

Zacharias v. SEC: D.C. Circuit Affirms SEC's Finding of Section 5 Violations

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In *Zacharias v. SEC*, the U.S. Court of Appeals for the District of Columbia Circuit affirmed an SEC order finding that two officers and directors of a public company and an unaffiliated third party engaged in a “scheme” to sell securities in violation of the registration requirement of Section 5 of the Securities Act, despite the fact that the only shares sold to the public were freely tradable shares owned by the third party. The Court’s praise of the SEC decision as “a triumph of substance over form” and the reasoning of the case (as well as the result) stand in contrast to the recent decisions of three U.S. District Courts that rejected the SEC’s claims of Section 5 violations in the hedging of “PIPEs” securities.

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.

Katia Brener

+1 212 450 4465
katia.brener@davispolk.com

Mark M. Mendez

+1 212 450 4829
mark.mendez@davispolk.com

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