

**EMPLOYEES' RETIREMENT SYSTEM OF THE CITY OF MILWAUKEE
ANNUITY AND PENSION BOARD**

Minutes of the Regular Meeting
held October 22, 2024 via teleconference

The meeting was called to order at 9:02 a.m.

Board Members Present: Matthew Bell, Chair
 Bill Christianson
 Deborah Ford
 Molly King
 Rudolph Konrad

Board Members Not Present: Timothy Heling (excused)
 Thomas Klusman (excused)
 Nik Kovac (arrived 9:02 a.m.)

Retirement System Staff Present: Jerry Allen, Executive Director
 Melody Johnson, Deputy Director
 David Silber, Chief Investment Officer
 Erich Sauer, Deputy Chief Investment Officer
 Thomas Courtright, Pension Investment Analyst – II.
 Aaron Shew, Pension Investment Analyst – II.
 Daniel Gopalan, Chief Financial Officer
 Jeff Shober, Chief Technology Officer
 Gust Petropoulos, Deputy Director – Disability
 Mary Turk, Business Operations Analyst
 Jan Wills, Board Stenographer

Others Present: Bryant Ferguson, Reinhart Boerner Van Deuren; David Zee, Callan; Lauren Albanese, Financial Investment News; Patrick McClain, Travis Gresham, City Attorney's Office; Terry Siddiqui, DS Consulting, Inc., eight members of the public called in to the meeting.

Regular Meeting.

Approval of Minutes.

Regular Meeting Held July 30, 2024. Mr. Bell noted the minutes were held over due to a question from Mr. Klusman. Mr. Allen added that Mr. Klusman was agreeable with the revision where he quoted an NCPERS pamphlet. It was moved by Mr. Kovac, seconded by Ms. King, and unanimously carried, to approve the Regular Meeting Held July 30, 2024.

Regular Meeting Held September 24, 2024. It was moved by Mr. Bell, seconded by Mr. Konrad, and unanimously carried, to approve the Regular Meeting Held September 24, 2024.

Chief Investment Officer Report.

Mr. Bell advised that the Annuity and Pension Board may vote to convene in closed session on the following item (II.A.), as provided in Section 19.85(1)(e), Wisconsin State Statutes, to deliberate or negotiate the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session. The Board may then vote to reconvene in open session following the closed session.

It was moved by Mr. Christianson, seconded by Ms. Ford, and unanimously carried, to convene in closed session. The motion prevailed by the following roll call vote: AYES: Mses. Ford and King; Messrs. Bell, Christianson, Konrad, and Kovac. NOES: None.

The Board convened in closed session at 9:07 a.m.

The Board reconvened in open session at 9:16 a.m.

Approval of Apogem Private Equity Fund XI, L.P. Side Letter. It was moved by Ms. King, seconded by Ms. Ford, and unanimously carried, to approve the Approval of Apogem Private Equity Fund XI, L.P. Side Letter.

Approval of Loomis Sayles Guideline Change. Mr. Sauer discussed the memo presented to the Board which is in regard to the Loomis Sayles Guideline Change for a merger that Dish Network is involved in. He said Dish Network was approached by a company called EchoStar and Dish bondholders have an option to convert their securities into new securities issued by EchoStar or the new merged entity. Mr. Sauer stated Loomis was to participate in that security exchange because it will be a stronger entity and the new securities will have better collateral. He said the Loomis guidelines do not have language referencing whether or not Loomis can participate in these types of transactions. Loomis is proposing to add that language to accept securities as part of an exchange. Mr. Sauer said this was discussed with Callan who said these transactions are becoming more common. He said Callan and Staff is supportive of this. Mr. Silber noted this was a time-sensitive issue for Loomis so it is on today's agenda rather than the November 7 Investment Committee Meeting agenda. It was moved by Mr. Bell, seconded by Mr. Christianson, and unanimously carried, to approve the Approval of Loomis Sayles Guideline Change.

Approval of Loomis Sayles Guideline Recommendation. Mr. Sauer said this item is also related to the Dish merger. He said the Dish bonds are in the 3% downgraded securities bucket so Loomis is allowed to hold up to 3% in securities that are downgraded below B- and B3. Mr. Sauer said the value of the Dish bonds spiked within the last month and certain of the bonds are up over 50% which has caused Loomis to exceed the 3% limit based on the value of the Dish bonds going up. He said Loomis believes there is still meaningful upside to these bonds, and has requested permission to exceed the 3% limit so they are not forced to sell these bonds. It was moved by Mr. Konrad, seconded by Mr. Christianson, and unanimously carried, to approve the Approval of Loomis Sayles Guideline Recommendation. Discussion ensued.

As a matter of information, Board members received the October 22, 2024 Performance Update. Mr. Sauer said the Fund as of September 30, 2024, had a value of \$6.06 billion dollars.

He said the Fund return of 1.3% in September, net of fees, underperformed the blended benchmark by approximately 47 basis points. Mr. Sauer said the main drivers of relative performance were Manager Selection with Private Equity detracting 37 basis points and Style Bias with Public Equity, primarily Small and Value Bias, detracting 11 basis points. He said the Fund has underperformed the benchmark in the year-to-date and one-year time periods, while outperforming in the longer time periods shown. Mr. Sauer said as of October 21, 2024, the Fund return is down 0.7% month-to-date, bringing the year-to-date return to up 7.8%, net of fees, and the Fund value to \$6.02 billion. He noted seven out of 15 active mandates are outperforming year-to-date. Mr. Sauer said the Fixed Income, Absolute Return and Real Assets asset classes are outperforming their respective benchmarks year-to-date. He said year-to-date, the Fund has seen a change in the value of investments of \$457.6 million, paid benefits and expenses of \$382.3 million, and has received contributions of \$239.0 million. Mr. Sauer concluded they have not yet determined whether to set up monthly withdrawals this month as this meeting falls earlier in the month.

New Business.

Retirements, Death Claims, and Refunds (September). Mr. Allen presented the following activity for the month of September 2024.

Administrative Withdrawal	\$17,716.69
Full Refund	\$96,292.22
Active Death Benefits reported	\$0.00
Deferred Death	\$0.00
Deferred Death-Member Only Refund	\$0.00
Ordinary Death Benefits reported	\$56,693.22
Retired Death Benefits reported	\$22,515.03
Survivor Death – Termination Benefits reported	\$7,992.32
Refund of Member Contributions paid	\$51,528.87

It was moved by Mr. Bell, seconded by Mr. Christianson, and unanimously carried, to approve the Retirements, Death Claims, and Refunds report for September 2024.

Conference Requests – October 2024 Board Meeting. Mr. Allen said there were no conference requests this month.

Medical Reports.

Mr. Allen and Mr. Petropolous presented certifications (October 2024) of the Fire and Police Medical Panel Physicians and the Medical Council relative to Duty & Ordinary Disability Retirement benefits as follows:

All Duty & Ordinary Disability Applications & Re-examinations (October).

<u>Police – Re-examinations – Duty</u>	<u>Recommendation</u>
Alejandro Arce	Approval
Michael Pendergast	Approval
<u>Police – Re-examinations – Ordinary</u>	<u>Recommendation</u>
Ruby Esqueda	Approval
Mark Johnson	Approval
Todd Rendon	Approval
<u>Fire – Re-examinations – Duty</u>	<u>Recommendation</u>
Christopher Gauthier	Approval
Andrew Korducki	Approval
Walter Price	Approval
<u>General City – Applications – Duty</u>	<u>Recommendation</u>
Yolanda Thomas	Denial
<u>General City – Re-examinations – Duty</u>	<u>Recommendation</u>
Tina Swanson	Approval
<u>General City – Applications – Ordinary</u>	<u>Recommendation</u>
Yolanda Thomas	Approval
Effective 05/25/2024	
<u>General City – Re-examinations – Ordinary</u>	<u>Recommendation</u>
Valerie Chapman	Approval

It was moved by Ms. Ford, seconded by Mr. Konrad, and unanimously carried, to approve the Duty & Ordinary Disability Applications & Re-examinations for October.

Unfinished Business.

Approval of Annual Financial Statements For Year Ended December 31, 2023. Mr. Allen noted Mr. Gopalan, ERS CFO, and he asking the Board to approve the annual financial statements for last year. He mentioned the basic financial statements are an element of the ACFR. Mr. Gopalan said the ACFR is a more comprehensive financial report consisting of:

- The management discussion and analysis,
- The basic financial statements which include the statement of change, the income statement, and the statement of net position which is the balance sheet. He stated part of the basic financial statements are the notes as well,
- the required supplementary information,
- the statistics section.

He concluded the basic financial statements are the income statement, balance sheet, and the notes.

It was moved by Ms. King, seconded by Mr. Christianson and unanimously carried, to approve the Approval of Annual Financial Statements For Year Ended December 31, 2023.

Please be advised that the Annuity and Pension Board may vote to convene in closed session on the following item (V.B.) as provided in Section 19.85(1)(e), Wisconsin State Statutes, to deliberate or negotiate the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session. The Board may then vote to reconvene in open session following the closed session.

The Board did not convene in closed session as noticed.

Pending Legal Opinions and Service Requests Report. Mr. Allen said there were many inquiries that came in after the adoption of Act 12 regarding what would happen with rehires after they had left City or City agency employment. Mr. McClain said the lengthy opinion was issued in September. He noted there were two takeaways from this opinion, the first being the City Attorney's Office interpreted the language of Section 241 of Act 12 which is now codified in Section 14 of Chapter 396 of the Laws of 1937. Mr. McClain reminded the Board that the Laws of 1937 are the enabling legislation for the creation of the ERS pension trust as well as defining the membership eligibility criteria for ERS membership. He said Act 12 modified or added an express exclusion criteria to the definition of employee in that law which had the effect of limiting who was eligible to join the ERS. Mr. McClain said this opinion interpreted that language which was a bit wordy, but it was concluded that the new language covers any employee of the City or City agency who was hired or re-hired on or after January 1st, 2024 to a position that the person did not occupy as an active employee on December 31, 2023. He said the practical effect of section 241 and that interpretation means that most City employees hired after December 31, 2023 will be enrolled in the WRS instead of the ERS. Mr. McClain said the only individuals eligible for re-enrollment in the ERS who are returning to City employment after December 31, 2023 are individuals who held the same position on December 31, 2023. He said the second conclusion reached by the opinion is essentially that Act 12's pension-related provisions were a legitimate exercise of legislative authority. Mr. McClain said the question posed to the City Attorney's Office was whether Act 12 violated the contractual rights of any ERS member and it was determined that

the right that could be implicated by Act 12 was the right of an inactive, separated ERS member to resume active ERS membership upon re-employment with the City. He said this required the City attorneys to focus on the contract law under the Wisconsin constitution distilled down. Essentially, he said, Wisconsin jurisprudence has interpreted the Wisconsin constitution to allow the State Legislature to impair existing contracts if there is a significant and legitimate purpose for that legislation. Mr. McClain said the opinion concludes that regardless of whether ERS members have a contractual right to resume active ERS membership during future periods of employment, Act 12 would still be upheld as a legitimate exercise of legislative authority. He said in reaching this conclusion, they made a few observations, the first being that they were unable to determine conclusively whether there is, in fact, a right for ERS members to resume active membership upon re-employment. Mr. McClain added that this question was unique in that the holders of this right would have been separated from City employment and inactive members of the ERS, essentially what is referred to as a deferred member. He said there is no case law on this issue and it is difficult to make a conclusive determination as to whether such a right exists. Mr. McClain said the more recent cases from the Wisconsin Court of Appeals and the Wisconsin Supreme Court create skepticism as to whether a right exists. He said those courts have been reluctant to identify present contractual rights to future benefit accruals in various contexts, particularly related to health insurance and in certain circumstances, pension benefits. Mr. McClain said the second notable observation is that even if there were a contractual impairment by a substitution of WRS benefits for ERS benefits, it is a compensating fact that would serve to mitigate the degree of the impairment. He stated, as noted in the opinion, the costs and the benefits provided by the WRS and ERS are not identical, but they are similar. Mr. McClain said, in addition to that, ERS members who are enrolled in the WRS based on future employment, do receive some additional perks related to their ERS benefits, specifically adjustment to final average salary. He noted because the benefits of WRS and ERS are similar, the Court would view any related contractual impairment with less scrutiny than it otherwise would have. Mr. McClain commented on the third and final observation and said the most clear conclusion related to the contract laws, is that even if the ERS members have this hypothetical right, Act 12 clearly furthers this significant, legitimate public purpose, such that they are confident the Court would uphold it as a legitimate exercise of legislative authority. He said the most concrete indicator to confirm this conclusion is a 2014 Wisconsin Supreme Court case called Madison Teachers, upholding 2011 Wisconsin Act 10 which prohibited collective bargaining over pension benefits by General City employees and also prohibited employers from paying the employee's share of the pension contribution. Mr. McClain stated just like the events that preceded Act 12, the Court considered the events preceding Act 10, which it described as a period of fiscal uncertainty, and the Wisconsin Supreme Court made the observation that pension costs were threatening the City's ability to maintain staffing levels. He said at length in the opinion, there was a legislative record built that essentially confirmed the presence of those two factors – the so-called fiscal cliff facing the City of Milwaukee leading up to Act 12 which mirrored the fiscal uncertainty that preceded Act 10, and based on that similar set of conditions back in 2014, the Supreme Court of Wisconsin concluded that Act 10 was a legitimate act of legislative authority, based on two significant state interests furthered by the legislation. The first of these, he stated, is that the State has an interest in maintaining uniform regulations of public pension plans in order to reduce fiscal strain and the second is that the state has an interest in maintaining a functioning civil service system. Mr. McClain said because those interests are present to an equal degree in the considerations leading up to Act 12, as they were leading up to Act 10, the City Attorney's office opinion concludes that, if subject to review, a Court would rather clearly, we are confident of this

conclusion, confirm that Act 12 was a legitimate exercise of legislative authority. He said, in summary, the opinion does two things – it provides guidance on how to sort new hires into either the WRS or the ERS and also confirms that Act 12 was a proper exercise of legislative authority. Discussion ensued.

Pending Legislation Report. Mr. Allen stated there are no items to report on Pending Legislation.

Executive Director’s Report – Inventory of ERS Projects. As a matter of information, Staff presented a report on the ERS projects and updated the Board on ERS activities, a copy of which is on file with the ERS.

Informational.

Mr. Bell advised that the Annuity and Pension Board may vote to convene in closed session on the following item (VI.A.) as provided in Section 19.85(1)(g), Wisconsin State Statutes, to confer with legal counsel concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved. The Board may then vote to reconvene in open session following the closed session.

It was moved by Mr. Christianson, seconded by Ms. Ford, and unanimously carried, to convene in closed session. The motion prevailed by the following roll call vote: AYES: Mses. Ford and King; Messrs. Bell, Christianson, Konrad, and Kovac. NOES: None.

The Board convened in closed session at 10:32 a.m.

The Board reconvened in open session at 10:48 a.m.

- 1) Pending Litigation Report.
- 2) Conferences.
- 3) Class Action Income 2024.
- 4) Minutes of the Administration & Operations Committee Meeting Held September 19, 2024.

The following is a list of activities since the last Board meeting, copies sent with meeting notice and attached to minutes:

- 5) Report on Bills.
- 6) Deployment of Assets.
- 7) Securities Lending Revenue and Budget Report.
- 8) Preliminary Performance Report and Asset Allocation.

Mr. Bell accepted and placed the Informational items on file.

There being no further business to come before the meeting, it was moved by Ms. Ford and seconded by Ms. King to adjourn the meeting.

Mr. Bell adjourned the meeting at 10:49 a.m.

Bernard J. Allen
Secretary and Executive Director

NOTE: All proceedings of the Annuity and Pension Board Meetings and related Committee Meetings are recorded. All recordings and material mentioned herein are on file in the office of the Employees' Retirement System, 789 N. Water Street, Suite 300.)