

Draft Securities Litigation Policy
Vermont Pension Investment Commission
December 2024

Overview

VPIC is an institutional investor in the global public markets. It purchases, with the assets of its public trust funds (collectively the “Plans”), the financial instruments of corporations (“Securities”) that are offered for sale to the public. The efficiency of public markets and therefore the ability of VPIC’s investments to achieve their targeted risk-adjusted performance benchmarks depends in part on how well prices for Securities owned by VPIC (“Fund-owned Securities”) reflect all available, relevant information about the actual value of the Securities and their underlying assets.

From time to time, a complaint is filed in a federal court alleging that a public corporation may have failed to disclose material information about an act of fraud, mismanagement, or other ethical breach to its shareholders. This failure to disclose negatively impacts the value of the corporation’s Securities and creates a loss to shareholder value. The process for recovery of such investment losses by any holder of record is through a class action or individual securities litigation (“Securities Litigation Matter”).

The Commission, as the governing body of VPIC, is granted by law with the authority to engage in legal action, and, in its fiduciary capacity, has the responsibility to control and manage the assets of the Plans. Included is the obligation to engage in prudent actions to protect assets and to recover funds lost through eligible transactions of Fund-owned Securities (“Eligible Transactions”) as the result of corporate mismanagement and/or fraud. Consequently, the Commission may initiate or participate in Securities Litigation Matters.

It is the goal of the Commission to satisfy its fiduciary duty by effectively managing claims as assets of Fund. The Commission seeks to maximize recovery of Fund assets on claims while minimizing fees paid to obtain recoveries.

The purpose of this policy (“Policy”) is to identify:

- 1) the expert resources and agents that support the Commission in Securities Litigation Matters,
- 2) the responsibilities of the Commission, and
- 3) the decisions made by the Commission regarding Securities Litigation Matters and the general principles that support the Commission’s decision-making.

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1) Expert Resources and Agents Supporting the Commission

The following expert resources and agents support the Commission in fulfilling its fiduciary responsibilities.

- a. The Attorney General's Office serves as the primary legal advisor to the Commission ("Primary Legal Advisor"), coordinating access to information and specialty legal expertise, analysis, and recommendations upon which the Commission makes decisions.
- b. The firm retained by the Commission in the role of fiduciary consultant ("Fiduciary Consultant") shall advise the Commission on the implications of any particular securities litigation case on the sound exercise of its fiduciary duty.
- c. A legal consultant ("Commission Securities Litigation Monitor") or consultants may monitor U.S. actions and non-U.S. actions, and also provide claims analysis.
- d. A securities litigation firm ("Commission Securities Litigation Counsel") with specialty expertise works in association with the Attorney General's Office to represent VPIC in legal action, should action be taken.
- e. The custodian bank ("Custodian Bank") or Commission Securities Litigation Monitor, provides monitoring for U.S. class actions and files claims where VPIC has Eligible Transactions, and ensures that recovery payments are received, are proper in amount, and are deposited.
- f. VPIC administrative staff ("Fund Administrative Staff"), led by the Chief Investment Officer, provides input to the Commission, and works with the aforementioned expert resources and agents, supports information flow where necessary, and ensures appropriate procedures, recordkeeping, and documentation are in place. The Chief Investment Officer, or their designee, is authorized by the Commission to opt into a non-U.S. action on the Commission's behalf.
- g. Fund investment staff provide input to the Commission when it considers opting out and filing a separate action or applying for lead or co-lead plaintiff status.

2) Commission Responsibilities

The Commission's responsibilities as it relates to Securities Litigation Matters include those for which it retains authority and those that are performed by its expert resources and agents. A listing of responsibilities appears below.

- a. **Responsibilities Where the Commission Retains Authority**
 - i. Develop and amend this Policy, when appropriate, in light of contemporary and best industry practices and the resources available to VPIC,
 - ii. Determine the need for and the scope of, and select, direct, monitor, and evaluate experts and agents to aid in and implement Commission decision-making,
 - iii. Determine whether to opt-out of a class action and file a separate action,
 - iv. Determine whether VPIC should serve as lead or co-lead plaintiff, and

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- v. Ensure the existence of a sound process and sufficient systems and resources to appropriately address Securities Litigation Matters.

b. Responsibilities Performed by Expert Resources and Agents

- i. Develop and maintain a sound process, and sufficient systems and resources to comply with this Policy (Primary Legal Advisor, Fund Chief Investment Officer, Fund Staff),
- ii. Monitor the public markets for U.S. and non-U.S. actions related to Fund-owned Securities and Eligible Transactions (Commission Securities Litigation Monitor, Custodian Bank),
- iii. File claims in all U.S. class action cases where VPIC has any Eligible Transactions, (Custodian Bank or Commission Securities Litigation Monitor),
- iv. Represent VPIC in legal action (Primary Legal Advisor, Commission Securities Litigation Counsel),
- v. Opt-in, on behalf of VPIC, to non-U.S. claims where appropriate (Chief Investment Officer),
- vi. Pursue other claims or actions in associated areas where appropriate and as advised by expert resources and agents (Chief Investment Officer),
- vii. Opt-out, on behalf of VPIC, of U.S. claims where appropriate, when expedited action is required that falls outside the calendar of regular meetings of the Commission (Commission Chair and Chief Investment Officer),
- viii. Where there are Fund-owned Securities and Eligible Transactions in non-U.S. actions, analyze the loss, evaluate the available legal options, and the associated risk and expense (Commission Securities Litigation Monitor),
- ix. Provide claims analysis for U.S. class actions where the loss is large and recommend to the Commission, where appropriate, application for lead or co-lead plaintiff status (Commission Securities Litigation Monitor),
- x. Represent VPIC in legal action (Primary Legal Advisor, Commission Securities Litigation Counsel),
- xi. Ensure recoveries are received, in the right amounts, and are appropriately deposited, (Primary Legal Advisor, Fund Administrative Staff), and
- xii. Monitor changes to applicable laws or regulations related to Securities Litigation Matters (Primary Legal Advisor).

3. Securities Litigation Matters: Commission Decisions and Principles

The Commission receives annual reports from the Primary Legal Advisor with information pertaining to Securities Litigation Matters and Eligible Transactions. The Commission makes decisions in consultation with its Fiduciary Consultant and upon the written recommendation from the Primary Legal Advisor and Commission Securities Litigation Monitor, to: a) opt-out of a class action and file a separate action, or b) serve as lead or co-lead plaintiff.

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A description of the Commission's parameters and principles relative to each decision follows. They are not intended to bind the Commission to specific actions.

a. Opt-Out of Class Action and File a Separate Action

Principles that guide the Commission's decision to opt-out of a class action and file a separate action include the following:

- VPIC has Eligible Transactions related to claims that are not included in the class action.
- VPIC has claims and/or theories of recovery that are not shared by or available to other class members.
- There is significant interest in opting out by other public pension funds to effectively create a separate class.
- There are alternative means to influence the case, such as a shared interest with the State.

If the Commission determines opting out is appropriate, it will select a Commission Securities Litigation Counsel, based on the recommendation of the Primary Legal Advisor, to file a separate action.

b. Serve as Lead Plaintiff or Co-Lead Plaintiff

All legal expertise, Fiduciary Consultant, and resources are outsourced in VPIC's operating model. Additionally, litigation typically involves a commitment of time and resources from the Primary Legal Advisor and Fund Administrative Staff. VPIC considers seeking lead or co-lead plaintiff status in securities class action lawsuits on a case-by-case basis only to the extent VPIC believes it has experienced the greatest loss and the Securities Litigation Matter reflects claims or potential claims more than \$10 million in estimated recoverable losses. In addition, qualitative factors that influence the Commission's decision to seek to lead or co-lead plaintiff status include the following:

- Strength of the case with or without VPIC as lead,
- Nature and severity of alleged misconduct,
- Ability to raise recovery size,
- Burden and cost of discovery,
- Effect on VPIC's investment portfolios, and
- Reputational risk.

The Commission may decide to seek to accept lead or co-lead plaintiff status based on the strength of the qualitative factors alone, even if estimated recoverable losses are less than the quantitative threshold. In cases where Fund is not lead or co-lead plaintiff, it works diligently to ensure that it collects all that it is entitled to as the result of any settlements or judgments.

c. Opt-in to non-U.S. claims

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Principles that guide the Commission's decision to opt-in to a class action and file a separate action include the following:

- VPIC has Eligible Transactions related to claims that are not included in the class action.
- VPIC has claims and/or theories of recovery that are not shared by or available to other class members.
- There is significant interest in opting in by other public pension funds to effectively create a separate class.
- There are alternative means to influence the case, such as a shared interest with the State.

If the Commission determines opting in is appropriate, it will select a Commission Securities Litigation Counsel, based on the recommendation of the Primary Legal Advisor, to file a separate action.