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FIVE YEARS AFTER #METOO GOES MAINSTREAM

In the past five years the authors have seen investors continue to demand corporate accountability for sexual harassment. They discuss the cases making up this trend. They then turn to the Biden Agenda for Women and the SEC, which, they find, has made board diversity one of its top priorities. They close anticipating that securities litigation will remain a strong and effective tool in enabling investors to compel companies to meaningfully address sexual harassment and other forms of workplace misconduct.

By Rebecca Boon and Brittney Balser *

After Congress expanded the scope of the U.S. Foreign Corrupt Practices Act (the “FCPA”) in 1998, the U.S. Department of Justice (the “DOJ”) and the U.S. Securities and Exchange Commission (the “SEC”) actively began using the FCPA to combat overseas bribery. In recent years, a number of other nations have improved or expanded their own anti-corruption efforts (e.g., Argentina, Brazil, France, Mexico, South Korea, and Vietnam). Many countries now are working with the United States and independently to investigate and prosecute bribery and corruption, which presents a number of challenges to multinational companies trying to ensure compliance with the FCPA and other applicable anti-corruption laws.

Five years ago, the MeToo movement founded by Tarana Burke went mainstream when Alyssa Milano asked people to tweet #MeToo if they had been sexually harassed or assaulted. By October 2017, #MeToo had reached 85 countries with 1.7 million tweets.¹ As millions of people came forward across industries with

their personal accounts of misconduct, investors were listening.

Over the past half-decade, we have seen investors continue to demand corporate accountability for sexual harassment and other workplace misconduct. We have also seen boards of directors, for the first time, acknowledge that sexual harassment harms companies and that addressing sexual harassment culture is required as part of the fiduciary duties that boards owe to their shareholders. Investors have created and employed new methods to achieve meaningful corporate governance reforms through shareholder derivative lawsuits, direct securities fraud class actions, and proxy proposals from activist investors. Going forward, we expect this momentum to continue as shareholders demand progress and U.S. regulators, like the Securities and Exchange Commission, begin to meaningfully tackle ESG issues for the first time.

In the first successful case of its kind, investors brought a derivative lawsuit against the board of directors of Twenty-First Century Fox in the Delaware Court of Chancery to address allegations of sexual harassment perpetrated by Fox News’ long-time CEO,

¹ <https://www.cbsnews.com/news/metoo-reaches-85-countries-with-1-7-million-tweets/>.

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