

SEC Charges the Cheesecake Factory in First Enforcement Action for Misleading COVID-19 Disclosures

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On December 4, 2020, the Securities and Exchange Commission announced that it had settled charges against The Cheesecake Factory for making material misstatements concerning the impact of COVID-19 on its business operations and financial condition. The settlement resolved charges pursuant Section 13(a) of the Securities Exchange Act of 1934 and Rules 13a-11 and 12b-20 thereunder concerning statements that The Cheesecake Factory had made in press releases attached to Current Reports on Form 8-K dated March 23 and April 3, 2020. Of particular concern to the SEC were statements by The Cheesecake Factory that its restaurants were “operating sustainably” despite internal documents painting a much different picture and showing actual losses of approximately \$6mm per week. This settlement constitutes the first action charging a public company for misleading statements regarding the impact of COVID-19 on business operations and may presage a number of enforcement actions based on COVID-19-related disclosures.