
Introduction

Shareholder litigation—primarily representative litigation on behalf of all stockholders of a corporation—has proliferated globally. Shareholder litigation has long been part of the corporate landscape in the United States, where shareholders can challenge nearly any corporate decision. The scope of shareholder suits, however, has been kept largely in check by a set of substantive and procedural rules. But in recent years these suits have proliferated as shareholders have taken advantage of innovative tactics and new doctrines. Moreover, shareholder litigation has begun to spread to jurisdictions other than the US, where it has taken on new forms.

This research handbook provides a modern-day survey of the state of shareholder litigation and offers empirical evidence of how these suits have developed. Its chapters provide in-depth analyses of the forms of shareholder litigation, including securities class actions, merger litigation, derivative suits, and appraisal litigation. Through its examination of these different types of litigation, the book details some of the advantages and disadvantages of shareholder litigation. It explores such issues as the agency costs inherent in representative litigation, the challenges of multijurisdictional litigation and disclosure-only settlements, and the rise of institutional investors. It also surveys how related issues are addressed across the globe, with examinations of shareholder litigation in the United States, Canada, the United Kingdom, the European Union, Israel, and China.

1. SECURITIES CLASS ACTIONS

The book begins, in Part I, by examining securities class actions. In “The Development of Securities Litigation as a Lawmaking Partnership,” Jill E. Fisch discusses the unusual pedigree of federal securities fraud litigation. Unlike most private federal litigation, which is based on an explicit statutory private right of action, the securities fraud cause of action was created by the federal courts. The absence of a statute defining the scope of the claim required the courts to play a significant lawmaking role. Although Congress has in turn responded, its interventions have been limited in scope and largely deferential to the resulting body of judgemade law. As discussed in this chapter, the collaborative process by which Congress, the courts, and the SEC have developed private securities fraud litigation reflects a lawmaking partnership. The chapter defends this partnership as a normatively desirable approach and identifies distinctive advantages over alternatives such as a more detailed statute or a broad delegation by Congress to the courts or an administrative agency. The chapter concludes that, as a result, the Court should use the existence of a lawmaking partnership as a canon of construction in construing the scope of its own lawmaking authority. Where the Court finds evidence of this type of collaborative process, the Court should be empowered to use policy analysis to determine how best to further Congress’s lawmaking objectives rather than limiting its inquiry to the contours of the statutory text.

The next chapter, “Securities Class Actions and Severe Frauds” by James J. Park, examines the impact of the Private Securities Litigation Reform Act of 1995 (PSLRA) on securities class actions in light of the severe frauds that occurred in the years after its passage. In what was a fortuitous turn of events for the securities class action, the years after the PSLRA coincided with a period of significant accounting restatements. Securities class actions after the PSLRA thus often addressed what were believed to be severe frauds at large public companies. In light of these lawsuits, the PSLRA’s assumption that securities class actions do no more than harass companies with volatile stock prices is no longer valid. This narrative may have been true before the PSLRA, but it has been displaced in part by examples of securities class actions that have provided investors with a remedy for the worst frauds. This success will likely secure the survival of the securities class action for another generation, but also raises new questions about how to ensure that such actions are effective in addressing severe frauds.

In “The Shifting Raison d’Etre of the Rule 10b-5 Private Right of Action,” Amanda Rose recounts the historical evolution of the private right of action under Rule 10b-5, explaining how it began as a cause of action not unlike traditional common law fraud and later morphed into the modern fraud-on-the-market class action. While the early version of the Rule 10b-5 private right was arguably consistent with standard corrective justice and deterrence rationales for private litigation, Rose argues that the modern fraud-on-the-market class action is difficult to defend on these grounds. The historical and theoretical context the chapter provides offers a lens for understanding contemporary scholarly debates over the social desirability of private Rule 10b-5 enforcement.

2. SHAREHOLDER DERIVATIVE SUITS

Part II analyzes shareholder derivative suits and the characterization of representative stockholder litigation. It begins with “The (Un)Changing Derivative Suit,” by Jessica Erickson. Her chapter sets the stage by providing an overview of the available empirical data about derivative suits. It contrasts the reform efforts in securities class actions and merger cases with legislative and judicial inaction in derivative suits. Building on the data and history of problems and reform, the chapter proposes additional scrutiny for derivative suits. It identifies mechanisms such as close judicial review of settlements, use of litigation-limiting charter and bylaw provisions, and the imposition of heightened procedural requirements.

Direct and derivative shareholder suits are the subject of Richard Booth’s chapter, “Claim Character and Class Conflict in Securities Litigation.” His detailed analysis of the distinct sources of losses suffered by buyers in a typical securities fraud class action leads him to conclude that courts have mischaracterized many shareholder claims. These claims are properly seen as belonging to the corporation—as derivative claims—rather than direct claims belonging to individual buyers. The chapter identifies legal support for recharacterizing the claims and considers consequences for shareholder litigation.

The next chapter, “Illegality and the Business Judgment Rule,” addresses derivative claims that seek to hold corporate officers and directors liable for causing the company to commit illegal acts. Charles Korsmo argues that corporate law should not subject defendants to greater judicial scrutiny in stockholder suits simply because they have caused the

company to violate the criminal or civil law. Corporations that violate the law may well face financial penalties and other legal repercussions under the relevant substantive law, and individuals personally involved may also face sanctions of their own. It is less clear, however, whether directors violate their fiduciary duties by approving illegal acts, especially where those acts do not harm the corporation. Many corporations today have made violating, and ultimately changing, the law part of their business model, from Airbnb to Uber and driverless cars. This chapter argues that corporate lawbreaking under this model may be both profitable and socially beneficial. As a result, stockholder litigation seeking director liability for illegal actions threatens to be a formidable obstacle to progress, with few if any countervailing benefits.

3. MERGER LITIGATION

Representative stockholder litigation challenging corporate mergers and acquisitions is the subject of Part III. Much of this merger litigation has been multijurisdictional, and the part begins by addressing how courts, litigants, and companies manage such litigation. Several of the chapters address concerns about the merits of shareholder litigation, particularly in the context of “disclosure-only” settlements in which shareholders’ recovery is limited to additional disclosures. The part then offers judicial perspectives on M&A litigation from prominent judges. It concludes with several chapters on appraisal proceedings.

A. Managing Multijurisdictional Litigation

In “Fighting Frivolous Litigation in a Multijurisdictional World”, Adam Badawi interrogates recent efforts by the Delaware Chancery Court to rein in disclosure-only settlements. Under Badawi’s analysis, such suits might constitute a “necessary evil” in service of another goal: “Delaware’s ability to stay at the forefront of corporate law.” Much depends on whether plaintiff law firms know the strength of their cases at filing, or whether they only develop that understanding over time. If the latter, rational firms might bring cases outside of Delaware—even strong cases—for fear that the lack of ability to obtain a disclosure-only settlement would leave them unable to recover costs in Delaware if the case turned out to be weak. Badawi raises the possibility that Delaware’s crackdown on such settlements may be incompatible with its commitment to remain the leading forum for corporate litigation.

The next chapter is “Addressing the ‘Baseless’ Shareholder Suit: Mechanisms and Consequences” by James D. Cox. This chapter examines several mechanisms—pretrial hearings, the derivative suit’s demand requirement, and settlements—that exist for screening shareholder suits. Screening serves a dual purpose: discarding meritless suits and enabling, indeed strengthening, meritorious suits so that injuries can be prevented or compensated. Yet not all of these screening mechanisms are created equal. As this chapter details, pretrial hearings and the demand requirement often work fairly effectively, providing courts with an early opportunity to assess a suit’s quality. In contrast, approval of settlements is a far less effective approach to screen shareholder suits. Even outside the specific context of disclosure-only settlements, judges are in a poor position to assess the quality of a settlement at a settlement hearing, given the nonadversarial nature of

the process and the frequent disconnect between the allegations in the complaint and the terms of the settlement. As a result of these concerns, the author argues that judges should withhold approval of the settlement and deny attorneys' fees if they have reason to believe that the settlement does not provide tangible benefits to the corporation or the class.

In "Who Collects the Deal Tax, Where, and What Delaware Can Do About It," Sean J. Griffith and Anthony Rickey similarly focus on Delaware's efforts to crack down on disclosure-only settlements. Griffith and Rickey test one theory of plaintiff law firms: that there are "white hat" and "black hat" firms, that is, firms that bring meritorious cases and firms that bring weak ones. They find evidence consistent with the existence of "black hat" firms, but also evidence that "white hat" firms may in fact be "gray", filing strong cases in Delaware and weaker cases outside it. To deal with the problem of "gray hat" behavior, the authors suggest that Delaware probe lead counsel applicants' conduct outside of Delaware in making lead counsel appointments. Delaware can use its unique position as the center of corporate law to assure that meritorious cases continue to be brought there.

Lawrence A. Hamermesh and Jacob J. Fedechko address the interaction among representative stockholder suits brought in multiple, competing jurisdictions in their chapter, "Forum Shopping in the Bargain Aisle: *Wal-Mart* and the Role of Adequacy of Representation in Shareholder Litigation." Focusing on the US and Delaware context, they articulate an approach to limiting litigants' incentives to file quickly and settle quickly. The chapter proposes a framework for courts to assess adequacy of representation when considering the preclusive effects of a prior judgment.

In response to a perceived increase in the amount of frivolous stockholder litigation, corporations have begun to insert provisions in their corporate governance documents that restrict shareholders' ability to pursue private litigation. In "Limiting Litigation Through Corporate Governance Documents," Ann M. Lipton sheds light on how these limitations, such as forum selection clauses, arbitration clauses, feeshifting agreements, and minimum stake requirements, could be abused. The chapter begins with the historical evolution of these provisions and the shifting legal justifications for them. It then explores some policy concerns regarding these limitations, including the scope of the limitations, the enforceability of such limitations, and, more broadly, the theoretical inquiry as to whether such limitations are appropriate for inclusion in corporate governance documents in the first instance. The author concludes that the answer can shift one way or another depending on whether one views the function of shareholder litigation as providing for compensation or deterrence.

B. Judicial Perspectives on Shareholder Litigation

In "Disclosure Settlements in the State Courts Post-*Trulia*: Practical Considerations," Judge James L. Gale of the North Carolina Business Court takes a close look at shareholder class actions following the Delaware Court of Chancery's 2016 opinion in *In re Trulia, Inc.* subjecting disclosure settlements to heightened judicial scrutiny. Although *Trulia* reduced the number of disclosure settlements in Delaware, plaintiffs have shown continued willingness to present such settlements in courts outside of Delaware, where judges may face substantive and procedural obstacles to applying the same standards. In this chapter, Judge Gale reports on the considerations facing judges outside of Delaware

in evaluating disclosure settlements under *Trulia*. First, the chapter draws a distinction between the corporate benefit doctrine and the common fund doctrine to shed light on how *Trulia* may be applied differently in different states. It goes on to discuss the considerations involved when a court is to apply Delaware law or another state's laws, including class action procedures, professional responsibility regarding attorney's fees, and evidentiary rules in assessing the materiality of disclosures.

In the next chapter, Vice Chancellor J. Travis Laster of the Delaware Court of Chancery compares how the Delaware Supreme Court applied enhanced scrutiny in M&A settings during the decade that followed the creation of the intermediate standard of review with the Delaware Supreme Court's current approach to similar issues. The chapter—"Changing Attitudes: The Stark Results of Thirty Years of Evolution in Delaware M&A Litigation"—cautions that the attitudes displayed in the early landmark decisions, and the results they reached, no longer hold. The Delaware Supreme Court's opinions from *Revlon* through *QVC* displayed skepticism towards single bidder sale processes, prioritized the interests of sell-side stockholders over the contract rights of acquirers, and resulted in the issuance of targeted preliminary injunctions to block the effectiveness of problematic provisions. By contrast, current Delaware law supports the use of a single bidder sale process, prioritizes the contract rights of acquirers over the rights of sellside stockholders, and rules out targeted preliminary injunctions. In place of vigorous judicial enforcement, current Delaware law defers to the stockholders to protect themselves by voting down deals that adversely affect their interests. The chapter posits that while multiple factors contributed to this shift, the two most salient are the rise of institutional investors and the generalized failure of stockholder-led M&A litigation.

Finally, in "Appraisal Rights in Complete Tender Offers in Israel: A Look into Israeli Case Law", Judge Ruth Ronnen of the Tel Aviv District Court's Economic Division examines two ways that courts appraise share value: via expert testimony on a company's "objective" value, and by reference to market prices. Surveying Israeli case law, and with frequent reference to Delaware Chancery court rulings, Judge Ronnen offers insights into how judges make appraisal decisions. In so doing she discusses numerous relevant concepts, some of which are grappled with by commercial courts worldwide, others of which are more prominent in Israel (where controlling shareholders predominate). These concepts range from discounted cash flow analysis to market checks, consent of the majority of the minority shareholders, consent of sophisticated shareholders, and the presence of actual price negotiations.

C. Appraisal Actions

The discussion of appraisal actions continues with "Recent Developments in Stockholder Appraisal." Charles R. Korsmo and Minor Myers provide an overview of stockholder appraisal activity—including recent data—together with an evaluation of recent legal developments, both judicial and legislative. The year 2015 was a record one for stockholder appraisal in terms of the number of mergers challenged and the dollar amounts involved. The evidence shows, however, that appraisal remains relatively rare and continues to be focused on deals with abnormally low merger premia and sales processes marked by conflicts of interest. As this chapter explains, developments in Delaware suggest a growing acceptance of the recent blossoming of appraisal arbitrage

as an investment strategy, coupled with sensible prophylactic measures against potential abuses of the appraisal remedy.

“Appraisal as Representative Litigation” connects appraisal actions to the broad themes of this book by examining the ways in which appraisal is a form of representative litigation. Minor Myers explains that, although appraisal claims cannot be brought as class actions, they are nonetheless a form of collective action. The outcome of an appraisal proceeding binds all dissenting stockholders, not just those who have filed a petition in court, and petitioning stockholders can recover their expenses pro rata from other members of the dissenting group. The representative nature of these suits gives rise to legal questions about control of claims, sharing of expenses, settlement rights, and notice obligations to other dissenters that are familiar but distinct from the class action context. This chapter explores these questions by analyzing the dynamics of an appraisal claim through its life cycle, from the initial decision to dissent to the sharing of expenses following a trial judgment.

4. LITIGANTS AND LAW FIRMS

Part IV examines the dynamics of representative shareholder litigation. It takes a close look at the players involved in these disputes, examining litigants on both sides and interactions within and among the law firms that represent these parties.

A. Plaintiffs and Law Firms

Stephen J. Choi and A.C. Pritchard evaluate the effectiveness of the lead plaintiff provisions in the Private Securities Litigation Reform Act in “Lead Plaintiffs and Their Lawyers: Mission Accomplished, or More to Be Done?” The PSLRA created a presumption that courts should appoint as lead plaintiff the class member seeking appointment with the largest financial interest in the relief sought. It also vested the lead plaintiff with authority to select and retain class counsel. More than 20 years has passed since the PSLRA was adopted, and the empirical record shows that, in substantial measure, the PSLRA’s lead plaintiff provision has succeeded. Institutional investors have stepped forward to serve as lead plaintiffs in a substantial number of cases, and they may play a role in ensuring greater recovery for investors in those cases. In addition, institutional investors seem to have reduced the share of recovery that goes to pay lawyers post-PSLRA. There is also evidence, however, that the competition among lawyers to serve as lead counsel has not been driven exclusively by price and quality of representation. The larger institutional investors that have most frequently agreed to serve as lead plaintiffs in securities class actions have been government-sponsored pension funds. The political influence over these funds raises suspicion that at least some class action law firms are buying lead counsel status with campaign contributions, that is, lawyers are paying to play. This chapter reviews the empirical record and then suggests specific reforms that might promote additional transparency and competition on price, as well as additional requirements for lead plaintiffs to further enhance the screening role played by the PSLRA.

In “The Mimic-the-Market Method of Regulating Common Fund Fee Awards: A Status Report on Securities Fraud Class Actions,” Charles Silver tracks the growth and

development of the mimic-the-market approach in setting attorneys' fees in securities class actions. This approach calls for judges to assess what the market would have paid for the lawyer's services, rather than the more traditional lodestar calculation. An idea that Silver himself advocated early on, the mimic-the-market approach to setting fees has gained traction in many jurisdictions across the United States, notably in the Second, Third, and Seventh Circuit Courts of Appeal, and in several district courts. Silver points out that following the mimic-the-market approach requires a measure of judicial courage, because it sometimes results in the award of very large fees. Silver also revisits his own prediction that judges would begin to set fees at the outset of cases, and considers why he believes that prediction has not been realized.

Steven D. Solomon and Randall S. Thomas inquire into law firm quality as measured by outcomes in class action shareholder litigation. "What Do We Know About Law Firm Quality in M&A Litigation?" reviews the state of the literature on law firm quality and asks what can be known about plaintiff and defense-side firms in class action shareholder litigation. Several dimensions of the question are explored, such as: How do clients select law firms? What substantive and reputational factors influence law firms' decisions to represent a client? To what extent does the client influence the outcome? How should a law firm's performance be measured when its client or potential client, particularly a repeat player defendant in M&A litigation, dictates the law firm's strategy in handling the litigation? The chapter closes by emphasizing the relatively underdeveloped state of the empirical evidence, offering several directions for future research.

B. Officers and Directors

Defendant officers and directors are the subject of the final two chapters in this part. Each examines limits on the ability of representative shareholder litigation to reach these actors. In "Jurisdiction over Directors and Officers in Delaware," Eric Chiappinelli provides an overview of the necessary jurisdictional underpinnings for shareholder litigation, with a focus on Delaware. Over time, the courts and the state legislature have developed a set of statutes and standards that allow Delaware courts to hear cases against nonresident directors and officers of corporations organized in the state. The chapter outlines the multiple sources of adjudicatory power: implied consent statutes, long-arm statutes, and conspiracy jurisdiction. With a critical eye, it analyzes the expansive geographic reach claimed by Delaware courts.

Shareholder litigation against corporate officers is the focus of Megan Wischmeier Shaner's chapter, "Stockholder Litigation, Fiduciary Duties, and the Officer Dilemma." Tracing the divergence between the development of director and officer fiduciary duties, she points out that stockholder litigation is rarely used to hold officers accountable. The chapter explores the causes and consequences of this gap in corporate law, and suggests remedial approaches targeted at officers' managerial role.

5. COMPARATIVE AND INTERNATIONAL SHAREHOLDER LITIGATION

A. The Globalization of Shareholder Litigation

“The Globalization of Entrepreneurial Litigation: Law, Culture, and Incentives” introduces the broad themes of this part of the book. John C. Coffee, Jr, examines the expansion of class action litigation in Europe and Asia, comparing the role of law, culture, and incentives in fostering entrepreneurial litigation similar to or different from the forms developed in the United States. This comparative analysis is especially important because the United States Supreme Court’s ruling in *Morrison v. National Australia Bank Ltd.* effectively limits the ability of shareholders to pursue certain claims within the United States, potentially prompting a renewed emphasis on the availability of representative litigation in other jurisdictions. The chapter begins with a presentation of the representative litigation models utilized in different jurisdictions. In the Netherlands, for example, a device called the “stichting” has been combined with the country’s Act of Collective Settlement to create a form of litigation substantially similar to opt-out securities class actions. Asia, on the other hand, with its relatively modest exposure to class action litigation, currently employs a model that lies somewhere between the United States’ and the European Union’s models. The chapter highlights some of the advantages and disadvantages of each model of collective litigation, ultimately finding strong evidence that “entrepreneurial” litigation has indeed begun to spread to other jurisdictions.

In “The *Teva* Case: A Tale of a Race to the Bottom in Global Securities Regulation,” Sharon Hannes and Ehud Kamar offer a unique perspective on shareholder litigation, describing their experience as plaintiffs in a transformative securities class action lawsuit in Israel. Israel-based Teva is the world’s largest manufacturer of generic drugs and is crosslisted in both the United States and Israel. The company reported its executive compensation in the aggregate, rather than individually, using its crosslisted status to avoid what Hannes and Kamar viewed as a straightforward requirement of both US and Israeli law. In contrast, companies listed only in Israel disclosed individual executive pay, and were therefore the only companies subject to media scrutiny of their compensation practices. Hannes and Kamar’s class action—opposed not just by the company, but by the Israel Securities Authority—eventually led to the requirement that all publicly traded Israeli companies disclose the compensation of each executive individually, regardless of whether the company is crosslisted. A copy of Hannes and Kamar’s groundbreaking complaint is included.

B. Comparative Shareholder Litigation

The chapters in this section take an explicitly comparative approach to the broad themes of this book and to some of the specific issues addressed in earlier chapters. The section begins with “A Transatlantic Perspective on Shareholder Litigation in Public Takeovers,” in which Dan Awrey and Blanaid Clarke compare the regulatory environment facing takeovers in the United States, the United Kingdom, and the Republic of Ireland. After recognizing some commonalities among the jurisdictions, including highly developed stock markets and each jurisdiction’s “market-oriented” approach to corporate governance that

seeks to maximize shareholder value, this chapter focuses on the major substantive and procedural differences between the regulatory regimes. The chapter offers a comprehensive analysis of the City Code of the United Kingdom and the corresponding Takeover Rules in Ireland that govern public takeovers and explains how these regimes may be preferable to more litigation-based models of takeover. Specifically, Awrey and Clarke identify three advantages of these regimes: the responsive and proactive rulemaking system of expert panels, the speediness of review, and cost savings offered by the difference processes.

The next chapter is “Private Ordering of Shareholder Litigation in the EU and the US” by Matteo Gargantini and Verity Winship, which takes a comparative approach to private ordering of shareholder litigation. To what extent can the players in shareholder litigation—companies, management, shareholders, and other investors—set the rules for litigation through private agreement? The chapter begins with the US example, in which dispute resolution provisions emerged in the constituent documents of US companies as a response to pressures from litigation. The contours of permissible provisions have not been exhaustively drawn, but dispute resolution bylaws have been tested in US state courts and were the subject of subnational legislation. The chapter then examines how private ordering of shareholder litigation—both intracorporate and securities suits—might function (or not) in the context of the EU and some of its constituent countries. This comparison highlights many of the similarities, as well as important differences, in how the United States and the European Union approach private ordering in shareholder litigation.

In “Mapping Types of Shareholder Lawsuits across Jurisdictions,” Martin Gelter compares the various forms of shareholder lawsuits that are found in the United States, the United Kingdom, and several European and Asian countries. This chapter notes that conflict of interest claims are the most prevalent claims brought by shareholders against directors, managers, and other shareholders. While shareholder litigation may, in some jurisdictions, be primary under the purview of the supervisory board, other, more liberal jurisdictions have procedural mechanisms that allow shareholders to bring a lawsuit on their own with varying limitations of the types of claims or suits that may be brought. This chapter discusses the various types of suits, such as direct, derivative, and rescission suits, that are presented to shareholders in each jurisdiction as well as the mechanisms, the difficulties therein, and the effectiveness of such lawsuits in deterring or remedying unfavorable actions. The chapter concludes with an evaluation of the efficacy of each jurisdiction’s models of shareholder litigation and highlights the difficulties in creating a perfect system that could ensure the protection of shareholders’ rights while preventing nonmeritorious or even abusive lawsuits.

The examination of comparative shareholder litigation concludes with “Securities Class Actions in Canada: Ten Years Later.” In this chapter, Poonam Puri reports the results of her comprehensive empirical study of secondary market securities class actions in Canada. The chapter examines ten years of data, beginning with the introduction of statutory secondary market liability in 2006 and ending in 2015. In addition to identifying procedural barriers, she analyses the types of plaintiffs (especially institutional versus retail investors) and defendants (large versus small, but also a concentration in the mining industry), providing a rich account of the Canadian experience with representative shareholder litigation for secondary market misrepresentations.

C. Other Modes of Enforcement

The book concludes with “CSRC Enforcement of Securities Laws: Preliminary Empirical Findings,” by Chao Xi, which considers public enforcement of the securities laws. This chapter sheds empirical light on an important component of the public enforcement of securities laws in China. The securities markets are a relatively recent market institution in China. First appearing in the early 1990s, the Chinese securities markets have expanded phenomenally and today are the second largest in the world. The burgeoning Chinese securities markets have long been plagued by market misconduct and securities law violations. Private enforcement of securities laws, by way of aggrieved investors bringing civil actions against wrongdoers, has been weak, with public enforcement thus significantly greater in amount and intensity. This chapter examines this public enforcement, drawing on a unique, handcollected dataset comprising all 447 sanction decisions taken by the China Securities Regulatory Commission (CSRC), China’s primary securities regulator, during the period from 2006 through 2012. This study reveals that the patterns of those efforts have shifted over time, from an initial focus on violations of disclosure rules to targeting a much wider spectrum of wrongdoing including, in particular, insider trading and investment advisor violations. In enforcing China’s securities laws, the CSRC also does not typically assume individual or corporate liability alone, but frequently holds culpable both firms and the individuals responsible for the malfeasance in question.