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Portfolio Protection & Securities Class Actions: I'll Opt For A Slice!

Webinar

Friday 17 July 2020





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A Word From Our Chairman



**Professor Michael
Mainelli**

Executive Chairman

Z/Yen Group



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Agenda



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- 11:00 – 11:05 Chairman's Introduction
- 11:05 – 11:30 Keynote Address
- 11:30 – 11:45 Questions & Answers



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Portfolio Protection &
Securities Class
Actions: I'll Opt For A
Slice!



David Seidel

Chief Executive and
Chief General
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Portfolio Protection and Securities Class Actions:

I'll opt for a slice

David Seidel

Chief Executive & Chief General Counsel

iiTRA Limited

Class actions are a form of Collective Redress

Collective Redress is:

- Litigation
- Involving multiple claimants
- For losses stemming from the same fact situation

Types of collective redress actions

Consumer claims for damages resulting from faulty products such as:

- design faults - e.g. Ford Pinto, silicone implants
- negligence – passengers aboard the Costa Concordia when it was grounded

Securities claims for damages resulting from loss of share value following:

- corporate malfeasance – e.g. Enron, Volkswagen
- negligence – e.g. misrepresentations owing to faulty accounting such as Tesco

Potential plaintiffs

With product liability, claims are made by purchasers of goods or services

In securities class actions, claims are by investors who have lost portfolio including:

- pension fund trustees
- investment and asset managers
- analysts, actuaries
- custodians

The aim of class actions

Class actions are designed to make the judicial process more efficient by reducing the number of lawsuits

Forms of collective redress are:

- class actions (US, Canada, Australia)
- group actions (UK, Germany, France)
- litigation and settlement foundations (Netherlands)

Procedural rules are different in different jurisdictions

Main difference is between “opt-in” and “opt-out” jurisdictions

Economic issues / What's at stake?

According to NERA Consulting:

- number of lawsuits filed with the courts(2017-2019) was >400 claims per year
- aggregate value of securities class action settlements in 2019 was \$472 million
- average claim settlement in 2019 was \$30 million

UK institutional investors may be restricted on their US holdings. Returns are dependent on the calculated loss for claims in which an institutional investor is interested

However, a rule of thumb based on industry experience is:

- 2 bps per annum on equities portfolio; or
- 5 bps per annum on US equities portfolio

Case study: the UK as an “opt-in” jurisdiction

Necessary to mitigate or eliminate financial risk via litigation funding and ATE insurance

Group Litigation Order will set deadline for signing up claimants

Only those involved in a case from deadline will share in Judgment or Settlement

“You have to be in it to win it!”

Past cases may reveal a UK bias against litigation

Examples of UK Group Actions include Royal Bank of Scotland, Lloyds Banking Group and Hiscox Insurance

Case study: US as an “opt-out” jurisdiction I

“Money on the table”

Claim is filed by claimants wishing to represent the class

Financial risks eliminated owing to availability of contingency fees and no adverse cost rule

Settlement or Judgment to be calculated for all potential plaintiffs

- whether a party to the claim
- All affected shareholders to be given a deadline to file a proof of claim
- Court appoints an Administrator who validates all proofs of claim and handles the distribution of funds

Case study: US as an “opt-out” jurisdiction II

Things to bear in mind

Securities class actions are not speedy procedures

After the claim is filed, there will be a number of motions to decide:

- whether the should be certified as a class action
- who will be the lead plaintiff
- who will be lead counsel

After these steps the case can begin in earnest

Case study: US as an “opt-out” jurisdiction III

Opting out of the class

Rationale: losses are so significant, may seek higher result outside of the class

Opt-out is independent and separate litigation

Is the potential increased gain worth the increased management time in prosecuting the case anew?

Case study: US as an “opt-out” jurisdiction IV

The F3 Rule

Prior to 2010, US was safe harbour for national and international claimants

Post-2010, US Supreme Court limits who can be involved in a securities class action
(*Morrison v. NAB*)

Non-Americans cannot sue a non-US company where shares traded on a foreign exchange

Alternatives available – other jurisdictions? US state court actions?

Case study: US as an “opt-out” jurisdiction V

Risk factors

- level of holdings
- financial risks mitigated?
- F3 Rules addressed?
- average time to settlement is 4 years plus 2 years to administer settlement or judgment funds

An introduction to iiTRA

Established to assist institutional investors by providing an independent advisor between investors and proponents of class action litigation

Improves:

- financial performance
- governance
- reporting to trustees and beneficiaries

Provides independent review of potential claims and alternative litigation

Includes filings of proofs of claim, when necessary, as a matter of course

Take-aways

Investments and securities class actions have global reach

Involvement in securities class actions provide better governance, performance and reputation enhancement

US: there's money on the table

UK: retail and institutional investors are already working together

Outsourcing is more cost-effective than building own team to deal with the issues.

Discussion

- Questions and Answers
- How to implement a securities class action strategy

Thank you

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Questions, Comments & Answer(s)?



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- 23 July 2020 (11:00) [AML Task Force](#)
- 24 July 2020 (10:00) [Getting Back Its Mojo? Uncertain Times For UK Financial Services](#)

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