

**MINUTES of SERS Board Meeting – Tuesday, December 12, 2023**

**CALLED TO ORDER: 9:30 a.m. by Chair Gregory C. Thall**

**IN-PERSON/MICROSOFT TEAMS MEETING/LIVESTREAM**

**ATTENDEES:**

**Members and Designees**

Gregory C. Thall – Chair	via TEAMS
John M. DiSanto	via TEAMS
Donald Enders Jr.	
Dan B. Frankel	Absent
Stacy Garrity	
J. David Henderson	
Vincent J. Hughes	Absent
Gregory K. Jordan	Absent
Brett R. Miller	
Uri Monson	
Wendy Spicher	
Christopher Craig – Designee for Treasurer Stacy Garrity	
Seamus Dubbs – Designee for Secretary Wendy Spicher	
Lloyd Ebright – Designee for Treasurer Stacy Garrity	via TEAMS
Charles Erdman – Designee for Senator John M. DiSanto	via TEAMS
Matt Lindsay – Designee for Senator Vincent J. Hughes	via TEAMS
Dan Ocko – Designee for Representative Dan B. Frankel	via TEAMS
Jeffrey Soderstedt – Designee for Secretary Wendy Spicher	via TEAMS
Jill Vecchio – Designee for Representative Brett R. Miller	via TEAMS
Thomas Waters – Designee for Treasurer Stacy Garrity	via TEAMS

**Executive Staff**

N. Joseph Marcucci  
Sara McSurdy  
James Nolan  
Joseph Torta

**Consultants**

Craig Graby, Korn Ferry	via TEAMS
Britt Murdoch, Callan LLC	via TEAMS
Tom Shingler, Callan LLC	via TEAMS
Mike Spadaro, Korn Ferry	via TEAMS

**SERS Staff**

Rose Agnew  
Kelly Bernhard  
Beth Christian  
Cindy Collins  
Jo Ann Collins  
Brenda Cunard

Thomas Derr  
Mark Farina           via TEAMS  
Taylor Frey  
Pam Hile  
Dan Krautheim  
Katie Mathews  
Ryan McCoy  
M. Catherine Nolan  
Amy Nowak  
Kara O'Donnell       via TEAMS  
Michelle Rhizor  
Jon Ryan  
Brett Shaffer  
Steven Skoff  
Matthew Soule  
Bill Truong  
Mark Walter  
Sheila Wilrich

**Visitors**

Brian Kimmetz, Rock the Capital

## **MINUTES of the SERS Board Meeting TUESDAY, December 12, 2023**

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### 1. CALL TO ORDER

Chair Thall called the meeting to order at 9:30 a.m.

### 2. WELCOME AND ROLL CALL

Executive Director Joseph Torta conducted a roll call of board members and designees.

A quorum was met. New board members Donald Enders Jr. and J. David Henderson were introduced and welcomed to the board.

### 3. ADOPTION OF THE AGENDA

#### **MOTION: 2023-49**

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

**RESOLVED:** That the board adopts the agenda for the December 12, 2023, board meeting.

### 4. APPROVAL OF CONSENT CALENDAR

A. Approving Board Meeting Minutes – September 26, 2023

B. Approving Defined Benefit Plan Statement of Changes in Fiduciary Net Position for the Periods Ending – July 31, August 31, and September 30, 2023

C. Approving Deferred Compensation Plan (DCP) Statement of Changes in Net Position Available for Benefits for the Periods Ending – July 31, August 31, and September 30, 2023

D. Approving Defined Contribution Plan Statement of Changes in Fiduciary Net Position for the Periods Ending – July 31, August 31, and September 30, 2023

#### **MOTION: 2023-50**

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

**RESOLVED:** That the board approves the Consent Calendar items, as listed, for the December 12, 2023, board meeting.

### 5. COMMITTEE REPORTS/ACTION ITEM

#### A. Securities Litigation

Designee Matt Lindsay for Assistant Committee Chair Vincent Hughes presented a report of the Securities Litigation Committee meeting of December 5, 2023, to the board.

#### B. Investment Committee

Committee Chair Uri Monson presented a report of the Investment Committee meeting of December 5, 2023, to the board. It was noted that Wendy Spicher received committee consensus to fill the Assistant Chair seat. The following actions were taken:

#### PRIVATE EQUITY – CLEARLAKE CAPITAL PARTNERS VIII, L.P.

#### **MOTION: 2023-51**

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

**RESOLVED:** That the State Employees' Retirement Board accepts the recommendation of the Investment Committee to commit (i) up to \$100 million to Clearlake Capital Partners VIII, L.P., and (ii) up to \$20 million to a sidecar vehicle that will co-invest alongside Clearlake Capital Partners VIII, plus investment expenses and pro rata share of partnership operating expenses, consistent with executed partnership documents, as follow on investments within the Private

Equity asset class, subject to successful completion of contract negotiations and execution and delivery of closing documents by all parties, including required Commonwealth legal approvals, within 12 months..

John M. DiSanto		YES
Donald Enders Jr.		YES
Dan B. Frankel	Designee Dan Ocko	YES
Stacy Garrity		YES
J. David Henderson		YES
Vincent J. Hughes	Designee Matt Lindsay	YES
Gregory K. Jordan		ABSENT
Brett R. Miller		YES
Uri Monson		YES
Wendy Spicher		YES
Gregory C. Thall		YES

REAL ESTATE – ARES PA OPPORTUNITIES FUND, L.P. AND ARES US REAL ESTATE OPPORTUNITY FUND IV, L.P.

**MOTION: 2023-52**

By motion that was moved, seconded, and approved by board members, except for Senator DiSanto who recused because a trust of which he is a beneficiary currently holds a property that has a business relationship with an Ares-held entity to avoid even the appearance of a conflict, it was

**RESOLVED:** That the State Employees’ Retirement Board accepts the recommendation of the Investment Committee to commit up to \$100 million to Ares PA Opportunities Fund, L.P., to be invested in Ares US Real Estate Opportunity Fund IV, L.P., and related co-investments, plus investment expenses and pro rata share of partnership operating expenses, consistent with executed partnership documents, as investments within the Real Estate asset class, subject to successful completion of contract negotiations and execution and delivery of closing documents by all parties, including required Commonwealth legal approvals, within 12 months.

John M. DiSanto		RECUSE
Donald Enders Jr.		YES
Dan B. Frankel	Designee Dan Ocko	YES
Stacy Garrity		YES
J. David Henderson		YES
Vincent J. Hughes	Designee Matt Lindsay	YES
Gregory K. Jordan		ABSENT
Brett R. Miller		YES
Uri Monson		YES
Wendy Spicher		YES
Gregory C. Thall		YES

**C. Finance and Member & Participant Services Committee**

Committee Assistant Chair Wendy Spicher presented a report of the Finance and Member & Participant Services Committee meeting of December 5, 2023, to the board. It was noted that Representative Dan Frankel was named Committee Chair.

**D. Audit, Risk, and Compliance Committee**

Committee Chair Stacy Garrity presented a report of the Audit, Risk, and Compliance Committee meeting of December 5, 2023, to the board.

**E. Board Governance and Personnel Committee**

Committee Chair Thall presented a report of the Board Governance and Personnel Committee meeting of December 5, 2023, to the board. It was noted that the existing contract for outside tax counsel expires at the end of April 2024. Volunteers are needed to serve on the Technical Evaluation Committee for bids. Interested board members or designees should contact Cindy Collins or Joe Marcucci. Chair Thall also asked board members to take time to complete and return the Performance Input for Key SERS Positions as referenced in a December 7<sup>th</sup> email from Katie Mathews. The following actions were taken:

**SERS SECURITIES LITIGATION POLICY****MOTION: 2023-53**

By motion that was moved, seconded, and approved unanimously by board members, it was **RESOLVED:** That the State Employees' Retirement Board accepts the recommendation of the Board Governance and Personnel Committee to adopt revisions to the SERS Securities Litigation Policy as set forth in BoardDocs at Agenda Item 8.b (ATTACHMENT A).

John M. DiSanto		YES
Donald Enders Jr.		YES
Dan B. Frankel	Designee Dan Ocko	YES
Stacy Garrity		YES
J. David Henderson		YES
Vincent J. Hughes	Designee Matt Lindsay	YES
Gregory K. Jordan		ABSENT
Brett R. Miller		YES
Uri Monson		YES
Wendy Spicher		YES
Gregory C. Thall		YES

**SERS THIRD AMENDED AND RESTATED RIGHT-TO-KNOW-LAW POLICY****MOTION: 2023-54**

By motion that was moved, seconded, and approved unanimously by board members, it was **RESOLVED:** That the State Employees' Retirement Board accepts the recommendation of the Board Governance and Personnel Committee to adopt the SERS Third Amended and Restated Right-To-Know Law Policy.

It was further moved that the Board Governance and Personnel Committee recommend that the State Employees' Retirement Board deem that document to be a SERS Policy, rather than a Board Governance Policy, and delegate the duty for maintaining and complying with the policy to SERS Staff, as set forth in BoardDocs at Agenda Item 8.c (ATTACHMENT B).

The Board Governance and Personnel Committee recommends that staff present any future amendments to the Right-to-Know Policy to the Committee for review and recommendation to the board for adoption of recommended changes and implement accordingly, as set forth in BoardDocs at Agenda Item 8.c.

John M. DiSanto		YES
Donald Enders Jr.		YES
Dan B. Frankel	Designee Dan Ocko	YES
Stacy Garrity		YES
J. David Henderson		YES
Vincent J. Hughes	Designee Matt Lindsay	YES
Gregory K. Jordan		ABSENT
Brett R. Miller		YES
Uri Monson		YES
Wendy Spicher		YES
Gregory C. Thall		YES

**SALARY ADJUSTMENT FOR INVESTMENT PROFESSIONALS**

**MOTION: 2023-55**

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

**RESOLVED:** That the State Employees' Retirement Board accepts the recommendation of the Board Governance and Personnel Committee to:

(i) approve a 3.6% upward adjustment, actual values may vary slightly in accordance with standard calculations for commonwealth pay to the salary bands for investment professionals, to be effective January 1, 2024; and

(ii) that the values in the Compensation Policy for Investment Professional Staff – State Employees' Retirement System be updated accordingly.

John M. DiSanto		YES
Donald Enders Jr.		YES
Dan B. Frankel	Designee Dan Ocko	YES
Stacy Garrity		YES
J. David Henderson		YES
Vincent J. Hughes	Designee Matt Lindsay	YES
Gregory K. Jordan		ABSENT
Brett R. Miller		YES
Uri Monson		YES
Wendy Spicher		YES
Gregory C. Thall		YES

**ANNUAL AGGREGATE PAY INCREASE BUDGET FOR 2024 FOR INVESTMENT PROFESSIONALS**

**MOTION: 2023-56**

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

**RESOLVED:** That the State Employees' Retirement Board accepts the recommendation of the Board Governance and Personnel Committee to approve the annual aggregate pay increase budget for 2024 to be set at 5% of the aggregate salary of all staff compensated on the investment professional pay schedule for positions below that of the Chief Financial Officer and the Chief Investment Officer, with the actual pay increases for all staff compensated on the investment professional pay schedule including the Chief Financial Officer and the Chief Investment Officer to be determined in accordance with the Compensation Policy for Investment Professional Staff – State Employees' Retirement System.

John M. DiSanto		YES
Donald Enders Jr.		YES
Dan B. Frankel	Designee Dan Ocko	YES
Stacy Garrity		YES
J. David Henderson		YES
Vincent J. Hughes	Designee Matt Lindsay	YES
Gregory K. Jordan		ABSENT
Brett R. Miller		YES
Uri Monson		YES
Wendy Spicher		YES
Gregory C. Thall		YES

**EXECUTIVE DIRECTOR COST OF LIVING INCREASE**

**MOTION: 2023-57**

By motion that was moved, seconded, and approved unanimously by board members, it was **RESOLVED:** That the State Employees' Retirement Board accepts the recommendation of the Board Governance and Personnel Committee to grant the Executive Director, SERS, a 2024 cost-of-living increase of the same percentage and with the same effective date as the annual cost-of-living adjustment approved by the Governor pursuant to the Act of October 19, 1995, P.L. 324, No. 51.

John M. DiSanto		YES
Donald Enders Jr.		YES
Dan B. Frankel	Designee Dan Ocko	YES
Stacy Garrity		YES
J. David Henderson		YES
Vincent J. Hughes	Designee Matt Lindsay	YES
Gregory K. Jordan		ABSENT
Brett R. Miller		YES
Uri Monson		YES
Wendy Spicher		YES
Gregory C. Thall		YES

**6. OLD BUSINESS – NONE**

**7. NEW BUSINESS**

A. Information Item Only – 2023 Annual Divestment Reports

**8. SPECIAL PRESENTATION - NONE**

**9. REPORT OF EXECUTIVE DIRECTOR AND AGENCY STAFF**

A. Executive Director Torta provided the following Executive and Legislative Updates:

- (i) On October 25, 2023, a senior staff retreat was held off-site. The Strategic Plan and Project Planning were the main concentration points.
- (ii) The PA Association of Public Employee Retirement Systems (PAPERS) Conference was held on November 8-9. He noted it was his first meeting to sit on the PAPERS board. Treasurer Garrity was a guest speaker and provided a great speech.

- (iii) On November 14, 2023, SERS held a veterans' ceremony. The Department of General Services Secretary, Reginald McNeil, was a guest speaker and Treasurer Garrity provided individual letters of gratitude to each veteran.
- (iv) SERS now has a LinkedIn presence. This will increase applicants for SERS positions. Also, SERS is investigating the implementation of LinkedIn Learning.
- (v) HB 1416 passed the house on November 14, 2023, and will now go to the Senate. This bill would provide SERS and PSERS retirees, prior to 2002, a cost-of-living adjustment (COLA).
- (vi) The following Board Dismissal reports regarding uncontested matters in which an Order was issued dismissing the following administrative appeals, as provided to the board:

Account of Frank L. Morris

Docket No. 2022-02

Claim of Frank L. Morris

Account of Tina A. Baker

Docket No. 2023-01

Claim of Tina A. Baker

- (vii) Board committee and regular meeting dates for 2024 are final. Those dates are: January 9, February 27, March 5, April 30, May 7, June 11, June 18, July 23, July 29 (Retreat), July 30, September 17, September 24, December 3, and December 10.
- (viii) Comments on the Independent Fiscal Office (IFO) Stress Test Report was opened to the full board. Rep. Miller commented that this report was authorized by the general assembly as a result of Act 120 of 2020 in which he served along with Rep. Frankel authorizing the IFO to conduct a stress test. The legislation passed the house and senate unanimously. Many thousands of individuals with SERS and PSERS rely on the pension system and decisions being made need to be secure. Rep. Miller recommended that stress testing be an on-going topic to the board agenda as the board moves forward on allocations and decisions on investments. He recognized that SERS unilaterally adopted their own annual stress testing in 2019 but their report is released in September while the IFO releases their test in December. Executive Director Torta noted that the Executive Office Staff and he support Rep. Miller's recommendation.

B. Deputy Executive Director of Administration Beth Christian provided the following Administrative Updates:

- (i) An employee cultural survey was issued in August. One result of that survey was to have new employee introductions and bios collected for proper introduction on the SERS intranet.
- (ii) The vision statement has been expanded to business cards and the mission and vision statement was posted at locations throughout SERS.
- (iii) The SERS employee suggestion box was re-instituted.
- (iv) For the first time this year, SERS participated in the 2023 Commonwealth employees' holiday wish program. She thanked Jill Moran who led this program.
- (v) SERS continues to make progress in reducing the number of job vacancies in this challenging environment.
- (vi) Congratulations to Sara McSurdy who is attending the Harrisburg University Leadership Development Program. Sara is the first from SERS and graduates in March 2024.
- (vii) The Office of Administration and the Office of Member and Participant Services teamed up for training in leadership. Sessions included IT training, HR training and a SEAP contractor who covered "Beating Burnout".

(viii) Two IT leaders are participating in the nine-month Harrisburg University IT Manager Certificate Program. Four IT leaders are participating with agency business partners in the six-month Harrisburg University Digital Transformation Program.

(ix) The State College field office has successfully relocated; she thanked Jennifer Perry, Dawn Smith and Dan Krautheim and their teams for their assistance in making this happen.

## 10. EXECUTIVE SESSION

A. Benefits Administration and Appellate Litigation Update

B. Notational Ballot

Account of Gary E. Patterson

Docket No. 2021-03

Claim of Gary E. Patterson

C. Notational Ballot

Account of Stephen H. Stetler

Docket No. 2020-01

Claim of Stephen H. Stetler

D. Notational Ballot

Account of James Keilman

Docket No. 2020-07

Claim of James Keilman

E. INFORMATION ITEM ONLY - Chief Compliance Officer Report on Board Referrals:  
Prospective Investment Opportunities and Service Provider Candidates

At 10:15 a.m., the board recessed and entered executive session to receive legal advice on the above executive session agenda items. The public meeting resumed at 11:35 a.m.

## 11. BOARD COMMENTS/ANNOUNCEMENTS/DATES TO REMEMBER

Next Committee Meeting Date – January 9, 2024

## 12. MOTION TO ADJOURN

**MOTION: 2023-58**

By motion of Chair Thall, the board unanimously agreed to adjourn the meeting at 11:36 a.m.

Respectfully submitted,



Joseph A. Torta  
Executive Director

## SERS Board Governance Policy Manual

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<b>Policy Name:</b>	<b>Securities Litigation Policy</b>
<b>Policy Number:</b>	2019-POL-BD-02
<b>Effective Date:</b>	September 25, 2019, as amended December 12, 2023
<b>Reviewed Date:</b>	December 5, 2023
<b>Applies To:</b>	SERS Board Members and Designees
<b>Contact Person:</b>	SERS Legal Office

### I. Purpose

The State Employees' Retirement System ("SERS") provides pension benefits to members of SERS in accordance with the State Employees' Retirement Code (the "Retirement Code").<sup>1</sup> The State Employees' Retirement Board (the "Board") is empowered by the Retirement Code with the exclusive control and management of the State Employees' Retirement Fund (the "Fund").<sup>2</sup> The members of the Board stand in a fiduciary relationship to SERS members regarding the investments and disbursements of any of the moneys of the Fund, and have the duty and obligation to invest and manage the Fund for the exclusive benefit of SERS members.<sup>3</sup> As fiduciaries, the members of the Board have the duty to invest and manage the Fund with the care, skill and caution that a prudent investor would exercise under similar circumstances.<sup>4</sup>

The Board has long recognized that the Fund assets include SERS' securities litigation claims for losses to the Fund arising from misconduct by publicly-traded entities in which the Board invests. As fiduciaries, the members of the Board have a duty to take reasonable and appropriate actions to recover losses to the Fund. In furtherance of the recognition of the Board's fiduciary duties, on October 28, 1998, the Board adopted Resolution 1998-67, which established a sub-committee with authority to approve applications by SERS to serve as lead plaintiff for the class in securities class actions. On June 4, 2003, the Board adopted Resolution 2003-49, which repealed Resolution 1998-67, established a Securities Litigation Committee of the Board (the "SLC"), and gave the SLC broad powers for determining whether SERS should institute securities litigation, but specified a minimum of \$3,000,000 in estimated losses to SERS as a general requirement for participating as an active class representative in a class action. On May 31, 2006, the Board adopted Resolution 2006-53 adopting the SERS Securities Litigation Policy (the "SLP"), which established the procedures for determining when and how to actively pursue securities litigation and the selection process to secure outside litigation counsel for such purpose. On April 24, 2013, the Board adopted Resolution 2013-25, which amended the SLP (the "First Amended SLP") to:

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<sup>1</sup> 71 Pa. C.S. §5101 *et seq.*

<sup>2</sup> 71 Pa. C.S. §5931(a)

<sup>3</sup> 71 Pa. C.S. §5931(e)

<sup>4</sup> 71 Pa. C.S. §5931(a). Rest. 3<sup>rd</sup>, Trusts (Prudent Investor Rule) §227

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(1) establish a secondary threshold where the potential burdens of class action class representation were reduced or absent and a greater recovery was evident, such as when opting out of a pending domestic class action in order to bring an independent action against defendants (where a \$2,000,000 loss was established as appropriate for further analysis), and (2) authorize SERS to consider joining a foreign or domestic joint, group or other available securities-based action filed outside the United States (where a threshold loss of \$500,000 was established as appropriate for further analysis).

For purposes of selecting outside law firms to represent SERS in these matters, a securities litigation counsel pool was established from which law firms were to be selected when the SLC approved active participation in securities litigation. On September 16, 2015, pursuant to Resolution 2015-51, the Board adopted the Second Amended Securities Litigation Policy (2018 POL-BD-03) (the "Second Amended SLP") so as to conform the outside securities litigation counsel selection process with procedures established by the Governor's Office of General Counsel, resulting in the creation of a new securities litigation counsel pool established in conjunction with the Public School Employees' Retirement System ("PSERS").

On October 24, 2018, the Board adopted Resolution 2018-75, as amended by Resolution 2018-99, which established the SERS Office of Chief Counsel ("OCC") as an independent legal office separate from the Governor's Office of General Counsel, with the exact date to be determined by the Board Secretary, with notice to the Governor's General Counsel pursuant to § 409 of Act 2017-05. The Chief Counsel, with the concurrence of the Board Secretary, was delegated the authority to retain, hire, terminate, reclassify or promote any other counsel, either in-house or outside counsel, as they deem necessary and appropriate, subject to Commonwealth personnel and procurement rules. On December 22, 2018, upon the Board Secretary's determination, the OCC, as an independent legal office, was formally established. Similarly, effective January 1, 2018, PSERS established an independent legal office. The OCC was reclassified as the Chief Counsel's Office ("CCO") via Executive Board Resolution OR-20-025 on October 27, 2020.

On November 19, 2018, the Board adopted Resolution 2018-82, which included the adoption of the Securities Litigation Committee Charter (the "SLC Charter"). Pursuant to the SLC Charter's provision that the SLC is to recommend any proposed changes to the Second Amended SLP and/or the SLC Charter to the Board, the SLC undertook a review of the Second Amended SLP and the SLC Charter. On September 25, 2019, upon the recommendation of the SLC and the Board Governance and Personnel Committee, the Board adopted Resolution 2019-73, which repealed Securities Litigation Policy (2018 POL-BD-03), adopted this Third Amended Securities Litigation Policy (this "Third Amended SLP"), and revised the SLC Charter.

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The purpose of the Securities Litigation Policy is to set forth the Board's approach to securities litigation, as recommended by the SLC, in order to protect the best interests of the Fund and its members.

### II. Definitions

- A. **Consultant:** A litigation consultant retained by the Board to advise the Board on matters related to securities litigation.
- B. **Class Action Securities Litigation:** Where one or a small group of plaintiffs can represent an entire class of similarly situated claimant investors in an action brought against the same defendant(s). If and when legal proceedings have concluded as a result of a proposed settlement, all putative/passive members of the class of claimant investors, as defined by the terms of settlement ratified by the court, can file proofs of claim to receive their pro-rata share of settlement monies. Class Action Securities Litigation is exclusively filed in the federal courts of the United States and Canada.
- C. **Class Period:** A specific period of time in which the defendant's unlawful conduct is alleged to have occurred in a securities litigation matter.
- D. **FIFO (First In, First Out):** A method of accounting used to place a net value on the purchase and sale of securities during the Class Period whereby the securities are assumed to be sold in the chronological order in which they were purchased (i.e., the first security purchased is assumed to be the first security sold).
- E. **LIFO (Last In, First Out):** A method of accounting used to place a net value on the purchase and sale of securities during the Class Period whereby the securities are assumed to be sold in the reverse-chronological order in which they were purchased (i.e., the last security purchased is assumed to be the first security sold).

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- F. ***Opt-In Securities Litigation:*** Where each individual claimant investor is required to either (i) bring an independent securities litigation proceeding against defendant(s) from the outset (which can be joined by a group of similarly situated claimant investors by a certain date set by the court), or (ii) join an established securities litigation previously filed against such defendant(s) by a group of similarly situated claimant investors by a certain date set by the court, in order to protect any future right it may have to make a damages claim against defendant(s). When opting into a litigation group, each claimant investor is generally required to appoint the agent(s) who initiated the case (and/or their legal counsel) to represent its claim against the defendant(s). This will usually entail the claimant investor signing an agreement directly with the agent(s) (and/or their legal counsel) and paying a proportional share of the litigation group's fees and expenses as a co-plaintiff in the securities litigation. Claimant investors who fail to protect their claim rights through the above-referenced methods will not be entitled to receive payment of its proportional share from any resultant settlement with or judgment entered against defendant(s). Opt-In Securities Litigation is practiced exclusively in jurisdictions outside of the United States and Canada.
- G. ***Opt-Out Securities Litigation:*** Where an individual claimant investor or group of similarly situated claimant investors, who are putative/passive members of the class of plaintiffs in a Class Action Securities Litigation filed against defendant(s), elects to "opt-out" of the Class Action Securities Litigation in order to bring a separate, distinct and otherwise independent securities litigation proceeding against the same defendant(s). Opt-Out Securities Litigation is generally utilized by claimant investors that (i) are required to file an independent securities action in order to preserve certain claims that would otherwise be time-barred by the running of the Statute of Repose (which period is not stayed by the filing of the Class Action Securities Litigation in the manner in which the Statute of Limitation is stayed by such filing), (ii) assert that an expanded Class Period from that claimed by the lead plaintiff of the Class Action Securities Litigation (and eventually certified by the court in the class action if its claims survive defendants' motion to dismiss) is more accurate/appropriate, thus expanding such claimant investor's claim for damages against defendant(s), and/or (iii) are not satisfied with the proposed settlement negotiated by the lead plaintiff on behalf of the putative/passive class of plaintiffs in the Class Action Securities Litigation, and believe they can secure a larger recovery if they bring an independent securities action against defendant(s).
- H. ***Unrealized Losses:*** Losses calculated for those securities acquired during the Class Period and still held. The current value of these securities is netted against their purchase cost.
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### III. General Guidelines

The following guidelines shall apply to securities litigation matters:

A. The SLC Charter provides that the SLC shall have the following responsibilities:

The SLC shall determine whether SERS should: (1) seek lead or co-lead plaintiff status in a Class Action Securities Litigation or take any other active role, including but not limited to, serving as a class representative, (2) initiate or join an Opt-Out Securities Litigation, or object to any portion of a proposed settlement of a Class Action Securities Litigation as a putative/passive member of the class of claimant investors, (3) initiate an independent, or join a group that has an established, Opt-In Securities Litigation action filed outside of the United States/Canada, and/or (4) collaborate with PSERS, other Commonwealth entities, and/or non-Commonwealth entities regarding securities litigation matters.

- i. The CCO shall have the SLC/Board's authority to: (a) select outside legal counsel in accordance with procedures established by the CCO, and (b) approve the amount of compensation to be paid to outside legal counsel (subject to court approval, where applicable).
- ii. For securities litigation matters in which SERS has taken an active role, the SLC shall approve the amount and terms of any settlement of securities litigation claims (subject to Office of Attorney General and court approval).
- iii. In making the decisions described in the SLC Charter, the SLC shall comply with the Securities Litigation Policy (and other applicable policies and procedures) and fully consider any evaluations provided by the CCO and other claim evaluators, including but not limited to evaluations by firms in the securities litigation pool and/or consultants retained by the Board. Where necessary and appropriate, the CCO may coordinate with and seek input from the SERS Investment Office in performing securities litigation evaluations for the SLC's consideration and/or assisting selected outside securities litigation counsel in an active case.
- iv. The SLC shall collaborate with the CCO, the Executive Director and the Director of Governance and Strategic Initiatives to review the Securities Litigation Policy, as provided for in the SERS By-laws. The SLC shall recommend any changes to such policies and procedures to the Board Governance and Personnel Committee, who shall review and recommend adoption to the Board.
- v. The SLC shall perform such other activities related to the SLC's functions and duties as contained in its Charter or as requested by the Board from time to time.

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- B. In determining whether to institute securities litigation, the SLC shall consider the objectives of the Board, including, but not limited to, preservation of the Fund and collection of all amounts due to the Fund; maximizing the net recovery of SERS; and the opportunity to effect meaningful corporate governance reforms as part of any securities litigation settlement.

### IV. Application of Policy

#### A. General Procedures

##### i. Establishment of Securities Litigation Pool

1. The CCO, with the concurrence of the Board Secretary, is authorized to work with PSERS in the establishment and maintenance of a pool of qualified outside law firms (the "SL Pool") to serve as securities litigation counsel for the Board (and/or the PSERS board) in any legal actions undertaken pursuant to this Third Amended SLP.

##### ii. Securities Litigation Implementation Procedures

1. The CCO shall design certain securities litigation implementation procedures (the "Securities Litigation Implementation Procedures") to implement the Securities Litigation Policy and shall review and revise the Securities Litigation Implementation Procedures from time to time, as necessary or required. The Securities Litigation Implementation Procedures shall include, but not be limited to: (a) the process for determining when and how to pursue securities litigation as lead or co-lead plaintiff in a Class Action Securities Litigation, (b) the process for determining when and how to (i) pursue an Opt-Out Securities Litigation, either alone or jointly with others, or (ii) object to any portion of a proposed settlement of a Class Action Securities Litigation as a putative/passive member of the class of claimant investors, and (c) the process for determining when and how to consider initiating an independent, or joining a group that has an established, Opt-In Securities Litigation action filed outside of the United States/Canada.

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### iii. Securities Litigation Monitoring

1. The CCO shall monitor various securities litigation matters and the Executive Director is authorized to subscribe to a securities litigation monitoring support service on behalf of the Board to assist in such oversight, which shall include, for Class Action Securities Litigation, Opt-In Securities Litigation and Opt-Out Securities Litigation, (a) filings of various securities litigation actions, (b) terms of settlements of various securities litigation actions, (c) SERS' estimated securities-related losses calculated under the LIFO and FIFO methods, and (d) instances where SERS' estimated losses have exceeded a threshold specified by the Securities Litigation Policy. The securities litigation monitoring support service may be combined with other services, including, but not limited to, claims filing services in Class Action Securities Litigation matters where SERS remains a member of the class of claimant investors.

iv. Claims Filing - The Board understands that it is important to file proofs of claim for SERS' pro-rata share of securities litigation recoveries when SERS is a member of a class of claimant investors in a Class Action Securities Litigation.

#### 1. Class Action Litigation Claims Filing

Proofs of Claim in Class Action Securities Litigation matters are currently filed on SERS' behalf by Bank of New York Mellon, the sub-custodian of SERS' securities ("Sub-custodian"), pursuant to an agreement with the Treasury Department. The Sub-custodian is to monitor such filings to assure that such filings are being made in an accurate and timely fashion, and that SERS is receiving its proper share of such recoveries. The Executive Director, on behalf of the Board, is authorized to engage outside service providers to provide claims filing services in Class Action Securities Litigation matters, which may be combined with other securities litigation services, including, but not limited to, securities litigation monitoring support services.

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### B. Consultant

- i. The Executive Director shall be authorized, subject to all necessary approvals required by law, to issue a request for proposals (either on behalf of the Board alone or jointly with the PSERS board), to enable the SLC to establish and evaluate the credentials of a Consultant to advise on matters related to securities litigation.
- ii. The Board shall seek to contract with not more than two (2) Consultants at any given time, who shall, at the request of the CCO, advise the Board on matters relating to securities litigation, including assisting the Board in analyzing its interest in both pending and potential securities litigation based upon SERS' holdings and exposure during the Class Period, including identification of the specific benefit to the Board and SERS in pursuing litigation, risk and value assessment, damage estimates, and recovery projections.
- iii. Upon receiving an assignment, a Consultant will be expected to perform an analysis and submit a report and recommendation in a prompt and judicious manner to allow the Board sufficient time to take any legal action recommended by the Consultant and/or determined to be appropriate by the Board. A Consultant shall not be eligible to be considered as potential counsel to represent the Board in any legal actions undertaken pursuant to the Securities Litigation Policy, nor, without express written consent of the SLC, advise the actual counsel selected to represent the Board in any legal actions undertaken pursuant to the Securities Litigation Policy.

### C. Loss Thresholds

- i. For the Board to consider seeking lead or co-lead plaintiff status in a Class Action Securities Litigation lawsuit, a loss of at least \$10,000,000 must be calculated under either the LIFO or FIFO recovery methods. If it is clear that the Federal District Court in which the lawsuit is brought requires a specific loss determination method, then SERS must have suffered at least a \$10,000,000 loss under that particular method to consider seeking lead or co-lead plaintiff status.
- ii. For the Board to consider bringing its own Opt-Out Securities Litigation action, a loss of at least \$7,500,000 must be calculated under the LIFO or FIFO recovery methods. If it is clear that the jurisdiction in which the Opt-Out Securities Litigation is to be brought requires a specific loss determination method, then SERS must have suffered at least a \$7,500,000 loss under that particular method to consider bringing the action.

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- iii. For the Board to consider joining in a foreign or domestic joint, group or other available Opt-In Securities Litigation, a loss of at least \$1,000,000 must be calculated under the LIFO or FIFO recovery methods. If it is clear that the jurisdiction in which the action is to be or has been brought requires a specific loss determination method, then SERS must have suffered at least a \$1,000,000 loss under that particular method to consider bringing the action.
- iv. Thresholds set forth in this section may be modified downward in instances where the SLC believes there are important policy reasons for commencing or joining a particular action even though the threshold amount has not been met.

### D. Factors to Consider in Deciding Whether to Seek Lead Plaintiff Status in Class Action Securities Litigation

#### i. **Analysis of Lawsuit and Defendants**

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

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

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

Do the defendants have any funds to pay a settlement or judgment? Are there viable and collectible claims against individual officers and directors or other third parties (auditors, underwriters, etc.) that appear unlikely to be vigorously pursued without SERS' participation in the litigation?<sup>5</sup>

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<sup>5</sup> Consideration might also be given to pursuing a shareholder derivative action where the company is not pursuing claims it might have against third parties, if the shareholders would benefit from realizing on those claims.

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

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

4. Was there egregious activity within the company such that a personal recovery from the defendants appears to be the most expedient way of preventing similar future corporate behavior?
5. Will SERS' participation have a positive impact on reforming securities litigation in general?

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

### ii. Analysis of Other Potential Lead Plaintiffs and Counsel

1. Is the case unlikely to be pursued if SERS does not take action?
2. Will another sophisticated lead plaintiff be likely to come forward to manage the case?

Where other institutional investors appear to have similar large claims, consideration may be given to contacting them about jointly opting out of a class action matter to bring a collective independent action against defendants.

3. Is SERS satisfied with the reputation and skills of potential lead counsel candidates?

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

## SERS Board Governance Policy Manual

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### iii. Analysis of Whether SERS is an Appropriate Lead Plaintiff

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

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

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

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

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

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

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

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

1. Are there resources available to pursue the litigation?

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

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

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

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

### v. Analysis of Impact on SERS' Investment Program

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

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

### vi. Analysis of Alternatives to Becoming Lead Plaintiff

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

Options may include doing nothing (i.e., staying a passive member of the class); attempting to get a larger claimant to become lead plaintiff; monitoring the case from the sidelines; writing a letter to the court

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and/or lead counsel to bring up issues being ignored; filing a motion to support or oppose a particular lead plaintiff or lead counsel candidate; filing a notice of appearance and more actively monitoring the case; attempting to negotiate an agreement with prospective lead counsel that will require them to keep SERS informed of case developments, provide SERS with access to discovery upon request, and allow SERS to participate in settlement negotiations or be consulted on a settlement; waiting until a proposed settlement has been announced and reviewing the settlement terms carefully with the option to object to a poor settlement and/or excessive attorneys' fees; and opting out of the class to file a separate action (e.g., where SERS has a substantial section 18 claim for direct reliance on misrepresentations in a document filed with the SEC that is unlikely to be pursued as part of the class action).

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

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

### E. List of Actions Authorized in Support of Securities Litigation

- i. The CCO may coordinate with SERS' Investment Office, investment managers and investment consultants as it deems necessary or desirable.
- ii. The CCO may coordinate with, advise and represent the Board and staff in connection with investigations, discovery and trial activities as it deems necessary or desirable.
- iii. The CCO, in consultation with and approval by the SLC Chair and, to the extent required under the agreement with the law firm representing the Board in the litigation, may approve the engagement of experts, consultants and other special expenditures which such law firm may recommend.
- iv. The CCO may coordinate and communicate with such other public funds and class members (and their counsel), as well as with state and federal

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- agencies as it deems necessary or desirable.
- v. The CCO may make such filings or approve such filings by the law firm representing SERS in the litigation as it deems necessary or desirable.
  - vi. The CCO shall periodically report to the SLC regarding securities litigation matters, including the status of litigation in which the SLC has authorized involvement. In the event of significant strategy changes prior to or during such matters, the CCO may make additional recommendations to the SLC.
  - vii. The CCO shall monitor and, when appropriate, participate in hearings regarding settlement petitions, including attorneys' fees requested in securities class action lawsuits, and object to such settlements and/or fee requests when the CCO, with the concurrence of the Executive Director, deem them to be not reasonable. The CCO shall work closely with outside counsel on cases, participate in important strategy decisions, and review important documents and pleadings. The CCO will obtain the authorization of the SLC prior to taking any legal action in appellate courts.
  - viii. With the approval of the Office of Attorney General, the SLC or, with the advice of SERS' Chief Counsel, the SLC Chair may approve a settlement of a particular litigation.
  - ix. Consistent with the Securities Litigation Policy, the Sub-custodian shall monitor and ensure that proofs of claim are filed in all applicable Class Action Securities Litigation settlements, that the appropriate cash amounts are received by SERS, and the SERS Office of Finance and Administration shall, at the request of the SLC, report on the collection of proofs of claim in Class Action Securities Litigation settlements.
  - x. Consistent with the Securities Litigation Policy, the CCO shall monitor any Opt- In Securities Litigation claims filed on behalf of the Board, that the appropriate cash amounts of the claims are received by SERS, and at the request of the SLC, report on the collection of claims in Opt-In Securities Litigation.

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### Document Properties

- a. **Document Owner:** Executive Office
- b. **Document Author:** SERS Legal Office
- c. **Summary of Changes:** N/A

<b>Date</b>	<b>Version</b>	<b>Author</b>	<b>Summary</b>
July 15, 2019	2019 POL- BD- 02	SERS Legal Office	The policy the Board has established to set forth the Board's approach to securities litigation.
December 12, 2023	2	SERS Legal Office	Biennial review. Ministerial changes to the policy.



## SERS Policy

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<b>Policy Name:</b>	<b>SERS Third Amended and Restated Right-To-Know Law Policy</b>
<b>Policy Number:</b>	2023-POL-CCO-01
<b>Effective Date:</b>	December 12, 2023
<b>Reviewed Date:</b>	N/A
<b>Applies To:</b>	All SERS Business Units
<b>Responsible Office:</b>	SERS Chief Counsel's Office
<b>Collaborating Office:</b>	SERS Office of Communications and Policy
<b>Contact Person:</b>	Deputy Chief Counsel for Benefits Administration

### **I. Purpose**

The purpose of this policy is to promote transparency by providing members of the public with guidance for accessing records of the retirement benefit plans the State Employees' Retirement Board administers through the State Employees' Retirement System ("SERS") under the Pennsylvania Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 – 67.3104, and for appealing denials of RTKL requests ("RTKL Requests") to the Office of Open Records ("OOR") pursuant to the RTKL. An additional purpose of this policy is to state the procedures SERS staff must follow to administer the RTKL. Furthermore, this policy provides SERS members and participants with information about RTKL Requests for their records.

### **II. Definitions**

**Business Day** – Any Monday, Tuesday, Wednesday, Thursday or Friday, from 8:00 a.m. to 4:00 p.m., except days when SERS Central Office in Harrisburg, Pennsylvania is closed for all or part of a day due to a state holiday; pursuant to Management Directive 530.17, *Partial and Full-Day Closings of State Offices*, or Management Directive 505.7, *Personnel Rules*, Section 8.7, due to severe weather (such as a blizzard or ice storm); due to natural or other disaster; or due to the request or direction of local, state or federal law enforcement agencies or officials.

**Commonwealth** – The Commonwealth of Pennsylvania.

**Deemed Denied** – A RTKL Request is Deemed Denied if one of the following conditions occurs: (i) SERS fails to respond within the initial five-Business Day period after receiving the RTKL Request; (ii) SERS extends the five-Business Day period by up to 30 calendar days, but then fails to respond by the end of that extended period; or (iii) SERS notifies the Requester that it requires additional time to issue a final Response in excess of the permitted 30 calendar day period, unless the Requester agrees in writing to a specified extension date.



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**Mailing Date** – The date the Open-Records Officer sends SERS' Response to a RTKL Requester via email or deposits it in the United States Mail.

**Open-Records Officer** – Any official or employee designated by the Board or, if authorized by the Board, by the Executive Director, to receive and respond to RTKL Requests. The Board or, if authorized by the Board, the Executive Director, may designate a chief Open-Records Officer and one or more deputy Open-Records Officers.

**Public Record** – A Record, including a financial Record, of a Commonwealth or local agency that:

- (1) is not exempt under the RTKL;
- (2) is not exempt from being disclosed under any other federal or state law or regulation or judicial order or decree; or
- (3) is not protected by a privilege.

**Record** – Information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received, or retained pursuant to law or in connection with a transaction, business, or activity of the agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document.

**Records Custodian** – An official, employee, or agent of SERS who has custody, possession, or control of a Record or who, based on the assigned job duties of the official, employee, or agent, would be reasonably likely to have custody, possession, or control of a Record if the agency has it.

**Redact/Redaction** – To eradicate or the eradication of a portion of a Record by any means while retaining the remainder.

**Requester** – A person who is a legal resident of the United States and requests a Record pursuant to the RTKL. The term includes an agency and an organization.

**Response** – Access to a Record or SERS' written notice to a Requester granting, denying, or partially granting and partially denying access to a Record.

**United States Mail** – Mail submitted to the United States Postal Service.

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### **III. Policy Statement**

#### **A. Form of RTKL Request**

1. All RTKL Requests must:
  - a. Be submitted in writing;
  - b. State the name and address of the Requester;
  - c. Set forth the address to which the interim and final Responses should be addressed; and
  - d. Identify or describe the Records sought with sufficient specificity to enable SERS to ascertain which Records are being requested.
2. RTKL Requests must be submitted via email, United States Mail, fax, or hand delivery and must be properly addressed as follows:

Email: [RA-sersrtk@pa.gov](mailto:RA-sersrtk@pa.gov)

Mail: SERS Open-Records Officer  
30 North 3rd Street, Suite 150  
Harrisburg, PA 17101-1716

Fax: SERS Open-Records Officer  
(717) 783-7300

Hand delivery: SERS Open-Records Officer  
30 North Third Street, 1<sup>st</sup> Floor Receptionist  
Harrisburg, PA

#### **B. Who Has the Right to Know**

1. The RTKL provides that, unless otherwise provided by law, a Public Record shall be accessible for inspection and duplication by a Requester in accordance with that statute. A Requester is, by definition, a resident of the United States. SERS may, at its discretion, require a requesting party to produce proper identification to establish that the party is a legal resident of the United States.
2. From time to time, SERS receives a RTKL Request from a party whose address is not within the United States and who does not otherwise demonstrate legal United States residency in the RTKL Request. Therefore, that individual might not satisfy the definition of Requester. In such case,

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SERS may exercise discretion in its Response. SERS may contact the party who submitted the RTKL Request for confirmation of resident status, or it may deny the RTKL Request based on not satisfying the definition of Requester. SERS also may provide the requested Public Records as a courtesy, outside the RTKL.

3. Among the factors that SERS may consider in deciding whether to provide Records as a courtesy are the administrative burden, the benefit to SERS (*e.g.*, cooperating in a survey that would be of interest to SERS), the risk that the information could be used to the detriment of SERS, a member, or a participant, and other points relevant to the particular RTKL Request. Voluntary disclosure by SERS does not compel SERS to provide the same or similar Records in response to other RTKL Requests. Likewise, although SERS endeavors to provide consistent Responses to all RTKL Requests, it reserves the right to change its interpretation of the applicable law and to reach a different conclusion about the accessibility of any Record in any subsequent Response.

### **C. Procedure for Responding to RTKL Requests**

1. SERS shall respond only to written RTKL Requests delivered via email, United States Mail, fax, or hand delivery. All RTKL Requests must be directed to the Open-Records Officer.
2. It is imperative to remind SERS staff from time to time to forward any RTKL Request to the Open-Records Officer immediately upon receipt because SERS' time to respond begins when the RTKL Request is submitted to SERS, even if it does not reach the Open-Records Officer until a later date.
3. Any RTKL Request received by SERS after the close of SERS' business hours, as set forth above, shall be deemed to be received on the following Business Day. Upon receipt of a RTKL Request, the Open-Records Officer will take the following actions:
  - a. Date stamp the RTKL Request if the date of delivery does not appear on the face of the request;
  - b. Assign a tracking number to the RTKL Request;
  - c. Record the RTKL Request in SERS' RTKL Request tracking system;
  - d. Compute the day on which the five-Business Day period will end and record that date on the electronic calendars of the Open-Records Officer, the Chief Counsel's Office, and other SERS staff as appropriate. The day that a RTKL Request is received or deemed to be received is not counted;

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- e. Make an electronic copy of the RTKL Request, including all documents submitted with it and the envelope, if any, in which it was delivered;
    - f. Create an electronic file for the retention of the original RTKL Request, a copy of the Response, a Record of verbal or written communications with the Requester, and a copy of other related communications.
  4. The Open-Records Officer shall be responsible for issuing interim and final Responses to all RTKL Requests. Upon receipt of a RTKL Request, the Open-Records Officer shall render a final Response within five Business Days from the date the RTKL Request is received, unless an interim Response is issued within that time.
  5. An interim Response may be sent on or before the last day of the five-Business Day period to extend the time for a final Response. The interim Response must notify the Requester that SERS is reviewing the RTKL Request, state that SERS will issue a final Response on or before the date of the first Business Day that is 30 calendar days after the interim Response date, and state one or more of the following reasons justifying the need for additional time:
    - a. The RTKL Request requires Redaction of a Public Record;
    - b. The RTKL Request requires the retrieval of a Record stored in a remote location;
    - c. A final Response within the five-Business Day period cannot be accomplished due to *bona fide* and specified staffing limitations;
    - d. A legal review is necessary to determine if a Record is a Public Record subject to access under the RTKL;
    - e. The Requester has not complied with SERS' policies regarding access to Public Records;
    - f. The anticipated cost of complying with the RTKL Request exceeds \$100 and the Requester has not prepaid such amount. If SERS requires prepayment, the time for issuance of a final Response shall be tolled from the time the demand for prepayment is made until such time as payment is actually received; or
    - g. The extent or nature of the RTKL Request precludes a Response within the required time period.
  6. If an interim Response is issued, then a final Response should be sent within 30 calendar days from the date of the interim Response. Failure to comply with either the five-Business Day or the 30 calendar day time limit will result in the RTKL Request being Deemed Denied unless the Requester agrees in writing to a further extension.
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**Note:** If the anticipated cost of complying with the RTKL Request exceeds \$100 and the Requester does not pay such amount within 30 calendar days after being informed to do so in an interim Response, then the RTKL Request will be considered to have been withdrawn.

7. The Open-Records Officer shall review and process each RTKL Request according to the following intake procedure:
  - a. Determine whether the requesting party satisfies the definition of "Requester." If the RTKL Request shows no evidence that the requesting party is a resident of the United States, the Open-Records Officer may contact the requesting party for clarification of residency status or may deny the RTKL Request in its entirety without further consideration.
  - b. Forward the RTKL Request to the likely Records Custodian to identify what, if any, responsive Records SERS has.
  - c. Consult with the Records Custodian and the Chief Counsel's Office, as needed, to determine what Records in SERS' possession are responsive, what, if any, exceptions apply, what portions of any Records need to be Redacted, whether SERS will require more than five Business Days to provide a final Response and establish a target date for the Records Custodian to deliver the Records.
  - d. If, after making a good faith effort to locate the requested Records at SERS, the Open-Records Officer determines that SERS does not possess the Records, the Open-Records Officer may deny the RTKL Request because the Records do not exist at SERS. If the Open-Records Officer determines that another agency is likely to possess the requested Records, the Open-Records Officer may also identify the agency that might possess the Records, notify the Requester what agency might possess the Records, and forward the RTKL Request to the other agency.
  - e. Draft an interim Response if SERS will require more than five Business Days to provide a final Response.
  - f. Draft a final Response granting or denying access to the identified Records as appropriate;
  - g. Timely issue any interim Response and the final Response to the Requester;
  - h. If the anticipated cost of complying with the RTKL Request will exceed \$100 and SERS requires prepayment, present the Requester with a demand for prepayment.
8. The Open-Records Officer shall issue a final Response within the aforesaid time periods. The Response shall state that the RTKL Request is: (1) granted, (2) denied, or (3) granted in part and denied in part. If a RTKL Request is denied, in whole or in part, the final Response must specify the following:
  - a. A description of the Records requested;

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- b. The specific reasons for the denial, including a citation to supporting legal authority;
- c. The typed or printed name, title, business address, business telephone number, and signature of the Open-Records Officer on whose authority the denial is issued;
- d. The Mailing Date of the Response;
- e. Instructions for appealing the denial to the OOR.

**Note:** SERS is not required to create a Public Record that does not already exist, nor is SERS required to compile, maintain, format, or organize a Public Record in a manner that it does not currently do.

### **D. Physical Access to Public Records**

SERS' Public Records shall be accessible for inspection and duplication by a Requester on Business Days between 8:00 a.m. and 4:00 p.m. To inspect SERS' Public Records onsite, a Requester shall submit a written RTKL Request to the Open-Records Officer who will determine, on an *ad hoc* basis, the time for such inspection and the manner of duplication that shall be available.

### **E. Notice to Members and Participants**

When SERS issues a final Response granting a RTKL Request for Public Records, regarding a specific member or participant, SERS may, but is not required to, notify the member or participant of the RTKL Request, and identify the Requester and the Records it provided in response. SERS may, but is not required to, provide notice of RTKL Requests for Records of multiple members or participants and SERS Responses by publication via its website, newsletter, or any other reasonable method. Neither members, participants, nor employers have the right to approve or disapprove a request for SERS' Records.

### **F. Redaction**

SERS may Redact any portion of a Record that is exempt from access under the RTKL, State Employees' Retirement Code, or other law or order. SERS shall Redact any portion of a Public Record the disclosure of which is prohibited by law. Any Redaction is a denial of access, and SERS shall state the legal basis for such Redaction in its final Response. The portion of a requested Record that is not exempt from access is subject to release under the RTKL.

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### G. Fees

1. SERS determines fees for Public Records on a case-by-case basis consistent with the Official RTKL Fee Schedule established by the OOR as follows:
  - a. *No Fee*
    - Redaction of Records
    - Delivery of Records by email
  - b. *Actual Cost*
    - Delivery of Records by First Class United States Mail
    - Delivery of Records by flash drive
    - Delivery of Records by CD / DVD Up to \$1.00 per disc
  - c. *Set Fees*
    - Black & White Copies (first 1,000) Up to \$0.25 per copy
    - Black & White Copies (beyond 1,000) Up to \$0.20 per copy
    - Color Copies Up to \$0.50 per copy
    - Conversion to Paper Up to \$0.25 per page
    - Certification of a Record Up to \$5.00 per Record
2. The Open-Records Officer may require a Requester to prepay if the fee to fulfill the RTKL Request is expected to exceed \$100. If SERS requires prepayment, the time for providing the Records to which SERS grants access shall be tolled from the time the demand for prepayment is made until SERS receives the payment.
3. A Requester shall have 30 calendar days to make prepayment. If SERS does not receive the demanded prepayment within 30 days, it will consider the RTKL Request to have been withdrawn. The Requester may submit a new RTKL Request for the same Records.

### H. Appeals

If a written RTKL Request for access to a Record is denied or Deemed Denied, the Requester may file an appeal with the OOR within 15 Business Days of the Mailing Date of SERS' Response or within 15 Business Days of a Deemed Denied Request. The appeal shall state the grounds upon which the Requester asserts that the Record to which SERS denied access is a Public Record and shall address any grounds stated by SERS for delaying or denying the RTKL Request. SERS provides notice of the right to appeal and instructions for doing so in each final Response.

## SERS Policy

### IV. Related Information

#### A. Related Policies

Management Directive 205.36, Right-to-Know Law Compliance

Management Directive 505.7, Personnel Rules

Management Directive 530.17, Partial and Full-Day Closings of State Offices

#### B. Related Processes

N/A

#### C. Related SERS Interpretive Statements

N/A

#### D. Related Laws or Regulations

Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101 – 67.3104

#### E. Business Continuity Significance

COOP Recovery Time Objective = Tier 2

### Document Properties

- a. **Document Owner:** Chief Counsel's Office
- b. **Document Author:** Catherine Nolan
- c. **Summary of Changes:**

Date	Version	Author	Summary
06/04/2003		SERS Legal Office	The Board adopted the Commonwealth of Pennsylvania State Employees' Retirement Board Right-to-Know Law Policy, in compliance with 65 P.S. §§ 66.1-66.9.
09/15/2004		SERS Legal Office	The Board amended its Right-to-Know Law Policy, deleting two definitions, clarifying certain provisions, and specifying that the fee for redaction was based on the employee's hourly wage and cost of benefits.
12/03/2008		SERS Executive Office	The Board adopted the Commonwealth of Pennsylvania State Employees' Retirement Board Second Amended and Restated Right-to-Know Law Policy in compliance with the

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			Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-67.3104, which was enacted on February 14, 2008, and repealed 65 P.S. §§ 66.1-66.9. It was applicable to RTKL Requests made after December 31, 2008
12/08/2010		SERS Executive Office	The Board amended the fees section to state that fees for compiling requested records included the cost of employee time based on the hourly wage and cost of benefits.
11/20/2015	2010 POL-EO-08	Barbara Kiral	The Board assigned a Policy Number.
12/12/2023	1 2023-POL-CCO-01	Catherine Nolan	This policy amends and restates <i>SERS Second Amended and Restated Right-to-Know Law Policy (2010-POL-EO-08)</i> . It identifies this document – adopted by the Board in 2003, and amended in 2004, 2008, 2010 and 2015 – as a SERS policy, identifies the CCO has the Responsible Office, updates the SERS Policy Number, and revises the document for consistency with the SERS policy template per the <i>Policy on Policies and Processes (2020-POL-EO-01)</i> . In addition, it expressly states that it applies to all four retirement plans administered by the Board and reflects current operational practices in accordance with the Board's direction, regarding the transparency of investment Records, the Pennsylvania Supreme Court's recognition of the right to informational privacy in <i>Pennsylvania State Education Association v. Department of Community and Economic Development</i> , 148 A.3d 142 (Pa. 2016), the OOR's Official RTKL Fee Schedule, and it better comports with current administrative practices.