



SHAREHOLDER ADVOCATE

Trends in Securities Law and Corporate Governance

WINTER 2009



The New Year Expected to Bring More Securities Fraud

With one of the roughest years for the economy and the financial markets in generations behind us, anyone hoping for a period of calm and rebalancing is likely to be sorely disappointed. The financial outlook for 2009 will likely bring even worsening economic conditions, a continuation of the credit crisis, and potentially more after-shocks to the financial crisis of 2008. These events will likely influence investing behavior, policy decisions, and the way business functions for years to come.

As the economic tide continues to recede, we expect that more fraudulent activity will be exposed. According to Deloitte Financial Advisory Services LLP, almost two-thirds of the approxi-

mately 1,300 executives polled expected accounting fraud to increase over the next two years. Driving this expected increase in corporate fraud are company-wide pressures to meet or exceed short-term profit goals that may be impossible to legitimately obtain in a slowing or contracting economy.

The Year in Review

In 2008, we certainly had more change than we could have ever anticipated from the outset of the year. Home prices fell more steeply than any time since the Great Depression, oil rose and then fell dramatically, stoking and then wiping away fears of rampant inflation, and the financial crisis swept away ven-

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New Name: Same Firm

On November 13, 2008, Cohen Milstein elected Joe Sellers a name partner in the firm. Joe is one of the nation's pre-eminent civil rights and employment lawyers and has served as the Head of Cohen Milstein's Civil Rights and Employment Practice Group since 1997.

Joe has represented victims of discrimination and other illegal employment practices individually and through class actions. He has tried several civil rights class actions to judgment before juries and has argued more than 25 appeals in the federal and state appellate courts, including the United States Supreme Court. He has served as class counsel, and typically lead counsel, in more than 30 civil rights and employment class actions. He is currently representing more than 2 million female employees of Wal-Mart who have alleged sex discrimination in promotion and pay decisions.

In addition to his extensive legal work, Joe has also been active in legislative matters. He has testified more than 20 times before Committees of the United States Senate and House of Representatives on various civil rights and employment matters and worked on the passage of the Civil Rights Act of 1991 and the Americans with Disabilities Act of 1990. He has also been recognized as one

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The New Year Expected to Bring More Securities Fraud

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erable financial names including Bear Stearns, Fannie Mae, Freddie Mac, Merrill Lynch, AIG, Washington Mutual, and Lehman Brothers. Currently, Citigroup is in financial straits as is the domestic auto industry.

As financial institutions unloaded their riskiest assets, shares prices fell, causing a near panic among investors. As liquidity dried up, so did lending. Without lending, the economy came to an abrupt halt. Policy makers in Washington DC were dumbfounded at how quickly these conditions materialized and sought help from the Treasury Department which acted swiftly in an attempt to right the economy. But however good the intentions of these rescue or bail-out plans were, their rapid implementation meant that they weren't well-conceived. Lending did not revive as the Treasury and policy makers envisioned; rather, banks, that received inflows of cash, bought other banks in an attempt to acquire a deposit base. Other companies that did not receive funds, sought to acquire companies that were eligible.

The financial crisis of 2008 also brought to the fore the noted inability of our regulators to adequately regulate. For example, the SEC failed to police the risks that led to the collapse of numerous financial institutions, culminating at the end of the year in the astounding failure to catch Bernard Madoff's \$50 billion ponzi scheme. Moreover, Fannie Mae and Freddie Mac's regulator, failed to act in a responsive way to concerns that these companies were inadequately capitalized. This allowed the two home mortgage giants to commit securities fraud right under Office of Federal Housing Enterprise Oversight's purportedly watchful eyes. Finally, banking regulators failed to illuminate the shadow banking world of off balance sheet vehicles with opaque liabilities.

The year was also marked by some of the largest potential securities fraud cases in decades. Cases against Bear Stearns, Lehman Brothers, Fannie Mae, Freddie Mac and AIG stole the limelight. Case filings in general rose dramatically year-over-year, as more and more fraudulent activity was revealed.

Going Forward into 2009

It is not hard to predict that weakness in the broad economy will carry over from 2008 into 2009. Companies will begin to get serious about cost controls, which will continue the trend of layoffs and drive the unemployment rate meaningfully higher. A national unemployment rate of 10% may be seen by the end of 2009, a level consistent with a lengthy and deep recession. We anticipate that high levels of

unemployment will likely lead to more individuals falling behind on their credit cards and other debts which may result in a second wave of financial difficulties for banks, as they struggle with the retail aspect of their businesses. We would not be surprised to see another wave of securities cases in this sector.

Securities Fraud

As already mentioned, the historical trends imply that the economic downturn may inspire an increase in securities fraud. If so, history tells us that the following industries will lead the way: telecommunications, healthcare, computer and retail. The types of fraud to expect include schemes involving revenue recognition, reserves and expenses, improper or incomplete disclosures, inventory and cost of goods sold.

Demands for Regulatory Reform

This will be a year filled with calls for additional regulation and disclosure, as 2008 showed that our current regulatory system was woefully inadequate. We expect there to be both a groundswell movement to increase transparency through enhanced disclosures of a company's financial assets and pressure on Congress to allow investors to use securities class actions to "clawback" bonuses and other incentive compensation earned by executives who committed securities fraud.

Shareholder Activism

Not surprisingly, the focus of shareholder interest in 2009 will most likely be on executive compensation. Say-on-Pay proposals that seek an annual shareholder advisory vote on executive pay should continue to be filed by shareholders for placement on companies' annual meeting ballots. Also, let us not forget that as recently as May 2007, then Senator Barrack Obama introduced a Say-on-Pay bill that would have required shareholder advisory voting on executive compensation. Even though that bill did not become law, perhaps this is the year some sort of Say-on-Pay legislation will be passed. In addition, the government's Troubled Asset Relief Program ("TARP") has inspired some shareholders at companies who have received TARP funds to propose executive compensation limits that are even stricter than the compensation limits required by the TARP. While it is doubtful that these proposals will be approved, they do send a message to executive management that shareholders are no longer willing to acquiesce on overly generous compensation plans.

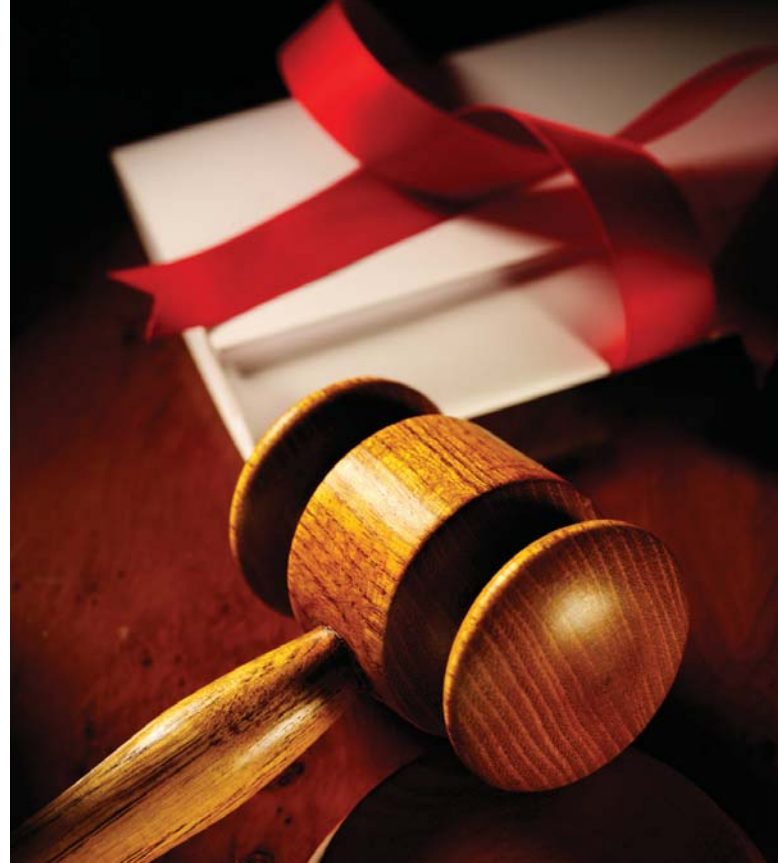
New Name: Same Firm

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of the top lawyers in Washington and as one of the top 10 plaintiffs' employment lawyers in the country.

Cohen Milstein also recently hired two new leading antitrust partners: Kit Pierson and Doug Richards. Kit has two decades of experience handling complex civil litigation matters and has successfully tried class action antitrust cases. Doug has spent the last nine years at two major plaintiffs' class action firms where he has focused on antitrust class actions. Doug will also serve as the managing partner of Cohen Milstein's New York office.

By electing Joe as a name partner, and bringing on Kit and Doug, Cohen Milstein remains committed to its core principle, which is to change the way corporations behave whether such practices affect shareholders, other businesses, consumers, or their own employees. The firm continues to specialize in class action litigation in the areas of antitrust, securities fraud, employee benefits, consumer protection, employment discrimination, and civil and human rights.



Taking on Wal-Mart

Cohen Milstein is not just a leader in prosecuting securities fraud actions, but also in the vigorous protection of our clients' rights in the area of civil rights, among other fields. One of our most prominent representations is as co-lead counsel on behalf of current and former female employees of Wal-Mart who are suing the company for violating anti-discrimination laws in its pay and promotion practices.

Our Wal-Mart litigation team is quite impressive, including Joseph M. Sellers, who recently became a name partner at Cohen Milstein and is one of the most renowned civil rights attorneys in the country; Christine Webber, recently named as one of Washington, D.C.'s top civil rights lawyers; and partners Julie Reiser and Jenny Yang.

The case, *Dukes, et al. v. Wal-Mart Stores*, has taken some interesting twists and turns since we first developed the legal strategy and crafted the class action complaint that was filed in the Northern District of California in June 2001. In June 2004, the federal district court ruled that Wal-Mart would stand trial for mistreating its female employees. In certifying the largest civil rights class action ever against a private employer, a class that likely consists of over 2 million female employees, the Judge noted "the importance of the courts in addressing the denial of equal treatment under the law whenever and by whomever it occurs."

Wal-Mart took an immediate appeal of that decision on what was supposed to be an "expedited track." Instead, the decision has been on appeal for longer than it was pending before the district court. In 2007, we won another victory in the case when a panel of the Ninth Circuit Court of Appeals decided to affirm, in substantial part, the district court's class certification decision. Wal-Mart responded by asking the entire Ninth Circuit court to re-visit that decision in what is referred to as an "en banc" review. Such reviews occur only if the majority of active judges vote to hear a case. That review has recently been granted, with oral arguments expected to take place in late March. Needless to say, our team is ready for this new challenge.

Make Your Voice Heard

Cohen Milstein Sellers & Toll PLLC

2008 Financial Meltdown and Regulatory Reform Survey

Investors have lost trillions of dollars in recent months as a result of the global financial meltdown. Billions of these losses are the result of fraudulent misrepresentations by corporations and financial institutions worldwide. And one thing that recent events have made clear is that self-regulation has not worked. With this survey, we would like to gauge the investor's attitude toward corporate governance and regulatory reform and the role of private investors in policing corporate behavior.

Please fill out the survey below and fax to 202-408-4699 or pdf and email to atebeest@cohenmilstein.com

All individual responses will be held strictly confidential. If, however, you would like to receive a copy of the results, please give us your contact information. Participants in the survey will also be invited to attend a roundtable discussion with our attorneys and fellow pension fund administrators and trustees on these issues.

The final results and your opinions will be presented to relevant media and regulatory authorities.

Name: _____

Email: _____

Would you be willing to be interviewed in-depth on these issues? Yes No

The following questions are for statistical purposes only. Please check the box that most closely reflects:

| Institution type: | Value of the assets under management: | Percentage decrease in portfolio value since January 2008: |
|---|---|--|
| <input type="checkbox"/> Taft-Hartley fund | <input type="checkbox"/> < \$1 billion | <input type="checkbox"/> More than 50% |
| <input type="checkbox"/> State pension fund | <input type="checkbox"/> \$1 billion to \$5 billion | <input type="checkbox"/> 30% to 50% |
| <input type="checkbox"/> Local or municipal pension fund | <input type="checkbox"/> \$5 billion to \$10 billion | <input type="checkbox"/> 20% to 30% |
| <input type="checkbox"/> Private investment fund | <input type="checkbox"/> \$10 billion to \$25 billion | <input type="checkbox"/> 10% to 20% |
| <input type="checkbox"/> None of the above, please describe: _____ | <input type="checkbox"/> > \$25 billion | <input type="checkbox"/> < 10% |

Please check the appropriate box that most closely reflects your fund.

- | | | |
|--|--|---|
| <p>1. Do you believe that the recent financial meltdown and accompanying declines in corporate share prices were due to inadequate regulatory oversight?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>1. Which areas of oversight and regulation – government or otherwise – do you believe were inadequate? (check all that apply)</p> <p><input type="checkbox"/> U.S. Securities and Exchange Commission (SEC)</p> <p><input type="checkbox"/> U.S. Federal Reserve</p> <p><input type="checkbox"/> Foreign government agencies</p> <p><input type="checkbox"/> Ratings agencies (Moody's, S&P, Fitch)</p> <p><input type="checkbox"/> Individual company corporate governance</p> <p><input type="checkbox"/> U.S. courts receptiveness to securities fraud litigation</p> <p>1. Do you feel the government response to the crisis has been adequate?</p> <p><input type="checkbox"/> Yes, it has been adequate</p> <p><input type="checkbox"/> No, it has not been adequate</p> <p><input type="checkbox"/> Too soon to tell</p> <p>1. Do you think the temporary suspension of the rules of mark-to-market was the right thing to do?</p> | <p><input type="checkbox"/> Yes, it calmed things somewhat</p> <p><input type="checkbox"/> No, it is now even harder for investors to gauge the health of a company from its balance sheet</p> <p>1. Have the recent events in the financial markets influenced your fund's opinion on the role of shareholders in "policing" corporate behavior?</p> <p><input type="checkbox"/> Made me feel shareholders should be more active</p> <p><input type="checkbox"/> Made me feel that litigation is the best way to influence corporate behavior</p> <p><input type="checkbox"/> Shareholders do not have an influence</p> <p><input type="checkbox"/> Has not changed my opinion</p> <p>1. Has the recent financial situation made you more concerned with issues of corporate governance in general?</p> <p><input type="checkbox"/> Much more concerned</p> <p><input type="checkbox"/> A little more concerned</p> <p><input type="checkbox"/> About the same</p> <p><input type="checkbox"/> Less concerned</p> <p><input type="checkbox"/> Not concerned</p> <p>1. Is your fund considering being more proactive in (check all that apply)</p> <p><input type="checkbox"/> Directly communicating with the executive management or the boards of the companies you hold in your portfolio?</p> | <p><input type="checkbox"/> Seeking "say-on-pay" shareholder proposals</p> <p><input type="checkbox"/> Seeking claw backs of executive pay if a company's financial performance subsequently falters</p> <p><input type="checkbox"/> Having shareholders nominate at least one or two of a corporate board's members each year</p> <p><input type="checkbox"/> Are not considering being more proactive</p> <p>1. Have the losses your fund experienced since the beginning of the year made you more likely to pursue recovering funds through (check all that apply)</p> <p><input type="checkbox"/> Active portfolio monitoring</p> <p><input type="checkbox"/> Increased attention to participation in class action settlements</p> <p><input type="checkbox"/> Actively participating in securities fraud litigation</p> <p><input type="checkbox"/> Opting out of class actions to undertake individual actions</p> <p>1. If you were to pursue securities litigation, how important would it be for you to seek corporate governance changes at the corporations that you believe have committed securities fraud?</p> <p><input type="checkbox"/> Extremely important</p> <p><input type="checkbox"/> Very important</p> <p><input type="checkbox"/> Somewhat important</p> <p><input type="checkbox"/> Not important</p> |
| <p>1. Do you think that the government needs to play a greater role in "policing" corporate behavior?</p> <p><input type="checkbox"/> Yes, a much greater role</p> <p><input type="checkbox"/> Yes, a somewhat greater role but shareholders need to play an active role</p> <p><input type="checkbox"/> No, shareholders and the markets are adequate regulators of corporate behavior</p> <p>1. What kind of increased regulation would you like to see (check all that apply):</p> <p><input type="checkbox"/> Legislation requiring "say-on-pay"</p> <p><input type="checkbox"/> Executive pay limits</p> <p><input type="checkbox"/> Executive pay claw backs for companies receiving funds under the Emergency Economic Stabilization Act of 2008</p> <p><input type="checkbox"/> Increased SEC mandate and enforcement staff</p> <p><input type="checkbox"/> Disclosure of the use of funds received under the Emergency Economic Stabilization Act of 2008</p> <p><input type="checkbox"/> Ban on using funds received under the Emergency Economic Stabilization Act of 2008 for executive pay</p> <p><input type="checkbox"/> Ban on using funds received under the Emergency Economic Stabilization Act of 2008 for the purchase of other companies</p> | | |

Upcoming Settlements

| Company Name | Symbol | Class Period | Proof of Claim Deadline |
|--------------------------------------|--------------------------------------|--|-------------------------|
| Xerium Technologies, Inc. | XRM | All those who purchased the common stock of Xerium Technologies Inc. pursuant and/or traceable to the Company's initial public offering on or about 05/16/05 - 11/15/05. | March 10, 2009 |
| Molson Coors Brewing Company | TAP | (1) former shareholders of Molson Inc. who received shares of Molson Coors Brewing Company as a result of the February 9, 2005 merger of Molson by and into the Adolph Coors Company); (2) who were open market purchasers of the common stock of Coors from July 22, 2004 to February 9, 2005, inclusive; or (3) were open market purchasers of the common stock of the Company, following completion of the merger between Molson and Coors on or about February 9, 2005 to April 27, 2005, inclusive, and who were damaged by the decline in the Company's stock. | March 19, 2009 |
| Pixelplus Co., Ltd. | PXPL | (1) all persons who purchased or otherwise acquired the publicly-traded ADS of Pixelplus Company Ltd. During the period from December 21, 2005 and April 11, 2006, inclusive, and (2) all persons who purchased Pixelplus ADS pursuant and/or traceable to the Company's December 21, 2005 IPO. | March 23, 2009 |
| Openwave Systems, Inc. | OPWV OPWVD | All persons or entities who purchased or acquired the common stock of Openwave Systems Inc. during the period from September 30, 2002 through October 26, 2006, inclusive. | March 25, 2009 |
| Brocade Communications Systems, Inc. | BBCD | All persons and entities who purchased or otherwise acquired Brocade Communications Systems, Inc. common stock during the period from May 18, 2000 through May 15, 2005, inclusive. | March 30, 2009 |
| Kinam Gold, Inc. | KGCPRB | All persons and entities who: (1) tendered shares of the \$3.75 Series B Convertible Preferred Stock of Kinam Gold Inc. to Kinross Gold Corp. pursuant to the February 20, 2002, cash tender offer (as amended February 22, 2002) made by Kinross; (2) continue to hold shares of the \$3.75 Series B Convertible Preferred Stock of Kinam; or (3) did not tender shares of the \$3.75 Series B Convertible Preferred Stock of Kinam to the February 20, 2002, cash tender offer (as amended February 22, 2002) made by Kinross but have since sold such shares directly to Kinross, Kinam or Kinross Gold U.S.A. Inc. | March 31, 2009 |
| ProQuest Company | PQE | All persons who purchased the publicly traded securities of ProQuest Co. during the period from February 20, 2001 through December 14, 2006, inclusive. | April 4, 2009 |
| Forest Laboratories, Inc. | FRX | All persons who purchased the common stock of Forest Laboratories, Inc. during the period from August 15, 2002 through July 2, 2004, inclusive. | April 7, 2009 |
| Warner Chilcott Ltd. | WCRX | All persons who purchased the common stock of Warner Chilcott pursuant and/or traceable to the Company's IPO on or about September 20, 2006 through September 26, 2006, inclusive. | April 7, 2009 |
| Mannatech Inc. | MTEX | All purchasers of the publicly traded securities of Mannatech, Inc. during the period from August 10, 2004 through May 9, 2005, inclusive. | April 14, 2009 |
| Bridgestone Corporation | 5108 BGT BRDCF BRDCY BRO | All purchasers of the publicly traded common stock and/or American Depository Receipts of Bridgestone Corporation during the period from March 30, 2000 to August 31, 2000, inclusive. | April 21, 2009 |
| UnitedHealth Group, Inc. | UNH | All persons who purchased or otherwise acquired the publicly traded securities of UnitedHealth Group, Inc. between January 20, 2005 through May 17, 2006 (the "Class Period"), including those Class Period purchasers who also held UnitedHealth stock during the 2002, 2003, 2004, 2005, 2006 UnitedHealth proxy solicitations, and those who acquired UnitedHealth stock in or traceable to the December 20, 2005 merger with PacificCare Health Systems, Inc. | April 22, 2009 |
| Crompton Corp. | CK CNK CNW WIT | Purchasers of Crompton Corporation publicly traded securities, including former Crompton & Knowles and Witco shareholders who exchanged their shares of stock for CK Witco stock pursuant to the merger during the period between October 26, 1998 and October 8, 2002, including without limitation all person and entities that purchased or otherwise acquired Cropton securities pursuant to the merger between Crompton and Knowles Corporation and Witco Corporation. | April 27, 2009 |
| Rhythms NetConnections | RTHMQ | All persons or entities who purchased the common stock of Rhythms NetConnections during the period from January 6, 2000 through April 2, 2001, inclusive. | May 4, 2009 |

A Securities Litigator's Take on the Subprime Crisis

The subprime crisis has brought with it a large number of new securities fraud cases. According to D&O Diary, the subprime crisis has generated more than 140 separate securities fraud lawsuits. However, this focus on subprime cases does not alter the fundamentals of evaluating and prosecuting securities litigation cases. The evaluation process can still be boiled down to three principal considerations: (1) establishing liability—how strong is the case when applying the facts to the law; (2) damages—were investors harmed and, if so, by how much; and (3) collectability or the ability of potential defendants to pay.

Establishing Liability

In most securities class actions, the plaintiff alleges that defendants violated Section 10(b) of the Securities Exchange Act of 1934. This is the general “catch all” anti-fraud provision of the federal securities laws which prohibits making false and misleading statements in connection with the purchase or sale of a security. The key elements for demonstrating liability in a Section 10(b) cause of action are:

(1) **A False Statement also known as a Material Misrepresentation or Omission:** In the subprime context, relevant examples include (a) a disclosure that the issuer of securities published false financial statements, such as where the issuer used inappropriate methodologies to establish “fair value” of securities or instruments under Generally Accepted Accounting Standards (GAAP), or where it failed to take impairment charges or other write-downs on a timely basis; or (b) misleading disclosures regarding loan underwriting practices. These are the types of disclosures that will attract the interest of investors and their counsel in considering potential litigation.

(2) **Scienter:** Under the federal securities laws, investors have the burden of pleading and proving that each of the defendants acted with a mental state known as “scienter”. This requires evidence of a least “reckless misbehavior”. Recently, in *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, the U.S. Supreme Court clarified this standard by requiring investors to demonstrate facts which support a “strong inference” of scienter, noting that the inference must be “cogent and at least as compelling as any opposing inference one could draw from the facts alleged.” This standard is generally considered to be among the highest pleading standards in U.S. civil litigation.

The adequacy of investors’ allegations of scienter or the mental state of defendants is an issue in virtually every case alleging securities fraud. In fact, I have not seen a single case since the passage of the Private Securities Litigation Reform Act of 1995 where a solvent defendant did not seek to dismiss the case based on an insufficient showing of scienter. We expect this defense strategy to continue in subprime cases.

Traditional Indicators of Scienter

In evaluating potential subprime cases, we look to some of the traditional indicators of scienter. These factors include:

- Has the issuer restated or indicated it would restate its financial statements? If so, will the reasons provided for the restatement plus the nature of the restatement support an inference of wrongdoing? For example, did the restatement involve the incorrect application of accounting principles that are clear and longstanding;
- Did potential defendants engage in insider trading during the period of time when plaintiffs claim that defendants defrauded investors;
- Is there a Securities and Exchange Commission investigation or a Department of Justice proceeding relating to the issuer’s disclosures;
- Have senior executives resigned and, if so, what were the reasons for the resignation; and
- Was the issuer’s compensation program such that insiders were incentivized to hide material information from the investing public.

Subprime Allegations and Scienter

With regard to subprime cases, I expect that the application of the relevant accounting standards will be front and center in the debate as to whether scienter can be demonstrated sufficiently. Indeed, one of the key issues in subprime litigation will be whether the issuer used appropriate methodologies to establish the “fair value” of the securities or instruments under GAAP. I expect that investors who bring subprime cases will allege that the accounting standards were reasonably clear and required issuers to timely disclose the true value of their investments which reflected either their deterioration in value or the fact that the issuer was unable to ascribe any reasonable value to the instruments.

On the other hand, we expect defendants to undercut any allegations or wrongful conduct by arguing that these standards were both complex and that the application of the standards was subject to the application of broad degrees of professional judgment. As a result, defendants will argue that the mere fact that an issuer may have gotten the valuation wrong does not support an inference that the error was made intentionally or recklessly. They will claim that, at best, the errors were made negligently and simple negligence will not support a securities fraud claim.

The evaluation of this type of scienter issue will be central to the plaintiff’s evaluation of claims in a subprime case.

Damages

The second consideration is damages -- that is, showing that the false statements caused injury to the investor. The typical measure of damages in a federal securities fraud case is the difference between the purchase price

of the security and the value of the security. In reality, the measure and proof of damages requires a vastly more complex analysis which inevitably entails the use of expert testimony, the purpose of which, in large part, is to segregate out information or events that caused a price decline. What is necessary to show is a price decline caused by a corrective disclosure (for example, an announcement that a company's financial statements were not presented in accordance with GAAP and that its financial statements will need to be restated).

Loss Causation

The issue of damages blurs with the concept of loss causation, which is also an element of a federal securities fraud claim. Broadly speaking, the loss causation element requires an investor to demonstrate that the price decline is causally linked to the information which the investor claims was false and misleading. Moreover, it is necessary to demonstrate that the price decline was not caused by other factors affecting the stock at the same time such as general market conditions or other unrelated company specific issues.

The considerations of damages and loss causation are of special importance when viewed against the backdrop of the subprime crisis and the related massive decline in the value of financial securities. We can be fairly confident that defendants will argue over and over again that any losses suffered by investors were not caused by the disclosure of any previous false or misleading statements but rather were simply the result of the general downward decline in the financial markets. This will be a key battleground on which securities fraud class action cases will be fought for many years to come -- at the pleadings stage, on motions to dismiss, at class certification and on the merits.

Collectability or Ability to Pay

The third consideration is perhaps the most pragmatic one – do the potential defendants have the ability to pay – by way of settlement or judgment – a meaningful portion of the damages sought. Obviously, it makes little sense for an investor and its counsel to spend years in lawyer time and expenses to pursue a case where there is little or no chance for recovery. For example, a company at or near bankruptcy; or with limited assets and available cash or low levels of D&O insurance may not be a good candidate for litigation unless other parties such as auditors or underwriters also share culpability. These considerations are more important than ever given how the subprime crisis has ravaged the financial health of bedrock institutions such as Fannie Mae, Freddie Mac, AIG, Bear Stearns, Lehman Brothers and Merrill Lynch, and compels plaintiff's counsel to look very closely at the ability to pay issue before a suit is filed.

Corporate Governance

The reasons described above should not be taken to mean that there are no additional reasons for a non-U.S. asset manager to want to take an active role in a shareholder class action. Such investors may also want to control and monitor other aspects of the litigation (including the attorneys) and to ensure that corporate governance measures consistent with their own goals are implemented as part of any settlement. The reasons discussed here do, however, indicate that there are unique and important reasons for non-U.S. asset managers to consider their active options—not to do so risks being denied any of the benefits these actions may have for investors.

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Upcoming Events

Cohen Milstein will be attending, exhibiting, or speaking at these upcoming events. We hope to see you there.

| Conference | Where and when | For more information |
|--|------------------------------|--|
| NAST Legislative | Washington, DC : Mar 8-11 | www.nast.net |
| Texpers Annual Meeting | Austin, TX : Mar 28 - Apr 1 | www.texpers.org |
| CII Spring | Washington, DC : Apr 5-7 | www.cii.org |
| Southern Conference on Teacher Retirement | Hilton Head, NC : Apr 19-23 | www.sctr.org |
| NCPERS Annual Conference | Beverly Hills, CA: May 3-7 | www.ncpers.org |
| SACRS Spring | San Francisco, CA: May 12-15 | www.sacrs.org |
| Building and Construction Trades 2009 Legislative Conference | Washington, DC: May 17-20 | www.buildingtrades.org |

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