



Educational Employees' Supplementary Retirement System of Fairfax County

Securities Litigation Policy

Adopted January 28, 2022

I. PURPOSE

Institutional investors such as public pension funds may be eligible to recover losses related to their equity investments caused by alleged violations of securities law by corporate management and/or fraud. Every investor owning the security in question during the holding period automatically becomes a class member for purposes of litigation. Most investors participate in securities litigation as passive class members.

This Securities Litigation Policy ("Policy") is intended to establish and provide guidelines for the Educational Employees' Supplementary Retirement System of Fairfax County's ("ERFC") monitoring and participation in securities litigation related to publicly traded equity investments. This Policy also serves to provide guidelines to determine the appropriate level of participation by ERFC, either as a lead plaintiff or passive class member in a group class action, or filing a separate individual claim.

II. POLICY OBJECTIVES

A. The objectives of this Policy are to:

1. Describe the guidelines that the Board of Trustees ("Board") will follow in evaluating and deciding the appropriate level of participation in securities litigation.
2. Provide guidance and direction to ERFC staff regarding securities litigation monitoring procedures.

III. ROLES AND RESPONSIBILITIES

A. The Board has a fiduciary duty to attempt to recover, to the extent reasonably practicable, any funds lost resulting from corporate mismanagement or fraud related to ERFC's investments in public equities. The Board will decide ERFC's participation level in securities litigation after considering the recommendation of ERFC staff, legal counsel, and consultants, as appropriate. ERFC will not pursue active litigation unless the Board expressly authorizes such active litigation.

B. ERFC's Executive Director/CIO and investment staff (collectively "Staff") will:

1. Monitor securities litigation in which ERFC may be eligible to participate, and claims filed by the custodian bank
2. Consider recommendations from the Securities Litigation Firms ("SLFs") to determine the best course of action
3. Make recommendations to the Board regarding ERFC's participation in securities litigation

C. The custodian bank has the primary responsibility to:



1. Maintain trading records and documentation related to purchase and sale transactions for each security for at least 10 years
 2. Identify and monitor securities litigations in which ERFC may be eligible to participate
 3. Timely file proofs of claim on behalf of ERFC
 4. Deposit settlement funds appropriately as directed by Staff
- D. SLFs will:
1. Identify and monitor securities litigation in which ERFC may be eligible to participate, including non-U.S. litigation
 2. Assess ERFC's potential losses
 3. Evaluate and provide reports on the merit and value of participating as a lead plaintiff
- E. Fiduciary Counsel will:
1. Assist SLFs in preparing ERFC to serve in lead or co-lead plaintiff role, including, but not limited to, the following:
 - Review all legal documents and materials
 - Review and assess any regulatory issues and risks related to ERFC's active participation in the litigation

IV. POLICY GUIDELINES

- A. SLFs are retained to assist in monitoring securities litigation cases, which includes:
 1. Monitoring potential cases involving ERFC assets
 2. Assessing the magnitude of potential losses to ERFC
 3. Evaluating ERFC's level of involvement in the litigation
- B. ERFC automatically becomes a passive class member of a litigation by owning the security during the eligible holding period. Situations may arise when it is in the best interest of ERFC to be an active member and serve as a lead plaintiff.
- C. In general, given the costs and time commitment related to serving as lead plaintiff in a litigation, ERFC will not consider active participation in securities litigation unless potential losses exceed \$1 million.
- D. The following factors will be assessed by Staff in consultation with consultants and appropriate legal counsel when making a recommendation to the Board regarding active participation in a litigation:
 1. Magnitude of loss incurred by ERFC
 2. Merits and strength of the underlying claims
 3. ERFC's position and right to serve as lead plaintiff versus other institutional investors
 4. Benefits and risks of serving as lead or co-lead plaintiff or pursuing a separate legal action versus serving as a passive class member
 5. Location of the litigation and feasibility of participation
 6. Participation, or lack thereof, from other institutional investors



7. Time commitment involved that will directly impact Staff resources from their main responsibilities
 8. Costs to ERFC for active participation in litigation
 9. Other factors, as appropriate
- E. Non-U.S. Securities Litigations
1. In 2010, the United States Supreme Court in *Morrison v. National Australia Bank* held that investor losses stemming from corporate wrongdoing on securities purchased outside the United States cannot be pursued under U.S. securities laws.
 2. Unlike in U.S. securities litigation, recovering losses as a passive class member is less likely. Most countries require active election to any potential or pending case to participate in the settlement.
 3. Staff will work with SLFs to assess foreign litigation opportunities.
 4. In addition to the factors listed in section IV.D above, the following factors will be considered in reviewing foreign litigation opportunities:
 - Whether the ability to recover damages will be lost if the litigation is not pursued
 - Out of pocket expenses for ERFC related to pursuing the litigation, including, but not limited to, legal fees and costs incurred if the Court decides in favor of the defendants
 - Different litigation procedures for each country
- F. Given that it may take several years before securities litigation is concluded, trading records and other documentation for each holding should be maintained at least 10 years.
- G. If after evaluating the factors described above, the Board determines that it is in the best interest of members and beneficiaries for ERFC to pursue active litigation because the potential recovery outweighs the cost and any risks related to active participation in a U.S. or non-U.S. litigation matter, Staff will work with SLFs and Fiduciary Counsel to pursue the claim and will report periodically, as appropriate, to the Board on the status of the litigation.
- H. Staff will regularly report to the Board the status of eligible claims and recoveries.
- I. Proceeds from settlements will be deposited by the custodian bank to the applicable account. If the applicable account is closed and unable to receive funds, the custodian bank will notify Staff and request direction on where to deposit the proceeds.

V. POLICY REVIEW

The Board will review this Policy periodically to ensure it remains relevant and appropriate.