

### 3 Cases Highlight SEC Distinction Between Exec, Co. Liability

By **Tejal Shah and Bingxin Wu** (February 24, 2026)

On Jan. 16, the U.S. Securities and Exchange Commission announced settled charges against two former executives of Spero Therapeutics LLC, a public biopharmaceutical company, for misleading investors about the regulatory approval prospects of the company's drug candidate.[1] The SEC charged the individuals with negligence-based fraud claims but did not charge the company.



Tejal Shah

Subsequently, on Jan. 22 and 27, the SEC announced charges against two other public companies and their former executives in cases alleging accounting fraud.[2]

In the first case, Lottery.com Inc. was charged with both scienter and negligence-based fraud claims for, among other things, recording phony revenue to falsely inflate its revenue. In the second case, Archer-Daniels-Midland Co. was charged with the same violations for, among other things, making fraudulent adjustments in order to meet profit goals.



Bingxin Wu

These enforcement actions demonstrate that while the current SEC administration is not moving away from policing disclosure violations when misstatements lead to investor losses, it will likely focus on individual liability when the charges stem from conduct involving what could be characterized as half-truths rather than affirmative misstatements.

However, where the conduct at issue involves traditional hallmarks of fraud, such as fraudulent adjustments or entries resulting in material misstatements, public companies are still subject to liability.

#### **Biotech Executives Charged With Disclosure Violation for Omitting Material Information Regarding FDA Feedback**

The SEC alleged that former Spero CEO Ankit Mahadevia and ex-Chief Financial Officer Satyavrat Shukla omitted material feedback from the U.S. Food and Drug Administration regarding the company's Phase 3 trial for an antibiotic called tebipenem. The trial was designed to show that tebipenem was noninferior to an existing intravenous drug.

In February 2022, the FDA informed Spero that its Phase 3 trial improperly included certain patients, and, as a result, the FDA was concerned that the trial did not meet the required noninferiority margin. The FDA also canceled a scheduled advisory committee meeting and drug-labeling discussions, telling Spero that, while it was still deliberating, the cancellations were due to its concerns.

Spero disclosed that the FDA canceled the meetings but did not disclose the specific deficiencies identified by the FDA, or that the trial would not have met the end point had those patients been excluded.

During the earnings call, Mahadevia and Shukla declined to provide more information on the

FDA's feedback. Eventually, after the FDA told Spero that it would need to conduct a second trial to obtain approval, Spero disclosed the FDA's negative feedback, and its stock price declined by 64%. Both a shareholder class action and an SEC enforcement action followed.

The SEC charged the former executives with violating Section 17(a)(2) of the Securities Act, a negligence-based claim that does not require the SEC to prove scienter. To establish violations of Section 17(a), there must be an "offer or sale of any securities."

As reflected in the order, Spero granted stock options and restricted stock units through an employee stock incentive plan, which provided the necessary basis for the SEC's negligence-based charges. The former executives settled the charges by paying civil penalties of \$112,500 and \$75,000, respectively. The settlements did not include officer and director bars.

Negligence-based fraud charges are not available to private plaintiffs. In October 2024, the U.S. District Court for the Eastern District of New York dismissed *In re: Spero Therapeutics Inc. Securities Litigation* — the shareholder class action — on the grounds that the plaintiffs failed to allege scienter.<sup>[3]</sup> The court held that Spero and its executives did not have an "affirmative duty to disclose the FDA's interim feedback."

The court further reasoned that, to plead scienter, the plaintiffs needed to allege that the defendants were aware of "a near certainty" that the drug would not be approved. The plaintiffs failed that standard because the allegations only showed that the defendants "were aware of a risk."

While the conduct proved sufficient for SEC liability under a negligence-based fraud theory, the court found that it did not meet the standard for scienter-based fraud.

## **Two Public Companies Charged With Accounting Fraud**

A week after the SEC's settlement with the Spero executives, the commission announced enforcement actions against two public companies.

In the first case, the SEC alleged that Lottery.com, its former executives and Vadim Komissarov, the former CEO of a special purpose acquisition company, engaged in fraudulent schemes to inflate Lottery.com's revenue. According to the SEC, the defendants orchestrated the schemes because Lottery.com was struggling financially and the SPAC faced a looming deadline to complete a de-SPAC merger.

In one scheme, Lottery.com borrowed \$9 million and booked it as revenue, then returned the money to the lender but claimed that it was a cash payment toward an acquisition. Another scheme involved Lottery.com recording a nonexistent \$30 million advertising credit as revenue.

After the company went public through the de-SPAC transaction, the former executives created two fake invoices totaling over \$35 million and recognized the amount as revenue. They touted the company's revenue growth to investors even though they knew that the vast majority of the company's reported revenue was fake.

The SEC's enforcement action against Lottery.com — *SEC v. DiMatteo* — is proceeding in the U.S. District Court for the Southern District of New York.

In the second case, the SEC alleged that ADM and three former executives inflated the

performance of an ADM business segment called Nutrition. The individual defendants promoted Nutrition's growth as a driver of the company's profitability and told investors that Nutrition's profits would grow by 15% to 20% annually.

When it became clear that Nutrition would not meet the profit forecast, the defendants made adjustments to Nutrition's transactions with other ADM business segments. The adjustments included retroactive rebates and price changes that were not available to third-party customers. This resulted in a shift of profits from ADM's other business segments to Nutrition, enabling Nutrition to meet its profit goals.

ADM settled the SEC's charges by paying a \$40 million civil penalty. Two former executives — former President Vince Macciocchi and former CFO Ray Youngalso — agreed to pay fines to settle the SEC's charges. The SEC's enforcement action against the third executive, Vikram Luthar, another former CFO, proceeds in the U.S. District Court for the Northern District of Illinois.

### **Affirmative Misstatements Versus Half-Truths**

While all three enforcement actions involve disclosure violations, the nature of the misstatements differs.

In the Lottery.com and ADM cases, the defendants allegedly made affirmative false statements claiming that the companies achieved certain revenue or profitability goals when, in fact, they had relied on phony transactions and improper adjustments.

In contrast, in the Spero case, the defendants were not alleged to have made any affirmative misstatements. Rather, they omitted key information that misled investors about the prospects of FDA approval.

According to the SEC, while Spero disclosed certain information regarding trial results and FDA feedback, it omitted other material information, such as the nature of the FDA's concerns. The SEC found that "taken together, Spero's disclosures created [a] misleading impression."

The Spero case reflects the SEC's continued focus on half-truths following the U.S. Supreme Court's April 2024 decision in *Macquarie v. Moab Partners*.<sup>[4]</sup> In that case, the Supreme Court held that a pure omission cannot form the basis of a securities fraud claim under SEC Rule 10b-5(b).

The Supreme Court distinguished between "pure omission" — or "when a speaker says nothing" — and "half-truths," or "representations that state the truth only so far as it goes, while omitting critical qualifying information."<sup>[5]</sup> The Supreme Court held that while the latter could be actionable, the former could not.<sup>[6]</sup>

Although *Macquarie* addressed only Rule 10b-5(b), its reasoning could apply to Section 17(a)(2), which contains a similar provision regarding omissions.

### **The SEC's Focus on Individual Liability**

Under Chairman Paul Atkins, the SEC is expected to prioritize holding individuals accountable for disclosure violations rather than imposing large corporate fines. Atkins has long held the view that corporate fines penalize shareholders who were already harmed by corporate executives' deception and the subsequent stock price declines when the fraud

became public.[7]

In a 2008 Fordham Journal of Corporate and Financial Law article, Atkins also expressed concern about "an inherent conflict of interest" between management and shareholders with respect to settlement of SEC enforcement actions, since management might be willing to offer a large corporate penalty to evade personal liability.[8] In addition, he wrote that he is skeptical of the "effectiveness of a corporate penalty as a means for deterrence." [9]

The SEC's shift toward individual liability is already reflected in its enforcement data. Since Atkins began his tenure in April of last year, the SEC has announced only five enforcement actions against public companies, a significant decrease from previous years. In contrast, the SEC initiated over 50 public company enforcement actions in the four months leading up to former Chair Gary Gensler's departure.[10]

The Spero case exemplifies the SEC's reluctance to charge public companies when the violations involve negligent misconduct. Under the previous SEC administration, a similar disclosure-related action involving omissions of FDA feedback resulted in charges in December 2024 against both the public company — Kiromic Biopharma Inc. — and the culpable individuals, even when the SEC decided not to impose penalties on the company.[11]

On the other hand, when disclosure violations involve affirmative misstatements and hallmarks of fraud — as seen in the Lottery.com and ADM cases — the SEC continues to pursue charges against public companies. However, the distinction between an omission that qualifies as a half-truth and an affirmative misstatement is not always clear-cut, and companies should not assume that the SEC will refrain from charging corporate defendants in all cases involving omissions, particularly when there are other indicia of fraud.

Public companies and their executives should continue to ensure that their disclosures present an accurate and complete picture for investors.

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*Tejal Shah is a partner at Cooley LLP. She previously served as associate director in the Division of Enforcement at the SEC's New York office.*

*Bingxin Wu is a resource attorney at Cooley.*

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[1] In the Matter of Ankit Mahadevia and Satyavrat Shukla, Securities Act Release No. 11400 (Jan. 16, 2026), available at <https://www.sec.gov/files/litigation/admin/2026/33-11400.pdf>.

[2] SEC v. Lottery.com, No. 1:26-cv-00603 (S.D.N.Y. Jan. 22, 2026), available at <https://www.sec.gov/files/litigation/complaints/2026/comp26464.pdf>; In the Matter of Archer-Daniels-Midland Company, Vince Macciocchi, and Ray Young, Securities Act Release No. 11403, Exchange Act Release No. 104697, Accounting and Auditing Enforcement Release No. 4582 (Jan. 27, 2026), available at <https://www.sec.gov/files/litigation/admin/2026/33-11403.pdf>.

[3] In re: Spero Therapeutics, Inc., Sec. Litig., 2024 WL 4593422 (E.D.N.Y. Oct. 28, 2024).

[4] 601 U.S. 257 (2024).

[5] Id. at 263.

[6] Id.

[7] Paul S. Atkins & Bradley J. Bondi, Evaluating the Mission: A Critical Review of the History and Evolution of the SEC Enforcement Program, 13 Fordham J. Corp. & Fin. L. 367, 400 (2008), available at <https://ir.lawnet.fordham.edu/jcfl/vol13/iss3/1/>.

[8] Id. at 401.

[9] Id.

[10] See Cornerstone Research, SEC Enforcement Activity: Public Companies and Subsidiaries – Fiscal Year 2025 Update, available at <https://www.cornerstone.com/insights/press-releases/sec-enforcement-actions-fy-2025/>.

[11] See In the Matter of Kiromic Biopharma, Inc., Securities Act Release No. 11332, Exchange Act Release No. 101797 (Dec. 3, 2024), available at <https://www.sec.gov/newsroom/press-releases/2024-189>.