



## The Duties to Correct and Update: A Web of Conflicting Case Law and Principles

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In certain circumstances, the company would be required to disclose the new information promptly under its normal disclosure duties, such as when the company is trading its own securities, the development triggers an 8-K requirement or the company has selectively disclosed the information to a securities market participant. If none of these specific affirmative disclosure duties apply, courts have developed the concepts of a “duty to correct” and a “duty to update” to address whether a company is required to revise prior disclosure that may no longer be accurate in advance of the next periodic report. Unfortunately, the duty to correct and the duty to update are often confused, but it is important to understand the distinction between these duties because they carry different obligations and liability risks and involve somewhat different legal considerations: a duty to correct may apply if the disclosure was materially false at the time it was made, and a duty to update may be triggered if the disclosure became materially false as a result of new developments.

Courts are generally more receptive to the concept of a duty to correct statements based on false historical information, except when the original statement is vague or the newly discovered contrary information is unreliable. With the major exception of the 7<sup>th</sup> Circuit, which has not recognized any duty to update, many courts also address the principle of a duty to update if a statement remains “alive” in the minds of reasonable investors and concerns a fundamental change to the company. Although courts discuss these doctrines in concept, they usually have been hesitant to find companies liable for failure to correct or update in the specific circumstances of cases before them. Furthermore, the academic literature has questioned the analytical basis for both duties in the absence of other legal duties to disclose. Nevertheless, investors continue to bring claims (and the SEC can initiate

investigations) based on these duties, and companies should be mindful of circumstances in which either duty might arise.

This article briefly addresses the broader disclosure duties that may require companies to publicly release new information, but focuses on court decisions addressing the more specific duties to correct and update that courts have considered when other disclosure duties are inapplicable. Section I of this article discusses legal defenses for forward-looking statements under current securities laws, which may preclude certain claims based on the duty to correct or duty to update. Section II addresses general disclosure requirements, with a focus on requirements to disclose new developments. Section III explores the duty to correct and key considerations to determine whether a correction is required. Section IV discusses the duty to update, to the extent it exists, and factors that weigh for and against imposition of this duty. Finally, Section V concludes with a discussion of practical implications for issuers and securities law practitioners.

To read the full article, please click [here](#).

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