

[Securities Regulation Daily Wrap Up, INITIAL PUBLIC OFFERINGS—S.D.N.Y.: Claims against solar energy company will not see light of day, \(Dec. 11, 2015\)](#)

Securities Regulation Daily Wrap Up

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By [Kevin Kulling, J.D.](#)

A federal district court has rejected a second attempt by a purported class to state a claim for securities law violations in connection with a solar energy company's initial public offering, dismissing allegations that Vivint Solar, Inc. issued a misleading registration statement that omitted material information in connection with the IPO (*Stadnick v. Vivint Solar, Inc.*, December 10, 2015, Forrest, K.).

Purchasers' allegations. Vivint, whose largest shareholder is Blackstone Group, L.P., conducted an IPO on October 1, 2014, selling 20,600,000 shares and raising \$300 million. In connection with the IPO, the company issued a registration statement, which the purported class of purchasers claimed inaccurately portrayed the company. The complaint alleged that the company's registration statement omitted material information about a massive negative swing in earnings in the third fiscal quarter that ended the day before the IPO, increasing regulatory constraints on the company's operations in Hawaii (the company's second biggest market), and changes in consumer preferences within the residential solar energy market.

The complaint alleged that the company misled the market when it failed to disclose its true financial picture in its registration statement and instead waited until the post-IPO release of its third quarter earnings to adequately clarify its position.

Failure to state a claim. According to the court's opinion and order, the company provided extensive information about the risks of investing in Vivint. For example, the registration statement summarized risks, including a "need to enter into substantial additional financing arrangements, electric utility industry policies and regulations, a material weakness in the company's internal control over financial reporting and the challenges of attracting training and retaining sales personnel and solar energy system installers."

Third quarter earnings. In reviewing the company's third quarter earnings disclosures, the court said that they were not the kind of extreme departures from earlier earnings disclosures that might impose a more stringent reporting requirement. The complaint failed to state a claim under Item 303 of Regulation S-K regarding the company's earnings, the court said.

Because the court found that the complaint failed to show how the registration statement contained an untrue statement of material fact or omit a material fact, the purchasers failed to state a claim under Section 11 of the Securities Act, and as a result, the court said the class failed to state a claim under Sections 12(a)(2) or 15.

The court also noted that Section 12(a)(2) provides for a cause of action against a statutory seller. The lead plaintiff in the complaint, however, did not allege that he purchased his shares directly from the underwriter or that he purchased the shares through the initial public offering itself. The court noted an apparent lack of standing in that regard.

The case is [No. 14-cv-9283](#).

Attorneys: Nicholas Ian Porritt (Levi & Korsinsky, LLP) for Robby Shawn Stadnick. Jay B. Kasner (Skadden, Arps, Slate, Meagher & Flom LLP) for Vivint Solar, Inc. and The Blackstone Group LP. Paul Vizcarrondo (Wachtell, Lipton, Rosen & Katz) for Goldman, Sachs & Co. and Merrill Lynch, Pierce, Fenner & Smith Inc.

Companies: Vivint Solar, Inc.; The Blackstone Group LP; Goldman, Sachs & Co.; Merrill Lynch, Pierce, Fenner & Smith Inc.

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