SHAREHOLDER ADVOCATE

Winter 2019

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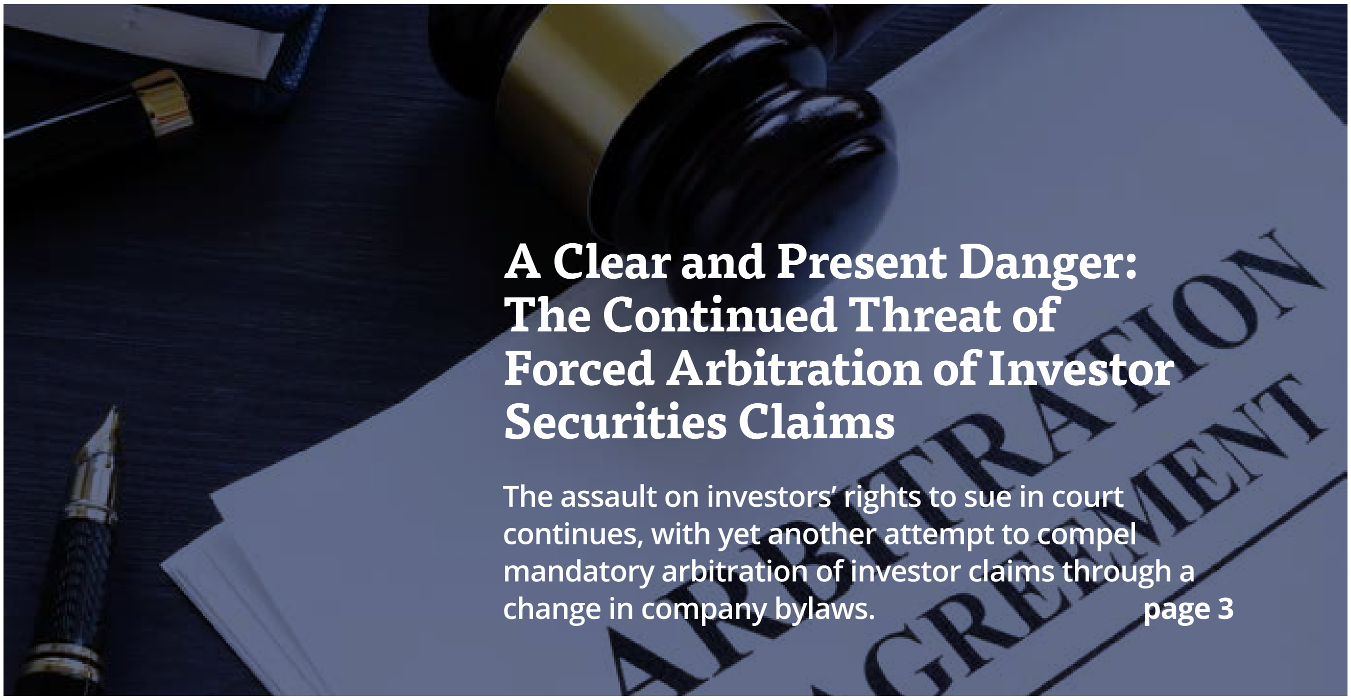

A Clear and Present Danger: The Continued Threat of Forced Arbitration of Investor Securities Claims

The assault on investors' rights to sue in court continues, with yet another attempt to compel mandatory arbitration of investor claims through a change in company bylaws. page 3

Cohen Milstein Beats Motion to Dismiss in Stock Loan Antitrust Case and Advances to Discovery

page 6

Case to Watch: *First Solar Inc. v. Mineworks Pension Scheme*

page 8

SEC Considers Eliminating Quarterly Reporting Requirement

page 10

Fiduciary Focus – Firearm Principles

page 12

A Clear and Present Danger: The Continued Threat of Forced Arbitration of Investor Securities Claims

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The assault on investors' rights to sue in court continues, with yet another attempt to compel mandatory arbitration of investor claims through a change in company bylaws.

The latest onslaught is being championed by Hal Scott, a Harvard Law professor and frequent critic of securities lawsuits. In November, Scott submitted a shareholder proposal on behalf of a trust he represents to Johnson & Johnson, Inc., a New Jersey corporation, seeking to amend the company's corporate charter to require arbitration of all federal securities claims. Scott's draconian proposal further seeks to prohibit class and joined claims, as well as eliminate appeals or challenges of awards, rulings and decisions.

The stakes for shareholders are high. Arbitration is neither cost effective nor practicable for investors who have lost money due to corporate misconduct, and lacks important safeguards guaranteed by the court system—the rights to a jury trial, discovery and a public hearing, to name just three.

THE STAKES FOR SHAREHOLDERS ARE HIGH. ARBITRATION IS NEITHER COST EFFECTIVE NOR PRACTICABLE FOR INVESTORS WHO HAVE LOST MONEY DUE TO CORPORATE MISCONDUCT, AND LACKS IMPORTANT SAFEGUARDS GUARANTEED BY THE COURT SYSTEM—THE RIGHTS TO A JURY TRIAL, DISCOVERY AND A PUBLIC HEARING, TO NAME JUST THREE.

In response to Scott's proposal, J & J has asked the Securities and Exchange Commission to issue a no-action letter to allow the company to exclude the proposal and supporting statement from its 2019 proxy materials on the grounds that implementing the proposal would be contrary to the policies underlying the federal securities laws and cause J & J to violate federal law.

The ball is now in the SEC's court. A non-action letter, stating that the staff will not recommend enforcement action against J & J if the proposal is excluded, would be consistent with the SEC's long-standing policy banning forced arbitration. It would provide J & J support to omit the proposal from its proxy documents, though the omission could be challenged in court by its proponent. The SEC staff also could duck the issue—either by not responding (citing the government shutdown), saying the matter requires more study (in light of intervening development discussed below) or referring it to the Commission itself. The latter course would be consistent with the views expressed by SEC Chair Jay Clayton, who has previously said a decision to allow bylaws with forced arbitration provisions should not be made by the staff, but by the Commission "in a measured and deliberative manner."[1] Absent a no-action letter, J & J would likely include the shareholder proposal given the impending deadline for the materials.

> “*Blue Apron* is a very significant decision because it clearly delineates the point beyond which bylaws cannot qualify or eliminate the rights of investors. It is also sensible, as the Constitution’s Supremacy Clause does not permit state law to eviscerate protections provided investors by the federal securities laws.”

JAMES D. COX, PROFESSOR OF LAW, DUKE LAW SCHOOL

Importantly for investors opposed to such a severe restriction of their rights, a recent Delaware Chancery Court decision undercuts the idea that a company’s bylaws or charters can provide the legal basis for mandatory arbitration of federal securities claims. In the closely watched case of *Sciabacucchi v. Salzberg, et. al.*, C.A. No. 2017-0931 (Del. Ch. December 19, 2018) (*Blue Apron*), Vice Chancellor Travis Laster invalidated charter provisions by three companies, Blue Apron Holdings, Inc., Stitch Fix, Inc. and Roku, Inc., requiring Section 11 claims under the Securities Act of 1933 to be litigated in federal court unless the directors otherwise agree. Vice Chancellor Laster explained that bylaws can only govern internal affairs that impact stockholders’ rights as they relate to the corporation. Drawing a line between internal claims, which are governed through bylaws, and external claims involving a company, which are not, Vice Chancellor Laster wrote that the “distinction between internal and external claims answers whether a forum-selection provision can govern claims under the 1933 Act. It cannot, because a 1933 Act claim is external to the corporation. Federal law creates the claim, defines the elements of the claims, and specifies who can be a plaintiff or defendant.” Further, the 1933 Act “provided that causes of action could be asserted in state or federal court.”

GIVEN THE CLEAR AND PRESENT DANGER POSED, INVESTORS SHOULD BE PROACTIVE AND SPEAK OUT AGAINST THE THREAT POSED TO THEIR RIGHTS.

“*Blue Apron* is a very significant decision because it clearly delineates the point beyond which bylaws cannot qualify or eliminate the rights of investors,” James D. Cox, a Duke Law School professor and leading academic in this area, told the *Shareholder Advocate*. “It is also sensible, as the Constitution’s Supremacy Clause does not permit state law to eviscerate protections provided investors by the federal securities laws.” Indeed, a month before the *Blue Apron* decision, Cox and 20 other prominent law professors analyzed Delaware corporate law on internal versus external matters and reached the same conclusion as the Chancery Court. “Delaware corporate law does not permit a corporate bylaw (or charter provision, for that matter) to require that claims arising under the federal securities laws be resolved in arbitration or indeed in any specified venue,”[2] the professors wrote.

In practice, permitting companies to force arbitration of federal securities law claims through corporate bylaws or charters would pose an existential threat to the rights and ability of investors to obtain redress or accountability from those who have defrauded them.

Some have said this threat goes to the very foundations of democracy. As Professor Cox explains: "In the classic work, *Democracy in America*, Alexis de Tocqueville wrote nearly 200 years ago that a central strength of the democracy in America was our country's commitment to access to justice through mechanisms such as the citizen's rights to be on juries and making the courts available for everyone. Mandated arbitration of investor and shareholder claims would be a grave departure from what makes America exceptional."

Given the clear and present danger posed, investors should be proactive and speak out against the threat posed to their rights. ■

Carol V. Gilden, a Cohen Milstein partner, oversees the firm's Chicago Office and is a member of the Securities Litigation & Investor Protection practice group. Before entering private practice, Carol served as an Enforcement Attorney with the SEC.

1 Letter from Chairman Jay Clayton to The Honorable Carolyn B. Maloney (Apr. 24, 2018) https://maloney.house.gov/sites/maloney.house.gov/files/MALONEY% 20ET%20AL%20-%20FORCED%20ARBITRATION%20-%20ES156546%20Response.pdf

2 https://secureoursavings.com/wp-content/uploads/2018/11/Arbitration-bylaw-white-paper.pdf

"In the classic work, *Democracy in America*, Alexis de Tocqueville wrote nearly 200 years ago that a central strength of the democracy in America was our country's commitment to access to justice through mechanisms such as the citizen's rights to be on juries and making the courts available for everyone. Mandated arbitration of investor and shareholder claims would be a grave departure from what makes America exceptional."

JAMES D. COX,
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COHEN MILSTEIN BEATS MOTION TO DISMISS IN STOCK LOAN ANTITRUST CASE AND ADVANCES TO DISCOVERY

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A lawsuit in which investors are using federal antitrust laws to try to recoup losses and end unlawful practices by banks that conspired to prevent modernization of the multi-trillion-dollar securities lending market has overcome a major procedural hurdle and is moving forward. In *Iowa Public Employees Retirement System et al. v. Bank of America Corp.*, Judge Katherine Polk Failla denied in its entirety defendants' motion to dismiss the Amended Complaint (Complaint). Cohen Milstein, along with its co-counsel, leads this antitrust class action in which plaintiffs, including the Iowa Public Employees' Retirement System, Los Angeles County Employees Retirement Association; Orange County Employees Retirement System and Sonoma County Employees' Retirement Association, allege that major financial institutions, including Bank of America, Credit Suisse, Goldman Sachs, JP Morgan, Morgan Stanley and UBS, conspired to overcharge investors and maintain the power they hold over the $1.7 trillion stock loan market.

The stock loan market is a critical component of a strong economy, enabling trading activities like short selling and hedging, while also ensuring that financial systems operate efficiently. Stock lending involves the temporary sale of a stock from one investor to another, typically from long term investors to entities who want to sell stock short. The stock loan market, however, has not kept pace with technological advancements. It remains an opaque, over-the-counter (OTC) trading market in which there is no central marketplace for stock borrowers and lenders to trade directly with one another or see real-time pricing that could help secure better financial terms for both the lender and the borrower of shares. The Complaint alleges that defendants artificially maintained the antiquated nature of the stock loan market by engaging in anticompetitive conduct to obstruct multiple efforts to create competitive electronic exchanges that would benefit both stock lenders and borrowers.

In her September 27 order denying defendants' motion to dismiss the case, Judge Failla rejected each of defendants' arguments and found that the Complaint plausibly alleged that the alleged conspiracy started in 2009; that defendants planned some part of the conspiracy at defendant Equilend's board meetings; and that defendants, who collectively controlled approximately 80% of the market, had

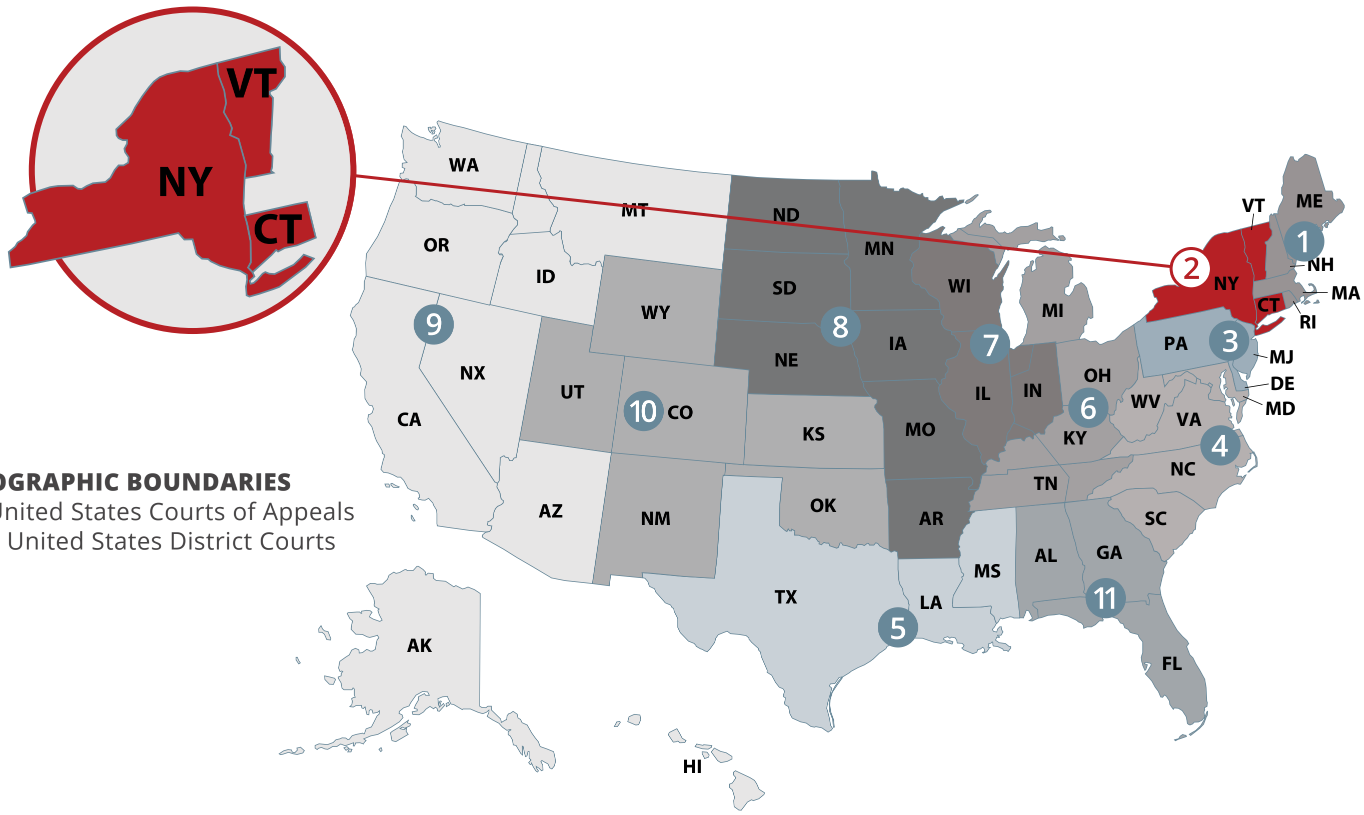
THE COURT FOUND THAT THE COMPLAINT MET THE *PER SE* STANDARD OF ANTICOMPETITIVE BEHAVIOR AND, IN THE ALTERNATIVE, HELD THAT THE COMPLAINT MET THE MORE DEMANDING "RULE OF REASON" STANDARD FOR STATING A CLAIM FOR VIOLATIONS OF THE SHERMAN ACT BY ALLEGING SPECIFIC INSTANCES WHERE DEFENDANTS TOOK ACTION THAT HAD THE SOLE PURPOSE OF ELIMINATING COMPETITION.

market power sufficient to control the market by pressuring others to neither invest in nor work with new market entrants, specifically AQS, SL-x and Data Explorers, thereby thwarting the competition.

Judge Failla made other important findings in her 93-page opinion. The Court found that plaintiffs alleged specific facts pertaining to each defendants' complicity in boycotting AQS and SL-x, the Complaint alleged separate instances of direct evidence of a conspiracy, such as the dates on which defendants entered into agreements to block competition, and the Complaint also sufficiently alleged parallel (or the same) conduct of the defendants to effectuate the conspiracy. The Court found that the Complaint met the *per se* standard of anticompetitive behavior and, in the alternative, held that the Complaint met the more demanding "rule of reason" standard for stating a claim for violations of the Sherman Act by alleging specific instances where defendants took action that had the sole purpose of eliminating competition, such as purchasing AQS's and SL-x's intellectual property but never fully using it. Lastly, the Court denied defendants' motion to dismiss claims prior to August 2013, because the Complaint pled with particularity that defendants fraudulently concealed their conspiracy throughout the entire period alleged in the Complaint.

Following this ruling, Cohen Milstein and its co-counsel began taking discovery in the case, which is ongoing. ■

Christina D. Saler is Of Counsel to the firm and a member of the Securities Litigation & Investor Protection practice group.



GEOGRAPHIC BOUNDARIES
of United States Courts of Appeals and United States District Courts

CASE TO WATCH: *FIRST SOLAR INC. V. MINEWORKS PENSION SCHEME*

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A basic premise of the federal securities laws is that investors are entitled to recover for harms caused by the revelation of a company's false statements. But in *First Solar Inc. v. Mineworks Pension Scheme*, defendants argue that they cannot be held liable for losses caused by the revelation of the effects of their fraudulently concealed conduct until the fact of the fraud itself is also disclosed. After their arguments fell short at the trial and appeals court levels, they have petitioned the Supreme Court of the United States to consider their position. *First Solar Inc.*, No. 18-164 (U.S.) (cert. petition pending).

During the class period alleged in the case, First Solar's stock fell from nearly $300 per share to around $50. Plaintiffs allege that, during that period, defendants intentionally concealed the existence of serious defects in two of their products, and that, even after one of the defects was revealed, defendants continued to hide its full costs and impact. The market did not learn about the existence of the second defect during the class period. But defendants did incorporate the costs of the concealed defects into their earnings statements—albeit without explaining all the reasons for their poor performance to the public. Plaintiffs argue that their loss was caused, in part, by the market reaction to those statements. A trial court agreed that plaintiffs' argument was sufficient to go to trial but permitted defendants to appeal that determination to the Ninth U.S. Circuit Court of Appeals.

On appeal, defendants did not meaningfully contest that plaintiffs put forward evidence that the earnings statements, rather than other intervening causes, reflected defendants' fraudulently concealed conduct and caused the decline in stock price that harmed them. Nevertheless, defendants contended that their fraudulent concealment of the defects could not have caused plaintiffs' losses because the market was only reacting to the economic *effects* of the undisclosed defects, without knowing that any conduct had been fraudulently concealed. The Ninth Circuit, applying a standard "proximate cause" analysis, agreed with the trial court that plaintiffs had adequately shown that their losses were caused by defendants' fraudulent conduct because those losses could be traced back to "the very facts about which the defendant lied."

Defendants now seek to argue their case before the Supreme Court. Again, they claim that the market must specifically learn about the fraudulent *nature* of their conduct in order for plaintiffs to

DEFENDANTS' POSITION WOULD GIVE POTENTIAL DEFENDANTS A ROADMAP FOR DRASTICALLY NARROWING THE POTENTIAL DAMAGES RESULTING FROM SECURITIES FRAUD; AS DEFENDANTS DID HERE, CORPORATIONS WOULD BE INCENTIVIZED TO REVEAL THE ECONOMIC IMPACT OF THEIR FRAUD, ALLOW THE MARKET TO REACT, AND THEN FACE LIABILITY ONLY FOR THE LOSSES INCURRED AFTER THE CONCEALED CONDUCT ITSELF WAS ADMITTED, WHICH MIGHT AMOUNT TO A MERE FRACTION OF THE OVERALL LOSS.

demonstrate loss causation—that is, defendants argue that investors are not harmed by their fraudulent misstatements unless the investors know that their injury is being caused by a fraud. That position would give potential defendants a roadmap for drastically narrowing the potential damages resulting from securities fraud; as defendants did here, corporations would be incentivized to reveal the economic impact of their fraud, allow the market to react, and then face liability only for the losses incurred after the concealed conduct itself was admitted, which might amount to a mere fraction of the overall loss.

Although defendants' argument is contrary to established Supreme Court precedent, corporation-friendly organizations, including the Securities Industry and Financial Markets Association, the U.S. Chamber of Commerce, and the Business Roundtable, have already filed an amicus brief supporting their position. In October 2018, the Supreme Court asked the Office of the Solicitor General to provide its views, which may take months. We will be watching this petition closely and will keep our clients apprised if the Supreme Court grants the petition and decides to hear the case. ■

S. Douglas Bunch is a partner and Alice Buttrick an associate in the firm's Securities Litigation & Investor Protection practice group.

EMULEX UPDATE: SUPREME COURT TO HEAR CASE WITH BIG IMPLICATIONS FOR MERGER SUITS

As the *Shareholder Advocate* predicted last summer, a plaintiff-friendly appeals court ruling in California has led the Supreme Court to consider an issue that, if decided in defendants' favor, would limit investors' ability to successfully bring federal merger-objection lawsuits.

In *Varjabedian v. Emulex Corp.* (*Emulex*), the Ninth U.S. Circuit Court of Appeals said plaintiffs needed only show that defendants were negligent to survive a motion to dismiss, rather than show defendants acted with *scienter* (knowledge of wrongdoing). In doing so, the Ninth Circuit adopted a more relaxed standard than five of its sister circuits for cases brought under Section 14(e) of the Securities Exchange Act of 1934.

In accepting the case on January 4, the Supreme Court waded into the debate over the increasing number of federal merger-objection lawsuits, which accounted for nearly half the securities class actions filed last year and have propelled annual filings to higher-than-average levels. Alleging breaches of fiduciary duty during the merger process that reduce deal prices at the expense of the acquired companies' shareholders, these cases have migrated to federal court following adverse state court rulings in Delaware, where most had been brought.

While most deal cases are brought under a different subsection of the Exchange Act, Section 14(a), there is concern that the Supreme Court could use the question presented in *Emulex* to impose the higher *scienter* standard on plaintiffs for all parts of Section 14.

Some anti-investor forces would like to see the Supreme Court go even further. In a friend-of-the-court brief filed in support of defendants' petition for consideration, the U.S. Chamber of Commerce urged the high court to eliminate the right to bring private lawsuits under Section 14 altogether.

The Supreme Court is expected to decide the case this year. ■

SEC CONSIDERS ELIMINATING QUARTERLY REPORTING REQUIREMENT

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At the urging of President Trump, the Securities and Exchange Commission is studying the impact of allowing publicly traded companies to file financial reports just twice a year instead of quarterly, a reduced standard that would turn back the regulatory clock a half century.

On December 18, four months after President Trump raised the idea in a Tweet, the SEC asked for public comment "on the nature, content, and timing of earnings releases and quarterly reports made by reporting companies."

Proponents of eliminating quarterly reports, such as President Trump and the US Chamber of Commerce, argue it would reduce unnecessary expenses associated with preparing the reports and encourage executives to focus on longer-term investments rather than quarterly earnings.

While replies aren't due until March 18, market heavyweights like Larry Fink of BlackRock, Warren Buffet of Berkshire Hathaway and Jamie Dimon of JPMorgan Chase—all of whom decry "short-termism"— are already on the record in favor of quarterly financial reports.

So is the Council of Institutional Investors, which issued a statement the day of the Tweet.

"Investors and other stakeholders benefit when regulations ensure that important information is promptly and transparently provided to the marketplace," CII Deputy Director Amy Borrus said. "Investors need timely, accurate financial information to make informed investment decisions."

That the SEC would consider such a measure is unsurprising, given the anti-regulatory posture of the Trump administration and Republican lawmakers. Over the last two years, the SEC appears to have focused chiefly on promoting capital formation, while pulling back on efforts to protect investors, police markets and ensure corporate accountability.

Enforcement, by most measures, is down since President Trump took office. Meanwhile, the Commission has floated ideas such as allowing companies to issue dual-class shares that permanently enhance insiders' power over that of ordinary shareholders.

The suggestion to reduce the frequency of required reporting came from outgoing PepsiCo CEO Indra Nooyi at an August dinner she and other business leaders attended at a Trump golf club. President Trump offered two motives for the shift, saying in his Tweet that it "would allow greater flexibility & save money" and later to reporters: "It made sense. We are not thinking far enough out."

The SEC echoed these ideas in it 31-page Request for Comment, saying it wanted input on "how we can enhance, or at a minimum maintain, the investor protection attributes of periodic disclosures while reducing administrative and other burdens … associated with quarterly reporting."

The Commission also asked whether the existing system of quarterly reports, earnings releases and earnings guidance "may affect corporate decision making and strategic thinking—positively or negatively—including whether these factors foster an inefficient outlook among registrants and market participants by focusing on short-term results."

But empirical evidence undercuts both these ideas. In fact, two studies cited by Robert Pozen of the Brookings Institution in an article defending quarterly reporting found evidence to the contrary: that the U.K.'s shift from semi-annual to quarterly reports in 2007 and back again in 2013 had no material impact on corporate spending; and that, in the U.S., companies that issued quarterly reports before they were legally required in 1970 had lower equity capital costs than those issuing semi-annual ones.

As the SEC Investor Advisory Committee said in response to a 2016 SEC concept release that touched on quarterly reports, "the current degree, quality and frequency of disclosure for U.S. issuers overall is appropriate and a source of strength for the U.S. capital markets."

Quarterly financial reports provide important comparative information to investors. If corporate executives are truly concerned about short-termism, they already have the power to take an important step in that direction by discontinuing quarterly earnings guidance, which is not required by the SEC. Removing the self-imposed pressure to meet quarterly earnings-per-share forecasts would likely do far more to encourage long-term focus than going from quarterly to semi-annual reports. ■

Richard E. Lorant is Director of Institutional Client Relations for the firm.

> "Investors and other stakeholders benefit when regulations ensure that important information is promptly and transparently provided to the marketplace. Investors need timely, accurate financial information to make informed investment decisions."
>
> AMY BORRUS, DEPUTY DIRECTOR, COUNCIL OF INSTITUTIONAL INVESTORS

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FIDUCIARY

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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[i] 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.[ii]

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."[iii] 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.

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. ■

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.

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.

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).

RECENT HIGHLIGHTS

COHENMILSTEIN IN THE NEWS

- Despite Trump's Regulatory Rollback, Employee Lawsuits Have Doubled Over This Critical Issue," *MarketWatch* – January 8, 2019
- "Lawsuit Says Orlando Utility's Coal Plant Polluting Thousands of Homes," *Reuters* – December 20, 2018
- "A Key Legal Reform to Fight the Child Sex Abuse Epidemic," *Law360* – December 9, 2018
- "'Calling Uber on Their Bluff,' Plaintiffs Lawyers Strike Back to Compel Arbitration," *The Recorder* – December 6, 2018
- "Marriott Hit with Multiple Suits After Massive Data Breach," *Law360* – December 3, 2018
- "Indiana Hospital Workers Reach Deal in Pension Suit," *Law360* – November 28, 2018
- "Tipped Wage Policy Rollback Could Put Labor Dept. at Legal Risk," *Bloomberg Law* – November 26, 2018
- "Private Prison Companies Served with Lawsuits over Using Detainee Labor," *The Guardian* – November 25, 2018
- "Plaintiffs Challenge Atrium Health for Claiming Government Exemption from ERISA," *Pensions & Investments* – November 20, 2018
- "How Michael B. Jordan Is Leading the Charge in Hollywood's Diversity Efforts," *Variety* – November 14, 2018
- "New Jersey Sues Pharmaceutical Company Amid Spiraling Opioid Crisis," *The New York Times* – November 13, 2018
- "Hospital System, Ex-Workers Settle 'Church Plan' ERISA Suit," *Law360* – October 29, 2018
- "Supreme Court to Weigh Workers' Right to Sue Their Employers," *The Wall Street Journal* – October 24, 2018
- "'Shame on Them.' Fund Companies Got Sued by Their Own Employees Over Pricey 401(k) Plans," *Barron's* – October 19, 2018
- "Advertisers Allege Facebook Failed to Disclose Key Metric Error for More Than a Year," *The Wall Street Journal* – October 16, 2018
- "End-Payors, Direct Purchasers Get Cert. in Solodyn MDL," *Law360* – October 16, 2018
- "$36 Million Settlement Approved in Lumber Liquidators Lawsuit," *CBS News* – October 11, 2018

AWARDS & ACCOLADES

- Cohen Milstein Named to *Trial Magazine*'s "Forum: America's 25 Most Influential Law Firms;" Betsy A. Miller and Steven J. Toll Named to *Trial Magazine*'s "RoundTable: America's 50 Most Influential Lawyers" – January 21, 2019
- Cohen Milstein Recognized as a *Law360* "Practice Group of the Year" in Two Categories: Environmental Law and Consumer Protection – January 14, 2018
- Cohen Milstein Named an "Elite Trial Lawyer: Winner" by *The National Law Journal* in Four Practice Areas: Consumer Protection; Counterterrorism; Financial Products; and Immigration – December 1, 20188
- Cohen Milstein's Kalpana Kotagal, Betsy A. Miller and Julie Goldsmith Reiser Recognized as "Elite Women of the Plaintiffs Bar: Winners" by *The National Law Journal* – December 1, 2018
- Cohen Milstein's Theodore J. Leopold Named a *Law360* "Environmental Law MVP" – November 26, 2018
- Cohen Milstein's Andrew N. Friedman Named a *Law360* "Cybersecurity and Privacy Law MVP" – November 26, 2018
- Cohen Milstein's Kalpana Kotagal Named a *Law360* "Employment Law MVP" – November 26, 2018
- Cohen Milstein's Sharon K. Robertson Honored with an "Outstanding Antitrust Litigation Achievement Award" by the American Antitrust Institute – October 9, 20188

UPCOMING EVENTS

- **January 27-29** | National Conference on Public Employee Retirement Systems (NCPERS) 2019 Legislative Conference, Capitol Hilton, Washington, DC – Richard Lorant and Christina Saler
- **February 10-12** | National Association of State Treasurers (NAST) Legislative Conference, Mayflower Hotel, Washington, DC – Jay Chaudhuri
- **February 14-19** | National Labor & Management 42nd Annual Conference, Westin Diplomat Resort & Spa, Hollywood, FL – Arthur Coia and Christopher Lometti
- **February 20-22** | National Association of Public Pension Attorneys (NAPPA) Winter Seminar Meeting, Tempe Mission Palms Hotel and Conference Center, Tempe, AZ
- **February 23-25** | National Association of State Retirement Administrators (NASRA), 2019 Winter Meeting, Washington, DC – Richard Lorant
- **March 4-6** | Council of Institutional Investors (CII) Spring 2019 Conference, Washington, DC
- **March 24-26** | County Commissioners Association of Pennsylvania (CCAP) Spring Conference, Hilton Harrisburg, Harrisburg, PA – David Maser

ATTORNEY PROFILE

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> "What I most enjoy about being a plaintiffs lawyer is building new cases. Whereas defense lawyers are always looking to poke holes, we, as plaintiff lawyers, focus on building a strong case, like a house—from the ground up—that can't be knocked down."

Raymond M. Sarola joined the firm in 2014 and is an associate in Cohen Milstein's Whistleblower / False Claims Act and Ethics and Fiduciary Counseling Practice Groups. Prior to joining the firm, Ray served as Senior Policy Advisor & Counsel in the Mayor's Office of the City of New York, where he represented the Mayor and Commissioner of Finance on the boards of the City's pension systems and deferred compensation plan and advised on legal issues regarding pension investments, benefit payments, securities litigation and corporate governance initiatives. This government experience coupled with his prior corporate defense litigation experience has given Ray a unique perspective in counseling clients and developing case strategy. For this issue of the *Shareholder Advocate*, Ray talked with Editor Christina Saler.

I grew up in … Valley Stream, Long Island which meant I was destined to be a Mets fan given my town's proximity to Shea Stadium where the team played up until the move to Citi Field in 2009. There's been a lot of Mets' heartbreak. I can vaguely remember the Mets making it to the World Series in 1986 and since then, well, I remain a diehard fan.

If I wasn't a lawyer, I'd really want to be … a shortstop. For the Mets. Baseball is my favorite sport and although my career was cut short by an unfortunate inability to hit junior high fastballs, one can always dream.

What I most enjoy about being a plaintiffs lawyer … is building new cases. Whereas defense lawyers are always looking to poke holes, we, as plaintiff lawyers, focus on building a strong case, like a house—from the ground up—that can't be knocked down. It requires a tremendous amount of focus, research and creativity. Every case is different, so I appreciate the challenge and responsibility of developing a strategy to best serve our clients with respect to the issues at hand.

The most challenging aspect of my job is … in our whistleblower cases, our clients are often subject matter experts, so to effectively represent them we need to quickly become experts ourselves in their field. It is essential that we fully understand how a particular industry functions so that we can work with the high-level, complex information our clients provide to break it down for the government and courts so the alleged fraud is easily seen and fully understood.

On my bookshelf is … a varied collection of new books that will keep Amazon guessing as to what I might order next. I am currently reading *Dopesick* which is about the opioid crisis and traces its devastating movement from rural communities to urban sites where the epidemic finally gained national attention. I have also read a few recent books on the explosive growth of cryptocurrency, which has occurred in the exciting intersection of law and finance. And in between, I am constantly rereading anything by Kurt Vonnegut, which always helps me keep the sometimes-chaos of life in perspective. ■

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