

MINUTES

BOARD GOVERNANCE COMMITTEE MEETING MARIN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

One McInnis Parkway, 1st Floor
San Rafael, CA

February 11, 2010 - 2:00 P.M.

CALL TO ORDER

Chair Gladstern called the meeting to order at 2:07 P.M.

ROLL CALL

PRESENT: Bolger, Gladstern, Webb

ABSENT: Haim

MINUTES

November 17, 2009 Governance Committee Meeting

It was M/S Bolger/Webb to approve the November 17, 2009, Governance Committee Meeting Minutes as submitted. The motion passed by unanimous vote.

A. OPEN TIME FOR PUBLIC EXPRESSION

No public comment.

B. OLD BUSINESS

1. Update on development of draft Excess Earnings, Interest Crediting and Reserving Policy
Counsel Ashley Dunning reported that she is conferring with MCERA's Actuary, the Senior Accountant, and the Retirement Manager in order to format the draft excess earnings, interest crediting, and reserve policy. Ms. Dunning explained that important restrictions to transferring retirement system funds are defined in the 1937 Act. The complexities of the process will be clarified by the Actuary's excess earnings and reserve policy presentation at the March Strategic Workshop, she said.

Retirement Administrator Ford explained that "excess earnings" would only be present once all other definable earnings have been accounted for. The discussion continued to revolve around the concept of "excess earnings," with Trustee Webb requesting specific 1937 Act cites. Trustee Bolger asked whether the courts had defined excess earnings. She was advised that some superior courts had discussed the topic in recent cases, but that there were no published decisions that expressly define the term. She also was referred to the post-*Ventura* decision of *In re Retirement Cases*, in which "excess investment earnings" of the retirement system were mentioned. The need for earnings to flow to the system's unfunded liability was discussed. Trustee Webb recommended that a chart showing funds flow be made available and it was determined that the Actuary would provide the flow chart.

2. Consider New Trustee Handbook table of contents and discuss possible revisions to same

Counsel Dunning noted that because the Supreme Court issued its January 2010 decision in the *Lexin* case, a change in the Trustee Handbook Table of Contents and pertinent materials regarding Government Code section 1090 should be made. No other edits were recommended at this time.

3. Consider possible edits to Retirement Administrator evaluation policy

The Committee discussed proposed edits to the Retirement Administrator evaluation policy. Trustee Bolger recommended eliminating the bonus provision, and there was general agreement on this point. Trustee Gladstern and Acting Retirement Administrator Ford proposed increasing the number of evaluation levels from three to five, as provided for by the County's employee evaluation form. Trustee Bolger expressed a preference for terms that define a measurable result. Counsel was directed to modify the evaluation policy to reflect that Committee's comments, for consideration by the full Board.

4. Consider current Corporate Governance policy

Chair Gladstern stated that the current Corporate Governance policy was derived from the Council of Institutional Investor's (CII) governance policy in 2004. As CII updates their policy yearly, the policy should be reviewed for possible changes, she said. Counsel Dunning was requested to compare the current policy with CII's policy to determine whether differences exist. The policy for investment manager proxy voting is slated for review, according to the Chair, and she recommended the managers' compliance with a governance policy also. Counsel Dunning offered to provide an Asset Manager Code of Conduct that was circulated at a recent public pension attorney conference as a model. The importance of disclosure of political contributions by any consultant was discussed.

5. Update on Plan Document progress

Counsel Dunning reported that MCERA's Plan Document is being compiled and reviewed and will be presented to the Committee and/or Board by this Summer. Counsel and the Acting Administrator also noted that the SACRS IRS task force will provide an update on its efforts regarding IRS determination letter submissions by 1937 Act systems at an upcoming meeting that they both will attend.

C. NEW BUSINESS

1. Resolution re Treatment of Executive Bonuses in Calculation of Retirement Allowances for MCERA Members Retired Prior to April 8, 2009

Consider and take possible action to recommend adoption of resolution by Board

Counsel Dunning stated that the draft Resolution reflects a recognition of potential ambiguities in the statute the Board interpreted in MCERA Resolution 2008/09-05, and limits the application of the Board's interpretation to members who retire on and after April 8, 2009, the date on which the Board adopted the original Resolution.

It was M/S Webb/Bolger to recommend approval of the Resolution re Treatment of Executive Bonuses in Calculation of Retirement Allowances for MCERA Members Retired Prior to April 8, 2009. The motion passed by unanimous vote.

2. Committee Charters

Consider and take possible action to recommend adoption of Investment Committee Charter and Communications Committee Charter by full Board.

Prior to considering the Charter for the new standing Communications Committee, the Trustees discussed whether the Communications Committee should remain a standing committee. Trustee Bolger recommended either merging the Communications Committee with the Member Services Committee, or returning it to ad hoc status. Trustee Webb recommended retaining standing-committee status for the Communications Committee, recalling that the incentive to originate the committee was the dearth of communication between the system and the members. Chair Gladstern cautioned that any change should accommodate the need for communications items to be discussed in a timely manner in order to synchronize with the newsletter. Acting Administrator Ford recommended that the full Board determine the status of committees.

It was M/S Webb/Bolger to approve the Communications Committee Charter as submitted. The motion passed by unanimous vote.

The Investment Committee Chair recommended edits to the proposed Investment Committee Charter, including adding liquidity language to cash management. Mr. Ford recommended review and discussion of the Investment Committee Charter by the Investment Committee.

It was M/S Bolger/Webb to refer the Investment Committee Charter to the Investment Committee for finalization and presentation to the Board as edited. The motion passed by unanimous vote.

3. Consider possible development of Additional Board Policies

The Committee determined to address the following policies in the manner noted:

- Existing proxy policy: Review.
- Mass media policy: Defer consideration indefinitely.
- Whistleblower policy: Review of the County's policy by Counsel; discuss at the next Committee meeting.
- Confidentiality and privacy policy: Examine the County's policy. The 1937 Act statute on this subject is broadly stated but somewhat ambiguous, according to Counsel, although the Board already has interpreted some aspects of it in MCERA's Accessibility of Records Policy. Mr. Ford assured the Committee that all member records, as defined in the Accessibility of Records Policy, are maintained confidentially absent a court order or member request for his or her own records. Ford referred the Committee to a policy users group at CORTEK with the purpose of developing a 1937 Act standard policy.
- Building and usage policy: Develop a policy on building usage and security as one policy. There was discussion as to whether the County must or should be charged rent under applicable state and federal laws. Counsel will develop a draft policy for discussion purposes.
- Due diligence policy: Mr. Ford recommended including due diligence within the investment policy. The option of delegating some due diligence to an outside consultant was discussed, along with discussion of the Board's continuing fiduciary obligations even if some responsibilities are delegated. There was general agreement to request a presentation to the Board during the Summer by potential outside due diligence consultants. Mr. Ford stated that the investment consultant should be relied upon to verify firms' validity, in addition to attending due diligence

site visits. The Acting Administrator emphasized the importance of maintaining close Board-manager relationships.

- Securities litigation and reporting policy: The policy is available and sufficient.
- Death benefits: Mr. Ford recommended initiating development of a new policy. As the result of his search for acquiring timely information and increasing efficiency, he said he has located an online service which provides immediate notice of deceased members at a reasonable fee. It was agreed the service would not be implemented until after implementation of the new CPAS system.

4. Next Committee meeting

Consider possible agenda topics and date for next meeting

As the Committee's Charter provides for recommending to the Board the proper role of committees, it was agreed to discuss the issue at the next meeting.

Acting Administrator Ford proposed that the Committee discuss the policy review schedule at its next meeting.

There being no further business, Chair Gladstern adjourned the meeting at 4:04 P.M.

Maya Gladstern, Chair

Attest: Thomas C. Ford
Acting Retirement Administrator