



**ND STATE INVESTMENT BOARD
SECURITIES LITIGATION COMMITTEE**

SPECIAL MEETING

Thursday, April 30, 2020, 8:00 a.m.
North Dakota Retirement and Investment Office (RIO)
RIO Conference Room (Virtual Meeting Host)
Teleconferencing – 701.328.7950 Participant Code – 696855#
3442 East Century Avenue, Bismarck, ND

AGENDA

1. Call to Order and Approval of Agenda – Chief Deputy Attorney General Seibel **Committee Action**
2. Minutes (November 7, 2019) **Committee Action**
3. Securities Litigation Committee (SLC) Updates – Mr. Hunter (20 minutes)
 - a. New SLC Member - Assistant Attorney General Mr. Dean DePountis – Mr. Hunter (verbal)
 - b. Pending Securities Litigation Activity – Mr. Hunter *Informational*
 - c. Securities Litigation Market Update – Mr. Michael Lange & Mr. Craig D’Alessio *Informational*
 - d. Executive Director Recommendation – Mr. Hunter **Committee Action**
4. Other - Next Proposed SIB Securities Litigation Committee Meeting

North Dakota Retirement and Investment Office
3442 E Century Ave, Bismarck, ND 58503
Tuesday, May 19 at 1:00 PM
5. 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 NOVEMBER 7, 2019, MEETING**

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

MEMBERS ABSENT: Jodi Smith, Vice Chair

STAFF PRESENT: Amy Carlson, Investment Accountant
Bonnie Heit, Admin Svs Suprv

GUESTS: Eric Belfi, Labaton Sucharow
Francis McConville, Labaton Sucharow

CALL TO ORDER:

Mr. Seibel, Chair, called the State Investment Board (SIB) Securities Litigation Committee meeting to order at 3:00 p.m. on Thursday, November 7, 2019, at the Retirement and Investment Office, 3442 E Century Ave, Bismarck, ND.

AGENDA:

IT WAS MOVED BY MS. FLANAGAN AND SECONDED BY MR. HUNTER AND CARRIED BY A VOICE VOTE TO APPROVE THE AGENDA FOR THE NOVEMBER 7, 2019, MEETING.

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

NAYS: NONE

MOTION CARRIED

ABSENT: COMMISSIONER SMITH

MINUTES:

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

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

NAYS: NONE

MOTION CARRIED

ABSENT: COMMISSIONER SMITH

MEETING SCHEDULE:

The Securities Litigation Committee reviewed a draft of 2019-20 meeting dates and times.

IT WAS MOVED BY MR. HUNTER AND SECONDED BY MS. FLANAGAN TO APPROVE THE SECURITIES LITIGATION COMMITTEE'S MEETING SCHEDULE FOR 2019-20.

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

NAYS: NONE

MOTION CARRIED

ABSENT: COMMISSIONER SMITH

SECURITIES LITIGATION:

Lead Plaintiff - Labaton Sucharow representatives reviewed "lead plaintiff" process, benefits, and responsibilities with the Securities Litigation Committee.

The Securities Litigation Committee felt the SIB's Securities Litigation policy authorized the Securities Litigation Committee to take a "lead plaintiff" position if a case would warrant those actions whereby the Securities Litigation Committee would need to act quickly. Mr. Seibel will review and confirm with the SIB at their November 22, 2019, meeting.

Proxy Voting - Mr. Hunter reviewed the current SIB proxy voting policy. Proxy voting for the SIB's portfolios are delegated to the investment managers. Labaton Sucharow representatives shared how other entities manage their proxy voting. Mr. Hunter will be following-up with the SIB and working with Dept. of Trust Lands to ensure both entities are managing their proxy voting in the best interests of the State of North Dakota.

FOOTNOTE DISCLOSURE OF CONTINGENCIES:

Mr. Hunter updated the Securities Litigation Committee on the Tribune and General Motors bankruptcy cases. Outside counsel has been retained for both cases with additional assistance from the ND Office of Attorney General.

The SIB became a party to a Settlement Agreement 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.

Tribune proceeding, the Litigation Trustee filed a Notice of Appeal to the Second Circuit, appealing the various judgements of the US District Court that dismissed the claims against defendants in the action and denying leave to amend the complaint to add a constructive fraudulent conveyance claim. Briefing of the legal issues before the Second Circuit will occur late 2019 or early 2020. No liability has been recorded at this time.

OTHER:

The next Securities Litigation meeting is scheduled for Tuesday, February 4, 2020, 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 4:15 p.m.

Mr. Seibel, Chair

Bonnie Heit
Recorder

Committee Action

TO: SIB Securities Litigation Committee

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

DATE: April 28, 2020

SUBJECT: Securities Litigation – Nissan Motor Co. Ltd. (Nissan)

- Financial Recovery Technologies (FRT), our securities litigation monitoring firm, made RIO aware of a developing international securities litigation case against Nissan on Friday, April 24th.
- The proposed action alleges that investors in Nissan suffered damages as a result of the revelations of financial misconduct that led to the arrest of former Nissan Chairman, Carlos Ghosn (as described in [Exhibit B](#)).
- Based on our SIB approved SLC Charter, the Committee is authorized to “[make decisions on the level of participation the SIB will take in ... opt-in or group litigation](#)” cases and “[approve the selection of special assistant attorneys](#)” under the guidance and approval of the AG office ([SLC Charter](#) on next page).
- On April 27, RIO discussed the merits of this case with Craig D’Alessio and Michael Lange of FRT to confirm: 1) estimated damages are approximately \$1.2 million; 2) the legal jurisdiction is Japan; and 3) the SIB approved litigation threshold for Japan is \$1 million ([Exhibit A](#)).
- The attached FRT “Opt-In” Monitoring Alert states the “Jurisdiction Risk” for this Nissan Motor Corporation case in Japan is deemed to be “Low Risk” for “Costs” and “Discovery” and “Medium Risk” for “Anonymity” ([Exhibit B](#)).
- FRT Senior Vice President of Worldwide Litigation Michael Lange stated there is “very little downside risk to pursuing securities litigation in this case and there is a good chance of obtaining a 25% estimated recovery” which translates into “an approximate \$300,000 gross loss recovery or an estimated \$225,000 net loss recovery” after up to a 25% contingent fee arrangement which may require the approval of the ND Emergency Commission on May 12, 2020.
- If the SLC concurs, RIO will request Mr. Michael Lange and Mr. Craig D’Alessio to share additional background on the merits and risks of electing to “Opt-In” to the Nissan securities litigation case including the engagement of Kessler, Topaz, Meltzer, Check LLP, an FRT approved securities litigation firm and a Special Assistant Attorney General (SAAG) appointment by our AG office.

**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:

- 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.

Committee Action Requested:

RIO respectfully requests the SLC to consider engaging Kessler, Topaz, Meltzer, Check LLP to Opt-In into international group securities litigation to recover an estimated \$225,000 in net loss recoveries from an alleged fraud committed by Nissan Motor Co. Ltd. noting the participation deadline is May 1, 2020. This recommendation is consistent with our SIB approved SLC Charter and Policy noting the jurisdictional threshold for Japan is \$1 million (per Exhibit A) and is classified as Low Risk for Costs and Discovery by FRT (per Exhibit B).

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

Jurisdictional Description	Threshold
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)	\$20,000 (FRT proposal to lower to zero)
Low risk jurisdictions (no discovery, low cost) including, but potentially not limited to: Japan	\$1 million
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	\$5 million
High risk jurisdictions (potential in-person discovery, no anonymity, uncapped fees) including, but potentially not limited to: Taiwan, United Kingdom, Singapore, Brazil	\$10 million

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

JAPAN: Nissan Motor Corporation

Company	Nissan Motor Co. Ltd.
Jurisdiction	Japan
Exchange	JSE
Industry	Automobile
Claims	Breach of continuous disclosure obligations, and misleading and deceptive conduct

Jurisdiction Risk

	Low <---	-----Medium-----	-----> High
Costs	✓		
Anonymity		✓	
Discovery	✓		

Next Steps

An evaluation of your trading history shows you actively traded Nissan common stock during the Relevant Period and have potentially been impacted by the alleged fraud.

As a first step, investors wishing to participate must provide Kessler with their transaction data to confirm eligibility and estimate losses. At your request, FRT can initiate this process by providing them with your data on an anonymous basis. If you have compensable losses and would like to further discuss your rights with the organizers, FRT can facilitate a direct discussion.

Please contact your FRT Representative if you would like to discuss registration in this case.

Securities & Damages Information

For securities and damages information, please log into the [FRT Client Portal](#).

Relevant Parties

Kessler, Topaz, Meltzer Check LLP

Important Dates

Relevant Period:

June 11, 2011 – November 19, 2018

Participation Deadline: May 1, 2020
Statute of Limitations: June 25, 2020

Update Information

Kessler has updated its recovery effort in the following three ways –

- **Extending the registration deadline:** The registration deadline is now **May 1, 2020**. Kessler’s claimant group is largely formed and ready to file, and they plan to file suit well before the limitations deadline. Therefore, you should consider May 1 a firm deadline with little flexibility.
- **Added claims:** Kessler has extended the relevant period. The new period is June 11, 2011 to November 19, 2018. Therefore, you may have more eligible trades.
- **Additional securities:** Kessler has added seven more securities identifiers. These correspond with company shares listed on exchanges outside of Japan. Your FRT loss estimate includes any losses in these newly added securities.

*Please note that these changes may have resulted in increasing your estimated damages – please review your damage in the client portal.

This proposed action alleges that investors in Nissan Motor Co. Ltd. (“Nissan”) suffered damages as a result of the revelations of financial misconduct that led to the arrest of former Nissan Chairman, Carlos Ghosn. The Kessler law firm is organizing recovery efforts in Japan on behalf of investors who purchased Nissan common stock during the Class Period. This litigation will be separate from the securities class action filed in December 2018 in the US District Court for Tennessee on behalf of investors who purchased Nissan American Depository Receipts (ADRs) (OTC: NSANY).

Kessler is targeting mid May to file first claims. This is based on when they anticipate having a first claimant group ready, with an eye towards a time limit on filing. Japanese securities laws include a five-year statute of repose, the outer time limit to file after the events on which the claim is based. Kessler wants to ensure inclusion among the allegedly false financials in Nissan’s Annual Report for the Fiscal Year ending March 31, 2015, which was publicly filed in Japan on June 25, 2015. The time limit for claims based on this Annual Report, and shares purchased at that time, would be June 25, 2020. If there is sufficient interest, the firm may file a second group complaint, but this cannot be guaranteed.

Disclaimer: Decisions to opt into non-US group litigations are at the discretion of the client. This notification does not constitute advice. It is not an evaluation of the legal merits of the case, nor is it an endorsement of the litigation being proposed or its potential outcomes. It is also not intended as an endorsement of the parties organizing the proposed litigation, including but not limited to the attorneys and/or funding agents described above. The purpose of this notice is to assist clients with their decision about whether to participate by providing certain key informational details as they have been presented by the case’s organizer(s).

ADDITIONAL INFORMATION**1. What is this matter about?**

On November 19, 2018, Nissan's former Chairman and CEO, Carlos Ghosn, was arrested in Japan on charges of misconduct around reporting on his compensation. Subsequent investigations revealed further wrongdoings by Mr. Ghosn and others, including a pervasive lack of internal controls and poor governance at Nissan going back years. These improprieties included false statements in Nissan's publicly filed reports.

The US Securities and Exchange Commission (SEC) sued Nissan and Goshen for violating anti-fraud provisions of the US securities laws. In September 2019, the SEC settled the charges by agreement requiring Nissan to pay a \$15 million penalty, and Goshen to pay a \$1 million penalty and agreeing to a 10-year ban on serving as officer or director.

On December 10, 2019, the Japanese Securities and Exchange Surveillance Commission (SESC) recommended Nissan be fined 2.5 billion yen (about \$22M) for violating disclosure obligations in the company's annual reports for fiscal years 2014 through 2017.

In response to news of Ghosn's first arrest (he was arrested several times), Nissan's stock price dropped about 5%. Throughout the Class Period, Nissan's stock price trended down and has remained down. Nissan shares currently trade about 40% below their November 18 close.

2. How big were my losses?

Claims will be brought under Japanese securities laws - the Financial Instruments and Exchange Act (FIEA) - and Japanese Civil Code (JCC). Under both, investors can recover actual losses caused by the defendants' illicit acts. The FIEA has a presumption for the amount of harm. Specifically, for shares purchased within one year of disclosure of an earlier falsehood, the FIEA assumes losses equal the difference between the average share price a month before and a month after the disclosure multiplied by the number of shares held through then. The presumption is rebuttable, meaning the defendants can disclaim responsibility for harm caused by other factors and events.

Compensable losses under Japanese law take into account the realized gains or losses from post disclosure sales. Rebounding share prices can also erode claim value unless losses are 'locked-in' by sale. For unsold shares, losses get 'locked in' by litigation: for FIEA claims they are calculated using the share price on the date they are filed, and for JCC claims they are calculated using the share price as of the date of trial.

As noted earlier, Nissan's stock price trended down throughout the Class Period and has not yet recovered. However, your claim for unsold shares remains vulnerable to future price increases. This favors filing sooner rather than later.

3. How does Japan handle group claims?

Japan does not have an opt-out class action mechanism for shareholder claims. Investors bring claims as a group, joining together in one complaint (a group action) or selecting and delegating authority to a representative for the group (an opt-in class). Unlike the US, Japan does not have a process for consolidating cases filed in different districts. Even within a district, claimant groups may stay separate, permitting different outcomes.

In addition to funding the litigation, Kessler will be managing and supervising it on your behalf in accordance with the Funding Letter Agreement. Generally, litigation takes 3-5 years to resolve. Historically, most securities case will settle rather than go to trial and this is one of only a few countries with a significant history of successful outcomes for shareholders.

4. What are the costs and burdens of participation?***Funder compensation***

Kessler is proposing to represent you on a fully funded, risk free contingent basis. The firm will retain and pay the Japanese lawyers, advance all case costs, and indemnify you against all associated risks. If successful, Kessler will get reimbursement of expenses (allocated pro rata on the gross recovery) plus the following percentage commission on the net (post-expense) recovery amount.

Phase	Definition	Percentage of Net Recovery (NR)
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I	Pre-complaint	15%
II	Litigation	20% on first \$50M of NR
	Litigation	17.5% on second \$50M of NR
	Litigation	15% on NR amounts > \$100M
III	Appeal	25%

Cost reimbursement will be capped at 2.5% of total Gross Recovery or 5% if the case is appealed.

Adverse costs

Like most non-US jurisdictions, Japan has adverse party (loser pays) cost shifting. However, the risk is modest. Like the US, each side bears its own attorney fees, so exposure is only on costs which are set by formula up-front based on claim size. At the defendants' request, for claimants located outside Japan, the court may require the posting of security for costs. In its FLA, Kessler agrees to fully indemnify you against adverse cost risk and if required, will post any required security.

Discovery, evidentiary burden, and participation

Documents should not be needed to prove your securities law claims as reliance is not an element under the FIEA. Japan does not have US style discovery so parties cannot compel each other to produce documents and information. They must obtain information by agreement or by asking the court to require it. So, you should not have to provide more than the documents and information required of any litigant, as detailed in the Registration Instructions. You should also not be required to attend hearings or trial. However, the Japanese court will ultimately decide if/what is required from the parties.

5. Will my participation in this case be anonymous?

No, as a litigant, your identity will be disclosed to the defendants. In Japan, litigation proceedings include hearings that are public.

6. How do I join?

Kessler has set a low minimum loss amount for participation: \$50,000. To register, the firm will need you to sign the following documents:

- Funding Letter Agreement (FLA); and
- Power of Attorney (POA).

As a litigant, the Japanese court will also require from you trade confirms, proof of standing to sue, and evidence of signing authority.

As a first step, investors wishing to participate must provide Kessler with their trade data to confirm eligibility and estimated loss amounts. At your request, FRT can initiate this process by providing Kessler with your data on an anonymous basis. If you have significant compensable losses and would like to further discuss your rights, FRT can facilitate a direct discussion with the firm.

If you decide to proceed, Kessler will customize a set of registration documents. These will include the FLA and POA mentioned above. In addition to signing both, you will need to provide documents on corporate organization, the signor's authority, your legal standing to sue, and ownership of the shares for which compensation is sought. Trade confirmations will also be needed.

Please don't hesitate to contact your FRT Account Representative regarding this matter.

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