



## Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Richard Doyle  
City Attorney

**SUBJECT:** PUBLIC MEMBER APPLICANT  
FOR FEDERATED CITY  
EMPLOYEES' RETIREMENT  
PLAN BOARD

**DATE:** November 20, 2019

### **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 application submitted by an individual who will be considered by the City Council for a public member trustee position on the Federated City Employees' 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 Federated City Employees 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***

Because 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 Federated City Employees Retirement Plan 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.

## **APPLICANT**

**Mark Keleher**

**Employer**

Retired

Consultant / Volunteer

**Spouse's Employer**

Pacific Apps

COO

**Conflict of Interest**

While Mr. Keleher disclosed that he is a consultant and volunteer, there was no disclosure of clients for which he provides consulting services. Based on the information submitted in his application, Mr. Keleher 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 he would have no financial interest to disclose other than his future pensions and his spouse's interest in employment.

Mr. Keleher disclosed that he is not currently receiving a pension, but will receive a pension from Merrill Lynch and BNY Mellon. He also disclosed that BNY Mellon has been the subject of various litigation matters, claims, and investigations, but that he has not personally been the subject of any litigation or investigation. He disclosed that he provided sworn testimony to the SEC, DOJ and USPS when requested, presumably related to BNY Mellon.

Mr. Keleher disclosed that he is a mentor for the Stanford School of Business' Seed Mentor Program and Santa Clara University's Miller Center.

## **LEGAL REVIEW OF RETIREMENT BOARD APPLICANTS**

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

- The application did not disclose any incompatible offices.
- The application did not disclose an appearance of bias.
- The application did not disclose an existing conflict of interest, e.g. no disclosure of an existing financial interest in any organization, association, or entity that has an existing contractual relationship with the Federated Retirement Board.
- The applicant indicated that he would not have any financial interests other than his future pensions from Merrill Lynch and BNY Mellon and his spouse's employment.

Attachment A is a list of the entities with which the Federated City Employees' Retirement Board has a contractual relationship as of October 2018. We note that some of these are forms of entities (partnerships or private companies) in which it is unlikely that an applicant would have a financial interest if they are not employed by the firm. However, even if an applicant does not currently have a contractual relationship with any firm in which the Board currently 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 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.

RICHARD DOYLE  
City Attorney

By   
Suzanne Hutchins  
Sr. Deputy City Attorney

cc: David Sykes, City Manager  
Toni Taber, City Clerk  
Roberto Pena, Director Retirement Services

ATTACHMENT A  
Retirement Board Contractors

**FEDERATED RETIREMENT PLAN**

*List of Administrative and Investment Vendors as of October 2018*

**Custodian Bank**

**Investment Consultant**

**Hedge Fund Consultant**

**Investment Attorney**

**Proxy Voting**

**General Counsel**

**Tax Counsel**

**Actuary**

State Street Bank

Meketa Investment Group

Albourne LLC

Hanson Bridgett LLP

Glass Lewis

Reed Smith, LLP

Ice Miller, LLP

Cheiron

Saltzman & Johnson Law  
Corp

**Legal Counsel**

**Investment Managers and Hedge Funds:**

American Realty Advisors

AHL Frontier

Artisan Partners Limited Partnership

ArrowMark Partners

BlackRock

Blue Bay Asset Management

Claren Road Asset Management. LLC

Comgest Asset Management International Limited

Cove Street Capital LLC

Credit Suisse Asset Management, LLC

Crestline Investors

Cross Ocean Partners

Davidson Kempner Capital Management LLC

DE Shaw

Dimensional Fund Advisors

DRA Advisors LLC

Dymon Asia Macro Fund

GEM Realty Capital

Global Infrastructure Partners

GQG Partners Global Emerging Markets

Great Hill Partners

Hudson Bay International Fund

Innovation Endeavors

JD CAPITAL

Kepos Capital

Marshall Wace Eureka

Medley Capital

Honorable Mayor and City Council

**Subject: Federated Retirement Board Conflicts Review**

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NEPC, LLC  
Neuberger Berman - PE Strategic Partnership  
Northern Trust NT World ex-US  
Oberweis International Opportunities  
Pantheon Ventures  
Partners Group (USA) Inc  
Pathway Capital Management LLC  
PGIM  
Pharo Macro  
Pine River Capital Management  
Pinnacle Asset Management L.P.  
Russell Implementation Services, Inc  
Rhumblin Advisors  
Sandler Capital Management  
Senator Investment Group LP  
Systemica Alternative  
Torchlight Investors  
Tristan Capital Partners  
Vanguard Group  
Voya Investment Management  
Wadhvani (Keynes Lev Quant Strat, LTD)  
White Oak Global Advisors, LLC