



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
City Attorney

**SUBJECT: PUBLIC MEMBER APPLICANTS
FOR POLICE AND FIRE
RETIREMENT PLAN BOARD**

DATE: November 6, 2024

BACKGROUND

This Office routinely reviews applications for appointment to City boards and commissions for conflicts of interest, appearance of bias and incompatible office. The applications generally do not provide complete information; however, they do occasionally disclose potential conflicts of interest or incompatible offices. The purpose of this memorandum is to summarize our review of the applications submitted by the individuals who will be considered by the City Council for a public member trustee position on the Police and Fire Department Retirement Plan's Board.

BOARD DUTIES

In order to analyze potential conflicts, it is necessary to consider the duties of the particular board or commission for which the applicant is seeking appointment. The Board of Trustees of the Police and Fire Department Retirement Plan is established under the Municipal Code to manage, administer and control the plan. The Board's scope of authority and duties include determining employee eligibility for benefits, establishing contribution rates for employees and the city based on actuarial valuations, commenting on ordinances that propose modifications to the retirement plan and investing retirement funds. The Board is expressly authorized to secure the following types of contractual services:

1. Actuarial service
2. Auditing services
3. Investment management services
4. Investment performance evaluation services
5. Proxy voting services
6. Legal services
7. Other consulting services as the Board deems necessary to carry out its duties and responsibilities under the retirement plan.

SUBSTANCE OF CONFLICTS REVIEW

Incompatible Office

The doctrine of incompatible offices is contained in Government Code section 1099. To fall within the Doctrine of Incompatible Offices, two elements must be present.

- Hold two public offices simultaneously, and
- A potential conflict or overlap in the functions or responsibilities of the two offices must exist.

Appearance of Bias

There may be facts which would not amount to a legal conflict of interest, but which could require a Board trustee to recuse him or herself from a Board vote or discussion, because of an appearance of bias on the part of the Board. City Council policy requires Board members to be free from bias in their decision making, and may require a Board member to recuse him or herself if the facts could reasonably lead one to conclude that the Board member would be biased for or against a person or entity.

Legal Conflicts That May Preclude Board Contracts

Since the Board has independent contracting authority, Board member conflicts of interest preclude the Board from contracting with entities in which a trustee has a financial interest. (Government Code Section 1090) For the Police and Fire Departments' Retirement Plan's Board, it is not adequate for a trustee to recuse him or herself from participating in a Board discussion or from voting on matters coming before the Board. The trustee with the conflict must either resign, or the Board must forgo the contractual opportunity.

While this list is not complete, conflicts generally arise in one or more of the following situations:

- A trustee has "sources of income" within the 12 months preceding the start of the trustee's term or during the trustee's term, as defined under the Political Reform Act.
- A trustee's spouse or domestic partner has "sources of income" within the 12 months preceding the start of the trustee's term or during the trustee's term, as defined under the Political Reform Act.
- A trustee or trustee's spouse or domestic partner is an Officer or

Board Member of an entity other than the Retirement Board and the entity is involved in a matter coming before the Board.

APPLICANTS

1. David Kwan

Employer

Retired

Spouse Employer

Retired

Conflict of Interest

Mr. Kwan is a public member on the Board for the Police and Fire Department Retirement Plan and his term expires on November 30, 0224. He did not identify any organization, association, or entity in which he was active or which he is involved or associated which might be affected by decisions of the Board. He further indicated that he would have no financial interest to disclose other than his interest in his spouse's pension from Bank of New York.

2. John Cleveland

Employer

Retired

Spouse's Employer

Retired

Conflict of Interest

Mr. Cleveland did not identify any organization, association, or entity in which he is active or which he is involved or associated that might be affected by decisions of the Board. He further indicated that neither he nor his spouse would have any financial interest to disclose.

3. Gretchen Flicker

Employer

Retired

Spouse's Employer

Retired

Conflict of Interest

Ms. Flicker did not identify any organization, association, or entity in which she is active or which she is involved or associated that might be affected by decisions of the Board. She further indicated that neither she nor her spouse would have any financial interest to disclose.

LEGAL REVIEW OF POLICE AND FIRE RETIREMENT BOARD APPLICANTS

Our office reviewed the applications submitted by the applicants to be considered for a public member position on the Police and Fire Retirement Board by the City Council. Our review was limited to the information provided by the applicants and was not intended to be a comprehensive investigation of potential conflicts involving the applicants. The results of our review are as follows:

- The applicants did not disclose an incompatible office.
- The applicants did not disclose an appearance of bias.
- The applicants did not disclose an existing conflict of interest, e.g. the applicants did not disclose an existing financial interest in any organization, association, or entity that has an existing contractual relationship with the Board.
- Two applicants indicated that they would not have any financial interests to disclose.
- One applicant indicated that he would not have any financial interests, other than his interest in his spouse's pension, to disclose.

Attachment A is a list of the entities with which the Police and Fire Departments' Retirement Board has a contractual relationship with as of October 9, 2024. We note that some of these are forms of entities (partnerships or private companies) in which it is unlikely that the applicants would have a financial interest if they are not employed by the firm. However, even if the applicants do not currently have a contractual relationship with any firm in which the Board has a financial interest, the list of entities with which the Board contracts with changes from time to time and we would expect a Board member's financial interests to change over

Honorable Mayor and City Council

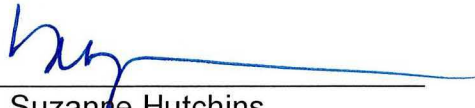
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time as well. Thus, both staff and any individual appointed to this Board will need to exercise vigilance to avoid conflicts from arising in the future.

NORA FRIMANN
City Attorney

By 
Suzanne Hutchins
Sr. Deputy City Attorney

cc: Jennifer Maguire, City Manager
Toni Taber, City Clerk
John Flynn, Director Retirement Services

ATTACHMENT A
Retirement Board Vendors

List of Administrative and Investment Vendors as of October 9, 2024

<u>Custodian Bank</u>	Bank of New York Mellon
<u>Investment Consultant</u>	Meketa Investment Group
<u>Absolute Return Consultant</u>	Albourne
<u>Governance and Joint Personnel</u>	Cortex Applied Research
<u>General Counsel</u>	Reed Smith
<u>Investment Counsel</u>	Hanson Bridget LLP
<u>Tax Counsel</u>	Ice Miller
<u>Actuary</u>	Cheiron
<u>Actuary Auditor</u>	<i>Vacant until next year</i>
<u>Disability Counsel</u>	Saltzman & Johnson
<u>Auditor</u>	Macias Gini & O'Connell
<u>Risk Advisory Services</u>	Verus Advisory
<u>Portfolio Overlay Services</u>	Russell Investments
<u>Pension Administration System</u>	LRS
<u>Medical Providers</u>	Medlink and Examworks
<u>Communication Consultant</u>	Communication Advantage - Marty Boyer
<u>Temp Agency</u>	Trendtec
<u>Cellular Service</u>	Verizon Wireless
<u>Death Audit</u>	Longevity Holding (The Berwyn Group)
	West Publishing
<u>COBRA Administrators</u>	P&A Group
<u>Membership</u>	CALAPRS
	GFOA
	SACRS
	NCPERS
<u>Insurance</u>	Liberty Mutual Insurance
	Risk Strategies Company
<u>Investment Data Processing</u>	Abel/Noser Corp
	Alpine Macro
	BCA Research
	Bloomberg Finance
	Bloomberg Index Services
	Burgiss
	Dynamo Software
	Evestment Alliance
	Frank Russell Company
	Institutional Limited Partners Association
	JP Morgan Bank

Investments Dues & Subscriptions

Klarity FX
MSCI
Pension Real Estate Association
Pacific Pension & Investment
Grant Newsletter
WSJ

Investment Miscellaneous

Financial Times
Deloitte & Touche
SEI Investments Global Fund Services

IT Vendors

Caseware International
Granicus

Iron Mountain
J&J Air Conditioning

Greenvelope
Social Sellinator

Rent

Pacific Resources First American

Investment Managers:

57 Stars
Aether Investment Partners
AIG Global Real Estate
Angelo Gordon
Arbour Lane
Artisan Partners
BlackRock
Blackstone
Blue Bay Asset Management
Bow Capital
Brookfield Asset Management
BSF
Burgundy
Canvas Ventures
CCMP Capital
Centerbridge
Charlesbank Capital
Clarion Partners
Collective Global Aduro Advisors
Columbia Threadneedle
Crabel Capital Management
Credit Suisse Asset Management
Crescent Capital Group
Crestline Investors
Cross Ocean Partners
Crosslink

DE Shaw
Dimensional Fund Advisors
DRA Advisors
Eagle Point Credit Management
EQT Exeter
Exeter Property Group
First Eagle
Francisco Partners
GCP SecureSpace Property
GEM Realty Capital, Inc.
Global Infrastructure Partners
GQG Partners
Harbour Vest Partners
HIG Realty Partners
HPS
Hudson Bay Capital
Hull Street Energy
Industry Venture
Innovation Endeavors
Insight Investment
Invesco
IPI Partners
JD Capital
Kepos Capital
Kimmeridge
Kotak India
KSL Capital
Lerer Hippeau
Lime Rock Partners
Medley Capital
Mellon Investments Corporation
Morgan Stanley
Mountain Capital
Next Play Capital
Northern Trust
Northgate Capital
Oberweis Asset Management
Octagon Credit Investors
Orion Capital
Orion Mine Finance
Paine Schwartz Partners
Pantheon Ventures
Park Square Capital
Payden & Rygel
PE Strategic Partners
Pine River Capital
Portfolio Advisors
Praedium Group

Real Asset Coinvest GoExpedi
Ridgewood
Rockpoint
RWC
Scout Energy
Sculptor Capital Management
Seraya Partners
Silverpoint
Shoreline Capital
Sierra Ventures
Signia Venture Partners
Siguler Guff
Strategic Value Partners
TA Realty
TCW
Tembo Capital
Tiger Iron Capital
Top Tier Capital
Torchlight Investors
TPG Capital
Tristan Capital
Unifi India
Upfront by Cooley
Voya Investment Management
Warburg Pincus
Wellington Management
White Oak Global Advisors