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SECOND CIRCUIT AGAIN CONSIDERS "PRICE MAINTENANCE THEORY" IN SECURITIES CLASS ACTIONS

By Brian Calandra

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On June 26, 2019, the Second Circuit heard oral argument on the defendants' appeal of the district court's class certification order in *Arkansas Teacher Retirement System v. Goldman Sachs Group, Inc. ("ATRS").* The panel's decision could provide guidance on how district courts should apply the Supreme Court's decision concerning the "fraud on the market" presumption of reliance in securities fraud class actions involving the so-called price maintenance theory. This theory asserts that defendants' fraud did not inflate the price of the company's stock but, rather, prevented it from falling by misrepresenting or concealing bad news.

Demonstrating that the critical issue of investor reliance can be established on a class wide basis has always been a crucial issue in securities litigation. In *Basic v. Levinson,* the Supreme Court held that in securities class actions involving stock traded on "efficient markets", courts may presume that investors all relied on "the integrity of the price set by the market," and that fraudulent statements would have distorted the market price. In *Halliburton Co. v. Erica P. John Fund, Inc. ("Halliburton II"),* the Supreme Court held that defendants can rebut the presumption by showing "that the asserted misrepresentation (or its correction) "did not affect the market price of the defendant's stock" because it was not "reflected in the market price at the time of [the investor's] transaction."

The simplest and most straightforward evidence of price impact is a misstatement quickly followed by an increase in the market price. Sometimes, however, plaintiffs try to demonstrate price impact by showing that the statement in question "maintain[ed] the inflation that is already present in a security's price." In other words, under this "price maintenance" theory, price impact is shown where a misstatement *maintains* that security's artificially inflated price.

The Supreme Court's decision in *Halliburton II* did not address several issues concerning the fraud-on-the-market presumption, including how defendants can rebut plaintiffs' showing of price impact in cases alleging price maintenance. The Second Circuit panel in *ATRS,* however, squarely raises these issues.

ATRS arose out of losses incurred by investors in four collateralized debt obligations issued by Goldman Sachs (the "Goldman CDOs"). The Goldman CDOs in 2006 and 2007, shortly before the 2008 financial crisis, without disclosing that the CDOs were designed so that a Goldman hedge fund client, or Goldman itself, could reap billions in profits when the assets underlying the CDOs failed.

Plaintiffs, purchasers of Goldman common stock, filed a class action against Goldman and certain of its officers and directors alleging that they had made material misstatements and omissions regarding the conflicts of interest attendant to the Goldman CDOs, which harmed investors in Goldman's stock when the stock price declined after the conflicts of interest were disclosed. According to plaintiffs, while Goldman was marketing the CDOs to its clients, it was filing 10-Ks with the SEC and releasing annual reports assuring investors that the firm had "extensive procedures and controls that are designed to identify and address conflicts of interest." Plaintiffs alleged that these and other statements were revealed to be false when the press reported that (i) the SEC had filed a civil lawsuit charging Goldman with securities fraud in connection with one CDO, (ii) the United States Department of Justice had opened a criminal investigation into whether Goldman had committed securities fraud in connection with its mortgage trading and (iii) the SEC had opened an investigation into a second CDO.

Of Counsel, Brian Calandra

After the court rejected defendants' motion to dismiss the complaint, the *ATRS* plaintiffs then moved to certify a class of all purchasers of Goldman common stock during the relevant period. Defendants opposed class certification on the grounds that plaintiffs had failed to demonstrate "price impact." Specifically, defendants submitted declarations and affidavits saying that Goldman's stock did not *increase* on the dates that the 10-Ks and annual reports containing the alleged misrepresentations were disseminated, nor had the price of Goldman's stock *decreased* on 34 days before 2010 when the press had previously reported the conflicts of interest concerning the Goldman CDOs. Goldman's stock did, however, decline significantly after the disclosures that the government was investigating and suing Goldman over its role in issuing and underwriting these CDOs.

The district court rejected defendants' arguments and certified the class, holding that defendants had not provided "*conclusive evidence* that no link exists between the price decline [of Goldman stock] and the misrepresentation[s]"

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(emphasis added). Among other things, the Court held that it could not consider defendants' arguments that Goldman's stock price had not increased on the dates of the alleged misstatements or decreased on dates of press reports regarding Goldman's alleged conflicts of interest in connection with the Goldman CDOs because, the court said, "truth on the market" and materiality defenses were not appropriate to consider at the class certification stage.

While defendants' appeal to the Second Circuit was pending, a different Second Circuit panel ruled in *Waggoner v. Barclays plc ("Barclays"),* where the investor class was represented by Pomerantz LLP. The *Barclays* panel held that when opposing a motion to certify a class in a securities fraud action, a defendant can rebut a purported showing of price impact by demonstrating by a *preponderance of the evidence* that an alleged misrepresentation had no effect on the price of the security at issue. While *Barclays* was a significant victory for investors, the "preponderance of the evidence" burden it seemed to be placing on defendants to rebut price impact was less onerous than the "conclusive evidence" required by the district court in the *ATRS* case.

Citing *Barclays,* the Second Circuit reversed the district court's certification of the *ATRS* class because it was unclear whether the district court had applied *Barclays'* "preponderance of the evidence" standard. On remand, the *ATRS* Plaintiffs relied on a declaration and testimony from an expert who concluded that the declines in Goldman's share price after disclosure of the government's actions against Goldman were at least in part attributable to the revelation that defendants had made misstatements concerning Goldman's conflicts of interest, commitment to its clients and compliance with governing laws Defendants countered with expert reports and testimony that purported to show that the alleged misrepresentations had no effect on Goldman's stock price because plaintiffs' expert testimony was unreliable and incomplete, and Goldman's stock price did not decline on 36 different days prior to 2010 when the press published articles concerning alleged conflicts of interest with regard to the Goldman CDOs.

The district court rejected defendants' arguments and re-certified the class. The court first held that plaintiffs' expert had established a link between the reports of Goldman's conflicts and the subsequent declines in Goldman's share price. It then held that defendants' evidence that Goldman's stock price had not declined on 36 days prior to 2010 did not rebut plaintiffs' showing because "[t]he absence of price movement . . . in and of itself, is not sufficient to sever the link between the first corrective disclosure and the subsequent stock price drop." Finally, the district court held that defendants' arguments that the alleged misstatements could not have affected Goldman's stock price because those statements were immaterial was not appropriate to consider at the class certification stage.

Defendants appealed again, arguing, among other things, that the district court had erred in applying price maintenance theory. They argued once again that there was no evidence that Goldman's stock price was ever "inflated" by defendants' alleged fraud, and that the district court had never addressed whether there was inflation "already extant" in Goldman's stock price at the time the alleged misstatements were made. Defendants also argued that the alleged misstatements "were not the types of statements that courts have recognized as capable of maintaining inflation in a public company's stock price." Finally, Goldman argued that the alleged misstatements were "so general that a reasonable investor would not rely on" them and thus the statements could not "inflate or maintain a stock price."

Plaintiffs responded that "[t]his Court and others have repeatedly rejected Goldman's claim that price-maintenance is limited to cases involving 'fraud-induced' inflation" and "[the Second Circuit] rejected [Defendants'] attempt to defeat class certification on materiality grounds in the last appeal."

The Second Circuit panel hearing this second appeal in *ATRS* has the opportunity to provide much-needed guidance on plaintiffs' use of price maintenance theory. The most important issues on the table are whether a plaintiff has to establish that there was fraud-induced price inflation of the company's stock before the misrepresentations were made. Suppose, for example, that a company's previous financial disclosures had been accurate, but then profits had declined but the company falsely claimed that profits had not declined, preventing the stock price from falling. Does that pattern of behavior not satisfy the requirements of price maintenance theory? The case also raises the question of whether price declines following disclosures of the negative information are enough to support "price impact" claims even if the price had not declined in other instances following disclosure of similar information.

The appeal also raises the issue of whether, as defendants contend, the panel should limit price maintenance theory to circumstances "where specific statements . . . (i) offset investor concerns or (ii) confirm[] market expectations, in either case about a material financial metric, product, or event." If the panel rejects this argument, it would clarify that price maintenance theory applies to misstatements that, when corrected, revealed no concrete financial or operational information that had been hidden from the market for the purpose of maintaining the stock price, as well as misstatements whose materiality is in question.

Finally, the panel's decision could address a potential ambiguity in the *Goldman I* decision concerning whether the materiality of the alleged misrepresentations should be considered on a class certification motion. ■

DELAWARE SUPREME COURT GRANTS INVESTOR REQUEST TO INSPECT ELECTRONIC CORPORATE RECORD

By Samuel J. Adams

A recent decision by the Delaware Supreme Court clarified that shareholders are potentially entitled to receive emails, text messages, and other electronic records in

connection with well-founded books and records requests under certain circumstances. Previously there had been some doubt that produceable "books and records" included those stored in electronic form, with courts often limiting production to hard copy documents actually reviewed by the board. In most cases, traditional, non-electronic documents will likely be sufficient to satisfy a plaintiff's proper purpose in a books and records action.

By way of background, many states, including Delaware, allow shareholders to request access to review corporate books and records provided, in general, that the shareholder can articulate a "proper purpose" and that the documents sought are narrowly-tailored and reasonably related to the shareholder's proper purpose. A shareholder may inspect a corporation's books and records for any proper purpose rationally related to the stockholder's "interest as a stockholder." Commonly accepted proper purposes include valuing a shareholder's interest in a company and investigating wrongdoing, mismanagement or corporate waste. Shareholders also commonly request books and records in anticipation of serving a litigation demand on a public company.

A books and records request can be a vital tool for shareholders weighing whether to file a potential shareholder lawsuit. Documents produced in response to a books and records demand can be instrumental in providing additional evidence that allows a plaintiff to prevail on a motion to dismiss, by presenting detailed and specific information detailing the alleged wrongdoing and demonstrating that the directors participated in or known about the wrongdoing or otherwise have a conflict of interest. In recent years shareholder plaintiffs have increasingly made use of books and records demands prior to commencing litigation. In particular, the Delaware courts have admonished shareholders to use the "tools at hand" and request access to critical books and records prior to commencing certain types of shareholder lawsuits, including shareholder derivative actions and lawsuits challenging mergers and acquisitions.

In KT4 Partners LLC v. Palantir Techs., Inc., the Delaware Supreme Court reversed a lower court's decision denying a request for access to certain electronic books and records. The plaintiff's books and records demand sought to "investigate fraud, mismanagement, abuse, and breach of fiduciary duty" by officers and directors of Palantir. Although the trial court found that the plaintiff had shown a proper purpose, it nonetheless denied the plaintiff's requests for the production of emails and other electronic documents related to that proper purpose.

On appeal, the Delaware Supreme Court determined that the Court of Chancery had abused its discretion by "denying wholesale [plaintiff's] request to inspect emails" related to its proper purpose. In this instance, the plaintiff was able to identify documents that it needed and provided a basis for the court to infer that those documents likely existed in electronic form. The Delaware Supreme Court concluded that Palantir "did not honor traditional corporate formalities … and had acted through email in connection with the same alleged wrongdoing that [plaintiff] was seeking to investigate." Making matters worse, Palantir, faced with plaintiff's allegations, failed to present any evidence of its own that more traditional materials, such as board resolutions or minutes, even existed, much less would satisfy plaintiff's need to investigate its proper purpose. Thus, the court took the unusual step of ordering the production of emails in addition to more traditional corporate books and records.

A clear takeaway from the court's decision is that, if a company elects to conduct business through electronic communications, it assumes the risk that these electronic communications may be the subject of a books and records demand. To this end, the court noted that a company "cannot use its own choice of medium to keep stockholders in the dark about the substantive information to which [the Delaware books and records statute] entitles them." Conversely, where a company is careful to conduct all of its official business through more traditional channels, a plaintiff will likely have more difficulty demonstrating its need to access electronic communications and electronic documents in a books and records action.

Attorney, Samuel J. Adams

Following the reasoning of the *KT4* decision, the Delaware Chancery Court recently ordered the production of electronic communication in a books and records action against Facebook involving data privacy breaches. Among other categories of documents, the plaintiffs in that action sought "electronic communications, if coming from, directed to or copied to a member of the Board," regarding the alleged misconduct. There, the court found that "[p]laintiffs have presented evidence that [Facebook] Board members were not saving their [hardcopy] communications regarding data privacy issues for the boardroom." Limiting its production to hard copy documents, Facebook produced only a compilation of highly redacted Board minutes that contain "essentially no information regarding the relevant subject." Accordingly, the court in that instance granted in part plaintiffs' request to produce electronic communications, even though Facebook adhered to many "traditional corporate formalities" which Palantir did not.

Read together, *KT4* and *Facebook* indicate that Delaware courts are beginning to take a more contemporary, real world approach in considering whether the production of electronic communications are necessary to satisfy a plaintiff's proper purpose in a books and records action. Where plaintiffs are able to present evidence that a company utilizes electronic communications in conducting official business, they will be able to present stronger arguments in favor of the production of electronic communications in books and records actions and, in the process, potentially secure the production of evidence which may, in turn, be critical in building a case at the early stages of litigation. Given the crucial role played by electronic communications in most business transactions, it is likely that production of such documents will be far more commonplace in future books and records cases.

FACEBOOK SETTLES WITH U.S. AGENCIES

By Marc C. Gorrie

Attorney, Marc C. Gorrie

In a press release issued July 24, 2019, the Securities and Exchange Commission announced charges against Facebook, Inc. as well as the settlement of the case; Facebook has agreed to pay $100 million to settle the SEC charges. This comes on the heels of Facebook's settlement with the Federal Trade Commission ("FTC"), which provided for a record fine of approximately $5 billion arising from the same privacy violations.

In 2012, the FTC charged Facebook with eight violations regarding privacy concerns, including making misleading or false claims regarding the company's control of the personal data of their users. The FTC alleged that Facebook had inadequately disclosed its privacy settings that control the release of personal data to third party developers, particularly in instances where one user designated its personal information as private, yet that information was still accessible via a friend who had not so designated it. This, the FTC alleged, dishonored users' privacy choices; the company settled those 2012 charges by agreeing to an order prohibiting Facebook from making misrepresentations regarding the privacy and security of user data and requiring the establishment of a privacy program.

One of the central allegations of the FTC complaint was that while Facebook announced it was no longer allowing third parties to collect users' personal data, it continued to allow such collection to continue. Further, the FTC alleged that Facebook had no screening process for the third parties that received this data.

The SEC alleged that Facebook knowingly misled investors regarding their treatment of purportedly confidential user data for over two years. While the company publicly stated their users' data "may be improperly accessed, used or disclosed," Facebook actually knew that a third-party developer had done so. Merely identifying and disclosing potential risks to a company's business rings hollow when those risk materialize and no disclosure is made.

According to the SEC's complaint, Facebook discovered in 2015 that user data for approximately 30 million Americans was collected and misused in connection with political advertising activities. The complaint alleges that Cambridge Analytica, a data analytics company, paid an academic researcher to collect and transfer Facebook data to create personality profiles for American users, in violation of Facebook's policy that prohibits developers, including researchers, from selling or transferring its users' data. The data gathered and transferred to Cambridge Analytica included names, genders, birthdays, and locations, among other pieces of information. This discovery was confirmed to Facebook by those involved in 2016.

It was during this period that Cambridge Analytica was hired by the Trump campaign to provide data analysis on the American electorate. Touting its cache of some 5,000 data points and personality profiles on every American, Cambridge Analytica assisted the campaign in identifying "persuadable" voters, though it maintains that this analysis was done using data maintained by the Republican National Committee, not by Cambridge Analytica.

Until Facebook disclosed the incident in March of 2018, it continued to mislead investors in SEC filings and through news sources by depicting the risk of privacy violations as merely possible, although they had actually occurred, and by stating that it had found no evidence of wrongdoing, even though it had.

Compounding the company's shortcomings was the SEC's contention that Facebook had "no specific policies or procedures in place to assess the results of their investigation for the purposes of making accurate disclosures in Facebook's public filings." Had Facebook had such mechanisms in place, the presentation of user data misuse as a hypothetical risk, when in reality it had occurred, would have been prevented.

The resolution of this enforcement action by the SEC continues the strong message the agency has been sending regarding the accuracy of public companies' risk disclosures concerning data privacy and cyber security. This portends to be merely an early round in Facebook's struggles to bring its business practices under control.

THE SEC'S RECENT APPROACH TO CRYPTOCURRENCY

By Villi Shteyn

At first glance, the U.S. Securities and Exchange Commission (the "SEC") has had a reserved and seemingly inconsistent approach to cryptocurrency, at times stepping into the fray for enforcement actions against a particular cryptocurrency it deems a security, but often staying out of the picture and refusing to provide detailed guidance. Although this leaves much to be desired, with many open questions about how defrauded prospective plaintiffs could proceed themselves, the few decisions the SEC has made reveal a lot.

The Threshold Question: Is it a Security?

Despite many commentators describing an uncertain approach, the SEC has given a fairly clear test for when it will treat cryptocurrencies as securities and subject them to the onerous rules that come with the classification. Importantly, on June 4th, 2019, the SEC sued Kik Interactive, Inc. in relation to its sale of the digital token Kin without registration. The SEC claimed it was a security because Kik's marketing presented it as an investment that would reap profits from Kik's efforts, and met the traditional Howey test for investment contracts. The SEC treated another Initial Coin Offering ("ICO") very differently. In the earlier case of Turnkey Jet, Inc.'s ICO of TKJ digital coins, the SEC issued its first no-action letter in this sphere on April 3, 2019. It deemed TKJ not a security, because the marketing did not hold it out as an investment opportunity with an expectation of profits from the company's efforts to develop the

digital infrastructure around the coin. The key component was that the coin was to be used only for buying charters, and the digital platform was already established, rather than part of an ongoing project that coin purchasers were buying themselves into to reap potential profits if and when it was successful, in contrast to Kik and their ICO of Kin. This clearly shows how TKJ was more like a currency, to be used for its function, while Kin was an investment security, and not being sold or purchased for its utility as a digital currency. Kik made statements about how its coin would increase in value due to its efforts to further develop the platform, while TKJ cautiously crafted its marketing to not take on any characteristics of a security.

These two examples offer guidance to prospective offerors of ICOs on how to avoid securities treatment, and importantly, to prospective class action securities plaintiffs attempting to convince courts that a digital coin at the heart of their suit is a security.

To recover for securities fraud when a cryptocurrency is involved, the threshold question will always be whether the digital tokens or coins are a security in the first place. The SEC guidance, the "Framework for 'Investment Contract' Analysis of Digital Assets," provides a host of factors for whether a cryptocurrency will be regulated as a security. With the Howey test as a background, The SEC defines these factors to include: purchasers' expectation of profit from the efforts of the issuer of the coin; whether a market is being made for the coin; whether the issuer is exercising centralized control over the network on which the coins are to be traded; the extent of the development of the blockchain ledger network, whether the coins are to be held simply for speculation or are to be put to a specific use; prospects for appreciation, and use as currency. This undergirds an important dichotomy that has emerged between the Existing Platform and the Developing Platform. If a cryptocurrency has a blockchain distributed ledger platform already created before money is raised through an ICO, and is run by a distributed network, then it is not likely to be defined as a security, whereas if the platform is still under development and under the management of the issuer at the time the coins are offered to the public, and is created and/or developed with the money raised in the ICO, which boosts the value afterwards, it is likely to be defined as an investment security.

Investors and the Role of Class Actions

Given the lucrative growth, volatility, and sometimes rapid declines we have seen in cryptocurrency values over the past few years, many have treated cryptocurrency as an investment, and many have suffered great losses. Cryptocurrencies, even if not on public stock exchanges, are traded with the same ease and appeal to unsophisticated retail investors as stock for Apple and Walmart. They are readily available on Coinbase, Binance, and other popular websites and apps, and a host of individuals and companies have begun releasing their own peculiar coins. Importantly, the novelty and ease of access to retail investors makes the cryptocurrency world one ripe for deceit and fraud, especially for the multitude of very volatile coins that are treated the same as securities by purchasers. As an illustration, users on Coinbase follow a chart with daily, weekly, monthly, and yearly curves showing the price movements of various digital currencies, and many treat it no differently than they would their E-trade account. Thus, this is a situation where securities class actions should take on a big role, as they are often the chief vehicles to defend the kind of diffuse harm to ordinary investors that is likely to take place with these digital coins.

Furthermore, due to the exponential growth of money held in cryptocurrencies, institutional investors are also following suit and adding them to their portfolios. According to a study released by Fidelity Investments, around half of institutional investors believe digital assets are appropriate for their portfolios.

In *Balestra v. ATBCOIN,* the proposed plaintiff class survived dismissal on the threshold question. The Judge found all the elements of a security met on the facts as alleged, finding that the ICO intended to raise capital to create the blockchain, and that efforts to do so by ATB would increase the value of the investment if successful. In the case of *Rensel v. Centra Tech,* purchasers of coins in a $32 million ICO are attempting to certify a class in their securities fraud suit. The company is already facing criminal and SEC enforcement actions for its allegedly false and misleading statements about licensing agreements it claimed to have with major credit card companies, and other alleged falsehoods. One of the main points that the proposed class focus on in their motion is whether the CTR tokens are investment contract securities, and they are trying to use the Howey test to make arguments similar to those used by the SEC against KIK: that investors in CTR invested money in the coin with an expectation of profits, there was a common enterprise with no investor control over the coin's value, and the value was tied to the managerial efforts by Centra Tech and its executives. This threshold question will make or break the case, and whatever the court decides could set important early-stage precedent in this sparsely populated cryptocurrency subclass of securities class actions. There are also class actions pending against Ripple and Tezos.

Facebook has recently announced their own new cryptocurrency: Libra. The statements the company released about Libra seem to take the prior SEC actions into consideration, such as presenting it as a currency with a stable value backed by deposits and low-risk government securities, rather than an investment vehicle. A potential issue stems from an audience Facebook has explicitly stated they will target, namely, those who do not use traditional banks. These individuals are the least sophisticated in financial matters, and the most vulnerable to fraud. While Facebook and others may state that their coins are currencies, they must be monitored diligently to ensure users, especially the most vulnerable, are not purchasing them as an unprotected substitute for the stock market. Securities class actions will be a viable means of protecting such individuals if things go sour with Libra or the many other ICOs already present or likely to hit the market soon.

NOTABLE DATES ON THE POMERANTZ HORIZON

Jennifer Pafiti

Jeremy A. Lieberman

Roxanna Talaie

Marc I. Gross

JENNIFER PAFITI and **ROXANNA TALAIE** will attend the TLFFRA Conference in Amarillo, Texas, from September 29 to October 2. They will also attend the NAST Annual Conference in Naples, Florida from October 5 to 9.

JEREMY, JENNIFER, and **ROXANNA** will attend the ICGN Conference from October 15 – 16 in Miami, Florida, at which **JEREMY** will speak on a Pomerantz-hosted panel entitled "Forced Arbitration Clauses and the Harmful Repercussions for Institutional Investors. "

MARC GROSS will speak on a panel at Loyola University's School of Law Symposium, Investors and the Rule of Law, in Chicago, Illinois on October 25.

JEREMY, JENNIFER, and **ROXANNA** will attend the NCPERS Public Safety Conference in New Orleans, Louisiana from October 27 to 30, at which **JEREMY** will speak on a Pomerantz-hosted panel entitled "Forced Arbitration Clauses and the Harmful Repercussions for Institutional Investors. "

ROXANNA will attend the SACRS Fall Conference in Monterey, California from November 12 to 15.

MARC will attend the Vanderbilt Law School/Indira Gandhi Institute for Development Research 10th Annual Emerging Markets Finance Conference in Mumbai, India from December 12 – 14, at which he will present a paper.

CORPORATE GOVERNANCE ROUNDTABLE EVENT

WITH SPECIAL GUEST SPEAKER

PRESIDENT BILL CLINTON

HOSTED BY
THE
CORPORATE GOVERNANCE INSTITUTE, INC.
AND
POMERANTZ LLP

SAVE THE DATE

JUNE 16, 2020

WALDORF ASTORIA BEVERLY HILLS, CALIFORNIA

Please join institutional investors and corporate governance professionals from around the globe to discuss the evolving role of institutional investors, ESG risk and governance challenges, featuring Remarks by President Bill Clinton

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Seating is limited. To reserve your place, please email: pomerantzroundtable2020@pomlaw.com

POMTRACK© CLASS ACTIONS UPDATE

Pomerantz, through its proprietary PomTrack© system, monitors client portfolios to identify potential claims for securities fraud, and to identify and evaluate clients' potential participation in class action settlements.

NEW CASES:

Recently filed securities class action cases filed by various law firms are listed below. If you believe your fund is affected by any of these cases, contact Pomerantz for a consultation

CASE NAME	TICKER	CLASS PERIOD	LEAD PLAINTIFF DEADLINE
Curaleaf Holdings, Inc.	CURA	November 21, 2018 to July 22, 2019	October 4, 2019
2U, Inc.	TWOU	February 25, 2019 to July 30, 2019	October 7, 2019
ABIOMED, Inc.	ABMD	January 31, 2019 to July 31, 2019	October 7, 2019
Evolent Health, Inc.	EVH	March 3, 2017 to May 28, 2019	October 7, 2019
International Flavors & Fragrances, Inc.	IFF	May 7, 2018 to August 5, 2019	October 11, 2019
Aetna, Inc.	AET	pursuant to November 2018 CVS merger	October 14, 2019
Granite Construction, Inc.	GVA	October 26, 2018 to August 1, 2019	October 14, 2019
NetApp, Inc.	NTAP	May 22, 2019 to August 1, 2019	October 14, 2019
Pluralsight, Inc.	PS	August 2, 2018 to July 31, 2019	October 15, 2019
SAExploration Holdings, Inc.	SAEX	March 15, 2016 to August 15, 2019	October 17, 2019
Nektar Therapeutics	NKTR	February 15, 2019 to August 8, 2019	October 18, 2019
Burford Capital Limited	BRFRF, BUR	March 18, 2015 to August 7, 2019	October 21, 2019
Textron Inc.	TXT	January 31, 2018 to October 17, 2018	October 21, 2019
Valaris plc	VAL	April 11, 2019 to July 31, 2019	October 21, 2019
Sarepta Therapeutics, Inc.	SRPT	September 6, 2017 to August 19, 2019	October 29, 2019
AmTrust Financial Services, Inc.	AFSIA, AFSIB, AFSIC, AFSIM, AFSIN, AFSIP	January 22, 2018 to January 18, 2019	October 30, 2019
Canada Goose Holdings, Inc.	GOOS	March 16, 2017 to August 1, 2019	November 4, 2019
Meredith Corporation	MDP	January 31, 2018 to September 5, 2019	November 5, 2019
MINDBODY, Inc.	MB	November 7, 2018 to February 15, 2019	November 5, 2019
Weatherford International Plc	WFTIQ	October 26, 2016 to May 10, 2019	November 5, 2019
Greenlane Holdings, Inc.	GNLN	pursuant to April 2019 IPO	November 11, 2019
MacroGenics, Inc.	MGNX	February 6, 2019 to June 3, 2019	November 12, 2019
ViewRay, Inc.	VRAY	March 15, 2019 to August 8, 2019	November 12, 2019
Cadence Bancorporation	CADE	July 23, 2018 to July 22, 2019	November 15, 2019
ProPetro Holding Corp.	PUMP	March 17, 2017 to August 8, 2019	November 15, 2019
Farfetch Limited	FTCH	pursuant to September 2018 IPO	November 18, 2019
Ollie's Bargain Outlet Holdings, Inc.	OLLI	June 6, 2019 to August 28, 2019	November 18, 2019

SETTLEMENTS:

The following class action settlements were recently announced. If you purchased securities during the listed class period, you may be eligible to participate in the recovery.

CASE NAME	AMOUNT	CLASS PERIOD	CLAIM FILING DEADLINE
Global Digital Solutions Inc	$595,000	October 8, 2013 to August 11, 2016	October 7, 2019
Americas Energy Company-AECo (SEC)	$4,315,640	September 9, 2009 to September 2, 2010	October 8, 2019
RH (f/k/a Restoration Hardware Holdings)	$50,000,000	March 26, 2015 to June 8, 2016	October 8, 2019
Akers Biosciences, Inc.	$2,250,000	May 15, 2017 to June 5, 2018	October 9, 2019
Ooma, Inc.	$8,650,000	July 17, 2015 to January 14, 2016	October 14, 2019
Capstone Turbine Corporation	$5,550,000	June 12, 2014 to November 5, 2015	October 15, 2019
Liberator Medical Holdings, Inc.	$4,750,000	for all who received $3.35/share in January 2016 merger with Bard	October 22, 2019
Stemline Therapeutics, Inc.	$680,000	January 20, 2017 to February 1, 2017	October 23, 2019
Qurate Retail, Inc.	$5,750,000	August 5, 2015 to September 8, 2016	October 25, 2019
Transgenomic, Inc.	$1,950,000	April 12, 2017 to June 30, 2017	October 29, 2019
Roadrunner Transportation Systems, Inc.	$20,000,000	March 14, 2013 to January 30, 2018	November 7, 2019
Endo International plc	$50,000,000	re June 2014 Secondary Public Offering	November 14, 2019
Prothena Corporation plc	$15,750,000	October 15, 2015 to April 20, 2018	November 25, 2019
Rentech, Inc.	$2,050,000	March 15, 2016 to April 6, 2017	November 26, 2019
SunEdison, Inc.	$74,000,000	September 2, 2015 to April 3, 2016	November 27, 2019
DeVry Education Group, Inc.	$27,500,000	August 26, 2011 to January 27, 2016	November 29, 2019
Fifth Street Finance Corp./Floating Rate Corp. (SEC)	$3,983,661	April 1, 2013 to December 31, 2014	November 29, 2019
Shire plc	$16,750,000	September 29, 2014 to October 14, 2014	December 4, 2019
LJM Preservation and Growth Fund	$12,850,000	February 28, 2015 to February 7, 2018	December 11, 2019
Lannett Company, Inc.	$300,000	February 8, 2018 to August 17, 2018	December 13, 2019
Quantum Corporation	$8,150,000	April 18, 2016 to February 8, 2018	December 13, 2019
Patriot National, Inc.	$6,500,000	January 15, 2015 to November 28, 2017	December 17, 2019
PPG Industries, Inc.	$25,000,000	January 19, 2017 to May 10, 2018	December 20, 2019
Banco Bradesco S.A.	$14,500,000	August 8, 2014 to July 27, 2016	December 21, 2019
Baffinland Iron Mines Corporation	$4,852,830	re January 2011 Takeover Bid	December 25, 2019
SFX Entertainment, Inc.	$6,750,000	February 25, 2015 to November 17, 2015	December 27, 2019
Babcock & Wilcox Enterprises, Inc.	$19,500,000	June 17, 2015 to August 9, 2017	January 2, 2020
Flowers Foods, Inc.	$21,000,000	February 7, 2013 to August 10, 2016	January 3, 2020
Arcimoto, Inc.	$2,450,000	June 22, 2017 to September 21, 2017	January 6, 2020
FX Instruments (Canada) (SocGen) (Antitrust)	$1,385,838	January 1, 2003 to December 31, 2013	January 15, 2020
Akorn, Inc.	$53,600,000	November 3, 2016 to January 8, 2019	January 24, 2020
EZCORP, Inc.	$4,875,000	January 28, 2014 to October 20, 2015	January 25, 2020
Linkwell Corp	$6,000,000	re September 2014 merger with Leading World	February 4, 2020
Euroyen-Based Derivatives (Antitrust) (Bank of Yokohama/Shinkin/Shoko)	$71,000,000	January 1, 2006 to June 30, 2011	March 3, 2020

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

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