the **POMERANTZ** MONITOR

VOLUME 14, ISSUE 2 MARCH/APRIL 2017

INSIDE THIS ISSUE

1 Recovery of Reputational Damages in Securities Fraud Cases

3 Class Action "Reform" in the Age of Trump

4 A Bad Choice for Audit Reviews

5 Judge Rakoff Challenges the Securities Bar

6 April in Paris

6 Pomerantz Announces Roundtable Event

6 Notable Dates

7 PomTrack© Update

The Pomerantz Monitor may be considered to be attorney advertising under applicable rules of the State of New York

RECOVERY OF REPUTATIONAL DAMAGES IN SECURITIES FRAUD CASES

By Marc I. Gross

To paraphrase Tolstoy, while all good companies may be alike, all frauds are not. Corporate frauds usually involve lies about financial information, such as historic results or future prospects. The financial impact of these frauds on the company's stock price is foreseeable and easily measured. However, the effects of lies that reflect the lack of management integrity or ineffectiveness of corporate governance controls are arguably less readily measured. These lies often have only a small direct impact on the bottom line; but when the truth is revealed, the effect on the company's stock price can be substantial. Such stock price effects, sometimes referred to as "reputational losses" or "collateral damage," are attributable to the market's reassessment of investor risks, including possible management turnover, or the possibility that problems lie ahead. Nonetheless, the ability to recover the damages in these instances is disputed by some corporations and academics.

A textbook example of reputational losses is what happened at Wells Fargo. At the beginning of September 2016, the bank had surpassed its rivals to become the largest financial institution measured by stock market capitalization, with assets exceeding $100 billion. It had distinguished itself from peers through its "cross-selling" policy, *i.e.*, marketing a menu of products (such as savings accounts and insurances policies) to checking account customers. Wells Fargo touted its cross-selling successes in shareholder reports, which were closely followed by analysts.

However, on September 8, 2016, investors were shocked to learn that the bank had agreed to pay $190 million to regulators to settle claims arising out of abusive cross-selling practices. Senior management's pressure to meet astronomical cross selling "goals" – which was actually a euphemism for quotas – had pushed branch bank officers to engage in abusive and illegal practices in order to meet those quotas. Without informing their customers, much less obtaining their consent, bank officers withdrew funds from customers' checking accounts near the end of the quarter, placed the funds in a new savings account for the customers, and then reversed the transactions at the beginning of the next quarter. Such schemes allowed bank officers to meet their quotas, while customers often found themselves paying overdraft fees when their checks unexpectedly bounced.

Senior Wells Fargo officials were aware of the illegal practices, having fired over 5,000 bank employees over several years for doing this. However, management continued to pressure bankers to meet cross-selling quotas, and awarded multi-million dollar bonuses to the Executive Vice President responsible for implementing the practices, making further illegal acts by many employees inevitable.

Partner, Marc I. Gross

These illegal practices had virtually no effect at all on Wells Fargo's bottom line. They resulted in only $2 million of additional revenues for the bank over a multi-year period, and even the $190 million regulatory settlement was like a drop in the bucket to such a giant company. Most telling, none of the financial data or cross-selling metrics were materially false. Nonetheless, concern about the adverse publicity, potential investigations and management shake-up caused Wells Fargo's share price to tumble 6% within days of the September 8, 2016 disclosure. Declines continued as pressure mounted for the resignation of the bank's CEO, John Stumpf. By the time Stumpf appeared to testify before a Congressional panel, Wells Fargo shares had fallen 16% -- although Wells Fargo's financial condition and prospects had not significantly changed.

Another example of pure reputational losses arose last year with Lending Club, a leader of the newly minted "on-line" lending services. LendingClub focuses on sub-prime customers whose credit ratings are too low to qualify for loans from regular banks. Once the loans were made, Lending Club bundled them and sold them to funders.

On May 9, 2016, Lending Club's CEO, Renaud Laplanche, was forced to resign following findings by an internal investigation that $22 million in loans had been improperly sold to the Jeffries Group (one of its funders), in contravention to Jeffries' express instruction. There were also indications that Laplanche had undisclosed interests in one of the company's potential funders. The size of the improperly sold loans paled in comparison to the billions

Continued on page 2

Continued from page 1

that Lending Club lent over the last several years.

Again, nothing indicated that Lending Club's historic performance had been inflated, nor that its operating model was flawed. However, once these infractions were disclosed, investors immediately drove the stock price down 30%.

Reputational Losses Are the Rule, Not the Exception. They occur whenever financial missteps are disclosed, whether the effects on the bottom line are material or not. Studies have shown that when a company restates prior performance or future prospects, only a portion of the declines in stock price can be explained by the resulting recalibration of likely future cash flows, a primary factor in stock valuation. Significant, if not larger, portions of those declines arise from the market's reassessment of management's reliability or integrity. One study actually concluded that "[f]or each dollar that a firm misleadingly inflates its market value, on average, it loses this dollar when its misconduct is revealed, plus an additional $2.71, due to reputation loss."

> Market perceptions of managerial competence and integrity are a distinct and critical factor in determining the stock price. Disclosure of fraud, as it reflects a lack of corporate integrity, augments any stock price reaction triggered by revising reported results. When the reliability and credibility of statements issued by management is called into question, it increases the perceived information asymmetry between management and stockholders.

The SEC has embraced the view that management integrity is critical to shareholder valuation: "[t]he tone set by top management—the corporate environment or culture within which financial reporting occurs—is the most significant factor contributing to the integrity of the financial reporting process." So too has the Public Company Accounting Oversight Board. Courts have also recognized the impact of management integrity on stock valuations, deciding that investors may base their investment decisions, at least in part, on factors such as management ethics and accountability.

Perhaps because these effects are undeniable and substantial, defendants in securities fraud actions increasingly argue that stock declines caused by revelations of integrity issues are not recoverable. The case for denying such recovery was made forcefully in a law review article by Cornell and Rutten in 2009, entitled *Collateral Damage and Securities Litigation* ("Cornell/Rutten"). The authors defined collateral damage as "the valuation impact of a corrective disclosure that does not correspond to the original inflation." They explained that, if the original misconduct did not materially affect the company's bottom line, it could not have inflated the company's market price at the time of purchase; therefore, "because the original misstatement could not have inflated the stock price in an efficient market, the decline following the corrective disclosure must be due to collateral damage." They concluded that "while collateral damage can have a material impact on securities prices, declines associated with collateral damage are not, and should not be, recoverable under section 10(b) of the Securities Exchange Act of 1934."

Presumably this analysis could apply even when the underlying misconduct did have a material effect on the company's bottom line, but the post-disclosure price drop is viewed as "disproportionate" to the specific financial impact of the fraud. Experts would then be called upon to parse out how much of the post-disclosure price drop was "proportional" and how much represents "collateral damage" caused by the realization that management was incompetent or corrupt.

It is true that, in assessing "loss causation," a fundamental element of any securities fraud claim, courts have started with the precept that the underlying fraud must have inflated the purchase price of the stock, and that revelation of the fraud removed that inflation, injuring investors. Cornell/Rutten's fundamental assumption is that stock price inflation can be caused only by misstatements of financial information, such as revenue or cash flows. They fail to attribute any possible inflation to investors' mistaken assumption of management integrity, and thus the reliability of statements regarding performance and outlook. But perceptions of competence and integrity are as critical as profits and losses in determining and maintaining the market price of a company's stock. That is why, when such perceptions are shaken, the market price drops dramatically.

> Public policy objectives also support recovery of such reputational losses. As noted by the Second Circuit in *Gould v. Winstar Communs, Inc.:*
>
> The argument is one of culpability and foreseeability. When a defendant violates section 10(b) by making a false statement to investors with scienter, the defendant in many cases should be able to foresee that when the falsity is revealed, collateral damage may result. *As between the culpable defendant—who could foresee that investors would suffer the collateral damage—and the innocent investors, it would seem entirely appropriate to require the defendant to be the one to bear that loss.*

Thus, when a company makes affirmative misrepresentations concerning its managerial competence and integrity, there can be no doubt that those statements help inflate the market price of its stock. But it is just as true that, in the absence of any representations on this subject, investors should be entitled to assume that management has the basic integrity necessary to guiding a modern public corporation. Just as it is reasonable to recognize that investors are entitled to presume the "integrity of the market" (untainted by fraud), so too should investors be entitled to presume the "integrity of management" (untainted by a propensity to commit fraud). Recovery of such additional "reputational" damages is consistent with policies intended to curb securities fraud.

CLASS ACTION "REFORM" IN THE AGE OF TRUMP

By J. Alexander Hood II

In February 2017, Rep. Goodlatte (R-Va.), Chairman of the House Judiciary Committee, introduced the Fairness in Class Action Litigation Act (H.R. 985), a bill that, if passed as written, would make it more difficult for plaintiffs to pursue class action litigation. Rep. Goodlatte was an author of the Class Action Fairness Act of 2005, which limited the ability to bring class actions in state courts. With Republicans now controlling both chambers of Congress and the White House, H.R. 985 stands a very real chance of becoming law. While the ultimate impact on securities class actions is unclear, as written the bill presents a near existential threat to the class action in its current form.

In a press release announcing the bill, Rep. Goodlatte made clear his disdain for class action litigation. "The current state of class action litigation has become an expensive business, and one easily gamed by trial lawyers to their own advantages." He went on to describe the bill's goal as "to maximize recoveries by deserving victims, and weed out unmeritorious claims that would otherwise siphon resources away from innocent parties." According to Rep. Goodlatte, H.R. 985 "will keep baseless class action suits away from innocent parties, while still keeping the doors to justice open for parties with real and legitimate claims, and maximizing their recoveries." Touting his experience authoring the Class Action Fairness Act of 2005, Rep. Goodlatte highlighted several provisions of the bill purportedly designed to close attorney-exploited loopholes and advance "fairness" for both "deserving victims" and "innocent parties": preventing class actions filed by attorneys who are relatives of parties in the litigation; requiring that plaintiffs' attorneys may only be paid after class members have been paid; and requiring disclosure to the court of any third-party litigation funding agreements.

Yet key features of H.R. 985 have nothing to do with weeding out frivolous claims or protecting "innocent parties." Rather, the bill, as designed, would make it more difficult to prosecute any claims in class actions. For example, the bill prohibits federal judges from certifying a class unless "each proposed class member suffered the same type and scope of injury as the named class representative or representatives." Limiting the range of injuries to be adjudicated in a single action naturally reduces the number of claims that can be aggregated.

Perhaps of the greatest significance for securities class actions, however, is a subsection titled "Prohibition of Conflicts," which precludes federal judges from certifying a class for which the lead plaintiff is "a present or former client of . . . or has any contractual relationship with" class counsel. This provision would make it significantly more difficult to bring claims, either as a plaintiff or class counsel. In particular, this provision would prevent institutional plaintiffs from selecting the same firm as lead counsel in multiple litigations. The broad language of the bill, which precludes a lead plaintiff from retaining a firm it has "any contractual relationship with" whatsoever, would even prevent an investor from selecting as lead counsel a firm that had previously merely provided portfolio monitoring services to the investor.

As Professor John Coffee, an eminent commentator on securities law, stated in his recent article critiquing this bill, "the standard pattern in securities class actions" is for a "public pension fund [to] act as a lead plaintiff and retains a major plaintiff's law firm that it has used before (presumably because it was satisfied with its prior efforts) …. Because the client may not use a firm that it has ever previously retained (apparently for any purpose), the result is to impose a legal regime of "one night stands" on clients and their counsel. Who benefits from this? The only plausible answer is: defendants!" Professor Coffee also notes that the provision may be unconstitutional because "several Circuits have repeatedly held that the Due Process Clause guarantees not simply the client's right to retain counsel in a civil case, but "the right to choose the lawyer who will provide that representation." Similarly, legal blogger Alison Frankel observed that "[s]ophisticated plaintiffs in complex securities and antitrust litigation need specialized lawyers, just like defendants in the same cases. … Why should a corporation be allowed to have an ongoing relationship with outside counsel but not a pension fund acting as a lead plaintiff?"

Attorney J. Alexander Hood II

Interfering with an institution's choice of counsel has nothing to do with weeding out frivolous claims or protecting the innocent. It is simply intended to discourage any financial institution from acting as a class representative. Notably, existing law (The Private Securities Litigation Reform Act of 1995 (the "PSLRA")) already prohibits any institution from serving as a lead plaintiff in more than five securities class actions over a three year period.

The effect of this provision stands in marked contrast to the stated goal of the PSLRA, which was to encourage institutional investors to assume a greater role in securities class actions. In part, the rationale underlying this goal was that institutional investors, compared to "retail" investors, are sufficiently sophisticated to take an informed and active role in the litigation process, thus ensuring that the interests of the plaintiff remain front and center, while minimizing concerns about attorney-driven litigation. This new bill, for its part, purports to protect plaintiffs from unscrupulous attorneys who would take advantage of them, but actively denies institutional investors the option of working with attorneys with whom they have an existing relationship, practically ensuring that the most sophisticated plaintiffs assume a diminished role in class actions.

H.R. 985 would also provide a host of other procedural obstacles to the prosecutions of class actions, whether or not those actions are meritorious. As Professor Coffee notes, the bill "would also slow the pace of class actions to a crawl. [because it] permits appeals of orders granting or denying class certification as a matter of right. Today, such interlocutory appeals are discretionary with the appellate court (and are infrequently granted). … Second, discovery is halted if defendant makes any of a variety of motions ….

Continued on page 4

Continued from page 3

Predictably, such motions will be made one after another, in seriation fashion, to delay discovery."

At present, the full scope and application of H.R. 985 remains unclear. A recent *Wall Street Journal* article reported that Lisa Rickard, president of the Institute for Legal Reform of the U.S. Chamber of Commerce, a major backer of the bill, has indicated that the bill is not intended "to restrict securities class actions . . . and will likely be clarified as it moves forward through the House and Senate." Nonetheless, as drafted, nothing in H.R. 985 limits the scope of its provisions to exclude securities class actions, and Ms. Rickard has previously characterized securities class actions as "betraying the individual investors [they are] designed to assist." Several amendments proposed by Democrats that would have provided carve-outs for certain types of class actions were voted down in committee.

All of this, of course, presupposes that the legislation ultimately passes both the House and Senate and is signed into law—and even with Republican majorities in both chambers, this is not a foregone conclusion. At the time of this writing, H.R. 985 had narrowly passed through the House by a margin of 220-201, with all Democrats and 15 Republicans voting against it. Legitimate doubts exist as to whether the Senate Judiciary Committee, despite being controlled by Republicans, would let the bill out of committee without some measure of bipartisan support.

A BAD CHOICE FOR AUDITOR REVIEWS

By Joshua B. Silverman

Partner, Joshua B. Silverman

Tucked away in the latest Dodd-Frank reform bill is a provision that threatens to roll back crucial investor protections for nearly a third of public companies. House Financial Services Committee Chair Jeb Hensarling's proposal, called CHOICE 2.0, would exempt all companies with market capitalization below $500 million, and all depository institutions with assets below $1 billion, from auditor review of internal controls. Currently, only the smallest companies – those with market capitalization below $75 million – are exempt from the requirement.

The auditor attestation requirement of Section 404(b) of the Sarbanes-Oxley Act of 2002 serves an important purpose. It helps to identify deficiencies in internal controls over financial reporting, so that companies can fix those deficiencies at an early stage. Expanding the Section 404(b) exemption to $500 million would increase the number of exempt companies approximately eight-fold. The proposed expansion would also exempt some constituents of common market indices like the Russell 2000 and Russell 3000 from auditor review of financial controls.

While all companies that have been public for more than one year are required to have management attest to the sufficiency of internal controls, repeated academic studies show that the auditor review under Section 404(b) is far more effective. The studies demonstrate that companies exempt from auditor attestation have a higher rate of accounting irregularities and restatements than those subject to the Section 404(b) requirement. Moreover, a review by the Government Accounting Office, required under Dodd-Frank, determined that compliance with Section 404(b) has a positive impact on investor confidence in the quality of financial reports. A recent analysis from MarketWatch's Francine McKenna shows that the concern is more than academic. It found that approximately 11.4% of the non-bank companies that received an auditor internal control over financial reporting opinion in 2015 but would be exempted by Hensarling's bill reported ineffective internal controls. 8.6% of the banks that would be exempted had control deficiencies. If CHOICE 2.0 is implemented, investors would not learn of these problems until it was too late.

The measure's proponents incorrectly claim that removing the requirement will increase initial public offerings of small and mid-market companies. This is a red herring. Newly-public companies are not subject to the requirements of Section 404(b). Regardless of market capitalization, no company needs to provide a Section 404(b) auditor attestation at the time it goes public, or even with its first annual report as a public company on SEC Form 10-K. The auditor attestation is only required after a company has already filed a full years' worth of periodic reports as a public company. Moreover, as an SEC study has determined, the cost to comply with Section 404(b) has declined significantly.

Nor does the broader regulatory environment justify stripping this important investor protection. Scores of recent measures such as the JOBS Act and Regulation A+ have already slashed red tape for small and middle market companies seeking to tap public markets. Companies choosing to remain private do so largely because they can easily raise money from private equity firms and lenders, not because current regulatory burdens are excessive.

When a proposal was introduced in 2014 to expand the Section 404(b) exemption to only $250 million, the Center for Audit Quality and the Council for Institutional Investors warned in a joint letter to the House Financial Services Committee that the assurance provided under that statute was "an important driver of confidence in the integrity of financial reporting and in the fairness of our capital markets." The expansion proposed today is twice as large, and would cause an even greater threat to investor confidence and accounting integrity.

JUDGE RAKOFF CHALLENGES THE SECURITIES BAR

By Matthew C. Moehlman

On July 3, 2016, the European Union implemented Market Abuse Regulation ("MAR"), a rulebook that governs, in part, enforcement of insider trading violations. MAR differs sharply from the American approach to insider trading law in that it does not require the government to link the trade to a known breach of fiduciary duty.

In a speech earlier this month to the New York City Bar Association, U.S. District Judge Jed S. Rakoff challenged the securities bar to draft a statute that would provide needed clarity to U.S. courts trying to make sense of the confusing tangle of judge-made insider trading law and pointed to MAR as a potential model.

Judge Rakoff suggested that most of the headaches created by U.S. insider trading law arise from judge-made requirements, such as that trading on inside information can be a crime only if the tippee knew that the tipper breached a fiduciary duty. Not only that, but that breach must involve betraying confidences of an employer, and also receiving some kind of personal benefit in exchange.

Judge Rakoff knows these difficulties well. He gave his speech three months after the Supreme Court ruled in the insider trading case *Salman v. United States*. As we reported in the last issue of the *Monitor, Salman* held that someone who trades on inside information can be found guilty even if the source of the information was a friend or family member of the tippee, and did not receive a financial quid pro quo. *Salman* affirmed a 2015 ruling that Judge Rakoff had authored while sitting by designation on the Ninth Circuit Court of Appeals. In a further twist, Rakoff's Ninth Circuit opinion in *Salman* relied on his reasoning in a 2013 insider trading decision, which the Second Circuit had reversed on appeal in 2014 in *U.S. v. Newman*. In effect, Judge Rakoff single-handedly created the circuit split that led the Supreme Court to validate his overturned district court ruling.

But *Salman* resolved just one of a myriad of issues surrounding insider trading: whether a tip to a friend or relative, without a financial quid pro quo, supports a claim of insider trading. As Rakoff noted in his speech, U.S. insider trading law is a judicial creation based on generalized antifraud provisions of the federal securities laws. There is no statutory definition of what constitutes inside information, or when a tippee violates the law by trading on it. The result has been that decades of often inconsistent judicial decisions have congealed into a common law morass that erodes investor confidence in the U.S. capital markets.

Some of the difficulties of insider trading law are illustrated by the prosecutions brought by Preet Bharara, the former U.S. Attorney for the Southern District of New York. Notably, he secured a conviction in 2011 of Raj Rajaratnam, the founder of hedge fund Galleon Group. But when Bharara decided to take on Steven A. Cohen, the hedge fund billionaire who founded S.A.C. Capital Advisors ("SAC"), he ran into a wall created by the requirement that a tippee, to be liable, has to be aware that the source of the inside information violated a fiduciary duty by disclosing it. Bharara decided not to go after Cohen.

As recounted in a recent *New Yorker* article, Bharara's decision rested in part on the difficulty in making the necessary evidentiary showing. The government's best evidence against Cohen was an email from one of his traders that conveyed inside information. To win, the government had to convince a jury that Cohen not only read the email—one of a thousand or so he received every day—but also that he read to the end of the email chain and realized that the trader's source had breached a fiduciary duty. Even Bharara, not known for timidity, blinked when faced with an opponent with billions to spend on his defense and a burden of proof that becomes more difficult to carry the more remote the tipper is from the tippee. Instead, Bharara settled for convictions of two of Cohen's top traders and a $1.8 billion penalty paid by Cohen's company, SAC. Cohen skated. After shuttering SAC, he set up shop under a new company, and went on trading as if nothing had happened.

Attorney Matthew C. Moehlman

Just as telling, even the narrow ruling in *Salman*, which criminalizes trading on uncompensated tips from friends and relatives, is subject to nitpicking. One of the former SAC traders that Bharaha managed to convict, Mathew Martoma, has appealed his conviction to the Second Circuit on the grounds that the friendship by which the information was passed to him was not a "meaningfully close" friendship.

By contrast, under MAR, the EU treats insider trading as a threat to the proper functioning of the capital markets, in that it impedes transparency. Article 7 of MAR defines "inside information" as non-public information which, if revealed, would significantly affect the price of a security. Regarding tippee liability, Article 8 says that it is "insider dealing" where a tippee uses the tip and "knows or ought to know" that the tip is "based upon inside information." This approach eliminates the fiduciary duty element of U.S. law, which Judge Rakoff has characterized as a "pretty complicated formulation." Moreover, in cases against top executives like Steven Cohen, who are often several degrees of separation distant from the source of the tip, it increases the prosecutor's ability to discern whether the law has been violated. While MAR is a new and relatively untested template, it has the potential to create a clear set of guidelines for traders, regulators, prosecutors and courts to follow, and a regime that the market can trust.

Pomerantz is familiar with the proof issues in SAC, having recently settled a civil suit for insider trading against Cohen and SAC for $135 million, on claims not pursued by the government.

POMERANTZ ANNOUNCES NEXT ROUNDTABLE EVENT

On July 11th and 12th, Pomerantz will host its third annual Roundtable Event in the Bahamas. The *Monitor* recently spoke with Jennifer Pafiti, Partner, and the firm's Head of Investor Relations, to give our readers the scoop on what this year's attendees can expect to gain fromparticipation.

This is the third roundtable event Pomerantz has hosted. In what ways were the first two designed to benefit attendees?

The Roundtable Event is an opportunity for institutional investors from around the globe to get together and discuss topics that affect the value of their pension funds. Presenters at our Roundtable Events are experts in the fields of securities litigation, corporate governance, and asset management. The events provide attendees with industry updates, case updates and the chance to speak and learn from peers in the industry. After the presentations, attendees have the opportunity to network with the speakers and each other in an informal atmosphere. Attendees have come from all over the world, including most U.S. states, the U.K., the Netherlands, Israel, France and Australia, and the feedback has been excellent.

What is different about the Roundtable Event this year?

We listen to our attendees – last year they said they wanted to receive professional credits for attending. So this year we will offer CLE and CE accreditation for the event. In addition, partly based on the beautiful venue at which we are hosting the event, the conference will cover two days.

On what issues will you focus in the upcoming event, and what are your goals for it?

We will continue to focus on issues of significance to institutional investors, with updates on the latest global trends in litigation, corporate governance, and asset protection. In addition, this year we are pleased to have as our special guest speaker Mr. Bob Woodward – journalist and Pulitzer Prize winner for All the President's Men. Mr. Woodward will speak on "The Age of the American Presidency."

We look forward to once again bringing people around our table for a few days of expanding knowledge, making connections, and enjoying professional camaraderie in a beautiful setting.

APRIL IN PARIS

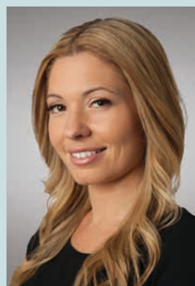
Nicolas Tatin
Director/Business Development Consultant for France, Benelux, Monaco and Switzerland

POMERANTZ IS DELIGHTED TO ANNOUNCE the opening of our **Paris** office, and to welcome **Nicolas Tatin**, who will head the office as Pomerantz' **Director/Business Development Consultant** for **France, Benelux, Monaco** and **Switzerland**.

Nicolas has served as a financial lawyer at Natixis Asset Management and BNP Paribas Investment Partners, where he developed expertise in the legal structuring of investment funds and acquired a global and cross-functional approach to the asset management industry.

In 2012, Nicolas joined ERAFP, France's €24bn fund for civil servants, where he provided legal advice on the selection of management companies and the implementation of mandates entrusted to them by ERAFP. We are pleased that he now brings his expertise to Pomerantz.

NOTABLE DATES ON THE POMERANTZ HORIZON



Jennifer Pafiti

Jeremy A. Lieberman

Marc I. Gross

Michael J. Wernke

On March 14 to 16, **JEREMY LIEBERMAN** and **JENNIFER PAFITI** will participate in **CWAG's Chair's Initiative and Western Pacific Summit** in Honolulu, Hawaii. On March 28, **JEREMY** will give a lecture on **U.S. Securities Litigation** at the **Bar Ilan University Faculty of Law** in Ramat Gan, Israel.

On March 30, **JENNIFER** will speak on **"Transformative Change: Women in Private Equity"** panel at the **NASP Seventh Annual Conference Day of Education in Private Equity,** in Los Angeles. On April 9 to 12, she will attend the **TEXPERS Annual Conference** in Houston.

MARC GROSS and **MICHAEL WERNKE** will attend **ILEP's Annual Symposium** in Naples, Florida on April 20 and 21, where **MICHAEL** will be a commentator for the panel, **"Employment and Other Agreements Whose Confidentiality Provisions Impede Disclosure of Corporate Misconduct."**

POMTRACK© CLASS ACTIONS UPDATE

Pomerantz, through its proprietary PomTrack© system, monitors client portfolios to identify potential claims for securities fraud, and to identify and evaluate clients' potential participation in class action settlements.

NEW CASES:

Recently filed securities class action cases filed by various law firms are listed below. If you believe your fund is affected by any of these cases, contact Pomerantz for a consultation

CASE NAME	TICKER	CLASS PERIOD	LEAD PLAINTIFF DEADLINE
Aetna	AET	August 15, 2016 to January 20, 2017	March 27, 2017
Banc of California	BANC	August 7, 2015 to January 23, 2017	March 27, 2017
BT Group	BT	May 24, 2012 to January 23, 2017	March 27, 2017
Innocoll Holdings	INNL	March 17, 2016 to December 29, 2016	March 27, 2017
Mallinckrodt	MNK	November 25, 2014 to January 18, 2017	March 27, 2017
PixarBio (f/k/a BMP Holdings)	PXRB	October 31, 2016 to January 20, 2017	March 27, 2017
The Western Union Company	WU	February 24, 2012 to January 19, 2017	March 27, 2017
Vista Outdoor	VSTO	August 11, 2016 to January 13, 2017	March 27, 2017
Yahoo!	YHOO	November 12, 2013 to December 14, 2016	March 27, 2017
Egalet	EGLT	December 15, 2015 to January 9, 2017	March 28, 2017
Facebook	FB	May 5, 2014 to December 9, 2016	March 28, 2017
Gigamon	GIMO	October 27, 2016 to January 17, 2017	March 28, 2017
State Street	STT	February 27, 2012 to January 18, 2017	March 28, 2017
Natus Medical	BABY	October 16, 2015 to April 3, 2016	March 31, 2017
DaVita	DVA	August 5, 2015 to October 21, 2016	April 3, 2017
Psychemedics	PMD	February 28, 2014 to January 31, 2017	April 3, 2017
Regulus	RGLS	February 17, 2016 to January 27, 2017	April 3, 2017
RH (f/k/a Restoration Hardware Holdings)	RH	March 26, 2015 to June 8, 2016	April 3, 2017
Roadrunner Transportation Systems	RRTS	May 8, 2014 to January 30, 2017	April 3, 2017
Stemline Therapeutics	STML	January 6, 2017 to February 1, 2017	April 4, 2017
Aratana Therapeutics	PETX	March 16, 2015 to February 3, 2017	April 7, 2017
FXCM	FXCM	March 15, 2012 to February 6, 2017	April 10, 2017
Under Armour	UA	April 21, 2016 to January 30, 2017	April 10, 2017
Galena Biopharma	GALE	August 11, 2014 to January 31, 2017	April 14, 2017
USANA Health Sciences	USNA	March 14, 2014 to February 7, 2017	April 14, 2017
Anthera Pharmaceuticals	ANTH	February 10, 2015 to December 27, 2016	April 17, 2017
Northern Dynasty Minerals	NAK	September 16, 2013 to February 14, 2017	April 17, 2017
Alcobra	ADHD, FSPM	August 13, 2015 to January 17, 2017	April 18, 2017
FusionPharm	BBYB	March 31, 2012 to May 16, 2014	April 18, 2017
SITO Mobile	SITO	February 9, 2016 to January 2, 2017	April 18, 2017
Global Eagle Entertainment	ENT	July 27, 2016 to February 17, 2017	April 24, 2017
Rentech	RTK	November 9, 2016 to February 20, 2017	April 24, 2017
Cemtrex	CETX	February 11, 2016 to February 22, 2017	April 25, 2017
Pearson	PSO, PSORF	January 21, 2016 to January 17, 2017	April 25, 2017
Grana y Montero	GRAM	April 30, 2014 to February 24, 2017	April 28,2017
Invuity	IVTY	July 19, 2016 to November 3, 2016	April 28, 2017
AmTrust Financial Services	AFSI	May 10, 2016 to February 24, 2017	May 1, 2017
Chicago Bridge & Iron	CBI	October 29, 2013 to December 10, 2014	May 1, 2017
Netflix	NFLX	July 22, 2014 to October 15, 2014	May 1, 2017
Omega Protein	OME	June 4, 2013 to March 1, 2017	May 1, 2017
Babcock & Wilcox Enterprises	BW	July 1, 2015 to February 28, 2017	May 2, 2017
Caterpillar	CAT	February 19, 2013 to March 1, 2017	May 2, 2017
HMS Holdings	HMSY	May 10, 2016 to March 2, 2017	May 2, 2017
Platinum Pari-Mutuel Holdings	PPMH, FJIC	July 12, 2016 to February 15, 2017	May 2, 2017

SETTLEMENTS:

The following class action settlements were recently announced. If you purchased securities during the listed class period, you may be eligible to participate in the recovery.

CASE NAME	AMOUNT	CLASS PERIOD	CLAIM FILING DEADLINE
Cornerstone Therapeutics	$17,881,555	September 15, 2013 to February 3, 2014	March 27, 2017
Fifth Street Asset Management	$9,250,000	pursuant to IPO about Oct 30, 2014	March 27, 2017
Fifth Street Finance Corp.	$14,050,000	July 7, 2014 to February 6, 2015	March 27, 2017
AgFeed Industries (SEC)	$5,500,000	March 14, 2008 to December 19, 2011	March 31, 2017
BP p.l.c.	$175,000,000	April 26, 2010 to May 28, 2010	April 1, 2017
Mard. (f/k/a KiOR, Inc.)	$4,500,000	June 24, 2011 to March 17, 2014	April 3, 2017
KaloBios Pharmaceuticals	$1,500,000	November 18, 2015 to December 16, 2015	April 6, 2017
MetLife	$9,750,000	March 3, 2011 to July 5, 2012	April 6, 2017
CVB Financial	$6,200,000	March 4, 2010 to August 9, 2010	April 18, 2017
Marion Bass Securities (Wells Fargo Bank)	$7,825,000	February 1, 1996 to December 11, 1998	April 21, 2017
AudioEye	$1,525,000	May 14, 2014 to April 1, 2015	April 24, 2017
Tile Shop Holdings	$9,500,000	August 22, 2012 to January 28, 2014	May 3, 2017
Sientra	$10,900,000	May 14, 2015 to October 28, 2015	May 8, 2017
Quiksilver	$1,500,000	June 6, 2014 to March 26, 2015	May 10, 2017
Xencor	$2,375,000	shares/notes held on June 12, 2012	May 13, 2017
Molycorp	$1,250,000	February 21, 201 to October 15, 2013	May 18, 2017
Barclays Bank (BARX)	$50,000,000	June 1, 2008 to April 21, 2016	May 19, 2017
EZCORP	$5,900,000	April 19, 2012 to October 6, 2014	May 19, 2017
King Digital Entertainment	$18,500,000	March 26, 2014 to September 22, 2014	May 23, 2017
Elan Corporation	$135,000,000	August 23, 2006 to July 29, 2008	May 29, 2017
Sino-Forest Corporation (Canada) (BDO Limited)	$6,361,080	March 19, 2007 to June 2, 2011	May 31, 2017
Sino-Forest Corporation (Canada) (Directors)	$543,720	March 19, 2007 to June 2, 2011	May 31, 2017
Revance Therapeutics, Inc.	$6,400,000	June 19, 2014 to May 1, 2015	June 5, 2017

THE POMERANTZ MONITOR
A BI-MONTHLY PUBLICATION OF POMERANTZ LLP
600 Third Avenue, New York, NY 10016

Presort Standard
U.S. Postage
Paid
New York, NY
Permit No. 757

POMERANTZLLP

THE LAW FIRM THAT INSTITUTIONAL INVESTORS TRUST FOR SECURITIES MONITORING AND LITIGATION

Pomerantz is acknowledged as one of the premier firms in the area of corporate securities.
Pomerantz is a recognized leader in securities and corporate governance litigation. Our clients include major individual and institutional investors and financial institutions with combined assets of $3 trillion. Founded by the late Abraham L. Pomerantz, known as the"dean of the class action bar," the firm pioneered the field of securities class actions. For 80 years and counting, Pomerantz has continued the tradition that Abe Pomerantz established, fighting for the rights of victims of securities fraud, breaches of fiduciary duty, and corporate misconduct. Prior results, however, do not guarantee a similar outcome in future cases.

NEW YORK
600 Third Avenue, New York, NY 10016 Tel: +1 212 661 1100 Fax: +1 917463 1044

CHICAGO
10 South La Salle Street, Suite 3505, Chicago, IL 60603 Tel: +1 312 377 1181 Fax: +1 312 377 1184

LOS ANGELES
468 North Camden Drive, Beverly Hills, CA 90210 Tel: +1 818 532 6499 Fax: +1 818 532 6499

PARIS
68, rue du Faubourg Saint-Honoré, 75008 Paris, France Tel: +33 (0) 1 53 43 62 08

CONTACT US:

We welcome input from our readers. If you have comments or suggestions about The Pomerantz Monitor, or would like more information about our firm, please visit our website at: wwww.pomerantzlaw.com or contact:

Jennifer Pafiti, Esq.
jpafiti@pomlaw.com +1 818 532 6499

Jeremy A. Lieberman, Esq.
jalieberman@pomlaw.com +1 212 661 1100