



## *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

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### **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

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

Honorable Mayor and City Council

**Subject: Federated Retirement Board Conflicts Review**

April 19, 2023

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PACIFIC RESOURCES FIRST AMERICAN, LLC

TRENDTEC INC

VINCE'S OFFICE SUPPLY

Rent

Temp Agency

Office Supplies