

APPROVED BY THE BOARD OF TRUSTEES: FEBRUARY 8, 2024

GUIDING PRINCIPLE

The guiding principle for the Virginia Retirement System's ("VRS") proxy voting and litigation activity is fiduciary responsibility, only taking actions that are in the best interest of the plan's participants and beneficiaries.

I. POLICY STATEMENT

A. VRS AS LONG-TERM INVESTOR

VRS should act like an owner of companies in which it invests by encouraging long-term value creation. However, the costs of becoming an active investor must be considered. VRS should always seek cost-effective means for acting as an owner. VRS can share the costs of any litigation by joining organizations made up of other similar institutional investors who are also concerned about creating and improving economic value for shareholders.

B. LITIGATION

Other than cases brought under the Virginia Administrative Process Act,¹ the most common type of litigation that affects VRS directly is securities litigation class actions for investments in which VRS has incurred a loss. From time to time, other types of litigation will arise, including cases where VRS is a defendant and cases brought under the Virginia Fraud Against Taxpayers Act (*Code of Virginia* § 8.01-216.1 et seq.). While VRS acknowledges that there are situations that may give rise to a fiduciary duty to pursue legal action on its own to recover on a claim, VRS also places significant weight on the fact that most (if not all) of these domestic claims will be prosecuted by class action attorneys on behalf of a multitude of institutional investors whether or not VRS undertakes active involvement in the litigation. Consequently, the default position for VRS in connection with domestic securities litigation is to simply file claims in connection with the settlement of securities litigation class action matters based on VRS holdings in the affected securities.

VRS will consider active involvement in securities litigation typically in those cases where (i) VRS has experienced a significant loss related to illegal conduct, fraud, or willful wrongdoing, (ii) active involvement could provide added value to VRS (e.g., in the form of a higher recovery than if VRS was not involved), either in the specific case or on a longer-term, portfolio-wide basis, or (iii) in the case of foreign litigation, active involvement is the only avenue for recovery. For the purposes of this policy and as a general guideline, a loss is significant when it exceeds three basis points of the total fund value ("Loss Threshold"). The decision to become actively involved in any securities litigation requires a balancing of the costs and benefits involved.

¹ Article V, section A (20) of the Board Governance Policy delegates authority to the Director to issue final case decisions regarding applications for disability retirement and other matters that have been appealed pursuant to the Administrative Process Act.

1. Domestic Securities Litigation

In considering whether to become actively involved in domestic securities litigation, VRS will also assess the long-term consequences of litigation as well as the impact of litigation on staff productivity. VRS will appoint outside counsel with expertise in securities litigation to assist in determining whether fraud or willful wrongdoing has occurred in connection with the acquisition or ownership of its investments. Outside counsel will identify significant cases that should be brought to the Board's attention and, if the Board decides to become actively involved in the case, will help evaluate an appropriate litigation strategy.²

2. Foreign Securities Litigation

The landscape of United States securities laws drastically changed with the Supreme Court decision in *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247 (2010). Under *Morrison*, investors no longer have the protection of the U.S. securities laws if the securities were purchased on a foreign exchange. After the *Morrison* decision, it is no longer possible to pursue a recovery in securities litigation in a foreign jurisdiction as a "free rider" as part of a class action, and an affirmative decision to participate in the class is typically required. Generally, in cases pending in foreign jurisdictions, VRS will only consider recovery methods that do not involve any risk that VRS would be liable for any expenses if the litigation were unsuccessful. For example, in most cases, VRS would not consider pursuing recovery in a foreign jurisdiction where the losing party in litigation pays the prevailing party's fees and costs. However, VRS will consider such foreign litigation if there is insurance or other indemnification protections in place to cover the potential "loser pays" liability.

3. Other Litigation

On relatively rare occasions, other types of litigation affect VRS that are not related to securities litigation for investments in which VRS has incurred a loss. For example, VRS may be a defendant in litigation, and the outcome of the litigation could affect the assets in the trust fund. While these types of cases are relatively rare and arise under unique facts and circumstances, the same guiding principle applies to the strategic decisions that may be involved in their resolution.

II. GUIDELINES

A. VRS AS LONG-TERM INVESTOR

It is expected that VRS will align itself with certain oversight organizations with an eye toward creating and improving economic value for shareholders. This will provide VRS with access to multiple, cost-effective tools for promoting good corporate governance at portfolio companies and for monitoring regulatory organizations such as the Securities and Exchange Commission. Moreover, membership will provide information and analysis about potential litigation, corporate governance issues, and best practices and solutions going forward.

² See "Selection of Counsel" in section II(C)(2).

B. LITIGATION

1. Filing Proofs of Claim

The VRS custodial bank is responsible for filing all proofs of claim, including the necessary supporting documents and information, in every securities class action pending in the U.S. in which VRS has an interest (the “Claims Filing”). To memorialize the custodian’s Claims Filing responsibilities, the Chief Investment Officer (“CIO”) shall prepare and revise, as appropriate, a statement of work to be included with the custodial agreement setting out formal Claims Filing procedures for the custodial bank to follow. These procedures shall include:

- i. Identifying and reviewing all class action recoveries for which VRS is eligible (whether by settlement or trial);
- ii. Providing timely notice of each settlement recovery, with sufficient time to allow VRS to opt out;
- iii. Filing complete and accurate proof of claim forms in a timely fashion on behalf of VRS;
- iv. Providing quarterly reports regarding these efforts; and
- v. Providing quarterly reports identifying all securities litigation proceeds recovered by VRS directly or on its behalf.

Alternatively, the VRS Board may elect to use a third-party vendor to be responsible for the Claims Filing activities.

2. Selection of Counsel

VRS has undertaken an open procurement process to select a number of outside counsel firms to provide legal advice related to investments and has entered into contractual agreements with each of the firms. Pursuant to this policy, VRS staff is authorized to select which of these firms will assist with a specific action depending on the facts and circumstances of each case. Criteria may include the firm’s expertise in a particular area of law, the firm’s analysis of a specific case, the firm’s fee structure, or the firm’s recommended strategy.

3. Class Actions – Securities Listed on a Domestic Exchange

The Board desires to create an evaluation policy that provides guidance regarding when and how VRS will become actively involved in domestic securities litigation, including seeking lead plaintiff status. The VRS Board adopts this policy to place itself, the CIO and the Director, with the advice of counsel, in the best position to identify, protect, and serve the best interests of VRS.

The following is an outline of the procedures to assist in decisions regarding domestic securities litigation issues.

i. Monitoring and Evaluation Procedures

VRS may retain a vendor specializing in identifying and analyzing potential and existing securities cases to perform this function, and to report its findings on a timely basis. VRS also retains law

firms as outside counsel to monitor and advise VRS of recently filed class actions that appear to have merit and for which VRS has sustained a loss that (i) exceeds its Loss Threshold or (ii) is substantial and involves unique factors justifying the involvement of VRS regardless of the Loss Threshold.

When a case meets the Loss Threshold for active involvement by VRS, VRS staff, in consultation with the Office of the Attorney General (“OAG”) and outside counsel, shall evaluate whether the class action is meritorious and deserves closer examination. The evaluation shall include a review of available information regarding the lawsuit before considering whether to seek lead plaintiff status or embark on some other active claim management strategy (e.g., opting out of the class and pursuing a separate claim).

ii. **Decision-making Process**

Absent a loss exceeding the Loss Threshold or unusual and compelling circumstances, the VRS Board will not consider pursuing any active claim management strategy for any given case without the concurrence of OAG. VRS staff should work with outside counsel to evaluate securities litigation options available to VRS on a case-by-case basis. VRS may also engage other vendors to monitor and identify potential securities litigation cases. These outside entities should forward material pertaining to such cases to VRS for further review and evaluation under the guidance contained in this policy.

The VRS Board will only consider becoming actively involved in domestic securities litigation in accordance with the “Monitoring and Evaluation Procedures” described above.

If these initial criteria are met, VRS staff should coordinate its analysis with outside counsel to ensure that the situation meets the VRS criteria. If so, VRS staff and outside counsel should forward relevant information and a recommended course of legal action to VRS investment staff for review and evaluation consistent with the guidance contained in this policy. Following this review and evaluation, VRS staff should only forward a recommendation to pursue legal action to the VRS Board for those cases that are considered appropriate under this policy. A case that does not exceed the Loss Threshold is presumed not to be an appropriate case to forward to the VRS Board absent unusual or compelling circumstances.

In most cases, decisions regarding whether to become actively involved in a given domestic securities case must be submitted, in advance, to the VRS Board at a regular meeting or, where immediate action is necessary, at a special meeting. However, where it is determined that immediate action is required in order to preserve the rights or interests of VRS by such involvement, and the matter cannot be timely presented at a regular or special meeting, or where a quorum cannot be reached at such meeting, the decision may be made, with the advice of counsel, by the Director and CIO. The VRS Board shall be notified and provided a summary of the action taken by the Director and CIO as soon as practicable upon the exercise of such authority. This procedure may also be used for other time-sensitive decisions related to securities litigation where it is deemed in the best interests of the plan to do so, to the extent such decisions are in conformance with this policy.

If the VRS Board (or its designees under this policy) approves a recommendation to become actively involved in a given domestic securities case, VRS will work with outside counsel to pursue an agreed-upon litigation or active claim management strategy.

The VRS Board should receive an annual report on the total asset recoveries from securities litigation received during the year, including a status report on any litigation in which VRS is the lead plaintiff.

iii. Settlement or Other Disposition/Resolution

In most cases, decisions to settle a case or to pursue other disposition or resolution in a given case will be submitted, in advance, to the VRS Board at a regular meeting or, where immediate action is necessary, at a special meeting. However, where it is determined that immediate action is required in order to preserve the rights or interests of VRS by such involvement, and the matter cannot be timely presented at a regular or special meeting, or where a quorum cannot be reached at such meeting, the decision may be made, with the advice of counsel, by the Director and CIO. The VRS Board shall be notified and provided a summary of the action taken by the Director and CIO as soon as practicable upon the exercise of such authority.

4. Class Actions – Securities Listed on a Foreign Exchange

Given the structure of global securities litigation after Morrison, VRS must monitor its portfolio to ensure that opportunities to recover assets based on securities fraud are not lost. This includes the analysis of whether to participate in an action in a foreign jurisdiction or to bring a state law action.

i. Participation in a Foreign Action

Unlike the class action process in the United States where investors can remain absent, receive notice of a settlement, and then decide to file a proof of claim or opt-out of the class action case, foreign actions generally require investors to join as named plaintiffs or “opt in” at the commencement of the case. This “opt-in” process will require affirmative decisions by VRS early in the process to join the case (and sometimes prior to the case being filed) to recover anything on its losses.

In general, VRS will only participate in foreign securities litigation when participation does not involve a risk that VRS would be liable for expenses if the litigation is unsuccessful (e.g., the “loser pays” risk is assumed by a third party), and VRS could assume a passive role in its participation in the case after an initial filing of transactional data supporting the VRS claim. Under those circumstances, the Loss Threshold does not come into play as the only way for VRS to participate in a foreign case to maximize its potential recovery is to take affirmative action.

VRS staff should obtain assurances and recommendations from its outside counsel and the OAG in the review and evaluation of foreign actions. In cases where there is no risk that VRS will be liable for expenses in the event of a loss, the decision to participate in a foreign action may be made, with the advice of counsel, by the Director and CIO. The VRS Board shall be notified

as soon as practicable upon the exercise of such authority, and shall receive a summary of the action. Consistent with the *Code of Virginia*, VRS staff will coordinate its efforts with OAG or the Governor's Office as appropriate under the circumstances.

ii. Participation in State Law Actions

Another option that is sometimes available with a foreign loss is to bring an action under state law in the United States. Because there are numerous issues that must be considered beforehand, the VRS Board should consider an action under state law only under very rare circumstances and after extensive consultation with staff, OAG, and outside counsel. In most cases, decisions regarding bringing a state law action related to a given foreign case will be submitted, in advance, to the VRS Board at a regular meeting or, where immediate action is necessary, at a special meeting. However, where it is determined that immediate action is required in order to preserve the rights or interests of VRS by such involvement, and the matter cannot be timely presented at a regular or special meeting, or where a quorum cannot be reached at such meeting, the decision may be made, with the advice of counsel, by the Director and CIO. The VRS Board shall be notified as soon as practicable upon the exercise of such authority, and shall receive a summary of the action.

iii. Settlement or Other Disposition/Resolution

In most cases, decisions to settle a case or to pursue other disposition or resolution in a given case will be submitted, in advance, to the VRS Board at a regular meeting or, where immediate action is necessary, at a special meeting. However, where it is determined that immediate action is required in order to preserve the rights or interests of VRS by such settlement or other disposition, and the matter cannot be timely presented at a regular or special meeting, or where a quorum cannot be reached at such meeting, the decision may be made, with the advice of counsel, by the Director and CIO. The VRS Board shall be notified as soon as practicable upon the exercise of such authority, and shall receive a summary of the action.

iv. Monitoring Procedures

VRS recognizes the importance of developing a protocol to stay informed and make prudent decisions relating to its involvement in foreign actions. VRS will use outside counsel and other entities to assist in monitoring foreign actions. This will ensure that VRS has the greatest possible visibility into applicable deadlines so VRS can make a timely and informed decision on whether to participate in a given foreign action and in what manner such participation will occur.

The VRS Board should receive an annual report on the total asset recoveries from foreign securities litigation received during the year.

5. Other Litigation

In all other types of litigation, with the exception of cases under the Administrative Process Act, such as those cases where VRS is a defendant and settlement negotiations may be ongoing, VRS staff will submit recommendations for actions (e.g., approval of a settlement), in advance, to the VRS Board at a regular meeting or, where immediate action is necessary, at a special meeting. However, where it is determined that immediate action is required in order to preserve the rights or interests of VRS, and the matter cannot be timely presented at a regular or special meeting, or where a quorum cannot be reached at such meeting, the Director and CIO, with the advice of counsel, are authorized to make the decision. The VRS Board shall be notified as soon as practicable upon the exercise of such authority, and shall receive a summary of the action. Consistent with the *Code of Virginia*, VRS staff will coordinate its efforts with OAG or the Governor's Office as appropriate under the circumstances.

III. INTERPRETATION

The Board of Trustees intends that this Policy should be construed broadly to provide the flexibility necessary for VRS to take immediate action where it is required to protect the best interests of the Fund's members, retirees and beneficiaries. In all cases, any such action must be reported to the Board at the earliest practicable opportunity and the Board shall receive a summary of the action.