SHAREHOLDER ADVOCATE

Winter 2024

COHENMILSTEIN

Powerful Advocates. Meaningful Results.

Protecting Market Participants from Manipulative Trading

When Congress passed the Securities and Exchange Act of 1934, one of its main goals was to protect the marketplace from manipulative conduct. In the nine decades since, technology has evolved–and with it, the methods devious traders use to manipulate stock prices. Cohen Milstein is representing investors in a series of innovative new cases designed to stop these state-of-the-art frauds.

page 2

Supreme Court Set to Resolve Whether Item 303 Liability Applies to Material Omissions

page 4

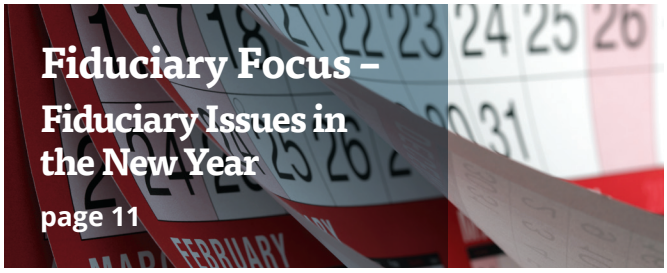
A New Year's Message from the Partners of the Securities Group

page 7

PLURALSIGHT

Judge Certifies Class in Pluralsight Securities Litigation

page 9



Fiduciary Focus – Fiduciary Issues in the New Year

page 11

Team Profile – Richard E. Lorant

page 14

Protecting Market Participants from Manipulative Trading

When Congress passed the Securities and Exchange Act of 1934, one of its main goals was to protect the marketplace from the kind of manipulative conduct that precipitated the Great Wall Street Crash of 1929. In the nine decades since, technology has evolved tremendously, and with it the methods devious traders use to manipulate stock prices. But the fundamental threat market manipulation poses to the integrity of securities markets remains unchanged. That's why Cohen Milstein has developed a series of innovative cases to hold trading firms and individuals accountable when they engage in manipulative securities transactions.

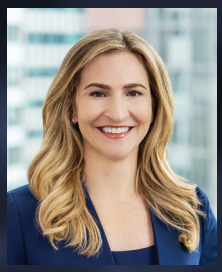
In a class action on behalf of investors in XIV notes, for example, the firm alleged that Credit Suisse manufactured a crash in these securities to obtain illegal profit and we obtained a groundbreaking decision from the Second Circuit holding that these allegations sufficiently pled market manipulation claims. We also represent a class of shareholders in Overstock who allege that the company's "short squeeze" manipulated the market for its own securities; those claims are currently under review by the Tenth Circuit. And when the Supreme Court considered the scope of key market manipulation provisions of the Exchange Act, we filed an amicus brief advocating for the position that the Court ultimately adopted in holding a broker liable for engaging in manipulative conduct.

Most recently, we filed two market manipulation lawsuits on behalf of dynamic companies in the biotech and information technology industries against some of the nation's largest broker-dealers for allegedly manipulating the price of these companies' shares for their own profit. The cases allege that the defendants engaged in "spoofing" to artificially drive down the price of the companies' shares in order to purchase them at below-market prices.

Spoofing is a form of market manipulation that typically involves placing large "baiting" orders on one side of the market to induce other traders to follow suit, then buying or selling that security on the other side of the market at the artificial prices created by the spoofing, and finally cancelling the baiting orders before they are executed.

The particular mechanisms of spoofing can involve complex features of high-frequency trading algorithms in electronic trading venues. But the basic concept can be analogized to a headfake in sports. A trader fools the marketplace into thinking it is trading in one direction with the goal of moving other traders in that direction, allowing the trader to execute its true trading intention in the other direction, at a greater profit. In our two cases, we allege that the defendants wished to purchase the companies'

RAYMOND M. SAROLA
267.479.5700
rsarola@cohenmilstein.com
V-CARD



LAURA H. POSNER
212.220.2925
lposner@cohenmilstein.com
V-CARD

COHEN MILSTEIN HAS BROUGHT TWO INNOVATIVE CASES ALLEGING DEFENDANTS ENGAGED IN "SPOOFING" TO ARTIFICIALLY DRIVE DOWN THE PRICE OF THE COMPANIES' SHARES IN ORDER TO PURCHASE THEM AT BELOW-MARKET PRICES.

PRIVATE SPOOFING CASES HAVE BEEN VERY RARE, IN PART BECAUSE PRIVATE PLAINTIFFS, UNLIKE THE GOVERNMENT, DO NOT HAVE ACCESS TO PRE-SUIT INVESTIGATIVE DISCOVERY TOOLS USED TO OBTAIN AND ANALYZE NONPUBLIC TRADING DATA.

shares at artificially low prices and used baiting orders to sell in order to execute buy orders at better prices.

Spoofing in the age of high-speed trading has been prosecuted criminally and civilly by the Department of Justice, Securities and Exchange Commission, and Commodities Future Trading Commission. But private spoofing cases have been very rare. This is in part because government agencies, unlike private plaintiffs, have access to pre-suit investigative discovery tools to obtain and analyze nonpublic trading data.

In our cases, we responded to this challenge by conducting comprehensive and sophisticated analysis of multiple sources of publicly available trading data, matching orders and executions, and applying parameters to identify patterns that courts have held to be indicative of spoofing. These patterns include placing large baiting orders on the opposite side of the market from smaller legitimate orders, cancelling the baiting orders after the smaller orders have executed, leaving the baiting orders on the market for only a short period of time, placing baiting orders behind other legitimate orders to make them less likely to execute, and other conduct contrary to acting as an ordinary market maker.

In both of our spoofing cases, defendants have moved to dismiss the complaint. In the *Northwest Biotherapeutics* case, briefing has concluded, and oral argument was held on November 14, 2023 before Magistrate Judge Gary Stein in the Southern District of New York. Arguing for the plaintiffs, we explained how our allegations are exactly the type that courts have consistently held sufficient to plead spoofing claims. The defendants argued, as those accused of spoofing always do, that their conduct was normal trading activity, either making markets or trading on behalf of clients. Magistrate Judge Stein recently issued a report and recommendation that agreed with our position on the sufficiency of our allegations as to defendants' manipulative conduct, scienter, and reliance, and concluded that only our loss causation allegations require more detail in an amended complaint. We await final orders from the district court judges in both cases.

Favorable decisions affirming the sufficiency of these complaints would be a major development towards fairer markets and remedies for companies and investors that have been victimized by manipulative trading schemes. ■

Raymond M. Sarola is Of Counsel in the firm's Securities Litigation & Investor Protection practice group. Laura H. Posner is a Partner in the firm's Securities Litigation & Investor Protection practice group.

SUPREME COURT SET TO RESOLVE WHETHER ITEM 303 LIABILITY APPLIES TO MATERIAL OMISSIONS

CAROL V. GILDEN
312.629.3737
cgilden@cohenmilstein.com
V-CARD

LAURA H. POSNER
212.220.2925
lposner@cohenmilstein.com
V-CARD

KATE NAHAPETIAN
202.408.4600
knahapetian@cohenmilstein.com
V-CARD

Fraud by omission versus commission. Should a corporation be able to do one but not the other in its mandatory discussion of known trends without risking liability under Section 10(b) of the Securities Exchange Act? This is a question the Supreme Court has been itching to answer.

The case is *Macquarie Infrastructure Corp. et al. v. Moab Partners LP et al.*, case number 22-1165. Back in 2017, the Supreme Court was prepared to review the issue in another case, *Leidos Inc. v. Indiana Public Retirement System et al.*, case number 16-581, but the case settled a month before arguments were scheduled. This time, there don't appear to be any settlements on the horizon, and numerous parties, including the U.S. Solicitor General, have filed amicus briefs, signifying the high stakes involved.

Important to investors is an SEC disclosure requirement under Regulation S-K Item 303, 17 CFR section 229.303 ("Item 303" disclosures, also known as Management's Discussion and Analysis of Financial Condition and Results of Operations), which requires companies to disclose "where a trend, demand, commitment, event or uncertainty is both presently known to management and reasonably likely to have material effects on the registrant's financial conditions or results of operations." The purpose, according to the SEC, is to enable investors "to assess the financial condition and results of operations" of a company and its "prospects for the future." [1]

In the case under review, Macquarie did not disclose that one of its most profitable subsidiaries was about to be subject to a United Nations regulation limiting pollution that would significantly eat into its profits. The plaintiff's 2018 lawsuit claims the defendants concealed the pending restrictions for two years. When the company finally did disclose the limitations it faced, its stock fell by over 40%.

[1] Commission Statement About Management's Discussion and Analysis of Financial Condition and Results of Operations, 67 Fed.Reg. 3746 at 3747 (Jan 25, 2002).

IMPORTANT TO INVESTORS IS AN SEC DISCLOSURE REQUIREMENT UNDER REGULATION S-K ITEM 303, 17 CFR SECTION 229.303, WHICH REQUIRES COMPANIES TO DISCLOSE "WHERE A TREND, DEMAND, COMMITMENT, EVENT OR UNCERTAINTY IS BOTH PRESENTLY KNOWN TO MANAGEMENT AND REASONABLY LIKELY TO HAVE MATERIAL EFFECTS ON THE REGISTRANT'S FINANCIAL CONDITIONS OR RESULTS OF OPERATIONS."

THE DEFENDANTS ARGUE THAT EVEN IF THEY HAD A DUTY TO DISCLOSE THE EXPECTED IMPACT OF THE UNITED NATIONS REGULATIONS UNDER ITEM 303, THEY SHOULD NOT BE HELD LIABLE FOR FAILING TO DO SO UNDER SECTION 10(B) OF THE SECURITIES EXCHANGE ACT.

The defendants argue that even if they had a duty to disclose the expected impact of the United Nations regulations under Item 303, they should not be held liable for failing to do so under Section 10(b) of the Securities Exchange Act. The district court sided with the defendants, but a unanimous Second Circuit disagreed and reinstated the claims in December 2022 before the Supreme Court ultimately agreed to review the case in September 2023.

Considering the high stakes involved for investors, who could see their ability to recover losses through private actions severely limited, Cohen Milstein has been actively engaged in the amicus effort to support the plaintiffs in the case and to respond to the arguments raised in amicus briefs filed in support of defendants by heavyweights like the U.S. Chamber of Commerce and Securities Industry and Financial Markets Association ("SIFMA").

This amicus effort includes briefs filed on behalf of dozens of securities law and business professors, institutional investors with over 340 billion in assets under management, and a group of consumer advocates who include the Consumer Federation of America, Better Markets, Inc., Public Justice, and the American Association for Justice.

As part of that amicus effort, Cohen Milstein authored an amicus brief on behalf of former SEC Commissioners and senior officials appointed by both Republican and Democratic presidents. That brief addresses the defendants claim that allowing for Section 10(b) liability for violations of Item 303 will force companies to provide overbroad and unnecessary disclosures that will confuse investors. Cohen Milstein's clients noted in their amicus brief that the SEC has "repeatedly highlighted that *Only* material items" be included in such disclosures, and that the SEC "expressly condemned unnecessary or duplicative disclosures precisely because they frustrate investor understanding." Indeed, in its 2003 Guidance, the SEC encouraged companies to "de-emphasize (or, if appropriate, delete) immaterial information that does not promote understanding."

The former SEC officials brief also noted the crucial role private actors play in the enforcement of securities laws, which ultimately provide investor confidence that promotes the liquidity of the U.S. securities market to the benefit of corporations and investors alike. The U.S. securities markets would not be "the envy of the world" without strong enforcement mechanisms, of which private actors are a vital part.

The Supreme Court has recognized this role as well, finding that private securities fraud actions provide "a most effective weapon in the enforcement" of securities laws and are "a necessary supplement to [SEC] action." *J.I. Case Co. v. Borak*, 377 U.S. 426, 432 (1964). The former SEC officials' brief noted that the "commission and its senior leadership have repeatedly

informed this Court of its view that private actions serve an essential role." As then-Chairman Richard Breeden explained in testimony before the US Senate, the SEC "does not have adequate resources to detect and prosecute all violations of the federal securities laws," private actions thus "perform a critical role in preserving the integrity of our securities markets."

The brief also discussed how the SEC has long recognized that a violation of Item 303 can serve as a basis for a Rule 10b-5 action and rejects the defendants' argument that fraud by omission should be permitted while fraud by commission should not. It is no surprise, therefore, that the plaintiffs were joined by the Solicitor General, who not only filed a brief in support of the plaintiffs but also asked to be allowed to make oral arguments. The Supreme Court granted this request on January 5, 2024, and oral arguments in the case took place January 16, 2024. Cohen Milstein will continue to closely monitor the case to ensure investor interests are protected. ■

Carol V. Gilden and Laura H. Posner are Partners in the firm's Securities Litigation & Investor Protection practice group. Kate Nahapetian is the firm's Manager of Investor Services.

COHEN MILSTEIN AUTHORED AN AMICUS BRIEF ON BEHALF OF FORMER SEC COMMISSIONERS AND SENIOR OFFICIALS APPOINTED BY BOTH REPUBLICAN AND DEMOCRATIC PRESIDENTS. ... THE BRIEF DISCUSSED HOW THE SEC HAS LONG RECOGNIZED THAT A VIOLATION OF ITEM 303 CAN SERVE AS A BASIS FOR A RULE 10B-5 ACTION AND REJECTS THE DEFENDANTS' ARGUMENT THAT FRAUD BY OMISSION SHOULD BE PERMITTED WHILE FRAUD BY COMMISSION SHOULD NOT.

A New Year's Message from the Partners of the Securities Group

Dear Readers,

As we begin 2024, we want to take a moment to look back on a fulfilling professional year and to express our appreciation to our clients, collaborators, and friends.

It was an extraordinary year for Cohen Milstein clients—one in which the firm achieved major courtroom victories on behalf of investors, consumers, public clients, and victims of human rights abuses.

The Securities Group had several noteworthy victories this year. For example, we negotiated a $1 billion recovery for shareholders of Wells Fargo & Company, which is among the largest securities fraud settlements of all time. The lawsuit alleged that Wells Fargo misled investors about its compliance with regulatory consent orders imposed on it after a 2016 consumer abuse scandal revealed that Wells Fargo had fraudulently opened millions of bank accounts without clients' knowledge. Cohen Milstein acted as co-lead counsel for the class, representing the Mississippi Public Employees Retirement System and the State of Rhode Island, Office of the General Treasurer, two of the co-lead plaintiffs.

We also negotiated $580 million in cash and equitable relief on behalf of institutional investors who participate in securities lending programs. In September, Cohen Milstein and its co-lead counsel received preliminary approval for a settlement with a group of big banks accused of illegally colluding to thwart competition in the securities lending market, thereby keeping transaction costs artificially high. According to our complaint, these "market makers" took advantage of a trading platform they controlled, EquiLend, to unlawfully exclude competitors seeking to modernize the opaque market through open electronic trading.

We and our clients—the Iowa Public Employees' Retirement System, the Los Angeles County Employees Retirement Association, the Orange County Employees Retirement System, the Sonoma County Employees Retirement Association—are pleased to have represented investors in the stock lending market to achieve this settlement.

In addition, we secured more than $950 million in settlements as special counsel to more than a dozen state attorneys general investigating abusive pricing practices by pharmacy benefit managers (PBM) who provide services to state Medicaid programs and state employee health plans.

IT WAS AN EXTRAORDINARY YEAR FOR COHEN MILSTEIN CLIENTS—ONE IN WHICH THE FIRM ACHIEVED MAJOR COURTROOM VICTORIES ON BEHALF OF INVESTORS, CONSUMERS, PUBLIC CLIENTS, AND VICTIMS OF HUMAN RIGHTS ABUSES.

Our work in these and other cases earned the Securities Group a number of honors, including this month's *Law360* "Securities Practice Groups of the Year" recognition for the second straight year, *American Lawyer*'s Litigator of the Week designation, and inclusion in the "Legal 500."

The unusual breadth of practice at Cohen Milstein is part of what makes us effective advocates for our clients, and attorneys in other practice areas of the Firm also had tremendous success this past year on behalf of their clients.

For example, our Complex Tort Litigation Group negotiated more than $640 million for 90,000 Flint, Michigan, residents and businesses in litigation against government and individual defendants for their roles in re-directing toxic levels of contaminated water from the Flint River into the city's drinking water in an effort to save money and covering up the resulting health crisis.

The Firm is preparing for a February 2024 trial against the remaining defendants in the *Flint Water* litigation. It is one of four cases we are scheduled to take to trial early this year, a demonstration of the depth of our trial advocacy capabilities. The Antitrust Group has two trials set to begin in April: one on behalf of former Ultimate Fighting Championship fighters who claim the UFC's anticompetitive practices led to them being underpaid; and another representing Pacific Steel, a company that alleges it was frozen out of building its own steel by Commercial Metals Corporation. Also in April, the Human Rights Group is slated to begin a jury trial in *Doe v. Chiquita International* on behalf of hundreds of Colombian citizens who allege that they or their relatives were victims of torture and extrajudicial killings carried out by a paramilitary group that was financially supported by Chiquita.

These cases and more illustrate how, inside the courtroom, Cohen Milstein's attorneys champion the cause of real people—citizens, workers, consumers, small business owners, investors, and whistleblowers—harmed by unsafe, unscrupulous, or discriminatory conduct.

As we embark on a new year, we look forward to continuing to work with our clients and, through the *Shareholder Advocate*, to keeping all of you apprised of developments in the law, our cases, and the Firm. We wish you all a healthy, prosperous, and productive 2024! ■

Securities Group Partners

Molly J. Bowen

S. Douglas Bunch

Michael B. Eisenkraft

Carol V. Gilden

Benjamin F. Jackson

Laura H. Posner

Julie G. Reiser

Christina D. Saler

Daniel S. Sommers

Steven J. Toll

JUDGE CERTIFIES CLASS IN PLURALSIGHT SECURITIES LITIGATION

RICHARD E. LORANT
202.408.3622
rlorant@cohenmilstein.com
V-CARD

“We are very pleased with this detailed and well-reasoned opinion.”

PARTNER CAROL V. GILDEN

A federal judge in Utah has certified a class of Pluralsight, Inc. investors seeking damages after Pluralsight stock dropped 40% when executives allegedly admitted they had exaggerated the size of the sales force key to the company’s continued growth.

In a December 27 memorandum decision and order granting class certification, U.S. District Judge David Barlow designated lead counsel Cohen Milstein as class counsel and its clients—lead plaintiffs Indiana Public Retirement System and Public School Teachers’ Pension and Retirement Fund of Chicago—as class representatives.

“We are very pleased with this detailed and well-reasoned opinion,” said Carol V. Gilden, the Chicago-based partner leading Cohen Milstein’s litigation team. “With the class certified, we can focus on marshaling the evidence we are collecting through the discovery process to secure the best possible resolution for our clients and the class.”

Headquartered in Utah, Pluralsight provides cloud-based and video training courses, skill and role assessments, learning paths, and analytics tools to businesses. Plaintiffs allege that the company and two top executives violated securities laws by making materially false misrepresentations and omissions about Pluralsight’s sales force and its ability to sustain strong growth in billings.

The complaint further accuses the executives, Aaron Skonnard, the CEO and Chairman, and James Budge, the chief financial officer, of violating securities laws by trading stock based on their inside knowledge. In all, plaintiffs allege that Pluralsight’s top three executives sold $47 million in stock during the class period, which runs from January 16, 2019, through July 31, 2019, including through their 10b5-1 trading plans.

In his opinion, Judge Barlow found that plaintiffs satisfied the requirements to pursue a class action under Federal Rule of Civil Procedure 23(a). Under the rule, the class must be large enough

THE JUDGE FOUND THAT 'COHEN MILSTEIN WILL FAIRLY AND ADEQUATELY REPRESENT THE CLASS'S INTERESTS' BASED ON THE FIRM'S PROSECUTION OF THE LAWSUIT SINCE 2020, ITS EXPERIENCE IN OTHER CASES, AND ITS SIGNIFICANT RESOURCES.

to make it impractical to pursue claims as individuals; the class members must share common "questions of law or fact;" and the class representatives must have "claims or defenses" typical of those of the class at large and "fairly and adequately" protect the interests of the class.

In appointing class counsel, the judge found that "Cohen Milstein will fairly and adequately represent the class's interests." He based his decision on the firm's prosecution of the lawsuit since its March 2020 lead counsel appointment, its experience as class counsel in other cases, and its significant resources.

Indeed, it took plenty of perseverance and skill to even reach the class certification stage. Filed in New York, the proceedings were transferred to the District of Utah where, in March 2021, the judge who was first assigned to the case dismissed plaintiffs' amended complaint. More than a year later, in August 2022, the Tenth Circuit Court of Appeals reversed the lower court's dismissal on plaintiffs' main claims. Following their successful argument to the appeals court, lead plaintiffs filed their second amended complaint in November 2022 and followed with their motion to certify the class in March 2023.

The case is *Indiana Public Retirement System, et al. v. Pluralsight, Inc. et al.*, 19-cv-00128-DBB-DAO (D. Utah). ■

Richard E. Lorant is the firm's Director of Institutional Client Relations and works with the firm's Securities Litigation & Investor Protection practice group.

SUZANNE M. DUGAN
202.408.4600
sdugan@cohenmilstein.com
V-CARD

FIDUCIARY FOCUS

FIDUCIARY ISSUES IN THE NEW YEAR

As pension funds across the country put 2023 behind them, the new year may bring additional headwinds. (Keep in mind: 2024 is a leap year, so there is one more whole day this year for complication and challenge!) Concerns about interest rates and inflation are front of mind for institutional investors, who are wondering whether the Federal Reserve will cut interest rates and how much the economy will slow. A presidential election year brings further uncertainty. Beyond those concerns, here are some key areas that public pension plan leaders have said they will be thinking about in the 366 days of 2024.

CYBERSECURITY

Managing cybersecurity risk will be a top priority in 2024. The U.S. recorded a 75% increase in ransomware events between July 2022 and June 2023, according to Malwarebytes, Inc. The National Conference on Public Employee Retirement Systems notes that public employee pension funds are prime targets for cyber criminals drawn by the fact that they collect large amounts of personally identifiable information, hold significant assets, and have relatively small staffs. Any doubt about this was resolved in June 2023, when the nation's two largest US pension plans, CalPERS and CalSTRS, were involved in a worldwide data security incident that impacted one of their contracted third-party vendors. The so-called MOVEit hack, named after the popular file transfer software that was breached, demonstrates that pension plans must be cognizant of their fiduciary risk. As the U.S. Department of Labor has emphasized, plan fiduciaries have an obligation to ensure proper mitigation of cybersecurity risks. One mitigation risk tool that pension systems have begun instituting are cybersecurity tabletop exercises, which simulate real-world attacks and are designed to test the organization's ability to respond to a cybersecurity incident.

ARTIFICIAL INTELLIGENCE

The use of artificial intelligence (AI) is another hot topic in the pension plan world in 2024. The CFA Institute noted in a report issued in October 2023 that "the potential impact of AI on the pensions industry is likely to be widespread." In a webinar hosted by the National Institute on Retirement Security, Andrew Roth, the Deputy Director of the Teacher Retirement System of Texas, observed that "tools that have AI components built into them [have] great promise for transformational technology to quickly get things done and do things faster with fewer resources" but "underlying that promise is a lot of risk." Pension systems are exploring the use of AI in a wide variety of ways, such as plan operations, member communications, retirement planning, investment analysis, and modeling. The CFA Institute notes that as pension systems learn how to integrate AI into their processes, each decision must be considered through an ethical lens. The report finds that AI can be used

AS THE U.S. DEPARTMENT OF LABOR HAS EMPHASIZED, PLAN FIDUCIARIES HAVE AN OBLIGATION TO ENSURE PROPER MITIGATION OF CYBERSECURITY RISKS.

PENSION SYSTEMS ARE EXPLORING THE USE OF AI IN A WIDE VARIETY OF WAYS, SUCH AS PLAN OPERATIONS, MEMBER COMMUNICATIONS, RETIREMENT PLANNING, INVESTMENT ANALYSIS, AND MODELING.

in many aspects of pension systems to potentially improve returns and reduce costs, "thereby delivering a higher standard of living in retirement—a worthwhile objective for all pension systems." But as the CFA Institute notes, "[a]ctive governance and clear accountability are essential in the development of all AI models and algorithms" and "[t]his will require experienced pension professionals to be involved, for, without that experience, judgment and oversight, there is the real risk that some outcomes will be helpful or misleading, or possibly even wrong, in the complex world of pensions."

GOVERNANCE

There are a myriad of other key challenges that pension plans face in 2024—from regulatory issues (IRS guidance on Secure 2.0) to litigation (seeking to overturn the new SEC rule requiring increased disclosure from private fund advising and prohibiting certain fee arrangements) to politicization (efforts to prohibit pension plans from making certain investments, or from doing business with certain investment managers). As the Council of Institutional Investors wrote in a recent letter, it believes "the heightened political atmosphere of U.S. elections will increase public scrutiny of members' investment policies and practices—especially those related to sustainability." An overarching principle that stands out when pension plans are addressing issues like these with fiduciary implications is the need for good plan governance.

IT CANNOT BE SAID STRONGLY ENOUGH: GOVERNANCE MATTERS. IT REDUCES THE RISK OF CONFLICTS OF INTEREST, ABUSE OF AUTHORITY, AND MISUSE OF PLAN RESOURCES. IT HELPS ENSURE ORGANIZATIONAL PERFORMANCE, SUCH AS PROPER PAYMENT OF BENEFITS, AND MULTIPLE STUDIES HAVE CONCLUDED THAT GOVERNANCE IS, IN FACT, A KEY DRIVER OF STRONG INVESTMENT PERFORMANCE.

As noted by the Stanford Institutional Investors' Forum Committee on Fund Governance, just as good organization governance is critical to publicly owned corporations (corporate governance), it is also critical to pension plans that own the stocks of those companies (plan governance). It cannot be said strongly enough: governance matters. It reduces the risk of conflicts of interest, abuse of authority, and misuse of plan resources. It helps ensure organizational performance, such as proper payment of benefits, and multiple studies have concluded that governance is, in fact, a key driver of strong investment performance—which is necessary to pay benefits. Good governance can also help attract and retain employees to public pension plans, which may not be able to compete with private sector salaries but can win employees' hearts and minds through their mission to protect the retirement security of the nation's teachers, safety officers, and other public servants. In 2024, more than ever, sound governance results in greater transparency, promotes buy-in from plan sponsors, legislators and other stakeholders, and enables trustees and administrators to fulfill their fiduciary duty to the members and beneficiaries of their pension plans. ■

Suzanne M. Dugan is special counsel at Cohen Milstein and leads the firm's Ethics & Fiduciary Counseling practice group.

COHENMILSTEIN IN THE NEWS

- "How Will the Jury Decide Epic v. Google? An Antitrust Lawyer Weighs In," *The Verge* – December 4, 2023
- "Fighters Say UFC Can't Avoid Wage Suppression Trial," *Law360* – December 3, 2023
- "How the $1.8 Billion Real-Estate Commissions Lawsuit Came to Be," *The Wall Street Journal* – November 26, 2023
- "Chemical Companies Denied Petition to Challenge PFAS Class Cert," *Bloomberg Law* – November 26, 2023
- "Baltimore Merck Vax Suit Proceeds But Utah, Idaho Claims Cut," *Law360* – November 21, 2023
- "DC Sues Tech Company RealPage, Landlords Over Rental Prices," Reuters – November 2, 2023
- "9th Circ. Won't Hear UFC Appeal of Fighter Wage Class Cert.," *Law360* – November 2, 2023
- "DC's AG Accuses RealPage, Landlords Of Price Fixing," *Law360* – November 1, 2023
- "Lessons for Biosimilar and Biologic Antitrust Litigation," *Law360* – October 20, 2023
- "Shareholder Suit Filed Against Abbott Laboratories Over Nationwide Baby Formula Shortage," *Law.com*, 2023
- "Real-Estate Commissions Could Be the Next Fee on the Chopping Block," *The Wall Street Journal* – October 18, 2023
- "Lipitor Hearing Punted as Ranbaxy Counsel 'Trapped' in Israel," *Law360* – October 10, 2023
- "High Court Turns Away Push to Send ESOP Suit to Arbitration," *Law360* – October 10, 2023
- "Broker Commission Practices Change in Antitrust Settlements," *Law360* – October 10, 2023
- "General Dynamics, Huntington Ingalls Sued in Engineers' 'No Poach' Lawsuit," Reuters – October 9, 2023

AWARDS & ACCOLADES

- Cohen Milstein has named Benjamin F. Jackson as the firm's newest partner, effective January 1, 2024.
- MVP: Cohen Milstein's Laura H. Posner – *Law360*, October 23, 2023
- Michael B. Eisenkraft, Laura H. Posner, and Sharon K. Robertson Named 2024 Future Stars – *Benchmark Litigation*, October 19, 2023
- Steven J. Toll Named 2024 Litigation Star – *Benchmark Litigation*, October 18, 2023
- Six Cohen Milstein Partners Among Leading U.S. Antitrust Lawyers – Who's Who Legal & Global Competition Review, November 29, 2023
- Cohen Milstein Team Among Legal Lions of the Week – *Law360*, December 15, 2023
- Andrew N. Friedman Recognized Among Litigator of the Week Runners-Up and Shout Outs – *The American Lawyer*, December 5, 2023

- **February 15-20** | National Labor & Management Conference, Diplomat Beach Resort, Hollywood, FL – Christopher Lometti and Arthur Coia
- **February 21-23** | National Association of Public Pension Attorneys 2025 Winter Seminar, Grand Hyatt Washington, DC – Suzanne Dugan, Jay Chaudhuri, Luke Bierman, Julie Reiser, and Carol Gilden
- **February 24-26** | National Association of State Retirement Administrators Winter Meeting, Washington, DC – Richard Lorant and Julie Reiser
- **March 3-5** | County Commissioners Association of Pennsylvania Spring Conference, Hilton Harrisburg, Dauphin County, PA – David Maser
- **March 4-6** | Council of Institutional Investors Spring Conference, The Salamander Hotel, Washington, DC – Jay Chaudhuri and Carol Gilden
- **March 7-10** | National Coordinating Committee for Multiemployer Plans 2024 Annual Conference – The Diplomat Beach Resort, Hollywood, FL – Christopher Lometti and Arthur Coia
- **March 10-12** | National Association of State Treasurers 2024 Legislative Conference, The Westin, Washington, DC – Jay Chaudhuri
- **April 7-10** | Texas Association of Public Employee Retirement Systems 2024 Annual Conference, Hyatt Regency, Dallas, TX – Richard Lorant and John Dominguez

TEAM PROFILE

RICHARD E. LORANT
202.408.3622
rlorant@cohenmilstein.com
V-CARD

Richard E. Lorant is the Director of Institutional Client Relations in the Securities Litigation & Investor Protection Group of Cohen Milstein. Richard joined the firm in 2015, bringing with him more than a decade of experience working with public pension trustees and staff. Richard plays an integral part in the Securities Group's client communications, while also serving on the editorial team of the **Shareholder Advocate*****. For this issue, Richard spoke with Editor Christina Saler.***

I grew up in … Newton, Massachusetts, a suburb of Boston known for its strong public schools. Though my upbringing was typical—I was a Boy Scout, played sports, and acted in plays—I always felt a little different because of my parents' childhood experience as Jews in Europe during World War Two. In 1941, not long before all Jews in their native Belgrade were rounded up, they escaped German-occupied Yugoslavia and fled to Italy with relatives. Once there, they survived the war with the help of Italian citizens who risked their own lives to provide them with false documents and shelter. My parents taught us that good people can make a difference in a world that can be unjust, and they embodied that lesson their whole lives, participating in the civil rights movement, antiwar protests, local fair-housing initiatives, and interfaith groups.

After college … I worked as a reporter for a group of Boston weekly newspapers. After a couple of years, I decided to shake things up and moved to Spain, where I met my wife, Susana, and eventually got hired by The Associated Press in Madrid. I stayed with the AP for 10 years, working as a foreign correspondent in Madrid, a general assignment reporter in San Francisco, and a business correspondent in Boston.

The law found me … in 2000, when I was approached by a partner at a plaintiff-side law firm who asked me to develop a marketing program aimed at developing a client base of institutional investors for its securities litigation practice. Building a program from scratch provided a welcome professional challenge. Fighting for pension plan participants damaged by corporate wrongdoing appealed to my sense of justice. Before long, I began meeting public fund trustees and professionals at conferences I had identified; over time, my work focused more and more on those relationships.

I love my work … because it enables me to apply the interviewing, researching, and writing skills I learned as a reporter in a meaningful and personal way. I enjoy the solitude of working at my computer, but also relish the opportunity to spend time in person with our clients. It's a perfect balance! After nearly 25 years, I have learned so much—about securities law, from my colleagues, and about the issues important to the public fund community, from our clients.

I'm currently watching … the Netflix series *Fisk*. It's about a lawyer in Australia who is reinventing herself after a divorce. The show is understated and yet hysterical. Every member of the ensemble cast is hilarious. I highly recommend adding it to your 2024 watch list. ■

OFFICE LOCATIONS

BOSTON, MA
769 Centre Street
Suite 207
Boston, MA 02130
t: 617.858.1990

CHICAGO, IL
190 South LaSalle Street
Suite 1705
Chicago, IL 60603
t: 312.357.0370

MINNEAPOLIS, MN
400 South 4th Street #401-27
Minneapolis, MN 55415
By Appointment
t: 612.807.1575

NEW YORK, NY
88 Pine Street
14th Floor
New York, NY 10005
t: 212.838.7797

PALM BEACH GARDENS, FL
11780 U.S. Highway One
Suite N500
Palm Beach Gardens, FL 33408
t: 561.515.1400

PHILADELPHIA, PA
100 N. 18th Street
Suite 1820
Philadelphia, PA 19103
t: 267.479.5700

RALEIGH, NC
407 North Person Street
Raleigh, NC 27612
t: 919.890.0560

WASHINGTON, DC
1100 New York Ave. NW
Fifth Floor
Washington, DC 20005
t: 202.408.4600

Editor: Christina D. Saler
Editorial Team: Richard E. Lorant and Samuel P. Waite

Please contact us with questions or comments at (202) 408-4600.

COHENMILSTEIN

Powerful Advocates. Meaningful Results.