

**DISCUSSION DOCUMENT for GOVERNANCE COMMITTEE: 9/14/11 MTG**

**STATE COMPENSATION INSURANCE FUND**

**OF THE**

**STATE OF CALIFORNIA**

**SECOND AMENDED AND RESTATED BY – LAWS**

1. Name, Organization and Purpose. These Second Amended and Restated By-Laws (these “By-laws”) are intended to supplement California Insurance Code Section 11770 et seq., as may be amended from time to time (hereinafter referred to as the “Insurance Code”). Wherever in these By-laws the name “State Fund” is used, it shall mean State Compensation Insurance Fund of the State of California; and wherever “Board” or “Board of Directors” is used, it shall mean the Board of Directors of State Fund.

2. Governing Authority. All powers of the Board shall be exercised pursuant to and in compliance with the authority provided in Division 2, Part 3, Chapter 4 (Section 11770 et seq.) of the California Insurance Code (hereinafter referred to as the “Insurance Code”), as may be amended from time to time.

All Board proceedings and deliberations shall comply with the provisions of the Bagley-Keene Open Meeting Act, California Government Code Section 11120 et seq., as may be amended from time to time (hereinafter referred to as the “Bagley-Keene Act”).

3. Board Membership. The Board is composed of up to eleven voting members (hereinafter referred to as the “Voting Members”) who shall be appointed and serve in such capacity in accordance with Insurance Code Section 11780, as may be amended from time to time. The Director of Industrial Relations shall be an ex officio, non-voting member of the Board (hereinafter referred to as the “Non-Voting Member”). Wherever in these By-laws the term “members” is used, it shall mean the Voting Members and the Non-Voting Member.

4. Term of Office. The terms of office of the Voting Members shall be as specified in Section 11770 of the Insurance Code, as may be amended from time to time, and the Voting Members shall hold office until the appointment and qualification of their successors.

5. Chairperson. As provided in Section 11770 of the Insurance Code, as may be amended from time to time, the Governor shall appoint the Chairperson of the Board (the “Chairperson”). The Chairperson may, at the Chairperson’s discretion, appoint a Vice Chairperson from among the Voting Members.

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The Chairperson shall preside at all meetings of the Board. Subject to the direction of the Board, the Chairperson shall generally manage the business and affairs of the Board and perform such other duties as assigned by the Board. In the absence or disability of the Chairperson, the Vice Chairperson, if any, shall assume the duties of the Chairperson. In the absence or disability of the Vice Chairperson, the Voting Member present at a meeting of the Board holding the longest consecutive term of service as a member of the Board shall preside at such meeting of the Board.

6. Principal Office. The principal office of State Fund is located in the City and County of San Francisco, California, or at such other location as the Board shall determine.

7. Place of Meetings. Regular and special meetings of the Board shall be held at the principal office of State Fund or at such other place as shall be designated in the notice of the meeting.

8. Regular Meetings. Regular meetings of the Board shall be held at least four times each calendar year on such dates and at such times as may be determined from time to time by the Board. With the approval of a majority of the Voting Members present at a meeting, any scheduled regular meeting may be advanced or postponed to another date.

9. Special and Emergency Meetings. Special and emergency meetings of the Board may be called pursuant to the provisions of the Bagley-Keene Act and shall be held at the principal office of State Fund or at such other place as shall be designated in the notice of the meeting.

10. Notice of Special and Emergency Meetings. Notice of the time and place of special and emergency meetings of the Board shall comply with the provisions of the Bagley-Keene Act.

11. Closed Sessions. Closed sessions of the Board may be held at any regular, special or emergency meeting pursuant to the provisions of the Bagley-Keene Act.

12. Adjournment. A majority of the Voting Members present, whether or not constituting a quorum, may adjourn any meeting to another time and place.

13. Notice of Adjournment. Notice of the time and place of holding an adjournment meeting shall be provided in compliance with the provisions of the Bagley-Keene Act.

14. Attendance. Attendance of Board members at regular, special or emergency meetings may be by conference telephone, electronic video screen communication or electronic transmission in compliance with the provisions of the Bagley-Keene Act, if all members of the Board participating in the meeting can hear each other at the same time. Participation in a meeting by these means shall constitute presence in person at the meeting.

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15. Quorum. A majority of the appointed number of Voting Members shall constitute a quorum for the transaction of business, except to adjourn as herein provided, provided that at no time shall a quorum be established with less than five Voting Members. Every act or decision done or made by a majority of the Voting Members present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of Voting Members, if any action taken is approved by at least a majority of the required quorum for such meeting.

16. Committees of the Board. The Board may, by resolution adopted by a majority of the Voting Members present at a meeting duly held at which a quorum is present, designate one or more committees to serve at the pleasure of the Board. Each committee of the Board shall consist of two or more Voting Members. In accordance with all legal and other applicable requirements, the chair, members and alternate members, if any, of each committee shall be nominated by the Chairperson, reviewed and approved by the Corporate Governance Committee (as hereinafter referenced in Section 17) and subject to final approval of a majority of the Voting Members present at a meeting duly held at which a quorum is present. Alternate members of any committee may replace any absent member at any meeting of such committee.

Each committee shall have the responsibilities and authority as designated from time to time by resolution of the Board, a Board-approved committee charter, or as otherwise prescribed by applicable law, including the ability to delegate to a subcommittee of a committee, with Board approval, except with respect to:

- (a) the filling of vacancies on the Board or in any committee;
- (b) the amendment or repeal of the By-laws or the adoption of new By-laws;
- (c) the amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable; or
- (d) the appointment of any other committees of the Board or the members thereof.

17. Standing Committees. The standing committees of the Board of Directors shall be: (a) the Audit Committee, (b) the Investment Committee, (c) the Corporate Governance Committee and (d) any other committees the Board determines are necessary.

18. Ad Hoc Committees. In addition to the standing committees of the Board of Directors, the Board may, by resolution adopted by a majority of the Voting Members present at a meeting duly held at which a quorum is present, designate one or more ad hoc committees.

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19. Resignation of Committee Members. Any committee member may resign at any time by giving written notice thereof to the Chairperson or the Secretary. Any such resignation shall take effect on the date of receipt of such notice by one of the above-specified officers, or at such later time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

20. Removal of Committee Members. Any committee member may be removed at any time and for any reason by the Chairperson or by a majority of the Voting Members present at a meeting duly held at which a quorum is present.

21. Committee Vacancies. Vacancies in any committee howsoever arising may be filled by the Chairperson, and subject to the approval of a majority of the Voting Members present at a meeting duly held at which a quorum is present. Committee members appointed pursuant to this Section 21 shall serve for the unexpired portion of the term of the committee member whose death, resignation or removal gave rise to the applicable vacancy, and until his or her successor shall have been elected and qualified, subject however, to such replacement committee member's earlier death, resignation or removal.

22. Meetings and Action of Committees. Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of these By-laws with such changes in the context of the By-laws as are necessary to substitute the respective committee and its members for the Board of Directors and its members. The Board of Directors may adopt rules for the governance of any committee not inconsistent with the provisions of these By-laws and with the provisions of the Bagley-Keene Act.

23. Minutes. Minutes shall be kept of all regular, special and emergency Board and committee meetings, and shall show the names of the members who are present and a succinct statement of each matter brought before the Board for consideration, together with a record of the number of "Yes" and "No" votes thereon, unless a member asks that his/her vote be specifically recorded.

24. Secretary and Assistant Secretary. The Voting Members shall elect by majority vote at a meeting duly held at which a quorum is present a person to serve as Secretary of State Fund. The Secretary shall attend all meetings of the Board and its committees, and be responsible for the keeping of proper minutes of such meetings. The Secretary will be the custodian of the minutes and the records of the Board, and will perform such other duties as may be assigned to him/her from time to time. The Voting Members may also elect one or more persons to serve as Assistant Secretary. In the absence of the Secretary, the Assistant Secretary shall perform the duties and responsibilities of the Secretary. In the absence of the Secretary or an Assistant Secretary, the Chairperson shall designate a Secretary, pro tem.

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25. Officers. The officers of State Fund are: (1) President, (2) Chief Financial Officer, (3) Chief Operating Officer, (4) Chief Information Officer, (5) Chief Technology Officer, (6) Chief Investment Officer, (7) Chief Risk Officer, (8) General Counsel, (9) any members of the Executive Committee not specifically listed herein and (10) any such other officers as the affairs of State Fund may require, each of whom shall hold office for such period, have such authority and perform such duties and assume such responsibilities as the President may from time to time prescribe. The President shall apprise the Board from time to time as to the current officers of State Fund and their respective duties and responsibilities.

26. President. The President of State Fund shall manage and conduct the business and affairs of State Fund under the general direction and subject to the approval of the Board of Directors and shall also perform such other duties as the Board prescribes. The President shall have the powers and duties conferred by law. The Board may delegate to the President any additional power, function or duty conferred by law on the Board in connection with the administration, management and conduct of the business and affairs of State Fund. The President may exercise those powers with the same force and effect as the Board.

In the absence or disability of the President, the Board may designate any other officer of State Fund, as defined by Section 25, to perform the duties of the President.

27. Removal of Officers. Either a majority of the Voting Members present at a meeting duly held at which a quorum is present, or the President at any time, may remove the designation as an officer of State Fund from any person previously designated as such, whether such designation was obtained by operation of the By-laws or by action of the President. Notwithstanding any such removal, the continued employment by State Fund of any officer so removed shall be governed exclusively by applicable law and without prejudice to the rights and obligations, if any, then existing under such law.

28. Resignation of Officers. Any officer may resign at any time by giving written notice to the Board, the Chairman, or the Secretary. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of State Fund under any contract to which the officer is a party. Notwithstanding any such resignation, the continued employment by State Fund of any officer who has resigned shall be governed exclusively by applicable law and without prejudice to the rights and obligations, if any, then existing under such law.

29. Inspection by the Board of Directors. Every member of the Board shall have the absolute right at any reasonable time to inspect all books, records, documents of every kind, and the physical properties of State Fund. This inspection by a member of the Board may be made in person or by an agent or attorney of such member, and the right of inspection includes the right to copy and make extracts of documents. The rights to inspect and copy are

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subject to, and may be circumscribed in, instances where such rights conflict with California or federal law pertaining to access to or possession of books, records and documents.

30. Liability of Members, Officers and Other Agents; Indemnification of Members, Officers and Other Agents.

(a) Liability of Members, Officers and Other Agents. The liability, in a private capacity, of any Board member, officer or other agent of State Fund shall be circumscribed by Insurance Code Section 11772.

(b) Indemnification - Third Party Proceedings. Notwithstanding Section 30(a), State Fund shall indemnify any person (each, an "Indemnatee") who is or was a party or is threatened to be made a party to any proceeding (other than an action by or in the right of State Fund to procure a judgment in its favor) by reason of the fact that Indemnatee is or was i) a member, ii) officer, or iii) appointed by the Board as President, Chief Financial Officer, Chief Operating Officer, Chief Information Technology Officer, Chief Investment Officer, Chief Risk Officer, or General Counsel of State Fund (collectively, a "Board Appointee"), by reason of any action or inaction on the part of Indemnatee while a member, officer or Board Appointee against actual and reasonable expenses (including subject to Section 30(f), attorneys' fees and any expenses of establishing a right to indemnification pursuant to this Section 30 or under California law), judgments, fines, settlements (if such settlement is approved in advance by State Fund, which approval shall not be unreasonably withheld) and other amounts actually and reasonably incurred by Indemnatee in connection with such proceeding if Indemnatee acted in good faith and in a manner Indemnatee reasonably believed to be in or not opposed to the best interests of State Fund and, in the case of a criminal proceeding, if Indemnatee had no reasonable cause to believe Indemnatee's conduct was unlawful. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that Indemnatee did not act in good faith and in a manner which Indemnatee reasonably believed to be in or not opposed to the best interests of State Fund, or with respect to any criminal proceedings, would not create a presumption that Indemnatee had reasonable cause to believe that Indemnatee's conduct was unlawful.

(c) Indemnification - Proceedings by or in the Right of State Fund. State Fund shall indemnify Indemnatee if Indemnatee was or is a party or is threatened to be made a party to any threatened, pending or completed action by or in the right of State Fund to procure a judgment in its favor by reason of the fact that Indemnatee is or was a member, officer or Board Appointee by reason of any action or inaction on the part of Indemnatee while a member, officer or Board Appointee against expenses (including subject to Section 30(f), actual and reasonable attorneys' fees and expenses of establishing a right to indemnification pursuant to this Section 30 or under

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California law) and, to the fullest extent permitted by law, amounts paid in settlement, in each case to the extent actually and reasonably incurred by Indemnatee in connection with the defense or settlement of the proceeding if Indemnatee acted in good faith and in a manner Indemnatee believed to be in or not opposed to the best interests of State Fund, except that no indemnification shall be made with respect to any claim, issue or matter to which Indemnatee shall have been adjudged to have been liable to State Fund in the performance of Indemnatee's duty to State Fund, unless and only to the extent that the court in which such proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, Indemnatee is fairly and reasonably entitled to indemnity for expenses and then only to the extent that the court shall determine.

(d) Successful Defense on Merits. To the extent that Indemnatee without limitation has been successful on the merits in defense of any proceeding referred to in Sections 30(b) or 30(c) above or in defense of any claim, issue or matter therein, State Fund shall indemnify Indemnatee against expenses (including attorneys' fees) actually and reasonably incurred by Indemnatee in connection therewith.

(e) Certain Terms Defined. For purposes of this Section 30, references to "proceeding" shall include any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative.

(f) Advancement of Expenses. State Fund shall advance all actual and reasonable expenses incurred by Indemnatee in connection with the investigation, defense, settlement (excluding amounts actually paid in settlement of any action, suit or proceeding) or appeal of any civil or criminal action, suit or proceeding referenced in Sections 30(b) and (c) hereof. Indemnatee hereby undertakes to repay such amounts advanced only if, and to the extent that, it shall be determined ultimately that Indemnatee is not entitled to be indemnified by State Fund as authorized hereby. The advances to be made hereunder shall be paid by State Fund to Indemnatee within twenty (20) days following delivery of a written request therefor by Indemnatee to State Fund.

(g) Notice of Claim. Indemnatee shall, as a condition precedent to his or her right to be indemnified under this Section 30, give State Fund notice in writing as soon as practicable of any claim made against Indemnatee for which indemnification will or could be sought under this Section 30. Notice to State Fund shall be directed to the Secretary at the principal office of State Fund (or such other address as State Fund shall designate in writing to Indemnatee). In addition, Indemnatee shall give State Fund such information and cooperation as it may reasonably require and as shall be within Indemnatee's power.

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(h) Enforcement Rights. Any indemnification provided for in Sections 30(b), 30(c) or 30(d) shall be made no later than sixty (60) days after receipt of the written request of Indemnatee. If a claim or request under this Section 30 or under any statute providing for indemnification is not paid by State Fund, or on its behalf, within sixty (60) days after written request for payment thereof has been received by State Fund, Indemnatee may, but need not, at any time thereafter bring suit against State Fund to recover the unpaid amount of the claim or request, and subject to Section 30(r), Indemnatee shall also be entitled to be paid for the expenses (including actual and reasonable attorneys' fees) of bringing such action. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in connection with any action, suit or proceeding in advance of its final disposition) that Indemnatee has not met the standards of conduct which make it permissible under applicable law for State Fund to indemnify Indemnatee for the amount claimed, but the burden of proving such defense shall be on State Fund, and Indemnatee shall be entitled to receive interim payments of expenses pursuant to Section 30(f) unless and until such defense may be finally adjudicated by court order or judgment for which no further right of appeal exists. The parties hereto intend that if State Fund contests Indemnatee's right to indemnification, the question of Indemnatee's right to indemnification shall be a decision for the court, and no presumption regarding whether the applicable standard has been met will arise based on any determination or lack of determination of such by State Fund (including its Board or independent legal counsel).

(i) Assumption of Defense. In the event State Fund is obligated to pay the expenses of any proceeding against Indemnatee, State Fund shall be entitled to assume the defense of such proceeding with counsel approved by Indemnatee, which approval shall not be unreasonably withheld, upon delivery to Indemnatee of written notice of its election to do so. After delivery of such notice, approval of such counsel by Indemnatee and the retention of counsel by State Fund, State Fund will not be liable to Indemnatee under this Section 30 for any fees of counsel subsequently incurred by Indemnatee with respect to the same proceeding, unless (i) the employment of counsel by Indemnatee has been previously authorized by State Fund, (ii) Indemnatee shall have reasonably concluded, based on written advice of counsel, that there may be a conflict of interest of such counsel retained by State Fund between State Fund and Indemnatee in the conduct of such defense, or (iii) State Fund ceases or terminates the employment of such counsel with respect to the defense of such proceeding, in any of which events the fees and expenses of Indemnatee's counsel shall be at the expense of State Fund. At all times, Indemnatee shall have the right to employ other counsel in any such proceeding at Indemnatee's expense.

(j) Approval of Expenses. No expenses for which indemnity shall be sought under this Section 30, other than those in respect of judgments and verdicts



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actually rendered, shall be incurred without the prior consent of State Fund, which consent shall not be unreasonably withheld.

(k) Subrogation. In the event of payment under this Section 30, State Fund shall be subrogated to the extent of such payment to all of the rights of recovery of the Indemnitee, who shall do all things that may be necessary to secure such rights, including the execution of such documents necessary to enable State Fund effectively to bring suit to enforce such rights.

(l) Exceptions. Notwithstanding any other provision herein to the contrary, State Fund shall not be obligated pursuant to this Section 30:

(i) Excluded Acts. To indemnify Indemnitee (a) as to circumstances in which indemnity is expressly prohibited pursuant to California or Federal law, or (b) for any acts or omissions or transactions from which person may not be relieved of liability pursuant to California or Federal law; or

(ii) Claims Initiated by Indemnitee. To indemnify or advance expenses to Indemnitee with respect to proceedings or claims initiated or brought voluntarily by Indemnitee and not by way of defense, except with respect to proceedings brought to establish or enforce a right to indemnification under this Section 30 or any other statute or law but such indemnification or advancement of expenses may be provided by State Fund in specific cases if the Board has approved the initiation or bringing of such suit; or

(iii) Lack of Good Faith. To indemnify Indemnitee for any expenses incurred by the Indemnitee with respect to any proceeding instituted by Indemnitee to enforce or interpret this Section 30, if a court of competent jurisdiction determines that such proceeding was not made in good faith or was frivolous; or

(iv) Insured Claims. To indemnify Indemnitee for expenses or liabilities of any type whatsoever (including, but not limited to, judgments, fines, or penalties, and amounts paid in settlement) which have been paid directly to Indemnitee by an insurance carrier under a policy of liability insurance maintained by State Fund.

(m) Partial Indemnification. If Indemnitee is entitled under any provision of this Section 30 to indemnification by State Fund for some or a portion of the expenses, judgments, fines or penalties actually or reasonably incurred by the Indemnitee in the investigation, defense, appeal or settlement of any civil or criminal

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action, suit or proceeding, but not, however, for the total amount thereof, State Fund shall nevertheless indemnify Indemnitee for the portion of such expenses, judgments, fines or penalties to which Indemnitee is entitled.

(n) Coverage. This Section 30 shall, to the extent permitted by law, apply to acts or omissions of Indemnitee which occurred prior to the adoption of this Section 30 if Indemnitee was a member, officer or Board Appointee of State Fund at the time such act or omission occurred. All rights to indemnification under this Section 30 shall be deemed to be provided by a contract between State Fund and the Indemnitee in which State Fund hereby agrees to indemnify Indemnitee to the fullest extent permitted by law, notwithstanding that such indemnification is not specifically authorized by these By-laws or by statute. Any repeal or modification of these By-laws or any applicable law shall not affect any rights or obligations then existing under this Section 30. The provisions of this Section 30 shall continue as to Indemnitee for any action taken or not taken while serving in an indemnified capacity even though the Indemnitee may have ceased to serve in such capacity at the time of any action, suit or other covered proceeding. This Section 30 shall be binding upon State Fund and its successors and assigns and shall inure to the benefit of Indemnitee and Indemnitee's estate, heirs, legal representatives and assigns.

(o) Non-Exclusivity. Nothing herein shall be deemed to diminish or otherwise restrict any rights to which Indemnitee may be entitled under these By-laws, any agreement or under the laws of the State of California.

(p) Severability. Nothing in this Section 30 is intended to require or shall be construed as requiring State Fund to do or fail to do any act in violation of applicable law. If this Section 30 or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then State Fund shall nevertheless indemnify Indemnitee to the fullest extent permitted by any applicable portion of this Section 30 that shall not have been invalidated.

(q) Attorneys' Fees. In the event that any action is instituted by Indemnitee under this Section 30 to enforce or interpret any of the terms hereof, Indemnitee shall be entitled to be paid all court costs and expenses, including reasonable attorneys' fees incurred by Indemnitee with respect to such action, unless as a part of such action, the court of competent jurisdiction determines that the action was not instituted in good faith or was frivolous. In the event of an action instituted by or in the name of State Fund under this Section 30, or to enforce or interpret any of the terms of this Section 30, Indemnitee shall be entitled to be paid all court costs and expenses, including reasonable attorneys' fees, incurred by Indemnitee in defense of such action (including with respect to Indemnitee's counterclaims and cross-claims made in such action), unless as a part of such action the court determines that Indemnitee's defenses to such action were not made in good faith or were frivolous.

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(r) Notice. All notices, requests, demands and other communications under this Section 30 shall be in writing and shall be deemed duly given (i) if delivered by hand and receipted for by the addressee, on the date of such receipt, (ii) if sent by electronic transmission by State Fund, at the time sent, or (iii) if mailed by domestic certified mail, with postage prepaid, return receipt requested, on the third business day after the date postmarked.

31. Amendment to By-Laws. The Voting Members shall have the authority to repeal, alter or amend these By-laws or adopt new By-laws at any regular meeting by the affirmative vote of a majority of the appointed number of Voting Members, provided that a quorum is present and the Voting Members shall not make or alter any By-law fixing Board membership, term of office or qualification for Board membership, unless such amendment thereof is necessary to make these By-Law provisions consistent with the laws of California.

Whenever an amendment or new By-law is adopted, it shall be placed in State Fund's book of minutes and proceedings with the By-laws. If any By-law is repealed, the fact of repeal with the date of the meeting at which the repeal was enacted shall be stated in such book of minutes and proceedings.

**CERTIFICATE OF SECRETARY**

I, the undersigned, being the Secretary of State Fund, hereby certify that the above By-laws were adopted as the By-laws of State Fund by resolution adopted by a majority of Voting Members present at a meeting duly held at which a quorum is present on September \_\_, 2011. These By-laws are, as of the date of this certification, the duly adopted and existing By-laws of State Fund.

IN WITNESS WHEREOF, I have set my hand this \_\_ day of September, 2011.

\_\_\_\_\_  
\_\_\_\_\_, Secretary