

## [Securities Regulation Daily Wrap Up, CORPORATE GOVERNANCE— N.D. Cal.: Plaintiff loses again on claim that Yahoo is an unregistered investment company, \(Feb. 13, 2017\)](#)

Securities Regulation Daily Wrap Up

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By [Amanda Maine, J.D.](#)

A federal court dismissed with prejudice a second amended complaint against Yahoo, Inc. and its directors and officers alleging that it violated an SEC order exempting it from registering as an investment company, and as such was illegally operating as an unregistered investment company. The court reiterated its original position that it could not revoke the SEC's order because it is the province of the SEC to determine when a company is no longer entitled to a registration exemption, and not of the court ([UFCW Local 1500 Pension Fund v. Mayer](#), February 10, 2017, Seeborg, R.).

**Original claims.** The plaintiff's original complaint alleged that a 2000 SEC order noted that, in granting the exemption at issue, Yahoo was "primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading securities." According to the plaintiff, since the exemption was granted, Yahoo's business has changed, citing in particular its investment in Chinese e-commerce company Alibaba, which should render the exemption void.

The court [rejected](#) this argument, finding that a federal court is not empowered to find that a company has lost the protection of an Investment Company Act exemption; only the SEC has the authority to revoke such an exemption. The court granted the plaintiff leave to amend the complaint to cure the deficiencies identified in the court's decision.

**Second amended complaint.** However, the second amended complaint failed to repair these defects, the court determined. The second amended complaint cited a 2011 SEC memo (Report No. 482) in support of the plaintiff's assertion that the Report's recommendation that exemptive orders are not applicable if their conditions have not been adhered to; that is, they are "self-executing."

The court found this argument unconvincing as well. Report No. 482 did not contain any language that indicates a private litigant can compel a court to find that the company has lost the protection of the exemption, according to the court. Having found that the plaintiff's claims fail as a matter of law, the court dismissed the claims against all defendants with prejudice.

The case is [No. 16-cv-000478](#).

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Companies: UFCW Local 1500 Pension Fund; Yahoo, Inc.

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