VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BOARD OF RETIREMENT

BUSINESS MEETING

NOVEMBER 16, 2009

MINUTES

DIRECTORS PRESENT:	William W. Wilson, Vice Chair, Public Member Lawrence L. Matheney, Treasurer, Ex-officio Member Peter C. Foy, Public Member Albert G. Harris, Public Member Karen Becker, General Employee Member Robert Hansen, General Employee Member Arthur E. Goulet, Retiree Member Will Hoag, Alternate Retiree Member Chris Johnston, Alternate Employee Member
DIRECTORS ABSENT:	Tracy Towner, Chair, Safety Employee Member Joseph Henderson, Public Member
STAFF PRESENT:	Tim Thonis, Retirement Administrator Henry Solis, Fiscal 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

Vice-Chairman Wilson called the Business Meeting of November 16, 2009 to order at 9:00 a.m.

II. APPROVAL OF AGENDA

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

Motion passed.

III. APPROVAL OF MINUTES

A. Disability Meeting of November 2, 2009.

Mr. Goulet moved, seconded by Mr. Harris, to approve the Minutes for the Disability Meeting of November 2, 2009.

Motion passed.

IV. CONSENT AGENDA

A. Regular and Deferred Retirements and Survivors Continuances for the Month of October 2009.

B. Statement of Plan Net Assets, Statement of Changes in Plan Net Assets and Summary of Investments and Cash Equivalents for the Month Ended September 30, 2009.

C. Report of Checks Disbursed in October 2009.

D. Budget Summary for the Month Ended October 31, 2009, Fiscal-Year 2009-10.

E. Barclays Global Investors 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 October 31, 2009.

Mr. Harris moved, seconded by Mr. Matheney, to approve the Consent Agenda.

Motion passed.

V. INVESTMENT INFORMATION

A. EnnisKnupp & Associates.

1. Monthly Investment Performance Update, October 2009.

V. **INVESTMENT INFORMATION (continued)**

A. EnnisKnupp & Associates. (continued)

2. Monthly Manager Updates/Summary, October 2009.

a. Sprucegrove
b. Capital Guardian
c. Artio
d. GMO
e. Acadian
f. Western
g. Reams
h. Loomis Sayles

Staff reviewed VCERA's asset allocation as of October 31, 2009. Staff noted that assets totaled $2.6 billion, down $40 million from September including $13.5 million paid in retiree payroll, translating to a 1.2% loss for the month. Staff commented that policy allocations versus actual allocations were very tight. In October, staff rebalanced assets from the fixed income portfolio to the equity portfolio. Staff has also taken steps to reposition the equity portfolio within the asset allocation levels set by the Board on September 21st, with $50 million scheduled for transfer on November 20th from the domestic equity portfolio to the global equity portfolio. Staff noted that two private equity managers, Adams Street and Pantheon, would be making presentations at the Board's meeting on December 21st as part of the newly established private equity allocation.

Staff discussed portfolio performance and noted the 1.2% loss in the month of October. In domestic equity, the Western Index Plus portfolio outperformed the benchmark by 250 basis points (2.5%). The international equity portfolio continued to disappoint with Sprucegrove and Artio having a difficult month in October. Staff commented that in looking at the 1, 3 and 5 year numbers, the international equity portfolio had not performed as expected. Staff noted that GMO saved value during the month for the global equity portfolio by outperforming its respective benchmark; however, Acadian continued to struggle relative to the benchmark due to poor stock selection.

Mr. Johnston questioned if staff had talked to Acadian regarding their plan to change their models. Staff responded that discussions had taken place and Acadian's explanation was that they would not be rewarded during the

V. **INVESTMENT INFORMATION (continued)**

A. EnnisKnupp & Associates. (continued)

existing "sentiment rally"; however, Acadian's management expects investors to be rewarded with positive results as market fundamentals begin to drive returns.

Staff commented that the total fixed income portfolio was up 90 basis points (.90%) on a relative basis during the month with all of the active managers outperforming their respective benchmarks. Staff noted the one year performance number for the fixed income portfolio was almost 29% and commented that the return illustrated the dislocation that took place within the fixed income market during 2008 and the rapid recovery in 2009. Staff also noted that the 10 year return for fixed income was at 6.9% in comparison to the U.S. equity portfolio return of 40 basis points (.40%). Clifton added 50 basis points (.50%) to the total fund return demonstrating that the cash overlay strategy has been beneficial to VCERA in the current market.

Mr. Matheney commented on the refreshing change of looking at good bottom line numbers throughout the portfolio.

Mr. Matheney moved, seconded by Mr. Goulet, to receive and file the reports from EnnisKnupp.

Motion passed.

B. Staff Update – Real Estate Investment Manager Conference Calls with Prudential Investment Management and RREEF America III.

Staff updated the Board on participation in conference calls that have been held recently regarding RREEF America III and Prudential PRISA.

The CEO of RREEF began the RREEF conference call by stating that all members of the Board of Directors were in attendance, as many shareholders had expressed disappointment at the lack of Board of Director participation in the shareholder meeting held on October 1st where only one Board Member was in attendance. Staff commented that shareholder discussions alluded to the possibility of an additional member being added to the RREEF Board of Directors, which staff viewed as a positive sign from an investor standpoint. Staff noted one of the main concerns with the RREEF portfolio is the leverage ratio at 75%, due to falling asset prices and

V. INVESTMENT INFORMATION (continued)

B. Staff Update – Real Estate Investment Manager Conference Calls with Prudential Investment Management and RREEF America III.

$1.8 billion in debt. In what was another challenging quarter for RREEF, performance was down 14.8%. RREEF has decided to return to their prior appraisal process of appraising 25% of their assets each quarter, rather than their practice over the past year of appraising all assets each quarter. Returning to their prior practice will save RREEF approximately $250K each year. RREEF has made progress on formalizing agreements extending 85% of secured debt loans, with 15% of loans being returned to lenders in the deeds in lieu process including the Sunnyvale property. Staff stated that Deutsche Bank may finance the liquidity gap associated with RREEF's unsecured debt.

Mr. Matheney received clarification on the promoted interest RREEF is maintaining on the Sunnyvale property.

Staff stated Prudential PRISA's performance was -7.8% in the third quarter and -32.4% for the calendar year, with declining asset values increasing the leverage ratio of the fund in excess of 40% (policy limit is 30%). Like RREEF, Prudential PRISA is addressing their high leverage ratio by attempting to improve fund liquidity through asset sales and extensions on debt maturities.

Mr. Johnston questioned if there were avenues to refinance debts through the stimulus packages. Staff commented that many banks do not want to reclaim ownership of the properties and therefore are more apt to extend the debts until funds can sell their assets at a more favorable level.

Mr. Goulet moved, seconded by Mr. Harris, to receive and file staff's update.

Motion passed.

VI. OLD BUSINESS

A. Letter from Staff Requesting Ratification of VCERA Position Reclassifications and Status Update on Various Administrative Issues.

Staff provided the Board with a brief history of the steps taken since May 2008 to discuss the reclassification of several staff positions with HR. SEIU

VI. OLD BUSINESS (continued)

A. Letter from Staff Requesting Ratification of VCERA Position Reclassifications and Status Update on Various Administrative Issues. (continued)

Local 721 participated in a meeting with representatives from VCERA and County HR and indicated their support of the reclassification of those represented positions to management positions under the Management Resolution. Staff noted that although a request had been made to have the opportunity to seek the Board's approval prior to implementation of the reclassifications, the request was not honored. Effective November 1, 2009, nine benefit staff positions, two administrative support staff positions, two management staff positions and one accounting position were reclassified and staff recommended the Board ratify those reclassifications.

Mr. Goulet provided an update on the status of VCERA obtaining special district designation.

Staff updated the Board on other pending administrative matters, including the request going before the Board of Supervisors on November 24th to approve an IT position for VCERA, a tentative meeting scheduled with John Nicoll, Assistant Executive Officer, regarding the Board approved compensation resolutions, and the special district status that Mr. Goulet commented on previously.

Mr. Matheney moved, seconded by Ms. Becker, to ratify the reclassification of 14 VCERA positions.

Mr. Hoag and Ms. Becker received clarification on the purpose of the requested IT position and the status of the CEO's support on the matter.

Motion passed.

VII. NEW BUSINESS

A. Presentation by Tom Dwyer, C.B. Richard Ellis – Updates on Lease Negotiations and Office Space Purchase Alternatives.

Tom Dwyer was present from C.B. Richard Ellis to discuss VCERA's occupant real estate needs. Mr. Dwyer stated that he had been in contact with M.F. Daily regarding renewing the lease for VCERA's current office

VII. NEW BUSINESS (continued)

A. Presentation by Tom Dwyer, C.B. Richard Ellis – Updates on Lease Negotiations and Office Space Purchase Alternatives. (continued)

space and M.F. Daily offered a two-year renewal at the current rate of $1.74/square foot. Mr. Dwyer noted that M.F. Daily did not mark up the rate to include operating expenses and further noted that the flat lease rate of $1.74 has not changed over the past seven years. Mr. Dwyer stated that M.F. Daily owned the property outright, they were business leaders in the community, and would negotiate on the lease. A written proposal to renew the lease would be submitted to M.F. Daily should the Board decide to stay at the current location.

Mr. Dwyer reviewed the supply of office space in Ventura County and stated there is a total of 10 million square feet of available space with a 23% vacancy rate. Mr. Dwyer clarified that VCERA's current location is categorized as a Class B building. Most of the office space in the area is Class B- and C+. Esthetics, location and interior tenant improvements are incorporated when assigning Class designations to a property. Mr. Dwyer noted that the market continues to struggle and there has not been rent inflation over the past 22 months. Mr. Dwyer discussed market conditions and the effect of foreclosure proceedings on future rental rates.

In response to a question from Mr. Harris, Mr. Dwyer stated it was difficult to project what the vacancy allowances would be in the future. Mr. Dwyer opined that a significant factor would be the County of Ventura's real estate needs as they own several properties, maintain several leases in the area and are one of the largest employers in the county.

Mr. Dwyer discussed VCERA's alternatives for office relocation. Locations discussed included 60 California Street, 1300 Eastman Avenue and 5720 Ralston Street. Mr. Dwyer estimated the value of each of the properties in the $5 million range. In the California Street location, VCERA could occupy the top two of four floors, with the ground floor leased to a local restaurant and the second floor unoccupied, but leased to a financial firm. The Eastman Avenue location has 9,000 square feet currently leased by Bank of America; however, that lease expires early in 2010 and Mr. Dwyer was uncertain if the lease would be renewed. In the Ralston Street location, there is ample space for VCERA offices to be on the first floor, with approximately 7,500 square feet on other floors currently under lease negotiations with the State of California.

VII. NEW BUSINESS (continued)

A. Presentation by Tom Dwyer, C.B. Richard Ellis – Updates on Lease Negotiations and Office Space Purchase Alternatives. (continued)

Mr. Dwyer noted that most of the office buildings in the area are not large buildings. VCERA currently occupies 6,400 square feet and is looking to potentially lease/own approximately 10,000 square feet to have room for growth over the next 10 years.

Mr. Goulet questioned if there was a legitimate chance of purchasing at the $5 million cost, to which Mr. Dwyer indicated that it would depend upon the banks who are holding the construction notes.

Mr. Dwyer provided the Board with additional information regarding the Ralston Street location, as the Board had not visited the site previously.

Mr. Goulet expressed interest in the Ralston Street location as it was close to where VCERA's current office space and to the County Government Center.

Staff noted that although there is not additional space available on the same floor as the office space currently leased, additional space was made available due to the digital storage of member records, instead of paper records in file cabinets. The space made available is anticipated to be utilized by contract & vendor employees during the PAS implementation, instead of using VCERA's boardroom.

Mr. Matheney commented that it would be a major undertaking for staff to move to a new location and the Board should make certain that the new office space will satisfy VCERA's needs very well for the next 10+ years, including a more adequate meeting room than is available now. Mr. Matheney expressed concern with construction methods and design limitations for such spaces in the alternative sites. Mr. Matheny agreed that the Ralston Street location was appealing as long as the design limitations were not severe.

Mr. Wilson stated he liked the Boyle Engineering space that was no longer available. He did not like the California Street location as it was poorly designed, difficult to access and there were parking concerns. Also, Mr. Wilson noted the building had two entrances making security another concern. Mr. Wilson expressed interest in seeing the Ralston Street location, but felt the Board should continue to look at staying in the current location.

VII. **NEW BUSINESS (continued)**

A. Presentation by Tom Dwyer, C.B. Richard Ellis – Updates on Lease Negotiations and Office Space Purchase Alternatives. (continued)

Ms. Becker commented that the Board may want to consider that the meeting room should be large enough to host VCERA's quarterly pre-retirement workshops, as currently they are held in the meeting rooms of other County agencies and run the risk of being displaced.

Staff noted that the Boardroom is also occasionally used for disability case hearings.

Several members of the Board expressed interest in visiting the Ralston Street location after one of the Board meetings in December.

Mr. Dwyer recommended that that Board approve allowing C.B. Richard Ellis to move forward with lease negotiations for the current office space and open negotiations on the Ralston Street location, as it seemed to be the best alternative site.

Mr. Harris commented that the Board should continue looking to purchase its own building. Although the Ralston Street site is an opportunity, Mr. Harris felt the prices would be reduced in the next two years. Mr. Harris also suggested extending the lease of VCERA's current office space for two years, because a one year lease was a tight timeframe to negotiate a price, purchase, revamp and move into a new building.

Mr. Foy agreed with Mr. Harris' comments but recommended a one year lease with the option to extend for another year, if needed.

Mr. Dwyer opined that it would probably be another 12 months before the market hit bottom.

Mr. Hansen agreed with Mr. Harris that a two year lease would be the best option. He didn't anticipate the market recovering and the Board didn't need to be in a hurry to purchase.

Mr. Goulet and Ms. Becker agreed with Mr. Foy's recommendation for a one year lease with the flexibility to renew if needed.

VII. NEW BUSINESS (continued)

A. Presentation by Tom Dwyer, C.B. Richard Ellis – Updates on Lease Negotiations and Office Space Purchase Alternatives. (continued)

Mr. Goulet recalled that the consensus of the Board was to stay at a location close to the Government Center and, also, that the Board agreed that the California Street location was no longer being considered.

Mr. Goulet moved, seconded by Mr. Foy, to have C.B. Richard Ellis pursue a one-year lease of the current VCERA office space and continue to consider properties for purchase.

Mr. Harris commented that the $1.74/square foot pricing was a good lease rate.

Motion passed. Mr. Harris and Mr. Hansen against the motion.

B. Presentation by Ashley K. Dunning, Manatt, Phelps and Phillips – Fiduciary Training.

Ashley Dunning was present from Manatt, Phelps and Phillips to provide the Board with a presentation on Fiduciary Fundamentals. The key topics covered were two fiduciary duties that apply to the Board – Fiduciary Duty of Care and Fiduciary Duty of Loyalty, the legal standards used by the courts to analyze Board's actions, and proactive steps the Board can take to demonstrate fiduciary compliance in decision making.

Ms. Dunning reviewed the Fiduciary Duty of Care which incorporates the Prudent Expert Rule, Duty to Assure Competency of Retirement System Assets, Duty to Monitor and Duty to Consult with Experts. The Prudent Expert rule is set forth in the California Constitution. Each member of the Board is expected to act as a prudent expert from the first day of their term and "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 a like capacity and *familiar with these matters* would use in the conduct of an enterprise of a like character and with like aims." Ms. Dunning stated that the Board has a duty to assure the competency of the Retirement System's assets, i.e. maintain authority over actuarial services.

In response to a question from Mr. Johnston regarding the split in methodology within the actuarial world (actuarial value vs. market value

VII. **NEW BUSINESS (continued)**

B. Presentation by Ashley K. Dunning, Manatt, Phelps and Phillips – Fiduciary Training.

debate) and its effect on Board decisions, Ms. Dunning emphasized the importance of the Board's understanding of the actuary's professional judgment in terms of compliance with the Actuarial Standards of Practice (ASOP) #44.

Ms. Dunning stated the Board has an obligation to monitor and take corrective action as when reasonably appropriate, such as with the significant investment losses in the past year. Ms. Dunning provided examples of cases with non-governmental fiduciaries that were held liable for trust losses in the context of a failure to monitor. Ms. Dunning reviewed the Board's duty to consult with experts to the extent necessary and appropriate in making decisions in areas that require expertise, such as investment, actuarial services and legal services. Ms. Dunning emphasized that should the Board choose to not follow the advice of its expert consultants, it should be able to identify a supportable rationale grounded in that expertise for not following the advice. Ms. Dunning equated the Duty of Cary to the Duty of Prudence, which requires asking questions and understanding the rationale for actions before taking them, analyzing advice and recommendations from experts, and following the Plan Documents ('37 Act, bylaws & policies) and other applicable law governing the system.

Ms. Dunning reviewed the Fiduciary Duty of Loyalty which incorporates the Primary Duty Rule, Exclusive Benefit Rule, and Loyalties of Board Members and questions the Collateral Interests of Board Members and Conflicting Interests Among Members and Beneficiaries. The Primary Duty Rule is also a part of California Constitution and states in part that a "retirement board's duty to the system's participants and their beneficiaries shall take precedence over any other duty", i.e. the Board's duty to members takes precedence over a duty to minimize employer contributions. The Exclusive Benefit rule pertains to the spending of the trust's funds, which may only be spent for the exclusive benefit of members and beneficiaries. Ms. Dunning used the possible purchase of a building for VCERA as an example and noted that the decision should be analyzed as to whether or not it makes sense from an investment and administrative perspective for the benefit of the membership. Under the Fiduciary Duty of Loyalty, Board members, as fiduciaries, are not permitted to have "dual loyalty", as would occur if a Board member acted as an agent for the entity that appointed/elected

VII. NEW BUSINESS (continued)

B. Presentation by Ashley K. Dunning, Manatt, Phelps and Phillips – Fiduciary Training.

him/her to the Board. Once on the Board, the Board member is to act in the best interests of members and beneficiaries; however, public retirement system fiduciaries have been permitted to take actions that result in reduced employer contributions so long as those actions do not compromise competency of assets of the retirement system to pay promised benefits, no conflict of interest arises in taking such actions, and the actions are in the overall best interest of members and beneficiaries.

Ms. Dunning discussed Collateral Interests and noted that the duty of loyalty in trust law would normally prevent a trustee from making decisions motivated by a purpose of advancing or expressing the trustee's personal views concerning social or political issues or causes. According to Ms. Dunning, trustees may test these decisions through risk-adjusted return analysis. For example, in weighing social investment issues, trustees are required to determine whether the returns from the social investing program are equal to or better than other returns available within the market place.

Mr. Goulet questioned how that duty is affected by the California legislature's bills that require divestment, to which Ms. Dunning responded that the Constitutional Savings Clause states that divestment shall occur so long as it is prudent to do so. Ms. Dunning provided some Department of Labor advisories on the issue.

Ms. Dunning commented on Conflicting Interests among members and beneficiaries and stated that they can be complex and crosscutting, i.e. previously held STAR COLA discussions. It is up to the Board to determine what action will best serve the members and beneficiaries of the system collectively. Ms. Dunning noted that when weighing the conflicting interests of the system's membership, the Board may look at the specific provisions that govern what the Board is deciding on and determine the means to implement those provisions, consider the number of individual members and beneficiaries impacted by the Board's action, consider the degree of hardship created by potentially taking away a particular benefit, consider the equities as between members/beneficiaries, and should consider if a proposed action implicates any vested rights of membership, including, without limitation, the actuarial soundness of the system. Ms. Dunning noted another facet of both Fiduciary Duty of Loyalty and Care is to administer the system in a manner that will ensure prompt delivery of benefits and related services.

VII. **NEW BUSINESS (continued)**

B. Presentation by Ashley K. Dunning, Manatt, Phelps and Phillips – Fiduciary Training.

Ms. Dunning noted there are two different potential Standards of Review that a court could use when analyzing the Board's actions – arbitrary and capricious standard for "quasi-legislative" acts and deference to administrative discretion. Ms. Dunning used the Mathews v. VCERA case as an example of the deference afforded to a Board, but emphasized that the Board's actions may still be subject to judicial review. Ms. Dunning discussed evidentiary issues including the fact that a legislator's subjective motives are irrelevant and attorney-client privilege is held by the Board and cannot be waived by an individual trustee or staff member. Ms. Dunning emphasized the process used to demonstrate fiduciary compliance, recognizing that although courts afford Board's broad discretion in decision-making, "exclusive authority" is not absolute discretion. According to Ms. Dunning, it is important to avoid "abuse of discretion" and steps the Board can take to do so include making sure the record reflects the process; education, inquiry, disclosure of reasons for actions; active independent actuarial oversight; active independent investment oversight; and legal consultation and compliance with applicable statutes.

Ms. Dunning summarized the Board's goal of fiduciary responsibility which is to use informed judgment and act in the overall best interest of system member/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.

C. Letter from Staff Requesting Authorization to Reimburse for Tax Penalty Incurred by Retired Member – Bernard Furlong.

Staff recommended the Board authorize the reimbursement for a member due to a tax penalty incurred for an error in the preparation of his 1099-R in 2007. Staff provided a brief background on the issue and noted the challenges faced with the preparation of tax documentation for disability retirees. In the case of Mr. Furlong, his wages were underreported in 2007, and the error was identifies in 2008. Mr. Furlong was provided with an amended 1099-R, refilled his return and the IRS subsequently levied a penalty. Staff felt it prudent to reimburse the member due to staff's error in order to avoid the filing of a claim against VCERA.

VII. NEW BUSINESS (continued)

C. Letter from Staff Requesting Authorization to Reimburse for Tax Penalty Incurred by Retired Member – Bernard Furlong. (continued)

Mr. Harris moved, seconded by Mr. Matheney, to approve the reimbursement of the tax penalty to Mr. Furlong.

Motion passed.

D. Request to Attend Institutional Investor Conference, April 21-23, 2010, in Austin, TX.

Mr. Harris moved, seconded by Mr. Goulet, to approve Mr. Hansen's travel to participate in the Institutional Investor Conference.

Motion passed.

VIII. INFORMATIONAL

A. Publications (Available in Retirement Office)
   1. Institutional Investor
   2. Pensions and Investments

B. Artio Global Investors CIO Letter 4Q09 – "Two for the Price of One".

C. Public Funds Summit, January 6-8, 2010, Scottsdale, AZ.

D. The Pension Bridge Annual Conference, April 6-8, 2010, San Francisco, CA.

IX. PUBLIC COMMENT

Staff reported that the Board was represented at the SACRS Business Meeting and Mr. Hoag supported the motion on the continuation of the Nominating Committee recommendations for changes to the SACRS election process and also supported the motion to approve the addition of the Tulare County legislative proposal regarding reciprocity on the SACRS legislative platform for 2010. Both measures passed.

X. BOARD MEMBER COMMENT

None.

XI. ADJOURNMENT

There being no further items of business before the Board, Vice-Chairman Wilson adjourned the meeting at 11:20 a.m.

Respectfully submitted,

TIM THONIS, Administrator

Approved,

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WILLIAM W. WILSON, Vice-Chairman