

# Protecting Your Pension: An Update on Securities Litigation

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# SECURITIES TERMS

## Section 10(b)

Designed to be a “catchall” antifraud provision.

It and its regulatory companion Rule 10b-5 prohibit the use of any “device, scheme, or artifice to defraud.”

Creates liability for material misstatements and omissions of fact.



# SECURITIES TERMS

## Derivative

Designed to allow shareholders to effectuate change in management practices. Shareholder brings a case against the officers and directors to change company policies/procedures.

Usually tied to some revelation about corporate wrongdoing.



# SECURITIES TERMS

## Class Action

A class action, a class suit, or a representative action is a form of lawsuit in which a large group of people collectively bring a claim to court and/or in which a class of defendants is being sued.



# SECURITIES TERMS

## Private Securities Litigation Reform Act (PSLRA)

The Private Securities Litigation Reform Act (PSLRA) is designed to limit frivolous securities lawsuits and ensure that large investors control the litigation.



# SECURITIES TERMS

## State Securities Laws

While the SEC is the main enforcer of the nation's securities laws, each individual state has its own securities regulatory body, typically known as the state Securities Commissioner. While most states leave the anti-fraud regulations to the SEC, they do have the power and authority to bring actions against securities violators.



# ONGOING TRENDS

## LIBOR Conspiracy

The London Interbank Offered Rate (LIBOR) is the average interest rate estimated by leading banks in London that they would be charged if borrowing from other banks.

In June 2012, multiple criminal settlements revealed significant fraud and collusion by member banks connected to the rate submissions. It was discovered that banks were falsely inflating or deflating their rates so as to profit from trades, or to give the impression that they were more creditworthy than they were.

At least \$350 trillion in derivatives and other financial products are tied to the LIBOR.

On July 9, the parent company of the New York Stock Exchange won a contract to administer and improve the benchmark.



# ONGOING TRENDS

## Foreign Exchange Transaction Lawsuits

A foreign exchange transaction is a type of currency transaction that involves two countries. Generally, a foreign exchange transaction involves conversion of currency of one country with that of another.

A number of recent lawsuits allege that banks providing custodial services have routinely engaged in unfair business practices when performing foreign exchange transactions for their custodial clients.

The lawsuits allege that when banks carried out foreign exchange transactions, they did not credit clients with the exchange rate that they actually used in those transactions.

This allowed the banks to take advantage of the exchange rates' daily volatility and to profit on the spread between the actual exchange rate used in the transactions and the fictitious exchange rates reported to the clients.





# ONGOING TRENDS

## Mortgage-Backed Securities Lawsuits

The fallout from the subprime lending scandal has led to an unprecedented number of lawsuits against the Nation's Biggest Lenders.

These predatory loans were packaged in bundles and sold as investments to unbeknownst individuals, companies, and investment portfolios. In doing so, the Banks failed to disclose that the mortgage backed securities were destined not to perform (the loans were based on lackluster, and in some case, no underwriting procedures).



# ONGOING TRENDS

## Custodial Bank Lawsuits

There is a recent focus on the duties of custodial banks to help prevent Ponzi schemes and regular exposure to potentially unnecessary, and in some cases, fraudulent expenses.

Westport National Bank (Madoff case currently underway in New York).

For example, Stueve Siegel has filed a lawsuit arising from the collapse of the Peregrine Financial Group and the alleged fraud committed by its CEO and sole owner.



# ONGOING TRENDS

## Foreign Corrupt Practices Act Investigations

The Foreign Corrupt Practices Act of 1977 is a U.S. federal law that applies to any person who has a certain degree of connection to the U.S. and engages in foreign corrupt practices.

The Act governs not only payments to foreign officials, candidates, and parties, but any other recipient if part of the bribe is ultimately attributable to a foreign official, candidate or party.



# ONGOING TRENDS

## Alternative Investments



# ONGOING TRENDS

## Increased SEC Scrutiny of Pension Funds

There appears to be increased scrutiny on state pension plans.

Recently, the state of Illinois was charged with securities fraud for misleading municipal bond investors about the state's approach to funds its pension obligations.

Additionally, the SEC just wrapped up a pension investigation in Rhode Island. Although no enforcement action was taken in that case, it appears that the state made significant policy changes that likely influenced the SEC's decision to end its investigation.



# ONGOING TRENDS

## “No Admission” Plea/Settlement Agreement Review

The SEC “No Admit/No Deny” policy is under review. The SEC has been faulted for not insisting on admissions from settling defendants. Critics say that allows securities violators to escape accountability for their actions, and does little to deter further wrongdoing.

The SEC counters by saying that without the policy, the ultimate result will be longer enforcement proceedings, and a slower return of funds to harmed investors, if at all.



# PENSION EXECUTIVE NEWS

## Former CalPERS Chief Indicted Over Fraud

The head of the country's largest pension fund, CalPERS was indicted in March of defrauding the private equity firm Apollo Global Management. Federico R. Buenrostro served as chief executive of CalPERS, which allocated more than \$200 billion to investment firms around the world.



# CONCLUSION

- During the Q1 2013, new corporate and securities lawsuits and regulatory enforcement actions increased slightly compared to Q4 2012, but remained well below annual averages over the last two years.
- The leading type of new lawsuits during the first quarter are regulatory and enforcement actions plus securities suits not brought as class actions.
- While the number of cases filed is below average, the average settlement value is more than double than the 2011 level and higher than the recent historical average.

Source: Advisen, D&O Claims Trends: 1Q 2013





# QUESTIONS?

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