

Colorado PERA has long recognized the importance of being active in the areas of corporate governance and securities litigation due to the role that these areas play in creating a culture of accountability and deterring corporate fraud. Through its participation in securities litigation, Colorado PERA has always had the goal of changing the litigation system to better protect the interests of shareholders to prevent future frauds and fulfill its fiduciary duty to its members by effectively managing claims as fund assets.

The Board of Trustees of Colorado PERA (the “Board”) formally recognizes the importance of continued access to the courts through securities litigation to recover for losses caused by corporate fraud, and believes such access is in the best interests of the members and beneficiaries of Colorado PERA.

For that reason, the Board hereby adopts this policy to establish procedures and guidelines for monitoring Colorado PERA’s portfolio for potentially actionable losses to protect Colorado PERA’s interest and maximize any recoveries available from such actionable losses. This policy has three parts: (1) a policy for asset recovery as passive class members; (2) a policy for active securities litigation for securities listed on a domestic exchange; and (3) a policy for active securities litigation for securities listed on a foreign exchange.

COLORADO PERA’S GOALS IN CREATING THIS POLICY ARE TO:

- » Fulfill Colorado PERA’s fiduciary duty by effectively managing claims as assets of the trust fund.
- » Increase recoveries on claims.
- » Reduce fees paid to obtain recoveries.
- » Deter future frauds by imposing personal liability on bad actors.
- » Assist in identifying corporate governance issues and participate in developing corporate governance improvements through litigation.
- » Change the litigation system to better protect interests of shareholders and meet the above goals.

SECURITIES LITIGATION POLICY FOR PASSIVE RECOVERY

Under U.S. federal law and in some foreign jurisdictions, securities class actions function as “opt-out” classes.

This means that investors such as Colorado PERA do not need to actively participate in order to recover their pro rata share of a class action recovery. Rather, they need only submit a timely and valid proof of claim or registration as a plaintiff in order to realize recoveries.

Colorado PERA shall retain a third-party vendor and/or its custodial bank to be responsible for filing claims in cases where Colorado PERA is a passive class member and is not taking an active role in the litigation. These cases include (1) U.S. class action securities litigation proof of claim forms; (2) foreign passive filings (claims

filings processes that are similar to those in the U.S. that does not require Colorado PERA to become an active litigant or subject to adverse cost risk); and (3) passive class participation for antitrust matters (collectively, the “Claims Filing”).

To memorialize the custodian and/or vendor’s Claims Filing responsibilities, Colorado PERA, through its General Counsel, has prepared and revised, as appropriate, or caused to be prepared and revised, a statement of work to be included with the custodial agreement setting forth formalized Claims Filing procedures for the custodial bank to follow. Alternatively, if a third-party vendor is retained, the General Counsel shall enter into a written agreement with the vendor setting forth formalized Claims Filing procedures for the vendor to follow.

SECURITIES LITIGATION POLICY FOR ACTIVE PARTICIPATION: SECURITIES LISTED ON A DOMESTIC EXCHANGE

It is the purpose of this policy to provide guidance regarding when and how Colorado PERA will become actively involved in domestic securities litigation, including seeking lead plaintiff status, opting out of the class action, or intervening in the class action. Adoption of this policy is intended to put the General Counsel in the best position to identify, protect, and serve the interests of Colorado PERA.

When time is of the essence, the General Counsel must be able to prudently evaluate and pursue lead plaintiff status and other alternatives as are deemed appropriate after conferring with Colorado PERA's Executive Director. Updates of securities litigation activities will be reported to the Board in the Investment Committee meetings and General Counsel Reports presented at each regular meeting of the Board of Trustees.

MONITORING PROCEDURES:

Colorado PERA uses internal staff to monitor potential class action filings by using external resources which may include the Stanford Class Action Clearinghouse website, external legal counsel, and other resources. Lawsuit class periods are compared to Colorado PERA's trading history to identify cases where Colorado PERA is a class member and to estimate a loss figure associated with the potential or actual class action filing.

INVESTIGATION AND DECISION-MAKING GUIDANCE FOR ACTIVE MANAGEMENT:

Colorado PERA's Loss Threshold for domestic cases is two basis points (i.e., 0.02%) of Colorado PERA's total fiduciary net position restricted for defined benefit pension plan benefits as reflected in the most recent Comprehensive Financial Annual Report.

When a case meets Colorado PERA's Loss Threshold, the General Counsel shall evaluate whether the case is meritorious and may be appropriate for Colorado PERA to seek a lead plaintiff role or pursue another avenue of active participation.

Nothing in the previous sentence or in this policy prevents the General Counsel from investigating and recommending cases where it may be necessary to intervene or opt out to protect Colorado PERA's interest in a case (e.g., to protect a claim when a statute of limitations or statute of repose is at issue).

When the General Counsel determines that a case is meritorious and may be appropriate for active participation, the case analysis will be provided to the Executive Director. The Executive Director, in consultation with the General Counsel, shall then determine whether Colorado PERA will seek active participation in a domestic case.

WHEN DETERMINING WHETHER TO PURSUE ACTIVE PARTICIPATION, THE FOLLOWING FACTORS WILL BE CONSIDERED:

- » Is it a viable case based on an initial assessment of key elements and the heightened pleading standard of the Private Securities Litigation Reform Act ("PSLRA")?
- » Assuming Plaintiffs can prevail, will there be sources of recovery available to satisfy a judgment or settlement?
- » How much has Colorado PERA lost?
- » What internal Colorado PERA resources are available to undertake the active management strategy?
- » Was there egregious activity within the company such that a personal recovery from the defendants appears to be the most expedient way of preventing similar future corporate behavior?
- » What are the corporate governance changes that could be considered to address causes of the fraud?
- » Will Colorado PERA's active involvement increase the likely recovery from this action?

WHEN DETERMINING WHETHER TO PURSUE LEAD PLAINTIFF STATUS, THE FOLLOWING ADDITIONAL FACTORS WILL BE CONSIDERED:

- » What can Colorado PERA bring to the litigation to improve the outcome?
- » Is Colorado PERA eligible to pursue lead plaintiff status?
- » Is another sophisticated and reliable lead plaintiff planning to come forward?

- » Can or should Colorado PERA team up with other funds as a co-lead plaintiff?
- » Is Colorado PERA the best fund to represent the class for any reasons other than the monetary loss, such as lending credibility to a less obvious claim?
- » Will participating in the suit assist in lowering plaintiff's attorney fees and foster healthy competition within the plaintiff's bar?
- » What are the likely costs both in terms of money and time, and will any recovery outweigh such costs or provide other benefits?

WHEN DETERMINING WHETHER TO OPT OUT OF THE CLASS ACTION AND BRING A DIRECT ACTION, THE FOLLOWING ADDITIONAL FACTORS WILL BE CONSIDERED:

- » Will opting out of the class likely result in a larger recovery of losses for Colorado PERA?
- » Does Colorado PERA have claims or losses that are not typical of the class as a whole?
- » If the class action has reached the settlement stage, is the settlement reasonable given the possible actionable losses? Is the attorney fee percentage reasonable?
- » Can or should Colorado PERA team up with other funds in an opt-out action?
- » Are there any potential statute of limitations or statute of repose concerns in bringing (or not bringing) a direct action?
- » Are there claims that are not being pursued by the class? Are there claims that have been abandoned in the class action that are viable for Colorado PERA to bring?
- » Does Colorado PERA have state law claims or other claims that are not typical of the class?
- » Can Colorado PERA bring a direct action in a more favorable forum?

SELECTION OF OUTSIDE COUNSEL

Colorado PERA is best served by requiring all solicitations from plaintiffs' attorneys to be channeled through the General Counsel who has developed, and will continue to develop, a short list of desirable plaintiffs' firms to utilize in the event Colorado PERA decides to pursue an active role. General Counsel, in consultation with the Executive Director, is responsible for selecting counsel, based on the following process if possible:

- » A competitive process whereby Colorado PERA seeks multiple proposals from competent counsel to reasonably assure the most favorable retention terms.
- » A written retainer agreement that memorializes the retention terms signed by counsel prior to their selection by Colorado PERA.
- » A requirement that counsel maintain contemporaneous time records that are available to Colorado PERA (and ultimately the Court) in compliance with current LEDES standards (<http://www.ledes.org/>).
- » A requirement that counsel charge only reasonable and necessary costs and contemporaneously record those costs for inspection by Colorado PERA upon request.
- » For class actions, a requirement that counsel abide by the procedures set forth in *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 994 (9th Cir. 2010) (procedural due process with respect to attorneys' fees applications) and *Scott v. City of N.Y.*, 626 F.3d 130 (2d Cir. 2010) (requiring submission of contemporaneous time records in making a fee application).
- » Except where inconsistent with the ethical rules of the jurisdiction, a requirement that class counsel abide by the American Bar Association Model Rules of Professional Conduct, including Rule 1.5 (regarding fees) and ABA Formal Ethics Opinion 08-451 (regarding outsourced attorney relationships).

SECURITIES LITIGATION POLICY FOR ACTIVE PARTICIPATION: SECURITIES LISTED ON A FOREIGN EXCHANGE

The landscape of United States securities laws drastically changed with the Supreme Court case *Morrison v. National Australia Bank Ltd.*, 130 S. Ct. 2869 (2010). Due to *Morrison*, investors no longer have the protection of the U.S. securities laws if the securities were purchased on a foreign exchange.

Given the realities of global securities litigation after *Morrison*, Colorado PERA must continue to adapt to the challenges of monitoring its portfolio to ensure that opportunities to recover assets based on securities fraud are not lost. This includes the analysis of whether to bring a state law action or to actively participate in an action in a foreign jurisdiction. The General Counsel, in consultation with the Executive Director, will determine whether to pursue these actions.

STATE LAW ACTION

One option is to bring an action under state law in the U.S. There are numerous issues that must be considered before bringing such an action. The General Counsel will consider the following:

- » Whether the Securities Litigation Uniform Standards Act of 1998 ("SLUSA") could preempt the state law securities action.
- » Whether to pursue the claims in state or federal court, and whether, if brought in state court, the case is likely to be removed to federal court.
- » The potential venues and whether the choice of law analysis (which varies by jurisdiction) supports the application of state law claims.
- » Whether a particular state's laws will govern the conduct of a foreign defendant (subject matter jurisdiction).
- » Whether the potential courts have personal jurisdiction over any or all of the foreign defendants such that claims can be prosecuted and judgment collected against the defendants.

- » Whether the case will be subject to serious *forum non conveniens* or comity challenges if the claims are pursued in the U.S.
- » Whether direct reliance is an element of one or more of the claims and, if so, whether this element can be met.
- » Whether privity between the plaintiff and the defendant is a requirement of the state securities act claim. If so, whether this element can be met.
- » Whether Colorado PERA's potential recoverable damages justify pursuing state law claims.

FOREIGN PARTICIPATION

In many foreign jurisdictions, investors are required to join as named plaintiffs or "opt-in" at the commencement of the case. In those cases, Colorado PERA is thus an active litigant and, depending on the jurisdiction, may be subject to discovery and adverse cost risk. The "opt-in" process requires affirmative decisions early in the process to join the case to recover anything on Colorado PERA's losses. In foreign cases where Colorado PERA will be an active litigant, the General Counsel will prudently evaluate and take necessary action as is deemed appropriate after conferring with the Executive Director.

SOME OF THE KEY ISSUES THE GENERAL COUNSEL WILL CONSIDER WHEN EVALUATING FOREIGN ACTIONS INCLUDE:

- » What is the process/cost for opting in?
- » How is the action being funded? Are the funders reliable? Who are the investors in the funders? What is the percentage fee that the funder is taking from the case? Is this percentage fee the entire fee, or is the funder also entitled to reimbursement of expenses and any costs? What law will apply to the relationship between Colorado PERA and the funder?
- » Is the funding agreement sufficient? In particular, are attorneys' fees, litigation expenses, and potential costs covered by the funder without recourse to Colorado PERA?
- » Can the funder cease to fund the litigation and, if so, under what conditions? Will the funder have any input or control over the prosecution of the litigation?

- » Who is the foreign counsel and how are they being paid?
- » What are the merits of the case in light of the law in that jurisdiction?
- » What are the potential risks of being involved in a case in this jurisdiction (i.e., to what extent may adverse party fees and cost risks be assessed by the court? What are the potential discovery burdens?)?
- » What role will Colorado PERA play in decision-making (i.e., no role or an active role)? How are the decisions made in the case?
- » What is the size of Colorado PERA's recoverable damages? Did the alleged wrongdoing cause the loss?
- » Does the funder have a minimum loss threshold?
- » What time and resources will Colorado PERA have to devote to the foreign litigation? Will participation in the case require Colorado PERA staff to travel to the foreign jurisdiction?

MONITORING PROCEDURES

Colorado PERA understands the importance of developing a protocol to stay informed and make prudent decisions relating to its involvement in foreign actions. Colorado PERA will use internal staff and/or external resources to assist in monitoring foreign actions and to ensure that Colorado PERA has the greatest possible information regarding applicable deadlines and the issues listed above so timely and informed participation decisions can be made.

POLICY EFFECTIVE DATE: JANUARY 1, 2020