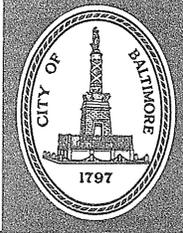


CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor



FIRE AND POLICE EMPLOYEES'
RETIREMENT SYSTEM

THOMAS P. TANEYHILL, CPA, Executive Director
7 E. Redwood Street
19th Floor
Baltimore, Maryland 21202

February 22, 2011

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549
Re: SEC File Number S7-45-10
Release No. 34-63576

City of Baltimore Fire and Police Employees' Retirement System – Comments

Dear Ms. Murphy:

As counsel to the City of Baltimore Fire and Police Employees' Retirement System (the System), we are writing in response to the Commission's request for comment regarding the interpretation of the definition of "municipal advisor" set forth in the above Release, to respectfully urge that the Commission: (1) treat governing boards of public pension plans such as the System and all individuals elected or appointed to serve on those boards, as an inherent part of the "municipal entity" for purposes of 15 U.S.C. §78o-4, (2) view public pension plan boards delegating their investment duties to regulated investment professionals as receiving, as opposed to providing, investment advice to municipal entities, and (3) not distinguish between different types of public pension trustees depending on whether they are appointed, elected, or serving *ex officio*.

I. The System

The System, which is codified in the Baltimore City Code, Art. 22, § 29 *et seq.* (the statute), was established by the City in 1962, and covers any officer or employee of the Police Department or Fire Department of the City, as well as certain uniformed officers of the State Aviation Administration and Maryland Transportation Authority. The System is a component unit of the City of Baltimore and is included in the City's financial report as a specially-funded, constituent agency of the City.

The System serves approximately a total of 10,600 members and beneficiaries: 4,600 active members and 6,000 retirees and beneficiaries. As of June 30, 2010, the System's market value of assets was approximately \$1.8 billion.



II. The Board and Its Responsibilities

The System is governed by an 11-member Board of Trustees (the Board) comprised of:

- 4 *ex officio* members - the City Comptroller, the Police Commissioner the Fire Chief and the City's Director of Finance
- 3 members appointed by the Mayor
- 1 member elected by the active members of the Police Department
- 1 member elected by the retired members of the Police Department
- 1 member elected by the active members of the Fire Department, and
- 1 member elected by the retired members of the Fire Department.

Elected and appointed trustees each serve a 4-year term. Art. 22, §33(b). Board members are not compensated for their service on behalf of the System. Art. 22, §33(d). Board members are expressly deemed to serve in a fiduciary capacity. Art. 22, §33(q)(2).

The Board's duties and responsibilities are established by the statute. Responsibilities of the Board under the statute range from establishing policies governing the administration of the retirement plan, making benefit determinations and managing the investments of the System's assets. The Board has investment authority under a "prudent person" standard and the duty to periodically establish investment policies. Art. 22, §35(h). In order to assist the Board in carrying out its investment authority, the Board is authorized to retain qualified investment advisors while retaining its ultimate investment authority. Art. 22, §43.

No member of the Board has any authority to act separately from the Board under the statute, which provides that each trustee has but 1 vote on the Board. The statute specifically requires a "quorum for the transaction of any business, the exercise of any power, or the performance of any duty authorized or imposed by [the statute]." Art. 22, §33(f).

III. "Municipal Entity" under 15 U.S.C. §78o-4

15 U.S.C. §78o-4(a)(1)(B), which was added by section 975 of Dodd-Frank, provides:

It shall be unlawful for a municipal advisor to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, unless the municipal advisor is registered in accordance with this subsection.

The term “municipal entity” as used in the Dodd-Frank provisions clearly was intended to include the decision-making body receiving advice from a municipal advisor. In the context of the System and, in all likelihood, most public pension plans, the governing body of the municipal entity as a whole and its individual members comprise the decision-making entity. As the System’s statute indicates, there is no concept in the law of individual members legally acting separately from the Board. Accordingly, it is necessary to conclude that the term “municipal entity” as used by the Dodd-Frank provisions comprises both the Board and its individual members.

IV. “Providing Advice” under 15 U.S.C. §78o-4

The Dodd-Frank provisions are clearly designed to regulate investment professionals who render investment advice or market financial products to municipal entities. Trustees of the Board and, in all likelihood, of most public pension plans, do not provide investment advice to their municipal entity or plan sponsor. To the contrary, as was noted above, trustees of the Board are charged with seeking, receiving and implementing investment advice that they receive from regulated investment advisors.

In their fiduciary capacity of retirement system administrators and investors, pension trustees ordinarily only serve on a part-time basis in addition to their working full-time jobs. System meetings are conducted monthly with special meetings scheduled sporadically. Moreover, by virtue of their jobs and positions, *ex-officio* and elected trustees do not possess investment expertise. Thus, by necessity, trustees of the Board, and, in all likelihood, most public pension plan trustees, delegate their duties to investment and other professionals who provide investment and other professional advice to the Board.

Accordingly, the Board, along with most other public pension governing entities, does not exercise investment discretion with regard to individual securities, but, rather, makes macro-level investment decisions pursuant to the advice of investment advisors and managers. Consequently, the Board does not provide investment advice to a municipal entity but, on the contrary, is charged with receiving investment advice from regulated investment professionals.

V. “Appointed” versus Elected and *Ex Officio* Trustees

The System statute does not differentiate between the duties or authority of the various types of trustees on the Board. Each member of the Board, whether elected, appointed, or serving on the Board *ex officio*, has the very same fiduciary responsibility towards the System and its members and beneficiaries and would account exactly the same for any breach of such fiduciary duty. In all likelihood, the Board is representative of most public pension plans in this regard. Therefore, the distinctions between various types of pension trustees proposed by the Commission are respectfully not grounded in either fact or sound legal reasoning.

Elizabeth M. Murphy, Secretary

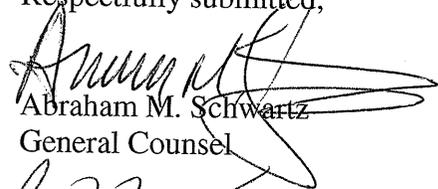
VI. Conclusion

For the above-stated reasons, the System respectfully urges the Commission to not adopt any proposal regarding 15 U.S.C. §78o-4 that would (a) treat governing boards of public pension plans such as the System separate and distinct from the board's individual members (b) view public pension plan boards delegating their investment duties to regulated investment professionals as providing, as opposed to receiving, investment advice to municipal entities, or (c) distinguish between different types of pension trustees depending on whether they are appointed, elected, or serving *ex officio*.

Counsel for the City of Baltimore Employees' Retirement System concur with the views expressed in this letter and will be sending their comments to the Commission in a separate letter.

If you have any questions regarding this letter, we may be contacted at 410.497.7929, ex. 244 or ex. 248 or emailed at aschwartz@bcfpers.org or iberger@bcfpers.org.

Respectfully submitted,



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General Counsel



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