

**CITY OF LAKELAND
EMPLOYEES' PENSION AND RETIREMENT SYSTEM
BOARD OF TRUSTEES**

Ron Tomlin, Chairman, CPPT
Mr. Charlet, Vice-Chairman
Mr. Haar, CPPT
Tim Hart
Robert Bertrand
Tory Bombard
Jeffrey Stearns

MEETING MINUTES

**May 26, 2009
8:30 AM**

City Commission Conference Room
3rd Floor City Hall
228 South Massachusetts Avenue
Lakeland, Florida 33801



In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this proceeding should contact Dana Blydenburgh no later than three (3) days prior to the proceeding at (863) 834-8797 for assistance; if hearing impaired, telephone the Florida Relay Service Numbers, (800) 955-8771 (TDD) or (800) 955-8770 (VOICE), for assistance.

CALL TO ORDER

Chairman Ron Tomlin called the meeting to order at 8:30 AM.

ROLL CALL

Trustees: Chairman Ron Tomlin, Secretary Kerry Charlet, Roger Haar, Tory Bombard, Bob Bertrand, Tim Hart and Jeffrey Stearns

Retirement Services Staff: Director Jennifer Kerr

Guests: Board Counsel Robert Sugarman of Sugarman & Susskind, PA; Mike Welker, The Bogdahn Group; Rick Beal, Fire Department.

INVOCATION

Board member Tim Hart gave the invocation

ADOPTION OF THE AGENDA

Mr. Haar moved approval of the agenda. Motion passed unanimously.

APPROVAL OF MINUTES

- Investment Committee Minutes – April 17, 2009
Roger Haar moved approval of the minutes April 17, 2009. Motion passed unanimously.
- Regular meeting minutes – April 28, 2009
Mr Charlet commented that he was not present at the meeting and Tim Hart should be noted as present.
Roger Haar moved approval as amended. Motion passed unanimously.
- Investment Committee Minutes – May 12, 2009
Roger Haar moved approval of the minutes May 12, 2009. Motion passed unanimously.

PRESENTATION

1 Term Asset-Backed Securities Loan Facility (TALF)

Mr. Haar explained the Investment Committee has met twice on this topic and did not come to a firm conclusion despite spending 4 hours discussing it over 2 meetings. Mr. Haar indicated that Jeff and Jennifer are very much for it, Tory at the last meeting was against it and that he is leaning against it. The reason the TALF presentation was added so quickly to the agenda is because an auction will be held in July.

Mr. Welker stated that his firm had a conference call with almost all the public pension attorneys in the state of Florida.

Mr. Sugarman explained the investment as proposed involves a different level of risk trustees would take on personally as fiduciaries. The arrangement does not provide the maximum protection. However if the trustees decide to go forward, they must decide whether to use the proposed arrangement, which Mr. Sugarman advises against because it offers less than

maximum protection though it offers some Mr. Sugarman stated he will try to build in as many protections as the Board can get but he's not sure he's able to get them all

Mr. Charlet asked if there are any other pension plans investing in this product. Mr. Welker stated West Palm Beach Fire and Deerfield have voted yes. PIMCO will advise what other public funds have committed to this investment.

Mr Graybar entered the room and greeted the trustees Mr Graybar began his presentation with an explanation of the TALF program He stated that more information is provided on the New York Federal Reserve website (www.nyfed.org) and type TALF in the search box. This program is the government's way to get investor capital back into the marketplace for auto loans, credit cards and student loans to get credit to consumers

Mr. Graybar explained PIMCO's TALF program is structured like a private equity investment. The fund term is 3.5 years plus one possible one-year extension. The capital drawdown period is the earlier of March 31, 2010 or the end of the TALF program. The Fund will distribute all interest proceeds beginning January 1, 2010. The minimum commitment is \$10m however lower amounts are accepted for Bogdahn clients. PIMCO will call capital as they see opportunities. If funds are not invested by March 31, 2010, remaining capital will not be called. PIMCO's management fee is 75 bps and a performance fee of 15% after the fund returns 8%

Mr. Graybar stated he will provide Mr. Welker with a list of PIMCO's public pension clients.

Mr. Welker explained the Board would not have to amend the investment policy. Once the police assets have separated and the fund is at 65/35, he suggests taking \$10 million equally from equity and fixed income. This investment is considered alternative and the current investment policy provides a 5% allocation to the asset class.

Mr. Welker stated not a lot of firms that are doing this type of investment. The Bogdahn Group recommends PIMCO based on its size, scale and expertise in the fixed income world and the \$50b asset-backed fund they currently manage. The Bogdahn Group already has a relationship with PIMCO and has done the due diligence on their firm.

Mr. Sugarman illustrated how the fund normally invests. Normally the pension fund provides assets to the investment manager to invest. In return, the investment manager acknowledges fiduciary duty to the plan. With the PIMCO deal, assets are invested in a Caymanian feeder fund which in turn invests the assets in a Delaware trust which hires PIMCO as its investment manager. The Delaware trust invests the assets. PIMCO acknowledges fiduciary duty only to the Delaware trust and not the (City of Lakeland) Board of Trustees. The investors of the Delaware trust may be different from the pension board. The protection normally provided by an investment manager is missing.

Mr. Sugarman stated the subscription agreement is to buy Caymanian stock. The laws are governed by the Cayman Islands and he does not know Caymanian law. Mr. Sugarman suggests the Board hire a Caymanian lawyer for this transaction. The reason PIMCO uses a Caymanian feeder fund is to keep income offshore and exempt from unrelated business income tax (UBIT).

Mr. Sugarman stated this product is not registered with the Securities and Exchange Commission and that it is offered through a private placement memorandum (PPM) with confidentiality provisions. PIMCO understands they must waive this provision since the records of the Board are public record.

Mr. Sugarman suggests hiring a Qualified Professional Asset Manager (QPAM). The fund would give the QPAM discretion to invest assets in a TALF investment if the QPAM decided that it was in the Fund's best interests. In return the QPAM would give back fiduciary acknowledgement. The QPAM would be an American company governed by the laws of Florida. The QPAM would evaluate the investment, and if it approved, direct assets to the Caymanian feeder fund and request the Board to execute the subscription agreement. This is not an unusual structure.

Mr. Sugarman asked if the Board is willing to accept this arrangement without normal protection, thus personally exposing themselves individually to some risk. The current proposed side letters do not solve the problem of PIMCO not willing to acknowledge fiduciary duty.

Mr. Graybar stated that as a matter of practice, PIMCO does not acknowledge fiduciary duty for each client unless it is structured as a separate account. Mr. Graybar stated his firm is working on a side letter to try to improve process, providing heightened fiduciary standards. Mr. Sugarman stated these standards are not good enough for the Board. Mr. Graybar continued to explain the side letter PIMCO is working on. PIMCO is willing to enter into QPAM, waive confidentiality, recognize the Florida venue and settle the indemnification issues.

Mr. Sugarman explained another "deal killer" may be the indemnification issue. The Board must indemnify PIMCO and the trust if certain things happen. It is the opinion of the Florida pension lawyers working on this arrangement that this is not proper use of trust assets. Florida law is very clear. Assets must be used for benefits and reasonable expenses of the fund. It is not reasonable to pay costs incurred by a third party.

Mr. Sugarman stated not all states have the same laws governing trustees as Florida does. Florida has incorporated word for word the investment standards of the Employee Retirement Income Security Act (ERISA) as it applies to the private sector. Florida law also states that any contract that seeks to relieve trustees of fiduciary duty is void as a matter of public policy. This is why the Board has fiduciary liability insurance. The indemnification of trustees is unlawful under Florida law.

Mr. Bertrand stated he is not comfortable with the investment if PIMCO does not acknowledge fiduciary duty to the Board.

Jeff Stearns motioned to invest \$10m with PIMCO through the Delaware trust subject to an acceptable side letter and PIMCO is not required to acknowledge fiduciary duty to the Board. Kerry Charlet seconded the motion.

Ayes: Kerry Charlet, Jeff Stearns

Noes: Tory Bombard, Bob Bertrand, Roger Haar, Tim Hart, Ron Tomlin

Mr. Sugarman asked if the Board if their interest would change if there was a QPAM. The Board agreed there would be interest only if a QPAM is found.

2. Fixed Income Investment Manager

Steven J. Doherty of Loomis Sayles & Co. introduced himself and discussed the portfolio performance. Total assets are \$85.8m as of April 30, 2009. Year-to-date through May 15, 2009 the portfolio returned 6.17% gross of fees versus the Barclays Aggregate index of 1.45%. The portfolio has returned 4.54% since inception (12/31/03) versus 4.34% for the index. As of April 30, 2009 the portfolio has returned an annualized return of -9.20% for the year versus 3.84% for the benchmark. The five year annualized return is 1.61% versus 4.78% for the index.

3. Investment Consultant

Mike Welker of the Bogdahn Group handed out the receipts and disbursements (R & D) letter which addresses the shortfall in cash flow the City has had based paying expenses from the fund. The letter instructs the custodian to hold an account solely to pay pension fund expenses. The account maintains a specified balance each quarter to pay all expenses. If the account has deposits over \$500k the difference would be distributed on a pro-rata basis to each investment manager consistent with the investment policy. In turn, required funds will be raised pro-rata from each investment manager consistent with the investment policy.

Invoices will be paid directly through the R & D account after approval by the Retirement Director
The Bogdahn Group reports all fee payments quarterly to the Board

Roger Haar moved approval of R&D letter setting the account at \$500k, amended to include approval of the Retirement Director. Motion passed unanimously.

Mr. Welker discussed the performance for April 30, 2009. Total assets are \$387m and the allocation is 55% stock and waiting to go to 65% after the transition of police assets. The one month return is 7.04% versus the policy index of 7.31%

Mr. Welker stated the Investment Committee will meet soon to do a full evaluation of the two current international investment managers, Invesco and Artio. Three other firms will be evaluated, EuroPacific, Barings and Manning & Napier. There is currently no side letter with Invesco

4. Attorney

Robert Sugarman of Sugarman & Susskind discussed the DROP early withdrawal penalty. Public safety members that withdraw DROP funds as a lump sum before the year in which they turn 50 will be penalized 10% on top of regular income taxes. General employees cannot withdrawal lump sums from their DROP account before age 59 ½ without incurring the 10% early withdrawal penalty. This does not apply if a member rolls over the amount or annuitizes the payments from DROP.

The IRS has put out a new tax table to lower taxes for workers to take home more of their paycheck as advance payment on the "Making Work Pay Tax Credit" that will be received next year. The last tax table applied to retirees as well, setting less aside for taxes at the end of the year. However retirees not working will not receive the credit. A new IRS tax table was issued to apply this correction to retirees.

Ms. Kerr stated the City Payroll Department is not able to implement multiple tax tables. Instead, the Payroll Department will communicate this issue to retirees and provide withholding forms for retirees that need to make changes.

The 2009 Florida legislature passed SB 538 providing mandatory provisions for Police and Fire. Mr. Sugarman stated once Police & Fire leave the plan these mandatory laws would not apply. If the plan were to terminate and it is unfunded, everybody would immediately vest and the City remains financially responsible for paying all promised benefits. The law also provides that a joint annuitant can be changed twice. Ms. Kerr stated the plan currently allows this provision for all members.

The State mandates compliance with the Protecting Florida's Investment Act (PFIA) by September 30, 2010. The act requires divestment of certain types of investments and businesses in Iran and Sudan such as mineral and petroleum companies. The state will provide a quarterly report of prohibited companies.

Police and fire can now buyback time police and fire time from other states and the federal government.

The law provides a foreign investment limit is up to 25%.

Health insurance deductions – police and fire able to reduce taxable income by \$3k if they buy retiree health insurance and the premium is deducted from their pensions. Florida now allows premiums to be deducted for insurance provided by anyone other than the City. Ms. Kerr stated she will speak with the City's payroll department on this issue.

There have been significant questions on how unused sick leave is counted towards someone's pension. Mr. Sugarman encourages the Board to consider all pay a person receives as pensionable. The ordinance, city policy and procedure do not match.

In the past Retirement Services has helped divorced members price out their pensions Mr Sugarman has issued a memo on qualified domestic relations orders (QDRO) and income deduction orders (IDO) stating the Board does not handle these types of calculations. The memo provides the Board actuary's contact information for any requested calculation.

5 Administrator

Jennifer Kerr, Retirement Services Director provided the Q1 2009 Expense Report. Administrative expenses for the quarter were \$95,036 and investment manager fees were \$328,330.24 Ms Kerr stated she will bring a proposal to the Board for office expenses within the next few months

Kerry Charlet motioned to accept the retirements & refunds for April 2009. Motion passed unanimously.

Ms. Kerr provided a report provided by the actuary listing the underpayment of 42 retired police officer benefits. Ms. Kerr reminded the Board the October 1, 2008 actuarial valuation was revised and approved to reflect this change. The underpayment of benefits changed the Police officer liabilities from 12.60% to 12.66%. The corrected benefit payment is effective June 1, 2009 with the first check dated June 15, 2009

Jeff Stearns motioned to accept the revised Police Officer retirement payments. Motion passed unanimously.

Ms. Kerr provided the Police pension transition resolution executed May 18, 2009 by City Commission.

Ms. Kerr provided the letter of direction to transfer \$2.5m from the Pyramis portfolio to City Finance

Ms. Kerr reminded the trustees that Financial Disclosure forms are due by July 1, 2009. Ms. Kerr offered to submit the forms to the Supervisor of Elections on behalf of the Board. Mr. Sugarman suggested each trustee keep a copy of their form

NEXT MEETING DATE

The next regular meeting of the Board of Trustees of the City of Lakeland Employees' Pension & Retirement System is scheduled for 8:30 AM, Thursday, June 25, 2009, City Commission Conference Room, 3rd Floor City Hall, 228 South Massachusetts Avenue, Lakeland, Florida 33801

ADJOURNMENT

There being no other business the Trustees adjourned at 11:48 AM.

ANNOUNCEMENTS

- FPPTA 25th Annual Conference
June 28 - July 1, 2009
Boca Raton Resort & Club, Boca Raton
For more information go to www.fppta.org
- Form 1 – Statement of Financial Interests due July 1, 2009
Local officers as defined in Section 112.3145(1)(b), F.S. need to file within 30 days of appointment and then annually by July 1 each year. Forms should be filed with the Supervisor of Elections of the county where the local officers resides.

Kathy Bridges
Absentee Services Coordinator
Polk County Supervisor of Elections
P.O. Box 1460
Bartow, FL 33831
863-534-5888

Respectfully Submitted,

Approval Date: 07/28/09

Signed: Ronald Tomlin
Ronald Tomlin, Chairman

Signed: Kerry Charlet
Kerry Charlet, Secretary

The purpose of this meeting is to consider items on the above agenda. Minutes will be available upon request from Retirement Services. In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this proceeding should contact Dana Blydenburgh no later than three (3) days prior to the proceeding at (863) 834-8797 for assistance; if hearing impaired telephone the Florida Relay Service Numbers (800) 955-8771 (TDD) or (800) 955-8770 (VOICE) for assistance.
