

## APPENDIX - D -

### SECURITIES MONITORING AND LITIGATION POLICY

#### I. GENERAL PROVISION

Pursuant to Iowa Code chapter 97B, the Investment Board of IPERS (Board) is authorized to establish policy and review its implementation in matters relating to the investment of the retirement fund. Pursuant to Iowa Code chapter 97B, the chief executive officer (CEO) is the administrator of IPERS. The Board, through the establishment of policy, and the CEO as the administrator of IPERS, except as otherwise indicated, jointly exercise the statutory authority related to this policy.

#### II. PROCEDURES AND GUIDELINES FOR DOMESTIC LITIGATION

Chapter 97B and common law principles create a fiduciary responsibility to manage IPERS' assets in a prudent manner for the exclusive benefit of IPERS' beneficiaries. Inherent in this fiduciary responsibility is the duty to use reasonable care and skill to preserve IPERS' assets, including the duty to take possession and control of IPERS' assets such as litigation claims, and the duty to take reasonable steps to realize on such claims that the IPERS Trust Fund may hold in its favor. In recognition of this fiduciary responsibility, the Board establishes the following procedures and guidelines for monitoring and participating in domestic securities class actions:

- A. As a large institutional investor, IPERS' assets include investments in publicly traded companies. Frequently, these investments are the subject of individual and class-action securities litigation under state and federal law. It is necessary for IPERS to understand the ramifications of legal actions impacting publicly traded securities. For the purposes of this paragraph, investments include public securities held in a commingled fund in which IPERS has invested.
- B. Because IPERS exists to provide retirement income to its members, the goal of this policy is the preservation of assets to meet the needs of IPERS members. IPERS will prudently select the best means to preserve Trust Fund assets. While IPERS may have a fiduciary duty to pursue legal action to recover on a claim, it must also take into consideration that most (if not all) of these actions will be prosecuted by the class-action bar whether or not IPERS takes an active role. Further, the recovery, whether IPERS assumes an active role or passive role in litigation, is ratably allocated for all class members. Consequently, IPERS will consider the active role in class-action litigation only when a case is identified where active involvement can add value on a long-term portfolio-wide basis. For

the purposes of this policy, an “active role” means seeking to serve as lead plaintiff, co-lead plaintiff, named plaintiff, or file an individual action.

- C. All litigation in which the potential loss to IPERS is under \$1,500,000 will be “passively monitored.” Passively monitored means that cases will be tracked for any notices of settlement and IPERS will participate in the litigation as a member of the class. Passively monitored also means that as notices of settlement are issued, proposed settlements will be evaluated and, absent any reasonable objections to unusual terms, IPERS will file a proof of claim so that it will receive its pro rata share of the recovery.
- D. Cases in which IPERS’ potential losses are between \$1,500,000 and \$3,000,000 will be “actively monitored” by IPERS. “Active monitoring” includes evaluation of the pattern of losses, settlement notices, viable objections, opt-out periods, and deadlines for filing, as well as monitoring the appointment of lead plaintiff and counsel, and class counsel fee submissions.
- E. Cases in which IPERS’ potential losses are \$3,000,000 or greater will receive a detailed analysis to determine the appropriate course of action—including but not limited to a motion to become lead plaintiff or co-lead plaintiff, named plaintiff, or to opt out and file an action on an individual basis in federal or state court as set out below. The criteria to be used in this analysis will include, but not be limited to, the following:
  - 1. Whether IPERS has, or had, substantial or significant holdings in the defendant company or security during the most plausible class period and sustained damages surpassing its threshold for considering action.
  - 2. Whether there is a very strong factual and legal basis for the action, including an analysis of any unique issues or defenses to which IPERS might be subject, indicating that it is highly probable that a successful verdict would be achieved by IPERS if the case was fully litigated.
  - 3. The availability of potential witnesses, and the ability of the investment manager, investment consultants, and custodian to respond to requested discovery.
  - 4. The probability that the defendant or an insurer is able to pay a reasonable recovery to the class.
  - 5. The potential prospective positive impact that corporate governance changes required as a result of legal action may have on the value of IPERS’ current holdings in the defendant corporation’s securities.

6. Whether to function as a co-lead plaintiff for the purpose of aggregating damages.
  7. Whether to serve as a lead or co-lead plaintiff for the purpose of modifying the claims time period to include IPERS' transactions.
  8. Whether to function as a lead or co-lead plaintiff with the purpose of disqualifying a law firm or lead plaintiff that will not represent the best interest of class members.
  9. Whether IPERS has any knowledge that another institutional investor is considering lead plaintiff or co-lead plaintiff status.
  10. Whether it would be prudent to take action to oppose or dismiss a lawsuit that is deemed not in the best interest of shareholders.
  11. Whether there is any other information that would be relevant to IPERS to aid it in deciding the position to take.
  12. Whether there are staffing or resource constraints that might make it difficult to effectively pursue the case actively, as a lead plaintiff, co-lead plaintiff, or through an independent legal action.
- F. A decision to seek an active role in litigation is based on the totality of the circumstances. The dollar loss thresholds referenced above are guidelines and are not intended to be the sole factor in making the determination to seek an active or maintain a passive role.

### **III. PROCEDURES AND GUIDELINES FOR FOREIGN LITIGATION**

- A. The landscape of securities laws has drastically changed with the Supreme Court's decision in *Morrison v National Australia Bank Ltd*, 561 US 247 (2010). After *Morrison*, investors no longer have the protection of U.S. securities laws with respect to securities of foreign entities purchased on a foreign exchange (irrespective of such foreign entities' presence in the U.S.). In such cases, IPERS may consider whether to bring a state law action or opt into participation in an action in a foreign jurisdiction.
- B. Unlike the U.S. class action process (where investors can remain absent, receive notice of a settlement, and then decide to make a claim or opt out of the class), in foreign actions, investors are generally required to join as named plaintiffs or "opt in" at the commencement of the case. This "opt in" process requires affirmative

decisions early in the process to join the case in order to recover losses. In many cases, investors may be required to make these decisions before a foreign action is filed. In many foreign jurisdictions, costs for both litigants are borne by the losing party. Accordingly, participating in foreign litigation can result in substantial costs in the event of defeat. Frequently, third party investors agree to fund such litigation in exchange for a share of the award.

- C. IPERS may file claims in foreign actions without Board discussion or approval if the action is fully funded and there are no material adverse costs to IPERS. These types of claims are not subject to the threshold or case by case analysis set forth in subparagraph D below.
- D. All other foreign actions will be evaluated on a case-by-case basis. Cases in which IPERS' potential losses are \$3,000,000 or greater will receive a detailed analysis to determine the appropriate course of action, if any. The criteria to be used in this analysis will include, but not be limited to, the following:
  - 1. Funding questions, including:
    - a. How is the action being funded? Are the funders reliable? Who are the funders? What is the funder's fee? Is the fee all-inclusive, or is the funder also entitled to reimbursement of expenses and any costs award? What law will apply to the relationship between IPERS and the funder?
    - b. Is the funding agreement sufficient? In particular, are attorneys' fees, litigation expenses, and potential costs covered by the funder without recourse to IPERS?
    - c. Can the funder cease to fund the litigation and, if so, under what conditions? Will the funder have any input or control over the prosecution of the litigation?
    - d. Does the funder have a minimum loss threshold?
  - 2. What are the merits of the case in light of the law in the jurisdiction?
  - 3. What is the process/cost for opting in?
  - 4. Who is the foreign counsel, reputation of foreign counsel, and how are they being paid?
  - 5. What risks are there to IPERS (i.e., to what extent is adverse party fees and costs risk covered)? What are the potential discovery burdens?

6. How are litigation decisions made?
  7. What is IPERS loss? Even if IPERS' first in first out (FIFO) or last in first out (LIFO) losses are large, will IPERS be entitled to recoverable damages under the foreign law?
  8. In the event of a favorable judgment, how is payment made?
  9. What time and resources will IPERS have to devote to the foreign litigation?
- E. IPERS can consider a state law action to address a foreign securities claim. There are numerous issues and obstacles that must be considered before bringing a state law action against a foreign entity. Such considerations include questions of federal preemption, many procedural and technical issues, and whether IPERS' potential recoverable damages justify pursuing state law claims.
- F. A decision to participate in foreign litigation is based on the totality of the circumstances. The dollar loss threshold referenced above is a guideline and is not intended to be the sole factor in making the determination regarding participation.

#### **IV. AUTHORITY AND RESPONSIBILITY**

Prior approval of the Board shall be required to proceed with any individual or class-action litigation pursuant to this policy except as otherwise noted herein. At the call of the Board's chair or IPERS' CEO, the Board shall meet to consider recommendations to proceed with litigation.

The CEO retains the authority related to the conduct of the litigation and settlement pursuant to this policy in recognition of the CEO's statutory authority to administer IPERS. The CEO may consult with the Board on any matter related to the initiation of or conduct of any suit pursuant to this policy. The CEO shall have full authority to execute all contracts, legal documents, certifications, and authorizations required hereunder to pursue authorized litigation. The CEO can delegate the exercise of the CEO's statutory authority and responsibility to any IPERS staff member.

The CEO is authorized to hire one or more consultants to serve as the Securities Monitoring and Litigation Counsel (Counsel), monitoring consultant, or in another capacity related to this policy.

The Board shall receive periodic regular reports regarding the implementation of this policy. Reports shall include information related to the passive and active monitoring activity authorized in this policy, including but not limited to the status of any litigation in which IPERS has assumed the role of lead plaintiff or co-lead plaintiff, or

has initiated individual action; the name of the security and/or defendant corporation; the estimated market loss to IPERS; action recommended and/or taken against the security or defendant corporation; status of the action; amount of claimed loss forwarded to the claims administrator; date claim was filed; and the amounts recovered. The Board may request additional information in advance of its next regularly scheduled meeting.