

Best Practices for Monitoring Your Securities Portfolio in 2021

written by Eduard Korsinsky, Managing Partner, Attorney, Levi & Korsinsky LLP

As fiduciaries, institutional investors have a responsibility on behalf of their members, their organization, and their investors to monitor their investment portfolios, protect and maximize their assets, and ensure that no money that should have been awarded to their funds are left unclaimed. If investment funds are lost due to corporate fraud or mismanagement, the institutional investor's trustees and management are responsible for making best efforts to reclaim those assets if possible.

But just like personal habits such as exercise, healthy eating, and saving, the act of monitoring, tracking, and understanding the legal ramifications affecting an investment portfolio can be a complicated, time-consuming, and daunting task for even the most sophisticated institutional investors. In fact, every year millions of dollars, often tens of millions, recovered in securities class actions are left unclaimed.

Institutional investors play a critical role in monitoring, investigating, and recovering funds that have been lost as a result of corporate mismanagement or fraud. What can be done to ensure that your institution is not leaving millions behind in unclaimed awards? How do you ensure that your beneficiaries' or customers' interests are represented and you are exercising the best possible portfolio monitoring practices? And most importantly, how do you do this with the limited resources, time, and knowledge at your disposal?

The answer is to implement best practices. Best practices are the equivalent of compound interest. The same way that money multiplies through compound interest, the effects of best practices multiply as you repeat them. They seem to make little difference on any given day and yet the impact over months and years can be enormous. It is only when looking back two, five, or perhaps ten years later that the value of good habits and the cost of bad ones becomes strikingly apparent.

The following ten items form the best portfolio monitoring practices for limiting unclaimed funds and helping trustees and management carry out their fiduciary responsibilities:

1 Solicit Monitoring Firms Through Requests For Proposals

The retention of outside firms provides an efficient and economically prudent means of monitoring investment portfolios, which identify and inform funds of portfolio losses due to mismanagement or fraud, provide advice on the appropriate action to take, monitor securities actions impacting funds, and file claims to recover money owed to the institution due to fraud or mismanagement.

The RFP (Request For Proposal) process is an effective tool for selecting outside counsel best suited to meet your institution's needs. An effective process begins with successful preparation, including a clear understanding of the goals of the RFP process, the needs of your institution, and the services required. Specific information from interested firms should be requested so that you can analyze the monitoring tools and procedures offered by various firms. The institution's outside counsel and consultants can be very helpful in the preparation and review of the RFPs.

2 Monitoring Agreements Should Be Non-Exclusive

A portfolio monitoring agreement should not be exclusive to any one firm. Rather, advice from multiple firms provides your institution with all available options and allows for comparisons when assessing the best action to take. With the threat of competition among firms, the risk of receiving poor or self-interested legal advice is mitigated. Further, if your institution decides to take legal action, multiple firms are forced to compete on price, resulting in the best deal for your institution. Finally, different firms have different approaches which you can more easily assess as you work with them. Not every firm is identical, in fact there is great differentiation, and it is not always evident from their pitchbooks.

3 Maintain Independent Decision-Making

Decision-making authority should always belong to your institution and demonstrates that your institution is informed, actively engaged, and that the advice received from outside counsel is disinterested and not frivolous. While your institution may seek advice from counsel, it is ultimately the institution's decision as to whether to bring legal action, or any other action, in response to fraud or mismanagement that has been detected in your portfolio's investments. In such instances, the determination of who to retain should solely be left to your institution.

4 Focus on Technology

Much attention is focused on the lawyering and advice, but often overlooked is the technology necessary to be applied by monitoring firms in order to provide such advice. If monitoring platforms cannot accurately identify losses eligible to be reclaimed or cannot timely and robustly pick up on potential claims before filing deadlines, then advice is not very valuable if it cannot easily be coupled with action. Easily navigable monitoring platforms with technological innovations can save trustees' and management's time and simplify the decision-making process for institutions to evaluate their legal options as they arise. Be sure to inquire about technology and, where possible, include technically savvy team members in the inquiry process.

5 Receive Regular Updates From Monitoring Firms

Your institution should receive regular updates from monitoring firms that includes relevant information about your institution's portfolio, including investment losses, the cause(s) of any such losses, potential claims, and legal options available. How often and how easy it is to read and understand these updates differs between monitoring platforms.

6 Actively Monitor Your Investment Portfolio

While firms provide monitoring services and updates on your investment portfolio, it is also important to remain actively and directly involved in the monitoring process. Your institution should have direct access to the platforms used by any monitoring firms that have been retained, which should allow you to easily navigate, track, and monitor your institution's investments. Direct monitoring enables your institution to remain informed and track ongoing litigation that impacts your investments. Ease of access and the contents of such platforms should be explored during the RFP process. Technology is a great differentiator between monitoring firms. Seek to retain the firm offering the best technology platform – it will result in more accurate information, transparency to the institution, and over time higher recoveries to the institution.

7 Monitor Settlements To Determine Eligibility

Millions of dollars from class action settlements remain unclaimed every year. To ensure your institution is not foregoing settlement money, a designated person or entity (such as monitoring firms) should monitor all settlements, regardless of whether your institution is a party to the lawsuit. This ensures that your institution is made aware of any settlements impacting it, has time to consider all options in response (including to opt out or file a claim), and allows you to respond in a timely fashion to meet all eligibility requirements and deadlines. The institution will be leaving money on the table if it cannot accurately determine how much it lost, filing deadlines, or if other information slips through the cracks.

8 Designate a Person or Entity to Handle Proof of Claims

The submission of proof of claim forms must meet strict deadlines and requires documentary evidence to support your claim. Understanding the intricacies of the claims process and submitting the appropriate forms takes time and expertise. The best practice for avoiding forfeiture of eligible claims is to designate a person or entity (such as a monitoring firm) to handle the submission of all proof of claim forms.

9 Maintain Accurate Records

Accurate and accessible documentation on your purchasing and trading histories for securities owned or previously owned assists in determining your institution's eligibility in settlements. Given settlement notices may not be sent until years after the initiation of litigation, documentation must be held and maintained long periods in order to submit valid claims. A robust monitoring platform should be able to maintain these records.

10 Maintain Up-To-Date Security To Protect Against Data Breaches

Cybercrime is a growing area of concern and the COVID-19 pandemic has provided greater opportunities for cybercriminals to target institutional investors. Such institutions present a lucrative target for cyber criminals given the vast amount of personal data available. To ensure protection of your members' and clients' sensitive information, you should utilize the most up-to-date security software while continuously evaluating your system for vulnerabilities. Third parties, such as monitors, must also be equipped to protect against cybersecurity threats.

Starting 2021 by following the ten practices above will provide institutional investors with the best practices for monitoring investment portfolios, upholding fiduciary duties, and ensuring that members' interests are adequately protected.



EDUARD KORSINSKY

Managing Partner, Co-Founder

Levi & Korsinsky LLP / CORE Monitoring Systems LLC

Eduard Korsinsky is the Managing Partner and Co-Founder of Levi & Korsinsky LLP, a national securities firm that has recovered billions of dollars for investors since its formation in 2003. For more than 24 years Mr. Korsinsky has represented investors and institutional shareholders in complex securities matters. He has achieved significant recoveries for stockholders, including a \$79 million recovery for investors of E-Trade Financial Corporation and a payment ladder indemnifying investors of Google, Inc. up to \$8 billion in losses on a ground-breaking corporate governance case. His firm serves as lead counsel in some of the largest securities matters involving Tesla, US Steel, Kraft Heinz and others. He has been named a New York "Super Lawyer" by Thomson Reuters and is recognized as one of the country's leading practitioners in class action and derivative matters.

Mr. Korsinsky is also a founder of CORE Monitoring Systems LLC, a technology platform designed to assist institutional clients more effectively monitor their investment portfolios and maximize recoveries on securities litigation.

Mr. Korsinsky received his LL.M. Master of Law(s) from New York University School of Law in 1997 and his J.D. from Brooklyn Law School in 1995.

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OFFICES

New York
Connecticut
Washington, D.C.
California

CONTACT

Doug Borths

Director of Institutional Client Services
& Marketing

dborths@zlk.com or 407-965-5748

Adam T. Savett

Director of Communications &
Institutional Research

atsavett@zlk.com or 212-363-7500



Levi & Korsinsky LLP
CORE Monitoring Systems LLC



@MergerAlerts
@COREClassAction

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