

# An Updated Checklist for Maximizing Securities Class Action Recoveries and Evaluating Securities Litigation Policies & Service Providers

Risk Management Questions to Minimize Liabilities and Optimize Your Institution's Securities Litigation Policies and Procedures

By Adam Savett



Securities class actions remain an omnipresent part of the investing landscape. They continue to evolve and become more, not less complex. That makes the decision to select an external vendor for any part of the securities class action lifecycle a critical one. It impacts not only regulatory and compliance activities of the institutional investor, but more importantly, it can make the difference between maximizing recoveries and leaving significant money on the table.

Selecting the right securities class action vendor -- one that understands the complexities of the process and your institution's needs -- is acutely important. Based on conversations with many of our existing and prospective clients, reviews of recent RFPs, and decades of combined experience in the securities class action arena, we have compiled a guide to enable institutions to ask the right questions when reviewing securities class action capabilities, like portfolio monitoring or claims filing. These questions help identify areas of both significant risk and opportunity.

## Securities Litigation Policy

- ☐ Do you have a policy in place to research, track, and monitor securities class actions?
- ☐ Are you currently handling these tasks in house?
- ☐ Are you currently relying on an outside vendor (law firms or other professional services firms) to handle any aspect of this process?
- ☐ Do you have services to address both the start of cases (portfolio monitoring / loss calculation) and the end of cases (claims filing)?
- ☐ Are you attempting to quantify losses your portfolio has suffered with respect to newly filed cases?
- ☐ Do you have a loss threshold in place for considering active participation in new cases?
- ☐ Do you have procedures in place to handle and track the claims filing process?



- ☐ Do you have a process in place to evaluate whether to opt-out or remain in a certified class action?
- ☐ Are you currently participating in non-US (opt-in) securities cases?

### Securities Class Action Operating Principles

- ☐ Do you understand the fiduciary duties of your trustees, managers, and service providers with respect to securities litigation issues?
- ☐ Do you or your vendor track all state and federal securities class actions filed each year?
- ☐ Do you or your vendor track class actions involving both equity and fixed income (debt) securities?
- ☐ Do you or your vendor actively check your portfolio for potential fraud in the market, or do they simply track cases already filed by other law firms?
- ☐ Do you or your vendor track non-US (opt-in) securities litigation filings?
- ☐ What technology does your vendor have to monitor your securities portfolio holdings?
- ☐ Are you quantifying your institution's losses that may be recoverable through securities litigation?
- ☐ What did your institution actually recover on those losses over the last year? Last 3 years?
- ☐ How did the claims recovery affect your institution's overall portfolio return for the Quarter? Year?

### Securities Class Action Vendors

- ☐ Do you have one or more vendors monitoring your portfolio for investment related losses that may be recoverable through litigation?
- ☐ What is the vendor's reporting and notification process generally, including methodology and frequency of reporting?
  - Are they provided Daily? Weekly? Monthly? Quarterly? Bi-Annually? Annually?
  - Do the reports indicate your institution's losses in each case?
  - Does your vendor have minimum loss requirements for notifying you of exposure?
  - If so, what is that threshold?
  - How many newly filed cases per year do you have that fall under that threshold?
  - Will your vendor notify you of new cases that impact your institution even if you have a gain?
- ☐ Does your vendor have the ability to customize their reporting services to suit your litigation policy and needs of your institution?
- ☐ How are cases which may merit active involvement presented to the board? Who makes the decision on whether to seek "lead plaintiff" status in a case?
- ☐ Does your institution's General Counsel have a role in what cases you pursue?
- ☐ Does the General Counsel get a referral fee for any cases your institution participates in?
- ☐ Does your institution receive and distribute case memos presented to the institution from portfolio monitoring law firms? If no, why not?
- ☐ Is your current custodian bank filing claims on your behalf in settled securities class actions?
  - Is the custodial agreement clear on the responsibility and level of claims filing service that your custodian can and will provide?
  - Have you switched custodians in the last 5-10 years, and if so, is it clear who has responsibility for filing claims with respect to transactions through the prior custodian?
  - Have you taken steps to warehouse your data outside the control of your custodian?



- ☐ How are your vendors compensated for providing securities class action related services to you?
  - Is it done on a contingent basis?
  - If so, have you done an analysis of out-of-pocket costs for this model vs. a flat rate payment model?
  - Are there any conflicts of interest (hypothetical or actual) that your vendors may have?
- ☐ Does your vendor have a minimum required loss threshold before they will file a settlement claim on your behalf?
  - If so, what is that threshold?
  - How many settlement claims per year do you have that fall under that threshold?
- ☐ What is your vendor's transition policy if you decide to change service providers?
  - Does your vendor charge for access to your historical data?
  - Will your vendor work with your new provider to ensure a smooth transition?

### Securities Class Action Operations Experience

- ☐ How many years of experience in securities transaction processing do you or your vendor have?
- ☐ What experience do the members of the team have with class action litigation?
- ☐ How many years of experience with claims filing do you or your vendor have?
- ☐ Is your vendor able to provide or present educational materials for your staff or trustees on best practices and trends in securities litigation?
- ☐ If you have a vendor model:
  - How many portfolio monitoring clients does the vendor have?
  - How many claims filing clients does the vendor have?
  - What size is the largest client (in terms of AUM, accounts, claims filed per year)?

### Participation in Industry Associations and Conferences

- ☐ Is your vendor a member of organizations that are important to your institution (e.g. GAPPT, FPPTA, TexPERS, NCPERS, etc.)?
- ☐ Which industry conferences does your vendor support and attend?
- ☐ Does your vendor contribute thought leadership to organizations and conferences that matter to your institution?

### Securities Class Action Operations Structure

- ☐ Do you or your vendor have automated procedures to identify and track new securities class actions that may impact your portfolio?
- ☐ What resources do you or your vendor subscribe to or utilize to conduct securities class action research?
- ☐ If you have a vendor model:
  - Can they ingest and store holdings and transaction files?
  - What formats are supported?
  - How many files were ingested across their client base in the past year?
  - From how many unique sources are they able to ingest holdings and transactional files?
  - Which custodians do they have relationships with?
  - How is follow-up performed with these custodians?

- ☐ Which claims administrators do you or your vendor have relationships with?
  - How is follow-up performed with claims administrators?
- ☐ Which third party litigation funders or non-US law firms do you or your vendor have relationships with?
- ☐ How much investment have you or your vendor made in people, process and technology in the past 3 years?
  - What has been the result of the investment?
  - What plans do you or your vendor have for the next 3 years?

### **Technology Infrastructure Management**

- ☐ Does your vendor have the technical support and infrastructure needed to properly service your account?
- ☐ Does the vendor have a documented Business Continuity Plan (BCP)?
  - Does the BCP include facilities?
  - Does the BCP include telecommunications?
  - Does the BCP include data backup and restore procedures?
  - How often is the BCP tested?
  - Is the BCP updated as critical systems, business processes and people responsibilities change?
  - When was the last BCP test conducted? What was the scope of the test? What were the results?
- ☐ Does the vendor have a formal change management process?
  - Does it include specific testing of new processes and systems?
  - Do clients participate in the testing?
- ☐ Does the vendor monitor system availability?
- ☐ Can they provide 2 or more years of uptime statistics?

### **Information Security Practices and Management**

- ☐ Who is responsible for risk management?
- ☐ Are you or your vendor compliant with the ISO 17799 standards for information security?
- ☐ Are you or your vendor's information security policies and practices documented?
  - How are they monitored and enforced?
- ☐ Do you or your vendor have a third-party telecommunications network penetration test conducted regularly?
  - Are they willing to share results of the latest test?
- ☐ If you have a vendor model, does the vendor allow clients to conduct audits?
  - If so, do they allow on-site audits?
  - How many have been completed in the last 12 months and what were the summary results?
- ☐ How do you or your vendor ensure that access to production programs, data files, sensitive system transactions, and operating system files are restricted to authorized users only? Is security role-based?
- ☐ Do you or your vendor have physical security to restrict access to server/computer rooms?
- ☐ How do you or your vendor ensure that physical access to computer and network hardware, stored data, and documentation is restricted to prevent unauthorized destruction, modification, disclosure or use?
- ☐ Are there human resource policies and practices regarding system and building access for terminated employees?
- ☐ Do you or your vendor have cyber security protocols in place?
- ☐ Do you or your vendor run intruder detection systems?



## Internal and External Audit Practices

- ☐ Do you or your vendor have an internal audit department?
- ☐ If so, what is the reporting structure?
- ☐ Is there a regularly scheduled external audit?
- ☐ If so, at what frequency?
- ☐ Does the vendor have a dedicated quality assurance team that provides oversight to operations and production controls?
- ☐ If you have a vendor model:
  - Are they willing to review their operational audit plans with you as part of due diligence?
  - Does the vendor have a continuous process improvement approach or methodology?
  - Will they provide you with copies of SOC 1 Type I reports? Type II reports? Do these reports cover technology? Compliance activities? Key third party providers?

Whether your institution chooses to handle some or all of the activities related to securities class actions in house, or chooses to utilize one or more external vendors, this checklist will help you to: (1) avoid some common pitfalls; (2) plan out your institution's policies and procedures; (3) maximize your institution's recoveries related to securities litigation; and (4) lessen the burden on already overtaxed internal resources associated with managing securities litigation oversight.



## About the Author

### Adam Savett, Of Counsel

Adam Savett joins Wolf Popper LLP with more than two decades of experience representing and advising some of the largest and most sophisticated institutional investors, government entities, individuals, and businesses in securities, antitrust, consumer protection, and other complex litigation.

Adam is a nationally recognized leader on complex litigation, class actions, and settlement claims filing. He is a frequent speaker, author, and commentator on class actions and securities litigation, and his comments have appeared in a wide variety of publications, such as The New York Times, Wall Street Journal, CFO Magazine, and Pensions & Investments.

Adam was previously named one of the 100 Lawyers You Need to Know in Securities Litigation by Lawdragon Magazine and has been an invited speaker before numerous industry groups, including the Federal Judicial Center (FJC), National Conference on Public Employee Retirement Systems (NCPERS), Bank Depository Users Group (BDUG), National Council on Teacher Retirement (NCTR), Association of Global Custodians (AGC), and SIFMA's Global Corporate Actions Forum.

## About Wolf Popper LLP



Wolf Popper is a leading complex litigation law firm that represents clients in high stakes individual and class action litigations in state and federal courts throughout the United States. The firm specializes in securities fraud, mergers and acquisitions, consumer fraud litigation, healthcare litigation, ERISA, and commercial litigation and arbitration. Wolf Popper was founded in 1945, and is headquartered in New York City. Wolf Popper also has offices in Washington, DC; Houston, Texas; Chicago and Springfield, Illinois; Boston, Massachusetts; and San Juan, Puerto Rico.

Wolf Popper's attorneys are experienced litigators, many of whom have prior experience at AmLaw 100 firms or in government agencies. Wolf Popper's reputation and expertise has been repeatedly recognized by courts, which have appointed Wolf Popper and its attorneys as lead counsel in complex litigations throughout the country. Over the past eighty years, Wolf Popper has recovered billions of dollars for its clients.

Wolf Popper was one of the first laws firms in the United States to develop a class action securities litigation practice. The practice was founded in 1958, and grew out of the Firm's historical commitment to protecting the rights of individuals. Wolf Popper's long-established role in the securities bar provides its clients with an understanding and insight into federal securities and state fiduciary duty laws that could only be obtained through years of practice in the fields.

Wolf Popper provides a range of services which are designed to aid shareholders seeking to recover damages related to fraud and other corporate misconduct, as well as shareholders who seek to advocate for improved corporate governance.

Wolf Popper routinely represents damaged and defrauded institutional and other large investors in class action and individual securities litigations. Wolf Popper is regularly appointed lead or co-lead counsel in complex securities litigations. Wolf Popper is very selective in the cases it litigates. The Firm's careful factual and legal research and selective prosecution has resulted in a significant percentage of the securities litigations in which the Firm is involved being sustained over, or being settled prior to a decision on, a motion to dismiss. Wolf Popper regularly litigates cases alleging materially false and misleading statements in violation of the federal securities laws, as well situations involving as other corporate misconduct, such as (i) excessive compensation being paid to a company's management; (ii) self-dealing transactions between a company and its management or

directors; or (iii) where a majority/controlling shareholder seeks to cash out the public, minority shareholders at a grossly unfair price or in a manner that compromises the process necessary to ensure that the public shareholders are treated fairly.

Wolf Popper's portfolio monitoring service aims to educate the Firm institutional investor clients about securities litigation and corporate misconduct issues that impact their investment portfolios. The Firm provides monthly and case specific reports related to current litigations and disclosures of potential fraud or other corporate misconduct. Wolf Popper also provides clients with monthly reports of recently reached class action settlements to help clients identify settlements in which they might be entitled to participate.

Wolf Popper serves as a trusted advisor to institutional shareholders, and strives to help board members, directors, administrators, and other fiduciaries meet their duties and responsibilities to protect fund assets and mitigate the risks and liabilities. Wolf Popper represents a number of state, county, and municipal pension funds as well as Taft-Hartley plans and other sophisticated institutional investors. Wolf Popper's portfolio monitoring services are provided to institutional investors at absolutely No Out-of-Pocket Cost and Risk Free. Wolf Popper provides litigation services to institutional investors on a contingent fee and non-recourse basis.

Wolf Popper has a long history of representing international clientele. Wolf Popper's office in San Juan, Puerto Rico provides the firm with a gateway to the civil law system in Latin America and Europe; Wolf Popper has working relationships with firms throughout those jurisdictions. Latin American institutional investors worldwide can expect fully bilingual services in portfolio monitoring and securities litigation from diverse and experienced attorneys.

Wolf Popper's founders always recognized the value of a workforce comprised of talent across the demographic spectrum. The Firm has been committed to diversity and inclusion and gender equality since its inception and is proud to continue to embrace that tradition of inclusion to the benefit of the Firm and the clients we serve.

To learn more, please visit us at [www.wolfpopper.com](http://www.wolfpopper.com), or email us at [outreach@wolfpopper.com](mailto:outreach@wolfpopper.com).