Victory for Bond Holders of Just for Feet

By Richard Joffe

The ability of corporate bondholders to bring class action lawsuits for securities fraud may have received a substantial boost as a result of Labaton Sucharow's victory in the battle over class certification in *AAL High Yield Bond Fund v. Ruttenberg*, 229 F.R.D. 676 (N.D. Ala. 2005), in which the Court certified a class of bondholders who had purchased high yield bonds issued by the now defunct Just For Feet, Inc. ("JFF"). The Court held that the market for the bonds was "informationally efficient."

Generally, a securities fraud lawsuit cannot be certified as a class action, unless plaintiffs can invoke a presumption that all class members relied on the market to incorporate all public information about the issuer into the price of the security. Some courts will not allow this presumption to be invoked, unless plaintiffs can make a showing that the market for the security at issue was "informationally efficient," by showing that, among other things, the price of the security routinely reacted quickly to the release of material, issuer-specific news.

Prior to *AAL High Yield Bond Fund*, only two published decisions had addressed whether the market for a particular corporate bond was informationally efficient. And, based on facts peculiar to those cases, both had rejected the attempted showing of efficiency.

Labaton Sucharow was able to change this unfavorable dynamic for bondholders with the help of two outstanding expert witnesses. As a result, the *AAL* plaintiffs showed that the market for a given bond can be efficient, even though its trading is much less frequent than that of the stock of the same issuer.

Moreover, the certified class included purchasers in the initial offering. This result is noteworthy because a number of courts have refused to include initial purchasers in certified classes, due to doubts that a market for an initial offering can be efficient.

The total recovery from all defendants totaled approximately 40% of Plaintiffs' estimated damages, with the lead underwriter contributing about 70% of this total. This was an exceptional recovery from an underwriter, given that, according to empirical research, when underwriters are among the defendants who settle an action for securities fraud, they contribute, on average, only 19% of the settlement fund.[1]

[1] *See Steven Marino & Renee Marino, "An Empirical Study of Recent Securities Class Action Settlements Involving Accountants, Attorneys, or Underwriters," 22 Secs. Reg. L.J. 115, 167 (1994)*