

# VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

## BOARD OF RETIREMENT

### BUSINESS MEETING

MARCH 21, 2011

### MINUTES

**DIRECTORS  
PRESENT:**

Tracy Towner, Chair, Safety Employee Member  
William W. Wilson, Vice Chair, Public Member  
Steven Hintz, Treasurer – Tax Collector  
Steve Bennett, Public Member  
Albert G. Harris, Public Member  
Joseph Henderson, Public Member  
Robert Hansen, General Employee Member  
Arthur E. Goulet, Retiree Member  
Chris Johnston, Alternate Employee Member  
Will Hoag, Alternate Retiree Member

**DIRECTORS  
ABSENT:**

Karen Anderson, General Employee Member

**STAFF  
PRESENT:**

Henry Solis, Interim Retirement Administrator  
Brenda Cummings, Retirement Operations Manager  
Lori Nemiroff, Assistant County Counsel

**PLACE:**

Ventura County Employees' Retirement Association  
Second Floor Boardroom  
1190 South Victoria Avenue  
Ventura, CA 93003

**TIME:**

9:00 a.m.

**ITEM:**

**I. INTRODUCTION OF MEETING**

Chairman Towner called the Business Meeting of March 21, 2011 to order at 9:00 a.m.

II. APPROVAL OF AGENDA

The Chair requested that item VII.B. be heard before VII.A.

Mr. Goulet moved, seconded by Mr. Harris, to approve the agenda as amended.

Motion passed.

III. APPROVAL OF MINUTES

A. Business Meeting of February 28, 2011.

Mr. Goulet offered corrections to page 9, paragraph 3, the word "complimentary" should be "complementary," and page 11, removal of the second paragraph, as it was redundant to the seventh paragraph.

Mr. Harris moved, seconded by Mr. Wilson, to approve the Minutes for the Business Meeting of February 28, 2011, as amended.

Motion passed.

B. Disability Meeting of March 7, 2011.

Mr. Goulet offered a correction to page four, item IV.B., the motion should reflect that the Hearing Officer's recommendation was to deny a service-connected disability retirement, and grant a non-service-connected disability retirement. Staff confirmed that Mr. Goulet's suggested correction was consistent with the Hearing Officer's recommendation.

Mr. Goulet moved, seconded by Mr. Henderson, to approve the Minutes for the Disability Meeting of March 7, 2011, as amended.

Motion passed.

IV. CONSENT AGENDA

A. Regular and Deferred Retirements and Survivors Continuances for the Month of February 2011.

B. Statement of Plan Net Assets, Statement of Changes in Plan Net Assets, Summary of Investments and Cash Equivalents, and Schedule of Investment Management Fees for the Month Ended December 31, 2010.

C. Report of Checks Disbursed in February 2011.

IV. CONSENT AGENDA (continued)

- D. Budget Summary – Year to Date as of January 2011, Fiscal-Year 2010-11.
- E. BlackRock Asset Management Report for the U.S. Equity Index Fund, Extended Equity Market Fund, U.S. Debt Index Fund, ACWI EX-US Fund for the Month Ended January 31, 2011.

Mr. Harris moved, seconded by Mr. Wilson, to approve the items on the Consent Agenda.

Motion passed.

V. INVESTMENT INFORMATION

- A. Hewitt EnnisKnupp, Kevin Vandolder.
  - 1. Monthly Investment Performance Update, February 2011.
  - 2. Monthly Manager Updates/Summary, February 2011.
    - a. Sprucegrove
    - b. Artio
    - c. Hexavest
    - d. Walter Scott
    - e. GMO
    - f. Acadian
    - g. Western
    - h. Reams
    - i. Loomis Sayles
    - j. K2

Kevin Vandolder from Hewitt EnnisKnupp was present to update the Board.

Mr. Vandolder addressed the impact of the Japanese earthquake, the tsunami, and the meltdown of the nuclear reactors. He identified the key risks to the Japanese economy. He stated that the Japanese own \$830 billion of Treasuries. If they decide to liquidate those assets, it could lead to continued selling pressures on Treasuries. Another factor is the concern about Japan's debt representing 200% of their current year GDP. He further stated that 60% of every dollar taken in, as reported by Walter Scott, goes to some form of government interest payment. In the last two days the stock market has climbed higher because people are

V. INVESTMENT INFORMATION (continued)

A. Hewitt EnnisKnupp. (continued)

becoming more comfortable, and it is anticipated that the reconstruction in Japan can lead to a sizable GDP expansion for the world's third largest economy.

Mr. Vandolder noted that VCERA has approximately \$130 million or 4.3% of the portfolio in some form of Japanese exposure. Artio has the most significant underweight (8%) in Japanese securities which should lead to significant outperformance in the month of March. Managers with strong performance up to this point have been overweighted to Japan. Hexavest and Sprucegrove are overweighted at 25% and 20%, respectively as compared to the benchmark weighting of roughly 15%. GMO and Acadian are at roughly 13% and 10%, respectively.

Mr. Vandolder discussed the February 2010 performance and stated that the total fund is now \$3.15 billion. Several things happened in January and February. In the Middle East, 300 million Muslims were seeking some form of democracy. The markets are wrestling with what is next. Oil prices started to spike with the unrest in Libya, at \$104. The last time there was a spike it went up to \$148. When gas prices rise above \$4 per gallon in California that is a major turning point in consumer decision making as this is a huge tax on the global economy. This could mean some muted economic growth, in Southeast Asia in particular, because inflation is so strong in Southeast Asia this type of increased tax from higher fuel cost could be what the monetary policy experts are looking for.

Mr. Vandolder referred to a tighter fiscal policy that could lead to potential economic contractions resulting from the tighter fiscal policy that may lead to corporate expansion. Virtually all economists agree it is good news for the government to become smaller, and corporations and capitalism to continue to spread. The current events may lead to capitalism spreading to countries like Libya, Iraq, or Iran, where it was never dreamed possible.

Mr. Vandolder stated that most of the portfolio managers' corporate profits remain high, and they remain bullish on the level of cash sitting in the coffers in corporations. They are more global than ever before, and any hint of a weakness in the US dollar may not be completely felt. Bull markets continue to climb significant walls of worry, but continue to see valuation expansion. And even though Bernanke continues to print \$2.5 million of money every minute until the end of June, the question will be what

V. INVESTMENT INFORMATION (continued)

A. Hewitt EnnisKnupp. (continued)

happens as we get closer and closer to June 30<sup>th</sup>, the deadline for Quantitative Easing 2 to fade away. The hope is that the corporate growth in the economy will pick up where the public sector is fading away.

In response to a question from Mr. Bennett regarding the Fed announcement that they would be selling \$150 billion of mortgage backed securities, Mr. Vandolder stated that this would reverse some of the impact of the Quantitative Easing 2. Mr. Vandolder further stated that the Fed is hinting to the market that they will turn off the printing of money. Bernanke is an expert in depression economic management, which is good news. There is a more positive outlook with the Freddie and Fanny experiment. Reams has been moving away from risk control and is moving to more risk in the portfolio for the first time in twelve months. These are all good indications that things are moving in the right direction.

Mr. Vandolder stated that the rate of return for the portfolio since June 30, 2010, is 22.1% relative to the policy portfolio of 20.8%. He reminded the Board that VCERA's investment program is set up to outperform by 80 basis points two out of every three years, and currently the fund is getting close to three times the added active alpha percentage. The reason that it is only 80 basis points is because the fund has so much money sitting in low cost index funds so as to make that market beta. Where the fund is trying to achieve some success is with active managers with which the Board has varying degrees of confidence, and all the fixed income managers.

Mr. Vandolder stated that Total U.S. Equity was up 32.4% relative to the benchmark of 31.9% with over \$1.2 billion invested, including \$1.04 billion in index funds, adding roughly 50 basis points of excess performance. On the non-equity side, there has been some challenge. Sprucegrove has not delivered as well. They have Nokia and Samsung in their portfolio, which has traded down. Artio has had a sizeable underweight to Japan and overweight to emerging markets, and that is what led to the significant adverse performance. 40% of the portfolio with Artio is exposed to one form of emerging markets or another, and that is the key driver in terms of performance. Artio's returns have been favorable, 23.5% on the fiscal year, but not keeping up with its benchmark of approximately 30%.

Acadian continues to underperform. They have a contrarian strategy, and are looking for undervalued companies with a strong prospective of

V. INVESTMENT INFORMATION (continued)

A. Hewitt EnnisKnupp. (continued)

material growth. They have missed the materials market in the Canadian market place which has led to a significant decline. They also avoided Exxon Mobile. This has led to a key component of their underperformance.

The Fixed Income managers have been successful across the board on a relative basis. The total returns earned in the last 36 months will not be earned going forward, with significant prospects of rising rates, which is bad for bonds. Mr. Vandolder continues to urge his clients to have a fairly heavy equity discipline, and focused on areas of the market where you get paid for that equity risk, like private equity.

Mr. Wilson commented on Loomis Sayles' rather spectacular consistent performance. Mr. Vandolder commented on the risk levels being off the chart to the right. He stated that Loomis takes significant equity like bets. They are a beta manager from the perspective that they take their benchmark and see the risky spots and avoid the things they are not getting paid a lot for and go heavily into high yield. So a lot of the portfolio looks and feels like equity. This is why Loomis only manages \$108 million. They have grown that a lot. The key driver of Loomis being in the portfolio is the Board telling him, "What can you give us that has more juice in it?"

K2 had a disappointing result. The fund is off 4.3% year to date for the first two months of 2011. The key driver was February 22<sup>nd</sup>, when the US dollar spiked, and the concern about what was happening in the Muslim nations. Most economists believe the US dollar will weaken because the Feds continue to print money, and the demand is tapering off. One of the reasons why we have not been further hurt is because the US dollar is still the reserve currency of choice. The US dollar will continue to weaken over the next five years, unless we get our fiscal house in order.

Mr. Goulet stated that he had read the dollar had weakened to the Yen. Mr. Vandolder responded that may have been for one or two days but that the yen has depreciated.

Mr. Wilson commented that after the earthquake and tsunami there was massive repatriation of money to Japan, so they were selling dollars and buying yen. This triggered an intervention by the government. Mr. Vandolder clarified that it was direct government intervention.

V. INVESTMENT INFORMATION (continued)

A. Hewitt EnnisKnupp. (continued)

Mr. Johnston requested clarification of Western Asset Management's classification and whether this was a core fund. Mr. Vandolder clarified that Western is considered core plus, core full. They take the aggregate bond index, which does not have any high yield or non-US direct currency exposures, and have specific flexibility to go outside of that benchmark, that makes the plus; and then to the extent that even more restrictions are removed, that makes it core full. It is therefore a little bit more risky. BlackRock is full core; Reams is core plus, but more risk adverse than Western; Loomis is far to the right based on relative risk.

Mr. Johnston received clarification on Western Index Plus' current outperformance but questioned at what risk. Mr. Vandolder stated that this investment is portable alpha, and the risk is significant. Many of the SACRS peers utilize this risk. VCERA has seen it on the down side, because VCERA invested near the top of the fixed income market. In essence VCERA is buying S&P 500 futures contracts, a very complex strategy. VCERA gets the beta exposure, the S&P 500 return, and then adds on top of it some fixed income beta, which is beta on top of beta. Mr. Vandolder stated he would say that this was "leverage," as one would be doubling the use of the assets. But many of his peers say it is "good leverage" because the assets are being used more effectively. This was in response to the Board's disappointment of the amount of active risk in the investment program, but had a high degree of confidence in Western. The risk is to the extent that the fixed income starts trading off as a result of significant concerns about a deflationary environment; on top of that the S&P starts trading off, magnifies the losses that occurred in the summer of 2008 thru March of 2009. Mr. Vandolder advised the Board to be very careful on the amount they give to a riskier manager of that type, especially since Western Asset is now the core alpha source, and in fixed income. When Western suffers poor performance as they did in the summer of 2008 thru March of 2009, their influence on the entire fund is magnified. It is a tactical risk, and VCERA needs to take tactical risks if they intend to earn excess performance, unless they want to be 100% index, according to Mr. Vandolder.

Mr. Johnston received clarification that because of the high level of risk, during periods of high volatility it takes Western longer to recover when they do poorly. Mr. Vandolder stated the Index Plus was an ill timed investment, and the Board's significant patience is beginning to pay off. Western continues to believe that spread sectors, non-Treasury securities,

V. INVESTMENT INFORMATION (continued)

A. Hewitt EnnisKnupp. (continued)

will continue to deliver excess performance. Therefore, the potential chance of growing the portfolio is pretty high, absent some major geopolitical event. Mr. Johnston said that several unforeseen events are playing out.

Mr. Vandolder stated Hewitt makes sure the Board is aware of the risks, and Western's strategies to mitigate them, and how they ensure compliance with the guidelines. Mr. Johnston highlighted the fact that Western is again out of compliance this month. Mr. Vandolder stated that that fact is disclosed that they are out of compliance by 21 basis points. Western is at 5.21% compared to the 5% in high yield securities. The Board could decide to have Mr. Vandolder work with staff to adjust to 5%, but those guidelines are a method of communication about risk control from the Board to the manager. He would encourage the Board to maintain the discipline with the out of compliance exposure for a period of time. The period of time is usually six months, and the Board is at 2 ½ months.

Mr. Johnston expressed concern about the Board's fiduciary duty to monitor risk in a responsible manner when a manager adds on more risk by being out of compliance. Mr. Vandolder would be glad to discuss how to "de-risk" the fixed income investment program at the next business meeting. Mr. Vandolder noted that options meant to provide diversification opportunities would be discussed later in the meeting, and Western may be a key source of that global exposure. He further stated that from a fiduciary perspective, the Board receives a report fully disclosing Western's risk. Mr. Vandolder has advised staff of Hewitt's comfort with this level of risk. Hewitt's concern is that the managers not have a "fire sale" of the securities that have been downgraded, but rather do their best to trade out of this violation. According to Mr. Vandolder, this will serve to protect the public by ensuring no manager sells a security they normally would not sell to come into compliance.

Mr. Vandolder stated that the Board has to have patience and confidence in the managers, because it leads to a higher probability of success.

Mr. Johnston stated he has no more confidence in Western.



V. INVESTMENT INFORMATION (continued)

A. Hewitt EnnisKnupp. (continued)

3. Evaluation of Global Fixed Income Investment Manger Candidates.

Mr. Vandolder discussed the four Global Fixed Income offerings, Loomis Sayles, PIMCO, Rogge and Western with a suggested mandate of \$100 million. If the Board chooses to move away from Western, Mr. Vandolder stated the solution is through global mandate. As the US dollar becomes less prominent, and the opportunities for benefitting from different monetary and fiscal disciplines around the world continue to play out, fixed income managers continue to ask for greater degrees of discretion.

Mr. Vandolder discussed the "BUY," "HOLD," and "SELL" ratings on the Executive Summary and Overview of Candidates Global Fixed Income. A "SELL" means they encourage all of their clients to remove the manager from the program; a "HOLD" means they are capable and qualified (Western is in this holding pattern); a "BUY" indicates the most appealing managers.

Mr. Vandolder reviewed the relative weaknesses/issues of each manager. Loomis has a deep value approach and is limited to one key individual. So if Kenneth Buntrock left that would be a serious concern. PIMCO has significant risk as they use derivatives, but with some of the brightest managers in the industry. Rogge has the highest degree of personal ownership; it is a smaller more nimble team. Western is also being presented, however, given some of the concerns this may not be the best approach in trying to find a solution set.

Mr. Vandolder highlighted Rogge's favorable fees compared to the other offerings.

Mr. Vandolder reviewed the historical duration, the level of interest rate sensitivity. He stated that Western is a lot more volatile in how they have been managing the duration of the portfolio. Loomis has underweight the market in terms of duration. Rogge has been very tight in terms of interest rate sensitivity. Mr. Vandolder stated that the concerns of Mr. Johnston are evident in the duration with Western.

Mr. Vandolder stated that with respect to risk adjusted basis, Loomis has the greatest degree of excess return, and more risk. Loomis has good characteristics historically. PIMCO is in the middle and Rogge is a little bit lower. Western has a higher degree of risk.

V. INVESTMENT INFORMATION (continued)

A. Hewitt EnnisKnupp. (continued)

Mr. Vandolder stated that the recent market impact on fixed income investments has taught fixed income managers a lot about what risk can do when all correlations go to one. The only thing that doesn't go to one is gold or silver or any other precious metal as they do not have any unique income potential outside of value storage.

Mr. Goulet stated that the rating process is entirely different than what they have seen in the past. He expressed his concern if the rating system was Aon's or Hewitt's as the Board was told that EnnisKnupp's rating system was proprietary. Mr. Vandolder clarified that the leadership for the most part remains the same with EnnisKnupp's professionals making up a significant amount of the over seventy manager researchers in their global organization. The researchers and management from Chicago are still the same. The only difference is that the key boss is Ean Peart, out of London. Over 80% of the opinions of all three organizations were in common. On eighteen percent of issues, they were able to come to the same conclusion, and two percent of the time there was a difference of opinion. The prior system, the Investment Manager Rating System, had scoring between zero and twenty. The new system is very similar and easier to communicate to fiduciaries.

Mr. Vandolder requested the Board's direction on which managers they would like to meet with. He stated he would work with staff to schedule presentations. He stated that his preference would be to meet at a regular board meeting in either April or June with two or three managers. His recommendation would be to avoid Western, and to meet with Loomis, and the boutique organization, Rogge, or PIMCO and Rogge.

Mr. Goulet stated he agreed with not meeting with Western. He stated that they have, as an active manager, more than ten percent of the portfolio. Mr. Vandolder clarified that the source of funding would come directly from their mandate at that point.

Mr. Wilson thought Loomis had a proven track record and it was a product they could handle well. He questioned Rogge because they are younger and smaller. He stated that he thinks that PIMCO is too large. Mr. Vandolder stated that their "macro insights" have been consistently right.

Mr. Johnston stated that PIMCO was very impressive, when he and Mr. Goulet visited them last year. They were, in his opinion, everything that Western was not. Mr. Goulet stated he agreed with Mr. Johnston.

V. INVESTMENT INFORMATION (continued)

A. Hewitt EnnisKnupp. (continued)

Mr. Bennett sought clarification regarding what the statement in the document meant when it referred to Loomis underperforming in a spread widening environment because they take deep value bets. Mr. Vandolder responded that spread means anything that is non-Treasuries, and that they do take on value risks that would continue to benefit Loomis' performance.

Mr. Wilson moved, seconded by Mr. Hansen, to have Loomis, PIMCO, and Rogge to make presentations to the Board.

Motion passed.

Mr. Vandolder stated the manager evaluation rating is now zero to five, an improvement compared to the zero to twenty rating scale. The rating goes over all the key touch points: overall rating; the business; the talent; the approach to the market; the risk they bring on, which is a new area; performance; and the terms and conditions of the underlying contracts.

Mr. Vandolder believes that this is actually an improvement in risk management. As a fiduciary they have done a review of all the managers' risk mitigation, risk compliance, and understand what the market looks like in the position of the portfolio.

Mr. Vandolder stated that with regard to Western, a ranking of three means neutral, and a two means there could be improvements with regard to the other managers that they see. In Western's ranking two of the five areas are twos. One is in the area identified by Mr. Johnston, that being risk. The bottom line opinion, the overall rating, is whether the manager has what it takes to add value to a reasonably difficult benchmark. Western has a "Hold" opinion.

Mr. Vandolder stated that he personally prefers this rating system because it addresses some of the deficiencies that were in the previous rating document, but the success of the program will ultimately determine each manager's value.

5. Memo - Western Fee Update.

Mr. Vandolder stated that Hewitt EnnisKnupp is the largest firm in the world, and money managers do not want to price themselves out of the

V. INVESTMENT INFORMATION (continued)

A. Hewitt EnnisKnupp. (continued)

market because they are on their buy list. Western has dropped their fee on the Western Index Plus by five basis points; this is approximately \$50,000 a year.

Mr. Goulet moved, seconded by Mr. Wilson, to authorize the chair to sign the fee agreement amendment with Western.

Motion passed.

6. Flash Report – Acadian Asset Management: Portfolio Management Departures.

Mr. Vandolder updated the Board with regard to Acadian. There were two talent defections over the last few weeks. However, they still have 13 PhD's, and 20 CFA holders, many of them have been there since the founding of the firm. Mr. Vandolder stated that some of brightest minds are there with this quantitative tool. He acknowledged that it has not shown up in relative performance yet, but they are sharing this as a written opinion from a fiduciary perspective on the Board's behalf

4. Memo - AlphaEngine Global Investment Solutions Update.

Mr. Vandolder presented an update on AlphaEngine Global Investment Solutions. He reviewed the five factors that Mr. Muralidhar analyzes, economic, valuations, sentiment, momentum, and technical, in making recommendations to the Board regarding tactically moving assets among the target policy portfolio. Mr. Muralidhar uses his MQ tool to look at these five factors and position the assets in advance of market movement. This is his value proposition.

Mr. Vandolder stated that VCERA needs two things to be successful in this space. He stated that the Board collectively has to have unanimous confidence in Mr. Muralidhar's capability to manage those five key factors successfully, and unanimous patience to leave the strategy in place for five years, enough time to complete a full market cycle.

The challenge is the fee level which was \$600,000 plus twenty percent of the upside, but since that meeting the fee was revised to \$450,000 fixed plus twenty percent of the upside. Mr. Vandolder stated he did not see the confidence and patience necessary for this investment by the Board and

V. **INVESTMENT INFORMATION (continued)**

A. Hewitt EnnisKnupp. (continued)

therefore recommended that the Board take a pass and continue to monitor what these opportunities look like. He stated that Mr. Muralidhar has had some type of success managing this type of platform, but looking at the Board's current plan, fee sensitivity, potential opportunity, the turnover in staff, and the success VCERA has achieved with Clifton, that is passive in nature, and decided that it is really not necessary to actively manage at this time.

Mr. Hintz stated he thought Mr. Vandolder had read the Board very well.

Mr. Hansen moved, seconded by Mr. Goulet, to receive and file Hewitt's memo regarding AlphaEngine.

Motion passed.

Mr. Hintz moved, seconded by Mr. Harris, to receive and file items 1 thru 3, and 5 and 6.

Motion passed.

VI. **CLOSED SESSION**

Pursuant to the Provisions of Government Code Section 54956.9 Subdivision (c), the Board of Retirement Adjourned into a Closed Session to Determine Whether to Initiate Litigation. (Name of Potential Defendant Withheld, as Authorized Under Government Code Section 54956.9 Subdivision (c).)

In open session, Ms. Nemiroff announced that the Board had taken no reportable action.

VII. **OLD BUSINESS**

A. Pension Administration System Project Update.

Brian Colker of Linea Solutions was present to update the Board on alternate vendors for VCERA's PAS project. Mr. Colker provided a report that summarized salient points of each proposal and a worksheet that compared the cost and resources for each vendor. He stated that while there are five feasible alternate vendors, Linea cannot recommend finalists at this time. He stated the cost range is fairly narrow. The pricing variable is

VII. OLD BUSINESS (continued)

A. Pension Administration System Project Update. (continued)

the annual maintenance and support. Implementation is fairly consistent. Four of the five vendors have a broad range of experience with public retirement systems and other defined benefit plans.

Mr. Towner received clarification that Mr. Colker has a plan for going forward, and the next step would be the procurement mode. He would go back to the five vendors with a more extensive list of requirements of what the vendors would need to provide. He would conduct due diligence, bring them in for demonstrations, bring in their project teams to be interviewed, and check references. Once finalists have been identified, site visits could be performed. If the Board is interested they would visit the facility of the software company. This process would take between six and eight weeks as the vendors would need at least three weeks to prepare. At that time he could come back to the Board with a vendor recommendation.

Mr. Henderson requested clarification how much overlap exists between the VCERA and SDCERA. Mr. Colker believed there is approximately an 80% overlap in functionality with VCERA. Mr. Colker explained that the core engine of what the systems need is basically the same. The twenty percent difference is why the project takes two years. The difference is in the way the project is implemented, and how each system interprets and applies the 1937 Act. In response to a question by Mr. Henderson on whether LRS, JEA, and Vitech have either implemented multiple '37 Acts or are in the process of doing so, Mr. Colker stated that all 1937 Act systems are using commercial off the shelf systems, and would not be allowed to license the product to VCERA. There are no "home grown" pension administration systems by '37 Act systems.

Mr. Goulet received clarification that the project team will look at the costs over the life of the system, so a more granular cost proposal must be obtained before Vitech is excluded from the process. Both soft and hard costs must be factored into the analysis. Mr. Colker stated that there will be a very detailed analysis. Mr. Goulet summarized by stating that he was interested in the effective annual cost, and not just the gross cost.

Mr. Bennett stated that there will need to be a clear discussion with the alternate vendors about the possibility of them using the deliverables acquired to date. He also questioned the difference in cost based on what, if any, kind of settlement will come out of CPAS. Mr. Bennett and Mr. Colker agreed that any payments will be based upon deliverables, and not a time schedule.

VII. OLD BUSINESS (continued)

A. Pension Administration System Project Update. (continued)

Mr. Bennett moved, seconded by Mr. Wilson, to direct Mr. Colker to return to the Board as soon as possible with whatever he recommends as his next step.

Motion passed.

Ms. Nemiroff announced that during the closed session the Board did vote to issue CPAS a notice of termination of the contract.

B. Office Space Lease Renewal Update.

Staff distributed the most recent lease amendment.

Tom Dwyer stated that he had submitted his red line comments to M.F. Daily and as of that morning he had received some responses back to the items that are in the Amendment. He stated M.F. Daily wanted changes to section four, consumer price index of 1967. The Landlord clarified that there was no difference between the 1982 index and the 1967 index. Mr. Dwyer said that his office will confirm there is no difference.

Mr. Dwyer stated that they had deleted the word "revised," and left it as the Consumer Price Index, and made the technical correction to read Los Angeles, Riverside, and Orange County rather than Los Angeles, Anaheim, and Riverside. Mr. Dwyer stated that they will not have comparison months but will bill VCERA retroactively to April of each year.

Mr. Dwyer stated that in section 6, the names of the tenants on the floor have been identified. None of the tenants on the second floor besides VCERA have any option rights to existing space.

Mr. Goulet stated that the example in that section is in error and creates an ambiguity, because the percentage used is over the 3% cap. Mr. Dwyer stated that he can have that changed. Mr. Goulet stated that the example is not necessary because the CPI publication actually lists the year to year change. Mr. Goulet stated that there should be a line that states it is limited to 3%.

Staff clarified that with the build out there will be additional costs for furniture, cabling, phones and moving.

VII. OLD BUSINESS (continued)

B. Office Space Lease Renewal Update. (continued)

Mr. Goulet stated that in the second line of section 4 rather than saying "increase" the word should be "adjusted," because it cannot be increased if it is zero.

Mr. Goulet moved, seconded by Mr. Henderson, that the lease be executed, subject to the changes discussed.

Motion passed.

VIII. NEW BUSINESS

A. SACRS Board of Director Elections – Recommended Ballot.

Staff stated that the SACRS nominating committee has put before the Board the recommended slate, but that there could be a write in candidate.

Mr. Goulet noted that there will be two probation officers on the SACRS board.

Mr. Bennett moved, seconded by Mr. Henderson, to direct the voting delegates to vote in accordance with the SACRS recommended ballot.

Motion passed.

B. Fiduciary Fundamentals for Board of Retirement Trustees Presentation, Ashley K. Dunning, Manatt, Phelps & Phillips, LLP.

Ashley Dunning of Manatt, Phelps & Phillips, LLP. was present. She stated that she provided a presentation to the Board on fiduciary fundamentals two years ago. She noted there have not been any significant changes, however, much attention and scrutiny is being focused on this area. She stated that the Board members' fiduciary obligations are at the core of their thinking about how they are conducting their business.

In response to a question from Mr. Bennett, Ms. Dunning noted that the presentation materials provided were her most up to date fiduciary training documents.



VIII. NEW BUSINESS (continued)

B. Fiduciary Fundamentals for Board of Retirement Trustees Presentation.  
(continued)

Ms. Dunning stated that there are four basic topics. They are the duty of care, the duty of loyalty, the legal standards that apply in these areas, and the processes that are important to demonstrate compliance with fiduciary obligations.

Ms. Dunning stated that basic trust law, which is incorporated into the California Constitution, states that the Board members are to be "prudent experts." She stated that this means they must discharge their duties with respect to VCERA 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 like character and with like aims. This includes areas of investment and benefit administration, and in matters where the Board does not have expertise, they are to consult with the retained experts, actuaries, advisors, and legal professionals.

Ms. Dunning stated that the Board members have several specific duties that are set forth in the California Constitution that fall under the duty of care. She stated that one of these is to ensure the competency of the retirement system assets. This is a very important provision. It speaks to the independence of the work the actuary does. This has been an area of conflict. She stated that a well known example was when a plan sponsor, the State of California, tried to take over CalPERS' provision of actuarial services. The court said no, and the people of the State of California said no by passing Proposition 162.

Ms. Dunning stated that the Board has plenary and exclusive authority over actuarial services provided to the system. The actuarial services determine the assets that are required to be paid into the system. The entities that pay the contributions into the system should not be dictating the form in which they are paid, because the fiduciary has to make sure there is enough money to pay the promised benefits.

Ms. Dunning stated that the duty to monitor is a duty of care. Fiduciaries have a continuing duty to monitor and take corrective action when reasonably appropriate. Although the Board members are not staff, they do need to know what is happening at the Retirement System so that the Board member can analyze if corrective action is necessary. She stated that there are a couple of cases that dealt with this duty. In one case the

VIII. NEW BUSINESS (continued)

B. Fiduciary Fundamentals for Board of Retirement Trustees Presentation.  
(continued)

trustees were found liable for failure to take action with respect to an investment that had "gone south" and they had not dealt with in a sufficiently quick manner to mitigate the damages. In the second case Ms. Dunning noted the trustees aren't required to, "watch the ticker as a speculator would" but they do have to exercise diligence in their review in a larger capacity.

Ms. Dunning stated that while each Board member is considered a prudent expert, they do not necessarily have all the pertinent training and background, and there is an affirmative obligation to consult with experts. When the Board does not accept the recommendations of the experts there must be a well informed reason for doing so.

Ms. Dunning stated that the fiduciary duty of care equals a duty of prudence. She stated that from a practical standpoint it requires the Board members ask questions and understand their rationale before they take action; analyze advice and recommendations, and not be a rubber stamp; and, follow applicable laws.

Ms. Dunning stated that the duty of loyalty includes the Primary Duty Rule, as set forth in the California Constitution. The primary duty of the Board is to the members and beneficiaries of the system. She noted that this duty takes precedence over all other duties. The California Constitution recognizes there is a secondary duty to minimize employer contributions, and to defray reasonable expenses of the system. She stated that if there is a choice between minimizing contributions or the overall best interest of the members and beneficiaries, taking action in the overall best interest of the members and beneficiaries trumps. This is basic trust law and there is much litigation about this issue and what it means, according to Ms. Dunning.

Ms. Dunning opined that the employer contributions should not be artificially increased in order to maximize benefits to the members, nor should any actions be taken detrimental to the members to minimize such contributions.

Mr. Wilson received clarification that the jurisdiction for the enhancement of vested benefits rests solely with the plan sponsor through negotiations. Ms. Dunning stated that there are exceptions and cited the STAR COLA as an

VIII. NEW BUSINESS (continued)

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example. Where the system has established sufficient assets, in excess of one percent of the fund, to set aside some funds for STAR COLA, the issue remains, what is in the overall best interest of the members and beneficiaries? The STAR COLA benefits a much smaller group, but it also benefits a group which deals with particular hardships as a result of their loss of earning power over time. She stated that this would be a balancing of interests, and the Board would look at the stability of the fund, the competency of the assets to pay, the promised benefits to the person hired yesterday just as much as the person retired for twenty years, the particular issue, the amount of money involved, and exercise their best judgment.

Mr. Goulet received clarification that STAR COLA is a non-vested benefit. Ms. Dunning noted that non-vested benefits may be prefunded and paid for a period of time.

Mr. Bennett received clarification that there is no duty to increase benefits, but rather that the duty is to ensure the plan has sufficient assets to pay all of the promised benefits when they come due. Ms. Dunning stated that when setting the contribution rates or setting the actuarial methodologies used to set those rates, the Board of Retirement is to assure that those benefits will be paid when they come due. The Board of Retirement is not deciding whether a particular formula should be implemented for a new tier, as that responsibility lies with the Board of Supervisors, the plan sponsor.

Ms. Dunning stated the Exclusive Benefit Rule is also fundamental to a Board member's fiduciary duty of loyalty. The assets of the Retirement System may only be used for the exclusive purposes of providing benefits to the members and beneficiaries and defraying reasonable costs of the system. This issue comes up when it is argued system assets are being used for some other purpose.

Ms. Dunning stated that the issue of Loyalty of Board members arises when the members of the Board of Retirement come from different places. In VCERA's case the members of the Board are either appointed by the Board of Supervisors, elected by active members, elected by retired members, or members by right of position or office. Under the trust law that applies to this Board there are no dual loyalties. A Board member cannot act as an agent of the group that appointed or elected the Board member

VIII. NEW BUSINESS (continued)

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(continued)

to the Board. The member acts as a fiduciary for all of the members. Ms. Dunning noted a US Supreme court case in which the Court incorporated ERISA fiduciary duties into a pre-ERISA labor act, stating that in the pre-ERISA context there was nothing in the statute that indicated an intent to allow a Board member to represent the interest of the party that appointed him. Once seated on the Board of Retirement each Trustee represents the same interest, but purposefully come from different arenas to provide their respective expertise and understanding of employee issues, retiree issues, and plan sponsor issues. She stated that while serving on the Board, Trustees have their fiduciary hat on, and they owe their duty to the members and beneficiaries of the Plan, and not a loyalty to another group.

Ms. Dunning elaborated on the Board members' single uniform responsibility to the all the members and beneficiaries, and noted California case law reaffirms that as well.

Ms. Dunning stated that California authority has, in some instances, allowed fiduciaries to take actions to reduce the employer contributions as long as they do not compromise the competency of the retirement system to pay promised benefits, and the actions are in the overall benefit interest of members and beneficiaries. She stated the Bandt case is used to support many different types of arguments. The context of the case was that San Diego had issued a pension obligation bond, and the timing was such that the plan sponsor put significant amounts of money into the system just after the actuarial valuation had been issued. The Retirement Board was faced with deciding to either keep the contribution rate as set by the actuarial valuation or have an interim valuation prepared to recognize the assets just put into the plan. San Diego's Board chose to do an interim valuation, and their decision was challenged. The court upheld San Diego's decision to do the interim valuation. Ms. Dunning stated that she would not carry that analysis too far.

Ms. Dunning discussed the Collateral Interest of Board members where Board members may express an interest in some type of social investing. The black letter law is that a trustee is not to be advancing one's own personal social interest. Case law exists, along with a number of academic publications, and guidance issued by the Department of Labor regarding the duty of loyalty under ERISA. In summary these documents state that, to the extent that the secondary or socially motivating interest does not

VIII. NEW BUSINESS (continued)

B. Fiduciary Fundamentals for Board of Retirement Trustees Presentation.  
(continued)

compromise the expected returns from the investment, and from an economic perspective the investor would expect greater or equal return, the Board is not prohibited from considering that social component.

Mr. Goulet received clarification that the savings clause is that this is to be done so long as it is consistent with the Board's fiduciary obligations. Ms. Dunning added that the Board has the responsibility of assessing in a very detailed way whether taking these steps that the statute would otherwise mandate are in compliance with their fiduciary obligations.

Ms. Dunning stated that the conflicts of interest can become very complex and crosscutting. The determinations of priorities are not always clear. It is also recognized in trust law that there are dissimilar interests, for example the interests of the income beneficiary and the remainder beneficiary. This is also true with the interests of the active members versus the retired members. The active members might have more of an interest in keeping their jobs, while the retired members may be more interested in receiving a COLA. There is some language in the Bandt case that recognizes when people lose their job they lose their pension rights. The law is evolving in this area. Ms. Dunning stated she always prefers when looking at the vested rights analysis to look at the pension rights.

Ms. Dunning stated that when there are conflicting interests between members and beneficiaries, Trustees should examine the specific provisions of the law, and their rationale, consider the number of people involved, the hardships, and the equities between members and beneficiaries, and then absolutely consider whether the action implicates any vested rights of beneficiaries. The court has decided that this type of analysis applies to the actuarial competency of the retirement system to pay promised benefits.

Ms. Dunning stated that prompt delivery of benefits and related services also falls within both the duty of loyalty and duty of care.

Ms. Dunning stated that the Board's appropriate standard of review when determining actuarial methodologies, the assessment of what is in compensation earnable and what is out of compensation earnable, should be under the arbitrary and capricious standard, which is different from the standard in disability retirement cases.

VIII. NEW BUSINESS (continued)

B. Fiduciary Fundamentals for Board of Retirement Trustees Presentation.  
(continued)

Mr. Goulet requested clarification whether the Board could ignore the mandatory furloughing by the County of VCERA employees because of the potential impact on the prompt delivery of benefits and related services. Ms. Dunning stated that the 1937 Act, under which VCERA operates, states that the system's employees are County employees, and that the Board may appoint the technical administrative services necessary to accomplish the work of the Board. CalPERS fought the battle on furloughs, and a decision is still forthcoming. In the salary context when they tried to pay their investment specialists more than what was authorized by civil service, the court said no. The issue of furloughs has been litigated, but she states she doesn't think it was complete. Ms. Dunning and Ms. Nemiroff concurred that no 1937 Act systems had litigated the issue. Ms. Dunning stated that she did not know of any '37 Act impacted by it. She stated that they would have to make a very good factual showing that they couldn't do their work; it would be a very high standard.

Ms. Dunning stated that in order for the courts to give deference to the Board's administrative discretion, the Board's deliberation on issues will need to be accurately reflected in the record to show that the Trustees are independent and deliberative in making decisions.

Ms. Dunning stated that typically a Board member's subjective motivation is irrelevant to the court, but it is important that the Board member's judgment be reflective of the overall best interest of members and beneficiaries. Courts will not rule on subjective motivation unless there is a conflict of interest.

Ms. Dunning reiterated that the attorney client privilege is held by the Board. Since the privilege is held by the Board there is no individual privilege, and any information shared with Ms. Nemiroff or any counsel retained by the Board is equally available to the rest of the Board.

Ms. Dunning stated that while the Board is given substantial discretion, exclusive authority, even plenary authority, that does not mean absolute discretion. The Board's actions are always subject to judicial review, and the Board needs to avoid anything that may be viewed as abuse of discretion. There are a number of important areas which should be reflected in the record including the participation in educational events, the

VIII. **NEW BUSINESS (continued)**

- B. Fiduciary Fundamentals for Board of Retirement Trustees Presentation.  
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questions asked, the fact that the Board members demand responses, critical active independent actuarial and investment oversight, and legal consultation.

Ms. Dunning stated that the fiduciary goal is for the Board of Retirement to use informed judgment and act in the overall best interest of system members and beneficiaries in a manner that is consistent with applicable laws when exercising its plenary authority over administration and investments, and its actions in that regard may not be "arbitrary" or "capricious" and must be rationally related to the information presented to the Board.

IX. **INFORMATIONAL**

- A. Publications (Available in Retirement Office)
1. Institutional Investor
  2. Pensions and Investments
- B. SACRS Public Pension Investment Management Program, July 11-13, 2011, Berkeley, CA.
- C. Letter from Edna Arnett Regarding Termination of STAR COLA Benefit.

IX. **PUBLIC COMMENT**

Kelly Shirk and Lisa Yoshimura, County of Ventura HR, were present to update the Board on the recruitment for Retirement Administrator. Ms. Shirk received thirteen applications from different parts of the country and there are five candidates that meet the minimum qualifications. She stated the next step is to contact the committee members and set up an appointment to review all of the applications that meet the minimum qualifications, followed by either a phone interview or personal contact in some manner.

Mr. Goulet noted that there were ten days left and questioned if more applications were anticipated. Ms. Shirk responded that new applications are received on a daily basis, and that there is a tendency for candidates to submit their applications on the last day. Mr. Goulet stated he and Mr. Hintz had discussed whether they wanted to be involved in reviewing the applications for

IX. PUBLIC COMMENT (continued)

minimum qualifications. He and Mr. Hintz concurred that given the number of applications received to date they felt that no additional review is warranted at this time. Mr. Goulet stated that unless things change dramatically, they can be brought to the Board for interview.

Ms. Shirk stated they are making personal contacts with a variety of Retirement Administrators throughout the state.

Mr. Wilson received clarification that Ms. Shirk sent out the recruitment flyer to each of the Retirement and Assistant Retirement Administrators, and had requested they share the document. Ms. Shirk stated follow up calls will be made to those parties who were sent the recruitment.

Ms. Shirk stated that she will update the Board at the next meeting.

Staff informed the Board that notifications for the general and safety member elections will be sent out with this week's payroll.

X. BOARD MEMBER COMMENT

None.

XI. ADJOURNMENT

There being no further items of business before the Board, Chairman Towner adjourned the meeting at 12:10p.m., upon the motion of Mr. Goulet, seconded by Mr. Wilson.

Respectfully submitted,

  
HENRY C. SOLIS, Interim Retirement Administrator

Approved,

  
TRACY TOWNER, Chairman