



ND STATE INVESTMENT BOARD SECURITIES LITIGATION COMMITTEE MEETING

Thursday, November 7, 2019 – 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**
2. Minutes (September 20, 2019) **Committee Action**
3. Securities Litigation Committee Meeting Schedule - Mr. Hunter (5 minutes) **Committee Action**
4. Securities Litigation Firm Updates – Lead Plaintiff Process Overview (45 minutes) *Informational*
 - a. Labaton Sucharow - Mr. Eric Belfi and Mr. Francis McConville
 - b. Market Update: Proxy Voting - Mr. Hunter
5. Securities Litigation Footnote Disclosure of Contingencies - Mr. Hunter (10 minutes) *Informational*
 - a. General Motors (Kasowitz Benson Torres)
 - b. Tribune (K & L Gates)
6. Other - Next Proposed SIB Securities Litigation Committee Meeting

North Dakota Retirement and Investment Office
3442 E Century Ave, Bismarck, ND 58503
Tuesday, February 4, 2020 at 1:00 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 COMMITTEE
MINUTES OF THE SEPTEMBER 20, 2019, MEETING**

BOARD MEMBERS PRESENT: Troy Seibel, Chair
Jodi Smith, Vice Chair
Connie Flanagan, Chief Financial Officer
David Hunter, Executive Director/CIO
Anders Odegaard, Attorney General's Office

STAFF PRESENT: Bonnie Heit, Admin Svs Suprv

GUESTS: Craig D'Alessio, Financial Recovery Technologies (TLCF)
Olav Haazen, Grant & Eisenhofer (TLCF)
Mike Lang, Financial Recovery Technologies (TLCF)
Marc Weinberger, Grant & Eisenhofer (TLCF)

CALL TO ORDER:

Mr. Seibel, Chair, called the State Investment Board (SIB) Securities Litigation Committee meeting to order at 2:36 p.m. on Friday, September 20, 2019, at the Retirement and Investment Office, 3442 E Century Ave, Bismarck, ND.

AGENDA:

IT WAS MOVED BY COMMISSIONER SMITH AND SECONDED BY MS. FLANAGAN AND CARRIED BY A VOICE VOTE TO APPROVE THE AGENDA FOR THE SEPTEMBER 20, 2019, MEETING.

AYES: COMMISSIONER SMITH, MR. SEIBEL, MR. HUNTER, MS. FLANAGAN, AND MR. ODEGAARD

NAYS: NONE

MOTION CARRIED

MINUTES:

IT WAS MOVED BY MR. HUNTER AND SECONDED BY MR. ODEGAARD AND CARRIED BY A VOICE VOTE TO ACCEPT THE MINUTES OF THE MAY 20, 2019, MEETING AS DISTRIBUTED.

AYES: MS. FLANAGAN, MR. ODEGAARD, COMMISSIONER SMITH, MR. SEIBEL, AND MR. HUNTER

NAYS: NONE

MOTION CARRIED

SECURITIES LITIGATION REVIEW:

Mr. Hunter reviewed the history and make-up of the Securities Litigation Committee, their Charter, and the SIB Securities Litigation policy's thresholds for pursuing securities litigation.

Election of Officers:

IT WAS MOVED BY COMMISSIONER SMITH AND SECONDED BY MR. HUNTER AND CARRIED BY A ROLL CALL VOTE TO NOMINATE MR. SEIBEL AS CHAIR OF THE SIB SECURITIES LITIGATION COMMITTEE FOR THE PERIOD OF JULY 1, 2019 - JUNE 30, 2020.

AYES: MR. ODEGAARD, MR. HUNTER, MS. FLANAGAN, MR. SEIBEL, AND COMMISSIONER SMITH
NAYS: NONE
MOTION CARRIED

IT WAS MOVED BY MR. ODEGAARD AND SECONDED BY MR. SEIBEL AND CARRIED BY A ROLL CALL VOTE TO NOMINATE COMMISSIONER SMITH AS VICE CHAIR OF THE SIB SECURITIES LITIGATION COMMITTEE FOR THE PERIOD OF JULY 1, 2019 - JUNE 30, 2020.

AYES: MR. HUNTER, MS. FLANAGAN, MR. SEIBEL, COMMISSIONER SMITH, AND MR. ODEGAARD
NAYS: NONE
MOTION CARRIED

IT WAS MOVED BY MS. FLANAGAN AND SECONDED BY MR. ODEGAARD AND CARRIED BY A ROLL CALL VOTE THAT THE SIB SECURITIES LITIGATION COMMITTEE CHAIR, AS LIAISON TO THE SIB, WILL PROVIDE A REPORT TO THE SIB AT LEAST ON A BIENNIAL BASIS.

AYES: COMMISSIONER SMITH, MR. SEIBEL, MR. HUNTER, MS. FLANAGAN, AND MR. ODEGAARD
NAYS: NONE
MOTION CARRIED

Securities Litigation Firms - Mr. Hunter reviewed pre-approved law firms the Securities Litigation Committee has identified that will be utilized on a case by case basis to provide expert advice when new securities litigation related cases are raised for further consideration by the Securities Litigation Committee. The following firms were preapproved - Bernstein Litowitz Berger & Grossman; Grant & Eisenhofer; and Labaton Sucharow.

The SIB has engaged Grant & Eisenhofer to recover investment losses in the Volkswagen and Danske Bank international securities litigation cases.

Financial Recovery Technologies (FRT) has been retained since 2018 to oversee the recovery of investment losses in the U.S. and international securities litigation cases.

Biennial Agenda - The Securities Litigation Committee reviewed their biennial agenda. No adjustments were made to the agenda.

Securities Litigation Report - Ms. Flanagan reviewed the securities litigation activity report for the fiscal year ending June 30, 2019. There were 60 cases of which \$344,684 was recovered by FRT and The Northern Trust.

Securities Litigation Case Updates - The Securities Litigation Committee entertained a motion to enter into Executive Session to receive an update from Grant & Eisenhofer on the Volkswagen and Danske Bank cases.

IT WAS MOVED BY MR. HUNTER AND SECONDED BY MS. FLANAGAN AND CARRIED BY A ROLL CALL VOTE TO ENTER INTO EXECUTIVE SESSION FOR ATTORNEY CONSULTATION PURSUANT TO NDCC §44-04-18.4(1), §44-04-19.1(9), & §44-04-19.2.

AYES: MS. FLANAGAN, MR. ODEGAARD, COMMISSIONER SMITH, MR. SEIBEL, AND MR. HUNTER
NAYS: NONE
MOTION CARRIED

The Securities Litigation Committee entered into Executive Session at 2:59 p.m. Mr. Seibel, Commissioner Smith, Mr. Hunter, Ms. Flanagan, Mr. Odegaard, Ms. Heit, Mr. Weinstein and Mr. Haazen were present.

After the review, the Securities Litigation Committee entered into Open Session at 3:14 p.m.

The Securities Litigation Committee took no action.

Mr. Weinstein also updated the Securities Litigation Committee on the 3M Company case.

Discussion followed.

The Securities Litigation Committee also received FRT's insight on the 3M Company case by Mr. Lang and Mr. D'Alessio.

Discussion followed on options for the State of ND. The Dept. of Trust Lands and the SIB will both review their own estimated losses and consider the total dollar amount when considering potential actions in the future. The deadline to file the necessary paperwork is September 27, 2019. The Securities Litigation Committee took no action noting the current estimated amount of losses is below the SIB's approved policy threshold, given time constraints, and the amount of time it would take to analyze the data and prepare the paperwork. Mr. Hunter will provide a brief update to the SIB at their September 27, 2019, meeting.

OTHER:

The next Securities Litigation meeting is scheduled for Thursday, November 7, 2019, at the Retirement and Investment Office, 3442 East Century Avenue, Bismarck, ND.

ADJOURNMENT:

With no further business to come before the Committee, Mr. Seibel adjourned the meeting at 3:50 p.m.

Mr. Seibel, Chair

Bonnie Heit
Recorder

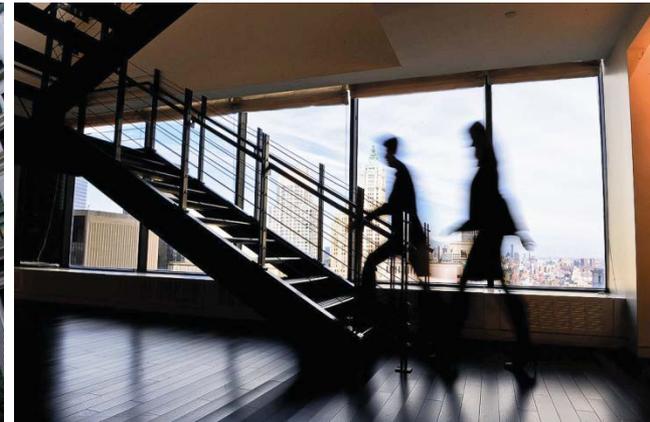
Informational

TO: SIB Securities Litigation Committee (SLC)
FROM: Dave Hunter
DATE: November 1, 2019
SUBJECT: **Proposed Meeting Schedule for 2020**

Proposed meeting dates for the SIB Securities Litigation Committee are as follows for 2020:

February 4, 2020 (Tuesday from 1:00 to 2:30 p.m.)
May 19, 2020 (Tuesday from 1:00 to 2:30 p.m.)
August 11, 2020 (Tuesday from 2:00 to 3:30 p.m.)
November 5, 2020 (Thursday from 1:00 to 2:30 p.m.)

RIO will seek to review the proposed 2020 meeting schedule and seek Committee member input at our SLC meeting on November 7, 2019.



NORTH DAKOTA STATE INVESTMENT BOARD

Securities Class Action Litigation
The Benefits and Responsibilities of Being Lead Plaintiff

Presented by Eric J. Belfi and Francis P. McConville

November 7, 2019

Agenda

- The Private Securities Litigation Reform Act
- Overview of Lead Plaintiff Process
- Class Action Case Evaluation
- Benefits and Responsibilities of Serving as Lead Plaintiff
- Analysis of Exposure and Assessment of Legal Options
- About Us

Purpose of the Private Securities Litigation Reform Act (“PSLRA”)

- The PSLRA was intended “to increase the likelihood that institutional investors will serve as lead plaintiffs” because, among other reasons, institutional investors and other class members with large amounts at stake “will represent the interests of the plaintiff class more effectively than class members with small amounts at stake.”

Overview of Securities Class Action Lead Plaintiff Appointment Process

- New case filing and appointment of lead plaintiff
 - PSLRA (15 U.S.C. § 78u-4) regulates initial process
 - 60 days to file lead plaintiff motion after initial complaint
 - Clear statutory guidelines regarding lead plaintiff selection criteria
 - Race to the courthouse days are over

How Lead Plaintiffs Are Selected

- The court shall adopt a presumption that the most adequate plaintiff in any private action arising under this title is the person or group of persons that:
 - Has either filed the complaint or made a motion in response to a notice [within 60 days of publication of the notice];
 - In the determination of the court, has the ***largest financial interest*** in the relief sought by the class; and
 - Otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

Securities Portfolio Monitoring and Case Evaluation Services



Director of Market Intelligence investigates unusual share price movements and tracks new cases



Case Evaluation Team reviews:

- SEC Filings
- Press Releases
- Analyst Reports
- Media Reports



Investigative Team, composed of eight in-house investigators, locates and develops confidential witnesses with information relating to alleged and potential fraud and corporate misconduct, is led by a former FBI agent



Case Evaluation Team assesses strengths and weaknesses of claims based upon multiple factors, including evidence of wrongdoing, existence of government investigations, etc.



Data Analysis Team:

- Provides global portfolio monitoring
- Assesses client losses
- Evaluates client exposure to potential matters

Case-Specific Recommendations

Current Example: 3M Company

- Initial Case Report
 - Overview of facts
 - Analysis of stock reaction to disclosures
 - Preliminary analysis recommendations
- Comprehensive Case Report
 - Detailed description of the facts
 - Results of our investigation, including confidential witness statements
 - Legal analysis of claims and potential defenses
 - Analysis of damages and loss causation
 - Analysis of court and judge assigned to case
 - Report on Labaton Sucharow's experience in similar cases

INITIAL CASE REPORT

Privileged & Confidential

3M COMPANY

around the court PFAS. Important environmental a PFAS in recent progress.

Overview

3M is a Delaware and related prod 5,000 or more v repellent clothin such as coated p

In 2010, the Sta the eve of trial i After the settler website, which I entitled "3M Cri Defendants kne

On April 25, 20 "was a disappo recorded in the significant litiga PFAS liability. (trading volume.

Following these and consumer fr states. Shortly r Chemours, 3M, for many of our following a pres **\$3.92 per share**

Preliminary clas Labaton Sucharow further undoclo theory of liabiln Company's em

INITIAL CASE REPORT

Privileged & Confidential

3M COMPANY

The following is our preliminary analysis of claims advanced against 3M Company ("3M" or the "Company") in the United States District Court for the District of New Jersey.¹ The Action alleges violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), and Rule 10b-5 promulgated thereunder by the Securities and Exchange Commission (the "SEC"), on behalf of all persons or entities that purchased 3M securities between February 9, 2017 and May 28, 2019, inclusive (the "Class Period").

The North Dakota State Investment Board ("North Dakota" or the "Fund") incurred losses of **\$2,736,609** on its transactions in 3M common stock throughout the Class Period. Based on our analysis of Labaton Sucharow's 200+ portfolio monitoring clients, North Dakota's loss is one of the largest among monitoring clients currently considering lead plaintiff appointment in this Action.

We believe there is merit to the Action as plead. The Action centers on Defendants' misrepresentations and omissions related to 3M's most lucrative product, PFAS. Specifically, the Action alleges that while publicly denying that PFAS causes harm to humans and the environment, Defendants concealed and misrepresented: (i) 3M's vast internal evidence dating back decades confirming that PFAS are toxic; (ii) 3M's decades-long history of suppressing negative information and/or damaging data about PFAS; and (iii) 3M's legal exposure to state, county, and local governments and individuals

Ticker	MMM (NYSE)
CUSIP	48579Y101
ISIN	US88579Y1010
Based	St. Paul, Minnesota
Incorporated	Delaware
Class Period	02/09/2017 – 05/28/2019
L.P. Deadline	09/27/2019
Venue; Judge	D. N.J.; Claire C. Cecchi
Loss	2,736,609

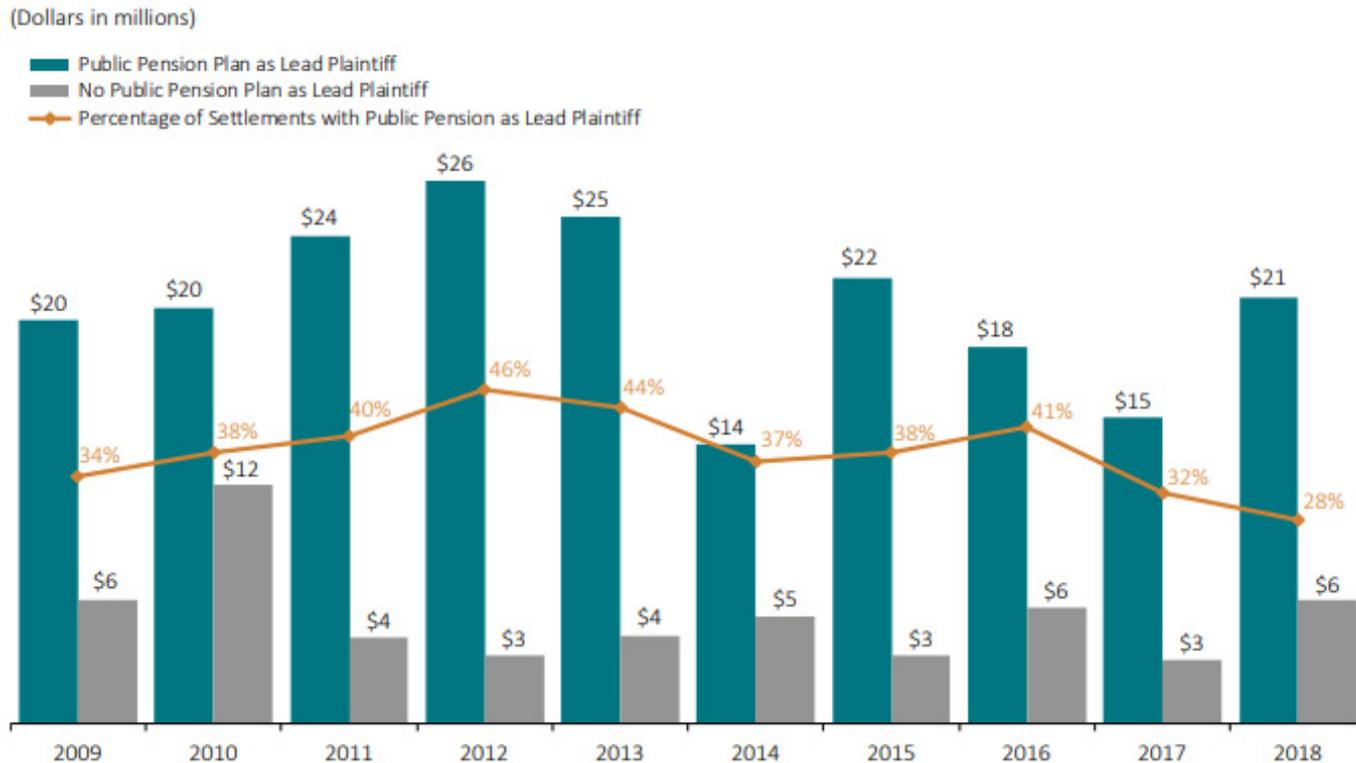
¹ See *Heary & General Laborers' Locals 472 & 172 Welfare Fund v. 3M Company*, 19-cv-15982 (D. N.J.) (the "Action"). In addition to the Company, the Action names the following individuals as defendants: (1) Inge G. Thulin, the Company's former Chief Executive Officer ("CEO"); (2) Michael F. Roman, the Company's current CEO; and (3) Nicholas C. Gangestad, the Company's current Chief Financial Officer ("CFO") (together with 3M, the "Defendants"). A coparcet action against Defendants expanding the class definition to include all "securities" was filed on August 22, 2019, in Federal District Court for the District of New Jersey. See *Rossini v. 3M Company*, 19-cv-17000 (D. N.J.).

Active Participation: Benefits of Serving as Lead Plaintiff

- Actions led by institutional investors are taken more seriously by courts and defendants, **increasing likelihood of success**
 - Leadership of an institutional investor often makes the difference between achieving a recovery or having a case dismissed
- Actions led by institutional investors **have larger recoveries**
- Institutional investor lead plaintiffs have greater influence over the **quality and experience-level of lawyers** litigating action
- Institutional investor lead plaintiffs with large financial interests have greater ability to **negotiate reasonable attorneys fees**
- Institutional investor lead plaintiffs are more likely to seek **corporate governance improvement** for long-term share value

Involvement by Institutions Leads to Higher Settlement Values

- Data indicates that when public pension funds are appointed as lead plaintiff, they tend to obtain better results for the class



Responsibilities of Lead Plaintiff

- Lead Plaintiff represents similarly situated shareholders and acts in the best interests of the class, working with its counsel to oversee litigation
- During the first 12 to 18 months of litigation very little staff/board time is required: ***no more than a few hours every few months***
 - Review retention and fee agreement
 - Review periodic case updates and pleadings
 - Preserve relevant documents related to share purchases
- During later phase of litigation slightly more staff time may be required, but ***it will be kept to a minimum***
 - Review periodic case updates and pleadings
 - In some cases sit for a short deposition, but this is often unnecessary
 - Authorize and participate in settlement negotiations

Determination of Taking Legal Action

- We can identify securities litigation matters where NDSIB has exposure and provide client-specific analysis regarding the loss and options for recovery
- We are mindful of our clients' limited time and prioritize our recommendations accordingly – we **rarely recommend active participation** in litigation

Active Participation

- Consider when **exposure** is significant
- Seek appointment as lead plaintiff in certain cases – courts generally appoint investor with largest financial interest
- Pursue “opt-out” from class action and/or bring a direct action

Passive Participation

- Remain member of class in U.S. class action
 - Cede control of contours of class action to lead plaintiff and their counsel

About Us

- Internal Infrastructure

- More than 70 attorneys

- Firm Locations:

- New York
- Delaware
- Washington, D.C.

- Significant trial and appellate court experience

- Largest team of in-house investigators in the plaintiffs securities bar (including former FBI agents and other law enforcement)

- Forensic accountants, certified public accountant, and certified fraud examiners

- Securities/financial analysts

- Includes analyst with experience as an examiner, financial engineer, and quantitative analyst for the SEC, and as a portfolio manager and specialist for a number of investment firms and asset managers



Labaton Sucharow LLP



Representative Clients

- Retained by more than 300 major financial institutions (including over 30 State pension funds) with combined assets under management in excess of \$2 trillion, including:
 - Public Employees' Retirement System of Mississippi
 - Nebraska State Investment Council
 - Indiana Public Retirement System
 - Public Employee Retirement System of Idaho
 - Employees Retirement System of Rhode Island
 - Connecticut Retirement Plans and Trust Funds
 - Virginia Retirement System
 - Maryland State Retirement System

Contact Information



Eric J. Belfi

(212) 907-0878

ebelfi@labaton.com

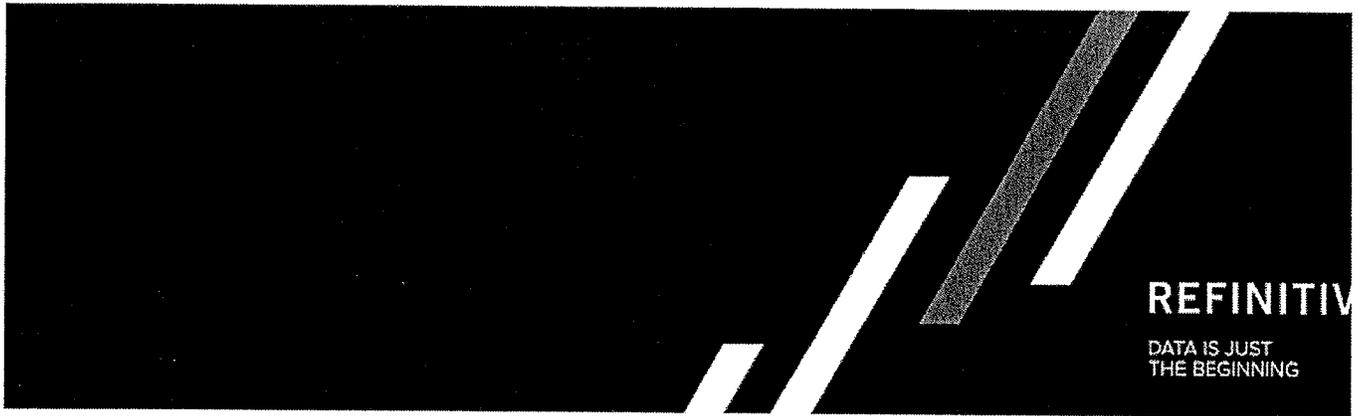


Francis P. McConville

(212) 907-0650

fmconville@labaton.com





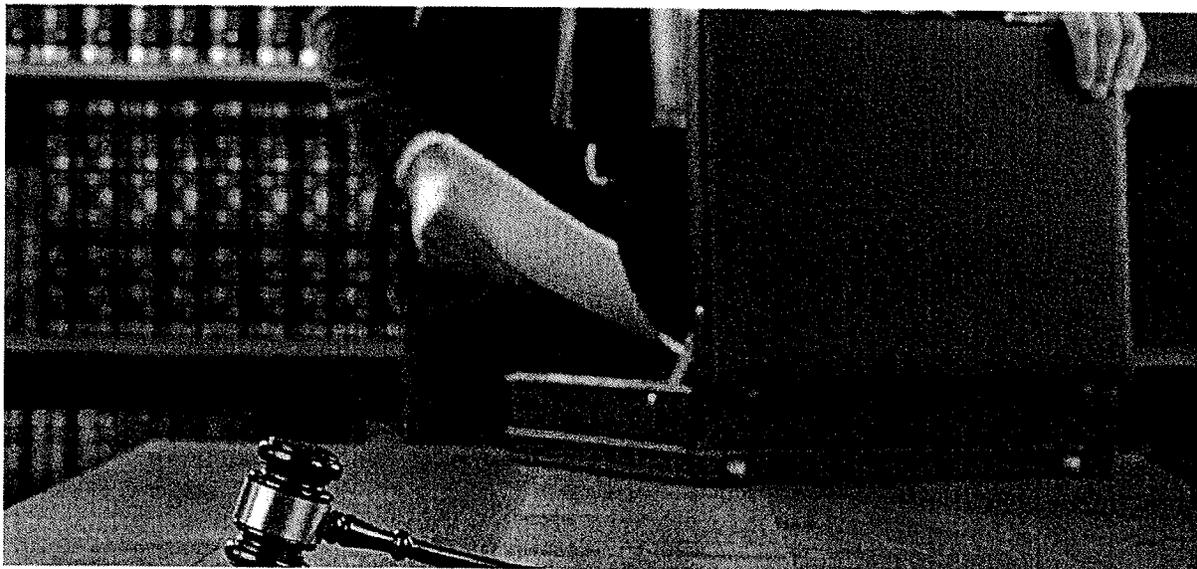
Home > COURTS

October 31, 2019 04:02 PM | 12 HOURS AGO

ISS sues SEC to stop proxy guidance

HAZEL BRADFORD

TWEET SHARE SHARE EMAIL





Getty Images/iStockphoto

Proxy advisory firm Institutional Shareholder Services Inc. filed a lawsuit Thursday against the Securities and Exchange Commission to halt agency guidance stipulating that proxy advisory firms must disclose how they reach their shareholder recommendations, among other changes.

The complaint, filed in the U.S. District Court for the District of Columbia, Washington, contends that the guidance issued Aug. 21 is unlawful because it exceeds the SEC's statutory authority and was not developed according to rule-making standards.

The lawsuit also contends that the guidance is arbitrary and capricious “because, even though it marks a significant change in the regulatory regime applicable to proxy advice, the SEC has denied that it is changing its position at all. The agency has thus flouted the basic requirement of reasoned decision-making that it at least display awareness that it is changing its position,” ISS said in a release.

“We are deeply concerned that it will be used or interpreted in a way that could impede our ability to deliver our data, research and analyses in an independent and timely manner,” ISS President and CEO Gary Retelny said in the release. “We believe litigation to be necessary to prevent the chill of proxy advisers' protected speech and to ensure the timeliness and independence of the advice that shareholders rely on to make decisions with regards to the governance of their publicly traded portfolio companies.”

Linda Kelly, senior vice president, legal, general counsel, and corporate secretary for the National Association of Manufacturers, said in a statement responding to the ISS lawsuit that the SEC “clearly has the authority to provide appropriate oversight of proxy advisory firms via the proxy solicitation rules. We recognize the role these firms play, but they have a track record of providing error-ridden and biased reports that pose a danger to Main Street investors' retirement savings.” NAM members, she said, “will continue to support the SEC's efforts to restore balance to the proxy process.”

Concern over the guidance and an upcoming Nov. 5 vote on more proxy adviser rule-making is also shared by the Council of Institutional Investors,

Washington. In an Oct. 24 letter to the SEC, CII Executive Director Ken Bertsch told the commissioners that the reports of pervasive factual errors in proxy adviser reports are exaggerated or based on misinformation by business groups, and urged SEC officials to gather evidence itself before moving forward on any new rules.

“If the SEC intends to impose a new regulatory structure on proxy advisory firms, it needs to develop evidence, not just leave it to assertions by the subjects of proxy adviser analysis,” Mr. Bertsch wrote.

RELATED ARTICLES



SEC shifting to more oversight of proxy firms



SEC lays out proxy advisory firms' responsibilities



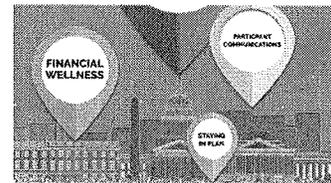
Commentary: It's time for the SEC to tackle proxy advisory firms

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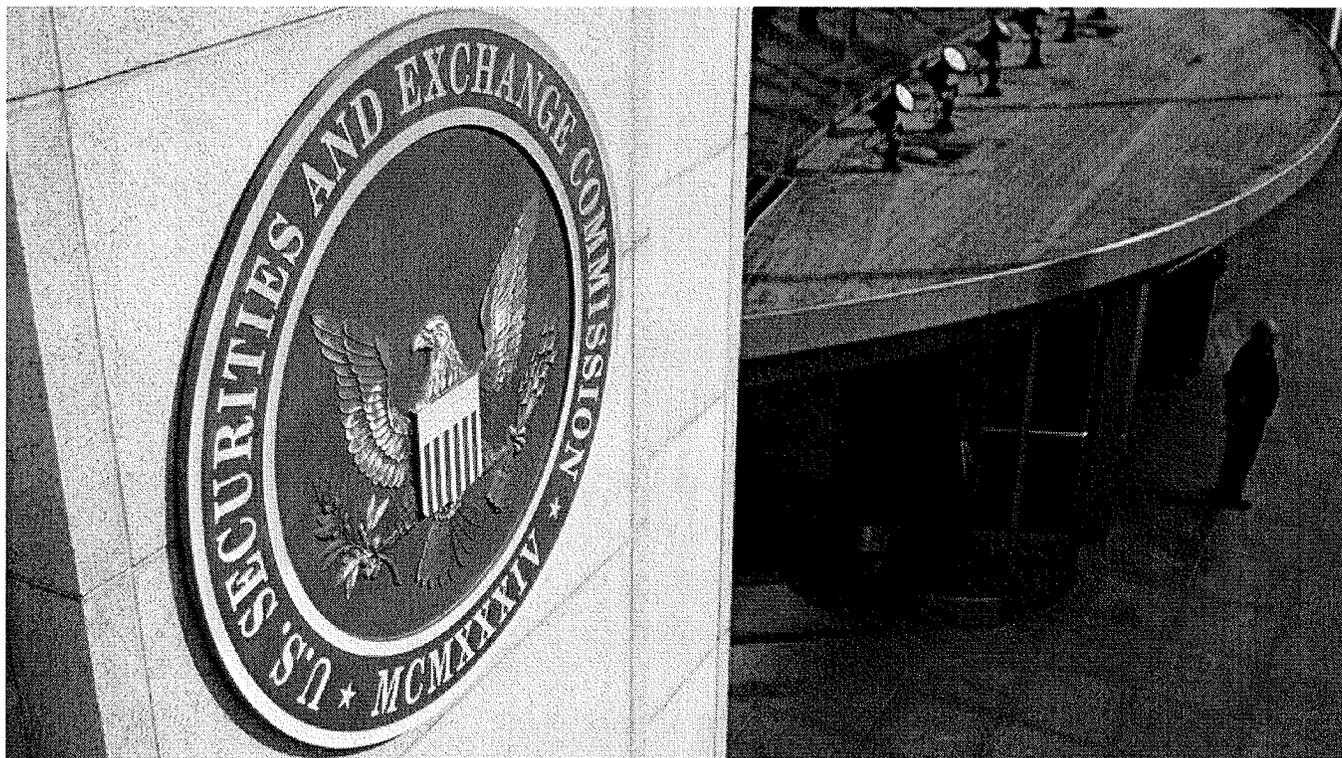
Pensions & Investments

October 30, 2019 01:39 PM | UPDATED 3 HOURS AGO

SEC to vote on changes to shareholder proposal process

Agency to also weigh tighter rules for proxy advisory firms

HAZEL BRADFORD



Bloomberg

The SEC will consider requiring more disclosure of any material conflicts of interest and create procedures for issuer and shareholder engagement.

The SEC is to vote on amending rules governing the shareholder proposal process and to issue rules on disclosure from proxy advisory firms.

The Securities and Exchange Commission is to vote Nov. 5 on whether to amend rules governing the shareholder proposal process and to issue rules requiring more disclosure from proxy advisory firms.

The commission will consider requiring more disclosure of any material conflicts of interest and create procedures "to facilitate issuer and shareholder engagement," a move supported by business groups. In August, the SEC approved guidance stipulating that proxy advisory firms must disclose how they reach their shareholder recommendations.

On the shareholder proposal process changes, a notice on the SEC website posted Wednesday describes it as modernizing submission and resubmission requirements and updating procedural requirements, which is expected to include higher ownership thresholds for submitting proposals.

The shareholder proposal process under SEC Rule 14a-8 allows shareholders meeting certain criteria to submit proposals to be included in a company's proxy statement to be voted on by all shareholders. Business groups have pushed for changes, including higher ownership thresholds. An October 2018 report by the U.S. Chamber of Commerce's Center for Capital Markets Competitiveness found that "zombie proposals" — ones submitted three or more times without garnering majority support — divert corporate resources and harm other shareholders.

Institutional investors consider those shareholder proposals and votes part of their fiduciary duty to beneficiaries. "We don't yet know what the SEC will propose, but we are concerned it may reduce shareholder rights," said Ken Bertsch, executive director of the Council of Institutional Investors, in an email.

Mr. Bertsch said the SEC description of what changes are being considered for proxy advisers "is particularly cryptic, but we gather from news reports that the commission may propose a regulatory structure that would undercut the contractual relationship between investor clients and proxy advisory firms, limiting the firms' independence and business viability.

"The goal appears to be a more management-friendly approach by proxy advisers, particularly on executive compensation," Mr. Bertsch said. "As we wrote to the SEC last week, there is little evidence for the main contention of CEO organizations that tighter regulation is needed because of pervasive errors in proxy advisory firm reports. The SEC should proceed based on evidence, not pressure from CEOs who would like more control of the voting process."

The current commission includes two Democrats and three Republicans, including Chairman Jay Clayton.

The changes are expected to be approved.

RELATED ARTICLES



CII urges SEC to reconsider proxy advisory firm regulation



SEC lays out proxy advisory firms' responsibilities



Sierra Club sues SEC over denial of climate-related shareholder resolutions

Inline Play

Source URL: <https://www.pionline.com/regulation/sec-vote-changes-shareholder-proposal-process>

Pensions & Investments

August 21, 2019 03:16 PM

SEC lays out proxy advisory firms' responsibilities

BRIAN CROCE



Bloomberg

Elad Roisman is leading SEC efforts to revamp the proxy voting process; he said the Wednesday vote will not be the last on this issue.

SEC commissioners approved guidance stipulating that proxy advisory firms must disclose how they reach their shareholder recommendations.

SEC commissioners approved guidance Wednesday stipulating that proxy advisory firms must disclose how they reach their shareholder recommendations, in a move applauded by the business community.

The SEC issued an interpretation that proxy voting advice provided by proxy advisory firms generally constitutes a "solicitation" under the federal proxy rules and said the

failure to disclose certain information required under existing law would render the advice materially false or misleading.

The commissioners also approved guidance that clarifies how an investment adviser's fiduciary duty relates to an adviser's proxy voting on behalf of clients, particularly if the investment adviser retains a proxy advisory firm. The guidance follows a question-and-answer format and provides examples to help facilitate compliance.

"It's giving a road map of what can be done to help you navigate the existing rules," said Laura D. Richman, counsel at law firm Mayer Brown, who focuses on corporate governance issues and public disclosure obligations.

Both measures passed in 3-2 votes; Democratic commissioners Robert Jackson Jr. and Allison H. Lee dissented.

Ms. Lee said the guidance introduces "increased costs and time pressure into an already byzantine and highly compressed process." Moreover, it calls for "more issuer involvement in the process despite widespread agreement among institutional investors and investment advisers that greater involvement would undermine the reliability and independence of voting recommendations."

Gary Retelny, president and CEO of Institutional Shareholder Services, a proxy advisory firm that along with Glass Lewis & Co., controls about 97% of the market, said the guidance could hurt business and its clients.

"While we will carefully review the guidance issued today to understand the potential impacts for our clients, upon initial review we are concerned that the guidance will hamper our ability to deliver independent, timely and accurate research, data, insights and perspectives to aid in the discharge of their fiduciary duties," said Gary Retelny, president and CEO of ISS, in a statement.

Business groups like the U.S. Chamber of Commerce, applauded the SEC's decision.

"Proxy advisory firms have been riddled with conflicts of interest, failed to link advice with economic return or company specific information, and lack process and transparency," said Tom Quaadman, executive vice president of the chamber's Center of Capital Markets Competitiveness, in a statement. "We commend the SEC for taking

a critical first step in bringing much-needed oversight to proxy advisory firms, and we hope the SEC and other regulators take further action to ensure that proxy advisory firms provide 'decision useful' information to investors."

Through its votes Wednesday, the SEC is not building a new regulatory regime but is explaining the contours of an existing one to help investment advisers and proxy advisers carry out their responsibilities, Commissioner Hester M. Peirce said at the meeting.

"The guidance we are issuing today regarding the provision of proxy advice is designed to help proxy advisers think through their role in the proxy process," Ms. Peirce said.

Gail C. Bernstein, general counsel for the Investment Advisers Association, said she is concerned the guidance will increase costs for advisers and also increase barriers to entry for proxy advisory firms. "While the commission stated at the open meeting that its actions do not create new obligations, we believe that as a practical matter they will for investment advisers," Ms. Bernstein said in a statement. "We are disappointed that the guidance was issued without the opportunity for public comment and without the benefit of an economic analysis."

Commissioner Elad L. Roisman, who is leading the commission's efforts to revamp the proxy voting process, indicated that Wednesday's votes will not be the last on this issue.

Pensions & Investments

July 17, 2019 12:00 PM

Commentary: It's time for the SEC to tackle proxy advisory firms

J.W. Verret



J.W. Verret

It's time for the Securities and Exchange Commission to force the hand of proxy advisers to provide real transparency to the market.

As annual general meeting season comes to a close, there is greater significance to the Securities and Exchange Commission's recent attention to the debate over the role of proxy advisers. The SEC is considering rules on proxy adviser regulation that stand to reshape the industry. Critics of proxy adviser reform question the need for action and argue that investors are not calling for reform. They are wrong.

Among institutional investors, the view is mixed. Certain fund managers such as Trillium Asset Management and Neuberger Berman have been vocal in their defense of the services that proxy advisers provide them. Others, most notably Blackrock, have called for greater accuracy in the data provided by proxy firms, as well as transparency over their operations. That view is shared by many retail investors. Recently, nearly 5,000 participated in a survey of their views on the role and influence of proxy advisers in an extensive study I helped to design. A clear majority voiced support for greater regulatory oversight of proxy advisers.

The power of these firms is unquestionable — and their recommendations shape the outcome of many annual meetings and transactions across capital markets. Hidden behind a veil of opacity, the leading proxy advisers, Institutional Shareholder Services and Glass Lewis, and their proponents argue they have no material influence over voting and merely provide independent research to thousands of institutional investors. Starboard Value, Rite Aid and Albertsons Cos. and a host of companies on the receiving end of negative recommendations are likely to disagree. Those anecdotes are supplemented by academic research.

SEC Commissioner Elad Roisman recently said that "asset managers disclose that they have adopted the proxy voting policies developed by proxy advisory firms." Certain funds not only tend to follow a proxy advisers' house policy but have internal policies in place that make it extremely difficult to vote in a way that diverges from recommendations. Emboldened, ISS and Glass Lewis have anointed themselves as quasi-regulators. The most egregious and recent example is Glass Lewis' statement that it would consider recommending against directors on boards that have excluded proposals under SEC rules. It seems Glass Lewis may view itself as a higher power than the regulator of U.S. capital markets. Worse, ISS has been known to threaten companies to use their "consulting services" in order to spur favorable recommendations. Unsurprisingly, a growing number of stakeholders are starting to voice their concerns over the duopoly that exists in the proxy adviser market.

If proxy advisers were simply a product of market competition, there would be no need for action. But the SEC created the market for these entities with a series of regulatory guidance letters 15 years ago, and early entrants took over the market. The power and prominence of ISS and Glass Lewis is inextricably linked to providing recommendations that allow institutional investors to meet their fiduciary obligations. Without the recommendations, their often-cited research may not be considered very valuable. Having put in place rules creating an artificial demand for proxy advisers, and encouraging investment advisers to use them, the SEC must take a level of responsibility over these entities.

Encouragingly, the SEC has now embarked on that journey to enhance investor protection by reviewing the role proxy advisers play in the U.S. proxy system. Providing clarification that institutional investors can elect when to vote or default to management would be a positive step to tackle the problems associated with existing rules. The SEC should also require added disclosure about how proxy advisers make recommendations, the expertise of those issuing recommendations and — failing an outright ban on clear conflicts of interests — far greater disclosure of their existence, including how they market consulting services to issuers under the soft threat of bad recommendations. And efforts must be made to ensure the accuracy of research being provided — by allowing companies to review draft reports and requiring proxy advisers to report on errors spotted by clients.

The efforts to enhance the quality of proxy adviser reports are likely to meet resistance.

One of the key aims of investment is generating sufficient returns to safeguard the future of investors. Institutional investors claim to discharge their fiduciary obligation by delegating voting decisions to firms who enjoy artificial demand for their services created by regulation, without having to meet any regulatory standards themselves.

Until the SEC can fully undo the damage done by the initial proxy adviser letters, it should be guided by the maxim that sunlight is the best disinfectant. It's time for regulators to force the hand of proxy advisers to provide real transparency to the market.

J.W. Verret is an associate professor at the Antonin Scalia Law School at George Mason University, Fairfax, Va. He also serves on the investor advisory committee of the Securities and Exchange Commission. This content represents the views of the author. It was submitted and edited under P&I guidelines but is not a product of P&I's editorial team.

Pensions & Investments

October 15, 2018 01:00 AM

ISS, CII launch website in opposition to House proxy agency bill

BRIAN CROCE



ISS and CII have created a website in opposition of a bill in Congress that they say would alter the nation's proxy advisory landscape.

Institutional Shareholders Services and the Council of Institutional Investors have created a website in opposition of a bill being floated in Congress that they say would alter the nation's proxy advisory landscape.

The website, Protect the Voice of Shareholders, was launched Oct. 2 and "corrects the inaccurate rhetoric pushed by H.R. 4015 proponents," according to an ISS and CII news release.

H.R. 4015, the Corporate Governance Reform and Transparency Act of 2017, passed the House of Representatives late last year and is now being considered in the Senate. Under the bill, proxy firms would have to register with the Securities and Exchange Commission, disclose potential conflicts of interest and codes of ethics, and make public their methodologies for formulating proxy recommendations and analyses.

ISS and CII are opposed to the bill.

"While proponents of H.R. 4015 have created the illusion of problems in proxy advising that need fixing by Congress, what they really seek to do is minimize the voice of shareholders and investors on matters like CEO pay," said Ken Bertsch, executive director of CII, in the news release. "H.R. 4015 would require proxy advisory firms to share their research reports and voting recommendations with the companies that are the subject of their reports and recommendations before they share them with their paying customers, institutional investors. Giving companies the right to review proxy advisors' work before it goes to actual clients is unprecedented interference in the commercial marketplace."

The new website prompts visitors to contact their senators and tell them to oppose H.R. 4015. It also touts a Morning Consult poll conducted in August that found 63% of voters are against the proposed legislation.

Inline Play

Source URL: <https://www.pionline.com/article/20181015/PRINT/181019919/iss-cii-launch-website-in-opposition-to-house-proxy-agency-bill>

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**TELL
CONGRESS
NO
ON H.R. 4015**

Protect the Voice of Shareholders

James McRitchie, [October 3, 2018](#),

Protect the Voice of Shareholders is the name of a new website created by Institutional Shareholders Services (ISS) and the Council of Institutional Investors (CII). The educational **website** supports the current system, where institutional investors pay for and receive independent research and voting recommendations from proxy advisory firms for the public corporations in which they are owners.

The site was launched in conjunction with a new Morning Consult **poll** of nearly 2,000 registered voters that found voters do not want Senators to advance the mis-named Corporate Governance Reform and Transparency Act of 2017 (H.R. 4015). H.R. 4015 passed in December 2017 in the U.S. House of Representatives and that, among other changes, would permit public company management to potentially stall or block proxy adviser reports and recommendations to their investor clients.

Said Gary Retelny, ISS president and CEO,



H.R. 4015 would harm workers and retirement savers across the country who entrust institutional investors with making informed investment decisions with their hard-earned money. This poll makes clear that American voters want their pension, IRA, and 401(k) managers to continue to receive unbiased, independent research and recommendations from proxy voting advisers and do not support a new law that would change the current system.

The new **website**, *Protect the Voice of Shareholders* (www.ProtectShareholders.org), corrects the inaccurate rhetoric pushed by H.R. 4015 proponents and shines light on the powerful special interests that are pushing the legislation. ISS and CII encourage individuals to visit the website to understand why they have collaborated to provide clarity and transparency on these important issues.

Said Ken Bertsch, Executive Director of the Council of Institutional Investors,



While proponents of H.R. 4015 have created the illusion of problems in proxy advising that need fixing by Congress, what they really seek to do is minimize the voice of shareholders and investors on matters like CEO pay. H.R. 4015, would require proxy advisory firms to share their research reports and voting recommendations with the companies that are the subject of their reports and recommendations before they share them with their paying customers, institutional investors.

Giving companies the right to review proxy advisors' work before it goes to actual clients is unprecedented interference in the commercial marketplace. In practice, it could have the effect of slowing down the issuance of these reports, giving institutional investors less time to do their own analysis. It could also have the effect of encouraging proxy advisory firms to skew their reports and recommendations in favor of companies and no longer allow institutional investors to receive the unbiased and independent information they find useful in assisting them in making informed proxy voting decisions.

Finally, H.R. 4015 would increase regulatory costs imposing higher barriers to entry for new firms to enter, or existing firms to remain in, the industry.

A Morning Consult **poll** of 1,975 registered voters, fielded August 27-29, finds H.R. 4015 to be an important bipartisan issue that Senators should take into account when considering legislation that would undermine institutional investors and their proxy voting advisers. The findings include:

Voters oppose H.R. 4015 and want their Senator to oppose it too

- When asked “Do you support or oppose your Senator backing this proposed law?” of those who expressed opposition (strong or somewhat) or support (strong or somewhat), which was 1,031 respondents, a vast majority – 61% – oppose their Senator backing this legislation.

Institutional Investors should get first look at proxy adviser reports

- Registered voters. 47% of registered voters say Institutional Investors should get a first look at the research and recommendations prepared by proxy advisers, while only 13% say the CEOs and management teams should get a first peek.
- Party Affiliation. There is strong support across the political spectrum for this position – 65% from Democrats, 61% from Republicans, and 55% from independents.

Weighing in on corporate voting matters: Registered voters believe that CEOs and the management teams of public corporations should not interfere with corporate voting matters.

- Across the board, respondents agreed that firms that invest in public corporations on behalf of shareholders should have the ability to receive independent research and vote recommendations, and that public corporation CEOs and management should not interfere in the preparation of that research.
- In fact, voter support is **more than double** (54% versus 20%) compared to the point of view that “if they have a difference of opinion, CEOs and management of public corporations should be able to add their own comments to research reports made by independent researchers on matters like setting their own pay or appointing new people to serve on the Board.”

Opposition to H.R. 4015 also comes down to cost.

- 45% of registered voters say they are less likely to support the proposed law on the basis it may increase the cost to everyday shareholders saving for their futures through a pension, IRA or 401(k) plan. By contrast, just 18% say they would be more likely to support the law.
- This sentiment is strongest among Baby Boomers (and 54 – 72), with 54% less likely to support the proposed law due to cost.

More poll details can be found **here**. Full **list of organizations supporting *Protect the Voice of Shareholders*** effort. Congratulations to CII and ISS. I hope *Protect the Voice of Shareholders* will more reach more Americans than the fake news of the so-called **Main Street Investors Coalition**, which is spending millions to ensure corporations are controlled by managers and entrenched boards.

Informational

TO: SIB Securities Litigation Committee

FROM: Dave Hunter, ED/CIO, and Connie Flanagan, Chief Financial Officer

DATE: November 1, 2019

SUBJECT: Securities Litigation – Footnote Disclosure of Contingencies

Note 11 - Contingencies/Litigation

The State Investment Board has been named as a defendant in two cases, arising out of the Tribune and General Motors bankruptcy proceedings, relating to securities that were purchased by external investment managers in one or more portfolios held by the SIB on behalf of its investment client funds. Outside counsel has been retained for both cases, in addition to assistance received from the ND Office of Attorney General. The SIB became a party to a Settlement Agreement dated April 10, 2019, as a Term Lender in the General Motors bankruptcy proceeding. This liability will be borne by other parties, so no liability was accrued by the SIB as of June 30, 2019. On July 15, 2019, in the Tribune proceeding, the Litigation Trustee filed a Notice of Appeal to the Second Circuit, appealing the various judgements of the U.S. District Court that dismissed his claims against defendants in the Action and denying leave to amend his complaint to add a constructive fraudulent conveyance claim. It is expected that briefing of the legal issues before the Second Circuit will occur in late 2019 and early 2020. Accordingly, no liability has been recorded at this time.

Note: K&L Gates has been retained for legal representation in the Tribune case and Kasowitz Benson Torres has been retained for legal representation in the General Motors case, as overseen and approved by North Dakota's Office of the Attorney General.