

The First Real Test: What *Saniger* Means for AI-Disclosure Fraud

The Securities and Exchange Commission has been bringing fraud cases against tech companies for lying to investors about their core technology for years. The sequence is well established: materially misrepresent what your product does, raise capital on the back of those claims, and face the consequences when the truth emerges. The SEC has applied that framework across industries and technology types alike, treating false statements about a company's core technology as securities fraud regardless of how novel the technology may be.

Now, given AI's explosive growth and its allure in the capital markets, the SEC has its eyes on the sector. But the Commission is not writing new law. It is applying familiar theories to a new class of companies. This update surveys the SEC's recent AI-disclosure enforcement actions in the context of that longer pattern, and draws out the practical implications for companies that build or market AI-related products.

I. The Enforcement Pattern

The Commission's technology-fraud cases span across a variety of industries and stretch back well before the current interest in artificial intelligence. Perhaps most famously, in 2018 the SEC took action against the blood-testing company, Theranos, and its founder, Elizabeth Holmes. In *SEC v. Holmes*, the Commission alleged that Theranos raised more than \$700 million on the representation that its proprietary analyzer could run a broad array of diagnostic tests from a few drops of blood, when in truth the device performed only a limited number of tests and most samples were processed on modified, commercially available machines. Holmes and the company settled without admitting or denying the findings, with Holmes agreeing to a \$500,000 penalty, a ten-year officer-and-director bar, the return of 18.9 million shares, and the surrender of her voting control.¹

¹ Press Release, SEC, Theranos, CEO Holmes, and Former President Balwani Charged With Massive Fraud, No. 2018-41 (Mar. 14, 2018), available at <https://www.sec.gov/newsroom/press-releases/2018-41>; Complaint, *SEC v. Holmes*, No. 18-cv-01602 (N.D. Cal. Mar. 14, 2018), available at <https://www.sec.gov/files/litigation/complaints/2018/comp-pr2018-41-theranos-holmes.pdf>.

Three years later, the Commission turned to the electric- and hydrogen-fuel-cell vehicle maker Nikola Corporation. In a settled order, the SEC alleged that, before Nikola had produced a single commercial product, the company's founder, Trevor Milton, gave investors the false impression that Nikola had reached key technological and production milestones. According to the SEC, Milton misled investors in tweets, media appearances, and even one promotional video depicting a prototype seemingly driving down a road when it was, in fact, rolling down an incline using gravity. Nikola resolved the matter for a \$125 million penalty on a neither-admit-nor-deny basis, and the SEC pursued the founder separately in *SEC v. Milton*.²

Later, in *SEC v. Perryman*, the Commission charged the former chief executive of medical-device startup Stimwave with defrauding investors of roughly \$41 million by misrepresenting the company's nerve-stimulation device. According to the complaint, one of the device's implanted components was a non-functioning piece of plastic. The executive falsely told investors the device had been approved by the FDA. Related conduct was also the subject of a parallel criminal prosecution by the U.S. Attorney's Office for the Southern District of New York.³

Though these cases span different industries and technologies, they follow a familiar pattern: in each, the company claimed its technology could do something it either could not do at all, or could only do through means it was not disclosing—manual processes or third-party equipment. The SEC treated those disclosure failures as securities fraud, regardless of the technology involved.

II. Application To Artificial Intelligence

Against that backdrop, the SEC's AI-related cases are best understood not as a new body of law but as the same principles applied to a new, fast-growing sector. The SEC's actions to date have ranged from settled civil proceedings against companies to parallel civil and criminal charges against individual corporate officers.

The earliest arrived in March 2024, when the Commission settled proceedings premised on an AI-washing theory⁴ against two investment advisers, Delphia (USA) Inc. and Global Predictions, Inc. Both firms were alleged to have marketed AI-driven investment capabilities they did not possess. According to the SEC's orders,⁵ Delphia claimed to use machine learning and artificial intelligence to "predict which companies and trends are about to make it big," and Global Predictions billed itself as the "first regulated AI financial advisor" offering "[e]xpert AI-driven forecasts." The SEC found those statements false and misleading and that neither entity implemented appropriate compliance procedures to

² Press Release, SEC, Nikola Corporation to Pay \$125 Million to Resolve Fraud Charges, No. 2021-267 (Dec. 21, 2021), available at <https://www.sec.gov/newsroom/press-releases/2021-267>; In re Nikola Corp., Securities Act Release No. 11018, Admin. Proc. File No. 3-20687 (Dec. 21, 2021), available at <https://www.sec.gov/files/litigation/admin/2021/33-11018.pdf>; Complaint, *SEC v. Milton*, No. 21-cv-06445 (S.D.N.Y. July 29, 2021), available at <https://www.sec.gov/files/litigation/complaints/2021/comp-pr2021-141.pdf>. Milton was also indicted for the same conduct in the Southern District of New York, but he received a full and unconditionapresidential pardon in March 2025. Executive Grant of Clemency to Trevor Milton (Mar. 27, 2025), available at <https://www.justice.gov/pardon/media/1395001/dl>.

³ Press Release, SEC, SEC Charges Former CEO of Medical Device Startup Stimwave with \$41 Million Fraud, No. 2023-255 (Dec. 19, 2023), available at <https://www.sec.gov/newsroom/press-releases/2023-255>; Complaint, *SEC v. Perryman*, No. 23-cv-10985 (S.D.N.Y. Dec. 19, 2023), available at <https://www.sec.gov/files/litigation/complaints/2023/comp-pr2023-255.pdf>; Indictment, *United States v. Perryman*, No. 23-cr-00117 (S.D.N.Y. Mar. 9, 2023), available at https://www.justice.gov/d9/press-releases/attachments/2023/03/09/u.s._v._perryman_indictment_0_0.pdf.

⁴ The term "AI washing" derives from "greenwashing," which describes false or exaggerated claims about the environmental benefits of a company's products or practices.

⁵ In re Delphia (USA) Inc., Investment Advisers Act Release No. 6573, Admin. Proc. File No. 3-21894 (Mar. 18, 2024), available at <https://www.sec.gov/files/litigation/admin/2024/ia-6573.pdf>; In re Global Predictions, Inc., Investment Advisers Act Release No. 6574, Admin. Proc. File No. 3-21895 (Mar. 18, 2024), available at <https://www.sec.gov/files/litigation/admin/2024/ia-6574.pdf>.

safeguard against those types of misstatements, charging both under the Investment Advisers Act. Without admitting or denying the findings, the firms were censured, agreed to cease and desist, and paid civil penalties of \$225,000 and \$175,000, respectively. Announcing the settlements, then-Chair Gary Gensler warned that advisers “should not mislead the public by saying they are using an AI model when they are not,” because “[s]uch AI washing hurts investors.”⁶

The government has also pursued parallel criminal actions against a corporate officer for alleged misstatements concerning AI-related products. In *SEC v. Roberts*, the Commission alleged that the former chairman and CEO of advertising-technology firm Kubient fabricated results for its flagship product. That product, KAI, was marketed as artificial-intelligence software that detected when advertisement views occurred, not by humans, but by software programs designed to artificially inflate views, and therefore the advertising price. According to the SEC, Kubient’s IPO Offering Materials stated that KAI “was able to successfully ingest hundreds of millions of rows of data in real-time” which prevented “approximately 300% more digital ad fraud than” competing products despite there being “no actual data” analyzed by the company. The U.S. Attorney’s Office for the Southern District of New York separately charged the former CEO, who pleaded guilty and was sentenced to one year and one day in prison.⁷

Perhaps the most aggressive government enforcement of AI-washing theory specifically came in April 2025, when the SEC charged Albert Saniger, the founder and former chief executive officer of the e-commerce startup Nate, Inc., in a fraud action filed in the Southern District of New York,⁸ and the U.S. Attorney’s Office for the same district indicted Saniger in a parallel criminal action.⁹ According to the complaint and the indictment, Saniger raised more than \$40 million by representing that Nate’s mobile shopping app used proprietary AI to complete online purchases autonomously, “without human intervention.” Saniger allegedly contrasted competitors’ “dumb bots” with Nate’s purported intelligence, assuring one investor that “[N]ate is an intelligent machine,” “not a bot, or a combo of bots,” and claiming a “success” rate of 93% to 97%. In reality, the government alleges, Nate’s automation rate was “effectively zero”: orders were placed manually by contractors in a Philippines call center, later supported by a center in Romania. Saniger allegedly concealed the manual operation—restricting access to an automation dashboard and prioritizing investors’ orders so they would appear seamless—and when human operation alone proved insufficient, directed his team to build the type of bots he had previously disclaimed. Even after a June 2022 news article questioned Nate’s use of AI, Saniger purportedly represented that Nate “only relied on ‘humans-in-the-loop’ for payments risk, data labeling, reinforcement learning training, and purchase completion for certain ‘edge cases.’” A year later, Nate, Inc. collapsed. The criminal indictment charges Saniger with one count of securities fraud and one count of wire fraud; the SEC’s civil complaint charges him with violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5, seeking an injunction barring further violations, an officer-and-director bar, disgorgement, and civil

⁶ Press Release, SEC, SEC Charges Two Investment Advisers with Making False and Misleading Statements About Their Use of Artificial Intelligence, No. 2024-36 (Mar. 18, 2024), available at <https://www.sec.gov/newsroom/press-releases/2024-36>.

⁷ Press Release, SEC, SEC Charges Former Chairman and CEO of Tech Co. Kubient With Fraud and Lying to Auditors, No. 2024-131 (Sept. 16, 2024), available at <https://www.sec.gov/newsroom/press-releases/2024-131>; Complaint, *SEC v. Roberts*, No. 24-cv-06990 (S.D.N.Y. Sept. 16, 2024), available at <https://www.sec.gov/files/litigation/complaints/2024/comp-pr2024-131a.pdf>; Information, *United States v. Roberts* (S.D.N.Y. Sept. 16, 2024), available at <https://www.justice.gov/usao-sdny/media/1368126/dl>; Press Release, U.S. Att’y’s Off., S.D.N.Y., Former CEO Of Kubient, Inc. Sentenced To Prison In Connection With Accounting Fraud Scheme (Mar. 20, 2025), available at <https://www.justice.gov/usao-sdny/pr/former-ceo-kubient-inc-sentenced-prison-connection-accounting-fraud-scheme>; see also Indictment, *United States v. Chidambaran*, No. 26-cr-97 (E.D.N.Y. Apr. 15, 2026), available at <https://www.justice.gov/usao-edny/media/1436506/dl?inline> (criminal indictment alleging corporate officers made materially misleading statements regarding finances of technology company claiming to provide AI-driven business automation solutions).

⁸ Complaint, *SEC v. Saniger*, No. 25-cv-02937 (S.D.N.Y. Apr. 9, 2025), available at <https://www.sec.gov/files/litigation/complaints/2025/comp26282.pdf>; SEC Litig. Rel. No. 26282 (Apr. 11, 2025), available at <https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26282>.

⁹ Indictment, *United States v. Saniger*, No. 25-cr-00157 (S.D.N.Y. Apr. 9, 2025), available at <https://www.justice.gov/usao-sdny/media/1396131/dl?inline>; see also Press Release, U.S. Att’y’s Office for the S.D.N.Y., Tech CEO Charged In Artificial Intelligence Investment Fraud Scheme, No. 25-082 (Apr. 9, 2025), available at <https://www.justice.gov/usao-sdny/pr/tech-ceo-charged-artificial-intelligence-investment-fraud-scheme>.

penalties.

The Saniger case is worth watching closely. It is the first AI-disclosure matter proceeding toward trial rather than settling, which means it will be the first to test these theories in adversarial litigation. Because prior cases have been resolved on a neither-admit-nor-deny basis, the outer limits of AI-washing liability are left ill-defined. If Saniger goes to verdict, the result will either validate the enforcement approach or expose its limits—and in either case, it will give companies and practitioners their first real look at how these cases are argued and decided.

III. Implications for AI Companies

For companies that build or market AI, the through-line of this enforcement history is more instructive than any single case. Across every matter discussed here—from Theranos to Nate—the underlying conduct follows the same pattern: the company claimed its technology could do something autonomously, at scale, or with a degree of sophistication it either did not possess or was achieving through undisclosed means. The gap between the claimed capability and the reality is what drew enforcement. AI companies are squarely within that pattern, and the SEC’s prior leadership made the point plainly, describing one AI case as “old school fraud using new school buzzwords.”¹⁰ On this front, the current Commission’s view is little changed. The SEC’s current Director of the Division of Enforcement has described his philosophy as a “back to basics” approach, centered on offering, accounting, and disclosure fraud—the same theories implicated when a company misstates material facts about its products or technology.¹¹ Companies should expect this enforcement pattern to continue, with the Commission treating AI-washing cases consistent with any other material misstatement.¹²

The practical lessons are familiar. Companies should ensure that any public statements about their use of AI are accurate and supported by a reasonable basis before they raise capital, report to the markets, or market their services, and should take particular care with concrete, verifiable metrics. They should maintain policies and procedures reasonably designed to ensure the accuracy of those statements, recognizing that the SEC has faulted not only the claims themselves but the absence of adequate controls.

And they should appreciate that exposure is not limited to the entity: founders, executives, and gatekeepers have been named in these matters, in civil and criminal proceedings alike. The potential costs for individuals—monetary penalties, disgorgement, officer-and-director bars, and in some cases imprisonment—are substantial.¹³

¹⁰ Press Release, SEC, SEC Charges Founder of AI Hiring Startup Joonko With Fraud, No. 2024-70 (June 11, 2024), available at <https://www.sec.gov/newsroom/press-releases/2024-70>.

¹¹ David Woodcock, Dir., Div. of Enf’t, SEC, Remarks at the MFA Legal & Compliance 2026 Conference (May 13, 2026), <https://www.sec.gov/newsroom/speeches-statements/woodcock-remarks-mfa-legal-compliance-2026-conference-051326>.

¹² The Commission’s retooling of its specialized units—replacing its crypto-and-cyber unit with a Cyber and Emerging Technologies Unit whose remit expressly includes fraud involving artificial intelligence—further signals institutional attention to the AI space, even if the broader program scales back on overall enforcement. Press Release, SEC, SEC Announces Cyber and Emerging Technologies Unit to Protect Retail Investors, No. 2025-42 (Feb. 20, 2025), available at <https://www.sec.gov/newsroom/press-releases/2025-42>.

¹³ More broadly, SEC enforcement is not the only consequence of inaccurate AI disclosures: the same representations that draw regulatory scrutiny increasingly give rise to private securities class actions. Such private AI-related securities class actions have proliferated, with fifteen such actions in 2024 and sixteen in 2025—both more than double the seven filed in 2023. Cornerstone Research, Securities Class Action Filings: 2025

Quinn Emanuel has extensive experience in securities enforcement, governmental investigations, counseling clients on public disclosure, and litigation. It stands ready to assist with inquiries regarding these developments.¹⁴

If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to reach out to:



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Year in Review at 5 (2026), available at <https://www.cornerstone.com/wp-content/uploads/2026/01/Securities-Class-Action-Filings-2025-Year-in-Review.pdf>.

¹⁴ Both cases remain in their early stages. In his criminal case, Saniger—a dual citizen of Spain and the United States—voluntarily waived extradition, pleaded not guilty, and was released on a \$250,000 bond. Pretrial motions are due in September 2026 and a status conference is set for November 5, 2026. The SEC's civil case advanced more slowly because Saniger had to be served in Spain under the Hague Convention. With service now effected, the district court has scheduled an initial conference for June 26, 2026.

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