

# MONTANA

## BOARD OF INVESTMENTS

### BOARD ADOPTED POLICY

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POLICY NUMBER: 10.250

EFFECTIVE DATE: September 23, 2022

TITLE: Securities and Litigation

SUPERSEDES: November 30, 2021

BOARD ADOPTION: November 30, 2021

REVIEWED: June 23, 2022

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#### I. Securities and Litigation

##### A. Purpose

1. The Board shall adopt, maintain, and revise as necessary, a process and policy to ensure that it participates in all class action litigation to which it is entitled.

##### B. Principles

1. The Board manages the assets entrusted to it “in accordance with the prudent expert principle” which requires that the Board act “with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character and with like aims.” Section 17-6-201, MCA. See also, Montana Constitution, Art. VIII, Sec.13.
2. Claims under state and federal securities laws arising out of losses on securities under the Board’s management are assets subject to the Board’s fiduciary duty of prudent management. Accordingly, the Board shall take reasonable steps to identify and recover on such claims. Such steps may include:
  - a) Participation as a passive class member in class actions brought by others and filing a proof of claim when action is settled/resolved.
  - b) Enhanced participation as a class member in class actions brought and led by others by considering objections or comments on settlements.
  - c) Active participation in a class action litigation, including serving as a “lead plaintiff” or “co-lead plaintiff” pursuant to the Private Securities Litigation Reform Act.
  - d) Separate litigation on behalf of the Board.
3. The Board shall delegate the responsibility to take steps to identify, analyze, pursue, and collect on securities law claims to qualified service providers.
  - a) The duties of each service provider shall be clearly articulated in contracts and the Board shall adopt prudent documented procedures to monitor the implementation of its policies.

##### C. Policies

1. The Board shall take reasonable, cost-effective steps to identify, pursue, and collect upon claims under state and federal securities laws for losses suffered by the Board on its investments because of alleged or proven violations of securities laws.
2. A proof of claim shall be filed on behalf of the Board in connection with every securities class action litigation settlement or judgment in which the Board is a member of the plaintiff class.
3. Unless the Board determines otherwise, it shall not initiate separate litigation or be a lead plaintiff with respect to any claim unless the value of the claim is at least \$1,000,000.

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4. When the losses exceed \$1,000,000, the Board may commence separate litigation or apply for lead or co-lead plaintiff status, after receiving advice from the Board's legal counsel that it is in the interest of the Board to do so.
  - a) The criteria to be considered in deciding whether to commence separate litigation or apply for lead plaintiff status are set forth in Policy 10.251.
5. If the Board has suffered losses of \$500,000 or more, and the Board is not pursuing separate litigation or acting as lead or co-lead plaintiff in a class action, the Board may play an enhanced role. This may include review of the terms of any settlement, including applications for legal fees, to determine if the Board should file a comment or objection with respect to the settlement, or opt out of the class.
  - a) The criteria for deciding whether to opt out are set forth in Policy 10.251.
  - b) The Board is authorized to direct the filing of a comment or objection.
6. The Board shall act only as a passive class member with respect to any claim in which the losses suffered are less than \$500,000. Proofs of claim shall be filed on behalf of the Board upon a settlement or final judgment awarding damages in relevant class actions.
7. The Board delegates the decision to seek lead or co-lead plaintiff status or to play an enhanced role in a class action under this Policy to the Audit Committee.
8. The Executive Director, the Chief Investment Officer, the Board's legal counsel, and the Board's investment consultant shall receive reports from the Monitoring Firm, regarding the status of all securities class action litigation matters in which the Board is or could be a member.
  - a) The Executive Director shall receive such reports at least quarterly and upon each filing of proofs of claim.

#### D. Roles and Authority

1. Board Role and Authority
  - a) Review staff reports regarding securities litigation matters.
  - b) Periodically review and, as appropriate, modify this Policy.
  - c) Establish, periodically review, and, as appropriate, modify protocols for implementation of this Policy.
  - d) Select a securities class action monitoring firm to identify and evaluate potential claims and oversee the process for selecting such firm.
  - e) Approve, modify, or terminate agreements with service providers responsible for implementation of this policy.
2. Audit Committee Role and Authority
  - a) Authorize commencement of separate litigation or filing of motion for lead plaintiff or co-lead plaintiff status or support for another's application for lead plaintiff status, consistent with this Policy.
  - b) Approve settlement of separate litigation or class action in which the Board is lead plaintiff or co-lead plaintiff, consistent with Board policy.
  - c) Authorize opting out of a class settlement, consistent with this Policy.
  - d) Authorize filing of objections and comments on settlements, consistent with Board policy.
  - e) Receive and review staff reports on the status of matters other than passive claim filings.
3. Staff Role and Authority
  - a) Circulate to Board members, legal counsel, and investment consultant the reports from the custodian and monitoring firm showing status of all securities litigation matters in which the

Board may have an interest. The status includes:

- (1) Date case filed.
- (2) Date of settlement.
- (3) Due date for claim filing.
- (4) Date Board's claim filed.
- (5) Date of recovery.

- b) Approve, circulate, and review responses to requests for proposals for monitoring firm services and make recommendations to the Board regarding selection.
- c) Monitor, with assistance from the Board's legal counsel, performance of the Monitoring Firm and report deficiencies to the Board.
- d) As appropriate, recommend to the Board modifications to this Policy and to implementation protocols.

#### 4. Board Legal Counsel Role and Authority

- a) Assist in the preparation of requests for proposals for a monitoring firm, review responses and make recommendations to Board members and staff regarding candidates.
- b) Assist in negotiations of terms and agreements with the Monitoring Firm, with assistance from the Board's investment consultant.
- c) Prior to submission to the Audit Committee, review, all recommendations from the Monitoring Firm regarding whether to commence separate litigation or seek lead plaintiff or co-lead plaintiff designation, or to opt out of or object to class settlements.
- d) Prior to submission to the Audit Committee, review all recommendations from the Monitoring Firm regarding proposed settlements of separate actions brought by the Board or class actions in which the Board is lead or co-lead plaintiff.
- e) Prior to submission to the Audit Committee, review all recommendations from the Monitoring Firm regarding whether to file objections to or comment upon settlements.
- f) Supervise and monitor outside legal counsel conduct of litigation when the Board pursues separate litigation or acts as lead or co-lead plaintiff.

#### 5. Custodian Role and Authority

- a) Maintain and communicate data necessary to identify the Board's securities holdings and transactions to determine if the Board is a class member and calculate losses.
- b) Collect and distribute to the Monitoring Firm all notices regarding the commencement, class certification and settlement of class action lawsuits in which the Board has an interest as an actual or potential class member.
- c) Collect, record on the Board's custody statements, and deposit into appropriate accounts for investment, proceeds from the Board's claims.

#### 6. Custodian/Class Action Role and Authority

- a) Establish and implement procedures to identify all securities class actions filed by others in which the Board is or may be a class member.
- b) Collect and distribute official notices of pendency of class actions in which the Board, according to this Policy, may consider applying for lead plaintiff status or pursuing separate litigation.
- c) Timely file accurate proofs of claim on behalf of the Board in all class actions in which the Board may participate as class member and notify the Monitoring Firm.

d) Provide necessary custody data to the Monitoring Firm.

7. Monitoring Firm Role and Authority

- a) Ensure by written communication that the Custodian has filed the appropriate documents for Board participation in pending class action litigation.
- b) Identify circumstances in which the Board may have incurred investment losses in excess of the minimum threshold which would give rise to potentially meritorious claims for the Board which are not yet the subject of litigation.
- c) Evaluate claims over \$1,000,000 and recommend whether the Board should pursue separate litigation or lead or co-lead plaintiff designation.
- d) Evaluate settlements of actions in which the Board is not lead plaintiff where losses exceed \$500,000 and recommend whether Board should object to, comment upon, or opt out of settlement.
- e) File objections to and comments upon settlements as authorized.

E. Implementation

- 1. These Policies shall be implemented in accordance with a written statement of procedures to be adopted by the Board incorporated as Policy 10.251.

Authority: Montana Constitution, Article VIII, Section 13  
Section 2-15-1808, MCA  
Section 17-6-201, MCA