

SPECIAL MEETING OF THE BOARD OF ADMINISTRATION
RETIREMENT BOARD
WATER AND POWER EMPLOYEES' RETIREMENT PLAN

MINUTES – JANUARY 15, 2004

Present:

Javier Romero	President
Lilly Calvache	Vice-President
Dan Mirisola	Board Member
David H. Wiggs	General Manager
Ron Vazquez	Chief Financial Officer
Michael T. Moore	Retiree Member
Gerard McCallum II	Board Member

Absent:

Duamel Vellon	Retirement Plan Manager
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Others Present:

Lesley Kuo	Investment Officer
Neil Rue	Pension Consulting Alliance (PCA)
Sarah Bernstein	Pension Consulting Alliance (PCA)
Mike Wilkinson	Deputy City Attorney

President Romero called the meeting to order at 10:07 a.m. after the Pledge of Allegiance.

[Pledge of Allegiance]

President Romero indicated there was a full Board present and welcomed Mr. Gerard McCallum II to the Board.

PUBLIC COMMENTS

Board President Romero recognized Mr. Vince Foley, President of Retired Employees Association and a retiree of the Department of Water and Power.

Mr. Foley approached the podium and introduced himself. He stated he was representing 10,000 retired employees of the Department. Mr. Foley expressed these retirees would face the consequence of sending a total of \$8.4 million in additional taxes to both the IRS and the state, due to the unintentional action of the Retirement Board. He indicated the management of the Retirement Plan should have presented to the Board what the consequences for the retirees would have been for payment pension checks the day before when the 1st fell on a weekend or a holiday, which would eventually effect the payment date for the December 31st pension check. Mr. Foley then expressed it was recognized this was going to be a problem by the Retirement staff, who, having been previously warned, neither informed the retirees about the impending situation nor brought it to the attention of the Board. He suggested the

Board today take a least three actions: 1) if possible, correct the problem so only 12 pay periods will be reported for 2003 2) to have the Board pass a resolution amending its previous one and saying the Retirement Plan will pay the day before for the benefit of all the retirees, except the December 31st pay period, this check being dated, funds available January 1st and 3) take the severest possible measure against the absent Retirement Plan Manager, Mr. Duamel Vellon, the same man who 7 months prior attempted to avoid giving retirees an extra percentage point from the C.O.L.A. bank, to avoid a cost of living increase, until the Retirement Board and the City Attorney's Office told him the extra percentage point was not discretionary but mandatory, a measure which may deem necessary the excision of a man whose actions resembled those of a fire-starter.

President Romero then recognized Mr. James Derry, a Department of Water and Power retiree.

Mr. Derry approached the podium and expressed he would like to reiterate what Mr. Foley stated, which was, the current situation the retirees are facing could have been avoided and this is an indication of the mismanagement which has been taking place with the Retirement Plan. He noted his tax accountant notified him of an additional \$3400 he would have to pay in taxes, \$2200 to the federal government and \$1200 to the state, due to the present situation. Mr. Derry shared he considered himself fortunate to have the resources to pay additional bill from the government, but other retirees, who might have to pay larger amounts of additional taxes, might not and due to this he wanted to present to the Board a possible solution to the current situation, which was proposed by his tax accountant (revealed through doing research regarding tax laws): the Retirement Board can choose to place the 13th pay period on the balance sheet as prepaid retirement, then issue the 2003 1099R's for only 12 periods, and finally carry out the Board's former resolution to exempt the December 31st pension check as the one the Board will pay, funds available, on January 1st. He concluded the Board might want to investigate this particular issue since his tax accountant firmly believes the Board can remedy the current situation in this fashion.

President Romero opened discussion of item 1.

1. Consideration of 2003 tax reporting through form 1099R for DWP retirees (calendar year 2003) and possible reconsideration of the Plan's monthly pension payments schedule for 2004.

President Romero inquired if Mr. Wilkinson was aware of the possible solution presented by Mr. Derry's tax accountant. Mr. Wilkinson then responded though the City Attorney's Office is not an expert in area of taxes, the report from the City Attorney's Office (previously made available to the Board members) expresses their opinion which was the money from 13th pay period had to be reported. He noted the information received from Duamel, and Duamel's report (a report indicating conversations with the IRS on two different occasions and which Mr. Wilkinson had independently reviewed) mentioning advice given by the IRS on this issue, both confirm the City Attorney's position stating the money paid and actually made available to the retirees from the 13th pay period had to be reported in 2003.

Mr. Vazquez then indicated the avenues he had gone through to see what could be done about the current situation, including looking at information sent via e-mail from Vince Foley, having the situation researched by PricewaterhouseCoopers, contacting Deloitte & Touche, calling the Tax Payer Advocate, considering the IRS's lack of flexibility regarding their tax regulations, and a suggestion which states the Board could pursue a letter ruling from the IRS to the extent the Board cannot get tax relief in any other way. He stated his advice would be not to mail the 1099R's until all the options have been evaluated to see if anything can be done.

President Romero expressed his concern over the likelihood of many retirees calling, possibly to complain about not receiving their 1099R's statements, it would be nice to know what window of time the Board has, before it has to send out these statements. Mr. Vazquez then expressed the current state of the investigation regarding the possible solutions to the current situation. He stated he has yet to work with the City Attorney's Office to get a letter ruling from the IRS, he was waiting for a response from the Tax Payer Advocate regarding a time frame for sending out the 1099R's, and he was waiting for PricewaterhouseCoopers and Deloitte & Touche to call regarding handling the money from the 13th pay period as a prepayment.

Ms. Calvache indicated there is a due date for sending out the 1099R's. Mr. Vazquez stated this date was January 31st and he hoped the issue will be resolved and the 1099R's will be sent out prior to this.

President Romero suggested deferring the examination of all aspects of this issue to the law firm who presently had contracts with the Retirement Board, including Bob Klausner's office, due to their expertise in the area of taxes. Mr. Vazquez commented it might be fruitful to pursue this course of action for him to be notified of the outcome. President Romero then indicated Ms. Kuo would handle the referral of this issue to the law firms.

Mr. Moore expressed how disturbed he was regarding the current situation and then stated there were two issues, in his opinion, which needed to be addressed: 1) trying to repair the damage which would occur if the 1099R's would be sent out reporting 13 pay-periods for 2003 (the damage being the consequences of a higher tax brackets, penalties for not withholding enough during the year, and loss of eligibility for certain social programs) and 2) determining what was the error, why did it happen, who was responsible for it, and taking action to resolve these so they do not occur again. Mr. Moore noted, with regard to the first issue, unless the Board changes the policy, extra tax burden would not be recoverable in the form of reduced income in the future until not only the retiree dies but their beneficiary dies and then it would be the estate which would be the ultimate beneficiary of lower taxes on one less month's payment. He felt two courses of action should be taken, the first being to notify the retirees in order to make them aware of the situation in order to give them the opportunity to prepare for the consequences which the Board would not be able to prevent. Mr. Moore explained the second course of action, if the Board chose to pursue the 11 month approach sending out an official letter, to satisfy the IRS and cover retirees in their income tax situations, indicating an error or oversight on the part of the Retirement Plan (the result being retirees having had their pensions seemingly raised, not reflecting their true pension).

He then stated, with regard to the second issue, he felt the Retirement Plan Manager had a fiduciary responsibility to notify the Retirement Board in advance concerning matters, such as the one currently facing the Board, so the Board could take appropriate action in order to fulfill its administrative and fiduciary responsibilities. Mr. Moore expressed potential financial harm to the retirees does constitute a fiduciary issue, as far as he was concerned. He commented according to e-mails received from Mr. Vellon and a conference call including Mr. Vellon and other Board members, Mr. Vellon as of yet does not realize that an error has occurred. Due to these considerations, Mr. Moore then presented the Board with questions in by the Retirement Plan Manager to be answered within 2 weeks addressing, the following questions: 1) When did he first realize his implementation of the Board's policy would entail 13 pay periods in the 2003 calendar year 2) What discussion did he have with staff about how this matter might have been handled? 3) What options did he and the staff consider? 4) Why did he not inform the full Board? 5) Why was no notice provided to the retirees? The report would also ask the Retirement Plan Manager to explain fully why he believes no error was made, on his part, in handling this matter (addressing the fiduciary and governance issues previously mentioned); to put forth recommendations stating what should be done to avoid the present situation in the future; and mention any other relevant issues.

President Romero then noted the 2 week deadline for the report from Mr. Vellon would not be reasonable due to the personal issues he was presently dealing with. Mr. Moore then suggested a deadline of 2 weeks from when Mr. Vellon returns as a more reasonable timeframe for this report to be completed.

Mr. Wiggs felt the actions of the Board were executed with good intentions, not realizing what consequences might eventually occur, and he supported the idea of a report from the Retirement Plan Manager, definitely before the next Retirement Board meeting, in order to understand why the current situation occurred. He also conveyed his firm belief of someone being fully in charge of making sure the Board did everything possible to look for ideas to resolve the current tax issue. Mr. Wiggs added If no resolution was possible, then the Board should take steps to make sure the current tax situation did not occur next year.

President Romero indicated he, Mr. Vazquez, Ms. Kuo, and Mr. Wilkinson would meet to discuss the current situation in order to see what solutions they could find and then defer the tax issue to the Board's fiduciary attorney, while Mr. Vazquez awaits responses from the those he had contacted regarding the tax issue and the current situation. He noted the urgency of having a response to the current situation, in light of the fact the 1099R's needed to be sent out by January 31st, and he urged the Board and Ms. Kuo to take action today.

Mr. Wilkinson stated he understood the time pressure placed on the Board and both he and the City Attorney's Office would do their part in this matter, which included contacting Mr. Klausner, the Board' fiduciary attorney, despite this attorney not being hired particularly for tax purposes. Mr. Mirisola attempted to allay any concerns Mr. Wilkinson had regarding Mr. Klausner's ability to handle tax issues stating in many of Mr. Klausner's conferences, one will hear him quite frequently mention an additional

(13th) paycheck for a given year. He thus expressed his firm belief of Mr. Klausner's firm having had to deal with this as far as a tax issue on more than one occasion.

Mr. Vazquez noted the misleading appearance of the schedule of payments, for the calendar year 2003, which was presented to the Board after it passed its resolution in November of 2002. He commented it would have been difficult for the Board to have taken action based on this schedule (reproduced on page 1.6 of the Board Agenda package) since it only showed 12 pension payments being made in the calendar year 2003.

Ms. Kuo indicated there were 2 more public comments for item 1 and these were permitted upon approval of Mr. Wilkinson.

President Romero recognized Ms. Dorothy Fuller, a Department of Water and Power retiree.

Ms. Fuller approached the podium. She expressed the need for the Retirement Board to take into account all of the previous comments and not to neglect an important function of both the Retirement Plan and the Retirement Board, which was to handle retiree calls relative to their concerns or problems. Ms. Fuller stated one action which the Board could immediately carry out, in order to prevent some of the telephone calls, would be to send a letter to all retirees (this week if possible) indicating a problem has occurred, the Board is looking into ways to resolve the current situation, the Board hopes to have the situation resolved before the end of January, and due to this the 1099R's may be mailed out later than usual.

President Romero recognized Mr. Nick Friesen, a Department of Water and Power retiree, who also desired to comment on item 1.

Mr. Friesen approached the podium. He at first expressed his support for the statements and comments made by the Board Retiree Representative, Mr. Moore, who neatly encapsulated and summarized the problems currently being faced. Mr. Friesen then communicated though a rush judgment should not be made by the Retirement Board, and due to federal law mandating the 1099R's being sent out by January 31st, swift and direct action must be taken by the Board.

Mr. Wiggs commented the suggestion to notify the retirees in writing, stating the Retirement Board is exhausting all possibilities to resolve the current situation, was a laudable one and someone associated with the Retirement Plan should draft a letter towards this end. He expressed this letter should be part of the action taken by the Board today. He also emphasized the need for the answers given by Retirement staff, in response to calls by retirees concerning the current situation, to be consistent with what would be stated in this letter.

Mr. McCallum stressed the need to evaluate the sequence of letters which would be sent out due to the difficulty of reproduction of corrected 1099R's, in light of only 11 working days being left to obtain a ruling from the IRS and then having ITS recalculate the 1099R's. He noted these letters might not reflect what the Board can actually do. President Romero then inquired as to the time frame for this reproduction by Retirement

Staff. Mr. Vasquez referred this inquiry to Ms. Kuo who then made the suggestion for Mr. Conney Williams, Retirement Section supervisor of the Retirement Office, who also oversees the processing of the 1099R's, to provide the Board with an answer.

President Romero then recognized Mr. Williams.

Mr. Williams approached the podium. He stated the Retirement Staff under his supervision already has had to deal with an inordinate amount of problems due to a 13th month's payment for 2003, which included the calculations which had to be made. Mr. Williams continued by stating staff are facing tremendous pressure to meet the deadline to send out the 1099R's and to consider reproducing the 1099R's in order for them to reflect 12 months of payments, instead of 13, would further exacerbate the situation. He explained this would require reordering additional stock (enough to reproduce approximately 10,000 statements), extra time to validate data, and the various and possibly complex tasks which the ITS Department would have to carry out. Mr. Williams reiterated a tremendous burden would be placed upon Retirement staff to execute this reproduction before the January 31st deadline.

Mr. Wiggs inquired if there were a process to file corrected 1099R's late, since it seemed to him the IRS would have set-up a special process for a case such as this. Mr. Williams responded he would not be the person to answer this question, due to not being knowledgeable on tax issues.

Mr. Moore inquired if there are delays in sending out the 1099R's: 1) what would be the penalties for these delays and 2) how significant would these penalties be. He then stated while the Board was exploring what it could do to resolve the current situation, it should consider the penalties incurred if it decided to send out the 1099R's based on 12 months of payments (the necessity for this consideration being the Board having to satisfy two laws, one being a fiduciary responsibility to 10,000 retirees and the other being the technical compliance with general IRS rules). Mr. Moore noted there might be tax penalties the Retirement Board might be willing to absorb in consultation with the IRS as part of the solution to the current problem.

Mr. Wiggs expressed his opinion in this matter was the same as Mr. Mirisola when he noted this was probably not the first time in which a situation such as this had occurred. He stated guidance for this situation must be available and the Board needs to obtain it.

Mr. Calvache urged the Board to contact ITS as soon as possible so it could tell the Board, in the event the 1099R's had to be reproduced, what ITS would need from the Board, which might include running another data tape. Ms. Calvache noted Mr. Dominic Lerma, ITS Systems Support for the Retirement Office, was in the audience.

President Romero then recognized Mr. Lerma.

Mr. Lerma approached the podium. He addressed the concerns of both Mr. Williams and Ms. Calvache, explaining ITS did not double order the 1099R stock due to them not anticipating a problem of this nature. Mr. Lerma further explained it would take approximately 4 days to complete the process of both reproducing the 1099R's and

examining them to ensure they contained the correct figures. He commented if ITS had the stock, the entire process would be completed in 2 weeks.

Mr. Wiggs then emphasized all of this indicates the Board needs to get an individual of the Board's choice, spending all their time, considering everything mentioned thus far (keeping the Board regularly advised of their progress), to determine what the Board needs to do to resolve the current problem. Mr. Wiggs commented Mr. Moore's made a few noteworthy suggestions such as the Board filing amendments and taking penalties. He further commented though the Board does not know enough about what can be done and needs to be done in this situation, it knows it wants to resolve the current problem, it needs to notify the retirees, and it needs one person to examine the possible outcomes of the current situation.

Mr. Mirisola recommended, since Mr. Vazquez works in accounting and has access to the figures as well as tax personnel and staff, he should take over the lead in investigating what the avenues, options, repercussion, and penalties would be to get this issue resolved. He also recommended the attorney defend the Board's decision and to investigate what case law defends the decision being made by this Board.

President Romero stated the intent Mr. Mirisola expressed regarding trying to make the retiree's whole by re-issuing the 1099's as a 12 month pay period was a concern felt by each Board member, but he did not feel comfortable with Mr. Mirisola's recommendation (of paying penalties) preferring to defer to tax counsel and seek legal advice, as this Board does not know what the penalties would be and could be a significant impact to the Plan, and felt this would be a break in the fiduciary duty of this Board.

Mr. McCallum added, this Board needs to evaluate what would this decision mean from a liability standpoint and, without having this information, he did not see how the Board could arbitrarily make this decision without knowing the liabilities in terms of penalties as this is money being spent from the Plan fund. He stated the Board needs to prudently assign one person to go through this and if a special meeting has to be called, to make decisions along the way, the Board has to make themselves available so this can be achieved expeditiously. President Romero concurred with both Mr. Mirisola and Mr. McCallum on the recommendation Mr. Vazquez take charge of this situation and work with staff and Mr. Wilkinson and to keep him informed. Mr. Vazquez responded he will.

Mr. Mirisola requested he too be informed, he stated had he known this was going on three weeks ago, Mr. Mirisola would have been a lot more active regarding the situation. He indicated he e-mailed Ms. Cheryl Press the legal counsel of the treasury department of the IRS in Washington DC to get an answer, but in an e-mail he received today was told she was at a conference. He added once he can get a hold of her, she could possibly provide the answers needed as she is very knowledgeable and is one who makes some of these rules.

Mr. Wiggs summarized what was mentioned regarding taking lead and action with this issue. He moved Mr. Vazquez take the lead on exploring with legal counsel every conceivable way to correct this problem as soon as possible and keep all Board

members advised and to again work with attorneys to draft a formal notice or letter informing all retiree's of the situation and get this out as soon as possible, and finally, to pursue the inquiry of what and why this happened using the draft memo Mr. Moore presented earlier as the basis for these answers and have it presented back to the Board no later than the next Board meeting and, if called for, does not mind an amendment be issued requesting this information two weeks from the time Mr. Vellon returns to the office. Seconded by Mr. Mirisola.

Mr. Wilkinson stated he had a concern regarding the Brown Act, while it is certainly important Board members become aware of important issues, discussions between meetings, anything, which may be construed, as a serial meeting is a serious Brown Act problem, and wanted the Board to be aware of this. Mr. Wiggs indicated he was aware, but just wanted the President to be made aware and advised of information so the President can call a special meeting to act when he deems necessary. Mr. Vazquez stated if this motion passes, his intent is to keep all Board members informed by e-mail as to what actions have been taken in resolving this matter and this is all. Ms. Calvache added is a special Board meeting was needed President Romero would do so at that time.

President Romero stated there was a motion by Mr. Wiggs, seconded by Mr. Mirisola and carried unanimously after the following vote:

Ayes: Romero, Moore, Mirisola, Calvache, Wiggs, McCallum, and Vazquez

Nays: None

Mr. Wiggs left the meeting at 10:55 a.m.

President Romero indicated another public comment regarding item 1. He then recognized Ms. Ellen Shimamoto

Ms. Shimamoto a Department of Water & Power Utility Administrator, approached the podium. She stated she had three comments 1) the letter which would be sent to the retirees' should iterate, on their paycheck for January 2004, not knowing what year-to-date information will be put on this check, which may be confusing to the retirees if one does not know what will be reported on the 1099 2) many times retirees will take their last check (usually the November check) and go straight to their tax person, so the sooner this letter goes out to the retirees the better, and the Board might want to mention if they used the check in November they may want to go back to their tax person and 3) ITS staff and Retirement staff will need much support with this because in order to resolve this problem they may need to start running those 1099's simultaneously and the Board is asking ITS and Retirement staff to do an enormous job as it is a lot of work to get these 1099's out and generally there use to be two months to do it and this year they only had one month to try and get it out and so to ask them to not only have had just one month and now asking them to do it another way in a short amount of time is a monumental feat and this may impact them while trying to process the January retirement checks. Ms. Shimamoto noted she wanted to bring this to the attention of the Board to be better able to direct staff.

2. Consideration of Responses to the Plan's Request for Proposal (RFP) for Small Cap Value Domestic Equity Managers and possible selection of a manageable number to be invited for interview.

President Romero gave a brief summary of item 2 and invited Mr. Neil Rue and Dr. Sarah Bernstein of Pension Consulting Alliance (PCA) to approach the table.

Mr. Vazquez inquired how this matter would be handled. President Romero stated Plan staff has been directed to handle this.

Mr. Neil Rue reviewed the Board is moving towards external management of their equity assets and this is one of several searches PCA is doing. He noted this assignment was advertised in 2003 and got pushed back a little bit and PCA has reviewed all responses to the Request for Proposal (RFP) as well as receiving additional and updated information from the managers. Mr. Rue indicated a summary of the manager's responses is included in the agenda packet before the Board. He gave a brief explanation of the listing provided to the Board. Mr. Rue stated the Board has established minimum qualifications and he would go over which of these managers have met all or some of those qualifications. He noted PCA was very stringent on whether or not the firms met the minimum qualifications and PCA had them stipulate any rationale relative to meeting those qualifications. Mr. Rue stated PCA inquired of those firms meeting the qualifications if there were any caveats to their answers. He indicated only two managers met the qualifications with no caveats at all.

Mr. Rue stated he wanted to highlight some of the managers before the Board made a decision. He reported Earnest Partners is rated very well in their investment capabilities but are also a minority firm, noting this is the first time a minority firm has hit any of the Board's search list. He mentioned they did not meet the qualifications, because they have some issues with the level of insurance requirements stipulated, but they are a minority firm and it may be worthwhile to bring them in and listen to them.

Mr. Rue explained Atlanta Capital did not meet the minimum qualifications because they do not have three portfolio's in this mandate greater than \$100 million dollars, and this is important as the Plan's assignment will be approximately \$80 million in size, so the Board will want to work with a firm doing some business in this range. He mentioned according to the RFP, Atlanta Capital does have an assignment with a public fund, one account worth \$72 million and several other public funds worth \$15 million and some charitable organizations at \$50 million, still not meeting the Board's minimum size qualification. President Romero inquired about the Plan's minimum size qualification. Mr. Rue responded three portfolio accounts of \$100 million or more.

Mr. Rue explained Boston Partners is a unit of Lobeko and in the RFP had not met the qualifications of three portfolio's of \$100 million, but as of December 31, 2003 they actually do now meet the qualifications with three portfolio's. He indicated they have two corporate accounts and a mutual fund in a separate small value product, which meets the qualification of the MQ's (minimum qualification) at approximately \$400 million, given the appreciation happening in the market, small caps are up

approximately 40-50%. Mr. Rue reported there was an SEC issue settled back in 2002 and it had nothing to do with the small cap assignment.

Mr. Rue stated DePrince Race Zollo noted they did not meet the MQ due to a very minor SEC infraction, but the issue has been settled in 2002 with no fines involved. He explained the SEC issue involved one of DePrince's principals was on the Board of a company where DePrince held stock and the Board member recused himself of all the holdings and of the position and fines were not involved. Mr. Rue stated given only this minor situation DePrince Race Zollo would be ranked high up there as well.

Mr. Vazquez requested PCA address Peregrine, as they are ranked number three. Mr. Rue stated Peregrine does not release information on their accounts, therefore PCA could not go one way or the other on the accounts they have in terms of the \$100 million dollar requirement. He noted Peregrine runs approximately \$150 million dollars in public funds, but PCA does not know how many public funds this is and Peregrine does run several billion dollars in other products as well. Mr. Rue stated Peregrine is a reasonable firm, but PCA does not have enough information.

President Romero inquired if Peregrine could possibly meet the MQ's. Mr. Rue stated on the small cap value side, Peregrine probably does not, but they probably have accounts of \$100 million dollars or more in other products.

Mr. Vazquez inquired State Street Research meets the qualifications without caveats and are ranked 9th, what is this based on. Mr. Rue stated based on organizational aspects, investment performance historically, and portfolio characteristics, did not rate high on those matters, in PCA's view, as other firms. He noted the 9th ranking is a middle ranking, since there were 16 original respondents and 4 of the original firms chose not to resubmit when the RFP was updated.

Mr. Moore inquired about Fisher Investments. Mr. Rue cited several other issues, including LA City Affirmative Action Plan, and section X & XI (which were insurance issues, which the Board might not be able to avoid) are the caveats which would prevent the Board from meeting its goals with this firm. Mr. Rue responded the Risk Manager has been taking a very hard stance in terms of the indemnification issues which might arise. He continued by stating the precedent has been, more often than not, for the Investment Managers to decide in the Board's favor when pressured. But in cases such as Earnest Partners, it would be up to the Board to give some direction to the Risk Manager due to Earnest Partners' minority status.

Mr. Moore inquired as to what Robeco was. Mr. Rue responded Robeco is a firm. Mr. Moore inquired the reason for Boston Partners being censured by the SEC. Mr. Rue responded there were some issues concerning one of their fixed income products, but it was for a product unrelated to the one the Board was currently concerned with. Mr. Moore inquired if this issue was not to be compared with the other issues the Board was concerned with. Mr. Rue responded in the affirmative and stated he was giving the Board the rationale behind possibly considering some of the other candidates. Mr. Moore expressed though he was not privy to the opinions of the rest of the Board, he was personally comfortable with interviewing the firms highlighted by PCA and then making a decision (after more details about these firms had been provided).

President Romero inquired as to the identity of the firms highlighted in gray on the Questionnaire Response Summary. Mr. Rue clarified the identity of the highlighted firms by stating the ones in gray are the ones PCA believes have the best investment approach (when one considers their investment product). He indicated State Street Research, TCW, Boston Partners, and DePrince Race Zollo are the 4 candidates Mr. Rue considered reasonable to interview

Mr. Moore inquired of Mr. Rue what he indicated concerning these 4 firms. Mr. Rue explained State Street and TCW both completely meet the Board's qualifications and they rank well. He explained regarding Boston Partners, when the reasons for them not qualifying are examined, they did not have 3 portfolios at \$100 million upon the report date, however, they did after PCA made certain considerations, such as the appreciation of the markets. Mr. Rue further explained regarding the SEC issue, this was an issue with an unrelated product, settled 18 months ago. He explained regarding DePrince Race Zollo, the SEC infraction was a minor one with no fines involved (the only consequence being the SEC telling one of the principals of the firm to cleanup a certain matter, which they dealt with over a year ago).

Mr. Mirisola then mentioned the minority status of Earnest Partners which prompted Mr. Rue to express, regarding Earnest Partners, their ranking of 2 by PCA was not based on their minority status. He further expressed they have been developing a good reputation and should also be considered by the Board for interview, which would increase the total number of candidates to 5. President Romero inquired what is their status regarding the subrogation issues. Mr. Rue responded the Board will most likely have to enter into negotiations with this firm, regarding these issues. President Romero then expressed the need of the Board to have an immediate answer from this firm on this issue, which was the reason for the questionnaire, in order for the Board to not waste time.

Mr. Vazquez stated, regarding some of the other managers which the Board chose to interview and pursue, these also had a some insurance and subrogation issues and after the Board interviewed them, they resolved these issues. He then expressed his desire to interview Earnest Partners firm and if they were unable to meet the Board's insurance qualifications, then the Board would disqualify this firm. Mr. Vazquez then inquired regarding Boston Partners and DePrince Race Zollo, if N's (for No) in the first column of the questionnaire (whether or not the firm indicated they met the minimum qualifications) were due to their previous issues with the SEC. Mr. Rue responded the only time the Board would have to be concerned about the response in this column would be when a Y (for Yes) appeared in it, prompting the Board to ask whether the firm truly met all of the minimum qualifications. Mr. Vazquez then clarified his question by inquiring should the Y's appear in the column. Mr. Rue then responded, for both of these firms, the Board could change the N (No) in the 1st column to a Y (Yes), in light of the information he had given the Board today. Mr. Vazquez expressed he felt much more comfortable, if for these 2 firms, Y's appeared in the 1st column. Mr. Rue explained what appeared in the table is what the firm indicated as to whether they meet of the minimum qualifications (MQ), based on how these firms answered the MQ sheet sent by the Board (if they met in every possible way the "yes" conditions, a Y would appear in the 1st column, PCA being very clear about this). He noted regarding Boston

Partners and DePrince Race Zollo, due to their minor issues with the SEC, they did not meet the exact definition of the MQ's, but the information he presented would allow the Board to say these firms met the minimum qualifications, provided the Board was comfortable with this information (keeping in mind the SEC infractions are old and had been dealt with).

Mr. McCallum inquired if the sole reason for N's appearing in the 1st column for both of these firms was due to the SEC infractions. Mr. Rue indicated the MQ sheets sent out to prospective candidates had a question, which stated "within the last 3 years, has your firm been censured by the SEC" to which the firms responded either "yes" or "no." He explained if the their answer is yes, then the firm fails to meet the MQ's (this would not look favorable for the firm), therefore, this is the reason for N's appearing in the 1st column for both Boston Partners and DePrince Race Zollo, however, they have either resolved their issues with the SEC or their issues are very minor. Mr. Rue concluded this is how these firms responded to the MQ sheets by presenting this information to the Board and then inquiring how the Board feels about these SEC issues, hoping what the Board would then be saying is these really are not issues for the Board.

President Romero then recognize Mr. Ken Brooks, a representative of Boston Partners.

Mr. Brooks approached the podium, introduced himself, and attempted to clarify the question put forth by Mr. Vazquez as "if Boston Partners had to answer today whether or not they met the MQ's, what would be their response." He explained today, Boston Partners would answer "yes" since the firm does have 3 portfolios over \$100 million and regarding the SEC infraction, the firm would be able to state this issue has been settled. Mr. Rue commented after 3 years, this issue should no longer be a concern for the Board. Mr. Brooks expressed he believed the intent behind Mr. Rue's comments was would this infraction, today, be an issue which would prevent the Board from reaching their investment goals with Boston Partners. He stated the answer to this question would be "no."

President Romero inquired of Ms. Kuo where the Board stood on the million dollar issue with TCW. Ms. Kuo stated the Retirement Staff is still working on the issue and her portion of the assignment was nearly complete. She explained she is still waiting for Mario Ignacio to present the final draft and also for the failed trade. Ms. Kuo elaborated Retirement Staff inquired of many investment managers and normal industry practice dictates no negotiations on what occurred 7 days prior and once an error or something not owned is discovered one of two actions can be taken: 1) the broker is contacted to determine if the trade can be cancelled (only a short period of time is available for this and there is only a possibility of cancellation) or 2) to buy back what was traded (without negotiations) and then advertise the security at the current market price.

President Romero then inquired was the trade T + 2 or T + 3. Ms. Kuo responded corporate bonds are always T + 3. President Romero then inquired, since the discovery concerning TCW was made on the 7th day, which was outside the T + 3 window, this is not the normal practice. Ms. Kuo responded in the affirmative. President Romero then expressed he had reservations concerning TCW.

Mr. Vazquez noted he did speak yesterday with Mr. Ignacio regarding this issue and what TCW did was not standard practice. He explained if a security is sold, which is not owned by the seller, this security needs to be provided to the buyer unless the buyer states the seller does not need to. Mr. Vazquez continued to explain if the seller does not have the security, they would have to somehow purchase this, give it to the buyer, and incur the resulting financial consequences. He noted, by examining such things as market prices, TCW's assessment determined the cost to be approximately \$370,000 (this assessment having been validated from the information TCW provided), which one might recommend the Board pursue the recovery of, in some way.

Mr. Wilkinson commented any further discussion on an item which was not found in the Board agenda, would be more properly discussed at future time. President Romero then voiced his disagreement, stating what was being discussed was relevant for determining whether the Board would interview TCW, citing the Board's fiduciary duties. Mr. Wilkinson responded his comment was referring only to decisions, which might be made by the Board regarding an earlier issue.

Mr. Moore, apologized to Ms. Kuo, stating it was he who indicated TCW was following standard industry practice regarding their aforementioned actions. Ms. Kuo stated a letter sent to the Retirement Plan by TCW, also indicated TCW's actions were standard industry practice. Mr. Moore then suggested, to President Romero, if TCW were also considered as a candidate for interview, it would encourage TCW to positively negotiate on the security involved.

President Romero then inquired of the Board how many firms would it wished to consider for interview. Mr. Vazquez recommended the Board interview 5 candidates: State Street Research, Earnest Partners, Boston Partners, DePrince Race Zollo, and TCW. He noted TCW would be included in the candidate pool pending resolution of their outstanding item discussed.

President Romero stated there was a motion by Mr. Vazquez, seconded by Mr. Mirisola and carried unanimously after the following vote:

Ayes: Romero, Moore, Mirisola, Calvache, McCallum, and Vazquez

Nays: None

Mr. Mirisola expressed to President Romero his desire to reopen item 1 for discussion, due to recently learning of attorney Bob Klausner's possible solution to the 1099 reporting problem (Mr. Mirisola having recently contacted Mr. Klausner by cell phone). He added Mr. Klausner was awaiting a phone call from Mr. Wilkinson to discuss this solution. Mr. Mirisola elaborated one possible solution Mr. Klausner put forth was to declare the 13th payment in error to the IRS and demand repayment as a technicality (by demanding repayment, the next payment would not be required since it had already been paid)

Mr. Wilkinson then commented he was concerned with further discussion of item 1, at this point, since the Board had moved to other issues and some of the Board members present at the start of the meeting (who had an interest in item 1) had left the meeting and he expressed once the meeting had adjourned, he could call Mr. Klausner. Mr.

Mirisola expressed the meeting is open until it has been adjourned, no item on the agenda is closed during the meeting, and an item can be reopened by the Board at any time during the meeting. He felt it was important all those concerned with the 1099R problem were made aware of Mr. Klausner's solution. He offered to give Mr. Vazquez Mr. Klausner's cell phone number. Mr. Vazquez indicated both he and Mr. Wilkinson would contact Mr. Klausner after the meeting had adjourned.

3. Consideration of Amendment to the Plan's Statement of Investment Guidelines to provide for Active Small Cap Value Domestic Equity Guidelines (recommended by Plan Consultant PCA).

President Romero introduced item 3 and inquired if there was any discussion related to this item.

Mr. Moore inquired if the only changes, which were previously made to this package, were the ones highlighted and which relate to the Small Cap Value (beginning on page 21 of the Plan's investment guidelines). Ms. Kuo responded in the affirmative and added noted pages 3.24 to 3.27 of the Board Agenda packet reflect the changes.

Mr. Vazquez expressed the only comment he had was on the Active Small Cap amendment/guideline on page 3.24 & 3.26. He stated all the words indicating a plurality of portfolios should be singularized, since there is only one portfolio. Mr. Rue commented Mr. Vellon, in the past had defined this term as "Manager A," and if the Board continued with this convention, the terms in question would then be singularized. Mr. Rue noted "Manager(s)" on the top of page 3.24 of the Board packet would then read "Manager [A]" (which would be consistent with the terminology previously used by Mr. Vellon) and result in every occurrence of the term "manager" being singular.

President Romero inquired if there was further discussion on item 3. Mr. Vazquez inquired if page 3.28 of the Board Agenda packet was intentionally made blank. Ms. Calvache responded in the affirmative and indicated nothing was wrong with this page.

Mr. More then moved approval of the amendments to the Plan's Investment Guidelines, seconded by Ms. Calvache and carried unanimously after the following vote:

Ayes: Romero, Moore, Mirisola, Calvache, McCallum, and Vazquez

Nays: None

4. Litigation status update – MFS letter of December 30, 2003 (information only)

President Romero introduced item 4 and inquired if there were any public comments. Ms. Kuo replied in the affirmative. President Romero recognized Ms. Lisa Jones, President of Institutional Business for MFS Investment Management.

Ms. Jones approached the podium, introduced herself, and also introduced Mr. Jack O'Connor, MFS's Director of North American Sales. She expressed she desired to recognize the importance of a decision to hire an investment manager and all of the work which goes into this decision. Ms. Jones stated, in the last 90 days, the SEC began investigations of the Mutual Fund industry and MFS has been embroiled in this investigation. Ms. Jones expressed she desired the Board to know MFS's case, among the SEC investigations, had not been settled, since it was not a black and white case, compared to cases of some of the other firms within these investigations. She noted through these investigations, several things have been learned, such as market timing is no longer tolerated, yet legal; late trading and special deals are illegal; and trading by portfolio managers for their own personal gain is both unethical and intolerable. Ms. Jones stated, concerning MFS, the mutual fund issues are simple: 1) there were no allegations with portfolio managers trading for their own personal gain 2) none of the allegations suggest there has been late trading on any of the MFS funds and 3) there were no special deals with hedge funds or brokerage firms.

Ms. Jones stated the allegations and the investigation, regarding MFS, concerns MFS's prospectus language. She elaborated MFS had and continues to have the position of not allowing market timing in its funds, where it negatively impacts the share holders and MFS's prospectus language was inconsistent with this position. Ms. Jones noted, due to this inconsistency, MFS has taken quick action to correct the language in the prospectus and has also hired outside experts to confirm, if there had been any occurrences of market timing in the portfolios of concern, did these negatively impact the shareholders. She further noted the reports thus far from these experts indicate any instances of market timing has not negatively impacted the shareholders.

Ms. Jones concluded the current situation of MFS, with regard to the SEC mutual fund issues, is continuing discussion with the regulators surrounding MFS's prospectus language. She requested, taking into consideration 2003 being a very solid year for absolute returns in the market place and MFS's own outlook for the market for 2004 as being very encouraging. She added MFS stands before the Retirement Board to ask for its continued confidence in appointing MFS as the Board's Large Cap Value Manager.

Mr. Vazquez requested, regarding this item, to the extent their views change, regarding the memorandum sent to the Board on December 30th mentioning their conclusion, PCA update this as it would see necessary. Mr. Rue indicated PCA would do this.

Mr. Moore then inquired the Board had currently received from PCA memos stating, both with respect to MFS and INVESCO, the Board should search for other firms which would handle their functions for the Retirement Plan. He expressed this being the case, where is the Board regarding a decision on this issue. President Romero noted this issue would be an item for discussion on the agenda for the January 21, 2004 Retirement Board meeting.

President Romero inquired if there was further discussion on item 4 and there was none.

Mr. Mirisola expressed one idea to add an item, named "Old Business," to the next Retirement Board Agenda, which would allow the Board to discuss anything the Board

had previously discussed and would satisfy the requirements of the Brown Act. Mr. Wilkinson advised against this. Mr. Mirisola then expressed he felt the Board currently had no way of dealing with many previously discussed, yet active matters, unless these appeared as an agenda item for a Board meeting. He commented the intent of the Brown act is neither to keep the Board from carrying out business nor fulfilling its fiduciary obligations to the Retirement Plan. Mr. Mirisola then inquired of Mr. Wilkinson how he would advise the Board to itemize the agenda so it could discuss previously discussed matters of great concern to the Board.

Mr. Wilkinson suggested other retirement plans have an agenda item, for each meeting, called "Future Agenda Items," and when this item is reached items of interest to the Board would be mentioned and the Board would deal with these at the next meeting. He noted the Board would not enter into in depth discussions on a matter but would do things such as identify areas of interest, state any concerns regarding this area, and have Retirement Staff provide reports (as an aid) regarding this area. He indicated this procedure would result in no violations of the Brown act.

Ms. Calvache indicated she understood this was a procedure already used by the Board in a modified form. Mr. Wilkinson explained the suggested procedure would be used for Board member to identify items, which would be discussed in a future Board meeting. President Romero noted this is not necessary, since any Board member can direct Retirement Plan staff to put an item on a future Board agenda, without having the item identified at a Board meeting.

Mr. Mirisola commented the suggested procedure would provide the Board with an opportunity to know, with regard to the opinions of the Board members, what the status of a certain item would be. Mr. Moore expressed he saw no problem Mr. Wilkinson's suggestion since this would give the Board an opportunity to determine what items the Board felt should appear on the next Board agenda.

Ms. Calvache expressed she was still unclear as to the difference between what Mr. Wilkinson suggested and what the Board already did. Mr. Wilkinson explained the suggestion he made was what worked for other retirement boards and this suggestion might not work for this Retirement Board. He added the Board could handle this issue in any legal way it desired.

Dr. Sarah Bernstein, a PCA representative, explained Mr. Wilkinson's suggestion would provide the Board with a more formal, yet legal procedure to discuss previously discussed items. Ms. Calvache then commented the issue would be resolved by the Board stating its desire for a certain item (for discussion) to be placed on the next Board agenda. Mr. Mirisola noted Board members, who were not present when a certain item was mentioned for future discussion, would desire to be present when this item was actually discussed.

President Romero stated for Ms. Kuo to record this item as open with no further discussions at this point.

5. Letter from Fred Alger dated December 22, 2003 (information only)

President Romero introduced item 5 and inquired if there was information or discussion regarding the letter from Fred Alger and there was none.

**6. Press release by Janus Capital Group (Parent Company of Intech)
(information only)**

President Romero introduced item 6 and inquired if there was discussion regarding the press release by Janus Capital Group with respect to Intech and there was none.

The Board meeting was adjourned at 11:38 A.M.

JAVIER ROMERO
President

DUAMEL VELLON
Secretary

Regina Luna
Acting Recording Secretary