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## FIREARM COMPANY SHAREHOLDERS PROPOSE INDUSTRY PRINCIPLES

*This issue's Fiduciary Focus column offers the views of guest columnist Raymond M. Sarola of Cohen Milstein*

Responding to continued mass shooting tragedies, some public pension funds that own stock in companies that manufacture, distribute, and sell firearms are promoting responsible gun industry practices as a way to protect the value of their shares and enhance public safety.

Public funds from California, Connecticut, Florida, Maine, Maryland and Oregon teamed with private institutional investors to form a coalition representing over \$4.8 trillion in assets<sup>i</sup> to sign the *Principles for a Responsible Civilian Firearms Industry*, five goals that companies in which they invest should pursue to reduce risks to the value of their businesses.<sup>ii</sup>

Representing current best practices in firearm manufacture and sales, the principles issued in November apply to investments in all public and private companies operating in the firearms industry. The principles direct manufacturers to support and utilize new technology to make their firearms safer and facilitate tracing by law enforcement agencies. But they do not end there. Distributors, dealers and retailers—a large set of companies that include consumer retailers like Wal-Mart—play a critical role in ensuring that safe firearms make it to the hands of safe owners. The principles direct these companies to adopt practices that ensure the completion of background checks on purchasers, to train their employees to identify suspicious transactions, and to work collaboratively with law enforcement to prevent and catch those who engage in gun violence.

The principles' twin policy goals are to protect the economic value of investments in gun companies and enhance the safety of the public at large, and to do so within the legal framework governing pension fund shareholder engagement. As explained by one signatory, the principles "are focused on reducing risk, which is a priority for institutional investors who have a fiduciary obligation to invest pension assets prudently and to monitor and manage risks."<sup>iii</sup> Importantly, however, the principles do not attempt to micro-manage company behavior or mandate specific operational changes. This allows the principles to achieve their greatest impact, since each company can implement these goals in ways that best suit their respective business models. The principles also reflect a belief in the rule of law and respect for the Second Amendment of the U.S. Constitution.

# FIDUCIARY FOCUS

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As shareholders in companies that manufacture, distribute and sell firearms, public pension funds and other large investors may look for ways to promote the goal of reducing gun violence while adhering to their legal duty to prudently invest fund assets. I believe the *Principles for a Responsible Civilian Firearms Industry* offer a timely and instructive example of how pension funds may consider accomplishing both aims simultaneously. ■

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*Raymond M. Sarola is an associate in the firm's Ethics and Fiduciary Counseling and Whistleblower Practice Groups. He led the team of Cohen Milstein attorneys who on a pro bono basis represented the family of a victim of gun violence, Kirsten Englund, in a wrongful death lawsuit. The lawsuit accused two firearms dealers of having affected straw sales by providing firearms to someone other than the actual purchaser of those weapons. In the settlement of this lawsuit, the firm negotiated a series of business improvements that the dealers agreed to implement such as additional controls to confirm the true identity of purchasers before firearms are handed over.*

i This group includes the California Public Employees Retirement System, California State Teachers' Retirement System, Connecticut Retirement Plans and Trust Funds, Florida State Board of Administration, the Maine Public Employees Retirement System, the Maryland State Retirement and Pension System, Nuveen (the asset manager of TIAA), OIP Investment Trust, the Oregon Public Employees Retirement Fund, Rockefeller Asset Management, the San Francisco Employees' Retirement System, State Street Global Advisors, and Wespath Investment Management.

ii The principles are below:

- Principle 1: Manufacturers should support, advance and integrate the development of technology designed to make civilian firearms safer, more secure, and easier to trace.
- Principle 2: Manufacturers should adopt and follow responsible business practices that establish and enforce responsible dealer standards and promote training and education programs for owners designed around firearms safety.
- Principle 3: Civilian firearms distributors, dealers, and retailers should establish, promote, and follow best practices to ensure that no firearm is sold without a completed background check in order to prevent sales to persons prohibited from buying firearms or those too dangerous to possess firearms.
- Principle 4: Civilian firearms distributors, dealers, and retailers should educate and train their employees to better recognize and effectively monitor irregularities at the point of sale, to record all firearm sales, to audit firearms inventory on a regular basis, and to proactively assist law enforcement.
- Principle 5: Participants in the civilian firearms industry should work collaboratively, communicate, and engage with the signatories of these Principles to design, adopt, and disclose measures, and metrics demonstrating both best practices and their commitment to promoting these Principles.

iii "Connecticut Retirement Plans and Trust Funds Joins Other Investors in Launch of Principles for a Responsible Civilian Firearms Industry," Office of State Treasurer Denise L. Nappier (Nov. 14, 2018).

