

# Coronavirus Securities Litigation Reform Act

## Summary

Event-driven securities class action lawsuits have already been filed against businesses impacted by COVID-19. These lawsuits are primarily based on stock price drops resulting from the economic impact of the virus and allege that public companies failed to warn investors about the potential consequences of this unprecedented pandemic. Given the extraordinary and unpredictable nature of this pandemic, it is imperative to protect businesses from unfair and opportunistic COVID-19-related securities lawsuits, while preserving the ability of individuals and businesses that have suffered real injuries to obtain relief.

To address these concerns, the proposed “Coronavirus Securities Litigation Reform Act” would apply to the following:

- A class action or private lawsuit in which the amount in controversy exceeds \$5 million, arises under either Title I of the Securities Act of 1933 or under Title I of the Securities Exchange Act of 1934, and either:
  - in connection with the purchase or sale of a covered security, alleges: (1) an untrue statement or omission of a material fact relating to Coronavirus, or (2) that the defendant used a manipulative or deceptive device or contrivance in any way relating to Coronavirus; or
  - seeks damages related to the purchase or sale of securities on or after January 31, 2020, and up until the date of the expiration of the Declaration of Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19 issued by the Secretary of Health and Human Services (HHS).

The proposed legislation would do the following:

- Require that actions subject to this legislation be filed in the appropriate U.S. district court;
- Permit interlocutory appeal rights for key questions in COVID-19-related securities class actions;
- Implement a stay on all proceedings until 60 days after the date of the expiration of the Declaration under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19 issued by the Secretary of Health and Human Services;
- Allow the court to permit particularized discovery under tightly prescribed circumstances if necessary to preserve evidence;
- Require dismissal of complaints that fail to state the requisite facts with particularity; and
- Cap damages at \$100 million for any COVID-related class action arising under Title I of the Securities Exchange Act of 1934.

## Analysis

### **Application**

- This legislative proposal sets forth specific circumstances under which its provisions would apply in order to capture *only* alleged or actual violations of federal securities laws related to COVID-19. This proposal is intended to provide protections against abusive and opportunistic event-driven litigation in which the driving “event” is the unforeseeable outbreak of COVID-19.

### **Procedural Protections**

- **Federal jurisdiction:** As the litigation subject to the provisions of this proposal are entirely predicated on federal securities law, it is consistent that there be a requirement that such cases be filed and housed in federal courts. Additionally, this requirement provides efficiency and ensures that these lawsuits are heard by federal judges, who likely have a greater degree of expertise in federal securities law than state judges. This proposal is intended to abrogate, in the context of COVID-19-related claims, the Supreme Court’s *Cyan* decision that allowed certain cases filed under the Securities Act of 1933 to be heard in state court.
- **Temporary stay:** Resolution of event-driven securities litigation is typically not highly time sensitive. Therefore, this provision prevents a deluge of COVID-19-related securities suits from overwhelming already bandwidth-limited courts, so that those courts may address other more pressing judicial matters. This provision will also allow companies to devote their resources to combating COVID-19, as well as working to rebuild our economy.
- **Discovery stay:** Subsection (b)(3)(B) of the Private Securities Litigation Reform Act (PSLRA)(15 U.S. Code § 78u-4) includes a similar stay of discovery to avoid spoliation (i.e., destruction or alteration of evidence). This is a reasonable ancillary provision to the proposed temporary stay.
- **Heightened pleading standard:** Subsection (b)(2) of the PSLRA includes a similar heightened pleading standard requiring complainants to “state with particularity facts giving rise to a strong inference that the defendant acted with the requisite state of mind.” The Federal Rules of Civil Procedure also require the stating of facts with particularity for fraud claims.
- **Damages cap for Securities Exchange Act suits:** The intent of private securities litigation is to provide recourse to those who lose value as a result of alleged misdeeds, and not to provide a windfall to one group of shareholders at the expense of other shareholders. This provision is intended to make damages in these cases fairer and less effectively punitive in nature.