the POMERANTZ MONITOR

VOLUME 21, ISSUE 2, MARCH/APRIL 2024

Curiouser and Curiouser: The Changing Dynamic of Shareholder-Corporate Engagement

By Dr. Daniel Summerfield

INSIDE THIS ISSUE

In the world of corporate governance and stewardship, change is becoming the new status quo. We are witnessing significant shifts in how shareholders engage with corporations and how those companies respond. To paraphrase *Alice in Wonderland*, it's becoming curiouser and curiouser as market participants adapt to the new normal. I outline below some recent developments that illustrate this evolving dynamic, in no particular chronological order.

Holding companies to account for climate change commitments

There is a growing realisation that the road to net zero under the 2015 Paris Climate Agreement will be rocky, even if a firm has prepared a detailed plan. This is, to a large extent, due to assumptions built into many such corporate plans, such as an expected presence of supportive government policies and customers' capacity to deal with the transition. Such assumptions may be built on misplaced optimism, lack of proper due diligence, or some of each. As a result of the ever-changing context, there is an increased challenge for companies in terms of their corporate climate commitments, particularly where these are not backed up by adequate plans and policies.

Indeed, a recent study by USS and University of Exeter outlined four narrative climate scenarios out to 2030 based on a framework that embraces the radical uncertainties surrounding the potential positive as well as negative tipping points. The scenarios focus on the vicissitudes of politics and markets and, to a lesser extent, on the climate itself, in the form of extreme weather events. Only in the most optimistic of the four scenarios does it seem possible that global emissions will be halved by the end of the decade despite the best intentions – and perhaps due to the lack of best intentions – of market participants.

It should therefore come as no surprise that, as companies step back from their previous commitments, we are seeing an escalation of engagement approaches being employed by shareholders to hold management to account.

In January 2024, twenty-seven institutional investors backed a resolution against Shell plc filed by the Dutch shareholder activists at Follow This; the resolution will be voted on at Shell's May 2024 Annual General Meeting ("AGM"). The resolution calls for the oil company to align its medium-term emissions reduction targets with the Paris Climate Agreement. It was co-filed by influential investors from Belgium, France, the Netherlands, the UK, the USA, Sweden, and Switzerland. These include, among others, Europe's largest investor, the French asset management firm Amundi, as well as the Rathbones Group, Scottish Windows, and NEST.

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Another interesting feature with this filing is that, despite the fact that the 27 investors manage assets with a combined value of $4.2 trillion, the investors collectively hold only 5% of Shell's stock.

In mid-March, after the resolution was filed, Shell backtracked on its climate targets, lowering its emission reduction targets from 20% to 15-20% by 2030 and scrapping its emission reduction targets of 45% by 2035.

"With this backtrack," stated Mark van Baal, founder of Follow This, "Shell bets on the failure of the Paris Climate Agreement … only Shell's shareholders can change the board's mind by voting for our climate resolution at the shareholders' meeting in May."

A similar resolution at Shell's AGM last year was supported by only 20% of shareholders.

A comparable proposal which was filed against Exxon Mobil in the U.S. by Follow This and Arjuna Capital was met with an unprecedented and worrying response in the form of a lawsuit by the company that targeted the investors who filed this resolution. ExxonMobil is justifying its litigation by alleging the SEC's inability to enforce rules that govern when investors can resubmit shareholder proposals. According to ExxonMobil, a court "is the right

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place to get clarity on SEC rules," adding that "the case is not about climate change." To date, despite the proposal being withdrawn, the company is going forward with its lawsuit. It remains to be seen if this will have a dampening effect on the filing of shareholder resolutions in the U.S.

Challenging companies' decision-making processes

Another interesting development in the U.S. was seen in a recent successful lawsuit by an individual shareholder who challenged the process by which Elon Musk's $55 billion pay package was approved by Tesla's board of directors. The Delaware judge overseeing the case voided Musk's compensation package, stating that Musk controlled the board through his personality and influence and the board could therefore not demonstrate that the share grant had been executed at a fair price or through a fair process. In the judge's words, "Musk was the paradigmatic 'Superstar CEO'… and dominated the process that led to board approval of his compensation plan.'"

According to corporate experts such as Professor Charles Elson at the University of Delaware, a case such as this "has not happened before. It is extraordinary." Although other academics have questioned whether it will set a precedent, there are likely to be significant reverberations felt in other boardrooms that may indeed lead to a review of the independence of board chairs of other companies. It also remains to be seen if Musk follows through with his threat to move Tesla from Delaware to Texas, the irony of which will not be lost on those who remember companies such as NewsCorp relocating to Delaware because of the state's perceived light touch on protections for investors.

Whatever the reverberations of the Tesla case, the perception by detractors that securities litigation simply serves to drain corporate funds has lost credibility. It is increasingly recognised that the two main goals of active and responsible shareholders that participate in securities litigation are a) to recover money lost as a result of corporate malfeasance and b) to increase the long-term value of the defendant companies through positive changes in corporate governance and corporate behaviour.

Indeed, securities litigation can be seen as an additional tool in shareholders' engagement armoury by addressing corporate wrongdoing through the implementation of corporate governance changes. The reality is that, under the proper circumstances, shareholder litigation can bring about significant changes which will protect investors that wish to remain invested and increase shareholder value over the long term.

Looking forward

Another development we are beginning to see in markets such as those in the UK and Italy, is a perceived regulatory race to the bottom as listing regimes seek to find ways to attract IPOs by diluting hitherto sacrosanct investor protections as a way of enticing companies to list in their respective markets. This can only result in companies with poor governance standards taking advantage of these reduced standards by listing in these markets. If that is the case, then we are only likely to see an increased use by shareholders of tools such as securities litigation and shareholder proposals as a way of holding management to account and deterring other companies that might be tempted to follow a path that is not in their shareholders' or stakeholders' interests. ■

SEC Passes Climate Disclosure Rules After Two-Year Wait

By Jonathan D. Park

On March 6, 2024, the United States Securities and Exchange Commission ("SEC") approved a set of long-awaited regulations requiring securities issuers to provide climate-related disclosures in their annual reports and registration statements. The final rules significantly scale back the proposal released nearly two years prior, after a comment period that saw record levels of feedback from investors, industry groups, and other stakeholders. SEC Chairperson Gary Gensler, who was joined by two Democratic colleagues in a 3-2 party-line vote approving the regulations, stated that "[t]hese final rules build on past requirements by mandating material climate risk disclosures by public companies and in public offerings. The rules will provide investors with consistent, comparable, and decision-useful information, and issuers with clear reporting requirements."

After the regulations are phased in, the final rule will require many registrants to disclose, among other things: certain greenhouse gas (GHG) emissions, subject to a materiality requirement; climate-related risks that have had or are reasonably likely to have a material impact on the registrant's business strategy, results of operations, or financial condition; the actual and potential material impacts of any identified climate-related risks on the registrant's strategy, business model, and outlook; and any oversight by the board of directors of climate-related risks and any role by management in assessing and managing the registrant's material climate-related risks.

In financial statements, registrants will be required to disclose, in the income statement, aggregate expenditures and losses as a result of severe weather events and other natural conditions, as well as to disclose costs and charges recognized on the balance sheet due to severe weather events and other natural conditions. Both of these requirements are subject to a monetary threshold.

If carbon offsets and renewable energy credits ("RECs") are material to a registrant's plan to achieve disclosed climate-related targets, the registrant must disclose a roll-forward of the beginning and ending balances. Registrants must also disclose whether, and if so, how, severe weather events and other natural conditions, as well as disclosed climate-related targets or transition plans, materially affected estimates and assumptions reflected in the financial statements. Large accelerated filers (issuers with a public float of $700 million or more) must begin making these financial statement disclosures in annual reports or registration statements that include financial statements for the year ending December 31, 2025, while accelerated filers (issuers with a public float greater than $75 million but less than $700 million) have an additional year to comply. The financial statement disclosures will be subject to audit requirements and management's internal control over financial reporting. For large accelerated filers and accelerated filers other than smaller reporting companies (SRCs) and emerging growth companies (ERGs), the registrant's auditor will assess controls over these disclosures.

During the comment period after publication of the proposed rule, significant attention was paid to the question of what information companies would be required to disclose outside of the audited financial statements. In particular, the final rule requires registrants to disclose "Scope 1" GHG emissions (i.e., those from the registrant's owned or controlled operations) and "Scope 2" GHG emissions (i.e., those from purchased or acquired electricity, steam, heat, or cooling). In a change from the proposed rule, these disclosures are only required if they are material. Materiality, the SEC emphasized, is not determined merely by the amount of these emissions, but by whether a reasonable investor would consider the disclosure as having significantly altered the total mix of information made available. For instance, the SEC explained, "[a] registrant's Scopes 1 and/or 2 emissions may be material because their calculation and disclosure are necessary to allow investors to understand whether those emissions are significant enough to subject the registrant to a transition risk that will or is reasonably likely to materially impact its business, results of operations, or financial condition in the short- or long-term."

The rule allows registrants to delay Scope 1 and Scope 2 disclosures until the due date of their Q2 quarterly report for the following year. Large accelerated filers must begin including Scope 1 and Scope 2 emissions disclosures in annual reports or registration statements that include financial statements for the year ending December 31, 2026. Accelerated filers have two additional years to comply. SRCs, ERGs, and nonaccelerated filers are exempt from the requirement to provide GHG emission disclosures.

Beginning with fiscal year 2029, large accelerated filers must attest with "limited assurance" as to the accuracy of the Scope 1 and Scope 2 emissions disclosures. Beginning two years later, such filers must attest to the accuracy of these disclosures with "reasonable assurance." Accelerated filers (other than SRCs and ERGs) need only provide "limited assurance" attestations beginning with fiscal year 2033.

The rule will also require disclosure of processes for identifying, assessing, and managing material climate-related risks; information about any climate-related targets or goals that have materially affected or are reasonably likely to materially affect the registrant's business, results of operations, or financial condition; and any oversight by the board of directors of climate-related risks and any role by management in assessing and managing such risks.

Notably, the final rule does not require disclosure of "Scope 3" GHG emissions, which are those produced along the registrant's "value chain," such as by the registrant's suppliers. Though Scope 3 emissions can be substantial, and even greater than a company's Scope 1 and Scope 2 emissions, the SEC eliminated this disclosure requirement in the face of vigorous opposition by business groups. This was likely an attempt to head off challenges and the prospect of a court decision invalidating the regulation. Scope 3 disclosures are required by the European Commission's Corporate Sustainability Reporting Directive (CSRD), as well as by California for certain companies doing business in that state, so many issuers will be obligated to assemble and report such information in any case.

Several lawsuits seeking to invalidate the rule have already been filed by Republican attorneys general of several states, industry groups, and energy companies. Environmental advocates have also sued, arguing that the rule does not go far enough, in particular by removing Scope 3 disclosure requirements. The cases have been consolidated in the United States Court of Appeals for the Eighth Circuit. Many consider the Eighth Circuit a conservative court where the Republican and industry challengers will find a sympathetic ear.

If the final rule eventually becomes effective, investors will surely benefit from the disclosures it requires, despite its pared back scope. A company's GHG emissions, and any plans to mitigate them or otherwise achieve climate-related targets, are increasingly necessary for investors to evaluate a company's outlook. Moreover, disclosure of how extreme weather events have affected a company's financial condition is increasingly material in light of the growing frequency and severity of such events. If the rule becomes effective, lawsuits and investigations regarding alleged violations of the disclosure requirements are likely, and will further clarify company's obligations under the rule.

The final rules are available on the SEC's website: https://www.sec.gov/rules/2022/03/enhancement-and-standardization-climate-related-disclosures-investors and will be published in the Federal Register.

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SEC Finalizes Rules Relating to SPACs, Shell Companies, and De-SPAC Transactions

By Brian P. O'Connell

On January 24, 2024, the U.S. Securities and Exchange Commission ("SEC") adopted new rules and guidance that affect Special Purpose Acquisition Companies ("SPACs") and offerings in which SPACs acquire and merge with private company targets ("de-SPACs"). The rules were initially proposed in March 2022 and were followed by a comment period. Approval was granted via a 3-2 vote, with two commissioners making statements in dissent. The rules are set to become effective July 1, 2024. They aim to enhance investor protection, including increasing disclosure requirements in connection with SPAC offerings, as well as to explicitly align SPAC offerings with traditional IPOs.

SPACs, also known as "shell" or "blank check" companies, are development-stage companies that have no operations of their own, apart from seeking private companies, known as "target companies," with which to engage in a merger or acquisition to take the target public. The SPAC first has gone public via its own IPO. Once the merger between the SPAC and the target company is complete, the target, or operating company, is the sole surviving entity, and it transitions to a public company. This transaction and IPO with the target company is called a de-SPAC, since the SPAC essentially ceases to exist in the process.

SPAC IPOs have surged in popularity in recent years. In 2021, the United States saw a whopping 613 SPAC IPOs, representing 59% of all IPOs that year. SPACs have often relied on celebrity backing to boost their popularity: for example, Shaquille O'Neal advised a SPAC for Beachbody; Peyton Manning, Andre Agassi, and Steffi Graf invested in a SPAC for Evolv Technology; Jay-Z invested in The Parent Co.; Serena Williams served on the board of directors of Jaws Spitfire Acquisition Corp.; Alex Rodriguez is CEO of Slam Corp., and former Speaker of the House Paul Ryan served as Chairman of Executive Network Partnering Corp. Much like their concern with celebrity-backed crypto investments, regulators have been anxious about retail investors' vulnerability to being misled by a famous name backing a blank check company offering. Although SPACs have subsided somewhat in popularity since their peak in 2021, SPAC IPOs remain in the news, with Trump Media Technology Group going public via de-SPAC on March 26, 2024 under the ticker "DWAC." SPAC IPOs still accounted for 43% of IPOs in 2023.

Many have raised concerns that the SPAC structure lacks investor disclosure and transparency policies that serve as investor protections under the Investment Company Act. This means that SPAC investors lack protections that are typical in traditional IPOs, which leaves SPAC retail investors vulnerable to being misled. However, critics of the new rules, including dissenting commissioner Mark Uyeda, have pointed out that SPACs now require disclosures in excess of equivalent M&A transactions.

Given the attention and lure to retail investors, regulators will continue to focus on this means of IPO, and these new rules will shape the disclosure requirements for SPACs and de-SPACs. The SEC's new rules set out to enhance disclosure requirements and provide guidance on the use of forward-looking statements with respect to SPACs, SPAC IPOs, blank check companies, and de-SPAC transactions. Specifically, the new rules provide that the Private Securities Litigation Reform Act ("PSLRA") safe harbor is not applicable to de-SPAC transactions, which now explicitly aligns de-SPAC offerings with traditional IPOs. In his statement on January 24, SEC Chair Gary Gensler noted that "investors are harmed when parties engaged in a de-SPAC transaction over-promise future results regarding the target company"—something that investors regularly have suffered, as forecasted results have by and large not panned out. Although the PSLRA safe harbor is explicitly not applicable, other safe harbors, such as the "bespeaks caution" doctrine, which is judicial as opposed to statutory, may still apply. However, this new rule may tamp down on the amount and frequency of overly rosy projections in de-SPAC offerings.

The rules also address issuer obligations and liabilities for de-SPAC IPOs, including requiring that SPAC target officers sign the de-SPAC registration statements, which makes them liable for misleading statements. The rules also include a new provision, Rule 145a, which makes the issuer a registrant under the Securities Act.

The final rules require disclosures from issuing companies at both the SPAC blank check stage and the de-SPAC stage regarding conflicts of interests, dilution risks, and the target company operations. Regarding dilution, the rules require detailed disclosure concerning material potential sources of additional dilution that non-redeeming SPAC shareholders may experience at different phases of the SPAC lifecycle, including the potentially dilutive impact of the securities-based compensation and securities issued to the SPAC sponsor, its affiliates, and promoters; any material financing transactions after the SPAC's IPO, or financing that will occur in connection with the de-SPAC transaction closing; and redemptions by other SPAC shareholders.

The rules further require additional disclosure about the SPAC sponsor, its affiliates, and any promoters, including their experience, material roles and responsibilities, and the nature and amount of all compensation of these

PLAINTIFF LITIGATOR OF THE YEAR

PARTNER EMMA GILMORE

Emma was chosen from a crowded field of powerful plaintiff attorneys across the USA. She currently leads Pomerantz's securities litigation against Amazon and another against Coupang, Inc., known as the "Amazon of South Korea." She had a banner year in 2023: In May she secured a $74 million settlement for investors in Arconic, the U.S. company that produced the aluminum cladding implicated in spreading the deadly Grenfell Tower fire in London in 2017. In February Emma recovered an extraordinary 50% of damages for investors in Deutsche Bank after the bank misrepresented its Know-Your-Customer protocols and continued doing business with convicted sex offender Jeffrey Epstein.

Congratulations, Emma, on this well-deserved recognition!

parties. SPAC sponsors will be required to disclose the circumstances or arrangements under which the SPAC sponsor, its affiliates, and promoters have or could transfer ownership of any of the SPAC's securities. The rules also require the identification of the controlling persons of the SPAC sponsor and any persons who have direct or indirect material interests in the SPAC sponsor and the material terms of any "lock-up" arrangements for the SPAC sponsor and its affiliates. SPAC IPOs and de-SPAC IPOs will also be required to state in the prospectus cover pages the SPAC's timeframe to complete a de-SPAC, redemption rights, and the SPAC sponsor's compensation.

The SEC declined to adopt Rule 140a, which had been included in the proposed rules in March 2022. This would have clarified that anyone who acts as an underwriter in a SPAC IPO and participates in the distribution associated with a de-SPAC is engaged in the distribution of the surviving public entity's securities. Such a person or entity, therefore, would be construed as an "underwriter" within the meaning of Section 2(a)(11) of the Securities Act. Under Section 11 of the Securities Act, underwriters can be liable for misstatements in registration statements, which incentivizes them to perform careful due diligence. Although this rule was not adopted, the SEC explained in the Final Release that it believes "the statutory definition of underwriter, itself, encompasses any person who sells for the issuer or participates in a distribution associated with a de-SPAC transaction," and therefore construes anyone involved in the distribution within a de-SPAC to fall within the meaning of Section 2(a)(11) of the Securities Act.

Under these rules, SPAC target companies that are not subject to the reporting requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 will be required to make non-financial disclosures that are included in a traditional IPO, including: (i) Item 101 (description of the business); (ii) Item 102 (description of property); (iii) Item 103 (legal proceedings); (iv) Item 304 (changes in and disagreements with accountants on accounting and financial disclosure); (v) Item 403 (security ownership of certain beneficial owners and management, assuming completion of the de-SPAC transaction and any related financing transaction); and (vi) Item 701 (recent sales of unregistered securities).

Overall, these rules aim to reduce the differences between de-SPAC offerings and traditional IPOs that led to SPAC investors being less robustly protected. Companies should be mindful of these new rules, while investors can now make use of their enhanced protections when choosing to invest in a SPAC, vote on a merger, redeem or not redeem shares in a de-SPAC, or invest in a de-SPAC offering. The new regulations mean that due diligence processes in advance of de-SPAC offerings will likely take longer, and that investors will have more protections, both in terms of the robustness of disclosures and legal options should the prices decline.

Pomerantz Scores Major Victory in Investor Suit Against Y-mAbs

The Editors

In February 2024, Pomerantz overcame defendants' motion to dismiss a major investor suit against Y-mAbs Therapeutics, Inc. and its executives. The case alleges that Y-mAbs made numerous misleading statements about the FDA approval process for its primary product, omburtamab.

Y-mAbs is a clinical biopharmaceutical company headquartered in New York that develops and markets antibody-based therapies. In 2020 and 2021, Y-mAbs' leading drug candidate was omburtamab, a therapy designed to treat neuroblastoma, a type of cancer that forms in nerve cells. In 2020, Y-mAbs submitted a Biologics License Application ("BLA") as part of the FDA approval process for omburtamab. In the application, Y-mAbs included a single-arm study comparing the overall survival results of patients using omburtamab with an external control constructed using data from the Central German Childhood Cancer Registry ("CGCCR"), rather than with a study control group. However, the company received a Refusal-to-File ("RTF") letter from the FDA indicating substantial flaws in the data Y-mAbs presented in its application. Y-mAbs issued a press release on October 5, 2020 informing investors of the RTF letter, but without actually publishing the contents of the letter. Instead, they assured the market that the RTF was issued merely for non-substantive reasons. Y-mAbs confirmed that the letter contained "new issues being raised that hadn't been discussed previously," but portrayed the FDA's concerns optimistically, saying that it was a "minor setback," "not a problem," they "have everything" to cure the deficiencies, and that there was "no concern that the FDA will think, 'Oh, that is not sufficient response.'"

In reality, since 2016 the FDA had repeatedly warned the company that the patient population in the study Y-mAbs submitted was not comparable to the population in the CGCCR. Contrary to what the company claimed, these deficiencies were not "new issues." Additionally, Y-mAbs and its executives knew they could not fully address all the points the FDA raised, as a satisfactory resubmission called for a comparison of patients who had also received craniospinal irradiation, which the CGCCR dataset did not contain.

The FDA maintained its position as it discussed the resubmission of the BLA with Y-mAbs in January 2022, reiterating that the CGCCR data was fundamentally flawed and that Y-mAbs did not provide sufficient information to support the BLA. The FDA told Y-mAbs that it had failed to adequately address the deficiencies that the agency had identified and that aspects of the Y-mAbs analysis were "arbitrary." Ultimately, the FDA informed Y-mAbs that if the company could not provide an adequate comparator, "an alternative clinical development program" would need to be discussed. Despite this feedback, Y-mAbs went out of its way to reassure investors that "all the information that we need, we have," and the FDA and Y-mAbs were "aligned" on the resubmission. The company even claimed that there was a "clear regulatory path forward," and the resubmission was "progressing as planned."

Y-mAbs had previously told investors the company would not file the BLA until they "reach a final agreement with the [FDA]" and "get a green light." However, on March 31, 2022, in keeping with a statement from a February earnings call in which Y-mAbs said it expected to resubmit the BLA by the end of the first quarter of 2022, the company resubmitted the BLA for omburtamab "prior to reaching agreement with the FDA on the content of the application." On October 26, 2022, the FDA released a Briefing Document for the Oncologic Drug Advisory Committee. The document laid out the FDA's findings that the clinical trials on which Y-mAbs had based its application were inadequate and not well-controlled, and therefore did not provide sufficient evidence that omburtamab is safe and effective.

Two days later the Advisory Committee unanimously voted to deny FDA approval for omburtamab. The committee concluded that the "difference in survival cannot be reliably attributed to omburtamab." On this news, Y-mAbs' share price plummeted over 76%.

The court reviewed defendants' motion to dismiss by dividing the alleged false statements into four categories: statements regarding timing of resubmission, statements regarding progress towards resubmission, statements interpreting clinical data, and statements interpreting FDA feedback and guidance.

The first category covers statements regarding the future timing of resubmission, such as "[we] expect this year to complete our BLA submission." The court held that such statements were not actionable as they constituted forward-looking statements or opinions, which are protected by the PSLRA's safe harbor.

The second category comprises statements regarding progress towards resubmissions. Examples of these statements include that the resubmission was "going as planned" and "progressing well." The court decided that these statements were not actionable under *Omnicare*, which established that a "reasonable investor" may understand an opinion statement to convey facts about how the speaker formed the opinion. As the FDA continued to meet with the company, the court concluded that this point fell short of a "serious conflict" between the FDA's interim concerns and the defendants' optimism. Even though the statements "fail[ed] to disclose the FDA's repeated statements of concern," the court reasoned that the FDA's interim feedback did not actionably conflict with defendants' statements about FDA approval because the optimistic statements were consistent

with the FDA's guidance about how deficiencies could be overcome.

The third category consists of statements interpreting clinical data. When defendants interpreted Study 03-133 and Study 101, they stated that there is a clear "clinical benefit in terms of response rates and survival." The court rejected the assertion that these statements were misleading because they do not claim that the FDA had interpreted the studies similarly.

The most consequential category of statements was the fourth: statements interpreting FDA feedback and guidance. For example, in May 2022, defendants stated that a "pre-BLA meeting with the FDA in January" had "confirmed our path towards our March BLA resubmission, which we ultimately achieved." The court upheld plaintiffs' allegation that statements by Y-mAbs characterizing FDA feedback and guidance were materially misleading. The court distinguished statements interpreting FDA feedback from the optimistic statements it found nonactionable because they described "the current state of resubmission" rather than future optimism. The court ruled that, even if these statements were opinions, the company misled investors because the FDA had outstanding concerns that were never resolved when the company resubmitted the BLA. This finding opens a direct pathway for defrauded investors to pursue recovery for the significant damages they incurred by Y-mAbs' misleading statements.

The court held that Pomerantz adequately alleged scienter, given y-mAbs' knowledge of the FDA's concerns, as demonstrated through the continuous communication between defendants and the FDA. The court also held that Pomerantz adequately alleged loss causation, writing, "each statement appears to contradict a warning by the FDA and these warnings were made clear in . . . the FDA Briefing Document, which was released just before the stock price fell."

"Companies are allowed to be as optimistic as they want," according to Pomerantz Partner Michael Wernke, who leads Pomerantz's litigation of the case. "But they can't be optimistic about what the FDA actually says." While investors are overwhelmingly incentivized to applaud companies' optimism about their products and progress, when corporate optimism mischaracterizes feedback from regulators and the news comes to light, investors must work to protect their rights in the face of corporate fraud. The case is now proceeding to discovery.

Jeremy A. Lieberman

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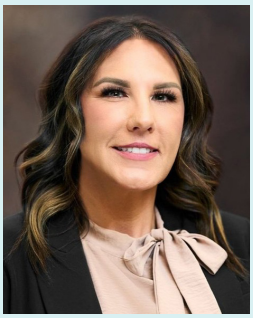

Janalee Spencer

NOTABLE DATES ON THE POMERANTZ HORIZON

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

DR. DANIEL SUMMERFIELD will attend two events in London, UK: the **Pensions Age Spring Conference** on April 18 and the **Investment Association's Sustainability & Responsible Investment Conference** on April 25.

On May 7, **JEREMY LIEBERMAN** will present a lecture titled, **"The Impact of Israeli Institutional Investors on U.S. Securities Class Actions"** in Tel Aviv, Israel.

From May 7–10, **JENNIFER PAFITI** and **JANALEE SPENCER** will attend the **SACRS Spring Conference** in Santa Barbara, CA.

JENNIFER and **JANALEE** will attend the **NCPERS Annual Conference & Exhibition** in Seattle, WA from May 19–22. **JENNIFER** will co-host a discussion on securities litigation as a tool to achieve ESG goals.

DANIEL will speak at the **Summit on Workforce Valuation and Performance: Understanding the Coming Workforce Transition** hosted by **Just Capital** from May 20–21 at the **University of Michigan Ross School of Business.**

JEREMY will moderate a panel at the **Perfect Law Global Class Actions and Mass Torts Conference** to take place from May 22–24 in London, UK.

From June 12–13, **DANIEL** will attend the **2024 European Class Actions Forum** in Amsterdam, the Netherlands.

JENNIFER will attend the **NAPPA Legal Education Conference** from June 25–28 in Fort Lauderdale, FL.

THE POMERANTZ MONITOR
A BI-MONTHLY PUBLICATION OF POMERANTZ LLP
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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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