

Duane Pozza Discusses FTC's Focus on Rulemaking After Supreme Court's *AMG* Decision

Law360

June 2, 2021

Duane C. Pozza, co-chair of Wiley's Federal Trade Commission (FTC) Regulation Practice and partner in the Privacy, Cyber & Data Governance Practice, was quoted in a May 28 *Law360* article about new approaches the FTC will likely take for seeking remedies and crafting privacy and data security rules.

As noted in the article, the FTC lost a key enforcement tool in April when the U.S. Supreme Court ruled, in *AMG Capital Management, LLC v. FTC*, that the Commission does not have the authority to seek equitable monetary relief when it files cases in federal court under Section 13(b) of the FTC Act. FTC Acting Chair Rebecca Slaughter also recently announced the creation of a new rulemaking group within the Commission's Office of the General Counsel that will address unfair and deceptive practices as well as unfair methods of competition.

"The fact that there's now a dedicated rulemaking group is a big change for the agency and really suggests that Acting Chair Slaughter is pretty serious about moving forward with rulemaking, barring the enactment of federal privacy legislation," said Mr. Pozza, who previously served as Assistant Director in the Division of Financial Practices at the FTC's Bureau of Consumer Protection.

Mr. Pozza said that rarely used rulemaking authority could help offset the impact of the *AMG Capital* ruling by allowing the FTC to establish new rules that it could enforce by bringing actions in federal court to recover civil penalties.

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Practice Areas

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For companies falling under the FTC's purview, an enhanced focus on rulemaking will likely "require a shift in the way they engage with the FTC to try to be more proactive in dealing with the rulemaking process," Mr. Pozza told *Law360*. And once any rules are in place, they would "add another layer of compliance obligations" for these businesses.

To read the article, click here (*subscription required*).