REDACTED COPY

RESPONSE SIGNATURE PAGE

Type or Print the following information.

PROSPECTIVE CONTRACTOR'S INFORMATION					
Company:	Pomerantz LLP				
Address:	600 Third Avenue, Floor 20				
City:	New York	State:	NY	Zip Code:	10016
Business Designation:	☐ Individual ☐ Sole Proprietorship ☐ Public Service Corp ☒ Partnership ☐ Corporation ☐ Nonprofit				
Minority and Women-Owned Designation*:	☒ Not Applicable ☐ American Indian ☐ Asian American ☐ Service-Disabled Veteran ☐ African American ☐ Hispanic American ☐ Pacific Islander American ☐ Women-Owned AR Certification #: _____ * See *Minority and Women-Owned Business Policy*				

PROSPECTIVE CONTRACTOR CONTACT INFORMATION *Provide contact information to be used for bid solicitation related matters.*			
Contact Person:	Jeremy A. Lieberman	Title:	Managing Partner
Phone:	212-661-1100	Alternate Phone:	646-581-9971
Email:	jalieberman@pomlaw.com		

CONFIRMATION OF REDACTED COPY

☒ YES, a redacted copy of submission documents is enclosed.

☐ NO, a redacted copy of submission documents is not enclosed. I understand a full copy of non-redacted submission documents will be released if requested.

Note: If a redacted copy of the submission documents is not provided with Prospective Contractor's response packet, and neither box is checked, a copy of the non-redacted documents, with the exception of financial data (other than pricing), will be released in response to any request made under the Arkansas Freedom of Information Act (FOIA). See Bid Solicitation for additional information.

ILLEGAL IMMIGRANT CONFIRMATION

By signing and submitting a response to this *Bid Solicitation*, a Prospective Contractor agrees and certifies that they do not employ or contract with illegal immigrants. If selected, the Prospective Contractor certifies that they will not employ or contract with illegal immigrants during the aggregate term of a contract.

ISRAEL BOYCOTT RESTRICTION CONFIRMATION

By checking the box below, a Prospective Contractor agrees and certifies that they do not boycott Israel, and if selected, will not boycott Israel during the aggregate term of the contract.

☒ Prospective Contractor does not and will not boycott Israel.

An official authorized to bind the Prospective Contractor to a resultant contract shall sign below.

The signature below signifies agreement that any exception that conflicts with a Requirement of this *Bid Solicitation* **will cause the Prospective Contractor's response to be rejected.**

Authorized Signature: _____ **Title:** Managing Partner

Printed/Typed Name: Jeremy A. Lieberman **Date:** 9/18/19

STATE OF ARKANSAS
OFFICE OF STATE PROCUREMENT
1509 West 7th Street, Room 300
Little Rock, Arkansas 72201-4222

ADDENDUM 1

TO: Vendors Addressed
FROM: Brandi Schroeder, Buyer
DATE: September 9, 2019
SUBJECT: SP-20-0012 Legal Services

The following change(s) to the above-referenced IFB have been made as designated below:

_____ Additional specification(s)
_X_ Change of specification(s)

CHANGE OF SPECIFICATIONS

- Delete 2.4.G. and 2.4.G.1-2. and replace with the following:

  G. Prospective Contractors **shall** have served as lead counsel representing a public pension plan in at least one (1) securities litigation class action case that culminated in a bench trial or jury trial that resulted in a settlement or award of at least $100,000,000.

The specifications by virtue of this addendum become a permanent addition to the above referenced RFQ. Failure to return this signed addendum may result in rejection of your proposal.

If you have any questions, please contact Brandi Schroeder at Brandi.Schroeder@dfa.arkansas.gov or (501) 682-4169.

Signature	Date 9/8/19
Jeremy A. Lieberman	Pomerantz LLP
Printed Name	Prospective Contractor's Name

STATE OF ARKANSAS
OFFICE OF STATE PROCUREMENT
1509 West 7th Street, Room 300
Little Rock, Arkansas 72201-4222

ADDENDUM 2

TO: Vendors Addressed
FROM: Brandi Schroeder, Buyer
DATE: September 16, 2019
SUBJECT: SP-20-0012 Legal Services

The following change(s) to the above-referenced IFB have been made as designated below:

X Additional specification(s)
X Change of specification(s)

CHANGE OF SPECIFICATIONS

- Delete 2.4.G. and replace with the following:

  G. Prospective Contractors **shall** have represented a public pension plan either as sole plaintiff or as lead plaintiff in a class action.

  1. Prospective Contractors **shall** have served as lead counsel in at least one (1) securities litigation case that resulted in a settlement or award of at least $100,000,000.

ADDITIONAL SPECIFICATIONS

- Add the following to 2.5.A.

  7. Trial experience in a securities litigation case as lead counsel.

The specifications by virtue of this addendum become a permanent addition to the above referenced RFQ. Failure to return this signed addendum may result in rejection of your proposal.

If you have any questions, please contact Brandi Schroeder at Brandi.Schroeder@dfa.arkansas.gov or (501) 682-4169.

Signature	Date 9/18/19
Jeremy A. Lieberman	Pomerantz LLP
Printed Name	Prospective Contractor's Name

CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM

lure to complete all of the following information may result in a delay in obtaining a contract, lease, purchase agreement, or grant award with any Arkansas State Agency.

SOCIAL SECURITY NUMBER — — OR FEDERAL ID NUMBER 13-1683465 SUBCONTRACTOR: ☐ Yes ☒ No SUBCONTRACTOR NAME:

XPAYER ID #:

XPAYER ID NAME: Pomerantz LLP IS THIS FOR: ☐ Goods? ☒ Services? ☐ Both?

UR LAST NAME: Lieberman FIRST NAME: Jeremy M.I.: A

DRESS: 600 Third Avenue, Floor 20

Y: New York STATE: NY ZIP CODE: 10016 COUNTRY: United States of America

S A CONDITION OF OBTAINING, EXTENDING, AMENDING, OR RENEWING A CONTRACT, LEASE, PURCHASE AGREEM R GRANT AWARD WITH ANY ARKANSAS STATE AGENCY, THE FOLLOWING INFORMATION MUST BE DISCLOSED:

FOR INDIVIDUALS*

icate below if: you, your spouse or the brother, sister, parent, or child of you or your spouse *is* a current or former: member of the General Assembly, Constitutional Officer, State mmission Member, or State Employee:

Position Held	Mark (√)		Name of Position of Job Held [senator, representative, name of board/ commission, data entry, etc.]	For How Long?		What is the person(s) name and how are they related to you [i.e., Jane Q. Public, spouse, John Q. Public, Jr., child, etc.]	
	Current	Former		From MM/YY	To MM/YY	Person's Name(s)	Re
eneral Assembly							
onstitutional Officer							
tate Board or Commission ember							
tate Employee							

☐ None of the above applies

FOR AN ENTITY (BUSINESS)*

licate below if any of the following persons, current or former, hold any position of control or hold any ownership interest of 10% or greater in the entity: member of the General Ass nstitutional Officer, State Board or Commission Member, State Employee, or the spouse, brother, sister, parent, or child of a member of the General Assembly, Constitutional Offic ard or Commission Member, or State Employee. Position of control means the power to direct the purchasing policies or influence the management of the entity.

Position Held	Mark (√)		Name of Position of Job Held [senator, representative, name of board/commission, data entry, etc.]	For How Long?		What is the person(s) name and what is his/her % of ownership intere what is his/her position of control?		
	Current	Former		From MM/YY	To MM/YY	Person's Name(s)	Ownership Interest (%)	
eneral Assembly								
onstitutional Officer								
tate Board or Commission ember								
tate Employee								

☐ None of the above applies

NOTE: PLEASE LIST ADDITIONAL DISCLOSURES ON SEPARATE SHEET OF PAPER IF MORE SPACE IS NEEDED

CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM

ilure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regula policy adopted pursuant to that Order, shall be a material breach of the terms of this contract. Any contra hether an individual or entity, who fails to make the required disclosure or who violates any rule, regulatio licy shall be subject to all legal remedies available to the agency.

s an additional condition of obtaining, extending, amending, or renewing a contract with a *state agency* I agr llows:

Prior to entering into any agreement with any subcontractor, prior or subsequent to the contract date, I will require the subcontrac complete a **CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM**. Subcontractor shall mean any person or entity with w enter an agreement whereby I assign or otherwise delegate to the person or entity, for consideration, all, or any part, performance required of me under the terms of my contract with the state agency.

I will include the following language as a part of any agreement with a subcontractor:

> *Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulati policy adopted pursuant to that Order, shall be a material breach of the terms of this subcontract. The party who fa make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal rem available to the contractor.*

No later than ten (10) days after entering into any agreement with a subcontractor, whether prior or subsequent to the contract d will mail a copy of the **CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM** completed by the subcontractor and a stat containing the dollar amount of the subcontract to the state agency.

certify under penalty of perjury, to the best of my knowledge and belief, all of the above information is true orrect and that I agree to the subcontractor disclosure conditions stated herein.

gnature _____ Title Managing Partner Date 9/18/19

ntity Contact Person Jeremy A. Lieberman, Pomerantz LLP Title Managing Partner Phone No. 212-661-1

ENCY USE ONLY

gency umber_____ Agency Name_____ Agency Contact Person_____ Contact Phone No._____ Contract or Grant No._____

FORMS AVAILABLE FROM OFFICE OF DISCLOSURE AND REVIEW (501) 682-5407

NOTE: PLEASE LIST ADDITIONAL DISCLOSURES ON SEPARATE SHEET OF PAPER IF MORE SPACE IS NEEDED

1.2 Equal Employment Opportunity.

It is Pomerantz's policy to provide employment, compensation, training promotions, and all other conditions of employment without regard to race, color creed, religion, sex, national origin, age, sexual orientation, citizenship status, marital status and/or disability. It is also the Firm's policy to conform to all employment standards required by federal, state or local law. Employment opportunities are and will continue to be open to all qualified candidates on the basis of their experience, aptitude and abilities. Advancement is based upon an individual's achievement, performance, ability and potential for promotion.

Cover page with the Prospective Contractor's contact data.

Pomerantz LLP
Jeremy A. Lieberman, Managing Partner
600 Third Avenue, Floor 20
New York, New York 10016
Phone: 212-661-1100
Direct Dial: 646-581-9971
Fax: 917-463-1044
Email: jalieberman@pomlaw.com

POMERANTZLLP

Jeremy A. Lieberman
Managing Partner

September 18, 2019

BY OVERNIGHT FEDEX

Brandi Schroeder
Buyer
Office of State Procurement
1509 West Seventh Street, Room 300
Little Rock, AR 72201-4222
Phone: 501-324-9316
Direct Dial: 501-682-4169
Email: Brandi.Schroeder@dfa.arkansas.gov

Re: ***Response of Pomerantz LLP to the Arkansas Teacher Retirement System Request for Qualification, Solicitation Number: SP-20-0012, issued August 30, 2019***

Dear Brandi Schroeder:

As the Managing Partner of Pomerantz LLP ("Pomerantz" or "The Firm"), I am pleased to submit the Firm's response to the Arkansas Teacher Retirement System Request for Qualification, Solicitation Number: SP-20-0012.

Founded in 1936, Pomerantz is one of the oldest and most respected law firms in the United States dedicated to protecting investors' rights. We have a proven track record of obtaining substantial monetary recoveries and transforming the law for the benefit of shareholders -- and of accomplishing this with impeccable integrity. The Firm offers the full range of securities litigation-related services to its institutional clientele, including i) portfolio monitoring and claims filing in securities class actions and ii) securities litigation, both on an individual and on a class-wide basis.

We would be pleased to address any questions you may have regarding our submissions.

Very truly yours,

Jeremy A. Lieberman

jalieberman@pomlaw.com
600 Third Avenue, New York, New York 10016 tel: 212.661.1100 www.pomerantzlaw.com
NEW YORK CHICAGO LOS ANGELES PARIS

Enclosures

CC: Murielle J. Steven Walsh, Esq. (by email to mjsteven@pomlaw.com)

DISCLOSURE INFORMATION

- These items will not be scored as part of the response evaluation; however, failure to provide the required items will result in rejection of a Prospective Contractor's response.
- Prospective Contractor may expand the space under each item/question to provide a complete response.

Describe all actual, potential, or appearances of conflicts of interest involving principal or lead attorneys in your law firm that may affect your law firm's representation of ATRS. Provide an explanation. There are no known actual, potential or appearances of conflicts of interest involving principal or lead attorneys in Pomerantz LLP that may affect the Pomerantz LLP representation of ATRS.
Identify any known relationships, either business or personal, which your law firm or a member of your law firm has with any ATRS Board of Trustee member, investment consultant, investment manager, or key employee of ATRS. If aware of none, state "None." (A list of ATRS Board members, investment consultants, investment managers, and key employees can be provided upon request. A formal conflicts check will be required prior to contracting.) None.
Identify any relationships, either business or personal, which your law firm or a member of your law firm has with a person known to you to have substantial business dealings with ATRS or its affiliates. If aware of none, state "None." None.
Identify any other known conflicts of interest your law firm or a member of your law firm has with any ATRS Board of Trustee member, investment consultant, investment manager, or key employee of ATRS. If aware of none, state "None." None.

REDACTED.

DISCLOSURE INFORMATION

Describe all actual, potential, or appearances of conflicts of interest involving principal or lead attorneys in your law firm that may affect your law firm's representation of ATRS. Provide an explanation.

Pomerantz is not aware of any actual, potential, or appearances of conflicts of interest involving principal or lead attorneys in the Firm that may affect the Firm's representation of ATRS.

Pomerantz has a specific process for identifying potential conflicts of interest. Before any case is filed, a designated Pomerantz employee circulates a memo via e-mail to all Firm employees and partners, identifying the potential matter and other pertinent information, and requesting information concerning any potential conflict. The conflict check memo includes the names of the individuals, companies, and other entities that are under investigation in a potential case. All employees and partners must respond to conflict check memos and identify and describe any potential conflicts that may exist.

Identify any known relationships, either business or personal, which your law firm or a member of your law firm has with any ATRS Board of Trustee member, investment consultant, investment manager, or key employee of ATRS. If aware of none, state "None."

None.

Identify any relationships, either business or personal, which your law firm or a member of your law firm has with a person known to you to have substantial business dealings with ATRS or its affiliates. If aware of none, state "None."

None.

Identify any other known conflicts of interest your law firm or a member of your law firm has with any ATRS Board of Trustee member, investment consultant, investment manager, or key employee of ATRS. If aware of none, state "None."

None.

FIRM'S SALARY STRUCTURE

Position	Rate of Pay	Frequency of Pay (i.e. hourly, annually)
Receptionist		
Legal Secretaries		
Legal Assistants		
Paralegals		
Contract Lawyers		
Associates		
Partners		

INFORMATION FOR EVALUATION

E.1 QUALIFICATIONS AND EXPERIENCE

A. Describe your firm's law firm and law practice, including historical background, number and location of firm offices, number of attorneys, major areas of practice, and national and international jurisdictional experience.

Founded in 1936, Pomerantz is one of the oldest and most respected law firms in the United States dedicated primarily to representing individual and institutional investors in domestic and foreign securities litigation. Pomerantz has consistently won landmark decisions that have expanded and protected investor rights and initiated historic corporate governance reforms.

Pomerantz is headquartered in New York City and has offices in Chicago, Los Angeles, and Paris. The Firm has 42 attorneys as follows:

- 13 Partners (11 of whom specialize in securities litigation)
- 2 Senior Counsel (both of whom specialize in securities litigation)
- 9 Of Counsel (8 of whom specialize in securities litigation)
- 13 Associates (10 of whom specialize in securities litigation)
- 5 Staff Attorneys (all of whom specialize in securities litigation)

Portfolio Monitoring Services

Pomerantz's Institutional Investor Practice Group (the "IIPG"), which consists of Partners, Associates, and other professionals, monitors *over $5 trillion in assets* for major institutional investors, public pension funds, and financial institutions both here and abroad.

The Firm has represented, has served in the pool of securities litigation counsel for, and/or has performed portfolio monitoring for many of the largest public pension funds in the United States, including Florida State Board of Administration; New York State Common Retirement Fund and New York State Teachers' Retirement System; Los Angeles County Employees Retirement Association; Connecticut Retirement Plans and Trust Funds; State of Hawaii Employees' Retirement System; Ohio Public Employees Retirement System, State Teachers Retirement System of Ohio, Ohio School Employees Retirement System, Ohio Police & Fire Pension Fund, and Ohio Highway Patrol Retirement System; and Arizona Public Safety Personnel Retirement System, Arizona Corrections Officers Retirement Plan, and Arizona Elected Officials Retirement Plan.

Pomerantz also provides portfolio monitoring services to Amundi, the largest asset manager in Europe, as well as to some of the largest pension funds in the UK. In addition, the Firm provides case analyses and settlement claims evaluations for approximately 100 private and public domestic and international institutional clients, including numerous pension funds and Taft-Hartley funds.

Our monitoring clients receive the complimentary benefit of our innovative *PomTrack* portfolio monitoring system. *PomTrack* reviews institutional investor portfolios and identifies losses due to financial misconduct, thereby notifying fiduciaries and enabling them to make informed decisions in order to maximize potential recoveries.

A detailed description of Pomerantz's portfolio monitoring services is included in the Firm's response to *Section E.3* below.

Securities Litigation Practice Group

Pomerantz has been at the forefront of securities class action litigation since its founding more than 80 years ago. Moreover, the Firm has been providing securities litigation services to public pension funds since before the enactment of the PSLRA—federal legislation that was enacted in 1995 to encourage institutional investors to serve as lead plaintiffs in securities fraud class actions.

Pomerantz currently serves as sole lead counsel representing lead plaintiff Universities Superannuation Scheme Ltd. in *In re Petrobras Sec. Litig.*, No. 14-cv-09662 (S.D.N.Y.), a case which arose from the Company's decades-long, multi-billion-dollar kickback scheme, a scandal ensnaring not only Petrobras's former executives but also Brazilian politicians, including former presidents and one-third of the Brazilian Congress. Plaintiffs asserted claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Sections 11, 12(a)(2) and 15 of the Securities Act of 1933. In 2018, the Firm secured $3 billion in settlements from the issuer defendant, Brazilian oil giant Petrobras, and its auditor, PriceWaterhouse Coopers. This represents the largest securities class action settlement in a decade, the largest settlement ever in a class action involving a foreign issuer, and the fifth-largest class action settlement ever achieved in the United States.

The settlement was achieved after nearly three years of hard-fought litigation—which included massive amounts of U.S. and foreign discovery, complex motion practice in the Southern District of New York, and an appeal to the Second Circuit Court of Appeals—and during the pendency of a petition by defendants for a writ of certiorari to the United States Supreme Court. At the preliminary approval hearing, Judge Rakoff remarked, "The lawyers in this case [are] some of the best lawyers in the United States, if not in the world." In response to the settlement, *Corporate Counsel* wrote, "If any general counsel out there are still letting their companies sleepwalk through compliance programs, Wednesday's $2.95 billion class action settlement with the Brazilian oil company Petrobras should smack them wide awake."[1]

The Firm recently secured a settlement of $110 million in a securities class action against Fiat, which alleged, among other things, that the defendants concealed a practice of installing "defeat devices" in Fiat vehicles which were designed to circumvent environmental regulations limiting emissions. *In re Fiat Chrysler Automobiles N.V. Sec. Litig.*, No. 15-CV-7199

[1] Sue Reisinger, *Huge Petrobras Settlement a Wake-Up Call for General Counsel*, Corporate Counsel (Jan. 4, 2018, 6:17 p.m.), https://www.law.com/corpcounsel/sites/corpcounsel/2018/01/04/huge-petrobras-settlement-a-wake-up-call-for-general-counsel/.

(S.D.N.Y.). The settlement amounts to 20% of recoverable class-wide damages, which is significantly higher than the 1.6% to 3.3% typically obtained in securities class actions.

In 2010, Pomerantz obtained a $225 million settlement in *In re Comverse Tech., Inc. Sec. Litig.*, No. 06-CV-1825 (E.D.N.Y.), which remains the second-largest recovery ever in a securities action involving options backdating. The Firm served as sole lead counsel for a foreign institutional investor lead plaintiff in this case—the Menora Mivtachim Insurance Group, Israel's leading insurance and pension provider.

In addition to securing significant monetary settlements, Pomerantz is recognized for consistently making new law, having won numerous landmark decisions enhancing the rights of shareholders and improving corporate governance. In the *Petrobras* litigation, the Second Circuit Court of Appeals sided with Pomerantz in rejecting defendants' argument urging a heightened standard that would have required plaintiffs to demonstrate that determining membership in a class is "administratively feasible." The Second Circuit also sided with Pomerantz in rejecting defendants' argument that securities plaintiffs seeking class certification must prove through direct evidence (*i.e.*, via an event study) that the prices of the relevant securities moved in a particular direction in response to new information. The ruling will have a major positive impact on plaintiffs in securities fraud litigation. The *Petrobras* litigation was honored in 2019 as a National Impact Case by Benchmark Litigation.

In *Strougo v. Barclays PLC*, No. 14-CV-05797 (S.D.N.Y.), another case in which Pomerantz served as sole lead counsel, the Second Circuit built on its decision in *Petrobras* and held that direct evidence of price impact is not always necessary to establish market efficiency and invoke a presumption of reliance on an alleged fraud. It further held that defendants seeking to rebut that presumption must do so by a preponderance of the evidence rather than merely meeting a burden of production.[2]

Pomerantz is also at the vanguard of securities litigation arising from foreign securities purchases in *In re BP plc Sec. Litig.*, No. 10-md-01285 (S.D. Tex.). Navigating institutional clients through three rounds of motions to dismiss, Pomerantz has set many ground-breaking precedents. The *BP* litigation is the first time since the Supreme Court's decision in *Morrison v. Nat'l Australia Bank*, 561 U.S. 247 (2010)—which barred the application of the U.S. federal securities laws to foreign-traded securities—that a U.S. court has heard foreign law claims being pursued by investors, foreign and domestic, seeking to recover for losses in foreign-traded securities.

The Firm and its Securities Litigation Practice Group have been the recipient of numerous recent accolades for its litigation successes, including:

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[2] Other groundbreaking cases led by Pomerantz include: *In re ChinaCast Educ. Corp. Sec. Litig.*, 809 F.3d 471 (9th Cir. 2015) (holding that a CEO's fraud could be imputed to his corporate employer, even though his alleged embezzlement and misleading of investors through omissions and false statements were adverse to the company's interests); and *EBC I, Inc. v. Goldman, Sachs & Co.*, No. 601805/2002 (N.Y. Sup. Ct. N.Y. Cty.) (holding that underwriters can owe fiduciary duties to their issuer clients when advising them on IPOs).

- Law 360 Securities Group of the Year (2018)
- Finalist for *The National Law Journal* Elite Trial Lawyers Securities Litigation award (2018)
- Lex Machina "Number 1 Law Firm Representing Plaintiffs 2018" (2018)
- Recognized as a leading law firm in The Legal 500 (2017, 2018)
- Nominated for European Pensions Law Firm of the Year (2017)
- *The National Law Journal* Hall of Fame (2013)
- *The National Law Journal* Plaintiffs' "Hot List" (2011)
- Named by Institutional Shareholder Services as one of the Top-10 securities class action firms (2010)

Corporate Governance Practice Group

The Firm has a Corporate Governance Practice Group, which prosecutes actions seeking to address breaches of fiduciary duty or challenging corporate transactions that arise from an unfair process or that result in an unfair price for shareholders. The group obtained a landmark ruling in *Strougo v. Hollander*, No. 9770-CB (Del. Ch.), that fee-shifting bylaws adopted after a challenged transaction do not apply to stockholders affected by the transaction. Other recent successes in this area include *In re El Paso S'holder Litig.*, No. 6949-CS (Del. Ch.), in which Pomerantz represented the Louisiana Municipal Police Employees' Retirement System and similarly-situated shareholders of El Paso Corporation challenging the proposed sale of the company to competitor Kinder Morgan, Inc.; and *Larson v. Banc One Corp.*, No. 00 C 2100 (N.D. Ill.), in which Pomerantz was co-lead counsel on behalf of Old Banc One shareholders who tendered their shares in the acquisition of First National Bank of Chicago by Banc One.

Antitrust Litigation Practice Group

Pomerantz also has a national reputation for its expertise in antitrust litigation, serving in a leadership role in numerous complex and high-profile antitrust actions. Representative litigations include: co-lead counsel in *In re Flonase Antitrust Litig.*, No. 08-cv-3301 (E.D. Pa.), where we obtained a $35 million settlement on behalf of indirect purchasers, including consumers, third-party payors, and health insurers; leadership role in *In re Methionine Antitrust Litig.* (N.D. Cal.) ($107 million recovery); leadership role in *In re Sorbates Direct Purchaser Antitrust Litig.* (N.D. Cal.) (over $82 million recovery); and *In re NASDAQ Market-Makers Antitrust Litig.*, MDL 1023 (S.D.N.Y.), which resulted in a settlement in excess of $1 billion for class members.

Strategic Consumer Litigation Practice Group

Pomerantz has a consumer litigation practice group, which represents consumers in strategic consumer actions that recover monetary relief on behalf of class members while also advocating for important consumer rights. The group has successfully prosecuted claims involving California's Unfair Competition Law, California's Consumer Legal Remedies Act, the

Song-Beverly Consumer Warranty Act, and the Song-Beverly Credit Card Act. Pomerantz attorneys have resolved data breach privacy cases and cases involving unlawful recording, illegal background checks, unfair business practices, misleading advertising, and other consumer finance related actions. Attorneys at Pomerantz have been Lead Counsel in the prosecution and successful resolution of major nationwide class actions against Nissan, Ford, Volkswagen, BMW, Toyota, Chrysler, and General Motors, arising out of failures to disclose car defects. All of these actions have also involved significant changes to defendants' business practices.

B. Describe your law firm's experience successfully prosecuting securities litigation claims for public pension funds as lead plaintiff. Provide an overview of your law firm's top five (5) recovery awards for a public pension plan, including the year each claim was filed, a summary of the claim, and the outcome of the claim.

Pomerantz has been successfully prosecuting securities litigation claims for public pension funds as lead plaintiff since before the enactment of the PSLRA—federal legislation that was enacted in 1995 to encourage institutional investors to serve as lead plaintiffs in securities fraud class actions.

Following is an overview of the Firm's top five recovery awards for a public pension plan.

***In re Petrobras Sec. Litig.*, No. 14-cv-09662 (S.D.N.Y.)**

As introduced above in response to *Question E.1.A,* Pomerantz has served as sole lead counsel representing lead plaintiff Universities Superannuation Scheme Ltd. in this securities class action. The litigation arose from the largest corruption scandal in Brazil, with more than three dozen executives being indicted on charges of price-fixing, bribery, and political kickbacks. The scheme ensnared not only Petrobras's former executives but also Brazilian politicians, including former president Lula da Silva and one-third of the Brazilian Congress.

After Pomerantz defeated the defendants' motions to dismiss, the Firm conducted massive amounts of discovery by developing an extensive network of Portuguese-speaking attorneys and investigators. Pomerantz retained more than 160 Brazilian attorneys to review over six million pages of documents. (Please see our response to *Question E.2.A.* below for further discussion of the Firm's discovery efforts in this case.)

Pomerantz also prevailed on its motion for class certification. The Second Circuit granted defendants' Rule 23(f) petition for interlocutory review of the class certification order, but largely rejected defendants' arguments, creating important precedents regarding the ascertainability requirement during class certification as well as the utility of event studies for establishing predominance in securities class actions.

The historic $3 billion settlement was then negotiated during the pendency of a petition by defendants for a writ of certiorari to the United States Supreme Court. The settlement represents a premium of more than ***65%*** over the average opt-out plaintiff's recovery. The settlement was granted final approval on June 26, 2018.

***In re Salomon Analysts AT&T Litigation*, No. 02-Civ-6801 (S.D.N.Y.)**

In this securities class action, Pomerantz served as sole lead counsel representing lead plaintiff Louisiana School Employees' Retirement System. This case, based on an analyst's issuance of false research reports regarding a single company, presented difficult loss causation issues. Nonetheless, after defeating a motion to dismiss in substantial part (350 F. Supp. 2d 455) and engaging in extensive discovery, Pomerantz secured a settlement of $74.75 million for the class.

***Treasurer of New Jersey v. AOL Time Warner Inc.*, No. MER-L-1349-03 (N.J. Super. Ct.)**

Pomerantz, together with co-counsel, litigated claims under Sections 11 and 12 of the Securities Act, and also under state law, for New Jersey's Treasury Department, its Division of Investment, and the five major funds the Division supervises, in this opt-out action filed in state court against AOL and Time Warner arising from defendants' accounting manipulations to inflate revenues. Here, our clients had significant losses and, moreover, their Section 11 and 12 claims were much easier to establish than the Section 10(b) claims held by most class members, factors strongly warranting individual action. We recommended that New Jersey pursue its claims in state, rather than federal, court for strategic and convenience reasons. After defeating an initial motion to dismiss, we engaged in discovery with the help of experts. Loss causation and damage calculations were especially challenging because of numerous partial and "proxy" disclosures, as well as the tremendous decline in the price of the securities throughout the relevant period. We nevertheless obtained a $50 million settlement, which represented a significant multiple of what New Jersey would have recovered in the class action settlement.

***In re American Italian Pasta Sec. Litig.*, No. 05-CV-865 (W.D. Mo.)**

In this securities class action, Pomerantz served as sole lead counsel representing lead plaintiff Iron Workers Locals 40, 361, & 417, which settled for $28.5 million in 2008. Pomerantz secured the lead position in the case on behalf of our client by successfully arguing that the three movant groups that claimed higher losses than Iron Workers were defective in their loss calculations and were inadequate representatives. This case involved substantial motion practice and resulted in numerous reported opinions, including: 2007 U.S. Dist. LEXIS 45573 (class certification motion granted in substantial part); 2006 U.S. Dist. LEXIS 40548 (motions to dismiss fraud claims denied in substantial part); 2005 U.S. Dist. LEXIS 43816 (lead plaintiff decision).

***New Mexico State Invest. Council, New Mexico Public Employees' Ret. Ass'n, & New Mexico Educ. Ret. Bd. v. Countrywide Fin. Corp.*, No. D-0101-C-2008-02289 (N.M. 1st Dist.)**

Pomerantz served as co-lead counsel in this opt-out action on behalf of New Mexico pension funds. We advised our clients, which suffered large losses in Countrywide mortgage-backed securities ("MBS"), to bring suit in New Mexico state court to take advantage of the concurrent jurisdiction provisions of the Securities Act of 1933 (for litigating Section 11 claims), rather than to join a parallel class action in which their significant claims would have been diluted. We established important precedents for MBS investors, and achieved for our clients an

extremely favorable (but confidential) settlement—significantly more than they would have received in the class action settlement.

C. Describe your law firm's experience prosecuting securities litigation cases in the last five (5) years. Provide an overview of the claims that includes the year each claim was filed, a summary of the claim, and the outcome of the claim.

Pomerantz has a stellar record of obtaining significant recoveries in securities class action litigation.

The following list includes notable cases where the Firm has acted as lead or co-lead counsel in the past five years.

***In re Petrobras Sec. Litig.*, No. 14-cv-09662 (S.D.N.Y.)**

Please see our description of this case in our responses to *Questions E.1.A. & E.1.B.* above.

***Pirnik v. Fiat Chrysler Automobiles N.V.*, No. 15-cv-07199-JMF (S.D.N.Y.)**

This securities class action alleged that Fiat Chrysler and its top management misled investors by asserting that the company had complied with its obligations to conduct safety recalls under regulations promulgated by the National Highway Traffic Safety Administration ("NHTSA"), as well as with emissions regulations promulgated by the Environmental Protection Agency ("EPA") and the European Union, which were designed to control emissions of Nitrogen Oxide ("NOx"). In truth, Fiat Chrysler had a widespread pattern of violations dating back to 2013, in which the company would purposefully delay notifying vehicle owners of defects and fail to repair the defects for months or years. The company also improperly outfitted its diesel vehicles in the U.S. and Europe (including Jeep Grand Cherokees and Ram 1500s) with "defeat device" software designed to cheat NOx emissions regulations. The defeat device software was able to detect when the vehicle was being tested by a regulator (such as the EPA). When testing conditions were detected, the vehicle would perform in a compliant manner, limiting emissions of NOx. When testing conditions were not detected, such as during real-world driving conditions, the emissions controls were disabled and the vehicles would spew illegal and dangerous levels of NOx. The truth concerning Fiat Chrysler's violations was revealed in a series of disclosures that caused the company's stock price to plummet.

As co-class counsel for a certified class of investors, Pomerantz recently achieved a $110 million settlement with defendants in this action. The settlement amounts to approximately 20% of recoverable damages—an excellent result when compared to historical statistics in class action settlements, where typical recoveries of cases of this size are between 1.6% and 3.3%. The court granted final approval of the settlement in early September 2019.

***In re Yahoo! Inc. Sec. Litig.*, No. 17-cv-00373 (N.D. Cal.)**

Pomerantz served as co-lead counsel in this securities class action against Yahoo!, its former CEO, and other former officers of the company. The case arose from Yahoo's

concealment of the two largest data breaches in U.S. history, when hackers (including Russian state operatives) stole the personal information of 3.5 billion Yahoo! users in 2013 and 2014. Plaintiffs alleged that defendants concealed these data breaches until late-2016, even though they had contemporaneous knowledge of the breaches. They also alleged that defendants failed to disclose Yahoo!'s severely inadequate information security protocols, which allowed the breaches to occur. Pomerantz, together with co-counsel, secured an $80 million settlement for the class in 2018.

***Kaplan v. SAC Capital Advisors LP*, No. 12 Civ. 9350 (S.D.N.Y.)**

Pomerantz, acting as co-lead counsel in this litigation, obtained a settlement of $135 million in 2017. This case was on behalf of purchasers and sellers of Elan Corp. shares for certain periods between 2006 and 2008, and arose out of the largest insider trading scheme ever uncovered. The case alleged that defendants Steven Cohen and SAC Capital engaged in transactions based on non-public information regarding Elan's efforts to develop a drug to treat Alzheimer's. Revelation of the scheme resulted in SAC paying a substantial fine, and a 9-year jail sentence for the SAC trader directly involved therein.

***In re Groupon, Inc. Sec. Litig.*, No. 12 C 2450 (N.D. Ill.)**

This securities class action arose from Groupon's revelation in March 2012 that it had materially understated refund reserves for Q4 2011 due to a failure to properly account for coupon refunds, and that as a result, it had materially misstated previously reported Q4 2011 and Full-Year 2011 revenue, operating income, operating expense, net income, earnings per share, and cost of revenue. Pomerantz won class certification after the court held that, because Groupon traded on the NASDAQ with significant volume, it was "undeniably a frequently traded stock in an efficient market." The Court also rejected arguments that *Comcast* required a class-wide damage study for certification. In 2016, the Firm obtained a settlement of $45 million for the class.

***In re Lumber Liquidators, Inc. Sec. Litig.*, No. 13-cv-00157-AWA-DEM (E.D. Va.)**

Pomerantz served as co-lead counsel in this securities class action, which alleged that defendants represented that the cause of the company's reported record gross margins was legitimate "sourcing initiatives" in China that supposedly reduced the cost of goods and cut out middlemen, when they were really due to importing cheap flooring made from illegally-harvested wood and laminate contaminated with high levels of formaldehyde. When the truth emerged in a series of disclosures and events—including news of federal criminal charges for violations of the Lacey Act—the stock price plunged by 68% from class period highs. The court denied the defendants' motion to dismiss in its entirety, and the Firm obtained a settlement for the class in 2016 of $26 million in cash and 1 million shares of Lumber Liquidators common stock, for a total settlement value of approximately $42 million.

***Robb v. Fitbit Inc.*, No. 16-cv-00151 (N.D. Cal.)**

Pomerantz served as co-lead counsel in this securities class action alleging that Fitbit and its management falsely stated that its heart rate monitoring technology was "highly accurate,"

when in fact, the technology did not consistently deliver accurate heart rate readings during exercise; the technology's inaccuracy posed serious health risks to users of Fitbit's products; and as a result of the foregoing, Fitbit's public statements were materially false and misleading. Fitbit stock declined sharply following reports of a consumer class action lawsuit alleging that the heart rate monitoring systems in the company's *Charge HR* and *Surge* devices were dangerously inaccurate and posed serious health risks to users. The Firm obtained a $33 million settlement on behalf of the class, which was granted final court approval in 2018.

***Thomas v. MagnaChip Semiconductor Corp.*, No. 14-cv-01160-JST (N.D. Cal.)**

Pomerantz, as sole lead counsel for investors, achieved a $23.5 million partial settlement with certain defendants in this action, which received final court approval in late 2016. Pomerantz also recently obtained a settlement of $6.2 million from another defendant, Avenue Capital. This securities class action arose from allegations that MagnaChip Semiconductor Corp. "cooked the books." Pomerantz secured the partial settlement despite an ongoing investigation by the SEC and shareholder derivative actions.

***Thorpe v. Walter Inv. Mgmt.*, No. 14-cv-20880-UU (S.D. Fla.)**

Pomerantz served as co-lead counsel in this securities fraud class action challenging the defendants' representations that their lending activities were regulatory compliant, when in fact the company's key subsidiaries engaged in rampant violations of federal consumer financial protection laws, subjecting it to various government investigations and a pending enforcement action by the CFPB and FTC. The Firm defeated defendants' motion to dismiss and won its motion for class certification. In 2016, Pomerantz obtained a $24 million settlement.

***Strougo v. Barclays PLC*, No. 14-CV-05797 (S.D.N.Y.)**

The Firm served as lead counsel in this putative securities class action that alleged Barclays PLC misled institutional investor clients about the extent of the banking giant's use of so-called "dark pool" trading systems, and about the transparency and safety of Liquidity Cross—a dark pool also known as "LX"—during the class period. The Firm obtained class certification in this action despite defendants' arguments that none of the alleged misstatements had a statistically significant impact on the stock price. The court held that defendants had not met their burden of disproving price impact as required under *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258 (2014).

The Second Circuit granted defendants' petition for interlocutory review of the class certification decision. In a win for investors, Pomerantz secured an important precedent-setting opinion from the Second Circuit, holding that direct evidence of price impact is not always necessary to demonstrate market efficiency to invoke the presumption of reliance, and that defendants seeking to rebut the presumption of reliance must do so by a preponderance of the evidence rather than merely meeting a burden of production. The Supreme Court denied cert, leaving in place this significant Second Circuit decision.

The Firm recently secured a settlement of $23 million on behalf of the class, which received final court approval in early June 2019.

***In re BP plc Sec. Litig.*, No. 10-md-2185 (S.D. Tex.)**

This multi-district litigation arises from our clients' purchases of BP securities on non-U.S. stock exchanges. Pomerantz represents 32 institutional clients from the U.S., Canada, UK, France, Netherlands, and Australia[3] in an innovative litigation that seeks to recover investment losses caused by declines in the price of BP securities following the 2010 Deepwater Horizon rig explosion and Gulf of Mexico oil spill. Since 2012, Pomerantz has pursued ground-breaking claims on behalf of these institutional investors in BP plc to recover losses in BP's common stock (which trades on the London Stock Exchange) and its American Depository Shares (which trade on the New York Stock Exchange). The threshold challenge was how to litigate in U.S. courts in the wake of the Supreme Court's 2010 *Morrison* decision, which barred recovery for losses in foreign-traded securities under the U.S. federal securities laws.

In 2013, the court largely rejected defendants' first motion to dismiss, agreeing, at Pomerantz's urging, to oversee claims seeking recovery of losses in both BP securities, even though the claims would be governed by English law. Our extensive advance due diligence with our clients' outside investment managers enabled us to successfully plead individual reliance on the alleged misstatements. The court also sided with Pomerantz in rejecting BP's arguments under *Morrison* and the Dormant Commerce Clause of the U.S. Constitution.

In 2014, the court largely rejected defendants' second motion to dismiss, once again siding with Pomerantz, in rejecting BP's *forum non conveniens* arguments, this time directed at our foreign clients. The ruling was the first time since *Morrison* that foreign plaintiffs pursuing foreign law claims seeking to recover losses in foreign-traded stocks were permitted to do so in a U.S. court. It also sided with Pomerantz in rejecting BP's attempt to extend the U.S. Securities Litigation Uniform Standards Act of 1998 (SLUSA) to bar our clients' English law claims. The court also accepted Pomerantz's argument that the statutes of limitation and repose governing our clients' U.S. federal securities law claims were tolled, a significant victory given the split in the nationwide case law.

In 2017, the court largely rejected defendants' third motion to dismiss and, later, rejected their motion for reconsideration. This time, Pomerantz secured the right of foreign and domestic investors in BP to pursue "holder claims" seeking to recover investment losses based on their retention of already-owned shares in reliance upon the fraud. The ruling is significant, given the

[3] Pomerantz's BP litigation clients include: Alameda County Employees' Retirement Association; Employees' Retirement System of the City of Providence; State-Boston Retirement System; South Yorkshire Pensions Authority; Electricity Pensions Trustee Ltd.; Hadrian Trustees Ltd. in its capacity as Trustee of Shipbuilding Industries Pension Scheme; Stichting Pensioenfonds Metaal En Techniek, Stichting Pensioenfonds Van De Mataleketro, Stichting Aandelenfonds MN Services Europa, Stichting Aandelenfonds MN Services Europa III; HESTA Super Fund; Mondrian Global Equity Fund, L.P., Mondrian International Equity Fund, L.P., Mondrian Focused International Equity Fund, L.P., Mondrian All Countries World Ex-US Equity Fund, L.P., and Mondrian Group Trust; New York City Employees' Retirement System, Teachers Retirement System of the City of New York, New York City Police Pension Fund, New York City Fire Department Pension Fund, New York City Board of Education Retirement System, Teachers' Variable Annuity Funds, and New York City Group Trust; Nova Scotia Health Employees' Pension Plan; Universities Superannuation Scheme, Ltd., acting as sole corporate trustee of Universities Superannuation Scheme; Merseyside Pension Fund; The Bank of America Pension Plan; IBM United Kingdom Pensions Trust Limited; MNOPF Trustees Limited; Merchant Navy Ratings Pension Fund Trustees Limited; Allianz Global Investors France S.A.; John Lewis Partnership Pensions Trust.

dearth of precedent from anywhere in the U.S. that both recognizes the potential viability of a holder claim under some body of non-U.S. federal law, and holds that the plaintiffs pursuing one had sufficiently alleged facts giving rise to reliance and other required elements of the underlying legal claims.

Danske Bank (Denmark)

Pomerantz was recently selected to join an "A-List" of other prominent U.S., German, and Dutch class action firms that are working together to file a foreign action against Danske Bank. Under Danish law, investors interested in the action are required to affirmatively opt in to the case. The Firm was recently retained by a major U.S. public pension fund to represent it in this matter. The action arises from the disclosure in early 2018 of the Danish lender's €200 billion money-laundering scandal. Danske's CEO resigned and is facing criminal investigations following revelations that €200 billion of money from Russia and other ex-Soviet states had passed through its Estonian branch. Danske has admitted that a significant portion of these transactions is suspicious. Disclosure of the scandal caused the bank's stock price to fall by almost 50%, causing investors billions of dollars in damages.

***In re Mylan N.V. Sec. Litig.*, No. 16-CV-07926 (S.D.N.Y.)**

Pomerantz is co-lead counsel and represents co-lead plaintiffs institutional investors Menorah Mivtachim Insurance Ltd., Menorah Mivtachim Pensions and Gemel Ltd., Phoenix Insurance Company Ltd., Meitav DS Provident Funds and Pension Ltd., and Dan Kleinerman in this securities class action against the drug marketer Mylan N.V. Mylan markets, among other drugs, the EpiPen, an epinephrine autoinjector for the emergency treatment of anaphylaxis. The complaint alleges that Mylan misled investors by failing to disclose that it knowingly misclassified the EpiPen as a generic drug for the purposes of the Medicaid Drug Rebate Program, a misclassification that resulted in Mylan's overcharging Medicaid for the EpiPen for nearly a decade.

On March 29, 2018, the court granted in part and denied in part defendants' motion to dismiss the amended complaint, upholding plaintiffs' claims based on alleged misstatements regarding the propriety of the Company's EpiPen rebates under the Medicaid drug rebate program, and regarding Mylan's price fixing of generic drugs. On July 6, 2018, Plaintiffs amended the complaint to add additional claims based on Mylan's anticompetitive conduct relating to the EpiPen. The Court denied the Defendants' Second Motion to Dismiss and the case is proceeding to discovery.

***Roofer's Pension Fund v. Papa*, No. 16-cv-02805-MCA-LDW (D.N.J.)**

Pomerantz is co-lead counsel in this action, representing numerous institutional clients. The action alleges that defendants made materially false and misleading statements regarding Perrigo Inc.'s business and competitive environment, first to defeat a hostile tender offer from a competitor, then to stem the decline in its shares after the tender offer expired unsuccessfully on November 13, 2015. The Amended Complaint alleges that defendants misrepresented both Perrigo's integration of Omega Pharma N.V., its largest acquisition, and competition in Perrigo's most profitable division, generic drugs, which was inflated by anticompetitive practices.

Pomerantz represents Lead Plaintiffs Migdal Insurance Company Ltd., Migdal Makefet Pension and Provident Fund Ltd., Clal Insurance Company Ltd., Clal Pension and Provident Ltd., Atudot Pension Fund for Employees and Independent Workers Ltd., and Meitav DS Provident Funds.

The court denied defendants' motions to dismiss, holding that the amended complaint adequately alleged both misrepresentations and scienter by the CEO and CFO regarding the failed integration of Perrigo's Omega acquisition and anticompetitive price fixing in Perrigo's generic drug business. The case is proceeding with discovery.

D. Describe your law firm's experience providing successful securities monitoring and litigation services for public pension funds in Arkansas, including ATRS. Provide an overview of each claim, including the year each claim was filed, a summary of the claim, and the outcome of the claim.

Pomerantz has not yet provided securities monitoring or securities litigation services to an Arkansas-based public pension fund.

E. Briefly summarize the scope and size of the largest settlement or award obtained in your law firm's capacity as sole lead counsel for a public pension plan.

Pomerantz has served as sole lead counsel representing lead plaintiff Universities Superannuation Scheme Ltd. in *In re Petrobras Sec. Litig.*, No. 14-cv-09662 (S.D.N.Y.). The Firm settled this case for $3 billion in June 2018 against the issuer defendant, Brazilian oil giant Petrobras, and its auditor, PriceWaterhouse Coopers. This represents the largest securities class action settlement in a decade, the largest settlement ever in a class action involving a foreign issuer, and the fifth-largest class action settlement ever achieved in the United States. Please see our detailed description of this case in our responses to *Questions E.1.A. & E.1.B.* above.

F. Provide a resume, biographical sketch, and curriculum vitae for at least ten (10) attorneys employed by your law firm whose focus is in securities litigation and experience. Include each partner, junior partner, and/or associate anticipated to interact with ATRS and represent ATRS through litigation, mediation, and public appearances. Include each attorney's education, experience, and other relevant activities as applicable to the Qualifications under this RFQ.

Following is a resume of each Pomerantz attorney anticipated to interact with ATRS and represent ATRS through litigation, mediation, and public appearances. A resume including all Pomerantz attorneys is attached hereto as Exhibit 1.

Jeremy A. Lieberman

Jeremy Lieberman is Pomerantz's Managing Partner. Mr. Lieberman became associated with the Firm in August 2004 and was promoted to Partner in January 2010. He became the Firm's Co-Managing Partner in July 2016 and sole Managing Partner this year.

Mr. Lieberman was honored as Benchmark Litigation's 2019 Plaintiff Attorney of the Year. In 2018, he was honored as a Titan of the Plaintiffs Bar by Law360 and as a Benchmark

Litigation Star. Mr. Lieberman has been honored as a Super Lawyers "Top-Rated Securities Litigation Attorney" in 2016, 2017, and 2018—a recognition bestowed on no more than 5% of eligible attorneys in the New York City metropolitan area. The Legal 500, in honoring Pomerantz as a Leading Firm for 2016 and 2017, stated that in New York, "Jeremy Lieberman is super impressive—a formidable adversary for any defense firm."

Mr. Lieberman led the litigation in *In re Petrobras Sec. Litig.*, No. 14-CV-9662 (S.D.N.Y.), described herein. Mr. Lieberman led oral arguments in all significant hearings in the case, most notably securing a significant victory for *Petrobras* investors at the Second Circuit Court of Appeals when the court rejected the heightened ascertainability requirement for obtaining class certification that had been imposed by the Third Circuit Courts of Appeals.

Mr. Lieberman led the Firm's litigation team that in 2018 secured a $31 million partial settlement with three defendants in *In re Libor Based Financial Instruments Antitrust Litig.*, No. 11-MD-2262 (S.D.N.Y.) a closely-watched multi-district litigation, which concerns the London Interbank Offered Rate (LIBOR) rigging scandal.

Mr. Lieberman also heads the Firm's recently-filed individual action, *Clal Ins. Co. Ltd. v. Teva Pharm. Indus. Ltd.*, No. 19-CV-543 (D. Conn.), against pharmaceutical giant Teva Pharmaceutical Industries Ltd., Teva Pharmaceuticals USA, and certain of Teva's current and former employees and officers relating to alleged anticompetitive practices in Teva's sales of generic drugs. Mr. Lieberman also serves as Lead Counsel in a number of the most high-profile securities class actions pending in the U.S. courts, such as *In re Mylan N.V. Sec. Litig.*, No. 16-CV-7926 (S.D.N.Y.); *In re Perrigo Co. Sec. Litig.*, No. 16-CV-2805 (D.N.J.); and *In re Fiat Chrysler Automobiles N.V. Sec. Litig.*, No. 15-CV-7199 (S.D.N.Y.).

In *In re China North East Petroleum Holdings Ltd. Sec. Litig.*, No. 10-CV-4577 (S.D.N.Y.) Mr. Lieberman achieved a significant victory for shareholders in the United States Court of Appeals for the Second Circuit, whereby the Appeals Court ruled that a temporary rise in share price above its purchase price in the aftermath of a corrective disclosure did not eviscerate an investor's claim for damages. The Second Circuit's decision was deemed "precedential" by the New York Law Journal and provides critical guidance for assessing damages in a § 10(b) action.

Mr. Lieberman had an integral role in *In re Comverse Technology, Inc. Sec. Litig.*, No. 06-CV-1825 (E.D.N.Y.) in which he and his partners achieved a historic $225 million settlement on behalf of the Class, which is the second-largest options backdating settlement to date.

Mr. Lieberman regularly consults with Pomerantz's international institutional clients, including pension funds, regarding their rights under the U.S. securities laws. Mr. Lieberman is working with the Firm's international clients to craft a response to the Supreme Court's ruling in *Morrison*, which limits the ability of foreign investors to seek redress under the federal securities laws. Currently, Mr. Lieberman is representing several UK and EU pension funds and asset managers in individual actions against BP plc in the United States District Court for the Southern District of Texas.

Mr. Lieberman is a frequent lecturer regarding current corporate governance and securities litigation issues. In March 2017, he spoke at the ICGN conference in Washington D.C., regarding recent trends in foreign securities litigation. He also led a recent discussion on U.S. securities class actions in Paris.

Mr. Lieberman graduated from Fordham University School of Law in 2002. While in law school, he served as a staff member of the Fordham Urban Law Journal. Upon graduation, he began his career at a major New York law firm as a litigation associate, where he specialized in complex commercial litigation.

Mr. Lieberman is admitted to practice in the State of New York; the U.S. District Courts for the Southern and Eastern Districts of New York, the Southern District of Texas, the District of Colorado, the Eastern District of Michigan, and Northern District of Illinois; the U.S. Courts of Appeals for the Second, Third, Fourth, Sixth, Ninth, and Tenth Circuits; and the United States Supreme Court.

Marc I. Gross

Senior Counsel Marc Gross served as the Firm's Managing Partner from 2009 to July 2016. He has been with Pomerantz for over four decades, focusing on securities fraud class actions and derivative actions, while also litigating antitrust and consumer cases. Substantially all of Mr. Gross's practice is related to securities litigation matters.

Mr. Gross's numerous notable achievements include: *In re BP plc Sec. Litig.* (individual and institutional investors have a right to sue under common law for purchases abroad); *In re Comverse Inc. Sec. Litig.* ($225 million settlement, including $60 million contribution by the former CEO); *In re Charter Communications Inc. Sec. Litig.* ($146.25 million settlement); *In re Salomon Analyst AT&T Litig.* ($74.75 million settlement); *In re Elan Corp. Sec. Litig.* ($75 million settlement); *and Snyder v. Nationwide Insurance Co.* (derivative settlement valued at $100 million). His role in high-profile cases has garnered international media attention. Mr. Gross has been interviewed on the CBS Evening News, the BBC, and numerous Israeli media sources. He has been honored by Super Lawyers as a "Top-Rated Securities Litigation Attorney" nine times, most recently this year.

Mr. Gross helped lead the Firm's ground-breaking litigation against BP, where, as already noted, the Firm evaded the effects of *Morrison* by developing an innovative legal strategy using common law to recover losses for BP common shareholders in the U.S. court system.

Mr. Gross has extensive trial experience, including *In re Zila Inc. Sec. Litig.* (D. Ariz.) and *In re Zenith Labs Sec. Litig.* (D.N.J.). Courts have consistently praised his lawyering. In approving the $225 million settlement in *Comverse*, Judge Garaufis stated, "Throughout this litigation, [the Court] has been impressed by Lead Counsel's acumen and diligence. The briefing has been thorough, clear, and convincing." In approving the settlement of *In re Chesapeake S'holder Deriv. Litig.* (whereby plaintiffs clawed back $13 million in excess compensation paid to the notorious CEO Aubrey McClendon), Judge Owens of the District Court of Oklahoma

stated, "Counsel, it's a pleasure, and I mean this and rarely say it. I think I've said it two times in 25 years. It is an extreme pleasure to deal with counsel of such caliber."

Mr. Gross frequently speaks at legal forums in the United States and abroad on shareholder related issues. He presented at the Loyola University Chicago School of Law's Institute for Investor Protection Conference the National Conference on Public Employee Retirement Systems' Legislative Conferences, PLI conferences on Current Trends in Securities Law, and a panel entitled "Enhancing Consistency and Predictability in Applying Fraud-on-the-Market Theory" sponsored by the Duke Law School Center for Judicial Studies. He addressed the Tel Aviv Institutional Investors Forum, the National Association of Pension Funds Conference in Edinburgh, and law school students at Bar Ilan University in Tel Aviv. He authored "Class Certification in a Post-Halliburton II World," published in Law 360 on July 21, 2014.

Mr. Gross graduated from New York University Law School in 1976, and received his undergraduate degree from Columbia University in 1973. He is President-Elect of the Institute of Law and Economic Policy and serves on the Board of T'ruah, The Rabbinic Call for Human Rights.

Mr. Gross is admitted to practice in New York, the United States District Courts for the Southern and Eastern Districts of New York, the United States Courts of Appeals for the First, Second, Third and Eighth Circuits, and the United States Supreme Court.

Murielle Steven Walsh

Murielle Steven Walsh joined the Firm in 1998 and was promoted to Partner in 2007. She was recently recognized as a 2018 Lawyer of Distinction, an honor bestowed on less than 10% of attorneys in any given state.

During her career at Pomerantz, Ms. Steven Walsh has prosecuted highly successful securities class action and corporate governance cases. She was one of the lead attorneys in prosecuting *In re Livent Noteholders' Sec. Litig.*, No. 98-CV-7161 (S.D.N.Y.) a securities class action in which she obtained a $36 million summary judgment against the company's top officers—an outcome that was upheld by the Second Circuit on appeal. Ms. Steven Walsh was also part of the team litigating *EBC I, Inc. v. Goldman, Sachs & Co.*, No. 601805/02 (N.Y. Sup. Ct. N.Y. Cty.) where the Firm obtained a landmark ruling from the New York Court of Appeals holding that underwriters may owe fiduciary duties to their issuer clients in the context of a firm-commitment underwriting of an initial public offering.

Ms. Steven Walsh currently leads the high-profile securities class action *Ferris v. Wynn Resorts Ltd.*, No. 18-CV-479 (D. Nev.), in which Pomerantz is lead counsel. The litigation arises from the concealment by Wynn Resorts of a long-running pattern of sexual misconduct against Wynn employees by billionaire casino mogul Stephen Wynn, the company's founder and former CEO. She also leads the Firm's groundbreaking litigation arising from the popular Pokémon Go game, in which Pomerantz is lead counsel. Pokémon Go is an "augmented reality" game in which players use their smartphones to "catch" Pokémon in real-world surroundings. GPS coordinates provided by defendants to gamers included directing the public to private property

without the owners' permission, amounting to an alleged mass nuisance. Ms. Steven Walsh recently obtained a settlement in this action, which received final approval in August 2019. *See In re Pokémon Go Nuisance Litig.*, No. 16-cv-04300 (N.D. Cal.).

Ms. Steven Walsh was co-lead counsel in *Thorpe v. Walter Inv. Mgmt. Corp.*, No. 14-cv-20880 (S.D. Fla.), a securities fraud class action challenging the defendants' representations that their lending activities were regulatory-compliant, when in fact the company's key subsidiary engaged in rampant violations of federal consumer financial protection laws, subjecting it to various government investigations and a pending enforcement action by the CFPB and FTC. In 2016, the Firm obtained a $24 million settlement on behalf of the class. She was also co-lead counsel in *Robb v. Fitbit Inc.*, No. 16-cv-00151 (N.D. Cal.), a securities class action alleging that the defendants misrepresented that their key product delivered "highly accurate" heart rate readings when in fact, their technology did not consistently deliver accurate readings during exercise and its inaccuracy posed serious health risks to users of Fitbit's products. The Firm obtained a $33 million settlement on behalf of the investor class in this action.

Ms. Steven Walsh serves on the Firm's Anti-Harassment and Discrimination Committee. She also serves on the Board of Trustees of the non-profit organization Court Appointed Special Advocates for Children of Monmouth County. She has served on the Honorary Steering Committee of Equal Rights Advocates ("ERA"), which focuses on specific issues that women face in the legal profession. ERA is an organization that protects and expands economic and educational access and opportunities for women and girls. In the past, Ms. Steven Walsh served as a member of the editorial board for Class Action Reports and as a Solicitor for the Legal Aid Associates Campaign. Ms. Steven Walsh has also been involved in pro bono legal work, and successfully secured political asylum for a young native of Togo who fled his country after being persecuted by government officials for his political beliefs.

Ms. Steven Walsh graduated *cum laude* from New York Law School in 1996, where she was the recipient of the Irving Mariash Scholarship. During law school, Ms. Steven Walsh interned with the Kings County District Attorney and worked in the mergers and acquisitions group at Sullivan & Cromwell.

Ms. Steven Walsh is admitted to practice in New York, the United States District Court for the Southern District of New York, and the United States Courts of Appeals for the Second and Sixth Circuits.

Emma Gilmore

Emma Gilmore joined Pomerantz as an Associate in 2012 and became a Partner in 2015. In 2018, Ms. Gilmore was honored by Law360 as an MVP in Securities Litigation, part of an "elite slate of attorneys [who] have distinguished themselves from their peers by securing hard-earned successes in high-stakes litigation, complex global matters and record-breaking deals." A maximum of six attorneys nationwide are selected each year as MVPs in Securities Litigation; and Ms. Gilmore is only the third woman in this practice area to have received this outstanding award since it was initiated in 2011. She was also honored as a 2018 and 2019 Super Lawyer in the New York Metro area. Ms. Gilmore is a Fellow of the American Bar Foundation, an honorary society of lawyers, judges, law faculty and legal scholars who have demonstrated

outstanding leadership in the profession. Membership is limited to one percent of the lawyers admitted to practice in the United States and includes the leading U.S. lawyers.

At Pomerantz, Ms. Gilmore has played a leading role in *Petrobras*. Ms. Gilmore was the principal drafter of the complaint. In addition, she deposed and defended numerous fact and expert witnesses, including deposing the former CEO of Petrobras, the whistleblower, and the chief accountant. She also played an instrumental role in securing a significant victory for investors in this case at the Second Circuit Court of Appeals, which rejected the heightened ascertainability requirement for obtaining class certification that had been imposed by other circuit courts. She also opposed defendants' petition for a writ of certiorari to the Supreme Court.

Ms. Gilmore played a leading role in *Strougo v. Barclays PLC.* She defeated defendants' efforts to dismiss the action and more recently contributed to securing an important precedent-setting opinion from the Second Circuit, holding that direct evidence of price impact is not always necessary to demonstrate market efficiency to invoke the presumption of reliance, and that defendants seeking to rebut the presumption of reliance must do so by a preponderance of the evidence rather than merely meeting a burden of production. While that ruling was appealed by defendants, the Supreme Court denied defendants' petition and left the Second Circuit's decision firmly in place.

Ms. Gilmore represents Safra Bank in a class action against Samarco Mineracao S.A. in connection with the Fundão dam-burst disaster, which is widely regarded as the worst environmental catastrophe in Brazil's history. She also played a leading role in the Firm's class action litigation against Yahoo! Inc., which was settled in 2018 for $80 million.

Ms. Gilmore is part of the team prosecuting securities fraud claims against BP plc on behalf of many foreign and domestic public and private pension funds arising from the company's 2010 Deepwater Horizon oil spill. *See In re BP plc Sec. Litig.*, No. 10-md-2185 (S.D. Tex.). She helped devise a cutting-edge legal strategy that established the right of individual foreign investors who purchase foreign-traded shares of a foreign corporation to pursue claims for securities fraud in a U.S. court, thereby overcoming the obstacles created by the U.S. Supreme Court's 2010 decision in *Morrison*.

Ms. Gilmore secured a unanimous decision by a panel of the Ninth Circuit Court of Appeals, which benefited defrauded investors in *Costa Brava Partnership III LP v. ChinaCast Education Corp*. In an issue of first impression, the Ninth Circuit held that imputation of the CEO's scienter to the company was warranted vis-a-vis innocent third parties, despite the fact that the executive acted for his own benefit and to the company's detriment.

Ms. Gilmore serves on the Firm's Anti-Harassment and Discrimination Committee. She has also devoted a significant amount of time to litigating pro bono matters. In particular, she played a critical role in securing a unanimous ruling by the Arkansas Supreme Court striking down as unconstitutional a state law banning cohabiting individuals from adopting children or serving as foster parents. The ruling was a relief for the more than 1,600 children in Arkansas who needed a permanent family. The litigation generated significant publicity, including coverage by the *Arkansas Times*, the *Wall Street Journal*, and the *New York Times*.

Before joining Pomerantz, Ms. Gilmore was a litigation associate with the firms of Skadden, Arps, Slate, Meagher and Flom, LLP and Sullivan & Cromwell, LLP, two of the top defense firms in the country, where she was involved in commercial and securities matters. Her experience includes working on the *WorldCom Securities Litigation* representing more than a dozen prominent banks and also representing clients such as General Electric, Columbia University, Samsung, LG Electronics, Sony, Philips, BT, and JVC. She also served as a law clerk to the Honorable Thomas C. Platt, former Chief Judge for the Eastern District of New York.

Ms. Gilmore graduated *cum laude* from Brooklyn Law School in 2004, where she served as a staff editor for the *Brooklyn Law Review*. She was the recipient of two *CALI Excellence for the Future Awards*, being the highest-scoring student in the subjects of evidence and discovery. She graduated *summa cum laude* from Arizona State University, with a BA in French and a minor in Business.

Ms. Gilmore is admitted to practice in New York, the United States District Courts for the Southern and Eastern Districts of New York, and the United States Court of Appeals for the Ninth Circuit.

Michael J. Wernke

Michael led the litigation in *Pirnik v. Fiat Chrysler Automobiles N.V. et al.*, No. 15-cv-07199-JMF (S.D.N.Y), in which the Firm, as Lead Counsel, recently achieved a $110 million settlement for the class. This high-profile securities class action alleges that Fiat Chrysler concealed from investors that it improperly outfitted its diesel vehicles with "defeat device" software designed to cheat NOx emissions regulations in the U.S. and Europe, and that regulators had accused Fiat Chrysler of violating the emissions regulations. The *Fiat Chrysler* recovery provides the class of investors with as much as 20% of recoverable damages—an excellent result when compared to historical statistics in class action settlements, where typical recoveries for cases of this size are between 1.6% and 3.3%.

In December 2018, Michael, along with Pomerantz Managing Partner Jeremy A. Lieberman, secured a $31 million partial settlement with three defendants in *In re Libor Based Financial Instruments Antitrust Litigation*, a closely watched multi-district litigation, which concerns the LIBOR rigging scandal.

In October 2018, Michael secured a $15 million settlement in *In re Symbol Technologies, Inc. Sec. Litig.*, No. 05-cv-03923-DRH-AKT (E.D.N.Y.), a securities class action that alleges that, following an accounting fraud by prior management, Symbol's management misled investors about state of its internal controls and the Company's ability to forecast revenues.

He was Lead Counsel in *Thomas v. Magnachip Semiconductor Corp.*, in which he achieved a $23.5 million partial settlement with certain defendants, securing the settlement despite an ongoing investigation by the Securities and Exchange Commission and shareholder derivative actions. He played a leading role in *In re Lumber Liquidators, Inc. Sec. Litig.*, in which Pomerantz, as Co-Lead Counsel, achieved a settlement of $26 million in cash and 1,000,000 shares of Lumber Liquidators common stock for the Class. Michael also secured a $7 million settlement (over 30% of the likely recoverable damages) in the securities class action

Todd v. STAAR Surgical Company, et. al., No. 14-cv-05263-MWF-RZ (C.D. Cal.), which alleged that STAAR concealed from investors violations of FDA regulations that threatened the approval of STAAR's long awaited new product.

In the securities class action, *In re Atossa Genetics, Inc. Sec. Litig.*, No. 13-cv-01836-RSM (W.D. Wash.), Michael secured a decision by the Ninth Circuit Court of Appeals that reversed the district court's dismissal of the complaint. The Ninth Circuit held that the CEO's public statements that the company's flagship product had been approved by the FDA were misleading despite the fact that the company's previously-filed registration statement stated that that the product did not, at that time, require FDA approval.

Michael is also Lead Counsel in the securities class action *Zwick Partners, LP v. Quorum Health Corp.*, No. 16-cv-2475 (M.D. Tenn.), which alleges that defendants misrepresented to investors the poor prospects of hospitals that the parent company spun-off into a stand-alone company. In defeating the defendants' motions to dismiss the complaint, Michael successfully argued that company from which Quorum was spun-off was a "maker" of the false statements even though all the alleged false statements concerned only Quorum's financials and the class involved only purchasers of Quorum's common stock.

During the nine years prior to coming to Pomerantz, Michael was a litigator with Cahill Gordon & Reindel LLP, with his primary focus in the securities defense arena, where he represented multinational financial institutions and corporations, playing key roles in two of only a handful of securities class actions to go to jury verdict since the passage of the PSLRA.

In 2019, Michael was honored as a Super Lawyers® "Top Rated Securities Litigation Attorney." In 2014 and 2015, he was recognized as a Super Lawyers® New York Metro Rising Star.

Michael received his J.D. from Harvard Law School in 2004. He also holds a B.S. in Mathematics and a B.A. in Political Science from Ohio State University, where he graduated *summa cum laude*.

He serves on the Firm's Anti-Harassment and Discrimination Committee.

Michael is admitted to practice in the State of New York and the United States District Court for the Southern District of New York.

Matthew L. Tuccillo

Matthew Tuccillo joined Pomerantz in 2011 and was named a Partner in December 2013. With 20 years of experience, he has been honored as a 2016 - 2019 Super Lawyers "Top-Rated Securities Litigation Attorney," a recognition bestowed on 5% of eligible attorneys in the New York Metro area, after a rigorous process overseen by Thompson Reuters; he is recognized in the categories of Securities Litigation, Appellate, E-Discovery, Civil Litigation, Alternative Dispute Resolution, and Class Action/Mass Torts. In 2018, he was recognized by Lawyer Monthly as its Lawyer of the Year (U.S.A.) in the Federal Tort & Military category, based on a ten-point assessment including significance of legal matters, case value, legal expertise,

innovation in client care, activity level, and peer recognition. Also in 2018, he was a New York honoree both in the National Trial Lawyers' Class Action Trial Lawyers Association Top 25 and in America's Top 100 High Stakes Litigators. Since 2016, he has been a recommended securities litigator by The Legal 500, which evaluates law firms worldwide for cutting edge, innovative work based on client feedback, practitioner interviews, and independent research. Since 2014, he has maintained Martindale-Hubbell's highest-available AV Preeminent™ peer rating, scoring 5.0 out of 5.0 in Securities Law, Securities Class Actions, and Securities Litigation while being described as a "First class, top flight lawyer, especially in complex litigation." His advocacy has been covered by Bloomberg, Law360, the Houston Chronicle, and the Hartford Business Journal, among others.

He is responsible, on an ongoing basis, for the Firm's litigation of numerous securities fraud class actions pending nationwide, currently including: *In re Toronto-Dominion Bank Sec. Litig.*, No. 1:17-cv-01735 (D.N.J.) and *Chun v. Fluor Corp.*, No. 18-cv-01338-S (N.D. Tex.).

Mr. Tuccillo oversees and is the lead litigator on the Firm's securities fraud lawsuits arising from BP's 2010 Gulf oil spill, pending in MDL No. 2185, *In re BP p.l.c. Sec. Litig.*, No. 4:10-md-2185 (S.D. Tex.). He briefed and argued successful oppositions to three rounds of BP's motions to dismiss the claims of roughly 100 institutional investors, drawing the court's praise for the "quality of lawyering," which it called "uniformly excellent." In leading the BP litigation, Mr. Tuccillo has secured some of the Firm's most ground-breaking rulings, described above in the response to *Question E.1.C.*

As the Firm's lead litigator in *Perez v. Higher One Holdings, Inc.*, No. 14-cv-00755-AWT (D. Conn.), Mr. Tuccillo persuaded the court, after an initial dismissal, to uphold a second amended complaint that pled five separate threads of fraud over a multi-year period by an education funding company and its executives. Among other rulings, the court agreed that the company's reported financial and operating results violated Regulation S-K, Item 303, 17 C.F.R. § 229.303, for failure to disclose known trends regarding the underlying misconduct and its impacts on reported results – a rare ruling in the absence of any accounting restatement. He negotiated a $7.5 million class-wide settlement that was approved by the court.

As the Firm's lead litigator in *In re KaloBios Pharm., Inc. Sec. Litig.*, No. 15-cv-05841 (N.D. Cal.), Mr. Tuccillo negotiated two court-approved class-wide settlements worth over $3.25 million in the aggregate, from a bankrupt pharmaceutical company, its jailed former CEO, and two separate D&O insurers. Significantly, he secured payments of cash and stock directly from the bankrupt company, which also required bankruptcy court approval.

As the Firm's lead litigator in *In re Silvercorp Metals, Inc. Sec. Litig.*, No. 12-cv-09456 (S.D.N.Y.), Mr. Tuccillo worked closely with mining, accounting, damages, and market efficiency experts to defeat a motion to dismiss and oversee discovery in a securities class action involving a Canadian company with mining operations in China and stock traded on the NYSE. After two mediations, the case was resolved for a $14 million all-cash fund. In granting final approval of the settlement, Judge Rakoff noted that the case was "unusually complex," given the technical nature of mining metrics, the need to compare mining standards in Canada, China, and the U.S., and the volume of Chinese-language evidence requiring translation.

Mr. Tuccillo's prior casework also includes litigation and resolution of complex disputes over roll ups of consulting companies and of commercial real estate interests. At Pomerantz, he was on the multi-firm team that litigated and settled *In re Empire State Realty Trust, Inc. Investor Litig.*, No. 650607/2012 (N.Y. Sup. Ct.), representing investors in public and private commercial real estate interests against the long-term lessees/operators, the Malkin family and the Estate of Leona Helmsley, regarding a proposed consolidation, REIT formation, and IPO centered around New York's iconic Empire State Building. These efforts achieved broad relief for the class, including a $55 million cash/securities settlement fund, a restructured deal creating a $100 million tax benefit, expansive remedial disclosures, and important deal protections.

Before joining Pomerantz, Mr. Tuccillo began his career at a large full-service Boston firm, litigating primarily for corporate clients. He also worked at plaintiff-side firms in Boston and Connecticut, litigating securities, consumer, and wage and hour class actions, as well as complex sale of business disputes. He has negotiated numerous multi-million-dollar settlements, through both mediation and direct negotiation. His pro bono work includes securing Social Security benefits for a veteran suffering from non-service-related disabilities.

Mr. Tuccillo graduated from the Georgetown University Law Center in 1999, where he made the Dean's List. He competed on and later coached Georgetown's award-winning team in the Philip C. Jessup International Law Moot Court Competition, was Foreign Publications Editor of the Georgetown International Environmental Law Review, and participated in Georgetown's top-ranked clinical program, representing the Mattaponi Tribe in its fight to block a Virginia dam project on ancestral burial grounds.

Prior to that, he was a 1995 graduate of Wesleyan University. As an alumnus, he has devoted considerable time to Wesleyan's pre-law programs, co-authoring and periodically updating its pre-law student guidebook, serving on numerous panels, and counseling students interested in a legal career. He is the current President of the Wesleyan Lawyers Association, after previously serving terms as Secretary, Executive Board member, and Steering Committee member.

Tamar A. Weinrib

Tamar Weinrib joined Pomerantz in early 2008. She was Of Counsel to the Firm from 2014 through 2018 and was elevated to Partner in 2019. Ms. Weinrib was recognized as a 2019 Securities Litigation Super Lawyer, and was named by Law360 as a 2018 Rising Star under 40, a prestigious honor awarded to a select few "top litigators and dealmakers practicing at a level usually seen from veteran attorneys." Ms. Weinrib has been recognized by Super Lawyers as a New York Metro Rising Star every year from 2014 through 2018.

In June 2019, Ms. Weinrib and Managing Partner Jeremy Lieberman achieved a $23 million settlement for the Class in *Strougo v. Barclays PLC*, a high-profile securities class action in which Pomerantz is Lead Counsel. Plaintiffs allege that Barclays PLC misled institutional investor clients about the extent of the banking giant's use of so-called "dark pool" trading systems. This case turns on the duty of integrity owed by Barclays to its clients. In November 2016, Ms. Weinrib and Mr. Lieberman achieved precedent-setting victories for investors, when the Second Circuit Court of Appeals held that direct evidence of price impact is not always

necessary to demonstrate market efficiency to invoke the presumption of reliance, and that defendants seeking to rebut the presumption of reliance must do so by a preponderance of the evidence rather than merely meeting a burden of production. In 2018, Ms. Weinrib successfully opposed Defendants' petition to the Supreme Court for a writ of certiorari.

Ms. Weinrib was the attorney responsible for the litigation of *In re Delcath Systems, Inc. Sec. Litig.*, in which Pomerantz recently achieved a settlement of $8,500,000 for the Class. She successfully argued before the Second Circuit in *In re China North East Petroleum Sec. Litig.*, to reverse the district court's dismissal of the defendants on scienter grounds. In addition to her involvement in several other securities matters pending nationwide, Ms. Weinrib is the Pomerantz attorney responsible for the litigation of *KB Partners I, L.P. v. Pain Therapeutics, Inc.*, a securities fraud case for which Judge Sparks of the Western District of Texas recently granted final approval for a settlement of up to $8,500,000 for class members.

Before coming to Pomerantz, Ms. Weinrib had over three years of experience as a litigation associate in the New York office of Clifford Chance US LLP, where she focused on complex commercial litigation. Ms. Weinrib has successfully tried pro bono cases, including two criminal appeals and a housing dispute filed with the Human Rights Commission.

Ms. Weinrib graduated from Fordham University School of Law in 2004 and, while there, won awards for successfully competing in and coaching Moot Court competitions.

Ms. Weinrib is admitted to practice in New York, the United States District Courts for the Southern and Eastern Districts of New York, and the United States Courts of Appeals for the Second, Third, Fourth, and Ninth Circuits.

Joshua B. Silverman

Josh Silverman is a partner in the Firm's Chicago office. He specializes in individual and class action securities litigation. Mr. Silverman was Lead Counsel in *In re Groupon, Inc. Sec. Litig.*, achieving a $45 million settlement, one of the highest percentage recoveries in the Seventh Circuit. He was also Lead or Co-Lead Counsel in *In re MannKind Corp. Sec. Litig.* ($23 million settlement); *In re AVEO Pharm., Inc. Sec. Litig.* ($18 million settlement, more than four times larger than the SEC's fair fund recovery in parallel litigation); *New Mexico State Inv. Council v. Countrywide Financial Corp.* (very favorable confidential settlement); *New Mexico State Inv. Council v. Cheslock Bakker & Associates* (summary judgment award in excess of $30 million); *Sudunagunta v. NantKwest, Inc.* ($12 million settlement); *Bruce v. Suntech Power Holdings Corp.* ($5 million settlement); *In re AgFeed, Inc. Sec. Litig.* ($7 million settlement); and *In re Hemispherx BioPharma Sec. Litig.* ($2.75 million settlement). Mr. Silverman also played a key role in the Firm's representation of investors before the United States Supreme Court in *StoneRidge*, and prosecuted many of the Firm's other class cases, including *In re Sealed Air Corp. Sec. Litig.* ($20 million settlement).

Several of Mr. Silverman's cases have set important precedent. For example, *In re MannKind* established that investors may support complaints with expert information. *New Mexico v. Countrywide* recognized that investors may show Section 11 damages for asset-backed securities even if there has been no interruption in payment or threat of default. More

recently, *NantKwest* was the first Section 11 case in the nation to recognize statistical proof of traceability.

In addition to prosecuting cases, Mr. Silverman regularly speaks at investor conferences and continuing legal education programs.

Before joining Pomerantz, Mr. Silverman practiced at McGuireWoods LLP and its Chicago predecessor, Ross & Hardies, where he represented one of the largest independent futures commission merchants in commodities fraud and civil RICO cases. He also spent two years as a securities trader, and continues to actively trade stocks, futures, and options for his own account.

Mr. Silverman is a 1993 graduate of the University of Michigan, where he received Phi Beta Kappa honors, and a 1996 graduate of the University of Michigan Law School.

Mr. Silverman is admitted to practice in Illinois, the United States District Court for the Northern District of Illinois, the United States Courts of Appeal for the First, Second, Third, Seventh, Eighth and Ninth Circuits, and the United States Supreme Court.

Leigh Handelman Smollar

Leigh Smollar, formerly Of Counsel to Pomerantz, became a partner in January 2012.

As a member of Pomerantz's Securities Litigation Group, Ms. Smollar plays a key role in litigating class actions against public companies for securities fraud. She was a member of the Pomerantz team in its successful litigation on behalf of three New Mexico pension funds related to Countrywide's mortgage-backed securities, resulting in a very favorable confidential settlement. Ms. Smollar has been a member of the Pomerantz litigation team for many of the cases where significant settlements were obtained. *See In re Sealed Air Corp. Sec. Litig.*, No. 03-CV-4372 (D.N.J.) ($20 million settlement approved December 2009); and *In re Safety-Kleen Stockholders Sec. Litig.*, No. 00-736-17 (D.S.C.) (as Co-Lead Counsel, Firm obtained a $54.5 million settlement).

Ms. Smollar is currently litigating *In re Galena Biopharma, Inc.*, No. 14-cv-00367 (D. Or.); *Alizadeh v. Tellabs, Inc.*, No. 13-cv-537 (N.D. Ill.); *Lubbers v. Flagstar Bancorp, Inc.*, No. 14-cv-13459 (E.D. MI); and *Cooper v. Thoratec Corp.*, No. 14-cv-360 (N.D. Cal.).

Ms. Smollar published an article in the Loyola Law Journal entitled, *The Importance of Conducting Thorough Investigations of Confidential Witnesses in Securities Fraud Litigation.* She has authored several articles and updates for the Illinois Institute for Continuing Legal Education (IICLE), including *Shareholder Derivative Suits and Stockholder Litigation in Illinois*, published in IICLE Chancery and Special Remedies 2004 Practice Handbook; *Prosecuting Securities Fraud Class Actions*, published in IICLE Chancery and Special Remedies 2009 Practice Handbook, including a 2011 supplement to Chancery and Special Remedies; and a new chapter in the 2013 Edition of the Chancery and Special Remedies Practice Handbook. In June 2011, as a panelist at the Illinois Public Employee Retirement Systems Summit in Chicago, Illinois, Ms. Smollar gave a presentation entitled *Carrying out Fiduciary Responsibilities in Management and Investments.*

Ms. Smollar is a 1993 graduate of the University of Illinois at Champaign-Urbana, where she graduated from the School of Commerce with high honors, and a 1996 graduate of the Chicago-Kent College of Law. Ms. Handelman Smollar spent the next five years specializing in insurance defense litigation.

Ms. Smollar is admitted to practice in Illinois, the United States District Court for the Northern District of Illinois, and the United States Courts of Appeals for the Seventh and Eighth Circuits.

Jennifer Banner Sobers

Jennifer Sobers focuses her practice on securities fraud litigation. She played an integral role on the team litigating *Petrobras* in the Southern District of New York. Among Ms. Sobers's contributions to the team's success were: managing the entire third-party discovery in the United States, which resulted in the identification of key documents and witnesses; deposing several underwriter bank witnesses; drafting portions of Plaintiffs' amended complaints, which withstood motions to dismiss; and drafting portions of Plaintiffs' successful opposition to Defendants' appeal in the Second Circuit, which resulted in precedential rulings.

Ms. Sobers is a key member of the litigation teams of other nationwide cases, including: *In re BP plc Sec. Litig.*; *In re KaloBios Pharm. Inc. Sec. Litig.*, pending in the Northern District of California, which secured successful settlements for the class; and *Perez v. Higher One Holdings, Inc.*, pending in the District of Connecticut, which survived dismissal and was successfully settled.

Prior to joining Pomerantz, Ms. Sobers was an associate at a prominent law firm in New York where her practice focused on complex commercial litigation, including securities law and accountants' liability. An advocate of pro bono representation, Ms. Sobers earned the Empire State Counsel honorary designation from the New York State Bar Association and received an award from New York Lawyers for the Public Interest for her pro bono work.

Ms. Sobers received her B.A. (with honors) from Harvard University, where she was on the Dean's List, a Ron Brown Scholar, and a recipient of the Harvard College Scholarship. She received her J.D. from the University of Virginia School of Law where she was a participant in the Lile Moot Court Competition and was recognized for her pro bono service.

She is a member of the Federal Bar Council, New York City Bar Association, and New York State Bar Association. She is also a member of the Association of Arbitrators.

Ms. Sobers is admitted to practice in New York, the United States District Court for the Southern District of New York, and the United States Courts of Appeals for the Second and Ninth Circuits.

G. Subject to the consent of clients as required by applicable ethics rules, provide the names and phone numbers of representative clients. Identify specifically any pension plans or other major institutional investors, either private or public, to which your law firm renders or has rendered significant legal services concerning the relevant subject area(s) during the past year.

Pomerantz has represented, has served in the pool of securities litigation counsel, and/or performed portfolio monitoring for many of the largest public pension funds in the United States.

The following clients may serve as references for the Firm.

[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

[redacted]

[redacted]

H.	*Describe your law firm's proven in-house U.S. and international bankruptcy knowledge and expertise in ERISA, Internal Revenue Code, fiduciary responsibilities relating to qualified governmental plans.*

pPomerantz is very experienced in litigating securities class actions involving bankrupt entities. *See Chamblee v. TerraForm Power, Inc.*, No. 16-cv-8039-PKC (S.D.N.Y.); and *Church v. Chatila*, No. 16-cv-07962-PKC (S.D.N.Y.).

E.2 RESOURCES AND RELEVANT PRACTICE

A.	*Briefly summarize resources available to your law firm that give your law firm an advantage in processing securities litigation cases, such as multilingual staff, information technology, office locations, or any other resources.*

Foreign Securities Litigation and Monitoring Capabilities

The Firm has an office in Paris, France, and an Of Counsel located in Tel Aviv, Israel, which give the Firm an advantage in monitoring potential foreign securities claims. The Firm

also has several relationships with foreign firms who focus on litigation arising from non-U.S. based securities purchases. See Response to Question E(3)(A).

Numerous Pomerantz employees are conversant or advanced in various languages, including Arabic, Chinese (Mandarin), Chinese (Cantonese), French, Hebrew, Italian, Romanian, Russian, Spanish, and Ukrainian.

Trial Experience and Appellate Capabilities

Pomerantz's track record of taking securities cases to trial sets the Firm apart from most law firms in this field and has a major impact on settlement negotiations: our adversaries know that we will not hesitate to proceed to trial. Our lawyers also have extensive appellate experience, and regularly argue before appellate courts throughout the country.

Senior Counsel Marc Gross has considerable trial experience, including *In re Zenith Labs Sec. Litig.*, No. 86-3241A (D.N.J. Feb. 11, 1993), which settled during trial for $12.5 million; and *In re Zila Inc. Sec. Litig.*, No. 99-0115-PHX-EHC (D. Ariz. Feb. 21, 2001), which settled for $5.75 million after the parties had exchanged witness lists, exhibit lists, expert reports, and other pretrial materials.

Senior Partner Patrick Dahlstrom served on the trial team in *In re ICN/Viratek Sec. Litig.*, No. 87 Civ. 4296 (S.D.N.Y. Apr. 9, 1996), which resulted in a hung jury with eight jurors in favor of plaintiffs, and one opposed. The case subsequently settled for $14.5 million. Judge Wood praised the team: "[P]laintiffs' counsel did a superb job here on behalf of the class .... This was a very hard fought case. You had very able, superb opponents, and they put you to your task .... The trial work was beautifully done and I believe very efficiently done." Mr. Dahlstrom also assisted in the *In re Zenith Labs* and *In re Zila Inc.* trials.

Senior Counsel Stanley Grossman's trial experience includes *Gartenberg v. Merrill Lynch Asset Mgmt., Inc.*, No. 79 Civ. 3123 (S.D.N.Y.), where Mr. Grossman was lead trial counsel for plaintiff. Judge Pollack noted at the completion of the trial: "[I] can fairly say, having remained abreast of the law on the factual and legal matters that have been presented, that I know of no case that has been better presented so as to give the Court an opportunity to reach a determination, for which the court thanks you."

Discovery Management

The Firm is proficient in efficiently and effectively managing document-intensive litigation. The *Petrobras* litigation is an excellent example of the Firm's ability to take on cases involving massive amounts of discovery. Discovery in *Petrobras* was an enormous undertaking set to a compressed schedule. Fifty-one live fact witness depositions, nineteen live expert witness depositions, and fifteen written fact witness depositions were conducted, with Pomerantz attorneys examining or defending in almost all. The majority of the live depositions and all written depositions were conducted in Portuguese.

Pomerantz also organized and reviewed over two million documents, which were mostly in Portuguese. In addition, Pomerantz served forty-four subpoenas for the production of documents on third parties. Sixteen Requests for Judicial Assistance under the Hague

Convention on the Taking of Evidence in Civil or Commercial Matters ("Hague Requests") were approved and signed by Judge Rakoff and issued to foreign third parties. Thirteen Hague Requests were for the production of documents and three were for live depositions. The Hague Requests issued in six different languages. Over 64,000 documents were produced pursuant to the third-party subpoenas and Hague Requests. These documents were in English, Portuguese, Swedish, Korean, and Japanese, among other languages.

Pomerantz also coordinated with two law firms acting as local counsel in Brazil, a Brazilian private investigator, and nearly 150 Portuguese-fluent attorneys working in five sites in the U.S. during the height of discovery. Through local counsel, Pomerantz obtained a massive number of documents from Brazilian sources. Pomerantz was granted access to 110 sealed criminal cases as interested third parties through applications to Judge Sergio Moro, the presiding judge in the Brazilian actions related to the Petrobras corruption scheme. Pomerantz further acquired six reports form active cases before the Tribunal de Contas da União ("TCU").

Documents obtained from Brazilian sources were all formally obtained and authenticated through a complex and time-consuming process. Pomerantz effectuated consular requests through the U.S. Department of State to their foreign counterparts, who in turn carried out the requests to the executive and judicial bodies. Hague Requests were received directly by the respective foreign ministries. On September 1, 2016, the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents ("Apostille Convention") entered into force in Brazil on September 1, 2016, greater streamlining this process. Before the Apostille Convention took effect, Pomerantz obtained properly certified copies of nine criminal sentences, six plea agreements containing 136 statements with twenty-three plea agreement pending, fifty-six testimony transcripts with thirty-four pending, two civil complaints, and twenty TCU reports with thirteen pending.

B. Describe your law firm's in-house resources for both legal and non-legal monitoring and/or evaluation responsibilities. Include which services are outsourced to third parties including data storage and other relevant activities for both domestically and internationally traded securities.

All of the Firm's portfolio monitoring and evaluation services are performed in-house by the Firm's IIPG, which includes partners, associates, damages analysts, and other professionals.

The professionals supporting the IIPG attorneys include:

Carolyn Moskowitz, the Firm's Director of Client Services, monitors client portfolios for potential securities fraud exposure and eligibility to participate in securities fraud class action settlements, using the Firm's proprietary Pomtrack® service. Ms. Moskowitz has a Bachelor of Fine Arts degree and extensive writing and marketing experience. In more than eighteen years with Pomerantz, she has developed expertise in assisting the Firm's clients when securities fraud cases settle. Among other responsibilities, she heads the PomTrack® team that searches clients' portfolios to identify settlements in which they might recover lost assets; reports to Pomerantz partners regarding clients' losses and potential recovery per each settlement's plan of allocation, so they may best analyze its fairness; files claims on behalf of clients; and liaises with claims administrators and custodian banks, with which she and the team have developed long and

productive relationships. Ms. Moskowitz also prepares a monthly customized *PomTrack* Report for each client, and is always available to respond to clients' needs.

Robert Willoughby, the Firm's Investor Relations Manager, monitors client portfolios for potential securities fraud exposure and eligibility to participate in securities fraud class action settlements. He earned his Bachelor's degree in Business from Fordham University and received an MBA in Finance from the University of Connecticut's Graduate School of Business. Prior to joining Pomerantz, he had over eight years' experience in various facets of the finance industry, including trading and investor relations.

Jack Lo, the Firm's Damages Analyst, reconciles and analyzes our clients' trading data and works closely with Pomerantz partners in providing damages analyses used in support of the Firm's case and settlement evaluations, lead plaintiff motions on behalf of our clients, and during the course of litigating and settling cases. Mr. Lo also conducts detailed analyses of defendants' insider sales, both foreign and domestic, to support the Firm's litigation efforts. Before joining Pomerantz, Mr. Lo worked for several years in the finance industry, including in risk analysis and as a trader, and worked as a damages analyst for another New York-based law firm.

Keely Lee, the Firm's Client Services Coordinator and Assistant Damages Analyst, compiles information regarding securities fraud litigations and settlements, searches client portfolios for relevant securities transactions, and files proofs of claims for clients. In addition, Ms. Lee liaises with claims administrators in the preparation and follow-up of the claims filing process, including curing any deficiencies in claims. She also assists in the preparation of our clients' monthly *PomTrack Reports.*

David Leifer, a senior paralegal with over 25 years of experience, performs supporting tasks, including the compilation of documents and data for the Firm's reports to clients, as well as other investigative support.

Sydney Castro, the Firm's Client Services Team Assistant and Assistant Damages Analyst, compiles information regarding securities fraud litigations, searches client portfolios for relevant securities transactions, and assists in analyzing our institutional and retail clients' trading histories and calculating their damages. Ms. Castro also assists in the preparation of our clients' monthly *PomTrack Reports.*

For a full discussion of the Firm's resources for monitoring domestically and internationally traded securities, please see our response to *Question E.3.A.* below.

C. Describe diversity within your law firm and examples of your law firm's efforts to recruit, promote, and retain a diverse workplace.

Pomerantz is fully committed to ethnic, racial, and gender diversity. The Firm is also committed to equal opportunity and advancement.

Females represent 38% of Pomerantz Partners; 22% of Pomerantz Of Counsel; and 30% of Associates. Pomerantz has been nationally recognized for its diversity efforts. In Law 360's 2015 "100 Best Law Firms for Female Attorneys," Pomerantz was ranked No. 1 among class

action securities firms and No. 6 among all law firms. In 2016, Pomerantz was honored by Equal Rights Advocates, a non-profit that has transformed the law for hundreds of thousands of women through impact litigation and policy reform, for the Firm's commitment to diversity and equal opportunities for women. Partners Murielle Steven Walsh and Jennifer Pafiti have served on ERA's Honorary Steering Committee.

D. Describe your law firm's particular knowledge of Arkansas law pertaining to contract requirements, public pension plans, securities law, prudent invest rule, other areas of law that may affect your law firm's representation of ATRS.

The Firm's attorneys have extensive knowledge of the federal and state securities laws, as well as applicable laws governing corporate conduct and fiduciary duties.

E. Describe the resources your law firm expects ATRS to provide throughout a resultant contract, including staff levels, expected commitment hours, etc.

Pomerantz monitors investment holdings data for the majority of its clients through real-time access to online custodian bank records. As such, any requirements for ATRS staff related to portfolio monitoring and evaluation would be minimal.

During litigation, ATRS staff would need to retain relevant documents for the specific litigation at hand and assist the Firm's attorneys in retrieving discovery documents from ATRS. The Firm would send its own personnel to help with document retrieval. ATRS representatives may need to provide deposition testimony as well. Beyond that, the Firm would expect ATRS staff to review updates from the Firm on particular cases and to consult on settlement negotiations.

F. Discuss any significant changes in the ownership or restructuring of your law firm or lead attorneys in the past three (3) years or if your law firm anticipates significant changes in the future. Provide an explanation of these changes and how these changes will or may affect its representation of ATRS. If no significant changes have occurred or are anticipated, discuss your firm's current organizational retention policy and succession plan.

In 2016, Marc Gross transitioned from acting as the Firm's Managing Partner to become a Senior Partner (and later Senior Counsel). At that time, Jeremy Lieberman and Patrick Dahlstrom became Co-Managing Partners. In 2019, Patrick Dahlstrom transitioned from Co-Managing Partner to become a Senior Partner. At that time, Jeremy Lieberman became the Firm's Managing Partner. Pomerantz does not believe that such changes will affect its representation of ATRS.

Pomerantz does not currently anticipate any significant changes in the future. In the event that one or more attorneys assigned to ATRS were to leave Pomerantz, ATRS should be assured that the Firm would continue to provide uninterrupted legal services. With 42 licensed attorneys—including 13 partners, 2 senior counsel, 9 of counsel, 13 associates, and 5 staff attorneys—Pomerantz is sufficiently staffed to withstand personnel turnover.

E.3 MONITORING AND REPORTING

A.	***Describe how your law firm will conduct ongoing client portfolio monitoring (tracking portfolio trading and cross-referencing the trading against potential securities claims) by reviewing the ATRS' portfolio losses on a regular basis, investigating potential claims, preparing detailed reports of findings, and presenting the findings to ATRS.***

Pomerantz has an exceptional record of monitoring and evaluating the investment portfolios of public pension systems and institutional investors. The Firm provides investment portfolio monitoring services, directly from the Firm, for securities traded both domestically and internationally.

Pomerantz's approach to portfolio monitoring services includes: (i) diligently monitoring and evaluating potential fraud claims; (ii) paying special attention to international securities issues and litigation; (iii) making narrowly tailored recommendations on litigation strategy to clients; and (iv) carefully monitoring and evaluating the fairness of class action settlements in which institutional clientele stand to participate.

MONITORING AND EVALUATION SERVICES

The Firm's IIPG monitors, evaluates, and reports on potential securities fraud claims that may impact clients' portfolios, and it tracks and evaluates every securities fraud settlement in which our clients may have claims. We provide customized monthly reports with information on securities fraud class actions and class action settlements as well as relevant SEC settlements. We also analyze the merits of a potential claim and provide a recommendation for or against seeking lead plaintiff status. When appropriate, we make recommendations as to whether a client should actively participate as a lead plaintiff in a securities class action or pursue individual litigation.

Specifically, the Firm offers the following monitoring and evaluation services:

i. We monitor news media and other sources for indications of securities fraud and corporate wrongdoing. The Firm's IIPG monitors legal, financial, and business developments on a daily basis, using electronic databases and services such as Bloomberg, LEXIS, Edgar Online Pro, Vickers, Securities Law 360, and Securities Class Action Services. The IIPG includes the Firm's Director of Client Services, as well as in-house damages analysts who calculate losses and damages. Where warranted, the group retains outside experts and investigators to provide specialized services.

ii. We monitor investment holdings data for the majority of our clients through real-time access to online custodian bank records. As new cases are announced or potential securities fraud matters are reported in the media, the Firm's investor relations staff run comprehensive searches using these custodian bank records and our proprietary *PomTrack* system. We initially determine whether our clients have incurred any trading losses arising from potential violations of the securities laws or breach of fiduciary duties.

iii. We evaluate cases in which an institutional client might be a class member, and where warranted, quantify potential damages. The Firm has effective procedures and a time-tested methodology in place for performing damage loss calculations for clients. The Firm performs its preliminary damage loss calculations in-house. We consult with outside damages experts for more advanced damages calculations, including analysis of class-wide damages and the price impact of the alleged misrepresentations.

iv. We evaluate whether a client has sufficient losses to qualify as lead plaintiff on behalf of the class, and generally make these determinations within 30 days of the initial case filing. Our memos to clients: (a) summarize the potential claim and its relative strengths and weaknesses; (b) present a thorough analysis of potential damages; and (c) recommend whether the client should seek a lead plaintiff position, initiate a private individual action, or continue to monitor the class action as an absent class member.

v. We evaluate class action settlements in which our clients are eligible to participate, and the possible options available to them. If a pension plan has a large loss in a case and has elected to be a passive class member in an action initiated by others, it is important that it evaluate the fairness of the settlement and the plan of allocation. At the time of settlement, we advise clients on the decision whether to (i) file an objection to the settlement and/or plan of allocation; (ii) opt out of the class and pursue an individual action; or (iii) file a proof of claim and participate in the settlement.

vi. We work with our clients' custodian banks to facilitate the claims filing process in class action settlements where the client chooses to participate. We provide custodian banks with copies of our monthly *PomTrack Reports*, which identify all claims that should be made and the pertinent deadlines. We can also provide assistance to custodian banks to cure claims deficiencies identified by claims administrators. The Firm has enjoyed long and successful relationships with the client relations teams of some of the largest U.S. custodian banks. A *PomTrack Report* is attached as Exhibit 2.

INTERNATIONAL SECURITIES MONITORING SERVICES

Many international litigations are different from U.S. litigations in that investors are generally required to "opt in" to foreign legal proceedings if they wish to join a case. Pomerantz is prepared to assess all of the factors that enter into whether a client should opt in to a foreign action, including the size of a client's losses; litigation funding options; whether a client might have potential liability in the form of adverse costs, exposure, or third-party claims; and what role a client would need to play in the opt-in litigation.

Pomerantz has a strong international presence. The Firm has an office in Paris, led by Nicolas Tatin, who is Of Counsel to the Firm and the Firm's Director-Business Development Consultant for France, Benelux, Monaco, and Switzerland. In addition, Eitan Lavie, who is based in Tel Aviv, is Of Counsel to Pomerantz and serves as an International Consultant to the Firm.

Pomerantz has numerous other resources at its disposal to assist in identifying and initiating foreign litigation arising from non-U.S. stock purchases:

- The Firm is a sponsor of the Institutional Investors Tort Recovery Association ("iiTRA"), a securities class action claims management and monitoring organization for institutional investors, headquartered in London, which focuses specifically on litigation in non-U.S. jurisdictions. iiTRA provides advice on current and prospective securities litigation to European and UK pension funds and asset managers, and it monitors and processes claims on a worldwide basis.

- The Firm has a strategic relationship with the Goal Group, Ltd., a UK-based international litigation service that, among other things, identifies new cases through initial case alert notifications.

- The Firm has a strategic relationship with the Deminor Group, a foreign shareholder advisory firm based in Brussels, which focuses on opt-in litigations in Europe. Deminor provides the Firm with information regarding global litigation opportunities in the areas of investor protection and recovery of investment losses. It also provides Pomerantz with access to attorneys in jurisdictions throughout the world for consultation on the merits of proposed individual and opt-in actions.

- Pomerantz has cultivated its own network of attorneys in the UK, the Netherlands, France, Australia, and the Middle East to identify securities litigation opportunities for international investors.

B. Describe how your law firm will report on the status of claims and recovery efforts for ATRS, including expected results and timing of payments to ATRS.

As already noted, Pomerantz prepares a monthly *PomTrack Report* for each of the Firm's monitoring clients. Such reports include information on securities fraud class actions and class action settlements as well as relevant SEC settlements. Pomerantz also analyzes the merits of potential claims and calculates trading losses and damages.

C. Describe how and how often your law firm will provide periodic reporting to ATRS of its claims and potential claims. Include how your law firm will determine and recommend ATRS' participation as class member, lead plaintiff, or any recommended individual action.

The Firm's monthly *Pomtrack Reports* include written recommendations for or against seeking lead plaintiff status both in potential class action litigation in the United States and in potential group or individual actions in non-U.S. jurisdictions.

Based on Pomerantz's experience litigating federal securities violations for more than 80 years, we have developed a keen eye to what constitutes a strong claim under the securities laws. We are very selective with the cases we propose to institutional investors and conduct intensive investigations before recommending that an institutional investor file or join in any litigation. Indeed, we take pride in our ability to keep clients out of weak cases as evidenced by the fact that very few of the cases in which our clients make lead plaintiff applications are dismissed.

After we conduct our initial investigation, when warranted, we retain outside consultants with expertise in the particular areas related to the specific action, such as accountants, corporate finance professionals, experts on the applicable industry, or private investigators. With our consulting experts, we conduct additional in-depth investigations into the specific merits of the case to verify the liability of the defendants, as well as analyze damages.

If our analyses demonstrate that a client has a sizeable loss, as well as damages, and a well-grounded claim for liability, we formulate a litigation strategy on how best to proceed on behalf of the client. The litigation strategy initially addresses whether the client should (i) move to be appointed lead plaintiff of a class action; (ii) file an individual (non-class) action in federal or state court; or (iii) remain a class member in a class action initiated by others.

We also take into account any objectives the client may have relative to the subject company, and any corporate governance reform issues which may be addressed through litigation, such as a derivative action. In addition, we counsel our clients to be flexible about loss thresholds related to lead plaintiff applications. In a case where ATRS has relatively small losses, moving for lead plaintiff may still be warranted, especially in a case involving an important policy issue, including corporate governance considerations or an opportunity to expand the law in an important area.

Where ATRS's losses are especially large and its claims are meritorious, an individual litigation should be strongly considered. The opt-out action has been increasingly used by public pension funds to obtain a larger recovery than what they would have received had they remained in a related class action. In the *AOL-TimeWarner* litigation, on our recommendation, the New Jersey Division of Investment pension funds filed an opt-out action in state court and recovered $50 million, a substantially higher recovery than what they would have been allocated under the settlement of the related federal class action.

D. *Describe how your law firm will provide filing of proofs of claim for domestic and international cases for ATRS.*

Pomerantz employees have considerable experience in the calculation and administration of claims in securities class actions. Upon request, the Firm is willing to undertake claims filing on behalf of ATRS. Pomerantz has been providing claims filing services for certain of its clients since 2003, and the Firm currently files claims on behalf of over a dozen of its institutional clients, including several large European asset managers with trillions of euros under management and numerous U.S.-based funds. The Firm also provides claims filings auditing services.

Pomerantz's monthly *PomTrack Reports* keep its clients apprised of the status of claims that the Firm has filed on behalf of clients, and which also identify new domestic and foreign securities litigations, current securities class action settlements, and note a particular client's eligibility to participate in the litigation. The Firm can also provide clients with access to our secure web platform, which features all reports and memorandums of advice on one secure portal.

The Firm has established solid relationships with some of the largest custodian banks, including BNY Mellon, State Street Bank & Trust Co., JPMorgan Chase, Northern Trust, Salem Trust, and Morgan Stanley. In addition, the Firm has excellent relationships with the main claims administrators in the securities class action field, including Gilardi & Co., KCC LLC, Garden City Group, Epiq Systems, and A.B. Data Ltd. We believe that these relationships afford us quicker response times on our inquiries and an increased likelihood of recovery with late filings and amending claims.

E.4 ETHICS, FIDUCIARY, AND PROFESSIONALISM

A. ***Provide details (and excerpts/samples if available) of articles written by your law firm's in-house attorneys that have been published in legal journals covering at least one (1) of the following subjects:***

- ***Class action securities litigation;***
- ***Securities law;***
- ***Public pension plan litigation, ethics, and/or institutional investors.***

Jeremy Lieberman:

- *Back to Basic(s): Common Sense Trumps Econometrics*, N.Y.L.J. (Jan. 8, 2018)*

Marc Gross:

- *Back to Basic(s): Common Sense Trumps Econometrics*, N.Y.L.J. (Jan. 8, 2018)
- *Class Certification in a Post-Halliburton II World*, 46 Loyola-Chicago L.J. 485 (2015)
- *Loser-Pays - or Whose "Fault" Is It Anyway: A Response to Hensler-Rowe's "Beyond 'It Just Ain't Worth It,'"* 64 L. & Contemp. Probs. 163 (Duke Law School 2001)

Michael Grunfeld

- *Litigating Securities Class Actions,* LexisNexis

James M. LoPiano

- "*Public Fora Purpose: Analyzing Viewpoint Discrimination on the President's Twitter Account*," Note, 28 Fordham Intell. Prop. Media & Ent. L.J. 511 (2018)
- "*Lessons Abroad: How Access Copyright v. York University Helped End Canada's Educational Pirating Regime*," Legal Watch, Authors Guild Fall 2017/Winter 2018 Bulletin
- "*International News: Proposal for New EU Copyright Directive and India High Court's Educational Photocopy Decision*," Legal Watch, Authors Guild Summer 2017 Bulletin

Leigh Handelman Smollar

- *The Importance of Conducting Thorough Investigations of Confidential Witnesses in Securities Fraud Litigation*, 46 Loy. U. Chi. L.J. 503 (2015)
- *Shareholder Derivative Suits and Stockholder Litigation in Illinois*, IICLE Chancery and Special Remedies 2004 Practice Handbook
- *Prosecuting Securities Fraud Class Actions*, IICLE Chancery and Special Remedies 2009 Practice Handbook, including a 2011 supplement to Chancery and Special Remedies

Brian Calandra

- *Note: Sound and Fury, Accomplishing Nothing?: Why Haven't Empirical Data, Commentator Advocacy and Sympathetic Media Coverage Helped Women In Bankruptcy?*, 30 Women's Rights L. Rep. 184 (2008)
- *Insider Trading Laws and Enforcement*, Practical Compliance & Risk Management For The Securities Industry (May-June 2016)*

Jonathan Lindenfeld:

- "*The CFTC's Substituted Compliance Approach: An Attempt to Bring About Global Harmony and Stability in the Derivatives Market*," Journal of International Business and Law: Vol. 14: Iss. 1, Article 6.

* Article attached.

B. Provide details (and excerpts/samples if available) of speaking engagements given by your law firm's in-house attorneys covering at least one (1) of the following subjects:

- ***Class action securities litigation;***
- ***Securities law;***
- ***Public pension plan litigation, ethics, and/or institutional investors.***

Jeremy Lieberman:

- Pomerantz Roundtable - July 15, 2019
- 2019 Class Action Conference: Mass Disputes and ADR - March 29, 2019
- National Conference on Public Employee Retirement Systems (NCPERS) Annual Conference - May 20, 2019
- NCPERS Annual Conference & Exhibition - May 13-16, 2018
- Pomerantz-sponsored lunch for institutional investors- November 21, 2017
- International Corporate Governance Network Conference - December 6-7, 2017
- National Institute of Public Finance Conference - July 20-21, 2017
- "EAG, Corporate Governance & US Securities Class Actions" Conference - June 8, 2017
- Bar Ilan University Faculty of Law - March 28, 2017
- The New Face of Corporate Governance in 2016 and U.S. Securities Class Actions: A Unique European Analysis of the Latest Legislation and Benchmark of Best Practices - November 29, 2016
- ICGN-IIRC Conference - December 6-7, 2016
- ICGN Conference - March 8-9, 2016
- SWFI Institutional Investor Forum 2016 - March 5-8, 2016
- Managing Political Risks in 2016 - January 12, 2016
- CII Conference - September 30-October 2, 2015
- ICGN Annual Conference - June 3-5, 2015
- ICGN conference - June 1-3, 2015
- Investor Protection Actions - January 30, 2014

- "US Class Actions, Implications For Institutional Investors - November 25, 2014
- Institutional Investor Conference - September 15, 2014
- ICGN conference - June 15-17, 2014
- 2014 Tel Aviv Institutional Investment Conference - March 10, 2014
- Israeli Pension Fund Conference - December 16-19, 2013
- Annual Institutional Investment Conference - March 13, 2013
- Annual Provident Funds Coalition Conference - December 2-4, 2012

Marc Gross:

- Institute for Law & Economic Policy's (ILEP) Symposium on Corporate Accountability - April 11-13, 2019
- Class Action Money & Ethics Conference - May 6, 2019
- American Law Institute Securities and Shareholder Litigation Developments Conference - October 3, 2017
- Duke Law Center for Judicial Studies Conference - July 20-21, 2017
- Annual Loyola University for Investor Protection Symposium - October 7, 2016
- American Law Institute's Securities and Shareholder Litigation Conference - March 31, 2016
- ILEP Conference, The 20th Anniversary of the private Securities Litigation Reform Act: Taking Stock - October 16, 2015
- ILEP 21st Annual Symposium - April 17, 2015
- Institute for Investor Protection Symposium School of Law - October 25, 2013
- National Conference on Public Employee Retirement Systems January 27-29, 2013
- First Annual Institute for Investor Protection Symposium - October 5, 2012
- Institutional Investor Conference - March 12, 2012

Patrick Dahlstrom

- State Association of County Retirement Systems Fall Conference - November 2009
- Interviews by NBC
- Interviews by the CBC

Stanley Grossman:

- "Conversations with Bob Mundheim" - April 15, 2019

Gustavo Bruckner:

- Institute for Law & Economic Policy's (ILEP) Symposium on Corporate Accountability - April 11-13, 2019
- PLI's 2015 Class Action Litigation Strategies Seminar - July 8, 2015
- ATP and Delaware Bylaws Roundtable - December 11, 2014

Jennifer Pafiti:

- National Association of Police Officers Conference - January 28-30, 2019
- Shareholder Engagement Roundtable - February 6, 2018
- Texas Local Firefighter Retirement Act's Educational Conference - October 1-2, 2017

- NASP 28th Annual Pension and Financial Services Conference - June 26-28, 2017
- NASP Seventh Annual Conference Day of Education in Private Equity - March 30, 2017
- Managing Political Risks in 2016 - January 12, 2016
- CII Conference - September 30-October 2, 2015

Nicolas Tatin:

- "EAG, Corporate Governance & US Securities Class Actions" Conference - June 8. 2017

Michael Wernke:

- ILEP's Annual Symposium - April 20-21, 2017

Joshua Silverman:

- Illinois Public Pension Fund Association - March 19, 2014

Leigh Handelman Smollar:

- Illinois Public Employee Retirement System - June 2011

C. Provide details (and excerpts/samples if available) of education provided by your law firm's in-house attorneys to other attorneys covering at least one (1) of the following subjects:

- ***Class action securities litigation;***
- ***Securities law;***
- ***Public pension plan litigation, ethics, and/or institutional investors.***

Pomerantz educates on important legal and regulatory developments through its bi-monthly newsletter, *The Pomerantz Monitor.* Pomerantz also co-sponsors with Brooklyn Law School the *Pomerantz Lecture Series*, which focuses on current issues affecting securities and corporate litigation.

Pomerantz partners regularly organize and present at conferences on important issues in securities and corporate governance law. In 2017, Managing Partner Jeremy Lieberman, together with The Investment Association, held a webinar on *Protecting Pension Fund Assets in Light of Recent Unfriendly Supreme Court Decisions in the U.S.* Last year, Partner Emma Gilmore held a webinar on *The Fraud-on-the-Market Doctrine: Recent Trends, Developments, and Legal Challenges*. Senior Counsel Marc Gross is highly valued by foreign investors for his expertise, having addressed the Tel Aviv Institutional Investors Forum, the National Association of Pension Funds Conference in Edinburgh, and law students at Bar Ilan University in Tel Aviv.

D.	***Discuss whether your law firm, a partner to your law firm, or any lead attorneys proposed to provide services for ATRS have ever had a formal grievance and/or complaint lodged against them pursuant to the applicable disciplinary rules. Provide outcomes of the grievances and/or complaints, explanations, and tell what actions the applicable party has taken to remedy the matter(s). If no formal grievances or complaints have been lodged against your law firm, a partner to your law firm, or any lead attorneys proposed to provide services for ATRS, discuss practices and/or policies your law firm has in place to avoid such grievance and complaints.***

No formal grievances or complaints have been lodged against the Firm, a partner to the Firm, or any lead attorneys proposed to provide services for ATRS.

Pomerantz prides itself on its 83-year history of consistently shaping the law. The Firm's partners, associates, and other professionals are committed to upholding a long tradition of winning landmark decisions that have expanded and protected investor and consumer rights and initiated historic corporate governance reforms. Pomerantz has a proven track record of not only obtaining substantial monetary recoveries but also of transforming the law for the benefit of all shareholders—and accomplishing this with impeccable integrity.

E.	***Discuss whether your law firm, a partner to your law firm, or any lead attorneys proposed to provide services for ATRS have ever been sued for malpractice or any civil or criminal regulatory enforcement action in connection with any type of legal representation, and whether any such attorneys have been sued individually with respect to any type of personal investment or other personal or business involvement concerning an underwriter or issuer of securities, investment adviser, investment company, securities broker-dealer, insurer, real estate transaction, or a lending institution. Provide outcomes of the suits, explanations, and tell what actions the applicable party has taken to remedy the matter(s). If no malpractice suits have been filed and/or no civil or criminal regulatory enforcement actions have been taken against your law firm, a partner to your law firm, or any lead attorneys proposed to provide services for ATRS, discuss practices and/or policies your law firm has in place to avoid such actions.***

No malpractice suits have been filed and no civil or criminal regulatory enforcement actions have been taken against the Firm, a partner to the Firm, or any lead attorneys proposed to provide services for ATRS. With respect to practices and policies the Firm has in place to avoid such actions, please see our statement of guiding principles in response to *Question E.4.D.* above.

F.	***List any court sanctions for securities litigation representation and any court sanctions or State Bar actions for ethical violations and/or irregular billing practices filed against your law firm. Provide explanations and tell what actions the applicable party has taken to remedy the matter(s). If no sanctions have been filed against your law firm, discuss practices and/or policies your law firm has in place to avoid such sanctions.***

No sanctions have been filed against the Firm.

Exhibit 1

POMERANTZ LLP

History Pomerantz LLP is one of the most respected law firms in the United States dedicated to representing investors. The Firm was founded in 1936 by the late Abraham L. Pomerantz, widely regarded as a legal pioneer and "dean" of the plaintiffs' securities bar, who helped secure the right of investors to bring class and derivative actions.

Leadership Today, led by Managing Partner Jeremy A. Lieberman, the Firm maintains the commitments to excellence and integrity passed down by Abe Pomerantz.

Results In 2018, Pomerantz achieved a historic $3 billion settlement for defrauded investors, and precedent-setting legal rulings, in *In re Petrobras Securities Litigation*. Pomerantz consistently shapes the law, having won landmark decisions that expanded and protected investor rights and initiated historic corporate governance reforms, including securing the rights of U.S. and foreign institutions that purchased BP shares abroad to bring common law claims in U.S. court.

Global Expertise Jennifer Pafiti, Partner and Head of Client Services, is dually qualified to practice in the United States and United Kingdom. Our Paris office is headed by French lawyer, Nicolas Tatin, Pomerantz's Director-Business Development Consultant for France, Benelux, Monaco and Switzerland. In addition to the Firm's in-house team in the United States and Paris, Pomerantz utilizes an extensive network of prominent law firms in the United Kingdom, Switzerland, and the Middle East, so that we are ready to assist clients, wherever they are situated, in recovering monies lost due to corporate misconduct and securities fraud. Our team of attorneys is collectively fluent in English, Arabic, Mandarin Chinese, Farsi, French, Hebrew, Italian, Portuguese, Romanian, Spanish, and Taiwanese.

Practice Pomerantz protects, expands, and vindicates shareholder rights through our securities litigation services and portfolio monitoring program. The Firm represents some of the largest pension funds, asset managers and institutional investors around the globe, monitoring assets of over $5 trillion, and growing. Pomerantz's practice includes corporate governance, antitrust, and strategic consumer litigation.

Recognition In 2019, Jeremy Lieberman was honored as Plaintiff Attorney of the Year by Benchmark Litigation, and Pomerantz received Benchmark Litigation's National Case Impact Award for *In re Petrobras Securities Litig*. In 2018, Pomerantz was honored as a Law360 Securities Practice Group of the Year and was a finalist for the *National Law Journal*'s Elite Trial Lawyers award; Jeremy Lieberman was named a Law360 Titan of the Plaintiffs' Bar and a Benchmark Litigation Star. Among other accolades, many of our attorneys have been chosen by their peers, year after year, as Super Lawyers® Top-Rated Securities Litigation Attorneys and Rising Stars.

Pomerantz is headquartered in New York City, with offices in
Chicago, Los Angeles and Paris.

Securities Litigation

Significant Landmarks

***In re Petrobras Sec. Litig.*, No. 14-cv-9662 (S.D.N.Y. 2018)**

On January 3, 2018, in a significant victory for investors, Pomerantz, as sole Lead Counsel for the class, along with Lead Plaintiff Universities Superannuation Scheme Limited ("USS"), achieved a historic $2.95 billion settlement with Petróleo Brasileiro S.A. ("Petrobras") and its related entity, Petrobras International Finance Company, as well as certain of Petrobras' former executives and directors. On February 2, 2018, Pomerantz and USS reached a $50 million settlement with Petrobras' auditors, PricewaterhouseCoopers Auditores Independentes, bringing the total recovery for Petrobras investors to $3 billion.

This is not only the largest securities class action settlement in a decade but is the largest settlement ever in a securities class action involving a foreign issuer, the fifth-largest securities class action settlement ever achieved in the United States, the largest securities class action settlement achieved by a foreign Lead Plaintiff, and the largest securities class action settlement in history not involving a restatement of financial reports.

The class action, brought on behalf of all purchasers of common and preferred American Depositary Shares ("ADSs") on the New York Stock Exchange, as well as purchasers of certain Petrobras debt, principally alleged that Petrobras and its senior executives engaged in a multi-year, multi-billion-dollar money-laundering and bribery scheme, which was concealed from investors.

In addition to the multi-billion-dollar recovery for defrauded investors, Pomerantz secured precedent-setting decisions when the Second Circuit Court of Appeals squarely rejected defendants' invitation to adopt the heightened ascertainability requirement promulgated by the Third Circuit, which would have required plaintiffs to demonstrate that determining membership in a class is "administratively feasible." The Second Circuit's rejection of this standard is not only a victory for bondholders in securities class actions, but also for plaintiffs in consumer fraud class actions and other class actions where documentation regarding Class membership is not readily attainable. The Second Circuit also refused to adopt a requirement, urged by defendants, that all securities class action plaintiffs seeking class certification prove through direct evidence (i.e., an event study) that the prices of the relevant securities moved in a particular direction in response to new information.

***Pirnik v. Fiat Chrysler Automobiles N.V. et al.*, No. 1:15-cv-07199-JMF (S.D.N.Y)**

In August 2019. Pomerantz, as Lead Counsel, achieved final approval of a $110 million settlement for the Class in this high-profile securities class action. Plalintiffs alleged that Fiat Chrysler concealed from investors that it improperly outfitted its diesel vehicles with "defeat device" software designed to cheat NOx emissions regulations in the U.S. and Europe, and that regulators had accused Fiat Chrysler of violating the emissions regulations. The *Fiat Chrysler* recovery provides the class of investors with as much as 20% of recoverable damages—an excellent result when compared to historical statistics in class action settlements, where typical recoveries for cases of this size are between 1.6% and 3.3%.

In addition to creating precedent-setting case law in successfully defending the various motions to dismiss the *Fiat Chrysler* litigation, Pomerantz also significantly advanced investors' ability to obtain critically important discovery from regulators that are often at the center of securities actions. During the course of the litigation, Pomerantz sought the deposition of a former employee of the National Highway Traffic Safety Administration ("NHTSA"). The United States Department of Transportation ("USDOT"), like most federal agencies, has enacted a set of regulations — known as "Touhy regulations" — governing when its employees may be called by private parties to testify in court. On their face, USDOT's regulations apply to both "current" and "former" employees. In response to Pomerantz's request to depose a former employee of NHSTA that interacted with Fiat Chrysler, NHTSA denied the request, citing the Touhy regulation. Despite the widespread application, and assumed appropriateness, of applying these regulations to former employees throughout the case law, Pomerantz filed an action against USDOT and NHTSA, arguing that the statute pursuant to which the Touhy regulations were enacted speaks only of "employees," which should be interpreted to apply only to current employees. The court granted summary judgment in favor of Pomerantz's clients, holding that "USDOT's Touhy regulations are unlawful to the extent that they apply to former employees." This victory will greatly shift the discovery tools available, so that investor plaintiffs in securities class actions against highly-regulated entities (for example, companies subject to FDA regulations) will now be able to depose former employees of the regulators that interacted with the defendants during the class period to get critical testimony concerning the company's violations and misdeeds.

***Strougo v. Barclays PLC*, No. 14-cv-5797 (S.D.N.Y.)**

Pomerantz, as sole Lead Counsel in this high-profile securities class action, achieved a $27 million settlement for defrauded investors in 2019. Plaintiffs alleged that defendants concealed information and misled investors regarding its management of its "LX" dark pool, a private trading platform where the size and price of the orders are not revealed to other participants. On November 6, 2017, the Second Circuit affirmed former District Court Judge Shira S. Scheindlin's February 2, 2016, Opinion and Order granting plaintiffs' motion for class certification in the case.

The Court of Appeals in *Barclays* held that direct evidence of price impact is not always necessary to demonstrate market efficiency, as required to invoke the *Basic* presumption of reliance, and was not required here. Significantly, when handing down its decision, the Second Circuit cited its own *Petrobras* decision, stating, "We have repeatedly—and recently—declined to adopt a particular test for market efficiency." *Waggoner v. Barclays PLC,* 875 F.3d 79, 94 (2d Cir. 2017).

The court held that defendants seeking to rebut the *Basic* presumption of reliance on an efficient market must do so by a preponderance of the evidence. The court further held that it would be inconsistent with *Halliburton II* to "allow [ ] defendants to rebut the *Basic* presumption by simply producing *some* evidence of market inefficiency, but not demonstrating its inefficiency to the district court." *Id.* at 100. The court rejected defendants' contention that Federal Rule of Evidence 301 applies, and made clear that the *Basic* presumption is a judicially-created doctrine and thus the burden of persuasion properly shifts to defendants. The court thus confirmed that plaintiffs have no burden to show price impact at the class certification stage—a significant victory for investors.

***In re Yahoo! Inc. Sec. Litig.*, No. 17-cv-00373 (N.D. Cal.)**

On September 10, 2018, Pomerantz, as Co-Lead Counsel, achieved final approval of a historic $80 million settlement for the Class in this ground-breaking litigation. The complaint, filed in January 2017, alleged

that the internet giant intentionally misled investors about its cybersecurity practices in the wake of massive data breaches in 2013 and 2014 that compromised the personal information of all 3 billion Yahoo customers. Plaintiffs allege that Yahoo violated federal securities laws by failing to disclose the breaches, which caused a subsequent stock price dive. This represents the first significant settlement to date of a securities fraud class action filed in response to a data breach.

As part of due diligence, Pomerantz located critical evidence showing that Yahoo's management had concurrent knowledge of at least one of the data breaches. Importantly, these records showed that Yahoo's Board of Directors, including Defendant CEO Marissa Mayer, had knowledge of and received repeated updates regarding the breach. In its public filings, Yahoo denied that the CEO knew about the breach, and the CEO's knowledge was a key issue in the case.

After receiving Plaintiffs' opposition to the motion to dismiss, but before the federal District Court ruled on the motion, the case settled for $80 million. This early and large settlement reflects the strength of the complaint's allegations.

***Kaplan v. S.A.C. Capital Advisors, L.P*, No. 12-cv-9350 (S.D.N.Y.)**

In May 2017, Pomerantz, as Co-Lead Counsel, achieved final approval of a $135 million recovery for the Class in this securities class action that stemmed from what has been called the most profitable insider trading scheme in U.S. history. After years of vigorous litigation, billionaire Steven A. Cohen's former hedge fund, S.A.C. Capital Advisors LP, agreed to settle the lawsuit by investors in the drug maker Elan Corp, who said they lost money because of insider trading by one of his portfolio managers.

***In re BP p.l.c. Securities Litigation*, MDL No. 2185 (S.D. Tex.)**

Since 2012, Pomerantz has pursued ground-breaking claims on behalf of institutional investors in BP p.l.c. to recover losses in BP's common stock (which trades on the London Stock Exchange) stemming from the 2010 Gulf oil spill. The threshold challenge was how to litigate in U.S. court in the wake of the Supreme Court's 2010 decision in *Morrison v. National Australia Bank*, which barred recovery for losses in foreign-traded securities under the U.S. federal securities laws. In 2013 and 2014, Pomerantz secured a series of significant victories in individual actions pursued on behalf of institutional investors in *In re BP p.l.c. Securities Litigation*, MDL No. 2185 (S.D. Tex.). Pomerantz defeated BP's *forum non conveniens* arguments seeking dismissal of U.S. institutions and, later, foreign institutions, pursuing English common law claims seeking recovery of investment losses stemming in both NYSE-traded ADSs and London Stock Exchange (LSE)-traded common stock. Pomerantz also defeated BP's attempt to extend the Securities Litigation Uniform Standards Act to dismiss these claims. Thanks to these rulings, Pomerantz now leads the only litigation, post-*Morrison*, where U.S. and foreign investors, pursuing foreign claims seeking recovery for losses in foreign-traded stocks, are doing so in a U.S. court.

In July 2017, Pomerantz secured the right of investors in BP p.l.c. to pursue "holder claims." The ruling, by Judge Keith P. Ellison of the U.S. District Court for the Southern District of Texas, is significant, given the dearth of precedent from anywhere in the U.S. that both recognizes the potential viability of a holder claim under some body of non-U.S. federal law and holds that the plaintiffs pursuing one had sufficiently alleged facts giving rise to reliance and other required elements of the underlying legal claims.

***In re Comverse Technology, Inc. Sec. Litig.*, No. 06-CV-1825 (E.D.N.Y.)**

In June 2010, Judge Nicholas G. Garaufis of the U.S. District Court for the Eastern District of New York granted final approval of a $225 million settlement proposed by Pomerantz and Lead Plaintiff the Menora Group, with Comverse Technology and certain of Comverse's former officers and directors, after four years of highly contested litigation. The *Comverse* settlement is one of the largest securities class action settlements reached since the passage of the Private Securities Litigation Reform Act ("PSLRA").[1] It is the second-largest recovery in a securities litigation involving the backdating of options, as well as one of the largest recoveries – $60 million – from an individual officer-defendant, Comverse's founder and former CEO, Kobi Alexander.

Other significant settlements

Even before the enactment of the PSLRA, Pomerantz represented state agencies in securities class actions, including the Treasurer of the Commonwealth of Pennsylvania (recovered $100 million) against a major investment bank. *In re Salomon Brothers Treasury Litig.*, No. 91-cv-5471 (S.D.N.Y.).

Pomerantz recovered $50 million for the Treasurer of the State of New Jersey and several New Jersey pension funds in an individual action. This was a substantially higher recovery than what our clients would have obtained had they remained in a related federal class action. *Treasurer of State of New Jersey v. AOL Time Warner, Inc.* (N.J. Super. Ct. Law Div., Mercer Cty.).

Pomerantz has litigated numerous cases for the Louisiana School Employees' Retirement System. For example, as Lead Counsel, Pomerantz recovered $74.75 million in a securities fraud class action against Citigroup, its CEO Sanford Weill, and its now infamous telecommunications analyst Jack Grubman. *In re Salomon Analyst AT&T Litig.*, No. 02-cv-6801 (S.D.N.Y.) Also, the Firm played a major role in a complex antitrust and securities class action which settled for over $1 billion. *In re NASDAQ Market-Makers Antitrust Litig.*, MDL No. 1023 (S.D.N.Y.). Pomerantz was a member of the Executive Committee in *In re Transkaryotic Therapies, Inc. Securities Litigation*, C.A. No. 03-10165 (D. Mass.), helping to win a $50 million settlement for the class.

In 2008, together with Co-Counsel, Pomerantz identified a substantial opportunity for recovery of losses in Countrywide mortgage-backed securities ("MBS") for three large New Mexico funds (New Mexico State Investment Council, New Mexico Public Employees' Retirement Association, and New Mexico Educational Retirement Board), which had been overlooked by all of the firms then in their securities litigation pool. We then filed the first non-class lawsuit by a public institution with respect to Countrywide MBS. *See N.M. State Inv. Council v. Countrywide Fin. Corp.*, No. D-0101-CV-2008-02289 (N.M. 1st Dist. Ct.). In Fall 2010, we negotiated for our clients an extremely favorable but confidential settlement.

Over its long history, Pomerantz has achieved significant settlements in numerous cases, a sampling of which is listed below:

- *In re Petrobras Sec. Litig.*, No. 14-cv-9662 (S.D.N.Y. 2018)
  $3 billion settlement of securities class action in which Pomerantz was Lead Counsel.

[1] Institutional Shareholder Services, *SCAS Top 100 Settlements Quarterly Report* (Sept. 30, 2010).

- *Pirnik v. Fiat Chrysler Automobiles N.V. et al.*, No. 1:15-cv-07199-JMF (S.D.N.Y)
  $110 million settlementof securities class action in which Pomerantz was Lead Counsel
- *In re Yahoo! Inc. Sec. Litig.*, No. 17-cv-00373 (N.D. Cal. 2018)
  $80 million settlement of securities class action in which Pomerantz was Co-Lead Counsel
- *In re Libor Based Financial Instruments Antitrust Litig.*, 1:11-md-2262
  $31 billion partial settlement with three defendants in this multi-district litigation in which Pomerantz represents the Berkshire Bank and the Government Development Bank for Puerto Rico
- *Kaplan v. S.A.C. Capital Advisors, L.P.*, No. 12-cv-9350 (S.D.N.Y. 2017)
  $135 million settlement of class action in which Pomerantz was Co-Lead Counsel.
- *In re Groupon, Inc. Sec. Litig.*, No. 12-cv-02450 (N.D. Ill. 2015)
  $45 million settlement of class action in which Pomerantz was sole Lead Counsel.
- *In re Elan Corp. Sec. Litig.*, No. 05-cv-2860 (S.D.N.Y. 2005)
  $75 million settlement in class action arising out of alleged accounting manipulations.
- *In re Safety-Kleen Corp. Stockholders Litig.*, No. 00-cv-736-17 (D.S.C. 2004)
  $54.5 million in total settlements in class action alleging accounting manipulations by corporate officials and auditors; last settlement reached on eve of trial.
- *Duckworth v. Country Life Ins. Co.*, No. 1998-CH-01046 (Ill. Cir. Ct., Cook Cty. 2000)
  $45 million recovery.
- *Snyder v. Nationwide Ins. Co.*, No. 97/0633 (N.Y. Sup. Ct. Onondaga Cty. 1998)
  Settlement valued at $100 million in derivative case arising from injuries to consumers purchasing life insurance policies.
- *In re National Health Lab., Inc. Sec. Litig.*, No. CV 92-1949 (S.D. Cal. 1995)
  $64 million recovery.
- *In re First Executive Corp. Sec. Litig.*, No. 89-cv-07135 (C.D. Cal. 1994)
  $102 million recovery for the class, exposing a massive securities fraud arising out of the Michael Milken debacle.
- *In re Boardwalk Marketplace Sec. Litig.*, MDL No. 712 (D. Conn. 1994)
  Over $66 million benefit in securities fraud action.
- *In re Telerate, Inc. S'holders Litig.*, C.A. No. 1115 (Del. Ch. 1989)
  $95 million benefit in case alleging violation of fiduciary duty under state law.

Pomerantz has also obtained stellar results for private institutions and Taft-Hartley funds. Below are a few examples:

- *In re Charter Commc'ns, Inc. Sec. Litig.*, No. 02-cv-1186 (E.D. Mo. 2005) (sole Lead Counsel for Lead Plaintiff StoneRidge Investment Partners LLC); $146.25 million class settlement, where Charter also agreed to enact substantive improvements in corporate governance.
- *In re Am. Italian Pasta Sec. Litig.*, No. 05-cv-865 (W.D. Mo. 2008) (sole Lead Counsel for Lead Plaintiff Ironworkers Locals 40, 361 and 417; $28.5 million aggregate settlements).
- *Richardson v. Gray*, No. 116880/1995 (N.Y. Sup. Ct. N.Y. Cty. 1999); and *In re Summit Metals*, No. 98-2870 (Bankr. D. Del. 2004) (two derivative actions where the Firm represented C.C. Partners Ltd. and obtained judgment of contempt against controlling shareholder for having made "extraordinary" payments to himself in violation of a preliminary injunction; persuaded the court to jail him for two years upon his refusal to pay; and, in a related action, won a $43 million judgment after trial and obtained turnover of stock of two companies).

Shaping the Law

Not only has Pomerantz established a long track record of obtaining substantial monetary recoveries for our clients; whenever appropriate, we also pursue corporate governance reforms on their behalf. In *In re Chesapeake Shareholders Derivative Litig*ation, No. CJ-2009-3983 (Okla. Dist. Ct., Okla. Cty. 2011), for example, the Firm served as Co-Lead Counsel, representing a public pension client in a derivative case arising from an excessive compensation package granted to Chesapeake's CEO and founder. This was a derivative action, not a class action. Yet it is illustrative of the results that can be obtained by an institutional investor in the corporate governance arena. There we obtained a settlement which called for the repayment of $12.1 million and other consideration by the CEO. The Wall Street Journal (Nov. 3, 2011) characterized the settlement as "a rare concession for the 52-year old executive, who has run the company largely by his own rules since he co-founded it in 1989." The settlement also included comprehensive corporate governance reforms.

The Firm has won many landmark decisions that have enhanced shareholders' rights and improved corporate governance. These include decisions that established that:

- defendants seeking to rebut the *Basic* presumption of reliance on an efficient market must do so by a preponderance of the evidence. *Waggoner v. Barclays PLC*, 875 F.3d 79 (2d Cir. 2017) (*Strougo v. Barclays PLC,* in the court below);
- plaintiffs have no burden to show price impact at the class certification stage. *Waggoner v. Barclays PLC*, 875 F.3d 79 (2d Cir. 2017) (*Strougo v. Barclays PLC,* in the court below);
- the ascertainability doctrine requires only that a class be defined using objective criteria that establish a membership with definite boundaries. *Universities Superannuation Scheme Ltd. v. Petróleo Brasileiro S.A. Petrobras*, 862 F.3d 250 (2d Cir. 2017);
- companies cannot adopt bylaws to regulate the rights of former stockholders. *Strougo v. Hollander*, C.A. No. 9770-CB (Del. Ch. 2015);
- a temporary rise in share price above its purchase price in the aftermath of a corrective disclosure does not eviscerate an investor's claim for damages. *Acticon AG v. China Ne. Petroleum Holdings Ltd.*, 692 F.3d 34 (2d Cir. 2012);
- an MBS holder may bring claims if the MBS price declines even if all payments of principal and interest have been made. Transcript of Proceedings, *N.M. State Inv. Council v. Countrywide Fin. Corp.*, No. D-0101-CV-2008-02289 (N.M. 1st Dist. Ct. Mar. 25, 2009);
- when a court selects a Lead Plaintiff under the Private Securities Litigation Reform Act ("PSLRA"), the standard for calculating the "largest financial interest" must take into account sales as well as purchases. *In re Comverse Tech., Inc. Sec. Litig.*, No. 06-cv-1825, 2007 U.S. Dist. LEXIS 14878 (E.D.N.Y. Mar. 2, 2007);
- a managing underwriter can owe fiduciary duties of loyalty and care to an issuer in connection with a public offering of the issuer stock, even in the absence of any contractual agreement. Professor John C. Coffee, a renowned Columbia University securities law professor, commenting on the ruling, stated: "It's going to change the practice of all underwriting." *EBC I, Inc. v. Goldman Sachs & Co.*, 5 N.Y. 3d 11 (2005);
- purchasers of options have standing to sue under federal securities laws. *In re Green Tree Fin. Corp. Options Litig.*, No. 97-2679, 2002 U.S. Dist. LEXIS 13986 (D. Minn. July 29, 2002);
- shareholders have a right to a jury trial in derivative actions. *Ross v. Bernhard*, 396 U.S. 531 (1970);

- a company may have the obligation to disclose to shareholders its Board's consideration of important corporate transactions, such as the possibility of a spin-off, even before any final decision has been made. *Kronfeld v. Trans World Airlines, Inc.*, 832 F.2d 726 (2d Cir. 1987);
- specific standards for assessing whether mutual fund advisors breach fiduciary duties by charging excessive fees. *Gartenberg v. Merrill Lynch Asset Mgmt., Inc.*, 740 F.2d 190 (2d Cir. 1984);
- investment advisors to mutual funds are fiduciaries who cannot sell their trustee positions for a profit. *Rosenfeld v. Black*, 445 F.2d 1337 (2d Cir. 1971); and
- management directors of mutual funds have a duty to make full disclosure to outside directors "in every area where there was even a possible conflict of interest." *Moses v. Burgin*, 445 F.2d 369 (1st Cir. 1971).

Comments from the Courts

Throughout its history, courts time and again have acknowledged the Firm's ability to vigorously pursue and successfully litigate actions on behalf of investors.

In approving the settlement in *Strougo v. Barclays PLC* in June 2019, Judge Victor Marrero of the Southern District of New York wrote:

> Let me thank counsel on both sides for the extraordinary work both sides did in bringing this matter to a reasonable conclusion. As the parties have indicated, the matter was intensely litigated, but it was done in the most extraordinary fashion with cooperation, collaboration, and high levels of professionalism on both sides, so I thank you.

In approving the $3 billion settlement in *In re Petrobras Securities Litigation* in June 2018, Judge Jed S. Rakoff of the Southern District of New York wrote:

> [T]he Court finds that Class Counsel's performance was in many respects exceptional, with the result that, as noted, the class is poised to enjoy a substantially larger per share recovery [65%] than the recovery enjoyed by numerous large and sophisticated plaintiffs who separately settled their claims.

At the hearing for preliminary approval of the settlement in *In re Petrobras Securities Litigation* in February 2018, Judge Rakoff stated:

> [T]he lawyers in this case [are] some of the best lawyers in the United States, if not in the world.

Two years earlier, in certifying two Classes in *In re Petrobras Securities Litigation* in February 2016, Judge Rakoff wrote:

> [O]n the basis not only of USS's counsel's prior experience but also the Court's observation of its advocacy over the many months since it was appointed Lead Counsel, the Court concludes that Pomerantz, the proposed class counsel, is "qualified, experienced and able to conduct the litigation." ... [T]he Pomerantz firm has both the skill and resources to represent the Classes adequately.

In approving the settlement in *Thorpe v. Walter Investment Management Corp.*, No. 14-cv-20880, 2016 U.S. Dist. LEXIS 144133 (S.D. Fla. Oct. 14, 2016) Judge Ursula Ungaro wrote:

> Class Counsel has developed a reputation for zealous advocacy in securities class actions. ... The settlement amount of $24 million is an outstanding result.

At the May 2015 hearing wherein the court approved the settlement in *Courtney v. Avid Technology, Inc.*, No. 13-cv-10686 (D. Mass. May 12, 2015), following oral argument by Jeremy A. Lieberman, Judge William G. Young stated:

> This has been very well litigated. It is always a privilege. I don't just say that as a matter of form. And I thank you for the vigorous litigation that I've been permitted to be a part of. [Tr. at 8-9.]

At the January 2012 hearing wherein the court approved the settlement in *In re Chesapeake Energy Corp. Shareholder Derivative Litigation*, No. CJ-2009-3983 (Okla. Dist. Ct., Okla. Cty. Jan. 30, 2012), following oral argument by Marc I. Gross, Judge Daniel L. Owens stated:

> Counsel, it's a pleasure, and I mean this and rarely say it. I think I've said it two times in 25 years. It is an extreme pleasure to deal with counsel of such caliber.
> [Tr. at 48.])

In approving the $225 million settlement in *In re Comverse Technology, Inc. Securities Litigation*, No. 06-CV-1825 (E.D.N.Y.) in June 2010, Judge Nicholas G. Garaufis stated:

> As outlined above, the recovery in this case is one of the highest ever achieved in this type of securities action. ... The court also notes that, throughout this litigation, it has been impressed by Lead Counsel's acumen and diligence. The briefing has been thorough, clear, and convincing, and ... Lead Counsel has not taken short cuts or relaxed its efforts at any stage of the litigation.

In approving a $146.25 million settlement in *In re Charter Communications Securities Litigation*, No. 02-CV-1186, 2005 U.S. Dist. LEXIS 14772 (E.D. Mo. June 30, 2005), in which Pomerantz served as sole Lead Counsel, Judge Charles A. Shaw praised the Firm's efforts, citing "the vigor with which Lead Counsel ... investigated claims, briefed the motions to dismiss, and negotiated the settlement." He further stated:

> This Court believes Lead Plaintiff achieved an excellent result in a complex action, where the risk of obtaining a significantly smaller recovery, if any, was substantial.

In approving a $24 million settlement in *In re Force Protection, Inc.,* No. 08 CV 845 (D.S.C. 2011), Judge C. Weston Houk described the Firm as "attorneys of great ability and great reputation" and commended the Firm for having "done an excellent job."

In certifying a class in a securities fraud action against analysts in *DeMarco v. Robertson Stephens Inc.*, 228 F.R.D. 468 (S.D.N.Y. 2005), Judge Gerard D. Lynch stated that Pomerantz had "ably and zealously represented the interests of the class."

Numerous courts have made similar comments:

- Appointing Pomerantz Lead Counsel in *American Italian Pasta Co. Securities Litigation*, No 05-CV-0725 (W.D. Mo.), a class action that involved a massive fraud and restatements spanning several years, the District Court observed that the Firm "has significant experience (and has been extremely effective) litigating securities class actions, employs highly qualified attorneys, and possesses ample resources to effectively manage the class litigation and protect the class's interests."

- In approving the settlement in *In re Wiring Devices Antitrust Litigation*, MDL No. 331 (E.D.N.Y. Sept. 9, 1980), Chief Judge Jack B. Weinstein stated that "Counsel for the plaintiffs I think did an excellent job. ... They are outstanding and skillful. The litigation was and is extremely complex. They assumed a great deal of responsibility. They recovered a very large amount given the possibility of no recovery here which was in my opinion substantial."

- In *Snyder v. Nationwide Insurance Co.*, No. 97/0633, (N.Y. Supreme Court, Onondaga Cty.), a case where Pomerantz served as Co-Lead Counsel, Judge Tormey stated, "It was a pleasure to work with you. This is a good result. You've got some great attorneys working on it."

- In *Steinberg v. Nationwide Mutual Insurance Co.* (E.D.N.Y. 2004), Judge Spatt, granting class certification and appointing the Firm as class counsel, observed: "The Pomerantz firm has a strong reputation as class counsel and has demonstrated its competence to serve as class counsel in this motion for class certification." (224 F.R.D. 67, 766.)

- In *Mercury Savings & Loan*, No. 90-cv-00087 LHM (C.D. Cal. 1993), Judge McLaughlin commended the Firm for the "absolutely extraordinary job in this litigation."

- In *Boardwalk Marketplace Securities Litigation*, MDL No. 712 (D. Conn.), Judge Eginton described the Firm's services as "exemplary," praised it for its "usual fine job of lawyering ...[in] an extremely complex matter," and concluded that the case was "very well-handled and managed." (Tr. at 6, 5/20/92; Tr. at 10, 10/10/92.)

- In *Nodar v. Weksel*, No. 84 Civ. 3870 (S.D.N.Y.), Judge Broderick acknowledged "that the services rendered [by Pomerantz] were excellent services from the point of view of the class represented, [and] the result was an excellent result." (Tr. at 21-22, 12/27/90.)

- In *Klein v. A.G. Becker Paribas, Inc.*, No. 83 Civ. 6456 (S.D.N.Y.), Judge Goettel complimented the Firm for providing "excellent ...absolutely top-drawer representation for the class, particularly in light of the vigorous defense offered by the defense firm." (Tr. at 22, 3/6/87.)

- In *Digital Securities Litigation*, No. 83-3255 (D. Mass.), Judge Young lauded the Firm for its "[v]ery fine lawyering." (Tr. at 13, 9/18/86.)

- In *Shelter Realty Corp. v. Allied Maintenance Corp.*, 75 F.R.D. 34, 40 (S.D.N.Y. 1977), Judge Frankel, referring to Pomerantz, said: "Their experience in handling class actions of this nature is known to the court and certainly puts to rest any doubt that the absent class members will receive the quality of representation to which they are entitled."

- In *Rauch v. Bilzerian*, No. 88 Civ. 15624 (N.J. Sup. Ct.), the court, after trial, referred to Pomerantz partners as "exceptionally competent counsel," and as having provided "top drawer, topflight [representation], certainly as good as I've seen in my stay on this court."

Corporate Governance Litigation

Pomerantz is committed to ensuring that companies adhere to responsible business practices and practice good corporate citizenship. We strongly support policies and procedures designed to give shareholders the ability to oversee the activities of a corporation. We vigorously pursue corporate governance reform, particularly in the area of excess compensation, where it can address the growing disparity between the salaries of executives and the workers of major corporations. We have successfully utilized litigation to bring about corporate governance reform in numerous cases, and always consider whether such reforms are appropriate before any case is settled.

Pomerantz's Corporate Governance Practice Group, led by Partner Gustavo F. Bruckner, enforces shareholder rights and prosecutes actions challenging corporate transactions that arise from an unfair process or result in an unfair price for shareholders.

In September 2017, New Jersey Superior Court Judge Julio Mendez, of Cape May County Chancery Division, approved Pomerantz's settlement in a litigation against Ocean Shore Holding Co. The settlement provided non-pecuniary benefits for a non-opt out class. In so doing, Judge Mendez became the first New Jersey state court judge to formally adopt the Third Circuit's nine-part *Girsh* factors, *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975). There has never before been a published New Jersey state court opinion setting out the factors a court must consider in evaluating whether a class action settlement should be determined to be fair and adequate. After conducting an analysis of each of the nine *Girsh* factors and holding that "class actions settlements involving non-monetary benefits to the class are subject to more exacting scrutiny," Judge Mendez held that the proposed settlement provided a material benefit to the shareholders.

In February 2018, the Maryland Circuit Court, Montgomery County, approved a $17.5 million settlement that plaintiffs achieved as additional consideration on behalf of a class of shareholders of American Capital, Ltd. *In re Am. Capital, Ltd. S'holder Litig.*, C.A. No. 422598-V (2018). The settlement resolved Plaintiffs' claims regarding a forced sale of American Capital.

Pomerantz filed an action challenging the sale of American Capital, a Delaware corporation with its headquarters in Maryland. Among other things, American Capital's board of directors (the "Board") agreed to sell the company at a price below what two other bidders were willing to offer. Worse, the merger price was even below the amount that shareholders would have received in the company's planned phased liquidation, which the company was considering under pressure from Elliott Management, an activist hedge fund and holder of approximate 15% of American Capital stock. Elliott was not originally named as a defendant, but after initial discovery showed the extent of its involvement in the Board's breaches of fiduciary duty, Elliott was added as a defendant in an amended complaint under the theory that Elliott exercised actual control over the Board's decision-making. Elliott moved to dismiss on jurisdictional grounds and additionally challenged its alleged status as a controller of American Capital. In June 2017, minutes before the hearing on defendants' motion to dismiss, a partial settlement was entered into with the members of the Board for $11.5 million. The motion to dismiss hearing proceeded despite the partial settlement, but only as to Elliott. In July 2017, the court denied the motion to dismiss, finding that Elliott, "by virtue solely of its own conduct, ... has easily satisfied the transacting business prong of the Maryland long arm statute." The court also found that the "amended

complaint in this case sufficiently pleads that Elliott was a controller with respect to" the sale, thus implicating a higher standard of review. Elliott subsequently settled the remaining claims for an additional $6 million. Pomerantz served as Co-Lead Counsel.

In May 2017, the Circuit Court of the State of Oregon approved the settlement achieved by Pomerantz and co-counsel of a derivative action brought by two shareholders of Lithia Motors, Inc. The lawsuit alleged breach of fiduciary duties by the board of directors in approving, without any meaningful review, the Transition Agreement between Lithia Motors and Sidney DeBoer, its founder, controlling shareholder, CEO, and Chairman, who was stepping down as CEO. DeBoer and his son, the current CEO, Bryan DeBoer, negotiated virtually all the material terms of the Agreement, by which the company agreed to pay the senior DeBoer $1,060,000 and a $42,000 car allowance annually for the rest of his life, plus other benefits, in addition to the $200,000 per year that he would receive for continuing to serve as Chairman.

The *Lithia* settlement extracted corporate governance therapeutics that provide substantial benefits to Lithia and its shareholders and redress the wrongdoing alleged by plaintiffs. The board will now be required to have at least five independent directors -- as defined under the New York Stock Exchange rules -- by 2020; a number of other new protocols will be in place to prevent self-dealing by board members. Further, the settlement calls for the Transition Agreement to be reviewed by an independent auditor who will determine whether the annual payments of $1,060,000 for life to Sidney DeBoer are reasonable. Lithia has agreed to accept whatever decision the auditor makes.

In January 2017, the Group received approval of the Delaware Chancery Court for a $5.6 million settlement it achieved on behalf of a class of shareholders of Physicians Formula Holdings Inc. over an ignored merger offer in 2012. *In re Physicians Formula Holdings Inc.*, C.A. No. 7794-VCL (Del. Ch.).

The Group obtained a landmark ruling in *Strougo v. Hollander*, C.A. No. 9770-CB (Del. Ch.), that fee-shifting bylaws adopted after a challenged transaction do not apply to shareholders affected by the transaction. They were also able to obtain a *25% price increase* for members of the class cashed out in the going private transaction.

In *Miller v. Bolduc*, No. SUCV 2015-00807 (Mass. Super. Ct.), the Group caused Implant Sciences to hold its first shareholder annual meeting in five years and put an important compensation grant up for a shareholder vote.

In *Smollar v. Potarazu*, C.A. No. 10287-VCN (Del. Ch.), the Group pursued a derivative action to bring about the appointment of two independent members to the board of directors, retention of an independent auditor, dissemination of financials to shareholders and the holding of first ever in-person annual meeting, among other corporate therapeutics.

In *Hallandale Beach Police Officers & Firefighters' Personnel Retirement Fund vs. Lululemon athletica, Inc.*, C.A. No. 8522-VCP (Del. Ch.), in an issue of first impression in Delaware, the Chancery Court ordered the production of the chairman's 10b5-1 stock trading plan. The court found that a stock trading plan established by the company's chairman, pursuant to which a broker, rather than the chairman himself, would liquidate a portion of the chairman's stock in the company, did not preclude potential liability for insider trading.

In *Strougo v. North State Bancorp*, No. 15 CVS 14696 (N.C. Super. Ct.), the Group caused the Merger Agreement to be amended to provide a "majority of the minority" provision for the holders of North State Bancorp's common stock in connection with the shareholder vote on the merger. As a result of the Action, common shareholders could stop the merger if they did not wish it to go forward.

Pomerantz's commitment to advancing sound corporate governance principles is further demonstrated by the more than 26 years that we have co-sponsored the Abraham L. Pomerantz Lecture Series with Brooklyn Law School. These lectures focus on critical and emerging issues concerning shareholder rights and corporate governance and bring together top academics and litigators.

Our bi-monthly newsletter, *The Pomerantz Monitor*, provides institutional investors updates and insights on current issues in corporate governance.

Strategic Consumer Litigation

Pomerantz's Strategic Consumer Litigation practice group represents consumers in actions that seek to recover monetary and injunctive relief on behalf of class members while also advocating for important consumer rights. The attorneys in this group have successfully prosecuted claims involving California's Unfair Competition Law, California's Consumers Legal Remedies Act, the Song Beverly Consumer Warranty Act and the Song Beverly Credit Card Act. They have resolved data breach privacy cases and cases involving unlawful recording, illegal background checks, unfair business practices, misleading advertising and other consumer finance related actions. All of these actions also have resulted in significant changes to defendants' business practices.

Pomerantz currently represents consumers in a nationwide class action against Facebook for mistargeting ads. Plaintiff alleges that Facebook programmatically displays a material percentage of ads to users outside the defined target market and displays ads to "serial Likers" outside the defined target audience in order to boost Facebook's revenue. *IntegrityMessageBoards.com v. Facebook, Inc. (N.D. Cal.) Case No. 4:18 -cv-05286 PJH.*

Pomerantz has pioneered litigation to establish claims for public injunctive relief under California's unfair business practices statute. For example, Pomerantz has filed cases seeking to prevent major auto manufacturers from unauthorized access to, and use of, drivers' vehicle data without compensation, and seeking to require the auto companies to share diagnostic data extracted from drivers' vehicles. The Strategic Consumer Litigation practice group also is prosecuting class cases against auto manufacturers for failing to properly identify high-priced parts that must be covered in California under extended emissions warranties.

Other consumer matters handled by Pomerantz's Strategic Consumer Litigation practice group include actions involving cryptocurrency, medical billing, price fixing, and false advertising of various consumer products and services.

Antitrust Litigation

Pomerantz has earned a reputation for prosecuting complex antitrust and consumer class actions with vigor, innovation, and success. Pomerantz's Antitrust and Consumer Group has recovered billions of dollars for the Firm's business and individual clients and the classes that they represent. Time and again, Pomerantz has protected our free-market system from anticompetitive conduct such as price fixing, monopolization, exclusive territorial division, pernicious pharmaceutical conduct, and false advertising. Pomerantz's advocacy has spanned across diverse product markets, exhibiting the Antitrust and Consumer Group's versatility to prosecute class actions on any terrain.

Pomerantz has served and is currently serving in leadership or Co-Leadership roles in several high-profile multi-district litigation class actions. In December 2018, the Firm achieved a $31 billion partial settlement with three defendants on behalf of a class of U.S. lending institutions that originated, purchased or held loans paying interest rates tied to the U.S. Dollar London Interbank Offered Rate (USD LIBOR). It is alleged that the class suffered damages as a result of collusive manipulation by the LIBOR contributor panel banks that artificially suppressed the USD LIBOR rate during the class period, causing the class members to receive lower interest payments than they would have otherwise received. *In re Libor Based Financial Instruments Antitrust Litig.*, 1:11-md-2262.

Pomerantz represented baseball and hockey fans in a game-changing antitrust class action against Major League Baseball and the National Hockey League, challenging the exclusive territorial division of live television broadcasts, internet streaming, and the resulting geographic blackouts. *See Laumann v. NHL* and *Garber v. MLB* (S.D.N.Y. 2012).

Pomerantz has spearheaded the effort to challenge harmful anticompetitive conduct by pharmaceutical companies—including Pay-for-Delay Agreements—that artificially inflates the price of prescription drugs by keeping generic versions off the market.

Even prior to the 2013 precedential U.S. Supreme Court decision in *Actavis*, Pomerantz litigated and successfully settled the following generic-drug-delay cases:

- *In re Flonase Antitrust Litig.* (E.D. Pa. 2008) ($35 million);
- *In re Toprol XL Antitrust Litig.* (D. Del. 2006) ($11 million); and
- *In re Wellbutrin SR Antitrust Litig.* (E.D. Pa. 2004) ($21.5 million).

Other exemplary victories include Pomerantz's prominent role in *In re NASDAQ Market-Makers Antitrust Litigation* (S.D.N.Y.), which resulted in a settlement in excess of $1 billion for class members, one of the largest antitrust settlements in history. Pomerantz also played prominent roles in *In re Sorbates Direct Purchaser Antitrust Litigation* (N.D. Cal.), which resulted in over an $82 million recovery, and in *In re Methionine Antitrust Litigation* (N.D. Cal.), which resulted in a $107 million recovery. These cases illustrate the resources, expertise, and commitment that Pomerantz's Antitrust Group devotes to prosecuting some of the most egregious anticompetitive conduct.

A Global Advocate for Asset Managers and Public and Taft-Hartley Pension Funds

Pomerantz represents some of the largest pension funds, asset managers, and institutional investors around the globe, monitoring assets of over $5 trillion, and growing. Utilizing cutting-edge legal strategies and the latest proprietary techniques, Pomerantz protects, expands, and vindicates shareholder rights through our securities litigation services and portfolio monitoring program.

Pomerantz partners routinely advise foreign and domestic institutional investors on how best to evaluate losses to their investment portfolios attributable to financial misconduct and how best to maximize their potential recoveries worldwide. In particular, Pomerantz Partners, Jeremy Lieberman, Patrick Dahlstrom, Jennifer Pafiti, and Marc Gross regularly travel throughout the U.S. and across the globe to meet with clients on these issues and are frequent speakers at investor conferences and educational forums in North America, Europe, and the Middle East.

Institutional Investor Services

Pomerantz offers a variety of services to institutional investors. Through the Firm's proprietary system, PomTrack®, Pomerantz monitor client portfolios to identify and evaluate potential and pending securities fraud, ERISA and derivative claims, and class action settlements. Monthly customized PomTrack® reports are included with the service.

When a potential securities fraud claim impacting a client is identified, Pomerantz offers to thoroughly analyze the case's merits and provide a written analysis and recommendation. If litigation is warranted, a team of highly skilled attorneys will provide efficient and effective legal representation. The experience and expertise of our attorneys – which have consistently been acknowledged by the courts – allow Pomerantz to vigorously pursue the claims of investors, taking complex cases to trial when warranted.

Pomerantz is committed to ensuring that companies adhere to responsible business practices and practice good corporate citizenship. The Firm strongly support policies and procedures designed to give shareholders the ability to oversee the activities of a corporation. Pomeranz has successfully utilized litigation to bring about corporate governance reform, and always considers whether such reforms are appropriate before any case is settled.

Pomerantz provides clients with insightful and timely commentary on matters essential to effective fund management in our bi-monthly newsletter, *The Pomerantz Monitor* and regularly sponsors conferences and roundtable events around the globe with speakers who are experts in securities litigation and corporate governance matters.

Attorneys

Partners

Jeremy A. Lieberman

Jeremy A. Lieberman is Pomerantz's Managing Partner. Jeremy became associated with the Firm in August 2004 and was elevated to Partner in January 2010. He was honored as Benchmark Litigation's 2019 Plaintiff Attorney of the Year. In 2018, Jeremy was honored as a Titan of the Plaintiffs Bar by Law360 and as a Benchmark Litigation Star. The Pomerantz team that Jeremy leads was named a 2018 Securities Practice Group of the Year. Jeremy has been honored as a Super Lawyers® "Top-Rated Securities Litigation Attorney" from 2016 through 2019 – a recognition bestowed on no more than 5% of eligible attorneys in the New York Metro area. The Legal 500, in honoring Pomerantz as a Leading Firm for 2016 and 2017, stated that in New York, "Jeremy Lieberman is super impressive – a formidable adversary for any defense firm."

Jeremy led the litigation of *In re Petrobras Securities Litigation,* a closely-watched securities class action arising from a multi-billion-dollar kickback and bribery scheme involving Brazil's largest oil company, Petróleo Brasileiro S.A. – Petrobras, in which Pomerantz was sole Lead Counsel. The biggest instance of corruption in the history of Brazil ensnared not only Petrobras' former executives but also Brazilian politicians, including former president Lula da Silva and one-third of the Brazilian Congress. In January and February 2018, Jeremy achieved a historic $3 billion settlement for the Class. This is not only the largest securities class action settlement in a decade but is the largest settlement ever in a securities class action involving a foreign issuer, the fifth-largest securities class action settlement ever achieved in the United States, the largest securities class action settlement achieved by a foreign Lead Plaintiff, and the largest securities class action settlement in history not involving a restatement of financial reports.

Jeremy also secured a significant victory for Petrobras investors at the Second Circuit Court of Appeals, when the court rejected the heightened ascertainability requirement for obtaining class certification that had been imposed by the Third Circuit Courts of Appeals. The ruling will have a positive impact on plaintiffs in securities fraud litigation. Indeed, the *Petrobras* litigation was honored in 2019 as a National Impact Case by Benchmark Litigation.

In 2019, Jeremy achieved a $27 million settlement for the Class in *Strougo v. Barclays PLC*, a high-profile securities class action in which Pomerantz was Lead Counsel. Plaintiffs alleged that Barclays PLC misled institutional investors about the manipulation of the banking giant's so-called "dark pool" trading systems in order to provide a trading advantage to high-frequency traders over its institutional investor clients. This case turned on the duty of integrity owed by Barclays to its clients. In November 2017, Jeremy achieved precedent-setting victories for investors, when the Second Circuit Court of Appeals held that direct evidence of price impact is not always necessary to demonstrate market efficiency to invoke the presumption of reliance, and that defendants seeking to rebut the presumption of reliance must do so by a preponderance of the evidence rather than merely meeting a burden of production.

Jeremy led the Firm's high-profile class action litigation against Yahoo! Inc., in which Pomerantz, as Lead Counsel, achieved an $80 million settlement for the Class in 2018. The case involved the biggest data breaches in U.S. history, in which over 3 billion Yahoo accounts were compromised.

In 2018 Jeremy achieved a $3,300,000 settlement for the Class in the Firm's securities class action against Corinthian Colleges, one of the largest for-profit college systems in the country, for alleged misrepresentations about its job placement rates, compliance with applicable regulations, and enrollment statistics. Pomerantz prevailed in the motion to dismiss the proceedings, a particularly noteworthy victory because Chief Judge George King of the Central District of California had dismissed two prior lawsuits against Corinthian with similar allegations. *Erickson v. Corinthian Colleges, Inc.* (C.D. Cal.).

Jeremy led the Firm's litigation team that in 2018 secured a $31 million partial settlement with three defendants in *In re Libor Based Financial Instruments Antitrust Litigation*, a closely watched multi-district litigation, which concerns the London Interbank Offered Rate (LIBOR) rigging scandal.

Jeremy heads the Firm's individual action against pharmaceutical giant Teva Pharmaceutical Industries Ltd., Teva Pharmaceuticals USA, Inc. (together, "Teva"), and certain of Teva's current and former employees and officers relating to alleged anticompetitive practices in Teva's sales of generic drugs. *Clal Insurance Company Ltd. v. Teva Pharmaceutical Industries Ltd.*

Jeremy also serves as Lead Counsel in a number of the most high-profile securities class actions pending in the U.S. courts, such as *In re Mylan N.V. Securities Litigation, In re Perrigo Co. Securities Litigation,* and *In re Fiat Chrysler Automobiles N.V. Securities Litigation.*

In *In re China North East Petroleum Corp. Securities Litigation*, Jeremy achieved a significant victory for shareholders in the United States Court of Appeals for the Second Circuit, whereby the Appeals Court ruled that a temporary rise in share price above its purchase price in the aftermath of a corrective disclosure did not eviscerate an investor's claim for damages. The Second Circuit's decision was deemed "precedential" by the *New York Law Journal* and provides critical guidance for assessing damages in a § 10(b) action.

Jeremy had an integral role in *In re Comverse Technology, Inc. Securities Litigation*, in which he and his partners achieved a historic $225 million settlement on behalf of the Class, which was the second-largest options backdating settlement to date.

Jeremy regularly consults with Pomerantz's international institutional clients, including pension funds, regarding their rights under the U.S. securities laws. Jeremy is working with the Firm's international clients to craft a response to the Supreme Court's ruling in *Morrison v. National Australia Bank, Ltd.*, which limited the ability of foreign investors to seek redress under the federal securities laws. Currently, Jeremy is representing several UK and EU pension funds and asset managers in individual actions against BP plc in the United States District Court for the Southern District of Texas.

Jeremy is a frequent lecturer regarding current corporate governance and securities litigation issues. In March 2017, he spoke at the ICGN conference in Washington D.C., regarding recent trends in foreign securities litigation. He has also led discussions regarding U.S. securities class actions in Paris, France.

Jeremy graduated from Fordham University School of Law in 2002. While in law school, he served as a staff member of the *Fordham Urban Law Journal*. Upon graduation, he began his career at a major New York law firm as a litigation associate, where he specialized in complex commercial litigation.

Jeremy is admitted to practice in the State of New York; the U.S. District Courts for the Southern and Eastern Districts of New York, the Southern District of Texas, the District of Colorado, the Eastern District of Michigan and Northern District of Illinois; the U.S. Courts of Appeals for the First, Second, Third, Fourth, Sixth, Ninth, and Tenth Circuits; and the United States Supreme Court.

Patrick V. Dahlstrom

Patrick Dahlstrom joined Pomerantz as an associate in 1991 and was elevated to Partner in January 1996. He was Co-Managing Partner with Jeremy Lieberman in 2017 and 2018 and is now Senior Partner. Patrick is based in the Firm's Chicago office. He was honored as a Super Lawyers® "Top-Rated Securities Litigation Attorney" in 2018 and 2019.

Patrick, a member of the Firm's Institutional Investor Practice and New Case Groups, has extensive experience litigating cases under the PSLRA. He led *In re Comverse Technology, Inc. Securities Litigation*, No. 06-CV-1825 (E.D.N.Y.), in which the Firm, as Lead Counsel, recovered a $225 million settlement for the Class – the second-highest ever for a case involving back-dating options, and one of the largest recoveries ever from an individual officer-defendant, the company's founder and former CEO. In *Comverse*, the Firm obtained an important clarification of how courts calculate the "largest financial interest" in connection with the selection of a Lead Plaintiff, in a manner consistent with *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336 (2005). Judge Garaufis, in approving the settlement, lauded Pomerantz: "The court also notes that, throughout this litigation, it has been impressed by Lead Counsel's acumen and diligence. The briefing has been thorough, clear, and convincing, and ... Lead Counsel has not taken short cuts or relaxed its efforts at any stage of the litigation."

In *DeMarco v. Robertson Stephens Inc.*, 228 F.R.D. 468 (S.D.N.Y. 2005), Patrick obtained the first class certification in a federal securities case involving fraud by analysts.

Patrick's extensive experience in litigation under the PSLRA has made him an expert not only at making compelling arguments on behalf of Pomerantz' clients for Lead Plaintiff status, but also in discerning weaknesses of competing candidates. *In re American Italian Pasta Co. Securities Litigation* and *Comverse* are the most recent examples of his success in getting our clients appointed sole Lead Plaintiff despite competing motions by numerous impressive institutional clients.

Patrick was a member of the trial team in *In re ICN/Viratek Securities Litigation* (S.D.N.Y. 1997), which, after trial, settled for $14.5 million. Judge Wood praised the trial team: "[P]laintiffs counsel did a superb job here on behalf of the class. ...This was a very hard fought case. You had very able, superb opponents, and they put you to your task. ...The trial work was beautifully done and I believe very efficiently done."

Patrick's speaking engagements include interviews by NBC and the CBC regarding securities class actions, and among others, a presentation at the November 2009 State Association of County Retirement Systems Fall Conference as the featured speaker at the Board Chair/Vice Chair Session entitled: "Cleaning Up After the 100 Year Storm. How trustees can protect assets and recover losses following the burst of the housing and financial bubbles."

Patrick is a 1987 graduate of the Washington College of Law at American University in Washington, D.C., where he was a Dean's Fellow, Editor in Chief of the *Administrative Law Journal*, a member of the Moot

Court Board representing Washington College of Law in the New York County Bar Association's Antitrust Moot Court Competition, and a member of the Vietnam Veterans of America Legal Services/Public Interest Law Clinic. Upon graduating, Patrick served as the Pro Se Staff Attorney for the United States District Court for the Eastern District of New York and was a law clerk to the Honorable Joan M. Azrack, United States Magistrate Judge.

Patrick is admitted to practice in New York and Illinois, the United States District Courts for the Southern and Eastern Districts of New York, Northern District of Illinois, Northern District of Indiana, Eastern District of Wisconsin, District of Colorado, Western District of Pennsylvania, the United States Courts of Appeals for the First, Fourth, Sixth, Seventh, Eighth, and Ninth Circuits, and the United States Supreme Court.

Gustavo F. Bruckner

Gustavo F. Bruckner heads Pomerantz's Corporate Governance practice area, which enforces shareholder rights and prosecutes litigation challenging corporate actions that harm shareholders. Under Gustavo's leadership, the Corporate Governance group has achieved numerous noteworthy litigation successes. He has been quoted frequently by Bloomberg, Law360, The New York Times, and Reuters, and was honored from 2016 through 2019 by Super Lawyers® as a "Top-Rated Securities Litigation Attorney," a recognition bestowed on no more than 5% of eligible attorneys in the New York Metro area. Gustavo regularly appears in state and federal courts across the nation.

In September 2017, Gustavo's Corporate Governance team achieved a settlement in New Jersey Superior Court that provided non-pecuniary benefits for a non-opt out class, in Pomerantz's litigation against Ocean Shore Holding Co. In approving the settlement, Judge Julio Mendez, of Cape May County Chancery Division, became the first New Jersey state court judge to formally adopt the Third Circuit's nine-part *Girsh* factors, *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975). Never before has there been a published New Jersey state court opinion setting out the factors a court must consider in evaluating whether a class action settlement should be determined to be fair and adequate.

Gustavo successfully argued *Strougo v. Hollander*, C.A. No. 9770-CB (Del. Ch. 2015), obtaining a landmark ruling in Delaware that bylaws adopted after shareholders are cashed out do not apply to shareholders affected by the transaction. In the process, Gustavo and the Corporate Governance team beat back a fee-shifting bylaw and were able to obtain a 25% price increase for members of the class cashed out in the "going private" transaction. Shortly thereafter, the Delaware Legislature adopted legislation to ban fee-shifting bylaws.

In *Stein v. DeBoer* (Or. Cir. Ct. 2017), Gustavo and the Corporate Governance group achieved a settlement that provides significant corporate governance therapeutics on behalf of shareholders of Lithia Motors, Inc. The company's board had approved, without meaningful review, the Transition Agreement between the company and Sidney DeBoer, its founder, controlling shareholder, CEO, and Chairman, who was stepping down as CEO. DeBoer and his son, the current CEO, negotiated virtually all the material terms of the Agreement, by which the company agreed to pay the senior DeBoer $1,060,000 and a $42,000 car allowance annually for the rest of his life, plus other benefits, in addition to the $200,000 per year that he would receive for continuing to serve as Chairman.

In *Miller v. Bolduc*, No. SUCV 2015-00807 (Mass. Sup. Ct. 2015), Gustavo and the Corporate Governance group, by initiating litigation, caused Implant Sciences to hold its first shareholder annual meeting in 5 years and to place an important compensation grant up for a shareholder vote.

In *Strougo v. North State Bancorp*, No. 15 CVS 14696 (N.C. Super. Ct. 2015), Gustavo and the Corporate Governance team caused the North State Bancorp merger agreement to be amended to provide a "majority of the minority" provision for common shareholders in connection with the shareholder vote on the merger. As a result of the action, common shareholders had the ability to stop the merger if they did not wish it to go forward.

In *Hallandale Beach Police Officers and Firefighters' Personnel Retirement Fund vs. Lululemon athletica, Inc.*, C.A. No. 8522-VCP (Del. Ch. 2014), in an issue of first impression in Delaware, Gustavo successfully argued for the production of the company chairman's Rule 10b5-1 stock trading plan. The court found that a stock trading plan established by the company's chairman, pursuant to which a broker, rather than the chairman himself, would liquidate a portion of the chairman's stock in the company, did not preclude potential liability for insider trading.

Gustavo was Co-Lead Counsel in *In re Great Wolf Resorts, Inc. Shareholders Litigation*, C.A. No. 7328-VCN (Del. Ch. 2012), obtaining the elimination of stand-still provisions that allowed third parties to bid for Great Wolf Resorts, Inc., resulting in the emergence of a third-party bidder and approximately $94 million (57%) in additional merger consideration for Great Wolf shareholders.

Gustavo received his law degree in 1992 from the Benjamin N. Cardozo School of Law, where he served as an editor of the Moot Court Board and on the Student Council. Upon graduation, he received the award for outstanding student service.

After graduating law school, Gustavo served as Chief-of-Staff to a New York City legislator.

Gustavo is a Mentor and Coach to the NYU Stern School of Business, Berkley Center for Entrepreneurial Studies, New Venture Competition. He was a University Scholar at NYU where he obtained a B.S. in Marketing and International Business in 1988 and an MBA in Finance and International Business in 1989.

Gustavo is a Trustee and the Treasurer of the Beit Rabban Day School, and an arbitrator in the Civil Court of the City of New York.

Gustavo is licensed to practice in New York and New Jersey and is admitted to practice before the United States District Court for the Eastern, Northern, and Southern Districts of New York, the United States District Court for the District of New Jersey, United States Court of Appeals for the Second and Seventh Circuits, and the United States Supreme Court.

Emma Gilmore

Emma Gilmore is a partner at the Firm and is regularly involved in high-profile class-action litigation. In 2018, Emma was honored as an MVP in Securities Litigation, part of an "elite slate of attorneys [who] have distinguished themselves from their peers by securing hard-earned successes in high-stakes litigation, complex global matters and record-breaking deals." Only up to six attorneys nationwide are

selected each year as MVPs in Securities Litigation. Emma is only the third woman in that practice group to have received this outstanding award since it was initiated in 2011. Emma was also honored in 2018 and 2019 as a Super Lawyer® in the New York Metro area.

Emma is regularly invited to speak about recent trends and developments in securities litigation. She was recently selected to serve on the New York City Bar's Securities Litigation Committee for a three-year term beginning on August 1, 2019. In that capacity she will have the opportunity to help shape law and public policy by, among other things, drafting reports, commenting and testifying on legislation, and submitting briefs.

Emma played a leading role in the Firm's class action case in the Southern District of New York against Brazil's largest oil company, Petrobras, arising from a multi-billion-dollar kickback and bribery scheme, in which the Firm was sole Lead Counsel. The biggest instance of corruption in the history of Brazil had ensnared not only Petrobras' former executives but also Brazilian politicians, including former president Lula da Silva and one-third of the Brazilian Congress. Emma was the principal drafter of the complaint. She deposed and defended numerous fact and expert witnesses, including deposing the former CEO of Petrobras, the whistleblower, and the chief accountant. She was also the principal drafter of the appellate brief and played an instrumental role in securing a significant victory for investors in this case at the Second Circuit Court of Appeals, when the Court rejected the heightened ascertainability requirement for obtaining class certification that had been imposed by other circuit courts. She opposed defendants' petition for a writ of certiorari to the Supreme Court. In a significant victory for investors, Pomerantz has achieved a historic $3 billion settlement with Petrobras. This is not only the largest securities class action settlement in a decade but is the largest settlement ever in a class action involving a foreign issuer, the fifth-largest class action settlement ever achieved in the United States, and the largest settlement achieved by a foreign lead plaintiff.

Emma played a leading role in *Strougo v. Barclays PLC*, a high-profile securities class action that alleged Barclays PLC misled institutional investor clients about the extent of the banking giant's use of so-called "dark pool" trading systems. She drafted the complaint, defeated defendants' efforts to dismiss the action, and contributed to securing an important precedent-setting opinion from the Second Circuit. Emma organized a group of leading evidence experts who filed amicus briefs supporting plaintiffs' position in the Second Circuit.

Together with managing partner Jeremy Lieberman, Emma leads the securities class action litigation against Philip Morris International, arising from the development of its Reduced Risk smoking products.

Emma also plays a leading role in the Firm's class action litigation against Arconic, arising from the deadliest U.K. fire in more than a century.

She also represents Safra Bank in a class action against Samarco Mineração S.A., in connection with the Fundao dam-burst disaster, which is widely regarded as the worst environmental disaster in Brazil's history.

Emma played a leading role in the high-profile class action litigation against Yahoo! Inc., in which the Firm, as Lead Counsel, achieved an $80 million settlement for the Class. The case involved the biggest data breaches in U.S. history, in which over 3 billion Yahoo accounts were compromised.

Among other cases, Emma is part of the team prosecuting securities fraud claims against BP on behalf of many foreign and domestic public and private pension funds arising from the company's 2010 Deepwater Horizon oil spill. *In re BP p.l.c. Sec. Litig.*, No. 10-md-2185 (S.D. Tex.). She helped devise a cutting-edge strategy that established the right of individual foreign investors who purchased foreign-traded shares of a foreign corporation to pursue claims for securities fraud in a U.S. court, thereby overcoming obstacles created by the U.S. Supreme Court's 2010 decision in *Morrison v. National Australia Bank Ltd.*

Emma secured a unanimous decision by a panel of the Ninth Circuit Court of Appeals, benefitting defrauded investors in *Costa Brava Partnership III LP v. ChinaCast Education Corp.* In an issue of first impression, the Ninth Circuit held that imputation of the CEO's scienter to the company was warranted vis-a-vis innocent third parties, despite the fact that the executive acted for his own benefit and to the company's detriment.

She has also devoted a significant amount of time to pro bono matters. She played a critical role in securing a unanimous ruling by the Arkansas Supreme Court striking down as unconstitutional a state law banning cohabiting individuals from adopting children or serving as foster parents. The ruling was a relief for the 1,600-plus children in the state of Arkansas who needed a permanent family. The litigation generated significant publicity, including coverage by the Arkansas Times, the Wall Street Journal, and the New York Times.

Before joining Pomerantz, Emma was a litigation associate with the firms of Skadden, Arps, Slate, Meagher and Flom, LLP, and Sullivan & Cromwell, LLP, where she was involved in commercial and securities matters. Her experience includes working on the *WorldCom Securities Litigation,* representing more than a dozen prominent banks and also representing clients such as General Electric, Columbia University, Samsung, LG Electronics, Sony, Philips, BT, and JVC.

She also served as a law clerk to the Honorable Thomas C. Platt, former U.S. Chief Judge for the Eastern District of New York.

Emma graduated *cum laude* from Brooklyn Law School, where she served as a staff editor for the *Brooklyn Law Review*. She was the recipient of two CALI Excellence for the Future Awards, being the highest scoring student in the subjects of evidence and discovery. She graduated *summa cum laude* from Arizona State University, with a BA in French and a minor in Business.

She serves on the Firm's Anti-Harassment and Discrimination Committee.

Emma is admitted to practice in the State of New York; the United States District Courts for the Southern and Eastern Districts of New York; and the United States Court of Appeals for the Ninth Circuit.

Michael Grunfeld

Michael Grunfeld joined Pomerantz in July 2017 as Of Counsel and was elevated to Partner in 2019.

He has played a leading role in some of the Firm's significant class action litigation, including its case against Yahoo! Inc. arising out of the biggest data breaches in U.S. history, in which the Firm, as Lead

Counsel, achieved an $80 million settlement on behalf of the Class. This settlement made history as the first substantial shareholder recovery in a securities fraud class action related to a cybersecurity breach. Michael also plays a leading role in many of the Firm's other ongoing class actions.

Michael was named a 2019 Rising Star by Law360, a prestigious honor awarded to a select few top litigators under 40 years old "whose legal accomplishments transcend their age." He was honored in 2018 and 2019 as a Super Lawyers® Rising Star.

Michael is the co-author of a chapter on damages in securities class actions in the LexisNexis treatise, *Litigating Securities Class Actions*.

Michael served as a clerk for Judge Ronald Gilman of the Sixth Circuit Court of Appeals and as a foreign law clerk for Justice Asher Grunis of the Israeli Supreme Court. Before joining Pomerantz, he was a litigation associate at Shearman & Sterling LLP and Paul, Weiss, Rifkind, Wharton & Garrison LLP.

Michael has extensive experience in securities, complex commercial, and white-collar matters in federal and state courts around the country. In particular, Michael has represented issuers, underwriters, and individuals in securities class actions dealing with a wide variety of industries. He has also represented financial institutions and individuals in cases related to RMBS, securities lending, foreign exchange practices, insider trading, and other financial matters.

Michael graduated from Columbia Law School in 2008, where he was a Harlan Fiske Stone Scholar and Submissions Editor of the Columbia Business Law Review. He graduated from Harvard University with an A.B. in Government, *magna cum laude*, in 2004.

Michael is admitted to practice in the State of New York, the Second, Fourth, and Sixth Circuit Courts of Appeals, and the United States District Courts for the Southern and Eastern Districts of New York and the District of Colorado.

Jordan L. Lurie

Jordan L. Lurie joined Pomerantz as a partner in the Los Angeles office in December 2018. Jordan heads Pomerantz's Strategic Consumer Litigation practice.

Jordan has litigated shareholder class and derivative actions, complex corporate securities and consumer litigation, and a wide range of fraud and misrepresentation cases brought under state and federal consumer protection statutes involving unfair competition, false advertising, and privacy rights. Among his notable representations, Jordan served as Lead Counsel in the prosecution and successful resolution of major nationwide class actions against Nissan, Ford, Volkswagen, BMW, Toyota, Chrysler and General Motors. He also successfully preserved a multi-million dollar nationwide automotive class action settlement by convincing the then Chief Judge of the Ninth Circuit and his wife, who were also class members and had filed objections to the settlement, to withdraw their objections and endorse the settlement.

Jordan has argued cases in the California Court of Appeals and in the Ninth Circuit that resulted in published opinions establishing class members' rights to intervene and clarifying the standing

requirements for an objector to appeal. He also established a Ninth Circuit precedent for obtaining attorneys' fees in a catalyst fee action. Jordan has tried a federal securities fraud class action to verdict. He has been a featured speaker at California Mandatory Continuing Legal Education seminars and is a trained ombudsman and mediator.

Outside of his legal practice, Jordan is an active educator and community leader and has held executive positions in various organizations in the Los Angeles community. Jordan participated in the first Wexner Heritage Foundation leadership program in Los Angeles and the first national cohort of the Board Member Institute for Jewish Nonprofits at the Kellogg School of Management.

Prior to joining Pomerantz, Jordan was the Managing Partner of the Los Angeles office of Weiss & Lurie and Senior Litigator at Capstone Law APC.

Jordan graduated cum laude from Yale University in 1984 with a B.A in Political Science and received his law degree in 1987 from the University of Southern California Law Center, where he served as Notes Editor of the *University of Southern California Law Review*.

Jordan is a member of the State Bar of California and has been admitted to practice before the United States District Courts for the Northern, Southern, Central and Eastern Districts of California, the Eastern and Western Districts of Michigan, and the District of Colorado.

Jennifer Pafiti

Jennifer Pafiti became associated with the Firm in May 2014 and was elevated to Partner in December 2015. A dually qualified U.K. solicitor and U.S. attorney, she is the Firm's Head of Client Services and also takes an active role in complex securities litigation, representing clients in both class and non-class action securities litigation. In 2019 Jennifer was named to Benchmark Litigation's exclusive *40 & Under Hot List* of the best young attorneys in the United States; was honored by Super Lawyers® as a Southern California Rising Star; and was named by The American Registry as one of Southern California's Top Young Lawyers. In 2018, Jennifer was recognized as a Lawyer of Distinction, an honor bestowed upon less than 10% of attorneys in any given state. She was honored by Super Lawyers® in 2017 as both a Rising Star and one of the Top Women Attorneys in Southern California. In 2016, the *Daily Journal* selected Jennifer for its prestigious "Top 40 Under 40" list of the best young attorneys in California.

Jennifer was an integral member of the Firm's litigation team for *In re Petrobras Securities Litigation*, a case relating to a multi-billion-dollar kickback and bribery scheme at Brazil's largest oil company, Petróleo Brasileiro S.A.- Petrobras, in which the Firm was sole Lead Counsel. She helped secure a significant victory for investors in this case at the Second Circuit Court of Appeals, when the court rejected the heightened ascertainability requirement for obtaining class certification that had been imposed by other Circuit courts such as the Third and Sixth Circuit Courts of Appeals. Working closely with Lead Plaintiff, Universities Superannuation Scheme Limited, she was also instrumental in achieving the historic settlement of $3 billion for Petrobras investors. This is not only the largest securities class action settlement in a decade but is the largest settlement ever in a securities class action involving a foreign issuer, the fifth-largest securities class action settlement ever achieved in the United States, the largest securities class action settlement achieved by a foreign Lead Plaintiff, and the largest securities class action settlement in history not involving a restatement of financial reports.

Jennifer is also involved in the litigations of *Dabe v. Calavo Growers, Flynn v. Sientra, Inc., Isensee v. KaloBios, Robb v. FitBit, Inc., Monachelli v. Hortonworks, Inc., Plumley v. Sempra Energy, and Greenberg v. Sunrun, Inc.,* in which the Firm is Lead Counsel.

Jennifer earned a Bachelor of Science degree in Psychology at Thames Valley University in England, prior to studying law. She earned her law degrees at Thames Valley University (G.D.L.) and the Inns of Court School of Law (L.P.C.) in the U.K. Jennifer is admitted to practice law in England and Wales (Solicitor) and in California.

Before studying law in England, Jennifer was a regulated financial advisor and senior mortgage underwriter at a major U.K. financial institution. She holds full CeFA and CeMAP qualifications. After qualifying as a Solicitor, Jennifer specialized in private practice civil litigation, which included the representation of clients in high-profile cases in the Royal Courts of Justice. Prior to joining Pomerantz, Jennifer was an associate with Robbins Geller Rudman & Dowd LLP in their San Diego office.

Jennifer regularly travels throughout the U.S. and Europe to advise clients on how best to evaluate losses to their investment portfolios attributable to financial fraud or other misconduct, and how best to maximize their potential recoveries.

Jennifer serves on the Honorary Steering Committee of Equal Rights Advocates ("ERA"), which focuses on specific issues that women face in the legal profession. ERA is an organization that protects and expands economic and educational access and opportunities for women and girls.

Jennifer is a member of the National Association of Pension Fund Attorneys and represents the Firm as a member of the California Association of Public Retirement Systems, the State Association of County Retirement Systems, the National Association of State Treasurers, the National Conference of Employee Retirement Systems, the Texas Association of Public Employee Retirement Systems, and the U.K.'s National Association of Pension Funds.

Jennifer is admitted to practice in England and Wales; the State of California; and the United States District Courts for the Northern, Central and Southern Districts of California. She is based in Los Angeles.

Joshua B. Silverman

Joshua B. Silverman is a partner in the Firm's Chicago office. He specializes in individual and class action securities litigation. Josh was Lead Counsel in *In re Groupon, Inc. Securities Litigation,* achieving a $45 million settlement, one of the highest percentage recoveries in the Seventh Circuit. He was also Lead or Co-Lead Counsel in *In re MannKind Corp. Securities Litigation* ($23 million settlement); *In re AVEO Pharmaceuticals, Inc. Securities Litigation* ($18 million settlement, more than four times larger than the SEC's fair fund recovery in parallel litigation); *New Mexico State Investment Council v. Countrywide Financial Corp.* (very favorable confidential settlement); *New Mexico State Investment Council v. Cheslock Bakker & Associates* (summary judgment award in excess of $30 million); *Sudunagunta v. NantKwest, Inc.* ($12 million settlement); *Bruce v. Suntech Power Holdings Corp.* ($5 million settlement); *In re AgFeed, Inc. Securities Litigation* ($7 million settlement); and *In re Hemispherx BioPharma Securities Litigation* ($2.75 million settlement). Josh also played a key role in the Firm's representation of investors

before the United States Supreme Court in *StoneRidge,* and prosecuted many of the Firm's other class cases, including *In re Sealed Air Corp. Securities Litigation* ($20 million settlement).

Several of Josh's cases have set important precedent. For example, *In re MannKind* established that investors may support complaints with expert information. *New Mexico v. Countrywide* recognized that investors may show Section 11 damages for asset-backed securities even if there has been no interruption in payment or threat of default. More recently, *NantKwest* was the first Section 11 case in the nation to recognize statistical proof of traceability.

In addition to prosecuting cases, Josh regularly speaks at investor conferences and continuing legal education programs.

Before joining Pomerantz, Josh practiced at McGuireWoods LLP and its Chicago predecessor, Ross & Hardies, where he represented one of the largest independent futures commission merchants in commodities fraud and civil RICO cases. He also spent two years as a securities trader, and continues to actively trade stocks, futures, and options for his own account.

Josh is a 1993 graduate of the University of Michigan, where he received Phi Beta Kappa honors, and a 1996 graduate of the University of Michigan Law School.

Josh is admitted to practice in Illinois, the United States District Court for the Northern District of Illinois, the United States Courts of Appeal for the First, Second, Third, Seventh, Eighth and Ninth Circuits, and the United States Supreme Court.

Leigh Handelman Smollar

Leigh Handelman Smollar, formerly Of Counsel to Pomerantz, was elevated to Partner in January 2012.

As a member of Pomerantz' Securities Litigation Group, Leigh plays a key role in litigating class actions against public companies for securities fraud. She recently achieved a settlement of $11,900,000 for the Class in a litigation against medical device company Thoratec Corporation alleging that the company misled investors about the safety of one of its primary products, the HeartMate II Left Ventricular Assist Device. *Cooper v. Thoratec Corp.*, No. 14-cv-360 (N.D. Cal.) She was an integral member of the litigation team that achieved a settlement of $19 million in cash and $1 million worth of shares of common stock on behalf of investors who suffered losses as the result of an alleged "pump and dump" scheme orchestrated by Galena Biopharma. *In re Galena Biopharma, Inc.*, No. 14-cv-00367 (D. Or.) Leigh is currently litigating *Luczak v. National Beverage Corp.*, No. 18-cv-61631 (S.D. Fla.); *Veal v. LendingClub Corp.*, No. 5:18-cv-02599 (N.D. Cal.); and *Brady v. Top Ships, Inc.*, No. 17-cv-04987 (E.D.N.Y.)

Leigh was a member of the Pomerantz team in its successful litigation on behalf of three New Mexico pension funds related to Countrywide's mortgage-backed securities, resulting in a very favorable confidential settlement. Leigh has been a member of the Pomerantz litigation team for many of the cases where significant settlements were obtained. *See In re Sealed Air Corp. Sec. Litig.*, No. 03-CV-4372 (D.N.J.) ($20 million settlement approved December 2009); and *In re Safety-Kleen Stockholders Sec. Litig.*, No. 00-736-17 (D.S.C.) (as Co-Lead Counsel, Firm obtained a $54.5 million settlement).

In 2015, Leigh published an article in the Loyola Law Journal entitled, *The Importance of Conducting Thorough Investigations of Confidential Witnesses in Securities Fraud Litigation*. She has authored several articles and updates for the Illinois Institute for Continuing Legal Education (IICLE), including *Shareholder Derivative Suits and Stockholder Litigation in Illinois*, published in IICLE Chancery and Special Remedies 2004 Practice Handbook; *Prosecuting Securities Fraud Class Actions*, published in IICLE Chancery and Special Remedies 2009 Practice Handbook, including a 2011 supplement to Chancery and Special Remedies; and a new chapter in the 2013 Edition of the Chancery and Special Remedies Practice Handbook. In June 2011, as a panelist at the Illinois Public Employee Retirement Systems Summit in Chicago, Illinois, Leigh gave a presentation entitled *Carrying out Fiduciary Responsibilities in Management and Investments*.

Leigh is a 1993 graduate of the University of Illinois at Champaign-Urbana, where she graduated from the School of Commerce with high honors, and a 1996 graduate of the Chicago-Kent College of Law. Leigh spent the next five years specializing in insurance defense litigation.

Leigh is admitted to practice in Illinois, the United States District Court for the Northern District of Illinois, and the United States Courts of Appeals for the Seventh and Eighth Circuits.

Matthew L. Tuccillo

Matthew L. Tuccillo joined Pomerantz in 2011 and was named a Partner in December 2013. He is responsible, on an ongoing basis, for the Firm's litigation of numerous securities fraud class actions pending nationwide, currently including: *In re Toronto-Dominion Bank Securities Litigation*, 1:17-cv-01735 (D.N.J.) and *Chun v. Fluor Corp., et al.*, No. 3:18-cv-01338-S (N.D. Tex.).

Mr. Tuccillo oversees and is the lead litigator on the Firm's securities fraud lawsuits arising from BP's 2010 Gulf oil spill, pending in Multidistrict Litigation 2185, *In re BP p.l.c. Secs. Litig.*, No. 4:10-md-2185 (S.D. Tex.). He briefed and argued successful oppositions to three rounds of BP's motions to dismiss the claims of roughly 100 institutional investors, drawing the court's praise for the "quality of lawyering," which it called "uniformly excellent." In leading the BP litigation, Mr. Tuccillo has secured some of the Firm's most ground-breaking rulings:

- He successfully argued that foreign and domestic investors had asserted viable "holder claims" seeking to recover investment losses due to their retention of already-owned shares in reliance upon the fraud, which is believed to be the first ruling by a U.S. court sustaining such a theory under English common law.

- He successfully argued against *forum non conveniens* dismissal, obtaining the first ruling after the Supreme Court's decision in *Morrison v. Nat'l Australia Bank Ltd.*, 130 S. Ct. 2869 (2010) to permit foreign investors pursuing foreign law claims to seek recovery for losses on a foreign stock exchange in a U.S. court.

- He successfully argued that the Securities Litigation Uniform Standards Act of 1998 (SLUSA), which extinguishes U.S. state law claims in deference to the U.S. federal securities laws, should not be extended to foreign common law claims being pursued by both domestic and foreign investors.

Mr. Tuccillo also fulfills Pomerantz's roles as MDL 2185 Individual Action Plaintiffs Steering Committee member and sole Liaison with BP and the Court. The Firm's BP clients include 32 public and private pension funds, investment management firms, limited partnerships, and investment trusts from the U.S., Canada, the U.K., France, the Netherlands, and Australia, seeking recovery for losses in BP's common stock (traded on the London Stock Exchange) and American Depository Shares (traded on the NYSE).

As the Firm's lead litigator in *Perez v. Higher One Holdings, Inc., et al.*, No. 14-cv-00755-AWT (D. Conn.), Mr. Tuccillo persuaded the court, after an initial dismissal, to uphold a second amended complaint that pled five separate threads of fraud over a multi-year period by an education funding company and its executives. Among other rulings, court agreed that the company's reported financial and operating results violated Regulation S-K, Item 303, 17 C.F.R. §229.303, for failure to disclose known trends regarding the underlying misconduct and its impacts on reported results – a rare ruling in the absence of any accounting restatement. He negotiated a $7.5 million class-wide settlement that was approved by the court.

As the Firm's lead litigator in *In re KaloBios Pharmaceuticals, Inc. Securities Litigation*, No. 15-cv-05841 (N.D. Cal.), Mr. Tuccillo negotiated two court-approved class-wide settlements worth over $3.25 million in the aggregate, from a bankrupt pharmaceutical company, its jailed former CEO, and two separate D&O insurers. Significantly, he secured payments of cash and stock directly from the bankrupt company, which also required bankruptcy court approval.

As the Firm's lead litigator in *In re Silvercorp Metals, Inc. Securities Litigation*, No. 1:12-cv-09456 (S.D.N.Y.), Mr. Tuccillo worked closely with mining, accounting, damages, and market efficiency experts to defeat a motion to dismiss and oversee discovery in a securities class action involving a Canadian company with mining operations in China and stock traded on the NYSE. After two mediations, the case was resolved for a $14 million all-cash fund. In granting final approval of the settlement, Judge Rakoff noted that the case was "unusually complex," given the technical nature of mining metrics, the need to compare mining standards in Canada, China, and the U.S., and the volume of Chinese-language evidence requiring translation.

Mr. Tuccillo's prior casework also includes litigation and resolution of complex disputes over roll ups of consulting companies and of commercial real estate interests. At Pomerantz, he was on the multi-firm team that litigated and settled *In re Empire State Realty Trust, Inc. Investor Litig.*, No. 650607/2012 (N.Y. Sup. Ct.), representing investors in public and private commercial real estate interests against the long-term lessees/operators, the Malkin family and the Estate of Leona Helmsley, regarding a proposed consolidation, REIT formation, and IPO centered around New York's iconic Empire State Building. These efforts achieved broad relief for the class, including a $55 million cash/securities settlement fund, a restructured deal creating a $100 million tax benefit, expansive remedial disclosures, and important deal protections.

Before joining Pomerantz, Mr. Tuccillo began his career at a large full-service Boston firm, litigating primarily for corporate clients. He also worked at plaintiff-side firms in Boston and Connecticut, litigating securities, consumer, and wage and hour class actions, as well as complex sale of business disputes. He has negotiated numerous multi-million dollar settlements, through both mediation and direct negotiation. His pro bono work includes securing Social Security benefits for a veteran suffering from non-service-related disabilities.

Mr. Tuccillo has been honored as a 2016 - 2019 Super Lawyers® "Top-Rated Securities Litigation Attorney," a recognition bestowed on 5% of eligible attorneys in the New York Metro area, after a rigorous process overseen by Thompson Reuters. In 2018, he was recognized by *Lawyer Monthly* as its Lawyer of the Year (U.S.A.) in the Federal Tort & Military category, based on a ten-point assessment including significance of legal matters, case value, legal expertise, innovation in client care, activity level, and peer recognition. Also in 2018, he was a New York honoree in both the National Trial Lawyers' Class Action Trial Lawyers Association Top 25 and in America's Top 100 High Stakes Litigators® for New York. Since 2016, he has been a recommended securities litigator by The Legal 500, which evaluates law firms worldwide for cutting edge, innovative work based on client feedback, practitioner interviews, and independent research. Since 2014, he has maintained Martindale-Hubbell's highest-available AV® Preeminent™ peer rating, scoring 5.0 out of 5.0 in Securities Law, Securities Class Actions, and Securities Litigation while being described as a "First class, top flight lawyer, especially in complex litigation."

Mr. Tuccillo graduated from the Georgetown University Law Center in 1999, where he made the Dean's List. He graduated from Wesleyan University in 1995, and among his various volunteer activities, he currently serves as President of the Wesleyan Lawyers Association.

Mr. Tuccillo is a member of the Bars of the Supreme Court of the United States; the State of New York; the State of Connecticut; the Commonwealth of Massachusetts; the Second and Ninth Circuit Courts of Appeals; and the United States District Courts for the Southern and Eastern District of New York, Connecticut, Massachusetts, the Northern District of Illinois, and the Southern District of Texas. He is regularly admitted to practice *pro hac vice* in state and federal courts nationwide.

Murielle Steven Walsh

Murielle Steven Walsh joined the Firm in 1998 and was elevated to Partner in 2007. She was honored as a 2019 Super Lawyers® "Top-Rated Securities Litigation Attorney," a recognition bestowed on 5% of eligible attorneys in the New York Metro area. Murielle was also recognized as a 2018 Lawyer of Distinction, an honor bestowed upon less than 10% of attorneys in any given state.

During her career at Pomerantz, Murielle has prosecuted highly successful securities class action and corporate governance cases. She was one of the lead attorneys litigating *In re Livent Noteholders' Securities Litigation*, a securities class action in which she obtained a $36 million judgment against the company's top officers, a ruling which was upheld by the Second Circuit on appeal. Murielle was also part of the team litigating *EBC I v. Goldman Sachs*, where the Firm obtained a landmark ruling from the New York Court of Appeals, that underwriters may owe fiduciary duties to their issuer clients in the context of a firm-commitment underwriting of an initial public offering.

Murielle currently leads the high-profile securities class action against Wynn Resorts Ltd., in which Pomerantz is lead counsel. The litigation arises from the company's concealment of a long-running pattern of sexual misconduct against Wynn employees by billionaire casino mogul Stephen Wynn, the company's founder and former Chief Executive Officer. *Ferris v. Wynn Resorts Ltd.*, No. 18-cv-479 (D. Nev.). She also leads the Firm's ground-breaking litigation arising from the popular Pokémon Go game, in which Pomerantz is lead counsel. Pokémon Go is an "augmented reality" game in which players use their smart phones to "catch" Pokémon in real-world surroundings. GPS coordinates provided by

defendants to gamers included directing the public to private property without the owners' permission, amounting to an alleged mass nuisance. *In re Pokémon Go Nuisance*, No. 3:16-cv-04300 (N.D. Cal.)

Murielle was co-lead counsel in *Thorpe v. Walter Investment Management Corp.*, No. 14-cv-20880 (S.D. Fla.), a securities fraud class action challenging the defendants' representations that their lending activities were regulatory-compliant, when in fact the company's key subsidiary engaged in rampant violations of federal consumer financial protection laws, subjecting it to various government investigations and a pending enforcement action by the CFPB and FTC. In 2016, the Firm obtained a $24 million settlement on behalf of the class. She is also co-lead counsel in *Robb v. Fitbit Inc.*, No. 16-cv-00151 (N.D. Cal.), a securities class action alleging that the defendants misrepresented that their key product delivered "highly accurate" heart rate readings when in fact their technology did not consistently deliver accurate readings during exercise and its inaccuracy posed serious health risks to users of Fitbit's products. The Firm obtained a $33 million settlement on behalf of the investor class in this action.

In 2018 Murielle, along with then-Senior Partner Jeremy Lieberman, achieved a $3,300,000 settlement for the Class in the Firm's case against Corinthian Colleges, one of the largest for-profit college systems in the country, for alleged misrepresentations about its job placement rates, compliance with applicable regulations, and enrollment statistics. Pomerantz prevailed in the motion to dismiss the proceedings, a particularly noteworthy victory because Chief Judge George King of the Central District of California had dismissed two prior lawsuits against Corinthian with similar allegations. *Erickson v. Corinthian Colleges, Inc.*, No. 2:13-cv-07466 (C.D. Cal.).

Murielle serves as a member and on the Executive Committee of the Board of Trustees of the non-profit organization Court Appointed Special Advocates for Children ("CASA") of Monmouth County. She also serves on the Honorary Steering Committee of Equal Rights Advocates ("ERA"), which focuses on and discusses specific issues that women face in the legal profession. ERA is an organization that protects and expands economic and educational access and opportunities for women and girls. In the past, Murielle served as a member of the editorial board for Class Action Reports, a Solicitor for the Legal Aid Associates Campaign, and has been involved in political asylum work with the Association of the Bar of the City of New York.

Murielle serves on the Firm's Anti-Harassment and Discrimination Committee.

Murielle graduated *cum laude* from New York Law School in 1996, where she was the recipient of the Irving Mariash Scholarship. During law school, Murielle interned with the Kings County District Attorney and worked within the mergers and acquisitions group of Sullivan & Cromwell.

Murielle is admitted to practice in New York, the United States District Court for the Southern District of New York, the United States Court of Appeals for the Second Circuit and the United States Court of Appeals for the Sixth Circuit.

Tamar A. Weinrib

Tamar A. Weinrib joined Pomerantz in early 2008. She was Of Counsel to the Firm from 2014 through 2018 and was elevated to Partner in 2019. Tamar was named a 2018 Rising Star under 40 years of age by Law360, a prestigious honor awarded to a select few "top litigators and dealmakers practicing at a level

usually seen from veteran attorneys." Tamar has been recognized by Super Lawyers® as a New York Metro Rising Star every year from 2014 through 2019.

In 2019, Tamar and Managing Partner Jeremy Lieberman achieved a $27 million settlement for the Class in *Strougo v. Barclays PLC*, a high-profile securities class action in which Pomerantz was Lead Counsel. Plaintiffs alleged that Barclays PLC misled institutional investor clients about the extent of the banking giant's use of so-called "dark pool" trading systems. This case turned on the duty of integrity owed by Barclays to its clients. In November 2016, Tamar and Jeremy achieved precedent-setting victories for investors, when the Second Circuit Court of Appeals held that direct evidence of price impact is not always necessary to demonstrate market efficiency to invoke the presumption of reliance, and that defendants seeking to rebut the presumption of reliance must do so by a preponderance of the evidence rather than merely meeting a burden of production. In 2018, Tamar successfully opposed Defendants' petition to the Supreme Court for a writ of certiorari.

In approving the settlement in *Strougo v. Barclays PLC* in June 2019, Judge Victor Marrero of the Southern District of New York stated:

> Let me thank counsel on both sides for the extraordinary work both sides did in bringing this matter to a reasonable conclusion. As the parties have indicated, the matter was intensely litigated, but it was done in the most extraordinary fashion with cooperation, collaboration, and high levels of professionalism on both sides, so I thank you.

Tamar was the attorney responsible for the litigation of *In re Delcath Systems, Inc. Securities Litigation*, in which Pomerantz achieved a settlement of $8,500,000 for the Class. She successfully argued before the Second Circuit in *In re China North East Petroleum Securities Litigation,* to reverse the district court's dismissal of the defendants on scienter grounds. In addition to her involvement in several other securities matters pending nationwide, Tamar is the Pomerantz attorney responsible for the litigation of *KB Partners I, L.P. v. Pain Therapeutics, Inc.*, a securities fraud case for which Judge Sparks of the Western District of Texas granted final approval for a settlement of up to $8,500,000 for class members.

Before coming to Pomerantz, Tamar had over three years of experience as a litigation associate in the New York office of Clifford Chance US LLP, where she focused on complex commercial litigation. Tamar has successfully tried pro bono cases, including two criminal appeals and a housing dispute filed with the Human Rights Commission.

Tamar graduated from Fordham University School of Law in 2004 and, while there, won awards for successfully competing in and coaching Moot Court competitions.

Tamar is admitted to practice in New York, the United States District Courts for the Southern and Eastern Districts of New York, and the United States Courts of Appeals for the Second, Third, Fourth, and Ninth Circuits.

Michael J. Wernke

Michael J. Wernke joined Pomerantz as Of Counsel in 2014 and was elevated to Partner in 2015.

Michael led the litigation in *Pirnik v. Fiat Chrysler Automobiles N.V. et al.*, No. 1:15-cv-07199-JMF (S.D.N.Y), in which the Firm, as Lead Counsel, recently achieved a $110 million settlement for the class. This high-profile securities class action alleges that Fiat Chrysler concealed from investors that it improperly outfitted its diesel vehicles with "defeat device" software designed to cheat NOx emissions regulations in the U.S. and Europe, and that regulators had accused Fiat Chrysler of violating the emissions regulations. The *Fiat Chrysler* recovery provides the class of investors with as much as 20% of recoverable damages—an excellent result when compared to historical statistics in class action settlements, where typical recoveries for cases of this size are between 1.6% and 3.3%.

In December 2018, Michael, along with Pomerantz Managing Partner Jeremy A. Lieberman, secured a $31 million partial settlement with three defendants in *In re Libor Based Financial Instruments Antitrust Litigation*, a closely watched multi-district litigation, which concerns the LIBOR rigging scandal.

In October 2018, Michael secured a $15 million settlement in *In re Symbol Technologies, Inc. Securities Litigation*, No. 2:05-cv-03923-DRH-AKT (E.D.N.Y.), a securities class action that alleges that, following an accounting fraud by prior management, Symbol's management misled investors about state of its internal controls and the Company's ability to forecast revenues.

He was Lead Counsel in *Thomas v. Magnachip Semiconductor Corp.*, in which he achieved a $23.5 million partial settlement with certain defendants, securing the settlement despite an ongoing investigation by the Securities and Exchange Commission and shareholder derivative actions. He played a leading role in *In re Lumber Liquidators, Inc. Securities Litigation*, in which Pomerantz, as Co-Lead Counsel, achieved a settlement of $26 million in cash and 1,000,000 shares of Lumber Liquidators common stock for the Class. Michael also secured a $7 million settlement (over 30% of the likely recoverable damages) in the securities class action *Todd v. STAAR Surgical Company, et. al.*, No. 14-cv-05263-MWF-RZ (C.D. Cal.), which alleged that STAAR concealed from investors violations of FDA regulations that threatened the approval of STAAR's long awaited new product.

In the securities class action *In re Atossa Genetics, Inc. Securities Litigation*, No. 13-cv-01836-RSM (W.D. Wash.), Michael secured a decision by the Ninth Circuit Court of Appeals that reversed the district court's dismissal of the complaint. The Ninth Circuit held that the CEO's public statements that the company's flagship product had been approved by the FDA were misleading despite the fact that the company's previously filed registration statement stated that that the product did not, at that time, require FDA approval.

Michael is also Lead Counsel in the securities class action *Zwick Partners, LP v. Quorum Health Corp., et al.*, No. 3:16-cv-2475, which alleges that defendants misrepresented to investors the poor prospects of hospitals that the parent company spun-off into a stand-alone company. In defeating the defendants' motions to dismiss the complaint, Michael successfully argued that company from which Quorum was spun-off was a "maker" of the false statements even though all the alleged false statements concerned only Quorum's financials and the class involved only purchasers of Quorum's common stock.

During the nine years prior to coming to Pomerantz, Michael was a litigator with Cahill Gordon & Reindel LLP, with his primary focus in the securities defense arena, where he represented multinational financial institutions and corporations, playing key roles in two of only a handful of securities class actions to go to jury verdict since the passage of the PSLRA.

In 2019, Michael was honored as a Super Lawyers® "Top Rated Securities Litigation Attorney." In 2014 and 2015, he was recognized as a Super Lawyers® New York Metro Rising Star.

Michael received his J.D. from Harvard Law School in 2004. He also holds a B.S. in Mathematics and a B.A. in Political Science from Ohio State University, where he graduated *summa cum laude*.

He serves on the Firm's Anti-Harassment and Discrimination Committee.

Michael is admitted to practice in the State of New York and the United States District Court for the Southern District of New York.

Senior Counsel

Marc I. Gross

Marc I. Gross has been with Pomerantz LLP for over four decades, serving as its Managing Partner from 2009 to 2016. During that time frame, Marc led securities lawsuits against SAC Capital (Steven Cohen - insider trading); Chesapeake Energy (Aubrey McClendon - insider bail out); Citibank (analyst Jack Grubman - AT&T research report upgrade to facilitate underwriting role); Charter Communications (Paul Allen - accounting fraud); and numerous others. He also litigated the market efficiency issues in the firm's landmark $3 billion recovery in *Petrobras*.

Marc is the President-Elect of the Institute of Law and Economic Policy ("ILEP"), which has organized symposiums each year where leading academics have presented papers on securities law and consumer protection issues. These papers have been cited in over 60 cases, including several in the United States Supreme Court. http://www.ilep.info.

Marc has addressed numerous forums in the United States on shareholder-related issues, including ILEP; Loyola University Chicago School of Law's Institute for Investor Protection Conference; the National Conference on Public Employee Retirement Systems' ("NCPERS") Legislative Conferences; PLI conferences on Current Trends in Securities Law; and a panel entitled *Enhancing Consistency and Predictability in Applying Fraud-on-the-Market Theory*, sponsored by the Duke Law School Center for Judicial Studies.

Marc is also valued by foreign investors for his expertise, having addressed the Tel Aviv Institutional Investors Forum, the National Association of Pension Funds Conference in Edinburgh, and law students at Bar Ilan University in Tel Aviv.

Among other articles, Marc co-authored, with Jeremy Lieberman, *Back to Basic(s): Common Sense Trumps Econometrics*, N.Y.L.J. (Jan. 8, 2018); *Class Certification in a Post-Halliburton II World*, 46 Loyola-Chicago L.J. 485 (2015); and *Loser-Pays - or Whose "Fault" Is It Anyway: A Response to Hensler-Rowe's "Beyond 'It Just Ain't Worth It,'"* 64 L. & Contemp. Probs. 163 (Duke Law School 2001).

Marc is also a Board member of T'ruah, The Rabbinic Call for Human Rights, and graduate of NYU Law '76 and Columbia College '73.

Marc is admitted to practice in New York, the United States District Courts for the Southern and Eastern Districts of New York, the United States Courts of Appeals for the First, Second, Eighth, and Ninth Circuits, and the United States Supreme Court.

Marc has been honored as a Super Lawyers® "Top Rated Securities Litigation Attorney" from 2006 through 2009 and from 2013 through 2019.

Marc serves on the Firm's Anti-Harassment and Discrimination Committee.

Stanley M. Grossman

Stanley M. Grossman, Senior Counsel, is the former Managing Partner of Pomerantz. He is recognized as a leader in the plaintiffs' securities bar. He was selected by *Super Lawyers®* as an outstanding attorney in the United States for the years 2006 through 2011 and was featured in the *New York Law Journal* article *Top Litigators in Securities Field -- A Who's Who of City's Leading Courtroom Combatants*. Stan has litigated securities (individual and class), derivative, and antitrust actions with the Firm for 39 years.

Stan has primarily represented plaintiffs in securities and antitrust class actions, including many of those listed in the Firm biography. *See, e.g., Ross v. Bernhard*, 396 U.S. 531 (1970); *Rosenfeld v. Black*, 445 F.2d 137 (2d Cir. 1971); *Wool v. Tandem Computers, Inc.*, 818 F.2d 1433 (9th Cir. 1987); and *In re Salomon Bros. Treasury Litig.*, 9 F.3d 230 (2d Cir. 1993). In 2008 he appeared before the United States Supreme Court to argue that scheme liability is actionable under Section 10(b) and Rule 10b-5(a) and (c). *See StoneRidge Inv. Partners, LLC v. Sci.-Atlanta, Inc.*, No. 06-43 (2008). Other cases where he was the Lead or Co-Lead Counsel include: *In re Salomon Brothers Treasury Litigation*, No. 91 Civ. 5471 (S.D.N.Y. 1994) ($100 million cash recovery); *In re First Executive Corporation Securities Litigation*, No. CV-89-7135 (C.D. Cal. 1994) ($100 million settlement); and *In re Sorbates Direct Purchaser Antitrust Litigation*, No. C98-4886 (N.D. Cal. 2000) (over $80 million settlement for the class).

In 1992, Senior Judge Milton Pollack of the Southern District of New York appointed Stan to the Executive Committee of counsel charged with allocating to claimants hundreds of millions of dollars obtained in settlements with Drexel Burnham & Co. and Michael Milken.

Many courts have acknowledged the high quality of legal representation provided to investors by Stan. In *Gartenberg v. Merrill Lynch Asset Management, Inc.*, No. 79 Civ. 3123 (S.D.N.Y.), where Stan was lead trial counsel for plaintiff, Judge Pollack noted at the completion of the trial:

> [I] can fairly say, having remained abreast of the law on the factual and legal matters that have been presented, that I know of no case that has been better presented so as to give the Court an opportunity to reach a determination, for which the court thanks you.

Stan was also the lead trial attorney in *Rauch v. Bilzerian* (N.J. Super. Ct.) (directors owed the same duty of loyalty to preferred shareholders as common shareholders in a corporate takeover), where the court described the Pomerantz team as "exceptionally competent counsel." He headed the six week trial on liability in *Walsh v. Northrop Grumman* (E.D.N.Y.) (a securities and ERISA class action arising from Northrop's takeover of Grumman), after which a substantial settlement was reached.

Stan frequently speaks at law schools and professional organizations. In 2010, he was a panelist on *Securities Law: Primary Liability for Secondary Actors*, sponsored by the Federal Bar Council, and he presented *Silence Is Golden – Until It Is Deadly: The Fiduciary's Duty to Disclose*, at the Institute of American and Talmudic Law. In 2009, Stan was a panelist on a Practicing Law Institute "Hot Topic Briefing" entitled StoneRidge - *Is There Scheme Liability or Not?*

Stan served on former New York State Comptroller Carl McCall's Advisory Committee for the NYSE Task Force on corporate governance. He is a former president of NASCAT. During his tenure at NASCAT, he represented the organization in meetings with the Chairman of the Securities and Exchange Commission and before members of Congress and of the Executive Branch concerning legislation that became the PSLRA.

Stan served for three years on the New York City Bar Association's Committee on Ethics, as well as on the Association's Judiciary Committee. He is actively involved in civic affairs. He headed a task force on behalf of the Association, which, after a wide-ranging investigation, made recommendations for the future of the City University of New York. He serves on the board of the Appleseed Foundation, a national public advocacy group.

Stan is admitted to practice in New York, the United States District Courts for the Southern and Eastern Districts of New York, Central District of California, Eastern District of Wisconsin, District of Arizona, District of Colorado, the United States Courts of Appeals for the First, Second, Third, Ninth and Eleventh Circuits, and the United States Supreme Court.

Of Counsel

Brian Calandra

Brian Calandra joined Pomerantz in June 2019 as Of Counsel. He has extensive experience in securities, antitrust, complex commercial, and white-collar matters in federal and state courts nationwide. Brian has represented issuers, underwriters, and individuals in securities class actions involving the financial, telecommunications, real estate, and pharmaceutical industries. He has also represented financial institutions in antitrust class actions concerning foreign exchange; supra-national, sub-sovereign and agency bonds; bonds issued by the government of Mexico; and credit card fees.

Brian has written multiple times on developments in securities law and other topics, including co-authoring an overview of insider trading law and enforcement for *Practical Compliance & Risk Management for the Securities Industry*, co-authoring an analysis of anti-corruption compliance risks posed by sovereign wealth funds for *Risk & Compliance*, and authoring an analysis of the effects of the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act on women in bankruptcy for the *Women's Rights Law Reporter*.

Before joining Pomerantz, Brian was a litigation associate at Shearman & Sterling LLP. Brian graduated from Rutgers School of Law-Newark in 2009, *cum laude*, Order of the Coif. While at Rutgers, Brian was co-editor-in-chief of the *Women's Rights Law Reporter* and received the Justice Henry E. Ackerson Prize

for Distinction in Legal Skills and the Carol Russ Memorial Prize for Distinction in Promoting Women's Rights.

Brian is admitted to practice in the State of New York, the State of New Jersey, the United States Supreme Court, the Third Circuit Court of Appeals, and the United States District Courts for the Southern District of New York, Eastern District of New York, Northern District of New York and District of New Jersey.

Cara David

Cara David focuses her practice on securities fraud litigation.

Prior to joining Pomerantz, she was an associate at both Schulte Roth & Zabel LLP and Cadwalader, Wickersham & Taft LLP. Cara represented defendants in some of the highest profile securities class actions in the last decade. She also has extensive government investigation experience. Cara was named a Super Lawyers® New York Metro Rising Star from 2017-2019 and was the recipient of Schulte's pro bono service award from 2014-2018.

Cara graduated from Cardozo School of Law in an accelerated 2 ½ year program. During law school, she served on Law Review and participated in the Mediation Clinic. She was awarded a Dean's Merit Scholarship and named to Order of the Coif.

Cara is a proud graduate of Wellesley College and is very active in alumnae activities.

Cara is admitted to practice in the States of New York, New Jersey and Connecticut; the United States District Courts for the Southern District of New York, Eastern District of New York and District of New Jersey; and the U.S. Courts of Appeals for the Second and Third Circuits.

J. Alexander Hood II

J. Alexander Hood II joined Pomerantz in June 2015 and was elevated to Of Counsel to the Firm in 2019. Alex leads the Firm's case origination team, identifying and investigating potential violations of the federal securities laws. He was honored in 2019 as a Super Lawyers® Rising Star.

Alex played a key role in securing Pomerantz's appointment as Lead Counsel in actions against Yahoo! Inc., Fiat Chrysler Automobiles N.V., Wynn Resorts Limited, Mylan N.V., The Western Union Company, Perrigo Company plc, Blue Apron Holdings, Inc., AT&T Inc., and Allergan plc, among others.

Alex also assists Pomerantz clients with respect to evaluating and pursuing recovery in foreign jurisdictions, including matters in the Netherlands, Germany, the UK, Australia, Denmark, and elsewhere.

Prior to joining Pomerantz, Alex practiced at Alston & Bird LLP and Bernstein Litowitz Berger & Grossmann LLP, where he was involved in commercial, financial services, corporate governance and securities matters.

Alex graduated from Boston University School of Law (J.D.) and from the University of Oregon School of Law (LL.M.). During law school, he served as a member of the Boston University Review of Banking & Financial Law and participated in the Thomas Tang Moot Court Competition. In addition, Alex clerked for the American Civil Liberties Union of Tennessee and, as a legal extern, worked on the Center for Biological Diversity's Clean Water Act suit against BP in connection with the Deepwater Horizon oil spill.

Alex is admitted to practice in the State of New York and the United States District Courts for the Southern, Eastern and Northern Districts of New York, the District of Colorado, the Eastern District of Michigan, the Northern District of Illinois, and the Southern District of Texas.

Louis C. Ludwig

Louis C. Ludwig joined Pomerantz in April 2012 and was elevated to Of Counsel in 2019. He has been honored as a 2016 and 2017 Super Lawyers® "Rising Star" and as a 2018 and 2019 Super Lawyers® "Top-Rated Securities Litigation Attorney."

Louis focuses his practice on securities fraud litigation, and has served as a member of the litigation team in multiple actions that concluded in successful settlements for the Class, including *Satterfield v. Lime Energy Co.*, (N.D. Ill.); *Blitz v. AgFeed Industries, Inc.* (M.D. Tenn.); *Frater v. Hemispherx Biopharma, Inc.* (E.D. Pa.); *Bruce v. Suntech Power Holdings Co.* (N.D. Cal.); *In re: Groupon, Inc. Securities Litigation* (N.D. Ill.); *Flynn v. Sientra, Inc.* (C.D. Cal.); *Thomas v. MagnaChip Semiconductor Corp.* (N.D. Cal.); *In re: AVEO Pharmaceuticals, Inc. Securities Litigation* (N.D. Cal.); and *In re: Akorn, Inc. Securities Litigation* (N.D. Ill.).

Louis graduated from Rutgers University School of Law in 2007, where he was a Dean's Law Scholarship Recipient. He served as a law clerk to the Honorable Arthur Bergman, Superior Court of New Jersey. Prior to joining Pomerantz, Louis specialized in litigating consumer protection class actions at Bock & Hatch LLC in Chicago, Illinois.

Louis is admitted to practice in New Jersey, Illinois, the United States Courts of Appeal for the Seventh and Ninth Circuits, and the United States District Courts for the District of New Jersey and the Northern District of Illinois.

H. Adam Prussin

Adam Prussin specializes in securities litigation and has extensive experience in derivative actions. He was special litigation counsel in the derivative actions on behalf of Summit Metals, Inc., actions which resulted in entry of a judgment, after trial, of $43 million in cash, plus an order transferring the stock of two multi-million-dollar companies to the plaintiff.

Adam has published several articles on the subject of the standards and procedures for the maintenance or dismissal of derivative actions, including *Termination of Derivative Suits Against Directors on Business Judgment Grounds: From* Zapata *to* Aronson, 39 Bus. Law. 1503 (1984); *Dismissal of Derivative Actions Under the Business Judgment Rule:* Zapata *One Year Later*, 38 Bus. Law. 401 (1983); and *The Business Judgment Rule and Shareholder Derivative Actions: Viva* Zapata*?* 37 Bus. Law. 27 (1981). In June 2009 he

spoke at the 6th Annual Securities Litigation Conference in New York, participating in the panel discussion, *From Behind Enemy Lines: The Perspective of Two Prominent Plaintiff Attorneys*.

Before joining the Firm, Adam was a named partner in Silverman, Harnes, Harnes, Prussin & Keller, which specializes in representing plaintiffs in shareholder derivative and class action litigation, particularly those involving self-dealing by corporate officers, directors and controlling shareholders. He played a key role in several landmark derivative cases in the Delaware courts, and has appeared frequently before the Delaware Supreme Court.

Adam graduated *cum laude* from Yale College in 1969 and, after obtaining a master's degree from the University of Michigan in 1971, received his J.D. degree from Harvard Law School in 1974.

Adam is admitted to practice in New York, the United States District Courts for the Southern and Eastern Districts of New York, and the United States Courts of Appeals for the Second, Ninth and D.C. Circuits.

Brenda Szydlo

Brenda Szydlo joined Pomerantz in January 2016 as Of Counsel. She brings to the Firm thirty years of experience in complex civil litigation in federal and state court on behalf of plaintiffs and defendants, with a particular focus on securities and financial fraud litigation, litigation against pharmaceutical corporations, accountants' liability, and commercial litigation.

Brenda played a leading role in the Firm's securities class action case in the Southern District of New York against Brazil's largest oil company, Petrobras, arising from a multi-billion-dollar kickback and bribery scheme, in which the Firm, as sole Lead Counsel, achieved a precedent-setting legal ruling and a historic $3 billion settlement for the Class. This is not only the largest securities class action settlement in a decade but is the largest settlement ever in a securities class action involving a foreign issuer, the fifth-largest securities class action settlement ever achieved in the United States, the largest securities class action settlement achieved by a foreign Lead Plaintiff, and the largest securities class action settlement in history not involving a restatement of financial reports.

Brenda has represented investors in additional class and private actions that have resulted in significant recoveries, such as *In re Pfizer, Inc. Securities Litigation*, where the recovery was $486 million, and *In re Refco, Inc. Securities Litigation*, where the recovery was in excess of $407 million. She has also represented investors in opt-out securities actions, such as *In re Bank of America Corp. Securities, Derivative & ERISA Litigation*.

Prior to joining Pomerantz, Brenda served as Senior Counsel at Grant & Eisenhofer P.A., where she represented plaintiffs in securities and financial fraud litigation, and litigation against pharmaceutical corporations and accounting firms. Brenda also served as Counsel in the litigation department of Sidley Austin LLP in New York, and its predecessor, Brown & Wood LLP, where her practice focused on securities litigation and enforcement, accountants' liability defense, and commercial litigation.

Brenda is a 1988 graduate of St. John's University School of Law, where she was a St. Thomas More Scholar and member of the Law Review. She received a B.A. in economics from Binghamton University in 1985.

Brenda is admitted to practice in the State of New York; United States District Courts for the Southern and Eastern Districts of New York; the U.S. Courts of Appeals for the Second and Ninth Circuits; and the United States Supreme Court.

Nicolas Tatin

French lawyer Nicolas Tatin joined Pomerantz in April 2017 as Of Counsel. He heads the Firm's Paris office and serves as its Director-Business Development Consultant for France, Benelux, Monaco and Switzerland. Nicolas advises institutional investors in the European Union on how best to evaluate losses to their investment portfolios attributable to financial misconduct, and how best to maximize their potential recoveries in U.S. and international securities litigations.

Nicolas was previously a financial lawyer at ERAFP, France's €24bn pension and retirement fund for civil servants, where he provided legal advice on the selection of management companies and the implementation of mandates entrusted to them by ERAFP.

Nicolas began his career at Natixis Asset Management, before joining BNP Paribas Investment Partners, where he developed expertise in the legal structuring of investment funds and acquired a global and cross-functional approach to the asset management industry.

Nicolas graduated in International law and received an MBA from IAE Paris, the Sorbonne Graduate Business School.

Austin P. Van

Austin P. Van joined Pomerantz in January 2017 as Of Counsel. He brings to the Firm experience in a variety of federal and state securities law matters, including disputes involving publicly traded stocks, RMBS and other ABS, securities lending disputes, and breach-of-trust matters arising in the securities law context. Austin was honored in 2018 and 2019 as a Super Lawyers® Rising Star.

Austin also has experience in complex commercial litigation, including contract disputes, business torts, consumer fraud, and antitrust matters. He has represented investment banks and other financial sector clients, as well as public and private companies in the technology, energy, pharmaceutical, telecommunications and shipping industries, among others. Austin was previously an associate at WilmerHale and at Cravath, Swaine & Moore, both in New York City.

Austin received a J.D. from Yale Law School, where he was an editor of the Yale Law Journal and the Yale Journal of International Law. He has a B.A. from Yale University and an M.Sc. from the London School of Economics.

Austin is admitted to practice law in the State of New York; the United States District Courts for the Southern and Eastern Districts of New York; and the U.S. Court of Appeals for the First Circuit.

Associates

Samuel J. Adams

Samuel J. Adams focuses his practice on corporate governance litigation.

Mr. Adams was previously an associate at Robbins Geller Rudman & Dowd LLP, where he focused his practice on securities fraud litigation and other complex matters. He has been recognized as a Super Lawyers® "Rising Star" for the New York Metro area for every year from 2015 through 2019.

Sam is a 2009 graduate of the University of Louisville Louis D. Brandeis School of Law. While in law school, he was a member of the National Health Law Moot Court Team. He also participated in the Louis D. Brandeis American Inn of Court.

Sam is admitted to practice in New York, the United States District Courts for the Southern, Northern, and Eastern Districts of New York, and the United States District Court for the Eastern District of Wisconsin.

Ari Y. Basser

Ari Y. Basser focuses his practice on strategic consumer litigation.

Prior to joining Pomerantz, Ari was an associate at major litigation law firms in Los Angeles. Ari also worked as a Law Clerk in the Economic Crimes Unit of the Santa Clara County Office of the District Attorney. Ari has litigated antitrust violations, product defect matters, and a variety of fraud and misrepresentation cases brought under state and federal consumer protection statutes involving unfair competition and false advertising. He has also been deputized in private attorneys general enforcement actions to recover civil penalties from corporations, on behalf of the State of California, for violations of the Labor Code.

Ari is a contributing author to the Competition Law Journal, the official publication of the Antitrust, UCL, and Privacy Section of the State Bar of California, where he has examined trends in antitrust litigation and the regulatory authority of the Federal Trade Commission.

Ari received dual degrees in Economics and Psychology from the University of California, San Diego in 2004. He earned his Juris Doctor in 2010 from Santa Clara University School of Law.

Ari is a member of the State Bar of California and has been admitted to practice before the United States District Courts for the Northern, Southern, Central and Eastern Districts of California.

Jessica N. Dell

Jessica Dell focuses her practice on securities fraud litigation.

She has worked on dozens of cases at Pomerantz, including the Firm's securities fraud lawsuits arising from BP's 2010 Gulf oil spill, pending in Multidistrict Litigation. Jessica has expertise in

managing discovery and a nose for investigating complex fraud across many sectors, including pharmaceuticals, medical devices, and data security. True to her roots in public interest law, she has also worked in complex pro bono class action litigation at Pomerantz.

Jessica graduated from CUNY School of Law in 2005. She was the recipient of an Everett fellowship for her work at Human Rights Watch. She also interned at the Urban Justice Center and National Advocates for Pregnant Women. While in the CUNY clinical program, she represented survivors of domestic violence facing deportation and successfully petitioned under the Violence Against Women Act. She also successfully petitioned for the release of survivors incarcerated as drug mules in Central America. After Hurricane Katrina, Jessica traveled to Louisiana to aid emergency efforts to reunite families and restore legal process for persons lost in the prison system weeks after the flood.

Jessica is a member of the New York City and State Bar Associations and the National Lawyers Guild.

Marc C. Gorrie

Marc C. Gorrie joined Pomerantz in 2014. He focuses his practice on securities fraud litigation and is actively involved in the Firm's securities lawsuit concerning Petróleo Brasileiro S.A.- Petrobras. As a member of the Firm's new matter group, he identifies and investigates potential violations of the federal securities laws.

Prior to joining the Firm, Marc focused his practice on a major securities fraud litigation with a prominent New York law firm. He was actively engaged in legal outreach for the Center for Seafarers' Rights of the Seamen's Church Institute of New York and New Jersey. Marc has previously served as a consultant for an EU development project on the rule of law in Gambia. He has authored articles on international humanitarian and human rights law published by organizations including the Foreign Policy Association and the Revue de Droit Comparé du Travail et de la Sécurité Sociale. Marc currently serves a member of the Ambassadors Advisory Group for One to One International Consulting, an international aid and development consulting firm headquartered in Ghana.

Marc is a 2010 graduate of Indiana University Maurer School of Law - Bloomington (J.D.) where he held a research fellowship in legal ethics and was consistently on the Dean's List. He is a 2012 graduate of University of Lund, Sweden (LLM, in conjunction with the Raoul Wallenberg Institute of Human Rights and Humanitarian Law) where he earned honors marks, lectured on U.S. Legal Ethics and on Federal Indian Law, and delivered his thesis on the interaction of tribal, state, federal, and international human rights and labor laws in the United States. Marc is a 2005 graduate of Sarah Lawrence College with a BA in Liberal Arts.

Marc is admitted to practice in New Jersey and the United States District Court, District of New Jersey.

Aatif Iqbal

Aatif Iqbal focuses his practice on securities fraud litigation.

Before joining Pomerantz, Aatif was a litigation associate at Cleary Gottlieb Steen & Hamilton LLP, where his practice involved bankruptcy, securities, and complex commercial litigation matters. Aatif also served

as a law clerk for the Honorable Patricia A. Seitz, United States District Judge for the Southern District of Florida.

Aatif graduated cum laude from Harvard Law School, where he earned a Dean's Scholarship in First Amendment Law and served as Managing Editor of the Harvard International Law Journal and Managing Technical Editor of the Harvard Human Rights Journal. He graduated cum laude from Yale University with a B.A. in Political Science.

Aatif is admitted to practice in New York.

Omar Jafri

Omar Jafri's practice focuses on securities fraud litigation. Omar played an integral role in *In re Juno Therapeutics, Inc. Securities Litigation*, in which the Firm, as Lead Counsel, achieved a $24 million settlement for the Class in 2018. Omar also played an integral role where Pomerantz was Lead or Co-Lead Counsel in *In re Aveo Pharmaceuticals, Inc. Securities Litigation* ($18 million settlement, which was more than four times larger than the SEC's fair fund recovery in its parallel litigation); *Sudunagunta v. NantKwest, Inc.* ($12 million settlement); and *Thomas v. MagnaChip Semiconductor Corp. Securities Litigation* ($6.2 million settlement with majority shareholder, Avenue Capital). Omar currently plays a key role in the Firm's representation of investors in connection with several complex cases that involve billions of dollars in damages.

During the last several years, Omar has litigated major disputes on behalf of institutional investors arising out of the credit crisis, including disputes relating to Collateralized Debt Obligations, Residential Mortgage-Backed Securities, Credit Default Swaps and other complex financial investments. He also has provided pro bono representation to several individuals charged with first-degree murder and attempted murder in the State and Federal courts of Illinois.

Before joining Pomerantz LLP, Omar was a law clerk to Judge William S. Duffey, Jr. of the United States District Court for the Northern District of Georgia. He was also an associate at Jenner & Block LLP's Chicago Office, where he represented clients in a wide variety of matters, including securities litigation, complex commercial litigation, white collar criminal defense, and internal investigations.

Omar graduated, *magna cum laude* and *Order of the Coif*, from the University of Illinois College of Law, where he was a Harno Scholar and a recipient of the Rickert Award for Excellence in Advocacy. He received his B.A. from the University of Texas at Austin, where he was on the Dean's Honor List and the University Honors List.

Omar is admitted to practice in Illinois, the United States District Courts for the Northern District of Illinois and the Northern District of Indiana, and the United States Court of Appeals for the Ninth Circuit.

Jonathan Lindenfeld

Jonathan Lindenfeld focuses his practice on securities fraud litigation. Prior to joining Pomerantz, Jonathan was an associate at a national plaintiffs' securities litigation firm where he focused on securities fraud litigation and stockholder derivative suits.

Jonathan graduated *cum laude* from Hofstra University School of Law in 2015, where he received Honors in Business Law, was awarded Merit Based Scholarships, and was on the Dean's Honor List. While in law school, Jonathan gained experience in the U.S. Attorney's Office for the Eastern District of New York and a boutique law firm specializing in forex and derivative exchanges. Jonathan also served as an editor of the Hofstra Journal of International Business and Law. Jonathan earned a Bachelor of Arts in Economics from City University of New York-Queens College in 2012.

In 2015, Jonathan published "The CFTC's Substituted Compliance Approach: An Attempt to Bring About Global Harmony and Stability in the Derivatives Market," in the Journal of International Business and Law: Vol. 14: Iss. 1, Article 6.

The article is available at: http://scholarlycommons.law.hofstra.edu/jibl/vol14/iss1/6.

Jonathan is admitted to practice in New York, New Jersey, and the United States District Courts for the Southern District of New York and District of New Jersey.

James M. LoPiano

James M. LoPiano focuses his practice on securities fraud litigation.

Prior to joining Pomerantz, James served as a Fellow at Lincoln Square Legal Services, Inc., a non-profit law firm run by faculty of Fordham University School of Law.

James earned his J.D. in 2018 from Fordham University School of Law, where he was awarded the Archibald R. Murray Public Service Award, *cum laude*, and merit-based scholarship. While in law school, James served as Senior Notes and Articles Editor of the *Fordham Intellectual Property, Media and Entertainment Law Journal*. James also completed a legal internship at Lincoln Square Legal Services, Inc.'s *Samuelson-Glushko Intellectual Property and Information Law Clinic*, where he counseled clients and worked on matters related to Freedom of Information Act litigation, trademarks, and copyrights. As part of his internship, James was granted temporary permission to appear before the United States Patent and Trademark Office for trademark-related matters. Additionally, James completed both a legal externship and legal internship with the Authors Guild. James also served as a judicial intern to the Honorable Stephen A. Bucaria in the Nassau County Supreme Court, Commercial Division, of the State of New York, where he drafted legal memoranda on summary judgment motions, including one novel issue pertaining to whether certain service fees charged by online travel companies were commingled with county taxes.

James earned his B.A. from Stony Brook University, where he double-majored in English and Cinema and Cultural Studies, completed the English Honors Program, and was inducted into the Stony Brook University chapter of the International English Honors Society. Additionally, James earned the university's Thomas Rogers Award, given to one undergraduate student each year for the best analytical paper in an English course.

James has authored several publications over the course of his legal career, including "Public Fora Purpose: Analyzing Viewpoint Discrimination on the President's Twitter Account," Note, 28 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 511 (2018); "Lessons Abroad: How *Access Copyright v. York University*

Helped End Canada's Educational Pirating Regime," Legal Watch, Authors Guild Fall 2017/Winter 2018 Bulletin; and "International News: Proposal for New EU Copyright Directive and India High Court's Educational Photocopy Decision," Legal Watch, Authors Guild Summer 2017 Bulletin.

James is admitted to practice in the State of New York.

Veronica V. Montenegro

Veronica V. Montenegro focuses her practice on securities fraud litigation.

Prior to joining Pomerantz, Veronica served for seven years as an Assistant Attorney General in the Investor Protection Bureau in the Office of the New York State Attorney General. Veronica represented the Office in some of its most high-profile financial fraud prosecutions. She worked on a case against a Madoff feeder-fund manager which resulted in the return of millions of dollars to defrauded investors. She was a member of the Residential Mortgage Backed Securities (RMBS) Working Group, comprised of State and Federal prosecutors tasked with investigating and prosecuting mortgage securities fraud, which has resulted in billions of dollars in recoveries. In recognition of her work in the RMBS Working Group, Veronica was awarded the Louis Lefkowitz Award for Exceptional Service. Veronica also worked on cases involving insider trading, auction rate securities and foreign exchange execution.

Veronica graduated from Fordham University School of Law in 2008. During law school, she served as a member of the Fordham International Law Journal and in Fordham's Moot Court Board. Additionally, she served as a judicial extern to the Honorable Ronald L. Ellis, Magistrate Judge for the Southern District of New York. Veronica graduated from New York University's College of Arts and Science in 2004, *cum laude*, with a double major in Political Science and Latin American Studies.

Veronica is admitted to practice in the States of New York and New Jersey and the United States District Court for the Southern District of New York.

Jared M. Schneider

Jared M. Schneider focuses his practice on securities fraud litigation.

Before joining Pomerantz LLP, Jared was a law clerk to the Honorable Charles R. Norgle of the United States District Court for the Northern District of Illinois. Jared was also an associate at Higgins & Burke, P.C., where he represented family offices and high net worth individuals in matters involving securities fraud and other types of financial-services misconduct. During law school, Jared worked with FINRA's Department of Enforcement in prosecuting members for violations of securities laws and regulations.

Jared earned his Juris Doctor *cum laude* from the John Marshall Law School and is a member of the National Order of Scribes. While in law school, Jared was a member of the American Bar Association National Appellate Advocacy Competition, and the Irving R. Kaufman Memorial Securities Law Moot Court Competition. Jared was also a staff editor for the *John Marshall Law Review*, an Associate Justice of the Moot Court Executive Board, and served as a teaching assistant in the School's appellate-advocacy program. Jared received his B.S. from the Kelley School of Business at Indiana University.

Jared is admitted to practice in Illinois, the United States District Courts for the Northern District of Illinois and the Northern District of Indiana.

Villi Shteyn

Villi Shteyn focuses his practice on securities fraud litigation.

Before joining Pomerantz, Villi was employed by a boutique patent firm, where he worked on patent validity issues in the wake of the landmark *Alice* decision, in which the court ruled that an abstract idea does not become eligible for a patent simply by being implemented on a generic computer. He also helped construct international patent maintenance tools for clients and assisted in pursuing injunctive relief for a patent-holder client against a large tech company.

Villi graduated from The University of Chicago Law School (J.D., 2017). In 2014, he graduated *summa cum laude* from Baruch College with a Bachelor of Science in Public Affairs.

Villi is admitted to practice in the State of New York.

Jennifer Banner Sobers

Jennifer Banner Sobers focuses her practice on securities fraud litigation.

Jennifer played an integral role on the team litigating *In re Petrobras Securities Litigation,* in the Southern District of New York, a securities class action arising from a multi-billion-dollar kickback and bribery scheme involving Brazil's largest oil company, Petróleo Brasileiro S.A. - Petrobras. The Firm, as sole Lead Counsel, achieved a historic $3 billion settlement on behalf of investors in Petrobras securities. Among Jennifer' contributions to the team's success were: managing the entire third-party discovery in the United States, which resulted in the discovery of key documents and witnesses; deposing several underwriter bank witnesses; and drafting portions of Plaintiffs' amended complaints that withstood motions to dismiss the claims and Plaintiffs' successful opposition to Defendants' appeal in the Second Circuit, which resulted in precedential rulings.

Jennifer is a key member of the litigation teams of other nationwide cases, including: *In re BP p.l.c Securities Litigation*, the MDL pending in the Southern District of Texas, which are securities fraud lawsuits on behalf of institutional investors in BP p.l.c. to recover losses in BP's common stock (which trades on the London Stock Exchange), arising from BP's 2010 Gulf oil spill and for which the team has successfully opposed several motions to dismiss the claims; *In re KaloBios Pharmaceuticals Inc. Securities Litigation,* pending in the Northern District of California, which secured successful settlements for the Class; and *Perez v. Higher One Holdings, Inc.,* pending in the District of Connecticut, which survived dismissal and was successfully settled, pending court approval.

Prior to joining Pomerantz, Jennifer was an associate with a prominent law firm in New York where her practice focused on complex commercial litigation, including securities law and accountants' liability. An advocate of pro bono representation, Jennifer earned the Empire State Counsel honorary designation

from the New York State Bar Association and received an award from New York Lawyers for the Public Interest for her pro bono work.

Jennifer received her B.A. from Harvard University (with honors), where she was on the Dean's List, a Ron Brown Scholar, and a recipient of the Harvard College Scholarship. She received her J.D. from University of Virginia School of Law where she was a participant in the Lile Moot Court Competition and was recognized for her pro bono service.

She is a member of the Federal Bar Council, New York City Bar Association, and New York State Bar Association. She is also a member of the Association of Arbitrators.

Jennifer is admitted to practice in New York, the United States District Court for the Southern District of New York, and the United States Courts of Appeals for the Second and Ninth Circuits.

Roxanna Talaie

Roxanna Talaie focuses her practice on securities litigation.

As a member of the Firm's investor relations group, she also frequently travels throughout the United States to inform clients on how best to evaluate losses to their investment portfolios attributable to financial fraud or other misconduct. In 2019, Roxanna was recognized as a Lawyer of Distinction, an honor bestowed upon less than 10% of attorneys in any given state.

Roxanna earned a Bachelor of Arts in Political Science from the University of Southern California in Los Angeles, California. She earned her law degree from Pepperdine University School of Law. During her time at Pepperdine, Roxanna participated in Pepperdine's Community Justice Clinic, in which she acted as general counsel for nonprofits, nongovernmental organizations, and other community groups working to promote social justice, human rights and develop economic opportunities and resources for vulnerable, underserved people and communities. She also earned a certificate in Dispute Resolution from Pepperdine's Straus Institute for Dispute Resolution, the highest ranked dispute resolution program in the United States.

Roxanna is admitted to practice in the State of California and the United States District Court for the Northern, Central and Southern Districts of California. She is based in Los Angeles.

Staff Attorneys

Átila de Carvalho Beatrice Condini

Átila de Carvalho Beatrice Condini, an international attorney at Pomerantz, focuses on class action securities litigation.

Átila brings to Pomerantz his 13 years' expertise in complex Brazilian federal legal, procedural, and regulatory issues. He is a member of Pomerantz's team for three securities class actions against Brazilian companies: *In re Petrobras Sec. Litig., Manidhar Kukkadapu, et al. v. Embraer, et al.*, and *Banco Safra S.A. - Cayman Islands Branch* v. *Samarco Mineração S.A.* et al.

Átila is a partner (on leave) at the law firm, Condini & Tescari Advogados, in São Paolo, Brazil, where he was responsible for the tax and litigation divisions. Before that, he was an associate and senior associate at two other major Brazilian law firms in São Paolo. During that period, he successfully worked on cases that became benchmarks in the Brazilian legal scenario. In one of them, he prepared a brief in the Extraordinary Appeal nº 559.937, whose thesis was accepted by the Brazilian Supreme Court, reducing the social contribution taxes (PIS / COFINS-Importação) levied on imports. In another case, he defended an advanced interpretation about D&O responsibilities, which was also accepted by the Brazilian Supreme Court in the Extraordinary Appeal nº 562.276.

Átila has also been attentive to social causes, not only practicing pro bono, but also in the human rights field. For example, Átila conducted a legal research project that ultimately resulted in the human rights group, Tortura Nunca Mais, being able to help fund and support the creation of a free virtual library focused on keeping alive Brazilian recent history for future generations. In 2006, Átila received a Bachelor of Laws degree from Pontifical University Catholic of São Paulo ("PUC/SP"). In 2008, he received a specialized law degree in taxation from PUC/SP.

Timor Lahav

Timor Lahav focuses his practice on securities fraud litigation.

Timor participated in the Firm's securities class action case against Brazil's largest oil company, Petrobras, arising from a multi-billion-dollar kickback and bribery scheme, in which the Firm, as sole Lead Counsel, achieved a historic $3 billion settlement for the Class, as well as precedent-setting legal rulings. Timor also participated in the firm's landmark litigation against Yahoo!. Inc., for the massive security breach that compromised 1.5 billion users' personal information.

Timor received his LL.B. from Tel Aviv University School of Law in Israel, following which he clerked at one of Israel's largest law firms. He was an associate at a law firm in Jerusalem, where, among other responsibilities, he drafted motions and appeals, including to the Israeli Supreme Court, on various civil matters.

He received his LL.M. from Benjamin N. Cardozo School of Law in New York. There, Timor received the Uriel Caroline Bauer Scholarship, awarded to exceptional Israeli law graduates.

Timor brings to Pomerantz several years' experience as an attorney in New York, including examining local SOX anti-corruption compliance policies in correlation with the Foreign Corrupt Practices Act; and analysis of transactions in connection with DOJ litigation and SEC enforcement actions.

Timor was a Captain in the Israeli Defense Forces. He is a native Hebrew speaker and is fluent in Russian.

He is admitted to practice in New York and Israel.

Laura M. Perrone

Laura M. Perrone focuses on class action securities litigation.

Prior to joining Pomerantz, Laura worked on securities class action cases at Labaton Sucharow. Preceding that experience, she represented plaintiffs at her own securities law firm, the Law Offices of Laura M. Perrone, PLLC.

At Pomerantz, Laura participated in the Firm's securities class action case against Brazil's largest oil company, Petrobras, arising from a multi-billion-dollar kickback and bribery scheme, in which the Firm, as sole Lead Counsel, achieved a historic $3 billion settlement for the Class, as well as precedent-setting legal rulings.

Laura has also represented bondholders against Citigroup for its disastrous investments in residential mortgage backed securities, shareholders against Barclays PLC for misrepresentations about its dark pool trading system known as Barclays LX, and shareholders against Fiat Chrysler Automobiles for misrepresentations about its recalls and its diesel emissions defeat devices.

Laura graduated from the Benjamin N. Cardozo School of Law, where she was on the editorial staff of Cardozo's Arts and Entertainment Law Journal and was the recipient of the Jacob Burns Merit Scholarship.

Laura is admitted to practice in the New York State Courts, the United States District Courts for the Southern and Eastern Districts of New York, and the United States Courts of Appeals for the Second and the Fifth Circuits.

Samir Sidi

Samir Sidi focuses his practice on securities fraud litigation.

Samir participated in the Firm's securities class action case against Brazil's largest oil company, Petrobras, arising from a multi-billion-dollar kickback and bribery scheme, in which the Firm, as sole Lead Counsel, achieved a historic $3 billion settlement for the Class, as well as precedent-setting legal rulings.

Previously, Samir represented plaintiffs in disputes related to a variety of financial investments, including the Federal Home Loan Bank of Seattle and the FDIC in their multi-billion-dollar actions against securities dealers to rescind the purchase of certificates backed by residential mortgage loans. He also represented institutional investors in a securities fraud action against Vivendi Universal (*In re Vivendi Universal, S.A. Sec. Litig.*, 02 Civ. 5571 (S.D.N.Y.)), where in January 2010 the jury returned a verdict that at the time had an estimated value of up to $9 billion.

Samir also served as a judicial intern for the Administrative Office of the Federal Judiciary – Office of Legislative Affairs in Washington, D.C.

Samir received his LL.L. from the University of Ottawa, and his LL.M. in Banking & Financial Law from the Boston University School of Law.

Samir is admitted to practice in New York State.

Allison Tierney

Allison Tierney focuses her practice on securities fraud litigation.

Allison brings to Pomerantz her 10 years' expertise in large-scale securities class action litigation. She participated in the Firm's securities class action case against Brazil's largest oil company, Petrobras, arising from a multi-billion-dollar kickback and bribery scheme, in which the Firm, as sole Lead Counsel, achieved a historic $3 billion settlement for the Class, as well as precedent-setting legal rulings.

Prior to joining Pomerantz, Allison worked on securities class action cases at several top New York law firms, representing institutional investors. She has represented plaintiffs in disputes related to antitrust violations, corporate financial malfeasance, and residential mortgage-backed securities fraud.

Allison earned her law degree from Hofstra University School of Law, where she served as notes and comments editor for the *Cyberlaw Journal*. She received her B.A. in Psychology from Boston University, where she graduated magna cum laude.

Allison is conversant in Spanish and is currently studying to become fluent.

Allison is admitted to practice in New York State.

Exhibit 2

REDACTED.

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Pomerantz LLP Responses:
ATRS Request for Qualification Bid Solicitation Document Sections 1-2

1.5 ACCEPTANCE OF REQUIREMENTS

Pomerantz unconditionally accepts all Requirements in the Requirements Section of this RFQ.

1.7 RESPONSE DOCUMENTS

Pomerantz acknowledges the Response Submission Requirements that must be submitted in the original Response packet. Pomerantz acknowledges that all additional hard copies and electronic copies must be identical to the original copy. Pomerantz acknowledges that if OSP requests additional copies of the response, then the copies must be delivered within the timeframe specified in the request.

1.9 CLARIFICATION OF BID SOLICITATION

If Pomerantz enters into a contract with the State, then Pomerantz shall comply with all the terms and conditions contained therein.

1.10 RESPONSE SIGNATURE PAGE

An official authorized to bind Pomerantz to a resultant contract signed the Response Signature Page included in the Response Packet.

1.11 PRICING

Pomerantz shall engage with ATRS on a contingency fee basis so resulting contract(s) will be at no cost to the State.

1.12 PRIME CONTRACTOR RESPONSIBILITY

Jeremy A. Lieberman of Pomerantz LLP is hereby identified as the prime contractor. The prime contractor shall be responsible for the contract and jointly and severally liable with any of its subcontractors, affiliates, or agents to the State for the performance thereof.

1.13 PROPRIETARY INFORMATION

Pomerantz acknowledges that except for the redacted information, the redacted copy must be identical to the original copy, reflecting the same pagination as the original and showing the space from which information was redacted.

1.16 QUALIFICATION PROCESS

Pomerantz acknowledges that any resultant contract of this Bid Solicitation shall be subject to State approval processes which may include Legislative review.

Pomerantz LLP Responses:
ATRS Request for Qualification Bid Solicitation Document Sections 1-2

1.17 DEMONSTRATIONS

Pomerantz shall endeavor to fulfill expectations set forth in Section 1.17 Demonstrations of the Bid Solicitation Document.

1.19 EQUAL OPPORTUNITY POLICY

The Pomerantz written Equal Opportunity Policy is included with the Response.

1.20 PROHIBITION OF EMPLOYMENT OF ILLEGAL IMMIGRANTS

Pomerantz hereby certifies that it does not employ or contract with illegal immigrants.

1.21 RESTRICTION OF BOYCOTT OF ISRAEL

Pomerantz checked the designated box on the Response Signature Page of the Response Packet. Pomerantz agrees and certifies that it does not, and will not for the duration of the contract, boycott Israel.

2.3 ENGAGEMENT PROCESS

If invited, Pomerantz acknowledges that it shall enter into negotiations with ATRS to further define Legal Services to be provided, compensation, invoicing, and length of the engagement, with ATRS having final approval of all negotiated items. Pomerantz shall comply with all negotiated items as approved by ATRS within the timelines specified by ATRS and shall comply with all Requirements and terms and conditions of this RFQ.

2.4 QUALIFYING REQUIREMENTS

Pomerantz acknowledges and accepts the Qualifying Requirements.

2.6 SERVICE REQUIREMENTS

Pomerantz acknowledges and accepts the Service Requirements.

2.7 PERFORMANCE STANDARDS

Pomerantz acknowledges that if any compensation is owed to ATRS due to the assessment of damages, Contractor shall follow the direction of ATRS regarding the required compensation process.

Pomerantz LLP

E.4.A. Response

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Outside Counsel

Back to Basic(s): Common Sense Trumps Econometrics

Part 1

Nearly three decades after the U.S. Supreme Court embraced the "fraud on the market" presumption of reliance in securities fraud class actions (*Basic v. Levinson*, 485 U.S. 224 (1988)), significant recalibrations have been made. In two recent decisions, *In re Petrobras Sec. Litig.*, 862 F.3d 250 (2d Cir. 2017) and *Waggoner v. Barclays PLC*, No. 16-1912-cv, 2017 U.S. App. LEXIS 22115 (2d Cir. Nov. 6, 2017), en banc petition pending, the Second Circuit held:

- In cases involving large cap, actively traded and well followed stocks (such as most listed on the NYSE and NASDAQ), plaintiffs need *not* present an "event study" to demonstrate that the stock traded in an "efficient" market. *Petrobras*, 862 F.3d at 278.
- When considering the efficiency of smaller cap stocks, district courts should "holistically" consider indirect factors of efficiency (e.g., trading volume, analysts and bid/ask spreads) along with event studies, rather than elevate event studies to a sine qua non status. Id. at 277.
- Plaintiffs need not show price movements when the alleged misrepresentations were first made, but rather may proceed on a "price maintenance theory," i.e., that the misstatements "merely maintained inflation already extant in a company's stock price." *Barclays*, 2017 U.S. App LEXIS 22115, at *48, quoting *In re Vivendi, S.A. Sec. Litig.*, 838 F.3d 223, 256 (2d Cir. 2016).
- Courts indeed should be wary of excessive reliance on event studies, given that such studies were intended for analysis of massive amounts of data involving multiple stocks, not individual firms with few "events." *Petrobras*, 862 F.3d at 278.
- While *Halliburton II* afforded defendants an opportunity to rebut the reliance presumption by demonstrating that the alleged fraud had no impact on the price of the stock, defendants must do so by a "preponderance of the evidence." 2017 U.S. App. LEXIS 22115, at **41-42.

MARC I. GROSS *and* JEREMY A. LIEBERMAN *are partners at Pomerantz LLP, plaintiffs' lead counsel in 'Petrobras' and 'Barclays'. Mr. Lieberman argued both appeals.*

By **Marc I. Gross** and **Jeremy A. Lieberman**

Presuming no further review by either the Second Circuit en banc or the U.S. Supreme Court, these two decisions mark a pivotal point where proof of market efficiency is no longer "wedded" to event studies in every federal securities fraud class action. This should simplify class certification motions. That said, event studies will still remain useful for measuring damages.

Presuming no further review by either the Second Circuit en banc or the U.S. Supreme Court, these two decisions mark a pivotal point where proof of market efficiency is no longer "wedded" to event studies in every federal securities fraud class action.

Moreover, as discussed herein, *Petrobras* and *Barclays* mark a return to basics for proof of reliance in securities fraud class actions, back to principles recognized long before event studies and dueling financial market experts became SOP. The decisions reaffirm the underlying principles, i.e., that on today's highly liquid, rapid-response stock exchanges, information drives prices, and misinformation inflates prices paid by unsuspecting investors. After all, investors rely upon the integrity of companies, and the markets, when purchasing shares. As noted in *Basic*: "[I]t is hard to imagine that there ever is a buyer or seller who does not rely on market integrity. Who would knowingly roll the dice in a crooked crap game?" *Basic*, 485 U.S. at 246-47, quoting *Schlanger v. Four-Phase Sys.*, 555 F. Supp. 535, 538 (S.D.N.Y. 1982) (J. Brieant).

Here we focus on the lead-up to these two decisions—how did we get here—and demonstrate that the linkage of event studies to class certification motions was, in fact, an after-thought to the court's early embrace of a more general "fraud on the market" presumption of reliance. Our next installment will focus on the reasoning and future applications of these decisions.

Some History

Rule 23's adoption in 1966 spurred the development of a wide range of class actions, including those based on the federal securities laws. In recognizing an implied private right of action for claims arising under the 1934 Exchange Act, courts incorporated certain elements of the common law tort of fraud or deceit (*Blue Chip Stamps v. Manor Drug Stores*, 421 U. S. 723, 744-745 (1975); *Herman & MacLean v. Huddleston*, 459 U.S. 375, 388-89 (1983)), including "reliance" upon the misstatement or omission (*Halliburton Co. v. Erica P. John Fund (Halliburton II)* 134 S. Ct. 2398, 2407 (2014)). To proceed on behalf of a class, plaintiffs had to show inter alia, that facts common to all class members' decisions to purchase shares *predominated* over facts unique to individual class members. (Rule 23(b)(3) also requires a finding that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.") Since common law required proof of direct reliance, courts quickly recognized that if each investor had to demonstrate they read the misstatements, individual issues of proof would overwhelm the common issues, thereby precluding class certification. See *Green v. Wolf*, 406 F.2d 291, 301 (2d Cir. 1968) ("Carried to its logical end, it would negate any attempted class action under Rule 10b-5, since ... reliance is an issue lurking in every 10b-5 action.").

To overcome this hurdle, the pioneer of shareholder litigation, Abraham L. Pomerantz, argued that defendants' public misrepresentations created

a "fraud on the market" (FOM) which impacted all investors alike:

> The relevant impact of the misrepresentations was on the market. It was the artificially heightened market price, pure and simple, which operated on plaintiffs and other members of the class to induce conversion." (Brief, p. 6). If plaintiffs can prevail in their "fraud on the market" theory, this may be sufficient to sustain a recovery under Section 10(b) of the Securities Exchange Act.

Herbst v. Able, 47 F.R.D. 11, 16 (S.D.N.Y. 1969) (emphasis in original). Origination of "fraud on the market" in this case, which was briefed by Pomerantz, was confirmed by Prof. Jill Fisch in "The Trouble With *Basic*: Price Distortion after Halliburton," 90 Wash. U. L. Rev. 895, 906-07 (2013).

The FOM concept was thereafter embraced by courts seeking to fashion a tool for class-wide proof of reliance:

> [P]roof of subjective reliance on particular misrepresentations is unnecessary to establish a 10b-5 claim for a deception inflating the price of stock traded in the open market .... Proof of reliance is adduced to demonstrate the causal connection between the defendant's wrongdoing and the plaintiff's loss. We think causation is adequately established in the impersonal stock exchange context by proof of purchase and of the materiality of misrepresentations, without direct proof of reliance. Materiality circumstantially establishes the reliance of some market traders and hence the inflation in the stock price—when the purchase is made the causational chain between defendant's conduct and plaintiff's loss is sufficiently established to make out a prima facie case.

Blackie v. Barrack, 524 F.2d 891, 906 (9th Cir. 1975).

Thereafter, clever academics linked FOM to the Efficient Market Hypothesis (EMH) posited by Eugene Fama of the Chicago School of Economics, a disciple of Milton Friedman. Eugene F. Fama, "Efficient Capital Markets: A Review of Theory & Empirical Work," 25 J. Fin. 383 (May 1970). A marriage of FOM and EMH was first proposed by Fama's colleague Prof. Daniel Fischel in "Use of Modern Finance Theory in Securities Fraud Cases Involving Actively Traded Securities," 38 Bus. Law. 1, 3 (November 1982):

> In an efficient capital market, such as American stock markets, ... the market price of a firm's stock will reflect all available information about the firm's prospects. Because the market price itself transmits all available information, investors have no incentive to study other available data.

In 1988, the Supreme Court formally adopted a presumption of reliance for securities fraud class actions in *Basic*. The court reasoned that so long as plaintiffs demonstrated that the stock traded in a "well-developed market[]," the stock "reflects all publicly available information, and, hence, any material misrepresentations." 485 U.S. 224, 246 (1988) (Fischel's article was cited in support of this observation at 485 U.S. 224 n.24). The court explained that the departure from the common law requirement of proof of direct reliance was warranted given that:

> [M]odern securities markets, literally involving millions of shares changing hands daily, differ from the face-to-face transactions contemplated by early fraud cases, and our understanding of Rule 10b-5's reliance requirement must encompass these differences.

Basic, 485 U.S. at 243-44, 245; see also *Halliburton II*, 131 S. Ct. at 2185; *Stoneridge Inv. Partners, v. Scientific-Atlanta*, 552 U.S. 148, 159 (2008) ("[U]nder the fraud-on-the-market doctrine, reliance is presumed when the statements at issue become public. The public information is reflected in the market price of the security. Then it can be assumed that an investor who buys or sells stock at the market price relies upon the statement.").

Justice Blackman listed several reasons why such a presumption made sense, including (1) "common sense and probability;" (2) "market professionals generally consider most publicly announced material statements about companies, thereby affecting stock market prices;" and (3) Professor Fischel's article on EMH. *Basic*, 485 U.S. at 246 and n.24. (Critical to understanding the latest developments, though, is that the *Basic* court did not cite EMH to the exclusion of other factors.) *Basic* also rendered the presumption of reliance rebuttable if defendants produced evidence that "sever[ed] the link" between the market's efficiency and individual investor's reliance thereon. 485 U.S. at 248 ("Any showing that severs the link between the alleged misrepresentation and either the price received (or paid) by the plaintiff, or his decision to trade at a fair market price, will be sufficient to rebut the presumption of reliance.").

Academics viewed 'Basic' as consecrating a marriage of EMH and FOM, and thereafter advocated borrowing tools developed by econometricians to measure the precise "efficiency" of markets for particular stocks, especially complex "event studies."

The Advent of Event Studies

Academics viewed *Basic* as consecrating a marriage of EMH and FOM, and thereafter advocated borrowing tools developed by econometricians to measure the precise "efficiency" of markets for particular stocks, especially complex "event studies."[1] A cottage industry of financial market experts for securities fraud cases was thereby spawned (including Lexicon, founded by none other than Professor Fischel).

'Basic' Redux—'Halliburton II'

In 2014, the Supreme Court revisited the interplay between reliance, FOM and EMH in *Halliburton II*, 134 S. Ct. 2398 (2014). Because *Basic* was a 4-2 plurality, the court reconsidered *Basic*'s foundation, but re-endorsed the rebuttable presumption of reliance for efficient markets. Id. at 2410. Noting the raging debate among economists,[2] the court rejected the view that markets must be perfectly efficient in order to find that they reflect all public information (including defendants' misrepresentations):

> The academic debates discussed by Halliburton have not refuted the modest premise underlying the presumption of reliance. Even the foremost critics of the efficient-capital-markets hypothesis acknowledge that public information generally affects stock prices ... . Debates about the precise *degree* to which stock prices accurately reflect public information are thus largely beside the point. "That the ... price [of a stock] may be inaccurate does not detract from the fact that false statements affect it, and cause loss," which is "all that *Basic* requires." *Schleicher v. Wendt*, 618 F. 3d 679, 685 (7th Cir. 2010) (Easterbrook, C. J.).

134 S. Ct. at 2410 (emphasis in original). "[T]o invoke the *Basic* presumption, a plaintiff must prove that: (1) the alleged misrepresentations were publicly known, (2) they were material, (3) the stock traded in an efficient market, and (4) the plaintiff traded the stock between when the misrepresentations were made and when the truth was revealed." Id. at 2413

The Supreme Court expressly rejected the "robust view of market efficiency" espoused by petitioners (id. at 2409), endorsing instead the view that the presumption of reliance could be triggered by a showing that the stock traded in a "generally" efficient manner. The court also observed that plaintiff's burden of proof should impose "no heavy toll on securities-fraud plaintiffs with tenable claims." Id. at 2417 (Ginsburg, J., concurring). (This standard for plaintiffs' burden was echoed in *Petrobras*, 862 F.3d at 277 and *Barclays*, 2017 U.S. App. LEXIS 22115 at *40 n.31.) As Chief Justice Roberts observed, the question of a market's efficiency was not a yes/no "binary" question, but rather more an analysis along a continuum:

> The markets for some securities are more efficient than the markets for others, and even a single market can process different kinds of information more or less efficiently, depending on how widely the information is disseminated and how easily it is understood.
>
> *Basic* recognized that market efficiency is a matter of degree ... .
>
> Id. at 2409-10.

As such, *Halliburton II* adopted a Goldilocks-like formula; the presumption of reliance was appropriate so long as plaintiffs showed that the market was "generally efficient."[3] At the same time, the court explicitly expanded defendants' right to rebut the presumption of reliance by demonstrating that the alleged misinformation did not "impact" the price of a stock. 134 S. Ct. at 2414.

Part 2

Yesterday's installment summarized the essential holdings of the Second Circuit's two recent securities fraud class actions decisions, In re Petrobras Sec. Litig., 862 F.3d 250 (2d Cir. 2017) and Waggoner v. Barclays PLC, No. 16-1912-cv, 2017 U.S. App. LEXIS 22115 (2d Cir. Nov. 6, 2017), en banc petition pending, along with case law that informed their outcomes. Today's article explores the decisions in depth, along with their ramifications for class certification motions.

Proof of 'General Efficiency'

Basic v. Levinson, 485 U.S. 224 (1988) and *Halliburton II* did not address how plaintiffs should demonstrate market efficiency at the class certification stage.[4] District courts have constructed a set of factors to be considered, though circuit courts have routinely "declined to adopt any particular test for [] market efficiency." *Petrobras*, 862 F.3d at 278 (quotations and citation omitted). Generally referred to as the *Cammer* and *Krogman* factors, these are: (1) average weekly trading volume as a percentage of shares outstanding; (2) number of securities analysts following the stock; (3) existence and number of market makers and arbitrageurs; (4) eligibility to file Form S-3; (5) "cause and effect" relationship between new information and price; (6) total market capitalization; (7) bid-ask spread; and (8) percentage of shares available to the public. *Cammer v. Bloom*, 711 F. Supp. 1264, 1286-87 (D.N.J. 1989); *Krogman v. Sterritt*, 202 F.R.D. 467, 478 (N.D. Tex. 2001).

Most of the debate among the courts over the last 30 years has centered on *Cammer* 5, cause and effect, which the courts have considered to be "direct" evidence of efficiency, in contrast to "indirect" evidence by way of the other factors. Satisfaction of *Cammer* 5 has generally been demonstrated by way of "event studies."[5]

In *Petrobras*, the Second Circuit endorsed a "holistic analysis" of all *Cammer/Krogman* factors, expressly refusing to elevate *Cammer* 5 to a "necessary" condition for demonstrating market efficiency. The District Court (Judge Jed Rakoff) rejected defendants' attacks on plaintiffs' event study, but also found that the "indirect *Cammer* factors lay a strong foundation for a finding of efficiency." Quoting *In re Petrobras Sec. Litig.*, 312 F.R.D. 354, 371 (S.D.N.Y. 2016). The appellate court agreed:

> We find that the district court's conclusion "falls within the range of permissible decisions." *Roach*, 778 F.3d at 405 (citation omitted). The district court properly declined to view direct and indirect evidence as distinct requirements, opting instead for a holistic analysis based on the totality of the evidence presented. *See, e.g., In re JPMorgan Chase & Co. Sec. Litig.*, No. 12 CIV. 03852 (GBD), 2015 U.S. Dist. LEXIS 132181, 2015 WL 10433433, at *7 (S.D.N.Y. Sept. 29, 2015) ("Defendants' criticisms of Plaintiffs' event study distract[] from the central question: Does the weight of the evidence tip in favor of the finding that the market for JPMorgan's common stock was efficient during the Class Period?").
>
> 862 F.3d at 277.

In *Barclays*, the Second Circuit went further, holding that "a plaintiff seeking to demonstrate market efficiency need not always present direct evidence of price impact through event studies" and that the district court's failure to consider an event study was not reversible error. *Barclays*, 2017 U.S. App. LEXIS 22115, at **32-33.

As such, *Barclays* marked the triumph of common sense over dogma, consistent with *Halliburton II's* recognition that plaintiffs need only demonstrate that the market was "generally efficient." After all, as the Second Circuit recognized, Barclays is "one of the largest financial institutions in the world," its average weekly volume was much higher than that for other stocks deemed to be efficient, and its stock was "closely followed by many analysts."[6] The court noted that all seven of the indirect factors "weighed so clearly" in favor of efficiency that the defendants "did not even challenge them." Id. at *35. The court distinguished the circumstance with Barclays stock with other cases, such as *Bombardier*, where the results of the indirect *Cammer* factors were far more equivocal. *Teamsters Local 445 Freight Div. Pension Fund v. Bombardier*, 546 F.3d 196 (2d Cir. 2008).

> 'Barclays' marked the triumph of common sense over dogma, consistent with 'Halliburton II's recognition that plaintiffs need only demonstrate that the market was "generally efficient."

The court though did not rule out the use of event studies in some cases:

> Direct evidence of an efficient market may be more critical, for example, in a situation in which the other four *Cammer* factors (and/or the *Krogman* factors) are less compelling in showing an efficient market.
>
> 2017 U.S. App. LEXIS 22115, at *33.

The court also noted that "several of our sister circuits have concluded that *Cammer* 5 is not necessary but nevertheless helpful."[7]

Nonetheless, the co-dependency of FOM and event studies for *every* case has been ended. As discussed below, this recalibration was long overdue. Indeed, empirical studies have demonstrated that even stocks listed on presumably efficient markets such as the NYSE and NASDAQ react to new company-specific information *less than 50 percent of the time*. See Richard Roll, "*R2*," Journal of Finance 43, (1988); Jacob Boudoukh et al., "Which News Moves Stock Prices? A Textual Analysis," Working Paper No. 18725, National Bureau of Economic Research (Oct. 14, 2013); John M. Griffin, Nicholas H. Hirschey, Patrick J. Kelly, "How Important Is the Financial Media in Global Markets?" Review of Financial Studies (2011); David I. Tabak, "What Should We Expect When Testing for Price Response to News in Securities Litigation," NERA Economic Consulting (August 2016).

Defendants' Burden To Rebut Price Impact

As noted, *Halliburton II* afforded defendants the opportunity to rebut the presumption of reliance by showing that, regardless of the "efficiency" of a particular stock, the alleged misrepresentations did not "impact" its price. Left unsaid was defendants' burden on rebuttal.

In *Barclays*, the Second Circuit held that defendants must "demonstrate a lack of price impact by a *preponderance* of the evidence at the class certification stage." 2017 U.S. App. LEXIS 22115, at **41-42 (emphasis supplied). In so doing, the court expressly rejected defendants' citation to Rule 301, Federal Rules of Evidence, which provides that with certain exceptions, parties may rebut a presumption by merely producing *some* contra-evidence rather than citing *persuasive* contra-evidence.[8] As the Second Circuit noted, Rule 301 expressly imposes a higher burden for rebuttal where a "federal statute ... provide[s] otherwise," and *Basic's* presumption was "pursuant to federal securities laws." 2017 U.S. App. LEXIS 22115, at *45. The Second Circuit added that *Halliburton II* held that to rebut the presumption of reliance, defendants must show "direct, more salient evidence" that the alleged misrepresentations did not impact the price of the stock. 134 S. Ct. at 2415-16 (citing *Basic*, 485 U.S. at 248). It stands to reason that if plaintiffs must produce evidence sufficient to satisfy a preponderance standard to trigger the presumption, then defendants must likewise satisfy that higher standard if they must produce "more salient" evidence than plaintiffs.

Risk of Undue Reliance On Event Studies

The seeds for severance of event studies from proof of market efficiency were first planted by *Petrobras*. There, defendants argued that while plaintiffs' event study had demonstrated stock price reactions to new information, the price had at times been "directionally" contrary to the news (e.g., gone up even though lower earnings had been announced), thereby suggesting that the market for the stock was neither rational nor efficient. Echoing Judge Rakoff's observation that this micro-analysis threatened to "let the perfect become the enemy of the good" (*In re Petrobras Sec. Litig.*, 312 F.R.D. 354, 371 (S.D.N.Y. 2016)), the *Petrobras* court held that plaintiffs had satisfied their burden for class certification purposes, noting the risks of singular reliance on event studies to measure market efficiency:

> Event studies offer the seductive promise of hard numbers and dispassionate truth, but methodological constraints limit their utility in the context of single-firm analyses. See generally Alon Brav & J. B. Heaton, Event Studies in Securities Litigation: Low Power, Confounding Effects, and

Bias, 93 Wash. U. L. Rev. 583 (2015); see also id. at 588 n.11 (collecting academic criticism of single-firm event studies). Notably, small sample sizes may limit statistical power, meaning that only very large-impact events will be detectable. See id. at 589-605.

862 F.3d at 278-79.[5]

As noted, in *Barclays*, the Second Circuit revisited the need for event studies altogether in certain cases. Plaintiffs had presented an event study in support of class certification in the district court. Ever the prescient maverick, Judge Shira Scheindlin chose to ignore the event study, certifying the class exclusively on the indirect *Cammer/Krogman* factors. *Strougo v. Barclays PLC*, 312 F.R.D. 307, 321-23 (S.D.N.Y. 2016) (citing the Brav/Heaton article). On appeal, the circuit court agreed with Judge Scheindlin, noting the concerns regarding reliability of event studies that were expressed in *Petrobras*. 2017 U.S. App. LEXIS 22115, at *36 (citing *Petrobras*, 862 F.3d at 256).

Return to Basic(s)

Barclays' decoupling of event studies and findings of efficient market for individual stock should come as no surprise to financial market economists. Event studies have been around for over 50 years, and were utilized by Professor Fama in his landmark studies to demonstrate market efficiency in the 1960s. However, Fama relied upon reams of data from decades of stock market prices, crunching the data using then emergent computers at University of Chicago. When *Basic* cited the EMH in support of the FOM presumption of reliance, it did not do so exclusively, but rather as part of a number of reasons supporting the "common sense" presumption that modern markets reflect all information, including misinformation. 485 U.S. at 246 and n.24.

'Petrobras' and 'Barclays' are unlikely to be the last words on these issues. Nonetheless, they represent a watershed moment in securities fraud class actions, and will undoubtedly be reference points for many other decisions to come.

Significantly, while *Basic* cited Professor Fischel's article on market efficiency in support of proof of reliance, it was never Professor Fischel's intention to use EMH as a predicate for class certification. Rather, his article was intended to constrain measuring damages, which (prior to *Dura Pharm. v. Broudo*, 544 U.S. 336 (2005)) was generally based on using the entire decline from the date of purchase until post-revelation. Similarly, the coupling of proof of FOM with event studies set forth in the article by Prof. Jonathan Macey et al.[6] was prompted by a belief that *Basic* should have focused on materiality, rather than reliance (which the Supreme Court in *Amgen* subsequently held should be determined at trial, not at class certification (*Amgen v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455 (2013)).

Moreover, none other than Professor Fama has questioned the securities bar's embrace of event studies. At a symposium in Chicago some years ago, he asserted that the paucity of "events" in single firm studies rendered them unreliable (anticipating Brav/Heaton). When asked how he would counter Professor Fischel's embrace of such studies, the Nobel Laurate quipped, "Oh he's just a lawyer."

Conclusion

Petrobras and Barclays are unlikely to be the last words on these issues. Nonetheless, they represent a watershed moment in securities fraud class actions, and will undoubtedly be reference points for many other decisions to come.

1. See Macey, Miller, Mitchell, & Netter, "Lessons from Financial Economics: Materiality, Reliance & Extending the Reach of *Bosic v. Levinson*," 77 Va. L. Rev. 1017 (Aug. 1991). Event studies are "regression analyses that seek to show that the market price of the defendant's stock tends to respond to pertinent publicly reported events." *Halliburton II*, 134 S. Ct. at 2415. Such studies consider several factors, including contemporaneous general market and industry specific price movements, as well as the historic volatility of the company's stock price, in order to measure the probability that the company's stock price routinely responded rapidly to new, company-specific information.

2. By this time, Eugene Fama had received a Nobel Prize for his work on market efficiency—but so too had Robert Shiller, for his work regarding irrational inefficiencies of markets. Professor Shiller is a leader in the "Behavioral Economics" field, see Robert J. Shiller, *Irrational Exuberance* (3d ed. 2015). Nobel Laureate Daniel Kahneman, author of the bestselling book *Thinking, Fast & Slow* (2011), is credited with developing this field with his colleague Amos Twersky; see also Michael Lewis, *The Undoing Project* (2016).

3. Id. at 2414; see also *Amgen v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 462 (2013). ("If a market is generally efficient in incorporating publicly available information into a security's market price, it is reasonable to presume that a particular public, material misrepresentation will be reflected in the security's price.")

4. In *Halliburton II*, the Supreme Court stated that the plaintiffs bear the burden of "proving" several factors at the class certification stage in order to trigger the FOM presumption of reliance, including the publicness of statement; that it was issued during the relevant period; the materiality of the statement; and market efficiency. This raises a question of whether plaintiffs must indeed prove, or simply produce sufficient evidence demonstrating market efficiency for purposes of class certification. *Halliburton Co. v. Erica P. John Fund*, 134 S. Ct. 2398, 2413 (2014)

If "prove" was intended in its traditional sense, then this should be a binding decision, not reviewable at the trial stage. This is at odds with *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455 (2013) and *Halliburtan I (Halliburton Co. v. Erica P. John Fund, Inc.)*, 563 U.S 804 (2011), which make clear that questions of loss causation and damages should be addressed at the latter stage. The Second Circuit previously chose its words carefully when addressing plaintiffs burden at the class certification stage:

> It would seem to be beyond dispute that a district court may not grant class certification without making a *determination* that all of the Rule 23 requirements are met. We resist saying that what are required are "findings" because that word usually implies that a district judge is resolving a disputed issue of fact. Although there are often factual disputes in connection with Rule 23 requirements, and such disputes must be resolved with *findings*, the ultimate issue as to each requirement is really a mixed question of fact and law.

In re Initial Pub. Offerings Sec. Litig., 471 F.3d 24, 40 (2d Cir. 2006) (*IPO*) (emphasis supplied).

In its most recent iteration, the Second Circuit used the term "satisfied" when referring to these factors, and omitted any reference to *Halliburton II*'s choice of "prove." *Barclays*, 2017 U.S. App. LEXIS 22115, at *23 and n.25.

5. See Macey, Miller, Mitchell, & Netter, "Lessons from Financial Economics: Materiality, Reliance & Extending the Reach of Basic v. Levinson," 77 Va. L. Rev. 1017 (Aug. 1991). Event studies are "regression analyses that seek to show that the market price of the defendant's stock tends to respond to pertinent publicly reported events." *Halliburton II*, 134 S. Ct. at 2415. Such studies consider several factors, including contemporaneous general market and industry specific price movements, as well as the historic volatility of the company's stock price, in order to measure the probability that the company's stock price routinely responded rapidly to new, company-specific information.

6. Id. at **35-36. The court noted that all seven of the indirect factors "weighed so clearly" in favor of efficiency that the defendants "did not even challenge them." Id. at *35. The court distinguished the circumstance with Barclays stock with other cases, such as *Bombardier*, where the results of the indirect *Cammer* factors were far more equivocal. *Teamsters Local 445 Freight Div. Pension Fund v. Bombardier*, 546 F.3d 196 (2d Cir. 2008).

7. Id. at 54 n.30; see *Local 703, I.B. of T. Grocery & Food Emps. Welfare Fund v. Regions Fin.*, 762 F.3d 1248, 1256 (11th Cir. 2014) ("Neither are we persuaded by [the defendant's] argument that a finding of market efficiency always requires proof that the alleged misrepresentations had an immediate effect on the stock price ... . [The defendant] does not point us to any court that has adopted the unwavering evidentiary requirement it urges upon us. Nor could it. Even the *Cammer* court itself did not establish such a strict evidentiary burden at the class certification stage."); *Unger v. Amedisys Inc.*, 401 F.3d 316, 325 (5th Cir. 2005) (explaining that the district court improperly used three of the *Cammer* factors, including *Cammer* 5, "as a checklist rather than an analytical tool"); see also *Gariety v. Grant Thornton, LLP*, 368 F.3d 356, 368 (4th Cir. 2004) (explaining that courts "should consider factors *such as*" the *Cammer* factors (emphasis added)); *Commer*, 711 F. Supp. at 1287 (stating only that it would be "helpful" for a plaintiff to demonstrate "a cause and effect relationship between unexpected corporate events ... and an immediate response in ... stock price").

8. Rule 301 states:

> In a civil case, unless a federal statute or these rules provide otherwise, the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption. But this rule does not shift the burden of persuasion, which remains on the party who had it originally.

Thus, the Rule literally could be read to provide a "bursting bubble" standard, i.e., any production of contra-evidence could rebut presumption regardless of how many hurdles the presumption's beneficiary needed to overcome to trigger it in the first place. *But see* Committee Notes to the Rule, which expressly reject the "bursting bubble" interpretation, and the Amicus Brief of Evidence Professors submitted on the *Barclays* appeal.

9. The court added:

> Brav and Heaton caution courts against misinterpreting studies that fail to find statistically significant price changes: "[W]hile a statistically significant reaction to a firm-specific news event is evidence that information was reflected in the price (absent confounding effects), the converse is *not true*—the failure of the price to react so extremely as to be [detectable] does *not* establish that the market is inefficient: it may mean only that the effect size was not large enough to be detected in the available sample. Brav & Heaton, 93 Wash. U. L. Rev. at 602 (emphasis added). "While some courts have been sensitive to this distinction ... , other courts have remained inattentive to this fact, which has generated inaccurate findings in some securities cases." *Id.* (footnote omitted).

Id. at 279 n.30.

10. See Macey, Miller, Mitchell, & Netter, *Lessons from Financial Economics: Materiality, Reliance & Extending the Reach of Bosic v. Levinson*, 77 Va. L. Rev. 1017 (Aug. 1991). Event studies are "regression analyses that seek to show that the market price of the defendant's stock tends to respond to pertinent publicly reported events." *Halliburton II*, 134 S. Ct. at 2415. Such studies consider several factors, including contemporaneous general market and industry specific price movements, as well as the historic volatility of the company's stock price, in order to measure the probability that the company's stock price routinely responded rapidly to new, company-specific information.

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Insider Trading Laws and Enforcement

By Christopher LaVigne and Brian Calandra

Introduction

The past three years have witnessed significant developments in the law of insider trading. Most noteworthy is the Second Circuit's December 2014 decision in *United States v. Newman*,[1] where a three-judge panel issued a ruling that has rolled back the tide of insider trading enforcement actions. In reversing the convictions of two hedge fund portfolio managers, the panel outlined the degree of "knowledge" a "remote tippee" must possess to be liable for insider trading and the scope of the "personal benefit" that must be provided to a corporate insider to sustain a civil or criminal enforcement action. As a result of *Newman*, over a dozen insider trading convictions have been vacated and Securities and Exchange Commission (the "SEC") enforcement actions have been dismissed. Commentators have opined on whether this decision will hamper U.S. Department of Justice ("DOJ") enforcement efforts going forward, with the U.S. Attorney for the Southern District of New York suggesting such is the likely outcome of the Second Circuit's decision.[2]

Yet questions still abound regarding the precise contours of insider trading liability in the wake of the *Newman* decision, particularly regarding remote tippees. The Supreme Court is hearing a case next fall where such issues will squarely be presented, providing the Court with an opportunity to delineate the contours of "tipper-tippee" liability for the first time since the early 1980s. Despite the *Newman* decision, federal regulators continue to vigorously police insider trading; the SEC has already filed 11 separate actions in 2016 alone, after filing more enforcement actions in 2015 than in 2014.[3] Moreover, the SEC's recent trial success in a civil enforcement action—after federal prosecutors dismissed a parallel criminal indictment—may foreshadow continued aggressive enforcement from the agency, which faces a lower burden of proof in civil enforcement actions than the DOJ does in criminal proceedings.

In short, since 2013, court decisions have provided more clarity on the scope of insider trading laws in the types of actions that always have represented the greatest challenge for federal enforcement officials—"remote tippees." Such actions have increasing relevance for the hedge

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fund industry, where portfolio managers and analysts may receive information that ultimately came from an insider, but is not specifically identified as such, nor even sourced.

This article provides a general overview of insider trading laws, outlines key developments since early 2013, and highlights recent trends and open issues pending before the Supreme Court, all of which should prove instructive to members of the hedge fund industry.

Overview of Insider Trading Law

Unlike many federal crimes, insider trading is not specifically prohibited by any statute. Rather, courts have interpreted insider trading to be prohibited by the general federal securities anti-fraud statute, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"). This statute prohibits the use of "any manipulative or deceptive device" in connection with the purchase or sale of a security.[4] Courts have interpreted this statute's anti-fraud prohibitions to include insider trading, since Section 10(b) "was designed as a catch-all clause to prevent fraudulent practices."[5]

At its core, insider trading law prohibits trading on the basis of material non-public information ("MNPI") that the trader knows or has reason to know was disclosed or obtained in breach of a duty of trust and confidence to the source of the information and in exchange for a personal benefit. There are some narrow statutes/regulations that prohibit insider trading in limited factual circumstances as well. Rule 14e-3 under the Exchange Act, for example, strictly prohibits trading or "tipping" on the basis of MNPI concerning a tender offer, and avoids many of the legal nuances (such as breaches of duties) associated with traditional insider trading actions.[6]

Classical Insider Trading

Under the so-called "classical theory" of insider trading, a corporate insider, *e.g.*, an officer or director of a corporation, can be liable for trading in his corporation's securities on the basis of MNPI that he possessed by virtue of his position with the corporation. Courts have found that an insider who trades on MNPI violates Section 10(b) because of the "relationship of trust and confidence [that exists] between the shareholders of a corporation and those insiders who have obtained confidential information by reason of their position with that corporation."[7] An insider thus commits fraud when he "takes advantage of information intended to be available only for a corporate purpose," and "fails to disclose [this MNPI] before trading on it and thus makes 'secret profits.'"[8] The classical theory applies not only to officers, directors, and other permanent insiders of a corporation, but also to "temporary insiders" or attorneys, accountants, consultants, and others who temporarily become fiduciaries of a corporation.[9]

Misappropriation Insider Trading

A trader can be liable for insider trading even if he is not an insider, *i.e.*, even if there is no fiduciary relationship between the trader and the shareholders of the company that issued the securities. Under this "misappropriation theory" of insider trading, a trader breaches a duty of trust or confidence owed to the *source* of the information by trading on the basis of information that the source expected the trader to keep confidential.[10]

As the Supreme Court explained in *United States v. O'Hagan*, the trader's use of his source's MNPI to purchase or sell securities, in breach of a duty of trust and confidence, defrauds the source of the exclusive use of that information.[11] While liability under the classical theory of insider trading arises out of the fiduciary relationship between the insider of a corporation and the shareholder of the corporation who is buying or selling stock, liability under the misappropriation theory arises out of the trader's "theft" of the MNPI from the source who entrusted him with it.

Tipper-Tippee Insider Trading

Insider trading enforcement actions often involve webs of interconnected corporate insiders, research analysts, and traders, all of whom can be "putative defendants," even though many of them did not actually trade any securities. Such sprawling actions are brought under the theory of "tipper-tippee" liability, which developed from a 1983 Supreme Court case called *Dirks v. SEC*.[12]

In *Dirks*, the Supreme Court recognized that insider trading actions must be predicated on "personal gain," which can be established by an insider's trading for profit, or "tipping" information to a third party in exchange for a "personal benefit."[13] The latter standard has been elusive to define. And foreshadowing the defenses successfully raised 30 years later in *Newman*, *Dirks* made clear that "[d]etermining whether an insider personally benefits from a particular disclosure, a question of fact, will not always be easy for courts."[14] The Court stated, however, that there are "objective facts and

circumstances" that justify the inference that a disclosure has been made in exchange for a benefit. For example, the Court wrote, "there may be a relationship between the insider and the recipient that suggests a *quid pro quo* from the latter, or an intention to benefit the particular recipient." The Court also held that a tipper could also be liable where he "makes a gift of confidential information to a trading relative or friend."[15]

Dirks also examined when a "tippee" would be liable for trading on MNPI. The Court stated that "a tippee assumes a fiduciary duty to the shareholders of a corporation not to trade on [MNPI] only when the insider has breached his fiduciary duty . . . by disclosing the information to the tippee *and the tippee knows or should know that there has been a breach*" (emphasis added). In so holding, however, the Court made clear that such a duty does not arise by the tippee's "mere possession" of MNPI, which "could have an inhibiting influence on the role of market analysts." Rather, such a duty arises from the relationship between the tipper and tippee, such that the tippee "knew" that the MNPI was provided in breach of the insider's duty.[16]

The past three years have witnessed

Recent Developments in Insider Trading Law

United States v. Newman

In December 2014, the Second Circuit applied the holding of *Dirks* to a case involving several "remote tippees" and in so doing vacated the convictions of two hedge fund portfolio managers.[17]

In *Newman*, the DOJ charged hedge fund portfolio managers Todd Newman (who worked for Diamondback Capital Management ("Diamondback")) and Anthony Chiasson (who worked for Level Global Investors ("Level Global")) with insider trading in the securities of two publicly-traded companies—Dell and NVIDIA. The Government alleged that the defendants' trades were based on MNPI disclosed by a corporate insider at each company, which related to earnings information prior to Dell's earnings announcements in May and August 2008 and NVIDIA's earnings announcement in May 2009. The jury convicted Newman and Chiasson on all counts, and the District Judge sentenced them principally to 54 months and 78 months in prison, respectively.[18]

Newman and Chiasson, however, were several steps removed from the insider's alleged disclosure of MNPI, which proved to be a critical fact on appeal.[19] Regarding the Dell trades, the DOJ offered evidence at trial that a Dell Investor Relations employee disclosed earnings information to a research analyst at Neuberger Berman, who passed it on to a Diamondback research analyst, who in turn provided the information to Newman, and to other analysts who provided it to Chiasson.[20] The NVIDIA "tipping chain" followed a similar path—the Government alleged that an NVIDIA insider provided MNPI regarding earnings information to a former executive at the technology companies Broadcom Corp. and Altera Corp., whom the insider knew from church. The former executive shared it with an analyst at Whittier Trust, who disclosed it to two analysts at Diamondback and Level Global, who in turn shared the information with Newman and Chiasson, respectively.[21]

On appeal, the defendants argued, among other things, that they lacked the *mens rea* to commit insider trading because they had no knowledge of the insider's "breach" under *Dirks*. The defense argued that, to be guilty of insider trading, the remote tippees must have knowledge of the benefit that was provided to the insider, to which the Government responded that the tippees merely needed to know that the MNPI was disclosed in violation of a company's policies on confidentiality. Newman also argued that there was insufficient evidence that the insiders received a benefit for allegedly disclosing MNPI.[22]

Regarding the first question, the Second Circuit panel adopted the defense's argument. The panel emphasized that, for an insider to "breach" his fiduciary duty to shareholders by disclosing MNPI, he or she must do so in exchange for a personal benefit. That is, "the insider's disclosure of confidential information, standing alone, is not a breach." The panel thus reasoned that for a tippee to have knowledge of such a "breach," he must "know[] of the personal benefit received by the insider in exchange for the disclosure," since such a benefit is essential to establish the "breach." Accordingly, the panel

found that the trial court's instructions were infirm, because the court instructed the jury that the Government need only establish that the defendants "knew that the [MNPI] has been disclosed by the insider in breach of a duty of trust and confidence." The panel further stated that the erroneous instructions were not harmless.[23]

The panel next considered defendant Newman's second argument. The panel again sided with the defense, concluding that the "circumstantial evidence in this case was simply too thin to warrant the inference that the corporate insiders received any personal benefit in exchange for their tips." In reaching this conclusion, the panel conceded that the scope of personal benefit was "broadly defined" to include "not only pecuniary gain, but also, *inter alia*, any reputational benefit that will translate into future earnings and the benefit one would obtain from simply making a gift of confidential information to a trading relative or friend." The panel clarified, however, that while this standard is "permissive," it "does not suggest that the Government may prove the receipt of a personal benefit by the mere fact of a friendship, particularly of a casual or social nature." The panel elaborated that "to the extent *Dirks* suggests that a personal benefit may be inferred from a personal relationship," "such an inference is impermissible in the absence of proof of a meaningfully close personal relationship that generates an exchange that is objective, consequential, and represents at least a potential gain of a pecuniary or similarly valuable nature." The panel clarified that "this requires evidence of a relationship between the insider and the recipient that suggests a *quid pro quo* from the latter, or an intention to benefit the latter." In sum, the personal benefit provided in exchange for confidential information "must be of some consequence."[24]

Applying these principles, the panel found that the Government had not established that the corporate insiders at Dell and NVIDIA provided confidential information in exchange for a "personal benefit." Regarding the Dell tips, the Government argued that the Dell insider provided MNPI in exchange for "career advice" from the Neuberger Berman analyst who received it. In rejecting this argument, the panel found that such "career advice" was "little more than the encouragement one would generally expect of a fellow alumnus or casual acquaintance." The panel further noted that the research analyst testified that he would have given the Dell insider the same advice regardless of whether the insider had disclosed MNPI, that he began providing such advice prior to receiving the alleged MNPI, and that no *quid pro quo* existed. The panel then held that the "benefit" evidence relating to NVIDIA was "even more scant," because the NVIDIA insider and the research analyst were "merely casual acquaintances."[25] Further, the tippee testified that he did not provide anything of value to the NVIDIA insider in exchange for the MNPI, and that the insider did not know that the tippee was trading NVIDIA stock. The panel further held that even if there was sufficient evidence of a benefit, there was "absolutely no testimony or any other evidence that Newman and Chiasson knew" of these alleged benefits. Similarly, the panel concluded that there was insufficient evidence to establish that the defendants consciously avoided learning the facts surrounding this alleged benefit, since they were so far removed from the initial disclosure, and because evidence showed that information similar to that disclosed by the insiders was often obtained through authorized leaks or analyst modeling.[26]

After the panel reversed Newman's and Chiasson's conviction, the DOJ requested that the entire Second Circuit rehear the *Newman* appeal *en banc*, arguing that "if the Opinion stands, the Panel's erroneous redefinition of the personal benefit requirement will dramatically limit the Government's ability to prosecute some of the most common, culpable, and market-threatening forms of insider trading."[27] The DOJ's pleas went unheeded, however, as the Second Circuit denied the rehearing request without comment and the Supreme Court denied the DOJ's petition for a writ of *certiorari* as well.

Convictions Vacated as a Result of Newman

As a result of the *Newman* decision, courts have vacated a dozen criminal convictions for insider trading.

The first convictions to fall concerned a group of traders who pled guilty to trading on the basis of MNPI concerning IBM Corporation's 2009 acquisition of SPSS Inc.[28]

The alleged "insider" at the start of this "tipping chain" was Michael Dallas—an associate at the law firm that had represented IBM in the acquisition. The DOJ charged that Dallas disclosed MNPI regarding the acquisition to Trent Martin, his close friend and a research analyst at an investment bank. Martin then allegedly tipped his roommate, Thomas Conradt, who worked as a broker. The DOJ alleged that Conradt, in turn, tipped his fellow brokers David Weishaus, Daryl Payton, and Benjamin Durant, all of whom allegedly traded in the securities of SPSS before the acquisition was announced.[29]

In charging the case, the DOJ relied on the misappropriation theory of insider trading, alleging that Dallas and Martin were close friends who had a "history, pattern and practice" of sharing confidential information, including MNPI obtained through their jobs. Based on this relationship of "trust and confidence," the DOJ contended, Martin had a duty to keep Dallas's MNPI regarding the IBM acquisition confidential. The DOJ charged that Martin breached his relationship of trust and confidence with Dallas by buying SPSS common stock and disclosing the MNPI to various tippees.[30]

Martin, Conradt, Weishaus, and Payton pled guilty to the charges before the *Newman* decision was issued. Within days of the *Newman* decision, however, Southern District of New York Judge Andrew L. Carter advised the parties that he was inclined to vacate the defendants' guilty pleas in light of *Newman*, as there was insufficient evidence of a cognizable benefit provided to the source of the MNPI. After extensive briefing, Judge Carter vacated the defendants' guilty pleas in February 2015, finding an insufficient factual basis for them.[31] After Judge Carter vacated the guilty pleas, the DOJ moved to dismiss the indictments against all five defendants,[32] effectively conceding that they could not prove their case beyond a reasonable doubt given Judge Carter's interpretation of *Newman*.

In October 2015, the DOJ agreed to vacate seven more convictions. Most prominently, the DOJ vacated the conviction of Michael Steinberg (a former SAC Capital Advisors Portfolio Manager), who was found guilty of insider trading after a jury trial for allegedly trading in shares of Dell and NVIDIA on the basis of the same MNPI allegedly used by Newman and Chiasson. The DOJ also vacated the guilty pleas entered by the cooperating witnesses who had been used to build the prosecutions of Newman, Chiasson, and Steinberg: Jon Horvath, the analyst who allegedly tipped Steinberg, Jesse Tortora, the analyst who allegedly tipped Newman, Spyridon Adondakis, the analyst who allegedly tipped Chiasson, Sandeep Goyal, an analyst at Neuberger Berman, Danny Kuo, an analyst at Whittier Trust, and Hyung Lim, an executive at Altera Corporation.[33]

It is worth mentioning, however, that despite the number of vacated convictions referenced above, courts have declined to vacate or dismiss a number of *Newman*-based challenges to prior convictions or indictments. To date, courts in the Southern District of New York have denied at least 15 motions to dismiss indictments or complaints, vacate convictions, or withdraw guilty pleas. Though the reasoning in those cases has varied, the courts found sufficient evidence in the record to support the defendants' convictions (including on issues of personal benefit and knowledge), and have emphasized that "*Newman* could not, and did not, overturn any prior precedent regarding the meaning of personal benefit."[34] Thus, while the *Newman* decision has caused the DOJ to seek dismissal of certain cases involving remote tippees, it has not resulted in a complete upheaval of the scores of insider trading convictions the DOJ has obtained over the last five years.

Civil Actions Affected by Newman

The holdings in *Newman* also presented challenges in civil actions brought by the SEC. On September 14, 2015, the SEC suffered a defeat in an administrative proceeding when Administrative Law Judge ("ALJ") Jason Patil dismissed insider trading claims against Joseph Ruggieri, a former trader at Wells Fargo Securities LLC. The SEC alleged that Gregory Bolan, considered a "rising star" in Wells Fargo's research department, tipped Ruggieri about changes to ratings on certain companies. The SEC alleged that Bolan disclosed the ratings changes in exchange for favorable performance reviews from Ruggieri, which gave Bolan access to valuable promotions and salary increases. ALJ Patil, however, held that positive performance reviews were not a sufficient "benefit" under *Newman* because Ruggieri's feedback appeared genuine and part of a standard practice. ALJ Patil also emphasized that Ruggieri had given Bolan positive feedback even before being provided with the alleged MNPI.[35]

United States v. Salman

On January 19, 2016, the Supreme Court granted *certiorari* in *United States v. Salman*, a case that could further clarify the test regarding the sufficiency of a "benefit" in an insider trading case.[36] The convicted defendant in *Salman* is a "remote tippee," though not as remote as the defendants in *Newman*.

The tipping chain in *Salman* proceeded as follows:

- Maher Kara (the "Insider") worked at a major bank's healthcare investment banking group. Through this role, the Insider learned of MNPI regarding mergers and acquisitions by the bank's clients. The Insider disclosed this information to his older brother (the "Tippee"), who regularly traded on it from 2004 to 2007;
- The Tippee then began disclosing this MNPI to Bassam Salman, the defendant. The Tippee and Salman were

close, as the Insider became engaged to Salman's sister. Salman traded on this MNPI, earning close to $2 million from the trades.[37]

At trial, the Government offered proof that the Insider and Tippee enjoyed a "close and mutually beneficial relationship," that the Tippee helped pay for the Insider's college, stood in for the Insider's father at the Insider's wedding, and taught science to the Insider to help him succeed at his job. In addition, the Insider testified that he provided the MNPI to the Tippee in order to "benefit him," and "fulfill whatever needs he had."[38]

In short, since 201[illegible], court decisions have [illegible] more [illegible] on the scope of insider trading law than the types of [illegible] that always have represented the greatest challenge to federal enforcement officials—remote tippees."

On appeal, Salman argued that the Government's proof of benefit was insufficient under *Newman,* since there was no evidence that the Tippee provided anything tangible to the Insider. The Ninth Circuit rejected this argument, finding that the Insider's disclosure was "intended as a gift of market sensitive information," which it found to be sufficient under *Dirks* and *Newman*.[39] The Ninth Circuit further stated that "to the extent *Newman* can be read to go so far [as requiring there to be a] tangible benefit," as opposed to an insider's gift to a friend, "we decline to follow it." Salman also argued that the evidence was insufficient to show that he "knew" of this benefit, which the panel rejected.[40]

The Supreme Court has agreed to hear the case in order to determine whether the benefit cited in *Salman* is sufficient under *Dirks*.[41]

Enforcement Actions Post-*Newman*

Despite *Newman*, the SEC has continued to bring insider trading actions at a brisk pace. Thus far in 2016, the SEC has already brought insider trading actions against 11 individuals and entities, after bringing actions against 87 individuals and entities in fiscal year 2015 and 80 individuals and entities in 2014.[42] Although the volume of such actions has not slowed, recent actions generally appear to focus on traditional insider trading cases involving direct tippers, or clear misappropriation of information related to corporate transactions prior to their announcements.[43]

While the pace of criminal insider trading enforcement actions does not appear to have kept up with pre-*Newman* rates, federal prosecutors continue to bring insider trading actions when it is clear that the allegations of wrongdoing are sufficient under *Newman*. In August 2015, for example, federal prosecutors in the Eastern District of New York and the District of New Jersey charged 32 traders and hackers with a wide-ranging insider trading scheme. According to the indictments, the traders sent hackers a "wish list" of corporate news releases they wanted to see before the releases became public. The hackers allegedly broke into companies like Business Wire, PR Newswire and Marketwired over five years and stole more than 150,000 news releases before the releases were published. The traders would then allegedly trade based on the stolen information and kick back a portion of the profits to the hackers.[44]

One other noteworthy development post-*Newman* is the SEC's trial victory in a civil enforcement action against Daryl Payton and Benjamin Durant. This case was discussed above—both defendants were remote tippees, indicted in the Southern District of New York, and the DOJ dismissed both cases after *Newman*. The SEC, however, continued to move forward with the case, and ultimately prevailed at trial against the defendants.

In declining to dismiss the SEC's action on *Newman*-related grounds, Judge Rakoff highlighted the advantages the SEC has in pursuing civil enforcement actions—a lower burden of proof, and a lower *mens rea*: "[W]hile a person is guilty of criminal insider trading only if that person committed that offense 'willfully,' *i.e.*, knowingly and purposely, a person may be civilly liable if that person committed the offense recklessly, that is, in heedless disregard of the probable consequences. With the respect to the motion here pending, that distinction arguably makes a difference."[45]

In finding that the SEC had sufficiently alleged a "benefit" to the source (Martin), Judge Rakoff focused on the tippee's (Conradt's) payment of certain living expenses or negotiation of reduced expenses for Martin, as well as his assistance to Martin with certain legal issues. The Court also cited Martin's statement to Conradt that Martin was happy Conradt profited from the SPSS trading. Judge Rakoff found such facts were "indicative of Martin's intent to benefit Conradt at the time of the disclosure of the information," "evidence of a *quid pro quo* relationship," and more than sufficient to allege "that Martin and Conradt had a meaningfully close personal relationship and that Martin disclosed the inside information for a personal benefit."[46]

Judge Rakoff also held that the SEC properly alleged that the two remote tippees—Payton and Durant—had sufficient knowledge of the benefits provided to Martin "to meet the civil standard of 'knowing or reckless.'" Judge Rakoff noted that while "there is no evidence that [Payton and Durant] knew specifically about Conradt's help to Martin," the SEC alleged that Payton and Durant "knew the basic circumstances surrounding the tip," including that Martin was the source of the MNPI, that Martin and Conradt were friends and roommates, and that Payton knew about Martin's legal issues. Judge Rakoff also cited to the defendants' repeated requests for more information from Conradt, and their efforts to conceal their trading. Judge Rakoff found that these circumstances were sufficient to raise the inference that Payton and Durant knew Martin's relationship with Conradt involved "reciprocal benefits." The Court distinguished these facts from those in *Newman*, where the defendants knew "next to nothing" about the tippers, were unaware of how the MNPI was obtained, and did not know the relationship between the tipper and tippee.[47]

In so holding, the Court also made clear that the SEC could prove its case through a "conscious avoidance" theory, explaining that "[d]espite their market sophistication and their knowledge that Conradt had learned the information from Martin, [the defendants] did not ask Conradt why Martin shared the information or how Martin learned of it in the first place." Judge Rakoff stated that "[t]he Court may draw an adverse inference from their conscious avoidance of details about the source of the inside information and nature of the initial disclosure."[48]

Key Take-Aways Post-*Newman* and *Salman*

After *Newman* and the Ninth Circuit's decision in *Salman*, the law appears settled that a remote tippee must know of the "benefit" that an insider received in exchange for providing confidential information to a direct tippee. The Second Circuit clearly held this to be the case, and the Ninth Circuit endorsed that approach as well. As discussed in *Durant*, however, the Government will still have the opportunity to argue that this "knowledge" element is satisfied by "conscious avoidance." In other words, traders and portfolio managers cannot simply put their heads in the sand when provided with information they consider to be MNPI—the *Newman* decision is not *carte blanche* to trade on such information. Both federal prosecutors and SEC enforcement officials can also continue to pursue insider trading cases relating to tender offers under Rule 14e-3, without the restrictions of establishing a sufficient "benefit," and a tippee's "knowledge" of the benefit.

There remain lines to be drawn regarding the sufficiency of the benefit that must be established to sustain an insider trading action. The Supreme Court will soon address whether the "benefit" inuring to an insider from making a "gift" of inside information to a friend will suffice. Even if the Supreme Court affirms on that narrow issue, questions may remain as to whether an insider's "tip" in a particular case "generates an exchange that is objective, consequential, and represents at least a potential gain of a pecuniary or similarly valuable nature," as required by *Newman*. Such a test is necessarily fact-specific, as the Supreme Court noted decades ago, although the Court may offer clarity when it decides *Salman*. It seems unlikely that the Court will take issue with the *Newman* Court's recognition that the friendship between an insider and tippee—standing alone—can permit an inference of "personal benefit," but time will tell.

Regardless of the evolving standards, the fact remains that insider trading enforcement actions will continue to remain a priority of both the SEC and the DOJ. And while the DOJ historically has taken the lead in prosecuting insider trading offenses, the SEC's recent success in the *Durant* case may foreshadow an increasing role for this agency in pursuing insider trading cases that lack the proof necessary for a criminal case.

Even if the number of charged cases decreases, it behooves all compliance officers and legal professionals to regularly educate and train their institution's traders about the insider trading laws and the dangers that can result from trading on what may appear to be MNPI. Similarly, maintaining restricted lists and a vigorous insider trading policy are measures that compliance officers should follow in order to protect the institution from the stigma of a widely publicized investiga-

tion or enforcement action. As the law evolves, questions no doubt will arise relating to fact-specific, detailed scenarios that often crop up in insider trading questions. Consulting outside counsel when necessary is another measure that can help protect the institution and its traders, and highlight the good faith of those working at the institution.

ENDNOTES

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As a federal prosecutor and member of the SDNY's Securities and Commodities Fraud Task Force, Chris prosecuted a wide array of securities fraud offenses. Among other cases, Chris served as lead trial counsel in the insider trading trial of *United States v. Doug Whitman*, in which the founder of the Whitman Capital hedge fund was convicted of all insider trading counts after a multi-week trial. Chris also investigated and prosecuted numerous other insider trading offenses at hedge funds and expert network firms, as well as cases involving investment adviser fraud, hedge fund overvaluation schemes, and broker-dealer markup schemes.

Chris also worked in the SDNY's Terrorism and International Narcotics Unit, where he served as lead counsel in several of the Office's highest profile international criminal prosecutions. Chris' noteworthy cases include the successful prosecution of individuals charged with conspiring to export military parts and carbon fiber from the United States to Iran and China, in violation of OFAC and other regulations. Chris has prosecuted several cases involving national security matters; foreign terrorist organizations such as al Qaeda and al Shabaab; export and money laundering offenses relating to embargoed countries and entities; and cases involving foreign corruption.

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4 15 U.S.C.A. § 78j(b) (2016).

5 *Chiarella v. United States*, 445 U.S. 222, 226 (1980).

6 17 C.F.R. § 240.14e-3.

7 *United States v. O'Hagan*, 521 U.S. 642, 651-52 (1997).

8 *Dirks v. SEC*, 463 U.S. 646, 647, 654 (1983).

9 *Id.* at 655 n.14.

10 *United States v. O'Hagan*, 521 U.S. 642, 652 (1997).

11 *Id.*

12 463 U.S. 646 (1983).

13 *Id.* at 662–63.

14 *Id.* at 664.

15 *Id.* at 663–64.

16 *Id.* at 660–61.

17 *Newman*, 773 F.3d at 443

18 Walter Pavlo, *Newman And Chiasson Insider Trading Conviction Overturned*, Forbes, Dec. 10, 2014, http://www.forbes.com/sites/walterpavlo/2014/12/10/newman-and-chiasson-insider-trading-conviction-overturned/#3f3fd28a4e6e.

19 *Newman*, 773 F.3d at 443.

20 *Id.*

21 *Id.*

22 *Id.* at 450–452.

23 *Id.* at 451.

24 *Id.* at 451–54.

25 *Id.* at 453–55.

26 *Id.* at 454–55.

27 Petition of the United States of America for Rehearing and Rehearing En Banc, *United States v. Newman*, No. 13-1837, at 3 (Jan. 23, 2015), ECF No. 279.

28 See Superseding Indictment, *United States v. Durant, et al.*, No. 12-cr-00887 (ALC), at ¶¶ 10–11 (S.D.N.Y. Oct. 29, 2014), at ECF No. 95.

29 *Id.*

30 *Id.*

31 *United States v. Conradt*, No. 12 CR. 887 (ALC), 2015 WL 480419, at *1 (S.D.N.Y. Jan. 22, 2015).

32 Nolle Prosequi, *United States v. Conradt, et al.*, No. 12-cr-00887 (ALC) (S.D.N.Y. Feb. 03, 2015), at ECF No. 170.

33 Patricia Hurtado, *SAC Capital's Steinberg Gets Insider Trading Charges Dropped*, Bloomberg, Oct. 22, 2015, http://www.bloomberg.com/news/articles/2015-10-22/u-s-drops-charges-against-sac-capital-s-michael-steinberg.

34 *See, e.g., United States v. Whitman*, 115 F. Supp. 3d 439, 444 (S.D.N.Y. 2015).

35 Ed Beeson, *SEC Loses Insider Trading Case on Home Court*, Law360, Sep. 14, 2015, http://www.law360.com/articles/702227/sec-loses-insider-trading-case-on-home-court.

36 Order, *Salman v. United States*, No. 15-628 (U.S. Jan. 19, 2015), http://www.supremecourt.gov/qp/15-00628qp.pdf.

37 *United States v. Salman*, 792 F.3d 1087, 1093 (9th Cir. 2015).

38 *Id.* at 1089.

39 See *id.* at 1094 ("Proof that the insider disclosed material nonpublic information with the intent to benefit a trading relative or friend is sufficient to establish the breach of fiduciary duty element of insider trading.").

40 *Id.* at 1093.

41 Order, *Salman*, *supra* n. 36.

42 Enforcement Announcement, *supra* n. 3.

43 Shearman & Sterling LLP, *Securities Enforcement: 2015 Year-End Review*, at 23 (Feb. 2016), http://www.shearman.com/en/newsinsights/publications/2016/02/securities-enforcement-2015-year-end-review.

44 *See, e.g.*, Indictment, *United States v. Korchevsky, et al.*, No. CR 15-381 (RJD) (E.D.N.Y. Aug. 5, 2015), ECF No. 1.

45 *S.E.C. v. Payton*, 97 F. Supp. 3d 558, 559 (S.D.N.Y. 2015).

46 *Id.* at 562.

47 *Id.* at 564.

48 *Id.*