

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
City Attorney

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

DATE: April 19, 2023

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 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 and administer 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.

APPLICANTS

Deborah Abbott

Employer

San Jose State University

Lecturer

Spouse's Employer

N/A

Conflict of Interest

In her application, Ms. Abbott did not confirm that she has read the Fair Political Practices Commission Form 700 reference pamphlet and agrees to file Form 700 Statements of Economic Interest, as required by the current City Council Conflict of Interest Resolution.

Ms. Abbott 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 she would have no financial interest to disclose other than her interest in her employment.

Douglas Andrey

Employer

OmnilIndex

Head of Operations

Spouse's Employer

N/A

Conflict of Interest

Mr. Andrey 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 interest in his employment.

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.

Matthew Faulkner

Employer

San Jose State University

Assistant Professor of Finance

Spouse's Employer

N/A

Conflict of Interest

Mr. Faulkner 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 interest in his employment.

Julian Vogel

Employer

San Jose State University

Assistant Professor of Finance

Spouse's Employer

California State University, Sacramento Assistant Professor

Conflict of Interest

Mr. Vogel 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 other than their interest in their employment.

LEGAL REVIEW OF RETIREMENT BOARD APPLICANTS

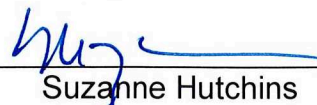
Our office reviewed the applications submitted by the applicants to be considered for the public member position on the Federated Employees' Retirement Plan Board by the City Council. Our review was limited to the information provided by the applicants and was not intended to be a comprehensive investigation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

- The applicants did not disclose any incompatible offices.
- The applicants did not disclose an appearance of bias.
- The applicants 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.
- One applicant indicated that he does not have any financial interests.
- Three applicants indicated that they would not have any financial interests other than their own employment.
- One applicant indicated that he would not have any financial interests other than his own employment 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 April 5, 2023. We note that some of these are forms of entities (partnerships or private companies) in which it is unlikely that any applicants 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.

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 Contractors

FEDERATED RETIREMENT PLAN

List of Administrative and Investment Vendors as of April 5, 2023

Vendor

CHEIRON, INC
SEGAL COMPANY, THE
VERIZON WIRELESS
MARTHA E BOYER
BNY MELLON
THE BERWYN GROUP
GRANT THORNTON LLP
CALAPRS CALIF ASSOC OF PUBLIC RETIREMENT SYSTEM
CORTEX APPLIED RESEARCH INC.
LIBERTY MUTUAL INSURANCE
RISK STRATEGIES COMPANY
ALBOURNE AMERICA, LLC
KOFF & ASSOCIATES, INC
MEKETA INVESTMENT GROUP
MCLAGEN PARTNERS, INC.
MORGAN STANLEY INVESTMENT MANAGEMENT
ABEL/NOSER CORP
BARRA, LLC
BCA RESEARCH INC.
BLOOMBERG FINANCE L.P.
BLOOMBERG INDEX SERVICES LIMITED
DYNAMO SOFTWARE, INC.
EVESTMENT ALLIANCE, LCC
FRANK RUSSELL COMPANY
INSTITUTIONAL LIMITED PARTNERSASSOCIATION
JP MORGAN BANK
KLARITY FX INC
MSCI, INC
PITCHBOOK
VERUS ADVISORY, INC
PENSION REAL ESTATE ASSOCIATION
PACIFIC PENSION & INVESTMENT INSTITUTE
HANSON, BRIDGETT, LLP
AMERIPRISE FINANCIAL INC
ARTISAN PARTNERS LIMITED PARTNERSHIP
BLACKROCK INSTITUTIONAL TRUST COMPANY, NATIONAL ASSOCIATION
COVE STREET CAPITAL LLC
INSIGHT NORTH AMERICA LLC

Category

Actuary
Actuary Auditor
Cellular Service
Communication Consultant
Custodian Bank
Death Audit
External Auditor
General Dues & Subs
Governance Consultant
Insurance
Insurance
Investment Consultant
Investment Consultant
Investment Consultant
Investment Consultant
Investment Consultant
Investment Data Processing
Investment Data Processing
Investment Data Processing
Investment Data Processing
Investment Data Processing
Investment Data Processing
Investment Data Processing
Investment Data Processing
Investment Data Processing
Investment Data Processing
Investment Data Processing
Investment Data Processing
Investment Dues & Subs
Investment Dues & Sub
Investment Legal
Investment Manager
Investment Manager
Investment Manager
Investment Manager
Investment Manager

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| INVESCO ADVISERS, INC | Investment Manager |
| MELLON INVESTMENTS CORPORATION | Investment Manager |
| NORTHERN TRUST INVESTMENTS | Investment Manager |
| OBERWEIS ASSET MANAGEMENT INC | Investment Manager |
| RUSSELL INVESTMENTS IMPLEMENTATION SERVICES, LLC | Investment Manager |
| VOYA INVESTMENT MANAGEMENT | Investment Manager |
| WHITE OAK GLOBAL ADVISORS, LLC | Investment Manager |
| DELOITTE & TOUCHE LLP | Investment Misc |
| SEI INVESTMENTS GLOBAL FUND SERVICES | Investment Misc |
| CASEWARE INTERNATIONAL INC. | IT |
| COMPUTERLAND OF SILICON VALLEY | IT |
| FLEXENTIAL COLORADO CORP. (F/K/A VIAWEST, INC) | IT |
| GRANICUS, LLC | IT |
| IRON MOUNTAIN INC. | IT |
| J & J AIR CONDITIONING, INC | IT |
| OFF-SITE RECORDS MANAGEMENT | IT |
| SHI INTERNATIONAL CORP | IT |
| SMARTWAVE TECHNOLOGIES, LLC | IT |
| SRP/SOCIALSELLINATOR | IT |
| TOSHIBA BUSINESS SOLUTIONS | IT |
| ZOOM VIDEO COMMUNICATIONS, INC | IT |
| ICE MILLER LLP | Legal |
| REED SMITH LLP | Legal |
| SALTZMAN & JOHNSON LAW CORP | Legal |
| CALIFORNIA MEDLINK INC | Medical Consultant |
| EXAMWORKS, INC | Medical Consultant |
| WORK HEALTH SOLUTIONS | Medical Consultant |
| ANTHEM BLUE CROSS LIFE & HEALTH INSURANCE COMPANY | Payroll Medical Insurance |
| KAISER FOUNDATION | Payroll Medical Insurance |
| KAISER PERMANENTE HEALTH PLAN | Payroll Medical Insurance |
| PRUDENTIAL INSURANCE COMPANY | Payroll Medical Insurance |
| VISION SVC PLAN | Payroll Medical Insurance |
| LIFE INSURANCE COMPANY OF NORTH AMERICA-L.I.N.A. | Payroll Medical Insurance |
| LEVI, RAY, AND SHOUP INC | Pension Administration System |
| PITNEY BOWES INC | Postage |
| SENDNLINK | Postage |
| UNITED PARCEL SERVICE | Postage |
| UNITED STATES POSTAL SVC | Postage |
| U S BANK CORPORATE PAYMENT SYSTEMS | Procurement Card |

PACIFIC RESOURCES FIRST AMERICAN, LLC
TRENDTEC INC
VINCE'S OFFICE SUPPLY

Rent
Temp Agency
Office Supplies