

**MINUTES of Regular SERS Board Meeting - Wednesday, September 16, 2015**

**CALLED TO ORDER: 9:30 a.m. by Chairman David R. Fillman**

**ATTENDEES:**

**Members and Designees**

David R. Fillman – Chairman  
Stephen S. Aichele  
Glenn E. Becker  
Robert W. Godshall  
Charles T. McIlhinney, Jr.  
Michael V. Puppio, Jr.  
M. Joseph Rocks  
Christopher Craig – Designee for Treasurer Timothy A. Reese  
Dan Ocko - Designee for Representative Dan B. Frankel  
Monica Riddle – Designee for Senator Charles T. McIlhinney, Jr.  
Ned Smith - Designee for Representative Robert W. Godshall

**Consultants**

Ian Bray, RVK, Inc.  
Mike Elio, StepStone Group LLC  
Kathlika Fontes, StepStone Group LLC  
Rob Kochis, The Townsend Group  
Robert Palmeri, RVK, Inc.  
Jim Voytko, RVK, Inc.

**Executive Staff**

Thomas Brier  
David E. Durbin  
Anthony Faiola  
Christopher Houston

**Staff**

Rose Agnew  
Karen Damiano-Stahler  
Dino Degennaro  
Patricia Dence  
Linda Engle  
David Felix  
Brandon Halm  
Pamela Hile  
William Hutcheson  
Meredith Jones  
Barbara Kiral  
Cheryl Krchnar

Lauren Lenfest  
Karen Lynn  
N. Joseph Marcucci  
Jeffrey McCormick  
Mark McGrath  
Sara McSurdy  
Jeffrey Meyer  
James Nolan  
Jay Pagni  
William Riegel  
Steven Rosenberry  
David Sedlak  
Joseph Torta  
William Truong

**Visitors**

Kim Aspenleider, Delaware Investments  
Braynard Brown, Rockefeller & Co., Inc.  
Jim Kane, Unite Here  
Sandy Leopold, PA Department of Treasury  
Ed Powers, Bank of America Merrill Lynch  
Shawn Smith, PA Office of General Counsel

**Presenters**

Alexander Casale, Audax Private Equity Fund V, LP  
Laura Fahrney, Ridgemont Equity Partners II, LP  
Alan Ngo, RRJ Capital Master Fund III, LP  
Richard Ong, RRJ Capital Master Fund III, LP  
Walker Poole, Ridgemont Equity Partners II, LP  
Geoffrey Rehnert, Audax Private Equity Fund V, LP  
Vikrant Sawhney, Blackstone Capital Partners VII, LP  
Michael Sotirhos, Blackstone Capital Partners VII, LP

## **MINUTES of the Regular SERS Board Meeting Wednesday, September 16, 2015**

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### A. CALL TO ORDER

At his first meeting as Chairman since his 8/13/2015 appointment by Governor Wolf, Mr. David Fillman thanked outgoing Chairman Glenn Becker for his work and professionalism while serving as Chairman.

### B. Investment Presentations and Reviews: SERS INVESTMENT OFFICE AND RVK, INC.

Presentation: 1. Capital Market Report

Messrs. Voytko and Bray presented the report provided to the board (9/16/2015 board handout).

Presentation: 2. SERS Quarterly Performance Report (as of June 30, 2015)

Messrs. Voytko and Bray presented the report provided to the board (9/16/2015 Board Package, Investment Report, Tab 3).

### C. Alternative Investments: SERS INVESTMENT OFFICE AND STEPSTONE GROUP LLC

Action: 1. Alternative Investments Interview: **RRJ Capital Master Fund III, L.P.**

Mses. Lenfest and Fontes and Messrs. Ong and Ngo presented the report provided to the board (9/16/2015 Board Package, Investment Report, Tab 11).

#### **MOTION: 2015-43**

By motion that was moved, seconded, and approved by board members, except for Mr. Craig on behalf of Treasurer Reese, who voted No, it was

RESOLVED: That the board commits up to \$50 million, plus investment expenses and pro rata share of partnership operating expenses, consistent with executed partnership documents, to RRJ Capital Master Fund III, L.P., as an investment within the Alternative Investments asset class, subject to successful completion of contract negotiations and execution and delivery of closing documents by all parties, including required Commonwealth legal approvals, within 12 months.

Action: 2. Alternative Investments Interview: **Audax Private Equity Fund V, L.P.**

Mses. Lenfest and Fontes and Messrs. Rehnert and Casale presented the report provided to the board (9/16/2015 Board Package, Investment Report, Tab 8).

#### **MOTION: 2015-44**

By motion that was moved, seconded, and approved by board members, it was

RESOLVED: That the board commits up to \$50 million, plus investment expenses and pro rata share of partnership operating expenses, consistent with executed partnership documents, to Audax Private Equity Fund V, L.P., as a follow-on investment within the Alternative Investments asset class, subject to successful completion of contract negotiations and execution and delivery of closing documents by all parties, including required Commonwealth legal approvals, within 12 months.

Action: 3. Alternative Investments Interview: **Blackstone Capital Partners VII, L.P.**

Mses. Lenfest and Fontes and Messrs. Sawhney and Sotirhos presented the report provided to the board (9/16/2015 Board Package, Investment Report, Tab 9).

**MOTION: 2015-45**

By motion that was moved, seconded, and approved by board members, it was

**RESOLVED:** That the board commits up to \$50 million, plus investment expenses and pro rata share of partnership operating expenses, consistent with executed partnership documents, to Blackstone Capital Partners VII, L.P., as a follow-on investment within the Alternative Investments asset class, subject to successful completion of contract negotiations and execution and delivery of closing documents by all parties, including required Commonwealth legal approvals, within 12 months.

**Action: 4. Alternative Investments Interview: Ridgemont Equity Partners II, L.P.**

Mses. Lenfest, Fontes and Fahrney and Mr. Poole presented the report provided to the board (9/16/2015 Board Package, Investment Report, Tab 10).

**MOTION: 2015-46**

By motion that was moved, seconded, and approved by board members, it was

**RESOLVED:** That the board commits up to \$50 million, plus investment expenses and pro rata share of partnership operating expenses, consistent with executed partnership documents, to Ridgemont Equity Partners II, L.P., as an investment within the Alternative Investments asset class, subject to successful completion of contract negotiations and execution and delivery of closing documents by all parties, including required Commonwealth legal approvals, within 12 months.

D. Investment Presentations and Reviews: SERS INVESTMENT OFFICE AND RVK, INC.  
(continued)

Presentation: 1. Asset Liability Study Discussion

Messrs. Voytko and Bray presented the report provided to the board (9/16/2015 Board Package, Investment Report, Tab 5).

Presentation: 2. Asset Allocation Discussion

Discussion was tabled until the October 28, 2015 meeting.

Presentation: 3. Emerging Manager Program Discussion

Discussion was tabled until the October 28, 2015 meeting.

E. EXECUTIVE SESSION

Presentation: 1. AGENDA

At 12:30 p.m., the board recessed and entered executive session to receive legal advice on executive session agenda items, as attached (ATTACHMENT A).

F. LUNCH BREAK

G. PUBLIC MEETING RESUMES

The public meeting resumed at 1:55 p.m.

#### H. DEFERRED COMPENSATION PROGRAM (DCP) DISCUSSION

Chairman Fillman noted that the following motions are a result of discussions in executive session.

**MOTION: 2015-47**

By motion that was moved, seconded, and approved by board members, it was

RESOLVED: That the board amends Motion: 2014-55 to approve the establishment of an additional Profile Fund within the Deferred Compensation Program, which Fund will target allocations of 10% to a short-term money market fund and 90% to a short-duration/intermediate-duration bond fund, as directed by the participant. The board directs staff and the Legal Office not to begin action on this motion until they receive final confirmation by the board.

**MOTION: 2015-48**

By motion that was moved, seconded, and approved by board members, it was

RESOLVED: That the board amends Motion: 2015-24 to approve the following managers Weaver C. Barksdale & Associates, Inc. and Baird Advisors, to actively manage assets for a short-duration/intermediate-duration bond fund component of a Conservative Income Fund, subject to successful completion of contract negotiations. 90% of participant directed assets into the Conservative Income Fund's short-duration/intermediate-duration bond fund component will be split evenly between Weaver C. Barksdale & Associates, Inc. and Baird Advisors. The remaining 10% of participant directed assets into the Conservative Income Fund will be deposited into the Short-term Money Market Fund. The board directs staff and the Legal Office not to begin action on this motion until they receive final confirmation by the board.

#### I. STANDARD MOTIONS

Action: 1. Minutes of Board Meeting - July 22, 2015

Chairman Fillman presented the report provided to the board (9/16/2015 Board Package, Administrative Report, Tab 2).

**MOTION: 2015-49**

By motion that was moved, seconded, and approved by board members, it was

RESOLVED: That the board approves the minutes of the July 22, 2015 board meeting.

Action: 2. Statement of Changes in Fiduciary Net Position for Periods Ending - June 30 and July 31, 2015

Chairman Fillman presented the report provided to the board (9/16/2015 Board Package, Administrative Report, Tab 3).

**MOTION: 2015-50**

By motion that was moved, seconded, and approved by board members, it was

RESOLVED: That the board accepts the State Employees' Retirement System's Statement of Changes in Fiduciary Net Position for the periods ending June 30 and July 31, 2015.

#### J. REPORT FROM ACTING CHIEF COUNSEL

Chairman Fillman noted that the following motion is a result of discussions in executive session.

**MOTION: 2015-51**

By motion that was moved, seconded, and approved by board members, except for

Rep. Godshall, who voted NO, it was

RESOLVED: That the board adopts the attached Resolution adopting the Second Amended Securities Litigation Policy in the form substantially similar to the one submitted to the board, a copy of which shall be filed with the minutes of the meeting (ATTACHMENT B).

#### K. REPORT FROM CHIEF FINANCIAL OFFICER

Action: 1. Fiscal Year 2016-17 Administrative and Investment Budgets Proposal

Mr. Faiola presented the report that was provided to the board (9/16/2015 Board Package, Administrative Report, Tab 12).

#### **MOTION: 2015-52**

By motion that was moved, seconded, and approved by board members, it was

RESOLVED: That the board approves both the SERS' Administrative Budget for Fiscal Year 2016-17, substantially in the form proposed with such amendments as are permitted by the Office of the Budget, and the SERS' Investment Budget for Fiscal Year 2016-17 in the form proposed.

#### L. REPORT FROM EXECUTIVE DIRECTOR

Presentation: 1. DCP Committee Minutes

Mr. Durbin noted that the minutes were provided to the board.

Action: 1. Report from Audit Committee

Mr. Durbin noted that the following motion is a result of discussions in executive session.

#### **MOTION: 2015-53**

By motion that was moved, seconded, and approved by board members, it was

RESOLVED: That the board adopts the attached Resolution (ATTACHMENT C) to authorize the engagement of Funston Advisory Services, LLC.

Presentation: 2. Board Adjudication

Mr. Durbin provided the board with the following information on the results of the notational ballots regarding Board Adjudications.

#### **Account of Kenneth N. Miller**

**Docket No. 2013-08**

**Claim of Kenneth N. Miller**

The State Employees' Retirement Board **DENIED** Claimant's appeal of the Act 140 forfeiture of his entire pension benefit. Board members Glenn Becker, Treasurer Reese, Representative Frankel, and Representative Godshall dissented. They did not agree with the results of the Board Opinion and would reinstate Claimant's pension benefits.

Presentation: 3. Administrative Update

Mr. Durbin presented the report that was provided to the board (9/16/2015 Board Package, Administrative Report, Tab 9 and board handouts).

Presentation: 4. Legislative Update

Mr. Durbin presented the report that was provided to the board (9/16/2015 Board Package, Administrative Report, Tab 10). A House Finance Committee meeting will be held on September 21, 2015 regarding HB 1332, the Tax Qualification bill.

**Presentation: 5. DRAFT 2016 Board Meeting Dates**

Mr. Durbin referenced the schedule that was provided to the board (9/16/2015 Board Package, Administrative Report, Tab 11). He asked that board members contact the executive office with any conflicts with the proposed dates before the schedule is finalized at the October 28, 2015 board meeting.

**M. NEXT BOARD MEETING - OCTOBER 28, 2015**

Chairman Fillman noted that the next regular meeting of the SERS board is scheduled for October 28, 2015.

**N. MOTION TO ADJOURN**

Action: 1. Adjournment

**MOTION: 2015-54**

By motion of Chairman Fillman, the board unanimously agreed to adjourn the meeting at 2:05 p.m.

Respectfully submitted,



David E. Durbin  
Executive Director

# ATTACHMENT A

## EXECUTIVE SESSION AGENDA

Meeting: September 16, 2015

### Executive Session

1. **Status of Board & Organizational Governance Project**
2. **Notational Ballot**  
  
**Account of Babatola Fadojutimi**  
**Docket No. 2014-07**  
**Claim of Babatola Fadojutimi**
3. **Reports on Decisions**
4. **Securities Litigation Committee**
5. **Deferred Compensation Program (DCP) Stable Value Transition with Proposed Motion**
6. **Samuel V. Nastari v. State Employees' Retirement System**
7. **Litigation – Records Review Process**
8. **Fund Update**
9. **Preliminary Fund Performance and Risk Statistics**

# ATTACHMENT B

## COMMONWEALTH OF PENNSYLVANIA STATE EMPLOYEES' RETIREMENT SYSTEM RESOLUTION 2015-51

**WHEREAS**, on October 28, 1998, pursuant to Resolution 1998-67, the State Employees' Retirement Board (the "Board") delegated to a subcommittee authority to approve applications by the State Employees' Retirement System ("SERS") to serve as lead plaintiff in securities class action law suits; and

**WHEREAS**, on June 4, 2003, the Board adopted Resolution 2003-49, which repealed Resolution 1998-67 and established a Securities Litigation Committee (the "SLC") and gave the SLC broad powers for determining whether SERS should institute securities litigation, but specified a \$3,000,000 loss to SERS as a general requirement for participating in securities litigation; and

**WHEREAS**, on May 31, 2006, the Board adopted Resolution 2006-53, which adopted the Securities Litigation Policy (the "SLP"), which established the procedures for determining when and how to pursue securities litigation and the selection process to secure legal counsel for such purpose; and

**WHEREAS**, on April 24, 2013, the Board adopted Resolution 2013-25, which amended the SLP (the "First Amended SLP") to: (1) establish a secondary threshold where the potential burdens of United States class action class representation are reduced or absent and a greater recovery is evident, such as in an opt-out action where a \$2 million loss is appropriate for analysis, and (2) authorize SERS to consider joining a foreign or domestic joint, group or other available non-United States class action, where a threshold loss of \$500,000 exists; and

**WHEREAS**, for purposes of selecting law firms to represent SERS, SERS established a securities litigation counsel pool (the "SERS Pool") from which law firms are selected should the SLC approve proceeding with securities litigation; and

**WHEREAS**, the Office of General Counsel has established a securities litigation counsel pool (the "Pool") through a request for qualifications (RFQ) process, from which law firms are to be selected to represent any agency seeking securities litigation counsel, according to OGC procedures established in conformance with Executive Order No. 2015-02; and

**WHEREAS**, the Pool would supplant the previously established SERS Pool; and

**WHEREAS**, the SLC recommends that the Board amend the First Amended SLP, so as to conform the securities litigation counsel selection process to the OGC procedures established for selection of law firms from the Pool, and adopt the Second Amended Securities Litigation Policy (the "Second Amended SLP"); and

**WHEREFORE**, it is hereby **RESOLVED**, that the Board adopts the Second Amended SLP in the form substantially similar to the one submitted to the Board, a copy of which shall be filed with the minutes of the meeting.

## STATE EMPLOYEES' RETIREMENT SYSTEM

### SECOND AMENDED SECURITIES LITIGATION POLICY

#### Background

The State Employees' Retirement Board (the "Board") has a fiduciary obligation to preserve and protect the assets of the State Employees' Retirement System ("SERS") for the exclusive benefit of SERS' members. The Board has long recognized that SERS' assets include securities claims, which SERS has. On October 28, 1998, the Board adopted Resolution 1998-67 establishing a sub-committee with authority to approve applications by SERS as lead plaintiff in securities class actions. On June 4, 2003, the Board adopted Resolution 2003-49, which repealed Resolution 1998-67 and established a Securities Litigation Committee (the "SLC") and gave the SLC broad powers for determining whether SERS should institute securities litigation, but specified a \$3,000,000 loss to SERS as a general requirement for participating in securities litigation. While this \$3,000,000 loss is not a strict threshold, it is helpful to articulate intermediate thresholds which will assist further in-depth analysis of potential securities litigation matters. The \$3,000,000 threshold was intended as a guideline to analyze and decide whether SERS would seek lead or co-lead status in a United States class action lawsuit. Such a threshold was suitable in light of the potential expenditure of time and the business burdens of such an undertaking. A secondary threshold was adopted in 2013 where the potential burdens of United States class action class representation are reduced or absent and a greater recovery is evident, such as in an opt-out action where a \$2 million loss is appropriate for analysis. Also adopted in 2013 was authority for SERS to consider joining a foreign or domestic joint, group or other available non-United States class action, where a threshold loss of \$500,000 exists. The Board recognizes that SERS' participation in securities litigation, including engagement of outside securities

counsel for such purpose, requires compliance with the Commonwealth Attorneys Act and the State Employees' Retirement Code.

The Board also understands that it is important to file claims for SERS' proper share of securities class action recoveries when SERS is a member of the class. Such claims are currently filed on SERS' behalf by Bank of New York Mellon ("BONYMELLON"), the sub-custodian of SERS' securities, pursuant to an agreement with the Treasury Department, and SERS' Office of Finance and Administration ("OFA") which monitors such filings. The Board believes that OFA should determine the appropriate allocation of filing and monitoring responsibility between the sub-custodian and OFA.

The SLC, in consultation with SERS' Chief Counsel and in coordination with the Office of General Counsel ("OGC") and the Office of Attorney General ("OAG"), has established certain procedures for determining when and how to pursue securities litigation, recognizing that such decisions involve a cost/benefit analysis based on the particular facts of each case. In accordance with procedures established by the Office of General Counsel of the Commonwealth of Pennsylvania ("OGC"), SERS' Legal Office will work with OGC to establish a pool (the "Pool") of qualified Law Firms to serve as Securities Litigation Counsel for SERS. SERS can contact the Pool for recommendations on whether and how to pursue securities litigation. When the SLC decides to consider instituting litigation, any engagement of law firms in the Pool by SERS, shall be in accordance with OGC procedures, for such purpose.

SERS utilizes the services of Financial Recovery Technologies LLC DBA IRSS LLC ("FRT") to advise SERS of (a) filings of securities class actions, (b) terms of settlements of securities class actions, (c) SERS' losses (calculated under FRT's formulas for both maximum recovery (profit & loss) and maximum recovery (wash)) based on SERS' securities trading data provided to FRT by BONYMELLON, and (d) instances where FRT has calculated a loss for SERS exceeding a threshold specified by SERS' Legal Office (the "Notice Threshold").

The Board has determined that it should amend its policy regarding securities litigation to formally recognize the revised Securities Litigation Counsel selection process and to confirm the roles of various parties and the procedures to be followed. This statement of policy is intended to formally acknowledge the procedures to be followed by the SLC and SERS. It is not intended to diminish the broad authority given to the SLC in Resolution 2003-49 and any succeeding Resolution. Indeed, as noted herein, the appendices to this statement of policy can be modified by the SLC.

#### Statement of Policy

In furtherance of the fulfillment of the Board's fiduciary duty to take reasonable, cost-effective steps to identify and recover losses associated with securities claims and, when appropriate, to attempt to effect improved corporate governance, the SLC, SERS Legal Office and OFA shall take the following actions. The SLC and SERS' Legal Office, in coordination with OGC and OAG, shall follow the steps set forth in the "Securities Litigation Decision Process" attached hereto as Appendix A (as said appendix may be modified from time to time by the Board or the SLC) for the purpose of deciding whether and how to be involved in securities litigation and which legal firm to engage for such purpose. In deciding whether to pursue securities litigation or to take other action, the SLC shall consider the factors set forth in "Factors to Consider in Deciding Whether to Seek Lead Plaintiff Status in Securities Class Actions" attached hereto as Appendix B (as said appendix may be modified from time to time by the Board or the SLC) and such other factors as the SLC deems appropriate, giving weight to the various factors based on the particular facts of each case. The \$3,000,000, \$2,000,000 and \$500,000 loss thresholds set forth in Resolution 2003-49 and succeeding Resolutions shall serve as a general guide and not as an absolute requirement.

If a decision is made to have SERS pursue litigation in a particular case, the SLC and SERS' Legal Office shall take all action deemed necessary or desirable by them, which may include, without limitation, any of the actions set forth in Appendix C (as said appendix may be modified from time to

time by the Board or the SLC). If SERS is not initially pursuing litigation in a particular case in which SERS had a loss, the SLC and SERS' Legal Office shall follow the monitoring procedures set forth in Appendix D (as said appendix may be modified from time to time by the Board or the SLC) to determine whether and what action should be taken in such case. Unless SERS has opted out of the class in connection with the settlement of a class action, SERS sub-custodian or, if the sub-custodian has not been engaged to do so, OFA or such other party as may be engaged or designated to do so on SERS' behalf shall make an appropriate filing to obtain for SERS its proper share of the class action settlement. OFA shall perform such monitoring as it deems appropriate to assure that such filings are being timely and properly made and that SERS is receiving its proper share of such class action settlements.

Appendices A, B, C and D may be modified from time to time by either the Board or the SLC. If any of said appendices is modified by the SLC, the SLC shall so advise the Board at the next meeting of the Board following such modification.

## Appendix A

### Securities Litigation Decision Process\*

#### SECTION I

- SERS' Legal Office receives notice of securities class action filings, potential claims and settlements.
- SERS' Legal Office advises the SLC, OGC and OAG of any potential cases where SERS may have a loss above or close to SERS' thresholds.
- SERS' Legal Office, to the extent it is able, obtains information, including:
  - Nature, details and quality of claim.
  - Named and potential defendants.
  - Sources of recovery.
  - Investment Office's views/concerns.
  - Other funds intending to seek lead plaintiff status.
  - Other factors that may be relevant to the decision on litigation (e.g., demands on SERS' resources, taking into account involvement in other securities cases and other matters).
- SERS' Legal Office may contact law firms in the Pool for recommendations on whether and how to pursue securities litigation and seek responses to questions, including, but not necessarily limited to the following:
  - Brief statement and assessment of merits and likelihood of success of case.
  - An evaluation of SERS' damages.
  - Availability of money to satisfy any judgment.
  - Recommendation of class action or individual action.
  - Any special issues regarding Defendants' domicile, status, trade locales, recoverability of damages or any other material matters.
- SERS' Legal Office briefs the SLC, OGC and OAG on its findings.
- If the SLC, OGC and OAG indicate that securities litigation should be considered, law firms in the Pool will be invited to submit their specific qualifications (Specific Qualifications) and case evaluations of SERS' legal position in accordance with SLC and OGC procedures (Technical Submittal). Specific

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\*Terms used herein, unless otherwise defined, shall have the meanings given to them in the body of the Securities Litigation Policy, as amended.

Qualifications will include technical expertise and responses to questions, including, but not necessarily limited to, the following:

- Brief statement and assessment of merits and likelihood of success of case.
  - An evaluation of SERS' damages.
  - Availability of money to satisfy any judgment.
  - Recommendation of class action or individual action.
  - Any special issues regarding Defendants' domicile, status, trade locales, recoverability of damages or any other material matters.
  - Special expertise/experience that makes them especially qualified for this case (not just a recitation of their previously disclosed securities litigation qualifications).
  - Three most recent securities litigation cases they handled, nature of claims in those cases, recoveries obtained and fee arrangements in those cases.
- In addition to the Technical Submittal, the law firm is to submit for evaluation the proposed fee, if engaged by SERS, including a cap and such other OGC required submissions, in accordance with OGC procedures.

## SECTION II

- Law firms that are considering responding may request relevant securities transaction information to enable such law firm to confirm SERS' loss.
- SERS' Legal Office transmits law firms' responses and loss confirmation to the SLC.
- Interviews of responding law firms may be conducted by SERS' Legal Office, the SLC, OGC and OAG to the extent considered desirable.
- The SLC approves or not approves proceeding with the litigation and, if the former, notifies OGC, via the SERS Legal Office, of its evaluation.
- Upon receipt of the SLC's evaluation of the Technical Submittal, after any discussions conducted with responsible law firms, OGC will combine the SLC's evaluation results with other evaluation factors, in accordance with OGC procedures. OGC, via the SERS' Legal Office, will recommend to the SLC the law firms according to the total overall score assigned to each, in descending order.
- Award will be made by the SLC to the responsible law firm determined to be the best qualified based on the evaluation factors, in accordance with OGC procedures. Fair and reasonable compensation shall be determined through negotiation and may be subject to court approval.

- If compensation cannot be agreed upon with the best qualified responsible law firm, then negotiations will be formally terminated with the law firm. If proposals were submitted by one or more other responsible law firm(s), negotiations may be conducted with the other responsible law firm or law firms in the order of their respective qualification ranking. Contracts may be awarded to the responsible law firm(s) then ranked as best qualified if the amount of compensation is determined to be fair and reasonable.
- The SLC and OGC have the discretion to reject all submissions or cancel the request for submissions, at any time prior to the time a contract is fully executed, when it is in the best interests of the Commonwealth. The reasons for the rejection or cancellation shall be recorded pursuant to OGC procedures.
- After selection of the law firm by the SLC, in accordance with OGC procedures OGC designates the law firm to represent SERS and advises it to proceed with the litigation.

## Appendix B

### FACTORS TO CONSIDER IN DECIDING WHETHER TO SEEK LEAD PLAINTIFF STATUS IN SECURITIES CLASS ACTIONS

#### I. Analysis of Lawsuit and Defendants

##### A. What are the strengths of the lawsuit's causes of action?

What claims are or could be asserted in the action and what is the likelihood of their sustainability? Is the case vulnerable to a motion to dismiss under the Private Securities Litigation Reform Act's pleading standards?

##### B. What are the potential sources of recovery (insurance, deep pockets, etc.)?

Do the defendants have any funds to pay a settlement or judgment? Are there viable and collectible claims against individual officers and directors or other third parties (auditors, underwriters, etc.) that appear unlikely to be vigorously pursued without SERS' participation in the litigation?<sup>1</sup>

##### C. Is there a need for governance changes to address company problems?

Are needed corporate governance changes likely to be made only as part of a settlement or judgment?

##### D. Was there egregious activity within the company such that a personal recovery from the defendants appears to be the most expedient way of preventing similar future corporate behavior?

##### E. Will SERS' participation have a positive impact on reforming securities litigation in general?

Will our credibility lend support to a cause of action that is legitimate but might otherwise fail?

#### II. Analysis of Other Potential Lead Plaintiffs and Attorneys

##### A. Is the case unlikely to be pursued if SERS does not take action?

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<sup>1</sup>Consideration might also be given to pursuing a shareholder derivative action where the company is not pursuing claims it might have against third parties, if the shareholders would benefit from realizing on those claims.

- B. Will another sophisticated lead plaintiff be likely to come forward to manage the case?

Where other institutional investors appear to have similar large claims, consideration may be given to contacting them about a joint effort.

- C. Is SERS satisfied with the reputation and skills of potential lead counsel candidates who have filed lawsuits?

Have there been indications from prior cases that likely lead counsel would seek a fee award in excess of market rates? Will participating in the suit assist in lowering plaintiff's attorney's fees and foster healthy competition within the plaintiff's bar?

### III. Analysis of Whether the Fund is an Appropriate Lead Plaintiff

- A. Will SERS have a conflict of interest in being lead plaintiff (e.g., a large continuing holding that could compromise its incentive to vigorously pursue the case)?

Is the potential class action really a nuisance suit that SERS should oppose? In such a case, SERS could add value to its holding by supporting the company's efforts to have the suit dismissed.

- B. Do compromising materials appear in SERS' or its investment manager's files?

Is there a potential that the defendants may be able to mount a stronger defense against SERS than against another lead plaintiff candidate?

- C. Are there unusual circumstances or facts that could complicate or undermine SERS' position (e.g., service as a lead plaintiff in more than five cases in the last three years, public criticism of the manager's decision to invest in the company, etc.)?

Has SERS applied for lead plaintiff in so many actions that it is taking the risk of becoming – or being seen as – a “professional plaintiff?”

- D. Are there unique claims held by SERS that may not apply to other class members (e.g., section 18 claims for direct reliance on misstatements in 10-Ks, section 11 claims from purchases pursuant to a false registration statement, etc.), which might create a conflict of interest or support a larger recovery in a separate lawsuit?

### IV. Analysis of Resources Available to Devote to Lawsuit

A. Are there resources available to pursue the claim?

Is SERS willing to bear the administrative burden of court appearances, strategy sessions, etc.? Is SERS limited by staffing constraints? Is SERS willing to accept the possibility that the court may impose Rule 11 sanctions against it if the litigation is unsuccessful?

B. What are the capabilities and anticipated testimony of SERS' likely witnesses?

C. Is the portfolio manager willing to support SERS' position in the litigation?

Does the investment manager agree that there was wrongdoing? Will the investment manager be willing to respond to requested discovery?

V. Analysis of Impact on Investment Program

A. Is there potential interference with the fund's anticipated future trading strategy if material, non-public information on the company were to be acquired during the litigation?

The investment manager may be restricted from trading the stock due to acquisition of inside information during the lawsuit. Can a firewall be established to allow continued trading?

VI. Analysis of Alternatives to Becoming Lead Plaintiff

A. Is there a less burdensome way of managing SERS' potential claim under the litigation?

Options may include doing nothing; attempting to get a larger claimant to become lead plaintiff; monitoring the case from the sidelines; writing a letter to the court and/or lead counsel to bring up issues being ignored; filing a motion to support or oppose a particular lead plaintiff or lead counsel candidate; filing a notice of appearance and more actively monitoring the case; attempting to negotiate an agreement with prospective lead counsel that will require them to keep SERS informed of case developments, provide SERS with access to discovery upon request and allow SERS to participate in settlement negotiations or be consulted on a settlement; waiting until settlement and reviewing the settlement carefully with the option to object to a poor settlement or excessive fees; and opting out of the class to file a separate action (e.g., where SERS has a substantial section 18 claim for direct reliance on misrepresentations in a document filed with the SEC that is unlikely to be pursued by the class).

B. Are there non-litigation alternatives to achieving SERS' goals?

Non-litigation alternatives to addressing the underlying cause of the company's problem are also considered (e.g., contacting appropriate law enforcement agencies about potential prosecution of wrongdoers; filing a shareholder resolution, running an alternate slate of directors, negotiating for remedial corporate governance changes, such as addition of independent directors or creation of an independent audit committee or nominating committee).

## Appendix C

### Non-comprehensive List of Actions Authorized in Support of Securities Litigation\*

- SERS' Legal Office shall coordinate with SERS' investment managers and investment consultants as it deems necessary or desirable
- SERS' Legal Office shall coordinate with, advise and represent SERS' Board and staff in connection with investigations, discovery and trial activities as it deems necessary or desirable
- SERS' Legal Office, in consultation with and approval by SERS' Chairman and, to the extent required under the agreement with the law firm representing SERS in the litigation, OGC and OAG, may approve engagement of experts and consultants and other special expenditures which the law firm representing SERS in the litigation may recommend
- SERS' Legal Office shall coordinate and communicate with such other public funds and class members and their counsel and with state and federal agencies as it deems desirable.
- SERS' Legal Office shall make such filings or approve such filings by the law firm representing SERS in the litigation as it deems necessary or desirable
- With the approval of OGC and OAG, the SLC or, with the advice of SERS Chief Counsel, SERS' Chairman may approve a settlement of the litigation

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\* Terms used herein, unless otherwise defined, shall have the meanings given to them in the body of the Securities Litigation Policy, as amended.

## Appendix D

### Class Action Securities Litigation Monitoring Procedures\*

#### SECTION I

- SERS' Legal Office shall review information provided by FRT regarding proposed settlements of class action securities litigation.
- If SERS had a significant loss in a case proposed for settlement, SERS' Legal Office shall consider the terms of the proposed settlement and other relevant information to determine whether SERS should consider opting out of the settlement and pursuing separate litigation, either alone or jointly with others.
- SERS' Legal Office may contact law firms in the Pool for recommendations on whether and how to pursue securities litigation and seek responses to questions, including, but not necessarily limited to the following:
  - Recommendation regarding opting out and pursuing separate litigation, including likelihood of success. If the recommendation is that SERS should not opt-out and pursue separate litigation, the law firm will be requested to explain why.
- If SERS' Legal Office determines that SERS should consider opting-out of a class in a case where a settlement has been proposed, it shall advise the SLC, OGC and OAG of the relevant facts.
- If the SLC, OGC and OAG conclude that opting out and pursuing separate litigation should be considered, law firms in the Pool will be invited to submit their specific qualifications (Specific Qualifications) and case evaluations of SERS' legal position in accordance with SLC and OGC procedures (Technical Submittal). Specific Qualifications will include technical expertise as well as responses to case evaluation questions, including, but not necessarily limited to, the following:
  - Recommendation regarding opting out and pursuing separate litigation, including likelihood of success. If the recommendation is that SERS should not opt-out and pursue separate litigation, the law firm will be requested to explain why.
  - Factors that make them especially qualified to represent SERS if they are recommending that SERS pursue litigation.
  - Names of any other parties they are or may be representing in a like suit against the same defendants.

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\* Terms used herein, unless otherwise defined, shall have the meanings given to them in the body of the Securities Litigation Policy, as amended.

- In addition to the Technical Submittal, the law firm is to submit for evaluation the proposed fee, if engaged by SERS, including a cap and such other OGC required submissions, in accordance with OGC procedures.

## SECTION II

- SERS' Legal Office transmits law firms' responses to the SLC for evaluation.
- Interviews of responding law firms may be conducted by SERS' Legal Office, the SLC, OGC and OAG to the extent considered desirable.
- The SLC approves or not approves opting out and proceeding with the litigation, either alone or jointly with others, and if the former, provides its evaluation to OGC.
- Upon receipt of the SLC's evaluation of the Technical Submittal, after any discussions with conducted with the responsible law firms, OGC will combine the SLC's evaluation results with other evaluation factors, in accordance with OGC procedures. OGC, via the SERS' Legal Office, will recommend to the SLC the law firms according to the total overall score assigned to each, in descending order.
- Award will be made by the SLC to the responsible law firm determined to be the best qualified based on the evaluation factors, in accordance with OGC procedures. Fair and reasonable compensation shall be determined through negotiation and may be subject to court approval.
- If compensation cannot be agreed upon with the best qualified responsible law firm, then negotiations will be formally terminated with the law firm. If proposals were submitted by one or more other responsible law firm(s), negotiations may be conducted with the other responsible law firm or law firms in the order of their respective qualification ranking. Contracts may be awarded to the responsible law firm(s) then ranked as best qualified if the amount of compensation is determined to be fair and reasonable.
- The SLC and OGC have the discretion to reject all submissions or cancel the request for submissions, at any time prior to the time a contract is fully executed, when it is in the best interests of the Commonwealth. The reasons for the rejection or cancellation shall be recorded pursuant to OGC procedures.
- After selection of the law firm by the SLC in accordance with OGC procedures, OGC designates the law firm to represent SERS and advises it to proceed with the litigation. SERS Legal Office would see that any appropriate opt out filing is made.
- In cases where SERS has a loss, but is not seeking to serve as lead plaintiff or pursuing separate litigation, SERS' Legal Office shall continue such monitoring and shall take such action as it, in consultation with SERS' Chairman, deems appropriate, including, without limitation, (i) filing briefs or motions with the court concerning the selection of lead plaintiff, lead counsel or other litigation matters, (ii) filing a notice of appearance, (iii) participating in settlement negotiations or consulting on a proposed settlement and (iv) objecting, or supporting an

objection filed by another party, to any of the proposed settlement terms (including the fee of lead counsel).

## **ATTACHMENT C**

**State Employees' Retirement System  
September 16, 2015 Meeting of the State Employees'  
Retirement Board**

***RESOLUTION 2015-53***

The Board hereby authorizes the Chairman to take all actions deemed necessary or desirable, including the execution of all legal documents, to effect the recommendation of the Board Audit Committee to approve the Recommendation for Best Value Selection issued by the SERS Issuing Officer to engage Funston Advisory Services, LLC (Funston) to provide those professional services to the Board as requested in the Review of SERS Board and Organizational Structure Request For Quotations (RFQ), being SERS RFQ Number 2015-001 and as described in Funston's proposal in response thereto, as modified by its best and final offer, all subject to final contract negotiations.