

Purpose and Background

1. The Securities Litigation Policy is intended to establish procedures and guidelines for monitoring and participating in securities class actions in furtherance of the Board of Retirement's fiduciary duties. For purposes of this policy, a securities class action includes, but is not limited to, an action alleging claims under state or federal securities and antitrust laws, as well as similar claims arising under the laws of foreign jurisdictions. The responsibility for overseeing securities litigation is delegated to the Investment Committee.

Principles

2. As a large institutional shareholder, OCERS is frequently a class member in securities class actions that seek to recover damages resulting from corporate fraud and misconduct.
3. The Private Securities Litigation Reform Act, enacted in 1995, allows institutional investors to seek lead plaintiff status in securities class actions pending within the United States under U.S. federal securities laws. The lead plaintiff attains the right to supervise and control the prosecution of such cases. Participation as lead plaintiff by large, sophisticated shareholders such as OCERS has resulted in larger recoveries and lower attorneys' fees.
4. In 2010, the United States Supreme Court in *Morrison v. National Australia Bank* held that investors cannot bring or participate in a U.S. securities class action if their claims are based on securities purchased outside the U.S. As such, investors no longer have the protection of U.S. securities laws for securities purchased on a foreign exchange. In many foreign jurisdictions, however, investors are required to join as a named plaintiff or otherwise join as an active litigant at the commencement of the case as a condition to sharing in any damages awarded or recovered. Such direct participation may be costly and, depending on the jurisdiction, may subject OCERS to the risk of liability for defendant's fees and costs if the claim is unsuccessful. Therefore, OCERS must weigh the potential benefits of action in a foreign jurisdiction carefully.
5. In June 2017, the United States Supreme Court in *CalPERS v. ANZ Securities, Inc.* held that the filing of a securities class action does not "toll" or satisfy the three-year time period (called the statute of repose) for putative class members to assert individual claims for recovery under Sections 11 and 12 of the Securities Act of 1933. The Supreme Court's decision has been extended by lower federal courts to apply to claims brought under the Securities Exchange Act of 1934. As a result, investors can no longer rely on the filing of a securities class action case to preserve the timeliness of their individual claims for recovery of damages and must exercise heightened diligence to protect potentially valuable claims from expiring under the statute of repose.
6. OCERS' goals for participation in securities class actions include:
 - Fulfilling OCERS' fiduciary duties by protecting trust assets and effectively managing claims as assets of the trust fund.
 - Maximizing claim recovery and reducing fees paid to obtain recoveries.
 - Deterring future fraud and corporate malfeasance to better protect fund assets.

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- Maintaining access to the courts through securities litigation in the best interest of OCERS' members and beneficiaries.

Monitoring of Securities Litigation

- 7. Monitoring of Class Action Filings and Cases.** The Legal Division will monitor securities class actions filings, both domestic and foreign, to identify cases where OCERS is a potential class member. Cases in which the applicable loss threshold (as defined in Section 10 below) is met or where special circumstances exist that justify OCERS' interest in the case will be monitored.
- 8. Active Participation.** Active participation in a domestic case includes seeking lead plaintiff status, opting out of the class action and filing an individual action, or intervening in the class action. Active participation in a foreign case includes joining the case as a named plaintiff or take other affirmative action at the commencement of the case to participate in the litigation.
- 9. Recommendation of the Legal Division.** The Legal Division will recommend to the Investment Committee whether or not OCERS should take an active role in a securities class action. The Legal Division will recommend OCERS take an active role in an action when it has determined that the case is meritorious, the applicable Loss Threshold is met, and it is in OCERS' best interest to take such action. In addition, the Legal Division may also recommend active participation in a securities class action where the Loss Threshold is not met but OCERS will join the case with one or more other institutional investors, OCERS cannot recover without active participation in the case, or OCERS' active participation may otherwise serve the goals of this policy.
- 10. Loss Thresholds.** A case within the United States meets the Domestic Loss Threshold when OCERS' estimated loss is at least \$2 million. The Foreign Loss Threshold, for a case filed in a foreign jurisdiction, is met with an OCERS' estimated loss of at least \$250,000.
- 11. Losses Below Threshold.** If the Legal Division identifies a case where OCERS' losses during the alleged claims period is less than the Loss Threshold but OCERS suffered a loss in excess of the Loss Threshold during a period of time shortly before or after the claims period, the Legal Division will consider whether to seek an adjustment of the claims period. If warranted, the Legal Division will actively monitor the case and participate in a motion to adjust the claims period.
- 12.** The Legal Division's recommendation on whether to take an active role in a domestic or foreign securities litigation case will be presented to the Investment Committee at a regularly scheduled meeting or, where immediate approval is necessary, at a special meeting. In addition, the Chief Executive Officer ("CEO") is authorized to approve taking such action where, after consultation with the General Counsel, it is determined that immediate approval is required to preserve OCERS' rights and the matter cannot be timely presented to the Investment Committee. In the event the CEO exercises such authority, the CEO will simultaneously notify the Chair of the Investment Committee and then provide a full report of the action at the next regularly scheduled Investment Committee meeting, or meeting of the Board of Retirement, whichever is sooner.

Active Participation: Domestic

- 13.** In deciding whether to pursue active participation in a domestic securities litigation cases, the Investment Committee will consider the following factors:

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- a. The size of OCERS' loss;
- b. The merits of the case;
- c. The identity of the lead plaintiff and other parties, if known;
- d. The identity of lead counsel, if known;
- e. The sources of recovery available to satisfy a judgment if plaintiffs prevail;
- f. The availability of internal OCERS' resources to participate in the litigation and the potential burdens of discovery;
- g. Whether OCERS' active participation will increase the likely recovery or otherwise add significant value to the resolution of the case;
- h. The potential impact on the OCERS portfolio from trading restrictions arising from the potential acquisition of inside information in litigation, if any; and
- i. Whether OCERS' active participation would be effective in deterring similar corporate misconduct in the future.

Active Participation: Foreign

14. Notwithstanding the Foreign Loss Threshold having been met, active participation in foreign securities actions will be examined on a case-by-case basis to determine whether the potential benefits of active participation outweigh the potential costs. In deciding whether to pursue active participation in a foreign securities litigation case, the Investment Committee will consider the following factors:

- a. The size of the potential recovery;
- b. OCERS' potential obligation to pay legal fees and costs;
- c. OCERS' potential liability for the legal fees and costs of the opposing party;
- d. The merits of the case in light of the law in that jurisdiction;
- e. How the action is being funded, and which law will apply to the relationship between OCERS and any funders;
- f. The identity of the foreign counsel and the method of their payment;
- g. The potential burdens of discovery; and
- h. The role OCERS will play in decision-making in the case.

Settlements

15. When a settlement is proposed in a case in which OCERS has taken an active role, the Legal Division will provide the Investment Committee with an analysis of the settlement terms. The Investment Committee may approve the settlement or delegate to the CEO or the General Counsel authority to enter into a settlement on terms it deems appropriate.

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16. If the CEO determines that immediate approval of (i) a proffer of a settlement demand, (ii) a grant of settlement authority to litigation counsel, or (iii) a response (including a counteroffer) to a settlement offer is required to preserve OCERS' rights, and the matter cannot be timely presented for approval by the Investment Committee, the CEO is authorized, after consultation with the General Counsel, Chief Investment Officer, and Chair of the Investment Committee, to approve the proffer, grant, or response and notify the Investment Committee at its next regularly scheduled meeting.

Claims Filing and Audits

17. OCERS' custodial bank will be responsible for filing all claims necessary to recover assets in securities class action cases in which OCERS has suffered losses, and the statement of work in the custodial agreement will set forth the claims filing procedures for the custodial bank to follow. If OCERS' custodial bank is not able to file the claim, then the Legal Division, in consultation with the Investment Division, will designate the entity that will be responsible for filing.
18. The custodial bank will submit or make available to OCERS quarterly reports on the securities litigation proceeds recovered and those reports will be provided to the Investment Committee.
19. The Legal Division, in conjunction with the Investment Division, will, from time to time, audit the custodial bank's claims filing process to ensure that OCERS is maximizing recovery from securities litigation settlements and awards. The Legal Division, in conjunction with the Investment Division, may require that the custodial bank change its processes for claim filings.

Retention of Monitoring Firms and Litigation Counsel

20. The General Counsel, with the approval of the CEO, will engage two to five firms with demonstrated expertise in securities class actions (the "Monitoring Firms") to advise or represent OCERS in monitoring securities class action filings and settlements that affect the OCERS investment portfolio.
21. The Monitoring Firms will:
- Obtain OCERS' securities trading and holdings information directly from OCERS' custodial bank;
 - Identify and monitor domestic securities class actions and analyze OCERS' estimated losses in the affected securities;
 - Provide timely notice and analysis of securities class actions filed in the U.S. where OCERS has suffered losses that meet its Loss Threshold and active participation may be warranted; or where other factors exist that justify OCERS' consideration of the case;
 - Provide reports of newly-filed domestic securities class actions and OCERS' estimated losses on at least a quarterly basis;
 - Identify and monitor securities actions in foreign jurisdictions, and provide an analysis of OCERS' estimated losses in the affected securities;

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- f. Provide timely notice and analysis of those foreign securities actions where OCERS has suffered losses that meet its Foreign Loss Threshold or where other factors exist that justify OCERS' consideration of the case;
 - g. Assist OCERS in joining and filing claims in foreign securities actions in which the Investment Committee approves active participation; and
 - h. Assist OCERS in identifying meritorious U.S. securities class actions in which OCERS has substantial losses or significant holdings, determining the relevant statutes of repose, monitoring the progress of the litigation, and evaluating whether to file a protective claim or motion before a significant repose period expires.
- 22.** Retainer Agreements with Monitoring Firms will be for terms not exceeding six years. Prior to the expiration of the six-year term, the General Counsel or their designee will conduct a Request for Proposals.
- 23.** When the Investment Committee or the CEO approves OCERS taking an active role in litigation, they will direct the General Counsel to retain litigation counsel or delegate to the General Counsel the authority to retain litigation counsel for the matter.
- 24.** The General Counsel may rely on Monitoring Firms for preparation of in-depth damages analyses and representation in litigation. However, the General Counsel may, with the approval of the Chief Executive Officer, retain outside counsel on behalf of OCERS to undertake these matters or to assist the Legal Division in carrying out this policy.

Reporting

- 25.** The Legal Division will keep the Investment Committee apprised of major developments on cases in which OCERS is actively participating and will provide reports on its policy-related activities on at least a quarterly basis. The reports will include listings of new securities litigation case filings and new settlements or awards in which OCERS has identified losses. For matters where OCERS' estimated losses exceed \$1 million, the report will include a brief analysis of the merits of the case.

Policy History

The Board adopted this policy on December 15, 2003. The Board amended this policy on December 20, 2004; reviewed this policy with no changes on March 24, 2008; and amended this policy on August 24, 2009, May 20, 2013, March 20, 2017, November 13, 2017 and August 17, 2020.

Secretary's Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.



Steve Delaney
Secretary of the Board

08/24/2022

Date



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