

**Request for Qualifications**

**SECURITIES LITIGATION COUNSEL**

North Carolina Department of State Treasurer

December 2009

**Deadline:** January 15, 2010

**Submit to:** Jay J. Chaudhuri  
General Counsel  
Department of State Treasurer  
325 North Salisbury Street  
Raleigh, North Carolina 27605-1385  
(919) 508-5176 (phone)  
(919) 508-5167 (fax)  
[jay.chaudhuri@nctreasurer.com](mailto:jay.chaudhuri@nctreasurer.com)  
[www.nctreasurer.com](http://www.nctreasurer.com)

**I. Expressions of Interest**

**North Carolina Department of State Treasurer  
Request for Qualifications  
Securities Litigation Counsel**

Please complete this form if you intend to submit a response to the Request for Qualifications (“RFQ”) for Securities Litigation Counsel. Please fax this form to the following fax number for receipt on or before 5:00 pm EST on January 8, 2010. **Any questions or requests for clarification regarding the RFQ should be submitted in writing with this form or via email by this date. Only those questions that have been submitted in writing or email by the date and time noted above will be responded to. Responses to any inquiries regarding this RFQ will be distributed to all firms that have returned an Expression of Interest.** Failure to file an Expression of Interest will disqualify a firm from being able to submit a proposal.

Jay J. Chaudhuri  
General Counsel  
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Interested firm: Firm Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Contact person: Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

## **II. Purpose and Background**

The Department of State Treasurer (“Treasurer”) seeks proposals from attorneys and law firms to provide outside securities litigation services (“Securities Litigation Counsel”). The Treasurer seeks through this Request for Qualifications (“RFQ”) to select and retain a pool of pre-qualified, experienced law firms in connection with securities class action litigation, related individual litigation or shareholder derivative actions in which the North Carolina Retirement System (“NCRS”) may become involved. The Treasurer will work in conjunction with the North Carolina Attorney General’s Office (“Attorney General”) to select the pool of pre-qualified law firms. Because the Attorney General’s Office does not have the requisite resources to provide all such services, the Attorney General will recommend to the Governor that selected firms be approved to provide legal services to NCRS.

The NCRS manages the consolidated assets of seven pension funds: (1) the Teachers’ and State Employees’ Retirement System (“TSERS”); (2) Local Governmental Employees’ Retirement System (“LGERS”); (3) Consolidated Judicial Retirement System; (4) Legislative Retirement System; (5) Firemen’s and Rescue Squad Workers’ Pension Fund; (6) National Guard Pension Plan; and (7) and Registers of Deeds’ Supplemental Pension Fund. The NCRS holds roughly \$60 billion in assets under management.

## **III. Contract Period**

The successful proposers will be retained as members of the pool for a period of three years commencing on or about February 15, 2010 and ending on or about December 31, 2012. These members may be retained for two additional one-year periods at the option of the Treasurer and with the approval of the Attorney General.

## **IV. Scope of Services**

One of the goals of the Private Securities Litigation Reform Act of 1995 (“PSLRA”) was to limit frivolous securities litigation by encouraging large institutional plaintiffs that may have suffered significant losses to act as lead plaintiffs in securities class action lawsuits. The NCRS is often one of the largest shareholders of large publicly traded companies against which claims of fraudulent, negligent, improper and/or illegal practices impacting securities prices may arise. Accordingly, the Treasurer seeks Securities Litigation Counsel to assist in evaluating potential securities class actions or related claims, to recommend a course of action with respect to particular litigation matters and, if requested, to represent NCRS in securities litigation.

Proposers should be familiar with the legal alternatives available to a securities holder, particularly a public pension fund, in securities litigation and have the experience, knowledge, and capacity to evaluate these options on a case-by-case basis within a severely limited time frame. Counsel should demonstrate the ability to identify and consider all the costs, risks, and

possible rewards to the Treasurer of pursuing any given alternative. All decisions regarding: (1) the filing of any action; (2) motions for dismissal; (3) opposition to certification of a class; (4) seeking appointment as lead plaintiff; (5) representation of a class; and (6) acceptance of proposed settlements, among other matters, shall be made by the Treasurer as Trustee of the NCRS and the Attorney General.

Successful proposers will be eligible to provide legal services to the Treasurer in connection with claims or potential claims that may arise from the investment holdings of the NCRS. The services to be provided may include, but shall not be limited to, screening potential class action securities claims, advising the Treasurer concerning the merits of new or previously filed class action claims, identifying potential advantages and disadvantages to the Treasurer of seeking appointment as lead plaintiff on behalf of the class pursuant to PSLRA or pursuing an independent action in state or federal court, and, if the Treasurer decides to seek appointment as lead plaintiff or bring an independent action, representing it in the litigation.

In addition, Treasurer may seek advice related to other pending securities litigation, including advice regarding intervening in any matter, or regarding shareholder derivative suits or general securities matters that may arise.

**It is possible that any particular proposer selected as Securities Litigation Counsel may not be asked to represent the NCRS in any litigation or other matters. Counsel should be free of actual and potential conflicts of interest.**

## **V. Calendar of Events**

Issuance of RFQ	December 7, 2009
Deadline for RFQ Questions	January 6, 2010 (5:00 pm EST)
Expression of Interest Due	January 8, 2010 (5:00 pm EST)
Responses to RFQ Questions	January 11, 2010
Deadline for Submission of Proposals	January 15, 2010 (5:00 pm EST)
Interviews, if necessary (Not earlier than)	Week of January 25, 2010
Notice of Award (Not earlier than)	Week of February 8, 2010

## **VI. Minimum Qualification**

The proposers must demonstrate substantial experience in the area of securities law, including experience with securities class action claims arising under federal securities law and regulations. The proposers should also demonstrate experience with individual state and federal securities actions and shareholder derivative actions, as well as experience with public pension funds. The proposers must demonstrate a commitment to abide by the laws of North Carolina and opinions of the Office of the North Carolina Attorney General.

## **VII. Proposal Requirements**

Each proposer must provide the following information, including sufficient supporting information to assure the Treasurer and the Attorney General of its accuracy. The response shall be a maximum of fifteen (15) pages (excluding required attachments and resumes of the proposer and individual attorneys). The proposal shall, at a minimum, contain the following:

- A. **Cover Letter:** A cover letter, which shall be considered an integral part of the proposal, shall be signed by the individual(s) authorized to bind the proposer contractually. The cover letter must indicate that the signer is so authorized and the title or position the signer holds in the proposer's firm.
  
- B. **General Information:**
  - 1. The name, telephone number, website and primary office location of the partner who will be the primary contact.
  - 2. A statement of understanding that selection as Litigation Counsel does not ensure that any services will be requested from the proposer.
  - 3. A list of all courts and jurisdictions in which the partners of the proposer to be assigned to this engagement are admitted to practice.
  - 4. A list of the identity and specific responsibilities of the proposer's partners and associates who will be assigned to matters relating to this RFQ, and the cities in which such attorneys are located.
  
- C. **Experience:** Please summarize the proposer's experience in the area of practice set forth in Section VI above. The proposer's description should include the following information:
  - 1. Describe the experience since January 1, 2001 of the proposer and the

attorneys that the proposer expects to use on this engagement in advising pension plans or other institutional investors with regard to securities law matters, particularly the representation of such clients in litigation arising under the Securities Act of 1933, the Securities and Exchange Act of 1934, the Investment Advisor Act of 1940, the PSLRA, and the regulations promulgated thereunder. Please indicate the approximate asset value of each pension plan or other institutional investor client and briefly identify the issues on which the proposer worked.

Provide a list of all securities class actions, commenced since January 1, 2001, in which each firm comprising the proposer represented a party in the action or a party that sought lead plaintiff status in the action. If the proposer (or a firm comprising a proposer) represented a plaintiff, indicate whether such plaintiff was the lead plaintiff. Provide a brief summary of the nature of the legal services rendered by each firm comprising the proposer in each such action. Please include case title, the court in which the action was commenced, case number, and for all actions that have been concluded, a brief description of the resolution of the action, including, if applicable, the percentage of losses recovered. Indicate whether any case has been taken to trial, and, if so, whether it went to verdict after trial or was settled prior to verdict. Please provide a list of citations to all reported decisions, if any, in actions where each firm comprising a proposer represented a party.

2. Provide a list of all shareholder derivative actions in which the proposer (and each firm comprising a proposer) has represented shareholders seeking changes in corporate governance structure and/or recovery of fraud related losses and all individual securities actions in state or federal courts in which the proposer (and each firm comprising a proposer) represented shareholders or security purchasers seeking redress for securities fraud or other disclosure violations in connection with the sale of securities.
3. Provide resumes of the attorneys and other legal or administrative staff from the proposer who would be directly assigned to this engagement and a description of the specific function each would perform. Additionally, the information should set forth the qualifying experience of each individual to perform the services identified. Please indicate whether the proposer routinely contracts with other law firms to help complete legal work in major securities class actions or whether all work is done in-house.

4. Provide full qualifications and resumes for all third-party contractors expected to be used by the proposer, if any, including accountants or other consultants.

**D. Fee Schedule:**

1. The Treasurer expect that in securities class action litigation where the NCRS seeks appointment as lead plaintiff, derivative actions and individual securities actions, legal fees, costs and expenses will be paid on a contingency fee basis upon application and award by the Court from the proceeds of any recovery, and that neither the State of North Carolina nor the Treasurer will have any responsibility for any costs, expenses or fees if the Treasurer is not selected as lead counsel or if recovery is not obtained.
2. Provide a detailed description of a proposed or sample contingency fee agreement, including percentage of recovery at each stage of involvement and for graduated tiers of recovery.
3. For securities litigation matters not covered by VII(D)(1) above, submit a schedule of customary hourly rates charged for the proposer's professionals to be assigned to the Treasurer's matters and indicate the discounted rate or rates that the proposer would, if selected, not exceed. If rates are specified by individual rather than by status (e.g., partner, "of counsel", associate, paralegal), please indicate a rate by status for professionals who may work on the NCRS's matters but who are not specifically named.

**E. Confidential Information:** If any portion of the proposer's submission contains proprietary or trade secret information, the proposer is responsible for clearly identifying limited sections as such. Please identify on each page of the response any information that the proposer claims is proprietary or a trade secret. Submissions may be subject to the North Carolina Public Records Law.

**F. Additional Information:** The proposer must also provide statements regarding the following:

1. The proposer must submit at least three (3) references containing contact persons, addresses and telephone numbers of contacts with pension plans or other institutional investors that it has represented as listed in the response to section VII (C)(1) or (2).

2. The proposer must agree to provide the Attorney General and NCRS with pre- and post-audit access to documents, personnel and other information necessary to conduct audits on request during the term of the Implementation Contract (defined below) and any subsequent retainer agreement and for six years thereafter.
3. The proposal submitted must contain a representation that the proposer is willing and ready to provide any services requested in a timely manner in accordance with the schedules developed by the Treasurer in close consultation with the Attorney General.
4. Include a description of the proposer's approach to representing clients in complex securities litigation, including case evaluation, management, how the proposer assigns attorneys and support staff to a litigation matter, communicating with the client, the proposer's expectations of the client, interaction with opposing counsel, discovery, trial preparation, settlement approach, utilization of experts and consultants, document management and the like.
5. Please disclose any known or foreseeable conflicts of interest that would exist if your firm were selected as Securities Litigation Counsel. Please note that when a firm is selected for an engagement, it will be required to sign a statement certifying that it is not now engaged and, for the duration of its service as counsel to the Treasurer, it will not engage in the representation of any party who has asserted a claim, or has given notice of its intent to assert a claim, in any judicial proceeding against the State, or any agency, institution, subdivision, or officer named or to be named in his or her official capacity, without an express waiver of the conflict by the State. The Treasurer and Attorney General reserve the right to deny waiver of a conflict.
6. Please provide a detailed description of any representation of any investment managers or investment service providers that have or are currently doing business with any North Carolina State agency.
7. Has the proposer, or have any of the attorneys discussed in VII (B) or (C) above been named as a defendant in any malpractice or disciplinary action? Please describe briefly any such action and the outcome of such action.
8. A statement of any criminal or Securities Exchange Commission

investigations involving your law firm or any attorney in your firm and the status of outcomes of such investigations.

### **VIII. Standard Requirements**

- A. By submitting a proposal, the proposer covenants that the proposer will not make any claims for or have any right to damages because of any misrepresentation or misunderstanding of the specifications or information contained in this RFQ, or because of any lack of information.
- B. Neither the Attorney General, the Department of State Treasurer, NCRS or any other State entity shall be obligated for any costs incurred by the proposer in preparation of a response to this RFQ or in activities related to the review of this RFQ.
- C. Except as specifically set forth in Sections I and VII, prospective proposers or their representatives shall not approach or contact any employees of the Attorney General, the Department of State Treasurer, or NCRS with respect to this RFP during the proposal period.
- D. Any proposal not arrived at independently without collusion, consultation, communication or agreement as to any matter relating to such proposal with any other proposer or with any competitors will be considered for award.
- E. It is the policy of the North Carolina Attorney General and the Treasurer to encourage and promote the use of small, minority, physically handicapped, and women contractors in purchasing goods and services.

### **IX. Evaluation of Proposers**

The selection process will begin with the review and evaluation of each of the written proposals. The purpose of this evaluation process is twofold: (1) to examine the responses for compliance with this RFQ; and (2) to identify the complying proposers that have the highest probability of satisfactorily performing the requested services at a reasonable cost, thereby achieving the Treasurer's objectives. The selection process may also include reference checks and/or interviews with selected proposers. The evaluation process will be conducted in a comprehensive and impartial manner.

The evaluation process will be conducted as set forth herein.

#### **A. Preliminary Review**

1. Proposals received after the final filing date and time will be rejected and returned to the proposer.
2. All proposals will be reviewed to determine if they contain all required submittals specified in Section V. Proposals that are incomplete in any material respect will be rejected. Responses are limited to fifteen (15) pages, single sided, 12 point font (excluding required attachments and resumes of the proposer and individual attorneys.)

**B. Evaluation**

Proposals will undergo an evaluation process conducted by that Evaluation Committee that includes representatives from the Attorney General's Office and the Department of State Treasurer. The Evaluation Committee will evaluate the proposals based on the general qualifications and the fee schedule as set forth in Section VII, and compliance with the other requirements of this RFQ.

Proposers may be requested by the Evaluation Committee to clarify the contents of their proposals. Other than to provide such information as may be requested by the Evaluation Committee, no proposer will be allowed to alter its proposal or add new information (except as provided in Section IX (C) below) after the final filing date.

**C. Interviews (if necessary)**

The Evaluation Committee reserves the right to determine whether interviews will be necessary. If the Committee decides to interview proposers, such interviews will occur as follows:

Each finalist will be notified of the date, place and time of their interview to be held not earlier than the week of January 25, 2010 at the Offices of the North Carolina Attorney General in Raleigh, North Carolina. The interview should further document the proposer's ability to provide the required services. The proposed lead partner, as well as any other key personnel who would be responsible for providing legal advisory services, should be present and participate in the interview. The purpose of the interview is to impart to the Evaluation Committee an understanding of how specific services will be furnished. Either prior to or during the interview the Evaluation Committee may request revisions of proposals determined to be susceptible of being selected for contract award. Further information with regard to the format of this stage of the evaluation may be

provided to the finalists prior to their interview.

**D. Contract Award**

Following the interviews, if any, and receipt of requested revisions, if any, to proposals, the Evaluation Committee members will re-evaluate each proposer interviewed. This evaluation will reflect the results of the interview process and any requested revisions to the proposal based upon the likelihood of the proposer satisfactorily performing the services required at a reasonable cost. The Attorney General and the Treasurer anticipate that the Evaluation Committee will make an award recommendation of approximately 10 proposers based upon its determination of a best value procurement for the NCRS. If there is a significant scoring point differential between a group of proposers and the next highest scoring proposer, however, the Evaluation Committee may cut off the number of proposers recommended at the point where the significant point differential occurs.

**E. Implementation Contract**

Upon selection, negotiations will commence with each successful proposer to enter into a contract setting forth the general terms that would govern any subsequent retainer agreement for services contemplated by this RFQ (the "Implementation Contract"). Should negotiations fail to result in an Implementation Contract within three weeks from the commencement of negotiations, the Treasurer and the Attorney General shall have the right to terminate negotiations at any time thereafter, and the proposer shall not become a member of the pool.

All successful proposers will be required to enter into an Implementation Contract with the Department of State Treasurer and Attorney General. These contracts will not be binding until approved in accordance with the Attorney General's contract approval process. The Implementation Contract(s) shall include (but shall not be limited to) the following provisions:

1. **Monitoring Litigation.** A plan for monitoring litigation for which the proposer is retained that shall require, at a minimum, that the proposer provide the Treasurer and the Attorney General with copies of all significant pleadings in the case, such as the motion for lead plaintiff status, the consolidated complaint, the motion for class certification, significant discovery motions and the like, for review and approval by the State Treasurer and the Attorney General at least five days before they are filed with the Court. The proposer will also be required to provide the Treasurer

and the Attorney General with bi-monthly status reports, including the proposer's time and expenses summarized by task. In addition, the proposer will be required to promptly advise the Treasurer and the Attorney General in writing of any significant developments in the case, including any settlement discussions. As appropriate, the proposer will also be required to schedule periodic meetings and conference calls to discuss case developments and strategies for the prosecution of the case; and;

2. **Statement prohibiting public statements regarding litigation** on which a firm is selected to represent the NCRS, which shall require, at a minimum, that the proposer agrees that at no time will the proposer disclose to the media any facts involving or relating to the litigation and/or the settlement thereof without prior approval of the Treasurer and Attorney General. This bars all forms of communication, including but not limited to responding to telephone inquiries and/or issuing public statements or press releases. The proposer will be required to fully cooperate with the Treasurer's and the Attorney General's communications offices regarding requests for information and assist in the preparation of documents relating to this litigation requested by the Treasurer's or Attorney General's offices.

**F. Selection of Proposers from Pool**

Selection to the pool of Securities Litigation Counsel and entering into an Implementation Contract will not guarantee any proposer that it will be selected to represent the Treasurer in litigation or be requested to provide any other services contemplated by this RFQ. The Treasurer and Attorney General will conduct an informal interview of the proposer or proposers from the pool deemed to best serve the interests of the NCRS to determine which proposer is best suited for the specific engagement. The Treasurer will submit its recommendations to the Attorney General. At that time, a retainer agreement, which shall be based on the Implementation Contract will be entered into between the proposer and the Treasurer. No compensation shall be payable to any proposer except pursuant to a retainer agreement.

**X. Method of Submission & Questions**

Please submit one (1) master copy of the proposal in a 3-ring binder suitable for photocopying, and four (4) additional copies of the proposal, no later than January 15, 2010 at 5:00 pm, EST, in a sealed package labeled "SECURITIES LITIGATION COUNSEL RESPONSE" to:

Jay J. Chaudhuri  
General Counsel

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