The PSLRA Turns 30

Overview of the PSLRA

Three decades ago, Congress overrode President Bill Clinton's veto and enacted the Private Securities Litigation Reform Act ("PSLRA")—a law that changed the landscape of securities class actions.[1] The PSLRA was enacted to address perceived abuses in securities fraud cases while also allowing meritorious actions to be brought forward.[2] The law sought to eliminate the perception of "the routine filing of lawsuits . . . whenever there is a significant change in an issuer's stock price," the "abuse of the discovery process to impose costs so burdensome that it is often economical for the victimized party to settle," and the "manipulation by class action lawyers of the clients they purportedly represent."[3] The law further sought to encourage large sophisticated institutional investors (with the ability to select and work with sophisticated and experienced class counsel) to exercise primary control over meritorious securities fraud litigation.[4]

Changes to Federal Securities Fraud Class Actions Under the PSLRA

The PSLRA made significant changes that apply to all federal securities fraud class actions. These changes include: (1) heightened pleading standards; (2) a process for selection of the lead plaintiff with the largest stake; (3) an automatic discovery stay pending the motion to dismiss; (4) a safe harbor provision; (5) a 90-day look back period limitation on damages; and (6) sanctions for frivolous claims.

1. Heightened Pleading Standards

One of the key provisions of the PSLRA is the heightened pleading standards that plaintiffs are required to meet when alleging securities fraud. Satisfying these heightened pleading standards is required to survive the motion to dismiss.

Prior to the PSLRA, securities fraud actions were subject to the pleading standards of Federal Rule of Civil Procedure 9(b), which requires a plaintiff to "state with particularity the circumstances constituting fraud."[5] However, in recognition of the serious nature in naming a party in a civil suit for fraud, Congress "intend[ed] to strengthen existing pleading requirements" when enacting the PSLRA.[6]

The PSLRA raised the Rule 9(b) pleading standard to require a plaintiff to specify each statement or omission alleged to have been misleading, the reason(s) why the statement or omission is misleading, and, if an allegation regarding the statement or omission is made on information and belief, the plaintiff must state

[1] *See* Pub. L. No. 104-67, 109 Stat. 737 (codified at 15 U.S.C.A. §§ 77, 68).

[2] *See* S. Rep. No.104-98, at 4 (1995) (hereinafter "Senate Report").

[3] *City of Philadelphia v. Fleming Co., Inc.*, 264 F.3d 1245, 1259 (10th Cir. 2001) (citing H.R. Conf. Rep. No. 104-369, at 31).

[4] *See* Senate Report at 4.

[5] Fed. R. Civ. P. 9(b).

[6] *See* H.R. Conf. Rep. No. 104-369, at 41 (1995) (hereinafter "House Report").

with particularity all facts on which that belief is formed.[7] The PSLRA also requires a plaintiff to state with particularity facts giving rise to a strong inference that the defendant acted with the requisite state of mind.[8] Although Congress did not define "strong inference" in the text of the statute, the Supreme Court has held that "an inference of scienter must be more than merely plausible or reasonable—it must be cogent and at least as compelling as any opposing inference of nonfraudulent intent."[9]

2. Selection of Lead Plaintiff

The PSLRA changed the playing field for plaintiffs. Traditionally, courts appointed lead plaintiff and lead counsel on a "first come, first serve" basis—*i.e.*, whoever filed the complaint first would be appointed—regardless of the quality of the complaint or the capabilities of the plaintiff or its counsel.[10] The PSLRA ended the race to the court house and established procedures for appointing the most adequate plaintiff, rather than appointing the speediest plaintiff.

The PSLRA requires a plaintiff to publish notice to the class no later than 20 days after filing a complaint.[11] Putative class members then have 60 days from the date of publication to move for appointment as lead plaintiff.[12] Significantly, the court is required to presume that the movant with the largest financial stake in the relief sought is the "most adequate plaintiff."[13] This presumption was "intend[ed] to increase the likelihood that institutional investors will serve as lead plaintiffs."[14] Congress was looking for large institutional investors with the sophistication and resources to monitor plaintiffs' counsel to step into the lead plaintiff role. Congress also included a restriction on professional plaintiffs, which prevents an individual from serving as lead plaintiff in more than five securities class actions during any three-year period.[15]

3. Automatic Discovery Stay

The PSLRA also imposed a stay of all discovery during the pendency of any motion to dismiss.[16] Absent exceptional circumstances, discovery will be permitted only after the court has sustained the legal sufficiency of the complaint (measured by the heightened pleading standards) and has denied the motion to dismiss.[17] This stay of discovery was intended by Congress to prevent "fishing expedition[s]" into corporate documents

[7] *See* 15 U.S.C.A § 78u-4(b)(1).

[8] 15 U.S.C.A § 78u-4(b)(2).

[9] *See Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 314 (2007).

[10] *See* Senate Report at 11; House Report at 33.

[11] 15 U.S.C.A § 78u-4(a)(3)(B).

[12] *Id*.

[13] *Id*; Senate Report at 11.

[14] Senate Report at 11.

[15] *See* 15 U.S.C.A § 78u-4(a)(3)(B).

[16] 15 U.S.C.A § 78u-4(b)(3)(B).

[17] *See id.*; Senate Report at 14.

and materials and to avoid the costs of discovery in cases without merit.[18]

4. Safe Harbor Provisions

In addition to raising the pleading standards, the PSLRA created a statutory safe harbor for forward looking statements.[19] To fall within the statutory safe harbor, "the statement must 'project, estimate, or describe' future events and be accompanied by sufficient notice that the information is forward-looking and that actual results may be materially different from such projections."[20] Such forward looking statements are not actionable if the statement is immaterial, was accompanied by sufficient cautionary language, or the defendant(s) lacked actual knowledge of the statement's falsity when made.[21] While the safe harbor provision created another hurdle for investors when initiating securities fraud actions, Congress intended for this provision "to encourage issuers to disseminate relevant information to the market without fear of open-ended liability."[22]

5. Ninety-Day Lookback Period

The PSLRA also imposed a limitation on damages. In a securities fraud case involving fraudulent misstatements or omissions, damages are calculated based on the difference between the price paid for the security and the price of the security on the date of the corrective disclosure, *i.e.*, when the truth was revealed to the market. [23] However, Congress acknowledged that the price of a security may fluctuate for reasons unrelated to the fraud.[24] To address this, the PSLRA capped damages at the difference between the security's purchase price and the average price during the 90-day period after the final corrective disclosure.[25]

6. Sanctions

Finally, under the PSLRA, the court is required, at the conclusion of the case, to make specific findings on the record as to whether all parties and attorneys have complied with each requirement of Federal Rule of Civil Procedure 11(b).[26] If the court finds there to be a violation, the court must impose sanctions.[27]

Securities Fraud Class Actions 30 Years After the PSLRA Was Enacted

Despite President Clinton's fear that the PSLRA would "have the effect of closing the court-house door on investors who have legitimate claims,"

[18] *See* Senate Report at 14.
[19] *See* 15 U.S.C.A § 78u-5.
[20] *See id.*; Senate Report at 17.
[21] 15 U.S.C.A § 78u-5.
[22] *See* House Report at 32.
[23] *See* Senate Report at 19-20.
[24] *See id.* at 20.
[25] *See id.*; 15 U.S.C.A § 78u-4(e).
[26] 15 U.S.C.A § 78u-4(c).
[27] *Id.*

the doors have not closed.[28] Securities fraud class actions are still being pursued and continue to be filed at high rates today.

For example, in 2024, there were 225 new securities fraud class action filings—an increase compared to the prior two years with 215 filings in 2023 and 208 filings in 2022.[29] There was also a record high number of Section 10(b) filings in 2024 with 198 filings, compared to 177 filings in 2023.[30] In the first half of 2025, plaintiffs filed 114 new securities class actions—a number in line with both the historical semiannual average of 113 filings and the second half of 2024's total of 115 filings.[31]

While filings remain high, the heightened pleading standards implemented by the PSLRA have affected cases in that many are weeded out early in the litigation. Indeed, only meritorious cases will survive the motion to dismiss. In that regard, between January 2015 and December 2024, a motion to dismiss was filed in 96% of securities class actions and a decision was reached in 74% of those cases.[32] Among the cases in which a decision was reached, the motions to dismiss were granted in 61% while only 39% of the motions to dismiss were denied, either in full or in part.[33] And despite the discovery stay preventing plaintiffs from receiving any formal discovery until the complaint survives the motion to dismiss, plaintiffs' counsel have found other means to obtain information that is sufficient to meet the heightened pleading standards. This includes rigorous pre-filing investigations and interviewing former employees of the defendant companies whose statements may be used in the complaint.

Additionally, by requiring the movant with the largest financial loss to be appointed lead plaintiff, Congress's goal of having institutional investors lead securities cases has come to fruition. This requirement has resulted in sophisticated institutional investors taking lead in large securities fraud class actions. To that end, just a few years after the PSLRA was enacted, in 2002, institutional investor participation grew to 27.2% in filed securities cases, and that percentage peaked at 57% in 2007.[34]

The shift to institutional investors has also benefited the class given that institutional investors have "expertise in the securities market and real financial interests in the integrity of the market."[35] These investors may act as repeat players thereby resulting in a level of expertise in

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[28] *See* William J. Clinton, Message to the House of Representatives Returning Without Approval the Private Securities Litigation Reform Act of 1995 (Dec. 19, 1995).

[29] Cornerstone Research, Securities Class Action Filings – 2024 Year in Review.

[30] *Id*.

[31] Cornerstone Research, Securities Class Action Filings – 2025 Midyear Assessment.

[32] Edward Flores and Svetlana Starykh, NERA, Recent Trends in Securities Class Action Litigation: 2024 Full-Year Review (January 22, 2025).

[33] *Id.* at 17.

[34] *See* Michael A. Perino, Have Institutional Fiduciaries Improved Securities Class Actions? A review of the Empirical Literature on the PSLRA's Lead Plaintiff Provision, St. John's School of Law Legal Studies Research Paper No. 12-0021 (Nov. 2012).

[35] *See Leone v. ASP Isotopes Inc.*, 2025 WL 3484821, at *30 (Dec. 4, 2025) (quoting *In re Donnkenny Inc. Sec. Litig.*, 171 F.R.D. 156, 157-58 (S.D.N.Y. 1997)).

prosecuting securities class actions.[36] Institutional investors have significant holdings and face constraints in selling particular securities, thereby creating a greater incentive to demand corporate governance changes at the defendant companies.[37] Institutional investors are also better equipped (both in sophistication and resources) to work with plaintiffs counsel to ensure only meritorious claims are pursued.

Studies have shown that institutional investor involvement is correlated with better results, including greater class recoveries and a lower probability of dismissal.[38] As to higher settlement values, in 2024 for example, the average settlement amount with institutional investor participation as lead or co-lead plaintiff was $37 million, whereas the average settlement amount without institutional investor participation was $7 million.[39]

The Future of the PSLRA

After 30 years, it is clear that the PSLRA is not going anywhere. The PSLRA has defined the way securities class actions are commenced, investigated, and litigated. The PSLRA's lead plaintiff provision will continue to encourage and result in institutional investors being appointed, which will ensure sophisticated lead plaintiffs are taking charge of these cases. The PSLRA's heightened pleading standards and discovery stay will continue to ensure that plaintiffs' counsel is conducting rigorous pre-filing investigations and obtaining the necessary information to satisfy its burden and will prevent issuers from costly discovery obligations in cases that do not have merit. The PSLRA has succeeded, and will continue to succeed, in providing a path for investors to pursue securities fraud cases and in protecting the integrity of the capital markets while protecting issuers from unmeritorious claims.

[36] *See* Perino, *supra* n. 34 at 5-6.

[37] *See id*.

[38] *See id*. at 12-13.

[39] Cornerstone Research, Securities Class Action Settlements – 2024 Review & Analysis.

Labaton Keller Sucharow's lawyers are available to address any questions you may have regarding these developments. Please contact the Labaton Keller Sucharow lawyer with whom you usually work or the contacts below.

Jonathan Gardner:
Managing Partner and Head of Litigation
JGardner@labaton.com
+1 212.907.0839

Emily N. Gault:
Associate
EGault@labaton.com
+1 212.907.0881