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WHO, WHAT, WHEN, WHERE, AND WHY: LESSONS LEARNED FROM THE SOLARWINDS LITIGATION

Companies and boards trying to minimize their cybersecurity risks face significant challenges. The risks of a data breach are omnipresent and now present heightened difficulty, given the rise of generative AI. Corporate counsel and compliance professionals must also contend with a fragmented and evolving regulatory landscape. This article draws lessons from the SEC's SolarWinds litigation, focusing on the securities fraud claims that survived the court's ruling on the defendants' motion to dismiss, and examining the conduct and statements that the district court found actionable. This article provides practical recommendations for those seeking to comply with a complex legal landscape and to enhance their cybersecurity programs.

By Olivia S. Choe *

Cybersecurity and data breach risks remain a top concern for corporate counsel.¹ And for good reason. The risk of a cyber incident — which has for some time been an ever-present and a growing threat — now

presents heightened difficulty, given the rise of generative AI.² The enforcement and litigation landscape is complex and evolving, particularly as a new

¹ Norton Rose Fulbright, Cybersecurity and data privacy: 2025 Annual Litigation Trends Survey, <https://www.nortonrosefulbright.com/en/knowledge/publication/s/4207a081/cybersecurity-and-data-privacy> (79% of corporate counsel expect exposure to cybersecurity and data privacy disputes to remain the same or grow in 2025); Baker McKenzie, Global Disputes Forecast 2025, <https://www.bakermckenzie.com/en/insight/publications/2025/01/global-disputes-forecast-2025> (“Cybersecurity and data privacy disputes remain the top concern. . .”).

² National Cyber Security Centre, The near-term impact of AI on the cyber threat, <https://www.ncsc.gov.uk/report/impact-of-ai-on-cyber-threat>; Fed. Bureau of Investigation, FBI Warns of Increasing Threat of Cyber Criminals Utilizing Artificial Intelligence (May 8, 2024), <https://www.fbi.gov/contact-us/field-offices/sanfrancisco/news/fbi-warns-of-increasing-threat-of-cyber-criminals-utilizing-artificial-intelligence> (May 8, 2024); N.Y. Dep’t of Fin. Servs., DFS Superintendent Adrienne A. Harris Issues New Guidance to Address Cybersecurity Risks Arising from Artificial Intelligence (Oct. 16, 2024), https://www.dfs.ny.gov/reports_and_publications/press_releases/pr20241016.

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