

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
City Attorney

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

DATE: April 28, 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 application submitted by the individual 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

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 Department 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. Drew Lanza

Employer

Berkeley Catalyst Fund

Managing Member

Spouse Employer

Retired

Conflict of Interest

Mr. Lanza is a current member of the Police and Fire Department Retirement Plan's Board. Mr. Lanza 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. While Mr. Lanza did not identify any organizations which might be affected by decisions of the Board, he did disclose that he is "fully recusing [himself] from any decisions related to small investments in any venture capital funds which might intersect [his] fund" and that "VC is a very collegial business and [he] 'intersect[s]' hundreds of other VC funds." Mr. Lanza disclosed that his spouse receives a pension from IBM. Mr. Lanza further indicated that he would have no financial interest to disclose other than his interest in his employment and his spouse's pension.

LEGAL REVIEW OF POLICE AND FIRE RETIREMENT BOARD APPLICANTS

Our office reviewed the application submitted by the applicant to be considered for a public member position on the Police and Fire Department Retirement Plan's 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 did not disclose any 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 Police and Fire Department Retirement Plan's Board.

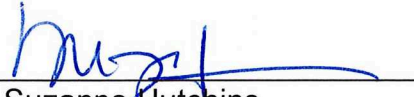
- The applicant indicated that he would not have any financial interests other than his own employment and his spouse's pension.

Attachment A is a list of the entities with which the Police and Fire Department's Retirement Plan's Board has a contractual relationship with as of November 16, 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' RETIREMENT PLAN

List of Administrative and Investment Vendors as of November 16, 2022

Custodian Bank

Investment Consultant

Absolute Return Consultant

Governance and Joint Personnel

General Counsel

Investment Counsel

Tax Counsel

Actuary

Actuary Auditor

Disability Counsel

Auditor

Risk Advisory Services

Portfolio Overlay Services

Pension Administration System

Medical Consultant

Medical Providers

Communication Consultant

Temp Agency

Cellular Service

Death Audit

Membership

Insurance

Investment Data Processing

Bank of New York Mellon

Meketa Investment Group

Koff & Associates

Albourn

Cortex Applied Research

Reed Smith

Hanson Bridget LLP

Ice Miller

Cheiron

The Segal Company

Saltzman & Johnson

Grant Thornton

Verus Advisory

Russell Investments

LRS

Work Health Solutions

Medlink and Examworks

Communication Advantage - Marty Boyer

Trendtec

Verizon Wireless

The Berwyn Group

CALAPRS

Liberty Mutual Insurance and Risk Strategies Company

Abel/Noser Corp

Barra, LLC

Bloomberg Finance LP

Bloomberg Index Services Limited

Dynamo Software, Inc.

Evestment Alliance, LLC

Frank Russell Company

Institutional Limited Partners Association

JP Morgan Bank

Klarity FX Inc

MSCI, Inc

Pitchbook

Pension Real Estate Association

Investments Dues & Subscriptions

Investment Miscellaneous

IT Vendors

Deloitte & Touche
SEI Investments Global Fund Services
Caseware International
Computerland of Silicon Valley
Flexential Colorado Corp (ViaWest)
Granicus LLC
Iron Mountain
J&J Air Conditioning
Off-site Records Management
SHI International Corp
Smartwave Technologies LLC
SRP/Social Sellinator
Toshiba Business Solutions
Zoom Video Communications
Pacific Resources First American LLC

Rent

Investment Managers:

57 Stars
Aether Investment Partners
AIG Global Real Estate
Angelo Gordon
Arbour Lane
Artisan Partners
BlackRock
Blackstone
Blue Bay Asset Management
Berkeley SkyDeck Fund
Bow Capital
Brookfield Asset Management
BSF
Canvas Ventures
CCMP Capital
Centerbridge
Clarion Partners
Columbia Threadneedle Investments
Cove Street Capital
Crabel Capital Management
Credit Suisse Asset Management
Crescent Capital Group
Crestline Investors
Cross Ocean Partners

DE Shaw
Dimensional Fund Advisors
DRA Advisors
Eagle Point Credit Management
EQT Exeter
Exeter Property Group
First Eagle
Francisco Partners
GCP SecureSpace Property Partners
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
JD Capital
Kepos Capital
Kimmeridge
KSL Capital
Kotak India
Lerer Hippeau
Lime Rock Partners
Medley Capital
Mellon Investments Corporation
Morgan Stanley
Mountain Capital
Neuberger Berman
Nortgage Venture Partners
Northern Trust
Next Play Capital
Northgate Capital
Oberweis Asset Management
Octagon Credit Investors
Orion Capital
Orion Mine Finance
Pantheon Ventures
Payden & Rygel

Park Square Capital, LLP
Pine River Capital
Portfolio Advisors
Praedium Group
Rockpoint
RWC
Redwheel
Sculptor Capital Management
Shoreline Capital
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
Voya Investment Management
Warburg Pincus
Wellington Management
White Oak Global Advisors
Wilson Sonsini