Perrigo Opt Out Litigation: Recovery & Investment Potential

Introduction & Summary

Multiple class action complaints were filed against Perrigo (PRGO) for actions taken by the Company and Joseph Papa, the CEO at the time, to defend against the unsolicited takeover bid by Mylan.[1] These suits seek to recover damages for violating federal securities laws which included making *"…materially false and misleading statements regarding the Company's business, operational and compliance policies."* The class period is 4/21/15 to 5/11/16. During that time PRGO's stock price had dropped from $192.82 to $92.75, a 51.3% loss.

A plaintiff's participation in a class action lawsuit, forgoes their right to file an individual lawsuit against the defendant. Opting out of a class action lawsuit, gives the injured party the right to file their own lawsuit. This report discusses the distinctions between opt out suits and class actions, the merits of the Perrigo suit and process to participate.

This report is broken down into 5 sections.

I. Opt Out versus Class Action Suits
II. Review of Perrigo Class Action Complaint
III. Examination of Alleged False and Misleading Statements
IV. Path to Resolution: Estimated Timeline, Milestones & Possible Scenarios
V. Next Steps

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SECTION I

Opt Out versus Class Action Suits

Class Action Suits

The benefit of participating in a class action suit is that it requires minimal effort. The class action complaint is filed with at least one named party, but brought on behalf of all other persons similarly situated. The injured party is not required to actively participate in the suit. The tradeoff of passive participation is that the plaintiff has no control over the legal process. After legal fees and expenses, the amounts recovered by the class are typically small relative to the size of the claims. For institutional shareholders that have incurred significant loss, opting out of the class action may present a superior alternative.

Procedural Hurdles for Class Action Suits

Class action suits are required to satisfy several procedural hurdles before being permitted to proceed on a class basis, which often results in delays and appeals. Class settlements require the court certification of the class and a fairness hearing. Settlements must seek court approval and public input as to whether or not the class of plaintiffs was treated fairly, before the settlement is paid.

Opt Out Suits

Ability to Control Litigation

Class counsel has the discretion to define the class period and the legal theory being pursued. Class counsel is motivated by an approach that will yield the best result for the class as a whole, but that may disadvantage an individual class member. Whether it is the formula for damages, the dates of the class period or the financial instruments included, the actions of class counsel may not be aligned with the interest of every shareholder. Opting out of the class frees a plaintiff to pursue the legal strategy that is best suited for them. This also means hiring counsel of their choice.

<u>The Price of Control</u>

As an active participant in the suit there may be discovery burdens[2], document productions, depositions etc. There is a cost in terms of personnel time and financial resources. Recovery rates for opting out have historically been substantially higher than settlements received by the class. Plaintiffs will need to weigh the benefit of higher potential recovery versus the attention participating in litigation will demand. There is also no guarantee that the final settlement/judgement will be the same for the class and the opt out suit. It is possible that the class action prevails while the opt out fails, or vice versa.

Optionality in the Opt Out

Plaintiffs participating in the class have to ability to opt out at an opportune time. The information uncovered by the class action becomes publicly available. The time and expense of extracting that information is borne by the class, while the benefit could accrue to a plaintiff opting out. This provides an informational and cost advantage, that makes an opt out case more economical.

Timing Advantage

Class actions can have lengthy proceedings. Opt outs can proceed to trial more quickly which can accelerate settlement discussions. There is also a strong incentive for the defendants to settle with the opt out plaintiffs prior to any adverse court decisions that would undermine the defendants case in the class action trial.

Jurisdictional Advantage

Class actions can only be brought in federal court. There may be claims that could be brought under state law that are unavailable to a class. A defendant fighting claims in multiple jurisdictions may be motived to reduce the number of suits outstanding and settle the opt out suits more quickly.

Important Legal Standard Distinction

Class action suits seek to recover damages based on violations of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder.

Section 10(b)

"Rule 10b-5, promulgated by the U.S. Securities and Exchange Commission ("SEC") under Section 10(b) of the Exchange Act, prohibits fraudulent conduct in connection with the purchase or sale of securities. See 15 U.S.C. § 78j. Rule 10b-5 provides that it is unlawful for any person, directly or indirectly:

1. *to employ any device, scheme, or artifice to defraud,*
2. *to make any untrue statement of material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or*
3. *to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.*

17 C.F.R. § 240.10b-5.

In order to plead a claim for securities fraud under Section 10(b) and Rule 10b-5, a plaintiff must plead:

- *a misrepresentation or omission of;*
- *a material fact;*
- *reliance thereon;*
- *causation;*
- *damages; and*
- *fraudulent conduct (scienter);*
- *in connection with the purchase or sale of a security."*[3]

For example, if the institution relied directly on the company's yearly or quarterly SEC filings, claims can be made under Section 18 of the Securities and Exchange Act of 1934, 15 U.S.C.S. § 78r that, unlike traditional securities fraud claims under 10(b), do not require proof of knowledge or fraudulent intent.

Proving knowledge or fraudulent intent at trial is a much higher hurdle than simply that the institution relied on the statement of the company. Opt out cases have a lower burden of proof.

15 U.S. Code § 78r - Liability for misleading statements

(a) Persons liable; persons entitled to recover; defense of good faith; suit at law or in equity; costs, etc.
Any person who shall make or cause to be made any statement in any application, report, or document filed pursuant to this chapter or any rule or regulation thereunder or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title, which statement was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, shall be liable to any person (not knowing that such statement was false or misleading) who, in reliance upon such statement, shall have purchased or sold a security at a price which was affected by such statement, for damages caused by such reliance, unless the person sued shall prove that he acted in good faith and had no knowledge that such statement was false or misleading. A person seeking to enforce such liability may sue at law or in equity in any court of competent jurisdiction. In any such suit the court may, in its discretion, require an undertaking for the payment of the costs of such suit, and assess reasonable costs, including reasonable attorneys' fees, against either party litigant.
(b) Contribution
Every person who becomes liable to make payment under this section may recover contribution as in cases of contract from any person who, if joined in the original suit, would have been liable to make the same payment.
(c) Period of limitations
No action shall be maintained to enforce any liability created under this section unless brought within one year after the discovery of the facts constituting the cause of action and within three years after such cause of action accrued.
(June 6, 1934, ch. 404, title I, § 18, 48 Stat. 897; May 27, 1936, ch. 462, § 5, 49 Stat. 1379.)

Higher Opt Out Recovery Rates

The historical average recovery on opt out suits is **20% to 40%** compared to a rate of **2% to 3%** of estimated losses for on class actions.[4]

"Institutions increasingly are opting out of class actions because, by bringing an individual action, they can potentially recover much more — sometimes a multiple of — what they stand to obtain in a class settlement. For example, a group of five New York City pension funds that opted out of the WorldCom litigation revealed they recovered three times more than they would have recovered if they stayed in the class. Several institutions, such as the California Public Employees' Retirement System, which opted out of the AOL Time Warner litigation, subsequently announced they ultimately settled for between approximately nine and 50 times more than they stood to recover under the class settlement. Similarly, several institutions such as the Teacher Retirement System of Texas and the California State Teachers' Retirement System that opted out of the Qwest Communications case announced they succeeded in obtaining 30 times what they would have received had they stayed in the class or greater, with opt-out institutions recovering, in the aggregate, more than the $400 million settlement reached by the class. ***Legal scholar John Coffee estimated investors who have brought opt-out actions recovered on average 20% to 40% of their actual losses, while class members only received on average 2% to 3%.*** *Thus, much larger recoveries are possible outside of class litigation for institutions."*[5]

Statutes of Limitations or Repose

For claims that have been asserted in the Class Action, statutes of limitations or repose pose only limited risks at this time. The limitation periods for plaintiffs to file claims under the anti-fraud provisions of the Exchange Act is the earlier of "[two] years after the discovery of the facts constituting the violation," or "[five] years after such violation."[6] *Pursuant to the Supreme Court's decision in American Pipe & Construction Co. v. Utah, 414 U.S. 538 (1974), "the commencement of a class action suspends the applicable statute of limitations as to all asserted members of the class*." The two-year discovery-rule limitations period is therefore tolled until such time as "the court has found the suit inappropriate for class action status."58 Here, Perrigo's alleged fraud was first partially disclosed on or around February 18, 2016, when it reported disappointing results for the fourth quarter of 2015, meaning that the two-year limitation period would expire on February 18, 2018. The Class Action was filed on May 18, 2016, and effectively "tolled" the limitation period for the time being.

It is possible that the five-year repose period has not been tolled—the Supreme Court heard a case on this question on April 17, 2017, and so the issue will likely be settled this term.[59] The repose period begins to run at the violation, in this case, the 2015 misstatements. Whether it will ultimately be tolled or not, the repose period will not expire until 2020, so it is not an immediate concern. For claims not asserted in the class action, *American Pipe* tolling arguably may not apply, and so limitations periods should be considered, and are discussed further above.

SECTION II

Review of Class Action Complaint: Case 1:16-cv-04752

On 6/21/16 in the United States District Court Southern District of New York a class action complaint was filed by Plaintiff AMI – GOVERNMENT EMPLOYEES PROVIDENT FUND MANAGEMENT COMPANY LTD, Individually and on Behalf of All Others Similarly Situated versus Defendants JOSEPH C. PAPA and PERRIGO COMPLANY PLC.

Nature of Action

The Class Period is 4/21/15 to 5/11/16. Perrigo rejected Mylan's $205 cash/stock offer on 4/21/15. PRGO cited its organic growth rate of 5-10% and the future benefits from the Omega Pharma acquisition which were not fully reflected in PRGO's performance.

Mylan's offer was subsequently raised to $235 and a tender date of 11/13/15 was set. The tender failed seemingly because shareholders were convinced by Papa of PRGO's standalone growth prospects.

Materially False and Misleading Statements Issued During the Class Period

The Class Period begins on April 21, 2015, when Perrigo's Board of Directors issues a press release, entitled "Perrigo Board Unanimously Rejects Unsolicited Proposal From Mylan." In the press release, the Company stated, in part, that Mylan's proposal "substantially undervalues Perrigo and its growth prospects." Touting the Company's strong competitive position, the Company advised shareholders that Mylan's offer "would deny Perrigo shareholders the full benefits of Perrigo's durable competitive position

and compelling growth strategy" and "does not take into account the full benefits of the Omega Pharma acquisition."[7]

On 4/21/15 Perrigo hosted webcast with an accompanying presentation titled "Perrigo: Creating Superior Value for Shareholders".[8] The slide presentation stated that Perrigo has a proven financial track record and projected a 3 year CAGR Goal (Organic Net Sales) for calendar year 2014-2017 of 5-10%.[9]

PRGO and Papa are accused of making false and/or misleading statement throughout the class period.

Specifically, Defendants made false and/or misleading statements and/or failed to disclose that:

I. *Perrigo as a standalone entity would be unable to achieve organic revenue growth of 5% to 10%;*
II. *Perrigo's competitive position and growth strategy were not "durable" but were in fact eroding;*
III. *Perrigo was facing serious issues integrating the Omega acquisition into the Company and had significantly overpaid for Omega;*
IV. *for the foregoing reasons, among others, Mylan's offer did not undervalue Perrigo; and*
V. *as a result of the foregoing, Perrigo's public statements were materially false and misleading at all relevant times.*[10]

Perrigo shareholders failed to meet the minimum tender threshold, Mylan's offer failed. The suit attributes the failure of the tender to Perrigo's "aggressive public campaign against Mylan". Perrigo was aggressive in its defense spending a total of $86.9 million[11] to prevent the Mylan takeover. Perrigo executives received $3.5 million for "their key contributions related to Mylan's takeover attempt."

The Truth Emerges

12/31/15

"The 2015 8-K reported lower fourth quarter revenue, margins, earnings and cash flow than investors had been led to expect and lowered the Company's earnings guidance for 2016. Perrigo also disclosed in the 2015 8-K an asset impairment charge of $185 million related to the recently acquired Omega assets."[12]

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5/12/16

2016 earnings guidance $8.20-$8.60, significantly below the guidance provide by Papa of $9.83 before the Mylan tender.

Newly appointed CEO, John T. Hendrickson, stated on the Q1 2016 Earnings call held on 5/12/16:

"First of all, going back to kind of expectations, guidance, et cetera. My philosophy is – again, I'll try to be as transparent as possible. ***I want the expectations we lay out to be realistic, numbers we feel we can deliver****, and then drive our team to deliver and beat those every day."*

Plaintiff's Class Action Allegations

Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- *whether the federal securities laws were violated by Defendants' acts as alleged herein;*
- *whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business, operations and management of Perrigo;*
- *whether the Defendant Papa caused Perrigo to issue false and misleading financial statements during the Class Period;*
- *whether Defendants acted knowingly or recklessly in issuing false and misleading*
- *financial statements;*
- *whether the prices of Perrigo securities during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and*
- *whether the members of the Class have sustained damages and, if so, what is the proper measure of damage*[13]

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Plaintiff will rely, in part, upon the presumption of reliance established by the fraud on-the-market doctrine in that:

- *Defendants made public misrepresentations or failed to disclose material facts during the Class Period;*
- *the omissions and misrepresentations were material;*
- *Perrigo securities are traded in an efficient market;*
- *the Company's shares were liquid and traded with moderate to heavy volume during the Class Period;*
- *the Company traded on the NYSE and was covered by multiple analysts;*
- *the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and*
- *Plaintiff and members of the Class purchased, acquired and/or sold Perrigo securities between the time the Defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.*

Counts

I. (Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder Against All Defendants)
II. (Violations of Section 20(a) of the Exchange Act Against Defendant Papa)
III. (Violations of Section 14(e) of the Exchange Act Against All Defendants 70.

SECTION III

Examination of Alleged False and Misleading Statements

Specifically, Defendants made false and/or misleading statements and/or failed to disclose that:

I. *Perrigo as a standalone entity would be unable to achieve organic revenue growth of 5% to 10%;*
II. *Perrigo's competitive position and growth strategy were not "durable" but were in fact eroding;*
III. *Perrigo was facing serious issues integrating the Omega acquisition into the Company and had significantly overpaid for Omega;*
IV. *for the foregoing reasons, among others, Mylan's offer did not undervalue Perrigo; and*
V. *as a result of the foregoing, Perrigo's public statements were materially false and misleading at all relevant times.*[14]

Relevant Precedent

Each securities litigation claim is fact specific; therefore a directly applicable precedent may not exist. However there are elements that make for a strong case.

Financial Restatement

On 4/25/17 Perrigo issued a press release titled "Perrigo Announces Restatement Of Previously Issued Forms 10-K And 10-Q Financial Statements; Announces Select Preliminary Unaudited First Quarter 2017 Financial Results"[15]

Allegations of Accounting Impropriety

Accounting irregularities may be present, which may be borne out through the litigation process. There were multiple impairment charges of the Omega acquisition. It may become clear through discovery that it was known earlier than disclosed that Omega's value was overstated.

Parallel Regulatory Investigations

On 5/2/17 Perrigo disclosed a Department of Justice (DOJ) investigation.[16] Search warrants were executed at the Company's corporate offices associated with an ongoing DOJ investigation related to drug pricing in the pharmaceutical industry.

Executive Departures

4/25/17 – former Perrigo CEO Joe Papa joins Valeant
2/27/17 – former Perrigo CFO Judy Brown resigns

These are significant resignations given how vociferously these executives defended Perrigo from Mylan's approach, citing the strong prospects of the company.

Large Drop in Stock Value

During the class period 4/21/15 to 5/11/16, Perrigo dropped from $192.82 to $92.75, approximately $100 points which equates to 52%.

Perrigo's Potential Defenses

As detailed in the timeline section below, Perrigo's defenses against the class action will be publicly disclosed when the Defendants file their motion to dismiss. The most common argument for defense of a class action claims is "scienter", that executives were not aware that their statements were false and will likely argue that here. As stated above, the legal concept of scienter is not applicable for opt out

litigation brought at the state level. However, the probability of success for an opt out suit is tied to whether or not a class action suit survives a motion to dismiss.

Other possible arguments that Perrigo could raise is that statements were not material to investors—that knowing the underlying true fact was not something that would have influenced their decision to invest in Perrigo, or reject the merger.

Lastly, the Defense could assert that the statements were not false when they were made, or that they were predictions, not statements of facts. It will be the job of Plaintiffs' counsel to prove that the statements were false at the time they were made.

Benefits of the Investigative Process & Discovery

Plaintiffs' counsel employees their own investigative staff to locate and interview former employees knowledgeable about the internal workings of business and what was known at the time.

If the complaint survives the Motion to Dismiss, the Plaintiff gains access to internal documents and the ability to take depositions through the discovery process. The deposition testimony and documents gathered can provide strong evidence for proving the claims. Discovery almost always reveals information damaging to the defendants, which is why the Motion to Dismiss is such a big inflection point in the litigation.

PRGO Standalone Would be Unable to Achieve Organic Revenue Growth of 5% to 10%

Joe Papa and the Perrigo board evaluated the Mylan offer in the context of PRGO's standalone value based on a 5-10% growth rate.[17]

PRGO's Competitive Position was Eroding

Omega Integration issues

On 11/6/14 Perrigo announced its acquisition of Omega Pharma NV (OME BB) for $4.5 (€3.6) billion enterprise value.[18] The acquisition was touted as accelerating Perrigo's international growth strategy establishing a durable leadership position in the European OTC marketplace.

SECTION IV

Path to Resolution: Estimated Timeline, Milestones & Possible Scenarios

On 3/16/17 the STIPULATION AND PROPOSED ORDER REGARDING THE CONSOLIDATED AMENDED COMPLAINT AND RESPONSIVE BRIEFING for Case No. 2:16-cv-02805-MCA-LDW was filed in the United States District Court District of New Jersey.

Perrigo Institutional Investment Group ("PIIG") is the Lead Plaintiff. The amended complaint is due to be filed on 6/21/17. The amended complaint may be quite different than the initial filings, which are done in haste, and represent a rough theory. The amended complaint, by contrast, represents focused

resources by the lead firm, including investigators and a careful review of filings and publicly available facts. Therefore it is possible a different case could come out of that process.

As a supplement to this report Arch Research will produce a report that evaluates the amended complaint.

Estimated Perrigo Timeline

06/21/17 – Amended Complaint
08/21/17 – Motion to Dismiss
10/05/17 – Plaintiffs' Opposition to Motion to Dismiss
11/06/17 – Defendants Reply
To Be Determined – Issuance of Court's Opinion

Key Milestones

- Motion to Dismiss
- Close of Discovery
- Summary Judgement
- Completion of the Brief
- Decision
- Trial
- Appeals

Motion to Dismiss

Surviving the Motion to Dismiss is a key determinant as to whether or not shareholders have an opportunity to recover a portion of their losses; it greatly improves the probability that Plaintiffs will receive a payout.

Close of Discovery

After a suit survives a Motion to Dismiss, the Plaintiffs are allowed discovery, which typically improves the evidence available to prove their claims. Settlement rarely occurs before the Motion to Dismiss is decided. Upon the close of discovery both sides have their information and may decide to seek a settlement.

Summary Judgement

After the close of discovery, when both sides have exchanged and reviewed documents, and taken depositions, the parties have a chance to move for summary judgment on one or more elements in the case, using the information they have collected. Summary judgment means that the court determines that there is "no genuine dispute as to any material fact" on an element, and therefore the question does not need to go before a jury.

In a lawsuit, a plaintiff must prove all elements to succeed in a claim. Summary judgment is defendants' second (and often last) chance to dispose of an action prior to going to trial. Typically in securities cases, defendants move for summary judgment on multiple elements, and if they prevail on any one, the case is dismissed. Plaintiffs can also move for summary judgment, and often do on a few elements. If

plaintiffs prevail on some subset of elements, however, the case is not over, those elements are simply decided before the trial. That puts plaintiff in a stronger position going in.

Trials

It is rare that shareholder litigation proceeds to trial. If it does, there is still an opportunity for settlement after the court rule on pre-trail motions. After the court rules, the parties have a better understanding as to the framework and key issue the case will be ruled on; that could prompt settlement discussions.

At the close of trial, settlements could still occur before a verdict, depending on how the trial goes.

Appeals

Parties can appeal adverse judgements along with the way; these represent another point at which cases can settle.

The path and milestones for class actions are largely applicable to opt out litigation. The dismissal rates for opt outs are going to be lower because of the nature of the litigation; only stronger cases are brought as direct actions.

Tolling Agreements

A tolling agreement is an agreement with defendants to put applicable limitations periods on hold. Every claim is subject to limitations periods that provide that if a plaintiff does not bring a claim within a certain period of time, they have lost their chance.

Investors that want to wait and see how a class action proceeds can approach defendants and obtain a tolling agreement. These are negotiated documents, so their content can vary. In general, the parties agree that while the agreement is in effect, the plaintiff will not sue, and the defendant will pause or "toll" the counting of the limitation period against plaintiffs. The parties can structure these in a lot of different ways. For instance, they can say it lasts for a set period of time, no matter what. In that case, nothing happens. Plaintiffs can't sue, but they are not in danger of losing claims. Or they can make it terminable by either party, usually with some notice period. Or its duration can be linked to some outside event (such as milestones in the class action).

Defendants are often willing to enter into these because it puts off potential litigation, and can make it more predictable. They are beneficial to investors because they can buy time to observe the progress of the class action. They also let the defendants know that the investor is out there, has large losses, and is considering filing an individual litigation, which can open a dialogue to settlement before the suit is filed.

Opt Out Litigation Overview of Historical Timing

Opt out actions could take from 18 months to over three years. The last publicly available article that studied the timeframe for security class actions and their key milestones was published in the April 2013 edition of the Professional Liability Underwriting Society Journal.[19]

- In Petrobras, some of the opt outs were settled within 18 to 22 months of being filed. This represents a relatively speedy resolution. Judge Rakoff who presided over the case is viewed as is a judge that moves cases along quickly.
- The timing for Lord Abbett v. Petrobras, 15-cv-07615 (SDNY), was more typically; it took in excess of two years.
- The ARCP opt outs, for example, are still ongoing. PIMCO Diversified Income Fund et al v. American Realty Capital Properties, Inc., 1:15-mc-00040-AKH. Filed in October 2015, and they have set close of discovery on September of this year. Those cases could go three or more years from the October 2015 complaint.

SECTION V

Risks to the Plaintiff & How are they Mitigated

- Time & Expense of Discovery
- Assistance with Discovery
- Negative Press & the Stigma Associated with Litigation
- Legal Fees

Time & Expense of Discovery

Time

The time required by the fund is difficult to predict. Plaintiff firms endeavor to minimize the amount of time fund management devotes to the case.

Document Collection:
There will be a small amount of time dedicated to document collection, but that function handled by a vendor.

Document Review:
That is handled by the Plaintiff's attorneys with minimal time commitment.

Deposition of Employees:
At least one employee related to the trading decisions, but likely more than one. The time commitment could be as little as a few days, but could take as much as a week to prepare. Depositions are one day, plus the preparation time. Preparation time will increased based on the employee's role and testimony. Defendants may also seek to depose higher level employees, depending on whether they had a role in the decision to purchase and hold the securities in question.

30(b)(6) deposition – an employee is designated to speak on behalf of the company. This can entail several or more days of preparation, as the employee must review a great deal of documents and be prepared to speak to general things about the corporation (document retention policies, investment strategy, etc.).

Expense of Discovery

The expense of retaining vendors is a modest component compared to other litigation costs such as retaining experts. The cost of the vendors is borne in the first instance by contingency firms, and taken out of recovery; similar to other litigation expenses.

Assistance with Discovery

Most of the information required for discovery is digital. Collection is done forensically by vendors who are specialists in the field, e.g. Precision Discovery[20]. The vendor performs targeted collection, which can be tailored to client's comfort level. The collection and targeted searches are conducted on site, meaning that only the documents that hit on pre-determined search terms are removed from the funds' premises. The subset of data is then reviewed by attorneys, and only those who produce what is responsive, and that is done under a protective order. The entire digital search process is minimally invasive.

Vendors are usually HIPPA[21] compliant, which is quite stringent; some vendors are even certified for government level security clearances.

Negative Press & the Stigma Associated with Litigation

The stigma associated with litigation, if there ever was, is virtually non-existent. Well-know, value oriented retail mutual funds have been involved in high profile litigation, as well as larger hedge funds.

Petrobras

- Vanguard, 15-6283 (EDPA)
- MassMutual, No. 15-9243 (SDNY)
- Hartford Funds, No. 15-9182 (SDNY)
- Pimco, Allianz, many others, No. 15-8192 (SDNY)
- Janus, No. 15-10086 (SDNY)
- Prudential, No. 16-7192 (SDNY)

Valeant

- T.Rowe Price, No. 16-5034 (DNJ)
- Janus, No. 16-7497 (DNJ)
- BlueMountain, No. 16-7328 (DNJ)

American Realty Capital Properties

- Pimco, 15-8466 (SDNY)
- Blackrock, No. 15-8464 (SDNY)
- Vanguard, No. 15-02157 (D.AZ)
- Pentwater Equity, No. 15-8510 (SDNY)
- Twin Securities, No. 15-1291 (SDNY)

Legal Expenses

Opt out law firms are most often contingency only with no upfront cost for the fund. As stated previously, litigation expenses, such as experts, will be reimbursed to the law firm upon recovery.

SECTION VI

Next Steps

Evaluation of Trade Claims

Plaintiff firms take very seriously issues of information security, including cybersecurity. They are committed to maintaining effective data protection protocols that provide defensible security of sensitive data. Critically, a client's data is not accessible firm wide, but only to a limited number of members from their in-house Data Analysis Team. Plaintiffs firms have implemented layers of security that apply to every process involving client investment information, as outlined below.

Plaintiff firm's Data Analysis Team retrieves client transactional data on a monthly basis from custodial banks, or more frequently as needed. The firm has extensive experience navigating all of the major custodians' web portals, including those of State Street Bank, BNY Mellon, JPMorgan, and Northern Trust. The team is also familiar with the various security features employed by some custodians, such as a two-step verification process or accessing portals via website certificates. Passwords and logins for custodial websites are securely stored in our in-house, proprietary database, which can only be accessed by members of our Data Analysis Team.

Plaintiff firms typically have a secure, proprietary database. The database securely manages approximately large amount of data and is updated by a dedicated in-house analyst and/or an outside software developer. The database is used to store and process client trading records, historical market information, and case-specific metrics. The database allows the data team to retrieve clients' transactional data and monthly position statements directly from custodial banks, and then cross-check holdings to calculate client losses and otherwise confirm client eligibility to participate in U.S. and non-U.S. actions.

Litigation Information Session

If pursuing potential recovery of losses is of interest, an in person meeting to discuss the litigation process in greater detail would be the next course of action.

Perrigo Opt Out Litigation: Recovery & Investment Potential

APPENDIX:

Precedent Recover Rate Comparison: Opt Out vs. Class

Case and Fund	Recovery		Multiple	Settlement Date
	Opt Out	Class		
New Jersey v. Tyco International Ltd. , No. 02-cv-5701 (D.N.J.) State of New Jersey Pension Funds	$ 73.30	$ 4.20	17.5 x	4/28/2008
California State Teachers' Retirement System v. Qwest , No. CGC-02-415546 CalSTRS	$ 46.50	$ 1.60	29.1 x	12/29/2006
Qwest Communications International, Inc. Colorado PERA	$ 15.50	$ 0.40	38.8 x	11/21/2007
Qwest Communications International, Inc. Texas Teachers	$ 61.60	$ 1.40	44.0 x	12/5/2007
Qwest Communications International, Inc. Alaska Funds	$ 19.00	$ 0.40	47.5 x	11/21/2007
Alaska Electrical Pension Fund v. AOL Time Warner, Inc. , No. 06-cv-00024 (D. Alaska Funds	$ 50.00	$ 1.00	50.0 x	12/7/2006
Regents of the University of California v. Richard D. Parson (AOL Time Warner, UCOP	$ 246.00	$ 14.40	17.1 x	2/28/2007
		Average	**34.8 x**	

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Perrigo Class Action Timeline

DATE	TYPE	NOTES	PRGO	MYL	Mylan Offer Value
7-Apr-15	pre-deal	Unaffected Price : pre MYL bid	164.71	59.57	
8-Apr-15	MYL offer	MYL approaches PRGO initial $205	195.00	68.36	205.00
21-Apr-15	Earnings	**Start of Class Period: PRGO rejects MYL, PRGO earnings**	**192.82**	74.07	222.95
24-Apr-15	MYL offer	MYL Commits to launch tender, $60 in cash + 2.2 MYL shares	192.89	76.06	227.33
29-Apr-15	MYL offer	MYL bumps offer to $75 in cash + 2.3 MYL shares; PRGO rejects	184.74	74.50	246.35
6-May-15	conference	Deutche Bank: Papa projects organic growth 5-10%	189.87	71.05	238.42
12-May-15	conference	BofA: Papa stated just getting started with the Omega transaction	194.26	70.33	236.76
18-May-15	conference	UBS: Papa reiterated 5-10% organic growth expectations	198.37	71.38	239.17
2-Jun-15	conference	Jeffries / Acquisition of OTC Brands: positioned for growth with Omega	194.31	72.28	241.24
23-Jun-15	conference	Opco: Judy Brown Omega integration proceeding as planned	189.39	71.02	238.35
27-Jul-15	Teva	day before Teva abandons MYL offer	193.60	56.37	204.65
28-Jul-15	Teva	Teva abandons unsolicited offer for MYL	192.07	56.35	204.61
5-Aug-15	Earnings	Papa characterizes the Omega acquisition as a key driver PRGO's success	189.65	54.60	200.58
28-Aug-15	MYL offer	MYL vote	185.42	50.37	190.85
14-Sep-15	Tender	Launch of Tender	181.26	49.06	187.84
17-Sep-15	PRGO call	Papa: reitered the success of the Omega acquisition / filed suit against MYL	181.08	49.37	188.55
21-Oct-15			155.24	40.89	
12-Nov-15	Tender	Day before tender	156.55	43.20	174.36
13-Nov-15	**Tender**	**Claims for all holders the day the tender failed**	**146.90**	48.78	**187.19**
18-Feb-16	Earnings	PRGO misses, guides down, Omega impairment charge	130.40	44.71	177.83
22-Apr-16	VRX	Reuters reports Papa to join Valeant (VRX)	121.35	48.29	186.07
25-Apr-16	Earnings	Papa joins VRX, PRGO guides down, another Omega impairment charge	99.40	45.02	178.55
11-May-16		**End of Class Period**	**92.75**	39.64	166.17
12-May-16	Earnings	additional $467 impairment charge for Omega	89.04	38.62	
27-Feb-17		CFO resigns, impairment charge and 2016 10-K will be unable to be filed	84.68	42.44	

Omega Pharma References

When the amended complaint is filed on 6/21/17 there may be more information detailing the Omega write downs. A timeline may emerge that indicate that Perrigo management was well aware of the Omega troubles while they were touting the acquisition publicly.

Perrigo Takes Waterland to Arbitration Over Omega Pharma Acquisition[22]

5/6/15 Deutsche Bank Conference: Joe Papa Comments

<Q - Gregg Gilbert>*: So, maybe I'll ask a few questions about Omega. You guys have been excited about it from the day you announced that. Obviously, you've had more time to dig deeper and become more excited. And I believe we were going to have an analyst day or a session to cover that. But maybe you can give us some of the highlights of what you think we should understand about Omega and what you're most excited about.*

<A - Joseph C. Papa>: Yeah. Sure. So, very, very simply, we think when we'd signed a deal on November 6, we were very excited about Omega. But if anything since that point as we closed the Omega on March 30, we become even more excited. The excitement comes from a number of things. Number one, you take a company like Perrigo that was doing business in six countries. Now you open up and you have 39 countries available. You have 300 million more consumers that you have access to as a result of doing the Omega transaction. That's a really exciting prospect for us as a company. So we think there is tremendous revenue synergies for us as a business as we put these two business together.

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5/12/15 Bank of America Conference: Joe Papa Comments

<Q - Sumant S. Kulkarni>*: Do you have any questions – we have one upfront but I'll ask one before that. So moving on to the Omega transaction, what do you think has been most underappreciated by investors in terms of that transaction?*

<A - Joseph C. Papa>*: Well, I would say for me personally, even when we made the announcement on November 6, we thought there* ***would be opportunity for synergy****, but as now, we've gotten more involved and closed the transaction on March 30. So from November 6 to March 30, it becomes smarter about what's in the Perrigo – I'm sorry, what's in Omega and how the Perrigo product would fit within Omega relative to taking the easy example. Omega has got some great products for pain but they don't have a night-time pain that also has a product in it that allows you to sleep better at night. It is the combination products that we have we think that would fit naturally into the Omega pipeline and launch new line extensions of the Omega pain products. That's a great easy example. The second example that I don't think people realize is that Perrigo has a very significant supply chain and a manufacturing footprint. As we think about taking the products that Omega has today – and 79% of what Omega sells today is outsourced. If I can bring that inside Perrigo, I could significantly lower the cost of goods sold for those products. I think those are really what I think are going to be the major synergy drivers and one that make me more excited today than I was three months, four months ago.*

06/23/15 Oppenheimer Healthcare Conference: Judy Brown

Responding to a question about Omega:

*<**A - Judy L. Brown**> We closed the transaction on March 30, so we're about nine weeks in right now and we, oh, are online – I should say in line with our going online integration process. Back office is working smoothly. We are*

bringing them on to all of our back office systems. And importantly, what was the underlying core of this deal was allowing Omega to remain independent in their sales and marketing process, not interfering with that but providing them product to put into that pipeline.

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*<Q - **Henry Capellan**>: And has Mylan impacted the integration process for Omega in any way? Has there been any distraction?*

<A - Judy L. Brown>: No. That team continues to do what their mission is and what they have been scheduled to do. And in fact, for Omega, it's – this time is very exciting because not only are they getting product from Perrigo in this process, but they have seen the value of being partnered together with us and the potential of being able to do something like the GSK deal, which they could not have done on their own.

Excerpts from 2015 Q4 Earnings

Asset Impairment

During the Company's impairment testing for the quarter ended December 31, 2015, the Company identified an impairment of certain indefinite-lived intangible assets based on management's expectations for future revenues, profits and cash flows associated with these assets. The indefinite-lived intangible assets were purchased in conjunction with the Omega Pharma Invest NV acquisition and are included in the BCH segment. The assessment resulted in an impairment charge of $185 million, which represents the difference between the carrying amount of the intangible assets and their estimated fair value. The primary assumptions supporting the fair value of these assets and cash flow projections assume modest revenue growth based on product line extensions, product life cycle strategies and geographical expansion within the markets in which the BCH segment currently distributes products, and gross margins and advertising and promotion investments largely consistent with historical trends.

In addition, the Company began actively marketing its India API business during the fourth quarter and recorded an impairment charge of $29 million related to the assets held for sale.

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Guidance

The Company expects 2016 adjusted earnings to be between $9.50 and $9.80 per diluted share as compared to $7.59 in 2015, excluding the charges outlined in Table III at the end of this release. This range results in a year-over-year growth rate in adjusted earnings of 25% to 29% over 2015's adjusted earnings per diluted share. The Company also expects 2016 reported earnings to be between $5.55 and $5.85 per diluted share as compared to a loss of $0.23 in 2015. A reconciliation to GAAP measures is attached in Table III.

References

[1] 10-Q filed 11/10/16, "Securities Litigation" section
https://www.sec.gov/Archives/edgar/data/1585364/000158536416000426/cy16q310q.htm

[2] https://www.mayerbrown.com/files/Publication/40fdd8df-11a0-46f6-8406-700ac93bc21b/Presentation/PublicationAttachment/933b5357-d218-4c4d-b53d-79f275f39f1f/12278.pdf

[3] http://www.weil.com/~/media/files/pdfs/10b_5_Guide.pdf

[4] See Kevin LaCroix, Opt-Outs: A Worrisome Trend in Securities Class Action Litigation, Oakbridge InSights 2, no. 3 (April 2007): 1

[5] http://www.pionline.com/article/20110725/PRINT/307259985/why-institutional-investors-are-opting-out-of-class-action-litigation

[6] 28 U.S.C. § 1658 (The Action alleges claims under the Exchange Act. Courts generally analyze the tolling of the one-and three-year limitations periods under the Securities Act in an equivalent manner).

[7] Class Complaint Case 1:16-cv-04752

[8] http://perrigo.investorroom.com/events-webcasts?item=32

[9] See appendix

[10] Class Complaint Case 1:16-cv-04752

[11] https://www.sec.gov/Archives/edgar/data/1585364/000158536416000245/cy15stubperiod10k.htm#s19F93E011F975634A14EBA755C8B61D8

[12] Class Complaint Case 1:16-cv-04752

[13] Class Complaint Case 1:16-cv-04752

[14] Class Complaint Case 1:16-cv-04752

[15] http://perrigo.investorroom.com/2017-04-25-Perrigo-Announces-Restatement-Of-Previously-Issued-Forms-10-K-And-10-Q-Financial-Statements-Announces-Select-Preliminary-Unaudited-First-Quarter-2017-Financial-Results

[16] http://perrigo.investorroom.com/2017-05-02-Perrigo-Discloses-Investigation

[17] 2015-05-12 Bank of America healthcare conference

[18] http://perrigo.investorroom.com/2014-11-06-Perrigo-Company-plc-To-Acquire-Omega-Pharma-NV-For-EUR-3-6-Billion-Creating-A-Top-Five-Global-OTC-Company

[19] https://sla.law.stanford.edu/sites/default/files/PLUS%20Pt%201%20-%20April%202013%20Journal.pdf

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