



# Helping Manage The Often Unmanaged Asset

payouts from securities litigation and the fiduciary obligations for managing the process.



## THE OFTEN UNMANAGED ASSET: PAYOUTS FROM SECURITIES LITIGATION



Just as dividends are an asset flowing from equity portfolio holdings, so too are payouts from securities fraud litigation arising from domestic and foreign-traded portfolios. Institutional investors and pension plans have a fiduciary responsibility to collect the full value of this alternative asset: securities litigation payouts. Unlike dividend distributions, however, we believe that most plan sponsors and fund managers have no comprehensive system to track securities litigation, determine what actions could improve recoveries and confirm receipt of full amounts due them through reconciliation against recognized losses. We believe that

the creation of a useful tracking and recovery system can be cost-prohibitive for each institutional investor individually. We believe that, as a result, the prudent decision for fiduciaries has frequently been to forego comprehensive recoveries on this asset class, and instead rely on their custodians to obtain lesser recoveries.

DIVIDEX seeks to change the value equation and seeks to offer plan sponsors and fund managers a more cost-effective means to effectively manage this portfolio asset, enhance their fiduciary oversight and improve recoveries owed them from securities litigation payouts.

Our company offers two sets of services that seek to improve DIVIDEX<sup>®</sup> flowing from investment portfolio-related litigation recoveries and to improve accountability and corporate governance in management of this asset class:

**DIVIDEX Consultative™** — designed for plan sponsors that actively manage their exposures to global securities litigation and related recoveries; and

**DIVIDEX Automated™** — designed to assist investors in satisfying their fiduciary duties by providing outsourced management of their securities litigation exposures.

Our services are designed to assist institutional investors and pension funds in satisfying their fiduciary obligations to attempt to recover losses arising from their domestic and foreign portfolios caused by fraud or market manipulation.

## WE BELIEVE TWO AREAS PRESENT SIGNIFICANT OPPORTUNITIES FOR PENSION FUNDS AND PLAN SPONSORS TO ENHANCE THEIR FIDUCIARY OVERSIGHT REGARDING SECURITIES LITIGATION CLAIMS AS ASSETS:

1

Lack of a cost-effective system to identify and evaluate potential fraud claims from equities purchased outside the U.S. (the “Morrison Problem”)

2

Lack of a cost-effective means for reconciliation against recognized loss or audit of revenue collected from settlements of domestic securities class actions.

DIVIDEX seeks to provide the asset management services plan sponsors and institutional investors need to enhance their fiduciary oversight in these two areas.

To the extent fiduciaries wish to consider being active in securities litigation cases, a further challenge exists of how to work with outside legal counsel: the inherent conflict of interest in allowing the same lawyers to both evaluate the merits of potential cases and to seek the lucrative appointment as class counsel. Ideally, fiduciaries have two sets of lawyers: one to evaluate cases and one to act as their class counsel, but often prospective securities litigators do not want to evaluate cases due to this potential conflict of interest.

In contrast, DIVIDEX provides evaluation of potential securities fraud class actions through engagement of its affiliated law firm, BLA Schwartz, PC, which will not seek class counsel appointment. Thus, evaluations through DIVIDEX are free of this potential conflict of interest. Fiduciaries also face challenges in recovering all class action payouts available to them.

DIVIDEX provides active monitoring of class action claims in process (such as identification and evaluation of opt- out opportunities, objections to class counsel fees and the like). When a securities class action settles and a plan sponsor is entitled to share in the proceeds, DIVIDEX applies a proprietary methodology that uses portfolio data normalization and analysis at the claims submission stage to seek to improve recoveries.



## MORRISON AND INDYMAC CASES AFFECTING INSTITUTIONAL PLAN SPONSORS

Two relatively recent United States court decisions have added further complexity to fiduciaries' duties to address potential securities fraud claims arising from their portfolios. Under the United States Supreme Court's decision in *Morrison v. National Australia Bank Ltd.*, investors that purchase shares on exchanges

outside the United States may not avail themselves of U.S. federal securities laws. This forces investors seeking to address losses due to alleged securities fraud to seek out, evaluate and join securities cases filed outside the United States, and manage risks associated with litigation funding and potential adverse party cost (loser pays) awards. While we believe it is widely accepted that there is a fiduciary duty to attempt recovery of securities fraud losses, we believe it has typically been cost-prohibitive to develop the comprehensive system that fiduciaries need to identify such losses, evaluate potential recovery options and determine whether to join in cases that offer a significant chance of recovery at acceptable levels of risk.

In the case of *In re IndyMac Mortgage-Backed Securities Litigation*, the Second Circuit Court of Appeals held that a time bar (“Statute of Repose”) for federal securities claims continues to run notwithstanding the filing of a class action. Accordingly, when a fiduciary is a passive class member, its opt-out rights become meaningless after the Statute of Repose runs out and it may not always wait for settlement to evaluate its opt-out opportunities.

DIVIDEX was founded to help fiduciaries fully address these recent challenges due to United States court decisions.

Interested in how we, DIVIDEX, and you, the plan sponsor, could work together?



LEARN MORE ABOUT OUR ENGAGEMENT PROCESS

CONTACT US

Name

Email Address



**SUBMIT**

14 + 1 =

ONE UNIVERSITY AVE, SUITE 301C  
WESTWOOD, MASSACHUSETTS 02090  
[INFO@DIVIDEXMANAGEMENT.COM](mailto:INFO@DIVIDEXMANAGEMENT.COM) TEL: 781-636-5070

COPYRIGHT © 2018 DIVIDEX MANAGEMENT, LLC. ALL RIGHT RESERVED. | [DISCLAIMER](#)