

Ninth Circuit Analyzes '34 Act Mens Rea Requirement in Tender Offer Disclosure Litigation

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On April 20, 2018, a panel of Ninth Circuit judges held that Section 14(e) of the Securities Exchange Act of 1934 does *not* require a showing that a defendant acted with scienter, and that a plaintiff can state a valid claim by alleging that the defendant was negligent. On the facts of the case, it seems unlikely that the defendants will be exposed to liability in the trial court. But the decision creates a split with five other Circuits, and does nothing to tamp down on the continued trend toward plaintiffs filing deal-related disclosure cases in federal court.

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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