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SEC Sued Over New Short Sales and Securities Lending Disclosure Rules: Second Lawsuit Filed This Year in 5th Circuit Challenging SEC Action

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The SEC has been sued again in the U.S. Court of Appeals for the Fifth Circuit, on the heels of that Court's recent invalidation of the SEC's newly-minted corporate buy-back rules. The new legal action asks the Court to invalidate the newly-adopted short sales and securities lending disclosure rules (see our client alert here on the short sale rule, and here on the securities lending rule). The basis for the new legal action is an allegedly defective cost-benefit analysis, and a claim that the SEC did not adequately consider the interconnectedness of the short selling and securities lending markets by adopting what plaintiffs state are inherently contradictory approaches to the two rules. The Fifth Circuit appellate panel that considers this lawsuit is likely to differ from the panel that ruled on the corporate buy-back rules.

The Compliance Date for the short sale rule is January 2, 2025, and for the securities lending rule, January 2, 2026 for reporting by covered entities. Accordingly, the Court should have time to consider and rule on this new lawsuit, but of course the market has already begun initial steps to prepare for their effectiveness. We recommend that covered persons continue at least preliminary steps to comply, and we will post developments in the litigation.

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