



ND STATE INVESTMENT BOARD SECURITIES LITIGATION COMMITTEE MEETING

Wednesday March 14, 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
2. Minutes (February 16, 2018)
3. Proposed Charter for Securities Litigation Committee – Mr. Hunter (Committee Action) (10 minutes)
4. Proposed Revisions to Securities Litigation Policy – Ms. Flanagan (Committee Action) (20 minutes)
5. Securities Litigation Monitoring Transition Update – Ms. Flanagan (Informational) (10 minutes)
6. Other - Next SIB Securities Litigation Committee Meeting (subject to Committee approval)

North Dakota Retirement and Investment Office
3442 E Century Ave, Bismarck, ND 58503
Thursday, May 10, 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.

**NORTH DAKOTA STATE INVESTMENT BOARD
SECURITIES LITIGATION SUBCOMMITTEE
MINUTES OF THE FEBRUARY 16, 2018, MEETING**

BOARD MEMBERS PRESENT: Troy Seibel, Chair
Treasurer Kelly Schmidt, Vice Chair
Patrick Brooke, Attorney General's Office (TLCF)
Connie Flanagan, Fiscal/Investment Opr Mgr
David Hunter, ED/CIO

STAFF PRESENT: Bonnie Heit, Assistant to the Board
Darren Schulz, Dep CIO

CALL TO ORDER:

Mr. Seibel called the State Investment Board (SIB) Securities Litigation Committee meeting to order at 3:04 p.m. on Friday, February 16, 2018, at the Retirement and Investment Office, 3442 E Century Ave, Bismarck, ND.

AGENDA:

IT WAS MOVED BY TREASURER SCHMIDT AND SECONDED BY MR. HUNTER AND CARRIED BY A VOICE VOTE TO APPROVE THE FEBRUARY 16, 2018, AGENDA.

**AYES: TREASURER SCHMIDT, MR. SEIBEL, MR. HUNTER, MS. FLANAGAN, MR. BROOKE
NAYS: NONE
MOTION CARRIED**

ELECTION OF OFFICERS:

IT WAS MOVED BY MR. HUNTER AND SECONDED BY TREASURER SCHMIDT AND CARRIED BY A VOICE VOTE TO NOMINATE MR. SEIBEL AS CHAIR.

**AYES: MS. FLANAGAN, MR. BROOKE, TREASURER SCHMIDT, MR. SEIBEL, AND MR. HUNTER
NAYS: NONE
MOTION CARRIED**

IT WAS MOVED BY MR. HUNTER AND SECONDED BY MS. FLANAGAN AND CARRIED BY A VOICE VOTE TO NOMINATE TREASURER SCHMIDT AS VICE CHAIR.

**AYES: MR. BROOKE, MR. HUNTER, MS. FLANAGAN, MR. SEIBEL, AND TREASURER SCHMIDT
NAYS: NONE
MOTION CARRIED**

CHARTER:

The Committee reviewed a draft Charter of the Committee for their consideration and adoption.

IT WAS MOVED BY MR. HUNTER AND SECONDED BY TREASURER SCHMIDT AND CARRIED BY A ROLL CALL VOTE TO APPROVE THE CHARTER AS DRAFTED.

AYES: MR. HUNTER, MS. FLANAGAN, MR. SEIBEL, TREASURER SCHMIDT, MR. BROOKE

NAYS: NONE

MOTION CARRIED

A draft Charter will be presented to the SIB at their February 23, 2018, meeting with final approval by the SIB at their March 23, 2018, meeting.

SECURITIES LITIGATION POLICY:

The Committee reviewed the SIB's existing Securities Litigation policy under Governance/Investments/Securities Monitoring and Litigation, E-14, which was adopted by the SIB on November 20, 2015.

After review and discussion, Treasurer Schmidt will reach out to other State Treasurers for their input on securities litigation policy. The review of the SIB's Securities Litigation policy by the Committee will continue to the next meeting.

MEETING SCHEDULE:

The Committee received a draft of potential meeting dates, times, and location. The Committee concurred on the schedule.

The Committee's next meeting will be held on March 14, 2018, at the Retirement and Investment Office, 3442 East Century Avenue, at 3:00 p.m.

ADJOURNMENT:

With no further business to come before the Committee, Mr. Seibel adjourned the meeting at 3:43 p.m.

Mr. Seibel, Chair

Bonnie Heit
Assistant to the Board

Committee Action Requested

TO: SIB Securities Litigation Committee (Committee)
FROM: Dave Hunter and Connie Flanagan
DATE: March 14, 2018
SUBJECT: **Proposed Charter for Securities Litigation Committee**

RIO's Fiscal & Investment Operations Manager Connie Flanagan drafted the proposed Charter for the Securities Litigation Committee based on the *SIB Audit Committee Charter*. The proposed Charter was reviewed and discussed with the Committee at our last Committee meeting on February 16, 2018. **After further review and discussion with the SIB on February 23, 2018, RIO recommends the Committee approve the revised Securities Litigation Committee Charter, which incorporates comments provided by the Board, and/or offer alternative language for further consideration.**

**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-draft** policy (to be formally approved by SIB) regarding dollar and/or risk thresholds for determining when to opt-out of class actions and/or seek direct litigation or lead plaintiff status;
- **based on SIB approved policy**, 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. **Based on SIB approved policy guidelines**, 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: March __, 2018

DATE SECURITIES LITIGATION COMMITTEE CHARTER ADOPTED AND APPROVED:

March __, 2018

Informational

TO: State Investment Board Securities Litigation Committee

FROM: Dave Hunter

DATE: March 14, 2018

SUBJECT: Review of Current Securities Litigation Policy

Based on SIB guidance shared at our last Board meeting, RIO suggests the Committee make a motion to accept the proposed revisions to our current Securities Monitoring and Litigation policy including any requested changes or request RIO to offer a revised draft of proposed changes at our next Committee meeting.

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 clients², 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 funds^s 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~~through class action ~~bar~~litigation 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 ~~filling~~ 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 firm(s) may be granted ongoing access to security holdings information through the custodian bank or other designated agent.
3. ~~An monitoring~~ agreement with any law firm for monitoring non-litigation services ~~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 or Securities Litigation Committee (Committee) with regards to accounting information on distributions received on claims filed by the custodian bank or other designated agent 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 or Committee. Before bringing any recommendations to the ~~Board~~ SIB or Committee, the Executive Director, with significant assistance ~~by~~ from 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 or Committee.
- 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 in U.S. or Canadian cases. Generally, in cases where the potential loss does not exceed the greater of 0.1% of trust assets or \$5 million, 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 or Committee 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. Generally, in cases where the potential loss does not exceed the Jurisdictional Thresholds referenced in Exhibit A, the SIB will avoid opt-in or group litigation participation.
- ~~c. The role or level of participation in the case by the SIB.~~

Roles in Managing and Monitoring Litigation

1. The SIB or Committee 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~~ SIB's or Committee'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~~ SIB or Committee 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~~ SIB or Committee 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 and Committee 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 or Committee before execution by the Executive Director.

Policy Review

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

Exhibit A
Non-US Opt-In and Group Litigation
Jurisdictional Thresholds

<u>Jurisdictional Description</u>	<u>Threshold</u>
<u>Passive/very low risk jurisdictions, simple registration or claim filing (no participation in litigation required, strong anonymity, very low costs) including, but potentially not limited to: Australia, Israel, Netherlands (including Dutch Foundations), regulatory funds (e.g. Compensation Schemes in UK)</u>	<u>\$20,000</u>
<u>Low risk jurisdictions (no discovery, low cost) including, but potentially not limited to: Japan</u>	<u>\$1 million</u>
<u>Moderate risk jurisdictions (moderate cost, funded/insured to protect from cost shifting, some restricted discovery, not fully public) including but potentially not limited to: Germany, Austria, Belgium, Switzerland, Denmark, Spain, Finland, France, Hong Kong, Indonesia, Ireland, Italy, Korea, Luxembourg, Malaysia, Norway, New Zealand, Portugal, Sweden, and Thailand</u>	<u>\$5 million</u>
<u>High risk jurisdictions (potential in-person discovery, no anonymity, uncapped fees) including, but potentially not limited to: Taiwan, United Kingdom, Singapore, Brazil</u>	<u>\$10 million</u>

Jurisdictional Thresholds are developed in consultation with legal counsel including other designated agents which are experts in global securities litigation matters.

Policy Implemented: November 20, 2015