



## *Memorandum*

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Richard Doyle  
City Attorney

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

**DATE:** October 16, 2018

### **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 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 applicants are 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.

**APPLICANTS**

**1. Ghia Griarte**

**Employer**

Ponte Partners

Managing Partner of private equity firm

**Spouse Employer**

Pingtumi

CEO

**Conflict of Interest**

Ms. Griarte did not identify any organization, association, or entity in which she is active or which she is involved or associated with that might be affected by decisions of the Board. She indicated that she would have no financial interest to disclose other than her interest in her employment and her spouse's interest in employment.

**2. Vikas Oswal**

**Employer**

Self Employed

Chief investment Officer

Responsible for managing equities and asset allocation products for advisors, financial institutions and family offices

**Spouse Employer**

Homemaker

**Conflict of Interest**

Mr. Oswal did not identify any organization, association, or entity in which he is active or which he is involved or associated with that might be affected by decisions of the Board. He indicated that he would have no financial interest to disclose other than his interest in his employment. He disclosed that his spouse is receiving a pension from Bank of New York, Mellon.

**3. Elaine Orr**

**Employer**

Self-Employed  
Strategic Consultant

Consulting and advising services  
for asset managers, family offices,  
and foundations

**Conflict of Interest**

Ms. Orr 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.

**LEGAL REVIEW OF POLICE AND FIRE RETIREMENT BOARD APPLICANTS**

Our office reviewed the applications submitted by the applicants to be considered for the public member position on the Police and Fire Retirement 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:

- No application discloses incompatible offices
- No application indicates an appearance of bias.
- No application discloses an existing conflict of interest, e.g. no applicant disclosed an existing financial interest in any organization, association, or entity that has an existing contractual relationship with the Police and Fire Retirement Board.
- One applicant indicated that he would not have any financial interests, other than his employment and his spouse's pension.
- One applicant indicated that she would not have any financial interests other than her employment and her spouse's employment.
- One applicant indicated that she would not have any financial interests other than her employment.

Honorable Mayor and City Council

**Subject: Police and Fire Retirement Board Conflicts Review**

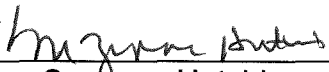
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Attachment A is a list of the entities with which the Police and Fire Departments' Retirement Board currently has a contractual relationship. We note that some of these are forms of entities (partnerships or private companies) in which it is unlikely that the applicants would have a financial interest if they are not employed by the firm. However, even if the applicants do 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 the 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

**POLICE AND FIRE DEPARTMENTS' 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**

**Legal Counsel**

State Street Bank

Meketa Investment Group,

Albourne LLC

Hanson Bridgett LLP

Glass Lewis

Reed Smith, LLP

Ice Miller, LLP

Cheiron

Saltzman Johnson Law

Corp.

**Investment Managers:**

American Realty Advisors

AHL Partners

Artisan Partners Limited Partnership

Beach Point Capital

Blackstone

BlackRock

GO Capital Partners / The Blackstone Group

Blue Bay Asset Management

Brookfield

Comgest Global Emerging Markets

Cross Ocean

Claren Road Asset Management, LLC

CCMP Capital Advisors

Colchester Global Investors Limited

Credit Suisse Risk Parity

Cove Street Capital

Davidson Kempner Capital Management LLC

DE Shaw

Dimensional Fund Advisors

Francisco Partners

Franklin Templeton

Dymon Asia Macro Fund

GEM Realty Capital

Harbour Vest Partners, LLC

Hudson Bay International Fund  
Industry Venture  
JD Capital (Tempo Volatility)  
KSL Capital Partners  
Marathon  
Marshall Wace  
Medley Capital  
Northern Trust  
Oberweis  
OZ Capital  
Orion Capital  
Park Square Capital, LLP  
Pantheon Ventures (US) LP  
Pharo  
Pine River Capital  
Pinnacle  
Portfolio Advisors, LLC  
Rhumblin Advisors  
Russell Implementation Services Inc.  
Sandler Capital Management  
Senator Investment Advisors LLC  
Shoreline Capital  
Siguler Guff & Company, LP  
Symphony  
Systematica  
TA Realty  
Torchlight Investors  
TPG Capital  
Tristan Capital Partners  
Vanguard  
Voya  
Wadhwani (Keynes Lev Quant Strat, Ltd)  
Wellington  
White Oak