

MEETING
STATE OF CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT SYSTEM
BOARD OF ADMINISTRATION
OPEN SESSION

ROBERT F. CARLSON AUDITORIUM
LINCOLN PLAZA NORTH
400 P STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, MARCH 15, 2017

10:30 A.M.

JAMES F. PETERS, CSR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

A P P E A R A N C E S

BOARD MEMBERS:

Mr. Rob Feckner, President

Mr. Henry Jones, Vice President

Mr. Michael Bilbrey

Mr. John Chiang, represented by Mr. Steve Juarez and Mr. Frank Moore

Mr. Richard Costigan

Mr. Richard Gillihan

Ms. Dana Hollinger

Mr. J.J. Jelincic

Mr. Ron Lind

Ms. Priya Mathur

Mr. Bill Slaton

Ms. Theresa Taylor

Ms. Betty Yee, represented by Ms. Lynn Paquin and Ms. Karen Greene Ross

STAFF:

Ms. Marcie Frost, Chief Executive Officer

Ms. Liana Bailey-Crimmins, Interim Deputy Executive Officer

Mr. Matthew Jacobs, General Counsel

Mr. Douglas Hoffner, Deputy Executive Officer

Ms. Donna Lum, Deputy Executive Officer

A P P E A R A N C E S C O N T I N U E D

STAFF:

Mr. Brad Pacheco, Deputy Executive Officer

Mr. Scott Terando, Chief Actuary

Ms. Marlene Timberlake D'Adamo, Interim Chief Financial Officer

Ms. Mary Anne Ashley, Chief, Legislative Affairs Division

Ms. Kara Buchanan, Board Secretary

Mr. Wylie Tollette, Chief Operating Investment Officer

ALSO PRESENT:

Mr. Alan Cabral, Seyfarth Shaw

Ms. Kathleen Cahill-Slaught, Seyfarth Shaw

Ms. Ashley Dunning, Nossaman LLP

Mr. Neal Johnson, Service Employees International Union
Local 1000

Ms. Yuliya Oryol, Nossaman LLP

Mr. Javier Plasencia, Seyfarth Shaw

Mr. Chirag Shah, Shah and Associates

I N D E X

	PAGE
1. Call to Order and Roll Call	1
2. Pledge of Allegiance	2
3. Board President's Report	2
4. Executive Reports	
a. Chief Executive Officer's Report (Oral)	5
b. Chief Investment Officer's Report (Oral)	15
5. Consent Items	17
Action Consent Items:	
a. Approval of the February 15, 2017 Board of Administration Meeting Minutes	
b. Board Travel Approvals	
6. Consent Items	17
Information Consent Items:	
a. Board Agenda Item Calendar 2017	
b. Draft Agenda for the April 19, 2017 Board of Administration Meeting	
c. General Counsel's Report	
d. Communications and Stakeholder Relations	
7. Committee Reports and Actions	
a. Investment Committee (Oral)	18
b. Pension & Health Benefits Committee (Oral)	20
c. Finance & Administration Committee (Oral)	23
d. Performance, Compensation & Talent Management Committee (Oral)	30
e. Risk & Audit Committee (Oral)	30
f. Board Governance Committee (Oral)	30
Action Agenda Items	
8. Proposed Decisions of Administrative Law Judges	32
a. Lucille J. McGowan	
b. Timothy Beck	
c. Harry Sagala	
d. Holly Massie	
e. Rosa Ponce	
f. Gregory Gordon	
g. Thomas Barkley, Jr.	
h. Peter H. Van Auken	
i. William E. Flores	
j. Steve H. Tsumura	

I N D E X C O N T I N U E D

PAGE

k.	Patricia Pranger	
l.	Gregory Coon	
m.	Michael Lourenco	
n.	Andre Metzler	
o.	George A. Perez	
p.	San Juana Navarro	
q.	Jessica R. Smith	
r.	Linda Disney	
s.	Bradley D. Heinz	
9.	Petition for Reconsideration	34
a.	Carey Kelly	
10.	Full Board Hearing Final Decisions	34,
a.	Sheldon Scarber	46
b.	Paul Mast	
11.	Fiduciary Counsel Interviews	62
	Information Agenda Items	
12.	State and Federal Legislation Update	37
13.	Summary of Board Direction	152
14.	Public Comment	153
	Adjournment	156
	Reporter's Certificate	157

1 P R O C E E D I N G S

2 PRESIDENT FECKNER: Good morning. We're going to
3 call the Board of Administration meeting to order.

4 We apologize for the delay. We have lots of
5 moving today. Some of it has to do with running out of
6 power yesterday, it happened to reconfigure things. So
7 good morning everyone. The first order of business will
8 be to call the roll.

9 BOARD SECRETARY BUCHANAN: Good morning.

10 Rob Feckner?

11 PRESIDENT FECKNER: Good morning.

12 BOARD SECRETARY BUCHANAN: Henry Jones?

13 VICE PRESIDENT JONES: Here.

14 BOARD SECRETARY BUCHANAN: Michael Bilbrey?

15 BOARD MEMBER BILBREY: Good morning.

16 BOARD SECRETARY BUCHANAN: Steve Juarez for John
17 Chiang

18 ACTING BOARD MEMBER JUAREZ: Here.

19 BOARD SECRETARY BUCHANAN: Richard Costigan?

20 BOARD MEMBER COSTIGAN: Here.

21 BOARD SECRETARY BUCHANAN: Richard Gillihan?

22 BOARD MEMBER GILLIHAN: Here.

23 BOARD SECRETARY BUCHANAN: Dana Hollinger?

24 BOARD MEMBER HOLLINGER: Here.

25 BOARD SECRETARY BUCHANAN: J.J. Jelincic?

1 BOARD MEMBER JELINCIC: Greetings and
2 salutations.

3 BOARD SECRETARY BUCHANAN: Ron Lind?

4 BOARD MEMBER LIND: Here.

5 BOARD SECRETARY BUCHANAN: Priya Mathur?

6 BOARD MEMBER MATHUR: Here.

7 BOARD SECRETARY BUCHANAN: Bill Slaton?

8 BOARD MEMBER SLATON: Here.

9 BOARD SECRETARY BUCHANAN: Theresa Taylor?

10 BOARD MEMBER TAYLOR: Here.

11 BOARD SECRETARY BUCHANAN: And Lynn Paquin for
12 Betty Yee?

13 ACTING BOARD MEMBER PAQUIN: Here.

14 PRESIDENT FECKNER: Thank you.

15 Next item is the Pledge of Allegiance. Will you
16 all please rise and face the flag.

17 Hand over heart.

18 Ready. Begin.

19 (Thereupon the Pledge of Allegiance was
20 recited in unison.)

21 PRESIDENT FECKNER: Thank you.

22 Item 3 is the Board President's Report.

23 Good morning, everyone.

24 Each year we provide an assessment of the State
25 of the System. What we think of as an annual checkup on

1 the CalPERS health. Once again, we're going to do this in
2 the form of a column to our valued members, employers and
3 stakeholders. You may have received a copy as you entered
4 the auditorium here today. If not, I'm sure there's some
5 still on the back table out back -- in the back.

6 Last year, we made significant progress toward
7 ensuring the soundness of the fund when we lowered our
8 discount rate from 7.5 percent to 7 percent over the next
9 three years. While this was a difficult decision that has
10 a financial impact on our employer partners and members,
11 it was necessary to help sustain the fund over the long
12 term. We lowered the rate because experts, both inside
13 and outside CalPERS, have advised us that the outlook for
14 strong investment returns over the next decade has
15 weakened.

16 Solid investment returns are the cornerstone of
17 the CalPERS system. They pay for nearly two-thirds of
18 every dollar we pay out in pension benefits. We recognize
19 that the market environment that we are operating in today
20 is very different than we've had before. We also
21 recognize that cutting the discount rate isn't just about
22 the numbers. This change impacts real lives, the lives of
23 some of our members, the bottom lines of the cities,
24 counties, schools, and special districts that belong to
25 our system, and ultimately the taxpayers.

1 All of this is a clear reminder that pensions are
2 a shared responsibility, in exchange for the services that
3 public employees provide to the citizens of California.

4 As we confronted our changing environment, we
5 were faced with a very difficult decision, to declare the
6 City of Loyalton in default after it failed to pay what it
7 owes the fund to its pension plan. It's a situation that
8 we face yet again today. Public employees and the
9 retirees impacted deserve better. Local employers must be
10 held accountable in fulfilling their obligations.

11 As the administrator of benefits promised to
12 employees by their employers, CalPERS must always keep the
13 security of pensions in the forefront of our decisions.
14 We don't take challenging issues, such as discount rate
15 and Loyalton, lightly, but steps must be taken to fulfill
16 our primary mission.

17 This year, celebrates it's 85th years CalPERS.
18 While these may be challenging times, our organization is
19 no stranger to weathering storms. CalPERS remains sound
20 and stable through the Great Depression, World War II, the
21 great inflation of the 1970s and the Great Recession of
22 2008. We are honored to serve those who serve California,
23 and our commitment to our 1.8 million members has never
24 been stronger.

25 Now, on a lighter note, I want to thank all of

1 those who attended the CalPERS Night at the Kings Game on
2 Monday. It was our first time gathering in the new arena,
3 and it was a treat to be able to walk to the game just
4 blocks away. And even more of treat was that the Kings
5 won. They beat the Orlando Magic 120 to 115.

6 I will say it was a lovely arena, but I'm never
7 sitting in those seats again up so high in the arena. My
8 nose bled for two days.

9 (Laughter.)

10 PRESIDENT FECKNER: Finally, I want to close by
11 acknowledging that this week is Sunshine Week, a national
12 celebration of the importance of open government and
13 freedom of information. CalPERS has been a proud
14 supporter of Sunshine Week for a number of years.
15 Openness is one of our core values, and we're proud of it.
16 On behalf of myself and the Board, thank you to all our
17 team members who contribute to our commitment of
18 transparency and accountability every day.

19 Thank you.

20 With that, we move on to Item 4, 4a, the Chief
21 Executive Officer's report. Ms. Frost.

22 CHIEF EXECUTIVE OFFICER FROST: Good morning, Mr.
23 President and members of the Board. I would like to begin
24 my update with two of the actions that are before the full
25 Board today.

1 And the first one is the East San Gabriel JPA.
2 And I know Mr. Feckner just briefly commented on this as
3 well. But because of the significance of the action and
4 the impact, I thought it worthwhile for me to spend a bit
5 of time talking about it as well.

6 So as you heard yesterday, before we were
7 disrupted by the power outage, and again this morning, the
8 Finance and Admin Committee is faced with terminating a
9 joint powers authority that began contracting with CalPERS
10 in 1979. And they have failed to stand by the agreement
11 that they entered with this organization, and with the
12 employees of that employer.

13 This is a unique situation, because the East San
14 Gabriel Valley Human Services Consortium, which is also
15 known as L.A. Works, lost a lot of its funding some time
16 ago, and then quit paying its pension contributions to
17 CalPERS.

18 The four Southern California cities that
19 originally formed the JPA, Azusa, Covina, Glendora, and
20 West Covina, have also refused to make good on those
21 contributions on behalf of the employees of the JPA.

22 Now, the price for that decision is severe, and
23 involves much more than the money owed. And our mission
24 here at CalPERS is to make sure that the members get the
25 benefits that they have earned throughout their working

1 careers, but we also have to make sure that those benefits
2 have been paid for by their employers.

3 The workers and the retirees performed their jobs
4 during the time that they worked for this JPA, but
5 unfortunately now will see a reduction in the pension
6 benefits that were again promised to them. And again,
7 this applies to the service that was earned during their
8 time at the JPA. And if they had worked for multiple
9 employers throughout their career, that service would not
10 be impacted.

11 I know I speak for the Board and all of us here
12 at CalPERS when I say this is not an acceptable situation
13 by my means. It's not acceptable by the employees or the
14 retirees who come to rely on a benefit that was promised
15 to them.

16 The bottom line for us, of course, is that the
17 pensions are a shared responsibility. And one of the
18 items that we have been trying to do, put more clarity
19 around is really the roles of the various parties within
20 the system. So the employer's responsibility once they've
21 negotiated the benefit levels they're offering to their
22 employees is to make sure that they're paying the
23 contributions associated with those promises.

24 CalPERS, we make sure that we administer the
25 benefit, we collect the contributions, and we collect the

1 data. And so unfortunately, again in the case, we were
2 unable through every means that we found possible -- and I
3 assure you that if we felt that this JPA was able to meet
4 these obligations, we would not be recommending this
5 action to the Board.

6 So today's action, again by the Finance and Admin
7 Committee, is a reminder that any decision like this is
8 extremely difficult and painful. It is the last thing we
9 want to do. We look at this work through the lens of
10 protecting the member and making sure that the member has
11 access to these benefits. So everything we do through the
12 back office and the front office is to make sure that we
13 can collect those funds. And again, unfortunately, we're
14 unable to do so.

15 So, at this point, it does require us to either
16 recover those amounts -- and we did ask the cities to
17 cover the amounts on behalf of the JPA. They all four
18 have indicated in writing to us that they are not willing
19 to do so.

20 So, at this point, the Finance and Admin
21 Committee had to take action, and again before the full
22 Board this morning, that would reduce the benefit payments
23 accordingly. So again, we take the duty very seriously.
24 We're talking about real people here, who will have their
25 financial security and retirement impacted. If we do not

1 receive payment of any kind, the effective date of this
2 action would be in July.

3 One of the items I did hear in the Finance and
4 Admin Committee is an interest by the Board to make sure
5 that we have full understanding by the member when we have
6 an employer who's moving into an arrears standpoint on
7 their contributions, and to make that notification and
8 that communication earlier in the process. So we will
9 take that back. We've assigned some resources already to
10 begin looking at that process from the member's
11 standpoint, as well as the employer's standpoint.

12 So the second item that will be coming before the
13 Board today for an action is pensionable compensation. So
14 as you well know, when PEPRAs was implemented four years
15 ago, we reviewed the regulations at that time on reporting
16 pensionable comp. And we wanted to make sure that our
17 practices aligned appropriately with the law that had been
18 passed.

19 At that point, our team here at CalPERS began to
20 identify the compensation reporting practices that the
21 employers would need to follow. And then we needed to
22 take formal steps to place those practices into a
23 regulation.

24 And the purpose of the regulation was to provide
25 tools for the employers to know how to report the data,

1 and report the compensation, and make sure that it was
2 consistent, predictable, and above all transparent for
3 everyone.

4 At yesterday's Pension and Health Benefits
5 meeting, the Committee was presented with a proposed
6 regulation that will clearly define pensionable
7 compensation practices that are really already in practice
8 today. An employer circular had already gone out, so this
9 regulation puts into code the practice of the organization
10 today. It includes prohibiting temporary upgrade pay from
11 being considered part of the worker's final compensation.

12 So I'm pleased that this item is coming to
13 resolution before you today, because it is a chance for us
14 to finalize very important guidance that we get out to the
15 employers, as well as to the members on what they can
16 expect to have in their pensions.

17 Moving on to some internal items, the executive
18 search updates. We have two positions on the executive
19 team that are vacant. We have the Chief Health Director,
20 and the Chief Financial Officer. We have been sourcing
21 candidates, and the Chief Health Director we believe we
22 have a sufficient candidate pool to begin scheduling some
23 interviews.

24 The Chief Financial Officer, we're working with
25 Heidrick & Struggles to source a candidate pool. We had

1 an initial meeting with them and believe we have very
2 strong candidates to move forward with.

3 We do expect to fill both of these positions
4 within the next few months, and, of course, I'll keep you
5 updated on the progress.

6 So some upcoming events and I know Mr. Eliopoulos
7 spoke about this briefly in his CIO report. But on May
8 10th, we'll be at the Sacramento Convention Center hosting
9 our second annual Diversity Forum. We've teamed up with
10 CalSTRS this year to organize a program that I think will
11 be excellent in supporting our continuing efforts to
12 expand diversity in the investment industry.

13 Leaders from the academic and the private sector,
14 as well as top officials from institutional investors will
15 examine the importance of diversity and how it could help
16 boost investment performance. I'm also looking forward to
17 someone who used to work -- or I used to work in the same
18 State with. The keynote speaker this year is John W.
19 Thompson who's the Chairman of Microsoft. So I hope many
20 of you will be able to attend the event, and I'll keep you
21 updated on the event as we get close to May.

22 Ms. Lum updated you on the Santa Barbara CBEE.
23 So that -- those continue to be very well attended. We
24 have a very complex set of rules, and I think the
25 attendance is reflective of the fact that people are

1 really trying to understand how those complex rules apply
2 to them and their retirement.

3 So they're extremely well attended. So our
4 Millbrae event a couple weeks ago had over 1,200
5 participants. And then in this weekend we'll be in Santa
6 Barbara on Friday and Saturday to begin working with
7 members in that area about programs and benefits available
8 to them.

9 Recent events. A few weeks ago, I ventured out
10 of Sacramento for the first time and attended the Pacific
11 Pension and Investment Institute's Winter Roundtable. And
12 I know there were a couple of Board members, Mr. Jones,
13 Mr. Juarez, Mr. Eliopoulos also attended. So it was a
14 moment for me to be -- to tell the story of CalPERS and my
15 first five months on the job. And, you know, Mr. Jones
16 was there again as I was having this dialogue with a
17 number of the asset owners who attend the events.

18 And I think what's interesting is that the
19 challenges or the issues we face are very, very similar.
20 How do we, as institutional investors, leverage the
21 markets in a way that we can hit some pretty, you know,
22 significant return targets. And we have markets that are
23 changing, and we have geographies that are changing. So
24 how can we be nimble and flexible and get the returns that
25 we really are expecting? And it's always helpful to meet

1 with our colleagues, and other pension systems, and other
2 institutional investors around the world.

3 And then before I finish, I'd like to remind the
4 Board of a few important events. First, we just launched
5 our annual Achieving Performance Excellence program,
6 better known as APEX. We have several recognition
7 programs at CalPERS. But what makes APEX special is this
8 is a program where co-workers nominate co-workers for an
9 award. And so those nominated are acknowledged on how
10 they live the core values at work, and how they exhibit
11 all around excellence in their jobs.

12 We received 67 nominations this year, and a
13 volunteer Committee of evaluators will be formed shortly,
14 and they will determine the APEX winners for this year.

15 Those recipients, those who are honored with the
16 award, will be -- will receive that honor in June. And
17 this will be my first APEX Ceremony, so I'm really looking
18 forward to being a part of it.

19 So that concludes my remarks this morning, Mr.
20 President, and as always, I'm happy to answer any
21 questions you may have.

22 PRESIDENT FECKNER: Thank you. I have Mr.
23 Jelincic.

24 BOARD MEMBER JELINCIC: A couple of things. In
25 recognition of transparency week, I noticed that the

1 expenses and reimbursements for the last quarter of '16
2 went up on the web either Friday or Monday. And so I'm
3 glad that at least through December is up.

4 But I noticed that once again there are a
5 significant number of asterisked things where there's no
6 information about what the trip was, and where it was,
7 what it was for. It's tied apparently to failure to file
8 claims. But I noticed I went back a quarter, and even
9 that it says, well, we're going to update them, but they
10 weren't updated.

11 CHIEF EXECUTIVE OFFICER FROST: Okay.

12 BOARD MEMBER JELINCIC: So I think we may need to
13 make some effort on that, but I do appreciate at least it
14 got up.

15 CHIEF EXECUTIVE OFFICER FROST: Thank you.

16 BOARD MEMBER JELINCIC: And then at the Finance
17 and Admin Committee, I commented that the actuaries were
18 always wrong. And the actuaries certainly understood what
19 I meant. But, you know, they are making multiple guesses
20 on multiple moving parts, and they are amazingly close
21 consistently. If they're ever spot on it's an accident.
22 But I did not -- you know, it's just a recognition that
23 that's the nature of the beast.

24 CHIEF EXECUTIVE OFFICER FROST: Yes.

25 BOARD MEMBER JELINCIC: And that was the spirit

1 in which it was intended. And I think Scott understood
2 that, because he certainly made the comment multiple
3 times.

4 CHIEF EXECUTIVE OFFICER FROST: He did. Yes, he
5 did.

6 Thank you, Mr. Jelincic. I really appreciate it.

7 BOARD MEMBER JELINCIC: Thank you.

8 PRESIDENT FECKNER: Thank you. Before I let you
9 go, Ms. Frost, when we get -- just so I don't put you on
10 the spot. When we get to the Finance Committee report,
11 and the discussion on the East San Gabriel, I'm getting
12 emails even after our meeting about folks that still don't
13 understand the temporary agency pool, and why it can't go
14 in there. So if you could be prepared at that point to
15 give an understanding, so that folks out there really
16 understand what that pool is for, and why it does or does
17 not fit in this situation.

18 CHIEF EXECUTIVE OFFICER FROST: Certainly.

19 PRESIDENT FECKNER: Thank you.

20 All right. Thank you. Nothing else on this
21 item. That moves us to Item 4b, Chief Investment
22 Officer's report. Sitting in his stead is Mr. Tollette.

23 CHIEF OPERATING INVESTMENT OFFICER TOLLETTE:

24 Good morning, Mr. President and members of the
25 Board. Wylie Tollette, Chief Operating Investment

1 Officer.

2 I'm here to give an update on the performance of
3 the Public Employees' Retirement Fund. As of January
4 31st, 2017, the total fund performance for the fiscal year
5 to date is 5.4 percent. As you know, we prefer to examine
6 returns over longer time periods as we believe they are
7 more meaningful. The 3-year return is 5.7 percent, the
8 5-year return is 8.7 percent, the 10-year return is 4.7
9 percent, reflecting our difficult real estate investment
10 environment in the mid-2000s, and the 20-year return of
11 the fund is 6.8 percent.

12 All asset allocations are within their policy
13 ranges. Total fund assets are valued as of January 31st,
14 2017 at 306.7 billion.

15 I'm happy to take any questions on that.

16 PRESIDENT FECKNER: Seeing none.

17 CHIEF OPERATING INVESTMENT OFFICER TOLLETTE:

18 Great. Thank you.

19 And with your permission, Mr. President, I'd like
20 to take a moment to introduce Clint Stevenson, our new
21 Investment Director over our Manager Engagement Programs
22 replacing Laurie Weir, who you may recall retired in
23 December. Clint comes to us with over 30 years of
24 experience with the Ford Foundation, and with great
25 experience in manager selection and evaluation.

1 We're excited to have Clint on board. Welcome to
2 Sacramento, where he escaped his -- the snow storm in New
3 Jersey, where he just recently moved from literally today,
4 and welcome to CalPERS.

5 (Applause.)

6 PRESIDENT FECKNER: Welcome.

7 Welcome to sunny California.

8 (Laughter.)

9 PRESIDENT FECKNER: All right. If theres'
10 nothing else, Mr. Tollette, we'll move on to number 5. We
11 have the action items. We have A, B -- A and B. What's
12 the pleasure?

13 BOARD MEMBER JELINCIC: I'll move it.

14 PRESIDENT FECKNER: We have it moved by Jelincic.

15 BOARD MEMBER TAYLOR: Second.

16 PRESIDENT FECKNER: Seconded by Taylor.

17 Any discussion on the motion?

18 Seeing none.

19 All in favor say aye?

20 (Ayes.)

21 PRESIDENT FECKNER: Opposed, no?

22 Motion carries.

23 Item 6, the Consent Items. Having no request to
24 move anything off, we move on to Item 7.

25 7a is the Investment Committee. For that, I call

1 on the chair, Mr. Jones.

2 VICE PRESIDENT JONES: Yeah. Thank you, Mr.
3 President. The Investment Committee met on March 13,
4 2017. The Committee approved the following:

5 Agenda Item 5a, to recommend for consideration by
6 the Board of Administration that the current Investment
7 Committee delegation remain in place with no changes;

8 Agenda Item 6a, to approve the proposed 115th
9 Congress Federal Investment Policy Priorities for the
10 2017-18 congressional session with modifications;

11 And, Agenda Item 7a, to accept the resignation of
12 Pension Consulting Alliance, LLC as the private equity,
13 PE, Board investment consultant effective March 16, 2017;
14 to authorize staff to contract with Meketa Investment
15 Group, Inc. to assume the responsibilities of the PE Board
16 consultant effective March 16th, 2017 for the remainder of
17 the existing contract term; and to authorize staff to
18 continue utilizing Meketa to complete existing work
19 currently in progress for the real asset team anticipated
20 to be completed on or before June 30th, 2017.

21 The Committee received reports on the following
22 topics:

23 The framework for integrating ESG across the
24 asset classes; and, the annual review of the Global
25 Governance Principles with a report on engagement

1 activities undertaken on the Dakota Access Pipeline.

2 The Chair directed staff to do the following:

3 Revise the federal investment priorities to
4 reflect the CalPERS is not bound -- reflect that CalPERS
5 is not bound by the noted priorities, that we support
6 reasonable Dodd-Frank reform efforts and protect core
7 provisions, and specify that our Housing Finance Reform
8 Priority honors the seniority of mortgage debt holders;

9 Providing a copy of China's Green Finance Plan to
10 the Committee;

11 Present to the Committee more information on the
12 Equator Principles and;

13 Present with legislative staff a discussion on
14 the divestment policy and review engagement priorities as
15 an information sharing and educational item.

16 The Committee heard public comments on the public
17 equity asset allocation and a labor dispute.

18 At this time, I'd like to share some highlights
19 of what to expect at the April Investment Committee
20 meeting; the second reading of the revision of the Total
21 Fund Investment Policy; and a report on the private
22 equity[sic] class roles and benchmarks.

23 The next meeting of the Investment Committee is
24 scheduled for April 17, 2017 in Sacramento, California.

25 That concludes my report, Mr. President.

1 PRESIDENT FECKNER: Thank you.

2 Item 7b, the Pension and Health Committee Report.
3 For that, I call on the Chair, Ms. Mathur.

4 BOARD MEMBER MATHUR: Thank you, Mr. President.

5 The Pension and Health Benefits Committee met
6 yesterday on March 14th, 2017.

7 The Committee recommends and I move that the
8 Board approve on Agenda Item 5 the proposed regulation to
9 clarify CalPERS' interpretation of what is considered
10 pensionable compensation for new members hired on, or
11 after, January 1st, 2013. Revise -- there's a revised
12 version of the regulations handed out as attachment 1.

13 PRESIDENT FECKNER: On motion by Committee.

14 Any discussion on the motion?

15 Mr. Jelincic.

16 BOARD MEMBER JELINCIC: I will be voting no for
17 all the reasons I gave at the Committee meeting, including
18 Luke 10, verse 7.

19 (Laughter.)

20 PRESIDENT FECKNER: Thank you.

21 Any other discussion on the motion?

22 Seeing none.

23 All in favor say aye?

24 (Ayes.)

25 PRESIDENT FECKNER: Opposed, no?

1 (Noes.)

2 PRESIDENT FECKNER: Motion carries.

3 Please record Mr. Jelincic as voting no.

4 BOARD MEMBER MATHUR: The Committee recommends
5 and -- further recommends and I move that the Board
6 approve on Agenda Item 6 to approve the proposed 115th
7 Congress federal health care priorities for the 2017-18
8 congressional session.

9 PRESIDENT FECKNER: On motion by Committee. Any
10 discussion on the motion?

11 Seeing none.

12 All in favor say aye?

13 (Ayes.)

14 PRESIDENT FECKNER: Opposed, no?

15 Motion carries.

16 BOARD MEMBER MATHUR: The Committee further
17 recommends and I move the Board approve on Agenda Item 7
18 the proposed 115th Congress federal retirement security
19 priorities for the 2017-18 congressional session.

20 PRESIDENT FECKNER: On motion by Committee.

21 Any discussion on the motion?

22 Seeing none.

23 All in favor say aye?

24 (Ayes.)

25 PRESIDENT FECKNER: Opposed say no?

1 Motion carries.

2 BOARD MEMBER MATHUR: The Committee heard several
3 reports yesterday including on the 2017-2022 health
4 initiatives; a presentation on the statewide collaboration
5 through SmartCare California on lower back pain; and the
6 semiannual report on the Long-Term Care Program.

7 The Chair directed staff to: With respect to the
8 federal health priorities, replace the word on page two
9 paragraph two, last sentence of Agenda Item 6, to replace
10 the word "Board" with the word "CalPERS". The sentence
11 will now read, "They do not bind CalPERS in considering or
12 adopting a position on any specific proposal, nor do they
13 supersede or alter any existing policies, beliefs, or
14 principles".

15 Also, with respect to the federal pension
16 retirement security priorities, same -- the same change on
17 page two paragraph one, last sentence of Agenda Item 7.

18 Also, the Chair directed staff to bring back a
19 cost-benefit analysis for member and child tiering; to
20 explore if the spousal surcharge can be administered at
21 the employer level as opposed to CalPERS; and to identify
22 opportunities when it would be helpful to have Board
23 members directly engage Congress members as part of the
24 annual federal priorities.

25 Some highlights of what to expect at the April

1 PHBC meeting. The Committee will review:

2 Legislative bills; and also, we'll hear
3 information on the health benefit design proposals for
4 2018, pharmacy benefit management strategies, planning for
5 Health Care Beliefs, and health care combo enrollments.

6 The next meeting of the PHBC is scheduled for
7 April 18th, 2017 in Sacramento, California. That
8 concludes my report, Mr. President.

9 PRESIDENT FECKNER: Thank you.

10 That brings us to Item 7c, Finance and
11 Administration Committee. For that I call on the Chair,
12 Mr. Costigan.

13 BOARD MEMBER COSTIGAN: Thank you, Mr. Feckner.

14 So before we begin, the -- what Mr. Feckner was
15 referencing is on Item 5a, and we had received a series of
16 letters that are part of the public record that cite to
17 Section 20577.5, which relates to the terminated agency
18 pool, and people were questioning why they weren't going
19 to be allowed to go into the pool. Is that the question,
20 Mr. Feckner?

21 PRESIDENT FECKNER: Correct. Yes.

22 BOARD MEMBER COSTIGAN: Thank you.

23 So, Ms. Frost.

24 CHIEF EXECUTIVE OFFICER FROST: With
25 authorization of the Board, I would like our Chief

1 Actuary, Scott Terando, to comment on the total -- the TAP
2 in Washington was the Total Allocation Portfolio. It
3 would be the Terminated Agency Pool here.

4 CHIEF ACTUARY TERANDO: Good morning, members of
5 the Board. Scott Terando, Chief Actuary.

6 So kind of go over what the purpose of the TAP
7 is, or the terminated agency pool. And what we -- what we
8 have is the TAP is when an agency terminates, we look at
9 the liabilities to immunize all the pension and expected
10 payments for that particular employer. And we look at the
11 assets needed to support those payments.

12 And in the majority of the cases, the employer
13 pays the amount necessary. We've had several plans --
14 even recently last year, we've had three or four plans
15 that terminated, paid the full amount, and once that
16 happens we move them into, what we call, the TAP, or the
17 terminated agency pool.

18 The members are moved into there. The assets are
19 moved in there, and then the Investment Office invests
20 those assets on an immunized basis to support the expected
21 payments to be made over the lifetime of the members.

22 When we have the situation with East San Gabriel,
23 when we have to move the assets and the benefits over and
24 the -- there's a misalignment, we have to cut the expected
25 payments is to lineup with the assets. So in the case of

1 East San Gabriel, after the 60-day period expires, we
2 will -- we will be moving them into the terminated agency
3 pool. But what we do is we kind of true it up, assets and
4 liabilities. So when we move them into the terminated
5 agency pool, they're in alignment, and they're 100 percent
6 funded going into the terminated agency pool.

7 At that point, the responsibility for the
8 benefits and the payment falls upon PERS -- CalPERS, and
9 there's no more responsibility on the employer side. So
10 the responsibility, any fluctuations in investment
11 returns, mortality, any experience falls upon us and our
12 responsibility to pay those benefits.

13 PRESIDENT FECKNER: Okay.

14 BOARD MEMBER COSTIGAN: Mr. Feckner, I think you
15 may have a question.

16 PRESIDENT FECKNER: Thank you.

17 Ms. Mathur.

18 BOARD MEMBER MATHUR: I just want to make sure
19 it's clear, because when you say that we have to bring the
20 assets and liabilities in alignment, that's when -- that's
21 when the benefit reduction -- you basically present value
22 back what you -- or future value --

23 CHIEF ACTUARY TERANDO: Correct.

24 BOARD MEMBER MATHUR: -- the current assets and
25 determine what the level of benefits must be in order for

1 the assets to meet those obligations.

2 CHIEF ACTUARY TERANDO: Yes, that's correct.
3 That's where we look at the liabilities and then we look
4 at the amount of assets to support that. And when there's
5 a mismatch, you know, we have to adjust the liabilities
6 down, which means we are adjusting --

7 BOARD MEMBER MATHUR: Yes.

8 CHIEF ACTUARY TERANDO: -- the benefits down to
9 match up with the assets being provided by the employer.

10 BOARD MEMBER MATHUR: Okay. Thank you.

11 PRESIDENT FECKNER: Thank you.

12 Ms. Hollinger.

13 BOARD MEMBER HOLLINGER: Yeah. And I just wanted
14 to emphasize that when we do that, similar to the
15 insurance industry, we're putting that money in a pool at
16 a very -- at a guaranteed return rate, which in the
17 insurance industry, or depending what rates are, is like a
18 2, or right now a little bit above a 2 percent return. So
19 it's a guarantee. So they also understand the mechanics
20 that, yes, it's being reduced by what we've collected, but
21 then we're applying a guaranteed rate to the future, so
22 they're not absorbing any investment risk.

23 CHIEF ACTUARY TERANDO: That's correct. By
24 moving it into the terminated agency pool, all the risk is
25 transferred to us, and so we need to minimize the risk,

1 because at this point there's no -- there's no employer we
2 can go back and ask for additional contributions to
3 true-up any losses that may occur in the future.

4 BOARD MEMBER HOLLINGER: Right. It's just
5 managing that risk.

6 CHIEF ACTUARY TERANDO: Correct.

7 PRESIDENT FECKNER: Ms. Slaton. Did you change
8 your mind?

9 BOARD MEMBER SLATON: No.

10 PRESIDENT FECKNER: Mr. Costigan.

11 BOARD MEMBER COSTIGAN: If I may continue.

12 Thank you, Mr. Chair -- or Mr. President.

13 The Finance and Administration Committee met on
14 March 14th and 15th, 2017.

15 The Committee recommends and I move the Board
16 approve the following:

17 Agenda Item 5a, Approve the staff recommendation
18 to terminate the East San Gabriel Valley Human Services
19 Consortium contract with the California Public Employees'
20 Retirement System. Reductions in retiree benefits be
21 adopted as staff has recommended effective July 1st, and
22 that the staff has been instructed to engage with the four
23 member organizations of the consortium to attempt the --
24 to collect the past due amount. And if that were to take
25 effect, that the staff would be bring back to this

1 Committee -- to the Finance Committee a payment schedule
2 reflecting those payments.

3 PRESIDENT FECKNER: On motion by Committee.

4 Any discussion on the motion?

5 Ms. Mathur.

6 BOARD MEMBER MATHUR: I just want to clarify the
7 language of the motion, if I might, to make sure that what
8 this is saying, as I heard it discussed in Finance
9 Committee, is that if the -- if the four cities agree to
10 pay the past due amount and bring it current, then we
11 would not execute the termination, and we would -- but we
12 would continue the payment schedule as it should be at --
13 it would otherwise have been? Is that what this -- that's
14 what this is saying.

15 INTERIM CHIEF FINANCIAL OFFICER TIMBERLAKE

16 D'ADAMO: Correct.

17 CHIEF EXECUTIVE OFFICER FROST: As -- yeah, as I
18 understand what would happen is if we were to receive
19 payment from the four cities in full for the amount that
20 is due, we would bring the action back to the Committee to
21 determine whether they were -- so if they come out of
22 arrears, then that could suspend the termination. But
23 basically, we would come back to the Committee to stop the
24 termination.

25 BOARD MEMBER MATHUR: Okay. Thank you.

1 PRESIDENT FECKNER: Thank you.

2 Mr. Slaton.

3 BOARD MEMBER SLATON: Yeah. Just -- I had a bit
4 of clarification just to make sure. It's not necessarily
5 four cities. It's coming back into compliance and being
6 current on payments. It could be one city. It could be
7 four cities.

8 CHIEF EXECUTIVE OFFICER FROST: It's about
9 collection of the arrears.

10 BOARD MEMBER SLATON: Right, collection of the
11 arrears. Thank you.

12 PRESIDENT FECKNER: All right. Thank you.

13 Seeing no other requests on the motion. Motion
14 being before you.

15 All in favor say aye?

16 (Ayes.)

17 PRESIDENT FECKNER: Opposed, no?

18 Motion carries.

19 BOARD MEMBER COSTIGAN: The Chair directed staff
20 to bring back in April a discussion of the statutory
21 changes for JPA contracting agencies; and to bring back to
22 the Committee an update on the termination process to
23 include a discussion of notification to employees and
24 retirees.

25 The Committee heard public comment on the

1 following topics:

2 The East San Gabriel Valley Human Services
3 recommended termination of agency contract.

4 At this time, I'd like to share some highlights
5 of what to expect at the April Finance and Administration
6 Committee meeting. We will have an update for the
7 employer and employee contribution rate for Judges'
8 Legislators', State, Schools, and valuation reports for
9 the 1959 Survivor Benefit Program.

10 We will have a first reading of the 2017-18
11 annual budget proposal, annual review of the Board member
12 employer reimbursements, a review of the Finance and
13 Administration Committee delegation, and a second reading
14 of the Asset Liability Management Policy.

15 The next meeting of the Finance and
16 Administration Committee is scheduled for April 18th, 2017
17 in Sacramento, California.

18 Thank you, Mr. President. That's my report.

19 PRESIDENT FECKNER: Thank you.

20 Item 7d, there was no meeting, no report.

21 7e, no committee meeting, no report.

22 Item 7f, Board Governance Committee. For that, I
23 call on the Chair, Ms. Taylor.

24 BOARD MEMBER TAYLOR: Got it. Okay.

25 Thank you. The Board Governance Committee met on

1 March 13, 2017. The Committee elected Theresa Taylor as
2 Chair, and Priya Mathur as Vice Chair of the Committee.

3 The Committee discussed the following topics:

4 The Committee discussed a proposed revision to
5 the public comment form; proposed revisions to the Board
6 Governance Policy regarding Board member representation on
7 outside boards; the responsibility for creating/disbanding
8 committees(standing, ad hoc, or subcommittees); and the
9 distinction between policies and procedures.

10 The Chair directed staff to:

11 Draft additional language for the Board
12 Governance Policy to further define outside boards and how
13 those outside board terms are renewed an reviewed, and to
14 bring the draft language back to the April meeting;

15 Draft additional language for the Board
16 Governance Policy to address where the responsibility
17 resides for creating and disbanding standing an ad hoc
18 Committees, and bring the draft language back to the April
19 meeting.

20 At this time, I'd like to share some highlights
21 of what to expect at the April Board Governance Committee
22 meeting. The Committee will discuss potential limitations
23 on Board member email usage.

24 The next meeting of the Board Governance
25 Committee is tentatively scheduled for April 18th, 2017 in

1 Sacramento, California.

2 PRESIDENT FECKNER: Thank you.

3 Before we move on to Item 8, I do want to note
4 that we will move Item 12, State and Federal Legislation,
5 prior to the Item 11, the Fiduciary Counsel Interviews.

6 So now we're on Item 8, Proposed Decision of
7 Administrative Law Judges. And I will say that the
8 Board's independent counsel for administrative hearings
9 and procedures, Mr. Chirag Shah, is in attendance today,
10 if Board members have any questions.

11 Mr. Jones.

12 VICE PRESIDENT JONES: Yeah. Thank you, Mr.
13 President.

14 I move to adopt the proposed decisions at Agenda
15 Items 8a through 8s, except for Agenda Items 8f and 8j,
16 which have been withdrawn, with the minor modifications to
17 Agenda Items 8b and 8c, and 8i and 8n as argued by staff.

18 PRESIDENT FECKNER: On motion by Committee.

19 I mean -- is there a second to the -- Mr. Jones'
20 motion.

21 BOARD MEMBER MATHUR: Second.

22 PRESIDENT FECKNER: We have a motion by Jones,
23 seconded by Mathur.

24 Any discussion on the motion?

25 Mr. Jelincic.

1 BOARD MEMBER JELINCIC: Yeah 8j.

2 PRESIDENT FECKNER: J.

3 BOARD MEMBER JELINCIC: J as in Jelincic.

4 PRESIDENT FECKNER: J as in Jelincic has been
5 withdrawn.

6 BOARD MEMBER JELINCIC: I don't remember seeing
7 anything about it.

8 PRESIDENT FECKNER: Mr. Shah sent out an email, I
9 believe, yesterday or the day before.

10 MR. SHAH: Yes, that's right. There was an
11 update to the recommendations, yes, that was sent
12 yesterday. It should be in your folder.

13 BOARD MEMBER JELINCIC: Okay. I saw the F. I
14 didn't see the J. So thank you.

15 PRESIDENT FECKNER: Okay.

16 MR. SHAH: J was withdrawn essentially.

17 PRESIDENT FECKNER: Any other discussion on the
18 motion?

19 Seeing none.

20 All in favor say aye?

21 (Ayes.)

22 PRESIDENT FECKNER: Opposed, no?

23 Motion carries.

24 Mr. Jones.

25 VICE PRESIDENT JONES: Yeah. Thank you, Mr.

1 President.

2 This is Agenda Item 9a. I move to deny the
3 petition for reconsideration at Agenda Item 9a.

4 PRESIDENT FECKNER: Moved by Jones.

5 Is there a second?

6 BOARD MEMBER TAYLOR: Second.

7 PRESIDENT FECKNER: Seconded by Taylor.

8 Any discussion on the motion.

9 Seeing none.

10 All in favor say aye?

11 (Ayes.)

12 PRESIDENT FECKNER: Opposed, no?

13 Motion carries.

14 Mr. Jones.

15 VICE PRESIDENT JONES: The -- are we going to
16 have further discussion on this item. Well, I'll make the
17 motion and then -- I move to adopt the full Board hearing
18 final decision presented at Agenda Items 10a and 10b in
19 the appeals of Sheldon Scarber and Paul Mast as the
20 Board's final decision.

21 PRESIDENT FECKNER: Thank you. Is there a
22 second?

23 BOARD MEMBER TAYLOR: Second.

24 PRESIDENT FECKNER: It's been moved by Jones,
25 seconded by Taylor.

1 Discussion on the motion?

2 Mr. Costigan.

3 BOARD MEMBER COSTIGAN: Thank you, Mr. Feckner.

4 I think there's a little confusion on this order.
5 I have read the transcript and I have read the motion, and
6 I want to make sure that the actions that was taken in the
7 transcript -- I'm going to try and talk slowly here,
8 because that transcript reflects is as though it was a
9 two-part motion to reject the decision and hold the
10 settlement agreement unenforceable.

11 In the way the motion is written, there is no
12 comma, and so it's one sentence versus two. And I would
13 just like, Mr. Jones and Mr. Feckner, that the motion -- I
14 want to make sure the motion is restated, and so whether
15 the record is reflective, because the difference of a
16 comma has a significant impact in the transcript.

17 So, Mr. Jones, I have -- and I don't know if we
18 would like an opportunity to move on to other items and
19 just clarify so that Mr. Chirag has the opportunity to
20 look at the transcript, look at the order, and then come
21 back and restate that, but that's -- the issue I have is
22 that the two are not -- do not appear to be the same.

23 And I have -- if you read it -- if you read it
24 singularly, the settlement agreement is in effect from day
25 one. If you read the transcript, it appears that by

1 operation of law, the settlement agreement -- that there
2 was a different time -- a different period adopted post
3 age 63. And I just think we just need to clarify it.

4 And I apologize for bringing this, the difficulty
5 in reading a red-line/green-line version as prepared to
6 us. I will -- one last point, I'm -- this is a little
7 different process than the State Personnel Board. We
8 typically don't put the order out prior to the Board
9 having the opportunity to review it for exactly these
10 reasons. I apologize for raising this so late. I
11 understand we're also under a 100-day period in which to
12 push this out, so that would be the issue I would raise.

13 PRESIDENT FECKNER: Very good. Thank you.
14 Mr. Juarez.

15 ACTING BOARD MEMBER JUAREZ: Yeah, I just want --
16 could I get clarification on the Scarber decision that
17 we're making today. What are we exactly voting on?

18 BOARD MEMBER COSTIGAN: We're on Mast, I'm sorry.

19 ACTING BOARD MEMBER JUAREZ: Oh, we're on Mast
20 right now? When we get to Scarber, I'd like some
21 clarification --

22 (Laughter.)

23 ACTING BOARD MEMBER JUAREZ: -- as to what we're
24 voting on.

25 PRESIDENT FECKNER: They're both part of the same

1 motion, but...

2 VICE PRESIDENT JONES: Yeah.

3 PRESIDENT FECKNER: Mr. Shaw, do you want extra
4 time before you respond on the Mast piece?

5 MR. SHAH: A few minutes would be good, if you
6 want -- would like me to take a look at it, that would be
7 fine.

8 PRESIDENT FECKNER: Okay. Let's move on to Item
9 12 right now, do State and federal legislation, and see if
10 that gives you enough time. If not, we will take a short
11 recess.

12 Ms. Ashley, please.

13 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: Good
14 morning, President Feckner, and members of the Board.
15 Mary Anne Ashley, CalPERS team member.

16 I will be presenting Agenda Item 12, which is the
17 State and Federal Legislative Update. This is an
18 informational item.

19 Since my last update, the bill introduction
20 deadline has passed. And as expected, a flurry of bills
21 was introduced, many of which the Legislative Affairs team
22 has identified would have a potential impact to CalPERS.

23 The bills are noted on the legislative summary
24 that's included in your Board materials for your
25 reference. All of our sponsored bills have been

1 introduced, and the authors and bill numbers of those
2 measures are noted on page one of the legislative summary.

3 And then as you've probably noticed, several
4 other bills have been added to the legislative summary
5 that the Legislative Affairs team is currently monitoring
6 very closely and/or analyzing with our program areas. The
7 bills cover a variety of policy issues, including
8 financial disclosure, pension reform, mandated health
9 coverage, prescription drugs, and divestment.

10 Senator Moorlach who is a member of the Senate
11 PERS Committee has introduced a package of seven bills
12 that are geared towards achieving various pension reform
13 efforts. The Legislative Affairs team is currently
14 working with the CalPERS program areas to identify the
15 impact of many of these measures that are noted on the
16 legislative summary, and identifying those that we would
17 consider bringing to the Board for the Board to adopt a
18 position on.

19 Additionally, we are also currently engaging with
20 member offices and their staff, as well as stakeholders to
21 clarify the intent of the authors on their legislation,
22 and to offer subject matter expertise.

23 And then I'd like to just note two other
24 measures. Senate Resolution 26. It's not noted on your
25 summary, because it was just introduced March 9th. This

1 resolution expresses California Senate's strong support of
2 the Affordable Care Act, and asked Congress to reject any
3 repeal of the ACA, unless it is simultaneously replaced
4 with a program that would ensure coverage for all
5 Americans, and that coverage would be more affordable and
6 of a higher quality for all Americans.

7 And then finally, Senator Hernandez is expected
8 to hold a press conference today and release amendments to
9 Senate Bill 17, which is a reintroduction of his bill last
10 year, Senate Bill 1010, on drug -- prescription drug cost
11 transparency. The Board adopted a support position on SB
12 1010 last year. The Legislative Affairs team will analyze
13 the amendments and keep the Board updated appropriately as
14 to the impacts to CalPERS.

15 And then on the federal side, we heard -- we
16 received the updates from the federal representatives
17 included in your Board materials. And then as noted, the
18 priorities for the 115th Congressional session were
19 approved for each of our federal representatives. And we
20 will continue monitoring the ongoing federal activities as
21 the new Trump administration unfolds with its priorities
22 and efforts.

23 And that includes[sic] my update, and I would be
24 happy to answer any questions.

25 PRESIDENT FECKNER: Thank you.

1 Mr. Jelincic.

2 BOARD MEMBER JELINCIC: A number of these are
3 going to change over the course --

4 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY:

5 Um-hmm.

6 BOARD MEMBER JELINCIC: -- so I won't
7 particularly pursue them, but one did strike my attention.
8 It was on page two. It was AB 592, 583 of the iPad, the
9 public agency contract termination cost requests. I don't
10 understand why the -- why the bill -- I thought that was
11 our current practice.

12 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY:

13 Right. So currently it's kind of in the spot
14 bill form intent language. So until it's amended, we
15 won't know the direct impact to CalPERS, but we can work
16 with the author's office to clarify the intent of that
17 bill.

18 BOARD MEMBER JELINCIC: But we do think it's
19 about termination costs?

20 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: As
21 far as we know right now, yes.

22 BOARD MEMBER JELINCIC: Okay. As it's written
23 here, that does reflect current practice, doesn't it, that
24 we give them an estimate?

25 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: Yes.

1 BOARD MEMBER JELINCIC: I'm seeing a bunch of
2 yeses.

3 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: Yes,
4 it does.

5 CHIEF EXECUTIVE OFFICER FROST: Correct.

6 BOARD MEMBER JELINCIC: Thank you.

7 PRESIDENT FECKNER: All right. Thank you.
8 Ms. Paquin.

9 ACTING BOARD MEMBER PAQUIN: Thank you, Mr.
10 President.

11 I had a question on Senate Bill 560, introduced
12 by Senator Allen, which is the Financial Climate Risk
13 Bill. And this description is asking for carbon footprint
14 reports in all asset classes by 2020. And I know we've
15 made a lot of progress in that area, and very enthusiastic
16 from the staff's report on Monday, but this seems to be a
17 little bit quick of a timeline.

18 So I was wondering if you or your staff have
19 reached out to their staff yet to kind of apprise them of
20 what CalPERS has been doing and plans to do?

21 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: Yes,
22 that's what we're planning on doing. We're collaborating
23 were CalSTRS to identify the impact, and we will be
24 reaching out to the author's office to work with them on
25 clarifying the intent. This is also one of the measures

1 we've identified as potentially bringing to the Board in
2 April for the Board's input.

3 ACTING BOARD MEMBER PAQUIN: Oh. Okay. And I'm
4 just curious, do you know if the author, his staff, had
5 prior knowledge that CalPERS was already preparing these
6 reports?

7 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: We
8 don't know that yet.

9 ACTING BOARD MEMBER PAQUIN: Okay. All right.
10 Thank you.

11 PRESIDENT FECKNER: Thank you.
12 Mr. Costigan.

13 BOARD MEMBER COSTIGAN: Thank you Mr. Feckner.
14 Just a slight question or -- so I understand we took a
15 position on SB 6 in Texas. And that was the correct
16 position that the Board supported, but we don't -- I know
17 you give a State of California, and a federal report. But
18 now we've taken a position on a piece of legislation in
19 Texas. So I would be curious as to how do we track
20 legislation in other states? What's the report? What
21 happened to the bill. I know we put out a oppose letter.
22 I know attempts were made to reach to the Governor. Has
23 the bill been heard? Was it set?

24 We need to start -- I would just recommend, Mr.
25 Feckner, if we're going to be taking positions on bills in

1 other states, it ends up in our tracking report.

2 And then -- does that fall under you Mary Anne to
3 continue to frack that?

4 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: Yes,
5 it would fall under our federal policy unit, which is part
6 of Legislative Affairs.

7 BOARD MEMBER COSTIGAN: No, SB 6 was the Texas
8 legislation.

9 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: Oh,
10 would it fall. It is --

11 BOARD MEMBER COSTIGAN: So would it -- does it
12 fall under you or was it because it impacted the
13 Investment? I just want to know who's tracking it, what's
14 the update, the fact that we signed off on a letter.
15 Again, you just gave us an update on State legislation.
16 We had an update on federal legislation.

17 What's going on in Texas? We don't -- we can
18 talk about it next month, but --

19 PRESIDENT FECKNER: But before you answer it,
20 just to educate your fellow Board members, Mr. Costigan.
21 Would you explain the Texas bill?

22 BOARD MEMBER COSTIGAN: Oh, I'm sorry. I thought
23 the letter was circulated in SB -- and it was the right
24 policy. The State of Texas - I don't remember which
25 member - introduced a bill that would be modeled after the

1 North Carolina legislation.

2 So the policy -- taking an opposition to the
3 policy is fine. We sent a letter opposing the bill before
4 it went to first committee in Texas. I'd just like to
5 know how are we tracking -- since it looks as though we're
6 going to start taking positions -- this is no different
7 than the Arkansas bill from two years ago, similar to the
8 North Carolina legislation -- the North Carolina
9 legislation of two years ago. What's our tracking?

10 Because we took a position -- and I'm just
11 looking for consistency. We took a position on
12 legislation in another State that didn't come before this
13 Board. I'd like to track it -- or know what's going on
14 because we signed off on it. And so I -- process. And
15 again, I want to make it clear, I support the position we
16 took.

17 What I don't -- I'd just like to know is what's
18 the process, and how are we going to report and track
19 back, because we sent the letter out. Did it have an
20 effect? Did the bill move?

21 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY:

22 Right. I do think this would fall under the
23 Legislative Affairs, and it is something that we're trying
24 to pin down as the process for tracking these, and
25 updating the Board as to the process, and the progress,

1 and what's happening, and the status.

2 BOARD MEMBER COSTIGAN: And I know Ms. Frost is
3 going to speak. I would say just again, the distinguish
4 on this one is we also took a position. So it's not just
5 tracking, and so I'm just looking for consistency. We
6 took a position through a -- so Ms. Frost, Mr. Feckner.

7 PRESIDENT FECKNER: Thank you.

8 CHIEF EXECUTIVE OFFICER FROST: Mr. Costigan, we
9 will put more transparency about the positions that we're
10 taking on these other items. Part of the rationale for
11 taking a position on this was the amount of real estate
12 holdings we have in that State. What happened when these
13 bills were passed in North Carolina, for example, there
14 were travel bans put in place. It makes it very difficult
15 for our investment team to do due diligence visits on
16 assets that we own. So we felt it was appropriate to take
17 a position on the bill. But that does not mean that we
18 shouldn't put more transparency around those actions and
19 report those out to you.

20 PRESIDENT FECKNER: Thank you.

21 Mr. Juarez.

22 Hold on. Just a second.

23 ACTING BOARD MEMBER JUAREZ: I did see the letter
24 where we signed on with a bunch of other folks from other
25 states. So maybe to Mr. Costigan's point, if we're going

1 to take positions, they should at least be made clear to
2 the Board that these are the positions, this is the
3 letter, that is what it says.

4 Again, I saw the other letter as something
5 slightly different. It may have expressed our position,
6 but it was written so generally to include all those other
7 signatories that I wasn't clear.

8 PRESIDENT FECKNER: Mr. Jelincic.

9 BOARD MEMBER JELINCIC: And I do not remember
10 seeing the letter. I'd like to request -- you know, I
11 apparently got it, but could you send it to me again?

12 CHIEF EXECUTIVE OFFICER FROST: Yes.

13 BOARD MEMBER JELINCIC: Thank you.

14 PRESIDENT FECKNER: All right. Seeing no other
15 requests. Anything else, Ms. Ashley?

16 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: No,
17 thank you.

18 PRESIDENT FECKNER: All right. Thank you.

19 Mr. Shah, you want a little more time?

20 MR. SHAH: I'm ready to go, Mr. President.

21 PRESIDENT FECKNER: All right. Please proceed.

22 MR. SHAH: Thank you. Okay. So I understand the
23 point that Mr. Costigan is making. It's readily apparent
24 that if you read the hearing transcript, there are a
25 couple of extra commas that changed the definition of the

1 motion -- or appear to change the definition of the
2 motion. There are two commas that should be deleted from
3 the hearing transcript, both of them appear after the word
4 ruling. So that my recollection of the motion that the
5 Board made was that the Board rejected the proposed
6 decision's ruling that the settlement agreement was
7 unenforceable, and adopted the proposed decision's ruling
8 that the member was not entitled to retire until he
9 reached age 63.

10 That's my recollection of the proceedings. And I
11 agree -- I agree that the transcript doesn't state that --
12 you know, the commas are quite misleading.

13 PRESIDENT FECKNER: Thank you.

14 Mr. Costigan.

15 BOARD MEMBER COSTIGAN: I just want to make sure
16 I understood. Can you restate what you just said. Did
17 you just -- very slowly, because I'm having a slow day
18 today is just --

19 (Laughter.)

20 MR. SHAH: Sure.

21 BOARD MEMBER COSTIGAN: -- because it's very
22 important. Restate it, please.

23 MR. SHAH: Sure. Absolutely.

24 The main issue before the Board was whether the
25 Board was going to accept the proposed decision's ruling

1 that the settlement agreement is unenforceable.

2 BOARD MEMBER COSTIGAN: Is unenforceable.

3 MR. SHAH: Unenforceable.

4 BOARD MEMBER COSTIGAN: Okay.

5 MR. SHAH: Okay. So -- and the motion read that
6 the Board rejected that ruling.

7 BOARD MEMBER COSTIGAN: Rejected --

8 MR. SHAH: Rejected that ruling.

9 BOARD MEMBER COSTIGAN: -- the ruling that the
10 settlement agreement is unenforceable.

11 MR. SHAH: Is unenforceable.

12 BOARD MEMBER COSTIGAN: And the comma creates the
13 problem.

14 MR. SHAH: The comma creates the problem
15 potentially.

16 BOARD MEMBER COSTIGAN: And therefore.

17 MR. SHAH: The settlement agreement -- the
18 Board -- the motion actually was that the settlement
19 agreement is enforceable --

20 BOARD MEMBER COSTIGAN: Is enforceable.

21 MR. SHAH: -- at all times, relevant to the
22 claim.

23 BOARD MEMBER COSTIGAN: Thank you. Thank you.

24 MR. SHAH: That's my understanding.

25 Of course --

1 PRESIDENT FECKNER: Ms. Mathur -- go ahead, mr.
2 Shah.

3 MR. SHAH: No, I was going to say this is up to
4 the Board. The final decision has not been adopted yet,
5 so this is your motion and your decision, so...

6 PRESIDENT FECKNER: Ms. Mathur.

7 BOARD MEMBER MATHUR: My recollection was that we
8 were not explicit as to during what period it is
9 enforceable, that we -- we did determine that the
10 settlement agreement is enforceable, but I -- I think we
11 were -- I think we were leaving it to the staff to
12 determine up till what date, and it could be up till the
13 date of the -- and I can't remember the case now, but
14 the -- the case that --

15 MR. SHAH: The Standiforth case.

16 BOARD MEMBER MATHUR: Standiforth case. Thank
17 you very much for reminding me -- when that decision was
18 made or it could -- so I think that was -- I think that
19 was still left open.

20 MR. SHAH: The language of the motion -- may I,
21 Mr. President?

22 PRESIDENT FECKNER: Please.

23 MR. SHAH: The language of the motion doesn't
24 create that condition.

25 BOARD MEMBER MATHUR: Okay.

1 MR. SHAH: It simply says that it's enforceable
2 from the beginning.

3 BOARD MEMBER MATHUR: Okay. So maybe I'm
4 misrecollecting.

5 PRESIDENT FECKNER: Mr. Jelincic.

6 BOARD MEMBER JELINCIC: And when I look at the
7 decision that we're about to adopt, the orders are that
8 the 1996 settlement agreement between JRS and respondent
9 shall continue to govern the calculation of retirement
10 benefits for Judge Paul -- Judge Paul Mast. And that's
11 the total order.

12 MR. SHAH: That is the order.

13 BOARD MEMBER JELINCIC: And I think that reflects
14 what we decided.

15 MR. SHAH: That's correct. And then the age 63
16 issue, which was withdrawn, but the -- it's also addressed
17 in the final decision that he was not entitled to retire
18 until age 63, which he agrees with.

19 BOARD MEMBER JELINCIC: Is that in the order?

20 MR. SHAH: It's in the order. It's in a
21 different place in the order.

22 BOARD MEMBER JELINCIC: It's in the --

23 MR. SHAH: In the body of the decision.

24 BOARD MEMBER JELINCIC: It's in the body of the
25 order.

1 MR. SHAH: Yeah, it's early on in the first few
2 pages.

3 BOARD MEMBER JELINCIC: Okay. As long as it's
4 there.

5 MR. SHAH: It's there. And the Judge withdraw,
6 nonetheless.

7 PRESIDENT FECKNER: Thank you.

8 Ms. Mathur.

9 BOARD MEMBER MATHUR: Sorry. So can -- at this
10 time, could we change our decision, if we wanted to time
11 bound it to the date that the Standiforth decision was
12 adopted -- was given, made. Is that something we could do
13 today?

14 MR. SHAH: Well, there's 100 day deadline for the
15 Board to issue its decision. The next Board meeting is
16 scheduled for April. So, you know, unless there's -- a
17 special meeting is called before the end of the month, in
18 order to adopt the decision itself -- I guess you could
19 adopt the decision with that provision, you know, to say
20 that, you know, you adopt the decision with these changes
21 perhaps. That's a possibility. But it's a hundred day
22 deadline, otherwise the PD is deemed adopted.

23 BOARD MEMBER MATHUR: Right. So today --

24 PRESIDENT FECKNER: The hundred days is March
25 31st.

1 BOARD MEMBER MATHUR: Okay. Right. But this is
2 before us today.

3 MR. SHAH: This is before you today.

4 BOARD MEMBER MATHUR: So I guess my question is
5 can we amend this today?

6 MR. SHAH: And provide those instructions.

7 BOARD MEMBER MATHUR: And provide those
8 instructions.

9 MR. SHAH: I guess that goes to the question of
10 what the Board's procedure is in adopting these decisions.
11 Would the Board want to see the matter back before it
12 gets -- becomes final?

13 BOARD MEMBER MATHUR: No.

14 MR. SHAH: The proposed decision?

15 BOARD MEMBER MATHUR: No, I don't think so.

16 PRESIDENT FECKNER: It doesn't appear so.

17 BOARD MEMBER MATHUR: No. I think it's really
18 for the purpose of clarifying the motion that was made or
19 the decision that was made last month.

20 MR. SHAH: Yeah. So I believe that the Board
21 could adopt the proposed decision with the amendment that
22 you proposed.

23 GENERAL COUNSEL JACOBS: I was just going to say
24 I think that if time allows, if the Board has a different
25 understanding of what it decided or wants to change what

1 it decided, it could direct its independent counsel to do
2 that, and that hopefully there would be enough time before
3 the end of the agenda today to get that done. I don't
4 know. That may put too much pressure on Mr. Chirag --
5 excuse me, Mr. Shah. But I think that's where you were
6 going.

7 BOARD MEMBER MATHUR: It's -- I think what I'm
8 asking is fairly simple, but -- and I don't know if the
9 rest of the Board is in agreement with me. But I think
10 my -- my understanding was different than what the actual
11 language turns out to be. And so I -- I don't know if it
12 requires a motion on my part. But, Mr. President, would
13 it require a motion that I move that we amend the decision
14 to reflect that it's time-bound by the Standiforth
15 decision?

16 GENERAL COUNSEL JACOBS: I think it would, but
17 I'd want to defer to your independent counsel on that.

18 MR. SHAH: Yes, it would require, because the
19 motion currently as it is, you would essentially either
20 rescind that motion or amend the prior motion to revise
21 the proposed -- the decision to stay -- say that the
22 settlement agreement is only enforceable up to the date of
23 the -- right, up to the date of the Standiforth decision,
24 and it's not after that, respectively.

25 I think that's what you were -- you're

1 suggesting.

2 BOARD MEMBER MATHUR: Yes. So that -- I guess
3 that would be my motion.

4 PRESIDENT FECKNER: So if we could hold on just
5 for a second, Ms. Mathur.

6 BOARD MEMBER MATHUR: Sure.

7 PRESIDENT FECKNER: We have a couple other
8 speakers. So before you make the motion --

9 BOARD MEMBER MATHUR: Fine.

10 PRESIDENT EDGAR: -- so they can talk to the
11 substance versus the motion --

12 BOARD MEMBER MATHUR: Happy to -- happy to wait.
13 Thank you.

14 PRESIDENT FECKNER: -- and I'll come back to you
15 for the motion.

16 Mr. Jones.

17 VICE PRESIDENT JONES: Yeah, thank you, Mr.
18 President.

19 If -- the problem is the two commas, so what do
20 we need to do to correct the record, because the way the
21 motion was read is correct. It's just that it was
22 recorded incorrectly.

23 MR. SHAH: Yeah, it's clerical error in the
24 hearing transcript. That's all it is.

25 VICE PRESIDENT JONES: So do we -- can we just

1 direct the recorder to correct the record, and it's done?

2 MR. SHAH: That would be -- that would be the
3 case if there's no desire to amend the motion.

4 PRESIDENT FECKNER: Mr. Jelincic.

5 BOARD MEMBER JELINCIC: Yeah. We had a whole
6 discussion about whether the settlement agreement was
7 enforceable, whether it was improperly adopted. We said
8 it was, and it became a contract issue. The motion we put
9 forward was not time-bound. It was you entered this
10 agreement, it is enforceable, live with it.

11 And so I think that we ought to leave it the way
12 it is, and not reconsider and add new conditions that we
13 hadn't just voted on.

14 PRESIDENT FECKNER: Thank you. Mr. Costigan.

15 BOARD MEMBER COSTIGAN: I was just going to point
16 out that what we have before us is Mr. Jones' clerical
17 error makes -- recommending clearing up the transcript
18 makes the settlement agreement enforceable. And what I
19 believe Ms. Mathur is going to propose is a shorter period
20 of time for the settlement agreement. And I would ask
21 before the motion is made, Mr. Shah, can you put
22 parameters of a time period on a settlement agreement?
23 Can you make a settlement agreement effective for only a
24 short period of time?

25 MR. SHAH: Yeah, I mean, the concept is that the

1 Standiforth decision rendered the settlement agreement
2 void against public policy, because, you know, it was
3 inconsistent with that. That would be the holding of
4 the -- of the Board, if you were to adopt such a motion.

5 BOARD MEMBER COSTIGAN: And as I -- as I recall
6 the discussion, up until the time in -- in time when the
7 statute was changed, which is the public policy decision,
8 the settlement agreement would be in effect until that
9 date.

10 MR. SHAH: Well, there are two different issues.
11 The statute was changed in 1976, right? And it covered a
12 protected period through 1977, I believe. And Mr. -- and
13 Judge Mast started his last protected term in '75, which
14 ended in '79. So I'm not sure if that answers your
15 question. But the settlement agreement was entered into
16 in 1996, and it applied to the compensation that would be
17 used in determining his retirement allowance.

18 BOARD MEMBER COSTIGAN: And what there is no
19 disagreement on is retirement does not begin until he
20 turned age 63?

21 MR. SHAH: There's no disagreement on that. And
22 the Judge Mast's attorney at the hearing withdrew that
23 accusation, and it's also addressed in the -- in the final
24 decision.

25 BOARD MEMBER COSTIGAN: Okay. Thank you, Mr.

1 Feckner.

2 PRESIDENT FECKNER: Okay. Ms. Mathur.

3 BOARD MEMBER MATHUR: Thank you.

4 I guess I still feel that this does not reflect
5 what my understanding of what the decision was, but I'm --
6 I guess I'm hearing from the rest of the Board that there
7 is a different understanding. So I don't know if I should
8 make the motion or not. I guess I -- I would -- I will
9 still make the motion and then we'll see where -- where
10 the Board falls.

11 My motion is that the decision should be amended
12 to uphold the terms of the settlement agreement until the
13 Standiforth decision, at which -- at which time, it was no
14 longer -- what was the word? I can't remember exactly the
15 wording that you used.

16 MR. SHAH: I think staff's position is that at
17 that point in time, it became unenforceable.

18 BOARD MEMBER MATHUR: Unenforceable.

19 MR. SHAH: That's right, because it was void
20 against public policy. So this would be a substitute
21 motion, I believe, right, because Mr. Jones made the
22 original motion.

23 BOARD MEMBER MATHUR: So let's make it a
24 substitution motion then. Thank you.

25 PRESIDENT FECKNER: Is there a second?

1 BOARD MEMBER COSTIGAN: I'll second.

2 PRESIDENT FECKNER: It's been moved by and
3 seconded. Seconded by Costigan, moved by Mathur.

4 Any discussion on the substitute motion?

5 Mr. Jelincic.

6 BOARD MEMBER JELINCIC: Speaking against.

7 We entered into a settlement agreement. A
8 settlement agreement is a settlement agreement. You know,
9 you -- Richard asked if you could limit it? Well, you can
10 at the time of the settlement. You can say this is our
11 settlement agreement and it expires on X date, but that
12 wasn't the case. There was -- the law was in flux. The
13 staff made a decision -- and it turns out in hindsight not
14 a wise decision, but they made a decision, they entered
15 into an agreement, and if you don't live -- you know, I
16 constantly ask when we have to own our mistakes. But we
17 entered into an agreement, we signed the agreement, and I
18 think we live with the agreement.

19 PRESIDENT FECKNER: Mr. Lind.

20 BOARD MEMBER LIND: I just wanted to mention I'll
21 be abstaining on this, as I was not present for the
22 hearing.

23 PRESIDENT FECKNER: Thank you.

24 Any other discussion on the substitute motion?

25 Seeing none.

1 Motion before you.

2 All in favor of the substitutes motion say aye?

3 (Ayes.)

4 PRESIDENT FECKNER: Opposed, no?

5 (Noes.)

6 PRESIDENT FECKNER: Motion fails.

7 We're back on Mr. Jones's motion, I believe.

8 Mr. Shah.

9 MR. SHAH: That's correct. We're back on Mr.
10 Jones's motion, but I believe Mr. Juarez had a question on
11 the 10a, the Scarber decision.

12 ACTING BOARD MEMBER JUAREZ: The Scarber
13 decision.

14 MR. SHAH: Would you like to address --

15 ACTING BOARD MEMBER JUAREZ: Yeah, I'll just
16 reask the question, which is pretty general in nature,
17 which is what are we deciding here today with regard to
18 the Scarber decision?

19 MR. SHAH: The Scarber decision simply holds that
20 Mr. Scarber is eligible to file, nothing more.

21 ACTING BOARD MEMBER JUAREZ: Okay. So he'll
22 file, and then if he -- if that case will eventually come
23 back to us to make a determination whether he's subject to
24 the disability?

25 MR. SHAH: Well, he'll file and he'll get a

1 decision on the merits.

2 ACTING BOARD MEMBER JUAREZ: Right.

3 MR. SHAH: And then he'll have the opportunity --
4 he will have the option of filing an appeal on that, and
5 if may or may not come back to you, depending on what
6 happens on -- before the administrative law judge. Does
7 that --

8 ACTING BOARD MEMBER JUAREZ: Okay. Thank you.

9 MR. SHAH: That was an easy one. Thank you.

10 ACTING BOARD MEMBER JUAREZ: Yeah, thank you.

11 PRESIDENT FECKNER: Thank you.

12 Mr. Costigan.

13 BOARD MEMBER COSTIGAN: Mr. Feckner, can we
14 separate the two cases --

15 PRESIDENT FECKNER: Certainly.

16 BOARD MEMBER COSTIGAN: -- instead of taking it
17 up as one item, please.

18 PRESIDENT FECKNER: Two separate motions,
19 correct.

20 All right. Seeing nothing else before us, we
21 will take --

22 BOARD MEMBER JELINCIC: Can you clarify what
23 we're voting on?

24 PRESIDENT FECKNER: Mr. Shah, will you clarify
25 what we're voting on with the two separate motions,

1 please?

2 MR. SHAH: Oh, I see. So 10a is one motion, is
3 that how you -- you're suggesting to --

4 PRESIDENT FECKNER: I think he wanted to split
5 Scarber and Mast.

6 MR. SHAH: Okay. So the motion is identical
7 actually 10a and 10b, separate motions. You're adopting
8 the final decision as presented by staff. And with
9 instruction to correct the administrative hearing
10 transcript, if possible. But this discussion I think
11 corrects the transcript for the record.

12 PRESIDENT FECKNER: Right.

13 All right. So we're on Item 10a, and A is
14 Scarber, I believe, correct?

15 BOARD MEMBER JELINCIC: Yes.

16 PRESIDENT FECKNER: All right. Motion on
17 Scarber.

18 All in favor say aye?

19 (Ayes.)

20 PRESIDENT FECKNER: Opposed, no?

21 (No.)

22 PRESIDENT FECKNER: Motion carries.

23 10b, motion on Mast.

24 All in favor say aye?

25 (Ayes.)

1 PRESIDENT FECKNER: Opposed, no?

2 (Noes.)

3 PRESIDENT FECKNER: Motion carries.

4 Anything else on this, Mr. Shah?

5 MR. SHAH: No, that's it, Mr. President. Thank
6 you.

7 PRESIDENT FECKNER: Very good. Thank you very
8 much.

9 That brings us down to -- what do we have left?
10 We're back to the fiduciary interviews, correct?

11 Yes. Okay. So we will take a 10-minute break to
12 set the stage, and then we will be back for interviews.

13 All right, we will be back at 11:45.

14 Thank you.

15 (Off record: 11:34 a.m.)

16 (Thereupon a recess was taken.)

17 (On record: 11:47 a.m.)

18 PRESIDENT FECKNER: So we're back in session.

19 Today, the Board is interviewing the finalists to
20 serve as the Board's external fiduciary counsel.

21 At this time, I'd like to ask Matt Jacobs, our
22 General Counsel, to summarize how we get to this point and
23 the logistics of the interview process.

24 Mr. Jacobs.

25 GENERAL COUNSEL JACOBS: Yes. Good morning,

1 President Feckner and members of the Board.

2 As you just stated, the purpose of this agenda
3 item is for the Board to interview and rank the two final
4 candidates to serve as CalPERS's and the Board's outside
5 fiduciary counsel.

6 A little bit about how we got here. As the Board
7 will recall, it last selected external fiduciary counsel
8 in October of 2014. In August of 2016, the firm that it
9 had selected, Klausner, Kaufman, Jensen & Levinson
10 resigned from the engagement.

11 Very shortly thereafter, you, Mr. President, in
12 your capacity as Board President, authorized me to retain
13 interim fiduciary counsel while my office solicited and
14 evaluated proposals for a more permanent engagement.

15 So with respect to that solicitation and the
16 proposals, on August 18th of 2016, we notified several
17 hundred law firms of the opportunity to submit a proposal
18 to serve as CalPERS's outside fiduciary counsel.
19 Basically, it was any firm that had registered on our
20 website to receive notifications of any bid opportunities.
21 We also made sure to -- that the folks with whom we had --
22 the firms with whom we had previously done business, or
23 that we knew were in the business of providing fiduciary
24 counsel were on that list.

25 As a result of that review -- no, hold on. I'm

1 getting ahead of myself here. So we asked the interest --
2 any interested firm to respond within 30 days. And 13
3 firms submitted proposals. You, as Board President, asked
4 me yesterday for a list of those 13, because some --
5 several members of the Board had asked for them. I gave
6 that to you this morning, and I understand that it's been
7 distributed to all Board members. It's also -- extra
8 copies of those are located in the back of the room on the
9 table.

10 On November 1st of 2016, you, Mr. Feckner, and
11 another Board member selected by you, and that was
12 Controller Yee, who operated through her designee, Karen
13 Greene-Ross, met with me and three, I think, of my senior
14 staff to carefully sift through and evaluate all of -- all
15 13 of the proposals.

16 As result of that review, the group collectively
17 and unanimously recommended that the Board interview the
18 two firms that we have here today, and to make a final
19 selection, or to take such other action as it would deem
20 appropriate.

21 So although the group considered a number of
22 factors in deciding how many and which firms to recommend
23 to the full Board for interviews, the most significant
24 were as follows:

25 The firm's experience and expertise in advising

1 public pension plans on fiduciary issues. I'd have to say
2 that was the most important.

3 Lesser, but also important, was whether the
4 firm's proposed teams were led by attorneys who are
5 located in California, so that they could get to
6 Sacramento or to Monterey as the case may be easily, and
7 also admitted to the California bar.

8 CalPERS' prior experience -- another factor is
9 CalPERS' prior experience, if any, that we had with the
10 firms, and then the reasonableness of the proposed fees.

11 Let me touch on today's process. We have two
12 finalists who will be interviewed in alphabetical order.
13 The first one is Nossaman LLP. The second Seyfarth Shaw
14 LLP. You have materials containing the agenda item that
15 was prepared by the Legal Office, and the full copies of
16 the finalists' proposals.

17 You have also been provided sample questions that
18 you may ask during the -- of the firms during their
19 interviews. You are not restricted to those questions. I
20 think in fairness, it's a nice practice to ask the same
21 questions of the same contestants, but you are not
22 restricted in that fashion. And I would note that these
23 questions -- the sample questions were selected by Ms.
24 Greene-Ross, who then consulted with the Board President,
25 and with me on them.

1 After both interviews, if the Board has any
2 follow-up questions for either firm, we will ask the firm
3 to come back in for those questions. The Board will then,
4 by a majority vote, decide which of the firms, if any,
5 would be ranked first, and how many firms, again if any,
6 would be awarded contracts, subject to staff's successful
7 negotiation of terms.

8 If the Board decides to contract with just one
9 firm, the Board would also decide whether the other firm
10 should be ranked second, so that if no contract is
11 successfully negotiated with the first firm, it could be
12 awarded to the second.

13 Most recently, in 2014, the Board contracted with
14 only one firm. However, in the past, the Board has
15 contracted with multiple firms, so that a back-up can be
16 readily available in the case of a conflict by the primary
17 firm.

18 I'd also like to remind the Board that contracts
19 for legal services are handled differently from other
20 CalPERS contracts, because they are exempt from
21 competitive bidding requirements. Despite this exemption,
22 CalPERS has historically requested proposals from
23 potential candidates to encourage competition and create a
24 diverse pool of providers. And, of course, that's what we
25 did here on this process.

1 In accordance with the standard solicitations for
2 legal services, selections are based on an evaluation of
3 written proposals and interviews with no formal scoring of
4 the proposals. As such, there's no need for the Board to
5 score these interviews today, and it can simply select
6 which finalist it prefers, if any, or the Board can direct
7 staff to enter into negotiations with both firms, if it
8 decide to contract with both.

9 So that's an overview of the process, and how
10 we -- how we got here.

11 PRESIDENT FECKNER: Thank you, Mr. Jacobs. And I
12 did want just for clarity and transparency, that the
13 questions when we -- where they vetted ahead of time were
14 sent to Controller Yee, who delegated that responsibility
15 to Ms. Greene-Ross.

16 GENERAL COUNSEL JACOBS: That is correct.

17 PRESIDENT FECKNER: So thank you. We will now
18 conduct the interviews in alphabetical order. Nossaman
19 will first, followed by Seyfarth Shaw. Each interview is
20 scheduled for 30 minutes with 10 minutes for the finalist
21 presentation, 20 minutes for the Board members' questions.
22 The clock located in front of dais will show the remaining
23 time for each segment.

24 This is an open meeting, but as a matter of
25 courtesy when we begin the interview of the first firm,

1 we'll ask the other firm to wait outside the auditorium
2 and vice versa.

3 Board members, please note that sample questions
4 to be asked of the finalists are included on your iPads
5 under the fiduciary counsel interview book. If there are
6 no questions at this point, we will begin the interviews.

7 Mr. Slaton.

8 BOARD MEMBER SLATON: Thank you, Mr. President.

9 Just a quick clarifying question for you, Matt.
10 In -- and I don't have experience on this Board with
11 having multiple fiduciaries. So help me understand, if we
12 were to have more than one fiduciary counsel under
13 contract, do we have a risk that it could be construed
14 that we could be shopping opinions?

15 GENERAL COUNSEL JACOBS: That's a risk. I don't
16 think it's a big risk, because you're going to have your
17 primary fiduciary counsel, and presumably it would be only
18 when the firm is conflicted that you would you go to
19 secondary counsel. And these would be real conflicts that
20 would cause you to do that, not just made up conflicts.
21 So it's a risk, but I think it's not a large risk.

22 BOARD MEMBER SLATON: So we'd have to restrict
23 ourselves in making sure that once we seek an opinion from
24 one fiduciary, that we restrict ourselves from seeking an
25 opinion from the second one.

1 GENERAL COUNSEL JACOBS: I think that would be a
2 fair way to proceed.

3 BOARD MEMBER SLATON: Okay. Thank you.

4 PRESIDENT FECKNER: Mr. Jelincic.

5 BOARD MEMBER JELINCIC: I certainly understand
6 the 10-minute limit for the presentation so that the two
7 parties have an equal chance. But the 20-minute limit on
8 questions, are we going to enforce that or -- you know,
9 because we may have questions that go over.

10 PRESIDENT FECKNER: We typically try and hold to
11 that, but we will see how it goes. If it looks like
12 there's still a lot of questions, we certainly won't quiet
13 the Board.

14 PRESIDENT FECKNER: Mr. Jones.

15 VICE PRESIDENT JONES: Yeah. Thank you Mr.
16 President. Yeah, Matt, if we were to go with two, would
17 it be like the spring-fed pool where they would go in and
18 it wouldn't require a retainer?

19 GENERAL COUNSEL JACOBS: It -- we would need to
20 have contracts with both. I'm not sure I'm tracking your
21 question, but we would need to have contracts with both.
22 I think we would want to designate one as our primary
23 fiduciary counsel, but it's somewhat akin to the
24 spring-fed pool in the respect of they're both available.

25 VICE PRESIDENT JONES: So the provisions of that

1 contract would be that when they're used, there would be
2 billable hours, but no --

3 GENERAL COUNSEL JACOBS: Exactly.

4 VICE PRESIDENT JONES: Okay.

5 GENERAL COUNSEL JACOBS: Oh, yeah. If you're
6 asking about a retainer, per se, like --

7 VICE PRESIDENT JONES: To be on --

8 GENERAL COUNSEL JACOBS: We have not gone with
9 the retainer approach for perhaps ever, but not in my
10 experience or in looking back through at least 2010.

11 VICE PRESIDENT JONES: Okay. Okay. Thank you.

12 PRESIDENT FECKNER: Thank you. Seeing no other
13 requests. At this time, I would like to invite all the
14 representatives Nossaman to come forward and ask the other
15 finalist representative to please leave the auditorium.

16 So, at this time, I'd like to ask the
17 representatives of Nossaman to please begin your
18 presentation with introductions.

19 GENERAL COUNSEL JACOBS: Ms. -- if I may
20 interrupt? I'm sorry, Ms. Perkins points out that we
21 should probably wait a minute because the video of the
22 feed is showing on the TV in the hallway. So to allow
23 time for --

24 PRESIDENT FECKNER: Okay.

25 GENERAL COUNSEL JACOBS: -- the firm to get to

1 where it will hang out in 1140.

2 PRESIDENT FECKNER: All right.

3 BOARD MEMBER JELINCIC: Are we sure it's not on
4 in 1140?

5 PRESIDENT FECKNER: It could be on iPhones, too.

6 Okay. Let's begin with the Nossaman group. And
7 the clock when they start talking, please.

8 MS. DUNNING: Good morning.

9 PRESIDENT FECKNER: Good morning.

10 MS. DUNNING: Thank you for the opportunity to be
11 considered for the important role of ongoing fiduciary
12 counsel for the CalPERS Board. I have been very honored
13 to have the opportunity to serve you as interim fiduciary
14 counsel for the last several months.

15 MS. DUNNING: I'm Ashley Dunning. And I am here
16 with my partner Yuliya Oryol. We are co-chairs of
17 Nossaman's Public Pension and Investments Practice Group.
18 I lead on fiduciary matters relating to administration,
19 governance, and ethics. Yuliya leads the investment side
20 of our team.

21 Yuliya is also the Chair of the Investment
22 Committee for the National Association of Public Pension
23 Attorneys, NAPPA, and she's on Nossaman's Executive
24 Committee.

25 Our colleague Mike Toumanoff has a medical

1 condition presently that makes him unable to travel, which
2 is why he is not with us today. Yuliya will first provide
3 a very brief overview of Nossaman.

4 MS. ORYOL: Good morning. It's an honor to be
5 here today. Nossaman is a California based law firm
6 established 75 careers ago, shortly -- established 75
7 years ago, shortly after CalPERS was established.

8 Our firm started serving public agencies in 1942.
9 We currently have eight offices with an office in
10 Sacramento. I joined Nossaman in 1999. And, in fact, the
11 first matter I worked on at Nossaman was a real estate
12 transaction for Sacramento County Employees Retirement
13 System.

14 I formed Nossaman's Public Pension and Investment
15 Group some years later in order to serve our clients and
16 provide them unrivaled team of legal professionals, and a
17 full range of legal services to public retirement systems
18 in California and nationally.

19 But frankly, our group was incomplete without
20 Ashley and Michael. They joined us several years ago.
21 Ashley's depth and experience and national reputation is
22 evidenced by her election to the NAPPA Executive
23 Committee. And similarly, Michael was a member of the
24 executive board as well and is currently on the NAPPA's
25 Emeritus Board.

1 But I've known Ashley for 20 years. We met as
2 legal interns in law school. We both clerked at the
3 Federal District Court in San Francisco. And combining
4 our practices quite honestly was seamless. As it turned
5 out we represented many of the same clients. Nossaman was
6 the investment counsel, and Michael and Ashley provided
7 the fiduciary counsel and related services.

8 The unique dedication that Nossaman offered its
9 institutional clients on the investment side complemented
10 Ashley's and Michael's approach to serving their clients
11 on the fiduciary side. Ashley and her team provide advice
12 and representation on public retirement issues only to
13 public retirement boards and systems, not to plan sponsors
14 or members.

15 Similarly, since Nossaman commenced working for
16 public retirement systems and other institutional
17 investors in the 1990s, we have limited our representation
18 to advising only the institutional investors in connection
19 with investment related matters. Nossaman does not
20 directly or indirectly represent fund managers, investment
21 management firms, general partners, money managers, or
22 sponsors of funds with whom our clients invest or might --
23 or may invest within the future.

24 Nossaman also does not represent custodians,
25 consultants, or investment advisory committees. We

1 believe that simultaneously representing those who are
2 potentially adverse to retirement boards and the systems
3 they govern on matters of concern to those retirement
4 systems leads to potential conflicts, and actual conflicts
5 of interest.

6 Avoiding these conflicts of interest ensures that
7 we only have the interest of our clients at all times.
8 We're proud of Nossaman's alignment of interests with our
9 public retirement clients.

10 MS. DUNNING: The CalPERS Board and Retirement
11 System are unique among public retirement systems in
12 California. As the largest plan with the most complicated
13 administrative and legal structure of all California
14 systems, and the most assets under management, CalPERS is
15 a leader in the State and country on issues of importance
16 to the world of public retirement.

17 The CalPERS Board also receives substantially
18 more public focus than most other public retirement
19 systems and boards, and certain challenges accompany that
20 focus. Importantly, however, CalPERS has perhaps more
21 similarities with other public pension plans in California
22 than differences.

23 The Board is guided by the same fiduciary
24 obligations of loyalty that requires you to act in the
25 overall best interests of your members and beneficiaries.

1 Those fiduciary obligations require that you act exercise
2 your duty of care as a prudent expert in all of the areas
3 where you exercise your authority.

4 And just as other public retirement systems in
5 California, you are governed by the State constitution,
6 and its protection of the vested rights of your members
7 and beneficiaries. Those vested rights are, however, also
8 determined in the context of and measured by the statutes
9 underwhich you operate.

10 You face similar struggles regarding how to carry
11 out your fiduciary duties in the context of the complex
12 issues that -- involving competing stakeholder's
13 interests, as well as critical questions about the manner
14 in which you exercise your authority and your discretion.
15 Those touch on so many areas, actuarial and funding
16 questions, disability retirement challenges, reciprocity
17 considerations, contracting agency dynamics, investment
18 diversification concerns, fee disclosure disputes,
19 governance challenges, among others.

20 And why does this matter?

21 We believe it matters because it illustrates the
22 complexity of the fiduciary issues that public retirement
23 boards face, and shows the importance of considering
24 certain qualities of counsel when you select your
25 fiduciary counsel.

1 Do they have a long and proven track record of
2 providing fiduciary counsel to public retirement boards in
3 California?

4 Do they have experience working with a variety of
5 different public retirement plans, such that they have
6 both a big picture perspective, and specific experience
7 over time working with clients to tackle these challenging
8 issues?

9 Do they demonstrate an understanding that
10 different retirement boards have different policy
11 approaches and different histories, and ways in which they
12 prefer to exercise their -- both their authority and their
13 discretion.

14 Do you like their style? Can you work
15 effectively with them? Are they passionate about their
16 work for public retirement boards and systems?

17 Yuliya, Michael, and I offer you our expertise,
18 our experience, and our understanding of how discretion
19 works for different boards, and we offer a passion to help
20 you fulfill your mission.

21 We aim to serve you with the same zeal that you
22 serve the members and beneficiaries of CalPERS. We have
23 dedicated our practices and our legal careers to serve
24 public retirement boards. And it would be a tremendous
25 honor to be able to serve the CalPERS Board as your

1 fiduciary counsel.

2 We are pleased to respond to your questions.

3 PRESIDENT FECKNER: Thank you.

4 So at this point, we're going to open up to
5 questions of the Board. I have a question for you to
6 start with. Can you tell me -- tell us, did you or do you
7 represent MCERA in the recent Marin County Association of
8 Public Employees decision, and what's the firm's position
9 on the California rule?

10 MS. DUNNING: Yes, I am outside general counsel
11 to the Marin County Employees Retirement Association
12 retirement board, and I represent them -- have represented
13 them in a number of different lawsuits including the MAPE
14 case.

15 And I would like to explain very briefly what
16 that case is about, because there's been a lot reported on
17 it.

18 That case involves implementation of a law you're
19 all very familiar with, which is PEPRA. As you're also
20 very familiar, PEPRA mostly impacts only new members of
21 plans. And today, you are discussing compensation
22 earnable. And what is included and what's not included.

23 One aspect of PEPRA that impacts current members
24 of the '37 Act systems, so the County Employees Retirement
25 Law of 1937 that governs 20 counties and districts within

1 those systems, and MCERA is one of them.

2 PEPRA modified the definition of compensation
3 earnable. And what it did is actually of great importance
4 for CalPERS, because it -- the '37 Act uses the same
5 definition of compensation earnable that CalPERS used
6 until 2003. There was a technical amendment to the
7 CalPERS definition of compensation earnable that made it
8 much more specific about what's included and what's
9 excluded.

10 That same change wasn't made at the same time to
11 the '37 Act, and I suspect because a lot of things
12 happened with CalPERS and CalSTRS and the UC systems that
13 don't trickle down for a while to the CERL.

14 With PEPRA came an amendment to the definition of
15 compensation earnable to state compensation earnable is X,
16 and it's the same definition as always, but it is not
17 payments that are made to enhance a member's retirement
18 allowance. Those items include, and then it had a list.
19 And it's a relatively short list.

20 One of those items is additional payments for
21 services rendered outside normal workings hours.

22 Well what's that?

23 The City of Pleasanton case involving CalPERS
24 told us exactly what that is. That's standby pay, that's
25 on-call. So the retirement boards operating under the '37

1 Act looked at the different -- hundreds of pay items that
2 they include in compensation earnable, and in final
3 compensation ensure pensionability retirement allows, and
4 determined what was excluded, and said, oh, well, now the
5 legislature has told us definitively it's out. You can't
6 include additional payments for services rendered outside
7 of normal working hours in the calculation of retirement
8 allowance.

9 And so what the MCERA board did was they said all
10 right, well, this -- our policy until now, and this new
11 law, has been to include it. So what we will do is as of
12 January 1st, as to people who retire after that date, any
13 periods of time within their final compensation period
14 that fall after January 1st, 2013, will have that item
15 excluded, and no more contributions will be taken on that
16 item either. Relatively modest action.

17 Everything else is the same, and then they took
18 the same type of action as this Board has taken in terms
19 of pensionable compensation, deciding what's in, what's
20 out.

21 As I mentioned in my initial comments, these are
22 fundamental questions of authority and discretion. Here's
23 what the legislature has told you the parameters are, and
24 within those parameters, how are you going to exercise
25 your discretion?

1 The Board also chose to exercise its discretion
2 to say in-kind conversions where you're getting flexible
3 benefit, you can choose to receive it in cash, or receive
4 it in kind. That's also out, because that's exactly the
5 type of thing that can lead to artificial inflation of
6 pensions. You take in-kind for your whole career, and
7 then you take it as a payment the last couple of years,
8 and it increases your lifetime retirement allowance.

9 Okay. So it exercises it's discretion, and is
10 immediately sued. We respond to that suit and say, no,
11 this is fine. This was within the Board's authority of
12 discretion. By the way, the legislature said they had to
13 do it as to the -- as to additional payments for services
14 rendered outside normal working hours.

15 And Judge Chernus in the Marin Superior Court
16 agreed. He wrote a paragraph decision that said constant
17 statutes are deemed to be constitutional. By the way, the
18 Board has always had discretion under the '37 Act, as this
19 Board does as well, to determine compensation earnable.

20 And the Board -- that doesn't mean that the
21 discretion goes only one direction. You can determine
22 that things are in or things are out. And they didn't --
23 there's no abuse of discretion here. Done. Case was
24 over. Demurrer sustained without leave to amend. Quick.

25 There's another pending piece of litigation going

1 on in another jurisdiction. So there's some wrangling
2 over whether that case should -- the Marin case should be
3 coordinated. It ended up not being coordinated after an
4 appeal that was unsuccessful by the petitioners.

5 So then it finally, years later, gets up before
6 the First District Court of Appeal. The retirement
7 board's position is not that this is about vested rights
8 really. The retirement board's position is there was not
9 a vested right originally to have standby pay included.
10 There was a vested right to have compensation earnable
11 calculated in a manner that was consistent with the
12 statute.

13 And the statute had language in it about ordinary
14 work that was susceptible to the exact same meaning that
15 CalPERS has applied to it, and that the legislature
16 applied to the CalPERS statute when it made those
17 revisions back in 2003. And that has been the argument
18 that we have always made, that this is -- you haven't even
19 gotten to beyond first base. You haven't even gotten to
20 the vested rights question about whether any comparable
21 new advantage would need to be provided, or if it was, if
22 there was a reasonable modification. It was not, in fact,
23 a modification in our view. It was really a
24 clarification.

25 And the legislature said that. In the

1 legislation, it said this statute is to be interpreted
2 consistently with In Re Retirement Cases, which is a case
3 I handled, as well as Salus, which is another case from
4 Southern California that said in-kind conversions are out
5 basically.

6 The First District Court of Appeal -- my
7 assessment is that the First District Court of Appeal did
8 not like the arguments that were being made by the
9 petitioners in the case. They did not like being told
10 that the legislature has no authority to make these types
11 of -- they viewed it as a change or clarifications.

12 And they took -- they -- they -- the case was
13 written in a way that was very different from the way it
14 had been briefed. And it has been criticized by many as
15 trying to chip away at the California rule.

16 I believe very strongly in the California rule.
17 I think that when you are working, you are rendering
18 services that you should be rendering services on terms
19 that will continue to apply through your appointment, to a
20 degree. To the extent that you determine, or the
21 legislature determines, or a court determines that certain
22 type of payments, whether it's a temporary increase in
23 somebody's pay just before they retire, as I understand is
24 now being proposed to be excluded from pensionable
25 compensation, or other types of payments, which you

1 determine should not be included, that is where you have
2 your discretion. And that's where the legislature and you
3 should have your authority to stop that for the benefit of
4 all members and beneficiaries.

5 And I don't think that that impairs the
6 California rule at all. The way I view this case is very
7 similar to the International Association of Firefighters
8 case that the California Supreme Court considered several
9 years ago. And this should be familiar to all of you, not
10 to terms of the name of the case, but the issue involved.

11 The issue was when the actuary recommended to the
12 Board for the first time to include an inflation factor in
13 the determination of contribution rates, and the normal
14 cost, was that a violation of vested rights, because it
15 had never had, and you never included an inflation factor
16 before. So what were -- did that increase the normal
17 cost? And so that increases the member contributions for
18 both sides and employer contributions.

19 And the response at the California Supreme Court
20 was no that is not a violation of vested rights, because
21 the actuarial funding of the system anticipates that you
22 will consider various factors within your determination of
23 normal cost. And it is fluid it. You rely on
24 recommendations of your actuaries. You rely on experience
25 to determine what is the most prudent way to set your

1 contribution rates.

2 And so it was not a violation of vested rights.
3 And, of course, no comparable advantage therefore needed
4 to even be considered. I believe that the same analysis
5 applies here, that the statutory definition of
6 compensation earnable was susceptible to this -- these --
7 these very exclusions, and therefore the legislature's
8 decision and the Governor's directive that they be
9 excluded was all right, and was not an impairment of
10 vested rights.

11 Now, it's up to a court to decide ultimately.
12 I'm the lawyer, you're the fiduciaries, but we're not the
13 judges. And that case is before the California Supreme
14 Court. So they will make the decision.

15 My goal is not to impair the California rule at
16 all, and the -- I can't speak for the MCERA Board on this
17 point. That would be inappropriate for me, but the MCERA
18 board has always taken the position on this that we are
19 not seeking to impair vested rights.

20 PRESIDENT FECKNER: Thank you.

21 Mr. Jones.

22 VICE PRESIDENT JONES: Yeah. Thank you, Mr.
23 President.

24 Yeah. I have a clarification question and then I
25 have another question. On Attachment D, where it lists

1 the statistical information for our diversity efforts,
2 there's no on total number of employees for your
3 California based office listed here. And there's no
4 employees listed for your national -- the reason I'm
5 asking the question because I was trying to evaluate your
6 diversity effort. And I was looking at the total column
7 of employees, and -- but they don't add up across with the
8 designations by ethnic group. So I was having a problem
9 understanding that.

10 MS. DUNNING: On the total employees, so
11 non-attorney, everybody, employees?

12 VICE PRESIDENT JONES: Yes.

13 MS. DUNNING: I don't have that off the top of my
14 head, Trustee Jones, but we are more than happy to make
15 sure that we provide all of that information when I --
16 when I have it.

17 VICE PRESIDENT JONES: Okay. Then the question
18 is what is the most current and critical fiduciary issue
19 pension fund board members are encountering, and what can
20 they do to limit the potential liability for these issues?

21 MS. DUNNING: Funding. Funding, I think is a --
22 is a very primary fiduciary duty that you have to address,
23 and you are addressing. There's been a -- there was a
24 discussion about the discount rate, and how you are
25 managing that process prudently.

1 I think in terms of the investment return
2 environment, that we've all been in since the recession,
3 that's been one of the big, big challenges. And then you
4 see certain jurisdictions go into bankruptcy, and that
5 certainly leads to additional challenges.

6 So if I had to give one, I think there are plenty
7 of challenges that we're all facing right now, but I think
8 funding is probably the primary one.

9 VICE PRESIDENT JONES: Okay.

10 PRESIDENT FECKNER: Thank you.

11 Mr. Costigan.

12 BOARD MEMBER COSTIGAN: Thank you, Mr. Feckner.

13 So I'm going to just go a little off script,
14 because I've got a couple different questions. But I
15 first want folks to know, and I'll not try to this time --
16 I've known Ashley a decade. I have -- I think Ashley is
17 an outstanding lawyer. She and I -- which is going to get
18 to the heart of my questions, there were many times I had
19 issues, and I would call Ashley. And she would disagree
20 with me. But there was not someone that I found better
21 understanding of the law.

22 I think I pointed out in January, when looking at
23 each other, everybody understood that we have had the
24 relationship. And I have been aware of, as my firm -- my
25 firm, at that time, your firm, was counsel for Marin at

1 the time. And so I've seen the pleadings for years, so I
2 know this is kind of something new, but the pleadings have
3 been out there for a long time. Nothing new.

4 The question I really have relates to some
5 comments that have been made about the independence of the
6 fiduciary and controlled by staff. And again, I have the
7 advantage of know you. And I know that's not the case. I
8 would like you to touch briefly on what do you see the
9 role of Mr. Jacobs, the role of the Board, and your role
10 as our independent fiduciary counsel?

11 MS. DUNNING: As fiduciary counsel, I serve the
12 Board, and I serve staff as it serves the Board as well.

13 Typically, my point people are if you have an
14 in-house counsel, which, of course, you do in the CalPERS
15 context, the General Counsel and, as needed, the President
16 of the Board or the Chair of the Committee as to which a
17 particular matter pertains.

18 And that reflects the reality of how public
19 retirement systems must be governed by law, which relates
20 to your open meetings, which occur monthly. It's not a --
21 you don't have daily meetings as a Board. There need to
22 be point people with whom I communicate. And I think it's
23 very important that your fiduciary counsel be able to have
24 a direct line of communication to the President of the
25 Board.

1 But I think that that also operates within the
2 context of what is typically, in my experience, a very
3 collegial relationship with others, and that's usually
4 with your -- and your CEO and your General Counsel. I
5 view it as very collegial, except when it's not.

6 I mean, ultimately, I represent the Board, and
7 I've this -- I've had many situations over the years where
8 I can harken back and draw on that experience, where you
9 have to go back to fundamentals of who your client is.
10 And your client is the Board, and it's usually through the
11 President. But if there's -- if the issue is with the
12 President, then what does the Governance Policy say about
13 that?

14 Then fiduciary counsel presumably goes to the
15 Vice President. What -- so you look, but you go back to
16 basic principles when there are challenges. In a healthy
17 environment, typically I would interact through the
18 General Counsel and the CEO, and as needed, the Board
19 President or Chair of each committee.

20 But I do think that a direct line of
21 communication needs to be respected as well to the extent
22 that -- just in the context of that relationship.

23 PRESIDENT FECKNER: Thank you.

24 Ms. Greene-Ross.

25 ACTING BOARD MEMBER GREENE-ROSS: Is this on?

1 PRESIDENT FECKNER: Yes.

2 ACTING BOARD MEMBER GREENE-ROSS: I do want to go
3 back with a follow-up question on the MCERA case.

4 MS. DUNNING: Yes.

5 ACTING BOARD MEMBER GREENE-ROSS: And in the --
6 and first to clarify --

7 MS. DUNNING: I like to call it the MAPE case. I
8 don't want to impugn my client, by calling it the MCERA
9 case. So the MAPE case is what I call it.

10 ACTING BOARD MEMBER GREENE-ROSS: MAPE case.

11 MS. DUNNING: Yes, MAPE. That's the name of the
12 petitioners.

13 ACTING BOARD MEMBER GREENE-ROSS: So on the
14 pleadings into -- to the Supreme Court case, because the
15 court of appeals raised -- went off on a tangent that's
16 causing great concern, did you address that issue in your
17 pleadings? How did you -- how did you position the --

18 MS. DUNNING: As politely as I could, I said it
19 was dicta. I mean, dicta meaning it's not binding.

20 ACTING BOARD MEMBER GREENE-ROSS: I'm not done.
21 I didn't finish my question.

22 MS. DUNNING: Oh, I'm sorry. Excuse me.

23 ACTING BOARD MEMBER GREENE-ROSS: Because the
24 issue I'm try -- and I know that it's dicta, and that's
25 what, you know, everybody doesn't want that to become

1 precedent upending years of other valid precedent, which
2 is why many wanted the case depublished. And that is the
3 question of what is the court's take -- the appellate
4 court's take on the requirement of having some discretion
5 to play around with benefits whether an anticipated
6 benefit that has to be counterbalanced by a new benefit.
7 And it's really raised a question of -- by using that
8 phrase, there's an entitlement to a reasonable pension,
9 and now that calls into question what is a reasonable
10 pension.

11 So other than just saying it's dicta --

12 MS. DUNNING: Right.

13 ACTING BOARD MEMBER GREENE-ROSS: -- have you
14 made any arguments in the case that would not call into
15 question the constitutional prohibition on impairing
16 contracts? How do you phase that in the --

17 MS. DUNNING: So now that we are where we are in
18 the case, which is having this published decision by the
19 court of appeal that will be subject to review, now we
20 will be in a context where briefing presumably will
21 address the vested rights analysis in an even more
22 thorough way.

23 The court itself said we are considering a vary
24 narrow issue. But then it went on to make some
25 pronouncements about "should" not "must" in terms of

1 comparable new advantage. And you're only entitled to a
2 reasonable pension, not a specific type of pension, which
3 needs to be parsed. I mean, there are a number of cases
4 that are not quite stated the way that I think they should
5 be stated. And I've analyzed very carefully all of that
6 California Supreme Court precedent.

7 I think that we will end up in the right place
8 presenting all of that to our Supreme Court. I feel very
9 confident in our California Supreme Court. I appeared
10 before them two months ago, in the Flethez case, and we
11 won that case unanimously. I think they are -- they are
12 very, very smart, and will see the nuance.

13 That said, from an MCERA perspective when you
14 have won a case, and you are seeking to preserve your win,
15 whether the case is de-published or not, you know, they
16 made their decision to proceed with the same arguments
17 that they've made all along, and the court decided to take
18 it.

19 Now, I think very interestingly, the court has
20 decided to take it and stopped the briefing until a
21 decision is rendered in the other case involving similar
22 issues, which is the coordinated cases. And I'm involved
23 in that matter as well on behalf of a different retirement
24 system.

25 And I think -- and those who are representing

1 retirement systems, if they're not taking a neutral
2 position as CalPERS took in the airtime case, they're
3 certainly not trying to impair vested rights. But as we
4 said in our initial comments as well, we are here to -- to
5 advise and defend you. And we advise you in a way that we
6 believe is defensible in terms of your exercise of your
7 authority and your discretion within the context of
8 California law.

9 And California law has been very protective of
10 member as it should be, but it also has been understanding
11 of the fiduciary rule that you play. And I think that
12 Flethez case is actually very important on this point,
13 because there, the Supreme Court recognized that your
14 fiduciary duty is to examine matters - in that case it was
15 disability retirement - and determine whether benefits
16 should or should not be granted after you've done a
17 thorough analysis.

18 It is not to grant every single application that
19 comes before you, nor is it to include every single
20 additional pay item that somebody may have received in
21 their last year in order to increase their retirement
22 allowance. You are the protectors of the Trust, and
23 that's a really important role.

24 PRESIDENT FECKNER: Thank you.

25 MS. DUNNING: Did I answer your question?

1 ACTING BOARD MEMBER GREENE-ROSS: Yes.

2 MS. DUNNING: All right. Thank you.

3 PRESIDENT FECKNER: So we're out of time. Let's
4 add 15 minutes, please. And I ask both the questions and
5 the answers to be a little more succinct, so we have a
6 number of folks that still would like to speak.

7 MS. DUNNING: Okay. Sorry.

8 PRESIDENT FECKNER: Ms. Mathur.

9 BOARD MEMBER MATHUR: Thank you.

10 In your view, what duty does a pension fund, such
11 as CalPERS, which manages a lot of assets, have to
12 incorporate environmental, social, and governance risks
13 and opportunities in investment decision making, and
14 investment activities?

15 MS. DUNNING: You have the overriding duty of
16 loyalty to act in the best interest of your members and
17 beneficiaries, and to act prudently. The Department of
18 Labor has recognized that there are circumstances where
19 ESG concerns may persuade a retirement board -- reasonably
20 persuade you that, in fact, you have a -- an
21 expectation -- you reasonably have an expectation for a
22 better return under certain circumstances relating to the
23 environmental, social, and governance aspects of a
24 particular type of investment.

25 And I think that's the -- those are the guiding

1 principles, but that you do need to be very rigorous in
2 your examination of those principles, and not -- not
3 become too focused on the principles themselves without
4 examining them in the particular context of what you're
5 investing in, for example.

6 BOARD MEMBER MATHUR: Okay. Thank you.

7 PRESIDENT FECKNER: Thank you.

8 Mr. Jelincic.

9 BOARD MEMBER JELINCIC: I'm very concerned about
10 the vested rights issue, and the California rule, but
11 that's not going to be my question.

12 Do you think it's appropriate to pledge trust
13 fund assets to indemnify a vendor against allegations of
14 criminal behavior; and if so, why; and if not, why not?

15 MS. DUNNING: To indemnify a vendor?

16 BOARD MEMBER JELINCIC: Yes.

17 MS. DUNNING: I always recommend against
18 indemnifying vendors.

19 MS. ORYOL: If I can answer that from an
20 investment perspective. Your investment contracts,
21 whether it's separate account, investment management
22 agreement, or unlimited partnership agreement, or side
23 letter, whatever the nature of the contract is or the
24 vehicle that you're investing in, or however you hire the
25 manager or third-party service provider, there should

1 always be an inclusion for indemnification for criminal
2 activity, fraud, gross negligence. And, in some cases,
3 it's appropriate for breach of contract.

4 BOARD MEMBER JELINCIC: Thank you.

5 PRESIDENT FECKNER: Thank you.

6 Ms. Hollinger.

7 BOARD MEMBER HOLLINGER: Yes. My question is
8 this, it's concerning fund sustainability. Right now,
9 depending what you look at, maybe we're 63 percent funded.
10 So how do you balance your fiduciary duty to your existing
11 retirees, while at the same time simultaneously your
12 fiduciary duty to intergenerational equity of people
13 coming into the system and ensuring that they have the
14 same secure retirement?

15 MS. DUNNING: That's an excellent question. It
16 goes to the principle of impartiality that is a fiduciary
17 principle. And it's the one that I rely upon less -- more
18 than intergenerational equity, which is more of a taxpayer
19 term.

20 Your most fundamental obligation is to fund the
21 plan in a way that you can timely pay the promised
22 benefits, subject, of course, to the caveats that you've
23 been discussing in the unfortunate circumstances of
24 contracting agencies don't pay what's required under their
25 contracts.

1 So you need to manage that, not overpay -- not
2 overpay the retirees and not undercollect from the
3 actives. It's a constant -- it's a constant challenge,
4 and that's where you need -- you do need to keep your on
5 that ball as you're making your difficult decisions.

6 PRESIDENT FECKNER: Thank you.

7 Ms. -- Mr. Lind.

8 BOARD MEMBER LIND: Thank you. So we have this
9 kind of diverse Board structure. Most of our members are
10 elected by members and retirees, but we've got two
11 statewide office holders. We've got appointments of the
12 Governor. Then I'm appointed by the legislature to
13 represent the taxpayers

14 Are there any nuances to our fiduciary
15 responsibilities, any potential conflicts, and how do you
16 counsel around those potential conflicts?

17 MS. DUNNING: So my first response is that even
18 though one is appointed by the legislature, or appointed
19 by another authority, or elected by a particular group,
20 that you are not on the Board to represent that particular
21 interest. Once you're on the Board, you are
22 co-fiduciaries and you're fiduciaries whose primary duty
23 is to the overall best interests of the members and
24 beneficiaries of the plan. And that is your
25 responsibility equally.

1 Now, what I argued to the California Supreme
2 Court in the Lexin case was that you are on this Board for
3 a reason though. You are on this Board, because that
4 diversity provides expertise, experience, and commitment
5 that might not be there without that diversity.

6 And so it is -- as I said to the Supreme Court in
7 that case, it is consistent with the responsibilities of
8 the employee members of the retirement board to act on
9 matters, even if it impacts them in the same way as it
10 impacts other members of the plan, whether you're setting
11 employee contribution rates, or you're determining
12 premiums under -- for PEPKA[sic] -- PEMHCA. And the
13 Supreme Court agreed, that's -- that's what you are here
14 for collectively as a body.

15 PRESIDENT FECKNER: Thank you.

16 Ms. Taylor.

17 BOARD MEMBER TAYLOR: Thank you, Mr. President.

18 So my question is could you just - and I know we
19 don't have a lot of time - list what constitutes a breach
20 of fiduciary duty, just quick, in your mind? It's a
21 really broad question, but...

22 MS. DUNNING: So a decision was rendered a couple
23 weeks ago called the O'Neal decision. Not sure if it's
24 crossed anyone's radar. But it -- it hasn't resolved the
25 question, because it was -- it was granted by the trial

1 court on a summary judgment, but -- and that was
2 overturned, so it's going back for trial.

3 But the question that was addressed by the court
4 of appeal was when the Board was making certain funding
5 decisions, when it was transferring certain assets between
6 reserves in a way that depleted funds that would have
7 otherwise been available for certain retiree benefits,
8 what was the best interest of members and beneficiaries
9 that was considered?

10 And so they said that the claim of breach of
11 fiduciary duty could not be resolved as a matter of law,
12 and they had to go back and try it.

13 So I'm not saying where that's going to come out.
14 I think that there's a lot of support for the level of
15 discretion exercised, and the authority asserted under the
16 statutes at issue. But I think it was a reminder by the
17 court of appeal that you've got to ask yourself that
18 question, what's the best interests of the members and
19 beneficiaries in this action and why? Why is that the
20 right answer?

21 And as I said earlier, it's not that you're
22 constantly just paying out more, more, more, because
23 that's not good for the person who just come into the plan
24 yesterday. Yes.

25 BOARD MEMBER TAYLOR: Thank you.

1 PRESIDENT FECKNER: Thank you.

2 Mr. Slaton.

3 BOARD MEMBER SLATON: Thank you, Mr. President.

4 So there's been some -- at least one paper that
5 I've read recently that talks about differentiating
6 between commercial pension balance and public pension
7 plans, and how our kind of focus on being 100 percent
8 funded. And the challenge presented in these papers say
9 that essentially probably 80 percent or so is probably a
10 reasonable target, given that the organizations, not
11 withstanding the action we took earlier today, are --
12 essentially exist in perpetuity, and are not like a
13 commercial enterprise that could go out of business.

14 So does that -- if we were to take that kind of a
15 position, what are your thoughts regarding impact for us
16 as fiduciaries to -- if we were to consider that kind of a
17 an approach?

18 MS. DUNNING: Well, I would submit that you
19 already do take that approach. The approach that
20 corporate -- corporate plans take is based on a
21 termination mentality, that the corporations can go out of
22 business at any time. And so you have to determine what
23 needs to be paid in that context.

24 The public, the State is not going out of
25 business. The counties are not going out of business.

1 And so the fact that you have a long-term assumption --
2 assumed rate of return reflects exactly that.

3 Now, does that mean that you should shoot for 80
4 percent funded? I suspect your actuary would tell you --
5 I defer to your actuary, but I suspect your actuary would
6 tell you not, that you want to shoot for that 100 percent.
7 I suspect your actuary would like you to be around 98
8 percent funded. I think -- I've heard many of them say
9 that the problems start happening were you're over 100
10 percent. People get funny ideas about things.

11 (Laughter.)

12 MS. DUNNING: So that's what I'd say. And I've
13 argued that to a court as well, that you shoot for 100
14 percent. The fact that you make certain determinations
15 with you're over 100 percent or under 100 percent is
16 within your area of discretion, but that's your target.

17 BOARD MEMBER SLATON: Thank you.

18 PRESIDENT FECKNER: Thank you.

19 Mr. Bilbrey.

20 BOARD MEMBER BILBREY: Thank you, Mr. Chair.

21 So I'll keep this short. Diversity is very
22 important to this Board. Does your firm promote
23 diversity, and, if so, how?

24 MS. DUNNING: Absolutely. It's very important to
25 both Yuliya and me.

1 MS. ORYOL: Well, I can answer that question.

2 MS. DUNNING: Can I answer one thing first?

3 MS. ORYOL: Oh, of course. Yes.

4 MS. DUNNING: I'm the head of the Women's
5 Affinity Group at our firm. And I've been -- and our
6 focus is the retention -- the recruitment, retention, and
7 advancement of women professionals at Nossaman. We have a
8 Minority Affinity Group that is focused on the same led by
9 Alfred Smith an African-American partner at our firm, and
10 the Chair of our Water Group. And that group
11 doesn't -- that is while he's also the Chair of the -- of
12 the Diversity Committee. We focus on that a lot. It's a
13 huge priority.

14 Now, I've only been with Nossaman for two years,
15 as Yuliya said or just over two years, so I would like to
16 turn to Yuliya a little bit more to give a little more
17 depth on that.

18 MS. ORYOL: Well, I'm personally an example of
19 why diversity is important at Nossaman. I joined the firm
20 in '99. I had worked in private practice for three years
21 for a maritime firm before that doing commercial work.
22 And when I joined Nossaman, what was important to me is
23 the -- not just was the staff diverse, but was the
24 attorneys diverse, and what chances I would have for
25 growth and partnership as a woman, and my own unique

1 perspective having been born outside the United States,
2 and their consideration for people who are -- who bring
3 diversity in race, religion, ethnicity.

4 And I found Nossaman to be a home for me since
5 '99. I now serve on the Executive Committee, but before
6 that I ran the San Francisco office. And before that, I
7 sat on our Nominating Committee. I worked in Asia for
8 four years, in South Korea where I was the only woman
9 basically in my office. And I knew that, in some, ways I
10 was used to window-dress the firm. I had the expertise in
11 transactions, and they wanted to attract international
12 clients, and they wanted an international face, because
13 everyone else in the firm were Korean men.

14 And I stayed of counsel to Nossaman at the time,
15 and they provided me a home. When I came back, I couldn't
16 think of any other place to come back to having worked in
17 an environment where I was pretty much the only whom, not
18 just in the office as an attorney. Of course, all the
19 staff were women there, but in a -- working in an
20 environment where there's certain challenges being a woman
21 and telling your clients things they can and cannot do.
22 You can imagine that would not always go well in a
23 different type of environment.

24 But I've always found that at Nossaman it's a
25 very receptive environment. There's room for growth, and

1 that diversity is really filled throughout all of our
2 offices, and in our associate ranks. And I'm proud that
3 I'm not the only woman on the Executive Committee, that
4 there's another woman on the Executive Committee who is an
5 instrumental attorney and a role model in transportation
6 law and infrastructure law.

7 So when I joined Nossaman there were other women
8 role models that I could look to who could guide me, and I
9 think that's extremely important, and it's who we are as a
10 firm, and it's what makes us very unique as a law firm in
11 the United States. The legal market is really changing
12 and we've tried hard, and I think we've been successful to
13 be true to our values.

14 MS. DUNNING: And as just a personal example,
15 when with I turned -- when I moved over to -- when I moved
16 my practice to Nossaman, I was told to become an equity
17 partner at the firm, it would take three years. Well, I
18 put myself early up a year early and was approved.

19 So, you know, they -- there is a commitment. I
20 wouldn't say I got it because I was a woman. I certainly
21 hope not, but there was a big -- there's a lot of support
22 for what we're doing. And that's just as important to our
23 public pension practice. As Yuliya said, we put a lot of
24 work into making this work for you, and that requires a
25 commitment from the firm as well.

1 But on diversity we are both huge supporters, our
2 firm is, and we're making strides

3 MS. ORYOL: And our public pension and investment
4 practice group is not the only practice group at our firm
5 led by women. I mean the two of us lead that group, but
6 we have other groups in the firm led by women. And the
7 fact that the firm -- the support they gave me to start
8 that practice group as a very junior lawyer coming up
9 ranks, that they believed in me and saw the vision and the
10 dedication and passion that I had to that and took my word
11 when we introduced Ashley and the practice that she
12 brought to our firm, and the way we were able to join our
13 practices together. I think that speaks a lot about the
14 management of the firm, and their vision, and the fact
15 that we can sustain that for the last 75 years and
16 hopefully 75 more.

17 MS. DUNNING: In terms of ethnic diversity as
18 well, it's a big focus. The associate I'm grooming on
19 several of our cases, a refugee from Vietnam, and she's
20 phenomenal, and, you know, we -- that's a big part of this
21 as well.

22 PRESIDENT FECKNER: Thank you.

23 That exhausts our time. We now thank you for
24 coming and being part of the interview process. We're
25 going to ask the Nossaman folks to please exit the

1 auditorium. We're going to take a 10 minute recess to get
2 the other group in here. So we'll reconvene at 12:55.

3 MS. DUNNING: Thank you.

4 MS. ORYOL: Thank you.

5 (Off record: 12:45 p.m.)

6 (Thereupon a recess was taken.)

7 (On record: 12:57 p.m.)

8 PRESIDENT FECKNER: Okay. We are going to
9 reconvene the Board meeting. We's like to ask the
10 Seyfarth Shaw group to pleaser begin your introductions
11 with your -- your presentation with your introductions.
12 And the clock will start as you begin your presentation.

13 MR. CABRAL: Thank you very much for --

14 PRESIDENT FECKNER: Have to turn your microphone
15 on first, please.

16 There you go.

17 MR. CABRAL: There we go. Okay.

18 PRESIDENT FECKNER: Yep. Thank you.

19 MR. CABRAL: Thank you very much for inviting us
20 here this morning -- actually, this afternoon now, I
21 think.

22 My name is Alan Cabral. I am a partner in the
23 Los Angeles Office of Seyfarth Shaw. I'm going to give
24 you a few words of introduction about myself and then I'll
25 ask my colleagues Kathleen and Javier to say a few words

1 about their practices.

2 I'm a partner Seyfarth's employee benefits
3 practice. I've been with the firm about 18, 19 years now,
4 where practice focuses on the representation of both
5 governmental and multi-employer pension and health and
6 welfare plans.

7 As counsel to my benefit plan clients, I provide
8 advice on all aspects of plan operation and compliance,
9 from benefit entitlements to plan investments. And, of
10 course, in connection with fiduciary issues.

11 Kathleen.

12 MS. CAHILL-SLAUGHT: Sure.

13 Good afternoon. My name is Kathleen
14 Cahill-Slaughter. I'm a partner in the San Francisco office
15 of Seyfarth Shaw. I've been a Seyfarth for 21 years. My
16 practice is in the ERISA litigation practice group, which
17 is under our labor employment group. And my -- 75 percent
18 of my practice is litigating pension and welfare plan
19 benefits, both in arbitration and in the federal courts.

20 I also have 25 percent of my practice as
21 representing as plan counsel for a large billion dollar
22 multi-employer pension fund, and which also has a welfare
23 fund, so I attend trustee meetings. And within this plan
24 counsel role, I have an active role in advising fiduciary
25 duties for that plan. I also, as you can see from resume,

1 have litigated the issue of fiduciary breaches numerous
2 times on the ERISA landscape, so I have breadth and depth
3 in that area on every issue almost of both welfare and
4 pension issues of fiduciary breaches.

5 I'd like to say a little bit about our ERISA
6 practice a Seyfarth. It's been voted by U.S. News best
7 lawyers, the ERISA practice group of the year last year.
8 So we have so much experience in pension administration
9 and breaches of fiduciary duty defense of trustees and
10 board members that I can honestly say there probably
11 hasn't been an issue that Seyfarth and our team of ERISA
12 litigators hasn't encountered and would be able to provide
13 the Board on advisory opinions on such issues.

14 MR. PLASENCIA: Mr. Chair and members of the
15 Board, good morning --

16 PRESIDENT FECKNER: Move the microphone in front
17 of you.

18 MR. PLASENCIA: Thank you --

19 PRESIDENT FECKNER: Move the microphone in front
20 of you, please.

21 MR. PLASENCIA: Excuse me.

22 Good morning. And thank you for the opportunity
23 to be here. My name is Javier Plasencia. And I had the
24 privilege of working here at CalPERS for over 26 years.

25 I worked for the Legal Office, and I dealt with

1 numerous benefit and real estate investment related
2 matters. From the benefits side, I advised and
3 represented the System on disability, membership, and
4 final compensation matters. And for the last 18 to 20
5 years at CalPERS, I primarily assisted and advised the
6 real estate unit on conflicts, Public Records Act
7 requests, policies and procedures, partnership documents,
8 and with the alignment of interests model, which was
9 adopted for the real estate separate accounts.

10 For as long as I can remember, CalPERS has always
11 been a leader in responsible investing with its Corporate
12 Governance and Responsible Contracting Policies.

13 As part of the Seyfarth team, we much fiduciary,
14 institutional, and public pension fund law experience to
15 provide a strong and comprehensive representation.

16 Thank you.

17 MR. CABRAL: Thank you. Now turning to slide
18 5 -- let's see, do I have control of that or...

19 --o0o--

20 MR. CABRAL: Turning to slide 5. This slide is
21 intended to let you know a little bit about who we are and
22 give you an idea of our firm culture. The firm was
23 founded in 1945 in Chicago. And we opened our first
24 office in California in 1973 with I think two lawyers, I
25 think one of whom just recently retired maybe a year or

1 two ago.

2 Today, we're over 240 lawyers in California,
3 spread out over three offices here in Sacramento, an
4 office in San Francisco, and 2 in L.A.; one in downtown
5 L.A. and one in Century City.

6 We place a strong emphasis on involvement in pro
7 bono and community activities. A lot of our attorneys and
8 staff are active in these activities. From the Inner City
9 Law Center in Los Angeles to the Sacramento County Bar
10 Association Diversity Fellowship Program, and the Bar
11 Association of San Francisco Foundation.

12 Attorneys in our L.A. office also are heavily
13 involved in providing support, both financially and boots
14 on the ground, as it were, to an organization called Brown
15 Bag Lady. Brown Bag Lady provides food to the homeless,
16 as well as other essentials, and toys, and school supplies
17 for children.

18 Seyfarth also places emphasis on diversity.
19 We've received numerous awards, including the Best Law
20 Firms for Women from 2011 to 2016, and Best Places to Work
21 under the Human Rights Campaign Corporate Equality Index
22 from 2009 through 2017. We're also a member -- board
23 member and sponsor of California Minority Counsel Program.

24 And finally, we were sponsors of the CalPERS 2017
25 General Assembly.

1 --o0o--

2 MR. CABRAL: Slide 6 just summarizes a couple of
3 our experience with fiduciary issues. Kathleen and Javier
4 have actually already addressed a lot of that. We just
5 want to highlight that Seyfarth has represented
6 governmental -- both governmental and private sector
7 pension and health plans for over 40 years, making us one
8 of the few firms in California I think that can say that.

9 We provide forthright and proactive advice with
10 respect to fiduciary issues to all of our retirement plan
11 clients. We have a thorough knowledge of ERISA fiduciary
12 obligations, prohibited transactions, and the fiduciary
13 obligations under the California Constitution.

14 And, of course, this plan is not subject to
15 ERISA, but as you know, governmental plans often look to
16 ERISA for guidance.

17 Seyfarth is a full service law firm. What does
18 that mean? It means that we're able to bring to bear
19 expertise in numerous areas from real estate, private
20 equity, securities, corporate and finance. And so we're
21 able to handle virtually -- bring those -- that expertise
22 to handle virtually any fiduciary issue that can come up.

23 We've got experience with other relevant statutes
24 Bagley-Keene Open Meeting Act, the Public Records Act, the
25 Political Reform Act.

1 We've represented both California governmental
2 plans and California public entities, and we've had
3 familiarity with the type issues encountered by CalPERS.
4 In addition, we've got experience handling litigation
5 involving fiduciary claims. And Kathleen is going to say
6 a couple more words about her work in that area.

7 MS. CAHILL-SLAUGHT: Well, being the lawyer, as
8 you know, I'm often not the most popular person in the
9 room, especially when I'm giving my forthright analysis of
10 whether or not there's been a potential breach of a
11 fiduciary duty, or if there has been past practices by a
12 plan or trustees in dealing with plan participants and
13 their questions on pension or welfare benefits.

14 So I have that expertise in dealing with multiple
15 board members and different varied interests. I recently
16 negotiated a large and favorable settlement for some
17 trustees who were accused of a whistleblower, that's ERISA
18 510 action against a former plan staff member.

19 So I think that my expertise is in both the
20 private and governmental plans in dealing with multiple
21 Board members, understanding the complexities of a board,
22 and providing the best advice in keeping really the hat of
23 the -- what is the fiduciary and who am I serving in terms
24 of providing fiduciary counsel.

25 And not always, you know, not necessarily giving

1 advice, they want to hear it, but you have to hear as a
2 fiduciary. So these are just a couple of cases where I've
3 been successful in cases where the plan has been accused
4 of breaches of fiduciary duty in the pension,
5 communications, and in pension benefits

6 And so I think that, again, the litigation
7 experience, it's helpful when you're analyzing whether
8 you're going to bring suit against a third-party
9 administrator or investment consultant really knowing the
10 course of litigation, knowing how some litigation can go
11 off the rails, knowing the parties involved, making sure
12 it's a really -- a strong fiduciary decision to go into
13 the litigation is where I can lend expertise to the -- to
14 the Board

15 MR. CABRAL: And, Javier, you want to address
16 slide 8.

17 --o0o--

18 MR. PLASENCIA: Side 8 quickly just simply
19 reflects issues that you're familiar with. You're aware
20 of them. You know the fiduciary and pension related laws
21 and their applications. They're not stagnant. Things are
22 always evolving. And on the same current with the
23 evolving issues, and through training, Seyfarth can assist
24 the Board on these matters.

25 MR. CABRAL: All right. I think I have 30

1 seconds left to address Slide 9.

2 --o0o--

3 MR. CABRAL: Slide 9 is -- we just wanted to
4 briefly highlight service we provide. We call it Seyfarth
5 Shaw At Work. And Seyfarth Shaw at work is a group of
6 dedicated attorneys who provide innovative training to
7 clients, that this group has developed dozens of training
8 modules for our clients, a wide variety of compliance
9 issues. And, of course, the one that would be relevant
10 for this group, at least from the start, would be the
11 fiduciary fundamentals training.

12 I'll just say briefly that it's a fascinating
13 group. A lot of these attorneys actually have improv and
14 theatrical experience, so it is actually -- people come
15 away from these sessions saying they actually enjoyed it.
16 So I don't think you've ever seen something quite like
17 this, but we can certainly provide the Board with
18 fiduciary training under this model.

19 PRESIDENT FECKNER: Thank you.

20 We now will begin the question and answer period
21 the Board. And I'll start with the first question. Could
22 you please explain your and your firm's position on the
23 California rule.

24 MR. CABRAL: Well, I think that's a -- that's
25 changing concept right now. I think with the pending

1 litigation with Marin County with PEPRA, I think that -- I
2 think the jury is literally out on what's going to happen
3 with the California rule. Whether or not people's
4 benefits can be changed and to what extent, I think we are
5 going to know shortly now that the Supreme Court is
6 looking at that.

7 PRESIDENT FECKNER: I asked the firm's position,
8 not what it was going to entail.

9 MR. CABRAL: I don't know if the firm has a
10 specific position on that. I would say that, you know, we
11 haven't had to advise a client specifically on that issue,
12 so I can't say that -- I can't articulate our firm's
13 position on that.

14 PRESIDENT FECKNER: Thank you.

15 Ms. Mathur.

16 BOARD MEMBER MATHUR: Thank you. You've
17 mentioned on a couple of slides, but I'll just ask more
18 deeply. In your view, what duty does a pension fund have
19 to incorporate environmental, social, and governance risks
20 and opportunities into its decision -- investment decision
21 making and investment activities.

22 MR. CABRAL: Well, I'll just start with the --
23 with again going to ERISA. The DOL, of course, has been
24 grappling with this issue for many years, kind of swinging
25 back and forth. They initially offered some guidance

1 saying, no, you can't consider those sorts of issues. It
2 really kind of put a crimp on pension funds.

3 It's evolved over time. And most recently, I
4 think in 2015 they kind of re-articulated that, and to let
5 pension funds know that you can take into account those
6 considerations. They can be tiebreakers, or they can
7 be -- there may actually be a financial benefit to a
8 decision like that.

9 So I think there's more -- a little more
10 breathing room in that area and maybe Javier wants to
11 address that a little.

12 MR. PLASENCIA: Primarily, it's you have a
13 fiduciary duty, and that is the utmost and most sacred,
14 you know, level that you've got to keep. And by gathering
15 the necessary data when you do the analysis for
16 environmental studies or, you know -- or other governance
17 issues, you need to have the information in order to
18 support whatever decision you pursue, but it's got to be
19 reasonable, prudent, and it's got to fulfill your
20 fiduciary duty, because that is your -- you know, your
21 responsibility.

22 MS. CAHILL-SLAUGHT: I would just say that I
23 think you can have these kinds of considerations as a
24 factor, but, you know, the way the court would look at it
25 is did it -- was any anybody, any fiduciary, any plan

1 participant going to be harmed because you made an
2 investment that, you know, was imprudent based on those
3 factors. So, you know, all -- they're all going to look
4 at your process. Who did you look to? What did you find
5 significant?

6 We encounter this a lot with union -- union
7 funds. And, you know, you cannot have a policy that
8 ignores, like he said, the statistical data, and the
9 performance of a specific fund or historical performance.
10 So you really want to make sure you're doing a balancing
11 act to make sure your processes are fair and transparent,
12 so that the court can say, no, they considered it, and it
13 was a prudent decision here to go for this fund.

14 PRESIDENT FECKNER: Mr. Jones.

15 VICE PRESIDENT JONES: Yeah. Thank you, Mr.
16 President. Yes, I have a clarifying question first and
17 then another question. On Attachment D, where you list
18 the statistical data, which provides for our future
19 diversity efforts. And I noticed when I add up the women
20 and minorities and compare it to the total, it appears
21 that you have more women combined with minorities than
22 total employees. Am I reading that right?

23 MR. CABRAL: So if you look at -- let's see, show
24 me which column you're looking at?

25 VICE PRESIDENT JONES: I'm looking at the total

1 column. For example, the second row where it say senior
2 attorneys 2-0-1, 201, women 101, and then several
3 different minorities.

4 MR. CABRAL: Yeah.

5 VICE PRESIDENT JONES: So that total doesn't add
6 to the totals going, so I'm trying to understand what
7 those numbers are.

8 MR. CABRAL: So the senior attorneys -- So women
9 101, and the other was African-American, is that what you
10 were --

11 MS. CAHILL-SLAUGHT: Well, he's saying -- you're
12 saying if you had 101 to 12 to 13 to 11, that doesn't add
13 up to 201.

14 VICE PRESIDENT JONES: Yeah, in the number of the
15 column.

16 MS. CAHILL-SLAUGHT: I think that's because some
17 people don't identify --

18 VICE PRESIDENT JONES: Oh, okay.

19 MS. CAHILL-SLAUGHT: -- as a specific category.
20 So there's going unfortunately --

21 VICE PRESIDENT JONES: So then I can't reach a
22 conclusion that you have more women and minorities in your
23 firm than white males by looking at this data?

24 MS. CAHILL-SLAUGHT: I think you -- go ahead.

25 MR. CABRAL: I think that's right.

1 PRESIDENT FECKNER: Can you please closer to the
2 microphone.

3 MR. CABRAL: Sure. Sure.

4 PRESIDENT FECKNER: Thank you.

5 BOARD MEMBER HOLLINGER: You need to align it.

6 PRESIDENT FECKNER: There you go.

7 MR. CABRAL: Yeah, I think that -- I think that's
8 right that we can't make that particular conclusion, but I
9 would not be surprised if it were true --

10 VICE PRESIDENT JONES: Okay.

11 MR. CABRAL: -- just on the fact that I see the
12 incoming class each year of lawyers, and each year a
13 greater portion of that is made up of women and
14 minorities.

15 MS. CAHILL-SLAUGHT: We specifically have a
16 summer fellow program, which takes diverse candidates from
17 law school and use it -- as summer associates, and then
18 hires them as incoming. And again, the factor has to be a
19 diverse candidate. Our laterals maybe, you know, white
20 or -- but our summer fellow program is specifically for
21 diverse candidates.

22 VICE PRESIDENT JONES: Okay. Okay. Thank you.

23 Then my question -- the other question is what
24 are the most current and critical fiduciary issues pension
25 fund board members are encountering, and what can they do

1 to limit potential liability in these issues?

2 MR. CABRAL: Well, I would say the most -- the
3 issues that are at the most forefront of people's minds
4 are funding issues, and particularly with respect to
5 governmental plans, the extent -- what sort of actions you
6 can take to address those funding issues.

7 And, for example, all the current litigation
8 that's going on with respect to the California rule, the
9 Marin case, that's a -- I think an issue for our
10 generation on how this is going to be resolved. And is
11 how to -- your second part of your question was what a
12 plan can do to address those?

13 VICE PRESIDENT JONES: Yes.

14 MR. CABRAL: Well, from a fiduciary perspective,
15 as Kathleen said, it's all process. A particular answer
16 may or -- just because it's -- it's -- the particular
17 answer itself won't drive whether or not you've satisfied
18 your fiduciary obligations. Fiduciary obligations are met
19 by showing that you've engaged in an active process,
20 considered all the elements, and made a prudent decision
21 with the exclusive benefit of plan participants in mind.

22 Now, what that mean -- how we interpret the
23 exclusive benefit for plan participants, you know, we're
24 looking at a plan that's going to go on for 100 years. So
25 we're not looking at just what's going on at this point in

1 time in front of us. We're looking at trying to maintain
2 the health of this plan for over a long horizon.

3 So again, it's the process that boards need to
4 satisfy to make sure they're demonstrating they're acting
5 prudently in considering all the information before them.

6 VICE PRESIDENT JONES: Okay. Thank you.

7 PRESIDENT FECKNER: Thank you. Ms. Taylor.

8 BOARD MEMBER TAYLOR: Sure. Thank you.

9 I had a couple of things. I was going to push
10 just a little bit on the -- on how you align yourselves
11 with the California rule, because I think it's important
12 that as a fiduciary counsel of a pension plan that you do
13 have a position.

14 But secondly, I also wanted to ask how do you
15 handle conflicts that would prevent you from advising
16 CalPERS on some matters, and are there any legal
17 proceedings or law enforcement investigations currently
18 pending against your firm?

19 MR. CABRAL: Answering the first part of your
20 question, no, there are -- there are no issues with
21 respect to current matters.

22 And I'm sorry the first part of the question, the
23 first --

24 MS. CAHILL-SLAUGHT: Conflicts.

25 BOARD MEMBER TAYLOR: Conflicts. How do you

1 handle conflicts?

2 MR. CABRAL: Yeah, we -- you know, we have a very
3 rigorous conflicts department. And we can't make a move
4 without our conflicts department being involved. So
5 whenever there's any matter that has a potential for a
6 conflict, we have to run it through our conflicts
7 department. And it's a very elaborate system. We're a
8 large firm, so you can imagine we have thousands of
9 matters, but they have a very sophisticated system that
10 they run it through to determine whether or not there are
11 any conflicts.

12 And, of course, if there are any conflicts, it's
13 our obligation to go to our clients and disclose them.
14 And then our clients need to consider whether or not they
15 feel that conflict will somehow inhibit our ability to
16 represent our clients.

17 BOARD MEMBER TAYLOR: Okay. Great. Thank you.

18 PRESIDENT FECKNER: Thank you.

19 Mr. Lind.

20 BOARD MEMBER LIND: Thank you. First, I want to
21 mention I do have experience with your firm. You are the
22 co-counsel on the Northern California UFCW Pension Fund
23 where I served as a trustee for a whole lot of years.

24 MR. CABRAL: Very good.

25 BOARD MEMBER LIND: I spent a lot of time with

1 Mitch Whitehead.

2 MS. CAHILL-SLAUGHT: Mitch.

3 MR. CABRAL: Absolutely.

4 BOARD MEMBER LIND: My question is the Board
5 structure here is diverse. We have -- most of our members
6 are elected by members and/or retirees. We have, you
7 know, the State Controller, the State Treasurer. We have
8 a couple of Board members that are appointed by the
9 Governor. I'm appointed by the legislature to represent
10 taxpayers.

11 Do you see any nuances in the fiduciary
12 responsibilities of those different Board members? Are
13 there any potential conflicts, and then how do you advise
14 around those conflicts?

15 MR. CABRAL: Well, by conflicts if you're
16 referring to people -- Board members having conflicting
17 views?

18 BOARD MEMBER LIND: Maybe conflicting views as to
19 their fiduciary responsibility.

20 MR. CABRAL: Well, Kathleen and I both represent
21 numerous funds. I represent funds both on the
22 governmental side and on the private sector side. The --
23 my private sector funds have boards very similar to your
24 Board here. Let's see there are 13 here. I think my
25 largest board has 20 or 25. So this OCW funds have a lot

1 of -- have a lot of board members. And that's always a
2 factor that you have diverse views. And frankly,
3 reasonable people can disagree about how -- what the
4 outcome should be.

5 We're very cognizant of that. And I think
6 there's no easy answer, but we do our best to facilitate
7 some kind -- some consensus with our clients. Each board
8 is different, so you -- there's no one size fits all, but
9 I tell folks my objective is to be constructive and to
10 assist in arriving at consensus.

11 What that means, it depends on the issue. It
12 depends on the particular board members. But, yeah, again
13 fiduciary -- the fiduciary outcome is -- the outcome of an
14 issue doesn't necessarily determine whether it's --
15 whether you satisfy your fiduciary obligations. You can
16 have diverse views and come to some agreement. Some
17 people may not be happy. Some people may be satisfied,
18 but you can still satisfy your fiduciary obligation. In
19 fact, that's -- that sort of discussion is -- I think
20 facilitates arriving at the proper conclusion.

21 MR. PLASENCIA: And if I may add to that is, I
22 mean, that's -- you come in here and you deliberate on
23 things. But you all know that -- you should know once you
24 come into the CalPERS building, you leave your other hat
25 wherever you come from outside and you put on your CalPERS

1 fiduciary duty and -- cap, and you have a responsibility
2 to this Board, and to the beneficiaries of members of
3 CalPERS. And that is your foremost responsibility to this
4 system, and not to a different group outside of CalPERS.

5 BOARD MEMBER LIND: Thank you.

6 PRESIDENT FECKNER: Thank you.

7 Ms. Greene-Ross.

8 ACTING BOARD MEMBER GREENE-ROSS: How do you
9 determine when you should attend a board meeting?

10 MR. CABRAL: That's entirely up to the Board.
11 Our boards -- when our boards ask us to attend a meeting,
12 we'll be there. If they want us to attend by phone, we'll
13 do that. Our boards are the clients, and they dictate
14 where we go, and how long we stay.

15 ACTING BOARD MEMBER GREENE-ROSS: And are
16 there --

17 MS. CAHILL-SLAUGHT: Anecdotally though, I attend
18 all my boards' meetings.

19 ACTING BOARD MEMBER GREENE-ROSS: So it wouldn't
20 be proactive where you would see things on the agenda and
21 you might want to raise our attention?

22 MR. CABRAL: For my -- for my clients -- most of
23 my clients now, I attend all meetings, if that's the
24 question. I attend all meetings, because that's what
25 they've asked me to. There is one fund, actually a health

1 fund -- a public health fund, where I only attend as
2 requested. But for a vast majority of my other clients,
3 I'm at all the meetings. Again, that's dictated by the
4 Board.

5 MS. CAHILL-SLAUGHT: I mean, I -- as a litigator,
6 as a voice of potential advice for the Board, I would
7 recommend that counsel attend all meetings. I think that
8 counsel needs to hear the discussion on certain
9 investments or what's the current thinking of the Board.

10 So that's what -- I like attending all my
11 meetings. I know where my trustees stand on issues, and
12 I -- I'm abreast of the issues. There's nothing like
13 hearing it first hand, so -- but -- and as to the -- as to
14 the, you know, the Marin -- the California rule, I mean,
15 I'm -- from a litigator's perspective, again, I think that
16 the decision was sound, and I think that, you know, in
17 this climate of potential underfunding, and bankruptcy,
18 and the fiduciary duty to maintain assets and the trust
19 for future generations, I think that it's important that
20 that decision be affirmed. And I think it -- again, I --
21 I'm just myself -- you know, just from a litigator's
22 perspective I think it was a well-reasoned decision. And
23 I think that the public policy is in its favor.

24 PRESIDENT FECKNER: Thank you.

25 Mr. Bilbrey

1 BOARD MEMBER BILBREY: Thank you, Mr. Chair.

2 So back to Mr. Jones talking about diversity.
3 Diversity is important to this Board. Does your firm
4 promote diversity and how -- if so, how?

5 MR. CABRAL: Yes. We -- there is a particular
6 focus on moving people up the ranks and taking into
7 account diversity. Now, that's certainly not the only
8 consideration, of course. But the management of the firm
9 is very cognizant van of that issue. And those sorts of
10 factors weigh heavily into decisions whether to promote
11 people to senior associate, to partner, equity partner.
12 That is a -- the firm is very active in that regard.

13 I don't know. Do you guys have any?

14 MS. CAHILL-SLAUGHT: Yeah, sure. We have what's
15 called a DAT, a diversity action team. And it's -- you
16 self-identify as wanting to be on the diversity action
17 team. And it's head -- spearheaded by two diverse
18 partners. And we have -- specifically, like the other day
19 we celebrated the Feast of Holy, which is the Indian
20 feast. And we had the -- had a celebration in our office.

21 Little things that really expose -- expose
22 attorneys and expose the office to diverse issues. But
23 specifically, the diversity action team, its job is
24 really, like Alan was saying, to mentor the younger
25 attorneys to make sure that they are provided the

1 resources.

2 And the specific affinity groups. We have the
3 women's affinity group. We have the LGBT affinity group.
4 We have the African-American affinity group. We have the
5 Pacific-Islander affinity group. So those groups can get
6 together within the firm to talk about ways to increase
7 awareness and diversity, and to support each other at
8 Seyfarth. So it's definitely a focus, which is why we've
9 gotten the awards that we've gotten.

10 MR. PLASENCIA: The obvious personal experiences
11 at the office at Seyfarth here in Sacramento, you walk in
12 and the staff to me is more diverse than even CALPERS.
13 You have a lot of students there that are hired from high
14 schools, like Cristo Rey to participate in the program.
15 And they have been there for many years, and they go --
16 continue -- and some continue as staff members there. So
17 that's a very diverse group there.

18 PRESIDENT FECKNER: Thank you.

19 Mr. Slaton.

20 BOARD MEMBER SLATON: Thank you, Mr. President.

21 So there's been at least one interesting paper
22 written recently on differentiating between ERISA plans
23 and public plans in terms of what should the goal be in
24 terms of funded status.

25 So on the ERISA aside, you know, the goal is 100

1 percent funded. And the paper theory is that those
2 organizations could go out of business, as opposed to
3 public funds where we're in perpetuity we're always going
4 to have cities, counties, special districts.

5 So the question is if we were to consider
6 something like an 80 percent target, as opposed to 100
7 percent target, what kind of challenges does that raise or
8 issues that might raise in your opinion regarding our
9 fiduciary duty?

10 MS. CAHILL-SLAUGHT: Do you want to speak to the
11 pension protection.

12 MR. CABRAL: Well -- so if I can understand your
13 question. You're saying that from -- moving from 100
14 percent to 80 percent --

15 BOARD MEMBER SLATON: As a goal, is what I'm
16 saying. Right now --

17 MR. CABRAL: As a goal -- as a goal for the
18 private sector or for the public sector?

19 BOARD MEMBER SLATON: For the public sector.

20 MR. CABRAL: For the public sector.

21 Well, I think the 100 percent goal is -- I mean,
22 that is something that I think we all kind of keep in the
23 back of our minds. But I think actuaries will tell you
24 that there's no really -- there's no reason why you need
25 to look for that 100 percent goal. You're an ongoing

1 plan. You're looking way down the future. And something
2 short of that I think is -- can be perfectly consistent
3 with your fiduciary obligations. And I think an actuary
4 would support that, that there's -- there's -- there's
5 really no reason to pursue this 100 -- this illusive 100
6 percent, but you need to pursue -- you need to strike some
7 balance. You need to find some goal that you can attain,
8 that you can strive for.

9 But I don't think a -- there's a magic number --
10 I don't think there's -- 100 percent is not a magic
11 number.

12 PRESIDENT FECKNER: Thank you.

13 Mr. Jelincic.

14 BOARD MEMBER JELINCIC: I have two questions.
15 I'll ask -- they're unrelated, but I'll ask the first one
16 and then look to the Chair for guidance.

17 PRESIDENT FECKNER: Hold you for just a second.
18 Please add 15 minutes to the clock. Thank you.

19 Excuse me.

20 BOARD MEMBER JELINCIC: That may have been my
21 guidance.

22 (Laughter.)

23 BOARD MEMBER JELINCIC: Do you believe it's
24 appropriate to pledge trust fund assets to indemnify
25 vendors from allegations of criminal behavior; and if so,

1 why; and, if not, why not?

2 MR. CABRAL: My response to that would be no.
3 It's not appropriate. And why not?

4 Vendors have their own insurance. Vendors are
5 looking to do business with pension funds. I think their
6 incentive to do business with pension funds, their own
7 insurance, those things should be covered by the vendors.
8 But I think -- now has it happened? It has happened, but
9 I think my position would be to avoid that to whatever
10 extent possible.

11 PRESIDENT FECKNER: Thank you.

12 BOARD MEMBER JELINCIC: Can I ask another
13 question?

14 PRESIDENT FECKNER: Yes, go ahead.

15 BOARD MEMBER JELINCIC: The -- as a fiduciary for
16 PERS, my obligation is to our members, the employees, the
17 retirees. When I look at your firm, you know, you
18 represent investment advisors. You represent, you know,
19 fund managers, your firm is very heavily pro-employer in
20 your practice more broadly.

21 So how do you deal with the either conflicts of
22 interest in maybe a legal sense, or even a broader sense
23 of a business conflict? If -- you know, if that's your
24 main business, how do we fit in, and how does that create
25 conflicts?

1 MR. CABRAL: That's a question that I think that,
2 as you can imagine, comes up often, especially with our
3 work with Taft-Hartley funds. Taft-Hartley funds are
4 jointly managed by representatives of labor and
5 management.

6 But I think we have a very good reputation with
7 our labor colleagues as being fair. And, in fact, they
8 often rely on us, because our ability to be impartial.
9 Now, we also -- we do represent investment funds. But I
10 think even a larger practice and a growing practice right
11 now is our representation of pension funds in their
12 investments with various institutions.

13 We -- at any one time, we're probably doing 10 or
14 15 investments on behalf of our benefit fund clients that
15 are investing in various investment funds.

16 Do conflicts arise? Yes, we have to do a
17 conflicts check. We run those conflicts checks. We have
18 to get the authority from the client, from the pension
19 fund to pursue that. We have to get the -- the okay from
20 the investment fund. Those conflicts are invariably
21 waived, because I think both -- on both sides know that
22 we're able to devote the attention we need to devote to
23 each client without crossing over with respect to client
24 issues.

25 PRESIDENT FECKNER: Thank you.

1 Ms. Hollinger.

2 BOARD MEMBER HOLLINGER: Yes. My issue -- my
3 question is as follows:

4 We're at, let's say, 63 percent funded, and we
5 have an obligation to pay benefits to our existing
6 retirees, as well as people coming into the system. So
7 how do you balance the fiduciary duty regarding the fund
8 sustainability to make sure that the benefits are there in
9 terms of intergenerational equity?

10 MR. CABRAL: Well, that's a big one.

11 (Laughter.)

12 MR. CABRAL: I think that -- again, with respect
13 to fiduciary obligations, it's process. And I guess I
14 don't -- I don't see new people coming in -- and I don't
15 necessarily see there's a conflict there. I guess maybe
16 if I could ask you what the conflict might be?

17 BOARD MEMBER HOLLINGER: Well, just in terms of
18 our funded ratio, and let's just say you did some math,
19 and, you know, making sure that there is benefits left to
20 be paid to people coming into the system?

21 MR. CABRAL: Well, I think an actuary actually
22 might look at that and say that's not such a bad thing,
23 because what you don't want is to have a plan where there
24 are fewer and fewer new people coming in.

25 BOARD MEMBER HOLLINGER: Well, there is. We have

1 a maturing population, so our risk is asymmetrical.

2 MR. CABRAL: So you do have a situation where --

3 BOARD MEMBER HOLLINGER: Correct.

4 MR. CABRAL: -- the --

5 BOARD MEMBER HOLLINGER: Yes.

6 MR. CABRAL: -- aging population is starting to
7 outstrip the new people coming in.

8 BOARD MEMBER HOLLINGER: Correct.

9 MR. CABRAL: Yeah. That's -- again, I don't
10 think there's any easy answer. Did you want to --

11 MR. PLASENCIA: Well, I think you're currently
12 going through the process in terms of doing your asset
13 allocation, and your risk analysis. And you're weighing
14 all the variables and then coming up with your discount
15 rate. And then how -- you amortize that over how many
16 years. So I think you're definitely doing what you need
17 to do. You're not reacting to just the current economy
18 also. You set a certain allocation. You believe that
19 your real assets versus your public equities is going to
20 give you a different return. And you've already accounted
21 for and provided and done some analysis for that.

22 And I think you're obviously, you know, doing the
23 right thing in that respect. There's no easy answer, but
24 you've got to try to allocate long-term and short-term
25 liabilities, as well as short-term gains and long-term

1 gains. And you've mixed -- you've got the whole mix, and
2 you're looking at it. And I -- but you've -- that's the
3 sort of long, long term that you've got to look at.

4 MS. CAHILL-SLAUGHT: And you have to look at the
5 fees. I mean, you've contracted your investment advisors,
6 so, you know, you might have some leverage there with your
7 investment advisors on fees, so -- and there's -- get
8 competing proposals. So, I mean, I think you have to
9 really get creative and currently what's going on with the
10 investments, as well as really start to press these -- the
11 investment advisors on reducing their fees in this climate
12 with a fiduciary rule on the -- it's being delayed by the
13 Trump Administration, but it's possible there could be
14 some fee reduction out there in the marketplace.

15 PRESIDENT FECKNER: Thank you.

16 Ms. Mathur.

17 Just a second.

18 BOARD MEMBER MATHUR: Thank you. It appears, and
19 correct me if I'm wrong, that most of your work is
20 actually on private sector plans, that you have some
21 governmental experience, but most of it is on private
22 sector plans. Am I correct in that assessment?

23 MR. CABRAL: I think that would be -- I think
24 that would be correct. We have -- there are attorneys
25 throughout the firm who represent public entities. There

1 are in various capacities. Whether it's with respect to
2 labor issues, with respect to on the investment side, we
3 do work on strictly on investments for public funds. As
4 far as acting to fund -- as fund counsel or in advising on
5 general matters, that's true. Most are private sector
6 plans.

7 The -- I'd like to emphasize the multi-employer
8 plans, because oftentimes their structure is very much
9 analogous to government plans. I know on some of the
10 boards I sit on for governmental plans, it's the same --
11 the same set-up. You've got the management folks and
12 you've got the labor folks. You've got diverse issues --
13 diverse interests at play that are very similar in that
14 sector, and I'm able to see that on a day-to-day basis
15 with my public fund clients and my private sector clients.

16 BOARD MEMBER MATHUR: So let me just ask, in what
17 way might your fiduciary advice to us, as a public sector
18 fund, as a public fund, differ from advice you might give
19 to private sector fund trustees? Would it differ in any
20 way, and in what ways would it be the same?

21 MR. CABRAL: Well, I think, as a conceptual
22 matter, it wouldn't be different, because the basic
23 fiduciary obligations that are imposed by public sector
24 plans, in California and many other states, is really --
25 mirrors very closely, if not exactly, the obligations

1 under ERISA.

2 So in that respect, I think that it's -- you can
3 do the same analysis on both sides. Are there other
4 issues? Absolutely. On the public -- on the private
5 sector side, ERISA has a -- there's a vast body of
6 regulatory law that plans need to be cognizant of. And
7 those can come up and bite you in all sorts of different
8 ways.

9 Public sector plans oftentimes don't have
10 those -- those issues, because that's part of Title 1 of
11 ERISA, which specifically doesn't apply to you. So, you
12 know, in that respect, there would be difference. But
13 conceptually, there really -- there really is no -- in my
14 mind, really no difference.

15 BOARD MEMBER MATHUR: Thank you.

16 PRESIDENT FECKNER: Thank you.

17 Mr. Costigan.

18 BOARD MEMBER COSTIGAN: Thank you, Mr. Feckner.

19 The longer this goes on, the more questions I
20 have, but I'm going to try to keep it short.

21 You just said you sat on boards, what boards do
22 you sit on?

23 MR. CABRAL: As far as -- well, maybe I should
24 clarify that. I don't sit as a board member. I sit as
25 fund counsel.

1 BOARD MEMBER COSTIGAN: Okay. Well, the
2 statement was you sit on boards, so there's a distinction.

3 MR. CABRAL: I clarified that.

4 BOARD MEMBER COSTIGAN: Mr. Feckner gave you the
5 opportunity to answer the question on the California rule,
6 and I don't believe you answered it.

7 So the question, if you want it restated, is what
8 do you -- do you support the California rule? You're
9 being asked to -- at least I didn't hear an answer to it.

10 MR. CABRAL: Yes, and I --

11 BOARD MEMBER COSTIGAN: As counsel to this Board,
12 your co-counsel answered it, but you're the lead.

13 MR. CABRAL: Yes. Absolutely. And I think she
14 artfully --

15 BOARD MEMBER COSTIGAN: No, I'd like your answer.

16 MR. CABRAL: Yes. I would -- I mean, I would
17 agree that -- personally, this is a personal view --

18 BOARD MEMBER COSTIGAN: No, you're asking to
19 represent this Board. So what is the position you're
20 going to articulate? What is it -- what is -- where do
21 you stand on the California rule, simple question?

22 MR. CABRAL: Okay.

23 BOARD MEMBER COSTIGAN: You counsel answered.

24 MR. CABRAL: I believe that plans can make
25 reasonable adjustments.

1 BOARD MEMBER COSTIGAN: Okay. So then your
2 position is you don't support the California rule.

3 Simple question, yes or no.

4 It's a simple question.

5 MR. CABRAL: That's correct.

6 BOARD MEMBER COSTIGAN: So what's the answer?

7 MR. CABRAL: So the answer is I do not support
8 that, the California rule.

9 BOARD MEMBER COSTIGAN: You don't support the
10 California rule.

11 Thank you, Mr. Feckner. My questions are done.

12 PRESIDENT FECKNER: Thank you.

13 Seeing no other requests, our time is now up of
14 questions. We appreciate you coming in for our interview
15 process. We'll now ask your firm to please leave the
16 room. The Board will take a five minute recess, and then
17 we'll reconvene to deliberate.

18 (Off record: 1:40 p.m.)

19 (Thereupon a recess was taken.)

20 (On record: 1:48 p.m.)

21 PRESIDENT FECKNER: Okay. We're going to come
22 back into session, please, Board members.

23 At this time, if any Board members had any
24 follow-up questions, we can bring the firms back if you
25 wanted to. If not, we will move on to discussion by the

1 Board. And then you have the opportunity to make a motion
2 to accept one, both, or neither of the firms, and we'll
3 move forward from there.

4 I'll call on Mr. Costigan.

5 BOARD MEMBER COSTIGAN: So I'll just say very
6 quickly. As to the answer of the last firm, do we have to
7 accept who their lead counsel would be, because the other
8 counsel was very clear in her position? And so I know --
9 are you okay, Matt?

10 GENERAL COUNSEL JACOBS: I think so.

11 (Laughter.)

12 BOARD MEMBER COSTIGAN: I'm not going to ask you
13 the same -- it's a simple question, Matt, yes or no?

14 (Laughter.)

15 PRESIDENT FECKNER: I think I want to play poker
16 with him though.

17 (Laughter.)

18 BOARD MEMBER COSTIGAN: But since they bid it
19 with him as the lead, does that contact have to go back
20 out, or would there be a new designation?

21 GENERAL COUNSEL JACOBS: No. No, we could -- we
22 could go with somebody else within the firm.

23 BOARD MEMBER GILLIHAN: Wouldn't we want to
24 interview them?

25 GENERAL COUNSEL JACOBS: Yeah. I mean, that's

1 the -- that's the other side of it, Mr. Gillihan that
2 you'd want to hear from.

3 BOARD MEMBER COSTIGAN: Thank you, Mr. Feckner.

4 PRESIDENT FECKNER: Ms. Hollinger.

5 BOARD MEMBER HOLLINGER: Yeah. Well, initially,
6 I felt that this most recent firm on the last few answers
7 was not very strong. However, I did have to give them
8 more points in terms of their preparation, their
9 PowerPoint. It did seem like they had more diversity.
10 Actually, Priya, in response to your question, they seem
11 to know more about ESG and those kind of things. But I
12 thought their answers were very weak.

13 Now, maybe, Matt, if we wanted to consider them,
14 I definitely thought the woman litigator would be lead
15 counsel. I thought she was the sharpest.

16 PRESIDENT FECKNER: Mr. Jelincic.

17 BOARD MEMBER JELINCIC: Yeah. A number of
18 things. But in terms of Richard's observation, yes, the
19 lead counsel -- the woman was much clearer in her
20 position. It was wrong, but at least she was clear. So
21 I've got to give them credit for that.

22 Part of my frustration with this whole process is
23 we got this list today, and had not had a chance to
24 actually do any kind of due diligence or research on them.

25 The guidance we got from staff I didn't think had

1 offered any real evaluative type material. This is the
2 strengths, this is the weaknesses. When we went through
3 this drill two years ago, that -- those same kind of
4 issues came up. So -- you know, so I've got that basic
5 disappointment.

6 You know, we've got two firms in front of us.
7 And I, quite frankly, don't find either acceptable. One
8 flat out says we don't support the California rule, and
9 the other says, well, we didn't mean to attack the
10 California rule, but we won, and we're not going to let
11 that victory go.

12 And the California rule is very, very, very
13 important to the people that we represent and have a
14 responsibility to. And so I'm not favorably impressed.
15 The other thing is that I did look at the websites for
16 these two, and they are very heavily employer dominated.
17 Their law practice is employer dominated. The only place
18 that, quite frankly, they're not virtually 100 percent
19 employer is on pensions. But even there, you know, they
20 tend to -- at least what I'm seeing, I see more of an
21 employer focus on their websites. So I would not support
22 either one of them, quite frankly.

23 PRESIDENT FECKNER: Thank you.

24 Mr. Slaton.

25 BOARD MEMBER SLATON: Thank you, Mr. President.

1 I saw a significant difference between these two
2 presentations. I think the second firm, you know -- well,
3 I'll get to the issue of the California rule in a moment.
4 But I didn't learn anything from his presentation, or
5 their presentation. And I think that, particularly when
6 it comes to fiduciary counsel, you know, you're looking
7 for analysis. You're looking for things that we don't
8 understand as well before we ask the question. When we
9 get an answer, than we've learned something as well as --
10 and having a better understanding. And I think that
11 Ashley did a fabulous job of teaching us as we were going
12 through it.

13 And let's take the answers -- the comparative
14 answers on the California rule. The second firm basically
15 said I'm withdrawing my proposal, is the way I interpreted
16 his answer.

17 (Laughter.)

18 BOARD MEMBER SLATON: But what happened is he
19 didn't push back on the question. And that's what he
20 should have done is push back on the question, and talked
21 about the nuances of this issue, because it is an
22 extremely important issue.

23 Whereas, contrast that with -- what's Ashley's
24 last name? -- Ms. Dunning's commentary which really was a
25 teachable moment and got us a better understand. And I

1 want to point out to my fellow Board members, we're not
2 hiring a lobbyist. We're hiring fiduciary counsel. So I
3 think that Ms. Dunning clearly demonstrated the skill sets
4 required to advise us on fiduciary matters.

5 And I think the work she's done so far for us in
6 an interim capacity has been outstanding. So I -- at the
7 appropriate moment, I'd be happy to make that motion to
8 engage her and to award the contract to them.

9 Thank you.

10 PRESIDENT FECKNER: Thank you.

11 Mr. Gillihan.

12 BOARD MEMBER GILLIHAN: Thank you, Mr. President.

13 My thoughts are along the lines of Mr. Slaton's.
14 I thought the first firm was, by far and away, a better
15 presentation than the second firm. On the California
16 question, I think, again, we're putting too much merit on
17 that. We're hiring these people to work for us, and
18 advise us on fiduciary matters. And I'd rather hire a
19 winner that saw things a little different than me anyhow
20 than somebody I didn't have so much confidence in.

21 So -- and then I would just also note that the
22 experience of the firm and the people involved seems to be
23 a lot more aligned in our world, which is, of course,
24 CalPERS and our very closely related '37 Act systems.
25 Whereas, the other firms seemed -- most of their

1 experience was in the ERISA world, so -- for what it's
2 worth. But I would support hiring the first firm.

3 PRESIDENT FECKNER: Thank you.

4 Mr. Lind.

5 BOARD MEMBER LIND: I was surprised at the
6 performance of Seyfarth. As I mentioned, I have a lot of
7 experience with them, and they were much better than this.
8 Although, that was in the Taft-Hartley multi-employer
9 ERISA arena.

10 I was impressed with Ms. Dunning as well. I
11 think she's done good work. She's very articulate. As to
12 the issue of the California rule, if -- and I'm not
13 advocating either way, but if we're going to set that as a
14 litmus test, are we going to find a firm that meets that
15 standard? Would anybody -- anybody from a firm sit there
16 and say I absolutely support it. Maybe. I just don't
17 know enough about fiduciary counsel.

18 So that's my question.

19 PRESIDENT FECKNER: Thank you.

20 Ms. Taylor.

21 BOARD MEMBER TAYLOR: Yes. I am -- again, I was
22 also not happy. There were a lot of things that were not
23 addressed with the second firm. And when it was
24 addressed, it wasn't addressed completely.

25 The only question I had, I believe Ms. Dunning's

1 answer to the California rule was excellent. I wasn't so
2 impressed with her answer to ESG. I feel like that there
3 was very -- a very nuanced maybe you can consider it as a
4 fiduciary duty maybe not, but you -- you know, I just felt
5 like it's going to -- her idea is that it's not on the
6 forefront of incorporating it into our investment, so I
7 just thought that that was a problem.

8 But overall, I liked their answers. The only
9 problem I had was the -- that issue. And then my last
10 issue is -- and I didn't bring it up, because it doesn't
11 have anything to do with this, is their involvement in
12 Dakota Access Pipeline.

13 PRESIDENT FECKNER: Thank you.

14 Mr. Costigan.

15 BOARD MEMBER COSTIGAN: Just very quickly.

16 I just want to say I had come into this wanting
17 to hold Ashley to a higher standard, because I knew her.
18 I was expecting her to truly outperform, and so I was
19 looking towards the other firm.

20 Taking that side, Ashley knows her stuff. I
21 think Theresa on your issue on the ESG, until there's more
22 statutory interpretation, until there's more of a
23 definitive, I think her answer was appropriate. You take
24 case law, and that's her job, as Bill says as a fiduciary,
25 she's going to interpret for us what the law says.

1 We promote ESG, and then you overlay the
2 fiduciary responsibility. But the implementation of how
3 ESG fits inside that fiduciary -- I meant to ask Mary Anne
4 that when the question came up. I believe the Allen bill
5 actually talks about a fiduciary relationship, which I was
6 a little concerned that adding the ESG into the reporting
7 creates a liability for us as a fiduciary.

8 So the fact that the Allen bill is beginning to
9 address that, I think goes sort of to your point. Even
10 though it was a nuanced question, it's undeveloped -- it's
11 really undeveloped within the fiduciary law.

12 I also agree with Mr. Gillihan. Ashley
13 represented her client. And again, I told you all, I've
14 known her a long time. And I'm remember that case came
15 along. That was a difficult case, but she represent -- it
16 was her board that made the decision. So you want someone
17 who's going to represent you zealously, and that's what
18 she did. And she had enough of an understanding of our
19 questions from the California rule, the ESG, all -- the
20 diversity, all of that I think is an excellent choice for
21 it.

22 But I just -- I was expect -- I was going to hold
23 her to a higher standard. She exceeded it. And I was
24 looking at the other film as well. They just did not
25 answer the way we did, so thank you very much.

1 PRESIDENT FECKNER: Thank you.

2 Ms. Greene-Ross.

3 ACTING BOARD MEMBER GREENE-ROSS: So just sort of
4 agreeing with Richard, Bill Slaton, and Richard Gillihan,
5 but I also wanted to just point out having worked with Rob
6 and Matt in looking at the other options, and while there
7 was maybe one other that maybe qualified, they were not
8 qualified, and we didn't bring them -- suggest bringing
9 them forward, because again the Board had delegated this
10 to a committee, which is why you guys weren't all part of
11 this process. We could bring any of them back, but you're
12 going to see firms that have taken sort of that similar
13 ERISA practice in other states and/or other sort of
14 litigation work that they think -- they could figure out
15 how to do this work, but they're not in this world. And I
16 do think that these two were as good as it could get for
17 the criteria that were laid out.

18 Historically, for this pension fund on what you
19 prefer, somebody based in California, and hopefully has a
20 lot of public pension work. So while there were several
21 firms, it was just few and far of them met the specific
22 criteria.

23 And then with -- again, with respect to the
24 California rule, that has definitely put -- everybody has
25 grave concern about the outcome of that appeal, and which

1 is why everybody argued for it to be de-published, because
2 that wasn't what the Board argued. They were going
3 within -- and as she walked us through the whole lesson on
4 why they were just, you know, tweaking in the margins of
5 what inuring things that we did ourselves here at this
6 Board, that the court added that language, which
7 everybody -- it was dicta.

8 So it -- I do -- it would be -- it would be
9 uncomfortable to penalize a lawyer for doing a good job
10 for her client. And I do think she seems to be a very
11 good fiduciary counsel, our experience to date. I think
12 she did an outstanding job at our off-site. And she is
13 a -- really goes out of her way to explain things in a
14 very good way.

15 And it just feels like, unlike the other firm
16 knew the client, read the room, knew that was a concern,
17 and was really prepared to answer that very tough
18 question. So I appreciated that.

19 PRESIDENT FECKNER: Thank you.

20 Mr. Jelincic.

21 BOARD MEMBER JELINCIC: I'm hearing a consensus
22 that Seyfarth Shaw is out. And so unless I'm wrong, I
23 think we ought to limit the discussion to Dunning.

24 And, you know, I think she actually gave a very
25 good answer given where she was coming from and her role

1 in this case. But I also will point out that she had to
2 know from October that that question was coming. And so
3 she had plenty of time to prepare her answer. It wasn't
4 exactly on the fly.

5 You know, I still have problems with saying,
6 well, I really didn't mean to do it, but, you know, here
7 we are. So...

8 PRESIDENT FECKNER: Thank you.

9 Ms. Mathur.

10 BOARD MEMBER MATHUR: Well, to me, it was crystal
11 clear which firm was more prepared, more familiar with our
12 public pension fund world, more familiar with us as an
13 organization, and just more thoughtful in the types of
14 answers and the depth of the answers that they provided,
15 and that was Nossaman.

16 So I just -- you know, while I sort of came into
17 this concerned about the MCERA case, I thought she -- I
18 thought Ms. Dunning gave a very thoughtful answer. And
19 the fact this she prepared, I think only says good things
20 about her as a lawyer. I think it would be worse if she
21 hadn't prepared in advance for this, and -- but I thought
22 she gave a very thoughtful answer that reflected, I think,
23 the values held by this Board, and of -- you know, she --
24 she's -- she articulated some of the steps that are still
25 before her for that case where she might have an

1 opportunity to clarify the position of the Marin County
2 retirement system.

3 PRESIDENT FECKNER: Thank you.

4 Ms. Hollinger.

5 GENERAL COUNSEL JACOBS: If I might. I'm sorry.
6 If I might on that. I've studied the briefs. MCERA never
7 took the position that we needed to carve into the
8 California rule. That was something -- I think she said
9 this, but just so it's clear, that the court really took
10 up on its own -- the Attorney General defended the case.
11 The Attorney General -- I've also read the Attorney
12 General's briefs. They were not trying to impinge on the
13 California rule. So...

14 PRESIDENT FECKNER: Thank you.

15 Ms. Hollinger.

16 BOARD MEMBER HOLLINGER: I just wanted to speak
17 to Michael Toumanoff who wasn't there to join, but who was
18 a mentor to Ashley. He's probably -- I've probably known
19 him over 30 years. He's probably one of the foremost
20 ethicists in the country. He is -- I understand he's sick
21 right now, but the -- I just could not stress enough the
22 integrity of that individual. I just wanted to say
23 something about him, because I know he can't be here.

24 PRESIDENT FECKNER: Thank you.

25 Mr. Jones.

1 VICE PRESIDENT JONES: Yeah. I was trying to
2 evaluate the 2 -- recognizing that Ashley had been with us
3 before. And that always gives you an upper hand, because
4 you -- and she had an opportunity to hear our concerns,
5 and to respond to them, and recognize that what's
6 important to us. And so I don't want to take that away
7 from her, but I think that also helped her in her
8 presentation. So I think it's obvious she did a better
9 job in presentation. But I think some of it may be
10 related to having been with us, and had worked with us,
11 and had understood what some of our issues and concerns
12 are.

13 On the other hand, if the lady, and this guy were
14 the people under contract, I would not have a problem
15 going with the other firm either.

16 PRESIDENT FECKNER: Thank you.

17 Seeing no other requests, Ms. Slaton, if you push
18 your button again, I'll click your microphone.

19 Mr. Slaton.

20 BOARD MEMBER SLATON: Thank you. So I move
21 that --

22 (Thereupon a phone went off.)

23 (Laughter.)

24 BOARD MEMBER MATHUR: Sorry. I don't know what I
25 did. It's a new phone and I bumped.

1 BOARD MEMBER SLATON: So a new phone. Okay.
2 So I hope Siri -- Siri, want to make a motion?
3 (Laughter.)

4 BOARD MEMBER SLATON: I move that we instruct the
5 staff to engage in contract negotiations with Nossaman LLP
6 for -- to serve as our fiduciary.

7 BOARD MEMBER GILLIHAN: Second

8 PRESIDENT FECKNER: It's been moved by Slaton,
9 seconded by Gillihan.

10 Any discussion on the motion?

11 Mr. Jelincic.

12 BOARD MEMBER JELINCIC: I have nothing new to
13 add, so I won't repeat it, but I would like a roll call
14 vote.

15 PRESIDENT FECKNER: All right. Roll call vote
16 has been requested. Any other discussion on the motion?
17 Seeing none. Please turn on the voting machine.
18 (Thereupon an electronic vote was taken.)

19 PRESIDENT FECKNER: Very good.

20 Motion carries. Thank you.

21 So that ends this part of the agenda.

22 We are now back on Summary of Board Direction,
23 Item 13. Ms. Frost, do you have any direction you have
24 been summarized?

25 CHIEF EXECUTIVE OFFICER FROST: Oh, lots.

1 (Laughter.)

2 CHIEF EXECUTIVE OFFICER FROST: I just had one
3 point of clarity. It was a point that Mr. Costigan and
4 Mr. Juarez but up regarding the legislative report from
5 Mary Anne Ashley, and the position that we took in signing
6 a letter that was against an anti-LGBT issue in State of
7 Texas.

8 So that, just by way of background, that came
9 through our social and governance system. And it happened
10 to be a bill as an instrument for us to engage. So I
11 think what we could do for further transparency beyond
12 sending the letter to the Board - and I'll make sure, Mr.
13 Jelincic, that I send you another copy of that letter - is
14 that if it is a bill as an instrument, we can put it on
15 the bill tracking log and report that out to all of you.

16 PRESIDENT FECKNER: Thank you. All right.

17 Brings us to Item 14, Public Comment.

18 I have two requests to speak. Mr. Johnson, Neal
19 Johnson, and Michael Flaherman, but I understand Mr.
20 Flaherman is no longer with us. Mr. Johnson, please come
21 forward. Speak your name for the record. Remember,
22 you're between the Board and food.

23 (Laughter.)

24 PRESIDENT FECKNER: You're between the Board
25 meeting and the airplane for a few of them.

1 MR. JOHNSON: If it was late in the day, if would
2 be the bar, and that would really be dangerous.

3 (Laughter.)

4 MR. JOHNSON: Neal Johnson, SEIU Local 1000.

5 Last Thursday morning the California legislature
6 passed AB -- or SB 28, a bill that ratified number of
7 State employee bargaining contracts, including one by SEIU
8 nine bargaining units, plus several others, also passed SB
9 48, a sort of interesting political marriage, but it's
10 part of the process.

11 And I want to actually thank this Board and the
12 staff, and maybe particularly Mr. Hoffner for pushing for
13 one of the elements that was part of that MOU, and that is
14 an increase in the compensation of actuaries in State,
15 which it has about 35 rank and file actuaries, and a
16 number of managerial. This Board holds or hires a
17 majority of those. And on behalf of those, I thank you,
18 and I thank Mr. Gillihan for finally getting Department of
19 Finance to see the wisdom of that.

20 (Laughter.)

21 MR. JOHNSON: The other thing that was part of
22 the MOU deals with the OPEB contributions. And the bill
23 summary, as printed in your book, and as we had fun trying
24 to explain to some of the members during ratification who
25 weren't -- didn't ask this question of when do they get

1 their bonus, dealt with this obtuse language about the
2 OPEB contribution in 2020 after con contract expires.

3 And we had had discussions with the employer, and
4 I think finally get them to understand that the current
5 analysis, which was done by very competent firm Gabriel
6 Roeder who's been under contract with the Controller for a
7 number of years, was a very good report for its purpose,
8 but didn't work well for dealing with what -- how that
9 overall State expenses actually translates down to
10 individual employees.

11 And one of the things I would encourage this
12 Board to do, and Mr. Gillihan, is to really bring that
13 in-house, and probably have PERS to add a few more
14 actuaries to actually, more in the health area, to -- and
15 so that we can really do that in a very professional job
16 that everyone agrees with the conclusions.

17 Thank you.

18 PRESIDENT FECKNER: Thank you.

19 So that brings us to end of our public session.
20 I am going to say for the record that the Board voted in
21 open session to award the fiduciary contract to the
22 Nossaman firm. We thank both parties for coming forward
23 today and presenting to us. So it will be subject to
24 negotiations with staff to -- on the particulars of the
25 contract. And we will hear back from staff at a later

1 date, so thank you both for being here.

2 At this point, we are going to adjourn the open
3 session. Mr. Jacobs, how long do you anticipate your
4 closed session being, now that we've removed the
5 cybersecurity portion of the agenda, folks?

6 GENERAL COUNSEL JACOBS: Right. I would say 10
7 minutes.

8 PRESIDENT FECKNER: Okay. Then we will just
9 clear the room and we'll go right into closed session,
10 because we have some folks need to catch flights, et
11 cetera, so we will break afterwards. So thank you for
12 being here.

13 Board members, please, all of -- you have
14 numbered pieces of paper in your folder about
15 cybersecurity. Those need to be collected please, and
16 they'll be handed back out next month.

17 So please turn those back in before you go.

18 And we really want to thank the IT folks for
19 being so flexible. Our speaker was from Canada, so we
20 really apprehensive about moving it, but he will be here
21 next month anyway. So we will just have this in April.

22 (Thereupon the California Public Employees'
23 Retirement System, Board of Administration
24 open session meeting adjourned at 2:12 p.m.)

25

C E R T I F I C A T E O F R E P O R T E R

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing California Public Employees' Retirement System, Board of Administration open session meeting was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California.

That the said proceedings was taken before me, in shorthand writing, and was thereafter transcribed, under my direction, by computer-assisted transcription.

I further certify that I am not of counsel or attorney for any of the parties to said meeting nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of March, 2017.



JAMES F. PETERS, CSR
Certified Shorthand Reporter
License No. 10063