

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
City Attorney

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

DATE: May 20, 2022

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 the individual who will be considered by the City Council for a public member trustee position on the Police and Fire Departments' 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 Departments' 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 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.

APPLICANT

1. David Kwan

Employer - Retired

Spouse Employer - Retired

Conflict of Interest

Mr. Kwan 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. Mr. Kwan further indicated that he would have no financial interest to disclose other than his interest in a "pension" from Bank of New York Mellon Corporation. The Bank of New York Mellon Corporation is the Police and Fire Department Retirement Plan's custodian bank. For purposes of conflicts of interest under the California Political Reform Act, a pension from a defined benefit plan qualified under IRS Section 401(a) is not a source of income and therefore would not create a conflict of interest under the Act. We have asked Mr. Kwan to provide additional information relating to his pension from Bank of New York Mellon Corporation, but have not yet confirmed whether his pension would not be a source of income under the Political Reform Act as of the date of this memo. If Mr. Kwan is appointed to the Board, he should not participate in the making of any decisions relating to Bank of New York Mellon Corporation until a conflict of interest analysis is completed by the Board's counsel.

LEGAL REVIEW OF POLICE AND FIRE RETIREMENT BOARD APPLICANT

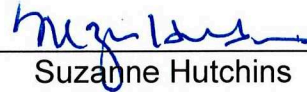
Our office reviewed the application submitted by the applicant to be considered for a public member position on the Police and Fire Retirement Board by the City Council. Our review was limited to the information provided by the applicant and was not intended to be a comprehensive investigation of potential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

- The applicant did not disclose an incompatible office.
- The applicant did not disclose an appearance of bias.
- The applicant may have an existing conflict interest, but further information and analysis are needed and should be completed by the Board's counsel, if the applicant is appointed to the Board.

Attachment A is a list of the entities with which the Police and Fire Department's Retirement Board has a contractual relationship with as of April 30, 2022. We note that some of these are forms of entities (partnerships or private companies) in which it is unlikely that the applicant would have a financial interest if the applicant is not employed by the firm. However, even if the Board does not currently have a contractual relationship with any firm in which the applicant 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.

NORA FRIMANN
City Attorney

By



Suzanne Hutchins
Sr. Deputy City Attorney

cc: Jennifer Maguire, City Manager
Toni Taber, City Clerk
Roberto Pena, Director Retirement Services

ATTACHMENT A
Retirement Board Vendors

POLICE AND FIRE DEPARTMENTS' REIREMENT PLAN

List of Administrative and Investment Vendors as of April 30, 2022

<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>Tax Counsel</u>	Ice Miller
<u>Actuary</u>	Cheiron
<u>Disability Counsel</u>	Saltzman & Johnson
<u>Auditor</u>	Grant Thornton
<u>Risk Advisory Services</u>	Verus Advisory
<u>Portfolio Overlay Services</u>	Russell Investments
<u>Pension Administration System</u>	LRS
<u>Medical Consultant</u>	Work Health Solutions
<u>Medical Providers</u>	Medlink and Examworks
<u>Communication Consultant</u>	Communication Advantage - Marty Boyer
<u>Temp Agency</u>	Trendtec

Investment Managers:

57 Stars
Aether Seed Partners
Angelo Gordon
Arbour Lane
Artisan Partners
BlackRock
Blackstone
Blue Bay Asset Management
Brookfield Asset Management
Canvas
CCMP Capital
Centerbridge
Clarion Lion
Columbia
Cove Street Capital
Crabel Capital Management
Credit Suisse Asset
Management
Crescent Capital Group
Crestline
Cross Ocean Partners
DE Shaw

DFA
DRA Advisors
Eagle Point
Exeter
First Eagle
Francisco Partners
GEM Realy
Global Infrastructure Partners
GQG Partners
Harbour Vest Partners
HIG Realty Partners
HPS
Hudson Bay Capital
Hull Street Energy
Iguazu Partners
Industry Venture
Innovation Endeavors
Insight Investment
Invesco
JD Capital
Kepos Capital
Kimmeridge
KSL Capital
Lime Rock Partners
Medley Capital
Mellon
Morgan Stanley
Mountain Capital
Northern Trust
Next Play Capital
Northgate Capital
Oberweis Asset Management
Octagon Credit Investors
Orion Capital
Pantheon Ventures
Payden & Rygel
Pine River Capital
Portfolio Advisors
Praedium Group
Park Square Capital
Rockpoint
RWC
Sculptor Capital Management
Shoreline Capital
Siguler Guff
Strategic Value Partners

TA Realty

TCW

Tembo Capital

Tiger Iron Capital

Top Tier Capital

Torchlight Investors

TPG Capital

Tristan Capital

Voya Investment Management

Warburg Pincus

Wellington Management

White Oak Global Advisors