

Purpose and Background

1. The Securities Litigation Policy is intended to establish procedures and guidelines for monitoring and, when appropriate, participating in securities class actions in furtherance of the Board of Retirement's fiduciary duty to protect the assets of the trust. See Cal. Const. Art. XVI, § 17. The responsibility for overseeing securities litigation is delegated to the Investment Committee.

Principles

2. As a large institutional shareholder, OCERS is frequently a class member in securities class actions that seek to recover damages resulting from alleged wrongful acts or omissions of others.
3. The Private Securities Litigation Reform Act ("PSLRA") enacted in 1995 allows institutional investors and other large shareholders to seek lead plaintiff status in securities class actions pending within the United States under U.S. federal securities laws. The lead plaintiff attains the right to supervise and control the prosecution of such cases. Since enactment of the PSLRA, it has been demonstrated that participation as lead plaintiff by large, sophisticated shareholders, particularly public pension funds, has resulted in lower attorney's fees and significantly larger recoveries on behalf of shareholders. The United States Securities and Exchange Commission and leaders in the legal community have commented that the governing board of a public pension system has a fiduciary duty to monitor securities class actions in which the system has an interest, and to participate as lead plaintiff where such participation is likely to enhance the recovery by members of the class.
4. In 2010, the United States Supreme Court in *Morrison v. National Australia Bank* ("Morrison") held that certain investor losses stemming from corporate wrongdoing cannot be pursued under federal securities laws. Specifically, the Supreme Court held that investors cannot bring or participate in a U.S. securities class action if their claims are based on securities they purchased outside the United States. As a result, investors must now identify and evaluate foreign securities actions in order to fully protect their interests, including the right to participate in such actions and share in any recovery. Unlike the United States, most countries do not have a class action procedure for the adjudication of securities claims. Instead, many other countries have some form of collective litigation that requires investors to affirmatively join the action to seek a recovery on a securities claim. Because there is no possibility of recovery as a passive member of the class in those cases, OCERS must give special consideration to whether the potential benefits of actively participating in such cases outweighs the potential risks.
5. In June 2017, the United States Supreme Court in *CalPERS v. ANZ Securities, Inc.* ("ANZ Securities") held that the filing of a securities class action does not "toll" or satisfy the three-year time period (called the statute of repose) for putative class members to assert individual claims for recovery under Sections 11 and 12 of the Securities Act of 1933. The Supreme Court's decision has been extended by lower federal courts to apply to claims brought under Securities Exchange Act of 1934. As a result, investors can no longer rely on the filing of a securities class action case to preserve the timeliness of their individual claims for recovery of damages under the federal securities laws, and must exercise heightened diligence to protect potentially valuable claims from expiring under the statute of repose.

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6. Because OCERS exists to provide retirement income to its members, the goal of this policy is the preservation of trust assets to meet the needs of OCERS members. OCERS will prudently select the best means to preserve those assets.

Monitoring of Securities Litigation and OCERS Holdings

7. **Review of Class Action Filings.** The Legal department will identify and evaluate securities class actions, pending or proposed to be filed within the United States and in foreign jurisdictions, in which OCERS may have recognized losses.
8. **Active Case Monitoring.** The Legal department will actively monitor each case in which it has determined the case has merit and either OCERS' estimated loss meets the Loss Threshold or there are special circumstances that justify OCERS actively monitoring the case. Active monitoring may include participation by the Legal department in significant motions and in settlement discussions when permitted by the parties or the court.
9. **Active Participation.** The Legal Office will recommend to the Investment Committee whether OCERS should take an active role in a securities class action (which may include, but is not limited to, seeking lead plaintiff status, or opting out of the class action and pursuing an individual action) in any case where the Legal department, after consulting with outside counsel, has determined the case has merit, the best interests of OCERS will be served by taking such action, and the case meets the Domestic Loss Threshold or Foreign Loss Threshold.
10. **Domestic Loss Threshold.** A case pending or proposed to be filed within the United States will meet OCERS' Domestic Loss Threshold if (a) OCERS' estimated loss is at least \$1 million; (b) OCERS has substantial losses that are less than \$1 million but OCERS will join the case with one or more other institutional investors; (c) OCERS cannot recover without active participation in the case; or (d) OCERS' active participation in the case may lead to meaningful corporate governance reforms.
11. **Foreign Loss Threshold.** A case pending or proposed to be filed in a foreign jurisdiction will meet OCERS' Foreign Loss Threshold where OCERS' estimated loss is at least \$250,000.
12. **Losses Below Threshold.** If the Legal department identifies a case where OCERS' losses during the alleged claims period is less than the Loss Threshold, but OCERS suffered a loss in excess of the Loss Threshold during a period of time closely preceding or following the claims period, the Legal department will consider whether to seek an adjustment of the claims period. If warranted, the Legal department will actively monitor the case and participate in a motion to adjust the claims period or seek approval of the Investment Committee to actively participate in the case.
13. OCERS will take an active role in a securities class action only after approval by the Investment Committee or the Chief Executive Officer, as set forth in Sections 15 through 18, below.
14. The Legal department will collaborate with the Investment department in monitoring securities class action filings and settlements that affect the OCERS investment portfolio, identifying instances where OCERS may have suffered losses due to securities fraud, and identifying developments in the marketplace that would lead to an interest or need in OCERS participating in litigation regarding the market generally.

Active Participation

15. Recommendations on whether to take an active role in a securities litigation case will be presented to the Investment Committee at a regularly scheduled meeting or, where immediate approval is necessary, at a special meeting.
16. In deciding whether to take an active role in securities litigation cases, the Investment Committee will consider:
 - a. The size of OCERS' loss;
 - b. The identity of the lead plaintiff and other parties, if known;
 - c. The identity of lead counsel, if known;
 - d. Whether OCERS has, or had, substantial losses or significant holdings in the company or security during the most plausible class period and sustained damages surpassing its threshold for considering action;
 - e. The merits of the case, both from a legal perspective and a business perspective;
 - f. The likely degree of recovery, including the probability of a defendant's insurer being able to fund an award, balanced against the time and costs involved in taking an active role in the case;
 - g. The effectiveness and availability of potential witnesses and ability of OCERS Investment department staff and fund managers to respond to requested discovery;
 - h. The potential impact on the portfolio from potential trading restrictions arising from acquisition of inside information in litigation, if any;
 - i. The effectiveness of potential alternatives for recovering the losses, such as filing a claim or protective motion, and monitoring;
 - j. Whether active participation by OCERS would add value to the potential resolution or management of the case;
 - k. The forum and choice of law for the case; and
 - l. Notwithstanding the Loss Threshold for active participation, active participation in foreign securities actions will be examined on a case-by-case basis. The Legal department will present meritorious foreign securities cases to the Investment Committee to determine whether the potential benefits of active participation outweigh the potential risks and costs. In making such determination, the Investment Committee will consider, among other factors, the size of the potential recovery, OCERS' potential obligation to pay legal fees and costs, the potential liability for an adverse cost award, and whether the funding arrangement, other participation agreements, or applicable local laws are sufficient to protect OCERS from an adverse cost award or other potential liability.
17. If the Chief Executive Officer determines that immediate approval is required in order to preserve OCERS' rights and/or interests by taking an active role in a securities litigation case, and the matter cannot be timely presented for approval at a regularly scheduled or special meeting of the

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Investment Committee, or where a quorum cannot be reached at such meeting, the Chief Executive Officer is authorized, after consultation with the General Counsel, Chief Investment Officer, and Chair of the Investment Committee, to make the decision and shall notify the Investment Committee at its next regularly scheduled meeting.

18. For purposes of this policy, a foreign securities action is defined as a lawsuit pending or proposed to be filed outside the United States involving securities purchased on a foreign securities exchange or other non-domestic transaction by OCERS or on its behalf. Participation as a class member in a foreign securities action, if participation in such foreign action requires registration or other affirmative action by OCERS, shall be considered “active participation” and shall be submitted to the Investment Committee for approval.

Settlements

19. When a settlement is presented in a case in which OCERS has taken an active role, the Legal department will provide the Investment Committee with an analysis of the settlement terms, including the total amount of the proposed recovery, proposed costs and fees paid to attorneys, the best estimate of the percentage of recovery of OCERS’ identified losses, analysis from the firm representing OCERS in the case, and any other relevant information pertaining to the settlement. The Investment Committee may approve a proposed settlement or delegate to the Chief Executive Officer or the General Counsel authority to enter into a settlement on whatever terms it deems appropriate.
20. If the Chief Executive Officer determines that immediate approval of a settlement is required in order to preserve OCERS’ rights and/or interests, and the matter cannot be timely presented for approval at a regularly scheduled or special meeting of the Investment Committee, or where a quorum cannot be reached at such meeting, the Chief Executive Officer is authorized, after consultation with the General Counsel, Chief Investment Officer and Chair of the Investment Committee, to approve the settlement and notify the Investment Committee at its next regularly scheduled meeting.

Claims Filing and Audits

21. OCERS’ custodial bank shall be responsible for filing all claims, including the necessary supporting documents and information, necessary to recover assets in every securities class action in which OCERS has suffered losses which has been brought or is pending within the United States. If OCERS’ custodial bank is not able to file all claims and necessary supporting documents and information, necessary to recover assets in every securities class action in which OCERS has suffered losses which has been brought or is pending in a foreign jurisdiction, then the Legal department, in consultation with the Investment department, shall designate the entity that will be responsible for filing those claims. The Legal department shall prepare, and revise as necessary, a statement of work to be included in the custodial agreement setting forth formalized claims filing procedures for the custodial bank to follow, which shall include identifying and reviewing all class action settlements, providing timely notice of each settlement to OCERS, filing claims correctly and timely on OCERS’ behalf, and providing quarterly reports regarding its efforts. The Legal department, in consultation with the Investment department, shall monitor the performance of the custodial bank

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in these matters. The custodial bank will submit quarterly reports on the securities litigation proceeds recovered, which information shall be shared with the Investment Committee.

- 22.** The Legal department, in conjunction with the Investment department, shall from time to time audit the custodial bank's claims filing process to insure that OCERS is recovering all the amounts that OCERS is due from securities litigation settlements and awards. The Legal department, in conjunction with the Investment department, may require that the custodial bank change its processes or implement an alternative plan for filing proofs of claim.

Retention of Securities Monitoring Firms and Litigation Counsel

- 23.** The General Counsel, with the approval of the Chief Executive Officer, will engage at least two and no more than five firms with demonstrated expertise and experience in prosecuting and/or monitoring securities class actions (the "Securities Litigation Monitoring Firms") to advise and/or represent OCERS in monitoring securities class action filings and settlements that affect the OCERS investment portfolio and identifying new instances where OCERS may have suffered losses due to securities fraud or related misconduct.

- 24.** At a minimum, Securities Litigation Monitoring Firms will:

- a. Obtain OCERS' securities trading and holdings information directly from OCERS' custodial bank;
- b. Identify and monitor securities class actions filed or proposed to be filed in the United States, and analyze OCERS' estimated loss, if any, in the affected security or securities in each action;
- c. Evaluate and provide timely notice and analysis of potential or pending securities class actions filed in the United States where (i) OCERS has suffered losses that meet its Loss Threshold and where active participation may be necessary and warranted; or (ii) if OCERS' losses are below its Loss Threshold, the Securities Litigation Monitoring Firm believes factors exist that justify OCERS' consideration of the case;
- d. Provide reports (at least quarterly) of newly-filed domestic securities class actions and OCERS' estimated losses or online access to pending securities class actions filed in the United States and OCERS' estimated losses;
- e. Identify and monitor securities actions that are filed or may be filed outside the United States in foreign jurisdictions, and provide an analysis of OCERS' estimated loss, if any, in the affected security or securities in each action;
- f. Evaluate and provide timely notice and analysis of those potential and pending non-U.S. securities actions where (i) OCERS has suffered losses that meet its Foreign Loss Threshold; or (ii) if OCERS' losses are below its Foreign Loss Threshold, the Securities Litigation Monitoring Firm believes factors exist that justify OCERS' consideration of the case;
- g. Assist OCERS in joining and filing claims in non-U.S securities actions in which the Investment Committee approves active participation, including obtaining, assisting in the review and negotiation, and submission of engagement agreements, third-party funder agreements, and insurance agreements; and

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- h. Assist OCERS in identifying meritorious U.S. securities class actions in which OCERS has substantial losses or significant holdings, determining the relevant statutes of repose, monitoring the progress of the litigation (including class certification), and evaluating whether to file a protective claim or motion before a significant repose period expires.
- 25.** Retainer Agreements with Securities Litigation Monitoring Firms will be for terms not exceeding six years. Prior to the expiration of the six year term, the General Counsel or his or her designee will conduct a Request for Proposals (“RFP”).
- 26.** When the Investment Committee or the Chief Executive Officer approves OCERS taking an active role in litigation, it or he or she will also direct the General Counsel to retain litigation counsel under specific terms, issue an RFP for litigation counsel, or delegate to the General Counsel the authority to retain litigation counsel for the matter.
- 27.** The General Counsel may rely on Securities Litigation Monitoring Firms for preparation of in-depth damages analyses and/or for representation in litigation which OCERS is actively monitoring. However, the General Counsel may, with the approval of the Chief Executive Officer, retain outside counsel on behalf of OCERS to undertake these matters or to assist the Legal department in carrying out any of its other responsibilities under this policy.

Reporting

- 28.** The Legal department will provide the Investment Committee with regular reports covering its responsibilities under this policy, and in no event less than quarterly.
- 29.** The reports will include listings of new securities litigation case filings and new settlements or awards in which OCERS has identified losses. The General Counsel will define the scope of other information that should be contained in the reports, and may include information such as the name of the security, the class period, OCERS’ identified losses, and the claims filing deadlines. For any matters where OCERS’ estimated losses exceed \$1 million, the report will include a brief analysis of the merits of the litigation.
- 30.** Legal department will provide the Investment Committee with status reports as needed to keep the Investment Committee apprised of major developments in cases in which OCERS is a party.

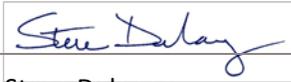
Policy History

- 31.** The Board adopted this policy on December 15, 2003. The Board amended this policy on December 20, 2004; reviewed this policy with no changes on March 24, 2008; and amended this policy on August 24, 2009, May 20, 2013, March 20, 2017 and November 13, 2017.

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Secretary's Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.



Steve Delaney
Secretary of the Board

11/13/2017

Date