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SEC Expected to Strengthen Agenda Under New Administration

With an evenly split Senate, a bitterly divided electorate and a pandemic battering the nation's physical and economic health, the Biden-Harris administration faces seemingly overwhelming choices about where to expend its energies and political capital over its first 100 days. **page 2**

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SEC Expected to Strengthen Agenda Under New Administration

With an evenly split Senate, a bitterly divided electorate and a pandemic battering the nation's physical and economic health, the Biden-Harris administration faces seemingly overwhelming choices about where to expend its energies and political capital over its first 100 days.

President Joe Biden has made clear that getting Congress to pass his $1.9 trillion COVID-19 relief plan is the administration's top priority. As for the rest, as Vice President Kamala Harris told NPR less than a week before inauguration day: "We have to multitask, which means, as with anyone, we have a lot of priorities and we mean to see them through."

One of those many priorities will be strengthening investor protections after four years during which the Republican-led Securities and Exchange Commission largely prioritized capital formation often to the detriment of investor protection.

Democratic Senate wins in Georgia that give the vice president the tie-breaking vote should make it easier to win Senate approval for the administration's pick, former Commodity Futures Trading Commission Chair Gary Gensler. Gensler, a former Goldman Sachs executive who is deeply familiar with Wall Street, revitalized the moribund CFTC and enacted tough rules governing the derivative products at the heart of the last financial crisis. He is widely seen as a strong pro-investor choice for the job.

For Cohen Milstein Partner Laura H. Posner, mapping the road ahead starts with a look back at opportunities missed and problems exacerbated under the Trump administration. Ms. Posner offers a regulator's perspective on the question. As former Chief of the New Jersey Bureau of Securities, she was that state's top securities regulator. She also served as Chair of Enforcement for the North American Administrator Association, where she helped set regulatory enforcement priorities for securities regulators. Ms. Posner outlined some of her priorities for the SEC as part of a "Symposium on Financial and Corporate Regulation in the Biden Administration" hosted by Business Scholarship podcaster Andrew K. Jennings. Below are excerpts from Ms. Posner's comments, edited for style and brevity.

DEMOCRATIC SENATE WINS IN GEORGIA THAT GIVE THE VICE PRESIDENT THE TIE-BREAKING VOTE SHOULD MAKE IT EASIER TO WIN SENATE APPROVAL FOR THE ADMINISTRATION'S PICK FOR SEC CHAIR, GARY GENSLER, WHO IS WIDELY SEEN AS A STRONG PRO-INVESTOR CHOICE FOR THE JOB.

Restoring Confidence in the Markets

The Biden administration, Congress, and whoever becomes Chair of the SEC, will be highly focused on recovering the economy after the pandemic. A critical part of that recovery will require taking meaningful steps to renew confidence in the public markets and in the ability of investors, particularly retail investors, to grow their retirement assets. To effectively do that, this administration is going to have to deal with the deregulation and focus on capital formation that the SEC under the Trump administration focused on, and instead turn to investor protection and putting back up some of the guardrails and protections necessary to give investors confidence in the markets.

You're going to see [a shift] in terms of the regulatory priorities of the agency: the types of rules that they propose and what they're focused on. But it will also impact how they handle enforcement. We'll see more focus on public companies. Rather than the smaller private exemption type of fraud or Ponzi schemes, we'll hopefully see a renewed focus again on accounting fraud. This has been I guess a real pet peeve of mine—and this is not unique to this administration—but we have seen very little oversight of the accounting industry post Sarbanes-Oxley. While certainly the number of restatements has come down, the amount of accounting fraud has not. So I anticipate we'll see a focus on enforcement. And enforcement of public companies and of accounting fraud gives real confidence to folks investing in the markets that there is a regulator on the beat—that someone is overseeing these companies and ensuring that they act appropriately.

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>
> **COHEN MILSTEIN PARTNER LAURA POSNER**

Regulation Best Interest

Ed: The SEC's 2019 Regulation Best Interest (Reg BI) established a standard of conduct for broker-dealers and investment advisers to act "in the best interest" of their clients but fell short of imposing stricter fiduciary standards of duty, loyalty and care like those required of pension trustees and professionals. Ms. Posner says this is especially important, given the number of investment professionals who wear "dual hats" in their roles as stockbrokers and investment advisors.

It was an absolute mistake not to put in place a fiduciary duty rule. Protecting investors, particularly retail investors, is critical to a well-functioning market and it is particularly important right now, given that retirement savings fall far short of what is necessary.

Not having some form of a uniform fiduciary duty rule across brokers, investment advisors and folks dealing with retirement accounts makes it very confusing both for the financial professional to keep track of their various and often conflicting requirements and for the investor. It raises further issues of compliance oversight by the institutions that employ these financial professionals as well.

While it may not be feasible to entirely change Reg BI and transform it into a fiduciary duty rule—although I do hope that is considered—there are changes that can be made to give Reg BI some real teeth. First, from an enforcement perspective, actually bringing cases to enforce the law. From an examination perspective, ensuring that these regs are being followed. And from a regulatory guidance perspective, the SEC can define what "best interest" means, because the rule certainly doesn't do that now. And it could be defined in a way that makes it much more in accordance with a fiduciary duty obligation. I think that's something this administration will be focused on. It was part of the Democratic platform this year and I would expect to see something along those lines.

Environmental, Social, and Governance (ESG)

With regard to ESG and climate risk factors, I think there is uniform desire by the institutional investor community for these types of factors to be set forth in public disclosures. You saw the SEC's Investor Advisory Committee recommending that public companies issue more thorough disclosures explaining their ESG commitments and citing that asset managers consider ESG policies important to their investment strategies.

The Biden administration has put climate and racial justice as two of its top four priorities. This seems like a very opportune place for them to establish some sort of new disclosure requirements, hopefully uniform ones, that will make a real difference in the governance of companies and the ability of companies to withstand these systemic, market-changing issues.

Forced Arbitration Clauses

WE'VE SEEN THE PROLIFERATION OF FORCED ARBITRATION IN BASICALLY EVERY ASPECT OF OUR LIVES—FROM OUR TELEPHONE CONTRACTS TO THE TVS WE BUY TO OUR EMPLOYMENT AGREEMENT—AND THERE HAS BEEN A RENEWED EFFORT TO INCLUDE FORCED ARBITRATION AGREEMENTS IN THE BYLAWS OR CERTIFICATES OF INCORPORATION OF PUBLIC COMPANIES.

We've seen the proliferation of forced arbitration in basically every aspect of our lives—from our telephone contracts to the TVs we buy to our employment agreements—and there has been a renewed effort, largely driven by Professor Emeritus Hal Scott at Harvard, to include forced arbitration agreements in the bylaws or certificates of incorporation of public companies. I think that is a huge mistake for many, many reasons, not the least of which is that you largely lose the deterrent effect of private litigation when securities fraud class actions no longer exist. Further, arbitration is conducted largely out of public sight. There is no development of the law or best practices for companies to follow when there is no public law.

Perhaps most importantly from an investor perspective is that you lose the ability to provide real and meaningful recoveries to investors in many circumstances. The private securities bar is infinitely more effective at returning money to investors than the SEC, and the SEC and state regulators have regularly said that private litigation is a necessary component to oversight of the financial markets. Regulators simply do not have the resources or personnel necessary to pursue all these cases and to recover the kind of money that private litigation does for investors.

Recent Changes to Proxy Rules

The SEC has made it significantly more difficult for investors, particularly retail investors, to propose new rules and changes or to renew proposals over time. This impedes the voice of shareholders bringing to a company's attention things that they need to pay attention to. And research has shown time and time again that shareholder proposals can generate positive long-term returns for companies and that limiting the ability of shareholders to submit proposals is quite harmful to companies.

In addition, we're seeing over time that shareholder proposals are gaining significantly more support. The percentage of shareholder voting in support of proxy proposals has increased dramatically and putting in these proxy proposal rule changes will likely serve to stifle campaigns that have been building momentum over years.

The proxy rule changes were a solution looking for a problem. The number of shareholder proposals is very modest. It accounts for less than 2% of voting items at U.S. shareholder meetings and, on average, only 13% of Russell 3000 companies even receive a shareholder proposal in a given year. And these proposals have played a valuable role in making changes in corporate governance policies, in corporate reporting, in practices on environmental and social matters. They include rules on board and committee independence, board diversity, independent board leadership, shareholder rights (including a majority-vote standard in elections for directors), accounting for stock options—a whole host of things that have been not only good for shareholder value but good for good corporate governance and good corporate citizenship. ■

INVESTORS SCORE IMPORTANT RULING AGAINST AUDITOR DEFENDANT DELOITTE

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Shareholders suing global Big Four auditing firm Deloitte & Touche, LLP cleared an important hurdle on November 17, 2020, when the U.S. District Court for the District of South Carolina denied Deloitte's motion to dismiss the Class' complaint in its entirety. This ruling is a significant victory for investors. Plaintiffs face a very high bar for finding auditors liable for securities fraud, making it particularly rare for auditor cases to withstand motions to dismiss.

The lawsuit accuses Deloitte of violating the Securities Exchange Act of 1934 by allowing SCANA Corporation, the former public utility company in South Carolina, to mislead investors about the true status of a massive nuclear energy expansion project at the Virgin C. Summer Nuclear Station in South Carolina. In the largest civil fraud in South Carolina history, SCANA repeatedly concealed delays in the $9 billion project. The eventual public abandonment and revelation of the true status of the failed project resulted in hundreds of millions of dollars in losses for SCANA's investors.

For years, despite obvious and voluminous evidence to the contrary, Deloitte provided unqualified and "clean" audit opinions declaring that SCANA's financial statements and internal controls over financial reporting were free from any material misstatements. Deloitte's blessing of SCANA's financial statements was a profound auditing failure, which facilitated SCANA's concealment of evidence showing that the Nuclear Project was hopelessly behind schedule, was doomed to fail and would not be eligible for billions of tax credits.

SCANA's eventual abandonment of the nuclear project in 2017 has been described as "one of the worst economic calamities in South Carolina," leading to SCANA's acquisition by Dominion Energy in the face of almost-certain bankruptcy. Following a $192.5 million settlement with SCANA's shareholders, federal authorities brought both civil claims against the Company and criminal fraud charges against two of SCANA's executives, who would later both plead guilty. Notably, neither the earlier private class action nor the federal authorities brought claims against Deloitte for its role in the fraud.

In her bench ruling following oral argument on defendants' motion to dismiss, Judge Margaret B. Seymour

JUDGE SEYMOUR RULED THAT "EVEN UNDER THE HEIGHTENED STANDARDS APPLICABLE" IN AUDITOR CASES, THE SHAREHOLDERS PLAUSIBLY ALLEGED THAT DELOITTE "HELPED CONCEAL THE FRAUD FROM INVESTORS BY BLESSING" SCANA'S FINANCIAL STATEMENTS WHICH MISREPRESENTED THE TRUE STATUS OF THE PROJECT AND "CONTINUED TO REASSURE INVESTORS THAT THE PROJECT WOULD BE COMPLETED IN TIME, EVEN THOUGH THEY KNEW THIS INFORMATION WAS FALSE."

ruled that "even under the heightened standards applicable" in auditor cases, the shareholders plausibly alleged that Deloitte "helped conceal the fraud from investors by blessing" SCANA's financial statements which misrepresented the true status of the project and "continued to reassure investors that the project would be completed in time, even though they knew this information was false." Judge Seymour further held that shareholders sufficiently alleged that Deloitte did so despite its obligations to review and understand significant internal and external reports that conflicted with SCANA's representations to investors regarding the project, a failure which amounted "to basically no audit at all."

Coming on the heels of the successful motion to dismiss and class certification decisions obtained by Cohen Milstein in a separate case pending against Big Four auditing firm KPMG, Judge Seymour's ruling is a significant victory demonstrating that even under the high standards applicable to such cases, auditors can be held to account if they fail to adhere to their obligations to objectively and independently evaluate the accuracy of a public company's financial statements. ■

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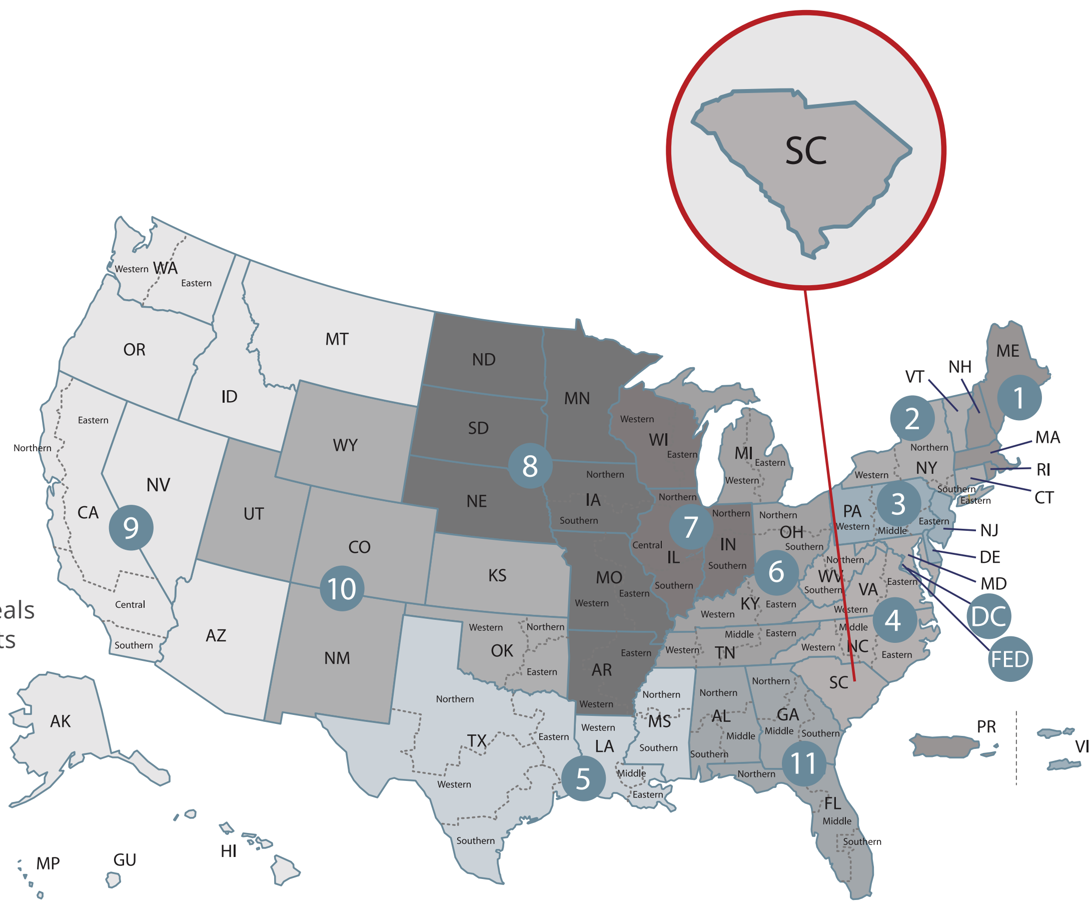

GEOGRAPHIC BOUNDARIES
of United States Courts of Appeals and United States District Courts

JUDGE HOLDS THAT SHAREHOLDERS' FRAUD CLAIMS AGAINST NATURAL GAS COMPANY EQT CAN PROCEED

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Securities fraud claims against EQT Corporation, one of the largest producers of natural gas in the United States, are proceeding to the discovery and class certification phases after a federal judge denied defendants' motion to dismiss the case.

Cohen Milstein is co-lead counsel for the proposed classes of investors, representing co-lead plaintiffs Northeast Carpenters Annuity Fund and the Northeast Carpenters Pension Fund. Defendants include EQT, certain of its former officers and former and current directors, and the former CEO and a former director of Rice Energy, Inc.

EQT drills and completes natural gas wells through hydraulic fracturing, operating mainly in the Appalachian Basin. In June 2017, defendants announced that EQT was planning to acquire its competitor, Rice, in a deal valued at $6.7 billion. Defendants promised shareholders that EQT's and Rice's combined gas drilling acreage would enable the new EQT to drill 1,200 additional well locations with an average lateral length of 12,000 feet, generating synergies worth at least $2.5 billion and saving $100 million in the first year alone.

To win shareholder approval, defendants had to beat back claims by an investor, JANA Partners, who publicly argued that EQT's claim of achievable synergies was inflated by more than $1 billion. EQT adamantly denied JANA's criticisms, and in November 2017, the acquisition closed. Through most of 2018, EQT assured investors that the company had "hit the ground running" and was "well on track" to achieve "several hundred million dollars" *more* in synergies than it had projected.

Lead plaintiffs allege that defendants misled investors because their claimed numbers of achievable drilling locations and well length were in fact impossible to drill on the companies' combined acreage. Lead plaintiffs also argue that defendants misrepresented their drilling abilities and their intent to incorporate Rice's best practices. After the acquisition, EQT racked up operational problems and hundreds of millions of dollars in extra costs, which it concealed from investors for months. As the truth was revealed, EQT's stock price fell, damaging investors.

LEAD PLAINTIFFS ALLEGE THAT DEFENDANTS MISLED INVESTORS BECAUSE THEIR CLAIMED NUMBERS OF ACHIEVABLE DRILLING LOCATIONS AND WELL LENGTH WERE IN FACT IMPOSSIBLE TO DRILL ON THE COMPANIES' COMBINED ACREAGE.

On December 2, 2020, Judge Robert J. Colville of the U.S. District Court for the Western District of Pennsylvania upheld all nine claims brought

JUDGE COLVILLE ALSO REJECTED DEFENDANTS' ARGUMENT THAT JANA'S ASSERTIONS SHOULD HAVE PUT INVESTORS ON NOTICE OF THE POTENTIAL UNRELIABILITY OF THEIR STATEMENTS; TO THE CONTRARY, JUDGE COLVILLE HELD, DEFENDANTS' "CONSISTENT AND STRONG" DENIALS SUPPORTED A FINDING THAT DEFENDANTS AT LEAST SPOKE RECKLESSLY.

by lead plaintiffs pursuant to the Securities Exchange Act of 1934 and the Securities Act of 1933. In doing so, Judge Colville found that the achievability of defendants' purported synergies presented "a genuine issue of material, present fact," as did EQT's leaders' post-acquisition statements touting the newly forged company's successes. Judge Colville also rejected defendants' argument that JANA's assertions should have put investors on notice of the potential unreliability of their statements; to the contrary, Judge Colville held, defendants' "consistent and strong" denials supported a finding that defendants at least spoke recklessly.

Lead plaintiffs' claims are bolstered by revelations from some of Rice's former owners, including Toby and Derek Rice, who launched a proxy fight for control of EQT in 2019. According to those former owners, EQT "consistently misled shareholders" regarding the acquisition, "did not seek and ha[d] not achieved the synergies and cost savings that were the purported rationale" for the acquisition and used "misleading math" in its accounting. The former Rice leaders gained control of EQT in June 2019, and Toby Rice became its CEO.

The case is *In re EQT Securities Litigation*, No. 2:19-cv-00754-RJC (W.D. Pa.). ■

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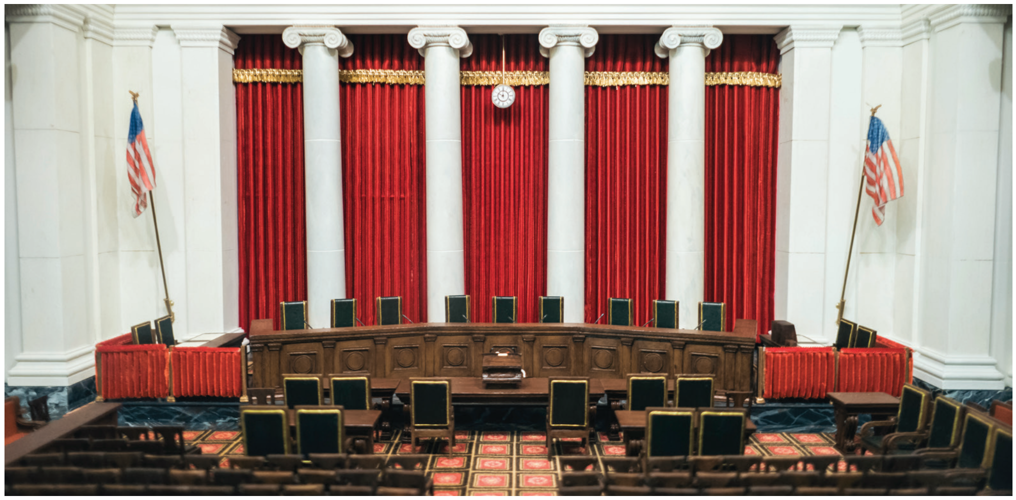
IN *GOLDMAN*, SUPREME COURT TO CLARIFY DEFENDANTS' ABILITY TO REBUT CLASS-WIDE RELIANCE



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The U.S. Supreme Court has agreed to address the circumstances under which defendants in a securities class action can rebut the "fraud on the market" presumption of class-wide reliance necessary for plaintiffs to form a certified class.

On December 11, 2020, the Supreme Court granted defendants' petition to consider whether the Second U.S. Circuit Court of Appeals erred when it certified a plaintiff class in *Goldman Sachs Group, Inc., et al., Petitioners v. Arkansas Teacher Retirement System, et al.* A decision in the case, the first shareholder class action before the Supreme Court since the appointment of Associate Justice Amy Coney Barrett, could offer insight into how far the current court is willing to deviate from longstanding precedent in this area.

The case itself stems from allegations Goldman Sachs misled investors when marketing a subprime mortgage product in 2007 just as the U.S. housing market was starting to collapse. The investment bank created a collateralized debt obligation (CDO) known as ABACUS 2007-AC1 at the request of hedge fund manager John Paulson so he could bet against the risky underlying subprime mortgages it held. Goldman received $15 million in fees and Paulson pocketed $1 billion by shorting the CDO.

In 2010, Goldman agreed to pay $550 million to settle Securities and Exchange Commission charges for failing to disclose Paulson's involvement in selecting the CDO's underlying securities. Goldman Sachs stock fell on news of the enforcement action, the largest-ever SEC penalty against a Wall Street firm. Goldman Sachs shareholders sued the company and three former executives, claiming their false and misleading statements kept its stock price artificially high until the SEC announced its complaint.

In 2012, the district court judge denied defendants' motion to dismiss and the case proceeded

A DECISION IN THE CASE, THE FIRST SHAREHOLDER CLASS ACTION BEFORE THE SUPREME COURT SINCE THE APPOINTMENT OF ASSOCIATE JUSTICE AMY CONEY BARRETT, COULD OFFER INSIGHT INTO HOW FAR THE CURRENT COURT IS WILLING TO DEVIATE FROM LONGSTANDING PRECEDENT IN THIS AREA.

to the class certification stage. Since then, the Second Circuit weighed in twice, the second time in April 2020 when it upheld certification of the plaintiff class, ruling that defendants had failed to rebut the presumption of class-wide reliance first established in the Supreme Court's 1988 *Basic Inc. v. Levinson* decision. *Basic* held that "in an open and developed securities market," a company's stock price is determined by all material information available to the public. Therefore, under *Basic*, investors need not show that they individually relied on defendants' misrepresentations to pursue a claim under Rule 10b-5 of the Securities Exchange Act of 1934. Their reliance is "presumed."

Basic, however, also held that defendants could rebut this "fraud on the market" presumption by, among other things, showing that the misstatements had no impact on the company's stock price, a right that was clarified by the Supreme Court in a 2014 decision, *Halliburton v. Erica P. John Fund, Inc.*, known as *Halliburton II*.

In *Goldman*, the Second Circuit refused to let defendants rebut the presumption of class-wide reliance by arguing that the bank's statements about identifying conflicts of interest and acting in clients' best interests were so "generic" and "aspirational" that they had no impact on the stock price. Accepting that argument, the Second Circuit said in a split decision, would allow defendants to "smuggle materiality" into the class-certification stage. Arguments over materiality—whether a reasonable shareholder would consider the information important to investment decisions—are "merits" issues reserved for trial, which follows class certification.

In its petition, Goldman Sachs asked the Supreme Court to decide whether "a defendant in a securities class action may rebut the presumption of classwide reliance … by pointing to the generic nature of the alleged misstatements in showing that the statements had no impact on the price of the security, even though that evidence is also relevant to the substantive element of materiality." It also sought to clarify whether a defendant rebutting the *Basic* presumption must persuade a court or simply present evidence on the issue of price impact.

Calling *Goldman* "the most important securities case to come before the [Supreme] Court" since *Halliburton II*, the petitioners argued that, left undisturbed, the Second Circuit's decision would have "devastating practical consequences for public companies" by making it impossible to rebut the *Basic* presumption. In opposing the petition, lawyers for Arkansas Teacher Retirement System called such "breathless" claims exaggerated, mentioned the lack of a conflict between appeals courts in different circuits, and said neither question posed by the petitioners "presents an issue of recurring importance." Observers have also pointed out that issues like materiality and price impact, explicitly or not, are usually factors in whether judges grant defendants' motion to dismiss—something that occurs prior to both the class certification and merits stages.

CALLING GOLDMAN "THE MOST IMPORTANT SECURITIES CASE TO COME BEFORE THE [SUPREME] COURT" SINCE HALLIBURTON II, THE PETITIONERS ARGUED THAT, LEFT UNDISTURBED, THE SECOND CIRCUIT'S DECISION WOULD HAVE "DEVASTATING PRACTICAL CONSEQUENCES FOR PUBLIC COMPANIES." OPPOSING LAWYERS CALLED SUCH "BREATHLESS" CLAIMS EXAGGERATED.

In its forays into securities class actions in the three decades since *Basic*, the Supreme Court has nipped and tucked at the rights and obligations of both plaintiffs and defendants without excising shareholders' fundamental ability to sue as a class under the Exchange Act. Indeed, judicial restraint and respect for prior decisions has been a hallmark of the court led by Chief Justice John Roberts. The addition of Justice Barrett has expanded the court's conservative majority but is unlikely to cause wholesale overnight abandonment of precedent in this case. It seems far more likely that a pro-petitioner ruling would force plaintiffs to address the issue of price impact earlier in the case than eliminate securities class actions altogether. ■

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SPECIAL PURCHASE ACQUISITION COMPANIES MAY CONTINUE TO BE A HOT TOPIC. USE OF THESE 'BLANK CHECK COMPANIES' TO GO PUBLIC HAS SURGED.

TOPICS TO WATCH IN 2021

Pension plans, like the rest of the country, were no doubt happy to wave goodbye to 2020 in the rearview mirror. To say that it was a challenging year would be an understatement. And yet pension trustees and administrators stepped up to fulfill their retirement systems' mission to deliver pension checks to more than 10 million retirees—including teachers, fire fighters, police officers, other public servants and their beneficiaries—who depend on the timely receipt of their benefit payments. They transitioned their teams to work remotely while processing payments and managing billions of dollars of pension fund assets in a time of tremendous turmoil in the markets. And now they're ready to welcome 2021!

While we're hopeful that the rollout of the vaccine will eventually ease the impacts of the COVID 19 crisis on operational and other related issues, here are some issues that the prudent fiduciary may want to watch for in the new year.

- **Ethics:** We saw an example of the very real impact of the application of state ethics laws in August of last year when issues stemming from the filing of state financial disclosure forms resulted in the departure of a chief investment officer at one of the country's largest pension plans. Fast forward to January of this year, when a state treasurer and two other trustees filed a complaint with their state ethics commission alleging that the system's executive director violated ethics laws by providing misleading or false information to the board. Fiduciaries can expect that issues related to disclosure, recusal, and conflict-of-interest law to remain in the forefront.
- **SPACs:** Special Purchase Acquisition Companies (SPACs) may continue to be another hot topic in 2021 after a tremendous amount of activity in 2020. As of late December, there had been 243 reported SPAC initial public offerings raising total gross proceeds of over $82 billion. The surge in popularity of the use of these "blank check companies" as a way to go public came as the method's reputation improved, with supporters citing an ability to go public faster with greater certainty regarding the company's valuation and equity capital raised. But improved governance practices weren't enough to stave off lawsuits regarding SPACs that started to accumulate in 2020. And in January the Council of Institutional Investors sent comments to the SEC questioning whether a proposed loosening of SPAC listing standards was consistent with the protection of investors and the public interest. Keep an eye out for more on SPACs in 2021.

- **Secure Choice:** "Secure Choice Pensions" refer to public-private partnerships to provide retirement security for American workers, particularly those who work for small businesses and don't already have access to a defined benefit or defined contribution plan. In the typical scenario, as described by the National Conference on Public Employee Retirement Systems (NCPERS), a state would enact legislation to establish a Secure Choice plan in which employee participation is voluntary. Contributions would be made by employees and preferably employers as well. For participating employers, administrative and fiduciary duties would largely be removed and placed in the hands of the board of trustees. While each employee would have an individual participant account, all contributions to the plan would be pooled for investment purposes to achieve economies of scale and the ability to negotiate lower fees. To date, almost a dozen states have passed legislation to create secure choice plans and an additional two dozen have pending legislation to do so.

- **ESG:** Environmental, Social and Governance (ESG) issues will no doubt remain a hot topic for pension plans in 2021. As the CFA Institutes notes, ESG analysis has become an increasingly important part of the investment process and is "now entering a true mainstreaming phase" as investors incorporate ESG data to gain a fuller understanding of the entities in which they invest and the risks they face. Expect an increased focus on reporting standards and metrics in 2021.

- **Regulatory Changes:** A new administration in Washington will bring changes to federal agencies such as the DOL and the SEC that will affect pension plans. For example, the DOL's guidance on ERISA rules on ESG investing, while not directly applicable to public pension plans, is influential in creating standards that are looked to even for non-ERISA plans. The SEC's new rules on proxy voting and other issues will be closely watched for potential reversal in areas such as the rules governing proxy advisory firms, which underwent sweeping changes under Trump-appointed Chairman Jay Clayton. Also note that

ESG ANALYSIS WILL REMAIN ON PENSION FUNDS' AGENDAS. IT IS 'NOW ENTERING THE MAINSTREAM,' ACCORDING TO THE CFA INSTITUTE.

with control of both the House and Senate, Democrats may use the Congressional Review Act to reverse federal regulations made in the last 60 days of the administration.

- **DE&I:** Diversity, Equity and Inclusion, or DE&I as it is commonly called, is one aspect of the "S" in ESG investing. Look for increasing calls for corporate board diversity building on efforts by Nasdaq and others such as the U.S. Chamber of Commerce and the Real Estate Roundtable. Moreover, DE&I is also something that is increasingly being addressed by pension systems in their own internal policies and procedures. Several major pension funds stepped up their DE&I efforts in 2020 and more will likely do so in 2021.

Finally, here's a jaw-dropping fiduciary story to carry you into the new year. We know that pension plans are long-term (or indeed perpetual) investors, but this really brings it home: in 2020, the last Civil War pensioner died. The 90-year-old woman had cognitive impairments, qualifying her for a lifetime pension as an adult child of a veteran. Her father, who served as a private in the Confederate Army before defecting to the Union, was on his second marriage when she was born just weeks before his 84th birthday. ■

Suzanne M. Dugan heads Cohen Milstein's Ethics & Fiduciary Counseling practice, which provides guidance to pension funds and other entities on ethics, fiduciary, governance and compliance issues.

COHENMILSTEIN IN THE NEWS

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- "3 Firms Score End-Payor Co-Lead Role in Seroquel XR Cases," *Law360* – November 13, 2020
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- "Cohen Milstein, Scott & Scott Both Want to Lead FICO Fight," *Law360* – October 30, 2020
- "Accenture Can't Escape Liability for Marriott Data Breach," *Law360* – October 27, 2020
- "New Federal Rule Will Make It Harder to Challenge Discrimination in the Housing Industry, Lawsuits Allege," *The Washington Post* – October 22, 2020
- "Bayer Investors Get Lead Plaintiff for Suit Over Roundup Payouts," *Bloomberg Law* – October 22, 2020
- "AT&T Sued for ERISA Violations," *Law Street* – October 13, 2020

AWARDS & ACCOLADES

- Cohen Milstein's Laura H. Posner Recognized Among New York's "Notable Women in Law" by *Crain's New York Business* – December 21, 2020
- Cohen Milstein Recognized as a *Law360* "Practice Group of the Year" in Four Categories: Class Actions; Environmental Protection; Life Sciences; and Securities Litigation – November 29, 2020
- Cohen Milstein Recognized Among the Top Firms Nationally in ERISA and Labor & Employment Litigation by *U.S. News – Best Lawyers* "Best Law Firms" – November 5, 2020
- Five Cohen Milstein Attorneys Recognized as 2020 "New York Super Lawyers" – October 28, 2020
- Cohen Milstein's Theodore J. Leopold Named Cumberland School of Law's 2020 "Distinguished Alumnus of the Year" – October 21, 2020
- Cohen Milstein Recognized Among the "Top Firms for Female Attorneys" in *Law360*'s 2020 Glass Ceiling Report – October 19, 2020
- Seven Cohen Milstein Attorneys Recognized Among the 2020 *Lawdragon 500* "Leading Plaintiff Employment Lawyers" – October 15, 2020
- Cohen Milstein's Agnieszka M. Fryszman Selected as "Human Trafficking Advocate of the Year" by the Human Trafficking Legal Center – October 9, 2020

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David Maser is Of Counsel at Cohen Milstein in the Securities & Investor Protection practice group and based in the firm's Philadelphia office. Since joining the firm in 2017, David has furthered the firm's national presence by developing new relationships with State Attorneys General, state pension systems and Taft-Hartley funds around the country. For this issue of the **Shareholder Advocate*****, David talked with Editor Christina Saler.***

I grew up in … Huntingdon Valley, Pennsylvania which is 45 minutes northeast of Center City Philadelphia, where I live today with my wife and 6-year old daughter. Although I've seen a lot of this country and really liked a lot of places, I've remained close to my childhood home. I went to college at Penn State and then came back to Philadelphia for law school at Temple University. I'm a product of Pennsylvania's public education system, which has made my work as the Vice Chair of the Board of the Pennsylvania State System of Higher Education (PASSHE) very rewarding. I was appointed to the PASSHE Board by the Pennsylvania Governor in 2013 and reappointed in 2016. In the past seven years we have had to navigate decreased state funding, consolidations and most recently the challenges of the pandemic.

I first decided I wanted to be lawyer … when I was in fifth grade, so I must have been 10 or 11 years old. *L.A. Law* was a popular TV show then, and having no lawyers in the family, it was my first and only introduction (albeit dramatized) to practicing law. Oddly, I wasn't drawn to the kinds of cases that the "cool" actors handled but decided that I wanted to be a tax lawyer. And, if memory serves me, the most curmudgeonly character on the show, was a tax lawyer. When I got to college, I was an accounting major for about three days, and then decided that accounting was not for me, tax law was not for me, but that I still very much wanted to be a lawyer.

After law school … I worked for the City Solicitor's Office of Philadelphia toward the tail end of the Ed Rendell Administration and then under the John Street Administration. I worked in the Claims Department and Intellectual Property Unit and was responsible for overseeing the city's computer network during the Y2K transition.

I got involved in politics … 28 years ago and to date have been involved in too many campaigns to remember. My level of involvement has varied from being a volunteer, fundraiser, staff and campaign chair. Some campaigns have been more memorable than others with my work on my first Presidential campaign in 1996 for President Clinton being a personal highlight. Throughout all of it, I've made a lot of terrific friendships.

While being homebound … my wife and I watched a fair amount of TV with the Paramount series *Yellowstone* staring Kevin Costner being our favorite. If you haven't seen it yet, I highly recommend it. ■

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