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Practice Update

Supreme Court Holds That Pure Omissions Do Not Support Section 10(b) Claims in *Macquarie Infrastructure Corp. v. Moab Partners, L.P.*

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On April 12, 2024, the U.S. Supreme Court limited an issuer's liability for securities fraud claims based on alleged omissions in SEC filings. The Court's unanimous decision in *Macquarie Infrastructure Corp. et al v. Moab Partners L.P. et al.*, No. 22-1165, held that "pure omissions," including a failure to disclose information required by Item 303 of SEC Regulation S-K (Item 303), cannot support a claim under Section 10(b) of the Securities and Exchange Act of 1934 (Section 10(b)) and Rule 10b-5 thereunder unless the omission renders any "affirmative statements made" misleading. The Court's unanimous opinion, authored by Justice Sonia Sotomayor, resolves a circuit split between the Second Circuit Court of Appeals, which permitted Section 10(b) claims premised on pure omissions in Item 303 disclosures, and the Third and Ninth Circuit Courts of Appeals, which did not.

In *Macquarie*, the shareholder plaintiffs brought a lawsuit against Macquarie Infrastructure Corporation under Section 10(b) and Rule 10(b)-5, alleging that the company's failure to disclose a change in international regulations was securities fraud because the company was required to disclose "known trends and uncertainties" under Item 303.

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The Southern District of New York dismissed the case for failure to state a claim. The Second Circuit reversed on appeal, holding that the company had a duty to disclose the change in international regulations under Item 303 and that the omissions alone could support a claim for securities fraud.

The Supreme Court held that "Rule 10b-5(b) does not proscribe pure omissions." Instead, the plain text of the Rule prohibits "omitting material facts necessary to make the 'statements made... not misleading.'" Thus, the Court held, the Rule "covers half-truths, not pure omissions."

The Court relied on its prior decision in *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 44 (2011), where it stated that "§10(b) and Rule 10b–5(b) do not create an affirmative duty to disclose any and all material information. Disclosure is required under these provisions only when necessary 'to make ... statements made, in the light of the circumstances under which they were made, not misleading.'" It also contrasted the Rule's language with Section 11 of the Securities Act of 1933, which expressly imposes liability for a registration statement that "omit[s] to state a material fact required to be stated therein or necessary to make the statements therein not misleading." The Court explained that the lack of similar language in Section 10(b) or Rule 10b-5 demonstrates that neither Congress nor the SEC intended to create liability for pure omissions.

The Court rejected the argument that excluding pure omissions from Section 10(b) and Rule 10b-5 liability would result in "broad immunity" for issuers that fraudulently omit information required to be disclosed. It noted that private parties may still bring claims based on Item 303 violations where they allege that failure to disclose information created misleading half-truths, and that the SEC retains authority to investigate violations of Item 303.