

The FDIC's Proposed Standards for Corporate Governance and Risk Management

By Michael J. Wernke

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On October 11, 2023, the Federal Deposit Insurance Corporation published for comment in the Federal Register proposed standards for corporate governance and risk management ("Proposed Standards") for the financial institutions it regulates that have \$10 billion or more in total assets ("covered institutions"). Under its safety and soundness powers in Section 39 of the Federal Deposit Insurance Act, the FDIC is able to publish such standards that go beyond mere guidance. The new standards are part of the FDIC's regulatory response to the bank failures that took place in the spring of 2023. Referring to the post-mortem evaluations conducted by the FDIC and the Federal Reserve Board following the Signature Bank and Silicon Valley Bank failures, the preamble to the Proposed Standards asserts that poor governance and risk management practices were contributing factors that led to the collapse of those banks.

The FDIC's Proposed Standards are based on the principles set forth in the Office of the Comptroller of the Currency's Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches (the "Heightened Standards"), but with key differences. The Proposed Standards include more details on what the FDIC expects from the boards of directors as well as the banks that the FDIC regulates. They also set a notably lower minimum asset threshold (five times lower) than the OCC's Heightened Standards to determine which banks are covered.

The Proposed Standards were approved 3-2: Chairman Gruenberg, CFPB Director Chopra, and acting Comptroller Hsu voted in support; Vice Chairman Hill and Director McKernan voted against the proposal.

Comments on the Proposed Standards are due by February 9, 2024. (This date was extended from the original deadline of December 11, 2023).

Background

The FDIC's Proposed Standards delve into legal issues

that—in the case of banks that do not have a federal charter—have typically been determined by state law. These include the duties and responsibilities of bank boards, directors, and management, including their duties of care and loyalty, as well as related concepts such as the business judgment rule.

While banks are primarily governed by state corporate governance law, there are instances in which federal oversight is enforced. For example, federal law imposes audit standards and a gross negligence "floor" on the conduct of bank directors and officers. Federal law also requires that federal banking regulators impose operational and managerial standards, compensation standards, and appropriate standards relating to asset quality, earnings, and stock valuation.

Specifically, following the poor risk management that led to the 2008 financial crisis, federal banking regulators enacted increased oversight of the governance and risk management of banks. The OCC initially imposed heightened expectations for the governance and oversight of the larger banks that it regulated and, in 2014, it adopted those Heightened Standards as a specialized standard for safety and soundness at larger federally chartered banks. Also in 2014, the Federal Reserve implemented part of the Dodd-Frank Act by establishing several risk management requirements for larger bank holding companies. This was followed in 2021 by expectations for effective governance by larger bank boards.

Proposed Guidelines

Note that in some specific instances, a covered institution may leverage its parent company's risk management



Michael J. Wernke, Partner

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program or board to meet the standards of the Proposed Guidelines.

Obligations Covered directors would have a duty to safeguard the interests of the bank, confirming that the bank operates in a safe and sound manner and in compliance with applicable federal and state law. In supervising the bank, a board should consider the interests of all of its so-called stakeholders, going beyond shareholders and depositors to include creditors, customers and even the regulators themselves.

Composition The Proposed Guidelines set out minimum standards for board composition, requiring a majority of its members to be independent and outside directors. Boards would also be expected to consider the diversity of their members, including social, seniority, and educational differences, among others. The Proposed Guidelines also caution against excessive influence from a “dominant policymaker.”

Duties Covered boards would need to (i) set an appropriate tone and establish a responsible, ethical corporate culture; (ii) evaluate and approve a strategic plan; (iii) approve and annually review policies; (iv) establish and annually review a written code of ethics; (v) actively oversee the bank’s activities, including all material risk-taking activities; (vi) exercise independent judgment; (vii) select and appoint qualified executive officers; (viii) establish and adhere to a formal training program; (ix) conduct an annual self-assessment of its effectiveness; and (x) establish and annually review compensation and performance management programs.

Committees The Proposed Guidelines require boards to maintain a risk committee and compensation committee in addition to the audit committee required by Section 36 of the FDI Act and Part 363 of the FDIC’s regulations. Risk committees would need to meet at least quarterly and maintain records of their proceedings, including risk management decisions.

Risk Management The Proposed Standards would impose expectations for the risk management program that a bank should develop and maintain. These expectations largely match the OCC’s Heightened Standards. For example, like the Heightened Standards, the Proposed Guidelines would require covered institutions to adopt a three-lines-of-defense risk management framework with a front-line unit (exclusive of the legal department), an independent risk management unit led by a Chief Risk Officer, and an internal audit unit led by a Chief Audit Officer. The Proposed Guidelines provide that the risk management program would need to address a wide variety of potential risk categories, ranging from credit, interest rate, and liquidity risks to anti-money laundering and third-party partnership and outsourcing risks. Further, material breaches of risk limits and emerging risks would need to

be reported in a timely manner to the board and the chief executive officer.

Identifying and Reporting Violations of Law The Proposed Guidelines would require a covered institution’s board to establish and annually review processes that would require either front-line units or the independent risk unit to report all violations of applicable laws and regulations to law enforcement or any appropriate federal or state regulatory agency. This would represent a shift from the FDIC’s current practice of encouraging, but not requiring, self-reporting of violations.

Questions The FDIC asks multiple questions in order to scope banks that should be subject to the Proposed Guidelines, including whether FDIC-supervised institutions with \$10 billion or more in total consolidated assets is an appropriate threshold and whether other financial institutions should fall under the definition of a covered institutions.

Implications and Objections

Collectively, the escalation of reporting requirements imposed by the proposal would appear to increase the likelihood of FDIC enforcement actions. The rule passed by a 3-2 vote of the FDIC Board. Each of the two Republican-affiliated Board members (Director McKernan and Vice Chairman Hill) issued a public dissenting statement.

Critics such as Director McKernan have pointed out that certain requirements in the Proposed Standards would exceed, or simply differ from, the Heightened Standards in prescriptiveness and stringency, creating confusion. For example, the FDIC sets its threshold for application (\$10 billion or more in consolidated assets) much lower than the Heightened Standards (federally chartered banks with at least \$50 billion in consolidated assets). The Proposed Standards also lean toward a rules-based approach to corporate governance, in contrast to the principles-based approach that is prevalent under state law.

Critics have asserted that the Proposed Standards are presented as “good corporate governance” without appreciating that what is “good” for one bank may not be “good” for another with FDIC Vice Chairman Hill saying regulators need to resist “one-size-fits-all” best practices. FDIC Director McKernan also asserted in his dissent that the requirement that the bank board “consider the interests of all its stakeholders, including shareholders, depositors, creditors, customers, regulators, and the public” could be at odds with bank directors’ fiduciary duties under applicable state law, for example, if a director voted against the interests of shareholders in order to serve the interests of customers or the “public.”

As mentioned above, the period for comment was extended to close on February 9, 2024. ■



Louis C. Ludwig, Of Counsel

What's in an Acronym? (Or, Can Bill Ackman "SPARC" a Fix to SPACs?)

By Louis C. Ludwig

A recent innovation in the realm of investment vehicles, SPACs, or Special Purpose Acquisition Companies, have experienced a dramatic rise and fall in the past few years. Unlike traditional IPOs, SPACs go public without a business model, later acquiring or merging with an existing company with a defined business. In so doing, SPACs circumvent many of the disclosures required of a traditional IPO. This provides a quicker path to going public, however avoiding the safeguards that the disclosures impose has led to a disturbing string of frauds and scandals. This, in turn, has resulted in SPACs trading for under \$10 per share, as well as some companies withdrawing from previously announced SPAC deals, even if they have to pay millions of dollars to the SPAC for backing out. The sense that SPACs are endangered may be what prompted billionaire investor (and former SPAC aficionado) Bill Ackman to step into the arena of SPAC reform. Ackman's innovation comes in the form of the suspiciously-similar-sounding "SPARC," or Special Purpose Acquisition Rights Company. However, the question remains: is this enough to save the SPAC from extinction? The answer: quite possibly.

SPACs are sometimes referred to as "blank check companies" because they are created for the sole purpose of acquiring another company and taking it public. They recall the 1980s penny stock market where highly speculative stocks sold for less than \$5 per share. Most penny stock offerings were similarly made by blank check companies whose stated purposes were to merge with a to-be-identified target. While penny stocks were cheaper than shares sold on reputable exchanges such as the NYSE, the unregulated market on which they were traded was rife with manipulation and outright fraud, subsequently dramatized in classic films like *Boiler Room* and *The Wolf of Wall Street*. By 1990, annual investor losses of \$2 billion prompted Congress and the SEC to finally regulate the penny stock market through the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 (PSRA) and Rule 419, respectively.

Fortunately for fans of Wild West-style investing, two bankers developed the concept of a SPAC in the 1990s as

an end-run around the PSRA and Rule 419. Like the penny stocks of yore, SPACs lack their own business model; initial investors simply have no idea what type of company they will ultimately be investing in. When formed, SPACs usually have an industry in mind, such as mining or software, but no specific acquisition target. The gap between the empty holding company and the entity that ultimately emerges through the SPAC process has led some observers to note that a more accurate term is "SCAMs."

The typical SPAC timeline is as follows: *first*, the SPAC's sponsors, who often possess significant financial and reputational clout, *e.g.*, Martha Stewart and Shaquille O'Neal, provide the starting funds for the SPAC; *second*, the sponsors, assisted by underwriters, take the SPAC public through a standard IPO, which allows the SPAC to raise funds that are held in a trust, pending identification of an acquisition target; and *third*, assuming the sponsors identify a target company within 18 to 24 months and obtain shareholder approval, the SPAC merges with the target company in a process known as "De-SPAC-ing." Once the de-SPAC is complete, the resultant company retains the name and operations of the target company, which then trades publicly on a stock exchange. Shareholders can typically redeem their investment if the 18 to 24-month window lapses and shareholders vote to extend the period for the SPAC to find an acquisition target, or if an acquisition target is found but the shareholders don't like it.

As the number of SPACs skyrocketed from 2019 into 2021, the informational disadvantage to investors inherent in the penny stock market began to reproduce in the SPAC space. SPACs have raised vast sums selling warrants as part of their IPOs, which can be used to buy shares in the de-SPAC-ed company. In the de-SPAC process, sponsors receive compensation in the form of a large ownership stake for a nominal cost, setting up a textbook conflict of interest. As *The D&O Diary's* Kevin LaCroix aptly put it, "[t]he conflict arises from the SPAC sponsor's financial interest in completing a merger even if the merger is not value-creating, which may conflict with the shareholders' interest in redeeming their shares if they believe that the proposed merger is disadvantageous." What's more, these lucrative sponsor compensation arrangements create dilutive effects affecting investors in the SPAC.

Even where they can show they've been wronged, SPAC investors are likely to have the courthouse doors slammed in their faces. Freed from the constraints of a traditional IPO, SPAC operators are permitted to speak directly to the market about the SPAC's financial prospects. SPAC projections are generally protected by the safe harbor for forward-looking statements afforded by the Private Securities Litigation Reform Act (PSLRA), whereas projections made in connection with traditional IPOs are beyond the PSLRA's safe harbor.

Almost as soon as SPACs became popular, scandals began to erupt. Nikola and Clover Health Investments, two

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of the biggest SPACs to go public in 2020, found themselves embroiled in fraud investigations conducted by the SEC and DOJ. In July 2021, Ackman's own SPAC, Pershing Square Tontine Holdings, abandoned a deal to buy 10% of Vivendi's flagship Universal Music Group after the SEC flagged several elements of the deal. According to Ackman, a colorful figure best known for his crusades against Herbalife and Harvard President Claudine Gay, the SEC "said that, in their view, the transaction did not meet the New York Stock Exchange SPAC rules and what that meant was what I would call a dagger in the heart of the transaction." Ackman was forced to return \$4 billion to investors.

In response, the price of Directors and Officers insurance for SPACs was reported to have almost doubled by the end of 2020. Democratic legislators in the U.S. House of Representatives introduced the "Holding SPACs Accountable Act of 2021," which would have excluded all SPACs from the safe harbor, and the "Protecting Investors from Excessive SPACs Fees Act of 2021," which would have compelled the SEC to adopt a rule requiring SPACs to disclose compensation arrangements in the interest of transparency. While both pieces of legislation passed the Committee on Financial Services, neither became law. For its part, the SEC has increased its scrutiny of SPACs, tightened disclosure regulations, and clarified that the safe harbor applies only to private litigation action and not SEC enforcement.

After the SEC spiked his SPAC's Universal deal in mid-2021, Ackman debuted a new take on the faltering investment vehicle, the SPARC. SPARCs do not require up-front money from investors like SPACs do. Instead of shares, SPARCs issue rights. Because the SPARC gives rights away, no money is held in trust. Once the acquisition target is identified, SPARC investors are given the chance to either walk away or opt in. Only if these investors approve the acquisition target and the amount that the SPARC is asking them to fork over (which will vary based on the size of the deal), can the deal close. At this point, the acquisition target gets the money and becomes public, and the SPARC rights transform into shares of the new public company. Importantly, SPARCs do not offer IPO warrants, which are used by SPACs as a way to enhance the capital raised in an IPO. This means that SPARC investors will not be diluted by such warrants and will therefore retain more of the company. Finally, SPARCs will have 10 years to complete an acquisition, in contrast to the 18 to 24-month period typically allocated to SPACs.

Though the future of the SPARC remains uncertain, it appears to address several of the concerns that have imperiled SPACs. Most prominently, SPARC investors, unlike their SPAC counterparts, have the ability to hold back their investment while they evaluate the target. The increased control granted to SPARC investors also avoids the elimination of the safe harbor, and investors will have a greater chance

to probe the specifics of the proposed acquisition. Lastly, SPARCs sidestep the share dilution endemic to SPAC compensation agreements, the precise concern underlying the "Protecting Investors from Excessive SPACs Fees Act of 2021." The SPARC is accurately characterized as shifting risk from the investor to the sponsor, who must corral investors without the leverage that comes from holding a pool of money in trust. In early October 2023, Ackman announced that he had received SEC approval to use a SPARC to raise a minimum of \$1.5 billion from investors for the acquisition of a private company. Ackman seems to have bet that regulators will be more receptive to a model that simultaneously levels the informational playing field and endows investors with more discretion. Given his early victory in bringing the SPARC to fruition, it's a wager that may have already begun to pay dividends. ■

The Future of Item 303-Based 10b-5 Claims

By Elina Rakhlin

A major unresolved question in securities litigation is headed back to the Supreme Court this term. In *Macquarie Infrastructure Corp. v. Moab Partners, L.P.*, SCOTUS will consider whether failing to disclose information required by Item 303 of the SEC's Regulation S-K can support a private claim under Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5. For plaintiffs seeking to hold companies accountable for misleading their investors by omitting material information from SEC filings, the stakes could not be higher.

Item 303's Disclosure Duty and the Absence of a Private Right of Action

Item 303 requires that public companies include a Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") section in their periodic SEC filings. The MD&A must describe known trends, demands, commitments, events or uncertainties that are reasonably likely to materially impact the company's financial condition or operating performance. The SEC has made clear that Item 303 imposes an affirmative duty to disclose material information. A company violates Item 303 by omitting information about a known trend or uncertainty that investors would consider important.

However, courts have widely recognized there is no private right of action under Item 303 itself—in other words, investors cannot sue directly for a company defendants' nondisclosures. Instead, plaintiffs are forced to seek recovery for these Item 303 violations within an existing securities fraud claim that does have a private right of action—most commonly, under Section 10(b) and Rule 10b-5.

This raises a key unsettled question—when does an Item 303 violation form the basis for an omissions case under Section 10(b)?

The Split: Can an Item 303 Violation Support a 10b-5 Claim?

To prevail on a Rule 10b-5 omission claim, plaintiffs must prove (1) the company had a duty to disclose, and (2) the omitted information was material. All courts agree that violating Item 303 breaches the duty to disclose. Where they diverge is whether an Item 303 violation, without more, makes the omission material for purposes of 10b-5.

Some circuits have held that Item 303 does not create a Section 10(b) duty to disclose. The Ninth, Third and Eleventh Circuits have held that just because a trend or uncertainty should be included under Item 303 does not mean that omitting it is a violation of Section 10(b). In their view, an Item 303 violation alone cannot establish a 10b-5 claim. Even if the omission breached Item 303, plaintiffs must separately prove materiality and scienter under 10b-5's standards.

The Second Circuit disagrees. It has held that omitting information required by Item 303 is “indeed an omission that can serve as the basis for a Section 10(b) securities fraud claim.” Under this theory, violating Item 303 satisfies 10b-5's materiality element automatically. Plaintiffs need only adequately allege the other 10b-5 requirements, such as scienter.

This divide is pivotal given the broad consensus among the courts that there is no private right of action under Item 303. As such, investors must look to Section 10(b) and Rule 10b-5 as one of their only avenues to obtain redress for Item 303 violations. The Circuit split thus determines whether investors can hold companies liable at all for these omissions.

This split also formed the basis for the Supreme Court's 2017 decision to grant review in a case presenting the same question, *Leidos Inc. v. Indiana Public Retirement System*. However, the case settled before oral argument. *Macquarie* gives the Court an opportunity to finally resolve the split.

The *Macquarie* Litigation

In *Macquarie*, plaintiff Moab Partners brought 10b-5 claims against Macquarie Infrastructure and its executives. Moab alleged that Macquarie concealed the known risk that impending regulatory changes restricting use of “high-sulfur fuel oil” in shipping would materially and adversely impact its storage and transportation business. Specifically,

Moab claimed Macquarie violated Item 303 by failing to disclose in its SEC filings the company's significant exposure to high-sulfur fuel oil and the risks posed by the new regulations.

The district court dismissed the case, finding Moab failed to sufficiently allege either an Item 303 violation or scienter. The Second Circuit reversed the district court's decision. Critically, it held that Macquarie's omission of the fuel oil exposure and regulatory risks, in violation of Item 303's disclosure duty, was sufficient to plead a material omission under 10b-5. The court also found scienter adequately alleged.

Macquarie's Petition for Certiorari

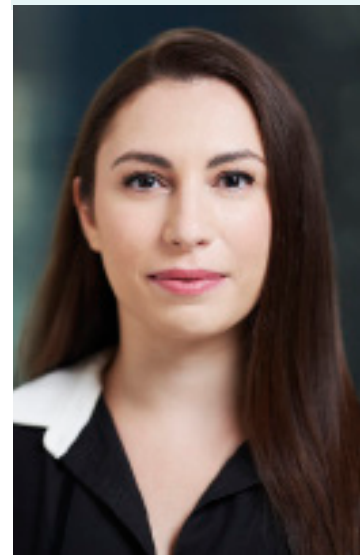
Macquarie petitioned the Supreme Court for certiorari on the question of whether the Second Circuit erred in holding that “a failure to make a disclosure required under Item 303 can support a private claim under Section 10(b).” Macquarie argues that this holding improperly expands liability under 10b-5 beyond what the statute and Court precedent permit. In its view, 10b-5 reaches only “deception”—i.e., misleading statements—not pure omissions of information that Item 303 requires be disclosed. Macquarie contends that the Second Circuit's decision conflicts with *Basic v. Levinson*, which held that silence, absent a duty to disclose, is not misleading under 10b-5. Macquarie argues that Item 303's more expansive disclosure standards make it ill-suited to support 10b-5 liability, which requires materiality be plead with specificity under the PSLRA.

Macquarie further contends that allowing 10b-5 liability for Item 303 omissions will compel companies to make overly defensive disclosures and spur meritless litigation. Macquarie claims that the Circuit split causes problematic forum shopping, with plaintiffs disproportionately bringing these claims in the Second Circuit.

Moab Partners' Opposition

In its opposition brief, Moab first argues that Macquarie's petition should be denied because the *Leidos* question is not as important as it once seemed. It claims the Circuit split has proven “superficial,” with most courts dismissing Item 303-based claims on other grounds, such as immateriality or lack of scienter.

Moab defends the Second Circuit's position as correctly reflecting 10b-5's text and the principle that misleading omissions are actionable. It argues that Item 303 creates a mandatory disclosure duty whose breach can mislead investors. Moab distinguishes “pure omissions” from “half-truths,” arguing that Macquarie's affirmative statements in SEC filings (like touting steady performance) also triggered a duty to disclose the Item 303 trend.



Elina Rakhlin, Attorney

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Finally, Moab argues that allowing 10b-5 liability for Item 303 omissions does not improperly expand the private right of action. Plaintiffs must still plead and prove materiality, scienter, and all other 10b-5 elements. Moab contends the robust 10b-5 requirements appropriately limit these claims.

What's Next?

On September 29, 2023, the Supreme Court granted certiorari in *Macquarie Infrastructure Corp. v. Moab Partners*. The case is currently set for oral argument on January 16, 2024. For years, federal courts have disagreed on whether failing to make required Item 303 disclosures can support private securities fraud suits under Section 10(b) and Rule 10b-5. The Supreme Court will likely finally resolve this dispute.

The Second Circuit allows these suits; the Ninth Circuit bars them unless plaintiffs show the omission also made affirmative statements misleading. The Court cares about uniformity in federal securities laws, and the Second Circuit's approach impacts markets nationwide; so the stakes are high.

Plaintiffs currently have an easier path bringing Item 303-based claims in the Second Circuit. To plead such a claim there, plaintiffs must adequately allege: (1) defendants violated Item 303; (2) the omitted information was material; (3) defendants acted with scienter; (4) plaintiffs' purchase/sale of the securities at issue; (5) plaintiffs' reliance on the omission; and (6) the omission caused losses.

The Ninth Circuit imposes more stringent requirements, in which plaintiffs are not only required to sufficiently allege those same elements but also show that defendants' Item 303 nondisclosures made affirmative statements materially misleading. This increased burden steers plaintiffs to the Second Circuit whenever possible.

If the Court sides with Macquarie, it will be harder for plaintiffs to hold companies liable for misleading omissions in periodic SEC filings. Ruling for Moab keeps another tool in investors' anti-fraud arsenal. No matter the outcome, plaintiffs likely must meet heightened pleading standards for these claims going forward. If the Supreme Court permits Item 303-based suits under 10b-5, plaintiffs still must rigorously allege facts supporting each element—especially materiality, scienter, and the PSLRA's particularity mandate. If the Court bars these suits absent misleading affirmative statements, the path forward is harder still. Indeed, significant unknowns exist regarding the future of Item 303-based claims as the Court could impose greater requirements on investors seeking to bring these claims or issue a decision that produces more confusion than clarity, leaving the question open to further interpretation and differing applications of the law among the lower courts. Either way, more vigorous pleading and tighter case screening is the future for Item 303-based 10b-5 actions. ■



TOP CASES

1. Deutsche Bank AG

In February 2023, Pomerantz secured nearly 50% of recoverable damages for defrauded investors in a securities class action against Deutsche Bank for misstatements about its anti-money laundering and know-your-customer controls. The bank's dealings with convicted sex offender Jeffrey Epstein were at the heart of this case.

2. Arconic, Inc.

In August 2023, Pomerantz secured final approval of a \$74 million settlement in a case against Arconic, Inc., arising from the tragic Grenfell Tower fire in London that killed 72 people in June 2017.

3. Wynn Resorts Ltd.

On March 1, 2023, Pomerantz secured class certification in a securities fraud class action against Wynn Resorts, which stems from the alleged decades-long pattern of sexual abuse and harassment perpetrated by the company's founder and former CEO, Steve Wynn, toward his female employees. The suit alleges that Wynn's behavior was habitually ignored and eventually covered up by managers and executives at the company.

TOP INDUSTRIES

1. Technology
2. Healthcare
3. Pharma
4. Biotech
5. Finance

LEAD COUNSEL APPOINTMENTS

33

TOTAL SETTLEMENTS
\$265,275,000



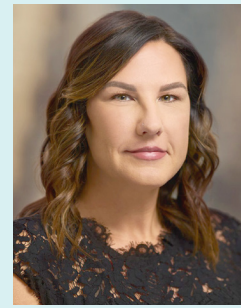
Jeremy A. Lieberman



Jennifer Pafiti



Dr. Daniel Summerfield



Janalee Spencer

NOTABLE DATES ON THE POMERANTZ HORIZON

IF YOU WOULD LIKE TO MEET US AT ANY OF THESE EVENTS, WRITE US AT: EVENTS@POMLAW.COM

JANALEE SPENCER will attend the **KORIED Plan Sponsor Educational Institute** in Key West, Florida from January 16–19, 2024 and **NAPO's 35th Annual Pension and Benefits Seminar** in Las Vegas, Nevada from January 28–30.

DR. DANIEL SUMMERFIELD will host a roundtable for trustees of UK pension funds on **Climate and ESG Litigation** on January 30. On February 6, **DANIEL** will host a roundtable for institutional investors on securities class actions in the UK. Both events will be in London, UK.

JEREMY LIEBERMAN will attend the **DAGA Policy Conference** from February 14–15 in Seattle, Washington.

DANIEL will present a lecture on "Class Actions – International Perspectives" to the **Assogestioni Board Academy** in Rome, Italy on February 16.

JEREMY and **JENNIFER PAFITI** will attend the **CII 2024 Spring Conference** in Washington, DC from March 4–6.

JEREMY and **DANIEL** will participate in the **2024 ICGN Conference** from March 7–8 in Washington, DC. **JEREMY** will present a lecture at an ICGN hosted session.

JENNIFER and **DANIEL** will attend the **2024 ACSI Conference** on March 14 in Melbourne, Australia.

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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.

NEW YORK

600 Third Avenue, New York, NY 10016 Tel: +1 212 661 1100 Fax: +1 917 463 1044

CHICAGO

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

LOS ANGELES

1100 Glendon Avenue, 15th Floor, Los Angeles, CA 90024 Tel: +1 310 405 7190

LONDON

Central Court, 25 Southampton Buildings, London WC2A 1AL, United Kingdom Tel: +44 (0)20 3709 9345

PARIS

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

TEL AVIV

HaShahar Tower, Ariel Sharon 4, 34th Floor, Givatayim, Israel 5320047 Tel: +972 (0) 3 624 0240

CONTACT US:

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

Jennifer Pafiti, Esq. OR **Jeremy A. Lieberman, Esq.**
jpafiti@pomlaw.com +1 310 432 8494 jalieberman@pomlaw.com +1 212 661 1100

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Warmest wishes for a joyful
holiday season from all of us at

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May you enjoy peace,
health, and prosperity
through the coming year

