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WHAT'S INSIDE

REGULATORY AFFAIRS

SEC to focus on asset management, disclosure, market structure in 2016

(Reuters) – The main U.S. financial regulator, the Securities and Exchange Commission, will zone in on asset management, equity market structure, and disclosure effectiveness in 2016, Chair Mary Jo White said on Feb. 19.

There is limited time for the commission to accomplish any goals, with the administration of President Barack Obama coming to an end in less than 12 months. Traditionally, the head of the SEC, a politically appointed position, is replaced when a president leaves office. The SEC is currently down two members from its full complement of five.

In equity market structure, the SEC will finalize rules on the

CONTINUED ON PAGE 16

REUTERS/Jonathan Ernst

EXPERT ANALYSIS

Despite criticism, *Salman* is a better choice for defining proscribed insider trading conduct than *Newman*

Brendan P. McGarry of Kaufman Dolowich & Voluck analyzes the U.S. Supreme Court's decision to hear the insider trading dispute in *Salman v. United States* and why the underlying facts present a better choice than a case it recently refused to hear, *United States v. Newman*.

SEE PAGE 3

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TABLE OF CONTENTS

Despite criticism, *Salman* is a better choice for defining proscribed insider trading conduct than *Newman*

By Brendan P. McGarry, Esq.
Kaufman Dolowich & Voluck

In deciding to consider *United States v. Salman,* 792 F.3d 1087 (9th Cir. 2015), *cert. granted* (U.S. Jan. 19, 2016) (No. 15-628), the Supreme Court has decided to define "benefits" necessary to impose criminal liability for insider trading by a tippee. While many called for the high court to take up a different case, *United States v. Newman,* 773 F.3d 438 (2d Cir. 2014), *cert. denied,* (U.S. Oct. 5, 2015) (No. 15-137), *Salman* will prove to be a better vehicle for defining what constitutes insider trading and what conduct is proscribed by federal securities laws.

In *Salman,* financial institutions will have a much more effective tool than *Newman* to teach appropriate conduct and impress the importance of confidentiality on their employees. Even if *Salman* is reversed, the outer boundaries of what is prohibited by Section 10(b) and Rule 10b-5 of the Securities Exchange Act have been interpreted in such a fashion that *Newman* will remain on the collective conscious of regulators and the judiciary for years to come.

NEWMAN REDEFINED BOUNDARIES

By vacating the convictions of two hedge fund managers in *United States v. Newman,*[1] the 2nd U.S. Circuit Court of Appeals reined in the prosecution of alleged insider trading violations like no case since *Dirks v. SEC,* 463 U.S. 646 (1983).

Newman involved the conviction of two hedge fund traders (and several other investment professionals) for trading on material nonpublic information they received through networks of analysts, who had received the information from corporate insiders. Todd Newman and his co-defendant, Anthony Chiasson, were several steps removed from the corporate insiders, and no evidence was presented that they knew the source of the information.

> Evidence at trial revealed that Bassam Salman's trades earned him and his brother-in-law $1.7 million from 2004 to 2007.

Nonetheless, they were convicted based largely on the government's argument that they must have known that the information on which they traded successfully had been disclosed by corporate insiders in breach of a fiduciary duty, and not for any legitimate corporate purpose.

Overturning the District Court's decision, the 2nd Circuit relied heavily on its interpretation of *Dirks,* which set the benchmark for criminal liability for insider trading on the part of a tippee more than 30 years ago. *Dirks* involved an analyst for a large broker-dealer firm who revealed to clients of his firm evidence of fraud by a large corporation that sold life insurance and mutual funds.

Reversing the decision of the District of Columbia U.S. Circuit Court of Appeals, the Supreme Court in *Dirks* held that tippee liability derives from the breach of a fiduciary duty by the tipper — and that the tippee must know of the tipper's breach to be liable. It said a tipper's breach requires that the tipper receive a direct or indirect personal benefit from the disclosure, such as pecuniary gain or a reputational benefit that will translate into future earnings. *Dirks* established that a tippee cannot be liable for insider trading absent such a breach by the tipper.

Relying on *Dirks,* the 2nd Circuit in *Newman* held that a tippee cannot be held liable for insider trading unless the tippee knew that the tipper received a benefit in exchange for the non-public information.[2] Thus, Newman and Chiasson could not be convicted because the government introduced scant evidence that the corporate insiders had received a benefit in exchange for the information, and did not introduce any evidence that Newman or Chiasson knew of any would-be benefit.

The 2nd Circuit stopped short of opining on what would constitute a benefit for the purpose of insider trading because the government failed to introduce proof that Newman and Chiasson knew about any alleged benefit.

SALMAN SEEKS CLARIFICATION

Bassam Yacoub Salman's case was on appeal in the 9th U.S. Circuit Court of Appeals when *Newman* was decided. He submitted supplemental briefing, arguing that his conviction for insider trading and conspiracy to commit insider trading should be vacated under the standard established by *Newman*. But the 9th Circuit affirmed his conviction, holding that the evidence was more than sufficient for a rational jury to find both that the inside information was disclosed in breach of fiduciary duty and that Salman knew of that breach when he traded on the inside information.[32]

Salman arises from an insider-trading scheme involving members of Salman's extended family. Salman's brother-in-law Maher Kara

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worked in the health care investment group at Citigroup. Initially, Maher's older brother Mounir (also known as Michael) Kara, who held an undergraduate degree in chemistry, helped Maher understand scientific concepts relevant to the latter's work at Citigroup.

Eventually, the brothers began discussing different companies that were active in the health care and biotechnology sectors. Maher began to suspect his brother of trading on the shared information. Although Michael denied doing so, he also began asking for more and more information. From late 2004 through early 2007, Maher regularly told his brother about impending mergers and acquisitions involving Citigroup clients.

During this time, Maher became engaged to Salman's sister and the two families became very close. Salman and Michael Kara became close friends, and Michael began to share with Salman the information regarding securities he received from his brother. Michael encouraged Salman to "mirror-image" his trading activity.

Instead of trading for himself, Salman recruited the husband of his wife's sister to open an account and enter the trades, from which they would split the gains. Evidence at trial revealed that Salman's trades earned him and his brother-in-law $1.7 million from 2004 to 2007. It also showed that Salman knew Maher was the source of the information that he used to make the trades.

The government also presented evidence that the Kara brothers shared a close and mutually beneficial relationship that was known to Salman. Salman was convicted of all five counts of insider trading and conspiracy to commit insider trading. After his bid for a new trial was rejected, he appealed his conviction.

In his supplemental appellate brief, Salman argued that his conviction should not stand in the wake of *Newman.* Specifically, he said the government did not present sufficient evidence that Maher had received a benefit for giving his brother inside information or that Salman knew about any alleged benefit.

In affirming the district court's conviction, the 9th Circuit acknowledged the definition from *Dirks* of the "personal benefit" that constitutes the breach of fiduciary duty, including "a pecuniary gain or a reputational benefit that will translate into future earnings."[4]

The *Salman* court, however, hung its hat on another benefit outlined in *Dirks:* "the 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."[5] The 9th Circuit found that the government had introduced sufficient evidence that Maher Kara gave his brother the inside information "to benefit him;" to "fulfill whatever needs he had;" and to get him off his back.[6]

> The Supreme Court chose wisely when it decided to review *Salman* rather than *Newman*, because *Salman* provides a much better vehicle by which to define proscribed conduct.

In addition, the government introduced evidence that Salman knew it was Maher Kara who was giving Michael Kara the information and that Salman could have readily inferred that Maher intended to benefit Michael with the information. Thus, the 9th Circuit held, there could be no question under *Dirks* that the evidence was sufficient for the jury to find that Maher disclosed the information in breach of his fiduciary duties and that Salman knew as much.

SALMAN WILL CARRY MUCH MORE WEIGHT THAN *NEWMAN*

The Supreme Court chose wisely when it decided to review *Salman* rather than *Newman*, because *Salman* provides a much better vehicle by which to define proscribed conduct. Even if *Salman* is reversed, the mere fact that a federal appeals court has held a mutually beneficial family relationship to be the basis for a breach of duty — and, therefore, insider trading — will be a much stronger message to corporate insiders than *Newman* could possibly be.

And while financial institutions, especially those on the sell-side, likely find the holding in *Salman* to be downright frightful, they are now better equipped to define acceptable conduct for employees like Maher Kara.

Salman likely provides the outer limits of what would be considered a "benefit": love and affection between family members. Outer limits are exactly what the securities laws are intended to define — what acts are unlawful or forbidden. *Salman* gives us this; *Newman* does not.

Newman involves run-of-the-mill industry favors between professionals, which would not serve as a very strong warning signal if the appellate ruling was to be reversed. Furthermore, even if the Supreme Court had taken up *Newman,* any definition of "benefit" resulting from a would-be decision would not be determinative of the case because the 2nd Circuit held that Newman and Chiasson could not have known about any alleged benefit received by the corporate insiders.

Securities laws are meant to define acceptable conduct and prevent unacceptable conduct. With respect to Section 10(b), they are meant to define and prevent fraudulent practices.[7] The prohibition of insider trading emanates from Section 10(b) and Rule 10b-5.[8] Therefore, if case law defining conduct proscribed by Section 10(b) and Rule 10b-5 is to be useful, it should define the outer limits of what is proscribed.

For example, if *Salman* is affirmed, the investing community will know that a mutually beneficial family relationship may give rise to insider trading liability in the event an insider gives material nonpublic information to a close family member. A young analyst at an investment bank could face liability for telling his sibling what deals he is working on if that sibling trades on the information before it is made public and the analyst receives only affection in return.

While that result may incorporate a seemingly tenuous interpretation of the term "benefit," it will serve as a valuable teaching tool. This is not to say *Salman* is beyond criticism. If a corporate insider is in a mutually beneficial family relationship and receives familial affection in return for disclosing material nonpublic information, how is that a benefit that the insider would not have received without providing the information? What better message could a financial institution send to its new hires, however, than "if you disclose nonpublic information to *anyone, even your family,* you could face criminal prosecution for insider trading even if you do it just to shut that person up"?

If that financial institution would like to foster a culture of compliance with securities laws, it is hard to imagine a stronger deterrent. Citigroup, for example, will be able to tell every analyst who walks in the door

"Maher only told *his brother* about deals the firm was working on, got nothing in return he did not already have, and is now in jail with his brother and, potentially, his brother-in-law." This may seem like a petty scare tactic, but it will be an effective one.

> *Salman* likely provides the outer limits of what would be considered a "benefit": love and affection between family members.

By contrast, even if the Supreme Court took up *Newman* and held that the alleged benefits at issue (industry advice and introductions) were sufficient to constitute a breach of fiduciary duty, such benefits would not define the outer limits of proscribed conduct. Exchanging information for industry advice and introductions is how business is often done — in fact, it's expected.[9]

In addition, even if the Supreme Court was to rule that what the insiders in *Newman* received constituted "benefits" under *Dirks,* such as decision would still not be determinative of the case. The 2nd Circuit held that the government did not prove Newman and Chiasson knew the source of the information, let alone that the source received something in return for it. So any opinion about the definition of "benefit" would not be sufficient to reverse the 2nd Circuit's decision.

CLASS ISN'T OVER YET, BUT LESSON LEARNED

Salman will not likely be heard until April at the earliest, but its lesson should be loud and clear. Even if overturned, *Salman* will be a strong tool for both fostering compliance with securities laws and enforcing them. The U.S. Department of Justice would like to have another crack at *Newman,* but prosecutors may have a more valuable weapon in *Salman.*

Likewise, even if *Salman* is reversed, financial compliance departments have all the ammunition they need to impress the importance of confidentiality. If it stands, *Salman* will give the DOJ and compliance departments an extremely effective tool. WJ

NOTES

1 *United States v. Newman,* 773 F.3d 438 (2d Cir. 2014).

2 *Id.* at 447.

3 *United States v. Salman,* 792 F.3d 1087 (9th Cir. 2015), *cert. granted* (U.S. Jan. 19, 2016) (No. 15-628). While not the subject of this analysis, it is interesting to note that U.S. District Judge Jed S. Rakoff, senior district judge of the Southern District of New York, sat on the 9th Circuit by designation and authored the opinion in *Salman*. The Southern District of New York is the district from which *Newman* originated. Judge Rakoff was vocal about his criticism of the Newman decision prior to *Salman*. His designation to the 9th Circuit was random; however, the opinion appears consistent with his criticism of *Newman*.

4 *Salman*, 792 F.3d at 1092.

5 *Id.*

6 *Id.*

7 *See Newman*, 773 F.3d at 445.

8 *Id.*, citing *Chiarella v. United States,* 445 U.S. 222 (1980) (internal cites omitted).

9 *See, e.g., Dirks v. SEC,* 463 U.S. 646, 658-659 (1983).

8th Circuit revives shareholder suit against publisher over loss of major client

A federal judge incorrectly dismissed a shareholder lawsuit accusing legal industry news publisher Dolan Co. of misleading investors about the financial stability of one of its subsidiaries, the 8th U.S. Circuit Court of Appeals has decided.

Rand-Heart of New York Inc. et al. v. Dolan et al., No. 15-1838, 2016 WL 521075 (8th Cir. Feb. 10, 2016).

The three-judge appeals panel said the complaint adequately alleged Dolan should have disclosed that its subsidiary lost Bank of America's business, which made up nearly one-third of its revenue.

DISCOVERREADY'S FINANCES

Dolan publishes business journals, legal newspapers and other commercial papers. It also operates websites and markets business events.

The case centers on the company's subsidiary DiscoverReady, which specializes in discovery management and document review services for the legal industry.

According to the shareholders' complaint, Bank of America accounted for between 20 percent and 30 percent of DiscoverReady's revenues in a given quarter.

In summer 2013, bank representatives met with Dolan executives to express concerns over the company's finances, the suit said.

They allegedly told Dolan that it needed to remedy its financial problems in order to continue receiving the bank's business. The representatives also declined to enter into an agreement to put DiscoverReady's computer servers in the same location as the bank's servers, the complaint said.

Bank of America stopped providing DiscoverReady with work in June 2013 and ceased negotiations for a large discovery project, according to the suit. As a result, Dolan looked into selling the subsidiary, the suit said.

Dolan announced its 2013 second-quarter results Aug. 1, 2013, but did not mention the problems with Bank of America or DiscoverReady's potential sale. It also reported that it expected to continue growing and to post strong financial results the rest of the year, the suit said.

But, according to the suit, Dolan issued its third-quarter results Nov. 12, 2013, announcing poor financial results and disclosing problems with Bank of America. The company announced that its revenues fell about 21 percent compared with its 2012 third quarter and that DiscoverReady had a reduced workload from its largest customer.

On this news, the company's stock price dropped $1.03, or about 50 percent, to $1.05 that day, the suit said.

Dolan announced Jan. 2, 2014, that it would begin a restructuring process, the complaint said.

The next day the company's stock price fell 14 cents per share, or about 20 percent, to 55 cents per share.

Several shareholders sued Dolan in the U.S. District Court for the District of Minnesota, alleging violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, 15 U.S.C.A. §§ 78j(b) and 78t(a), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

They claimed the company, former CEO James Dolan and former Chief Financial Officer Vicki Duncomb had misrepresented DiscoverReady's business relationship with Bank of America and its "deteriorating" financial condition.

'SAFE HARBOR'

Dolan and the individual defendants moved to dismiss the suit.

U.S. District Judge Paul A. Magnuson granted the motion, finding that Dolan Co.'s 2013 statements about expected growth are shielded under the "safe harbor" provision of the Private Securities Litigation Reform Act, 15 U.S.C.A. § 78u-5(c), which protects certain forward-looking statements or management predictions that later turn out to be inaccurate. *Rand-Heart of N.Y. Inc. et al. v. Dolan et al.*, No. 14-cv-3011, 2015 WL 1396984 (D. Minn. Mar. 26, 2015).

The complaint also did not adequately allege Dolan intentionally failed to disclose the Bank of America issue before the November 2013 press release, he held.

The shareholders appealed, and the 8th Circuit partially reversed the decision.

The panel said the PSLRA does not protect the company's statements about expected growth in the August press release. The suit sufficiently claimed Dolan Co. knew its August growth statements were misrepresentations and that it knowingly failed to disclose the Bank of America problem before the November 2013 press release, the 8th Circuit said.

"Statements about DiscoverReady's expected performance are not immaterial, and the complaint sufficiently alleges Dolan [Co.] had actual knowledge that the statements were, at least, misleading," the opinion said.

But the panel held that the Jan. 2, 2014, statements did not correct alleged misrepresentations made in the Nov. 12, 2013, because the Nov. 12 press release properly disclosed the financial problems and the Bank of America issue. WJ

Related Court Document:
Opinion: 2016 WL 521075

See Document Section A (P. 19) for the opinion.

Pharma company wins bid to toss shareholder suit over prostate treatment

A Nymox Pharmaceutical Corp. shareholder has failed to show that the company knowingly deceived investors over problems with the clinical trials for ITS treatment of enlarged prostates, a New Jersey federal judge has ruled.

Sapir v. Averback et al., No. 14-cv-7331, 2016 WL 554581 (D.N.J. Feb. 10, 2016).

U.S. District Judge Jose L. Linares of the District of New Jersey dismissed the shareholder's suit accusing the company and CEO Paul Averback of securities law violations, finding the complaint did not properly allege scienter, or fraudulent intent to deceive investors.

Nymox subsequently began phase 3 studies but on Nov. 2, 2014, the company issued a statement announcing that the two phase 3 trials failed to meet their efficacy goals compared with the placebo control.

The company's stock price dropped 82 percent the next day to 93 cents per share, according to the opinion. CEO Averback held a conference after the markets closed Nov. 3, 2014, detailing the problems with the phase 3 studies, the opinion said.

"The court notes that [the] amended complaint fails to cite a single document or witness that corroborates allegations of scienter," U.S. District Judge Jose L. Linares said.

NX-1207'S DRUG APPROVAL PROCESS

Canada-based Nymox has two subsidiaries in Hasbrouck Heights, New Jersey. It specializes in products and treatments for the elderly.

According to the judge's opinion, the company began developing the drug NX-1207 in 2002 to treat benign prostatic hyperplasia, or prostate gland enlargement in older men, with a single injection.

To obtain Food and Drug Administration approval a drug must complete three phases of clinical trials.

Nymox successfully completed phase 1 and phase 2 clinical trials for NX-1207 in 2009 and reported positive results from the studies, the opinion said.

Shareholder Roy Sapir sued the company and Averback, alleging violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, 15 U.S.C.A. §§ 78j(b) and 78t(a), and Securities and Exchange Commission Rule 10b-5, 17 C.F.R. § 240.10b-5.

Several other shareholders also filed suit, and Judge Linares appointed investors Harry Lattanzio, PRS Inc., Network Accreditation Services Inc., Andrew Silverman and Rock 49th Restaurant Group as lead plaintiffs.

The lead plaintiffs filed an amended complaint alleging that the defendants failed to disclose that the enrollment process for phase 3 trials was slow and difficult.

Instead, Nymox disseminated positive information about the drug despite the phase 3 problems and focused on the results of smaller and shorter studies, as well as the previous phase 2 studies, resulting in an inflated share price, the suit claimed.

INFERENCE OF SCIENTER

Averback and Nymox moved to dismiss the suit in August 2015.

Judge Linares granted the motion, saying the complaint did not properly allege scienter, a required element of securities fraud.

"The court notes that [the] amended complaint fails to cite a single document or witness that corroborates allegations of scienter," he wrote.

Judge Linares said the evidence provided suggested that Nymox did not have results for the phase 3 studies until a few days before the November 2014 conference call.

As a result, "the inference of scienter is far less compelling than the opposing, non-fraudulent inference," the judge said. WJ

Attorneys:
Plaintiff: Gary S. Graifman, Kantrowitz, Goldhamer & Graifman, Montvale, NJ; Michael N. Borish and Tina Moukoulis, Law Office of Bernard M. Gross, Philadelphia, PA

Defendants: Andrew B. Joseph, Drinker, Biddle & Reath, Florham Park, NJ; Scott A. Coffina, Stephen G. Stroup and Joshua M. Link, Drinker Biddle & Reath, Philadelphia, PA

Related Court Document:
Opinion: 2016 WL 554581

See Document Section B (P. 27) for the opinion.

Imperva says investor suit over IBM competition should be tossed

By Nicole Banas, Senior Content Writer, Westlaw Daily Briefing

Imperva Inc. is asking a California federal judge to dismiss amended allegations that the cybersecurity firm duped investors by falsely claiming it dominated IBM in head-to-head competition in 2013.

Shankar v. Imperva Inc. et al., No. 14-cv-1680, memo supporting dismissal filed (N.D. Cal. Feb. 10, 2016).

The class-action suit, pending in the U.S. District Court for the Northern District of California, alleges Imperva co-founder and chairman Shlomo Kramer used the company as his "personal bank," cashing out $10 million in company shares days before it released disappointing financial results on April 9, 2014.

Imperva shareholders allege that the company, Kramer and Chief Financial Officer Terrence Schmid violated federal securities law by falsely claiming Imperva typically beat out IBM in four out of five sales.

The defendants argue in a memo supporting dismissal that the third amended complaint sets forth an "economically irrational" theory of fraud given that Kramer acquired more Imperva shares than he sold between May 2, 2013, and April 9, 2014, the proposed class period.

For the claims to survive, the plaintiffs would have to show that Kramer was "effectively 'defrauding' himself" by making overly optimistic statements about Imperva, the memo says.

Redwood Shores, California-based Imperva provides cybersecurity solutions to protect customers' data and applications, according to its website.

PRIOR DISMISSAL

Judge Phyllis J. Hamilton dismissed an earlier version of the complaint Sept. 17, finding that the allegations lacked "precision."

She granted lead plaintiff Delaware County Employees Retirement System leave to amend the complaint in part to add details about Imperva's alleged false statements.

FALSE HYPE?

The third amended complaint, filed Jan. 13, alleges the defendants falsely touted Imperva's competitive advantage over IBM during the 11-month period ending April 9, 2014.

Schmid allegedly said in 2013 that Imperva had lost some deals to IBM because IBM had "political connections" and could take potential customers to "play a round of golf."

In reality Imperva's flagship product, SecureSphere, had been rapidly losing ground to IBM because IBM offered discounts, bundling and a deferred cost alternative, the suit says.

Kramer allegedly fueled IBM's competitive advantage by selling another cybersecurity company he co-founded, Trusteer, to IBM for $1 billion in August 2013.

The third amended complaint says Imperva's share price rose 60 percent in late 2013 due to the defendants' misleading statements and their unrealistic first-quarter revenue forecast of $36 million.

Kramer started to unload his Imperva stock in early 2014, selling nearly $5 million worth of shares in January and another $5 million in early April, according to the suit.

The company's share price plunged 44 percent when Imperva revealed April 9 that first-quarter revenue was only $31 million, the suit says.

The defendants' false and misleading statements violated the anti-fraud and control-person provisions in Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, 15 U.S.C.A. §§ 78j(b) and 78t(a), the suit says.

DISMISSAL SOUGHT

The defendants' memo supporting dismissal of the third amended complaint says the suit does not allege particular facts showing that Imperva's stated win-loss ratio against IBM was incorrect.

The allegations about IBM's purported political connections are presented out of context, as Schmid acknowledged IBM's bundling practice likely influenced its ability to win sales, the memo says.

> The suit actually shows that Imperva co-founder and chairman Shlomo Kramer is a "visionary executive and innovator," the defendants say.

Claims related to first-quarter revenue guidance are inactionable because Imperva warned investors about intense competition in the market and other risks when it issued the forecast, the defendants say.

They also contend the allegations regarding Kramer's stock sales fail to demonstrate a strong inference of scienter, or fraudulent intent.

The suit actually shows that Kramer is a "visionary executive and innovator" who accumulated substantial wealth by founding successful companies like Imperva, the memo says.

A hearing on the motion to dismiss is scheduled for March 30. WJ

Related Court Document:
Memo supporting dismissal: 2016 WL 551596

Boeing hit with investor suit over SEC accounting probe

By Nicole Banas, Senior Content Writer, Westlaw Daily Briefing

Boeing Co. painted a rosy picture of financial health for its commercial jetliner business based on an accounting method currently being questioned by the Securities and Exchange Commission, according to an investor fraud suit filed in Chicago federal court.

Bisht v. Boeing Co. et al., No. 16-cv-2454, complaint filed (N.D. Ill. Feb. 22, 2014).

The proposed class-action complaint says Boeing share price fell Feb. 11 almost 7 percent, about $8 each, on news the SEC is investigating the aircraft builder's accounting for the production costs of its 787 Dreamliner and the 747 jumbo aircraft.

The complaint says the truth about Boeing's accounting practices started to emerge Feb. 11, when Bloomberg News reported that the SEC had launched an investigation of the company in response to a whistleblower complaint.

Boeing, CEO Dennis Muilenburg and CFO Gregory Smith allegedly violated federal securities law by failing to tell investors that they had improperly recorded costs and expected sales associated with the commercial jets.

Chicago-based Boeing is a global manufacturer of commercial jetliners, military aircraft, and defense, space and security systems.

The suit, filed in the U.S. District Court for the Northern District of Illinois by Boeing shareholder Tribhuwan Bisht, seeks compensation for investors who bought Boeing shares during a nearly four-year period ending Feb. 11.

'PROGRAM' ACCOUNTING

According to the complaint, Boeing's commercial airplanes segment since 2003 has used the "program accounting" method in which the company divides the cost of producing a unit across its entire jetliner program.

The method allows Boeing to defer production costs for a specific jet over the course of a program that can last decades, the suit says.

Boeing's 2011 annual report to the SEC allegedly disclosed its use of program accounting and said that the method requires "reasonably dependable" estimates of the revenue and costs associated with existing and anticipated contracts.

The company reported that its 787 program had a "low single digit" profit margin and that its 747 program was in a "reach-forward loss position," the complaint says.

Boeing's year-end filings from 2012 through 2015 cautioned that the company could be required to record additional reach-forward losses should it be unable to mitigate risks associated with the 787 and 747 programs, according to the suit.

SEC PROBE REVEALED?

The complaint says the truth about Boeing's accounting practices started to emerge Feb. 11, when Bloomberg News reported that the SEC had launched an investigation of the company in response to a whistleblower complaint.

The SEC probe allegedly focuses on whether Boeing made overly optimistic sales forecasts in financial statements and whether its

REUTERS/Bobby Yip

estimates of declining production costs are accurate.

Boeing's shares, which reached a class-period high of $158 each in February 2015, began a slide in December. They were trading Feb. 10 around $116 each and closed Feb. 11 below $108.50. The share price has since rebounded and is currently around $115.50.

SECURITIES FRAUD CLAIMS

The defendants allegedly made misleading statements to investors in violation of the anti-fraud provision of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C.A. § 78j(b).

The Boeing executives are additionally liable as control persons under Section 20(a) of the Exchange Act, 15 U.S.C.A. § 78t(a), the complaint says. WJ

Related Court Document:
Complaint: 2016 WL 704769

Judge certifies shareholder class in suit against cloud platform company

Covisint Corp. must face a certified class of investors in a lawsuit accusing the company of misrepresenting its sales and competition in the lead up to its September 2013 initial public offering, a Manhattan federal judge has ruled.

Desrocher v. Covisint Corp. et al., No. 14-cv-3878, 2016 WL 740275 (S.D.N.Y. Feb. 22, 2016).

U.S. District Judge Alvin K. Hellerstein of the Southern District of New York granted a motion for class certification filed by Karen Desrocher and Charles Rankin, saying the proposed class of Covisint shareholders met preliminary federal certification requirements and common questions predominate the class.

"The consolidation of these claims into a single class actions [sic] allows for the most cost-effective and efficient resolution of the dispute, and therefore a class action is superior to other methods of adjudicating the conflict," the judge said.

He also appointed Desrocher and Rankin as class representatives and appointed Robbins Geller and Johnson & Weaver as class counsel.

COVISINT'S IPO

According to Desrocher's complaint, several automotive manufacturers founded Covisint in February 2000 to create an efficient, cheap and secure online auto parts exchange.

Covisint provides a cloud platform that allows customers, business partners and suppliers to connect and collaborate.

The automaker exchange failed and in 2004 Compuware Corp. bought most of Covisint's assets, the complaint says.

Covisint filed a registration statement with the Securities and Exchange Commission on Sept. 20, 2013, announcing its initial public offering. Six days later, it held the IPO, and the company sold 6.4 million Covisint shares to the public at $10 per share, the suit says.

In its registration statement, Covisint said it expected its revenues to grow by 20 percent for its 2014 fiscal year from about $91 million in 2013.

But in May 2014 the company reported that its revenue for the 2014 fiscal year only reached $97.1 million, falling short of its lofty projection, the suit says.

Covisint's stock price fell heavily on this news and by May 30, 2014, the share price had dropped to $5.37 per share, a 46 percent difference from its IPO price.

Desrocher sued the company and its officers, directors and underwriters in May 2014 alleging violations of Sections 11 and 15 of the Securities Act of 1933, 15 U.S.C.A. §§ 77k and 77o.

The suit claims Covisint misled investors by failing to disclose a decline in its subscription revenue as a result of poor sales and conversion issues. The company also misrepresented its growing competition and the loss of its health care customers, the suit says.

CLASS CERTIFICATION

Shareholder Rankin's claims were consolidated with Desrocher's, and both plaintiffs filed a motion for class certification in December.

Judge Hellerstein granted the motion, finding that the class met the requirements for certification under Rule 23 of the Federal Rules of Civil Procedure.

First, he determined that the class satisfies Rule 23(a)'s requirements of numerosity, commonality, adequacy and typicality.

Although the pair bought their shares at different times, the individualized fact questions are not enough to bar certification, he said.

Second, the class meets the requirement of Rule 23(b)(3) that common questions of law and fact predominate the class members, according to the order.

No members of the class expressed interest in litigating separately and all members claim the company misled investors about the company's growth in the lead up to the IPO, Judge Hellerstein ruled. WJ

Related Court Document:
Order: 2016 WL 740275

Top court should not review stock manipulation case, SEC says

The Securities and Exchange Commission has asked the U.S. Supreme Court to deny review of the agency's decision to sanction an investment firm and adviser for improperly manipulating the stock price of three small banks.

Koch et al. v. Securities and Exchange Commission, No. 15-781, opposition brief filed (U.S. Feb. 18, 2016).

In its brief opposing a petition for review by Koch Asset Management LLC and Donald Koch, the SEC says the District of Columbia U.S. Circuit Court of Appeals correctly upheld the agency's order and that the investment firm and adviser's arguments for review are without merit.

The SEC adequately proved that the petitioners knowingly manipulated the stocks and the appellate panel did not give the SEC "total deference," the agency argues.

THE SEC'S ALLEGATIONS

The case stems from the SEC's enforcement proceeding against KAM and Koch.

According to an opinion by a three-member appellate panel of the D.C. Circuit, Koch founded KAM in 1992 with a strategy to buy shares of small community banks as long-term investments.

After the 2008 financial crisis, Koch worried about his investments and began "marking the close" of three banks' stock between September and December 2009, the SEC alleges.

Marking the close is a prohibited form of market manipulation in which an investor buys shares of a particular security at an above-market price immediately before the stock market closes for the day with the intent of artificially inflating the stock's value.

The SEC investigated Koch's trading activity and initiated an enforcement proceeding against the petitioners in April 2011, alleging violations of the Securities Exchange Act, 15 U.S.C.A. § 78j(b), and the Investment Advisers Act of 1940, 15 U.S.C.A. § 80b–6(1), (4).

After a hearing, an agency administrative law judge found that KAM and Koch illegally manipulated the banks' stock price by marking the close. SEC commissioners affirmed the decision. *In the Matter of Koch et al.*, No. 3-14355, 2014 WL 1998524 (S.E.C. May 16, 2014).

The agency barred Koch from associating with any investment adviser, broker, dealer, municipal securities dealer, municipal adviser, transfer agent or nationally recognized statistical rating organization. It also ordered Koch and KAM to disgorge their profits plus interest and pay a fine of $75,000.

The firm and adviser appealed the commission's ruling to the D.C. Circuit.

The appellate panel affirmed the agency's findings but lifted the ban on associating with municipal advisers and NRSROs because that remedy was not available when KAM and Koch's alleged misconduct occurred. *Koch et al. v. SEC*, 793 F.3d 147 (D.C. Cir. 2015).

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, expanded the ban to municipal advisers and NRSROs but the agency could not retroactively apply the ban to KAM and Koch, the D.C. Circuit said.

EVIDENCE AND 'DEFERENCE'

Now KAM and Koch are seeking the Supreme Court's review of the appellate panel's decision.

They say the D.C. Circuit failed to require proof that the petitioners intentionally marked the close and that their conduct caused an artificial price increase. Their petition for review also says the panel afforded the SEC too much deference.

"Ample record evidence, including contemporaneous emails and telephone calls, established that petitioners intentionally marked the close," the SEC says in its brief.

The agency counters that the commission adequately proved that KAM and Koch violated the Exchange Act and Investment Advisers Act.

"Ample record evidence, including contemporaneous emails and telephone calls, established that petitioners intentionally marked the close," the SEC says in its brief.

Additionally, the agency maintains that the D.C. Circuit did not give the agency total deference. The appellate court properly adopted the agency's factual findings but it did not afford the commission's legal conclusions deference, the SEC says. WJ

Related Court Documents:
Opposition brief: 2016 WL 676131
Petition: 2015 WL 9184840

See Document Section C (P. 39) for the brief

Delaware high court won't restart suit over GM ignition switch debacle

Dissident General Motors investors have failed to persuade the Delaware Supreme Court to give them another chance to prove the automaker's directors negligently relied on a defect reporting system that failed to alert them to deadly ignition switch flaws for five years.

In re General Motors Co. Derivative Litigation, No. 392, 2015, 2016 WL 552651 (Del. Feb. 11, 2016).

After holding a special oral argument session Feb. 10 at the Widener University Delaware Law School in Wilmington, the justices decided, in a brief order, to uphold a Chancery Court judge's dismissal of charges that GM's directors were asleep at the wheel and missed a fatal vehicle flaw. *In re Gen. Motors Co. Derivative Litig.*, No. 9627, 2015 WL 3958724 (Del. Ch. June 26, 2015).

The high court agreed with the vice chancellor that the "business judgment" rule of the corporate law of Delaware, where GM and most of the nation's larger companies are incorporated, shields directors who oversaw a flawed quality monitoring system.

At stake was the GM shareholders' apparently last chance to pursue a derivative suit against the directors for breaching their duty of good faith to ensure that they were receiving timely, accurate and complete reports of defects in GM vehicles.

Since the plaintiffs sued on behalf of all GM shareholders and did not give the directors an opportunity to first review their charges through a so-called pre-suit demand they were required to prove the board could not fairly judge the merits of their allegations before they could proceed to discovery.

Vice Chancellor Sam Glasscock III found that the plaintiffs failed to make such a showing, and he dismissed the suit.

Now that the Delaware Supreme Court upheld the judge's ruling and his reasoning, other would-be derivative plaintiffs are barred from stepping in as the new shareholder champion to pursue the same charges.

Delaware law experts agreed that the GM plaintiff shareholders had a tough row to hoe in trying to convince the state high court that the reporting system the board implemented was so "utterly useless" that relying on it constituted gross misconduct.

Widener professor Paul Regan, who took his corporate law classes to the oral argument, said the odds did not appear to be in the plaintiffs' favor.

Even if they proved the directors made bad or negligent decisions about the defect reporting system's setup and operation, he said, it wouldn't have been enough to revive their suit because "the standard of bad faith regarding the duty of care is very tough to meet."

Regan noted that the justices closely questioned plaintiffs' attorney David A. Jenkins of Smith Katzenstein & Jenkins in Wilmington, on his attempt to prove that the directors exhibited bad faith — rather than mere negligence — in using a reporting system that failed to get them the information they needed on a spate of disastrous ignition switch lockups.

The justices had no questions for defense attorney Robert J. Kopecky of Kirkland & Ellis in Chicago, who recited a litany of the directors' well-intentioned attempts to ensure that they were getting up-to-date information on defects after GM emerged from bankruptcy protection in 2009, Regan said.

Kopecky acknowledged that until February 2014 the defect reporting system did not officially alert the GM board to the seriousness of the ignition defect, which caused some GM cars to suddenly shut off.

Though flaws in the defect reporting system allowed the problem to persist, resulting in 2.6 million recalled vehicles, hundreds of accidents and dozens of deaths, the shareholder plaintiffs were confusing bad outcomes with bad faith, Kopecky said.

Courtesy of Widener University Delaware Law School

"The complaint does not even allege that the directors knew about the problem and failed to act," GM attorney Robert Kopecky told the court.

"The complaint does not even allege that the directors knew about the problem and failed to act, and GM has not been sanctioned for failure to comply with government regulators," Kopecky told the court.

Since there is ample proof that GM did have a reporting system — however flawed — in place from 2009 to 2014, the plaintiffs were not excused from making a demand on the board, and the suit was rightly dismissed, Kopecky successfully argued.

The Supreme Court normally confers after oral argument and may take up to three months to issue an opinion, but recently it has issued short orders within days affirming several Chancery Court decisions on procedural issues. WJ

Related Court Document:
Order: 2016 WL 552651

SEC proposes new liquidation rules for large broker-dealers

(Reuters) – The U.S. Securities and Exchanges Commission proposed a new rule Feb. 17 that it said was designed to make the liquidation process for large broker-dealers more orderly and efficient.

The new rule would implement part of the Dodd-Frank Wall Street Reform law known as "Title II" that created an alternative insolvency process for large financial companies.

The SEC said it would "help ensure that customers are treated in a manner at least as beneficial as would have been the case in a liquidation under the Securities Investor Protection Act," referring to the established course currently followed by broker-dealers in insolvency.

"This proposal will help ensure that in the event there is a need for the orderly liquidation of a broker-dealer, the process is handled in a manner that minimizes disruption and promotes public confidence," said SEC Chair Mary Jo White in a statement.

Specifically the proposed rule, which was drafted after consultation with the Federal Deposit Insurance Corp. and Securities Investor Protection Corp., lays out how to notify interested parties immediately that a liquidation proceeding has begun by filing a notice and application for protective decree in federal district court.

"The proposed rule would establish an orderly process for the liquidation of a broker dealer whose failure might otherwise pose a risk to the financial system," said FDIC Chairman Martin Gruenberg.

It also proposes the steps for transferring accounts to a bridge company for determining claims and distributing assets, and the roles of SIPC and the FDIC. Traditionally, SIPC, a nonprofit supported by broker-dealers created in the investor protection act, oversees the liquidation of its bankrupt or troubled members and works to return missing securities and cash to customers. The better-known FDIC is a federal agency that, among other things, manages bank receiverships and examines banks for safety and consumer protection.

"The proposed rule would establish an orderly process for the liquidation of a broker dealer whose failure might otherwise pose a risk to the financial system," said FDIC Chairman Martin Gruenberg in a statement. WJ

(Reporting by Lisa Lambert; additional reporting by Doina Chiacu)

Santander shareholders fight bid to toss suit over dividends

By Jason Seashore, J.D., Senior Content Writer, Westlaw Daily Briefing

Santander Consumer USA Holdings Inc. shareholders are urging a Dallas federal judge to deny the auto finance company's bid to toss allegations it omitted problems with dividend payments and regulatory compliance from 2014 initial public offering documents.

Deka Investment GmbH et al. v. Santander Consumer USA Holdings Inc. et al., No. 15-cv-2129, plaintiffs' brief in opposition to motion to dismiss filed (N.D. Tex. Feb. 5, 2016).

In a court memo opposing dismissal, lead plaintiffs Deka Investment GmbH and City of Dearborn Heights Act 345 Police & Fire Retirement System say the class-action complaint adequately pleads that the company violated federal securities law by failing to disclose that Federal Reserve regulations would restrict dividend payments.

In addition to Santander Consumer, the suit names as defendants a dozen current and former officers and directors, including ex-CEO Thomas Dundon and Chief Financial Officer Jason Kula.

It also names 17 IPO underwriters, including Citigroup Global Markets Inc. and JPMorgan Securities LLC.

Santander Consumer, a subsidiary of Dallas-based bank holding company Santander Holdings USA Inc., is a specialized finance company focused on vehicle and unsecured consumer loans.

The 2014 class-action suit is pending before U.S. District Judge Ed Kinkeade of the Northern District of Texas.

DIVIDEND RESTRICTIONS

According to the complaint, federal regulations promulgated under the Dodd-Frank Act require a bank holding company to submit to the Federal Reserve a capital plan, including dividend payments, for stress testing.

REUTERS/Andrea Comas

Santander Holdings' capital plan was submitted two weeks before Santander Consumer's January 2014 IPO, but no unauthorized capital distributions, including dividends, were allowed until the Federal Reserve announced the stress test results, the suit says.

Nevertheless, in the lead-up to the IPO, Santander Consumer allegedly enticed investors with promises of paying 30 percent of its annual earnings in the form of dividends. The defendants continued to promise investors dividends even after the Federal Reserve announced that Santander Holdings had failed its stress test, the complaint says.

Santander Consumer also failed to tell investors that its compliance and risk management framework did not comport with legal requirements, the plaintiffs say.

In May and June 2014, Santander Consumer was finally forced to admit that it was not allowed to pay dividends and that its compliance framework was severely inadequate, the suit says.

UNAUTHORIZED CAPITAL DISTRIBUTIONS

In a Dec. 18 memo supporting dismissal, Santander Consumer and the individual defendants argued that the Federal Reserve regulations apply only to bank holding companies, not their subsidiaries, leaving Santander Consumer unrestricted in its ability to pay dividends at the time of the IPO.

In their memo opposing dismissal, the plaintiffs dispute that contention, arguing that distributions by subsidiaries are treated by the capital plan regulation as distributions by the bank holding company.

That reading of the rule is consistent with Santander Holdings' September 2014 settlement with the Federal Reserve, stating expressly that the post-IPO dividend statements constituted unauthorized capital distributions under the capital plan rule, the memo says.

The alleged false statements are not "forward-looking statements," which would be protected by the "bespeaks caution" doctrine, because they concern the then-current status of Santander Consumer's ability to issue dividends, the plaintiffs say.

Bespeaks caution is a judicial doctrine that deems it unreasonable for an investor to claim reliance on a company's financial outlook when it is accompanied by cautionary language identifying attendant risk factors.

The defendants' cautionary language was too general and not tailored to the specific situation involving the capital plan rule, the memo says. WJ

Related Court Document:
Opposition brief: 2016 WL 462027

Chicago federal judge rules arbitration is proper venue for futures manipulation dispute

A trading firm must arbitrate before the Chicago Board of Trade its claims that unidentified traders manipulated futures markets in violation of the Commodity Exchange Act, a Chicago federal judge has ruled in dismissing the case

HTG Capital Partners LLC et al. v. Doe et al., No. 15-cv-2129, 2016 WL 612861 (N.D. Ill. Feb. 16, 2016).

U.S. District Judge Edmond E. Chang of the Northern District of Illinois granted four commodity traders' motion to compel arbitration, saying HTG Capital Partners LLC had agreed to arbitrate disputes related to trading on the CBOT's exchange.

Because trading on the exchange is anonymous, the judge also rejected HTG's request that the court identify the traders for purposes of the federal court action. He, however, declined to rule on whether the traders can remain unidentified in arbitration, saying the arbiter in that proceeding must decide that question.

'SPOOFING' MANIPULATION

According to court filings, HTG claims unknown traders manipulated CBOT futures by "spoofing" the markets.

Futures are contracts that allow participants to buy or sell a standard quantity of a financial asset or commodity on a future date at a fixed price.

"Spoofers" are traders who create market demand by using high-speed trading to rapidly place large orders only to cancel them before they close. This creates momentum that other traders follow, allowing the spoofers to take advantage of the price swing by selling at a higher price or buying at a lower price.

High-speed trading uses advanced computer systems and proprietary algorithms to make rapid trades that exploit market inefficiencies.

The traders' market-rigging caused HTG to unwittingly bet the wrong way on market movements, the Chicago-based firm says.

HTG sued the unidentified traders as "John Does," claiming they violated the Commodity Exchange Act, 7 U.S.C.A. § 1.

SUBPOENA

After filing suit, HTG sent CME Group, CBOT's parent company, a subpoena request for the traders' identities. CME refused, and HTG filed a motion to compel. One of the traders, joined by CME, then moved to quash the subpoena.

Judge Chang called the issue a "chicken or the egg" problem in a September ruling. He said he must first know the identities of the unknown traders to determine whether they are CBOT members and therefore subject to the exchange's arbitration rules. *HTG Capital Partners v. Doe et al.*, No. 15-cv-2129, 2015 WL 5611333 (N.D. Ill. Sept. 22, 2015).

At a Nov. 3 hearing, the judge authorized the traders to file a motion to compel arbitration and directed the parties to brief him on the confidentiality of CBOT arbitration proceedings.

ARBITRATION

The traders moved to compel arbitration Dec. 22, arguing that Judge Chang "knows that HTG and the Doe defendants are CBOT members, and there is no dispute that the CBOT rules require arbitration of trading disputes between such members."

HTG countered that the defendants waived their right to arbitration by participating in the federal litigation.

Judge Chang granted the motion and dismissed the case without prejudice under the Federal Arbitration Act, 9 U.S.C.A. § 1.

Citing 7th Circuit precedent allowing courts in the circuit to dismiss an action rather than stay it where it is clear the entire controversy between the parties will be resolved by arbitration, the judge determined that dismissal rather than a stay was warranted.

"All of HTG's claims are arbitrable under CBOT Rule 600.A," he noted.

The plaintiff and defendants were CBOT members when the alleged wrongful conduct occurred, and the nature of the claims relates to transactions that took place on the CBOT's exchange, Judge Chang said.

He further ruled that the traders did not waive their right to arbitration because their conduct did not imply a waiver. The defendants did not delay their request for arbitration, and they did not actively litigate the dispute in federal court, he said.

Judge Chang also declined to identify the traders.

"When a court compels arbitration, it means that the action should not have been in this forum in the first place, which in turn means that the court should not be meddling with procedural requests that should be made in the arbitration," he wrote.

"Arbitration, and not this court, is the proper forum to request this information," Judge Chang said. WJ

Related Court Document:
Opinion: 2016 WL 612861

SEC
CONTINUED FROM PAGE 1

oversight of active proprietary traders and on alternative trading systems. It will also work to enhance order routing disclosures and the risk controls on trading algorithms, White said in a speech at a lawyers' meeting in Washington.

> The SEC is currently down two members from its full complement of five.

White said she anticipates the SEC will soon ask for comment on a plan from self-regulatory organizations for the consolidated audit trail, which would establish a central database for every trade order, execution and cancellation to help regulators better police Wall Street trading activity in stock and options markets.

For asset management, White said the SEC would continue to look at liquidity risk, and that "advancing proposals for transition planning and stress testing are among our 2016 priorities for the asset management industry." WJ

(Reporting by Lisa Lambert)

NEWS IN BRIEF

SHAREHOLDERS ASK COURT TO APPROVE SETTLEMENT WITH PETROLEUM FIRM

Penn West shareholders are seeking preliminary approval of a $19 million settlement with the petroleum firm over securities fraud allegation. According to lead plaintiffs the City of Miami Fire Fighters' and Police Officers' Retirement Trust and Avi Rojany, the settlement is fair and reasonable to Penn West's shareholders. Penn West is one of Canada's largest conventional oil and natural gas producers. It has operations in the country's western provinces and in Wyoming, and its shares are traded on the New York Stock Exchange and the Toronto Stock Exchange. Shareholders had accused the company of hiding problems with its accounting practices in violation of federal securities laws. Disclosure of the alleged misrepresentation caused the company's stock to drop more than 14 percent to $7.85 per share, the suit claimed. The settlement affects individuals who bought Penn West's shares from Feb. 18, 2010, to July 29, 2014.

In re Penn West Petroleum Ltd. Securities Litigation, No. 14-cv-6046, memorandum in support of preliminary approval of settlement filed (S.D.N.Y. Feb. 12, 2016).

JUDGE GIVES FINAL OK TO SOCIAL MEDIA GAME MAKER'S $23 MILLION SETTLEMENT

A California federal judge has given final approval to a $23 million settlement between shareholders and online game developer Zynga Inc. U.S. Magistrate Judge Jacqueline Corley of the Northern District of California approved the settlement, saying the amount is not indicative of collusion and adequately compensates shareholders. The parties negotiated at arm's length with experienced and professional counsel, she said. She also awarded lead counsel, the law firms Berman DeValerio and Newman Ferrara LLP, $5.75 million, or 25 percent of the settlement. Zynga develops and operates games on social media platforms. According to the consolidated complaint, the company violated federal securities laws by misleading investors over user numbers and in-game purchases in the lead up to its initial public offering. When the company disclosed the problems with its business in 2012, the stock fell 37 percent to $2.97 per share in one day, the suit said.

Destefano et al. v. Zynga Inc. et al., No. 12-cv-4007, 2016 WL 537946 (N.D. Cal. Feb. 11, 2016).

Related Court Document:
Order: 2016 WL 537946

SEC NAMES CHIEF COUNSEL FOR EXAM PROGRAM

The Securities and Exchange Commission announced Feb. 17 that Daniel S. Kahl will be the new chief counsel for the agency's Office of Compliance Inspections and Examinations. The office conducts examinations for broker-dealers, investment advisers, investment companies, municipal advisers, national securities exchanges, clearing agencies and self-regulatory organizations. Kahl previously served as the assistant director of the OCIE's Investment Adviser Regulation Office. He joined the SEC in 2001 as a counsel for the agency's Division of Investment Management. Before joining the SEC, he worked as an attorney for the Investment Adviser Association, Financial Industry Regulatory Authority and the North American Securities Administrators Association, the agency's statement said.

CASE AND DOCUMENT INDEX