At the request of Mr. Carey, the Management Committee is reviewing the proposed changes to its AI policies, addressing the very issues that occurred here," the firm insisted.

Carey and the firm declined to comment beyond their filing Friday. Attorneys for OnlyFan's parent company also declined to comment.

U.S. District Judge Fred W. Slaughter **plans to hold a hearing** on Sept. 25 to determine whether he should issue sanctions "for the misuse of artificial intelligence" in briefs filed by the plaintiffs' attorneys in the suit against OnlyFans.

The plaintiffs sued the parent company of OnlyFans, Fenix International Ltd., in 2024 alleging that OnlyFans knowingly allows professional "chatters" to **impersonate content creators** on the subscription platform, duping users into thinking they're having a direct conversation with an individual they paid to connect with.

Attorneys for the OnlyFans users have admitted that a contract attorney working on the case used ChatGPT to draft some briefs, resulting in mistakes, and they've **sought permission to fix earlier filings** found to have errors that they say came from ChatGPT.

But Fenix has said that it should be **granted permission to dismiss the claims**, arguing that counsel for the five anonymous plaintiffs gave up their right to fight the dismissal by including the bogus AI-generated citations in their objection.

"Plaintiffs' counsel understands serious errors occurred in this case — both in Celeste Boyd's use of AI without verifying its accuracy and by Robert Carey and Hagens Berman in failing to fully cite check the briefs before filing them — and that some sanctions are appropriate," Hagens Berman told the court Thursday.

But those sanctions should only be issued against the attorneys who played a role in filing the AI-generated briefs. Hagens Berman, its other attorneys and the other firms representing the plaintiffs in the case shouldn't be punished given that they didn't use AI or know about its use, the firm said.

"Such sanctions should only be issued against the attorneys who have violated their Rule 11 duties, and because plaintiffs' counsel did not act in bad faith, the court should decline to award any sanctions under its own inherent authority," the firm added.

The OnlyFans users are represented by Christopher Pitoun, Robert B. Carey, Michella A. Kras and Leonard W. Aragon of Hagens Berman Sobol Shapiro LLP, by Andrea R. Gold, Annick M. Persinger and Shana H. Khader of Tycko & Zavareei LLP, by Andrew W. Knox and Keith T. Vernon of Timoney Knox LLP, and by Andrew C. Stone and Seth T. Goertz of Dorsey & Whitney LLP.

Fenix International Ltd. and Fenix Internet LLC are represented by Jason D. Russell, Hillary A. Hamilton, Or-el Vaknin, Peter B. Morrison and Raza Rasheed of Skadden Arps Slate Meagher & Flom LLP.

The case is N.Z. et al. v. Fenix International Ltd. et al., case number 8:24-cv-01655, in the U.S. District Court for the Central District of California.

—Additional reporting by Adrian Cruz and Craig Clough. Editing by Leah Bennett.



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Capital One, Influencers Announce Deal After Earlier Flub

By **Sydney Price**

Law360 (September 19, 2025, 5:23 PM EDT) -- Two days after an initial filing was withdrawn, Capital One and a proposed class of influencers say they now indeed have a deal to settle a lawsuit over claims the bank helped itself to funds meant for the influencers using its browser extension.

According to Thursday's notice, the parties will file the settlement for initial approval no later than Nov. 17.

Earlier this week, counsel for the proposed class said that a **previous settlement notice** had been filed "in error," and that no agreement to settle existed at the time.

In a statement, Capital One said it is pleased to have now reached a settlement, and that its agreement to settle is not an admission of wrongdoing.

"The plaintiffs' filings included provably false allegations that Capital One Shopping was happy to defend itself against," Capital One said. "And, the evidence overwhelmingly confirmed that Capital One Shopping recognizes and follows industry rules and is aligned with its advertising partners."

In a separate motion, the influencers asked the court not to grant Capital One's request to redact certain information from the proposed class' certification brief and expert report that Capital One alleges "would cause competitive harm, or increase the risk of the security of the Capital One Shopping browser extension."

The plaintiffs said that the fact that items have been sealed in the past is irrelevant given that the bar to seal gets higher as the litigation progresses.

"Capital One fails to provide specific assertions regarding the confidentiality of the materials redacted," the motion states. "The brief contains no information making clear why the specific materials to be sealed are trade secrets, or the competitive harm Capital One would expect to incur if such information was made public."

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.

Representatives of the parties did not immediately respond to requests for comment on Friday.

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 Emily Kokoll.

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IBS Drug Buyers Win Class Cert. In Takeda Antitrust Case

By **Lauren Berg**

Law360 (September 19, 2025, 10:44 PM EDT) -- A Massachusetts federal judge on Friday certified buyer classes in litigation alleging Takeda Pharmaceutical broke antitrust law by cutting a pay-for-delay deal with Par Pharmaceuticals to keep a generic version of Takeda's anti-constipation drug Amitiza off the market for several years.

U.S. District Judge Myong J. Joun's lengthy **order** largely grants motions for class certification brought by direct purchasers and end-payors, finding among other things that the classes are sufficiently numerous and present common questions that predominate over questions affecting individual members.

The judge appointed KPH Healthcare Services, also known as Kinney Drugs, to represent the nationwide class of direct purchaser plaintiffs consisting of those who directly bought brand Amitiza or generic Amitiza from Takeda or a generic manufacturer other than Par, the order states.

Meijer Inc. also sought to represent the DPP class, but Judge Joun rejected the request and booted the supermarket chain from the class in light of his **January decision** pushing its claims against Takeda to arbitration based on a provision in Meijer's contract with Par.

The judge then appointed Premera Blue Cross to represent damages and unjust enrichment classes of end payor plaintiffs consisting of those who indirectly purchased or paid for Amitiza or generic versions in a number of states from the defendants or any other generic manufacturer, according to the order.

Counsel for the parties did not immediately respond to requests for comment Friday evening.

Amitiza is an anti-constipation drug often taken to help treat side effects of irritable bowel syndrome, or IBS, or chronic constipation that can be caused by the use of opioids. The drug was first approved by the U.S. Food and Drug Administration in 2006, but by 2010, generic-drug maker Par was asking the agency for permission to make a generic.

Takeda tried to stop it from happening, but the FDA ultimately denied its petition. Litigation proved a more successful route, and Par and Takeda reached a settlement in 2014 in which Par was rewarded for agreeing to delay its entry until early 2021, according to the suit.

Meijer **filed its claims in 2021**, accusing Takeda of agreeing to split its "monopoly profits" with Par. There is still no generic of Amitiza available for purchase today, but Meijer claims that if it were not for the anticompetitive deal struck between the drug companies, there would have been at least two generic versions on the market as early as July 2015.

Par was originally named in the Meijer suit, but the grocery chain dropped it from the litigation after the pharmaceutical company filed for bankruptcy in mid-2022.

Meijer's suit, which was also pursued by direct purchaser FWK Holdings, was then **consolidated in January 2023** with **one filed by Kinney**.

After Judge Joun sent Meijer's claims to arbitration this past January, the supermarket chain **sought to immediately appeal** the ruling, arguing that the case presents several issues that the First

Circuit would need to address.

Meijer argued that Judge Joun wrongly failed to consider whether another underlying contract should have been applied in the dispute. Moreover, even if Meijer's contract with Par is applicable, an open question remains as to whether Takeda, as a nonsignatory, can force the dispute into arbitration under that pact, the grocer told the court.

But the judge in March **refused to allow** Meijer to do so, finding no potential differences of opinion that would warrant an immediate appeal. He said the company wants the First Circuit "to impermissibly wade into the facts."

Kinney, Meijer and the direct purchaser class are represented by Erin C. Burns, Jessica R. MacAuley, Thomas M. Sobol, Daniel Polonsky, Kristen A. Johnson, Mark Vazquez and Rebekah Glickman-Simon of Hagens Berman Sobol Shapiro LLP.

Premera Blue Cross and the end payor class are represented by Peter St. Phillip, Uriel Rabinovitz and Renee A. Nolan of Lowey Dannenberg PC.

Takeda is represented by Fred Kelly, Joshua Barlow, Tiffany Jang, Andre Geverola, Laura Shores, Wallace Wu, Assad H. Rajani, Katie J.L. Scott, Ada Añon, Michael H. Sapiro, Matthew M. Wilk and Sam Sullivan of Arnold & Porter Kaye Scholer LLP, and Mike Brockmeyer and Ralph E. Labaton of Haug Partners LLP.

The case is In re: Amitiza Antitrust Litigation, case number 1:24-cv-10223, in the U.S. District Court for the District of Massachusetts.

--Additional reporting by Nadia Dreid, Chris Villani, Caroline Simson and Bryan Koenig. Editing by Vaqas Asghar.

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SEC Walks Away From Ozy Media, Stanford Fraud Cases

By **Jessica Corso**

Law360 (September 19, 2025, 8:02 PM EDT) -- The U.S. Securities and Exchange Commission has walked away from its \$50 million case against former Ozy Media Inc. founder Carlos Watson after President Donald Trump granted him clemency earlier this year, and also dropped a long-dormant case against a co-conspirator in Robert Allen Stanford's \$7 billion Ponzi scheme.

The SEC said in a court document Thursday that it was dismissing the case against Ozy Media and Watson, whom it accused in 2023 of defrauding investors by painting a too-rosy picture of the media startup. Watson was sentenced to 10 years in prison and ordered to return \$36.7 million to his victims late last year, but Trump **commuted** his sentence in March on the same day that Watson was due to report to prison.

The SEC didn't tell the court why it was dropping its case against Watson. But the news came the same day that the agency also walked away from a case against Mark Kuhrt, who was convicted more than a decade ago for his role in Stanford's \$7 billion Ponzi scheme.

John Helms, an attorney for Kuhrt, told Law360 that the case against his client had been dormant for years.

Kuhrt, the former chief accounting officer of Stanford Financial Group, **was sentenced** to 20 years in prison in 2013 for his role in Stanford's fraud. Former President Joe Biden commuted his sentence alongside more than 1,400 others last December. The commutation notice does not say why Kuhrt was granted clemency.

"Mr. Kuhrt has been criminally convicted, and I would guess that they didn't see any real point in continuing to pursue it at this point," Helms said in an email.

Kuhrt was accused of creating misleading promotional materials and financial statements to persuade potential customers to invest in Stanford's company and to reassure existing clients their money was safe during the 2008 global economic crisis. He was among several co-conspirators that the government claimed assisted or covered up Stanford's misappropriation of billions of dollars in investor funds, including some \$1.6 billion he allegedly moved to a personal account.

The SEC's request for dismissal noted that the agency's case against Kuhrt hasn't seen any major developments since it filed its second amended complaint in 2010. The agency did not say why it was dropping the lawsuit now, but told the court that its decision "does not necessarily reflect the SEC's position on any other defendant in this action or any other case."

An attorney for Watson declined to comment. The SEC declined to comment on either case.

Watson and Kuhrt join former Hunter Biden business partner Devon Archer in seeing the cases against them **dismissed** by the SEC on Thursday.

Archer was convicted of helping to execute a \$60 million bond scam against a South Dakota tribal corporation in 2018 and was sentenced to a year in prison. In 2023, he served as a key witness in a Republican-led congressional inquiry into the business dealings of Joe Biden's son.

Archer was pardoned by President Trump earlier this year.

Watson and Ozy Media are represented by Andrew James Frisch of Cuti Frisch PLLC.

Kuhrt is represented by Gregg Anderson of Terry Bryant PLLC and John Helms of the Law Office of John M. Helms.

The SEC is represented in the Ozy Media case by its own Margaret Ryan, Paul Gizzi and Hayden Brockett. The agency is represented in the Kuhrt case by its own Jason Rose.

The cases are SEC v. Ozy Media Inc. et al., case number 1:23-cv-01424, in the U.S. District Court for the Eastern District of New York and Securities and Exchange Commission v. Stanford International Bank Ltd et al., case number 3:09-cv-00298, in the U.S. District Court for the Northern District of Texas.

--Additional reporting by Dorothy Atkins and Hailey Konnath. Editing by Alanna Weissman.

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