



SHEPHERD, FINKELMAN, MILLER & SHAH, LLP
Attorneys at Law

COMBATING CORPORATE FRAUD AND ABUSE



Safeguarding and Protecting Your Investments

Shepherd, Finkelman, Miller & Shah, LLP (“SFMS” or the “Firm”), a law firm with exceptional skills and experience in the fields of corporate fraud and governance actions, provides a variety of services to select pension funds and other institutional investors related to the monitoring and prosecution of individual and class action cases asserting causes of action for securities fraud and other breaches of legal duty. The mission of SFMS is to combat corporate fraud and abuse. The services that SFMS provides have become increasingly important because it, unfortunately, has become clear that many facially reputable companies and the individuals who manage them cannot always be trusted to fulfill their duties to their shareholders — even if shareholders are significant institutional investors. As the experience of the last several years has taught investors in cases such as Adelphia, Ahold, Bear Stearns, Citigroup, Countrywide Financial, Enron, HealthSouth, Lehman Brothers, Parmalat, Tyson Foods and Worldcom, purported blue chip companies, as well as the banks and other professionals employed to manage and advise them, often engage in intentional fraud and gross mismanagement as a result of personal avarice or misplaced arrogance. Securities fraud and other corporate governance litigation has emerged as an important tool for institutional investors to remedy losses and obtain significant governance changes, as well as to deter against future misconduct. The Firm is committed to assisting select pension funds and other institutional clients in recovering losses due to fraud and related misconduct, while also compelling the perpetrators of such malfeasance to adopt improved corporate governance procedures as a prophylactic means to protect against future abuses. The Firm’s attorneys provide its clients with a powerful combination of investigative and prosecutorial skills and experience, as well as a commitment to excellence in representation, client communication and advocacy.

As described more fully in these informational materials, the Firm offers the following services to pension funds and other institutional clients:

- Develop Guidelines And Policy Statements Regarding Securities And Derivative Litigation, As Well As Other Corporate Governance Initiatives, To Meet Fiduciary Obligations
- Monitor Securities And Related Litigation That Affects A Client’s Investments
- Investigate Potential And Pending Litigation To Evaluate The Appropriate Role, If Any, For The Client
- Prepare Presentations For Institutional Clients Regarding The Status Of Potential And Pending Litigation And Other Corporate Governance Initiatives
- Provide Updates Regarding The Settlement Or Other Resolution Of Litigation Disputes And Initiatives
- Assist Clients, When Requested, In Completing Appropriate Claim Forms And Other Documentation To Maximize Recoveries

Institutional Investors' Fiduciary Duties And Private Enforcement Actions

Institutional investors have a tremendous responsibility to their beneficiaries and other stakeholders to ensure the financial security of their fund assets and to ensure that fund assets are invested in corporate entities that conduct themselves in a responsible and forthright manner. Institutional investors typically hire professionals to manage fund assets and ensure growth. To this end, institutional investors often create sophisticated processes to monitor the performance of their investment professionals and the results they achieve. One of the most important duties of institutional investors is the safeguarding of fund assets, including the duty to take reasonable steps to monitor and, where appropriate, prosecute claims arising from fraud or other malfeasance by corporate wrongdoers.

Institutional investors currently play a critical role in the prosecution of private securities fraud actions. With the passage of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), Congress dramatically altered the federal securities laws and established many of the provisions that now govern shareholder lawsuits. One of the principal goals of the PSLRA was to encourage institutional investors to take charge of prosecuting securities class action lawsuits by becoming "lead plaintiffs" in the case. Congress explicitly stated its preference for institutional lead plaintiffs when it issued the following statement: "The Conference Committee believes that increasing the role of institutional investors in class actions will ultimately benefit shareholders and assist courts by improving the quality of representation in securities class actions." In recognition of the critical role that institutions can play in securities fraud class actions, in 1998, the United States Department of Labor ("DOL") stated the following in an amicus brief filed in *In re Telxon Corporation Securities Litigation*:

"Not only is a fiduciary not prohibited from serving as a lead plaintiff, the Secretary believes that a fiduciary has an affirmative duty to determine whether it would be in the interest of the plan participants to do so. The Secretary has previously taken the position that it may not only be prudent to initiate litigation, but also a breach of a fiduciary's duty not to pursue a valid claim."

As a result of the DOL's position, in the last several years, a significant number of public and Taft-Hartley pension funds, as well as other institutional investors, have elected to serve as lead plaintiffs in securities fraud litigation and have consistently demonstrated an ability to increase the size of the recoveries for shareholders. In fact, as a 2003 NERA Economic Consulting study, "Recent Trends in Securities Class Action Litigation," confirms: **"settlements in securities class actions were found to be about 20% higher where the plaintiff was an institutional investor."** Moreover, the value of securities class action settlements reached over \$18 billion in 2006 — as compared to just \$2.1 billion in 2003. It is estimated that the current value of pending securities class actions exceeds \$15 billion, thereby providing a large source of potential recovery for harmed investors — and especially institutional investors.

Creating Policy Guidelines For Monitoring And Evaluating Corporate Governance Litigation

Although certain institutional investors have actively pursued securities and corporate governance litigation, it was not until the collapses of Enron and Worldcom that a significant number of institutions began taking a careful look at their own obligations and the role that they might play in curbing corporate abuses. Few institutional investors find the prospect of participating in a class action or other corporate governance litigation particularly attractive. Many public pension funds and other institutional investors, however, now recognize the need to establish securities litigation policies, monitor fraud-related damages and, where appropriate, consider legal action to fulfill their fiduciary duties. On January 24, 2003, the Securities and Exchange Commission candidly acknowledged its own resource limitations in making the following self-assessment: **“The ability of investors to fully recover their losses, indeed may largely depend on the use of private actions.”** It is relatively simple for the prudent institutional investor to establish processes to evaluate its responsibilities and make informed judgments regarding how to fulfill these responsibilities. Furthermore, based upon the increased recoveries that institutional investor lead plaintiffs have been able to obtain in securities class actions, it is in the best interests of institutional investors to consider taking a lead role in appropriate cases.

In sum, based upon the realities of the investing and legal marketplaces, out of self-interest, as well as fiduciary duty, every institutional investor should develop a policy to define its role in securities class action and corporate governance litigation so that it can determine how best to protect its assets and the interests of its beneficiaries or other stakeholders.

The policy guidelines that we develop with our institutional investor clients typically address the following considerations: (i) identification of the individuals or entities charged with identifying potential claims (i.e., outside counsel, in-house counsel, portfolio managers and/or analysts); (ii) the timing and procedure for evaluation of potential claims; (iii) quantitative triggers for identification and investigation of claims, including the dates and timing of the investment, the percentage of holdings of outstanding shares or other securities, the relative size of an investor's holdings relative to those of other investors, the potential damages recoverable and the magnitude of decline in percentage terms of the investment's value; (iv) qualitative triggers based on the character and nature of any alleged fraud or other misconduct; and (v) the procedure and requirements to authorize litigation, as well as to ensure that all claims are appropriately and timely completed.

Shepherd, Finkelman, Miller & Shah is committed to assisting our institutional and other clients in recovering assets lost due to fraud and other misconduct.

Please telephone us toll-free at 866-540-5505 / 877-891-9880 or contact us via e-mail at institutionalservices@sfmslaw.com.

The Firm's Institutional Investor Services

The Firm's attorneys and other professionals provide a variety of services to monitor and safeguard institutional investors' equity and other investments. The Firm's mission is to identify losses that clients may have suffered as a result of potential violations of state and federal securities laws, as well as related legal obligations. The Firm works closely with its clients to prepare monthly reports regarding potential violations of applicable law and, at times, may recommend to an institutional investor that it institute an individual action or seek to serve as the "lead plaintiff" in class action litigation in order to recover such losses. An institutional investor that chooses to engage the Firm never has an obligation to pursue litigation that may be presented for review and consideration. Rather, as part of the services provided, the Firm periodically informs its institutional clients of potential securities fraud and similar actions that may affect a client's investments and the institutional client chooses whether to pursue any further action at that time. The Firm generally provides these monitoring services to institutions that choose to engage the Firm at no cost or other obligation — although certain clients compensate the Firm for such services. In the event that an institutional client chooses to participate in corporate governance litigation or similar proceedings, including any class action litigation, the Firm generally is engaged on a contingent fee basis pursuant to a fee agreement that is specifically negotiated with respect to the litigation or other matter at issue.

The services that the Firm provides include the following:

- We work with our institutional clients to develop guidelines and policies with respect to securities litigation, including thresholds in both quantitative and qualitative terms to trigger an evaluation of whether (i) an investigation is warranted, and (ii) the client should consider legal action.
- We monitor the filing of other securities litigation to ensure that our institutional clients are (i) aware of cases affecting their investments, and (ii) able to protect their rights by, among other things, seeking appointment as a "lead plaintiff" or class representative in securities litigation.
- We evaluate potential and pending litigation, prepare presentations regarding the strength and weaknesses of such cases utilizing the skills and expertise of our attorneys, investigators, forensic accountants and other experts, and make recommendations to the institution's staff or other designee(s) as to the available options and reasons weighing in favor and against the available options, thereby assisting the institution in fulfilling its fiduciary duties and creating a record of the same.
- When appropriate, we litigate cases (both individually and on a class action basis) on behalf of institutional investors until we are able to obtain a favorable outcome through hard-fought settlement negotiations or at trial.
- We ensure that our institutional clients receive updates regarding settled securities class actions so that all necessary claim forms and other paperwork can be timely completed and, when appropriate, assist in completing such claim documentation.

If you would like to meet with us to discuss our services, please telephone us toll-free at 866-540-5505 / 877-891-9880 or contact us via e-mail at institutionalservices@sfmslaw.com.

The Firm generally provides these monitoring services at no cost to institutional, as well as certain individual investors, for a very simple reason — if the Firm’s clients choose to institute litigation to recover losses as a result of securities fraud or similar corporate malfeasance, the Firm often will be retained by these clients to represent them in such litigation. Pursuant to the terms of such an engagement, the Firm typically will be entitled to be compensated for its work and the costs incurred if it is successful. In other words, the Firm usually pursues such litigation on a contingent basis with respect to the attorneys’ fees, costs and other expenses incurred so that the Firm only is paid if the litigation results in a favorable outcome. Thus, by engaging SFMS, institutional investors are able to fulfill important duties while ensuring that their funds’ remaining assets are not placed at risk.

Of course, the Firm only recommends that its institutional clients become involved in those cases which we determine to be meritorious and strong. On certain occasions, we also may recommend that our institutional clients pursue individual actions rather than pursue relief on behalf of a class of similarly situated entities and/or persons. In so doing, we recommend actions that, in our professional judgment, are in the best interests of the client and also protect the institutional client’s reputation and standing in the community. In sum, we offer important services in monitoring and, where appropriate, litigating securities fraud and similar actions on behalf of institutional clients and, in so doing, assist our clients in fulfilling their fiduciary duties.

The Firm has been recognized in courts throughout the United States for the quality of its work and the effectiveness of its advocacy. In fact, the Firm has been successful in resolving the securities fraud claims of certain institutional investors in a manner such that over 90% of the losses were ultimately recovered. With offices in six states, an active practice throughout the country, and a team of attorneys and professionals dedicated to meeting the specific needs of each client, SFMS is well positioned to serve the institutional investors that choose SFMS as their counsel to assist in monitoring and combating corporate fraud and abuse.

In recognition of its work on behalf of institutional investors, Securities Class Action Services (“SCAS”) recently named SFMS as one of the SCAS 50 in the United States. The SCAS 50 lists the top 50 law firms ranked by the total dollar amount of final securities class action recoveries in which the law firm served as lead counsel.

The Firm's Background And Experience

SFMS concentrates its practice in the areas of complex class action and commercial litigation, with a particular emphasis on litigating securities and investment fraud, consumer protection, antitrust, derivative actions, healthcare fraud, ERISA, and employment litigation class actions, as well as False Claims Act litigation. SFMS represents state and municipal governments, privately-held corporations, healthcare providers, institutional investors, including pension, health and welfare funds, and private individuals throughout the United States. SFMS's lawyers are a diverse group who have years of experience in complex class action and commercial litigation. The Firm has served as court-appointed lead counsel and class counsel in state and federal courts and, in such cases, has recovered hundreds of millions of dollars on behalf of its clients. In pursuing securities fraud and breach of fiduciary duty cases, at times, SFMS has recovered in excess of seventy percent of the losses suffered by the institutional investors it represents. SFMS also has been similarly successful in achieving significant corporate governance changes, including the following:

- Requiring Boards of Directors to act as ombudspersons by conducting on-site visits to corporate sites and conducting "open door" sessions on a confidential basis to discuss employee complaints and concerns.
- Mandating annually elected boards controlled by independent directors.
- Separating the Chairman of the Board of Directors and Chief Executive Officer roles.
- Requiring at least 75% of the Board of Directors to be truly independent.
- Limiting the number of corporate Boards of Directors upon which an individual can serve.
- Creating enforceable attendance requirements for Boards of Directors.
- Changing corporate compensation schemes to emphasize pay for long-term performance.
- Requiring forfeiture of proceeds of insider sales in the event of subsequent restatements of earnings by the Company.
- Requiring immediate public disclosure of all sales or purchases of a Company's stock by any corporate officer or director, and requiring pre-disclosure of sales or purchases of a Company's stock in certain circumstances.
- Requiring the creation of appropriate Audit Committee, Compensation Committee and Corporate Governance Charters.
- Requiring creation of an Audit Committee Complaint Procedure.
- Requiring the creation of a Code of Ethics for Senior Financial Officers.

SFMS is actively involved in the litigation of individual and class action securities cases involving causes of action for securities fraud, breach of fiduciary duty, and shareholder derivative claims. The Firm has played a substantial role in a number of these cases, including, to name a few, the following actions: In Re Adelpia Securities Litigation; AFC Enterprises Securities Litigation; Reardon v. Ameripath, Inc.; D'Andrea v. CIGNA Securities, Inc.; Coca-Cola Enterprises Derivative Litigation; In Re: FARO Technologies Securities Litigation; Phones Plus, Inc. v. The Hartford Financial Services Group, Inc. and Neuberger Berman Management, Inc.; Smith v. Interstate Bakeries Corp.; In Re JDS Uniphase Securities Litigation; In Re McKesson HBOC, Inc. Securities Litigation; In Re Mercator Software Derivative Litigation; In Re Sara Lee Corp. Securities Litigation; and SupportSoft Systems, Inc. Derivative Litigation. In addition, when appropriate, SFMS has represented select institutions and individuals in proceedings before the National Association of Securities Dealers and the New York Stock Exchange regarding securities fraud and related matters.

Why Shepherd, Finkelman, Miller & Shah?

We are a mid-sized law firm with the resources more typically associated with a larger law firm. We are committed to providing you with “small firm” individual attention that less typically is found at the larger firms with which we regularly compete. In choosing representation, we encourage you to consider the following:

- **Personal Attention** — At SFMS, every institution has one designated attorney responsible for providing regular and timely updates to your fund(s), who also is available to immediately respond regarding any questions you may have regarding your portfolio, legal rights and options.
- **Significant Resources** — At SFMS, we maintain the resources necessary to provide a broad range of monitoring and litigation services for your fund(s). We regularly work with our team of investigators, forensic economists and financial experts to develop proprietary cases and compile case specific reports before recommending a course of action with respect to pending or prospective litigation.
- **Legal And Expert Talent** — At SFMS, we pride ourselves on our diversity and commitment to excellence, as well as the academic and legal accomplishments, of our team of attorneys and other personnel. Most of the attorneys at our Firm began their careers at large corporate “defense” firms and understand exactly what it takes to litigate complex, high stakes litigation. In addition, many of our attorneys have experience as judicial clerks and other work experience that provides valuable case insight so that appropriate and considered judgments can be made at all times. We invite you to review our accompanying Firm resume to learn more about SFMS.
- **Monthly, Detailed And Individually Tailored Reports** — At SFMS, we provide every institution that we represent with detailed monthly reports. We find that, in light of applicable legal deadlines and the speed with which market developments occur, it is important and consistently more helpful to provide monthly, as opposed to quarterly or bi-monthly, reports to our clients. The reports are both detailed and individually tailored to meet the specific institution’s needs. You will not receive a “form report” from SFMS. That is because, in our experience, boilerplate reports deliver little value to clients.
- **Assistance With Administration And Claim Submission** — At SFMS, we understand that, for the institutional investor, the ultimate recovery on losses is often the most important concern for any fund. For that reason, in addition to monitoring and litigating appropriate claims, we also regularly assist our clients in working with settlement administrators and submitting claims — even when the case is not one that SFMS has litigated. Unlike certain of our competitors, we understand that, at times, assisting our clients with the less “glamorous” work of submitting claims and obtaining recoveries is just as important as evaluating and, when appropriate, asserting claims. In other words, at every step of the process, you can count on the diligence and persistence of SFMS in recovering losses and assets.

Shepherd, Finkelman, Miller & Shah is committed to assisting our institutional and other clients in recovering assets lost due to fraud and other misconduct. The Firm is also committed to effectuating meaningful corporate reforms, where appropriate, to remedy and protect against future acts of corporate malfeasance.

Institutional Investor Frequently Asked Questions

Q: How should an institutional investor decide whether to serve as a lead plaintiff?

A: The only sensible way to make an informed decision is through an established screening and evaluation process that identifies instances where such action may be appropriate and determines whether, in fact, such action is appropriate, given the facts and circumstances of a specific case. The screening and evaluation can be performed in-house, by an outside service, or by qualified law firms such as SFMS. In 1998, the U.S. Secretary of Labor opined that pension funds have an “affirmative duty” as fiduciaries to determine whether plan participants can benefit by pursuing a lawsuit. An appropriate monitoring and evaluation system assists institutional investors in meeting these important obligations, providing trustees and other fiduciaries with the information necessary to render an informed decision.

Q: Are there instances when an institutional investor should pursue individual action as opposed to class action litigation?

A: Yes. It is important that an institutional investor evaluate each potential case and determine whether it should be pursued on an individual or class action basis. Although serving as a lead plaintiff in a class action often creates significant leverage, there may be instances where it simply makes more sense for the client to pursue an individual action.

Q: Why would a relatively small institutional investor seek appointment as a lead plaintiff?

A: Certain funds may never seek lead plaintiff status in a securities fraud class action. There are several reasons, however, that smaller institutions should consider taking a lead role in securities litigation. First, as a result of different investment strategies pursued by many institutions, smaller funds often have invested in securities that their larger counterparts never purchase. In these instances, smaller institutions can serve as an effective force in important securities and other corporate governance litigation. Second, there are times when larger institutions with significant losses may choose not to serve as lead plaintiff because they are already involved in a number of lawsuits or based upon unique circumstances related to the institution’s investment losses. In such instances, smaller institutions have a unique opportunity to enforce their rights and take a lead role. Third, although the size of an institution’s losses is an important factor in determining lead plaintiff status, it is not necessarily the only one. Therefore, even small funds should set up a mechanism to screen cases before ruling out active participation in a securities lawsuit.

Q: What can an institution do to protect itself even if it chooses not to become a lead plaintiff?

A: Even if an institution is not a lead plaintiff, it can exert influence in the case. For example, if the fund effectively monitors securities litigation, it can take action to protect its rights by serving as a class representative or, where appropriate, objecting to any action, including a proposed settlement, if the terms are inappropriate or ineffective. In addition, by monitoring such litigation, the institution can “opt out” or exclude itself from a class action to pursue an individual lawsuit if it deems such action appropriate. Finally, at a minimum, by monitoring litigation, a fund can ensure that it participates in the benefits of any settlement or judgment — a right that it might not otherwise enforce.

Q: What are the fees and costs of serving as a lead plaintiff?

A: Since the Firm generally works on a contingent fee basis and advances the expenses to prosecute the case, there are no up-front costs for a lead plaintiff in a securities class action and other corporate governance cases. The lawyers only are compensated if they achieve a recovery on behalf of the class. The question of expenses, therefore, largely relates to the time and resources necessarily devoted by the institution.

Q: What resources and time will an institution need to devote to serve as a lead plaintiff or a similar lead role?

A: The answer to this question is largely case dependent. Typically, most funds are actively involved at the initial stage when an agreement is negotiated with the Firm, a detailed consolidated complaint is filed, during pretrial discovery, and in settlement negotiations with defendants. In most instances, it is only an institution’s in-house counsel and/or the executive director (or his or her designee) who are involved in a significant manner. Lawsuits do not require considerable board involvement or oversight. Instead, the governing bodies of most institutions simply wish to receive periodic updates from SFMS regarding the progress of the litigation and more detailed updates when significant developments occur.

The Firm is pleased to present these answers to frequently posed questions for informational purposes only. None of the answers should be treated or considered as legal advice of any kind or as conclusive in nature. If you would like to discuss the above topics or any other matters, please telephone us toll-free at 866-540-5505 / 877-891-9880 or contact us via e-mail at institutionalservices@sfmslaw.com.

SHEPHERD, FINKELMAN, MILLER & SHAH, LLP
Attorneys at Law

California • Connecticut • Florida
New Jersey • Pennsylvania • Wisconsin

Toll-Free: 866-540-5505 • 877-891-9880
www.sfmslaw.com