

# Securities Litigation Monitoring Services

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## Request for Proposal

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January 2023

**Orange County Employees Retirement System (OCERS)**

2223 E Wellington Avenue Suite 100

Santa Ana, CA 92701 USA

1-(714)-558-6200

<http://www.ocers.org>

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## Section 1: Introduction

The Orange County Employees Retirement System ("OCERS") is requesting proposals from qualified firms interested in providing securities litigation monitoring services.

Those who wish to be considered must submit their completed proposal by **5:00 p.m., PT, on February 6, 2023**. Specific requirements for proposal submissions are contained in Section 6 and 7 of this RFP.

Questions about this RFP must be submitted in writing by **5:00 pm, PT, on January 13, 2023**, to Jim Doezie, by email at [jdoezie@ocers.org](mailto:jdoezie@ocers.org).

## Section 2: Background

OCERS was established in 1945 under the County Employees Retirement Law of 1937, providing members with retirement, disability, death, and cost-of-living benefits. There are approximately 49,000 members served by OCERS, of which over 19,000 are retirees. OCERS is governed by a nine-member Board of Retirement ("Board"), which has plenary authority and fiduciary responsibility for the investment of moneys and administration of the retirement system. OCERS has over one hundred employees, and the Board appoints a Chief Executive Officer responsible for the agency's management. For additional information about OCERS, please refer to the OCERS website at [ocers.org](http://ocers.org).

The OCERS Securities Litigation Policy (attached as Exhibit "A") sets forth the procedures and guidelines for monitoring and participating in securities class actions, domestic and foreign, in furtherance of the Board's fiduciary duties under the California Constitution. The policy provides that the Legal Division will monitor securities class action filings to identify cases where OCERS is a potential class member. To assist OCERS in its efforts to identify, evaluate, and monitor securities actions in which the OCERS fund may have an interest, OCERS seeks to retain one or more firms to provide securities litigation monitoring services.

## Section 3: Scope of Services

The detailed scope of services for this engagement is outlined in the attached Exhibit "B" ("Scope of Services"). The primary objectives of this engagement are to provide OCERS with securities litigation monitoring services.

The firm(s) selected for this engagement will be expected to meet requirements that include, but are not limited to, the following:

1. The firm must have all necessary permits and licenses to perform the requested services and must be bonded where applicable.
2. Professional liability insurance with coverage of no less than \$2 Million per occurrence or claim and \$3 Million in the aggregate.
3. The firm shall provide all personnel, equipment, tools, materials, vehicles, supervision, and other items and services necessary to perform all services, tasks, and functions as requested in this RFP.
4. The term of the contract awarded pursuant to this RFP will be for a period not exceeding six years.
5. All work under the contract awarded shall be performed and all equipment furnished or installed in accordance with applicable safety codes, ordinances, and other regulations, including the regulations of the State of California, Division of Industrial Safety, and the provisions of the California Labor Code.

# Section 4: General Conditions

All terms, conditions, requirements, and procedures included in this RFP must be met for a proposal to be qualified. A proposal that fails to meet any material term, condition, requirement, or procedure of this RFP may be disqualified. OCERS reserves the right to waive or permit the cure of non-material errors or omissions. OCERS reserves the right to modify, amend, or cancel the terms of this RFP at any time.

OCERS may modify this RFP before the date fixed for submission of a proposal by posting, mailing, emailing, or faxing an addendum to the respondents known to be interested in submitting a proposal. However, failure of a respondent to receive or acknowledge receipt of any addendum shall not relieve the respondent of the responsibility for complying with the terms thereof.

A respondent’s proposal shall constitute an irrevocable offer for the 120 days following the deadline for submission of proposals. Reference to a certain number of days in this RFP shall mean calendar days unless otherwise specified.

All proposals submitted in response to this RFP will become the exclusive property of OCERS. Therefore, proposals will not be returned to respondents.

By submitting a proposal, the respondent acknowledges that it has read this RFP, understands it, and agrees to be bound by its requirements unless clearly and specifically noted in the proposal submitted.

# Section 5: Point of Contact

A quiet period will be in effect from the date of issuance of this RFP until announcement of the candidate(s) selected. During the quiet period, respondents are not permitted to communicate with any OCERS staff member or Board Member regarding this RFP except through the Point of Contact named herein. Respondents violating this quiet period may be disqualified at OCERS’ discretion. In addition, respondents having current business with OCERS must limit their communications to the subject of such business.

OCERS’ regular business hours are from 8:00 am to 5:00 pm, Monday through Friday, except for federal and state holidays.

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**The Point of Contact for all matters relating to this RFP is:**

<b>Name:</b>	Jim Doezie
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<b>Title:</b>	Contracts Administrator
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<b>Address:</b>	OCERS PO BOX 1229 Santa Ana, CA 92702
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<b>Telephone:</b>	(714) 569-4884
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<b>Email:</b>	<a href="mailto:jdoezie@ocers.org">jdoezie@ocers.org</a>
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<b>OCERS Website:</b>	<a href="http://www.OCERS.org">www.OCERS.org</a>
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**Status:**

See the OCERS website for status of the RFP and announcements. These items can also be found here:

<http://www.ocers.org/rfp/requestforproposal.htm>

## Section 6: Response to Request for Proposal

Proposals must be submitted to the Point of Contact identified in Section 5 and delivered by the due date and time stated below in the RFP Schedule.

OCERS will accept electronic, paper, or both types of submissions. Proposals may be submitted electronically in Microsoft Word or Adobe Acrobat PDF format to the email address noted in Section 5. Submission may also be made by mailing a USB flash drive with the electronic files or a paper copy to the mailing address noted in Section 5. If paper copies are submitted, two (2) copies must be submitted.

### RFP Schedule

The following timetable constitutes a tentative schedule for this RFP process. OCERS reserves the right to modify this schedule at any time.

Deliverable	Date	Time
Release of RFP	January 3, 2023	5:00 pm
RFP Questions Deadline	January 13, 2023	5:00 pm
RFP Answers Posted	January 20, 2023	5:00 pm
RFP Submission Deadline	February 6, 2023	5:00 pm
OCERS Review of RFP Submissions	February 6 through February 24, 2023	
Selection of Finalists	February 27, 2023	
Interviews of Finalists	To be determined	
Contract Award	To be determined	

## Section 7: Proposal Requirements

Proposals must include the following information:

1. The "Proposal Cover Page and Check List," attached as Exhibit "C."
2. An executive summary that provides the respondent's background, experience, and other qualifications to provide the services included in the Scope of Services.
3. A description of the respondent including:
  - a. Brief history, including year the respondent firm was formed.

- b. Ownership structure.
  - c. Office locations.
  - d. Organization chart.
  - e. Number of employees.
  - f. Annual revenues.
  - g. Scope of services offered.
  - h. Respondent's specialties, strengths, and limitations.
4. The names and qualifications of the staff that will be assigned to OCERS work, including a detailed profile of each person's background and relevant individual experience.
  5. At least three (3) references for which the respondent has provided services like those included in the Scope of Services. Please include for each reference the individual point of contact, a summary of the work performed, and the length of time the respondent provided each service.
  6. Copies of any pertinent licenses required to deliver respondent's product or service (e.g., business license).
  7. A certificate of insurance coverage reflecting professional liability insurance equal to or greater than \$2,000,000 USD per occurrence or claim and \$3,000,000 USD in the aggregate.
  8. An explanation of all actual or potential conflicts of interest that the respondent may have in contracting with OCERS.
  9. A description of all litigation, including malpractice claims, administrative, state ethics, disciplinary proceedings, and other claims against respondent and/or any of the individuals proposed to provide services to OCERS within the five years immediately preceding the submittal of the proposal.
  10. Any other information that the respondent deems relevant to OCERS' selection process.

## Section 8: Evaluation Criteria

Responses will be evaluated based upon the following:

1. Experience and quality of work in providing securities litigation monitoring services for other public pension systems and institutional investors.
2. Experience, relationships, and affiliations with firms in foreign jurisdictions.
3. Quality of the team proposed to provide services to OCERS, including staffing depth, experience, turnover, and compensation.
4. Compliance with standards contained in this RFP.
5. The organization, completeness, and quality of the proposal.
6. Information provided by references.
7. Other factors OCERS determines to be relevant.

The factors will be considered as a whole, without a specific weighting.

OCERS may require one or more interviews with or personal presentations by finalists to be conducted with staff or members of the Board of Retirement.

If the proposal's information is deemed to be insufficient for evaluation, OCERS may request additional information or reject the proposal outright at OCERS' sole discretion. In addition, false, incomplete, or unresponsive statements in connection with a proposal may result in rejection of the proposal.

## **Section 9: Non-Discrimination Requirement**

By submitting a proposal, the respondent represents that it and its subsidiaries do not and will not discriminate against any employee or applicant for employment based on race, religion, color, national origin, ethnic group identification, mental disability, physical disability, medical condition, genetic information, marital status, ancestry, sex, gender, sexual orientation, gender identity, gender expression, age, or military and veteran status.

## **Section 10: Notice Regarding the California Public Records Act**

The information submitted in response to this RFP will be subject to public disclosure pursuant to the California Public Records Act (California Government Code Section 6250, et. seq., the "Act"). The Act provides that all records relating to a public agency's business are open to public inspection and copying unless exempted explicitly under one of several exemptions set forth in the Act. If a respondent believes any portion of its proposal is exempt from public disclosure under the Act, the respondent must provide a full explanation and mark such portion "TRADE SECRETS," "CONFIDENTIAL," or "PROPRIETARY," and make it readily separable from the balance of the response. Proposals marked "TRADE SECRETS," "CONFIDENTIAL," or "PROPRIETARY" in their entirety will not be honored, and OCERS will not deny public disclosure of all or any portion of proposals so marked.

By submitting a proposal with material marked "TRADE SECRETS," "CONFIDENTIAL," or "PROPRIETARY," the respondent represents it has a good faith belief that the material is exempt from disclosure under the Act; however, such designations will not necessarily be conclusive, and the respondent may be required to justify in writing why OCERS should not disclose such material under the Act. Fee and pricing proposals are not considered "TRADE SECRET," "CONFIDENTIAL," or "PROPRIETARY."

If OCERS receives a request pursuant to the Act for materials that the respondent has marked "TRADE SECRET," "CONFIDENTIAL," or "PROPRIETARY," and if OCERS agrees that the material requested is not subject to disclosure under the Act, OCERS will either notify the respondent so that it can seek a protective order at its own cost and expense, or OCERS will deny disclosure of those materials. OCERS will not be held liable for inadvertent disclosure of such materials, data, and information or for disclosure of such materials if deemed appropriate in OCERS' sole discretion. OCERS retains the right to disclose all information provided by a respondent.

If OCERS denies public disclosure of any materials designated as "TRADE SECRETS," "CONFIDENTIAL," or "PROPRIETARY," the respondent agrees to reimburse OCERS for, and to indemnify, defend, and hold harmless OCERS, its Board, Board members, officers, fiduciaries, employees, and agents from and against:

1. Any and all claims, damages, losses, liabilities, suits, judgments, fines, penalties, costs, and expenses, including, without limitation, attorneys' fees, expenses, and court costs of any nature whatsoever (collectively, "Claims") arising from or relating to OCERS' non-disclosure of any such designated portions of a proposal; and
2. Any and all Claims arising from or relating to OCERS' public disclosure of any such designated portions of a proposal if OCERS determines disclosure is required by law, or if disclosure is ordered by a court of competent jurisdiction.

## Section 11: Contract Negotiations

OCERS will propose a contract to the successful respondent, which will contain such terms as OCERS, in its sole discretion, may require. In addition, the selected firm will agree that this RFP and the firm's proposal will be incorporated into any resulting contract.

This RFP is not an offer to contract. Acceptance of a proposal neither commits OCERS to award a contract to any respondent nor does it limit OCERS' right to negotiate the terms of a contract in OCERS' best interest, including the addition of terms not mentioned in this RFP. The final contract must, among other terms and conditions required by OCERS, allow OCERS to terminate the contract a) for OCERS' convenience, b) if funds are not appropriated for the services, or c) for default.

The general form of the agreement OCERS intends to use for this engagement is included as Exhibit "D" ("Legal Services Agreement for Securities Litigation Monitoring Counsel" or "Legal Services Agreement"). OCERS reserves the right to make changes to the contract prior to execution, including material changes. The final Scope of Services to be included in the agreement will be determined at the conclusion of the RFP process.

By submitting a proposal without comment on the Legal Services Agreement, respondent will be deemed to have agreed to each term in the Legal Services Agreement, and to not seek any modifications to it. If respondent objects to any term in the Legal Services Agreement or wishes to modify or add terms to the Legal Services Agreement, the proposal must identify each objection and propose language for each modification and additional term sought. A rationale should be included for each objection, modification, or addition.

## Section 12: Reservations by OCERS

In addition to the other provisions of this RFP, OCERS reserves the right to:

1. Cancel or modify this RFP, in whole or in part, at any time.
2. Make such investigation as it deems necessary to determine the respondent's ability to furnish the required services, and the respondent agrees to furnish all such information for this purpose as OCERS may request.
3. Reject the proposal of any respondent who is not currently in a position to perform the services, or who has previously failed to perform similar services properly, or in a timely manner, or for any other reason in OCERS' sole discretion.
4. Waive irregularities, to negotiate in any manner necessary to best serve the public interest, and to make a whole award, multiple awards, a partial award, or no award.
5. Award a contract, if at all, to the firm which will provide the best match to the requirements of the RFP and the service needs of OCERS in OCERS' sole discretion, which may not be the proposal offering the lowest fees.
6. Request additional documentation or information from respondents, which may vary by respondent. OCERS may ask questions of any respondent to seek clarification of a proposal or to ensure the respondent understands the scope of the work or other terms of the RFP.
7. Reject any or all proposals submitted in response to this RFP.
8. Choose to not enter into an agreement with any of the respondents to this RFP or negotiate for the services described in this RFP with a party that did not submit a proposal.



9. Determine the extent, without limitation, to which the services of a successful respondent are or are not actually utilized.
10. Defer selection of a bidder to a time of OCERS' choosing.
11. Consider information about a respondent other than, and in addition to, that submitted by the respondent.

## Exhibit A

### OCERS Securities Litigation Policy



#### OCERS Board Policy

### Securities Litigation Policy

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#### Purpose and Background

1. The Securities Litigation Policy is intended to establish procedures and guidelines for monitoring and participating in securities class actions in furtherance of the Board of Retirement's fiduciary duties. For purposes of this policy, a securities class action includes, but is not limited to, an action alleging claims under state or federal securities and antitrust laws, as well as similar claims arising under the laws of foreign jurisdictions. The responsibility for overseeing securities litigation is delegated to the Investment Committee.

#### Principles

2. As a large institutional shareholder, OCERS is frequently a class member in securities class actions that seek to recover damages resulting from corporate fraud and misconduct.
3. The Private Securities Litigation Reform Act, enacted in 1995, allows institutional investors to seek lead plaintiff status in securities class actions pending within the United States under U.S. federal securities laws. The lead plaintiff attains the right to supervise and control the prosecution of such cases. Participation as lead plaintiff by large, sophisticated shareholders such as OCERS has resulted in larger recoveries and lower attorneys' fees.
4. In 2010, the United States Supreme Court in *Morrison v. National Australia Bank* held that investors cannot bring or participate in a U.S. securities class action if their claims are based on securities purchased outside the U.S. As such, investors no longer have the protection of U.S. securities laws for securities purchased on a foreign exchange. In many foreign jurisdictions, however, investors are required to join as a named plaintiff or otherwise join as an active litigant at the commencement of the case as a condition to sharing in any damages awarded or recovered. Such direct participation may be costly and, depending on the jurisdiction, may subject OCERS to the risk of liability for defendant's fees and costs if the claim is unsuccessful. Therefore, OCERS must weigh the potential benefits of action in a foreign jurisdiction carefully.
5. In June 2017, the United States Supreme Court in *CalPERS v. ANZ Securities, Inc.* 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 the 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 and must exercise heightened diligence to protect potentially valuable claims from expiring under the statute of repose.
6. OCERS' goals for participation in securities class actions include:
  - Fulfilling OCERS' fiduciary duties by protecting trust assets and effectively managing claims as assets of the trust fund.
  - Maximizing claim recovery and reducing fees paid to obtain recoveries.
  - Deterring future fraud and corporate malfeasance to better protect fund assets.

## OCERS Board Policy Securities Litigation Policy

- Maintaining access to the courts through securities litigation in the best interest of OCERS' members and beneficiaries.

### Monitoring of Securities Litigation

- 7. Monitoring of Class Action Filings and Cases.** The Legal Division will monitor securities class actions filings, both domestic and foreign, to identify cases where OCERS is a potential class member. Cases in which the applicable loss threshold (as defined in Section 10 below) is met or where special circumstances exist that justify OCERS' interest in the case will be monitored.
- 8. Active Participation.** Active participation in a domestic case includes seeking lead plaintiff status, opting out of the class action and filing an individual action, or intervening in the class action. Active participation in a foreign case includes joining the case as a named plaintiff or take other affirmative action at the commencement of the case to participate in the litigation.
- 9. Recommendation of the Legal Division.** The Legal Division will recommend to the Investment Committee whether or not OCERS should take an active role in a securities class action. The Legal Division will recommend OCERS take an active role in an action when it has determined that the case is meritorious, the applicable Loss Threshold is met, and it is in OCERS' best interest to take such action. In addition, the Legal Division may also recommend active participation in a securities class action where the Loss Threshold is not met but OCERS will join the case with one or more other institutional investors, OCERS cannot recover without active participation in the case, or OCERS' active participation may otherwise serve the goals of this policy.
- 10. Loss Thresholds.** A case within the United States meets the Domestic Loss Threshold when OCERS' estimated loss is at least \$2 million. The Foreign Loss Threshold, for a case filed in a foreign jurisdiction, is met with an OCERS' estimated loss of at least \$250,000.
- 11. Losses Below Threshold.** If the Legal Division identifies a case where OCERS' losses during the alleged claims period is less than the Loss Threshold but OCERS suffered a loss in excess of the Loss Threshold during a period of time shortly before or after the claims period, the Legal Division will consider whether to seek an adjustment of the claims period. If warranted, the Legal Division will actively monitor the case and participate in a motion to adjust the claims period.
- 12.** The Legal Division's recommendation on whether to take an active role in a domestic or foreign securities litigation case will be presented to the Investment Committee at a regularly scheduled meeting or, where immediate approval is necessary, at a special meeting. In addition, the Chief Executive Officer ("CEO") is authorized to approve taking such action where, after consultation with the General Counsel, it is determined that immediate approval is required to preserve OCERS' rights and the matter cannot be timely presented to the Investment Committee. In the event the CEO exercises such authority, the CEO will simultaneously notify the Chair of the Investment Committee and then provide a full report of the action at the next regularly scheduled Investment Committee meeting, or meeting of the Board of Retirement, whichever is sooner.

### Active Participation: Domestic

- 13.** In deciding whether to pursue active participation in a domestic securities litigation cases, the Investment Committee will consider the following factors:

## OCERS Board Policy Securities Litigation Policy

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- a. The size of OCERS' loss;
- b. The merits of the case;
- c. The identity of the lead plaintiff and other parties, if known;
- d. The identity of lead counsel, if known;
- e. The sources of recovery available to satisfy a judgment if plaintiffs prevail;
- f. The availability of internal OCERS' resources to participate in the litigation and the potential burdens of discovery;
- g. Whether OCERS' active participation will increase the likely recovery or otherwise add significant value to the resolution of the case;
- h. The potential impact on the OCERS portfolio from trading restrictions arising from the potential acquisition of inside information in litigation, if any; and
- i. Whether OCERS' active participation would be effective in deterring similar corporate misconduct in the future.

### Active Participation: Foreign

14. Notwithstanding the Foreign Loss Threshold having been met, active participation in foreign securities actions will be examined on a case-by-case basis to determine whether the potential benefits of active participation outweigh the potential costs. In deciding whether to pursue active participation in a foreign securities litigation case, the Investment Committee will consider the following factors:

- a. The size of the potential recovery;
- b. OCERS' potential obligation to pay legal fees and costs;
- c. OCERS' potential liability for the legal fees and costs of the opposing party;
- d. The merits of the case in light of the law in that jurisdiction;
- e. How the action is being funded, and which law will apply to the relationship between OCERS and any funders;
- f. The identity of the foreign counsel and the method of their payment;
- g. The potential burdens of discovery; and
- h. The role OCERS will play in decision-making in the case.

### Settlements

15. When a settlement is proposed in a case in which OCERS has taken an active role, the Legal Division will provide the Investment Committee with an analysis of the settlement terms. The Investment Committee may approve the settlement or delegate to the CEO or the General Counsel authority to enter into a settlement on terms it deems appropriate.

## OCERS Board Policy Securities Litigation Policy

16. If the CEO determines that immediate approval of (i) a proffer of a settlement demand, (ii) a grant of settlement authority to litigation counsel, or (iii) a response (including a counteroffer) to a settlement offer is required to preserve OCERS' rights, and the matter cannot be timely presented for approval by the Investment Committee, the CEO is authorized, after consultation with the General Counsel, Chief Investment Officer, and Chair of the Investment Committee, to approve the proffer, grant, or response and notify the Investment Committee at its next regularly scheduled meeting.

### Claims Filing and Audits

17. OCERS' custodial bank will be responsible for filing all claims necessary to recover assets in securities class action cases in which OCERS has suffered losses, and the statement of work in the custodial agreement will set forth the claims filing procedures for the custodial bank to follow. If OCERS' custodial bank is not able to file the claim, then the Legal Division, in consultation with the Investment Division, will designate the entity that will be responsible for filing.
18. The custodial bank will submit or make available to OCERS quarterly reports on the securities litigation proceeds recovered and those reports will be provided to the Investment Committee.
19. The Legal Division, in conjunction with the Investment Division, will, from time to time, audit the custodial bank's claims filing process to ensure that OCERS is maximizing recovery from securities litigation settlements and awards. The Legal Division, in conjunction with the Investment Division, may require that the custodial bank change its processes for claim filings.

### Retention of Monitoring Firms and Litigation Counsel

20. The General Counsel, with the approval of the CEO, will engage two to five firms with demonstrated expertise in securities class actions (the "Monitoring Firms") to advise or represent OCERS in monitoring securities class action filings and settlements that affect the OCERS investment portfolio.
21. The Monitoring Firms will:
- Obtain OCERS' securities trading and holdings information directly from OCERS' custodial bank;
  - Identify and monitor domestic securities class actions and analyze OCERS' estimated losses in the affected securities;
  - Provide timely notice and analysis of securities class actions filed in the U.S. where OCERS has suffered losses that meet its Loss Threshold and active participation may be warranted; or where other factors exist that justify OCERS' consideration of the case;
  - Provide reports of newly-filed domestic securities class actions and OCERS' estimated losses on at least a quarterly basis;
  - Identify and monitor securities actions in foreign jurisdictions, and provide an analysis of OCERS' estimated losses in the affected securities;



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- f. Provide timely notice and analysis of those foreign securities actions where OCERS has suffered losses that meet its Foreign Loss Threshold or where other factors exist that justify OCERS' consideration of the case;
  - g. Assist OCERS in joining and filing claims in foreign securities actions in which the Investment Committee approves active participation; and
  - h. Assist OCERS in identifying meritorious U.S. securities class actions in which OCERS has substantial losses or significant holdings, determining the relevant statutes of repose, monitoring the progress of the litigation, and evaluating whether to file a protective claim or motion before a significant repose period expires.
22. Retainer Agreements with Monitoring Firms will be for terms not exceeding six years. Prior to the expiration of the six-year term, the General Counsel or their designee will conduct a Request for Proposals.
23. When the Investment Committee or the CEO approves OCERS taking an active role in litigation, they will direct the General Counsel to retain litigation counsel or delegate to the General Counsel the authority to retain litigation counsel for the matter.
24. The General Counsel may rely on Monitoring Firms for preparation of in-depth damages analyses and representation in litigation. However, the General Counsel may, with the approval of the Chief Executive Officer, retain outside counsel on behalf of OCERS to undertake these matters or to assist the Legal Division in carrying out this policy.

### Reporting

25. The Legal Division will keep the Investment Committee apprised of major developments on cases in which OCERS is actively participating and will provide reports on its policy-related activities on at least a quarterly basis. The reports will include listings of new securities litigation case filings and new settlements or awards in which OCERS has identified losses. For matters where OCERS' estimated losses exceed \$1 million, the report will include a brief analysis of the merits of the case.

### Policy History

The Board adopted this policy on December 15, 2003. The Board amended this policy on December 20, 2004; reviewed this policy with no changes on March 24, 2008; and amended this policy on August 24, 2009, May 20, 2013, March 20, 2017, November 13, 2017 and August 17, 2020.

### Secretary's Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.



Steve Delaney  
Secretary of the Board

08/24/2022

Date



## **OCERS Board Policy**

# **Securities Litigation Policy**

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## Exhibit B

### Scope of Services

The firm(s) selected to provide securities litigation monitoring services will be expected to:

1. Obtain OCERS' securities trading and holdings information directly from OCERS' custodial bank.
2. Monitor OCERS' invested assets for any losses that may have occurred due to a violation or potential violation of federal or state securities laws or a breach of any duty owed to OCERS.
3. Identify, monitor, and provide timely notice to OCERS of securities class actions filed in the United States and provide an analysis of OCERS' estimated loss, if any, in the affected security or securities in each action.
4. Identify, monitor, and provide timely notice to OCERS of securities actions that are filed or may be filed outside the United States, and provide an analysis of OCERS' estimated loss, if any, in the affected security or securities in each action.
5. Identify, evaluate, and provide timely notice and analysis of those potential and pending U.S. and non-U.S securities actions in which the firm determines OCERS may have a significant financial interest and where active participation may be necessary and warranted.
6. Advise OCERS of the existence of litigation to which the OCERS should be a party, whether OCERS should apply to be lead plaintiff or seek to join the lead plaintiff group, whether OCERS should remain in the plaintiff class or opt-out, the various deadlines that affect OCERS' rights, and other factors, as appropriate, to enable OCERS to make an informed decision as to how to proceed.
7. Assist OCERS in joining and filing claims in foreign securities actions in which OCERS' Board approves active participation, including assisting in reviewing and negotiating engagement agreements, third-party funder agreements, and insurance agreements.
8. Provide OCERS with an ongoing and comprehensive securities monitoring and administration service that provides expert legal advice and litigation-related services involving all aspects of securities litigation.
9. Be responsive to and available on an "as needed" basis to confer with and provide recommendations to the OCERS' Legal Division regarding case status, strategies, and potential settlement or other resolution of cases.
10. On at least a quarterly basis, the selected firm(s) shall issue a report on the status of any pending or potential litigation relative to OCERS' investments.
11. The firm's core skills will include comprehensive knowledge and understanding of relevant securities laws in the U.S. and non-U.S. securities markets, experience advising, representing, and providing securities litigation monitoring services for public pension systems and institutional investors, excellent oral and written communication skills, sound judgment, the ability to work well with and maintain the confidence of the Board and staff, and the ability to deliver services in a timely and cost-effective manner.
12. **The Scope of Services does not include representation of OCERS as attorney of record in connection with a securities action or any other type of legal action. OCERS will solicit and obtain such representation as necessary on a case-by-case basis. OCERS will not exclude a law firm selected to provide securities litigation monitoring services from consideration to serve as litigation counsel.**



## Exhibit C

### PROPOSAL COVER PAGE AND CHECK LIST (TO BE SUBMITTED IN FIRM'S LETTERHEAD)

Respondent Name:

Respondent Address:

***By submitting this response, the undersigned hereby affirms and represents that they have reviewed the proposal requirements and have submitted a complete and accurate response to the best of their knowledge. By signing below, I hereby affirm that the respondent has reviewed the entire RFP and intends to comply with all requirements.***

Respondent specifically acknowledges the following:

1. Respondent possesses the required technical expertise and has sufficient capacity to provide the services outlined in the RFP.
2. Respondent has no unresolved questions regarding the RFP and believes that there are no ambiguities in the scope of services.
4. Respondent has completely disclosed to OCERS all facts bearing upon any possible interests, direct or indirect, that Respondent believes any member of OCERS, or other officer, agent, or employee of OCERS presently has, or will have, in this contract, or in the performance thereof, or in any portion of the profits thereunder.
5. Materials contained in the proposal and all correspondence and written questions submitted during the RFP process are subject to disclosure pursuant to the California Public Records Act.
6. Respondent is not currently under investigation by any state or federal regulatory agency for any reason.
7. Except as specifically noted in the proposal, respondent agrees to all of the terms and conditions included in the Legal Services Agreement.
8. The signatory below is authorized to bind the respondent contractually.

**Exhibit D**  
**LEGAL SERVICES AGREEMENT FOR**  
**SECURITIES LITIGATION MONITORING COUNSEL**

This Legal Services Agreement for Securities Litigation Monitoring Counsel ("Agreement") is made between the Orange County Employees Retirement System ("OCERS") and [Firm] ("FIRM"). OCERS and FIRM are sometimes individually referred to as "Party" and collectively as "Parties." **The Parties hereby agree as follows:**

**1. Mutual Responsibilities**

The FIRM will assist OCERS with the identification and evaluation of potential and pending securities actions within the United States and in foreign jurisdictions in which OCERS has suffered losses, should file a claim, or should consider active participation according to the factors set forth in OCERS' Securities Litigation Policy. A copy of this policy is attached as Exhibit "A" and incorporated herein by this reference. For those securities actions in which the FIRM determines active involvement is appropriate or recommended, the FIRM will provide the Legal Office with timely notice and analysis setting forth the nature and merits of the action, including facts, claim(s), parties, OCERS' estimated losses and damages, the issues and risks specific to the jurisdiction where the case is pending, and any other information relevant to deciding whether to pursue the matter. FIRM will also provide to OCERS' General Counsel a report describing the FIRM's activities pursuant to this Agreement on at least a quarterly basis.

OCERS will cause its custodial bank ("Custodian") to provide the FIRM access to OCERS' securities holdings, which may include online access, downloading, hardcopy printing, and spreadsheet information. In addition, OCERS will instruct its Custodian to provide such additional information it has or has access to regarding trades involving the OCERS portfolio, as reasonably requested by the FIRM.

**2. Term**

The term of this Agreement will commence upon the effective date entered herein below and will continue for six (6) years from the effective date ("Term"), unless earlier terminated as provided herein.

**3. Non-Exclusive Agreement**

FIRM will provide legal services to OCERS under this Agreement on a non-exclusive basis. OCERS will have no obligation to take any action with respect to any securities action that the FIRM brings to its attention, and FIRM will have no obligation to represent OCERS in connection therewith. In the event OCERS does decide to pursue such an action, it agrees to consider retaining the FIRM to represent it. However, nothing in this Agreement should be construed to require OCERS to retain FIRM.

**4. Confidentiality**

In the course of performing services under this Agreement, the FIRM may have access to confidential information, including the securities holdings and practices of OCERS and its Custodian. FIRM agrees the information is provided on a confidential basis and will be utilized by the FIRM solely in connection with providing the services described in this Agreement. FIRM hereby covenants and agrees not to bring suit against OCERS or its agents, including the Custodian, or represent a plaintiff against them, based upon the FIRM's receipt or awareness of information or procedures gained from its provision of services under this

Agreement. Furthermore, the FIRM agrees the information, including procedures utilized by OCERS and its Custodian, is protected by the attorney-client privilege and the FIRM agrees not to disclose any such information or procedures to third parties unless OCERS has given its prior written consent, or unless required to by law, subpoena, or other legal process. FIRM further agrees to promptly notify the OCERS General Counsel of any such requirement. The obligations and restrictions of this Section 4 shall survive the termination of this Agreement.

## **5. Conflicts of Interest**

Before undertaking any work on OCERS's behalf, the FIRM shall conduct a conflict check to ensure that the FIRM has no legal conflicts of interests between any former or existing client and OCERS. FIRM shall also immediately notify in writing OCERS General Counsel of any actual or potential conflicts of interest discovered during the Term of this Agreement.

## **6. Fees and Expenses**

FIRM will not charge OCERS for any costs or expenses incurred by itself or its agents in performing services under this Agreement but agrees to perform these services in exchange for OCERS consideration of the FIRM to represent it in connection with a securities action. If OCERS does retain the FIRM to represent OCERS in any such action, such representation will be pursuant to a separately negotiated and executed retainer agreement.

## **7. Termination for Convenience**

Either Party may terminate this Agreement for any reason or for no reason on thirty (30) days' written notice to the other Party.

## **8. Indemnification**

The FIRM agrees to indemnify, defend, hold harmless OCERS, its officers, employees, and agents from and against any and all liability, suits, expense (including defense costs and legal fees), judgments, fines, and penalties, and claims for damages of any nature whatsoever, including but not limited to, breach of contract, loss of funds, death, bodily or personal injury to any person, or damage to any property, arising from or connected with the FIRM's operations or its services hereunder, or any and all improper or unethical practices, including but not limited to any Workers Compensation suits, liability, or expense arising from or connected with services performed on behalf of the FIRM by any person pursuant to this Agreement.

## **9. Authority to Enter Agreement**

FIRM has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

## **10. Governing Law; Venue**

This Agreement shall be governed by the laws of the State of California. The exclusive venue for any dispute arising out of or relating to this Agreement shall be in Orange County, California.

**IN WITNESS THEREOF**, the Parties hereto have caused this Agreement to be executed by their duly authorized officers, and effective as of **\_[DATE]\_\_\_\_\_**.

**OCERS**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Gina M. Ratto  
General Counsel

By: \_\_\_\_\_ Date: \_\_\_\_\_

[Name]  
[Title]

**FIRM**

By: \_\_\_\_\_ Date: \_\_\_\_\_

[Name]  
[Title]

## Exhibit A

### OCERS Securities Litigation Policy



## OCERS Board Policy Securities Litigation Policy

### Purpose and Background

1. The Securities Litigation Policy is intended to establish procedures and guidelines for monitoring and participating in securities class actions in furtherance of the Board of Retirement's fiduciary duties. For purposes of this policy, a securities class action includes, but is not limited to, an action alleging claims under state or federal securities and antitrust laws, as well as similar claims arising under the laws of foreign jurisdictions. The responsibility for overseeing securities litigation is delegated to the Investment Committee.

### Principles

2. As a large institutional shareholder, OCERS is frequently a class member in securities class actions that seek to recover damages resulting from corporate fraud and misconduct.
3. The Private Securities Litigation Reform Act, enacted in 1995, allows institutional investors to seek lead plaintiff status in securities class actions pending within the United States under U.S. federal securities laws. The lead plaintiff attains the right to supervise and control the prosecution of such cases. Participation as lead plaintiff by large, sophisticated shareholders such as OCERS has resulted in larger recoveries and lower attorneys' fees.
4. In 2010, the United States Supreme Court in *Morrison v. National Australia Bank* held that investors cannot bring or participate in a U.S. securities class action if their claims are based on securities purchased outside the U.S. As such, investors no longer have the protection of U.S. securities laws for securities purchased on a foreign exchange. In many foreign jurisdictions, however, investors are required to join as a named plaintiff or otherwise join as an active litigant at the commencement of the case as a condition to sharing in any damages awarded or recovered. Such direct participation may be costly and, depending on the jurisdiction, may subject OCERS to the risk of liability for defendant's fees and costs if the claim is unsuccessful. Therefore, OCERS must weigh the potential benefits of action in a foreign jurisdiction carefully.
5. In June 2017, the United States Supreme Court in *CalPERS v. ANZ Securities, Inc.* 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 the 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 and must exercise heightened diligence to protect potentially valuable claims from expiring under the statute of repose.
6. OCERS' goals for participation in securities class actions include:
  - Fulfilling OCERS' fiduciary duties by protecting trust assets and effectively managing claims as assets of the trust fund.
  - Maximizing claim recovery and reducing fees paid to obtain recoveries.
  - Deterring future fraud and corporate malfeasance to better protect fund assets.