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San Bernardino County Employees' Retirement Association

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Last Approved	N/A
Effective	Upon Approval
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Next Review	3 years after approval

Area	Investments
Applicability	SBCERA systemwide

## Securities and Antitrust Litigation Policy

POLICY NO. 008

### Purpose:

The Board of Retirement for the San Bernardino County Employees' Retirement Association (SBCERA) adopts this policy for monitoring and participating in securities litigation class action lawsuits. This policy is intended to set forth procedures and guidelines for monitoring and, when appropriate, participating in securities class action and antitrust lawsuits in furtherance of the Board of Retirement's fiduciary duty to protect the assets of the SBCERA trust as set forth in the California Constitution.

### Background and Principles:

As a public pension plan and institutional shareholder, SBCERA is frequently a class member in securities class actions that seek to recover damages resulting from alleged wrongful acts or omissions of others whose securities SBCERA holds as investments in the Trust.

The enactment by Congress of the Private Securities Litigation Reform Act (PSLRA) in 1995 allows institutional investors and other large shareholders to seek lead plaintiff status in securities class actions. Since enactment of the PSLRA, it has been demonstrated that participation as lead plaintiff by large, sophisticated shareholders, particularly institutional shareholders, 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 domestic and international 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 the members of

the class.

*In Morrison v. National Australia Bank*, the **Unites United** States Supreme Court held that investors cannot initiate or participate in a U.S. securities class action if the investor's claims are based on securities purchased outside the U.S. Investors must evaluate actions in non-U.S. jurisdictions to protect their interests. SBCERA will determine whether the potential benefits of actively participating in non-U.S. cases outweighs the potential risks.

*In CalPERS v. ANZ Securities, Inc. ("ANZ Securities")*, the United States Supreme Court 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.

SBCERA exists to provide retirement income to its members. The goal of this policy is to preserve trust assets to meet the needs of SBCERA members. SBCERA will prudently select the best means to preserve those assets.

### **Policies:**

1. The Board of Retirement delegates the filing and reporting of all proofs of claim in domestic securities litigation class action lawsuits for which SBCERA is eligible to SBCERA's Custodian.
2. SBCERA shall retain Securities Litigation Monitoring Firms and Portfolio Monitoring and Filing Services to monitor securities litigation class action lawsuits and other lawsuits; **as well as at the discretion of Chief Counsel may retain an independent third-party analysis service in regard to claims and/or lead plaintiff requests**, that may have an impact on the SBCERA portfolio. The Board shall appoint Securities Litigation Monitoring Firms and Portfolio Monitoring Services through a RFP processes.
3. The Board delegates filing of proofs of claim not filed by the Custodian to SBCERA's portfolio monitoring and filing service, as well as the monitoring and filing of claims in antitrust lawsuits. In all cases, SBCERA's Monitoring Firms, and Portfolio Monitoring Services shall monitor all international actions and provide reports on such actions.
4. SBCERA's Custodian, Securities Litigation Monitoring Firms, and Portfolio Monitoring and Filing Services shall provide no less than quarterly reports on securities litigation class action lawsuits in which SBCERA is or is eligible to be a class member, which shall be monitored by Chief Counsel or designee, in cooperation with the Chief Investment Officer or designee or with such other staff member as the Chief Executive Officer may designate. The Chief Counsel shall report case filings and recoveries quarterly to the Board.

#### **Participation in Domestic Class Actions:**

5. The Board of Retirement will consider becoming a lead plaintiff in a domestic securities litigation or antitrust case, where: (1) the estimated loss to SBCERA exceeds \$2 million or the estimated loss to SBCERA exceeds \$1 million and SBCERA will join with one or more other

institutional investors in pursuing the action; (2) to the best of SBCERA's knowledge, no institutional investor with sufficient losses and standing intends to petition the court to become lead plaintiff; and, (3) lead plaintiff status is recommended by both SBCERA's Chief Counsel and Chief Executive Officer in consultation with SBCERA's Securities Litigation Monitoring Firms.

6. The Board of Retirement may also consider petitioning for lead plaintiff status for cases in which SBCERA sustained unique losses that are not covered by named class representatives. In such cases, the Board of Retirement shall consider the amount of losses sustained by SBCERA, the likelihood of additional recovery due to SBCERA's participation, the cost, if any, to SBCERA to participate, the amount of SBCERA staff time required to pursue the litigation, and other information that is relevant to the matter. The Board of Retirement shall consult with the Chief Executive Officer, Chief Counsel, and Securities Litigation Monitoring Firms.
7. If the Board of Retirement determines it is in SBCERA's best interests to petition for lead plaintiff or to join an action as a named plaintiff, the Board of Retirement shall enter into a separate retainer agreement with one of its Securities Litigation Monitoring Firms or another firm based upon the review of a variety of factors such as the firm's experience, evaluation of the case, proposal, and other factors.

**Participation in International Group Actions:**

8. The Board of Retirement will consider becoming a lead plaintiff in international securities litigation cases that are substantially similar to domestic class actions, where: (1) the estimated loss to SBCERA exceeds \$2 million; (2) no institutional investor has petitioned the court to become lead plaintiff; and, (3) lead plaintiff status is recommended by both SBCERA's Chief Counsel and Chief Executive Officer in consultation with SBCERA's Securities Litigation Monitoring Firms.
9. Participation in international securities litigation that is not substantially similar to a domestic class action cases will be based on the following considerations: (1) the cost to participate, including any attorneys' fees, is not so high as to reduce recovery below the point where participation is prudent; and, (2) both Chief Counsel and Chief Executive Officer, after reviewing the case and considering cost to participate and any other risks, the likelihood of recovery, and the likely size of such recovery, make a recommendation to participate.

**Authority:**

10. The Board shall approve SBCERA filing as lead plaintiff, joining as co-lead plaintiff with another institutional investor, joinder, and/or amicus curiae in an existing action. However, if Chief Counsel determines that immediate approval to take an active role in litigation is necessary to preserve SBCERA's rights and / or interests, and the matter cannot be timely presented to the Board of Retirement at a regularly scheduled meeting, the Chief Counsel is authorized, after consultation with the Chief Executive Officer and Chief Investment Officer, to approve participation. The Chief Counsel shall notify the Board of Retirement of the decision at its next regularly scheduled meeting.

**Other Actions:**

11. SBCERA will not pursue individual actions such as opt-out cases except in extraordinary circumstances. Extraordinary circumstances may arise in class-action cases where the proposed settlement does not provide a recovery to SBCERA that is proportional to SBCERA's losses or SBCERA has unique losses that are not covered by the settlement.
12. SBCERA may also pursue individual actions to address corporate governance or other issues

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when SBCERA is in a unique position to substantially improve shareholder value in the defendant organization.

13. Individual actions will be filed only after approval by the Board of Retirement at a regularly-scheduled meeting.

## Independent Analysis

~~When possible, SBCERA shall utilize the services of an independent third party to provide analysis of claims and/or lead plaintiff requests. Such analysis should include a summary of the case, potential upside and downside risk, and resource commitment. If the CEO and Chief Counsel recommend to the Board that SBCERA serve as a lead plaintiff, such independent analysis shall be provided to the Board for consideration.~~

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## Approval Signatures

### Step Description

Investment Services Review  
Investment Services Review

### Approver

Barbara Hannah: Chief Counsel  
Eydie Cox: Sr Investment Analyst

### Date

Pending  
Pending

## Applicability

SBCERA, SBCERA Internal