



## MESSAGE FROM *the President*



*Mel Aaronson*

Mel Aaronson  
NCPERS President

## 2014 Annual Conference and Exhibition Review

Mel Aaronson, NCPERS president, delivered the welcoming address at the 2014 Annual Conference and Exhibition, held April 27–May 1, 2014, in Chicago, Illinois. In his welcoming remarks, Aaronson summarized all that NCPERS has accomplished this year. Some highlights included the testimony of the NCPERS National Conference on Insurance Legislators (NCOIL) in opposition to Senator Orrin Hatch's proposal to turn public pensions over to private insurance companies; the defeat of San Jose Mayor Chuck Reed's California Rule ballot measure, designed to eliminate constitutional protections for California public employees' benefits; and NCPERS push back against the Laura and John

Arnold Foundation and Pew Charitable Trusts.

The featured speaker, Carl Tannenbaum with NCPERS CorPERS member Northern Trust, stated the U.S. fiscal policy is in a much better position than it was last fall. He also predicted that the Federal Reserve's leadership transition would be a smooth one and opined that the risks to the economic outlook are primarily from overseas forces – in particular, low growth in Europe and slower growth in China. A second of Monday's General Session was a panel discussion on the impact of big data by two NCPERS CorPERS member members State Street and BNY Mellon. NCPERS board advisor Mr. Rich Protasewich with State Street Corporation and Mr. Jack Malvey

with BNY Mellon discussed why we are hearing so much about big data and the current trends and challenges.

The highlight of the Tuesday morning general session was a panel discussion with three public plan chief investment officers. The panel consisted of Ash Williams, with the Florida State Board of Administration; Carmen Heredia-Lopez, with the Chicago Teachers' Pension Fund; and Girard Miller, with Orange County Employees Retirement System. Topics discussed by the panel included how public plans are looking at asset allocations, how to protect against downside risk, active versus passive management styles, discount rates, the cost of management fees, plan design, and public plan investment in U.S. infra-

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# Supreme Court Decision in IndyMac MBS Case Could Have Big Impact on Investors

By Patrick T. Egan

Most public pension funds are named plaintiffs in very few securities class actions. If a plaintiff with a bigger loss steps forward, most funds are content to remain absentee class members, secure in the knowledge that they can share in any eventual recovery or file their own case later if needed.

That ability to wait before deciding whether to file an individual complaint is made possible by something called *tolling* – a mechanism that suspends the deadlines by which purported class members’ claims must be filed. Until recently, a purported class action was presumed to protect the rights of those absentee class members.

Now, in a case with important implications for NCPERS members, the U.S. Supreme Court has agreed to resolve an appeals court split as to whether the filing of a class action complaint does indeed trigger tolling for absentee class members of the statute of repose (the three-year period by which investors must bring suit under the 1933 Securities Act).

The appeal, *Public Employees’ Retirement System of Mississippi v. IndyMac MBS, Inc.*, concerns investors in mortgage-backed securities issued by IndyMac Bancorp, Inc. The initial IndyMac complaint asserted class claims on behalf of investors in dozens of MBS offerings, but the lower court dismissed all claims related to offerings the lead plaintiffs did not purchase. In response, institutional investors that purchased dismissed offerings stepped forward to intervene. But the district court said those motions were untimely because they



were filed more than three years after the securities were offered and, hence, time barred under the statute of repose.

On appeal to the Second Circuit Court of Appeals, investors invoked the Supreme Court’s 1974 decision in *American Pipe & Construction Co. v. Utah*, which held that the filing of a timely class action suspends, or tolls, the statute of limitations for anyone who would have been a member of the class. Investors argued that *American Pipe* tolling should extend to statutes of repose. But the circuit court disagreed, holding that the filing of the initial complaint did not toll the statute of repose for absentee class members.

If the Supreme Court sides with the circuit court, institutional investors may be forced to file “protective” appearances in many class

actions – or risk finding out later that their claims are time-barred. At the very least, they will need to track the statute of limitations in cases that impact them. And if their losses are too small to warrant suing on their own, they may find themselves flat out of luck if a judge rules that their purchases are outside the class.

The Supreme Court has the opportunity to preserve an important investor protection jeopardized by the Second Circuit Court of Appeals. It would defeat the point of having class actions if every investor potentially affected were forced to spend the time and money necessary to analyze each pending claim – and to file duplicative complaints and appearances at the outset of the case to preserve their rights. Such “protective” filings would create additional work for investors, clog already overburdened courts, and eliminate the types of procedural efficiencies that class actions were designed to create.

A ruling is expected by mid-2015. ♦

*Patrick T. Egan is a partner in the Boston office of Berman DeValerio, a law firm that provides securities litigation and advisory services to approximately 100 institutional investors, mostly public pension funds. Mr. Egan focuses his practice on complex business litigation, including securities fraud class actions. He represents the Wyoming Retirement System and the Wyoming State Treasurer’s Office as lead plaintiffs in the IndyMac class action, as well as the Los Angeles County Employees Retirement Association, one of the parties before the Supreme Court.*