

VIDEOCONFERENCE MEETING
STATE OF CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT SYSTEM
BOARD OF ADMINISTRATION
BOARD GOVERNANCE COMMITTEE

WEBEX PLATFORM

WEDNESDAY, NOVEMBER 18, 2020
10:00 A.M.

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

APPEARANCES

COMMITTEE MEMBERS:

Mr. Henry Jones, Chairperson
Ms. Lisa Middleton, Vice Chairperson
Mr. Rob Feckner
Ms. Fiona Ma, represented by Mr. Frank Ruffino
Ms. Stacie Olivares
Ms. Eraina Ortega
Mr. Jason Perez

BOARD MEMBERS:

Ms. Margaret Brown
Mr. David Miller
Mr. Ramon Rubalcava
Ms. Shawnda Westly
Ms. Betty Yee, represented by Ms. Lynn Paquin

STAFF:

Ms. Marcie Frost, Chief Executive Officer
Mr. Matt Jacobs, General Counsel
Mr. Kelly Fox, Chief, Stakeholder Relations
Ms. Pam Hopper, Committee Secretary
Ms. Anne Simpson, Managing Investment Director

APPEARANCES CONTINUED

ALSO PRESENT:

Ms. Ashley Dunning, Nossaman LLP

Mr. Larry Woodson, California State Retirees

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PROCEEDINGS

1
2 CHAIRPERSON JONES: I'll call the Board
3 Governance meeting to order. And the first order of
4 business is roll call.

5 Ms. Hopper, please.

6 COMMITTEE SECRETARY HOPPER: Henry Jones?

7 CHAIRPERSON JONES: Here.

8 COMMITTEE SECRETARY HOPPER: Rob Feckner?

9 COMMITTEE MEMBER FECKNER: Good morning.

10 COMMITTEE SECRETARY HOPPER: Frank Ruffino for
11 Fiona Ma?

12 ACTING COMMITTEE MEMBER RUFFINO: Present.

13 COMMITTEE SECRETARY HOPPER: Lisa Middleton?

14 VICE CHAIRPERSON MIDDLETON: Present.

15 COMMITTEE SECRETARY HOPPER: Stacie Olivares?

16 COMMITTEE MEMBER OLIVARES: Here.

17 COMMITTEE SECRETARY HOPPER: Eraina Ortega?

18 COMMITTEE MEMBER ORTEGA: Here.

19 COMMITTEE SECRETARY HOPPER: Jason Perez?

20 COMMITTEE MEMBER PEREZ: Here.

21 COMMITTEE SECRETARY HOPPER: Mr. President, all
22 is in attendance.

23 CHAIRPERSON JONES: Okay. Thank you very much,
24 Ms. Hopper.

25 The next item is the approval of the Board

1 Governance Committee timed agenda. Do I have a motion?

2 VICE CHAIRPERSON MIDDLETON: Move to approve.

3 COMMITTEE MEMBER FECKNER: Second.

4 CHAIRPERSON JONES: Moved by Mrs. Middleton,
5 second by Mr. Feckner.

6 Any discussion?

7 Seeing none.

8 Ms. Hopper, please call the roll.

9 COMMITTEE SECRETARY HOPPER: Rob Feckner?

10 COMMITTEE MEMBER FECKNER: Aye.

11 COMMITTEE SECRETARY HOPPER: Frank Ruffino for
12 Fiona Ma?

13 ACTING COMMITTEE MEMBER RUFFINO: Aye.

14 COMMITTEE SECRETARY HOPPER: Lisa Middleton?

15 VICE CHAIRPERSON MIDDLETON: Aye.

16 COMMITTEE SECRETARY HOPPER: Stacie Olivares?

17 COMMITTEE MEMBER OLIVARES: Aye.

18 COMMITTEE SECRETARY HOPPER: Eraina Ortega?

19 COMMITTEE MEMBER ORTEGA: Aye.

20 COMMITTEE SECRETARY HOPPER: Jason Perez?

21 COMMITTEE MEMBER PEREZ: Aye.

22 COMMITTEE SECRETARY HOPPER: Mr. President, we
23 have Lisa Middleton making the motion, Rob Feckner
24 seconding it. All ayes for Agenda Item 2, timed agenda.

25 CHAIRPERSON JONES: All right. Thank you, Ms.

1 Hopper -- Ms. Hopper. Next item is Executive Reporter.
2 Mr. Jacobs.

3 GENERAL COUNSEL JACOBS: Yes. Good morning,
4 President Jones and Board members. Happy to be here with
5 you this morning. We have two substantive items on the
6 agenda today. The first is whether to make the Pension
7 and Health Benefits Committee a committee of the whole.
8 And the second is a presentation of a new version of a
9 potential amendment to the Board Governance Policy
10 regarding reporting investigations of executive team
11 members to the Board.

12 Ms. Simpson will present both of those items. I
13 would also note that Ashley Dunning, your fiduciary
14 counsel, will be standing by on the second of those items.

15 And that is my executive report.

16 CHAIRPERSON JONES: Thank you, Mr. Jacobs.

17 The next item agenda is Item 4a, approval of the
18 September 15th Board Governance Committee meeting minutes.

19 COMMITTEE MEMBER FECKNER: (Hand raised.)

20 CHAIRPERSON JONES: Moved by Mr. Feckner.

21 COMMITTEE MEMBER FECKNER: Move approval.

22 COMMITTEE MEMBER PEREZ: (Hand raised.)

23 CHAIRPERSON JONES: Second by Mr. Perez.

24 Further discussion?

25 Seeing none.

1 Ms. Hopper, please.

2 COMMITTEE SECRETARY HOPPER: Rob Feckner?

3 COMMITTEE MEMBER FECKNER: Aye.

4 COMMITTEE SECRETARY HOPPER: Frank Ruffino for
5 Fiona Ma?

6 ACTING COMMITTEE MEMBER RUFFINO: Aye.

7 COMMITTEE SECRETARY HOPPER: Lisa Middleton?

8 VICE CHAIRPERSON MIDDLETON: Aye.

9 COMMITTEE SECRETARY HOPPER: Stacie Olivares?

10 COMMITTEE MEMBER OLIVARES: Aye.

11 COMMITTEE SECRETARY HOPPER: Eraina Ortega?

12 COMMITTEE MEMBER ORTEGA: Aye.

13 COMMITTEE SECRETARY HOPPER: Jason Perez?

14 COMMITTEE MEMBER PEREZ: Aye.

15 COMMITTEE SECRETARY HOPPER: Mr. President, we
16 have Rob Feckner making the motion, Jason Perez seconding
17 it for the approval of Item 4a of the Committee meeting
18 minutes.

19 CHAIRPERSON JONES: Okay. Thank you Ms. Hopper.
20 The next item is the information consent items. I have no
21 requests to discuss any of those, Items A -- 5a or 5b. So
22 we will move on to information agenda items, 6a,
23 composition of the Pension and Health Benefits Committee.

24 Mrs. Simpson.

25 MANAGING INVESTMENT DIRECTOR SIMPSON: Good

1 morning, Board members. And thank you, Chair Jones.

2 This item has been prepared in response to a
3 request by Board Member Perez to consider whether the
4 Pension Health[SIC] and Benefits Committee should become a
5 Committee of the whole, wherein all members of the Board
6 would be members.

7 We have -- know that the Board is very familiar
8 with the discussion around committee structures. This was
9 a central part of discussions in the most recent Board
10 self-assessment. So in the item, you'll see that we set
11 out three options for the Committee to consider. The
12 first to retain the status quo, the current arrangements;
13 secondly, to introduce this suggestion into the next Board
14 self-assessment, which will be coming up in the spring of
15 2021; and three, of course, to move ahead with Mr. Perez's
16 suggestion.

17 So with that, thank you.

18 CHAIRPERSON JONES: Okay. Questions from the
19 Committee members or other Board members?

20 I see no requests to speak. This is an
21 information item.

22 Oh, Mr. Feckner.

23 COMMITTEE MEMBER FECKNER: Yes. Thank you, Mr.
24 Chair. You know, I guess I just need to weigh in about
25 the making committees a committee of the whole. I think

1 that negates the purpose of having committees. And I
2 don't think there's any one committee that's more
3 important than the other, so if we would do this with
4 Pension and Health, then I would assume we would need to
5 do that with Board Governance, Risk and Finance. And I
6 think that just does away with a lot of the committee work
7 that we work so hard to get done, and that we at no time
8 discourage or prohibit any Board member from sitting in on
9 any committee meeting or having any input.

10 The only thing is they don't get to vote on
11 Committee day, but they certainly have full access to
12 comments, and commentary, and then they can vote during
13 Board day. So I, for one, just have some concerns about,
14 you know, making it a committee of the whole, because I
15 think it does away with some of the options. And also,
16 for some of the appointed folks, they didn't sign on for
17 doing six committees, so maybe they can't make their
18 schedule work for that. And I think we need to take that
19 into consideration as well.

20 Thank you, Mr. Chair.

21 CHAIRPERSON JONES: Okay. Thank you, Mr.
22 Feckner.

23 Mr. Perez.

24 COMMITTEE MEMBER PEREZ: Thank you.

25 Rob, I agree with you in regards to the

1 committees being important. I think it -- I think the way
2 we run it is kind of -- is not very smooth. It's not very
3 effective. I think if we made it all committees -- each
4 committee a committee of the whole, the Board of
5 Administration could just meet on the items that they need
6 to meet on. They don't need to report back. We wouldn't
7 need to have another set of votes and substitute motions,
8 which if it's done in the committee, it would be done.

9 That's my thinking behind it.

10 CHAIRPERSON JONES: Okay. Ms. Middleton.

11 VICE CHAIRPERSON MIDDLETON: Thank you, Mr.
12 President. We've had a lot of discussion back and forth
13 on these issues, and clearly the Investment Committee is a
14 very different animal. And I understand the point of
15 making the Investment Committee a committee of the whole.
16 I think the Pension and Health Benefits Committee is an
17 extremely important one, but it would be hard to argue
18 that it is more important than any of the other
19 committees. So I would prefer that we leave Pension and
20 Health Benefits as a committee as opposed to making it a
21 committee of the whole.

22 CHAIRPERSON JONES: Okay. Than you, Ms.
23 Middleton. We have a couple of comments -- or questions
24 and comments from other Board members.

25 Mr. Miller.

1 BOARD MEMBER MILLER: Yeah. You know, I've
2 spoken at some length on this in the past. And I think we
3 really need to remember that the whole purpose of creating
4 committees, subcommittees, the whole purpose of delegating
5 is for efficiency and effectiveness. To delegate and to
6 have subcommittees, we have to have trust in other Board
7 members that are assigned to those committees to do that
8 additional work. They are additive. They add value, and
9 efficiency, and effectiveness to our process of the Board.

10 And so just going to committees of the whole, we
11 lose those benefits and we also kind of imply that, you
12 know, without me on every committee, those committees are
13 not going to be as effective and efficient in all cases.
14 And I think that -- that does us a disservice as a Board.
15 I think we need the benefits of having real committees,
16 real subcommittees that add value, and add efficiency and
17 effectiveness.

18 That said, it's not about the importance of the
19 work. This is about process. This is about effectiveness
20 and efficiency. This is about allowing the Board to
21 perform at its best and it's additive. So I would
22 suggest, and I know this will cause some folks to take
23 umbrage, but the decision on the Investment Committee
24 wasn't about the importance, frankly it was about Board
25 dynamics and other aspects. But it really was not about

1 effectiveness or efficiency, because basically going to a
2 committee of the whole for any committee, then all you're
3 doing basically is adding an additional redundancy in your
4 decision-making process, because you no longer have the
5 benefits of an actual committee that is delegated to do
6 some of the heavy lifting before the entire Board weighs
7 in.

8 So, yeah, enough said from me on this subject,
9 but I think -- I hope we will in the future focus more on
10 process and governance, effectiveness and efficiency than
11 on some of the more, I hate to say it, internal politics
12 of things.

13 Thanks

14 CHAIRPERSON JONES: Okay. Thank you, Mr. Miller.
15 Ms. Paquin.

16 ACTING BOARD MEMBER PAQUIN: Thank you, Mr.
17 President. So on behalf of the Controller, she does feel
18 very strongly that the Pension and Health Benefits
19 Committee should be a committee of the whole. Several
20 important conversations going on with the long-term care
21 insurance fund and also with our annual look at health
22 insurance and health rates and trends.

23 And although, most Board members do attend the
24 Committee, even if they're not sitting on the Committee,
25 they lack the ability to vote, to make motions, and so

1 forth. And so for those reasons, we do feel that this is
2 a committee that is going to be facing a lot of very
3 pressing challenges this year. And we do think that all
4 Board members should be seated on this committee.

5 Thank you.

6 CHAIRPERSON JONES: Thank you.

7 Ms. Middleton.

8 VICE CHAIRPERSON MIDDLETON: I've spoken already
9 and I think I may have spoken out of order and I
10 apologize.

11 CHAIRPERSON JONES: Okay. That's it. We do have
12 -- that's it from Board members. I see no further
13 requests from Board members. We do have a request to
14 speak on this item from the public.

15 Mr. Fox.

16 STAKEHOLDER RELATIONS CHIEF FOX: Yes, Mr.
17 President. We have one caller, Mr. Larry Woodson of the
18 California State Retirees.

19 MR. WOODSON: Good morning. Larry Woodson,
20 California State Retirees. Thank you for the opportunity
21 to comment. Can you hear me okay?

22 CHAIRPERSON JONES: Yes.

23 MR. WOODSON: Okay. So I'm commenting on this
24 item, but I'm also -- I apparently didn't get in the queue
25 early enough to comment on 5b, so I will follow that with

1 some comments on that as well. I hope, you know, maybe
2 you'll give me a little extra time, since I wasn't allowed
3 to do it on 5b, but I'll make it quick.

4 So first of all, CSR -- and Tim is not -- Tim
5 Behrens, our President, is not able to join us. I'm
6 speaking on behalf of him and CSR. I -- we endorse the
7 idea of PH -- Pension and Health Benefits being a
8 Committee of the whole. The discussion -- I've been
9 attending committee meetings and Board meetings for five
10 years. And this notion that it's more efficient to have
11 committees be not of the whole is just completely contrary
12 to my observation.

13 It's much more efficient and effective to have
14 all members be able to vote and discuss in-depth at the
15 time that these items are presented to staff. They're not
16 presented and discussed at the same length in Board
17 meetings. And as you've already acknowledged, the
18 Investment Committee has gone back to Committee of the
19 whole, which it operated that way and functioned that way
20 for many, many years quite well, and that -- and more
21 efficiently and effectively, I might add. So that's our
22 position on that.

23 But of great concern -- as great a concern is the
24 schedule and calendar that you just approved for Pension
25 and Health Benefits. About a year ago, the Board asked

1 the staff to go back and review the need for revising its
2 recent reduction to the number of meetings Pension and
3 Health Benefits would hold, which was -- which had been
4 downsized to quarterly. And -- and I -- two long-term
5 Board members, and you know who you are, told me that they
6 didn't feel four was adequate. And since CSR and other
7 stakeholders have given input to increase them. And also,
8 when I first started five years ago, there were eight
9 Pension and Health Benefit Committee meetings. Now, maybe
10 that was excessive, but four is certainly inadequate. And
11 as late as September -- this September in the Board
12 meetings and committee meetings there was some discussion
13 about this and it was raised and I believe, Chairman --

14 CHAIRPERSON JONES: Excuse me, Mr. Woodson -- Mr.
15 Woodson. Ms. Hopper, would you start the clock again for
16 three minutes, because he was speaking on a separate item.

17 Okay. Go ahead, Mr. Woodson.

18 MR. WOODSON: Oh, thank you very much.

19 So as late as the September Board meetings this
20 year, I think the -- one of the Board members -- or this
21 was raised as an issue. And I think it was you, Mr.
22 Jones, that said, well, this isn't on the agenda. We'll
23 put it on the agenda for a later meeting, but we can't
24 discuss it as part of the discussion about the -- you
25 know, the makeup of the Committee, so -- but it hasn't

1 been put on the agenda, and all of a sudden this calendar
2 shows up with quarterly meetings.

3 So I -- I -- you know, I'm perplexed and
4 disappointed that -- because I do feel that the -- the
5 number of issues, the complexity that this Pension and
6 Health Committee has to address, and the work of the
7 staff -- and, by the way, the team -- I'm really -- I'm
8 really happy with the team, but there's a lot of work to
9 be done as we could see from this last meeting. Our
10 stakeholder meeting went two and a half hours, primarily
11 because Pension and Health Benefits had so much on the
12 table.

13 So I would urge you to at least take this up
14 again soon. I hope if you do vote down this committee of
15 the whole issue, I hope you can expand the number of
16 meetings. Thank you for your consideration.

17 CHAIRPERSON JONES: Okay. Thank you, Mr.
18 Woodson. And I think it's important to note, Mr. Woodson,
19 that as we discuss the number of meetings, those are
20 minimums. But whenever there's a need to add an
21 additional meeting, the Committee Chair will work with the
22 staff to agendize those additional meetings. So it's not
23 a hard -- it's not that you can't have additional
24 meetings. So thank you for your comments.

25 Okay. So, Ms. Brown.

1 BOARD MEMBER BROWN: Thank you. Sorry. I had
2 lost connection there for a minute. So I don't want to
3 know -- I don't know if I'm duplicating it, but I also
4 agree that Pension and Health should be a committee of the
5 whole. When I was first on -- when I first became a Board
6 member, I was not on Pension and Health. And I have got
7 to tell you, most of the calls and concerns I had were
8 about Pension and Health.

9 Now, we're moving into even more issues and
10 complex issues, and we've completely redesigned -- the
11 risk adjustment, I was not on when that got canceled, but
12 now we're going on to a new type of adjustment. And it's
13 going to raise the rates for quite a few, I would think
14 more than 50 percent, of the members. And I mean, I don't
15 have the exact numbers, but these issues are so complex.
16 And also the Pension and Health Committee voted yesterday
17 to reduce benefit design, but we don't know what it's
18 going to be. We're going to have to do it in the future.

19 And I thought it was odd, but I just think
20 everybody should be involved in this committee, including
21 being able to make motions and have an active vote.
22 Otherwise, what happens is when it comes back to the
23 Board, I mean, it's literally an oral report go, go, go,
24 aye, aye, no, and that's it. It's really never discussed.
25 And so I think it makes more sense to be a committee of

1 the whole. Thank you.

2 CHAIRPERSON JONES: Okay. Mr. Perez.

3 COMMITTEE MEMBER PEREZ: Yeah. I feel like I
4 have to counter to what Mr. Miller said. President Jones,
5 you know that the last two times we have selected the
6 committees, I've begged you not to put me on Pension and
7 Health, because it's so -- it's so deep and there's just
8 so much information that you have to know. So no, I'm --
9 I'm -- I trust the Board members to do the right thing for
10 what they believe.

11 I won't disagree with the internal politic issue
12 that he mentioned, but I absolutely disagree with the --
13 his point about effectiveness and efficiency. It is not.
14 It's not effective and it's not efficient. We
15 add extra -- excuse me -- we add extra layers of
16 complexity that don't need to be there. And that's it.

17 CHAIRPERSON JONES: Okay. Thank you. Okay. So
18 I see no additional requests to speak on this. And
19 getting a sense from the Committee members this was just
20 an information item. But, of course, if any of the
21 committee members would like to have this discussed
22 further, we could go on, but I see no additional requests.
23 So we would now move on to the next item on the agenda
24 then.

25 Okay. 6b is a information agenda item. Ms.

1 Simpson. The proposed changes to the Board Governance
2 Policy, reporting investigations to the Board.

3 MANAGING INVESTMENT DIRECTOR SIMPSON: Thank you,
4 Chair Jones. As you say, Item 6b is for the Committee to
5 consider a potential revision to the policy which would
6 formalize current practice. It clarifies that the Board
7 retains authority for both oversight and monitoring of
8 investigations and that the Board has delegated that
9 authority to the President and to the Chair of the Risk
10 and Audit Committee.

11 In the language, which is highlighted for your
12 consideration, you'll see that it introduces wording to
13 say that if and when an investigation determines that the
14 allegations are more likely than not true, management
15 would inform the full Board of the investigation.

16 So I'd be happy to answer any questions. Thank
17 you.

18 CHAIRPERSON JONES: Okay. Committee members, are
19 there any questions?

20 Ms. Brown.

21 BOARD MEMBER BROWN: I'm not on the Committee,
22 but -- so no one on the committee has question. All
23 right, so I do.

24 So Ms. Simpson, are you saying that we're not
25 making any changes or are we just pointing out what the

1 current policy is?

2 MANAGING INVESTMENT DIRECTOR SIMPSON: Thank you.
3 The existing practice is the Chief Executive Officer,
4 Marcie Frost, has explained previously is that she keeps
5 the Board leadership informed of these types of
6 developments. By introducing this language into the
7 policy, it gives an opportunity to formalize that practice
8 and ensure that all sides have had an opportunity to
9 consider how asset matters are handled.

10 BOARD MEMBER BROWN: So under this process that's
11 in our Board materials, when would the full Board have
12 been told of the conflict of interest about the -- for the
13 ex-CIO?

14 MANAGING INVESTMENT DIRECTOR SIMPSON: I'm not in
15 a position to answer that specific circumstance. I don't
16 know if Marcie or our General Counsel would like to weigh
17 in there.

18 BOARD MEMBER BROWN: So my -- so my concern is --
19 I think a large number of the Board members were very
20 concerned that we didn't know about this ahead of time,
21 much earlier on in the investigation, since I believe we
22 know the investigation was started.

23 GENERAL COUNSEL JACOBS: Excuse me, President --

24 CHAIRPERSON JONES: Excuse me, Ms. Brown. Excuse
25 me, our General Counsel wants to make a comment.

1 BOARD MEMBER BROWN: Oh, sure.

2 CHAIRPERSON JONES: Go ahead.

3 GENERAL COUNSEL JACOBS: Yeah, I think that
4 you're probably getting into a closed session item that is
5 not appropriate for discussion in open session.

6 BOARD MEMBER BROWN: I don't think I said
7 anything that was closed session, but -- so I just want to
8 make sure that we don't find out, you know, certainly
9 after the press. But I think it's important that we know
10 early on in the -- with this issue. And I don't know that
11 this policy is written here solves the problem we had with
12 the ex-CIO. So with that, I'll leave it there.

13 Thank you.

14 CHAIRPERSON JONES: Okay. Ms. Ortega.

15 COMMITTEE MEMBER ORTEGA: Thank you, Mr. Chair.
16 I am not in support of the amendment that's here. I don't
17 feel like this quite addresses the conversation that we
18 had in a prior discussion. I'll tell you what I would
19 support. The --

20 CHIEF EXECUTIVE OFFICER FROST: Lost her.

21 CHAIRPERSON JONES: Okay. We lost, Ms. Ortega.
22 Ms. Ortega, are you back?

23 Ms. Ortega, can you hear us?

24 COMMITTEE MEMBER ORTEGA: Can you hear me now?

25 CHAIRPERSON JONES: I can hear you now. Would

1 you start over, please?

2 COMMITTEE MEMBER ORTEGA: Yes. So the way the
3 amendment is drafted, as I see it, that the management
4 will be notified -- will notify the Board once it has been
5 determined the allegation is more likely than not to be
6 true. So that language refers to the investigation has
7 already been conducted and it is more likely than not that
8 the allegation is founded.

9 I support something sooner than that, which is
10 for these limited individuals that have been identified in
11 this section, when an allegation is made, typically there
12 is a -- there's pre-investigation work. An investigator
13 will look into an allegation to determine whether or not
14 the -- the issue should have a full investigation. So
15 allegations can be made that are completely baseless and
16 that usually there is a preliminary look into the
17 allegation, and your EEO officer, for example, might say,
18 I couldn't find anything to suggest this is other than
19 somebody has a grudge and so we're not going to go forward
20 with a full investigation.

21 I don't think those types of issues need to come
22 to the Board. But for the limited number of people who
23 are in the section that's identified, if the CEO has
24 reason to believe that a full investigation is necessary,
25 I believe the Board needs to be notified at that point.

1 So that's a step sooner than what's drafted here.

2 CHIEF EXECUTIVE OFFICER FROST: And if I could
3 comment. Ms. Ortega, that's really the intent of that
4 language and maybe it's not the correct language to use in
5 the policy. But the idea was that at the first given
6 point in the review, whether it's a full investigation or
7 a pre-investigation, at the point that we believe that
8 these allegations can be substantiated, either through,
9 you know, testimony through some kind of documentation
10 that we were able to discover, at that point the full
11 Board would be notified. So I think it's the language,
12 but the idea is you would be notified as soon as I believe
13 that more likely than not, you know, we would have to open
14 up that full investigation or that these allegations can
15 be substantiated.

16 COMMITTEE MEMBER ORTEGA: Okay. Thank you. I
17 mean, I think we're in agreement on the policy. It's just
18 that way it's drafted, as I read it, the language that's
19 being used is the language that we would typically use
20 after an investigation has been completed. So I think it
21 needs to be clear that an investigation is going to begin.

22 CHAIRPERSON JONES: Okay. Okay. Good. Good.
23 Ms. Olivares.

24 COMMITTEE MEMBER OLIVARES: Thank you, Mr.
25 President. First of all, my video is going to be going on

1 and off, just to save bandwidth, so we can get through
2 this meeting. And I concur with Ms. Ortega's comments.
3 In addition, as I'm looking at Agenda Item 6b, page one,
4 the analysis paragraph, it says here that the full Board
5 retains authority to oversee and monitor any
6 investigation. And it goes on. It has delegated that
7 authority to the Board President.

8 I'd like to bring Ms. Ashley Dunning forward to
9 comment on that, particularly as it relates to what the
10 risks are to Board -- the Board members, since we have
11 oversight. And if we delegate that authority, what risk
12 does that create to us?

13 CHAIRPERSON JONES: Ms. Dunning. We can't hear
14 you.

15 MS. DUNNING: Can you hear me?

16 CHAIRPERSON JONES: Yes, now we can. Okay.

17 MS. DUNNING: Good morning, Board. You have the
18 authority to delegate certain responsibilities, of course,
19 so long as you retain your oversight. And we talked about
20 that the last time this came to the Board. The question
21 here is at what point you are involved in this monitoring
22 and oversight role. And to Trustee Ortega's point about
23 wanting to be apprised of the investigation once a full
24 investigation is authorized, that certainly seems
25 consistent with your oversight responsibility, so that you

1 would be aware of the investigation. We talked about the
2 risks of compromising the due process rights of your
3 members to full and fair investigations, so you have to be
4 very careful about that and sensitive to the fact that
5 the -- the mere fact that a full investigation is
6 occurring does not suggest that allegations will be
7 substantiated, so there's risk in conveying the
8 information in a way that could result in it becoming
9 public. But I think it's incumbent upon every Board
10 member, as you already know, to maintain these topics
11 confidential.

12 So with that being the baseline of understanding,
13 I think that you comply with your fiduciary obligations of
14 oversight by making the tweak to the language that Ms.
15 Ortega suggested.

16 COMMITTEE MEMBER OLIVARES: Thank you. And, Ms.
17 Dunning, I understand that each Board member brings their
18 own area of expertise. And given that my area of
19 expertise is both insurance and institutional investments,
20 I wonder what risk that creates if I were to delegate my
21 authority to the Board President and the Chair of the Risk
22 and Audit Committee when they're not experts in the
23 investment field. And a large part of the risk that we
24 face as an organization and that our members face has to
25 do with our investment portfolio and conflicts of interest

1 in that space.

2 MS. DUNNING: So you've raised two fiduciary and
3 governance topics in that question. One is the way in
4 which they Board governs itself through the selections of
5 the Board leadership and it is appropriate for the Board
6 to select leaders, such as your President and Vice
7 President, who have broad authorities dealt -- assigned to
8 them to communicate with management on all aspects of the
9 administration and investments of the plan. So that is
10 perfectly appropriate.

11 The other aspect of your question relates to
12 competencies that you each hold, such as your own in the
13 investment arena. And you do have a responsibility as
14 somebody with those particular strengths to share those
15 strengths with the Board and with the committees. So if
16 that means that you are more active in your -- or in the
17 way in which you share your expertise with the rest of say
18 the Investment Committee, that would be consistent with
19 your responsibilities.

20 But it is not inconsistent with your
21 responsibilities as a trustee on the Board to have
22 selected a President who doesn't necessarily have the same
23 level of experience in one aspect of the business of the
24 organization. I hope that responds to your question.

25 COMMITTEE MEMBER OLIVARES: I think it's part of

1 it. I guess where I'm trying to get is that if we're
2 looking -- if there every happens to be another
3 investigation into a potential conflict of interest that
4 regards investment holdings, I'm not comfortable
5 delegating my fiduciary duty, my oversight authority,
6 particularly when it comes to looking at risks to the
7 investment portfolio and conflicts of interest.

8 MS. DUNNING: Okay. Now, I see more where you're
9 going with your question, I think. And the answer to that
10 is that the -- the fact that you have particular expertise
11 does not create a circumstance where you have the
12 responsibility to advise the organization in that area.
13 For example, you may have a number of lawyers on the
14 Board. The fact that you have lawyers on the Board does
15 not make them the lawyer for CalPERS.

16 Similarly, if you have investment professionals
17 on the Board, they are not the investment professionals of
18 CalPERS. They share their expertise in terms of their
19 level of sophistication and understanding as to the topics
20 that are discussed, but they are not the expert who's
21 being retained or referred to in those contexts. And I
22 hope that --

23 COMMITTEE MEMBER OLIVARES: I understand that.

24 MS. DUNNING: -- that example of the lawyer
25 helps. So anyway --

1 COMMITTEE MEMBER OLIVARES: I guess what I'm --
2 how I'm looking at this is this is part of my area of
3 oversight as well, right? So it's the full CalPERS in
4 terms of oversight, but in terms of this being my area of
5 expertise. And I'm trying to understand how I can provide
6 adequate oversight, if I delegate my authority in this
7 regard.

8 MS. DUNNING: Fair enough. And with the approach
9 that's being discussed right now where the full Board in
10 closed session would be apprised of an investigation -- a
11 full investigation of one of these individuals who -- or
12 one of these positions, based on the CEO's determination
13 that that's the appropriate course of action, that would
14 be the forum in which you would share your expertise. You
15 would not, of course, be running the investigation, but
16 you would be hearing --

17 COMMITTEE MEMBER OLIVARES: Of course, right.

18 MS. DUNNING: -- you would be hearing your
19 expertise in the context of that closed session discussion
20 with your fellow Board members and management.

21 COMMITTEE MEMBER OLIVARES: Yeah. My question is
22 prior to that. So prior to a full investigation being
23 commenced, I'm concerned -- and this gets to the
24 sophistication of investments and how complex it can be
25 when there is a conflict of interest. And so this is

1 what's really making me pause here in terms of delegating
2 my oversight authority.

3 MS. DUNNING: Another way to look at it would be
4 do you want to be assuming the responsibility of advising
5 on the correct answer in a conflict of interest context?
6 Because, in fact, it's not a member -- it's not a trustee
7 on the Board who's going to make that ultimate
8 determination. It's going to be whomever is the
9 adjudicatory body. And usually when you're talking about
10 conflicts of interest, it's the FPPC or it's the attorney
11 general.

12 So while your expertise will be very important to
13 weigh in on and it may be that the Board President
14 determines that he or she has a fellow member on the Board
15 with whom that person should consult, because they have
16 such a sophistication over this -- around this area. And
17 it would be permissible for the President, so long as
18 there's not a Bagley-Keene violation, to consult in that
19 context.

20 But I think -- but to my first point, it is not
21 inappropriate for the President and Vice President, who
22 may not have that level of expertise, instead to consult
23 with other experts, say your head of HR or somebody who's
24 been hired by CalPERS to advise on the particular topic.
25 Maybe not to run the investigation, but instead to advise

1 CalPERS on the conflict or whatever the topic is that's
2 being investigated.

3 COMMITTEE MEMBER OLIVARES: I understand that and
4 I'm not talking about running the investigation at all.
5 What I'm talking about is providing insight into
6 particularly the investment piece, which is critical to
7 fund and to our members, prior to the commencement of a
8 full investigation, so that we fully understand if an
9 investigation should be launched. How does that fit
10 within my fiduciary duty and in service to the members.

11 MS. DUNNING: Investigations often do need to be
12 launched, even if a -- even if the one who's launching the
13 investigation is dubious about what the results may be.
14 And so the fact that you may have a -- the fact that you
15 have expertise in this area would not mean that an
16 investigation would not need to be launched, so --

17 COMMITTEE MEMBER OLIVARES: And that's not what
18 I'm saying. I think perhaps I'm not being clear. So I
19 think there's been discussion about Board members being
20 informed once an investigation has been launched, right,
21 once allegation -- allegations have been founded. Prior
22 to that though, there might be some -- something that we
23 miss in terms of there being, for example, complex
24 investment transactions that would actually warrant an
25 investigation. And I do not want to be negligent in my

1 fiduciary duty by delegating oversight when I -- this is
2 my area of expertise. And again, it's a complex area and
3 there's tremendous amounts of risk here --

4 MS. DUNNING: So in your hypothetical Trustee
5 Olivares, are you anticipating that an investigation might
6 not be launched, but had you been consulted, your
7 conclusion would have been there should have been an
8 investigation or the opposite, the investigation
9 launched --

10 COMMITTEE MEMBER OLIVARES: It could go -- it
11 could go either way, quite frankly. So it's -- and I'm
12 not asking for -- I'm not -- my question isn't about -- my
13 question is about my fiduciary duty, my role to our
14 members, right, and safeguarding their interests. And to
15 the extent that, again, there's potential risk for
16 conflict of interest when it comes to our investments.
17 And if a decision is being made about a potential
18 investigation, I think it's important to have insight
19 there.

20 MS. DUNNING: This is a topic that also is one
21 that's appropriate for you and the CEO to discuss
22 separately. So to the extent that the CEO has
23 communication with you about matters where you have
24 particular expertise, that's perfectly appropriate, as
25 long as it's not becoming a bases for a serial meeting.

1 And I'm sure that she values and will reach out to those
2 who have the level of expertise that you're -- you're
3 showing in your particular arena.

4 So that's another way for a board to address what
5 appears to be your concern that you're not complying with
6 your fiduciary responsibilities. You are as you speak out
7 on these topics, and the organization follows up on that
8 by having communications with each of you in your areas of
9 expertise to make sure that you are heard.

10 And, I mean, I welcome if the CEO would like to
11 speak up about that. I feel like I've monopolized a
12 little bit here, but that's -- that's my framework for
13 analyzing your question.

14 COMMITTEE MEMBER OLIVARES: Thank you.

15 CHAIRPERSON JONES: Okay. Good. We have Ms.
16 Middleton.

17 VICE CHAIRPERSON MIDDLETON: Thank you, Mr.
18 President. And I want to thank Ms. Ortega for her
19 comments. I think they were extremely good. I do believe
20 if we move to what she is proposing, then management would
21 notify the full Board once there was a determination that
22 a full investigation is warranted. That's a very bright
23 line that clearly defines at the moment at which the full
24 board would need to be notified, because we would have
25 authorized a full investigation. So I support that. And

1 I support in part because it is both an improvement over
2 the previous process, and it is something that defines a
3 very straightforward bright line.

4 If you accept that though, the previous -- the
5 middle sentence of number 18 becomes, I think,
6 inoperative, because as it relates now it says, "CalPERS
7 management will inform the Board President and the Chair
8 of the Risk and Audit Committee upon commencement of such
9 investigation". And what we are defining is that we will
10 be informing the full Board on commencement of an
11 investigation. And what I would suggest is we substitute
12 that, that the Board President and the Chair of the Risk
13 and Audit Committee are notified whenever there is an
14 allegation. And that's -- that would be my proposed
15 substitute language.

16 And then I have a question for Mr. Jacobs and Ms.
17 Dunning. I think one of the most important words in
18 section 18 is the word "monitor". And I would like to
19 have Ms. Dunning and Mr. Jacobs define what they believe
20 the word "monitor" means in terms of Board responsibility,
21 both what we should do and should not do in carrying out
22 our monitoring responsibility.

23 GENERAL COUNSEL JACOBS: Well, I'm happy to go
24 first. I don't have much of a substantive response
25 though. I guess what I would say, Ms. Middleton, is that

1 monitor means be aware of and, based on the circumstances,
2 kind of consult with the CEO or management, as the case
3 may be, to determine that it's being handled
4 appropriate -- appropriately.

5 CHAIRPERSON JONES: Okay. Ms. Dunning.

6 MS. DUNNING: I think that's right. And I would
7 -- a monitor is obviously part of your fiduciary
8 obligations with respect to many aspects of the
9 organization's business, so it's both being apprised of or
10 aware of invest -- of these matters, receiving sufficient
11 reporting from those who are conducting an investigation,
12 in this instance, relating to the investigation, and being
13 provided an opportunity to ask questions. So whether that
14 opportunity to ask questions is through questions you may
15 ask of the General Counsel in a privileged context or
16 through closed sessions that are agendized for discussion,
17 all aspects of this being receiving reports and having an
18 opportunity to ask questions about them is what is
19 appropriate in the context of monitoring.

20 VICE CHAIRPERSON MIDDLETON: And I appreciate
21 that. And all of the -- that language sounds very
22 different than directing or managing the course of an
23 investigation, is that correct?

24 MS. DUNNING: Absolutely, yes.

25 VICE CHAIRPERSON MIDDLETON: Thank you.

1 CHAIRPERSON JONES: Okay. Ms. Ortega.

2 COMMITTEE MEMBER ORTEGA: Thank you, Mr. Chair.

3 I just wanted to comment on the questions that Ms.
4 Olivares was raising. I think my sense of how the Board
5 feels comfortable with the kind of issue that she's
6 raising is we have to be certain that we have policies
7 about conflict of interest and clear direction to the CEO,
8 so that when the -- when an allegation is made, they
9 have -- they, the staff, HR, whomever might be involved,
10 have the right set of criteria to review, to determine
11 whether the investigation has to go forward. And my sense
12 of how I feel comfortable with that delegation is that we,
13 as a Board, have set those expectations and then we expect
14 the staff to carry them out. I think that -- making sure
15 we're comfortable that we've set that criteria and given
16 that direction to the staff is step one.

17 I think Ms. Middleton's proposal together with
18 that provides even more protection, if that's the
19 direction the Board wants to go in, because then there's
20 an opportunity to have -- or for members of the Board, if
21 it's the Chair and Vice Chair to have some interaction
22 with the staff to be sure that that's being carried out.

23 I think, in my experience, there are many more
24 allegations than there are investigations. So it makes me
25 very nervous about going down a road of constantly being

1 informed of allegations, because I also think that there
2 can be circumstances where there's then an unfair aura
3 around an employee maybe where those allegations might
4 have come up. So I think it is really important to keep
5 the number of people who know about allegations to a
6 limited number and then you -- when you have determined
7 that something more serious has likely occurred, then you
8 share that with a broader group.

9 CHAIRPERSON JONES: Okay. Thank you. And so I
10 think we've, you know, had a number of excellent comments
11 regarding this issue, and this is an informational item,
12 so what I'm going to suggest unless the Board has --
13 Committee members have a different opinion is that the
14 comments that Ms. Ortega and Ms. Middleton made would work
15 with staff to rewrite that section and to incorporate
16 those comments, and then bring this back to a future Board
17 meeting for an action. So unless there are concerns -- I
18 see some comments now.

19 Mr. Feckner.

20 COMMITTEE MEMBER FECKNER: Yes. Thank you, Mr.
21 Chair. I just think it's important to weigh in here. I
22 do agree with some of the comments from Ms. Ortega and
23 most of the comments from Ms. Middleton. I do, however,
24 want to caution us that, you know, you can't unring the
25 bell. So if something is said about an employee before

1 it's been investigated, we all know how this -- this rumor
2 mill works. And once it gets out there, it's hard to pull
3 that back. That's why we hire a CEO. The Board has
4 direct control of the CEO. The CEO should be able to
5 determine whether or not a full investigation is
6 warranted, then inform the full Board if that's what
7 the -- the point is.

8 But trying to do that piecemeal ahead of time I
9 think is problematic. I think it raises personnel issues.
10 And I caution us to -- any of us to consider that we're
11 experts. I mean, we're all here as lay Board members and
12 we're here to do the bidding of our organization. But at
13 the same time, you know, I don't think any of us are any
14 better off than any other person. We all have our own
15 ideas, our own concepts, our own background and knowledge.
16 But, you know, none of us are experts in these -- in all
17 of these fields. So I just caution us to look at that.

18 But at the same time, that's why we have a CEO to
19 make those determinations. I don't want to see us on the
20 ground floor of any investigation, because we all know how
21 that information leaks. The next thing you know we have a
22 whole bunch of people that are -- either harmed their
23 careers, et cetera. We want to make sure that we're very
24 careful doing that. So thank you, Mr. Chair.

25 CHAIRPERSON JONES: Okay. Thank you. Okay. We

1 have one more question.

2 Ms. Olivares.

3 COMMITTEE MEMBER OLIVARES: Thank you, Mr.
4 President. And I'd like to thank Ms. Ortega for a very
5 eloquent way of restating what I was trying to get at.
6 I -- as we go forward with this Governance item and then
7 we're also going forward with conflicts of interest
8 concerns and perhaps even looking at blind trusts, I want
9 to be sure that we're able to establish a very robust
10 policy that prevents conflicts of interest. And that
11 would require early identification.

12 So in addition to Ms. Middleton and Ms. Ortega
13 working with the CEO and the rest of the team, I will also
14 be doing so.

15 CHAIRPERSON JONES: Sure. We welcome comments
16 from any Board, member as long as --

17 COMMITTEE MEMBER OLIVARES: Thank you.

18 CHAIRPERSON JONES: -- as we're not creating a
19 serial meeting, as Ms. Dunning so appropriately stated.
20 So the CEO could receive input from any Board member, as
21 long as we're not communicating with each other regarding
22 those issues, okay?

23 Okay. So this will come back in the future as an
24 action item with the changes based on this discussion. So
25 seeing no additional questions on this item, we now will

1 move to -- and there's no public comment -- are there any
2 public comments on this, Mr. Fox?

3 STAKEHOLDER RELATIONS CHIEF FOX: No, Mr.
4 President. There are no callers at this point.

5 CHAIRPERSON JONES: Okay. Thank you.

6 Okay. So thank you. And then we move to Item
7 6c. And thank you, Ms. Dunning. We will move to --

8 MS. DUNNING: Thank you.

9 CHAIRPERSON JONES: -- Item 6c, the summary of
10 Committee direction. Mr. Jacobs.

11 GENERAL COUNSEL JACOBS: Yes, Mr. Jones. I think
12 you just stated what it is.

13 CHAIRPERSON JONES: Okay.

14 GENERAL COUNSEL JACOBS: On 6b we're going to
15 bring that back as an item -- action item based on the
16 changes that have been discussed this morning and that is
17 all I have.

18 GENERAL COUNSEL JACOBS: Okay.

19 CHAIRPERSON JONES: I think you got it, Mr.
20 Jacobs.

21 Okay. So we will move now to Item 6d, public
22 comment.

23 Mr. Fox, do we have any requests to speak on that
24 item?

25 STAKEHOLDER RELATIONS CHIEF FOX: Mr. President,

1 we have no callers at this time.

2 CHAIRPERSON JONES: Okay. Thank you very much.
3 And so we have a -- that's the end of the Board Governance
4 Committee. And our Board of Administration, let's allow a
5 10-minute break before we start our Board of
6 Administration meeting. So let's say five minutes after
7 11:00. Okay, 11:05. Okay. See you guys then.

8 Thank you.

9 (Thereupon California Public Employees'
10 Retirement System, Board Governance Committee
11 meeting adjourned at 10:52 a.m.)

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