



## Memorandum

**TO:** HONORABLE MAYOR AND CITY COUNCIL      **FROM:** Richard Doyle  
City Attorney

**SUBJECT:** RETIREMENT BOARDS PUBLIC MEMBER APPLICANTS      **DATE:** December 3, 2012

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### BACKGROUND

This Office routinely reviews applications for appointment to City boards and commissions for conflicts of interest, appearance of bias and incompatible office. The applications generally do not provide complete information; however, they do occasionally disclose potential conflicts of interest or incompatible offices. The purpose of this memorandum is to summarize our review of the applications submitted by the individuals who will be considered by the City Council on December 4, 2012 for the public member trustee positions on the City's two Retirement Boards.

While our office does not typically perform a formal conflicts analysis of the applications submitted by the applicants for the retiree positions on the Boards, we did not see any obvious conflicts in the three individuals' applications.

### BOARD DUTIES

In order to analyze potential conflicts, it is necessary to consider the duties of the particular board or commission for which the applicants are seeking appointment. The Boards of trustees of the City's two retirement plans are established under the Municipal Code to manage, administer and control the City's two retirement plans. The Boards' scope of authority and duties include determining employee eligibility for benefits, establishing contribution rates for employees and the city based on actuarial valuations, commenting on ordinances that propose modifications to the retirement plans and investing retirement funds. The Boards are expressly authorized to secure the following types of contractual services:

1. Actuarial service
2. Auditing services
3. Investment management services
4. Investment performance evaluation services
5. Proxy voting services

6. Other consulting services as the Boards deem necessary to carry out their duties and responsibilities under the retirement plans.

## **SUBSTANCE OF CONFLICTS REVIEW**

### ***Incompatible Office***

The doctrine of incompatible offices is contained in Government Code section 1099. To fall within the Doctrine of Incompatible Offices, two elements must be present.

- Hold two public offices simultaneously, and
- A potential conflict or overlap in the functions or responsibilities of the two offices must exist.

### ***Appearance of Bias***

There may be facts which would not amount to a legal conflict of interest, but which could require a Board trustee to recuse him or herself from a Board vote or discussion, because of an appearance of bias on the part of the Board. City Council policy requires Board members to be free from bias in their decision making, and may require a Board member to recuse him or herself if the facts could reasonably lead one to conclude that the Board member would be biased for or against a person or entity.

### ***Legal Conflicts That May Preclude Board Contracts***

Because these Boards have independent contracting authority, Board member conflicts of interest preclude the Board from contracting with entities in which a trustee has a financial interest. (Government Code Section 1090.) For these Boards, it is not adequate for a trustee to recuse him or herself from participating in a Board discussion or from voting on matters coming before the Board. The trustee with the conflict must either resign, or the Board must forgo the contractual opportunity.

While this list is not complete, conflicts generally arise in one or more of the following situations:

- A trustee has "sources of income" within the 12 months preceding the start of the trustee's term or during the trustee's term, as defined under the Political Reform Act.

- A trustee's spouse or domestic partner has "sources of income" within the 12 months preceding the start of the trustee's term or during the trustee's term, as defined under the Political Reform Act.
- A trustee or trustee's spouse or domestic partner is an Officer or Board Member of an entity other than the Retirement Board and the entity is involved in a matter coming before the Board.

### **LEGAL REVIEW OF RETIREMENT BOARDS APPLICANTS**

Our office reviewed the applications submitted by the applicants who are to be considered for the public member positions by the City Council on December 4, 2012. Our review was limited to the information provided by the applicants and was not intended to be comprehensive investigation of potential conflicts involving the applicants. The results of our review are as follows:

- No application discloses incompatible offices
- No application indicates an appearance of bias.
- No application discloses an existing conflict of interest, e.g. no applicant disclosed an existing financial interest in any organization, association, or entity that has an existing contractual relationship with the Board(s) in which the applicant is interested.
- One applicant disclosed a potential for conflict because he has financial interests, primarily employment, in entities which may seek to contract with the Boards. Where such potential for conflict was identified, our analysis briefly addresses the significance of this potential for conflict, based on information received from Retirement Services staff.
- The two applicants indicated that they would not have any financial interests, other than employment, to disclose.

Attachment A is a summary and brief analysis of any apparent legal conflicts of interest for each applicant based on the information that was available in the applications submitted by the applicants. This summary and analyses is limited to the applicants who are being considered by the City Council on December 4, 2012 and focuses on their relationship if any to persons or entities that are likely to come before the Board(s) for which they are applying.

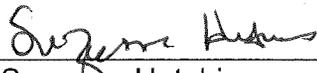
Attachment B is a list of the entities with which one or both Boards currently have a contractual relationship. We note that some of these are forms of entities (partnerships or private companies) in which it is unlikely that applicants would have a financial interest if they are not employed by the firm. However, even if the applicants do not currently have a contractual relationship with any firm in which either Board currently has a financial interest, the list of entities with which

the Boards contract changes from time to time and we would expect Board member's financial interests to change over time as well. Thus, both staff and the individuals appointed to these Boards will need to exercise vigilance to avoid conflicts from arising in the future.

**CONCLUSION**

The applicants did not identify any existing conflicts which would prevent them from serving on the Boards. A potential conflict of interest for one applicant was identified. Further, as noted above, potential for conflicts could arise through the terms of office of one applicant. However, according to Retirement Services staff, an actual conflict could be avoided in almost all cases because the types of contractual services that the Boards normally secure are usually not so unique services that the Boards need to contract with a particular entity.

RICHARD DOYLE  
City Attorney

By   
Suzanne Hutchins  
Senior Deputy City Attorney

cc: Debra Figone, City Manager  
Dennis Hawkins, CMC, City Clerk  
Donna Busse, Acting Director Retirement Services

ATTACHMENT A  
Retirement Boards Candidates  
Conflict of Interest Review

**Applicant Stuart Odell**

**Board**  
Federated

**Employer**  
Intel Corporation

**Spouse Employer**  
N/A

**Conflict of Interest**

Mr. Odell did not identify any organization, association, or entity in which he was active or which he is involved or associated that might be affected by decisions of the Board. He further indicated that he would have no financial interest to disclose other than his interest in his employment.

**Applicant Vincent Sunzeri**

**Board**  
Police and Fire

**Employer**  
Morgan Stanley  
Wealth Management

**Spouse Employer**  
N/A

**Conflict of Interest**

Mr. Sunzeri indicated that he would have no financial interest to disclose other than the above employment interest. With respect to organizations, association or entities which might be affected by Board decisions, Mr. Sunzeri previously stated when considered for appointment in 2010 that if either Board were to retain Morgan Stanley as either a consultant or a money manager, he would resign his position. It is our understanding, based on conversations with Retirement Services staff, that Morgan Stanley is not a firm with which the Boards are likely to contract. If either Board were to retain Morgan Stanley as a consultant, the Boards' General Counsel would need to revisit this.

ATTACHMENT B  
Retirement Boards Contractors

**FEDERATED CITY EMPLOYEES'  
RETIREMENT SYSTEM**

**Custodian Bank:**

State Street Bank

**Actuary**

CHEIRON, INC

**Investment Consultant**

Meketa Investment Group

**Hedge Fund Consultant**

Albourne America, LLC

**Investment Attorney**

Hanson Bridgett, LLP

**Proxy Voting**

Glass Lewis

**General & Fiduciary Counsel**

Reed Smith, LLP

**Tax Counsel**

Ice Miller, LLP

**Legal Counsel**

SALTZMAN & JOHNSON LAW CORP

**Investment Managers:**

ARTISAN PARTNERS LIMITED  
PARTNERSHIP

RUSSELL IMPLEMENTATION  
SERVICES

Blackstone/GSO

Seix Investment Advisers

CALAMOS ADVISORS LLC

Tradewinds Global Investors

Credit Suisse Asset Management, LLC

White Oak Global Advisors, LLC

DRA Advisers

EAGLE ASSET MANAGEMENT INC

First Quadrant

GE Asset Management

Great Hill

GSO Capital Partner

Long Wharf Real Estate Partners LLC

MACKAY SHIELDS LLC

Medley Capital

Northern Trust Global Investments

Pantheon Ventures (US) LP

Partners Group

Pathway

Pathway Capital

Pathway Capital Management, LLC

Prisa

Prudential Real Estate Investors

RS INVESTMENT MANAGEMENT CO,  
LLC

**All other vendors:**

BLOOMBERG FINANCE L.P.

BLUE SHIELD OF CALIFORNIA

CALAPRS CALIF ASSOC OF PUBLIC

RETIREMENT SYSTEM  
CANON BUSINESS SOLUTIONS  
FORMERLY NEWCAL  
CBRE ITF 1737 NO FIRST ST CORP

CINTAS FIRST AID & SAFETY  
CLEAN SOURCE

COMBINED INS CO OF AMERICA  
COMPUTER XTRAS XPRESS  
COMPUTERLAND OF SILICON VALLEY  
CORTEX APPLIED RESEARCH INC.  
EVESTMENT  
FEDERAL EXPRESS CORP  
FINANCIAL KNOWLEDGE NETWORK LLC  
GFOA

GRAEBEL COMPANIES, INC.  
IFEBP PUBLICATIONS DEPARTMENT  
KAISER FOUNDATION  
L.R. WECHSLER, LTD  
LEVI, RAY, AND SHOUP INC  
LIFE INSURANCE COMPANY OF NORTH  
AMERICA

MACCORKLE INS SERVICE  
MACIAS GINI & O'CONNELL, LLP  
MAILINGS US, INC.  
MCCREESH, PATRICK, M.D.  
MCCREESH, PATRICK, M.D.  
MERCER INVESTMENT CONSULTING  
NAPPA

NATIONAL AVENUE MEDICAL  
ASSOCIATES  
NORTHERN TRUST INVESTMENTS  
PACIFICARE  
PC MALL GOV, INC.  
PEAK TECHNOLOGIES INC  
PENSION BENEFIT INFORMATION  
PRUDENTIAL INSURANCE COMPANY  
RECALL TOTAL INFORMATION MGMT  
RICOH AMERICAS CORPORATION  
ROBERT HALF INTERNATIONAL  
SACRS  
SEPSIS, PETER G  
SILICON VALLEY PROFESSIONAL  
STAFFING

SPRINT PCS

TRENDTEC INC  
U S BANK CORPORATE  
PAYMENT SYSTEMS  
UNITED PARCEL SERVICE  
VANTAGE POINT  
PHOTOGRAPHY, INC  
VISION SVC PLAN

**POLICE AND FIRE DEPARTMENT  
RETIREMENT PLAN**

*List of Administrative and Investment Vendors  
as of November 2012*

**Custodian Bank**

**Investment Consultant**

**Hedge Fund Consultant**

**Investment Attorney**

**Proxy Voting**

**General Counsel**

**Tax Counsel**

**Actuary**

**Legal Counsel**

State Street Bank

NEPC, LLC

Albourne America, LLC

Hanson Bridgett, LLP

Glass Lewis

Reed Smith, LLP

Ice Miller, LLP

Cheiron

SALTZMAN & JOHNSON

LAW CORP

**Investment Managers:**

Alliance Capital

AMERICAN REALTY ADVISORS

Blackstone/GSO

BOSTON PARTNERS ASSET  
MANAGEMENT LLC

BOSTON SAFE DEPOSIT & TRUST CO

BRANDES INVESTMENT PARTNERS LP

CALAMOS ADVISORS LLC

CREDIT SUISSE

FIRST QUADRANT

HARBOURVEST PARTNER

INCOME RESEARCH & MANAGEMENT

MacKay Shields

MACKAY SHIELDS LLC

Medley Capital

ORG PORTFOLIO MANAGEMENT LLC

Pantheon Ventures

PIMCO

Portfolio Advisors

RHUMBLINE ADVISERS

RS INVESTMENT MANAGEMENT CO, LLC

RUSSELL IMPLEMENTATION SERVICES

SEIX ADVISORS/GEORGE WAY

Siguler Guff

TCW

White Oak

WILLIAM BLAIR & CO

**All other vendors:**

BLOOMBERG FINANCE L.P.

BLUE SHIELD OF CALIFORNIA

CALAPRS CALIF ASSOC OF PUBLIC RET SYSTEM

CANON BUSINESS SOLUTIONS

CBRE ITF 1737 NO FIRST ST CORP

CDWG GOVERNMENT, INC.

CINTAS FIRST AID & SAFETY

CLEAN SOURCE

COLMAN, JOHN P MD, INC

COMBINED INS CO OF AMERICA

COMPUTER XTRAS XPRESS

CORTEX APPLIED RESEARCH INC.  
DAMORE, EDWARD, M.D.  
DELANEY, TERENCE J, M.D.  
ELLAMAGGIORE, EUGENE D, M.D.  
FEDERAL EXPRESS CORP  
FINANCIAL KNOWLEDGE NETWORK LLC  
GOVERNMENT FINANCE OFFICERS ASSOCIATION  
GRAEBEL COMPANIES, INC.  
IFEBP PUBLICATIONS DEPARTMENT  
KAISER FOUNDATION  
L.R. WECHSLER, LTD  
LEVI, RAY, AND SHOUP INC  
LIFE INSURANCE COMPANY OF NORTH AMERICA-  
L.I.N.A.  
MACCORKLE INS SERVICE  
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MAILINGS US, INC.  
MCCREESH, PATRICK, M.D.  
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MEDICAL DIRECTOR & SUPPORT STAFF  
MERCER HUMAN RESOURCE CONSULTING  
MERCER INVESTMENT CONSULTING  
NAPPA  
NATIONAL AVENUE MEDICAL ASSOCIATES  
ORG PORTFOLIO MANAGEMENT LLC  
PACIFICARE  
PC MALL GOV, INC.  
PEAK TECHNOLOGIES INC  
PENSION BENEFIT INFORMATION  
PRUDENTIAL INSURANCE COMPANY  
RECALL TOTAL INFORMATION MGMT  
REHABONE MEDICAL GROUP, INC  
RICOH AMERICAS CORPORATION  
ROBERT HALF INTERNATIONAL  
ROBERT HALF INTERNATIONAL  
ROBINSON, TED H, M.D.  
ROLLINS, JOHN S MD  
RS INVESTMENT MANAGEMENT CO, LLC  
SACRS  
SALTZMAN & JOHNSON LAW CORP  
SEPSIS, PETER G  
SILICON VALLEY PROFESSIONAL STAFFING  
SILVER, RICHARD A, D.C.

SPRINT PCS  
STEWART MANAGEMENT CO  
TRENDTEC INC  
U S BANK CORPORATE PAYMENT SYSTEM  
UNITED PARCEL SERVICE  
VANTAGE POINT PHOTOGRAPHY, INC  
VISION SVC PLAN  
WELSH, JOHN, M.D.