

Securities Litigation Update: Constitutional Challenges to SEC's Administrative Courts Gain Momentum

September 24, 2015 | Client Update

Constitutional attacks against the Securities Exchange Commission's (the "SEC") use of administrative proceedings have grown in strength as securities respondents across the country have filed federal complaints contending that, among other things, SEC Administrative Law Judges ("ALJs") are acting in violation of Article II of the Constitution. Two district judges have found the constitutional challenges meritorious, while other courts have held that federal courts lack jurisdiction to decide the constitutional issues raised in the complaints. The SEC has recently weighed in, rejecting challenges to the constitutionality of its use of ALJs. And last week, after hearing oral argument, the Second Circuit stayed an administrative proceeding while it considers the merits of an appeal raising these issues. If the constitutional challenges ultimately prevail, it could call into question past administrative proceedings against securities respondents and also have implications for other federal agencies' use of administrative proceedings.

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.

Greg D. Andres

+1 212 450 4724
greg.andres@davispolk.com

Martine M. Beamon

+1 212 450 4262
martine.beamon@davispolk.com

Angela T. Burgess

+1 212 450 4885
angela.burgess@davispolk.com

Denis J. McInerney

+1 212 450 4477
denis.mcinerney@davispolk.com

Neal Potischman

+1 650 752 2021
neal.potischman@davispolk.com

Amelia T.R. Starr

+1 212 450 4516
amelia.starr@davispolk.com

Linda Chatman Thomsen

+1 202 962 7125
linda.thomsen@davispolk.com

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's privacy notice for further details.

Related materials

[Read the full update](#)