

## D&O Newsletter

### Pleading Loss Causation After DURA

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On April 19, 2005, the U.S. Supreme Court issued its decision in *Dura Pharmaceuticals, Inc., et al., v. Broudo, et al.*, 125 S. Ct. 1627 (2005). In *Dura*, the Court held that allegations of “price inflation” alone -- allegations that plaintiffs were injured because they purchased securities at an artificially inflated price as a result of defendants’ alleged misrepresentations -- are insufficient to allege the loss causation element of a claim for violations of Section 10(b) of the Securities Exchange Act of 1934. Instead, a plaintiff must allege and establish that the defendants’ misrepresentations and/or omissions “proximately caused” plaintiff economic loss by showing that the price of securities dropped after the truth was disclosed. Thus, in order to plead loss causation under *Dura*, a plaintiff must allege: (1) that the stock price dropped *after* the corrective disclosure; and (2) identify the new information revealed (or in some instances, the materialization of a concealed risk) and tie the disclosure and/or the materialization of risk to the price decline.

However, since *Dura*, the federal district courts and circuit courts have interpreted the pleading requirements for loss causation differently. A minority of courts have held that minimal pleading requirements apply. For example, in the case, *In re Omnivision Technologies, Inc.*, C-04-2297 SC, 2005 WL 1867717, at \*5 (N.D. Cal. July 29, 2005), the district court held that at the motion to dismiss stage, loss causation will be satisfied even if plaintiffs merely allege that their damages occurred “when the revelation of the true facts were revealed.” See also *In re ICG Communications, Inc. Sec. Litig.*, No. 1:00CV01864 REB BNB, 2006 WL 416622 (D. Colo., Feb. 7, 2006) (holding that “the law does not require plaintiffs to allege that [the company] disclosed every fine detail of the alleged manipulation of [the company’s] revenue to establish that those manipulations caused the plaintiffs’ losses”); *In re Synovis Life Technologies, Inc. Sec. Litig.*, No. 04-3008, 2005 WL 2063870 (D. Minn. Aug. 25, 2005); *Montalvo v. Triplos, Inc.*, No. 4:03cv995-SNL, 2005 WL 2453964 (E.D. Mo. Sept. 30, 2005).

However, most courts require more, and analyze the substance of the disclosure in order to determine whether the disclosure was “corrective.” For a disclosure to be “corrective,” it must reveal the falsity of prior misrepresentations or disclose prior errors. In *Sekuk Global Enterprises v. KVH Enterprises, Inc.*, C.A. No. 04-306ML, 2005 WL 1924202 (D. R.I. Aug. 11, 2005), plaintiffs alleged that defendants improperly accounted for key products and that the price of the defendant company’s

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Securities dropped after the company issued a press release announcing reduced quarterly revenue as a result of lower than expected sales. Defendants moved to dismiss the complaint under *Dura*, arguing that the disclosure was not corrective because the press release did not reveal that the decline in revenue resulted from sales of the key product. In order to determine whether the press release constituted a “corrective disclosure,” the court analyzed the substance of the disclosure and held that the key product, which allegedly caused plaintiffs’ losses, was a possible contributor to the lower than expected sales, even if it was not expressly discussed in the press release. Accordingly, the court held that plaintiffs adequately alleged loss causation, and denied the defendants’ motion to dismiss. See also *In re Retek, Inc. Sec. Litig.*, Master File No. 0:02-CV-4209-JRT/SRN, 2005 WL 3059566 (D. Minn. Oct. 21, 2005) (wherein the court analyzed the press release to see if the disclosure was “corrective”); *In re Verisign Corp. Sec. Litig.*, No. C 02-02270, 2005 WL 2893783 (N.D. Cal. Nov. 2, 2005); *In re Gilead Sciences Sec. Litig.*, Master File No. C-03-4999-MJJ, 2005 WL 2649200 (N.D. Cal. Oct. 11, 2005) (wherein the court analyzed each public statement to determine whether a causal link existed between the losses and each disclosure).

Courts are also divided as to what constitutes an adequate “disclosure” under *Dura*. District courts in the Fourth and Sixth Circuits have held that only a public disclosure made by the issuer itself can satisfy *Dura*. See *In re Actema Corp. Sec. Litig.*, 378 F. Supp. 2d 561 (C.D. Md. 2005) (dismissing a complaint because the decline in stock price did not immediately follow a public disclosure made by the issuer); *In re Compuware*, 386 F. Supp. 2d 913 (E.D. Mich. 2005) (dismissing complaint because price drop did not immediately follow a disclosure made by the company). Conversely, courts in the Second Circuit have held that the materialization of a foreseeable event or condition concealed by the company that causes a subsequent price decline is likewise sufficient to constitute a “corrective disclosure” under *Dura*. For example, in the case *In re Parmalat Securities Litigation*, 375 F. Supp. 2d 278 (S.D.N.Y. 2005), plaintiffs alleged that the company’s inability to pay off maturing bonds revealed that the company’s accountants previously concealed the true financial condition of the company. The accountant defendants moved to dismiss the complaint for plaintiffs’ failure to allege loss causation. The accountant defendants argued that their alleged misrepresentations were not the proximate cause of the loss and that their role in the alleged accounting fraud was not revealed until after the price decline. The court held that a “corrective disclosure” by the company is not necessary to establish loss causation, and here, the company’s inability to pay off maturing bonds was a materialization of the foreseeable risk that was concealed by the accountant defendants (overstated financials) and such event constitutes an adequate “corrective disclosure” under *Dura*. See also *Teamsters Local 445 Freight Division Pension Fund v. Bombardier*, No. 05 Civ. 1898(SAS), 2005 WL 2148919, at \*12 (S.D.N.Y., Sept. 6, 2005) (holding that in order to plead loss causation, it is adequate for a plaintiff to allege that a misrepresentation made in a prospectus concealed a risk, which then occurred, and the materialization of that risk caused a subsequent loss to plaintiffs).

Courts appear to be in agreement that plaintiffs must allege that the price dropped in response to a “corrective disclosure” or the materialization of an undisclosed risk, not as a result of events unrelated to the alleged fraud (i.e., contemporaneous non-actionable statements conveying other bad news or a downturn in the market). However, more often than not, companies issue statements that encompass more than one event or occurrence. Accordingly, there is also some divide among the courts as to whether, at the pleading stage, a plaintiff must allege that the “corrective disclosure” is the “primary cause” of the loss. For example, district courts in the Fourth Circuit have required plaintiffs to exclude other factors that may have contributed to plaintiffs’ losses at the pleading stage. *In re Cree, Inc. Sec. Litig.*, Master File No. 1:03CV00549, 2005 WL 1847004 (M.D.N.C. Aug. 2, 2005); see also *In re Actema Corp. Sec. Litig.*, 378 F. Supp. 2d 561 (C.D. Md. 2005) (dismissing complaint because plaintiff failed to adequately allege loss causation because plaintiff’s losses were due to a downturn in the industry, not as a result of the disclosures). However, district courts in the Second and Third

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circuits do not require plaintiffs to allege that the corrective disclosure is the primary cause of plaintiffs' loss at the pleading stage. For example, in *Fraternity Fund Ltd. v. Beacon Hill Asset Management LLC*, 376 F. Supp. 2d 385 (S.D.N.Y.,2005), defendants argued that other market factors, including a drop in interest rates, contributed to plaintiffs' losses; thus, plaintiffs failed to allege loss causation. Even though the drop in interest rates may have caused some of plaintiffs' losses, the court held that the alleged misconduct only need be a contributing factor to the losses and not necessarily the primary cause of such losses. Thus, the court held that plaintiffs adequately alleged loss causation at the pleading stage. See also *In re Geopharma, Inc. Sec. Litig.*, No. 04 Civ. 9463 [SAS], 2005 WL 2431518 (S.D.N.Y. Sept. 30, 2005) (holding that at the pleading stage, plaintiffs do not have a duty to exclude additional factors that may have also contributed to the price drop); *In re Bristol-Myers Squibb Sec. Litig.*, Master File No. 02-CV-2251 (LAP), 2005 WL 2007004 (D. N.J. Aug. 17, 2005) (holding that plaintiffs need not exclude all possible explanations for a price drop in reaction to a corrective disclosure in order to allege loss causation because it is "an impossible burden to satisfy").

Below is a table of Post-*Dura* decisions in each circuit:

<b>CIRCUIT</b>	<b>DECISION/HOLDING</b>
<b>First Circuit</b>	<i>Sekuk Global Enterprises v. KVH Enterprises, Inc.</i> , C.A. No. 04-306ML, 2005 WL 1924202 (D. R.I. Aug. 11, 2005) (holding that a statement need not specifically address the alleged false statements in order to considered a "corrective disclosure).
<b>Second Circuit</b>	<p><i>Teamsters Local 445 Freight Division Pension Fund v. Bombardier</i>, No. 05 Civ. 1898 (SAS), 2005 WL 2148919, at *12 (S.D.N.Y., Sept. 6, 2005) (holding that it is adequate to allege that a misrepresentation made in a prospectus concealed a risk, which then occurred, and the materialization of that risk caused a subsequent loss to plaintiffs).</p> <p><i>In re Geopharma, Inc. Sec. Litig.</i>, No. 04 Civ. 9463 [SAS], 2005 WL 2431518 (S.D.N.Y. Sept. 30, 2005) (holding that at the pleading stage, plaintiffs do not have a duty to exclude additional factors that may have also contributed to the price drop).</p> <p><i>In re Parmalat Securities Litigation</i>, 375 F. Supp. 2d 278 (S.D.N.Y. 2005) (holding that "loss causation does not require a corrective disclosure followed by a decline in price...the loss causation requirement will be satisfied if such conduct has the effect of concealing the circumstances that bore on the ultimate loss").</p> <p><i>Fraternity Fund Ltd. v. Beacon Hill Asset Management LLC</i>, 376 F. Supp. 2d 385 (S. D.N.Y.,2005) (holding that the alleged misconduct only needs to be a contributing factor to the losses, not the primary cause of such losses).</p>
<b>Third Circuit</b>	<i>In re Cigna Corp. Sec. Litig.</i> , No. Civ. A. 02-8088, 2005 WL 3536212 (E.D. Pa. Dec. 23, 2005) (holding that <i>Dura</i> is consistent with the Third Circuit's existing pleading requirements for loss causation). Defendants argue that plaintiffs failed to adequately allege loss causation and economic loss because lead plaintiff, who purchased and sold several shares during the class period, did not suffer a net loss in its trading in company securities. Instead of extending the Third circuit's decision, the court ordered expedited discovery on this issue and denied defendants' motion to dismiss at this time.

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	<i>In re Bristol-Myers Squibb Sec. Litig.</i> , Master File No. 02-CV-2251 (LAP), 2005 WL 2007004 (D. N.J. Aug. 17, 2005) (holding that plaintiffs need not exclude all possible explanations for a price drop in reaction to a corrective disclosure in order to allege loss causation because it is “an impossible burden to satisfy”).
<b>Fourth Circuit</b>	<p><i>In re Cree, Inc. Sec. Litig.</i>, 2005 WL 1847004 (M.D.N.C. Aug. 2, 2005) (holding that “[w]hile it is clear that a disclosure need not conform to any prescribed format, it must nevertheless satisfy at least a minimum standard of content. A disclosure must reveal new facts; a bald assertion of fraud is not sufficient”).</p> <p>See <i>In re Actema Corp. Sec. Litig.</i>, 378 F. Supp. 2d 561 (C.D. Md. 2005) (dismissing a complaint because the decline in stock price did not immediately follow a public disclosure <b>made by the issuer</b> and because plaintiffs losses were the result of a downturn in the industry).</p> <p><i>Montalvo v. Tripos, Inc.</i>, No. 4:03cv995-SNL, 2005 WL 2453964 (E.D. Mo. Sept. 30, 2005) (holding that a restatement, which did not cause the price of the company’s securities to drop, occurred after the end of the class period. Plaintiffs still alleged loss causation because the restatement confirmed prior-announcements revising the company’s projections downward, which caused a stock drop).</p>
<b>Fifth Circuit</b>	<i>In re Enron Corporation Securities, Derivative and "ERISA" Litigation</i> , No. MDL-1446, Civ. A. H013624, Civ.A. H040087 (S.D. Tex. Dec. 22, 2005) (holding that the Fifth Circuit does not impose a heightened pleading standard for loss causation and that the Fifth Circuit follows <i>Lentell v. Merrill Lynch &amp; Co.</i> , 396 F. 3d 161 (2d Cir. 2005), wherein the Second Circuit held that plaintiff must allege that loss was “foreseeable” and that it was caused by the “materialization of a concealed risk”). <sup>1</sup>
<b>Sixth Circuit</b>	<p><i>D.E. &amp; J. Limited Partnership v. Conaway</i>, 133 F. App'x 994 (6th Cir. 2005) (holding that because a company's stock price dropped in reaction to an announcement that the company is filing for bankruptcy is not a “corrective disclosure” because plaintiffs did not allege that “the market's acknowledgment of prior misrepresentations [defendants' fraud] caused the drop”).</p> <p><i>In re Compuware</i>, 386, F. Supp. 2d 913, 918 (E.D. Mich. 2005) (dismissed complaint because price drop did not immediately follow disclosure).</p>

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<sup>1</sup> In *Enron*, the court granted plaintiff leave to file a supplemental statement pleading the basis of its allegations of loss causation because in the complaint, which was filed prior to *Dura*, plaintiff merely alleged that as a result of defendants’ falsification of the company’s financial results, defendants cause plaintiffs to purchase securities at artificially high prices, which in turn injured plaintiff.

<b>Seventh Circuit</b>	<i>Schleicher v. Wendt</i> , 2005 WL 166871 (S.D. Ind. July 14, 2005) (dismissing complaint because stock dropped significantly before the corrective disclosure was made).
<b>Eighth Circuit</b>	<p>See also <i>In re Retek, Inc. Sec. Litig.</i>, Master File No. 0:02-CV-4209-JRT/SRN, 2005 WL 3059566 (D. Minn. Oct. 21, 2005) (wherein the court analyzed the press release to see if the disclosure was corrective).</p> <p><i>In re Synovis Life Technologies, Inc. Sec. Litig.</i>, No. 04-3008, 2005 WL 2063870 (D. Minn. Aug. 25, 2005) (holding that <i>Dura</i> does not impose a heightened pleading standard with respect to pleading loss causation).</p>
<b>Ninth Circuit</b>	<p><i>In re Omnivision Technologies, Inc.</i>, C-04-2297 SC, 2005 WL 1867717, at *5 (N.D. Cal. July 29, 2005) (holding loss causation will be satisfied even if plaintiffs merely allege that their damages occurred “when the revelation of the true facts were revealed”).</p> <p><i>In re Verisign Corp. Sec. Litig.</i>, No. C 02-02270, 2005 WL 2893783 (N.D. Cal. Nov. 2, 2005) (analyzed statements to determine whether causal link between losses and each statement).</p> <p><i>In re Gilead Sciences Sec. Litig.</i>, Master File No. C-03-4999-MJJ, 2005 WL 2649200 (N.D. Cal. Oct. 11, 2005) (wherein the court analyzed each public statement to determine whether a causal link existed between the losses and each disclosure).</p> <p><i>In re Daou Systems, Inc.</i>, 411 F.3d 1006 (9th Cir. 2005) (holding that plaintiffs adequately alleged loss causation by stating that the price drop occurred after announcements concerning the “company’s true financial condition”).</p>
<b>Tenth Circuit</b>	<i>In re ICG Communications, Inc. Sec. Litig.</i> , No. 1:00CV 01864 REB BNB, 2006 WL 416622 (D. Colo., Feb. 7, 2006) (holding that “the law does not require plaintiffs to allege that [the company] disclosed every fine detail of the alleged manipulation of [the company’s] revenue to establish that those manipulations caused the plaintiffs’ losses”).
<b>Eleventh Circuit</b>	<i>In re Sawtek, Inc. Sec. Litig.</i> , No. 603CV2940RL31DAB, 2005 WL 2465041 (M.D. Fla., Oct. 6, 2005) (holding that plaintiffs failed to allege loss causation because “plaintiffs’ loss causation theory, while plausible, [was] not reflected in the [complaint],” instead plaintiffs merely alleged that they suffered losses because they purchased securities at an inflated price in the complaint). <sup>2</sup>

<sup>2</sup> In *Sawtek*, plaintiffs argued, at a hearing, that the effects of undisclosed sales practices were realized when the company announced that it was lowering its sales and revenue forecasts, and the company’s stock dropped in response thereto, although, this was not alleged in the complaint.

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## Supreme Court Clarifies Scope of SLUSA

In *Merrill Lynch, Pierce, Fenner & Smith v. Dabit*, No., 126 S. Ct. 1503 (2006), the U.S. Supreme Court unanimously determined that the Securities Litigation Uniform Standards Act ("SLUSA"), 15 U.S.C. §§ 77p, 78bb(f) preempts state securities class actions brought solely on behalf of *holders* of securities (as contrasted to the ordinarily preempted claims brought on behalf of *purchasers* or *sellers* of securities).

In reaching its decision, the Court resolved a split among the circuits. In *Dabit v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 395 F.3d 25 (2d Cir. 2005), the underlying case reviewed by the Court, the Second Circuit had effectively held that SLUSA does not preempt class action claims by holders or other nonpurchasers and nonsellers of securities and that they are free to bring such claims in state court. The Eleventh, Ninth and Eighth Circuits were in agreement with the Second Circuit. By contrast, the Seventh Circuit held that SLUSA preempts class action claims by holders such that they cannot bring claims in state court because Congress meant to have securities class actions proceed exclusively under federal law, or not at all. *Kircher v. Putnam Funds Trust*, 403 F.3d 478, 484 (7th Cir. 2005).

The Court's decision was prompted by its presumption that Congress intended that SLUSA would have a broad application, a presumption which followed from the circumstances and motives that led to SLUSA's enactment. SLUSA was enacted to further the purposes of the Private Securities Litigation Reform Act (PSLRA), 15 U.S.C. §§ 77z-1(b), 78u-4(b). Congress passed the PSLRA in 1995 to curb the abuse of federal securities fraud litigation in the form of strike suits wherein plaintiffs brought meritless claims in order to coerce large settlement amounts. Among other procedural protections, the PSLRA imposes a heightened pleading standard requiring plaintiffs to "state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind." In order to circumvent the heightened pleading requirements of the PSLRA, plaintiffs began asserting state law claims in state court. In order to stem the tide of state actions, Congress passed SLUSA in 1997 to create exclusive federal jurisdiction and venue, and impose federal law for class actions alleging fraud "in connection with the purchase or sale of a covered security."

Central to the Second Circuit's decision had been its application of the U.S. Supreme Court's opinion in *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723 (1975). The Second Circuit held that the "in connection with the purchase or sale of a covered security" language in SLUSA means the same as that of § 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j (b), and Rule 10b-5 promulgated there under, which allow for a private cause of action for fraud "in connection with the purchase or sale of a security." According to the Second Circuit, the U.S. Supreme Court in *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723 (1975), interpreted the "in connection with the purchase and sale of a security" language in the Exchange Act to mean that only actual purchasers and sellers of securities have standing to assert federal securities claims. Because the language of SLUSA tracks the language of the Exchange Act, the Second Circuit held, the purchaser-seller standing rule of *Blue Chip Stamps* also applies to the construction of "in connection with" under SLUSA such that SLUSA preempts only claims brought by purchasers or sellers.

By contrast, the Court reasoned that, in *Blue Chip Stamps*, it did not purport to define the words "in connection with the purchase or sale" but rather it did intend to define the scope of a private right of action under Rule 10b-5. The Court emphasized that the *Blue Chips Stamps* decision was motivated by policy reasons, particularly a desire to curb the risk of

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vexatious litigation posed by holders. Similar policy considerations, such as avoiding vexatious or duplicative litigation in state and federal courts and a preference for federal regulation of the national securities market, compelled the Supreme Court to interpret SLUSA broadly. Moreover, the Supreme Court emphasized that under its other precedential decisions interpreting the phrase "in connection with the purchase or sale" of securities, an alleged fraud need merely "coincide" with a securities transaction in order to be considered to have been made "in connection with the purchase or sale" of securities. See *SEC v. Zanford*, 535 U.S. 813, 820 (2002); and *United States v. O'Hagan*, 521 U.S. 642, 651 (1997). The Supreme Court also noted that Congress was aware of the broad construction given to the phrase "in connection with" when it enacted SLUSA, further signaling Congress's intent that SLUSA be interpreted broadly.

The Supreme Court stressed that SLUSA does not preempt any cause of action, it merely preempts the class action vehicle for certain types of claims. It seems that securities lawyers on both sides of the equation will agree that the Supreme Court's decision has only a limited application and will not have much impact on securities litigation because class actions brought by holders present only a small fraction of all securities actions.

## Directors & Officers Department

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This quarterly newsletter is prepared by the Directors & Officers Practice Group of Lewis Brisbois Bisgaard & Smith LLP. The D&O Group routinely represents some of the largest underwriters of directors and officers liability insurance as coverage, litigation and transactional counsel. We pride ourselves on our ability to find creative and innovative solutions to complex and potentially catastrophic lawsuits on a cost-efficient basis for our clients. We also work with insurance companies in drafting policy forms and endorsements that address the rapidly changing and volatile risks presented by today's financial markets and regulatory environment. The members of the group draw upon their collective backgrounds in insurance, corporate transactional and securities work, commercial litigation, employment law and bankruptcy to forge a unit that is uniquely qualified to meet the changing needs of its clients.

This issue presents an overview of the various circuit court's rulings on loss causation post the landmark *Dura Pharmaceuticals* decision by the U.S. Supreme Court, a case comment on another recent U.S. Supreme Court decision which expands SLUSA to include claims brought by holders (as opposed to purchasers or sellers) of securities, as well as a review of the SEC's widening investigation into the practice of backdating stock options. Contributors to this issue include Katrina Giedt (*Dura*), Joanne Romero (*SLUSA*) and Brent Pelton (*Options*), all associates in the NY Office practicing in the D&O Group.

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## SEC Probes Backdating of Stock Options

The Securities and Exchange Commission (“SEC”) and the Justice Department have commenced broad investigation into the manipulation of stock option grant dates, a practice that a large number of companies may have utilized to boost executive compensation. The SEC is also considering public comments on a proposed rule that would require companies to provide enhanced disclosure of executive compensation. According to Bloomberg, at least 22 companies are currently under investigations by the SEC or the Justice Department for having issued backdated options. *The Wall Street Journal* reported on May 18, 2006 that in the past several weeks, eight executives at three companies had resigned from, or had been fired as a result of the expanding investigation, and on May 24, 2006, five additional companies disclosed that they were the subject of investigations.

Academic research revealed that from 1992 through 2002, stocks suffered abnormally low returns prior to the issuance of stock option, followed by abnormally high returns after stock options had been granted. Stock options are most frequently given to executives to reward strong share performance, and the options allow employees to purchase stock at the exercise price, which is generally set as the closing stock price on the grant date. By backdating option grant dates to coincide with stock drops, exercise prices are set at low levels, allowing greater opportunity to profit as the stock price appreciates. While the practice of backdating stock option grant dates is not specifically prohibited under SEC regulations if fully disclosed and permitted by the company’s internal policies, the failure to disclose backdating may constitute securities fraud. Backdated options may also subject companies to increased tax liabilities as proceeds attributable to backdated options are not tax deductible.

*The Wall Street Journal* published an article in March 2006 stating that CEOs experienced luck with regard to their option grant dates that surpassed many lottery winners. The paper reported that the chance that the former CEO of Comverse Technologies Inc. received his options at trading lows by chance was approximately 1 in 6 billion. While corporate boards and their compensation committees are generally responsible for issuing stock options, officers often maintain substantial control over the board and the timing of such offerings. UnitedHealth has reported that as a result of its option grant-date practices, it may need to restate three years of financial results, wiping away \$286 million in net income. Comverse Technology Inc. disclosed that it would restate more than five years of financial results while Vitesse Semiconductor Corp. placed its CEO on leave and may be required to restate three years of financial results.

Before the enactment of the Sarbanes-Oxley Act of 2002 (“SOX”), companies were not required to disclose stock option grant dates until several months after the options were awarded. Pursuant to SOX, however, companies are now required to report the issuance of stock options within two days of the grant date, which has been attributed to a reduced number of backdated options. While companies may still issue options during times of stock drops or prior to the announcement of positive results, the two-day reporting requirement has reduced the opportunity to backdate options. In order to reduce the risk of timing, companies may institute regularly scheduled grant dates while requiring that options vest over a period of several years. Regulators are also examining more stringent same-day reporting requirements.

Based on research indicating that hundreds of companies may have engaged in the practice of backdating options, we anticipate the current regulatory investigations to continue, and that additional civil lawsuits will be commenced on behalf of shareholders seeking damages purportedly attributable to undisclosed backdated stock options.



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