

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

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

DATE: May 11, 2020

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 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.

APPLICANTS

1. Sunita Ganapati

Employer

N/A; Wells Fargo until recently

Spouse Employer

Entrepreneur – Self-Employed

No clients identified

Conflict of Interest

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

Ms. Ganapati disclosed that her former employer, Wells Fargo, has been the subject of several investigations and disciplinary actions all of which are well known in the public domain, but she was not directly involved in any of these investigations.

2. 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 his spouse's pension from Bank of New York Mellon.

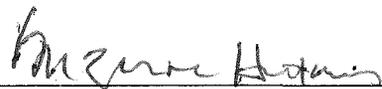
LEGAL REVIEW OF POLICE AND FIRE RETIREMENT BOARD APPLICANTS

Our office reviewed the applications submitted by the applicants 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 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 an incompatible office.
- The applicants did not disclose an appearance of bias.
- The applicants did not disclose an existing conflict of interest, e.g. the applicants did not disclose an existing financial interest in any organization, association, or entity that has an existing contractual relationship with the Board.
- One applicant indicated that she would not have any financial interests, other than her interest in her spouse's employment, to disclose.
- One applicant indicated that he would not have any financial interests, other than his interest in his spouse's pension from Bank of New York Mellon, to disclose.

Attachment A is a list of the entities with which the Police and Fire Departments' Retirement Board has a contractual relationship with as of December 31, 2019. 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 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.

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 Vendors

POLICE AND FIRE DEPARTMENTS' RETIREMENT PLAN

List of Administrative and Investment Vendors as of December 31, 2019

Custodian Bank

Investment Consultant

Hedge Fund Consultant

Investment Attorney

Governance and Joint Personnel

General Counsel

Tax Counsel

Actuary

Disability Counsel

Auditor

Risk Advisory Services

Portfolio Overlay Services

Pension Administration System Project Manager

Legistar Operating System

State Street Bank

Meketa Investment Group,

Albourne LLC

Hanson Bridgett LLP

Cortex

Reed Smith, LLP

Ice Miller, LLP

Cheiron

Saltzman Johnson Law
Corp.

Grant Thornton

Verus Advisory, Inc.

Russell Investments

LRWL

LRS

Investment Managers:

57 Stars LLC

AHL Partners

Artisan Partners Limited Partnership

BlackRock

The Blackstone Group

Blue Bay Asset Management

Brookfield Asset Management

Cross Ocean Partners

Clarion Partners

CCMP Capital Advisors

Crestline Investors

Credit Suisse Asset Management

Crescent Capital Group

Cove Street Capital

DE Shaw

Dimensional Fund Advisors

DRA Advisors, LLC

Dymon Asia Capital, LTD

Francisco Partners

GEM Realty Capital

GQG Partners
Global Infrastructure Partners
Harbour Vest Partners, LLC
Hudson Bay Capital Management
Industry Venture
Innovation Endeavors
Insight Investment
JD Capital
Kepos Capital LP
KSL Capital Partners
Kimmeridge Energy
Lime Rock Partners
Marathon Asset Management
Medley Capital
Neuberger Berman
Northern Trust
Oberweis
Octagon Credit Investors
Sculptor/Och Ziff Real Estate Funds III
Orion Capital
Park Square Capital, LLP
Pantheon Ventures (US) LP
Pharo
Pine River Capital
Pinnacle
Portofolio Advisors, LLC
Russell Investments
RWC Emerging Markets Equity Fund LP
Sandler Capital Management
Senator Investment Advisors LLC
Shoreline Capital
Siguler Guff & Company, LP
Systematica Investments, LTD
TA Associates Realty
TCW
Torchlight Investors
TPG Capital
Tristan Capital Partners
Vanguard

Wadhvani Asset Management LLP
Warburg Pincus, LLC
Wellington EM Systematic
Wellington Management
White Oak Global Advisors