the POMERANTZ MONITOR

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Pomerantz Opens London Office

INSIDE THIS ISSUE

Pomerantz is pleased to announce that on October 1, 2022, it opened its first London office, and that Dr. Daniel Summerfield has joined Pomerantz as Manager of the new office and Business Development Director for the United Kingdom. Jennifer Pafiti, Pomerantz Partner and Head of Client Services, as well as a dually qualified U.K. Solicitor and U.S. attorney, co-heads the London office with Dr. Summerfield.

Dr. Summerfield was formerly the Head of Corporate Affairs of the Universities Superannuation Scheme (USS), the U.K.'s largest private pension fund, having previously served as USS's Co-Head of Responsible Investment for many years. Dr. Summerfield brings to Pomerantz a wealth of professional experience, particularly with his strong background in addressing ESG, sustainability and corporate governance issues. Learn more about Dr. Summerfield and what he plans to accomplish in his new role in our Q&A with him in this issue.

"Given Pomerantz's increasing global footprint, it is only natural for our firm to open an office in London to complement our international offices in Paris and Tel Aviv," says Managing Partner Jeremy A. Lieberman. "We are delighted to welcome Dr. Summerfield to the team. His decade and a half as the Head of Corporate Governance and Corporate Affairs at USS makes him particularly well suited to advising U.K. and European funds regarding securities litigation occurring in the United States and in Europe."

Pomerantz has long had a meaningful presence in the U.K., representing some of the U.K.'s most influential institutional investors and protecting the rights and assets of British shareholders, including the 400,000-plus members of USS, which served as Lead Plaintiff in the Firm's historic *Petrobras* litigation. Ms. Pafiti and Mr. Lieberman have hosted numerous educational events for institutional investors in London over the years, featuring notable guest speakers, such as, Sir Christopher Hoy, Jeremy Paxman, and Boris Johnson. They will continue this tradition on October 26, 2022, at a Pomerantz-hosted investor luncheon in which Mr. Lieberman, Ms. Pafiti and Dr. Summerfield will be joined by special guest speaker, the acclaimed journalist and broadcaster, Andrew Neil.

For decades, Pomerantz has led the way in expanding the rights of, and exploring avenues of recovery for, global investors. The U.S. Supreme Court's 2010 decision in *Morrison v. National Australia Bank Ltd.* disrupted decades of legal precedent by barring use of U.S. federal securities laws to recover losses from investments in foreign-traded securities – even where a company dual-lists its stock or sells other securities in the U.S. Investors, including Pomerantz clients, were abruptly left unprotected, with no right of recovery under U.S. law and seemingly no viable recourse in U.S. courts, whenever the exchange on which their damaged shares traded was outside U.S. borders.

Before the ink on the *Morrison* decision was dry, Pomerantz attorneys were hard at work developing novel legal theories to overcome the roadblocks it imposed. In the first successful workaround to *Morrison*, Pomerantz pur-

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sued ground-breaking individual lawsuits for institutional investors to recover losses in BP plc's London-traded common stock and NYSE-traded American Depository Shares (ADS) folllowing the company's 2010 Gulf of Mexico oil spill.

During the course of the *BP* litigation, Pomerantz secured ground-breaking rulings that paved the way for 125+ global institutional investors to pursue their claims, marking the first time, post-*Morrison*, that both U.S. and foreign investors, pursuing foreign claims seeking recovery for losses in a foreign company's foreign-traded securities, did so in a U.S. court. In the process, the Firm secured the right of investors with U.S. federal law claims concerning BP's U.S.-traded ADS to simultaneously pursue English common law claims concerning their London-traded ordinary shares in a U.S. court. In early 2021, after nine years of hard-fought, landmark litigation, Pomerantz resolved lawsuits pursued on behalf of its nearly three dozen institutional investor clients for a confidential, favorable monetary settlement.

Pomerantz's London office is located in Central Court, in the heart of the legal profession's Chancery Lane. Formerly the headquarters of the London Patent Office, Central Court boasts a galleried reading room, glass domed roof, and balconied walkways on cast iron columns. Built from 1899–1902, it was designed by Sir John Taylor, whose best known works include the Vestibule and Central Hall with staircase of the National Gallery in London.

Jennifer Pafiti and **Dr. Daniel Summerfield** look forward to servicing the needs of U.K. and European investors from Pomerantz's London office.

Dean P. Ferrogari, Associate

The Inconvenient Case of *Forum Non Conveniens*

By Dean P. Ferrogari

On April 20, 2010, the explosion and subsequent sinking of the oil drilling rig, *Deepwater Horizon*, resulted in the death of 11 workers and approximately five million gallons of oil pouring into the Gulf of Mexico – now commonly known as the worst accidental oil spill in U.S. history. This industrial disaster had devastating ramifications for both the oceanic environment and the investors in BP plc ("BP"), a majority owner of the sunken oil well. In the wake of the spill, and in rapid succession, the price of BP's ordinary shares, as well as its American Depository Shares ("ADS") plunged a shocking 50%. These drastic decreases in share price were the result of revelations coming to market; revelations that disclosed the truth behind BP's misleading statements regarding its commitment to safety and its ability to effectively deal with large oil spills.

The *BP* litigation took to task the 2010 U.S. Supreme Court ruling in *Morrison v. Nat'l Australia Bank Ltd.*, which shook the international investment community by prohibiting the use of U.S. federal securities laws to recover losses from investments in foreign-traded securities. Consequentially, the Supreme Court's holding in *Morrison* left investors who trade on foreign exchanges, outside the purview of American borders, with no rights or recourse to recover their losses under U.S. law. Pomerantz was the chief architect in successfully overcoming the *Morrison* hurdles and securing the rights of defrauded investors, both foreign and domestic.

Pomerantz's *BP* litigation is the first instance in which the hurdles presented by *Morrison* were successfully navigated. Absent the cutting-edge precedent established in this litigation, BP investors would have been limited to pursuing U.S. federal securities law claims in U.S. courts to recover losses in BP's ADS, as Morrison barred the use of those same laws to recover losses from BP's ordinary shares traded on the London Stock Exchange. Throughout the litigation, BP attempted to rely on *Morrison* as a mechanism to have the cases dismissed. If the court agreed that such dismissal was warranted, it would have enabled BP to litigate the claims in England, where courts apply rules that harshly disfavor investor rights when compared to U.S. courts.

In 2013, Pomerantz survived BP's first motion to dismiss. The court, located in the Southern District of Texas, was persuaded by Pomerantz to apply English common law and held that the investors, who were U.S.-based pension funds, had sufficient ties to the United States that warranted adjudication of the litigation domestically, rather than in a U.K. courtroom. Here, the Texas Court rejected BP's arguments that the Dormant Commerce Clause of the U.S. Constitution and the *forum non conveniens* doctrine warranted dismissal in deference to U.K. courts. *Forum non conveniens* is an equitable doctrine that permits courts to decline jurisdiction if the moving party establishes that the convenience of the parties and the interests of justice would be better facilitated in another forum. The court's analysis on a motion to dismiss for *forum non conveniens* proceeds in two stages. First, the court must decide whether an alternative forum is adequate and available. If the court concludes that such a forum exists, the court must weigh the private interests of the litigants and the public interest in having the case heard in each forum.

Here, Pomerantz was able to overcome BP's arguments that the Texas court was an inconvenient forum and that the case should be litigated in England, which would have required the case's dismissal. BP argued for the court to dismiss our domestic investors' claims under the doctrine of *forum non conveniens*. In doing so, BP asserted that England was an adequate alternative forum and that both the private and public interest factors favored dismissal. When successfully disputing these assertions, Pomerantz contended that an English court would be an inadequate alternative because it would be unable to adjudicate all of the domestic investors' claims. Moreover, Pomerantz established that the private interest factors did not weigh in favor of dismissal. Notably, the court was capable of applying English law, which shares strong similarities to the U.S. legal system due to a common heritage. The court also agreed with Pomerantz that the public interest factors weighed in favor of retaining the

domestic investors' English law claims in U.S. court. Most importantly, the court agreed that the controversy at issue – the worst accidental oil spill in U.S. history – was unquestionably a local interest to Texas courts. The oil spill prompting this litigation occurred only 50 miles off the coast of Louisiana, a state, like the presiding Texas court, with federal district courts under the jurisdiction of the U.S. Court of Appeals for the Fifth Circuit. The Texas court's application of English common law nullified the barriers presented by the *Morrison* holding. In surviving BP's first motion to dismiss, Pomerantz provided U.S. institutional investors the unique ability to pursue not only the U.S. traded ADS losses, but the opportunity to pursue damages for their BP ordinary shares trading on a foreign exchange.

In 2014, Pomerantz overcame BP's second motion to dismiss, this time securing the same rights for foreign institutional investors by again defeating BP's *forum non conveniens* argument. Defendants argued that the foreign investors' claims should be dismissed in favor of adjudication in U.K. courts. The structure of the English legal system provides restrictions on contingent fee litigation and imposes a loser-pays regime on legal fees. The application of such a regime would have threatened the viability of our foreign clients' cases to proceed, if at all, due to the significant risks and costs contingent litigation imposes on plaintiffs. Pomerantz, however, successfully secured the litigation's position in U.S. court, trumping BP's arguments that the claims of the foreign investors had a stronger nexus to England.

Pomerantz prevailed on the court's *forum non conveniens* analysis, which determined that England was not a more convenient venue for the foreign investors asserting claims against both foreign and American defendants. First, the court determined that England was an available and adequate venue for the foreign investors' claims, presenting significant obstacles that Pomerantz successfully overcame. Second, the court determined how much deference to accord the foreign plaintiffs' choice of forum. Although there was a multitude of precedent standing for the notion that a foreign plaintiff's choice of forum is entitled to less deference when compared to a domestic plaintiff's choice, Pomerantz was able to establish a legitimate connection between the foreign investors' English common law claims and this multi-district litigation. Establishing the connection allowed our foreign investors to receive the same deference previously afforded to the domestic investors in the first motion to dismiss. Finally, the court determined that our foreign investors' claims would not be dismissed and adjudicated in U.K. court. Here, the court weighed the substantial deference accorded to the investors' choice of forum against the private and public interest factors when determining transfer did not heavily weigh in favor of dismissal. Pomerantz successfully persuaded the court to decline BP's *forum non conveniens* arguments, survived the motion to dismiss, and enabled the foreign investors to pursue their English common law fraud claims in U.S. court, where investor rights were advantageous. The decisions secured by Pomerantz in *BP* broke new ground, enabling the very first time, post-*Morrison*, that U.S. and foreign investors, pursuing foreign claims seeking recovery for losses in a foreign company's foreign-traded securities, did so in a U.S. court.

Pomerantz crafted and successfully applied novel legal theories that opened the gates for investors who trade on foreign exchanges – effectively setting a new precedent to be used by defrauded investors in the years to come.

Pomerantz LLP Achieves Significant Victory for Damaged Deutsche Bank AG Investors

By The Editors

In a significant victory for damaged Deutsche Bank AG investors, the Bank has agreed to pay nearly $26.3 million to end a proposed class action against it on behalf of investors who acquired Deutsche Bank stock between March 14, 2017, and May 12, 2020. Pomerantz is sole lead counsel representing the putative class of plaintiffs in the litigation. The recovery represents approximately 49.4% of the likely recoverable damages in this case, which is well above the median recovery of 1.8% of estimated damages for all securities class actions settled in 2021. Plaintiffs have moved the court for approval of the settlement.

The complaint, filed in 2020, alleges that Deutsche Bank made materially false and misleading statements about its anti-money-laundering ("AML") deficiencies and did not properly monitor customers it considered high risk, such as financier and accused sex offender Jeffrey Epstein. For example, defendants repeatedly assured investors that Deutsche Bank had "developed effective procedures for assessing clients (Know Your Customer or KYC) and a process for accepting new clients in order to facilitate comprehensive compliance," and insisted that "[o]ur KYC procedures start with intensive checks before accepting a client and continue in the form of regular reviews." Defendants also claimed Deutsche Bank's "robust and strict" KYC program "includes strict identification requirements, name screening procedures and the ongoing monitoring and regular review of all existing business relationships," with "[s]pecial safeguards . . . implemented for... politically exposed persons ["PEPs"] ..."

In truth, however, far from implementing a "robust and strict" KYC program with "special safeguards" for PEPs, defendants repeatedly exempted high-net-worth individuals and PEPs from any meaningful due diligence, enabling their criminal activities through the use of the Bank's facilities. For example, Deutsche Bank continued "business as usual"

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Emma Gilmore, Partner

with Jeffrey Epstein even after learning that 40 underage girls had come forward with testimony that he had sexually assaulted them. Deutsche Bank's former CEOs also onboarded, retained, and serviced Russian oligarchs and other clients reportedly engaged in criminal activities, including terrorism.

In making its case, Pomerantz received statements from eleven confidential witnesses, including multiple internal auditors.

In 2020, the media began to cover Deutsche Bank's internal problems, including news of a harshly critical Federal Reserve report on the bank's AML and control issues, a $150 million fine from New York State's financial regulator for AML misdeeds, and its Epstein relationship. According to a *Bloomberg* news article on July 16, 2020, Deutsche Bank, in a July 7 message to staff, stated that adding Epstein as a client in 2013 "was a critical mistake and should never have happened." In response to these disclosures, Deutsche Bank's stock price dropped, wiping out millions of dollars in market capitalization.

According to Partner Emma Gilmore, who leads the litigation, "We are very pleased with the result achieved in this matter. The extraordinary 50% recovery the Firm achieved on behalf of Deutsche Bank's investors should be a wake-up call for all corporations who choose to conduct business with unsavory characters. As a woman prosecuting the case against Deutsche Bank, this victory is all the more rewarding."

Additional Pomerantz attorneys litigating this case are Jeremy A. Lieberman, Dolgora Dorzhieva, and Villi Shteyn. The case is *Karimi et al. v. Deutsche Bank AG et al.*, No. 1:22-cv-02854, in the U.S. District Court for the Southern District of New York. ■

SEC Proposes Amendment to Rule Governing Shareholder Proposals

By Jonathan D. Park

On July 13, 2022, the U.S. Securities and Exchange Commission (the "SEC") proposed amendments to the rule governing the process for including shareholder proposals in a company's proxy statement (the "Proposed Rule"). If adopted, the Proposed Rule will limit the ability of companies to exclude shareholder proposals from proxy statements.

Shareholders' ability to make proposals to be included in a company's proxy materials and voted on by all shareholders is an important means of engagement between shareholders and public companies. Rule 14a-8, promulgated by the SEC pursuant to the Securities Exchange Act of 1934, requires reporting companies subject to federal proxy rules to include shareholder proposals in their proxy statements, subject to certain requirements. The rule permits companies to exclude shareholder proposals from proxy statements on thirteen substantive grounds. The Proposed Rule would amend three of those grounds: (1) the substantial implementation exclusion, (2) the duplication exclusion, and (3) the resubmission exclusion.

The Proposed Rule aims to provide clarity to all stakeholders concerning when shareholder proposals may be excluded from proxy statements. Further, it will narrow the grounds on which shareholder proposals may be excluded, thus permitting greater shareholder engagement with management.

Of the three provisions addressed by the Proposed Rule, the substantial implementation exclusion is the most frequently invoked by company "no-action requests" concerning shareholder proposals. Disagreements between a company and a shareholder as to whether a proposal must be included in a proxy statement is often resolved by the SEC staff in response to company requests for the Commission to issue a "no-action letter" stating that it would take no action against the company if it excluded the shareholder proposal. Of the no-action requests received by the SEC during the 2019, 2020, and 2021 proxy seasons, 39% invoked the substantial implementation exclusion. By contrast, the duplication exclusion and the resubmission exclusion were invoked in 5% and 1%, respectively, of no-action requests.

The Substantial Implementation Exclusion

Rule 14a-8(i)(10) currently permits companies to exclude shareholder proposals that "the company has already substantially implemented." The Proposed Rule would permit companies to exclude a shareholder proposal if "the company has already implemented the *essential elements* of the proposal" (emphasis added).

The SEC staff's interpretation of the existing rule—that is,

whether a proposal has already been "substantially implemented"—calls for consideration of whether the company's "policies, practices and procedures compare favorably with the guidelines of the proposal" as well as whether the company has addressed the proposal's underlying concerns and essential objectives.

Shareholders report that this has led to debates regarding the "essential purpose" of a proposal, and that companies have excluded proposals that addressed similar subject matter as existing company procedures even where the proposal set forth a materially different action. For instance, Exxon Mobil sought to exclude a shareholder proposal calling for the company to state whether and how it planned to reduce its carbon footprint in alignment with the Paris Climate Accords. Exxon argued that the proposal was excludable because, among other things, it had already reported information concerning its approach to climate change. It did not, however, report if it intended to align its business with the Paris Climate Accords or state how it intended to accomplish that goal. Nevertheless, the SEC staff agreed with Exxon, finding that Exxon's disclosures "compared favorably" with the shareholder proposal and, therefore, that Exxon had already "substantially implemented" the proposal.

Under the Proposed Rule, it appears that this proposal would not be excludable under the substantial implementation exclusion because its "essential element"— that the company state if and how it intends to align its business with the Paris Climate Accords—is distinct from a company's reporting about its general approach to climate change.

The SEC stated that the Proposed Rule is expected to promote certainty because a proposal's "essential elements" are likely easier to define, and less subject to debate, than its "essential purpose." Therefore, all stakeholders would have greater certainty as to whether a proposal may be excluded under the substantial implementation exclusion.

Shareholder proponents are likely to have greater success avoiding exclusion on this basis if they develop proposals that include specific and identifiable essential elements that are distinct from the company's current practices. This is illustrated by SEC commentary discussing the Proposed Rule. The SEC addressed, as an example, the fact that historically its staff had permitted companies to exclude proposals to adopt a bylaw permitting an *unlimited* number of shareholders who collectively have owned 3% of the company's outstanding common stock for 3 years to nominate up to 25% of the company's directors, where the company's bylaws permitted a group of *up to 20* shareholders to aggregate their holdings to meet such a threshold. The SEC explained: "Under the proposed amendment, because the ability of an unlimited number of shareholders to aggregate their shareholdings to form a nominating group generally would be an essential element of the proposal, exclusion would not be appropriate."

The Duplication Exclusion

Rule 14a-8(i)(11) currently permits companies to exclude a shareholder proposal that "substantially duplicates another proposal previously submitted by another proponent that will be included in the company's proxy materials for the same meeting."

The Proposed Rule would provide that a proposal "substantially duplicates" another proposal if it "addresses substantially the same subject matter and seeks the same objective by the same means."

Under the existing standard, the SEC has focused on whether proposals share a "principal thrust" or focus. The SEC stated that this framework can be difficult to apply in a consistent and predictable manner because there are often several ways to determine a proposal's principal thrust. By contrast, the Proposed Rule sets forth a more precise standard for the duplication exclusion that the SEC expects it can more easily apply consistently.

The proposed amendment to the duplication exclusion is also narrower than the existing standard, so proposals are less likely to be excludable on this basis. As a result, it is more likely that shareholders will face the option of voting on multiple proposals concerning the same or similar topic at the same shareholder meeting. The SEC noted that this may cause shareholder confusion and could lead to difficulties if multiple proposals, perhaps with overlapping or even conflicting objectives, are approved at the same meeting. Nevertheless, the SEC stated that shareholder consideration of similar proposals may increase the likelihood that proposals that align closely with shareholder objectives will be implemented.

Because the duplication exclusion operates in favor of the earlier-submitted proposal, narrowing the exclusion will reduce the incentive for a shareholder to rush to submit a proposal quickly to avoid exclusion on this basis. It will also lessen the likelihood that a shareholder will be able to block proposals from other shareholders concerning the same topic.

The Resubmission Exclusion

Rule 14a-8(i)(12) currently permits companies to exclude a shareholder proposal that "addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years" and that was voted on at least once in the last three years and did not receive shareholder support above a certain threshold.

Observers may recall that in 2020, the SEC increased the thresholds applicable to the resubmission exclusion. Specifically, the Commission adopted a new rule providing that the resubmission exclusion applied where a proposal was included in the company's proxy materials within the preceding five years, was voted on within the preceding three years, and the most recent vote was: (1) less than 5% of votes cast, if the proposal was previously voted on once (up from 3%); (2) less than 15% of votes cast, if the proposal

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Jonathan D. Park, Of Counsel

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was previously voted on twice (up from 6%); and (3) less than 25% of votes cast, if the proposal was previously voted on three times or more (up from 10%).

As a result of increasing these thresholds, more shareholder proposals became vulnerable to exclusion on this basis. Some shareholders noted that this could prevent or delay shareholder consideration of proposals on emerging issues that may have received little support when first introduced. Moreover, because the current resubmission exclusion applies broadly to proposals with "substantially the same subject matter," it can prevent shareholders from refining their proposals and seeking a vote in a subsequent year.

Under the Proposed Rule, the resubmission exclusion would apply where a proposal "addresses the same subject matter and seeks the same objective by the same means" as an earlier proposal. This is narrower than the existing rule. First, the exclusion would apply only where a proposal addresses the "same" subject matter, not just "substantially the same" subject matter. Second, it would apply only if a proposal "seeks the same objective" as an earlier proposal. Thus, a shareholder proposal concerning a given subject would not block a later proposal on the same topic if the two proposals sought different objectives. Third, the exclusion would apply only if the proposal uses the "same means" as an earlier proposal.

Therefore, if the resubmission exclusion is amended as proposed, shareholder proposals are less likely to be excludable on this basis.

Conclusion

The Proposed Rule is likely to increase shareholders' ability to have their proposals included in proxy materials and voted upon by other shareholders. Major institutional investors have already expressed support for the Proposed Rule in comments submitted to the SEC.

The deadline for public comments expired on September 12, 2022. The SEC is expected to announce a final rule in the near future. Alternatively—though less likely—the SEC may take no further action (allowing the current rules to remain in place) or may issue a revised proposed rule for further comment. ■

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.

JENNIFER PAFITI and **JANALEE SPENCER** will both attend the **2022 TLFFRA Annual Education Conference** in Austin, TX from October 2-4.

From October 12-14, **JENNIFER** will attend the **Assogestioni Auxiliary Corporate Governance Conference** in Rome, Italy.

JEREMY LIEBERMAN will speak on a panel at the **ThoughtLeaders4 2022** event focusing on Group Litigation and Class Actions taking place in London, U.K. from October 19-20.

From October 23-26, **JANALEE** will attend the **NCPERS Public Safety Conference** in Nashville, TN.

On October 26, **JEREMY LIEBERMAN**, along with **JENNIFER** and **DR. DANIEL SUMMERFIELD**, will host an **investor luncheon** in London with special guest speaker, journalist and broadcaster **ANDREW NEIL**.

JANALEE will attend the **IBEW Nuclear Conference** in St. Pete Beach, FL from November 13-15; **JENNIFER** will attend the **SACRS Fall Conference** in Long Beach, CA from November 8-11.

JEREMY will speak on a panel at the **ICLG Global Class Actions Symposium** in Amsterdam, the Netherlands, which will take place from November 17-18.

Q&A

Dr. Daniel Summerfield

Partner Jennifer Pafiti recently interviewed Dr. Daniel Summerfield, Pomerantz's new Business Development Director for the United Kingdom and Co-Manager of the Firm's London office.

Jennifer Pafiti: Please describe the path that led you to your new role with Pomerantz.

Daniel Summerfield: I have worked with institutional investors in a variety of roles and in various markets over the years and believe that pension funds can and should be a force for good. For that to happen, trustees of pension funds should utilize the means available to them to effect the changes that will ensure the long-term performance of their funds and the companies in which they invest. Those means include litigation. Joining Pomerantz, a firm that not only fights to protect investors, but also serves as an advocate for good corporate governance, seemed like the next logical step in my career.

JP: What are the most significant differences between securities litigation in the U.S. and U.K.?

DS: Securities litigation in the U.K. remains quite challenging when compared to the U.S., Germany, the Netherlands and Australia. The U.K. is catching up, but slowly. In the last decade, the English courts have taken steps to address class actions in a much more favorable way and we've seen some civil society groups utilize class actions in cases against companies such as Shell.

JP: What is the appetite of U.K. institutional investors for pursuing securities litigation?

DS: There has been a seismic shift in that regard, at least in the context of the relatively slow changes that take place in the U.K. market compared to the U.S. Fiduciaries are beginning to sit up and take note of the critical role of lead plaintiff. I would argue that, until recently, institutional investors in the U.K. viewed class action securities litigation as merely a way of seeking financial compensation. With the continued amplification of ESG concerns, active engagement in litigation is also being viewed as a way to bring about corporate governance reforms which otherwise would not have been achieved. When USS, even as a relatively conservative pension scheme, stepped forward to serve as lead plaintiff in the *Petrobras* case, it demonstrated to others that it is not such an onerous responsibility when you have the right law firm as a partner.

JP: You mentioned ESG issues, an area in which you have deep experience. Can you give an example?

DS: I have been engaged with regulators, policy makers and pension funds around the globe to bring about governance changes, for example, in getting the concept of Responsible Investment into the mainstream thinking and practices of pension funds as well as introducing market reforms in areas such as hedge fund governance. And I have been involved beyond the traditional staple of engagement tactics. In 2005, USS, collectively with U.S., Australian and European funds, successfully sued Rupert Murdoch's News Corp in Delaware Chancery Court. The suit alleged that News Corp defrauded investors by refusing them the right to vote on an extension of a poison pill provision, as it had promised it would do. The company had claimed that it did not need to honor its promise to shareholders because the board had the right to change the poison pill policy. This was a significant win for shareholder rights and for corporate governance reform, and it has been frequently cited since.

JP: What is the most important lesson you learned from leading USS through their role as lead plaintiff in its historic $3 billion *Petrobras* litigation?

DS: I would cite three important lessons learned. First, the paramount importance of good recordkeeping. We could not have achieved what we did had we not had those records in place. Second, the importance of choosing a law firm with the experience, expertise, and patience to help you navigate the challenging path that a complex case like *Petrobras* presents. And third, I would say, is the importance of resilience. We took the role of lead plaintiff seriously and did not waiver in our responsibility to represent our members and the class. And neither did Pomerantz. All the parties remained resolute in terms of what we wanted to see as an outcome. We achieved it together.

JP: Why should it matter to institutional investors in the U.K. that Pomerantz is now local in London?

DS: While Pomerantz began as a U.S. law firm, it has grown to be a leading global firm in a globalized marketplace. As Jeremy Lieberman has said, 'where can you say a trade takes place today when it is placed online on one side of the world, transmitted over satellites, and executed on an exchange on a different continent?' Pomerantz pursues securities litigation wherever in the world the need arises, and the jurisdiction supports. What we can now do as a law firm operating in London is to ensure that U.K. investors and pension funds have a full breadth of understanding of what is going on in the U.S. and the world, and work closely with them, guiding them through the decision-making process regarding specific cases in which they have exposure.

JP: How do you see securities litigation evolving in the U.K.?

DS: It's about making it more mainstream. Securities litigation is still relatively obscure in the UK, misunderstood by many and taken up by a few. I think where we need to get to, and what I think the next stage in this process is, is to ensure that securities litigation is seen as part of part of the stable of tools that are available to investors rather than as an exception to the rule.

JP: If there was one thing you want institutional investors to know about securities fraud, what would it be?

DS: The sky is not going to fall in just because you are involved in this process. Pursuing securities litigation does not mean that you will automatically lose influence or contact with a company. In a sense, it is par for the course, particularly in the U.S. Securities litigation is also not just about backward-looking financial redress. As I mentioned before, it is also about future-proofing the companies in which we invest and sometimes acting as a deterrent to that company and others who might be tempted to follow in their steps. The changes that we can bring about through class actions can have a very positive, long-lasting outcome.

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

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 $8 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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