

Delaware Supreme Court Finds Exclusive Federal Forum Provisions for Securities Act Litigation Are Valid

March 25, 2020 | Client Update

On March 18, 2020, a unanimous Delaware Supreme Court held in *Salzberg v. Sciabacucchi* that provisions in a Delaware corporation's certificate of incorporation requiring actions arising under the U.S. Securities Act of 1933 (the "Securities Act") to be filed in a federal court instead of a state court are valid under Delaware law. The decision reverses a 2018 decision in the Delaware Court of Chancery and will likely reinvigorate the adoption of Securities Act exclusive federal forum provisions ("FFPs"), in particular for companies contemplating an initial public offering. Similar to developments following then-Chancellor Strine's decision in *Boilermakers Local 154 Retirement Fund v. Chevron Corp.* with respect to exclusive forum provisions governing disputes concerning the internal affairs of Delaware corporations, the enforceability of FFPs will need to be tested in other state and federal courts.

Private companies with the ability to adopt exclusive federal forum provisions relatively easily should consider doing so, in particular before or in connection with an IPO. Public companies will need to be particularly mindful of investor and proxy advisory firm scrutiny in deciding whether to take action, and private companies should also consider possible negative reactions after they are public.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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