No. 12-113

IN THE

Supreme Court of the United States

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,

Petitioner,

v.

GEORGE MCREYNOLDS ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

STEPHEN M. SHAPIRO
TIMOTHY S. BISHOP
LORI E. LIGHTFOOT
STEPHEN J. KANE
MAYER BROWN LLP
71 South Wacker Drive
Chicago, Illinois 60606
(312) 782-0600

JONATHAN D. HACKER
(*Counsel of Record)*
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
(202) 383-5300
jhacker@omm.com

Counsel for Petitioner

[Additional Counsel Listed on Inside Cover]

JEFFREY S. KLEIN
NICHOLAS J. PAPPAS
ALLAN DINKOFF
WEIL, GOTSHAL &
MANGES LLP
767 Fifth Avenue
New York, N.Y. 10153
(212) 310-8000

FRAMROZE M. VIRJEE
O'MELVENY & MYERS LLP
400 South Hope Street
Los Angeles, Cal. 90071
(213) 430-6045

ADAM P. KOHSWEENEY
ANNA-ROSE MATHIESON
O'MELVENY & MYERS LLP
Two Embarcadero Center
28th Floor
San Francisco, Cal. 94111
(415) 984-8700

TABLE OF CONTENTS

Page

INTRODUCTION..1

I. THE CLASS MANDATED HERE CANNOT BE RECONCILED WITH THE CLASS REJECTED IN *DUKES* 2

II. THE SEVENTH CIRCUIT'S USE OF "ISSUE" CLASSES UNDER RULE 23(C)(4) DEEPENS AN ACKNOWLEDGED CIRCUIT CONFLICT AND CONTRAVENES RULE 23 5

CONCLUSION 12

TABLE OF AUTHORITIES

Page(s)

CASES

Allison v. Citgo Petroleum Corp.,
151 F.3d 402 (5th Cir. 1998) 7

Bolden v. Walsh Constr. Co.,
2012 WL 3194593 (7th Cir. Aug. 8, 2012) 4

Burrell v. Crown Cent. Petroleum,
197 F.R.D. 284 (E.D. Tex. 2000) 8

Castano v. Am. Tobacco Co.,
84 F.3d 734 (5th Cir. 1996) 7

Colindres v. Quietflex Mfg.,
235 F.R.D. 347 (S.D. Tex. 2006) 8

Corley v. Orangefield Indep. Sch. Dist.,
152 F. App'x 350 (5th Cir. 2005) 8

Gates v. Rohm & Haas Co.,
655 F.3d 255 (3d Cir. 2011) 8, 10

Gunnells v. Healthplan Servs.,
348 F.3d 417 (4th Cir. 2003) 8, 11

In re Nassau Cnty. Strip Search Cases,
461 F.3d 219 (2d Cir. 2006) 8

In re Panacryl Sutures Prods. Liab. Cases,
263 F.R.D. 312 (E.D.N.C. 2009) 10

In re St. Jude Med., Inc.,
522 F.3d 836 (8th Cir. 2008) 8

TABLE OF AUTHORITIES
(continued)

Page(s)

M.D. v. Perry,
675 F.3d 832 (5th Cir. 2012)....................................9

Mullen v. Treasure Chest Casino, LLC,
186 F.3d 620 (5th Cir. 1999)....................................9

Ortiz v. Fibreboard Corp.,
527 U.S. 815 (1999)..5

Palace Exploration Co. v. Petroleum Dev. Co.,
316 F.3d 1110 (10th Cir. 2003)..............................12

Peoples v. Wendover Funding, Inc.,
179 F.R.D. 492 (D. Md. 1998) 10

Riley v. Compucom Sys., Inc.,
2000 WL 343189 (N.D. Tex. Mar. 31, 2000)..........8

Smilow v. Southwestern Bell Mobile Sys., Inc.,
323 F.3d 32 (1st Cir. 2003) 11

Smith v. Texaco, Inc.,
263 F.3d 394 (5th Cir. 2001)....................................8

Taylor v. CSX Transp., Inc.,
264 F.R.D. 281 (N.D. Ohio 2007)..........................10

Wal-Mart Stores, Inc. v. Dukes,
131 S. Ct. 2541 (2011).................................. passim

Williams v. Mohawk Indus.,
568 F.3d 1350 (11th Cir. 2009)..............................11

TABLE OF AUTHORITIES (continued)

Page(s)

OTHER AUTHORITIES

Fed. R. Civ. P. 23 .... passim

Fed. R. Civ. P. 52 12

Coffee, *The Future (If Any) of Class Litigation After 'Wal-Mart'*, NAT'L L.J. ONLINE (Sept. 12, 2011) 1, 5

Matthew Bender & Company, 3-19 Products Liability Practice Guide § 19.09 10

Note, *Splitting the Baby: Standardizing Issue Class Certification*, 64 VAND. L. REV. 1585 (2011) 10

INTRODUCTION

The Seventh Circuit decision in this case is irreconcilable with *Wal-Mart Stores, Inc. v. Dukes,* 131 S. Ct. 2541 (2011). This is not a one-off disagreement. Judge Posner's opinion holds that a disparate-impact "issue" class *must* be certified where plaintiffs challenge a "national policy" delegating discretion to local employees and managers. That decision provides a roadmap for circumventing *Dukes* and certifying classes that should not be certifiable after *Dukes*.

The problem is not merely the court's failure to follow *Dukes*' clear mandate in a materially indistinguishable case—though that problem alone justifies certiorari, if not summary reversal. The broader concern is the Seventh Circuit's decision to join the Second and Ninth Circuits in allowing courts to invoke Rule 23(c)(4) to certify classes to address "issues" *within* individual claims, even when the claims as a whole are not amenable to class certification. This approach—rejected by the Fifth Circuit—allows courts to evade vital prerequisites to certification by simply shaving off elements and issues requiring individualized factfinding until nothing is left but some broadly common issue. This approach could support certification in almost any case.

This use of 23(c)(4) has been openly urged by some in the wake of *Dukes* as a way to "respond imaginatively" to the decision, as one euphemism put it. Coffee, *The Future (If Any) of Class Litigation After 'Wal-Mart'*, NAT'L L.J. ONLINE (Sept. 12, 2011). While indeed imaginative, this (mis)use of Rule 23(c)(4) is not actually new, but has been the subject of significant conflict among the federal circuits for years. The decision in *Dukes* (which should have

ended the practice for good), coupled with the decision below (which instead confirms that the controversy persists despite *Dukes*), bring new urgency to resolution of the conflict.

Plaintiffs labor to distinguish this case from *Dukes*, but they cannot—both cases involve nationwide disparate impact classes challenging national policies of allowing "discretion" in individualized, localized employment decisions. The reasons such a class was rejected in *Dukes* apply foursquare here.

Plaintiffs also labor to deny the circuit conflict over the use of Rule 23(c)(4), but they cannot—the Fifth Circuit unambiguously rejects the Seventh Circuit's construction of Rule 23(c)(4), as courts and commentators uniformly recognize. Plaintiffs' contrary argument mischaracterizes Fifth Circuit precedent.

Unless the decision below is reversed, courts in the Second, Seventh, and Ninth Circuits will be little constrained by *Dukes* in certifying "issue" classes to decide broad "liability" questions, without regard to the individualized application of those questions to particular class members. The result will be the same unfairness to defendants and absent class members, and the same coercive settlement pressure, that *Dukes* sought to curtail.

I. THE CLASS MANDATED HERE CANNOT BE RECONCILED WITH THE CLASS REJECTED IN *DUKES*

Plaintiffs describe this case as the "polar opposite" of *Dukes*. Opp. 14. Their hyperbole is belied by the "distinctions" they cite.

Plaintiffs' main contention is that unlike in *Dukes*, "Merrill Lynch promulgated two 'objective national policies' that apply uniformly to every Merrill Lynch broker and manager." *Id.* at 14.[1] But in describing those "objective" policies, plaintiffs discuss *only* the "account distribution" policy (*id.* at 16), utterly ignoring the "teaming" policy, which involves discretionary, subjective decisionmaking by managers and brokers. Pet. 5-6; Pet. App. 55a-56a. Plaintiffs do not contend otherwise. Nor do they make any effort to distinguish the local discretion exercised in teaming by brokers and managers from the local discretion exercised in hiring and promotion by Wal-Mart store managers.

Plaintiffs do say the account distribution policy is "objective" and thus different from the Wal-Mart policy of discretion (Opp. 16), but they ignore both the district court's findings and the Seventh Circuit's opinion based on those findings. The account distribution policy does employ facially objective criteria (Pet. 7), but as the district court found, consideration of a broker's past success—which is at the heart of the policy challenged by plaintiffs—results directly from discretionary conduct by managers and brokers, and numerous other subjective criteria (including special language skills, requests by customers for

---

[1] Plaintiffs repeatedly insist that Merrill Lynch has admitted that the challenged policies have caused racial disparities in promotion and pay. Not so. Merrill Lynch has never conceded that the disparities exist when the data is viewed through the appropriate lens, nor has it ever conceded that any disparities identified by plaintiffs were caused by the challenged policies. None of the statistics cited by plaintiffs establish that causal connection.

particular brokers, and broker-to-broker transfers) also affect account distribution. Pet. App. 30a-31a, 32a, 55a. The Seventh Circuit agreed, holding that a class should be certified *despite* the discretion inherent in *both* policies. Nowhere did the Seventh Circuit suggest that the account distribution policy was amenable to classwide challenge because it was "objective." The court instead candidly acknowledged that the account distribution policy depended on localized, discretionary and subjective judgments in practice (*id.* at 13a, 15a), but held that class certification was required anyway. That holding cannot be reconciled with *Dukes*.

Plaintiffs contend that the recent Seventh Circuit decision in *Bolden v. Walsh Construction Co.*, 2012 WL 3194593 (7th Cir. Aug. 8, 2012), shows that this case is compatible with *Dukes*. Opp. 16. The opposite is true. In *Bolden*, the court repeated its error here, explaining that *McReynolds* differs from *Dukes* simply because teaming constitutes a "single national policy," which was the "missing ingredient" in *Dukes*. *Bolden*, 2012 WL 3194593 at *4. But it was not missing at all: the whole point of plaintiffs' case in *Dukes* was to challenge Wal-Mart's *national policy* of allowing localized store-manager discretion in hiring and promotion, a policy that allegedly resulted in gender-based disparities because of local manager biases. Exactly the same is true of plaintiffs' claim here. The "single national policy" distinction emphasized both here and in *Bolden* is thus no distinction at all. And the Seventh Circuit's reaffirmation of that distinction confirms, rather than undermines, the need for review to put class-action caselaw in the Seventh Circuit back on track, and to avoid confusion elsewhere.

II. THE SEVENTH CIRCUIT'S USE OF "ISSUE" CLASSES UNDER RULE 23(c)(4) DEEPENS AN ACKNOWLEDGED CIRCUIT CONFLICT AND CONTRAVENES RULE 23

In mandating certification of a nationwide disparate-impact class challenging localized, discretionary, subjective employment practices, the Seventh Circuit did more than defy *Dukes*. The court also deepened a circuit conflict concerning the proper use of "issues" classes under Rule 23(c)(4). Plaintiffs do not deny that the Seventh Circuit's construction of Rule 23(c)(4) facilitates class certification of cases in a wide array of contexts where a class action could not otherwise proceed. Pet. 28-30. Indeed, some commentators *celebrate* the use of Rule 23(c)(4) to obtain class certification that would otherwise be denied under Rule 23 and *Dukes*. *See*, *e.g.*, Coffee, *supra*.

But nothing could be more inconsistent with this Court's precedent and Rule 23 itself. *Cf. Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 845 (1999) (warning against "adventurous" applications of Rule 23). Properly understood, Rule 23(c)(4) is merely a housekeeping device that permits bifurcation of particular issues (such as damages) within a claim that is otherwise susceptible to certification as a whole. Pet. 24-27. The Fifth Circuit has clearly understood and enforced that limitation, as courts and commentators consistently recognize. Other circuits disagree. The result is sharply disparate treatment for similarly-situated litigants in cases involving the highest stakes. That conflict is intolerable and should be resolved.

1. Plaintiffs try to deny the conflict (Opp. 29-31, 33-36), but only after misstating the terms and history of Rule 23 and Judge Posner's holding in this case. Plaintiffs first contend that Rule 23(c)(4) is not just a housekeeping device, but was specifically intended to facilitate class certification in cases where it would not otherwise be allowed. Opp. 20-22. Plaintiffs' theory is at odds with the language, structure, and history of the Rule. Pet. 24-27. It would permit class certification whenever some common issue can be identified—which will almost always be true—eviscerating Rule 23(b) and contradicting the framers' understanding that Rule 23(c)(4) was a mere "detail" useful only to bifurcate the adjudication of liability to the class from follow-on hearings needed to calculate individual class members' damages.[2]

Plaintiffs also precede their discussion of the circuit conflict with the baseless argument that certification here would be proper under Rule 23(a) and (b)(2) even without invoking (c)(4). That argument is completely misplaced—neither court below believed that a class could be certified here absent the "imag-

[2] Plaintiffs err in relying on a clause in the prior version of Rule 23(c)(4), which they say suggested the provisions of Rule 23 should be applied *after* the action was divided into issue classes. Opp. 21. That clause was located in the provision governing subclasses under Rule 23(c)(4)(B) and thus did not govern the issue certification provision in Rule 23(c)(4)(A). And the 2007 Amendment *deleted* the clause as "non-substantive," leaving nothing in Rule 23(c)(4) to suggest an issue class can avoid the requirements of Rules 23(a) and (b). The 2007 Amendment indicates that Rule 23(c)(4) was always properly understood as simply a "housekeeping" procedural tool, necessary to facilitate sub-classing to address individual issues within a broader, properly certified class action. Pet. 26-27.

inative" use of (c)(4) issue certification. Plaintiffs surely *wish* the Seventh Circuit had mandated certification of a class without resort to (c)(4) issue certification, but its decision makes clear that certification was not possible absent (c)(4). This case thus squarely presents the question whether Rule 23(c)(4) permits class certification to adjudicate fragments of claims that could *not* be certified under Rule 23(a) and (b)(2) standing alone—precisely the use of Rule 23(c)(4) rejected by the Fifth Circuit.

2. Finally turning to that conflict, plaintiffs say the Fifth Circuit no longer treats Rule 23(c)(4) differently from the Seventh Circuit, and that courts and commentators generally are aligned in favor of the Seventh Circuit's approach. Plaintiffs exaggerate the weight of authority on their side, but more importantly, they completely misrepresent current Fifth Circuit law.

a. Plaintiffs start by trying to dismiss as "dicta" the seminal decisions in *Allison v. Citgo Petroleum Corp.*, 151 F.3d 402 (5th Cir. 1998), and *Castano v. American Tobacco Co.*, 84 F.3d 734 (5th Cir. 1996), holding that Rule 23(c)(4) cannot be used to "save" a class by breaking otherwise-noncertifiable claims apart into individual issues because "a cause of action, as a whole, must satisfy the predominance requirement of (b)(3)." *Castano*, 84 F.3d at 745 n.21. Plaintiffs suggest that *Castano* is limited to its "unique facts" (Opp. 28) and that *Allison*'s explicit reasoning and holding can be disregarded because of a comment in a statement respecting the denial of rehearing (*id.* at 31).

Those arguments are meritless. Decisions by the Fifth Circuit[3] and by district courts within the Fifth Circuit[4] uniformly treat *Allison* and *Castano* as binding precedents—not dicta—that squarely reject the interpretation of Rule 23(c)(4) adopted by the Seventh Circuit here. Outside the circuit, too, courts recognize a concrete and continuing conflict between Fifth Circuit precedent on Rule 23(c)(4) issue classes and precedents from other circuits. *See Gates v. Rohm & Haas Co.*, 655 F.3d 255, 273 (3d Cir. 2011) ("circuit disagreement"); *In re St. Jude Med., Inc.*, 522 F.3d 836, 841 (8th Cir. 2008) ("conflict in authority"); *In re Nassau Cnty. Strip Search Cases*, 461 F.3d 219, 226 (2d Cir. 2006) ("the Circuits have split"); *Gunnells v. Healthplan Servs.*, 348 F.3d 417, 444 (4th Cir. 2003) ("circuit conflict"). Plaintiffs themselves acknowledged this "split" below. C.A. Reply Br. 18 & n.8.

b. After erroneously minimizing the precedential force of *Allison* and *Castano*, plaintiffs move on to the wholly frivolous assertion that subsequent precedents have changed the law in the Fifth Circuit, which they say "now interprets Rule 23(c) in accord

---

[3] *See Corley v. Orangefield Indep. Sch. Dist.*, 152 F. App'x 350, 355 (5th Cir. 2005); *Smith v. Texaco, Inc.*, 263 F.3d 394, 409 (5th Cir. 2001), *vacated by settlement*, 281 F.3d 477 (5th Cir. 2002).

[4] *See*, *e.g.*, *Colindres v. Quietflex Mfg.*, 235 F.R.D. 347, 380 (S.D. Tex. 2006); *Burrell v. Crown Cent. Petroleum*, 197 F.R.D. 284, 287 n.3 (E.D. Tex. 2000); *Riley v. Compucom Sys., Inc.*, 2000 WL 343189, at *3 n.6 (N.D. Tex. Mar. 31, 2000). The latter two decisions reject the suggestion that the rehearing statement in *Allison* rendered its holding non-binding dicta, and no court in the circuit since has declined to follow *Allison* on that basis.

with the consensus view of other circuits." Opp. 33; *see id.* at 27-28, 35. Plaintiffs rely chiefly on *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620 (5th Cir. 1999), but *Mullen* does not even *mention* Rule 23(c). The decision instead evaluates predominance and other Rule 23(b) requirements *for the claim as a whole*, holding that because common issues predominated, the class could be certified under Rule 23, with bifurcation used as a housekeeping tool to streamline the trial. *Id.* at 626. Unsurprisingly, in the years since *Mullen*, no court anywhere has suggested that *Mullen* signaled a retreat from *Allison* and *Castano*.

c. The only recent case plaintiffs cite (Opp. 34) is *M.D. v. Perry*, 675 F.3d 832, 841 (5th Cir. 2012). But *M.D.* did not involve issue classes either. Rather, in *reversing* class certification, the court noted the possibility of breaking the class into subclasses, but took "no position" on whether this would be appropriate. *M.D.*, 675 F.3d at 848-49. Plaintiffs say the *M.D.* court's observation tacitly overrules *Castano* and *Allison*, eliminating the circuit conflict they previously acknowledged. But "no position" means "no position." And it was "no position" on an issue not even relevant here. Subclasses are not inherently identical to issue classes. As *M.D.* explains, certification of a subclass allows the court to divide an overbroad class into smaller classes, "'each of which has separate and discrete legal claims.'" 675 F.3d at 848. *M.D.* thus contemplates subclasses that would each assert *entire* claims, *if* the subclass could be certified to assert that claim as a whole. That analysis is perfectly consistent with *Allison* and *Castano*, and very different from breaking apart a single claim to ad-

dress sub-issues on a fragmented basis, as the Seventh Circuit did here.

3. Current Fifth Circuit law on Rule 23(c)(4) is thus not at all ambiguous; neither is it nearly so isolated as plaintiffs suggest. Several district courts outside the Fifth Circuit have agreed that "Rule 23(c)(4) does not permit a federal district court to certify a class under Rule 23(b)(3) by splitting a class action to create predominance." *Peoples v. Wendover Funding, Inc.*, 179 F.R.D. 492, 501 n.4 (D. Md. 1998); *see*, *e.g.*, *In re Panacryl Sutures Prods. Liab. Cases*, 263 F.R.D. 312, 325 (E.D.N.C. 2009); *Taylor v. CSX Transp., Inc.*, 264 F.R.D. 281, 297 (N.D. Ohio 2007).[5]

Plaintiffs also exaggerate the extent of other circuits' disagreement with the Fifth Circuit. They correctly note that the Third Circuit disagrees with *Allison/Castano* (Opp. 19), but the Third Circuit *also* disagrees with the Seventh, declining to "join[] either camp in the circuit disagreement," instead adopting a multi-factor balancing test. *Gates*, 655 F.3d at 273.

---

[5] Commentators are also sharply divided, as plaintiffs acknowledge. Opp. 19 & n.4. The sheer number of articles addressing this issue attests to its importance. Plaintiffs disparage the academic integrity of commentators who previously represented class action defendants in private practice (*id.*), as if their experience somehow undermines the quality of their arguments. In any event, plaintiffs ignore other commentators who reject their position, *e.g.*, Matthew Bender & Company, 3-19 Products Liability Practice Guide § 19.09; Note, *Splitting the Baby: Standardizing Issue Class Certification*, 64 VAND. L. REV. 1585, 1605-06 (2011); and omit to mention that their own most prominent academic supporter—a co-author of the Federal Practice and Procedure treatise they cite (Opp. 19)—typically represents plaintiffs in his own private practice.

Plaintiffs erroneously cite the Fourth Circuit's decision in *Gunnells* as rejecting the Fifth Circuit's view. Opp. 19. The Fourth Circuit in fact expressly stated that it had "no need to enter th[e] fray," 348 F.3d at 444, because *Gunnells* involved a different issue, *viz.*, whether Rule 23(c)(4) can be used to certify a distinct *claim* when the *entire case as a whole* cannot be certified. *Id.* at 438-39. The issue here, by contrast, is whether Rule 23(c)(4) can be used to *break apart an individual claim* and litigate fragmented elements or sub-issues on a classwide basis.

Nor are *Smilow v. Southwestern Bell Mobile Systems, Inc.*, 323 F.3d 32 (1st Cir. 2003), and *Williams v. Mohawk Industries*, 568 F.3d 1350 (11th Cir. 2009), at odds with *Allison*/*Castano*. Opp. 19. *Smilow* holds only that (c)(4) may be used to resolve issues "necessary to *calculate damages*," 323 F.3d at 41 (emphasis added)—it does not suggest that substantive elements and sub-issues can be stripped away for class treatment. And the *Williams* court held that the district court could certify a class under (c)(4) only *if* it "determine[d] that common issues predominate" under (b)(3). 568 F.3d at 1360.

The circuit conflict is, in short, just as the petition demonstrated: the Second, Seventh, and Ninth Circuits disagree squarely with the Fifth Circuit on the proper use of Rule 23(c)(4) issue classes, and the Third Circuit disagrees with both "camps." Pet. 22-24. Plaintiffs contend that the Court has declined previous opportunities to address this issue (Opp. 35-36), but none of the cases they cite actually implicates the split over Rule 23(c)(4)—indeed, most do not mention 23(c)(4) at all. This case, by contrast, presents a clean opportunity to resolve the im-

portant, longstanding circuit conflict over the meaning of Rule 23(c)(4).[6] Certiorari should be granted.

CONCLUSION

The petition should be granted.

[6] The Seventh Amendment problems created by piecemeal issue adjudication (Pet. 31-32; PLAC Br. 9-15) cannot be resolved by simply requesting a jury trial on the first-stage issue. Opp. 33. Where, as here, the first-stage issue is equitable, a jury is advisory, Fed. R. Civ. P. 52(a), and "an advisory jury is not the equivalent of a Seventh Amendment jury." *Palace Exploration Co. v. Petroleum Dev. Co.*, 316 F.3d 1110, 1120 (10th Cir. 2003).

Respectfully submitted,

STEPHEN M. SHAPIRO
TIMOTHY S. BISHOP
LORI E. LIGHTFOOT
STEPHEN J. KANE
MAYER BROWN LLP
71 South Wacker Drive
Chicago, Illinois 60606
(312) 782-0600

JEFFREY S. KLEIN
NICHOLAS J. PAPPAS
ALLAN DINKOFF
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, N.Y. 10153
(212) 310-8000

JONATHAN D. HACKER
(*Counsel of Record)*
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
(202) 383-5300
jhacker@omm.com

FRAMROZE M. VIRJEE
O'MELVENY & MYERS LLP
400 South Hope Street
Los Angeles, Cal. 90071
(213) 430-6045

ADAM P. KOHSWEENEY
ANNA-ROSE MATHIESON
O'MELVENY & MYERS LLP
Two Embarcadero Center
28th Floor
San Francisco, Cal. 94111
(415) 984-8700

Counsel for Petitioner
Merrill Lynch, Pierce, Fenner & Smith Incorporated

SEPTEMBER 2012