State of Oregon
Office of the State Treasurer

16290 SW Upper Boones Ferry Road

Tigard, Oregon 97224

OREGON INVESTMENT COUNCIL

December 6, 2023

Meeting Minutes

Members Present:	Cara Samples, Treasurer Tobias Read, Lorraine Arvin, Pia Wilson-Body, Alline Akintore, Kevin Olineck
Staff Present:	Rex Kim, David Randall, Karl Cheng, Louise Howard, Rupa Raman, Mike Mueller, Jamie McCreary, Chris Ebersole, Andrew Coutu, Kenny Bao, Chuck Christopher, Bryson Pate, Jennifer Kersgaard
Staff Participating Virtually:	Ryan Auclair, Sara Bayes, Tyler Bernstein, Taylor Bowman, Tan Cao, Austin Carmichael, Collin Cousar, Kiara Cruz, Bradley Curran, Ashley Daigle, Debra Day, Gloria Gil, Alli Gordon, Will Hampson, Wil Hiles, Ian Huculak, Roy Jackson, Aliese Jacobsen, Kristi Jenkins, Josh Jones, Young Kim, Amanda Kingsbury, Jeremy Knowles, Paul Koch, Michael Langdon, John Lutkehaus, Ben Mahon, Michael Makale, Tim Miller, George Naughton, Quran Nelson, Savanah Oliveira, Lisa Pettinati, Jen Plett, Mohammed Quraishi, Jo Recht, Andrew Robertson, Scott Robertson, Holly Rohwer, Angela Schaffers, Faith Sedberry, Mark Selfridge, Alli Sorensen, Loren Terry, Gisela Verdeja Bogle, Rachel Wray, Tiffany Zahas
Consultants Present:	Allan Emkin, Mika Malone, Eric Larsen, Tom Martin, Raneen Jalajel, Paola Nealon, Ashley Woeste, Jason Trennert
PERS Present:	Kevin Olineck
Legal Counsel Present:	Steve Marlowe (Department of Justice)

The December 6, 2023, OIC meeting was called to order at 9:15am by Cara Samples, Chair

Time	**Tab**		**Presenter**
8:30 – 9:00		**Executive Session***	Steven Marlowe Oregon Department of Justice Christy Monson Oregon Department of Justice

An executive session was held pursuant to ORS 192.660(2)(f), to consider information and records that are exempt by law from public inspection. In compliance with ORS 192.660(6), no decisions were made during this meeting.

9:15	1	**Review & Approval of Minutes** October 25, 2023	Cara Samples OIC Chair

Chair Samples asked for approval of the October 25, 2023 OIC regular meeting minutes. Treasurer Read moved approval at 9:16 am, member Arvin seconded the motion which then passed by a 5/0 vote. Acknowledging one change, not regarding the minutes but during the discussion of changes to INV 210 at the last meeting, INV 208 was referenced instead of INV 207, the correction has been made.

	2	**Committee Reports**	Rex Kim Chief Investment Officer

Private Equity Committee:

November 30th	Clearlake Capital Partners VIII	$250M USD
November 30th	Centerbridge Capital Partners V	$250M USD

Real Estate Committee:

November 13th	Carlyle Property Investors	$200M USD

Opportunity Committee:

December 5th	Sixth Street Lending Partners	$150M USD

Alternatives Portfolio Committee:
None

Staff Discretion
None

9:15 – 10:00	3	**Market Presentation**	Jason Trennert Managing Partner, Chief Strategist, Strategas Research

Jason Trennert, managing partner at Strategas Research, presented a market overview that touched on recession odds, inflation, and the possibility of a soft landing. He discussed factors influencing the market: quantitative easing, unemployment rates, GDP and interest expense.

--- BREAK ---

10:05 – 10:25	4	**Q3 OPERF Performance**	Paola Nealon Managing Principal, Meketa Eric Larsen Investment Analyst, Meketa

Paola Nealon, Managing Principal, Meketa, and Eric Larsen, Investment Analyst, Meketa presented the Q3 OPERF Performance Review. The presentation included an economic and market update that discussed inflation, global monetary policies, and pressure on US consumers.

OPERF's Q3 QTD returns trailed the policy benchmark by -0.6 but are exceeding the benchmarks for the 3 year and 5 year periods by 2.4% and 0.4%, respectively.

10:25 – 11:00 5 **OPERF Fixed Income Annual Review**

Rupa Raman
Senior Investment Officer, Fixed Income
Allan Emkin
Managing Principal, Meketa
Mika Malone
Managing Principal, Meketa

Rupa Raman, Senior Investment Officer, Fixed Income, presented the OPERF Fixed Income Annual Review. The important role of Fixed Income as a diversifier relative to equity and equity-like asset classes was discussed, as well as shifts in the fixed income portfolio's benchmark over the last decade. It's been benchmarked to the Bloomberg US Aggregate Bond Index since 2021, which simplifies measurement. The priority for 2023 portfolio changes were adjustments made to address tracking error. In the current interest rate environment, the Fixed Income portfolio is in a position to generate a meaningful yield.

11:00 – 11:10 6 **OST Internal Fixed Income Overview**

Rupa Raman
Senior Investment Officer, Fixed Income

Rupa Raman, Senior Investment Officer, Fixed Income, presented the OST Internal Fixed Income Overview, which manages over $40 billion in internally managed fixed income assets in 4 primary portfolios: Oregon Short Term Fund, Government Fund, Oregon Intermediate Term Pool, and the Public University Fund Core Bond.

All portfolios are producing excess returns relative to their benchmarks.

--- BREAK ---

Member Pia Wilson-Body left meeting during the break and then rejoined remotely.

11:10 – 11:20 7 **OPERF Investment Policy Statement**
(Action Item: Approval of IPS)

Mika Malone
Managing Principal, Meketa
Raneen Jalajel
Associate Partner, Aon

Mika Malone, Managing Principal, Meketa, and Raneen Jalajel, Associate Partner, Aon, presented the final version of the IPS for approval. At 11:19 am Treasurer Read moved for approval; member Arvin seconded the motion, which then passed by a vote of 5/0.

11:20 8 **Calendar – Future Agenda Items**

Rex Kim

Rex Kim presented the forward calendar, which includes a special OIC meeting on February 6, 2024, when Treasurer Read will present his climate plan.

11:20 9 **Open Discussion**

OIC Members, Staff, Consultants

Steve Marlowe, DOJ Counsel, discussed Chair Samples' request from the March 2023 OIC meeting for an update of the DOJ 2010 opinion. The memo can be released with the board's approval.

At 11:21 am Chair Samples made a motion to "waive attorney client privilege on the 2023 opinion memo to be released to the public." Treasurer Read seconded the motion which then passed by a 5/0 vote.

*Executive Session: No admittance unless stated below. Thank you.

The executive session is being held to consider records from the Department of Justice that are exempt from disclosure. The executive session is being held pursuant to ORS 192.660(2)(f), which allows a governing body to hold an executive session to consider information or records that are exempt by law from public inspection. In compliance with ORS 192.660(6), no decisions will be made during this meeting. Representatives of the news media, Treasury staff and Treasury consultants are allowed to attend this executive session. Representatives of the news media are specifically directed not to report on any of the deliberations during executive session, except to state the general subject of the session as previously announced.

ELLEN F. ROSENBLUM
Attorney General

LISA M. UDLAND
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

September 5, 2023

Cara Samples
Oregon Investment Council, Chair
16290 SW Upper Boones Ferry Road
Portland, OR 97224

Treasurer Tobias Read
Oregon State Treasury
16290 SW Upper Boones Ferry Road
Portland, OR 97224

Re: OIC Fiduciary Duties and De-carbonization Framework
DOJ No. 171001-GT0352-23

Dear Ms. Samples and Mr. Read:

OIC Chair Cara Samples has asked whether new guidance provided by the U.S. Department of Labor alters the conclusions in a published Attorney General Opinion addressed to then Treasurer Ted Wheeler ("2010 opinion").[1] The 2010 opinion discussed the fiduciary duties of OIC members and the Treasurer, as Investment Officer, in identifying and selecting investments and cited to then-current interpretive guidance from the Department of Labor on the duties of ERISA (as well as other laws) plan fiduciaries. [2] In short, our advice remains consistent with the 2010 opinion, as further clarified by the new federal guidance.

Since the issuance of the 2010 opinion, Treasurer Read has announced a Core Decarbonization Framework which refers to "decarbonizing OST's portfolio, consistent with our fiduciary duty."[3] OIC has also held discussions in recent public meetings about Environmental, and Social Governance (ESG), and Diversity, Equity and Inclusion (DEI) principles for investing. This letter addresses how the new Department of Labor guidance can help to clarify the advice given in the 2010 opinion.

[1] *See* Letter of Advice dated August 5, 2010, to Treasurer Ted Wheeler, Office of the State Treasurer (OP 2010-3).
[2] Although PERS is not an ERISA plan, the fiduciary guidance provided with respect to ERISA plans has been used by the courts as useful guidance when determining the duties of the fiduciaries of non-ERISA plans.
[3] https://www.oregon.gov/treasury/news-data/Documents/topics-of-interest/2022/Treasurer-Reads-Core-Decarbonization-Framework.pdf.

There have not been any relevant changes to Oregon law that would alter the advice this office gave in the 2010 opinion regarding Oregon law. Nor has our advice regarding compliance with the Internal Revenue Code changed. Here, we are focused solely on updating our prior advice in light of new guidance that has been provided by the U.S. Department of Labor. This update is applicable primarily to section III.D. of the 2010 opinion.

The Department of Labor's Investment Duties regulation under Title I of ERISA is codified at 29 CFR §2550.404a-1. On October 14, 2021, the Department of Labor published a notice of proposed rulemaking to amend the regulation regarding fiduciary duties for ERISA plans that had been adopted in 2020. The final regulation was then published on December 1, 2022, and became effective on January 30, 2023.[4]

The rule, in relevant part, provides:

> (4) A fiduciary's determination with respect to an investment or investment course of action must be based on factors that the fiduciary reasonably determines are relevant to a risk and return analysis, using appropriate investment horizons consistent with the plan's investment objectives and taking into account the funding policy of the plan established pursuant to section 402(b)(1) of ERISA. Risk and return factors may include the economic effects of climate change and other environmental, social, or governance factors on the particular investment or investment course of action. Whether any particular consideration is a risk-return factor depends on the individual facts and circumstances. The weight given to any factor by a fiduciary should appropriately reflect a reasonable assessment of its impact on risk-return.

29 CFR §2550.404a-1.

In adopting the rule, the Department of Labor emphasized that the final regulation does not change "longstanding principles" and that the final regulation "retains the core principle that the duties of prudence and loyalty require ERISA plan fiduciaries to focus on relevant risk-return factors and not subordinate the interests of participants and beneficiaries (such as by sacrificing investment returns or taking on additional investment risk) to objectives unrelated to the provision of benefits under the plan."[5]

Our 2010 opinion stated that the "USDOL's highly rigorous approach … does not rule out all considerations of social factors."[6] The current regulation from the Department of Labor remains consistent with that conclusion. Rather than conflicting with its prior regulation or the 2010 opinion, the new Department of Labor regulation simply clarifies both by listing specifically allowable considerations that are relevant to the issues facing the world and the

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[4] Following the Department of Labor's rule, the Congress, resolved that it "disapproves the rule submitted by the Department of Labor.[4] However, President Biden vetoed this joint resolution on March 20, 2023. Thus, the rule adopted in 2022 is the current law.
[5] 87 FR 73822, 73827.
[6] See Letter of Advice dated August 5, 2010, to Treasurer Ted Wheeler, Office of the State Treasurer (OP 2010-3).

economy today, e.g., economic effects of climate change and other environmental, social, or governance factors on a particular investment.

While the proposed regulation initially contained examples, they were deleted from the final version passed by the Department of Labor. However, the federal rulemaking preamble from the Department of Labor does provide that:

> [D]epending on the surrounding circumstances, a fiduciary may reasonably conclude that climate-related factors, such as a corporation's exposure to the real and potential economic effects of climate change including exposure to the physical and transitional risks of climate change and the positive or negative effect of Government regulations and policies to mitigate climate change, can be relevant to a risk/return analysis of an investment or investment course of action. A fiduciary also may make a similar determination with respect to governance factors, such as those involving board composition, executive compensation, and transparency and accountability in corporate decision-making; a corporation's avoidance of criminal liability; compliance with labor, employment, environmental, tax, and other applicable laws and regulations; the corporation's progress on workforce diversity, inclusion, and other drivers of employee hiring, promotion, and retention; investment in training to develop a skilled workforce; equal employment opportunity; and labor relations and workforce practices generally.
>
> The foregoing examples are merely illustrative, and not intended to limit a fiduciary's discretion to identify factors that are relevant with respect to its risk/return analysis of any particular investment or investment course of action. A fiduciary may reasonably determine that a factor that seems to fall within a general category described above (e.g., climate-related factors), but is not specifically identified above, nonetheless is relevant to the analysis (e.g., drought). For example, depending on the facts and circumstances, relevant factors may include impact on communities in which companies operate, due diligence and practices regarding supply chain management, including environmental impact, human rights violations records, and lack of transparency or failure to meet other compliance standards. As another example, labor-relations factors, such as reduced turnover and increased productivity associated with collective bargaining, also may be relevant to a risk and return analysis.[7]

These examples provide a variety of factors the OIC and Treasurer could consider in making investment decisions, while still complying with its fiduciary responsibilities. A note of caution is warranted, however, because the preamble to the regulation also states that "the final rule makes unambiguous that it is *not establishing a mandate that ESG factors are relevant under every circumstance, nor is it creating an incentive for a fiduciary to put a thumb on the scale in favor of ESG factors*."[8]

In essence, the new Department of Labor regulation largely replaces the prior federal guidance about the use of ESG as a "tie-breaker" provision with a standard that, instead, requires

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[7] 87 FR 73822, 73832 (2022).
[8] 87 FR at 73831 (emphasis added).

the fiduciary to conclude prudently that competing investments, or competing investment courses of action, equally serve the financial interests of the plan over the appropriate time horizon. In such cases, the fiduciary is not prohibited from selecting the investment, or investment course of action, based on collateral benefits other than investment returns.[9]

Finally, we think the following guidance from the preamble provides a path for the OIC to approach the consideration of ESG factors in making future investment decisions:

> [T]he new text [of the regulation] sets forth three clear principles. First, a fiduciary's determination with respect to an investment or investment course of action must be based on factors that the fiduciary reasonably determines are relevant to a risk and return analysis, using appropriate investment horizons consistent with the plan's investment objectives and taking into account the funding policy of the plan established pursuant to section 402(b)(1) of ERISA. Second, risk and return factors may include the economic effects of climate change and other environmental, social, or governance factors on the particular investment or investment course of action. Whether any particular consideration is a risk-return factor depends on the individual facts and circumstances. Third, the weight given to any factor by a fiduciary should appropriately reflect an assessment of its impact on risk and return.[10]

In other words, consistent with the Department of Labor regulation, the OIC may follow these principles in making investment decisions:

1) Investment decisions may be based on factors reasonably relevant to a risk and return analysis over the appropriate investment horizon.
2) Risk and return factors may include economic effects of climate change and other ESG factors on the particular investment or investment course of action, and each investment depends upon the individual facts and circumstances.
3) Investment decisions must weigh all factors based on an assessment of the factor’s impact on risk and return.

Conclusion

As noted above, the 2010 opinion concluded that the “USDOL’s highly rigorous approach … does not rule out all considerations of social factors.” We think the Department of Labor’s latest amendments to the ERISA regulations result in a similar conclusion, addressing the common issues of the day and clarifying that climate change and other ESG factors may be relevant risk and return factors to be considered.

[9] 87 FR at 73827.
[10] 87 FR 73822, 73831 (2022).

If you have any questions or concerns about any specific future investments, we are happy to advise and assist you.

/s/ Steven Marlowe
Steven Marlowe
Sr. Assistant Attorney General
Tax & Finance Section

SWM:rmk/klp/mmr/798532134
c: Deena Bothello, General Counsel, Oregon State Treasury
Rex Kim