



## **ND STATE INVESTMENT BOARD SECURITIES LITIGATION COMMITTEE MEETING**

Friday February 16, 2018 - 3:00 PM  
North Dakota Retirement and Investment Office (RIO)  
3442 East Century Avenue, Bismarck, ND 58503

### **AGENDA**

1. Call to Order and Approval of Agenda – Chief Deputy Attorney General Seibel (Committee Action) (5 minutes)
2. Election of Chair and Vice Chair – Chief Deputy Attorney General Troy Seibel (Committee Action) (5 minutes)
3. Proposed Charter for Securities Litigation Committee – Ms. Flanagan (Committee Action) (20 minutes)
4. Review of Current Securities Litigation Policy – Mr. Hunter (Informational) (20 minutes)
5. Proposed Committee Meeting Dates and Location – Mr. Hunter (Committee Action) (10 minutes)
6. Other - Next SIB Securities Litigation Committee Meeting (subject to Committee approval)  

North Dakota Retirement and Investment Office	or	North Dakota State Capitol
3442 E Century Ave, Bismarck, ND 58503		17 <sup>th</sup> Floor A.G. Conference Room, Bismarck, ND
Thursday, March 15, 2018 @ 3:00 PM		Thursday, March 15, 2018 @ 3:00 PM
7. Adjournment

Any individual requiring an auxiliary aid or service should contact the Retirement and Investment Office at (701) 328-9885 at least (3) days prior to the scheduled meeting.

***Committee Action Requested***

**TO:** State Investment Board Securities Litigation Committee  
**FROM:** Dave Hunter and Connie Flanagan  
**DATE:** February 9, 2018  
**SUBJECT:** Proposed Charter for Securities Litigation Committee

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RIO's Fiscal and Investment Operations Manager Connie Flanagan drafted the proposed Charter for the Securities Litigation Committee based on the *SIB Audit Committee Charter*. **After review and discussion, RIO suggests the Committee make a motion to accept the proposed Charter including any requested changes or request RIO Staff to provide a revised draft of the proposed Charter at the next Committee meeting.**

**CHARTER OF THE  
SECURITIES LITIGATION COMMITTEE OF THE  
NORTH DAKOTA STATE INVESTMENT BOARD**

**PURPOSE**

The Securities Litigation Committee (the Committee) is a standing committee of the North Dakota State Investment Board (SIB) created to assist in fulfilling its fiduciary oversight responsibilities of monitoring the investment of assets entrusted to it by the various statutory and contracted funds, and to serve as a communications link for the SIB, RIO's management and staff, third party securities litigation firms, and others.

The Committee will determine when an active role should be pursued in regards to securities litigation affecting securities within the SIB's portfolios.

**AUTHORITY**

The Committee is authorized to:

- create SIB policy regarding dollar and/or risk thresholds for determining when to opt-out of class actions and/or seek direct litigation or lead plaintiff status;
- make decisions on the level of participation the SIB will take in direct litigation, opt-in or group litigation, anti-trust and other class actions; and
- approve the selection of special assistant attorneys in cases of direct litigation.

## **COMPOSITION**

The Committee will consist of the Executive Director of RIO, one member of RIO fiscal or investment staff, RIO general counsel, and two members of the SIB appointed by the Chair.

Membership on the Committee will be for one year or termination of term on the SIB. Vacancies will be filled by the SIB Chair at the first scheduled meeting following the vacancy. There will be no limit to the number of terms served on the Committee.

The Committee will elect a Chair and a Vice Chair. The Chair will preside at all meetings of the Committee and serve as the liaison to the SIB. In the absence of the Chair, the Vice Chair will perform the duties of the Chair. The liaison will report at least four times a year to the SIB on the activities of the Committee and other pertinent information.

The Committee may form, and delegate authority to, subcommittees when it deems appropriate.

## **MEETINGS**

The Committee will meet generally four times a year, with authority to convene additional meetings, as circumstances require or to adequately fulfill all the obligations and duties as outlined in this charter.

Meeting agendas will be prepared by the Executive Director and approved by the Committee Chair, unless otherwise directed by the Committee and will be provided to the Committee members along with briefing materials before the scheduled committee meeting.

Committee members are expected to attend each meeting, in person or via tele- or video-conference. RIO's executive management and others necessary to provide information and to conduct business will attend meetings. The Committee may invite staff of RIO or others to attend meetings, as necessary. The Committee may hold executive sessions as allowed under state law.

The Committee will act only on the affirmative vote of three of the committee members at a meeting. To conduct business, a quorum will be three members of the Committee. Should a quorum not be present before a scheduled meeting or during a meeting, the Chair will announce the absence of a quorum and the members will disburse. Meetings unable to transact business for lack of a quorum are not considered meetings. Meeting minutes will be prepared by RIO, or as otherwise directed by the Committee. Approved meeting minutes of the Committee will be submitted to the SIB.

## **RESPONSIBILITIES**

RIO's management is responsible for ongoing monitoring of securities litigation and claims filing. The Committee has the responsibility to provide oversight in the areas of:

- policy development
- determination on direct litigation and/or lead plaintiff status
- approval of special assistant attorneys (outside counsel)

To this end, the Committee will:

- Develop initial policy and periodically review policy to determine if changes are needed.
- Review reports from RIO staff and third parties in order to maintain awareness of potential and actual securities litigation affecting the SIB portfolios.
- Make decisions on whether to pursue direct litigation and/or lead plaintiff status on cases exceeding policy thresholds for passive participation.
- Select third party litigation firms when deemed appropriate.
- Perform other activities related to this charter as requested by the SIB.
- Review and assess the adequacy of the Committee charter annually, requesting the SIB approval for proposed changes.
- Confirm annually the review of all responsibilities outlined in this charter.

### **Reporting Responsibilities**

- Report to the SIB about the Committee's activities, issues, and related recommendations.
- Provide a written report annually to the SIB, describing the Committee's composition, responsibilities and how they were discharged, and any other information required.

**DATE OF CREATION OF COMMITTEE AMENDMENTS:** February \_\_, 2018

**DATE SECURITIES LITIGATION COMMITTEE CHARTER ADOPTED AND APPROVED:**

February \_\_, 2018

*Informational*

**TO:** State Investment Board Securities Litigation Committee

**FROM:** Dave Hunter

**DATE:** February 9, 2018

**SUBJECT:** Review of Current Securities Litigation Policy

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**On January 26, 2018, the SIB established a new Securities Litigation Committee (SLC or Committee).** SIB Chair Lt. Governor Brent Sanford appointed the following members: 1) Chief Deputy Assistant Attorney General Troy Seibel; 2) State Treasurer Kelly Schmidt; 3) Assistant Attorney General Patrick Brooke; 4) RIO Executive Director David Hunter; and 5) RIO Fiscal and Investment Operations Manager Connie Flanagan.

**After the Committee adopts a Charter for the Securities Litigation Committee of the SIB, RIO suggests the Committee review the existing Securities Litigation Policy (as shown on the following four pages).**

**POLICY TITLE: SECURITIES MONITORING AND LITIGATION**

General Purpose

1. The North Dakota State Investment Board (“SIB”) is a fiduciary for assets held in trust for the benefit of SIB clients’ including their beneficiaries and to defray expenses of administration of their respective investment funds.
2. In order to carry out its fiduciary duty to prudently invest and diversify the assets of the various investment funds, the SIB invests considerable assets in global public securities markets.
3. The efficient and effective deployment of plan assets requires that in seeking returns market risks must be prudently assumed and managed. Investing in publicly-traded securities in regulated markets under accounting, disclosure and business practice laws and regulations provides general, but not perfect assurance that the information forming the basis for investments is accurate, conforms with accepted accounting practices, and is not distorted due to misfeasance, malfeasance or nonfeasance, or the timing of information disclosures by persons or entities with the ability to affect market prices of the investment securities.
4. Legal action is sometimes necessary to attempt to recover all or part of losses the fund may incur due to alleged improper action or inaction that results in the impairment of the value of the fund’s security holdings.

5. Most such actions will be prosecuted by the class action bar whether or not the SIB takes an active role as a plaintiff or a passive role as a member of a certified class of plaintiffs. Any ultimate award or settlement from a class action filing will be ratably allocated among legitimate claimants.
6. The SIB will generally only consider pursuing active participation in securities actions when such a role is expected to add value by enhancing the prospect for recovery, increasing the amount of recovery, assuring more efficient and effective prosecution of the case, or identifying and addressing corporate governance issues through litigation.

For purposes of this Policy, “active participation” means seeking status as lead plaintiff, co-lead plaintiff, or filing separate legal action.

### Non-Active Recovery and Filing

1. SIB will require as part of its agreement with its custodial bank **or other designated agent**, that adequate securities class action monitoring is maintained on an ongoing basis, sufficient to assure that most of the actual awards and settlements for such cases are tracked and identified and that proof of claim forms, including supporting documentation, will be properly and timely filed.
2. To augment and enhance coverage, identification and tracking of class-action cases (potential or actual) SIB may engage one or more legal firms that specialize in monitoring and prosecuting security class-action cases; any such engagement is subject to the special appointment requirements of N.D.C.C.§54-12-08. For these purposes only, such firms may be granted ongoing access to security holdings information through the custodian bank **or other designated agent**.
3. A monitoring agreement with any law firm for monitoring service access and reporting will not commit SIB to employing said firm in the event that it seeks to represent SIB as an active participant in any securities related litigation. Such representation must be effected by a separate retainer agreement between the SIB and said firm, or another, depending on such factors as the potential monetary scope, the nature of the case and industry specialty that may be required, the allocation of current or past cases among candidate firms, the likely duration and cost of prosecuting such a case, retainer fees or contingency splits, the venue in which the case is to be filed, and other considerations.
4. The custodial bank **or other designated agent** will be required to provide the Retirement and Investment Office (“RIO”) with periodic reports that detail class action cases monitored, claims filed, and award or settlement distributions received. RIO will maintain these records and provide an update to the SIB with regards to accounting information on distributions received on claims filed by the custodian bank on our behalf.

### Active Participation in Cases

1. The Executive Director will initiate active participation in securities cases only upon prior review and approval of the SIB. Before bringing any recommendations to the Board, the Executive Director with significant assistance by legal counsel from the Office of the Attorney General, will assess the merits and prospects for active participation by reference to the criteria and factors outlined in this section.

## 2. Decision Criteria and Factors:

- a. The decision to participate in an active capacity in security litigation should be based on the totality of the circumstances. Dollar loss amounts are important, but not the sole or overriding factor to consider in making such recommendations by the Executive Director, or determinations by the SIB.
- b. Potential losses to SIB clients must be significant in order to warrant participation as a lead plaintiff, co-lead plaintiff, or separate “opt-out” litigant. Generally, in cases where the potential loss does not exceed the **greater of 0.1%** of trust assets, the SIB will avoid active participation.
- c. The *prima facie* merits of the claim for loss, and the factual basis for the action, recognizing that the full discovery process will not commence until the class has been certified by the court in which such case is to be filed.
- d. The availability of witnesses, and possible support that may be obtained from investment managers, consultants, and the custodial bank through discovery.
- e. The potential that any defendants or insurers will be able to pay an adequate recovery to the class, without impairing the value of any current security holdings SIB may yet hold in the issuer in the portfolio.
- f. The ability of the law firm recommending action on the part of SIB to prosecute the case effectively, in the venue where such case is likely to be filed, and the experience of the firm in managing such cases individually or in partnership with other firms.
- g. Potential long-term benefits from corporate governance changes from pursuing litigation.
- h. The ability of SIB to serve as a fiduciary on behalf of all class members in the case, especially in relative terms to other institutional investors that may be considering the same case.
- i. Potential costs that may be incurred. Special consideration must be given to any case that must be filed in a non-U.S. venue under the “Morrison” criteria established by the U. S. Supreme Court in a 2010 decision, since costs of litigation and potential liabilities of unsuccessful claims may be significant.
- j. Current workload and staffing resources required for the fulfillment of SIB’s primary member service functions, and whether participation might displace time and staff resources needed for core business functions.

## 3. Decision Criteria and Factors for cases filed in a non-U.S. venue: In addition to the Criteria and Factors set forth in Subsection 2, the SIB may consider the following:

- a. The proposed funding arrangements for the action.
- b. Evaluate the merits and risks of the case in light of the law of the jurisdiction in which the action would be brought.
- c. The role or level of participation in the case by the SIB.

### Roles in Managing and Monitoring Litigation

1. The SIB will make the final determination of whether it is in the SIB's best interest to pursue active participation in any case and whether to engage any law firm and the terms of such engagement.
2. Decisions regarding the conduct and implementation of the Board's decision to participate will be the responsibility of the Executive Director, or an approved member of the management staff if he so delegates. When feasible and advisable, the Executive Director shall seek advice and direction from the Board on strategic and legal issues that may arise in prosecuting the action on behalf of the SIB and its clients. The Executive Director shall timely report to the Board on the progress of the litigation.
3. The Executive Director shall be responsible for management of the relationship with any portfolio monitoring law firm or organization for such purpose. Based on the need for additional coverage, the Executive Director will determine whether one or several firms are needed to fulfill the goals of this Policy and may terminate such monitoring agreements as judgment advises.
4. Any agreement for portfolio monitoring services that includes a fee or subscription cost must first be approved by the SIB before execution by the Executive Director.

### Policy Review

1. The Board shall review this policy at least every three years to ensure that it remains relevant and appropriate.

**Policy Implemented:** November 20, 2015



***Committee Action Requested***

**TO:** SIB Securities Litigation Committee  
**FROM:** Dave Hunter  
**DATE:** February 9, 2018  
**SUBJECT:** **Proposed Meeting Schedule - Securities Litigation Committee**

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RIO Staff suggests the Securities Litigation Committee schedule four meetings per year on the following dates:

March 15, 2018 (Thursday)  
May 17, 2018 (Thursday)  
August 23, 2018 (Thursday)  
November 8, 2018 (Thursday)

RIO Staff invites input on the proposed meeting dates and frequency including the desired meeting location (e.g. RIO or Capitol) and time (e.g. 3:00 or 3:30 pm).

If the Committee concurs, RIO's Supervisor of Administrative Services and Office Manager Bonnie Heit will seek to confirm Committee member availability on each of the above dates in advance of our next proposed meeting on March 15, 2018.