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PROTECTING INVESTORS IN A GLOBALIZED WORLD

By Jeremy A. Lieberman, Managing Partner, Pomerantz LLP

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

European Pensions, Europe's highly regarded information source for pension decision makers and fiduciaries, has honored Pomerantz with its inaugural 2020 Thought Leadership Award. European Pensions selected Pomerantz as the first recipient of this award in recognition that the Firm "has demonstrated the possibility to make a real, material difference to the pension fund space."

Here, Pomerantz Managing Partner Jeremy Lieberman reflects on the current landscape of global securities litigation and what it takes to protect investors in a globalized world.

In the last several decades, the landscape of global securities litigation has changed dramatically, both in terms of the remedies available to international investors for losses to their portfolios due to fraud and the appetite of investors outside of the United States to pursue litigation.

Since 1995, more than $95 billion has been recovered in securities class actions litigated in the U.S. on behalf of defrauded investors. With landmark recoveries making international news – $6.1 billion in *Worldcom* in 2005, $7.2 billion in Enron in 2008 and Pomerantz's $3 billion 2018 settlement in *Petrobras* – investors outside of the U.S. began to ask: what does this mean for us?

The different rules regarding class action securities litigation in different jurisdictions complicated the path for shareholders around the world wishing to learn about their rights. Further, there were cultural barriers to overcome. Decades ago, many European institutional investors viewed their litigious American counterparts as too aggressive and preferred not to "dirty their hands" in the same way. They tended to accept not being able to participate in recoveries as mere bad luck. While that was the common wisdom then, modern and sophisticated European institutional investors are increasingly proactive. With so much money on the table, they are seeking solutions not just out of best practice but out of fiduciary duty to obtain recoveries for their funds.

In 2010, the U.S. Supreme Court's decision in *Morrison v. Nat'l Australia Bank Ltd.* barred use of the U.S. federal securities laws to recover losses from investments in foreign-traded securities. This ruling exacerbated the sense of unfairness already felt by investors outside of the U.S. Their rights would not be protected, nor could they recover losses, if they purchased shares in the very same company on a non-U.S. exchange as investors that purchased on a U.S. exchange.

The first test of how to deal with the *Morrison* hurdle arrived almost before the ink on the decision had time to dry. On April 20, 2010, BP's Deepwater Horizon oil rig explosion and resulting oil spill devastated countless lives and caused immeasurable economic and environmental damage. It also impacted investors. Within weeks, the price of BP's ordinary shares and its American Depository Shares ("ADS") plummeted nearly 50%, driven down by revelations that BP's prior statements regarding its commitment to safety and its ability and preparedness to deal with a large oil spill were misleading.

Managing Partner Jeremy A. Lieberman

Although the U.S. federal securities laws protected purchasers of BP's ADS, which trade on the New York Stock Exchange, the same was not true for the purchasers of BP's ordinary shares, which trade on the London Stock Exchange ("LSE"). For investors that purchased BP common stock on the LSE, they seemed to have no legal options in the U.S. courts.

Pomerantz responded by developing a new legal theory, placing it at the vanguard of ground-breaking litigation. Through a series of hard-fought victories, Pomerantz secured the right of its clients, both foreign and domestic, to pursue English common law claims in a U.S. federal court to recover their losses in BP's London-traded common shares and its ADS. This marked the first time, post-*Morrison*,

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THE DELAWARE COURT OF CHANCERY STRIKES BACK

By Daryoush Behbood

Attorney Daryoush Behbood

Section 220 of the Delaware General Corporation Law is a powerful statute that allows stockholders to inspect suspected wrongdoing at Delaware incorporated public companies. With this statute, Delaware stockholders are given the right to inspect a company's books and records, which can range anywhere from board meeting minutes to communications with government officials about a pending corporate investigation. Such inspection permits stockholders to make an informed decision and determine whether to engage in litigation or otherwise demand remedial action.

Of course, the inspection right provided by Section 220 is not without limitation, and certain elements must be demonstrated before a court will give a stockholder free access to a company's internal, and many times highly confidential, documents. When a stockholder seeks inspection for the purpose of investigating corporate wrongdoing, one such element a stockholder must demonstrate is a "credible basis" to suspect possible wrongdoing.

In February 2020, Pomerantz, on behalf of its client, served Gilead Sciences, Inc., a company focused on researching and developing drugs used in the treatment of viruses such as HIV, with a Section 220 books and records demand. According to the demand, Gilead adopted a business model that sought to protect its profits and market share at the expense of the very patients its HIV treatments were supposed to help. In so doing, Gilead allegedly violated state and federal antitrust laws; became the focus of massive antitrust lawsuits; delayed the development of safer HIV drugs to extend the profitability of the company's existing HIV treatments; and was accused of infringing on the U.S. Government's patents for HIV treatment regimens. Four other stockholders served similar demands.

Given the expansive accusations pending against Gilead, the stockholders believed that they easily satisfied the "credible basis" standard, which, as the Delaware courts have repeatedly noted, is the "lowest possible burden of proof." Unfortunately, Gilead refused to produce a single document. Thus, Pomerantz's client and the four other stockholders filed Section 220 complaints in the Delaware Court of Chancery seeking documents related to the above allegations. In response to the stockholders' complaints, Gilead (as the Court would later note in its opinion granting the stockholders' demands) "launch[ed] a number of peripheral attacks designed to chip away at the [stockholders'] proper purposes" and even attempted to argue that each of the five stockholders was merely serving as a passive conduit in a purely lawyer-driven inspection effort.

The entire purpose of a Section 220 books and records demand is for the stockholder to determine whether any case exists for the stockholder to pursue. In other words, determine whether any wrongdoing actually exists in the first place. In that vein, the Delaware Court of Chancery has made clear that Section 220 court proceedings are intended to be "streamlined, summary proceedings." They are supposed to move swiftly and be "promptly tried."

In its opinion released this past November 2020, the Delaware Court of Chancery noted that Gilead's defense strategy frustrated that purpose and ordered Gilead to provide the stockholders with many of the corporate internal documents they requested earlier in the year. Unfortunately, many Delaware stockholders (like the Gilead stockholders) seeking to inspect a corporation's books and records have had to endure many of the same aggressive, scorched earth, defense tactics that Gilead imposed. The Court took notice, stating that "Gilead's overly aggressive defense strategies epitomizes a trend" whereby "defendants are increasingly treating Section 220 actions as 'surrogate proceeding[s] to litigate the possible merits of the suit' and 'place obstacles in the plaintiffs' way to obstruct them from employing it as a quick and easy pre-filing discovery tool.'"

The Court continued, in words that are surely to raise eyebrows in many Delaware boardrooms:

> Defendants like Gilead adopt this strategy with the apparent belief that there is no real downside to doing so, ignoring that this court has the power to shift fees as a tool to deter abusive litigation tactics. Gilead's approach might call for fee shifting in this case, and the plaintiffs are granted leave to move for their expenses, including attorneys' fees, incurred in connection with their efforts to obtain books and records.

In so holding, the Court not only found that each of the five stockholders demonstrated a credible basis to suspect potential wrongdoing and established a proper purpose for conducting the Section 220 investigation, but that Gilead's defense strategy may have involved "bad faith conduct." As the Court explained, Delaware courts follow the "American Rule." That is, "each party is generally expected to pay its own attorneys' fees regardless of the outcome of the litigation." However, the Court "retains the ability to shift fees for bad faith conduct 'to deter abusive litigation and protect the integrity of the judicial process.'" The Court held that Gilead's "overly aggressive litigation strategies by blocking legitimate discovery, misrepresenting the record, and taking positions for no apparent purpose other than obstructing the exercise of plaintiffs' statutory rights" opened the door for fee shifting, and granted the stockholders leave to move for attorneys' fees.

The implications of the Court's striking opinion remain to be seen. But stockholders and their counsel alike surely hope it will have the deterrent effect the Court most assuredly intended. ■

Louise Howard, Interviewed by Jennifer Pafiti

Louise Howard
Chief Legal Officer for Universities Superannuation Scheme (Ltd.)

Jennifer Pafiti
Partner and Head of Client Services

Partner and Head of Client Services Jennifer Pafiti interviewed Louise Howard, the Chief Legal Officer for Universities Superannuation Scheme (Ltd). The USS pension scheme manages over £67 billion on behalf of over 400,000 active and retired academic and academic-related staff from universities in the United Kingdom. USS served as a highly engaged and effective lead plaintiff on behalf of the class in the historic *Petrobras* settlement, helping achieve a $3 billion recovery for defrauded investors.

Jennifer Pafiti: Please share a little bit about your journey and what led you to your role today at USS.

Louise Howard: I began my professional life as a pensions lawyer. On qualification, it was a toss-up between property finance or pensions and, in the foolhardiness of youth, I choose the most difficult of the two "so that I'll never get bored." I couldn't have appreciated quite how right that prediction would be! In all my 16 years in private practice, I genuinely do not think I was ever asked the same question twice, and so every new request was a complete greenfield. As for my move to USS, like most good things, it came by chance. Around 2003, "Fiduciary Management" was a rapidly growing new business area being marketed to UK defined benefit pension funds. I found several of my clients approached with differing levels of information about what the trustees of these funds were actually buying into. So that trustees could make informed decisions, I became active on the conference circuit, speaking about how particular fiduciary management models may impact their legal duties. That led to me being approached for the newly created role at USS. I'll always remember the call as I was on the beach with my young daughter, who had just been stung by a wasp moments before, so when I answered, I think I was probably the most "no-nonsense" version of me!

It was a fantastic opportunity as, even though USS had been established in 1974, it had not had any internal legal support at all until the end of the noughties, and that was then just focused on investment management activity. From 2014 onwards, there was a move to strengthen the control environment in general and broaden the internal legal support to the pensions business in particular. We now have a 15-strong legal team that covers everything from investment legal work to pension fund administration, commercial and contractual work to employment and data protection law. And the rest is history ...

JP: Can you take us to the *Car Wash*?

LH: The Car Wash is so-called because it was inspired by the car valet business inside my local shopping mall. They have a set of giant posters detailing each of the levels of cleaning you can buy — bronze, silver or gold — each detailing the specific services you would get and, of course, the price you pay for each. I thought to myself that we could categorize the different work we are asked to do, just like the car wash, and then be very clear with our business colleagues what level of engagement they could expect from us. It means we operate transparently and consistently. There are other benefits, of course as well. It can help us plan our resourcing — if the business wants lawyers on more than just a handful of gold standard deals or projects, we will need some extra pairs of hands, or the business might need to prioritize. It's all very logical, and as such, people can engage with it well, both in the team and in the business.

JP: What is the most important takeaway for institutional investors from the newly revised 2020 U.K. Stewardship Code?

LH: The key takeaway for me is how much further this goes in terms of reach. Asset owners will no longer be able to remain well-meaning but essentially sedentary. The ambit of the Code, now stretching beyond just-listed equities, as well as the granular level of detailed narrative reporting that will be required, represent excellent improvements. But I'd caution that institutional investors should not underestimate the effort that will be involved.

JP: On a related note, what has been the Financial Conduct Authority's biggest impact on USS?

LH: The Trustee Company's subsidiary, USS Investment Management Limited, created in 2012, is the entity authorized and regulated by the FCA. It is a special category of firm with a more limited range of permissions than a full scale, multi-client investment manager would have due to having only one client, the Trustee Company. Due to the size of assets under management, USSIM became subject to the new Senior Managers & Certification regime as an "Enhanced Firm." There are fewer than 1% of firms in that category, and it means that we are subject to the most onerous set of requirements, broadly equivalent to those in force for banks.

A tremendous amount of effort over 12 months went into preparing for the introduction of the new regime, which focusses on senior managers, and a broader population of certification staff, each of whom must be certified as "fit and proper" to perform their role. At the end of that period, we had identified USSIM's Senior Managers, created a Management Responsibility Map and Statements of Responsibilities, ensuring there were appropriate 'reasonable steps frameworks' in place. In addition, we had identified our Certified Persons and prepared for their annual fit and proper assessments and trained all relevant staff on what the regime means for each individual.

JP: Can you speak a little about the effort that goes into the valuation process that the fund is mandated to go through every three years?

LH: It seems a distant memory now, and almost like a fairy tale, but at the start of my career, my work was largely around helping employers access the huge excess reserves that had built up in defined benefits funds as legislation at the time required them to be reduced. Things changed very quickly at the turn of the century, and we started facing deficits in these pension plans. Now UK funds are required by law to undertake a valuation every three years and put in place the contributions revealed by that valuation to be necessary to fund future benefit provision and also fund any deficit concerning historic liabilities. For most plans, this has become an increasingly difficult job, not just because of the inherent uncertainty that comes with trying to price today a benefit that will be paid out many, many years in the future. But we have seen in investment cycles the resulting contribution numbers becoming increasingly painful because of the lack of certainty. The scale of a valuation for a scheme of our size, with close to £70bn in assets (as of March 2019) and over 400 employers, is immense, and the volume of work and the complexity of the challenges are relentless.

JP: What do you see as the biggest issue facing public pension funds today or in the near future?

LH: It has to be affordability. And I mean for all, sponsors and members. We all still would like the comfort of financial security in the future, but, in my view, with the levels of uncertainty we are facing, that seems an even greater uphill struggle than it has ever in the past. A sobering thought, but we just must keep on doing the best we can for our members. ■

THE SHORT SQUEEZE, STONKS AND DEMOCRACY

By The Editors

As this issue of the *Monitor* goes to press, the stock market continues on a wild ride that began with hedge funds shorting the stock of GameStop, a struggling company whose brick-and-mortar stores sell video games in shopping malls.

To short a stock is to bet that its value will go down. An investor borrows a stock, sells it, and then buys it back to return it to the lender. If the stock is less expensive when the investor sells, the investor profits. Sophisticated investors might identify a flaw in a strong company's operations before the rest of the market and short its stock, betting that their prescience, once it plays out, will pay big. Noting the flaws in GameStop's business model, however, did not require much discernment. Expecting customers to travel to strip malls to buy a physical product in the digital age is tilting at windmills; add a pandemic and it becomes a Herculean task. But even though GameStop's shares were already low when the hedge funds swept in, even a small per share profit, when multiplied exponentially, adds up.

Meanwhile, day traders, transacting in stocks on their cell phones via online, no-fee platforms like Robinhood and E-Trade, were watching the hedge funds watch GameStop. Convening on online message boards such as Reddit's WallStreetBets, they determined to stick it to the man — namely, the hedge funds — and make some quick money while doing so. Over several months, a large, broad, and loosely cohesive group of day traders devised a strategy for a "short squeeze": they would buy volumes of GameStop shares to push up its price, and in so doing force the hedge funds to cover their position by rushing to buy back shares, which would further push up the price.

Many of the amateur investors have been placing option bets to bet *against* the shorts. A call option is a contract that gives the owner the right to buy a specific amount of stock at a specific price by a specific future date. If the price rises, the trader can buy the stock at the set price — now a bargain — and sell it for a profit (or sell the option contract itself). The brokers who sell the options, as a rule, own enough stock to be ready when traders exercise their options. In the GameStop scenario, where the price skyrocketed, those brokers, too, have to buy more stock now to mitigate the burn of having to buy too many expensive shares at one time later. This increases demand, which again increases the price.

The financial flash mob's plan worked. Shares of GameStop skyrocketed 400% in the last week of January, ending the month with a staggering 1,625% gain. At least one hedge fund, Melvin Capital Management, having lost billions, threw in the towel on its GameStop position. Keith Gill, the 34-year-old suburban father and financial adviser who ignited the GameStop buying frenzy with YouTube videos under the name Roaring Kitty, is now — at least on paper — a multimillionaire.

Meanwhile, a day after GameStop shares rose 135%, Robinhood, the free-trading pioneer purportedly founded to democratize trading, restricted trading on its app in GameStop and other highly shorted securities, only allowing users to close out their positions, while those investors not tied to their app were still free to invest. Robinhood, which is backed by venture capital, said in a statement that these restrictions were made to comply with the regulations that govern it, including capital obligations mandated by the SEC. Indeed, over the last few days in January, Robinhood raised $3.4 billion, most likely to cover heightened margin requirements that may have been imposed by the Depository Trust & Clearing Corporation, the central clearing facility for the stock market.

Day traders staged protests, accusing Robinhood of being in league with the "suits" of Wall Street. The broker's move also engendered rare bipartisan accord in Congress, with both progressive Democrats and populist Republicans condemning Robinhood. Democratic Senator Elizabeth Warren said:

> What's happening with GameStop is just a reminder of what's been going on on Wall Street now for years, and years and years. It's a rigged game. We need a market that is transparent, that is level and open to individual investors. It's time for the SEC to get off their duffs and do their jobs.

The GameStop story, though, is not simply a tale of Wall Street vs. the Degenerates (as the community on WallStreetBets call themselves). Elon Musk, the richest man in the world, fanned the fires with a single-word tweet on January 26 and a hyperlink to WallStreetBets. The word? Gamestonk. Stonks, an intentional misspelling of stocks widely used on Reddit forums, mocks Wall Street's seriousness, and Musk's tweet made him an unlikely anti-establishment hero to Redditors.

Some day traders have claimed they bought GameStop for "lolz" — the fun of it. Others jumped in for FOMO once the price started to soar. But many cite having been embittered by the 2008 financial crisis, the subsequent bailout of the big banks, and the failure to hold those responsible accountable.

At the time of writing, it remains to be seen where the GameStop saga will end. Some hedge fund CEOs have had their eyebrows singed, a few day traders got rich, but many analysts predict that those day traders who still have long positions will lose big.

How efficient is a market in which the value of a stock has no relation to a company's fundamentals? And what can regulators do when an inflated price is not the result of fraud? The SEC now finds itself in the position of seeking potential areas of liability. As Dean Seal wrote in *Law360*, "The novelty of the situation itself will stand as a test for a regulator in transition — determining what role the SEC has in a seemingly ideological trading war between the mom-and-pop traders it is sworn to protect and the old guard of Wall Street." ■

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YEARS – A LONG TRADITION OF INNOVATION

Abraham L. Pomerantz

In celebration of the founding of the Pomerantz Firm 85 years ago, the *Monitor* will feature a highlight from its history in each issue in 2021.

Let's start at the very beginning. In 1926, Abraham Louis Pomerantz, a young graduate of Brooklyn Law School, hung up his shingle in New York City. For years, he shared one small room and a stenographer with three other young lawyers. When one of lawyers had a client visit, the other three would make themselves scarce. But there weren't many clients in those early days, and the four spent much of their time playing knock rummy.

One day in 1932, Celia Gallin, the widow of Abe's high school gym teacher, walked in the door. Her husband had left her 20 shares of stock in the National City Bank of New York (today's Citigroup). Before the market crash of 1929, they had sold for $585 a share; now, in the Great Depression, they traded at $17. Gallin thought there must be someone she could sue to get her money back. Unfortunately, there was not, Abe told her.

A few months later, Ferdinand Pecora took over as Chief Counsel for what had been a bumbling, ineffective Senate probe of the causes of the stock market crash. As Michael Perino, the author of *Ferdinand Pecora, the Hellhound of Wall Street: How Ferdinand Pecora's Investigation of the Great Crash Forever Changed American Finance*, wrote:

> In just a few weeks Pecora turned the investigation around. His first target was City Bank and its Chairman, "Sunshine" Charlie Mitchell. After a whirlwind investigation, Pecora chronicled how Mitchell and the bank's other executives had manipulated stocks, dodged taxes, ripped off their shareholders, and collected enormous bonuses for peddling shoddy securities to unsuspecting American investors.

Realizing the opportunity that opened up, Abe quickly called Gallin. He still couldn't get her money back, but he hoped to effect retribution by convincing the court to force the bank's executives to return their bonuses. Retaining the well-known New York lawyer David Podell to try the case, Abe brought a derivative suit against National City Bank, relying on the disclosures from the Pecora hearings. Abe and Podell won, clawing back $1.8 million in bonuses from the bank's executives.

A few months later, Pecora held hearings on Chase Manhattan Bank. Abe brought a derivative lawsuit alleging the same wrongdoing Pecora had revealed. The bank settled. Abe thereafter decided to specialize in stockholder suits, and thus began the Firm as we know it.

Again, according to Perino:

> In the worst depths of the Great Depression, Pecora paraded a series of elite financiers before the Senate Banking and Currency Committee. The sensational disclosures of financial malfeasance galvanized public opinion for reform and led to passage of the first federal securities laws and the Glass-Steagall Act.
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> . . .
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> Until his death in 1982, Abraham Pomerantz was one of the leaders of the plaintiffs' bar. He helped pioneer derivative suits brought by small shareholders against publicly traded corporations, and the law firm he founded remains a major player in the field.

In 1946, "on the strength of his familiarity with complicated financial transactions and his reputation as a tenacious trial lawyer," the United States Government appointed Abe as Deputy Chief Counsel (Economics) at Nuremberg. As such, he was senior trial counsel in all cases against German industrialists for collaborating in Nazi war crimes. He left after eight months, frustrated that the prosecutions were impaired by inadequate human and financial resources. Abby Mann, in his introduction to his screenplay, *Judgment at Nuremberg*, wrote, "The first time I gave Nuremberg any thought was when I met Abraham Pomerantz at a dinner party in New York in 1957. Pomerantz had been one of the prosecutors in the last trials at Nuremberg when the defendants included diplomats, doctors and Judges."

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85 Years – A Long Tradition of Innovation

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In 1965, *Variety Magazine*, which as a rule covered theater and film, sent reporter Ronald Gold to cover a trial that Abe was litigating. Gold wrote it up as a movie review:

> Though he doesn't get top billing, Abe Pomerantz, playing one of two lawyers for a couple of worried investors, does the standout job. Managing to be both breathless and stentorian, the gray-haired portly veteran delivers a ringing indictment of legalistic trickery, all the while letting the audience know that along with his sincere emotion he's just as clever as the opposition.

In a 1968 feature in *Fortune Magazine* titled "Abe Pomerantz is Watching You," Spencer Klaw opined:

> If the past is any guide, at one time or another during the next year the officers or directors of scores of large, publicly held corporations will be handed a depressing legal document. It will inform them that they have been named as defendants in a minority-stockholder suit. The news will be particularly depressing if the plaintiff is represented by Abraham Pomerantz… Pomerantz has been suing corporate insiders for thirty-five years, and in four out of five cases the defendants have had to pay sizable amounts of money out of their own pockets.

Abe was often in the spotlight, as in the lively February 1977 interview segment, "Lancelot at Law," on *Wall Street Week* with Louis Rukeyser. On his death in 1982, the *New York Times* described Abe as "an articulate courtroom orator who reveled in fencing with his political and legal adversaries."

The late, and esteemed attorney Milton S. Gould eulogized Abe:

> The stockholders' derivative action flourished under the leadership of men like Abe Pomerantz … and it continues to flourish. I think an enlightened view of its function and usefulness is that the cause of action has proved to be the most effective instrument we have in protecting corporate ownership from misconduct in corporate management. From those cases have evolved useful concepts of fiduciary loyalty and the need for honest full disclosure ... Abe Pomerantz became a hero, and his name became a synonym for the successful prosecution of the plaintiff's derivative suit.

In 2015, eighty-three years after Celia Gallin first walked into Abe's office looking for justice, John C. Coffee, Jr., Professor of Law and Director of the Center on Corporate Governance at Columbia University Law School, wrote in *Entrepreneurial Litigation: Its Rise, Fall, and Future*:

> If this book has found one unassailable hero within the plaintiffs' bar, it was probably Abe Pomerantz. ■

Protecting Investors in a Globalized World

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that institutional investors had been permitted to pursue foreign claims seeking recovery for foreign-traded securities in a U.S. court. The case has now been resolved, with favorable recovery for LSE investors that otherwise would have recovered nothing under *Morrison*.

Morrison had further consequences for investors of dual-listed shares – a staple feature of most global portfolios. Dual-listed shares (shares traded on more than one exchange) afford institutional investors the opportunity to execute trades on the venue offering the most favorable trading hours, pricing and liquidity at any given moment. However, under *Morrison*, purchasers of the same dual-listed stock, traded at the same time and injured by the same fraudulent misrepresentations and omissions, might have very different remedies, depending on which exchange shares were bought. Those that purchased on a U.S. exchange would be able to join together with other similarly situated investors to collectively seek compensation in a U.S. class action. Investors purchasing on a foreign exchange, under *Morrison*, were generally left only the expensive and daunting option of pursuing claims individually in a foreign court likely to be less familiar with and less favorable to securities fraud litigation than those in the U.S.

Continuing its pursuit of justice for defrauded European investors, in 2019, Pomerantz set historic precedent for investors in the dual-listed shares of Perrigo Co. plc, when a U.S. federal court certified parallel classes of investors that purchased Perrigo shares on both the U.S. and the Tel Aviv Stock Exchange. The ruling was the very first to certify a foreign purchaser class since *Morrison*. Since then, Pomerantz also successfully achieved certification for parallel classes of investors in a securities class action against Ormat Technologies, Inc., in which the Firm recently achieved a favorable settlement for investors.

In addition to the barriers to recovery for international investors set by *Morrison*, there have been efforts by the U.S. Chambers of Commerce – a big-business-supporting lobbying group – and the U.S. Congress, to clip the wings of securities class actions. However, they have unwittingly created a monster, spawning new litigations to protect and vindicate investor rights within and beyond the U.S.

Legal counsel must be creative in handling these issues and arriving at solutions that are favorable for international investors. The answer, in some cases, is to bring securities fraud cases in jurisdictions outside of the U.S. Pomerantz is currently representing international clients in international litigations, including, among others, against BRF S.A. (Brazil), Wirecard (Germany), Deutsche Bank AG (Germany), Danske Bank (Denmark) and Tesco PLC (U.K.). ■

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
GoodRx Holdings, Inc.	GDRX	September 23, 2020 to November 16, 2020	February 16, 2021
Sona Nanotech, Inc.	SNANF	July 2, 2020 to November 25, 2020	February 16, 2021
ACM Research, Inc.	AMCR	March 6, 2019 to October 7, 2020	February 19, 2021
Restaurant Brands International, Inc.	QSR	April 29, 2019 to October 28, 2019	February 19, 2021
Triterras, Inc.	TRIT, TRITW	August 20, 2020 to December 16, 2020	February 19, 2021
CD Projekt SA	OTGLY	January 16, 2020 to December 17, 2020	February 22, 2021
SolarWinds Corp.	SWI	February 24, 2020 to December 15, 2020	March 5, 2021
QuantumScape Corp. (f/k/a Kensington Capital Acq.)	QS	November 27, 2020 to December 31, 2020	March 8, 2021
Tricida, Inc.	TCDA	September 4, 2019 to October 28, 2020	March 8, 2021
GTT Communications, Inc. (2021)	GTT	May 5, 2016 to November 9, 2020	March 15, 2021
Decision Diagnostics Corp.	DECN	March 3, 2020 to December 17, 2020	March 16, 2021
Penumbra, Inc.	PEN	August 3, 2020 to December 15, 2020	March 16, 2021
9F Inc.	JFU	August 14, 2019 to September 29, 2020	March 22, 2021
Bit Digital, Inc.	BTBT	December 21, 2020 to January 8, 2021	March 22, 2021
Cleanspark, Inc.	CLSK	December 31, 2020 to January 14, 2021	March 22, 2021
Lizhi, Inc.	LIZI	January 17, 2020 to January 20, 2021	March 22, 2021
Walmart, Inc.	WMT	March 30, 2016 to December 22, 2020	March 22, 2021
Voyager Therapeutics, Inc.	VYGR	June 1, 2017 to November 9, 2020	March 24, 2021
AstraZeneca Plc	AZN	May 21, 2020 to November 20, 2020	March 27, 2021
Exxon Mobil Corporation (2021)	XOM	November 6, 2019 to January 14, 2021	March 29, 2021

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
Valeant Pharmaceuticals Int'l, Inc. (Canada)	$68,766,640	January 27, 2012 to October 26, 2015	February 15, 2021
The Southern Company	$87,500,000	April 25, 2012 to October 30, 2013	February 18, 2021
Jumia Technologies AG	$2,000,000	April 12, 2019 to December 9, 2019	February 19, 2021
Bankrate, Inc. (SEC)	$15,473,774	August 1, 2012 to October 9, 2014	February 23, 2021
Arlo Technologies, Inc.	$1,250,000	August 3, 2018 to December 2, 2018	February 25, 2021
Spectrum Brands Legacy, Inc.	$39,000,000	January 26, 2017 to November 19, 2018	February 25, 2021
Finisar Corporation (2011)	$6,800,000	December 2, 2010 to March 8, 2011	February 26, 2021
MetLife, Inc. (2012)	$84,000,000	August 3, 2010 to October 6, 2011	February 26, 2021
Taronis Technologies, Inc.	$1,700,000	January 28, 2019 to February 12, 2019	February 26, 2021
London Silver Fixing, Ltd. (DB Defendants)	$38,000,000	January 1, 1999 to October 1, 2016	March 1, 2021
Envision Healthcare Corporation	$17,400,000	August 10, 2018 to October 11, 2018	March 11, 2021
DaVita Inc.	$135,000,000	February 26, 2015 to October 6, 2017	March 20, 2021
Sogou Inc. (2019)	$1,450,000	November 9, 2017 to March 14, 2018	March 20, 2021
Franchise Group, Inc. (f/k/a Liberty Tax, Inc.)	$5,600,000	January 1, 2019 to December 17, 2019	March 22, 2021
FTS International, Inc.	$9,875,000	February 2, 2018 to February 21, 2019	March 22, 2021
Sea Limited	$10,750,000	October 1, 2017 to November 1, 2018	March 29, 2021
Oasmia Pharmaceutical AB	$2,350,000	October 23, 2015 to October 14, 2019	April 5, 2021
Saks Incorporated	$21,000,000	July 29, 2013 to November 4, 2013	April 5, 2021
Chemical and Mining Co. of Chile, Inc.	$62,500,000	June 30, 2010 to March 18, 2015	April 8, 2021
Health Insurance Innovations, Inc. (2017)	$2,800,000	August 4, 2017 to September 11, 2017	April 8, 2021
Qudian Inc.	$8,500,000	October 18, 2017 to December 12, 2017	April 14, 2021
SSA Bonds Antitrust Litigation .	$30,000,000	January 1, 2005 to March 5, 2018	April 16, 2021
Correvio Pharma Corp.	$1,750,000	September 5, 2018 to December 10, 2019	April 20, 2021
Obalon Therapeutics, Inc.	$3,150,000	October 6, 2016 to May 11, 2018	April 22, 2021
Adamas Pharmaceuticals, Inc.	$7,500,000	January 24, 2018 to May 13, 2019	May 8, 2021
Livent Corporation	$7,400,000	October 11, 2018 to May 13, 2019	May 8, 2021
Health Insurance Innovations, Inc. (2019)	$11,000,000	September 25, 2017 to April 11, 2019	May 11, 2021
TechnipFMC plc	$19,500,000	January 16, 2017 to July 24, 2017	May 15, 2021
Canadian Solar, Inc. (Canada)	$13,000,000	May 26, 2009 to June 1, 2010	May 31, 2021
Helios and Matheson Analytics, Inc.	$8,250,000	August 15, 2017 to July 26, 2018	June 7, 2021

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