

Delaware Supreme Court Upholds Federal Forum Provision for Securities Act Claims

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The Supreme Court of Delaware has upheld provisions in corporate certificates of incorporation requiring that lawsuits instituted under the federal Securities Act of 1933 (“Securities Act”) be brought exclusively in federal court. [Salzberg v. Sciabacucchi](#) (Del. March 18, 2020). The decision is significant because Securities Act claims can be brought in either state or federal court. Now, Delaware companies can ensure in their operating documents that any Securities Act claims be decided exclusively in federal court.

The Securities Act obligates companies issuing securities to make a “full and fair disclosure of information” relevant to a public offering. The act expressly grants securities’ purchasers a private right of action to enforce various registration and disclosure requirements. In recent years, plaintiffs have opted to file more of their Securities Act claims in state court rather than federal court after legislation made it more onerous to pursue claims in federal court. In response, some Delaware corporations adopted federal forum provisions (“FFPs”) in their charters or certificates of incorporation. These provisions often state that “the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933.”

In *Salzberg*, Delaware’s Supreme Court held that the FFPs were facially valid under Section 102 of Delaware’s General Corporation law (“DGCL”), which governs matters that may be included in a corporation’s certificate of incorporation. Specifically, DGCL § 102(b) permits provisions relating to (1) a corporation’s management of its business and the conduct of its affairs, and (2) the powers of the corporation as well as its directors and stockholders. The court found that FFPs facilitate business management because they ensure efficient consolidation and coordination of multiple lawsuits. The court also found that FFPs regulate shareholder power by prescribing where shareholders can bring Securities Act claims.

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