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Supreme Court Denies Opportunity to Clarify Whether the Federal Securities Laws Carry a Duty to Update

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On May 20, 2019, the U.S. Supreme Court denied defendants-appellees' petition for *certiorari* in [Hagan v. Khoja](#). As set forth in [our prior alert](#), the executives of the now-defunct biotechnology company, Orexigen, sought review of a Ninth Circuit decision, which not only created a departure from other courts in its narrow-approach to incorporation by reference and judicial notice, but according to the petition, also distinguished itself by being the first Circuit Court of Appeal to find that an issuer owes a duty to update a statement of historical fact that was accurate when made. At issue was whether Orexigen had a duty to disclose data that demonstrated interim results from an obesity drug trial were not as promising as once touted. In opposition to the petition for *certiorari*, respondent argued, among other things, that "[e]ven if petitioners were correct . . . that this case implicates whether companies have a duty to update earlier statements of historical fact, the interlocutory posture of this case would make it the worst kind of vehicle for considering that question."

In light of U.S. Supreme Court's decision to deny *certiorari*, the Ninth Circuit's decision, holding that the company was required to make such a corrective disclosure, will stand. In denying *certiorari*, the Supreme Court declined the opportunity to clarify whether a duty to update exists and under what circumstances that duty is owed under the federal securities laws.

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