

AGENDA

A SPECIAL JOINT MEETING OF THE BOARD OF RETIREMENT

AND THE BOARD OF INVESTMENTS

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION

300 NORTH LAKE AVENUE, SUITE 810, PASADENA, CALIFORNIA 91101

9:00 A.M., WEDNESDAY, APRIL 4, 2018

*The Board may take action on any item on the agenda,
and agenda items may be taken out of order.*

- I. CALL TO ORDER
- II. PLEDGE OF ALLEGIANCE
- III. APPROVAL OF MINUTES
 - A. Approval of the Minutes of the Special Joint Meeting of the Board of Retirement of August 10, 2017
 - B. Approval of the Minutes of the Special Joint Meeting of the Board of Investments of August 10, 2017
- IV. PUBLIC COMMENT
- V. NON-CONSENT ITEMS
 - A. Presentation regarding LACERA's Chief Executive Officer Search as submitted by Michael Kennedy, Senior Client Partner, and Josh Tanenbaum, Senior Associate, from Korn Ferry.
(Memo dated March 27, 2018)

April 4, 2018

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V. NON-CONSENT ITEMS (Continued)

B. Recommendation as submitted by Johanna M. Fontenot, Senior Staff Counsel: That the Boards consider the following three possible reporting structures for the Chief Investment Officer position:

1. The current structure where the Chief Investment Officer reports to the Chief Executive Officer;
2. Change the reporting structure for the Chief Investment Officer to report directly to the Board of Investments; or
3. Chief Investment Officer reports to the Chief Executive Officer and have a formal policy that requires the Chief Executive Officer to seek the input from the Board of Investments with regard to hiring, evaluation and termination.

(Memo dated March 27, 2018)

VI. REPORTS

A. For Information Only as submitted by Steven P. Rice, Chief Counsel, regarding Joint and Separate Responsibilities of the Boards.

(Memo dated March 27, 2018)

VII. EXECUTIVE SESSION

A. Conference with Legal Counsel - Anticipated Litigation Initiation of Litigation (Pursuant to Paragraph (4) of Subdivision (d) of California Government Code Section 54956.9)

Number of Potential Cases: One

VIII. ADJOURNMENT

April 4, 2018

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Documents subject to public disclosure that relate to an agenda item for an open session of the Board of Retirement that are distributed to members of the Board of Retirement less than 72 hours prior to the meeting will be available for public inspection at the time they are distributed to a majority of the Board of Retirement Members at LACERA's offices at 300 N. Lake Avenue, Suite 820, Pasadena, CA 91101, during normal business hours of 9:00 a.m. to 5:00 p.m. Monday through Friday.

Persons requiring an alternative format of this agenda pursuant to Section 202 of the Americans with Disabilities Act of 1990 may request one by calling Cynthia Guider at (626) 564-6000, from 8:30 a.m. to 5:00 p.m. Monday through Friday, but no later than 48 hours prior to the time the meeting is to commence. Assistive Listening Devices are available upon request. American Sign Language (ASL) Interpreters are available with at least three (3) business days notice before the meeting date.

MINUTES OF THE BOARD OF RETIREMENT FROM
A SPECIAL JOINT MEETING OF
THE BOARD OF RETIREMENT AND THE BOARD OF INVESTMENTS
OF THE LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION
300 NORTH LAKE AVENUE, SUITE 810, PASADENA, CA 91101
THURSDAY, AUGUST 10, 2017
1:00 P.M.

PRESENT: Shawn Kehoe, BOR Chair

Vivian Gray, BOR Vice Chair

Marvin Adams

Alan Bernstein

Anthony Bravo

Joseph Kelly

Ronald Okum

ABSENT: William de la Garza, BOR Secretary

David Muir

William Pryor

STAFF ADVISORS AND PARTICIPANTS

Gregg Rademacher, Chief Executive Officer

Steven P. Rice, Chief Counsel

Funston Advisory Services LLC
Rick Funston, Consultant

BOARD OF INVESTMENTS

David Green, BOI Chair

Shawn Kehoe, BOI Vice Chair

Joseph Kelly, BOI Secretary

Ronald Okum

Diane Sandoval

Herman B. Santos

Michael Schneider

I. CALL TO ORDER

The meeting was called to order by Mr. Kehoe at 1:07 p.m., in the Board Room of Gateway Plaza.

II. PUBLIC COMMENT

There were no requests from the public to speak.

III. ACTION ITEMS

A. Recommendation as submitted by the Ad hoc Joint Organizational Governance Evaluation Committee:

1. The Board of Retirement and the Board of Investments approve the Joint Organizational Governance Committee Charter, and
2. The Board of Retirement and the Board of Investments each elect a member to the Joint Organizational Governance Committee. (Memo dated August 1, 2017)

Messrs. Rademacher and Rice and Rick Funston of Funston Advisory

Services were present and answered questions from the Board.

III. ACTION ITEMS (Continued)

Mr. Kehoe made a motion, Mr. Okum seconded, to approve the Joint Organizational Governance Committee Charter with the following revisions listed below. The motion passed unanimously.

- 1) Eliminate section 7.1 (Dispute Resolution) to combine the items listed in Section 7.2 (Litigation and Claims) in the redline provided by Trustee Muir;
- 2) Revise Section 7.3 (Legislation) to reference only recommendations regarding legislation that impacts both Boards and delete second paragraph in Section 7.3;
- 3) Revise Section 7.4 (Staff Compensation) to coincide with the Audit Committee Charter regarding the Chief Audit Executive;
- 4) Include Strategic Planning in Section 7.9 (Organizational Philosophy); and
- 5) Include the following verbiage in the Overview of the LACERA Board of Retirement and Board of Investments Section to state that the BOI is also responsible for obtaining actuarial valuations that serve as the basis for setting employer and employee contribution rates required to fund the system.

Mr. Bernstein was nominated as a member of the Joint Organizational Governance Committee by Mr. Kehoe. Hearing no other nominations, the Board voted unanimously and elected Mr. Bernstein as a member of the Joint Organizational Governance Committee.

August 10, 2017

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IV. CLOSED SESSION

- A. Conference with Legal Counsel - Anticipated Litigation
(Significant Exposure to Litigation Pursuant to Paragraph (2) of
Subdivision (d) of California Government Code Section 54956.9)

- 1. Number of Potential Cases: 1

Mr. Kehoe make a motion, seconded by Mr. Bernstein to refer this matter to the Joint Organizational Governance Committee. The motion passed unanimously.

- B. Pursuant to Government Code Section 54957 – Public Employee

- 1. Performance Evaluation:
Title: Chief Executive Officer

This item was not discussed.

V. ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned at 4:14 p.m.

MINUTES OF THE BOARD OF INVESTMENTS FROM
A SPECIAL JOINT MEETING OF
THE BOARD OF RETIREMENT AND THE BOARD OF INVESTMENTS
OF THE LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION
300 NORTH LAKE AVENUE, SUITE 810, PASADENA, CA 91101
THURSDAY, AUGUST 10, 2017
1:00 P.M.

PRESENT: David Green, BOI Chair

Shawn Kehoe, BOI Vice Chair

Joseph Kelly, BOI Secretary

Ronald Okum

Diane Sandoval

Herman B. Santos

Michael Schneider

ABSENT: Wayne Moore

Valerie Villarreal

STAFF ADVISORS AND PARTICIPANTS

Gregg Rademacher, Chief Executive Officer

Steven P. Rice, Chief Counsel

Funston Advisory Services LLC
Rick Funston, Consultant

BOARD OF RETIREMENT

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Ronald Okum

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Messrs. Rademacher and Rice and Rick Funston of Funston Advisory

Services were present and answered questions from the Board.

III. ACTION ITEMS (Continued)

Mr. Kehoe made a motion, Mr. Green seconded, to approve the Joint Organizational Governance Committee Charter with the following revisions listed below. The motion passed unanimously.

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- 5) Include the following verbiage in the Overview of the LACERA Board of Retirement and Board of Investments Section to state that the BOI is also responsible for obtaining actuarial valuations that serve as the basis for setting employer and employee contribution rates required to fund the system.

Mr. Santos was nominated as a member of the Joint Organizational Governance Committee by Mr. Green. Hearing no other nominations, the Board voted unanimously and elected Mr. Santos as a member of the Joint Organizational Governance Committee.

IV. CLOSED SESSION

- A. Conference with Legal Counsel - Anticipated Litigation
(Significant Exposure to Litigation Pursuant to Paragraph (2) of
Subdivision (d) of California Government Code Section 54956.9)

1. Number of Potential Cases: 1

Mr. Kehoe make a motion, seconded by Mr. Santos to refer this matter to
the Joint Organizational Governance Committee. The motion passed unanimously.

- B. Pursuant to Government Code Section 54957 – Public Employee

1. Performance Evaluation:
Title: Chief Executive Officer

This item was not discussed.


V. ADJOURNMENT

There being no further business to come before the Board, the meeting was
adjourned at 4:14 p.m.



March 27, 2018

TO: Each Member
Board of Investments
Board of Retirement

FROM: Robert R. Hill 
Interim Chief Executive Officer

FOR: April 4, 2018 Joint Board of Investments and Board of Retirement Meeting

SUBJECT: EXECUTIVE SEARCH SERVICES - KORN FERRY

Korn Ferry has been selected as LACERA's Search Partner. Michael Kennedy, Senior Client Partner and Head of the Firms Public Funds Specialty Group, will lead the search for LACERA. Korn Ferry was determined to be the best fit for this search based on Mr. Kennedy's commitment to transparency and diversity, communication style, extensive knowledge of the public pension industry, and knowledge of LACERA's operations. In addition, Mr. Kennedy is very familiar with the culture and dynamics of LACERA and our Boards as he led the successful search for LACERA's 2016 Chief Investment Officer (CIO). Josh Tanenbaum, Senior Associate in Korn Ferry's New York office, assisted Mr. Kennedy on the CIO project and will assist with the CEO project as well.

Following you will find additional information on Korn Ferry, Michael Kennedy, and Josh Tanenbaum.

Korn Ferry is headquartered in Los Angeles, California. Korn Ferry is a leading global executive search and leadership consultancy firm with over 40 years of experience in recruiting Chief Executive Officers and Executive Directors for public retirement systems, private pension plans, endowments, foundations, and investment management firms. Since its founding in 1969, Korn Ferry International has been the executive recruitment industry's leader and innovator, and today has evolved as the world's premier provider of executive talent management solutions. Globally, the company has approximately 80 offices in 40 countries, spread throughout the Americas, Asia Pacific, Europe, the Middle East, and Africa. Korn Ferry conducts more than 10,000 senior-level searches for clients worldwide each year.

Mr. Kennedy leads the firm's efforts in the pension sector and is highly respected in the field, with an excellent reputation and proven track record in successful executive high-profile placements at CEO and Executive Director levels for pension funds,

endowments and foundations, Taft-Hartley plans, and asset management organizations. For the past 10 years, Mr. Kennedy has also co-lead the Diversity Practice at Korn Ferry and has placed numerous diverse candidates into leadership roles. In 2010, Mr. Kennedy was appointed by President Obama to serve as chairman of the Federal Retirement Thrift Investment Board, the largest pension fund in the country, and has been confirmed by the United States Senate.

Mr. Tanenbaum is a member of Korn Ferry's Asset Management and Alternatives practice, as well as a founding member of its Impact & Sustainable Investing Center of Expertise and Transactions & Transformation Solution. Josh specializes in recruiting senior investors and lifting out teams. Prior to joining Korn Ferry in 2014, he founded a venture platform and social enterprise, which was successfully exited. He started his career in Asset Management at Deutsche Asset & Wealth Management and Morgan Stanley, focusing on manager due diligence and business development. Josh serves as the firm's Asset Management & Alternatives Lead for Transactions & Transformations. He partners with asset managers and asset owners on team lift-outs and mergers and acquisitions and advises on mitigating intangible and human capital risks and ensuring a successful integration.

Mr. Kennedy and Mr. Tanenbaum will be introduced to your Boards at its joint Board of Investments and Board of Retirement meeting on Wednesday, April 4, 2018. At which time, Mr. Kennedy will provide a presentation to update the Boards regarding the CEO search.



**LOS ANGELES COUNTY EMPLOYEES
RETIREMENT ASSOCIATION**

Chief Executive Officer

April 2018



Korn Ferry Team

Michael Kennedy
Senior Client Partner
Atlanta, GA

Josh Tanenbaum
Senior Associate
New York, NY

- **Michael Kennedy and Josh Tanenbaum** – Michael and Josh will lead the day-to-day execution of this project for LACERA. Michael is a senior member of the Asset Management Practice and has over 19 years of recruiting experience in asset management and over 12 years in recruiting for public pension plans. Michael will lead the overall search process and all meetings/discussions with the search committee. Michael and Josh will both be involved in outreach to candidates. Michael will participate on-site in candidate interviews and other relevant meetings.
- **Knowledge of LACERA** – Michael and Josh conducted the CIO search which led to the hiring of Jon Grabel in early 2017. As a result, the Korn Ferry team is already familiar with the organizational structure and culture of LACERA.
- **Executive Director Experience** – Michael has led ED projects for public pension plans since 2005. This extensive search experience will enable the Korn Ferry team to have greater access to top talent.
- **Public Pension Board Experience** – In 2010, Michael was named by President Obama to serve on the Federal Retirement Thrift Investment Board, the largest pension fund in the country with assets currently at \$480 billion. In 2011, President Obama elevated Michael to become Chairman of the five member Board. Michael served as a Trustee of the Employees Retirement System of Georgia for 15 years, and was Chairman of the Investment Committee. These experiences have allowed Michael to be more effective in collaboratively working with Public Pension Boards as part of the search process.
- **Extensive Public Pension Search Experience** – The Korn Ferry team has worked with an extensive list of public pension plans across the country. Some of these include: LACERA, CalPERS, CalSTRS, Texas Teachers, North Carolina, Virginia Retirement System, Maryland State Retirement Agency, Illinois Teachers, Minnesota State Board of Investment, and others. This strong track record should allow Korn Ferry to be uniquely able to partner with the LACERA Board for the Executive Director position.
- **Diversity** – Michael Kennedy co-leads the Diversity Practice at Korn Ferry and has an extensive track record in recruiting diverse talent to senior pension roles. Michael is the only executive search consultant who is a member of the National Association of Securities Professionals, an organization for people of color in the asset management industry. He is also a supporter of the TOIGO Fellowship Program. For the CIO search, the Korn Ferry team produced a diverse slate of candidates.



Michael Kennedy



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michael.kennedy@kornferry.com

Senior Client Partner, Global Asset Management Practice

- Michael Kennedy is a Senior Client Partner in the Atlanta office of Korn Ferry and a member of the firm's Global Financial Services Market. He leads the firm's efforts in the pension sector and has conducted senior level searches for the largest pension plans in the country. He has conducted Chief Investment Officer assignments for pension funds, endowments and foundations, Taft-Hartley plans and asset management organizations. He is also a co-leader in the firm's diversity efforts, and has worked with numerous financial services organizations in the development and implementation of diversity recruiting efforts.
- Prior to joining Korn Ferry, Mr. Kennedy's career experience was in corporate finance and asset management. He previously worked in senior roles at General Electric Capital Corporation and Wachovia. He started his financial services career as an Equity Research Analyst at JP Morgan Investment Management Group.
- In 2010, Mr. Kennedy was nominated by President Obama, and confirmed by the US Senate, to the Federal Retirement Thrift Investment Board, the largest retirement plan in the country. In 2011, President Obama designated him as Chairman. With assets exceeding \$460 billion, the Federal Retirement Thrift Investment Board develops and establishes policies governing the Thrift Savings Plan (TSP). In 2014, Mr. Kennedy was recognized for his leadership by Sovereign Wealth Institute's publication, *Sovereign Wealth Quarterly*, which ranked him as #5 on its list of the top 100 public investors globally. Also in 2014, Mr. Kennedy was reappointed by President Obama to another four-year term as Chairman.
- Prior to joining the Federal Retirement Thrift Investment Board, Mr. Kennedy served for 14 years as a Trustee at the Employees Retirement System of Georgia. During part of his tenure, he served as the Board Chair and Chairman of the Investment Committee. During his term as Chairman of the Investment Committee, he was involved in moving the plan into alternative investments, including private equity.
- Mr. Kennedy currently sits on the Board of the University of North Carolina at Chapel Hill Investment Foundation Fund Board and also serves as a national co-chair of the UNC capital campaign. He previously served as Chairman of the UNC Board of Visitors. In addition to his UNC involvement, Mr. Kennedy has served on the Board of Trustees of the Phillips Exeter Academy in Exeter, New Hampshire.
- In the Atlanta community, he has been involved with the Communities-In-Schools program, serving in numerous leadership roles including Board Chair. He has also been involved in the Harvard Business Club of Atlanta and the National Association of Securities Professionals.
- Mr. Kennedy earned a Master in Business Administration from Harvard Business School. He received a Bachelor's degree with highest honors in History and Political Science from the University of North Carolina at Chapel Hill.



Josh Tanenbaum

Senior Associate, Asset Management & Alternatives



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Delivering results for clients

Josh Tanenbaum is a member of Korn Ferry's Asset Management and Alternatives practice, as well as a founding member of its Impact & Sustainable Investing Center of Expertise and Transactions & Transformation Solution. Josh specializes in recruiting senior investors and lifting out teams.

Prior to joining Korn Ferry in 2014, he founded a venture platform and social enterprise, which was successfully exited. He started his career in Asset Management at Deutsche Asset & Wealth Management and Morgan Stanley, focusing on manager due diligence and business development.

Josh has spoken at forums such as The White House, The University of Maryland Smith School of Business, The University of Michigan Ross School of Business, Nexus Global Youth Summit, and recently, he judged the President Clinton-backed Hult Prize.

Josh currently serves Senior Advisor to an emerging markets private equity fund. Josh is also a member of the University of Michigan Ross School of Business's Erb Institute External Advisory Board.

Expertise

Josh serves as the firm's Asset Management & Alternatives Lead for Transactions & Transformations. He partners with asset managers and asset owners on team lift-outs and mergers and acquisitions and advises on mitigating intangible and human capital risks and ensuring a successful integration.

As an investment specialist, Josh has placed Chief Investment Officers and heads of asset classes for Asset Managers, Endowments & Foundations, Hospitals, Public and Corporate Pension Plans across Public Equity, Fixed Income, Hedge Funds, Private Equity and Credit.

Academic background

Josh graduated from the University of Melbourne, Australia where he earned a dual B.A. in Sociology and Politics & International Studies.



Stakeholder Feedback

	Board	Staff
Leadership/Management	<ul style="list-style-type: none"> • Connect with people/Soft Skills • Strong communicator • Diversity 	<ul style="list-style-type: none"> • Connect with people/Approachable/Build relationships • Strong communicator • Character/Honest/Build trust
Pension Experience	Mixed <ul style="list-style-type: none"> • Critical vs Non-critical 	Divided <ul style="list-style-type: none"> • If not, premium on management/leaders
Public Sector	More open to candidates without deep public sector experience	Preferred <ul style="list-style-type: none"> • Must understand public sector
Board	Board Experience <ul style="list-style-type: none"> • Work with strong Board(s) • Strong leader/Communicator 	Board Perspective <ul style="list-style-type: none"> • More hands on over time • Strong leader/Communicator
Type of Candidate	Open to Internal and External Candidates <ul style="list-style-type: none"> • Need fresh perspective • Bring best practices • Visionary/Strategic • Stability • Open to non-traditional candidates 	Open to Internal and External Candidates <ul style="list-style-type: none"> • Fresh perspective/Different perspective • Challenge old way of doing things • 21st century vision



Search Strategy: Potential Target Universe

Scenario 1

Pension Funds

Implications

- Known quantity & reputation
- Immediate knowledge of role
- Proven track record
- Easy to reference 360
- Extensive knowledge of plan administration

Scenario 2

Consulting Firms

Implications

- Creative
- Allow entrée for “best athletes”
- Provide “best in class” perspective
- May not have management experience
- Some candidates may have pension experience prior to entering consulting

Scenario 3

Other

Implications

- Known quantity & reputation
- Understand role from different perspective
- Proven track record
- May not have extensive pension background
- References will be important

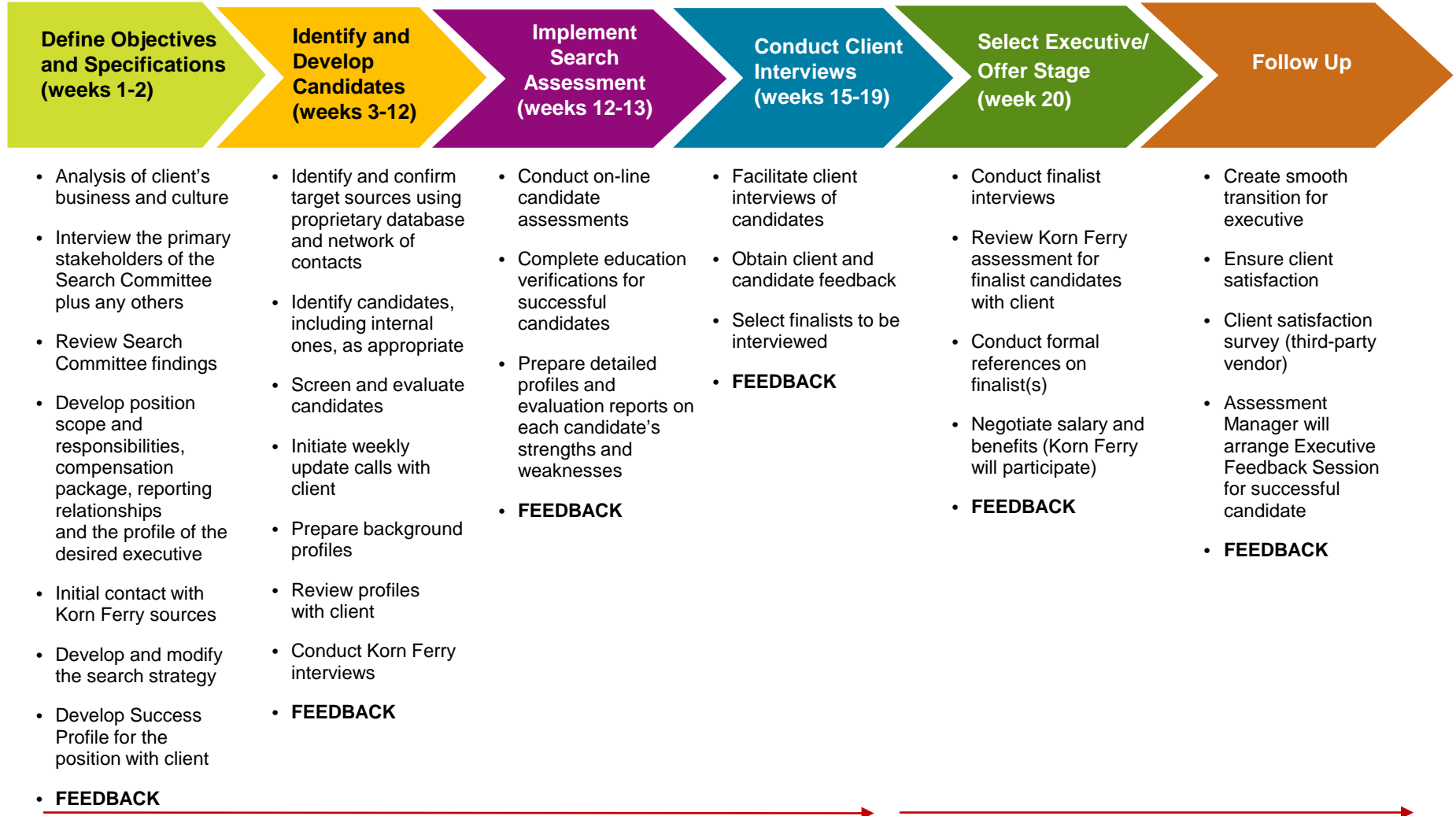
Focus on:

- **Diversity outreach**
- **Non-Traditional candidates**
- **Local candidates**



Proposed Timeline

We use a 6-step approach to our searches that fully integrates the client's executive team in the decision making at each critical juncture



Above is typical timing shown, however where the search is time sensitive KF endeavors to meet our clients deadlines

Time to close based on candidate and client availability.



Tentative Timeline

*Weekly Calls

*Status Reports updated Weekly

March	Calls/in-person meetings with various stakeholders (search committee members, Board members, relevant staff, etc.).
April/May	Initiate candidate outreach. Preliminary discussion on position description and KF4D. Candidate Outreach.
May/June	Candidate Outreach. Potential in-person meeting with Search Committee. Establish tentative interview dates for first and second rounds.
June	Candidate Outreach. Discussion of candidate slate with search committee to select initial list of candidates for potential interviews. Confirm potential interview dates for first and second round interviews. First round candidate interviews (education verification completed on each candidate prior to interview).
July/ August	Second round interviews. KF4D Assessments.
August/September	Interviews with joint Boards.
September	Reference checks; salary negotiations; offer extended.





Lessons Learned – Market Feedback

Challenges

- Location

Positives

- Location
- Opportunity to build/reset investment program
- Size/scale of plan
- Largest county plan in the country
- Quality of team
- Not as involved in state politics







March 27, 2018

TO: Each Member
Board of Investments
Board of Retirement

FROM: Johanna M. Fontenot *JMF*
Senior Staff Counsel

FOR: April 4, 2018 Joint Board of Retirement and Board of Investments Meeting

SUBJECT: **STAFF ANALYSIS ON PROPOSAL THAT CHIEF INVESTMENTS
OFFICER REPORT TO THE BOARD OF INVESTMENTS**

The purpose of this memorandum is to provide information to assist your Boards in considering the proposal to change the Chief Investments Officer (CIO) reporting structure from reporting to the Chief Executive Officer (CEO) to reporting to the Board of Investments (BOI).

Legal Authority

As previously explained in the October 2, 2017 memo, your Boards have the legal authority under Government Code Section 31522.4 to change the reporting structure of the CIO position. For your convenience, the October 2, 2017 memo is attached as Attachment A.

Role of the CIO

The CIO is regarded as the investments expert for the BOI acting as advisor on all matters involving the investment of LACERA assets. This unclassified position reports to the CEO and is responsible for directing the implementation of LACERA's investment policies and programs adopted by the BOI. The CIO is responsible for monitoring and supervising the management of LACERA's portfolio. Additionally, the CIO directs, plans and supervises the Investment staff. The CIO currently has 7 direct reports. A copy of the CIO job description is attached as Attachment B.

CIO Serves at the Pleasure of the Boards, With Appointing Authority Presently Delegated to the CEO

In 2001, LACERA sponsored legislation that authorized LACERA to employ certain management positions exempt from the civil service system, and therefore, the individuals occupying these positions would serve at the pleasure of the appointing Boards. (Government Code Sections 31522.2 and 31522.4). Since the Boards

designated the CIO position as an at-will position, the CIO serves at the pleasure of the Boards.

Currently, the CIO reports to the CEO because the Boards have delegated their appointing authority under Government Code Section 31522.4 to the CEO. The Boards, acting jointly, have the authority to revoke or revise this delegation.

Peer Systems

One of the fundamental challenges in comparing LACERA's reporting structure to other funds is the diversity among the public pension funds themselves with regard to operational models, laws, regulations and policies. There are at least four basic fund governance models in use among major state and CERL funds:

- 1) an integrated investment and pension administration organization with a single fiduciary board;
- 2) a separate investment management board;
- 3) separate investment and pension administration organizations reporting to the same fiduciary board. In this model, the board delegates pension administration to the CEO and investment responsibilities to a CIO, with each reporting directly to the board; and
- 4) sole fiduciary, where responsibility is vested in an elected or appointed official, typically the state treasurer or comptroller.

The most common model is the integrated investment and administration with a single board, with the CEO responsible for the entire organization and the CIO and all other key employees reporting to the CEO.

There is limited value in comparing LACERA to other systems for purpose of CIO reporting since LACERA is the only CERL system with a separate investments board and there are only a small minority of states that have separate investment boards. Nevertheless, a review of peer systems reveals in most circumstances the CEO has general responsibility for the entire organization, including the CIO. The second most common is a dual structure where the CEO and board share responsibilities – the CIO has straight line to the CEO and a dotted line to the board. In this scenario, the CEO would be responsible for managing, directing, supervising and evaluating the work and performance of the CIO and the board plays a role in the recruitment, selection and evaluation of the CIO by providing input to the CEO. Finally, a few systems have the CIO reporting directly to the board.

Fiduciary Review by Ennis Knupp & Associates

Ennis Knupp & Associates conducted a fiduciary review on behalf of the BOI in 2008. Ennis Knupp reviewed documentation, analyzed data, and interviewed staff. As part of their review, they made observations about the CIO position with regard to reporting and evaluation. Ennis Knupp noted the following with regard to reporting and evaluation:

Reporting. The reporting lines within LACERA relating to the investment activities are typical of what is found in other similar-sized public retirement systems, with the notable exception of having two boards. Most large funds have one board with the CIO reporting organizationally up through the CEO but interfacing directly with the oversight board at meetings. We found no issues with the current reporting lines of the CIO and CEO and understand from staff and BOI members that in their views it works well.

Evaluation. Because communication with the governing Board is so important, it is wise for the CEO to seek input from the BOI as part of the CIO's evaluation process. We understand that this is done informally but that there is no requirement for the CEO to continue this practice.

The fiduciary review further states that the best practice for LACERA is to keep the CEO responsible for hiring, firing, evaluating and compensating CIO, but have a formal policy requiring the CEO to seek Board and staff input as part of the evaluation process. Ennis Knupp noted that LACERA's practice was for the CEO to receive informal input from the BOI, however, Ennis Knupp recommended as a best practice that the BOI adopt a formal policy requiring the CEO to seek board input as part of the evaluation process. This recommendation, however, was never implemented by the former CEO. For this reason, LACERA does not have a formal policy requiring the CEO to seek board input as part of the evaluation process of the CIO.

Interview of Investments Staff

The majority of the staff interviewed about the proposed change in reporting of the CIO stated that they prefer the present reporting arrangement, although a couple employees observed that it is a difficult question because there is currently no permanent CEO. Some staff stated that their preference depends primarily on the leadership skills and effectiveness of the next CEO. If there is a strong and capable leader as CEO they believed it is more advantageous for the CIO to report to the CEO. On the other hand, if the CEO is weak, it may be more advantageous for the CIO to report to the BOI.

The following are some of the expressed concerns if the CIO reporting changes to reporting to the BOI. First, it may be difficult to form consensus as to appropriate measurement and monitoring of the CIO's performance due to the constant changing of the composition of the BOI. Second, it is important for the CIO to have the CEO as a "buffer" and "checks and balances" to the BOI's political influence. This was explained by the observation that a CIO should be able to say "no" to certain requests of the BOI or "challenge" the BOI without fear of losing his or her job or receiving a negative evaluation. Finally, there was some concern about the lack of clear direction, communication and assignment of administrative duties if the reporting structure changed.

Best Practices

Surveys of other peer systems show that there is not a "one size fits all" standard of care that all systems must follow when it comes to reporting structure. Instead an assessment of many factors should be considered and analyzed to ensure that the Board is selecting a reporting arrangement that connects a fund's decision-makers with one another, strengthens fiduciary principles and provides good governance.

Stanford's Clapman Report *Fund Governance Best Practice Principles* (the "Report") summarized the principles of fund leadership and the interplay of the governing body and executive staff, in part, as follows:

- A fund should identify and disclose its leadership structure and all persons in positions of senior responsibility.
- A fund should establish clear lines of authority between its governing body and its staff that reflect a commitment to representing beneficiary interests. Delegations of authority from a governing body to its staff should be clearly defined and regularly reviewed.
- A governing body should have authority to select or dismiss key staff and independent advisors and counsel. However, executive staff must be qualified and able to fully discharge their duties. Trustees must therefore not allow undue influence to be exerted on staff, usurp the function of staff, nor allow staff to usurp the function of trustees.

The Clapman Report 2.0, which updates the original Report, references the comprehensive review performed by CalPERS of its governance policies and states that it "provides an excellent example of a framework for addressing these issues." With regard to reporting structure, CalPERS Governance Policy, Section 9 *Delegations to Executives and Board Reporting Relationships* states the following six principles:

1. The Board will have one direct report: The Chief Executive Officer. The Chief Executive Officer is responsible for the overall administration of all units, departments and functions within CalPERS. The Board and the Chief Executive Officer share responsibility for hiring, evaluating and, if necessary, terminating the Chief Investment Officer.
2. The Board will have long-term Chief Executive Officer and Chief Investment Officer succession planning processes.
3. The Board will evaluate direct report performance and compensation based on the agreed-upon strategy and performance outcomes and metrics. If the Board is not satisfied with the performance of the Chief Executive Officer, it will discipline or replace him or her, but will not get involved in day-to-day operations.
4. The Board will have ready access to all executives, and such access will be coordinated by the Chief Executive Officer.
5. The Board strongly supports an environment where CalPERS staff may engage in impartial, robust, objective and ethical decision-making free of improper influence from individual Board members, executives or third parties. The Board requires implementation of a staff policy regarding impartial decision-making and immediate reporting of instances of undue influence.
6. The Board and/or its committees will establish a schedule of closed session meetings with selected executives, i.e., those making frequent reports to Board, including the Chief Investment Officer.

The CIO is regarded as the investments expert and spends more time on Board issues such as directives, strategies and implementation compared to the time working on administrative assignments involving the CEO. But that is only one of the considerations. Other considerations, involving clear lines of authority, independence, conflict of interest and fiduciary considerations, are very important and covered in a separate memorandum prepared by fiduciary counsel Harvey Leiderman. A copy of Mr. Leiderman's opinion dated December 1, 2017 is attached as Attachment C.

Summary

There are three possible reporting structures for the Boards to consider for the CIO position: 1) the current structure where the CIO reports to the CEO; 2) change the reporting structure for the CIO to report directly to the BOI; or 3) CIO report to the CEO and have a formal policy that requires the CEO to seek the input from the BOI with regard to hiring, evaluation and termination.

Re: Staff Analysis
March 27, 2018
Page 6

The purpose of this memorandum is to provide you feedback as to LACERA staff, other systems' practices and best practices with regard to CIO reporting arrangement.

Reviewed and Approved:



Steven P. Rice
Chief Counsel

Attachments

c: Robert Hill
Jonathan Grabel
James Brekk
John Popowich
Bernie Buenaflor
Harvey Leiderman

Attachment A

October 2, 2017 Board Memo

Attachment A

October 2, 2017

TO: Each Member,
Board of Investments

Each Member,
Board of Retirement

FROM: Steven P. Rice *SPR*
Chief Counsel

FOR: October 11, 2017 Board of Investments Meeting
October 12, 2017 Board of Retirement Meeting

SUBJECT: **REPORT ON WORK PLAN FOR PROPOSAL THAT CHIEF
INVESTMENT OFFICER REPORT TO BOARD OF INVESTMENTS**

On August 28, 2017, the Joint Organizational Governance Committee (JOGC) voted to direct the JOGC Chair to work with Staff on a proposal that LACERA's Chief Investment Officer (CIO) report to the Board of Investments (BOI). This memo reports to both the Board of Retirement (BOR) and the Board of Investments (collectively, Boards) on Staff's work plan with regard to the issue. No action is required at this time.

LEGAL AUTHORITY

Under Government Code Section 31522.4, the Boards may elect to appoint a CIO; the position must be included in the Los Angeles County Salary Ordinance. Appointees under Section 31522.4 are not subject to the Civil Service Rules and serve at the will of the Boards. Many years ago, the LACERA Boards elected to delegate their appointing authority under Section 31522.4 to the Chief Executive Officer (CEO). This decision is confirmed in the County Salary Ordinance, which provides, in Section 6.127.040 B 1, that the CEO is "Appointing Authority" for the CIO; other sections of the Salary Ordinance provide that salary determinations, discipline, and dismissal are functions of the Appointing Authority. The published Class Specification for the CIO position provides that the CIO reports to the CEO. The Boards have the authority under Section 31522.4 to change the reporting structure. By action of both Boards, and with the approval of the Board of Supervisors as to necessary Salary Ordinance changes, the CIO may be assigned to report to the BOI, as proposed.

In considering such a proposal, the Boards will exercise their plenary authority and discretion over administration of the system and their fiduciary duties of prudence and loyalty under Article XVI, Section 17 of the California Constitution and Government Code Section 31595, both of which address the Boards' investment authority as well as other duties. Section 31595 provides, in relevant part:

The board and its officers and employees shall discharge their duties with respect to the system:

(a) Solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system.

(b) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.

The Constitution contains similar language.

WORK PLAN

The proposed change represents a major shift in LACERA's longstanding governance model. The change affects many existing LACERA governance documents, policies, procedures, and practices. Accordingly, the change should be considered by means of a careful, deliberate, and thorough process that will enable potential issues to be identified, discussed, and addressed up front before the change is effective, if approved, and that is consistent with the Boards' fiduciary duties as outlined above.

Staff has considered the issues involved in the proposed change and will employ the following six-step work plan in evaluating the issues and then presenting the proposal for discussion and action to the JOGC, the LACERA Boards, and ultimately the Board of Supervisors. The tasks and completion dates will be modified as needed based on information obtained as the process moves forward. However, it is reasonable for the Boards to expect that all tasks will be completed in time to permit implementation, if the proposal is approved, on July 1, 2018, which is the beginning of the 2018-2019 fiscal year and is also the beginning of the Staff Evaluation Year:

<i>TASK</i>	<i>COMPLETION</i>
Step 1: Staff Analysis <ul style="list-style-type: none">• Survey of Peer Systems• Elements of Appointing Authority's Responsibilities<ul style="list-style-type: none">○ Hiring○ Performance Standards○ Goals○ Supervision and Monitoring	November 2017

<ul style="list-style-type: none"> ○ Evaluation ○ Feedback ○ Compensation Setting ○ Discipline ● Effect on CIO Supervision of Investment Office Staff, including Administrative Policies and Procedures ● Review and Analysis of Relevant Existing Documents, including Class Specification, JOGC Charter, BOI Charter, and Other LACERA and BOI Policies and Procedures ● Review and Analysis of Fiduciary Issues and Implications in Performing Appointing Authority Role <ul style="list-style-type: none"> ○ Checks and Balances ● Review of BOR Policies, Roles, and Responsibilities ● Consultation with CIO and Investment Staff ● Consultation with CEO ● Consultation with Outside Fiduciary Counsel 	
<p>Step 2: Draft Supporting Documents</p> <ul style="list-style-type: none"> ● Class Specification ● Salary Ordinance ● JOGC Charter ● BOI Charter and Other Governance Documents ● Investment Policy Statement and Other Policies ● New BOI Policy Setting Forth Hiring, Supervision, Reporting, Evaluation, and Discipline Standards and Processes ● Other Documents, As Needed 	<p>January 2018</p>
<p>Step 3: JOGC Discussion and Recommendation</p>	<p>March 2018</p>
<p>Step 4: BOR and BOI Discussion and Action, If Recommended by JOGC</p> <ul style="list-style-type: none"> ● Joint Meeting, which will include proposed Chief Counsel reporting change 	<p>April 2018</p>
<p>Step 5: Board of Supervisors Approval of Salary Ordinance Changes, If Approved by LACERA Boards</p>	<p>June 2018</p>

Step 6: Implementation, If Approved
--

July 1, 2018

CONCLUSION

Staff believes this work plan is prudent and will facilitate full and deliberate consideration of all the issues associated with the proposed change and a smooth implementation, if the change is approved. Staff will report back to the Boards monthly as to the progress on the work plan.

cc. Robert Hill

James Brekk

Jonathan Grabel

John Popowich

Bernie Buenaflor

John McClelland

Christopher Wagner

Vache Mahseredjian

Ted Wright

Jim Rice

Scott Zdrazil

John Nogales

Annette Cleary

Attachment B

Chief Investment Officer, Job Description

Attachment B



Chief Investment Officer, LACERA - (Unclassified)

Class Code:
0493

Bargaining Unit: Non-represented (exempt)

SALARY RANGE

\$0.00 Monthly
\$0.00 Annually

DEFINITION:

The Chief Investment Officer is regarded as the investments expert for the Board of Investments (Board), acting as advisor on all matters involving the investment or the proposed investment of Los Angeles County Employees Retirement Association (LACERA) assets.

POSITION INFORMATION:

This unclassified position reports to the Chief Executive Officer, LACERA and is found in LACERA and is distinguished by its' responsibility for directing the implementation of LACERA's investment policies and programs adopted by the Board; monitoring and supervising the management of LACERA's portfolio which includes Fixed Income, Equities, Real Estate, and Alternative Investments and ensuring the efficient utilization of investment funds, in accordance with the policies and decisions of the Board.

EXAMPLES OF ESSENTIAL JOB FUNCTIONS:

Direct the implementation of investment policies and strategies within the goals established by the Board.

Direct, plan, and supervise the activities of the Investment staff.

Supervise and coordinate the activities between LACERA's Principal and Senior Investment Officers and external managers, advisors, and consultants.

Supervise and coordinate the Principal and Senior Investment Officers roles as liaison with LACERA management and the Board.

Establish reporting mechanisms to keep the Board sufficiently and appropriately informed as to the status of LACERA's investment program and the procedures used to implement it.

Standardize policy and procedural guidelines to ensure consistency with investment strategies adopted by the Board and compliance with state and federal laws.

Represent LACERA in the investment community, the media, the legislature and among constituents, as a participant in various functions and an expert spokesperson on investment matters relating to LACERA as directed by the Chief Executive Officer or the Board.

Provide the Board with an ongoing analysis of the global economic situation as it relates to LACERA's investment program.

Make recommendations to the Board on the selection of external managers and contractors.

Advise Chief Executive Officer as to the impact on the investment program of information released to the public, press, legislature, and other similar matters as needed.

Evaluate overall performance of Principal and Senior Investment Officers, including their role as supervisors of staff.

Evaluate overall performance of the external investment managers.

Directs preparation of the investment office budget to ensure adequate staffing and resources to meet the goals and objectives of the investment office.

May be required to perform other duties related to matters involving the investment or proposed investments of LACERA's assets.

REQUIREMENTS:

Attachment C
Harvey Leiderman Opinion

Attachment C

Reed Smith LLP
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San Francisco, CA 94105-3659
+1 415 543 8700
Fax +1 415 391 8269
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From: Harvey L. Leiderman
Direct Phone: +1 415 659 5914
Email: HLeiderman@reedsmith.com

To: Joint Organizational Governance Committee of the
Board of Retirement and Board of Investments
Los Angeles County Employees Retirement Association

Date: December 1, 2017

Subject: Reporting Responsibilities of Chief Counsel and Chief Investment Officer

The Joint Organizational Governance Committee (JOGC) is considering the appropriate lines of reporting for the LACERA executive positions of Chief Counsel and Chief Investment Officer. The JOGC has approved a Staff Work Plan for considering the various governance, legal and implementation aspects of the issue for each position. We will endeavor not to repeat Staff's analysis here; rather, the purpose of this Memorandum is to offer a fiduciary perspective as the JOGC considers its recommendations to the two Boards.

Because the considerations applicable to one position can inform our thinking about the other position, we will address them separately but together in this one Memorandum. ¹

CHIEF COUNSEL

LACERA has appointed a Chief Counsel pursuant to Secs. 31522.4 and 31529.1 of the County Employees Retirement Law of 1937, Government Code sections 31450, et seq. (CERL). Although under CERL the Boards are the appointing authority for the Chief Counsel position, the Boards have delegated that authority to the Retirement Administrator (Chief Executive Officer, or CEO), and that delegation is reflected in the County Code adopted by the County Board of Supervisors at Sec. 6.127.040 B 1.

By law and the rules governing the practice of law in California, the client of the Chief Counsel is the retirement system, LACERA, as directed by its "highest authorized ...body." Rule 3-600, CA Rules of Professional Conduct. In the unique case of LACERA, the role of the "highest authorized body" is shared by the Board of Retirement and the Board of Investments. Govt. Code. Sec. 31520.2; *see also*, CERL Sec. 31459.1. Together, the Boards have plenary authority and fiduciary responsibility for administering the retirement system. CA Const. Art. XVI, sec. 17. In connection with their administration of the system, the Boards have chosen to delegate substantial fiduciary responsibilities to attorneys, employed both in the office of the Chief Counsel and in private practice. Govt. Code sec.

¹ In this Memorandum we refer to the job descriptions for the Chief Executive Officer, Chief Counsel and Chief Investment Officer posted on the LACERA website. For convenience, a copy of the CEO job description is attached to this Memorandum; copies of the other two are attached to Staff's Memoranda reporting on the results of its Work Plans.

31529.6. All such attorneys owe a fiduciary responsibility to the system and its members and beneficiaries. Further, the Chief Counsel is a “public official who manages public investments” under section 87200 of the state Political Reform Act (Govt. Code secs. 81000 *et seq.*), with all of the fiduciary obligations that Act imposes.

The right to choose counsel enjoys special recognition under California (and common) law. That choice includes establishing the scope of counsel’s representation. Absent engaging in criminal or unethical activity, a client has an absolute right to instruct counsel on all aspects of counsel’s engagement.

Notwithstanding the Boards’ absolute legal authority to administer the retirement system, as a practical matter the Boards cannot effectively administer the day-to-day operations of a \$50 billion retirement system, with over 160,000 members and a staff of some 430 employees. Nor would it be prudent to try to do so. As high-functioning Boards, you rightly focus your attention on setting overall strategic policy for every aspect of the retirement system, and expect staff to implement those policies on a tactical basis. You then periodically verify that your policies have been effectively carried out by staff.

A critical role of Chief Counsel in a complex public agency like LACERA is to be an advisor and counselor on all aspects of the law applicable to the delegated administration of the retirement system. These responsibilities include serving as a resource on legal and ethical obligations for the administrative staff to whom the Board has delegated day-to-day responsibilities to administer the system, consistent with the Board’s policies and procedures, and the legal requirements applicable to public employee retirement systems in general and LACERA specifically. Those responsibilities span the spectrum from benefit and health care administration, disabilities, investments, premises, security, audit and compliance, federal tax law, litigation, risk management, information technology, contracting, human resources, labor relations, finance, ethics, member, plan and public communications and more. In order to effectively perform these functions, the Chief Counsel manages a Legal Division employing several professionals and supporting staff, all of whom are devoted to “accomplishing the necessary work of the boards.” CERL sec. 31522.1.

In addition, the Chief Counsel performs key services directly for the Boards and its committees. Despite the fact that the Boards and committees meet, at most, only once or twice a month, the role of legal advisor to the Boards and its committees is on-going, both on procedural and substantive matters. Procedural advice includes agenda-setting, preparing minutes, observing procedures and by-laws, advising on open meeting (Brown Act) requirements, and watching for potential conflicts of interest. Substantive counsel includes presenting securities litigation opportunities and updates, advising on member appeals, reporting on staff activities, risk monitoring and mitigation, preparing compliance updates and the like. All of these activities help the Boards discharge their duty of prudence by establishing sound processes designed to assist the Board in exercising its fiduciary oversight role.

In a modern, complex public pension fund, we believe that Chief Counsel's availability as a resource to the staff that administers the fund is every bit as mission critical to the governing boards' ability to prudently administer the system as is providing direct counsel to those boards. Pension administrations that lack a strong and present legal advisor in the "C-suite" often find themselves struggling with fear, uncertainty and doubt over the conduct of their businesses, hampering the ability of the board to manage the system. Member service suffers and errors proliferate. Staff inertia can lead to missed investment opportunities and heightened risks. Boards get hit by costly surprises that have not been adequately anticipated by staff. In our experience a highly trained and accessible in-house chief counsel open and available to retirement staff is an essential resource for successfully fulfilling the board's important fiduciary duties. And where the Boards are also advised by independent Fiduciary Counsel, the opportunity to assure staff of strong and capable legal resources internally can truly improve the overall functioning of the system.

In this manner, Chief Counsel and the Legal Division assist the Boards in carrying out all of their fiduciary duties: The duty to administer the system solely for the benefit of LACERA's members and beneficiaries; the duty to use system assets to pay correct amounts of benefits to those entitled to them, without incurring unreasonable expenses; the duty to follow rules and procedures, checks and balances in order to prudently manage the system; and, of course, the duty to follow the law.

As the Boards consider options for changing the reporting line for the Chief Counsel, we encourage the Boards to clarify what exactly they mean by "reporting." The foregoing discussion focuses on the functional aspects of the Chief Counsel's job. As shown, the Chief Counsel functions as an advisor both to the retirement staff and to the retirement and investment Boards, but always serving the same master. Functionally, the Chief Counsel "reports" to both the CEO, as the chief administrative officer, and to the Boards, as the "highest authorized body" of the retirement system. Regardless of the color, thickness or direction of the particular lines that may appear on the system's organization chart, ultimately LACERA's Chief Counsel already reports to the Boards.²

If by "reporting," however, the intent is to assure the Boards that Chief Counsel will be as responsive to their direction and needs as the position is to the CEO, and will recognize the Boards as the highest authorized bodies of the organization, we think that assurance can be achieved without the time, expense and uncertainty of trying to change the CERL or the County Code. The easiest and most effective change to the current status would be to enhance the Boards' preeminence through a simple change in the Chief Counsel's and CEO's job descriptions. The change would recognize that the Boards seek a closer, more independent and responsive relationship with counsel appointed to advise them and to carry out their fiduciary responsibilities, while not degrading in any manner his or her accessibility or effectiveness with retirement staff. The change could come in the form of (1) an addition to the Chief Counsel's job description,³ and (2) a direction to the CEO that in hiring, firing, compensating and

² Ironically, we note that the current organization chart posted on the LACERA website omits the two Boards entirely. *See*, https://www.lacera.com/about_lacera/organizational_chart.html.

³ Currently the only reference to the Boards in the Chief Counsel's job description is: "Provides legal advice during public and closed sessions of the Board of Retirement and Board of Investments."

evaluating the Chief Counsel, the CEO will consult with the Boards. These changes could be accomplished by action of the Boards alone, since the Boards have complete authority to administer the retirement system, including, ultimately, the evaluation and appointment of the CEO, an at-will position that serves at the pleasure of the Boards. CERL sec. 31522.1; County Code secs. 6.127.020, 6.127.040 E(2)b (“In the case of the retirement administrator, the evaluation shall be in accordance with the procedures established by the board of retirement and board of investments jointly.”) *See also* Division 7 of the Board of Retirement Policies and Procedures Manual.

If this is the Boards’ goal, we would recommend adding the following language to the job description of the Chief Counsel:

Recognizing that the Board of Retirement and Board of Investments are the highest authorized bodies of the retirement system, provides independent advice and assistance on legal issues to the Boards and their members.

And we would recommend adding the following language to the job description of the CEO:

Selects and evaluates LACERA’s Chief Counsel, with the input of the governing Boards.

CHIEF INVESTMENT OFFICER

The Boards have the fundamental fiduciary duties to hold and expend the plan’s funds solely in the interest of the members and beneficiaries, to prudently manage the plan and to diversify the assets so as to minimize the risk of loss and maximize the rate of return. Cal. Const. Art. XVI sec. 17(a), (c), (d). In order to accomplish the necessary work of the fund, the Boards delegate many of their responsibilities to others, reserving to themselves the power and ability to monitor their delegations and make changes in the investment program.

LACERA’s Chief Investment Officer (CIO) has a direct delegation of responsibilities from the Boards. The position is appointed by the two Boards (Govt. Code sec. 31522.4) but primarily serves to execute on the strategic investment plan determined by the Board of Investments. *See*, CIO job description, which identifies the direct relationship with the Board of Investments:

The Chief Investment Officer is regarded as the investments expert for the Board of Investments (Board), acting as advisor on all matters involving the investment or the proposed investment of Los Angeles County Employees Retirement Association (LACERA) assets.

This unclassified position reports to the Chief Executive Officer, LACERA and is found in LACERA and is distinguished by its responsibility for directing the implementation of LACERA’s investment policies and programs adopted by the Board; monitoring and supervising the management of LACERA’s portfolio which includes Fixed Income, Equities, Real Estate, and Alternative Investments and ensuring the efficient utilization of investment funds, in accordance with the policies and decisions of the Board.

The balance of the job description is highlighted by several direct references to the CIO's obligations to the Board of Investments. And unlike the Chief Counsel, the primary work of the CIO is to advise the Board, notwithstanding that "this unclassified position reports to the Chief Executive Officer." The CIO, in conjunction with investment consultants, updates the Board regularly on the performance of the portfolio, the risk/reward balance of the investment program, capital markets projections, peer comparisons, market risks and opportunities, and rebalancing.

The duties of the CIO directly descend from the Board of Investments. Contrast that with the duties of the Chief Counsel, whose responsibilities run both to supporting organizational activities the Boards have delegated to others and supporting the Boards directly.

Public retirement boards frequently reexamine whether the CIO should "report" directly to the board or to the chief executive officer. In our experience, this is more often than not a reflection of the unique interpersonal relationships among the board, the CEO and the CIO – and is usually triggered because something in those relationships has gone awry. Most boards end up where they began, however, with the CIO continuing to report directly to the CEO for organizational management reasons. Once again, we ask the Boards to determine what you would want to accomplish by altering the "reporting" of the LACERA CIO. The CIO is the expert to whom the Board directly delegates its fiduciary responsibilities. Of course, the CIO also oversees and administers an Investment Division with dozens of employees. To this extent the CIO necessarily reports to the CEO as a matter of administrative effectiveness. That the CIO "reports" to the CEO for administrative purposes (personnel and HR needs, facilities needs and management, resources, budgeting and the like) should not detract from the fact that the CIO also "reports" to the Board on the substantive scope of his or her job duties.

Once again, perhaps less is more. Should the Boards seek clearer recognition of the direct line between them and the CIO's responsibilities, with enhanced communication and independence from the CEO on investment affairs, that direction can be added to the CIO's job description. Before proceeding with any material change in reporting, however, we suggest that the Boards consult with the current CIO (who recently accepted the position on the basis of certain understandings) and with the soon-to-be-appointed CEO when that person arrives at LACERA. To a very large extent, we have found that improved communications among pension fund executives is more a function of personality, commitment and desire rather than of organization charts. We think that the "reporting" goal can best be achieved by the Board clearly articulating its expectations directly to the CIO, rather than through formal charts and job descriptions.

We will be available at the December 13, 2017 JOGC meeting to address any questions or comments you may have.

FOR INFORMATION ONLY

March 27, 2018

TO: Each Member
Board of Retirement
Board of Investments

FROM: Steven P. Rice *SPR*
Chief Counsel

FOR: April 4, 2018 Joint Board of Retirement and Board of Investments Meeting

SUBJECT: Joint and Separate Responsibilities of the Boards

At the March 15, 2018 Board of Retirement (BOR) meeting, certain BOR members requested a legal analysis of the joint and separate responsibilities of the BOR and the Board of Investments (BOI) (together, Boards) in order to facilitate a clear understanding and compliance with applicable law.

LEGAL AUTHORITY

The responsibilities of the Boards are enumerated in Article XVI, Section 17 of the California Constitution, the County Employees Retirement Law of 1937 (CERL), Cal. Gov't Code §§ 31450, *et seq.*, the California Public Employees' Pension Reform Act of 2013 (PEPRA), Cal. Gov't Code §§ 7522, *et seq.*, and the Internal Revenue Code, 26 U.S.C. §§ 401(a), *et seq.*

The Boards' overarching plenary authority and fiduciary responsibilities are addressed in Article XVI, Section 17 of the Constitution. Article XVI, Section 17 applies generally to all California public pension boards. The Constitution does not change the division of responsibilities between the Boards as established in CERL.

Specific operational responsibilities of the Boards are set forth in CERL and PEPRA, which describe the duties of LACERA's Boards in detail.

LACERA is the only California public pension system that has separate boards for administration and investments (although a number of California charter cities have established separate pension funds and boards for safety and general members).

DISCUSSION

A. Constitution.

Under Article XVI, Section 17 of the Constitution, "the retirement board of a public pension or retirement system shall have plenary authority and fiduciary responsibility for

investment of moneys and administration of the system.” The Constitution only uses the singular term “retirement board,” but it does not create that board. Rather, the Constitution confers duties on governing board(s) otherwise established by plan sponsor agencies under the laws that provide for their respective plans. For example, the Public Employees’ Retirement Law, Cal. Gov’t Code §§ 20000, *et seq.* (PERL), establishes the Board of CalPERS; the Teachers’ Retirement Law, Cal. Ed. Code §§ 22000, *et seq.*, establishes the Board of CalSTRS. So, too, CERL authorizes the twenty California counties adopting the CERL to establish the retirement boards for their respective county systems. For Los Angeles County, CERL authorized the County to establish two boards for jointly governing a single retirement system, and the County exercised that authority to create the BOI. Because of the unique authority granted by CERL, both LACERA Boards have constitutional fiduciary obligations that are important to the performance of their coordinated governance of the retirement system. The Boards both have the same constitutional mission and the same fiduciary duties of prudence and loyalty. It is important to review these fiduciary duties because they have a direct bearing on how the Boards should interact with each other in considering their joint and separate operational responsibilities under CERL.

Article XVI, Section 17 provides for the following duties, which apply to both the BOR and the BOI:

- “The retirement board . . . shall have the sole and exclusive fiduciary responsibility over the assets” of the system. (Section 17(a).)
- “The retirement board shall also have sole and exclusive responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services to the participants and their beneficiaries.” (Section 17(a).)
- Fund assets “are trust funds and shall be held for the exclusive purposes of providing benefits to participants . . . and their beneficiaries and defraying reasonable expenses of administering the system.” (Section 17(a).)
- Trustees “shall discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system. A retirement board’s duty to its participants and their beneficiaries shall take precedence over any other duty.” This is the duty of loyalty. (Section 17(b); *see also* CERL, Section 31595(a).)
- Trustees “shall discharge their duties with respect to the system with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would

use in the conduct of an enterprise of a like character and with like aims.” This is the duty of prudence. (Section 17(b).)

In addition, Article XVI, Section 17 includes two duties that apply to the BOI, although the BOI is not mentioned by name:

- Trustees “shall diversify the investments of the system so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly not prudent to do so.” (Section 17(d); see *also* CERL, Section 31595(c).)
- The board, “consistent with the exclusive fiduciary responsibilities vested in it, shall have the sole and exclusive power to provide for actuarial services in order to assure the competency of the assets of the public pension or retirement system.” (Section 17(e).)

The BOR and BOI share the same constitutional fiduciary duties in furtherance of the same purpose. The trustees of the boards are co-fiduciaries of the retirement system. The Boards must work together to achieve the purpose of the fund. The need to work together is a constitutional requirement that follows from the duty of prudence because any reasonable trustee in a like position must cooperate fully with their trustees on the other board. Joint effort also follows from the duty of loyalty because the interests of the members and their beneficiaries could be impaired if there are jurisdictional disagreements between the Boards. The Boards must respect clear lines drawn in CERL as to their separate and joint authorities. The Boards should also be flexible and collaborative in addressing ambiguities in the law as to board authority where they exist in CERL and PEPRA and in addressing special circumstances that may prudently require joint action or joint communication.

B. CERL and PEPRA.

1. Background.

a. BOR.

Section 31520 of CERL provides, “Except as otherwise delegated to the board of investments and except for statutory duties of the county treasurer,¹ the management of the retirement system is vested in the board of retirement” Section 31520 provides for a five-member board of retirement. However, where a system (like LACERA) provides for safety member contributions and retirement, Section 31520.1 provides for a nine-

¹ CERL provides that the Boards may delegate certain responsibilities, such as the holding and investment of assets, to the treasurer. The Boards have not exercised this authority.

member board of retirement, with an alternate safety member. The nine members include four elected by the members (two by general members, one by safety members, and one by retired members), four appointed by the board of supervisors, and the county treasurer, sitting ex officio. Section 31520.5 provides for a retired member alternate to the board of retirement.

LACERA has had its Board of Retirement since the fund's formation in 1938.

b. BOI.

Section 31520.2 provides that, in any county with over \$800 million in assets, the board of supervisors may establish a nine-member board of investments. The membership of the board of investments follows the same pattern as described above for the board of retirement, except that there are no alternate members.

LACERA has had a Board of Investments since 1972, shortly after the Board of Supervisors voted to authorize it. LACERA is the only CERL system with a board of investments. Under Section 31520.2(b), "The board of investments shall be responsible for all investments of the retirement system."

2. Definition of "Board."

The responsibilities of the BOR and BOI are contained in various CERL and PEPR provisions. Sometimes, the statutes are clear and specific as to which board is given a particular responsibility. Other provisions simply use the term "board" or are vague as to whether they apply to the BOR, the BOI, or both. Section 31459.1 provides a definition of "board" which is applicable only to LACERA, as follows:

(a) In a county in which a board of investments has been established pursuant to Section 31520.2:

(1) As used in Sections 31453, 31453.5, 31454, 31454.1, 31454.5, 31472, 31588.1, 31589.1, 31591, 31592.3, 31594, 31595.1, 31595.9, 31596, 31596.1, 31601.1, 31607, 31610, 31611, 31612, 31613, 31616, 31618, 31621.11, 31625, 31639.26, 31784, and 31872, "board" means board of investments.

(2) As used in the first paragraph of Section 31592.2 and the first paragraph and subdivision (c) of the second paragraph of Section 31595, "board" means a board of investments.

(3) Sections 31521, 31522, 31522.1, 31522.2, 31523, 31524, 31525, 31528, 31529, 31529.5, 31535.1, 31580.2, 31614, 31680, and 31680.1,

apply to both the board of retirement and board of investments, and “board” means either or both the board of retirement and board of investments.

(4) Subdivision (a) of Section 31526 and subdivisions (a) and (b) of the second paragraph of Section 31595 apply to both the board of retirement and board of investments, and “board” means either or both the board of retirement and board of investments.

(b) In Article 17 (commencing with Section 31880) of this chapter, “board” means the Board of Administration of the Public Employees’ Retirement System.

(c) In all other cases, “board” means the board of retirement.

(d) This section shall apply only in a county of the first class, as defined in Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961.

The specific CERL sections mentioned in Section 31459.1 are discussed in detail in the next section of this memo. Section 31459.1 does not list all provisions of CERL that specifically mention the board of investments. Other provisions must be interpreted in developing a list of the Boards’ responsibilities. In addition, it is important to note that Section 31459.1 is not itself a grant of authority to either board; it is a definitional section to assist in interpreting some but not all of the substantive provisions of CERL that describe specific areas of board responsibility.

3. Responsibilities and Authorities of the Boards.

As quoted above, Section 31520 states that “the management of the retirement system is vested in the board of retirement,” and Section 31520.2(b) provides that “The board of investments shall be responsible for all investments of the retirement system.” However, these statements are so general that they do not provide much practical guidance in understanding how the many specific functions of managing a public retirement system are to be handled by the Boards.

Understanding of the detailed allocation of responsibilities is found in the definition quoted above from Section 31459.1 and in other provisions of CERL that specifically mention one or both of the Boards. Based on Section 31459.1 and the rest of CERL, certain responsibilities belong to both the BOI and the BOR, certain responsibilities belong to the BOI, and everything else that is not specifically identified belongs to the BOR. The next three subsections of this memo list specific responsibilities that fall into each category. CERL is a long and complex statute, over 360 pages in length. There may be specific separate responsibilities of the BOR or BOI that are not listed below. However, the lists below include major responsibilities and authorities of the Boards.

a. Joint Responsibilities and Authorities of the BOR and BOI.

Under CERL, there are two specific responsibilities and authorities that require joint action of both the BOR and the BOI:

- i. Appointment of personnel.* (Sections 31522.1, 31522.2, 31522.4.) These provisions provide that “the board of retirement and both the board of retirement and board of investment may appoint” the retirement administrator and other staff. Since LACERA has both the BOR and BOI, the statutory language giving appointing authority to “both” the BOR and the BOI governs. Appointing authority includes the power to approve organizational staffing needs, classifications and classification changes, evaluation, compensation adjustments, and discipline. Accordingly, appointment of staff is a statutory joint responsibility of the Boards.

Long ago, the Boards determined to retain joint appointing authority over the Chief Executive Officer (CEO) and delegate appointing authority for all other positions, other than the Chief Audit Executive,² to the CEO. This structure is reflected in County Salary Ordinance provisions, as required by CERL.³

The Salary Ordinance provides, “The person appointed by the Boards of Retirement and Investments to act as retirement administrator pursuant to Government Code Section 31522.2, shall be known as the Chief Executive Officer.” (Ordinance 6.127.020(A).) The Salary Ordinance defines “Appointing Authority” for the CEO as “the board of retirement and the board of investments jointly” and for staff as the “retirement administrator.” (Ordinance 6.127.040(B)(1).)

² The Boards have determined that they are the appointing authority for the Chief Audit Executive (CAE) with respect to appointment, discipline, dismissal, and/or removal. The Audit Committee is the CAE’s appointing authority with respect to performance management and salary adjustments. The CAE reports to the CEO for administrative purposes. The role of the Boards, the Audit Committee, and CEO are fully described in the Audit Committee Charter. Note that changes to the Salary Ordinance to implement the system described in this footnote, as approved by the Boards in January 2017, are pending approval by the Board of Supervisors as of the date of this memo.

³ This structure is not unique to LACERA. A similar arrangement exists in the City of San José, which has separate boards to administer its Police and Fire Department Retirement Plan and its Federated City Employees’ Retirement System. By City Charter (Section 810.1(a)), however, the two boards have the authority to “jointly appoint the chief executive officer and the chief investment officer.”

The CEO's compensation "may be determined by written agreement between the boards of retirement and investments and such designated person." (Ordinance 6.127.030(B)(1); see *also* Ordinance 6.127.040(C).) The CEO's salary may be adjusted "by the boards of retirement and investments," even if it falls outside designated Salary Ranges. (Ordinance 6.127.030(B)(3).) The Boards jointly may authorize additional compensation to the CEO for "exceptional or extraordinary service." (Ordinance 6.127.030(B)(2).) The County's Table of Classes of Positions with Salary Schedule and Level does not state the CEO's compensation; instead, it refers back to the Board's joint compensation setting authority under Ordinance 6.127.020(A). (Ordinance 6.127.050, Note N37.)

Under the Ordinance, salary adjustments and performance management for LACERA staff are the responsibility of the CEO as Appointing Authority under Chapter 127 of the Ordinance.

The Boards also have the independent authority, by joint resolution, to create a Performance Compensation Program for LACERA employees. (Ordinance 6.127.030(C).)

The Boards may, by joint action, request a change in the Ordinance. However, at present, the structure for personnel is as described above. The Civil Services Rules are consistent, where applicable.

- ii. *Budget approval.* (Section 31580.2.) This statute provides that, where "the board of retirement, or the board of retirement and the board of investments, have appointed personnel . . . , the respective board or boards shall annually adopt a budget covering the entire expense of administration of the retirement system which expense shall be charged against the earnings of the retirement fund." At LACERA, since the Boards jointly appoint personnel under CERL as discussed above, the responsibility and authority to adopt a budget belongs as a matter of law under Section 31580.2 to both Boards acting jointly. This is in fact the way LACERA conducts its budget process.

Although appointment of personnel and budget approval are the only two specified areas of joint Board action under CERL and PEPR, there may be other important issues that flow from the specified areas or otherwise reasonably should be handled by both Boards. Examples include: litigation that presents significant organizational risks; union contracts; legislation that affects LACERA's overall governance structure; changes in LACERA's

Mission, Values, or Vision; joint committees such as the Audit Committee;⁴ policies that affect both Boards, such as the Audit Committee Charter, Education and Travel Policy, Legislative Policy, Code of Ethical Conduct, Conflict of Interest Code, and similar policies that cross board lines; and engagement of fiduciary counsel to advise both Boards. As noted above, a spirit of cooperation, collaboration, and flexibility is legally required among the Boards as a matter of their co-fiduciary duties in addressing other issues of joint interest.

b. BOI Responsibilities and Authorities.

CERL is generally structured so that the responsibilities and powers of the BOI are specifically identified. Any responsibilities and powers not given to the BOI belong to the BOR. Despite this structure, there are still some ambiguities because Section 31459.1 is not complete and other CERL and PEPR provisions are also ambiguous. Responsibilities and authorities that the BOI, and its trustees, may separately exercise as identified in governing law include the following:

- i. All investments.* (Sections 7514.2, 31520.2(b), 31594, 31595, 31595.1, 31595.9, 31601.1, 31602, 31603.) The BOI “shall be responsible for all investments of the retirement system.” (Section 31520.2(b).) The statutory authority is very broad. Investments may be made “in any form or type of investment deemed prudent” in compliance with the BOI’s fiduciary duties. (Section 31494.) Note that investments in real property require approval by at least six votes, except that nine votes are required if the Board of Supervisors or County Board of Education has a material interest. (Section 31601.1.) Investments in in-state infrastructure projects are specifically addressed by statute. (Section 7514.2.)
- ii. Diversification of investments.* (Section 31595(c).) The BOI is required to “diversify the investments of the system so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly prudent not to do so.” (*Id.*) This same language appears in Article XVI, Section 17(d).

⁴ The responsibilities and authorities of the Audit Committee include oversight of Internal Audit, oversight of the CAE (see footnote 2), oversight of and recommendations regarding selection of the External Auditor, monitoring of the financial reporting process, monitoring management’s system of internal controls and compliance, and conflicts and ethics. These responsibilities are fully defined in the Audit Committee Charter approved by both Boards.

- iii. Delegation of investment authority. (Sections 31595, 31595.1, 31596.) The BOI has the authority and discretion to “invest, or delegate the authority to invest, the assets of the fund.” (Section 31595.) One party to whom the BOI may delegate authority is the treasurer. (Sections 31595.1, 31596.)
- iv. Actuarial investigations, assumptions, and valuations. (Sections 31453, 31453.6, 31454, 31454.1, 31515.1.) The BOI has sole authority under CERL over actuarial matters related to the pension fund. Actuarial issues are also recognized in the Constitution, which provides that board (as to LACERA, the BOI) “shall have the sole and exclusive power to provide for actuarial services in order to assure the competency of the assets of the public pension or retirement system.” (Article XVI, Section 17(e).)
- v. Retirement benefit funding policy. (Sections 7522.52, 31591.) The BOI sets the funding policy for LACERA, which includes the funding goal, annual implementation, allocation of actuarial assets, and the valuation cycle.
- vi. Recommendation of interest rates on deposits. (Sections 31453, 31454, 31472, 31591.) Based on actuarial investigation, valuation, and recommendations, the BOI recommends to the Board of Supervisors changes in the interest rate on deposits.
- vii. Recommendation of member contribution rates. (Sections 31453, 31454, 31621.11, 31625, 31639.26, 31872.) Based on actuarial input, the BOI recommends to the Board of Supervisors the rates of member contributions.
- viii. Recommendation of employer contribution rates and appropriations. (Sections 31453, 31453.5, 31454, 31454.5, 31495.) Similarly, the BOI recommends to the Board of Supervisors employer contributions rates and appropriations based on actuarial findings.
- ix. Transfer of excess interest. (Section 31592.2(a).) The BOI has authority, when the surplus interest in excess of the amount credited to contributions and reserves exceeds 1% of total assets, to transfer such surplus into a county advance reserve for the payment of benefits.
- x. Selection of custodian. (Section 31596.) The BOI is responsible to select LACERA’s custodian.

- xi. Investment, actuarial, custodial, and investment legal expenses.* (Section 31596.1) The BOI manages expenses of investment, the fund's actuary, the custodian, and investment counsel, all of which are then charged against investment earnings or fund assets as the BOI determines.
- xii. Adopt BOI regulations.* (Sections 31525, 31526(a).) The BOI is required to adopt board regulations providing for election of officers, their terms, meetings, and all other matters relating to the administrative procedure of the board.
- xiii. Interest on unpaid installments of death benefit.* (Section 31784.) The BOI determines the rate at which interest is paid to a person who elects to receive a death benefit over time.
- xiv. Certain Plan E actions.* (Sections 31488, 31491(f) and (g), 31492(b) and (c).) The interest and mortality tables adopted by the BOI are used for calculation of the early retirement adjustment factors that may be employed under Plan E. (Section 31491(f).) The BOI also adjusts primary insurance amounts for Plan E based on the advice of the actuary. (Section 31491(g).) In addition, the BOI approves the actuarial equivalence of a Plan E member's election for an increased survivor allowance. (Section 31492(c).)
- xv. Filling of BOI vacancies.* (Section 31523.1.) The BOI is required to cause an election to be held at the earliest possible date for any vacancy in the elected positions.
- xvi. Separation from County service.* (Section 31524.) Separation from County service of an elected member vacates the trustee's office.
- xvii. 24 hours of trustee education.* (Section 31522.8.) BOI trustees are required to obtain 24 hours of education every two years on the subjects listed in Section 31522.8.
- xviii. Conflict and revolving door limits.* (Section 31528.) Members of the BOI may not have a personal interest, direct or indirect, in the making of any investment, the profit or losses on any investments, or the sale of any investment, or act as agent for others in the use of trust funds. BOI members also may not, for a period of two years after leaving office, act as an agent or attorney for or otherwise represent for compensation any person, except the County, before the BOI, BOR, or staff by personal appearance or any oral or written communication for the purpose of influencing LACERA administrative or legislative

action or concerning a contract, grant, or purchase or sale of good or property. Beyond Section 31528, the BOI has authority to regulate conflicts that may arise in the conduct of its affairs and the matters under its authority.

- xix. Authority to obtain legal representation. (Sections 31529, 31529.1, 31529.5, 31529.6, 31529.9, 31607.) The BOI may retain outside counsel to act as counsel for the board or assist in the performance of its responsibilities.
- xx. Securities and investment-related litigation. Authorization and oversight of securities and other investment-related litigation is the responsibility of the BOI because the issues involve matters within the broad investment responsibility of that board.
- xxi. Issuance of subpoenas. (Section 31535.1) The BOI has the authority to issue subpoenas in connection with its areas of responsibility.
- xxii. OPEB trust investments and trust administration. (Sections 31694.1, 31694.3, 31694.5.) The BOI may invest Other Post-Employment Benefit (OPEB) trust assets contributed by participating employers. The BOI is trustee under the County, Court, and Master OPEB Trust Agreements with responsibility for trust investment and administration.
- xxiii. Approval of travel. The BOI has the responsibility under the Education and Travel Policy to approve travel for its trustees according to the terms of the policy.
- xxiv. Committees. Under the BOI Regulations, the BOI Chair may appoint such standing and ad hoc committees as he or she deems necessary to accomplish the BOI's responsibilities. The BOI as a whole also has authority to establish committees.

The BOI has the authority to perform and manage their specific responsibilities as listed above, adopt policies and procedures, retain other consultants and vendors, and take other reasonable and necessary actions related to their specifically assigned responsibilities. The BOI's authorities and responsibilities are further addressed in the BOI's Regulations (or Bylaws), Board Charter, Powers Reserved Defined, Powers Reserved and Delegated Authorities, the Powers and Duties of Investments Board Members, Investment Policy Statement, Corporate Governance Committee Charter, Corporate Governance Principles and Policy, Domestic Proxy Voting Guidelines, and other existing policies and procedures. The BOI must manage its meetings and affairs so as to comply with the Brown Act, Cal. Gov't Code 54950, *et seq.*

c. BOR Responsibilities and Authorities.

Under Section 31520, “the management of the retirement system is vested in the” BOR, except for those responsibilities specifically assigned to both Boards or the BOI. Accordingly, the short answer to the question of the BOR’s responsibilities and authorities is that the BOR separately can do anything, required under CERL, PEPRA, and the Constitution to manage the system, that is not specifically listed in paragraph 3(a) (joint BOR and BOI responsibilities) and paragraph 3(b) (BOI responsibilities). However, to provide a more helpful response, the responsibilities and authorities that may be separately exercised by the BOR include the following:

- i. Pension benefits administration upon service retirement.* (Section 31670.) The BOR approves all service retirements and administers all issues and processes under CERL and PEPRA related to delivery and support of pension benefits, including Member Services, Benefits, and Quality Assurance.
- ii. Compensation earnable and pensionable compensation.* (Sections 7522.34, 31461.) The BOR makes determinations as to whether pay codes are compensation earnable under CERL. The BOR also acts upon pensionable compensation recommendations under PEPRA, although there is less board discretion under PEPRA than there is under CERL because PEPRA does not specifically reference a board determination.
- iii. Disability retirement benefits administration.* (Sections 31530, 31720 *et seq.*) The BOR approves all disability retirements. In that role, the BOR administers Disability Retirement Services, engages physicians, manages the board’s medical advisor, decides applications, appoints referees to conduct appeal hearings, receives and acts upon referee reports, sets rules for disability applications and hearings, and makes such other decisions and performs such other oversight as required for delivery of disability retirement benefits. Member Services, Benefits, and Quality Assurance may also be necessary, from time to time, to support the administration of disability retirement.
- iv. All other benefits and benefit-related issues.* All other benefits and benefit-related issues under CERL and PEPRA, including, for example, survivor benefits, death benefits, investigation of benefits questions, felony forfeiture, and reciprocity, are within the BOR’s authority.

- v. Collections. The BOR oversees collection issues, including underpayment of contributions and overpayment of benefits.
- vi. Administrative appeals. The BOR has established and oversees an administrative appeals process, and hears and decides member appeals with regard to plan administration issues. The administrative appeals process adopted by the BOR provides due process to members with disputes.
- vii. Procedure for assessing and determining whether an element of compensation was paid to enhance benefits. (Section 31542.) The BOR is required to implement a procedure to address potential “pension spiking.” If the BOR determines that compensation was paid to enhance a member’s benefit, the member or employer may present evidence that the compensation was not paid for that purpose and request the BOR to reverse its decision. This requirement was implemented in part through the administrative appeals process described in (vi) above.
- viii. LACERA operations. All LACERA operational issues are addressed by the BOR, other than those assigned to the Boards jointly or to the BOI as described in the preceding sections of this memo. The BOR’s operational responsibilities are broad, except as limited, and include such important matters as privacy, Public Records Act requests, member communications, and all issues not specifically provided to be performed elsewhere.
- ix. Financial and accounting services. (Section 31593.) Aside from financial, actuarial, and auditing responsibilities of the BOI and the Audit Committee as explained above, the BOR monitors and supervises the Financial and Accounting Services Division and related financial reporting compliance issues and approves retention of LACERA’s external financial auditor based on a recommendation from the Audit Committee.
- x. Personnel issues. The personnel function, which includes Human Resources, is part of the management of the system, and is therefore under the jurisdiction of the Board of Retirement. Personnel issues includes employment claims and litigation. This responsibility excludes the CEO and the CAE, which report jointly to both Boards as noted above. It also excludes classification, compensation, and union contracts (although negotiations will be overseen by the BOR), which are joint board responsibilities. In addition, it is reasonable to

acknowledge that both Boards have an interest in significant personnel issues concerning senior management, such as the Chief Counsel, who regularly advise the BOR. Accordingly, while the BOR will have oversight responsibility for most personnel issues, certain personnel issues may appropriately be addressed by both Boards working together or by the BOI alone.

- x*i. *Aids to benefits administration.* The BOR's broad authority over benefits, including service retirements, disability retirements, and other benefits, encompasses the ability to procure consultants and whatever other aids are necessary for the effective performance of that work.
- x*ii. *Tax compliance issues.* The BOR oversees tax qualification issues and monitors that LACERA remains in compliance with applicable requirements of the Internal Revenue Code. The BOR also monitors compliance with other tax laws, such as state and federal withholding requirements for member and beneficiary payments.
- x*iii. *Adopt BOR regulations.* (Sections 31525, 31526.) The BOR is required to adopt board regulations providing for election of officers, their terms, meetings, and all other matters relating to the administrative procedure of the board.
- x*iv. *Filling of BOR vacancies.* (Section 31523.) The BOR is required to cause an election to be held at the earliest possible date for any vacancy in the elected positions.
- x*v. *Separation from County service.* (Section 31524.) Separation from County service of an elected member vacates the trustee's office.
- x*vi. *24 hours of trustee education.* (Section 31522.8.) BOR trustees are required to obtain 24 hours of education every two years on the subjects listed in Section 31522.8.
- x*vii. *Conflict and revolving door limits.* (Section 31528.) Members of the BOR may not have a personal interest, direct or indirect, in the making of any investment, the profit or losses on any investments, or the sale of any investment, or act as agent for others in the use of trust funds. BOR members also may not, for a period of two years after leaving office, act as an agent or attorney for or otherwise represent for compensation any person, except the County, before the BOI, BOR, or staff by personal appearance or any oral or written communication for the purpose of influencing LACERA administrative or legislative action or concerning a contract, grant, or purchase or sale of goods or

property. Beyond Section 31528, the BOR has authority to regulate conflicts that may arise in the conduct of its affairs and the matters under its authority.

- xviii. Authority to obtain legal representation. (Sections 31529, 31529.1, 31529.5, 31529.6, 31529.9.) The BOR may retain outside counsel to act as counsel for the board or assist in the performance of its responsibilities.
- xix. Litigation related to LACERA benefits, operations, and management. All non-investment related litigation is managed by the BOR, with the possible exception that there may be limited, extraordinary situations where good governance and fiduciary duty suggests that the best case management will be performed by both Boards.
- xx. Issuance of subpoenas. (Section 31535.1) The BOR has the authority to issue subpoenas in connection with its areas of responsibility.
- xxi. Administration of the OPEB program. (Sections 31691, 31694.) The BOR administers the retiree healthcare program under the 1982 Agreement, as amended, with the County and under separate agreements with participating districts.
- xxii. Approval of travel. The BOR has the responsibility under the Education and Travel Policy to approve travel for its trustees according to the terms of the policy.
- xxiii. Committees. Under the BOR Regulations, the BOR Chair may appoint such standing and ad hoc committees as he or she deems necessary to accomplish the BOR's responsibilities. The BOR as a whole also has the authority to establish committees.

The BOR also has the authority to perform and manage their specific responsibilities as listed above, adopt policies and procedures, and take other reasonable and necessary actions related to their specifically assigned responsibilities. The BOR's authorities and responsibilities are further addressed in the BOR's Regulations, Board Charter, Committee Charters, the Power and Duties of Retirement Board Members, Policies and Procedures for Handling Disability Applications, Procedures for Disability Retirement Hearings, and other existing policies and procedures. The BOR must manage its meetings and affairs to comply with the Brown Act, Cal. Gov't Code 54950, *et seq.*

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CONCLUSION

This summary of the Boards' responsibilities is based on the current state of the law. It is also important to repeat that, while this memo is intended to be comprehensive, there may be specific responsibilities of the Boards that are not mentioned with particularity. To the extent there are ambiguities in the law or the Boards would like to change existing practice, LACERA can seek legislative changes. The Boards, separately or jointly depending on the subject matter, also have the discretion to adopt additional policies and procedures to clarify their respective responsibilities.

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Documents not attached are exempt from disclosure under the California Public Records Act and other legal authority.

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