

Section 12(a)(1)⁹ of the 1933 Act “imposes strict liability for violating” the

omissions.”¹⁷

Appellee bought shares of common stock of each company, either in the initial public offering or a short time later. On December 29, 2017, he filed a putative class-action complaint in the Court of Chancery against the individuals who had served as the

II. Standard of Review

2. The FFPs Fall Within the Broad, Enabling Text of Section 102(b)(1)

States Supreme Court unanimously held that federal and state courts have concurrent jurisdiction over class actions based on claims brought under the 1933 Act, and that such

The 2015 amendments were intended, in part, to codify

simply clarifies that *for certain claims*, Delaware courts may be the only forum, but they cannot be excluded as a forum. Section 102(b)(1)'s general and broad provisions govern

explain why the General Assembly, having explicitly prohibited certain provisions, did not do so as to others—*i.e.*, forum-selection provisions governing claims that are not internal corporate claims—if that is what it intended to do. Had the General Assembly intended for Section 115 to circumscribe the scope of Section 102(b)(1), it would have amended that subsection in the 2015 amendments (the as the well.tion (the P45(i29(protver(the fee[()] TJETQ.00000

the synopsis's clarification that provisions allowing "Delaware plus another" jurisdiction should be written directly in the statute's text. Without that direct permission, the *expressio unius* doctrine

ATP amended its bylaws in 2006 to include a fee-shifting provision. The provision applied to any claim

laws.

suggests, *Boilermakers* did not establish the outer limit of what is permissible under either Section 109(b) or Section 102(b)(1). Second,

102(b)(1) to be aligned perfectly with the boundaries of the internal affairs doctrine, it could do so. But until then, it is the obligation of our courts to construe the plain language of the statute.¹⁰⁰

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stockholders to a third party and do not themselves implicate the internal affairs of the

In *McDermott v. Lewis*,¹¹³ this Court agreed with the scope of internal affairs

activities concerning the relationships *inte*

Based upon our reasoning above, the universe of matters encompassed by Section

“first principles,”

The Court of Chancery did not cite *Rodriguez*. It

Delaware state court to settle federal claims as part of a state court settlement (resulting in the *extinguishment* of the federal claims), then it follows that a provision in a Delaware corporation's charter requiring stockholders of the corporation to litigate federal claims in federal court is not violative of federal policy.

2. *FFPs and Inter-State Policy*

Perhaps the most difficult aspect of this dispute is not with the facial validity of FFPs, but rather, with the "down the road" question of

would support the enforcement of FFPs.¹⁵⁵ As this Court noted in *McDermott*¹⁵⁶ and *VantagePoint*,¹⁵⁷ the internal affairs doctrine raises important Constitutional concerns—namely, under the Fourteenth Amendment Due Process Clause, the Full Faith and Credit Clause, and the Commerce Clause. Due Process concerns address the off

Further, a well-developed body of law, includin

