"Smart Policy, Smarter Decisions"

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Learn how a comprehensive securities litigation policy should guide a Pension Plans decision-making process relating to securities litigation.

Investment staff and Trustees make critical decisions on behalf of the Pension Plans, including decisions relating to participation in securities litigation and settlements. Having a comprehensive Securities Litigation Policy (SLP) in place puts public pension plans in the best position to properly discharge their fiduciary responsibility in protecting pension assets.

What Is the Purpose of an SLP?

SLP is a formal document that describes a public pension plans' approach to domestic and international securities litigation and settlements and its process for evaluating and pursuing legal action. It articulates the factors that pension plans should consider when presented with the opportunity to actively participate in securities litigation as lead plaintiff, or alternatively, remain a passive class member through the settlement process. A carefully drafted litigation policy also describes the process related to portfolio monitoring, such as record keeping procedures, retention of outside consultants and their roles and responsibilities, as well as internal procedures for the consideration and approval of the plans' course of action. In essence, an SLP is a tool that ensures the pension plan has a structured approach in seeking recovery of its assets through litigation and settlements. (do we want to mention Opt out/Opt in?)

What Is the Primary Objective of an SLP?

The primary objective of an SLP is the fulfillment of the pension plans fiduciary duty to effectively manage legal claims as plan assets, including maximizing recovery through litigation and settlements. A securities litigation policy ensures that the plan approaches litigation and asset recovery in a fully informed manner and that its approach is consistent across different litigation opportunities. Having in place a comprehensive framework that guides trustees' deliberation enhances the transparency of their decision-making process. It can also shield trustees' professional judgment exercised within the bounds of a formal litigation policy from potential claims of breaches of fiduciary duties.

What Components Should a SLP Have?

There is no "one size fits all" when it comes to securities litigation policy. Each plan should seek to develop a policy that uniquely fits the plan's needs. Generally speaking, a comprehensive securities litigation policies have several components, including:

- procedures for monitoring class action litigation and settlements, including the identity and number of portfolio monitoring law firms and their roles and responsibilities;
- factors that the plan may consider when evaluating its involvement in litigation, including any quantitative loss thresholds (expressed as either set dollar amount of a percentage of the funds under management) as well as qualitative elements, such as subject matter of the litigation and related policy considerations;
- form and content of periodic reports provided to the plan by its legal advisors, as well as the individuals responsible for the review of any such reporting and communication with outside counsel,

including procedures for documenting progress in litigation from filing the complaint through settlement and recovery;

- processes for accurate documentation of the plan's trading activity for purposes of determining eligibility to participate in litigation and settlements, and evaluation of each litigation opportunity;
- the identity of individuals who participate in the decision-making process, their roles and responsibilities as well the identity of those who should contribute their skills, expertise, and authority to evaluate and commit the plan to a certain course of action.

What Are the Steps for Developing a SLP

Developing an SLP is a deliberate process that requires collaboration between a qualified securities law firm, the plans' general counsel, and potentially others, including investment consultants, plan managers, and/or the pension plans board of trustees. It starts with a first draft most often crafted by a securities law firm, which is then discussed, modified, and shaped to the unique needs of the pension plan, and ultimately adopted by the board. The SLP should be periodically revised and updated to reflect new developments in the law, changes in the pension plans assets and needs, and to ensure that it conforms with other policies, including, for example, the pension plans investment policy statement.

Assistance with Your SLP Statement

If your plan requires support in updating its SLP Statement, please contact Lowey Dannenberg at jmadden@lowey.com or afarah@lowey.com. Our team is fully prepared to assist with this important governance function and is available to collaborate directly with your custodians to ensure real-time monitoring of your publicly traded securities portfolio.

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