Simpson Thacher

Securities Law Alert

In This Issue:

- Supreme Court to Address the Personal Benefit Requirement Established in *Dirks v. SEC* for Insider Trading Liability Based on Tipping Material Inside Information to a Third Party

- Fifth Circuit: (1) Disclosure of an Accurate "Bottom Line" Impact of a Company Problem Is Generally Sufficient, and (2) Courts Cannot Infer Scienter Based on an Executive's Position in the Company Absent "Special Circumstances"

- Southern District of New York: (1) Purchases Made on Over-the-Counter Bond Markets Do Not Satisfy *Morrison*'s First Prong, and (2) Settling a Transaction Through the DTC System Is Not Enough to Satisfy *Morrison*'s Second Prong

- Southern District of New York: (1) General Corporate Compliance Statements Are Not Actionable, and (2) Accurate Statements of Past Earnings Are Not Misleading Even If the Earnings Were Boosted by an Alleged Fraudulent Scheme

- Southern District of New York: Fiscal Strategy-Related Statements Are Not Misleading If the Company Was Considering a Different Strategy at the Time, Provided the Company Did Not Emphasize One Strategy and Imply That It Had Ruled Out Other Strategies

- Northern District of California: Corporate Executives May Be Liable for Blog Posts on the Company's Website If the Executives Allegedly Had "Ultimate Authority" Over the Posts Within the Meaning of the Supreme Court's Decision in *Janus*

- Delaware Chancery Court: Disclosure-Only Settlements Must Be Carefully Scrutinized to Ensure Supplemental Disclosures Are Sufficiently Material to Warrant a Broad Release of Claims

- Oregon Supreme Court: Delaware Forum Selection Bylaw Is Enforceable Even When Adopted on the Eve of a Merger Announcement and Shareholders Had No Opportunity to Repeal or Amend the Bylaw

January 2016

Simpson Thacher

Simpson Thacher is a "standout choice for financial institutions, with a well-established reputation for its handling of high-value litigation."

– Chambers USA 2015

Supreme Court to Address the Personal Benefit Requirement Established in *Dirks v. SEC* for Insider Trading Liability Based on Tipping Material Inside Information to a Third Party

In *Dirks v. S.E.C.*, 463 U.S. 646 (1983), the Supreme Court determined that an insider can only be held liable under Section 10(b) and Rule 10b-5 for disclosing material inside information to a third party, or tipping, if the insider "receive[d] a direct or indirect personal benefit from the disclosure, such as a pecuniary gain or a reputational benefit that will translate into future earnings." Notably, the *Dirks* Court stated that "[t]he elements of fiduciary duty and exploitation of nonpublic information also exist when an insider makes a gift of confidential information to a trading relative or friend." The *Dirks* Court found that if a tipper receives no personal benefit for disclosing the information to a third party (the tippee), then the tippee has no duty to abstain from trading on that information.

On January 19, 2016, the Supreme Court granted certiorari to address a circuit split on the scope of the personal benefit requirement. *Salman v. U.S.* (No. 15-628). The Court will consider whether the Government must prove "an exchange that is objective, consequential, and represents at least a potential gain [to the tipper] of a pecuniary or similarly valuable nature," as the Second Circuit held in *United States v. Newman*, 773 F.3d 438 (2d Cir. 2014) (Parker, J.); or whether the Government may establish the existence of a personal benefit by presenting "evidence of a friendship or familial relationship between tipper and tippee," as the Ninth Circuit found sufficient in *United States v. Salman*, 792 F.3d 1087 (9th Cir. 2015) (Rakoff, J.).

Second Circuit Holds That a Personal Relationship Between the Tipper and Tippee Is Not Enough, Standing Alone, to Satisfy the Personal Benefit Requirement

In *Newman*, 773 F.3d 438, the Second Circuit held that the Government cannot "prove the receipt of a personal benefit by the mere fact of a friendship, particularly of a casual or social nature." The Second Circuit found that "[t]o the extent *Dirks* suggests that a personal benefit may be inferred from a personal relationship between the tipper and tippee," "such an inference is impermissible in the absence of proof of a meaningfully close personal relationship that generates an exchange that is objective, consequential, and represents at least a potential gain [to the tipper] of a pecuniary or similarly valuable nature."

The Second Circuit further stated that while "the tipper's gain need not be *immediately* pecuniary, . . . the personal benefit received in exchange for confidential information must be of some consequence." The court indicated that the personal benefit requirement may be satisfied if there is "evidence of 'a relationship between the insider and the recipient that suggests a *quid pro quo* from the latter, or an intention to benefit the [latter]'" (quoting *U.S. v. Jiau*, 734 F.3d 147 (2d Cir. 2013)).

Ninth Circuit Holds That the Personal Benefit Requirement Is Met Where an Insider Discloses Confidential Information to a Trading Relative or Friend, Even If the Insider Did Not Receive an Actual or Potential Financial Benefit

In *Salman*, 792 F.3d 1087, the Ninth Circuit held that the personal benefit requirement is satisfied where an insider discloses confidential information to a trading relative or friend, even if the insider did not receive a potential or actual financial benefit for that disclosure.

The Ninth Circuit expressly declined to follow the Second Circuit's decision in *Newman* "[t]o the extent *Newman* can be read to go so far" as "to hold that evidence of a friendship or familial relationship between tipper and tippee, standing alone, is insufficient to demonstrate that the tipper received a benefit." The Ninth Circuit reasoned that if it were to hold otherwise, "then a corporate insider or other person in possession of confidential and proprietary information would be free to disclose that information to her relatives, and they would be free to trade on it, provided only that she asked for no tangible compensation in return."

The court concluded that "[p]roof that the insider disclosed material nonpublic information with the intent to benefit a trading relative or friend is sufficient to establish the breach of fiduciary duty element of insider trading."[1]

* * *

The Court will decide *Salman* this term; a date for oral argument has not yet been set.

Fifth Circuit: (1) Disclosure of an Accurate "Bottom Line" Impact of a Company Problem Is Generally Sufficient, and (2) Courts Cannot Infer Scienter Based on an Executive's Position in the Company Absent "Special Circumstances"

On January 13, 2016, the Fifth Circuit affirmed dismissal of a securities fraud action against Diodes, a semiconductor company, and two of its corporate officers for failure to raise a strong inference of scienter. *Local 731 I.B. of T. Excavators and Pavers Pension Trust Fund v. Diodes*, 2016 WL 157822 (5th Cir. 2016) (Jones, J.). The court rejected plaintiffs' contention that "more disclosure was required" as to the reasons for a labor shortage where defendants had accurately disclosed both the timing and financial impact of that shortage. The court explained that "[m]ost reasonable investors would rather receive an accurate 'bottom line' assessment of a disclosed company problem than all of its assumptions and nuances." The court further held that it could not infer scienter based on the officers' positions at the company absent "special circumstances," which the court found were not present.

1. The Seventh Circuit's decision in *SEC v. Maio*, 51 F.3d 623 (7th Cir. 1995) also arguably conflicts with *Newman*. There, the court found that a tipper had violated Section 10(b) when he made "an improper gift of inside information to . . . a trading friend" even though the tipper "did not receive any direct or indirect personal [financial] benefit as a result of his tip."

Court Finds No Basis for Plaintiffs' Contention That Diodes's CEO and CFO Must Have Known That the Labor Shortage Was Due to Diodes's Workplace Policies

In the case before the court, defendants had "repeatedly warned investors of a labor shortage that would affect [the company's] output in the first two quarters of 2011" and also "*accurately* warned [of] the precise impact this labor shortage would have on [the company's] financial results." Plaintiffs nevertheless claimed that defendants' disclosures were materially misleading because defendants did not disclose that the labor shortage was "due principally to Diodes's own harsh labor practices that alienated workers and caused them to quit."

Plaintiffs did not allege any "facts indicating that [Diodes's CEO and CFO] knew that the labor shortage was principally caused by Diodes's workplace practices." Instead, plaintiffs contended that "a strong inference of scienter [could] be drawn simply from the magnitude of disruption caused by the company's labor policies, which, from their top executive positions, [Diodes's CEO and CFO] must or should have known about."

Plaintiffs acknowledged that under Fifth Circuit case law, "'an officer's position with a company does not suffice to create an inference of scienter'" (quoting *Nathenson v. Zonagen,* 267 F.3d 400 (5th Cir. 2001)). However, plaintiffs argued that courts in the Fifth Circuit have held that "special circumstances, 'taken together with an officer's position, may support a strong inference of scienter'" (quoting *Dorsey v. Portfolio Equities,* 540 F.3d 333 (5th Cir. 2008)).

The Fifth Circuit in *Diodes* explained that these "'special circumstances' cases exhibit some combination of four considerations that might tip the scales in favor of an inference of scienter." First, the court noted that "the smaller the company the more likely it is that corporate executives would be familiar with the intricacies of day to day operations." A second factor is whether the transaction in question was "critical to the company's continued vitality." A third factor is whether "the misrepresented or omitted information at issue would have been readily apparent to the speaker." Finally, a fourth factor is whether the "defendant's statements were internally inconsistent with one another."

The Fifth Circuit determined that "[n]one of these considerations [was] present here." The court pointed out that "Diodes is a large company with over 4,000 employees at locations across the world." The court found it "not at all clear that Diodes's top executives in Dallas would have been aware of labor policies at the Shanghai facility, much less the chatter on the factory floor and the varying reasons for employee attrition." There was no allegation that the labor shortage "jeopardized the company's existence." As to the causes of the labor shortage, the court found that the impact of Diodes's workplace policies on the labor force would not necessarily have been "readily apparent" to Diodes's CEO and CFO given that there were also other factors at play (the Chinese New Year and new Chinese government policies). Finally, the court noted that "defendants' statements [on the labor shortage] were both consistent and accurate."

The court therefore concluded that it could not infer scienter based solely on the executives' positions at Diodes.

Court Finds Diodes's Early Product Shipments Do Not Suggest Scienter

Plaintiffs also contended that "Diodes's early shipments of orders without prior customer authorization" "indicate[d] that Diodes [had] intended to conceal the true impact of the labor problems from the public and to deceive investors by artificially pushing forward its earnings."

The Fifth Circuit found that this "argument [was] beset with difficulties, not the least of which is that early shipping is a legal practice that may be supported by any number of legitimate reasons, and usually does not support a strong inference of scienter." The court also deemed plaintiffs' theory illogical because "shipping orders early would tend to enhance the labor shortage problem, not disguise it." The court explained that "shipping orders early would deplete the inventory" and "Diodes's ensuing inability to keep up with orders would [then] quickly become apparent, and its revenue and gross profit margin would decrease."

Court Finds Stock Sales by Diodes's CEO Insufficient to Support a Finding of Scienter

The Fifth Circuit then turned to plaintiffs' contention that stock sales by Diodes's CEO prior to the company's disclosure of the impending labor shortage supported an inference of scienter. The court explained that "insider trading, by itself, cannot create a strong inference of scienter, but it may meaningfully enhance the strength of the inference of scienter." The court underscored that "even unusual sales by one insider do not give rise to [an inference of] scienter when other defendants do not sell some or all of their shares during the [c]lass [p]eriod."

The Fifth Circuit agreed that Diodes's CEO's stock sales "might be considered suspicious" when "[v]iewed in isolation" because they were "out of line with his prior trades, which were infrequent and in much smaller amounts." However, the court concluded that the CEO's stock sales could not support an inference of scienter because "[t]he sales represented a small portion of his investment in the company" and there were no allegations of other suspicious insider sales during the same time period.

Based on the "[t]otality of the circumstances," the Fifth Circuit found that plaintiffs had failed to allege facts giving rise to "a strong inference of scienter."

Southern District of New York: (1) Purchases Made on Over-the-Counter Bond Markets Do Not Satisfy *Morrison*'s First Prong, and (2) Settling a Transaction Through the DTC System Is Not Enough to Satisfy *Morrison*'s Second Prong

In *Morrison v. National Australia Bank*, 561 U.S. 247 (2010), the Supreme Court held that Section 10(b) only applies to securities fraud claims brought "in connection with the purchase or sale of a security listed on an American stock exchange, and the purchase or sale of any other security in the United States."

On December 20, 2015, the Southern District of New York dismissed on *Morrison* grounds securities fraud claims brought by certain investors who had purchased debt securities (the "Notes") issued by Petróleo Brasileiro ("Petrobras"), a Brazilian oil company, on over-the-counter bond markets in New York. *In re: Petrobras Sec. Litig.*, 2015 WL 9266983 (S.D.N.Y. 2015) (Rakoff, J.). The court held that an over-the-counter bond market does not qualify as an "American stock exchange" under the first prong of the *Morrison* test. The court further ruled that the second prong of the *Morrison* test is not satisfied whenever a transaction is settled in the United States through the Depository Trust Company ("DTC") system.

Court Finds That an Over-the-Counter Bond Market Is Not an American Stock Exchange for Purposes of the First Prong of the *Morrison* Test

Applying the first prong of the *Morrison* test, the court found that an over-the-counter bond market does not qualify as a national stock exchange. The court reasoned that "over-the-counter transactions are, by definition, those that do not occur on an exchange."

The court further observed that the Notes "were listed or intended to be listed on the New York Stock Exchange" but "they did not trade there." The court explained that under Second Circuit precedent, "mere listing, without trading, is insufficient to satisfy *Morrison*'s first prong" (citing *City of Pontiac Policemen's and Firemen's Ret. Sys. v. UBS AG*, 752 F.3d 173 (2d Cir. 2014)).

Applying the Second Circuit's Test in *Absolute Activist*, Court Finds That Settling a Transaction in the United States Through the DTC System Is Not Enough to Satisfy *Morrison*'s Second Prong

Turning to the second prong of the *Morrison* test, the court noted that "the Second Circuit has construed the *Morrison* test narrowly, in line with its underlying rationale." The court explained that under the Second Circuit's decision in *Absolute Activist Value Master Fund Ltd. v. Ficeto*, 677 F.3d 60 (2d Cir. 2012),[2] "the second prong of *Morrison* is satisfied only 'when the parties incur irrevocable liability to carry out the transaction within the United States or when title is passed within the United States'" (quoting *Absolute Activist*, 677 F.3d 60). To meet the requirements of *Absolute Activist*, plaintiffs must "allege . . . specific facts, 'including but not limited to, facts concerning the formation of contracts, the placement of purchase orders, the passing of title, or the exchange of money'" (quoting *Absolute Activist*, 677 F.3d 60).

Here, plaintiffs did "not claim that legal title in the Petrobras Notes was transferred in the United States." Plaintiffs instead contended "that beneficial ownership was transferred in the United States because their Notes purchases settled through the [DTC] in New York, New York." Plaintiffs argued that "when [the] DTC adjusts its books to settle an investor's trade, it is the functional equivalent of transfer of title."

The court acknowledged that "global financial markets could not properly function without the DTC or similar depository institutions and that the chain reaction of adjustments to book entries set off by a securities transaction is necessary to complete a purchase." However, the court held that "the operations of the DTC are insufficient to satisfy *Absolute Activist*, even assuming that DTC's bookkeeping affects a change in beneficial ownership in New York." The court explained that under Second Circuit precedent, "domestic 'actions

2. Please click here to read our prior discussion of the *Absolute Activitist* decision.

needed to carry out . . . transactions' . . . are insufficient to satisfy *Morrison* (quoting *Loginovskaya v. Batratchenko*, 764 F.3d 266 (2d Cir. 2014)). While "[t]he mechanics of DTC settlement are actions needed to carry out transactions," the court underscored that those mechanics "involve neither the substantive indicia of a contractual commitment necessary to satisfy *Absolute Activist*'s first prong nor the formal weight of a transfer of title necessary for its second."

The court further reasoned that "the entire thrust of *Morrison* and its progeny would be rendered nugatory if all DTC-settled transactions necessarily fell under the reach of the federal securities laws." The court explained that "[t]he laws would reach most transactions, not because they occurred on a domestic exchange but because they settled through the DTC." The court held that "[t]his result cannot be squared with the plain language and careful reasoning of *Morrison* and *Absolute Activist*."

Southern District of New York: (1) General Corporate Compliance Statements Are Not Actionable, and (2) Accurate Statements of Past Earnings Are Not Misleading Even If the Earnings Were Boosted by an Alleged Fraudulent Scheme

On January 6, 2016, the Southern District of New York dismissed a securities fraud action alleging that Sanofi and its former CEO had made misleading statements in connection with an alleged scheme to increase sales of Sanofi's diabetes products. *In re Sanofi Sec. Litig.*, 2016 WL 93866 (S.D.N.Y. 2016) (Castel, J.). The court held that Sanofi's general statements concerning compliance and corporate integrity were inactionable puffery. The court further ruled that Sanofi's failure to disclose the alleged illegal marketing scheme did not render its sales figures for diabetes products false or misleading. The court explained that "the allegation that a corporation properly reported income that is alleged to have been, in part, improperly obtained is insufficient to impose Section 10(b) liability."

Background

Plaintiffs alleged that Sanofi and its former CEO, Christopher Viehbacher, had "engaged in an illegal marketing scheme to artificially boost the sales of its diabetes product line and hid those illegal practices from investors while touting the product line's incredible sales growth and publicizing Sanofi's commitment to corporate integrity." According to plaintiffs, "the eventual abandonment of Sanofi's illegal marketing scheme caused a slowing of diabetes sales, which in turn led to a significant decline in Sanofi's share price." Defendants moved to dismiss plaintiffs' claims.

Court Finds Sanofi's Compliance-Related Statements Too General to Be Actionable

The court found that "statements regarding Sanofi's legal compliance and corporate integrity" were "not actionable under the securities laws" because the statements were "too general to cause a reasonable investor to rely on them." The court determined that those statements were nothing more than corporate puffery.

In so holding, the court relied on the Second Circuit's decision in *ECA and Local 134 IBEW Joint Pension Trust of Chicago v. JP Morgan Chase*, 553 F.3d 187 (2d Cir. 2009) (*ECA*). There, the Second Circuit held that JP Morgan Chase's "statements about risk management and corporate integrity . . . could not be the basis for a securities violation" *Sanofi*, 2016 WL 93866 (discussing *ECA*, 553 F.3d 187). The Southern District of New York found that "[d]efendants' statements about Sanofi's compliance program and corporate integrity [were] analogous to the statements held not to be actionable in *ECA*."

Court Holds That Sanofi's Sales Figures for Its Diabetes Products Were Not Misleading Even Though Sanofi Did Not Disclose the Alleged Illegal Marketing Scheme

Plaintiffs alleged that Sanofi's "SEC filings, press releases and conference calls reporting the growth in diabetes product sales . . . were misleading because they omitted material information" regarding the company's alleged illegal marketing scheme for those products. According to plaintiffs, "Sanofi's reported diabetes sales were inflated as a result of the alleged scheme."

The court explained that "the securities laws do not impose a general duty to disclose corporate mismanagement or uncharged criminal conduct." However, the court acknowledged that "a duty to disclose uncharged criminal conduct does arise if it is necessary to ensure that a corporation's statements are not misleading." The court found that the "critical consideration" is "whether the alleged omissions . . . are sufficiently connected to defendants' existing disclosures to make those public statements misleading."

Applying this standard to Sanofi's statements, the court determined that defendants did not "plausibly attribute the growing sales of diabetes products to pharmacies implicated in the alleged illegal kickback scheme." The court noted that "[n]one of the statements . . . offered any explanation as to why the products were selling more." The court concluded that "the omission of the alleged illegal marketing [scheme was] not sufficiently connected to defendants' existing disclosures to make those public statements misleading."

The court also found that the statements at issue were "not actionable as a matter of law because they [were] simply accurate statements of past earnings and growth." The court explained that "a violation of federal securities laws cannot be premised upon a company's disclosure of accurate historical data." The court underscored that "the allegation that a corporation properly reported income that is alleged to have been, in part, improperly obtained is insufficient to impose Section 10(b) liability."

Here, "Sanofi's [SEC] filings merely reported the financial health of the company and the percentage growth in diabetes product sales." The court found these statements inactionable because there was no "allegation that Sanofi [had] reported income that it did not actually receive or sales growth that did not actually occur." The court also found inactionable statements in "defendants' 20-Fs, press releases, and conference calls" because "those statements were nothing more than accurate descriptions of the growth of diabetes products sales in a different form." The court reasoned that "[i]f accurately reporting the percentage growth of diabetes products is itself not actionable under the securities laws, . . . [then] it cannot be the case that merely reporting that growth in more colorful words, without attributing the sales growth to a particular factor that is implicated in the alleged fraud, is actionable."

Court Rejects Plaintiffs' Contention That Sanofi's CEO Must Have Known of the Alleged Scheme Based on His Position in the Company

Plaintiffs attempted to allege scienter as to Christopher Viehbacher, Sanofi's former CEO, based largely on "his position within Sanofi." Plaintiffs claimed that "Viehbacher *must* have received information detailing [Sanofi's] internal investigation [of the alleged illegal marketing scheme] and its findings because of the general operation of . . . corporate policies at Sanofi." However, plaintiffs did not "reference any specific report or statement [concerning the alleged scheme] that was produced as a result of any of those policies."

The court found plaintiffs' allegations insufficient to plead Viehbacher's scienter. The court explained that "[s]cienter . . . cannot be inferred solely from the fact that, due to the defendants' . . . executive managerial position, they had access to the company's internal documentation as well as any adverse information."

The court also deemed unpersuasive "plaintiffs' suggested inference that Viehbacher and Sanofi knew their statements [concerning diabetes product sales] were misleading because an internal investigation was ordered but then never disclosed." The court found that any "inference of scienter based on the unreported findings of an unreported internal investigation [was] not as compelling as an alternative nonfraudulent inference: defendants did not have knowledge that their statements about Sanofi's diabetes sales were misleading because whatever internal investigation took place—if any—did not uncover any unlawful activity of a material proportion." The court reasoned that "[i]f Sanofi's [b]oard committed the resources necessary to undertake an internal investigation and that internal investigation uncovered unlawful behavior, why would the [b]oard of a publicly-traded company not disclose that information?" The court stated that "[t]o assume that Sanofi's [b]oard was silently clutching the results of an investigation . . . directly contradict[ed] the rationale behind engaging in an internal investigation in the first place: the desire to uncover any improper conduct by Sanofi's employees."

Southern District of New York: Fiscal Strategy-Related Statements Are Not Misleading If the Company Was Considering a Different Strategy at the Time, Provided the Company Did Not Emphasize One Strategy and Imply That It Had Ruled Out Other Strategies

On December 23, 2015, the Southern District of New York dismissed a securities fraud action alleging that China Gerui Advanced Materials Group ("China Gerui") had made misrepresentations regarding its fiscal strategy. *Pehlivanian v. China Gerui Advanced Materials Group,* 2015 WL 9462115 (S.D.N.Y. 2015) (Ramos, J.). The court held that a company's fiscal strategy-related statements are not misleading even if the company was considering a different fiscal strategy at the time, provided the company did not "hype" a specific fiscal strategy and imply that it had ruled out other fiscal strategies.

Background

China Gerui is a China-based steel processing company. Plaintiffs alleged that China Gerui and certain of its current and former directors and officers had "made material misstatements and/or omissions relating to China Gerui's expenditure of approximately $234 million to purchase antique Chinese porcelain." According to plaintiffs, the purchase was "shocking" because up until the company's September 4, 2014 purchase announcement, China Gerui had "consistently and unambiguously stated that its growth strategy consisted of expanding and diversifying its product line, identifying overseas markets, and undertaking strategic mergers and/or acquisitions."

Defendants moved to dismiss plaintiffs' claims on the grounds that stockholder disagreements with a company's investment decisions are "beyond the purview of the federal securities laws."

Court Holds That China Gerui's Fiscal Strategy-Related Statements Were Not Necessarily False or Misleading Even Though the Company May Have Been Considering a Different Strategy at the Time

Plaintiffs contended that China Gerui must have been in the process of purchasing the Chinese porcelain on or before May 20, 2014, "and thus, statements made after that date regarding [China Gerui's] growth and fiscal strategies were false or materially misleading." The court found that even if China Gerui had decided to purchase the Chinese porcelain collection by May 20, 2014, strategy-related "statements made after that date [were] not inherently false or misleading."

The court explained that in *San Leandro Emergency Medical Group Profit Sharing Plan v. Phillip Morris Companies,* 75 F.3d 801 (2d Cir. 1996) (*Phillip Morris*), the Second Circuit "rejected the argument that a company's statement discussing one strategy was 'false because the company had already made the decision, or was actively considering adopting a plan' to implement a different strategy" (quoting *Phillip Morris*, 75 F.3d 801). The Second Circuit acknowledged that "'it may be reasonable to infer that [the company] began to consider changing its marketing strategy at least a couple of weeks before the plan was presented.'" However, the Second Circuit found that plaintiffs had "'not alleged circumstances indicating how such consideration would have rendered any of the company's prior statements false'" given that the company had not made "'any statements or predictions foreclosing the possibility of adopting alternative' strategies."

Relying on *Philip Morris*, the Southern District of New York found that China Gerui's decision "to pursue another strategy" (the purchase of Chinese porcelain) did not render "its earlier statements false."

Court Finds China Gerui Had No Duty to Update Its Fiscal Strategy Statements Because It Did Not "Hype" Any Particular Strategy to the Exclusion of Others

The court rejected plaintiffs' contention that China Gerui "had a duty to update" its fiscal strategy-related statements "once the [c]ompany seriously considered purchasing the [Chinese porcelain] [c]ollection and after the [p]urchase allegedly occurred."

The court recognized that "'[a] duty to update may exist when a statement, reasonable at the time it is made, becomes misleading because of a subsequent event'" (quoting *In re Intl. Bus. Machines Corporate Sec. Litig.*, 163 F.3d 102 (2d Cir. 1998) (*IBM*)). However, the court explained that "[t]here is no duty to update 'vague statements of optimism or expressions of opinion' that 'lack the sort of definite positive projections that might require later correction'" (quoting *IBM*, 163 F.3d 102). The court further noted that "there is no duty to update non-forward-looking statements unless the statements 'contain some factual representation that remains 'alive' in the minds of investors as a continuing representation'" (quoting *IBM*, 163 F.3d 102).

In considering the scope of China Gerui's duty to update, the court found instructive the Second Circuit's decision in *In re Time Warner Securities Litigation*, 9 F.3d 259 (2d Cir. 1993). Plaintiffs in the *Time Warner* case "claimed that the company's 'highly publicized campaign to find international 'strategic partners' who would infuse billions of dollars of capital into the company' . . . [was] false and misleading because the company failed to disclose its consideration of an alternative method of raising capital" (quoting *Time Warner*, 9 F.3d 259). The Second Circuit stated that "'when a corporation is pursuing a specific business goal and announces that goal as well as an intended approach for reaching it, it may come under an obligation to disclose other approaches to reaching the goal when those approaches are under active and serious consideration.'" Given that the company had "'publicly hyped strategic alliances,'" the Second Circuit concluded that the company "'may have come under a duty to disclose'" its consideration of alternate strategies "'that would place the statements concerning strategic alliances in a materially different light.'"

The *China Gerui* court noted that in *Philip Morris*, the Second Circuit found that *Time Warner* "'went nearly to the outer limit of the line that separates disclosable plans from plans that need not be disclosed'" (quoting *Philip Morris*, 75 F.3d 801). The *Philip Morris* court deemed it significant that Time Warner had "'hyped a specific plan, thereby inducing investors to believe that alternatives were excluded.'"

The Southern District of New York found that China Gerui had not "'hype[d]' a specific plan for addressing the declining economy." Because China Gerui had instead "identified many potential strategies," the court found it "unlikely that its statements created the impression that other potential strategies were excluded." The court therefore concluded that China Gerui had no duty to update its fiscal strategy-related statements.

The court further found that statements addressing China Gerui's fiscal discipline and its careful management of cash reserves were "general pronouncements" that did "not require updating."

Northern District of California: Corporate Executives May Be Liable for Blog Posts on the Company's Website If the Executives Allegedly Had "Ultimate Authority" Over the Posts Within the Meaning of the Supreme Court's Decision in *Janus*

On December 23, 2015, the Northern District of California declined to dismiss securities fraud claims brought against Rocket Fuel, an advertising solutions company, and three of its senior executives in connection with an allegedly misleading blog post on the company's website. *In re Rocket Fuel Sec. Litig.*, 2015 WL 9311921 (N.D. Cal. 2015) (Hamilton, J.). Plaintiffs did not claim that Rocket Fuel's executives had authored or reviewed the blog post. Nevertheless, the court found that the executives could be deemed the "makers" of the blog post within the meaning of the Supreme Court's decision in *Janus Capital Group v. First Derivative Traders*, 131 S. Ct. 2296 (2011)[3] because plaintiffs alleged that the executives had "ultimate authority" over that post.

Background

Rocket Fuel "claim[ed] that its technology [was] better than its competitors' at detecting 'digital ad fraud'—including the viewing of ads by computer programs, such as 'bots,' rather than by real people."

Plaintiffs brought suit alleging that "Rocket Fuel and its officers [had] made false and misleading statements (and omissions) regarding the technology's effectiveness" and "failed to disclose that bots were actually causing some Rocket Fuel customers to stop using its service." Among other statements, plaintiffs cited to a blog post on the company's website representing that Rocket Fuel "'uses real-time data points to recognize these bad actors and block them at the source,' that it 'undermines fraudulent practices and makes sure con artists always leave empty-handed' and is 'able to identify and eliminate all threats before serving a single ad'" (collectively, the "Blog Post Statements").

Defendants moved to dismiss plaintiffs' claims on the grounds that, *inter alia*, the Blog Post Statements were inactionable "product marketing statements."

Court Finds the Blog Post Statements Actionable Because They Described "a Specific Level of Effectiveness" for Rocket Fuel's Bot-Blocking Technology

The court found the Blog Post Statements actionable because they "describe[d] a specific" but allegedly inaccurate "level of effectiveness" with respect to Rocket Fuel's bot-blocking technology. The court explained that "[t]he words 'all' and 'always' serve[d] to distinguish" the Blog Post Statements "from the remainder of the allegedly false/misleading statements contained in the complaint."

The court rejected defendants' contention that the Blog Post Statements were "mere 'product marketing statements.'" The court found that the statements were "more properly characterized as 'factual statements regarding Rocket Fuel's efforts to combat bot fraud.'"

The court also deemed meritless defendants' claim that no "reasonable investor" would have "relied upon" the Blog Post Statements "as a guarantee that Rocket Fuel's technology prevented literally every single instance of ad fraud in the billions of impressions Rocket Fuel considered per day." The court stated that it "[knew] of no authority for the proposition that a statement can be so clearly false that it should not be considered false or misleading."

Court Finds Rocket Fuel's Senior Executives Could Be Considered the "Makers" of the Blog Post Statements Within the Meaning of the Supreme Court's Decision in *Janus*

In *Janus*, the Supreme Court defined what it means to "make" a statement for purposes of Rule 10b-5. The *Janus* Court held that "the maker of a statement is the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it." 564 U.S. 135.

Defendants argued that the Blog Post Statements could not be attributed to the three senior executives named as defendants (Rocket Fuel's CEO, President, and CFO) because there was no allegation that the executives had "authored, reviewed, or approved any portion" of those statements. *Rocket Fuel*, 2015 WL 9311921. However, the court found that plaintiffs did "allege that the three [executives] 'possessed the power and authority to control the contents of the [c]ompany's press releases [and] investor and media presentations.'" Based on these allegations, the court held that plaintiffs had "adequately alleged" that the three executives "had 'ultimate authority' over" the Blog Post Statements within the meaning of *Janus*.

Court Relies on the "Core Operations" Theory to Find That Plaintiffs Had Adequately Alleged Scienter as to the Company's Senior Executives

The court found that plaintiffs had adequately alleged scienter as to Rocket Fuel's three senior executives based on the "core operations" theory, which "allows a court to

3. Please click here to read our prior discussion of the *Janus* opinion.

infer[ ] that the facts critical to a business's core operations or important transactions are known to a company's key officers." The court also determined that defendants' own arguments indicated that they knew the Blog Post Statements were misleading. The court explained that "[t]o the extent that defendants impl[ied] that a reasonable investor would know that" the Blog Post Statements were not "literally true, that implication also supports a finding that the statements were made with scienter."

Because the court found that plaintiffs had "adequately alleged scienter" as to the three corporate executives, the court also held that plaintiffs had "adequately alleged corporate scienter."

Court Rejects Plaintiffs' Contention That the Blog Post Statements Should Be Considered Part of Rocket Fuel's Registration Materials Under *Omnicare*

Plaintiffs also asserted Securities Act claims against Rocket Fuel's underwriters, and contended that the Blog Post Statements should be considered part of the company's registration materials for purposes of those claims. Plaintiffs relied on the Supreme Court's recent decision in *Omnicare v. Laborers District Council Construction Industry Pension Fund*, 135 S. Ct. 1318 (2015)[4] to argue that Rocket Fuel's registration materials "need to be considered in a 'broader frame.'"

The court found that plaintiffs' argument "stretch[ed] *Omnicare* too far, in an apparent attempt to shoehorn their strongest allegation . . . into all asserted claims." The court explained that "*Omnicare* holds only that 'an investor reads each statement within such a document, whether of fact or opinion, in light of all its surrounding text, including hedges, disclaimers, and apparently conflicting information'" (quoting *Omnicare*, 135 S. Ct. 1318). The court determined that "[n]othing in *Omnicare* endorses plaintiffs' approach of importing statements into registration materials in order to state a Securities Act claim."

4. Please click here to read our prior discussion of the *Omnicare* decision.

Delaware Chancery Court: Disclosure-Only Settlements Must Be Carefully Scrutinized to Ensure Supplemental Disclosures Are Sufficiently Material to Warrant a Broad Release of Claims

On January 22, 2016, the Delaware Chancery Court rejected a proposed disclosure-only settlement of a stockholder class action challenging the stock-for-stock merger of two online real estate companies, Zillow and Trulia. *In re Trulia S'holder Litig*., 2016 WL 270821 (Del. Ch. 2016) (Bouchard, C.). The court found the supplemental disclosures neither "material" nor "even helpful to Trulia's stockholders," and therefore concluded that the proposed settlement did "not afford [Trulia's stockholders] any meaningful consideration to warrant providing a release of claims to the defendants."

The court discussed at length the proliferation of disclosure-only settlements in the context of merger litigation. Finding numerous inherent problems with such settlements, the court cautioned that "disclosure settlements are likely to be met with continued disfavor in the future unless the supplemental disclosures address a plainly material misrepresentation or omission, and the subject matter of the proposed release is narrowly circumscribed to encompass nothing more than disclosure claims and fiduciary duty claims concerning the sales process, if the record shows that such claims have been investigated sufficiently."

Background

Following the announcement of the Trulia-Zillow merger, Trulia's stockholders brought suit alleging that the company's directors had "breached their fiduciary duties in approving the proposed merger at an unfair exchange ratio." The parties reached a settlement in principle a few months later. Pursuant to the terms of the settlement, defendants agreed to provide supplemental disclosures to the section of the Proxy statement summarizing the analysis of Trulia's financial advisor. In exchange, plaintiffs agreed to a broad release of "'any claims arising under federal, state, statutory, regulatory, common law, or other law or rule' held by any member of the proposed class relating in any conceivable way to the transaction, with the exception of the carve-out for claims arising under state and federal antitrust law." The settlement provided for "the payment of a fee to plaintiffs' counsel," but no financial award for Trulia's stockholders.

Court Finds Disclosure-Only Settlements Warrant Careful Judicial Scrutiny

The *Trulia* court explained that while "Delaware has long favored the voluntary settlement of litigation, the fiduciary character of a class action requires the [c]ourt to independently examine the fairness of a class action settlement before approving it." The court stated that "[a]pproval of a class action settlement requires more than a cursory scrutiny by the court of the issues presented." Rather, "[t]he [c]ourt must exercise its own judgment to determine whether the settlement is reasonable and intrinsically fair" in order to protect "the legal rights of absent class members."

The court noted that there has been a "proliferation" of disclosure-only settlements in recent years. The court observed that "the public announcement of virtually every transaction involving the acquisition of a public corporation provokes a flurry of class action lawsuits" that "often . . . serve[ ] no useful purpose for stockholders." Plaintiffs have substantial leverage in these suits because they can threaten an injunction to prevent the closing of the deal. "Faced with that threat, defendants are incentivized to settle quickly in order to mitigate the considerable expense of litigation and the distraction it entails, to achieve closing certainty, and to obtain broad releases as a form of 'deal insurance.'"

The court found that "[t]he most common currency used to procure a settlement is the issuance of supplemental disclosures to the target's stockholders before they are asked to vote on the proposed transaction." These disclosures typically consist of "a laundry list of minutiae in a financial advisor's board presentation that does not appear in the summary of the advisor's analysis in the proxy materials." The court explained that "providing supplemental disclosures is a particularly easy 'give' for defendants to make in exchange for a release."

Once the parties reach a settlement in principle, plaintiffs and defendants then work together in a "non-adversarial" way to obtain court approval of the settlement. In the usual case, "little or no motion practice has occurred and the discovery record is sparse." Courts have nevertheless been "willing[ ] . . . to approve disclosure settlements of marginal value and to routinely grant broad releases to defendants and six-figure fees to plaintiffs' counsel in the process."

The *Trulia* court found that this practice has "caused deal litigation to explode in the United States beyond the realm of reason." The court noted that "[t]he increased prevalence of deal litigation and disclosure settlements has drawn the attention of academics, practitioners, and the judiciary." Legal scholars have "criticized disclosure settlements" on the grounds that the "non-material supplemental disclosures provide no benefit to stockholders . . . while the liability releases that accompany settlements threaten the loss of potentially valuable claims."

The *Trulia* court found that the "historical [judicial] predisposition toward approving disclosure settlements needs to be reexamined." The court cautioned that going forward, "practitioners should expect that disclosure settlements are likely to be met with . . . disfavor . . . unless the supplemental disclosures address a plainly material misrepresentation or omission, and the subject matter of the proposed release is narrowly circumscribed to encompass nothing more than disclosure claims and fiduciary duty claims concerning the sale process, if the record shows that such claims have been investigated sufficiently." In cases "[w]here the supplemental information is not plainly material, it may be appropriate for the [c]ourt to appoint an *amicus curiae* to assist the [c]ourt in its evaluation of the alleged benefits of the supplemental disclosures."

As to "concern[s] that enhanced judicial scrutiny of disclosure settlements could lead plaintiffs to sue fiduciaries of Delaware corporations in other jurisdictions," the court expressed its "hope and trust" that courts in other states would "reach the same conclusion."

Oregon Supreme Court: Delaware Forum Selection Bylaw Is Enforceable Even When Adopted on the Eve of a Merger Announcement and Shareholders Had No Opportunity to Repeal or Amend the Bylaw

On December 10, 2015, the Oregon Supreme Court enforced a forum selection bylaw designating Delaware as the exclusive forum for derivative suits brought by shareholders of TriQuint Semiconductor ("TriQuint") even though TriQuint's directors had adopted the bylaw just days before the company announced a merger with RF Micro Devices, and the shareholders had no practical opportunity to repeal or amend the bylaw. *Roberts v. TriQuint Semiconductor,* 2015 WL 8539902 (Or. 2015) (Kistler, J.) (*TriQuint*).

Background

TriQuint's certificate of incorporation empowers its board of directors to "adopt, amend, or repeal" TriQuint's bylaws unilaterally. In late February of 2014, TriQuint's directors "amended the company's bylaws to designate the Delaware Court of Chancery as the exclusive forum for resolving internal corporate disputes, including shareholder derivative suits." Two days later, TriQuint announced its plan to merge with RF Micro Devices.

TriQuint's shareholders subsequently brought derivative suits in both Oregon and Delaware; the Oregon suits were consolidated. TriQuint and its directors (collectively, "defendants") moved to dismiss the Oregon suits based on the forum selection bylaw.

The Oregon trial court declined to enforce the forum selection bylaw and denied defendants' motion to dismiss. While the court "recognized that Delaware law authorized TriQuint's board to unilaterally adopt a binding forum-selection bylaw," the court found "that Delaware law also authorized TriQuint's shareholders to modify or repeal the company's bylaws." The court "reasoned that adopting the forum-selection bylaw contemporaneously with the merger effectively deprived TriQuint's shareholders of their statutory right to repeal the forum selection bylaw."

Defendants petitioned the Oregon Supreme Court for an alternative writ of mandamus to address the enforceability of TriQuint's forum selection bylaw, which the court issued.

Oregon Supreme Court Finds TriQuint's Forum Selection Bylaw Valid as Applied Based on the Delaware Chancery Court's Decisions in *Chevron* and *First Citizens*

On appeal, plaintiffs conceded that TriQuint's forum selection bylaw was facially valid under *Boilermakers Local 154 Retirement Fund v. Chevron Corp.*, 73 A.3d 934 (Del. Ch. 2013). Plaintiffs claimed, however, that "the bylaw [was] invalid as applied in this case because it '[was] being used for improper purposes inconsistent with the directors' fiduciary duties'" (quoting *Chevron*, 73 A.3d 934).

In considering plaintiffs' claims, the Oregon Supreme Court found instructive the Delaware Chancery Court's decision in *City of Providence v. First Citizens BancShares,* 99 A.3d 229 (Del. Ch. 2014) (*First Citizens*),[5] which was decided after the trial court issued its opinion in this case. In *First Citizens*, the directors of a North Carolina bank incorporated in Delaware adopted a forum selection bylaw designating North Carolina as the exclusive forum for shareholder derivative suits. On the same day that the bank's directors adopted the bylaw, the bank announced its plan to merge with a bank holding company. A shareholder subsequently brought a derivative action in Delaware "challenging both the forum-selection bylaw and the merger." *TriQuint*, 2015 WL 8539902 (discussing *First Citizens*, 99 A.3d 229). Plaintiff contended that "the [bank's] board had breached its fiduciary duty to the shareholders in adopting the forum-selection bylaw" because the bylaw was designed to "'insulate [the bank's directors] from the jurisdiction of Delaware courts'" (quoting *First Citizens*, 99 A.3d 229).

The Delaware Chancery Court in *First Citizens* "rejected the plaintiff's breach of fiduciary duty claim." *TriQuint*, 2015 WL 8539902. The court noted "the absence of

5. Please click here to read our prior discussion of the *First Citizens* decision.

any 'well-pled facts to call into question the integrity of the . . . courts of North Carolina'" (quoting *First Citizens*, 99 A.3d 229). The court further found that "the plaintiff had failed to rebut the board's exercise of its business judgment in adopting the forum-selection bylaw or to show that the board's 'selection of North Carolina as the exclusive forum was irrational'" (quoting *First Citizens*, 99 A.3d 229).

The Oregon Supreme Court determined that *First Citizens* was the most "applicable precedent" to the facts at hand. As was the case in *First Citizens*, "the TriQuint board [had] adopted the forum-selection bylaw making Delaware the exclusive forum for resolving disputes contemporaneously with its approval of the merger" with RF Micro Devices. Following the Chancery Court's "reasoning in *First Citizens*," the Oregon Supreme Court found that TriQuint's "forum-selection bylaw [did] not prevent its shareholders from challenging the merger" but "only provide[d] where they may do so." The court noted that the forum-selection bylaw kept "TriQuint's assets from being diluted by a multiplicity of suits in various states." Moreover, the court underscored that "Delaware, the state in which TriQuint is incorporated, is the 'most obviously reasonable forum [for internal affairs cases because those cases] . . . will be decided in the courts whose Supreme Court has the authoritative final say as to what the governing law means'" (quoting *Chevron*, 73 A.3d 934).

The Oregon Supreme Court therefore concluded that TriQuint's forum-selection bylaw was neither "invalid [n]or unenforceable under Delaware law as a breach of the board's fiduciary duty."

Oregon Supreme Court Finds TriQuint's Forum Selection Bylaw Enforceable Even Though TriQuint's Shareholders Could Not Realistically Modify or Repeal the Bylaw

Plaintiffs alternatively contended that TriQuint's forum selection bylaw was "unenforceable or unfair" under the Supreme Court's test in *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972) "because giving effect to the bylaw would deprive TriQuint's shareholders of their statutory right to amend the bylaws."

The Oregon Supreme Court found that "[t]he Delaware Chancery Court [had] addressed a similar issue in *First Citizens*." The *First Citizens* court stated that it did "'not interpret either the [Delaware General Corporate Law] or *Chevron* to mandate that a board-adopted forum selection bylaw can be applied only if it is realistically possible that stockholders may repeal it'" (quoting *First Citizens*, 99 A.3d 229). Rather, the *First Citizens* court found that "a shareholder's remedy against enforcing a board-adopted forum-selection bylaw lies primarily in arguing" that it would be inequitable to apply the bylaw under *Schnell v. Chris-Craft Industries*, 285 A.2d 437 (Del. Ch. 1971).[6]

The Oregon Supreme Court determined that "as a matter of Delaware law, a board-adopted bylaw will be given effect until the shareholders modify or repeal it, unless the board lacked authority to adopt it or the board breached its fiduciary duty in adopting it." The court reasoned that holding otherwise "would effectively read out of Delaware law a corporate board's authority to adopt bylaws unilaterally because there will always be a gap between the time that a board adopts a bylaw and the time that shareholders have an opportunity to modify or repeal it."

The Oregon Supreme Court held that TriQuint's forum selection bylaw was not unenforceable as applied, and directed the trial court to grant defendants' motion to dismiss the Oregon shareholder derivative suits.

6. The *TriQuint* court noted that in *Schnell*, the Delaware Supreme Court had found a bylaw amendment unenforceable where "the board improperly had used the 'corporate machinery and the Delaware Law for the purpose of perpetuating itself in office'" (quoting *Schnell*, 285 A.2d 437). The *TriQuint* court observed that in *Schnell*, the board's "inequitable conduct rendered what otherwise would have been a valid bylaw inequitable and unenforceable."

The Securities Law Alert is edited by Paul C. Gluckow pgluckow@stblaw.com / +1-212-455-2653, Peter E. Kazanoff pkazanoff@stblaw.com / +1-212-455-3525 and Jonathan K. Youngwood jyoungwood@stblaw.com / +1-212-455-3539).

Simpson Thacher

New York

Mark G. Cunha
+1-212-455-3475
mcunha@stblaw.com

Paul C. Curnin
+1-212-455-2519
pcurnin@stblaw.com

Michael J. Garvey
+1-212-455-7358
mgarvey@stblaw.com

Susannah S. Geltman
+1-212-455-2762
sgeltman@stblaw.com

Paul C. Gluckow
+1-212-455-2653
pgluckow@stblaw.com

Nicholas S. Goldin
+1-212-455-3685
ngoldin@stblaw.com

Peter E. Kazanoff
+1-212-455-3525
pkazanoff@stblaw.com

Joshua A. Levine
+1-212-455-7694
jlevine@stblaw.com

Joseph M. McLaughlin
+1-212-455-3242
jmclaughlin@stblaw.com

Lynn K. Neuner
+1-212-455-2696
lneuner@stblaw.com

Thomas C. Rice
+1-212-455-3040
trice@stblaw.com

Mark J. Stein
+1-212-455-2310
mstein@stblaw.com

Alan C. Turner
+1-212-455-2472
aturner@stblaw.com

Mary Kay Vyskocil
+1-212-455-3093
mvyskocil@stblaw.com

Craig S. Waldman
+1-212-455-2881
cwaldman@stblaw.com

George S. Wang
+1-212-455-2228
gwang@stblaw.com

David J. Woll
+1-212-455-3136
dwoll@stblaw.com

Jonathan K. Youngwood
+1-212-455-3539
jyoungwood@stblaw.com

Los Angeles

Michael D. Kibler
+1-310-407-7515
mkibler@stblaw.com

Chet A. Kronenberg
+1-310-407-7557
ckronenberg@stblaw.com

Palo Alto

Alexis S. Coll-Very
+1-650-251-5201
acoll-very@stblaw.com

James G. Kreissman
+1-650-251-5080
jkreissman@stblaw.com

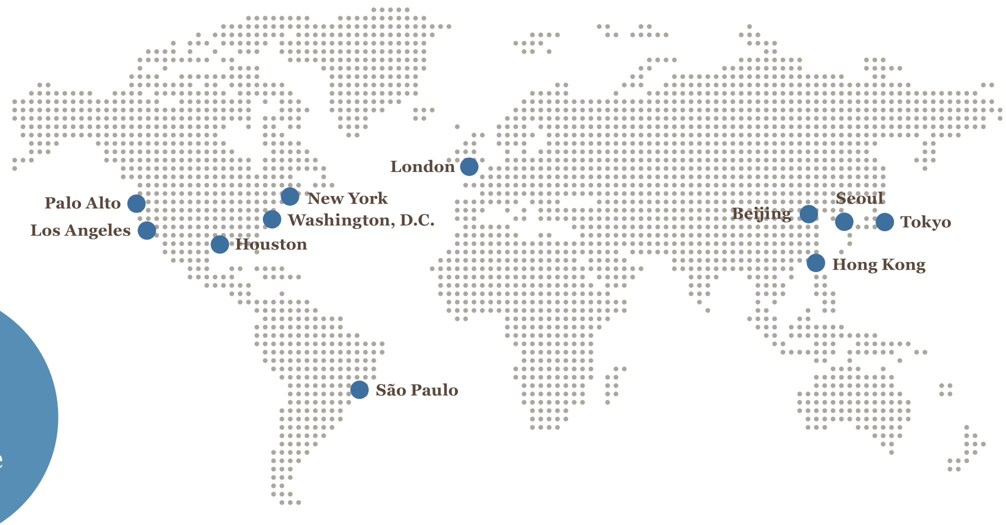
Washington, D.C.

Peter H. Bresnan
+1-202-636-5569
pbresnan@stblaw.com

Jeffrey H. Knox
+1-202-636-5532
jeffrey.knox@stblaw.com

Cheryl J. Scarboro
+1-202-636-5529
cscarboro@stblaw.com

Peter C. Thomas
+1-202-636-5535
pthomas@stblaw.com



Simpson Thacher Worldwide

UNITED STATES

New York
425 Lexington Avenue
New York, NY 10017
+1-212-455-2000

Houston
600 Travis Street, Suite 5400
Houston, TX 77002
+1-713-821-5650

Los Angeles
1999 Avenue of the Stars
Los Angeles, CA 90067
+1-310-407-7500

Palo Alto
2475 Hanover Street
Palo Alto, CA 94304
+1-650-251-5000

Washington, D.C.
900 G Street, NW
Washington, D.C. 20001
+1-202-636-5500

EUROPE

London
CityPoint
One Ropemaker Street
London EC2Y 9HU
England
+44-(0)20-7275-6500

ASIA

Beijing
3901 China World Tower
1 Jian Guo Men Wai Avenue
Beijing 100004
China
+86-10-5965-2999

Hong Kong
ICBC Tower
3 Garden Road, Central
Hong Kong
+852-2514-7600

Seoul
25th Floor, West Tower
Mirae Asset Center 1
26 Eulji-ro 5-gil, Jung-gu
Seoul 100-210
Korea
+82-2-6030-3800

Tokyo
Ark Hills Sengokuyama Mori Tower
9-10, Roppongi 1-Chome
Minato-Ku, Tokyo 106-0032
Japan
+81-3-5562-6200

SOUTH AMERICA

São Paulo
Av. Presidente Juscelino
Kubitschek, 1455
São Paulo, SP 04543-011
Brazil
+55-11-3546-1000