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Perrigo

Opt Out Litigation Analysis

Higher Opt Out Recovery

- Opt out action historical recovery rates averaged **20% to 40%** of estimated losses
- Class action recovery rate of **2% to 3%** of estimated losses

[http://2011-07-25 Pensions&Investments - Josuha H. Vinik, Andrea Rado and John R.S. McFarlane](http://2011-07-25%20Pensions&Investments%20-%20Josuha%20H.%20Vinik,%20Andrea%20Rado%20and%20John%20R.S.%20McFarlane)

Opt Out vs. Class Action Recovery

Case and Fund	Recovery			Settlement Date
	Opt Out	Class	Multiple	
<i>New Jersey v. Tyco International Ltd.</i> , No. 02-cv-5701 (D.N.J.) State of New Jersey Pension Funds	\$ 73.30	\$ 4.20	17.5 x	4/28/2008
<i>California State Teachers' Retirement System v. Qwest</i> , 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
<i>Alaska Electrical Pension Fund v. AOL Time Warner, Inc.</i> , No. 06-cv-00024 (D. Alaska Funds	\$ 50.00	\$ 1.00	50.0 x	12/7/2006
<i>Regents of the University of California v. Richard D. Parson (AOL Time Warner,</i> UCOP	\$ 246.00	\$ 14.40	17.1 x	2/28/2007

Average 34.8 x

Introduction & Summary

- Multiple class action complaints were filed against PRGO for actions management took to defend against the unsolicited takeover bid by Mylan
- 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

Overview

- 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

Class Action Suits

Pros:

- Active participation not required
- Minimal effort to receive potential recovery proceeds
- Fund is not publicly named in the suit

Cons:

- No control over the legal process
- Amounts recovered are typically small relative to the size of the claims, **2%-3%**
- Class action suits are required to satisfy several procedural hurdles before being permitted to proceed

Opt Out Suits

Pros:

- ❖ Considerably higher recovery rates, **20%-40%**
- Control of litigation
- Legal strategy can be tailored to the needs of the fund
- Optionality in the timing of opting out
- Cost efficient
- Timing advantage
- Jurisdictional advantage
- Benefits from important legal standard distinction with regard to the burden of proof of claims

Opt Out Suits

Cons:

- Fund is subject to discovery
- Requires participation and the allocation of fund resources to oversee the process
- The plaintiff is publicly disclosed

Review of Class Action Complaint

Nature of Action

- Perrigo rejected Mylan's \$205 cash/stock offer on 4/21/15
- The offer was subsequently raised to \$235 ahead of the tender date of 11/13/15
- PRGO cited its organic growth rate of 5-10%
- PRGO touted the future benefits from the Omega Pharma acquisition which were not fully reflected in the company's performance

Review of Class Action Complaint

Materially False and Misleading Statements Issued During the Class Period

- I. Standalone entity would be unable to achieve organic revenue growth of 5% to 10%
- II. Competitive position and growth strategy were not “durable” but were in fact eroding
- III. Serious issues integrating the Omega acquisition and PRGO had significantly overpaid for Omega
- IV. Mylan’s offer did not undervalue PRGO
- V. As a result of the foregoing, Perrigo’s public statements were materially false and misleading at all relevant times

Review of Class Action Complaint

The Truth Emerges

- Missed estimates, lowered guidance
- Omega impairment charges
- 2016 earnings guidance \$8.20-\$8.60, significantly below the guidance provide of \$9.83 before the Mylan tender
- Joe Papa, the CEO that warded off the Mylan bid resigns to accept the CEO position at Valeant
- CFO resigns, additional impairment charge and the inability to file 2016 10-K

Examination of Alleged False & Misleading Statements

Elements of a Strong Case

- Financial restatement
- Allegations of Accounting Impropriety
- Parallel Regulatory Investigations
- Executive Departures
- Large Drop in Stock Value

Perrigo's Potential Defenses

- The most common argument for defense of a class action claims is “scienter”, that executives were not aware that their statements were false
- 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
- Defense could assert that the statements were not false when they were made, or that they were predictions, not statements of facts

Benefits of the Investigative Process & Discovery

- Plaintiffs' counsel employs their own investigative staff to locate and interview former employees knowledgeable about the internal workings of business
- If the complaint survives the Motion to Dismiss, the Plaintiff gains access to internal documents and the ability to take depositions
- Deposition testimony and internal documents can provide strong evidence for proving the claims
- Discovery can reveal information damaging to the defendants, which is why the Motion to Dismiss is such a big inflection point in the litigation.

Class Action Path to Resolution

Estimated 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

Opt Out Path to Resolution

Key Milestones

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

Risks to the Plaintiff & How are they Mitigated

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

Next Steps

- Opt out litigation Information session
- Evaluation of trade claims and potential recovery
- An in person meeting to discuss the litigation process in greater detail

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