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**Securities Litigation Update** September 10, 2025

# Ninth Circuit Holds Companies May Need To Disclose Intra-Period Financial Results in SEC Filings Under Specific Circumstances

*The decision potentially expands disclosure obligations for companies and may increase securities litigation risk.*

In *Sodha v. Golubowski*, No. 24-1036, a divided Ninth Circuit panel held that a company may violate the securities laws if it discloses historical financial results in securities offering materials without also disclosing current, intra-period financial results that materially differ from the historical results. The Court also held that companies' disclosure obligations under Item 303 of Regulation S-K in certain circumstances are not limited to long-standing trends, and short-lived, material shifts may also require disclosure in securities offering materials.

**Background**

Robinhood Markets, Inc. conducted an initial public offering (IPO) in July 2021—while its second quarter was still in progress. As part of its IPO, the company filed a registration statement, which included disclosures about its financial performance and key performance indicators (KPIs) through the first quarter of 2021 and its expectations for the second and third quarters of 2021. After the IPO, when the company reported full financial results and KPIs for the second quarter, its stock price dropped.

Plaintiffs sued under Sections 11, 12, and 15 of the Securities Act. They alleged that the registration statement omitted material information about a downturn in the company's performance in the second quarter—the quarter in progress at the time of the IPO—which purportedly contradicted the impression given by the company's accurate disclosures regarding historical performance.

The district court dismissed the case with prejudice in January 2024. It held that a company has no obligation to disclose intra-quarter declines unless they reflected an "extreme departure" from the company's historical results. The district court also found that the allegedly deteriorating financial results and KPIs were "not so persistent" as to require disclosure as "known trends" under Item 303. Plaintiffs appealed to the Ninth Circuit shortly thereafter.

**Issue**

Do Sections 11 and 12 of the Securities Act create a duty to disclose material intra-period results in securities offering materials?

**Court's Holding**

The court held that under Sections 11 and 12, a company has a duty to disclose material information in securities offering materials where a subsequent event renders a previous statement on the same topic misleading.

**What It Means**

The Ninth Circuit's decision in *Golubowski* represents a potential expansion in companies' disclosure obligations under the securities laws in the context of public offerings, at least with respect to private securities litigation in the Ninth Circuit. Many courts have held that companies are not required to disclose in their offering materials intra-period results for a quarter that is still in progress unless those results reflect a "known trend" that must be disclosed under Item 303 or are an "extreme departure" from historical results. *See, e.g.*, *Shaw v. Digital Equipment Corp.*, 82 F.3d 1194, 1210 (1st Cir. 1996) (registration statement should disclose if the "quarter in progress at the time of the public offering will be an extreme departure" from historical results). Assuming *Golubowski* stands, the Ninth Circuit now requires disclosure in offering materials where intra-period results are "material," and has expressly rejected the "extreme departure" test adopted by the First Circuit. The Ninth Circuit held that "the disclosure duty arises from the combination of a prior statement and a subsequent event, which, if not disclosed, renders the prior statement false or misleading." In other words, if this decision stands, companies undertaking a public offering would need to consider implications of this case in formulating decisions on whether to disclose material information concerning interim events—including intra-quarter declines in financials and metrics—that contrast with disclosures of historical information about the same topic.

The panel also clarified the scope of disclosure obligations under Item 303 in the context of public offerings. The panel expressly rejected the bright-line rule adopted by some courts that a business pattern must persist for at least two months to trigger disclosure as a known trend under Item 303. It explained that companies' disclosure obligations under Item 303 may be triggered by short-lived but material shifts, and pointed to the fallouts from the COVID pandemic and 2008 financial crisis as examples.

The Court's opinion is available here.

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Gibson Dunn lawyers are available to assist in addressing any questions you may have regarding these developments. Please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any of the following leaders and members of the firm's Securities Litigation or Securities Regulation & Corporate Governance practice groups:

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