the POMERANTZ MONITOR

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Pomerantz Holds London Corporate Governance Roundtable With Sir Tony Blair

Dr. Daniel Summerfield and Jennifer Pafiti

Jeremy A. Lieberman and Sir Tony Blair

By the Editors

Ten years ago, Pomerantz decided to gather a small group of institutional investors to share ideas and concerns regarding the funds these investors represent. Over the past decade, the original gathering of 5-6 institutional investors gradually grew to over 75 participants, becoming the Firm's marquee event for investors: Pomerantz's Corporate Governance Roundtable. On June 18th, 2024, for the first time, the Roundtable was held outside the United States, with over 100 institutional investors, corporate governance professionals, and investment experts from all over the world attending a full-day conference in London, U.K. The program featured topics ranging from AI to greenwashing to securities litigation. The day's highlight was a keynote interview by Pomerantz Managing Partner, Jeremy A. Lieberman, with former British Prime Minister, Sir Tony Blair, who provided an insightful assessment of the current state of global affairs.

The response was phenomenal," says Pomerantz Partner and Head of Client Services, Jennifer Pafiti, who played a leading role in organizing the Roundtable. "The feedback we have received over the years is that institutional investors consider these events crucial for keeping pension professionals connected and educated on real-time matters that affect the value of the funds they represent." Held at Landing 42, the UK's highest event space in the heart of the London's financial hub, the theme of this year's conference was "Lessons Learned from Corporate Governance Failures." "Hearing insight and discussion from the most expert governance professionals in the world was fascinating," adds Pafiti, "both in terms of their presentations and the dialogue with the audience."

One of the issues discussed was the challenges that pension fund investors face from so-called "greenwashing," which refers to the practice by companies or fund managers of making unfounded claims about their organizations' environmental responsibility initiatives. A panel dedicated to the subject at the Roundtable suggested that although regulation can provide important guardrails for issuers, there is no substitute for effective due diligence and scrutiny by pension funds of the information that is provided. The challenge will be to find the right balance between encouraging disclosure of ESG related matters and ensuring that the information is evidence-based and reliable. "It would be in no one's interests if the result of exposing greenwashing activity that has taken place would be a reluctance by issuers, in particular, to disclose any information other than that which is mandatory," says Dr. Daniel Summerfield, Pomerantz's Director of ESG and UK Client Services, who helped organize the conference with Pafiti. "Disclosure of ESG needs to become an authentic endeavour by all parties."

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A recurring theme in discussons at the conference was that, with the benefit of hindsight, many of the causes of previous instances of corporate malfeasance were hiding in plain sight but were ignored or excused as an inconvenient truth. While securities litigation can act as an important backstop and deterrent as well as a way to secure compensation for investors and put in place corporate governance reforms, it should not be seen as a panacea. Conference attendees agreed that there is no substitute for investor scrutiny of corporate governance and effective engagement and stewardship. An important consideration was paraphrased by one panelist as the need to ensure that we can turn hindsight into foresight to provide more insight.

"Having been involved in several Pomerantz Roundtables over the years, I believe that this was the most successful one to date owing to the caliber of speakers, diversity of delegates and the rich and relevant content, as well as the keynote address by Sir Tony Blair," offers Summerfield. "Holding the event overseas for the first time was a strategic decision reflecting the internationalization of our client base as a result of an increased interest in securities litigation among global investors. The choice of sessions at the Roundtable was responsive to the key issues which are of concern to our U.S. and international clients. Our Roundtables are part of our series of global educational and networking events – albeit at a larger scale – that we regularly host in different countries to cater to the increase in demand and interest in the services we provide."

Adrian Wilkes, Deputy Head of Investments Legal, and Tanya Bagley, Head of Investments and Markets Legal, both of Brightwell Pensions (formerly known as BT Pension Management), U.K, participated in the London Roundtable. Reflecting on it afterwards, they jointly expressed:

"We always find Pomerantz events to be highly informative and enjoyable, and the 2024 Corporate Governance Roundtable was no exception. The quality and range of the speakers and sessions were impressive, and we really value the insights afforded by hearing the experience and thoughts of both U.K. and international peers on highly relevant topics – as well as the opportunity to catch up with familiar faces and meet new ones. An excellent event altogether – many thanks!"

As far back as 2007, the TIAA-CREF Institute asserted that the primary actors promoting changes in corporate governance systems are often foreign. "What has become increasingly apparent and was noted at the Roundtable," explains Summerfield, "is that with the globalization of investors' portfolios, we need to learn from the experiences of domestic investors based in the markets in which we now invest. The utilization of alternative engagement tools may also be required as investors diversify their risks and increase their exposure to different markets which may not have the same level of corporate governance standards."

With a potential regulatory race to the bottom as stock exchnages compete for IPOs – a topic which was also discussed at the Roundtable – business as usual may no longer be appropriate in holding investee companies to account. Pomerantz stands ready to support our clients as they manage these additional risks in an increasingly volatile and uncertain world.

Supreme Court Further Curtails Power of Administrative Agencies

By Michael Grunfeld

On June 28, 2024, in *Loper Bright Enterprises v. Raimondo,* the Supreme Court overruled the 40-year-old precedent set in *Chevron v. Natural Resources Defense Council*. In *Chevron*, the Court had ruled that when administrative agencies implement ambiguous statutory provisions, courts must defer to the agency's interpretation as long as it is reasonable. *Loper Bright* extends the Court's recent trend of limiting the power of administrative agencies to regulate as they see fit and its continued overturning of significant precedents. This decision opens the door to a flurry of new cases challenging agency interpretations of statutory provisions that likely would have received deference under *Chevron*.

Administrative, or regulatory, agencies are located in the Executive Branch of the federal government and are tasked with implementing statutes within their purview passed by Congress. These agencies—such as the Securities and Exchange Commission, Federal Trade Commission, and Environmental Protection Agency, among others—cover a wide range of areas.

In *Loper Bright,* the Supreme Court ruled that "Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority." This ruling was based on the power of judicial review set out in *Marbury v. Madison* in 1803, which provided "[i]t is emphatically the province and duty of the judicial department to say what the law is." The Court reasoned that statutes dealing with regulatory agencies are no different than other types of statutes, where "courts use every tool at their disposal to determine the best reading of the statute and resolve the ambiguity. . . . It therefore makes no sense to speak of a 'permissible' interpretation that is not the one the court, after applying all relevant interpretive tools, concludes is best." In addition, the Court based its ruling on its interpretation of the Administrative Procedure Act (APA), which sets out the procedures that apply to administrative agencies. The Court ruled that the APA's provision for judicial review of agency action codifies "that courts, not agencies, will decide 'all relevant questions of law' arising on review of agency action" and "set aside any such action

inconsistent with the law as they interpret it." Lastly, the Court explained why the principle of *stare decisis*—or adherence to precedent—did not preclude overruling Chevron, including the majority's view that Chevron's reasoning was flawed and that it was "unworkable" in practice.

Justice Elena Kagan penned a forceful dissenting opinion, joined by Justices Sotomayor and Jackson, taking the unusual step of summarizing from the bench to emphasize the extent of her disagreement with the majority's decision. She explained that the Court's decision "will cause a massive shock to the legal system, 'casting doubt on many settled constructions' of statutes and threatening the interests of many parties who have relied on them for years." In addition, she explained that *Chevron* made sense because:

> Some interpretive issues arising in the regulatory context involve scientific or technical subject matter. Agencies have expertise in those areas; courts do not. . . . and some present policy choices, including trade-offs between competing goods. Agencies report to a President, who in turn answers to the public for his policy calls; courts have no such accountability.

Moreover, Justice Kagan criticized the majority for putting "courts at the apex of the administrative process as to every conceivable subject," such as on issues related to climate change, health care, the financial system, transportation, and artificial intelligence. She cautioned: "In every sphere of current or future federal regulation, expect courts from now on to play a commanding role. It is not a role Congress has given to them, in the APA or any other statute. It is a role this Court has now claimed for itself."

Justice Kagan explained that deferring to the reasonable interpretations of agencies is consistent with the judicial power to interpret the law because *Chevron* was simply based on a "presumption—really, a default rule—for what should happen" when a statute is ambiguous: that "Congress would select the agency it has put in control of a regulatory scheme to exercise the 'degree of discretion' that the statute's lack of clarity or completeness allows." Justice Kagan noted that "presumptions of this kind are common in the law," that the APA's provision for judicial review does not specify what standard of review should be applied, and *Chevron* deference does not contradict "how judicial review operated in the years leading up to" and following the enactment of the APA.

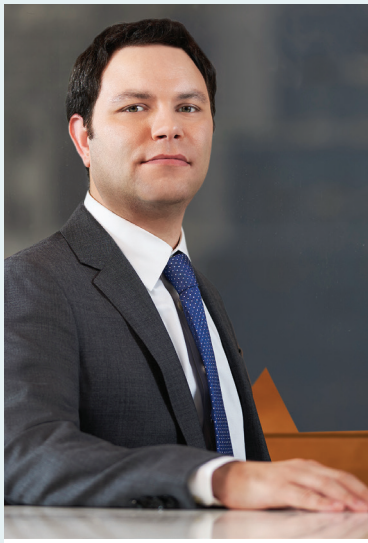
Furthermore, Justice Kagan was highly critical of the majority's failure to adhere to *stare decisis*. She explained that far from being the type of situation that warrants overruling, "*Chevron* is entitled to a particularly strong form of *stare decisis*" because "Congress has kept *Chevron* as is for 40 years." Despite having had ample opportunity to limit it, the case has been cited in over 18,000 federal-court decisions, and it has had a "powerful constraining effect on partisanship in judicial decisionmaking."

Rather, Justice Kagan described the decision as rooted in "the majority's belief that *Chevron* . . . gave agencies too much power and courts not enough. But shifting views about the worth of regulatory actors and their work do not justify overhauling a cornerstone of administrative law. In that sense too, today's majority has lost sight of its proper role."

Justice Kagan placed the Court's decision in the pattern of its recent "treatment of agencies" and "its treatment of precedent." The decision was "yet another example" of "the Court's resolve to roll back agency authority, despite congressional direction to the contrary." Another example came just this term in *SEC v. Jarkesy*, where the Court ruled that the SEC's use of in-house tribunals—as opposed to courts—to seek civil penalties from defendants for securities fraud is unconstitutional. As for *stare decisis*, Justice Kagan cited her "own dissents to this Court's reversals of settled law" that "by now fill a small volume"—including the Court's overruling of *Roe v. Wade* in *Dobbs v. Jackson Women's Health Organization*. Justice Kagan therefore described the majority's decision as a case where a "rule of judicial humility gives way to a rule of judicial hubris. In recent years, this Court has too often taken for itself decision-making authority Congress assigned to agencies."

Loper Bright portends an onslaught of new cases challenging how agencies implement federal statutes, where judges will exert independent review and not be required to defer to expert agency interpretations of statutory ambiguities. There are, however, several important limitations to the Court's decision. The majority stated that prior decisions cannot now be overruled merely because they relied on *Chevron*. (Justice Kagan, however, was concerned that "Courts motivated to overrule an old *Chevron*-based decision can always come up with something to label a 'special justification'" to support overruling. "All a court need do is look to today's opinion to see how it is done.")

In addition, *Loper Bright* applies only where a statute is deemed to be ambiguous, but not where a court determines that the statute itself is clear. The decision also does not apply to agency policymaking and fact-finding, which are still accorded substantial deference. Moreover, this decision applies only where the statute is silent as to who should interpret the provision at issue. Congress may still expressly delegate to administrative agencies the power to interpret statutory provisions. These qualifications may be of little comfort to regulators—and the public that relies on them—in cases where newly empowered courts reject agency interpretations that would have been deemed reasonable under *Chevron*. Even so, agencies may try to alleviate such results by providing as fulsome explanations as possible for their decisions, Congress may try to do so through the legislative process, and litigants may marshal arguments as to why a court should adopt an agency's interpretation as the best understanding of the statute at issue.



Michael Grunfeld, Partner

Section 12 and Fundraising Via Digital Assets

By Genc Arifi

Whenever law and a new technology collide, courts either analyze the statute and case law and arrive at an updated interpretation that fits the new invention, or they invite Congress to enact new rules to provide guidance. With the advent of blockchain technology and its financial side-kick cryptocurrency, courts have adopted the former approach, taking it upon themselves to provide guidance on how statute and case law apply to the particular nuances of the new technology. Section 12 of the Securities Act has provided relief to purchasers of traditional securities from unscrupulous sellers since its inception almost 100 years ago. Now, in the absence of new statutes, courts are increasingly relying on Section 12 to interpret the meaning of the term "seller" within the new and ever-evolving cryptocurrency ecosystem and within the larger universe of social media, impacting who may be held liable for providing misleading information about a security or other investment vehicle.

Blockchain and Cryptocurrency – a primer

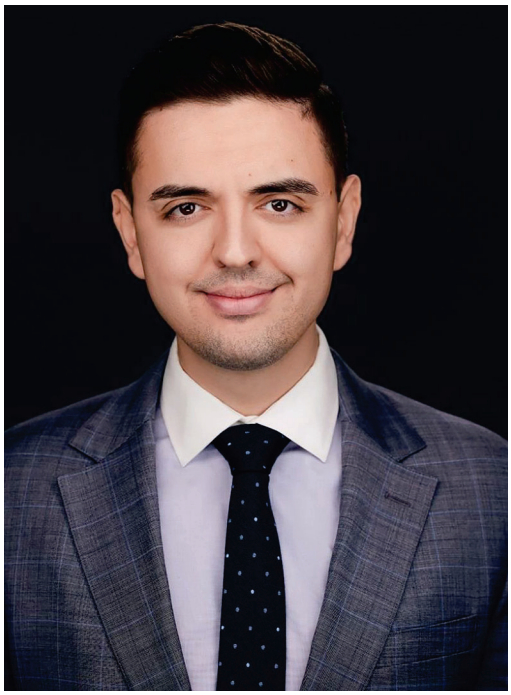
Blockchain is a decentralized, distributed ledger technology that records transactions across many computers so that registered transactions cannot be altered retroactively. Cryptocurrency is a digital currency operating on the blockchain. While all cryptocurrencies are built on blockchain technology, not all blockchain applications involve cryptocurrencies. One of the main features of blockchain technology is the decentralization of networks, meaning that no single entity has control over the network.

For this article, it will be assumed that all cryptocurrencies mentioned fall under the securities umbrella. However, the decentralization analysis will eventually become pivotal in determining whether a cryptocurrency is classified as a security, whether via a new interpretation of the *Howey* Test, which lays out the four criteria an asset must meet to qualify as an investment contract, or through legislative rulemaking.

Section 12 of the Securities Act – who is a seller?

Section 12(a)(1) of the Securities Act creates a private right of action for a purchaser against the seller in any transaction that violates Sections 5(a) or (c) and includes the right to sue for damages or rescission. Section 12(a)(2) creates liability for misleading statements in "a prospectus or oral communication."

The Supreme Court in *Pinter v. Dahl* defined a "statutory seller" as someone who (1) "successfully solicits the purchase [of a security], motivated at least in part by a desire to serve [its] own financial interests or those of the securities' owner" or (2) passes title, or other interest in the security, to the buyer for value.



Genc Arifi, Associate

Solicitation – the rise of social media

Cryptocurrency and other investment projects promoted on social media are challenging the definition of "seller" under Section 12 of the Securities Act. Lower courts have begun to issue rulings determining whether online videos promoting crypto tokens constitute "solicitations that make someone a seller." However, varying interpretations by lower courts have created uncertainty for investment firms regarding what they can promote online without risking legal action.

For example, the first SEC enforcement actions focused on celebrities who took to social media to advertise Initial Coin Offerings ("ICOs") without disclosing that they had been paid for their promotion of the tokens. World-renowned boxer Floyd Mayweather, Jr. and music personality DJ Khaled were found to have violated the Securities Act for touting ICOs and failing to disclose that they had been paid do so.

More recently, in October 2023, the Supreme Court declined to grant *certiorari* for a case involving Cardone Capital LLC, a real estate management company, after a California district court ruled that the CEO of Cardone Capital was not a "seller." The plaintiff alleged a violation of § 12(a)(2) and claimed that the CEO made "untrue statements of material fact or concealed or failed to disclose material facts in Instagram posts and a YouTube video in 2019" where the CEO stated that, "it doesn't

matter whether the investor is accredited or non-accredited … you're gonna walk away with a 15% annualized return…." The district court noted that the CEO was not a seller under the first prong of the *Pinter* test, as title was not passed, and further, Cardone was not found to be a "seller" under the second prong because the "plaintiff never alleged that [the CEO] or Cardone Capital was directly and actively involved in soliciting Plaintiff's investment, nor that Plaintiff relied on such a solicitation when investing." However, the Ninth Circuit overturned this decision, holding that "§ 12 of the Securities Act contains no requirement that a solicitation be directed or targeted to a particular plaintiff... [and] that a person can solicit a purchase, within the meaning of the Securities Act, by promoting the sale of a security in a mass communication." The Ninth Circuit further held that the plaintiff "need not have alleged that he specifically relied on any of the alleged misstatements."

> "Blockchain technology is poised to evolve at a far greater pace than court precedents could hope to keep up with."

The Ninth Circuit opinion followed the Eleventh Circuit case, *Wildes v. BitConnect International PLC*. The *Wildes* court noted that, "when a person solicits the purchase of securities to serve their financial interests, they are liable to a buyer who purchases those securities – whether that solicitation was made to one known person or to a million unknown ones." The Wildes court emphasized the relevance of the Securities Act, noting that "technology has opened new avenues for both investment and solicitation, sellers can now reach global audiences through podcasts, social media posts, online videos, and web links."

Passing Title – centralized vs decentralized exchanges

A centralized cryptocurrency exchange is a digital platform where buyers and sellers can trade various cryptocurrencies, such as Bitcoin or Ethereum, using traditional order book systems. These exchanges operate as intermediaries, facilitating transactions between users by matching buy and sell orders and executing trades on behalf of participants. Centralized exchanges typically maintain control over users' funds by holding them in centralized wallets, and users must create accounts and undergo verification processes to trade on the platform. Examples of centralized exchanges include Binance, Coinbase, and Kraken.

On April 5, 2024, the Second Circuit reversed the district court in *Oberlander v. Coinbase Global Inc.*, holding that plaintiffs had sufficiently alleged that Coinbase was a seller under Section 12(a)(1) because some newly discovered agreements between buyers and Coinbase stated that buyers were purchasing digital assets from Coinbase, thus satisfying the passing title prong of Pinter. Without the language of the agreements expressly stating that Coinbase was a seller, the Second Circuit would likely have upheld the ruling of the district court since Coinbase was an intermediary, meaning that it provided the infrastructure to execute trades between buyer and sellers but itself did not maintain title to or sell any digital assets. It is important to note that the Second Circuit did not disturb the district court's holding that Coinbase did not solicit the sale of securities and that its involvement was merely collateral participation, which is not sufficient to satisfy the first *Pinter* prong.

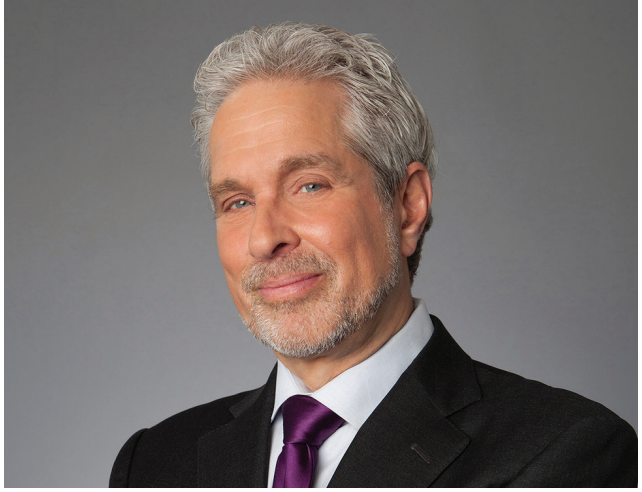
In contrast, a decentralized cryptocurrency exchange ("DEX") operates on a blockchain network without the need for a central authority or intermediary. Instead of relying on a centralized entity to facilitate trades, DEXs use smart contracts to automate the trading process, allowing users to trade directly with each other in a peer-to-peer manner. Users retain control of their funds at all times. Examples of decentralized exchanges include Uniswap, PancakeSwap, and SushiSwap.

In *Risley v. Universal Navigation Inc.*, the court ruled against the plaintiffs, stating that developers of smart contracts do not transfer title of tokens. The court likened their role to lawyers or underwriters in traditional exchanges who facilitate but are not party to transactions. The court also determined that the exchange and other defendants did not have title over each token and that any momentary transfer would be insufficient to establish liability under Section 12.

Conclusion

To date, courts have been able to apply long-standing case law to grapple with the technological intricacies of blockchain technologies and the risks of cryptocurrency. However, blockchain technology is poised to evolve at a far greater pace than court precedents could hope to keep up with. What is evident is that the interests of investors and the various blockchain projects can best be served via rule-making and robust regulatory framework, both lacking at this time.

Event-Driven Securities Litigation: an Interview with Marc I. Gross



Whether you're an influencer, a politician, or a major corporation, reputation is part of your livelihood. In the Spring 2024 issue of *The Business Lawyer*, Pomerantz Senior Counsel Marc I. Gross published a paper titled "#Reputation Matters! A Critique of the Event Driven Suits Model." In the article, Marc focused on corporate reputations and offered a rebuttal to Columbia Law Professors Merritt Fox and Joshua Mitts' "Event Driven Suits and the Rethinking of Securities Litigation," published in the Winter 2022-2023 issue of the same journal. Marc sat down with Brett Lazer of *The Pomerantz Monitor* to discuss his article and why a company's reputation is a key factor often missed by the courts when assessing the impact of misleading statements on stock prices, and the consequences thereof for measuring damages in securities fraud class actions.

The Pomerantz Monitor
Your article focuses on event-driven securities litigation. Perhaps you can explain what event-driven lawsuits are and the debate surrounding them.

Marc I. Gross
"Event-driven litigation" is a term Professor John Coffee of Columbia coined about 10 years ago to describe cases filed following major catastrophes, such as BP's Deepwater Horizon oil rig explosion, or a dam bursting. The question is whether the same rules should apply to these cases as in financial misstatement cases, because event-driven cases essentially deal with an undisclosed risk, not a misstated result. For example, in a case that Pomerantz successfully pursued against BP p.l.c., the company had a series of catastrophes prior to the Deepwater Horizon explosion in the Gulf of Mexico. BP claimed it had implemented a remedial program, but failed to disclose that the program did not apply to high-risk offshore drilling. The court ultimately found that BP's prior pattern of misconduct, combined with its failure to disclose the degree of risk investors actually faced, could support a securities fraud claim. In recent years, event-driven litigation has expanded from catastrophes like natural disasters and explosions to cases where a company was suddenly found to have engaged in other types of misconduct. Examples include the dark pool trading platform at issue in Pomerantz's case against Barclays, or the ABACUS transactions that John Paulson engaged in with Goldman Sachs, which were referenced in the film The Big Short.

In their article, Fox and Mitts argue that event-driven cases should be categorized separately and analyzed under a different set of rules, including imposition of much higher pleading burdens on plaintiffs. Frankly, I don't think they want to limit such rules to catastrophes. I think they see their proposals as a way to recast what they think is wrong in securities fraud litigation.

Pomerantz Monitor
What is the argument of the Fox and Mitts piece?

Marc I. Gross
Their article says that in event-driven cases, if not most securities cases, the court should not focus on what happened to stock prices when the wrongdoing was disclosed, but the price impact had the company said nothing at the outset. In other words, to determine damages, the court should focus on stock prices at the time the misconduct first occurred, not when the misconduct was revealed. For example, in the Barclays case the bank previously had serious violations arising from certain trading platforms, and they said, "Well, we now offer 'dark pool' trading, but this is not like what happened before, we've taken remedial measures to make sure customers are adequately protected and there are no abusive practices," which, in fact, they hadn't. Fox and Mitts' thesis is that in assessing price impact, the court shouldn't look at what happened when investors learned that Barclays' statements were misleading, but how the market would have reacted had there been no statements about the dark pool trading at the outset, on the assumption that the company did not have to volunteer such information.

Pomerantz Monitor
You say this misses a key function of these kinds of corporate utterances.

Marc I. Gross
These statements are made to burnish a company's reputation, including assuring investors that past misconduct has been remediated. My argument is that courts are failing to give sufficient weight to the degree to which a company's reputation impacts the stock price at the time misstatements are made. There's empirical evidence showing that a significant portion of any stock price is attributable to reputation. Marty Lipton [a founding partner of law firm Wachtell, Lipton, Rosen & Katz] suggests it's 50%. That makes sense because companies are essentially brand names. Their value is based on what investors think their profitability will be, but also on perceptions of the management's integrity. Investors don't like surprises, so they will invest in stocks based upon an assumption of reliability and truthfulness. We have this whole theory of fraud on the market - what else is the market doing but presuming a degree of credibility and reliability of management? Investors assume such factors are baked into the stock price. So when a company discloses misconduct, or incurs a catastrophic event, and the stock price plummets, studies have shown that the size of the decline is often disproportionate to the amount that the stock would have fallen had the company simply been truthful in the first instance. If a company says, "Instead of earning $1 we only earned $0.75," you might expect a 25% decline based on historic price/earnings ratios. In fact, studies show that stock will actually fall over 50%. What accounts for that additional decline? As cited in my article, Professor Karpov and others have shown empirically the additional decline is attributable to the market reassessing the reputational risk of the company.

Pomerantz Monitor
One of the examples you use to illustrate this effect is Wells Fargo. Can you take us through what happened in that case?

Marc I. Gross
Wells Fargo had a sterling reputation, selling at a higher price-to-earnings ratio than its competitors, Chase and Bank of America. The bank touted its "synergy" practices such as getting checking account customers to invest in other types of accounts. These "synergies" gave the bank a way to distinguish itself from its competitors. Then suddenly investors learned that Wells Fargo's bankers were engaging in abusive practices, taking money from customer accounts at the end of the quarter, putting them in other accounts, and then reversing the transactions, thereby meeting "goals." Sometimes customers lost money due to overcharge fees, sometimes they didn't. It didn't add a great deal of profits or revenues. This wasn't Enron, where earnings were being faked. Wells Fargo was still making billions of dollars in profits. Indeed, when these abusive practices were disclosed, it paid only a $185 million fine, which was a drop in the bucket for the bank. Nonetheless, the stock price cratered by $30 billion within a month. So that's an indication that the market reassessed the reliability of management. The market was very prescient because it turned out that Wells Fargo was doing this with car loans, insurance and other products. Boeing right now is an extreme example of such misconduct. It didn't cook the books like Enron, but the company cratered their own planes by pushing profits before safety.

Pomerantz Monitor
This gets back to the issue of a company's statements. One supposes Boeing

couldn't come out and say it was skimping on safety to maximize profits.

Marc I. Gross
It's a good question, because the courts have asserted, and properly so, that a company doesn't have to accuse itself of criminal misconduct. The problem is that Boeing was clearly behaving improperly. At the end of the day, it's not about merely saying that you're taking action to improve safety as Boeing did, it's whether you are actually doing it. For Fox and Mitts, these situations don't constitute securities fraud because there was no requirement to volunteer information about safety practices. Rather, the professors categorize this as only a breach of a fiduciary duty of care for which derivative claims exist as a remedy. In a sense this is correct, because directors have a fiduciary duty of care under the Caremark case in Delaware that says they have to make sure remedial measures are, in fact, being implemented. We could certainly bring a derivative case in a situation like Boeing. The problem with a derivative cases is that it takes money from the directors, puts it back into the company, and it doesn't necessarily help shareholders who bought stock and lost millions when they sold shares following disclosure of the wrongdoing.

Pomerantz Monitor
Fox and Mitts suggest that any function served by private securities litigation would be better addressed by derivative cases, regulatory criminal prosecutions, or SEC enforcement, but you claim these remedies are insufficient. Why?

Marc I. Gross
Historically, the SEC's recoveries are limited to collecting fines, not damages incurred by investors. In fact, studies by John Coffee and others show that private litigants get 10 times the amount that the SEC gets in their cases. So first, there's a matter of compensation. Second, the SEC simply doesn't have the resources to pursue all these claims. The SEC and the Supreme Court have long recognized that as securities litigation firms, we function as private attorneys general. We play a complementary role. With better resources, could the SEC actions one day be sufficient? Perhaps. But I'm not convinced. At a certain point it becomes political. Congress has a vested interest in this system, and so without private actors there will always be political concerns that interfere with justice being carried out.


Jeremy A. Lieberman


Jennifer Pafiti


Dr. Daniel Summerfield


Janalee Spencer

NOTABLE DATES ON THE POMERANTZ HORIZON

IF YOU WILL BE ATTENDING ANY OF THESE EVENTS AND WOULD LIKE TO MEET WITH US, SEND US A MESSAGE AT: EVENTS@POMLAW.COM.

On September 26 -27, **DR. DANIEL SUMMERFIELD** will attend the **International Corporate Governance Network ("ICGN") Global Stewardship Forum** in London, UK.

On September 30, **DANIEL** will participate in a **Roundtable** at **Kings College London** on **The Investor Stewardship Landscape.**

On October 6–8, **JANALEE SPENCER** will attend the **Texas Local Firefighter Retirement Act ("TLFFRA") Educational Conference** in Irving, Texas.

On October 15–16, **DANIEL** will attend the **Pensions and Lifetime Savings Association ("PLSA") Annual Conference** in Liverpool, UK.

On October 27–30, **JENNIFER PAFITI** and **JANALEE** will attend the **National Conference on Public Employee Retirement Systems ("NCPERS") Public Safety Conference** in Palm Springs, California.

On November 5-6, **DANIEL** will attend **Pension & Investment's World Pension Summit** in the Hague, the Netherlands.

On November 13-14, **JEREMY A. LIEBERMAN, JENNIFER** and **DANIEL** will attend the **ICGN Conference** in Melbourne, Australia, where **DANIEL** will speak.

On November 28, **DANIEL** will attend the **PLSA ESG Conference** in London, U.K.

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Pomerantz is acknowledged as a global leader in securities and corporate governance litigation. Pomerantz monitors the portfolios of some of the most influential institutional investors and financial institutions worldwide, monitoring assets in excess of $9 trillion. Founded by Abraham L. Pomerantz, who was known as the "dean of the class action bar," the Firm pioneered the field of securities class actions. For 85 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.

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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 www.pomlaw.com or contact:

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