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FROM CHANCERY COURT TO FEDERAL COURT: THE OBSTACLES TO A POST-*TRULIA* MIGRATION

In the watershed Trulia *Stockholder Litigation, Chancellor Bouchard of the Delaware Chancery Court — departing from the usual playbook — rejected a disclosure-only settlement on the ground that the supplemental disclosures plaintiffs obtained were not material or even helpful to stockholders. The case has led to a migration of stockholder litigation from Delaware to other states, and to the federal courts under the Exchange Act. The authors describe* Trulia *and follow-on cases, and discuss the obstacles to such litigation in federal court in light of the PSLRA.*

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For many years, shareholder suits challenging corporate mergers and acquisitions stuck to a familiar script. From deal to lawsuit to negotiated settlement, the outcome was invariably swift: defendants gained broad releases from liability; plaintiffs' lawyers won hundreds of thousands of dollars in fees; and shareholders received token disclosures supplementing the proxy statement. The majority of those cases were litigated in the Delaware Court of Chancery, which generally approved the predictable "disclosure-only" settlements. But in early 2016, the Court of Chancery changed course, rejecting such a settlement in *In re Trulia, Inc. Stockholder Litigation*[1] and warning practitioners to expect continued judicial scrutiny in the future. At first glance, the federal courts might seem like the next stop for plaintiffs' attorneys post-*Trulia* — an alternative to the suddenly less-friendly Delaware courts. As we explain here, however, federal securities laws carry their own set of challenges to shareholder-plaintiffs (and their attorneys) seeking to profit from M&A litigation.

In this article, we first discuss the *Trulia* decision and the ensuing shift of M&A suits away from Delaware. Second, we explore the possible migration of such suits to federal courts in the form of federal securities law claims, including the hurdles shareholder-plaintiffs will face under the Private Securities Litigation Reform Act. Third, we discuss a recent Seventh Circuit decision suggesting that disclosure-only settlements may fare no better in federal court than in the Delaware Court of Chancery.

TRULIA

Until recently, shareholder lawsuits were filed as a matter of course after the announcement of virtually every merger or acquisition of a public corporation.

[1] 129 A.3d 884 (Del. Ch. 2016). Unless otherwise noted, all internal citations and quotation marks have been omitted.

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