

# A class act

➤ **Vicky Dean examines the importance of class actions for pension funds**



Over the past few years it has become clear that fund managers and custodians have a fiduciary duty to ensure that their clients participate in securities class actions that may recoup some of their investment losses.

The main goals of the class action mechanism are generally viewed as improving corporate governance, obtaining monetary relief for investors, and strengthening shareholder rights – in other words, encouraging corporate management to behave honestly and responsibly and providing a means of redress when that does not happen. Participating in shareholder litigation is an efficient way of supporting good governance and challenging those companies that do not meet best practice (through fraudulent or irresponsible corporate behaviour). Historically, there has clearly been appetite for such a mechanism in the UK and investors' have looked to the US system to fill the gap. In March 2009, for example, Merseyside and North Yorkshire pension funds filed a motion to become lead plaintiffs in a US securities class action against the Royal Bank of Scotland plc (RBS).<sup>1</sup>

Analysis<sup>2</sup> has shown that the typical European share portfolio has become

strongly international. The average weighting is currently at 60 per cent in domestic shares and 40 per cent in foreign shares. These weightings have highlighted to UK pension fund shareholders (and responsible fiduciaries) that they could miss out on chances to claim rightful returns in the US or in any other foreign legislature should they fail to monitor legislative opportunities to process securities class actions globally. Research by Goal Group, a global class action and withholding tax services specialist, has revealed that between 2000 and 2012, investors' non-participation in US securities class actions has resulted in over \$18 billion being left unreclaimed.<sup>3</sup> This is a striking figure and it is possible to estimate that a quarter of eligible claims are left unprocessed. European pension funds make up a large proportion of equity investment.

It is important for pension fund managers, who are responsible for monitoring and ensuring participation in securities class actions, group, and collective redress actions, to demonstrate business integrity, financial transparency and strong corporate governance as an integral part of fulfilling their fiduciary duties to protect the assets in their schemes. This responsibility is increasingly being recognised and could potentially present a legal threat to fiduciaries. For example, having acknowledged the significant benefits of participating in securities class actions, many custody RFPs (Request for Proposals) from major pension funds are now including liability for identification as a requirement for a class action service.

Responsible parties can no longer ignore the opportunity to claim international damages as there is an increasing possibility that such neglect will result in legal action. However, keeping track of opportunities to make a claim, and the actions required to do so successfully, can be a complicated and daunting task, particularly when spread across the globe. That's why pension funds work with specialist providers to manage this complicated process.

As securities class action, group, and collective redress actions globalise and opportunities to recover damages within the UK increase, one might like to consider this practical guide to effective damages recovery:

1. **MONITORING** of cases and case opportunities is necessary via specialist service providers/law firms.
2. **ACTIVITY:** Investors need to be active to participate in a settlement.
3. **FILING A CLAIM** is mandatory in most jurisdictions in Europe as most legislation operates with an 'opt-in' system.
4. **ASSIGNMENT** of claims, where possible, to minimise court and attorney fees.
5. **COLLECTIVE ACTION:** Starting a collective action to share risks and costs and put pressure on defendants.
6. **STATUTES OF LIMITATION:** Investors need to check on the relevant statutes of limitation in each jurisdiction and can't rely on US proceedings; any attempt to start proceedings in the USA only, based on common law fraud or state law claims can jeopardise valid claims in other jurisdictions.
7. **FUNDING:** Acting with a litigation funder for an action in Europe is somewhat essential as litigating in the UK is expensive; furthermore, the UK operates the 'loser pays' rule.

➤ **Written by Goal Group director of sales and relationship management EMEA and global director of withholding tax sales Vicky Dean**

<sup>1</sup> North Yorkshire County Council, 'RBS Class Action Press Release', 16th March 2009

<sup>2</sup> MindMetre Research independent analysis data

<sup>3</sup> Goal Group, Unacceptable Losses (December 2013)