Sez. I – *Osservatorio sulla giurisprudenza straniera*

Supreme Court of the United States, 12 aprile 2024 – Macquarie Infrastructure Corp. (Ricorrente) et al. v. Moab Partners L.P., et al. (Convenuto) – Certiorari to the United States Court of Appeal for the Second Circuit (No. 22-1165).

Section 10(b) and *Section* 13(a) of the *Securities Exchange Act of 1934* (15 *U.S.C.* § 78j(b); 15 *U.S.C.* §§ 78m(a)(1), 78l(b)(1)); *Securities Exchange Commission (SEC) Rule* 10b-5(b) (17 *CFR* § 240.10b-5)*; Item* 303 of *SEC Regulation S-K* (17 *CFR* § 229.303(b)(2)(ii)).

La seconda *prohibition* della *SEC Rule 10b-5(b)* – che vieta di omettere la *disclosure* di un fatto materiale necessario affinché le comunicazioni precedentemente effettuate dalla società emittente, alla luce delle circostanze in cui sono state rilasciate, non risultino ingannevoli – sanziona soltanto le mezze verità (*half-truths*), ossia le dichiarazioni che esprimono il vero solo fino a un certo punto, omettendo informazioni essenziali e determinanti ("*representations that state the truth only so far as it goes, while omitting critical qualifying information*"), ma non anche le mere omissioni (*pure omissions*), ricorrenti quando il dichiarante tace, in circostanze che non attribuiscono alcun particolare significato a tale silenzio ("*when a speaker says nothing, in circumstances that do not give any particular meaning to that silence*"). Deve dunque escludersi la responsabilità dell'emittente per la mera omissione di informazioni richieste dall'*Item 303* della *SEC Regulation S-K*.

OPINION OF THE COURT

(Omissis)

Securities and Exchange Commission (SEC) Rule 10b–5(b) makes it unlawful to omit material facts in connection with buying or selling securities when that omission renders "statements made" misleading. Separately, Item 303 of SEC Regulation S–K requires companies to disclose certain information in periodic filings with the SEC. The question in this case is whether the failure to disclose information required by Item 303 can support a private action under Rule 10b–5(b), even if the failure does not render any "statements made" misleading. The Court holds that it cannot. Pure omissions are not actionable under Rule 10b–5(b).

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Section 10(b) of the Securities Exchange Act of 1934 makes it "unlawful for any person … [t]o use or employ, in connection with the purchase or sale of any security … [,] any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the [SEC] may prescribe." 48 Stat. 891, 15 U. S. C. §78j(b). Rule 10b–5 implements this prohibition and makes it unlawful for issuers of registered securities to "make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading." 17 CFR §240.10b–5(b) (2022). This Court "has found a right of action implied in

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