the POMERANTZ MONITOR

VOLUME 15, ISSUE 6 NOVEMBER/DECEMBER 2018

PROTECTING SHAREHOLDER RIGHTS: FORCING AWAY FORCED ARBITRATION CLAUSES

By Jennifer Pafiti

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Pomerantz is the oldest law firm in the world dedicated to representing defrauded shareholders. When it came to our attention that the United States Securities and Exchange Commission (the "SEC") hinted that it might consider allowing companies to include mandatory arbitration clauses in their bylaws, Pomerantz acted quickly to express its concern that such clauses could eviscerate a shareholder's ability to hold to account a corporate wrongdoer.

Background:

Banks, credit card issuers and other companies, preferring to settle disputes with shareholders without going to court over class action lawsuits, often insert mandatory arbitration/class action waiver provisions in the fine print of their service agreements. But for investors, a bar on securities class actions would eliminate the ability of all but the largest shareholders to seek compensation from companies who have violated U.S. securities laws.

For decades, it has been the policy of the SEC not to accelerate any new securities registrations for companies that contained a class action waiver provision, as such waivers run counter to the SEC's mission to enforce the federal securities laws. In 2012, the Carlyle Group's Initial Public Offering registration was delayed because it contained such a waiver bylaw. Ultimately, under pressure to complete its offering, the Carlyle Group scrapped the offensive waiver. Since then, no public company has attempted to include such a waiver bylaw in its registration statement, preserving the right of defrauded investors to participate in securities class actions.

Then last year, a Consumer Financial Protection Bureau rule banning mandatory arbitration was overturned by the Republican-controlled Congress, under the Congressional Review Act. President Donald Trump signed the legislation, H.J. Res. 111 (115).

Adding concern is a recent push by the U.S. Chamber of Commerce and other affiliated groups to allow forced arbitration clauses. At a Heritage Foundation conference in July 2017, then Republican SEC Commissioner Michael Piwowar openly encouraged corporations to file registration statements containing class action waiver bylaws. In October 2017, the U.S. Treasury Department issued a position paper whereby it encouraged the SEC to change its policy regarding class action waivers. A few months ago, Republican Commissioner Hester Peirce answered "absolutely" to the question as to whether she believed such bylaws should be allowed.

The position today is that unless the current Chairman of the SEC, Jay Clayton, is convinced to maintain the status quo, the SEC can and will easily change its policy to allow class action waiver bylaws, which would doom investors' rights to hold corporate wrongdoers accountable via securities class actions in the U.S.

Jennifer Pafiti, Partner and Head of Investor Relations

Hear Us Roar:

To express concerns over a potential shift in policy, Pomerantz organized a coalition of large institutional investors from around the globe to meet with SEC Chairman Jay Clayton in D.C. on October 24, 2018. The key focus of this meeting was to attempt to persuade Chairman Clayton against the recent push by the U.S. Treasury Department and the Republican Commissioner of the SEC to allow for forced arbitration/class action waiver bylaws which could seriously undermine the future of defrauded investors.

Wanting to make sure all bases were covered, and after meeting with Chairman Clayton, Pomerantz and the team of institutional investors then met with a number of both Republican and Democratic Senate staffers. The purpose of the meetings was to encourage them, in particular Republican Senators, to write to Chairman Clayton cautioning against a shift in policy that would impose forced arbitration bylaws on investors.

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Our Voices Were Heard:

On November 13, 2018 – two weeks after the SEC meetings – ten Republican State Treasurers, in a letter co-authored by the State Financial Officers Foundation, urged the SEC to maintain their existing stance against forced arbitration. In the letter, the State Financial Officers Foundation, which represents mostly conservative-leaning state treasurers, auditors and controllers, expressed "concerns about recent news reports that the SEC may change its long-standing position and allow public companies to include forced arbitration clauses in their corporate governance documents." The letter went on to say that: "Allowing public companies to impose a private system of arbitration on investors "will eliminate the ability of all but the largest shareholders to seek recompense from criminals." Republican Treasurers signing the November 13 letter represent Arizona, Arkansas, Idaho, Indiana, Kentucky, Louisiana, Maine, Nevada, South Carolina and Washington State. It is a significant and unusual step to have ten Republican Treasurers publicly take a position contrary to two Republican SEC Commissioners and the Treasury Department.

Pomerantz has been credited by the American Association for Justice for our dedication to this effort.

Jeremy Lieberman, Pomerantz's Co-Managing Partner, said of the firm's efforts on this matter: "Bringing a coalition of large institutional investors from around the globe to express our concern to Chairman Clayton is an important step to ensuring the continued viability of shareholder litigation for institutional and retail investors. While we believe that Chairman Clayton was receptive to our position, it is critical to continue a full court press to ensure that both Congress and policy makers understand the significance of this issue to the investor community."

Looking Ahead:

Democrats remain concerned about mandatory arbitration and the issue is likely to get renewed attention when the party takes control of the House in January.

Rep. Carolyn Maloney of New York, currently the Democratic head of the House panel that oversees the SEC, said in April that "allowing companies to use forced arbitration clauses would devastate investor confidence in our markets."

While the Republican letter to the SEC is a strong step forward, the institutional investor community should remain concerned about any SEC shift in policy. Pomerantz will continue to work proactively with the institutional investor community to prevent a policy change that would harm institutional investors.

To learn how you can get involved in this effort, please contact Pomerantz Partner Jennifer Pafiti: jpafiti@pomlaw.com.

Attorney Marc C. Gorrie

HARE-BRAINED TWEET GETS MUSK IN TROUBLE

By Marc C. Gorrie

On September 27, 2018, the SEC sued Elon Musk, CEO and Chairman of Tesla Inc., charging him with securities fraud. It alleged that on August 2, 2018, after the close of the market, Musk had sent an email with the subject, "Offer to Take Tesla Private at $420," to Tesla's Board of Directors, Chief Financial Officer, and General Counsel. Musk stated he wanted to take Tesla private because being a publicly-traded company "[s]ubjects Tesla to constant defamatory attacks by the short-selling community, resulting in great harm to our valuable brand." Apparently Musk had not lined up financing or done any other preparatory work before making this offer.

Before anyone at the company could respond, on August 7, 2018 Musk sent out a series of false tweets about the potential transaction to take Tesla private, confusingly saying that:

> "My hope is *all* current investors remain with Tesla even if we're private. Would create special purpose fund enabling anyone to stay with Tesla."
>
> "Shareholders could either to [sic] sell at 420 or hold shares & go private."
>
> "Investor support is confirmed. Only reason why this is not certain is that it's contingent on a shareholder vote."

Rule 10-b5 prohibits a company's officers and directors from "knowingly or recklessly mak[ing] material misstatements about that company." Musk's tweets contain both clearly factual statements that are ambiguous or incomplete at best and concern information that Tesla shareholders would find very important.

The SEC's complaint alleged that Musk had not even discussed the deal terms he tweeted, which offered a

substantial premium to investors that was greater than Tesla's share price at the time. After the tweet, Tesla's stock price rose on increased trading volume, closing up 10.98% from the previous day.

A press release issued by the SEC on September 27, 2018 made it clear that Musk's "celebrity status," including his 22 million Twitter followers, did not affect his "most critical obligations" as a CEO not to mislead investors, even when making statements through non-traditional media. This status and Musk's large audience drove the tenor of the SEC's complaint and the relief sought: a permanent injunction against future false and misleading statements, disgorgement of any profits resulting from the tweets, civil penalties, and a bar prohibiting Musk from serving as an officer or director of a public company.

The SEC had previously issued a report that companies can use social media to announce key information in compliance with Regulation Fair Disclosure, so long as investors have been alerted about which media avenues will be used and such statements otherwise comply with regulations. This clarification arose out of the 2013 inquiry into a post by Netflix CEO Reed Hastings' personal Facebook page, stating that Netflix's monthly online viewing had exceeded one billion hours for the first time. Due to the uncertainty about the rule, an enforcement action was not initiated regarding Hastings or Netflix.

Regarding the disclosure of material, company-specific information via Twitter, the SEC averred that Tesla had stated in 2013 that the company may use social media to release information to investors, but never made any greater specification. Here, Musk announced a record-breaking private buyout offer at a price he alone determined without any board approval or arms-length negotiation.

Musk initially rejected settlement negotiations outright, but lawyers for the company purportedly convinced him, and the SEC, to come back to the table. Before Musk or Tesla responded to the SEC's complaint, settlement was quickly reached on September 29, 2018 and a joint motion for the court to approve the settlement was filed. The deal allows Musk to remain CEO and a board member but imposed a two-year ban as Chairman and a $20 million fine, as well as a $20 million fine on Tesla. The settlement further requires Tesla to add two independent directors as well as a permanent committee of independent directors tasked with monitoring disclosures and potential conflicts of interest. Such monitoring includes a required preapproval of any communications regarding Tesla in any format that contains, "or reasonably could contain, information material to the Company or its shareholders."

On October 4, District Judge Alison J. Nathan ordered the parties to file a joint letter explaining why the proposed settlement was fair and reasonable, which was filed October 11. As to the reasons behind the tweets, Musk has cryptically commented, "[i]f the odds are probably in your favor, you should make as many decisions as possible within the bounds of what is executable. This is like being the house in Vegas. Probability is the most powerful force in the universe, which is why the house always wins. Be the house."

Before the Court ruled on the proposed settlement, Musk released another confusing tweet:

> "Just want to [sic] that the Shortseller Enrichment Commission is doing incredible work. And the name change is so on point!"

The court nevertheless overlooked this outburst, approved the settlement and entered final judgment on October 16. After taking a short Twitter break, Musk then tweeted that the whole debacle was "[w]orth it."

The settlement comes without an admission or denial of wrongdoing by Musk, but stands as a clear reminder of the obligations that the officers and directors of public companies have to shareholders. Tesla is a company whose value is in no small part its future potential – a value driven by a belief that Musk is central to the company's ongoing success. It appears as though this was tacitly recognized through the settlement negotiations, as the second round resulted in the SEC backing away from their initial position that Musk be barred from being a corporate officer or director permanently. Such a punishment could have easily proved ruinous for Tesla.

In a time where even presidential communiqués can issue via Twitter, officer and director statements concerning material information related to publicly traded companies must adhere to the well-established rules of disclosure, even when they are limited to 140 characters or less.

CALIFORNIA CHAMPIONS WOMEN FOR BOARD SEATS

By Gustavo F. Bruckner

In late September, California became the first state to require its publicly held corporations to include women on their boards. Pursuant to this new law, SB-826, publicly traded corporations headquartered in California must have at least one woman on their boards of directors by the end of 2019. By the end of July 2021, a minimum of two women must sit on boards with five members, and there must be at least three women on boards with six or more members. Companies that fail to comply face fines of $100,000 for a first violation and $300,000 for a second or subsequent violation.

It is widely accepted that companies with gender-diverse boards of directors outperform their peers. Although it is not uniformly settled as to why this is so, companies with gender-diverse boards tend to have higher returns on equity and net profit margins than their peers. Studies have shown that the greatest benefit to a company's bottom line occurs when there are three or more women on a board. According to one famous study, "One female board member is often dismissed as a token. Two females are not

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Partner Gustavo F. Bruckner

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enough to be taken seriously. But three give the board a critical mass and the benefit of the women's talents."

In the United States, women comprise about half of the total workforce; hold half of all management positions; are responsible for almost 80% of all consumer spending; and account for 10 million majority-owned, privately-held firms, employing over 13 million people and generating over $1.9 trillion in sales.

It is generally believed that gender diversity on boards translates to less "group think," greater expression of non-conforming views, more leadership positions for talented but often overlooked female employees, and less tolerance for underperforming CEOs.

Every company but one on the Standard & Poor's 500 has at least one woman on its board and 11 of the Standard & Poor's 500 companies, including Best Buy, Macy's, Viacom and General Motors, have half or more of their board seats held by women. However, women still only hold 19.9% of board seats at Standard & Poor's 500 companies.

Sixty-four countries have made some sort of national effort to promote boardroom gender diversity. In 2003, Norway passed a law mandating 40 percent representation of each gender on the board of publicly limited liability companies. Since then, approximately 20 countries have adopted some sort of legislation/quota to increase the number of women on boards, including Colombia, Kenya, Belgium, Denmark, Finland, France, Germany, Iceland, Italy, and Israel. Not surprisingly, a study of global companies found that Norway (46.7%) and France (34.0%) had the highest percentages of women on their boards.

In the United States, there has been a deep reluctance to mandate gender quotas. The Securities Exchange Commission (SEC) requires that companies disclose whether they have a diversity policy, and how it applies to board recruitment practices (Regulation S-K, Item 407(c)). While the SEC recommends that this include "race, gender, and ethnicity of each member/nominee as self-identified by the individual," ultimately, the definition of diversity is left to each issuer. Many states have passed resolutions encouraging public companies to gender diversify their boards. Some, like Rhode Island, made pension fund investments conditional on increased board diversity. In March, the New York State Common Retirement Fund said it would vote against all corporate boards of directors standing for re-election at companies with no women board members. The California State Teachers' Retirement System recently sent letters to 125 California corporations with all-male boards warning them that they risk shareholder action if they do not self-diversify. Thirty-five of those companies subsequently appointed female directors.

The political forces in California felt that change was not being effected fast enough. A quarter of California's publicly traded companies do not have a woman on their boards and there are 377 California-based companies in the Russell 3000 stock index of large firms with all-male boards that could be affected by the new law. 684 women will be needed to fill board seats for Russell 3000 companies by 2021.

POMERANTZ HOSTS INTERNATIONAL CONFERENCE IN NEW YORK

By Roxanna Talaie

On October 23, Pomerantz hosted its 2018 Corporate Governance and Securities Litigation Roundtable Event in the Four Seasons Hotel in New York City. The Roundtable Event provides institutional investors from around the globe with the opportunity to discuss topics that affect the value of the funds they represent, and to network with their peers in an informal and educational setting. Presenters are international experts in the fields of corporate governance, securities litigation and asset management. This year, presenters and attendees traveled to the Roundtable from across the United States, the United Kingdom, France, Italy, Belgium, and Israel.

The theme of this year's Roundtable Event focused on women and minorities who have risen through the ranks and have pioneered the path for change and unity in our communities. Pomerantz Partner Jennifer Pafiti, the event's organizer, says, "We were excited to present issues of importance to institutional investors through the lens of diversity. Judging by the robust exchange of ideas during the day's sessions and the feedback we have received, these are matters that resonate globally today." As a first-year associate with Pomerantz, and as a woman with an ethnically diverse background, creating and

Attorney Roxanna Talaie

participating in this event was a great point of pride and honor in my career. While our community is at the cusp of change, Pomerantz believes it is pivotal to be at the forefront to encourage these discussions to further educate and bring awareness to ourselves and members of our community with the hope of encouraging and fostering a change that will benefit us all.

Counsel to a $400-billion European asset management company presented, "Corporate Governance: What Can the World Learn from the European Model?" This session explored the emerging European corporate governance model, and how it compares to its Anglo-American counterpart. The European Union's 2017 Shareholder Rights Directive ("SRD") mandates that institutional investors

> "… THESE ARE MATTERS THAT RESONATE GLOBALLY TODAY."
>
> *Jennifer Pafiti*
> *Partner and Head of Investor Relations*

and asset managers develop and publicly disclose an engagement policy that describes, among other matters, how they integrate shareholder engagement in their investment strategy, and how they monitor investee companies on relevant matters, including ESG: environmental, social, and corporate governance. Of interest to many in the room was the news that the United States receives a relatively low ESG country rating in the EU for the reasons that it pulled out of the Paris Agreement on climate change and maintains the death penalty.

"Gunning for Profit" was another session that focused on ethical investing. Following a number of mass shootings in the United States, CalSTRS made the decision to stop investing in companies that sold assault-style weapons or devices that allow guns to fire more rapidly. The session inspired a lively discussion on whether ethical investing makes financial sense, and provided insight into why CalSTRS, the second-largest pension fund in the U.S., decided to take a stand against the big guns.

The Roundtable Event also discussed the allegations against Harvey Weinstein and how they created a Hollywood movement that has since gained momentum around the globe, turning the focus to workplace culture and corporate governance. Beyond Weinstein's liability, the conversation has since turned to the institutions that allowed those crimes to become a part of the corporate culture. The panel session, "Corporate Governance in a Post-Weinstein Era" addressed such issues. Among other information shared by panelists, Partner Gustavo Bruckner, who heads Pomerantz's Corporate Governance litigation team, described the firm's involvement in current litigation relating to sexual and other harassment in the workplace (see his article in this issue of the *Monitor*).

Research indicates that companies with board members representing diversity of thought and culture deliver higher returns on equity and better growth overall. In the past five years, many countries have passed legislation mandating diverse board representation or set non-mandatory targets. However, some argue diversity cannot be truly measured and performance cannot be attributed to the makeup of those occupying boardroom seats. The panel "Diversity in the Boardroom: Fashion or Fact?" opened up vibrant debate among panelists and Roundtable attendees as it explored those conflicting ideals, how subconscious bias can affect selection processes, and why diversity in the boardroom should foster an environment in which every shareholder is represented.

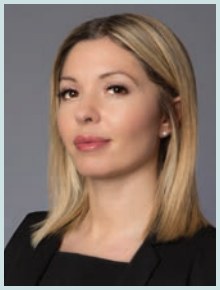
In "Unleash the Lawyers: Securities Litigation Policy and Practice," a panel of lawyers shared their thoughts on the hallmarks of a robust securities litigation policy and what to do to mitigate a fund's liability in the absence of one.

Jeremy Hill, Group General Counsel for Universities Superannuation Scheme ("USS"), gave an enlightening presentation on USS's role as lead plaintiff in the Petrobras litigation, in which USS and Pomerantz recently achieved a historic settlement of $3 billion on behalf of defrauded investors with Brazilian oil giant, Petrobras, and its auditors. Armed with candor, facts, and figures, he explained how a conservative British pension fund that had never before served as lead plaintiff found itself leading the highest-profile class action in the United States.

Pomerantz Co-Managing Partner Jeremy Lieberman spoke on, "Will Trump's SEC Negate Investors' Ability to Fight Securities Fraud?" With serious indications that the new SEC Chair, Jay Clayton, is considering allowing corporations to use forced arbitration clauses to curtail investors' rights to bring securities class actions, Jeremy used several examples from Pomerantz's roster of active and recently settled cases to demonstrate the very real and deleterious effect that forced arbitration would have on investors. He also addressed what institutional investors can do to protect their right to hold companies accountable for securities fraud. Notably, the day after the Roundtable, Jeremy Lieberman and Jennifer Pafiti traveled to Washington D.C. to meet with Chairman Clayton and other key Senate staffers to strenuously argue against forced arbitration clauses and for the crucial function of securities class action litigation as a fundamental principal to hold corporate wrongdoers accountable. [Eds.' note: See cover story for the update.]

The Pomerantz Monitor will keep our readers posted on the next Corporate Governance and Securities Litigation Roundtable Event, scheduled for 2020 in California.

NOTABLE DATES ON THE POMERANTZ HORIZON


Jennifer Pafiti


Jeremy A. Lieberman


Roxanna Talaie

From November 14-16, **ROXANNA TALAIE** will attend the National Association of Police Officers (NAPO)'s Legal Seminar in Las Vegas. The topic will be, "The Aftermath of Janus and Other Current Issues for Attorneys."

ROXANNA will also attend the Pennsylvania Association of Public Employee Retirement Systems (PAPERS) Fall Conference in Philadelphia on November 27-28.

Pomerantz will sponsor a lunch for institutional investors in London, England on November 28. The guest speaker will be Michael Portillo, British journalist, broadcaster, and former Member of Parliament and Cabinet Minister of the Conservative Party. **JEREMY LIEBERMAN** and **JENNIFER PAFITI** will host.

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Pomerantz is acknowledged as one of the premier firms in the area of corporate securities and a leader in securities and corporate governance litigation. Our clients include major individual and institutional investors and financial institutions with combined assets of $5 trillion, and growing. Founded by the late Abraham L. Pomerantz, known as the"dean of the class action bar," the firm pioneered the field of securities class actions. For 80 years and counting, Pomerantz has continued the tradition that Abe Pomerantz established, fighting for the rights of victims of securities fraud, breaches of fiduciary duty, and corporate misconduct. Prior results, however, do not guarantee a similar outcome in future cases.

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

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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
Huazhu Group Ltd.	HTHT	May 14, 2018 to August 28, 2018	December 7, 2018
Alphabet, Inc.	GOOG, GOOGL	April 23, 2018 to October 7, 2018	December 10, 2018
Stitch Fix, Inc.	SFIX	June 8, 2018 to October 1, 2018	December 10, 2018
Trevena, Inc.	TRVN	May 2, 2016 to October 9, 2018	December 10, 2018
Camping World Holdings, Inc.	CWH	March 8, 2017 to August 7, 2018	December 18, 2018
Dycom Industries, Inc.	DY	November 20, 2017 to August 10, 2018	December 24, 2018
Jianpu Technology, Inc.	JT	November 16, 2017 to October 25, 2018	December 24, 2018
Bank OZK	OZK	February 19, 2016 to October 18, 2018	December 26, 2018
McKesson Corporation	MCK	October 24, 2013 to January 25, 2017	December 26, 2018
China Zenix Auto International Ltd.	ZXAIY	October 2, 2015 to June 14, 2018	December 31, 2018
Nektar Therapeutics	NKTR	November 11, 2017 to October 2, 2018	December 31, 2018
Honeywell International, Inc.	HON	February 9, 2018 to October 19, 2018	January 2, 2019
India Globalization Capital, Inc.	IGCC	October 25, 2017 to October 29, 2018	January 2, 2019
Synchrony Financial	SYF	October 21, 2016 to November 1, 2018	January 2, 2019
Align Technology, Inc.	ALGN	July 25, 2018 to October 24, 2018	January 4, 2019
Apogee Enterprises, Inc.	APOG	June 28, 2018 to September 17, 2018	January 4, 2019
Costco Wholesale Corp.	COST	June 6, 2018 to October 25, 2018	January 7, 2019
Evoqua Water Technologies Corp.	AQUA	November 6, 2017 to October 30, 2018	January 7, 2019
Ribbon Communications (f/k/a Sonus Networks)	RBB	January 8, 2015 to March 24, 2015	January 7, 2019
Ryanair Holdings plc	RYAAY	May 30, 2017 to September 28, 2018	January 7, 2019
Tesaro, Inc. (July 2016 Offering Disclosures)	TSRO	November 4, 2016 to November 14, 2016	January 9, 2019
MoneyGram International, Inc.	MGI	February 11, 2014 to November 8, 2018	January 14, 2019
Edison International	EIX, SCE	February 23, 2016 to November 12, 2018	January 15, 2019
McDermott International, Inc.	MDR	January 24, 2018 to October 30, 2018	January 15, 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
Vista Outdoor Inc.	$6,250,000	August 11, 2016 to November 9, 2017	November 26, 2018
Wilmington Trust Corporation	$210,000,000	January 18, 2008 to November 1, 2010	November 26, 2018
Symbol Technologies, Inc.	$15,000,000	March 12, 2004 to August 1, 2005	November 29, 2018
Keurig Green Mountain (f/k/a Green Mountain Coffee Roasters)	$36,500,000	February 2, 2011 to November 9, 2011	December 1, 2018
Intuitive Surgical, Inc.	$42,500,000	February 6, 2012 to July 18, 2013	December 6, 2018
Inventure Foods, Inc.	$4,200,000	September 12, 2014 to April 23, 2015	December 6, 2018
Yingli Green Energy Holding Company Ltd.	$1,200,000	December 2, 2010 to May 15, 2015	December 8, 2018
ERBA Diagnostics, Inc.	$1,215,000	June 14, 2013 to November 20, 2015	December 10, 2018
Quality Systems, Inc.	$19,000,000	May 26, 2011 to July 25, 2012	December 12, 2018
UTi Worldwide Inc.	$13,000,000	March 28, 2013 to February 25, 2014	December 18, 2018
U.S. Dollar LIBOR-Based (Antitrust) (OTC Deutsche)	$240,000,000	August 1, 2007 to May 31, 2012	December 20, 2018
U.S. Dollar LIBOR-Based (Antitrust) (OTC HSBC)	$100,000,000	August 1, 2007 to May 31, 2012	December 20, 2018
Walter Investment Management Corp.	$2,950,000	August 9, 2016 to August 1, 2017	December 20, 2018
ISDAfix (Antitrust) (4 Banks and ICAP Capital Markets)	$96,000,000	January 1, 2006 to January 31, 2014	December 23, 2018
America West Resources, Inc. (SEC Fair Fund)	$3,700,000	February 23, 2012 to February 24, 2012	January 2, 2019
Baxano Surgical, Inc. f/k/a TranS1, Inc.	$3,250,000	February 23, 2009 to October 17, 2011	January 2, 2019
Medtronic, Inc.	$43,000,000	September 8, 2010 to June 28, 2011	January 2, 2019
Kitov Pharmaceuticals Holdings Ltd.	$2,000,000	November 20, 2015 to February 6, 2017	January 3, 2019
Sunrun Inc. (2016)	$32,000,000	August 5, 2015 to February 1, 2016	January 3, 2019
Centrais Eletricas Brasileiras S.A. - Eletrobras	$14,750,000	August 17, 2010 to June 24, 2015	January 4, 2019
Och-Ziff Capital Management Group LLC	$28,750,000	February 9, 2012 to August 22, 2014	January 9, 2019
JPMorgan Chase Bank, N.A. ADR FX	$9,500,000	November 21, 2010 to July 18, 2018	January 12, 2019
Joy Global Inc.	$20,000,000	September 1, 2016 to April 5, 2017	January 14, 2019
Global Eagle Entertainment, Inc.	$1,100,000	May 9, 2016 to March 16, 2017	January 18, 2019
Wells Fargo & Company	$480,000,000	February 26, 2014 to September 20, 2016	January 23, 2019
CPI Card Group, Inc.	$11,000,000	October 9, 2015 to June 15, 2016	January 30, 2019
Osiris Therapeutics, Inc.	$18,500,000	May 12, 2014 to November 16, 2015	January 30, 2019
Poseidon Concepts Corp.	$28,659,360	March 22, 2012 to February 14, 2013	February 7, 2019
Santander Consumer USA Holdings Inc.	$9,500,000	February 3, 2015 to March 15, 2016	February 7, 2019
Emergent Biosolutions, Inc.	$6,500,000	January 11, 201 to June 21, 2016	February 16, 2019
GlobalSCAPE, Inc.	$1,400,000	March 3, 2016 to August 7, 2017	February 16, 2019
ClubCorp Holdings, Inc.	$5,000,000	July 10, 2017 to September 18, 2017	February 18, 2019
United Development Funding IV	$10,435,725	March 8, 2011 to March 8, 2016	February 21, 2019
Celadon Group, Inc.	$5,500,000	October 29, 2013 to April 13, 2018	February 25, 2019
Citi Sponsored ADRs (Citibank)	$14,750,000	January 1, 2006 to September 4, 2018	March 15, 2019
Concordia International Corp. (Canada)	$13,900,000	November 12, 201 to August 11, 2016	March 19, 2019
BHP Billiton Limited/BHP Billiton Plc	$50,000,000	September 25, 201 to November 30, 2015	April 2, 2019

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