

Securities Litigation Policy
Of
the Commonwealth of Pennsylvania
Public School Employees' Retirement Board

Adopted by
the Board of Trustees
on September 19, 2003
Effective September 19, 2003

Adopted: September 19, 2003
Date Last Revised: December 9, 2011
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Preface

WHEREAS, the Public School Employees' Retirement System (PSERS) provides pension and other benefits to public school employees in accordance with the Public School Employees' Retirement Code;⁷⁰ and

WHEREAS, the Public School Employees' Retirement Board (PSERB) is empowered by the Retirement Code with the exclusive control and management of PSERS;⁷¹ and

WHEREAS, the members of the PSERB stand in a fiduciary relationship to the members of PSERS with respect, *inter alia*, to the disbursement of any moneys from the fund;⁷² and

WHEREAS, as fiduciaries, the members of the PSERB have the duty to invest and manage the funds of PSERS for the exclusive benefit of the members of PSERS;⁷³ and

WHEREAS, as fiduciaries, the members of the PSERB also have a duty to invest and manage the funds of PSERS with the care, skill and caution that a prudent investor would exercise under similar circumstances;⁷⁴ and

WHEREAS, as fiduciaries, the members of the PSERB also have a duty to take reasonable and appropriate actions to recover losses to the funds of PSERS arising from misconduct by the companies in which the PSERB invests; and

WHEREAS, as fiduciaries, the members of the PSERB also have a duty to monitor settlements, including attorneys' fees that are sought, in securities class action lawsuits and to object to them when they do not appear to be reasonable; and

WHEREAS, on May 28, 1999, pursuant to Resolution 1999-27, the PSERB adopted a policy to approve applications by PSERS to serve as lead plaintiff in securities class action law suits; and

WHEREAS, on September 19, 2003, pursuant to Resolution 2003-44, the PSERB determined that it would be beneficial to adopt a more deliberative approach to securities litigation to better protect PSERS' interests in connection with possible

⁷⁰ 24 Pa.C.S. §8101 et seq.

⁷¹ 24 Pa.C.S. §8521(a).

⁷² 24 Pa.C.S. §8521(e).

⁷³ Rest. 3rd, Trusts (Duty of Loyalty) §170.

⁷⁴ 24 Pa.C.S. §8521 (a). Rest. 3rd, Trusts (Prudent Investor Rule) §227.

securities litigation and the coordination of action with the State Employees' Retirement System (SERS) when deemed appropriate; and

WHEREAS, on September 24, 2004, pursuant to Resolution 2004-50, the PSERB amended the Securities Litigation Policy to reflect the fact that the Policy would come under the auspices of the Corporate Governance Committee, and to more accurately reflect the securities litigation process then in use; and

WHEREAS, on June 3, 2005, the PSERB amended the Securities Litigation Policy, among other things, specifically to reflect the methodology for evaluating PSERS' possible involvement in securities litigation, to reflect PSERS' obligations pertaining to the settlement of class action lawsuits, and to establish guidelines for monitoring and reporting staff time and effort regarding securities litigation, and

WHEREAS, on September 28, 2007, the PSERB amended the Securities Litigation Policy, among other things, to identify the PSERB's objectives for pursuing an active role in class action lawsuits, and to direct the establishment and implementation of securities litigation implementation procedures and class action settlement procedures that collectively comprise PSERS' securities litigation program; and

WHEREAS, on January 22, 2010 the PSERB amended the Securities Litigation Policy, among other things, to lower the loss threshold to consider seeking lead-plaintiff status in a class action; and

WHEREAS, the PSERB desires to amend the securities litigation policy, among other things, to provide for consideration of PSERS' participation in securities litigation matters that are not class actions, but where there are joint or similar actions available; provide for an additional loss calculation methodology; and provide loss thresholds specific to opt-out litigation and other non-class actions; and clarify the procedure for consideration of securities litigation matters.

NOW THEREFORE, the members of the PSERB establish the following Securities Litigation Policy in connection with possible securities litigation:

I. Definitions

A. **Consultant:** A litigation consultant retained by the PSERB to advise PSERS on matters related to securities litigation.

B. **Corporate Action Agency Committee:** An agency committee comprised of three PSERB members appointed by the Chair of the PSERB and four PSERS staff members appointed by PSERS' Executive Director.

C. **Executive Staff:** PSERS' Executive Director and Chief Investment Officer.

- D. **FIFO (First In, First Out):** A method of accounting for the purchase and sale of securities whereby the securities are assumed to be sold in the chronological order in which they were purchased.
- E. **LIFO (Last In, First Out):** A method of accounting for the purchase and sale of securities whereby the securities are assumed to be sold in the reverse-chronological order in which they were purchased (i.e. the last security purchased is assumed to be the first security sold).
- F. **Maximum Recovery (Profit & Loss) (P & L):** A FIFO loss calculation methodology in which sales of a particular security during the class period are matched against initial holdings of the security until all the initial holdings have been depleted, and then a gain or loss is calculated based on those purchases and sales. Subsequent sales during the class period are matched against purchases during the class period when calculating gain or loss. Holdings at the end of the class period are matched against purchases on a FIFO basis to determine unrealized losses. The gains (if any) and losses are then aggregated to approximate the maximum amount PSERS might expect to recover at the end of a case.
- G. **Maximum Recovery (Wash):** A FIFO loss calculation methodology in which sales during the class period are matched against initial holdings, but no gain or loss is calculated on these initial matched sales. Subsequent sales during the class period are matched against purchases during the class period and a gain or loss is calculated. Holdings at the end of the class period are matched against purchases on a FIFO basis to determine unrealized losses. The gains (if any) and losses are then aggregated to approximate the maximum amount PSERS might expect to recover at the end of a case.
- H. **OAG:** Commonwealth of Pennsylvania, Office of Attorney General.
- I. **OCC:** PSERS' Office of Chief Counsel.
- J. **Policy:** Securities Litigation Policy adopted by the PSERB on September 19, 2003, as amended.
- K. **PSERB:** The Public School Employees' Retirement Board.
- L. **PSERS:** The Public School Employees' Retirement System.
- M. **Unrealized losses:** Losses calculated for those shares acquired during the class period and still held. The current value of the shares is netted against their purchase cost.

II. General Guidelines

The following guidelines shall apply to securities litigation matters:

A. Consistent with the Bylaws, the Corporate Governance Committee shall have the following responsibilities:

- To establish and modify, as it deems desirable, general principles consistent with this Policy to consider in determining whether PSERS should participate in securities litigation and in what capacity, with a general requirement of at least a \$10,000,000 loss to PSERS' retirement fund for PSERS to seek lead plaintiff or co-lead plaintiff status in a class action law suit;
- To recommend to the PSERB whether PSERS should institute securities litigation and, if so, whether it should do so individually or as a lead plaintiff or co-lead plaintiff in a class action law suit, and whether it should pursue litigation jointly with the State Employees' Retirement System;
- To recommend to the PSERB whether PSERS should institute other actions, including shareholder derivative actions, opt-out litigation, actions before the Securities and Exchange Commission (SEC), or participation in SEC rulemaking;
- To consider, in making a decision to recommend institution of securities litigation, the objectives of the PSERB, including, but not limited to, preservation of the retirement fund and collection of all amounts due to the retirement fund; maximizing the net recovery of PSERS; and the opportunity to effect meaningful corporate governance reforms as part of any securities litigation settlement;
- To identify for the PSERB the net added value to PSERS in pursuing a particular securities litigation;
- To take such further actions as the Corporate Governance Committee deems necessary or desirable to effect the desired results in the exercise of the foregoing and to comply with applicable laws and regulations.

B. Consistent with the PSERB's By-Laws regarding agency committees, the Corporate Action Agency Committee shall have the following responsibilities:

- In extraordinary circumstances in which there is no time to have a securities litigation matter addressed by a regular or special meeting of the Corporate Governance Committee, the Corporate Action Agency Committee shall be authorized to act.

- At the request of OCC and Executive Staff where it is deemed appropriate, to authorize pursuing class action litigation and foreign or domestic joint, group or other available non-class action litigation.
- To consider, in making a decision to recommend institution of securities litigation, the objectives of the PSERB, including, but not limited to, preservation of the retirement fund and collection of all amounts due to the retirement fund; maximizing the net recovery of PSERS; and the opportunity to effect meaningful corporate governance reforms as part of any securities litigation settlement;
- To identify for the PSERB the net added value to PSERS in pursuing a particular securities litigation;
- To take such further actions as it deems necessary or desirable to effect the desired results in the exercise of the foregoing and to comply with applicable laws and regulations

III. Application of Policy

A. General Procedures.

OCC shall design securities litigation implementation procedures to implement this Policy, and shall review and revise the securities litigation implementation procedures from time to time as necessary or required.

OCC shall monitor securities litigation matters, and PSERS may also subscribe to a securities litigation monitoring support service to assist in such oversight, which shall include evaluating and monitoring potential or pending securities litigation, estimating PSERS' potential losses in a particular case, and determining when to request the advice of a Consultant.

PSERS' Investment Accounting Division shall design class action settlement procedures to implement this Policy and shall review and revise the class action settlement procedures from time to time as necessary or required.

B. Consultant(s).

PSERS' Executive Director shall be authorized, subject to all necessary approvals required by law, to issue a Request For Proposals (either on behalf of PSERS alone or jointly with the State Employees' Retirement System), to enable the Corporate Governance Committee to establish and evaluate the credentials of a Consultant to advise PSERS on matters related to securities litigation.

PSERS shall seek to contract with not more than two (2) Consultants at any given time, who shall, at the request of PSERS' Chief Counsel, advise PSERS on matters relating to securities litigation, including assisting PSERS in analyzing its

interest in both pending and potential securities litigation based upon PSERS' holdings and exposure during the relevant periods, including identification of the specific benefit to PSERS in pursuing litigation, risk and value assessment, damage estimates, and recovery projections.

Upon receiving an assignment, a Consultant will be expected to perform an analysis and submit a report and recommendation in a prompt and judicious manner to allow PSERS sufficient time to take any legal action recommended by the Consultant or determined to be appropriate by the PSERB. A Consultant shall not be eligible to be considered as potential counsel to represent PSERS in any legal actions undertaken pursuant to this Policy, nor, without express written consent of PSERS, advise the actual counsel selected to represent PSERS in any legal actions undertaken pursuant to this Policy.

C. Loss Thresholds.

- For PSERS to seek lead or co-lead plaintiff status in a class action lawsuit, a loss of at least \$10,000,000 must be calculated under either the P & L, Wash, LIFO or FIFO recovery methods. If it is clear that the Federal District Court in which the class action lawsuit is brought requires a specific loss determination method, then PSERS must have suffered at least a \$10,000,000 loss under that particular method to seek lead or co-lead plaintiff status.

- For PSERS to consider bringing its own opt-out litigation action, a loss of at least \$7,500,000 must be calculated under the P & L, Wash, LIFO or FIFO recovery methods. If it is clear that the jurisdiction in which the opt-out action is to be brought requires a specific loss determination method, then PSERS must have suffered at least a \$7,500,000 loss under that particular method to consider bringing the action.

- For PSERS to consider joining in a foreign or domestic joint, group or other available non-class action litigation, a loss of at least \$2,000,000 must be calculated under the P & L, Wash, LIFO or FIFO recovery methods. If it is clear that the jurisdiction in which the action is to be brought requires a specific loss determination method, then PSERS must have suffered at least a \$2,000,000 loss under that particular method to consider bringing the action.

- Thresholds set forth in this section may be modified downward in instances where PSERS believes there are important policy reasons for commencing a particular action even though the threshold amount has not been met.

D. Factors to Consider in Deciding to Seek Lead Plaintiff Status:

1. Is PSERS an appropriate lead plaintiff?

- Are there reasons why PSERS should not seek lead plaintiff status, (including estimated damages that do not meet PSERS' threshold, unique claims

or damages that are large enough to merit filing a separate case, or an impractical or non-sympathetic venue)?

- Does PSERS have a conflict of interest in being lead plaintiff, such as a large continuing holding or relationship that would compromise PSERS' ability or desire to vigorously pursue the case?
- Is the potential class action a legitimate suit or simply a nuisance suit that PSERS has no interest in pursuing?
- Are there unusual circumstances or facts that could complicate PSERS' position, such as the risk of being viewed as a "professional plaintiff," weaknesses in PSERS' case not common to other potential lead plaintiffs, or documents or opinions inconsistent with PSERS' position?
- Are there non-monetary remedies of special importance to PSERS, such as corporate governance reforms, which other potential lead plaintiffs may not pursue?
- What is the likelihood of PSERS increasing its net recovery or capturing other added value by being lead plaintiff?
- Is there a less burdensome way of managing PSERS' potential claim other than litigation (such as attempting to convince a shareholder with a larger loss to become lead plaintiff, monitoring the case from the sidelines, filing a motion to support or oppose a candidate for lead plaintiff, or negotiating an agreement with lead counsel to keep PSERS informed of case development)?

2. Does PSERS have the resources available to devote to litigation?

- Is PSERS willing to bear the administrative burden of court appearances, strategy sessions, etc.?
- Is PSERS limited by staffing constraints?
- What are the capabilities and anticipated testimony of PSERS' likely witnesses?
- Do PSERS' investment managers support PSERS' position in the litigation?
- Are PSERS' investment managers willing to respond to requested discovery?
- In how many other class action or other securities litigation cases is PSERS currently actively involved?

3. Strength of claim and defenses.

- What claims can be asserted in the action and what is the likelihood of their sustainability?
 - Is the case vulnerable to a motion to dismiss?
 - What are the possible defenses to be raised and how strong are such defenses?
 - What are the potential sources of recovery (corporate defendants, individual officers and directors, auditors, underwriters)?
 - Is PSERS willing to pursue a shareholder derivative action?
- Will PSERS' participation lend credibility and support to a cause of action that is legitimate but might fail otherwise?

4. Other potential lead plaintiffs and lead counsel.

- Will another sophisticated lead plaintiff likely come forward to manage the case?
- Is PSERS willing to contact other institutional investors, or has it been contacted by other institutional investors, to jointly pursue lead plaintiff status?
- Is PSERS satisfied with the reputation and skills of potential lead counsel candidates?
- Will PSERS' participation in the litigation assist in lowering attorney fees?

E. Review of New Cases.

1. At the time that OCC learns of a loss in excess of PSERS' threshold arising from a securities fraud claim, it will obtain information regarding the potential claim and advise PSERS' Executive Staff of the potential claim.

a. OCC and Executive Staff may then, if they deem it advisable, confer with and seek advice from one or both of the Consultants to determine what action, if any, to take, consistent with this Policy. If they do not deem it advisable to submit the matter to a Consultant, they shall document their decision and advise the Corporate Governance Committee of such action at its next regularly scheduled meeting.

b. If the matter is submitted to a Consultant, and if based on the Consultant's recommendation OCC and Executive Staff determine that PSERS should initiate securities litigation individually, or as a lead plaintiff or co-lead plaintiff in a class action lawsuit, or in some other capacity, then OCC and Executive Staff will make a recommendation to that effect to the Corporate Governance Committee at its next regularly scheduled meeting (or at a special meeting of the Committee and the PSERB or the Corporate Action Agency Committee, as the case may be, if time does not permit).

c. In extraordinary circumstances in which there is no time to have the issue addressed by a regular or special meeting, the Corporate Action Agency Committee shall be authorized to act.

d. If, however, OCC and Executive Staff, after considering the recommendation of the Consultant, decide to take no action, then they shall so notify the Corporate Governance Committee and the PSERB. Any individual PSERB member shall have the right to have that decision placed on the agenda of the next scheduled meeting of the Corporate Governance Committee and PSERB (or at a special meeting of the Committee and the PSERB if time does not permit). Pending said meeting, no action shall be taken regarding the potential claim.

2. If the Corporate Action Agency Committee or the Corporate Governance Committee and the PSERB authorize the commencement of securities litigation, OCC will seek delegation of authority from, or participation by, OAG.

3. OCC will finalize the agreement for legal services with counsel and OAG, and advise counsel to proceed with the litigation. The final terms and conditions of all legal services contracts entered into as a consequence of the policy must be satisfactory to the Executive Staff and OCC.

F. Role of OCC and Executive Staff.

1. OCC shall periodically report to the Corporate Governance Committee or the PSERB regarding securities litigation matters, including the status of litigation in which the PSERB has authorized involvement. In the event of significant strategy changes prior to or during particular securities litigation, OCC and Executive Staff will make additional recommendations to the Corporate Governance Committee.

2. OCC and Executive Staff shall monitor, and, when appropriate, participate in hearings regarding settlement petitions, including attorneys' fees requested in securities class action lawsuits, and object to such settlements and/or fee requests when the OCC and Executive Staff deem them to be not reasonable. OCC shall work closely with outside counsel on cases and participate in important strategy decisions and review important documents and pleadings. OCC will obtain the authorization of the

Corporate Governance Committee and the PSERB prior to taking any legal action in appellate courts.

G. Reporting Requirements.

1. Consistent with this Policy and the procedures established by PSERS' Investment Accounting Division, PSERS' Investment Accounting Division shall monitor and ensure that claims are filed by PSERS' custodian bank in all applicable class action settlements, that the appropriate cash amount of the claims are received by the custodian bank, and report quarterly to the PSERB on the collection of claims in securities class action settlements filed by PSERS' custodian bank.

2. OCC shall submit to the PSERB at the January meeting an annual report on securities litigation matters for the prior year, and shall include the amount of staff time and effort expended on particular securities litigation matters in which PSERS is actively involved and other matters on which time has been expended.

H. Residual Funds.

In any case where PSERS is a lead plaintiff in a class action, and, upon settlement or other resolution of the matter that entails the receipt and distribution of funds to a class, there are residual funds remaining at the end of the distribution that are eligible for payment to a non-profit organization, PSERS shall seek court approval to pay such residual funds to a non-profit organization or organizations that have as a prime purpose the support of good corporate governance; protection of investor rights; or advancing the interest of retirement security. Sections Amended September 24, 2004 Sections throughout Policy revised to reflect the fact that the Policy will now come under the auspices of the PSERB's new Corporate Governance Committee, and to more accurately reflect the securities litigation process currently in use.

Sections Amended June 3, 2005

Sections throughout Policy revised to, among other things, specifically reflect the methodology for evaluating PSERS' possible involvement in securities litigation, to reflect PSERS' obligations pertaining to settlement of class action lawsuits, and to establish guidelines for monitoring and reporting staff time and effort regarding securities litigation.

Sections Amended September 28, 2007

Sections throughout Policy revised to, among other things, identify the PSERB's objectives for pursuing an active role in class action lawsuits, and direct the establishment and implementation of securities litigation implementation procedures and class action settlement procedures that collectively comprise PSERS' securities litigation program.

Sections Amended January 22, 2010

Sections throughout Policy revised to lower the stated threshold for PSERS to consider lead plaintiff status.

Sections Amended December 9, 2011

Sections throughout policy revised to provide for consideration of PSERS' participation in securities litigation matters that are not class actions, but where there are joint or similar actions available; provide for an additional loss calculation methodology; provide loss thresholds specific to opt-out litigation and other non-class actions; and clarify the procedure for consideration of securities litigation matters.