

## Chapter 10

# Securities Litigation and the Energy Sector

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**§ 10.01. Introduction.**

Throughout the past 10 years securities litigation has made front-page news in the energy sector with high-profile accounting scandals at Enron, the Sarbanes-Oxley Act of 2002 (SOX),<sup>1</sup> allegedly risky option trading at SemGroup, the Deepwater Horizon explosion and oil spill in the Gulf of Mexico involving B.P., the Upper Big Branch Mine collapse that killed 29 Massey Energy employees, and alleged misconduct from CEOs at Dynegy and Chesapeake. As these cases indicate, public energy companies are prime targets for securities litigation — and related regulatory enforcement activity, congressional reforms, and rulemaking by the Securities and Exchange Commission (SEC).

A recent study by accounting firm PricewaterhouseCoopers offers up-to-date statistics on securities litigation filings.<sup>2</sup> Federal securities class action filings have increased over the past three years, including in the energy sector.<sup>3</sup> In fact, the energy sector accounted for 11 percent of all filings, an increase over previous years where this sector only claimed about four percent of all cases.<sup>4</sup> In addition to securities litigation filings, the SEC increased enforcement actions in 2011 by eight percent from 2010.<sup>5</sup> These may increase even more due to the SEC's expanded enforcement capabilities from the whistleblower provisions of the Dodd-Frank Wall Street Reform and Consumer Protections Act (Dodd Frank) that became effective on August 12, 2011.<sup>6</sup>

In light of this, public companies — including those in the energy sector — must understand the risks associated with securities litigation. This chapter provides a primer on the various types of securities litigation that may be brought against a public company. Next, it looks at trends in the energy sector, including issues regarding reserves estimate disclosures,

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<sup>1</sup> Pub. L. No. 107-204, 116 Stat. 745 (2002).

<sup>2</sup> PricewaterhouseCoopers 2011 Securities Litigation Study, available at [http://10b5.pwc.com/PDF/2011\\_SECURITIES\\_LITIGATION\\_STUDY\\_14\\_INTERACTIVE.PDF](http://10b5.pwc.com/PDF/2011_SECURITIES_LITIGATION_STUDY_14_INTERACTIVE.PDF).

<sup>3</sup> *Id.* at 3.

<sup>4</sup> *Id.* at 13.

<sup>5</sup> *Id.* at 4.

<sup>6</sup> Pub. L. No. 111-203, 124 Stat. 1376 (2010).