



**OREGON
STATE
TREASURY**

Oregon Investment Council

December 1, 2021

John Russell
Chair

Tobias Read
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OREGON INVESTMENT COUNCIL

Agenda

December 1, 2021
12:00 PM

Oregon State Treasury
Investment Division
16290 SW Upper Boones Ferry Road
Tigard, OR 97224

<u>Time</u>	<u>A. Information Items</u>	<u>Presenter</u>	<u>Tab</u>
12:00-12:15	1. Mission, History and Overview of the OIC	Allan Emkin <i>Managing Principal/Consultant, Meketa</i>	1
12:15-1:00	2. Fiduciary Responsibility	Jeanna Cullin <i>Partner, Fiduciary Services Practices Leader, Aon</i>	2
1:00-1:30	3. Governance	Jeanna Cullin <i>Partner, Fiduciary Services Practices Leader, Aon</i>	3
1:30-1:45	4. Hot Topics for Institutional Investors	Jeanna Cullin <i>Partner, Fiduciary Services Practices Leader, Aon</i> Kristen Doyle <i>Partner, Aon</i>	4
-----BREAK-----			
2:00-2:30	5. Actuarial Concepts	Colin Bebee <i>Managing Principal/Consultant, Meketa</i>	5
2:30-3:15	6. Investment Program	Mika Malone <i>Managing Principal/Consultant, Meketa</i>	6
3:15-3:35	7. Operations	David Randall <i>Chief Investment Operating Officer, OST</i>	7
3:35-4:00	8. Legal and Legislative	Steven Marlowe <i>Counsel to OIC, Oregon DOJ</i>	8

John Russell
Chair

Cara M. Samples
Vice-Chair

Monica Enand
Member

Charles Wilhoite
Member

Tobias Read
State Treasurer

Kevin Olineck
PERS Director

TAB 1 – Mission, History, and Overview of the OIC

OLC Educational Session: History

December 1, 2021



OIC Educational Session: History

History of the OIC

- 1966- First data point
 - Jim George, managed \$200 million, all internally
- 1967- Investment Act created the OIC
 - Prudent Person Rule
 - 10% public equity constraint
- 1970- Changing Times
 - Roger Meier appointed to OIC as representative of PERS- An investor, businessman, and a storied OIC member
 - Pushed OIC to be one of the first Public Plans to invest in:
 - Real Estate
 - International stocks
 - Private Equity



OIC Educational Session: History

Investment Duties of OIC

- 1982- First Private Equity Transaction with KKR
 - Norris Industries
 - Fred Meyer
 - Staff was still very small
 - Inflation moderates, equities pick up steam
- 1986- Carol Hewitt, becomes chair of OIC. Gerry Drummond joins council
 - Staff remains small for next two decades
- 1993- First Index manager, Wells Fargo
- 2008- First external fixed income manager
- 2012- Portfolio has grown in complexity
 - OIC retains Funston to conduct a study on Staffing, Governance and Performance
 - Performance was excellent, staffing was bare bones, governance was sub-optimal



OIC Educational Session: History

Investment Duties of OIC

- 2014- Legislature added increased funding authority
 - Began to increase staff
 - Brought in Alladin
 - Portfolio complexity increased with internal equity, factor tilts, diversifying strategies
- Takeaways:
 - Council has always had strong and effective leadership
 - Council has benefitted from continuity
 - Staff has become deep and well regarded
 - In recent years, some bets worked, and some did not
 - Private equity helped
 - Factor tilts hurt
 - Today, portfolio and staffing are much closer in structure and size to peers

TAB 2 – Topics 2, 3, and 4:

- Fiduciary Responsibility
- Governance
- Hot Topics for Institutional Investors



Oregon Investment Council Orientation Fiduciary Responsibility, Governance, and Hot Topics for Institutional Investors

December 1, 2021

Jeanna Cullins, Partner | Kristen Doyle, Partner
Fiduciary Services Practice, Aon

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Agenda

I. Fiduciary Responsibility

- A. Origins of Fiduciary Responsibility
 - B. Overview of Key Fiduciary Standards
 - C. Fiduciary Liability and Prohibited Transactions
-

II. Governance

- A. What is Governance and Why is it Important
 - B. Pitfalls
 - C. Governance Practices to Mitigate Pitfalls
-

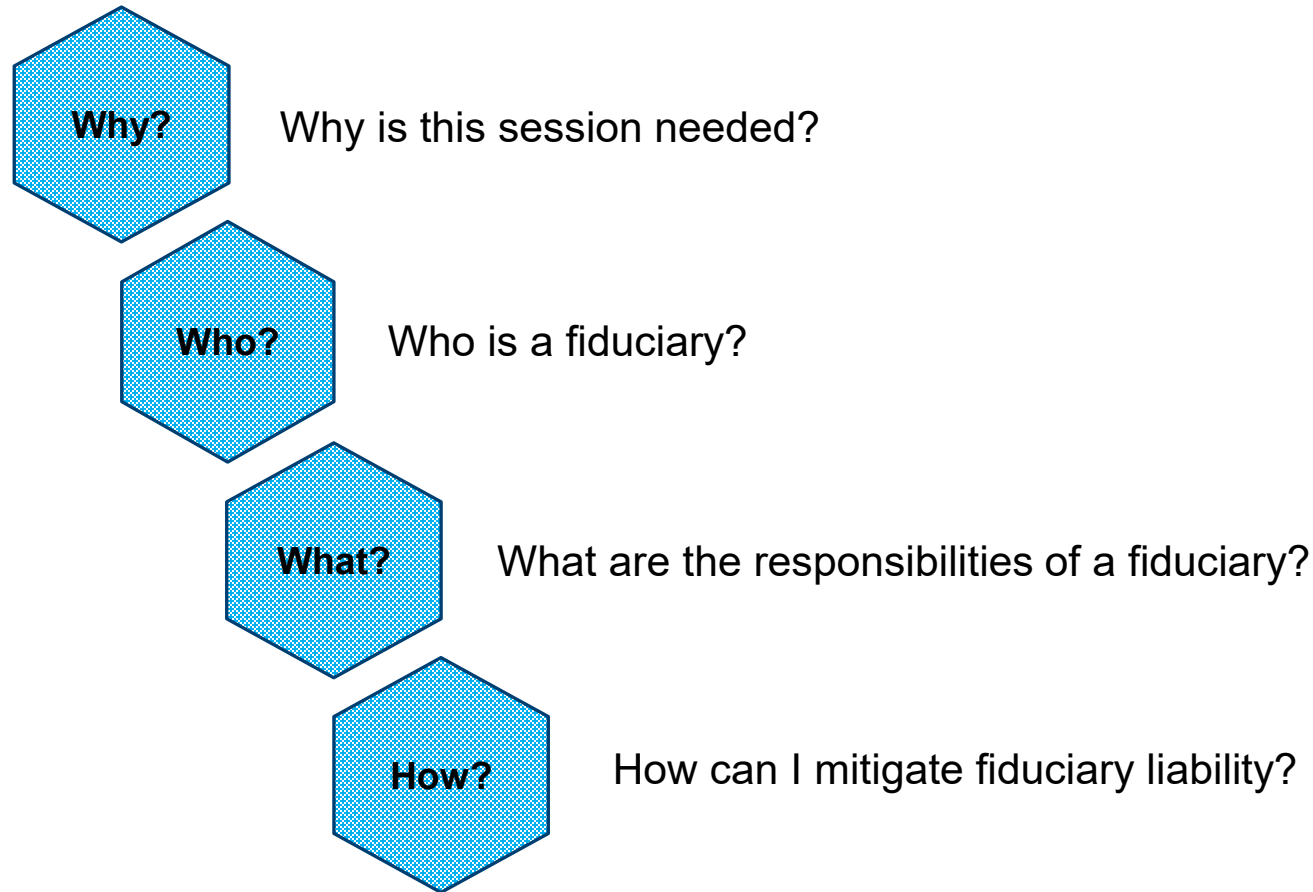
III. Hot Topics for Institutional Investors

- A. Cyber Security
- B. ESG and Proxy Voting



I. Fiduciary Responsibility

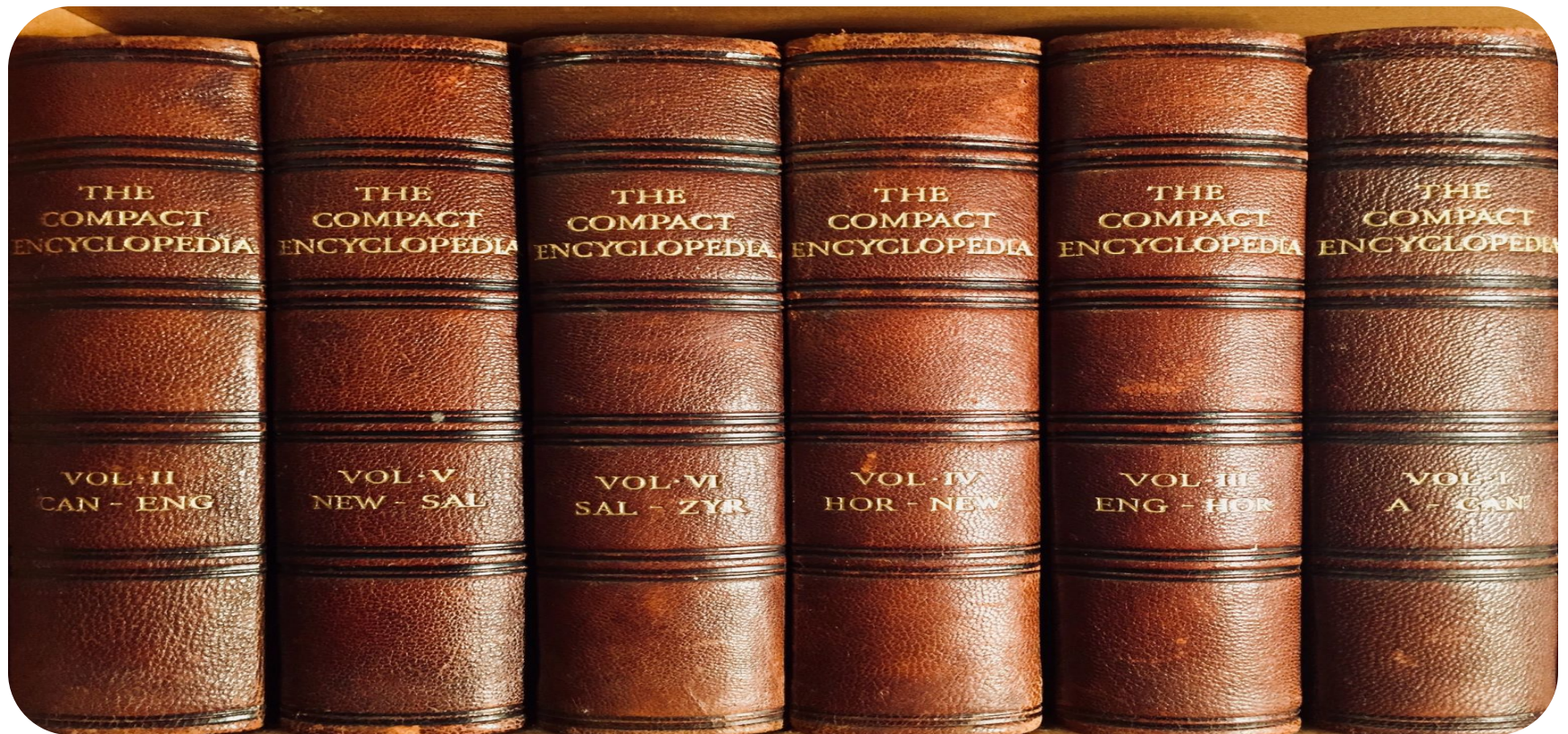
Questions to Think About Today



CAVEAT: The purpose of the training today is not to provide legal advice

Why Fiduciary Training Is Needed?

- Members of the OIC are the primary governing fiduciaries of the investment funds under their purview.
- Fiduciary standards are the “**highest known to law**” *Donovan v. Bierwirth*, 680 F.2d 263 (2nd Cir. 1982). But, they are a frequently misunderstood concepts and a breach could result in fiduciary liability.
- Understanding the genesis, purpose, and how the standards are related helps fiduciaries to fulfill their duties.
- Engaging in orientation and ongoing training is consistent with “good governance” and a best practice. This session also satisfies your mandatory training requirements.
- Oregon law requires continuing education for members of the OIC related to fiduciary duties, best practices or both. ORS 293.712



A. Origins of Fiduciary Responsibility

Genesis of Fiduciary Standards

- Because funds are held in trust, basic principles of trust law apply.
- Trust law is hundreds of years old, was started in England and was developed by the courts over time. It was applied to family, business, and charitable trusts even before pension funds.
- General trust law contains standards that apply to all trusts and fiduciary law stems from that.
- Three parties are involved with a trust:
 - Settlor
 - Trustees
 - Beneficiaries



Sources of Fiduciary Standards



Primary source of standards for OIC: state law, including ORS 293.721 and 293.726

- Other relevant sources
 - Restatement of Trusts 2nd (1959)
 - Restatement of Trusts 3rd: Prudent Investor Rule (1992)
 - Employee Retirement Income Security Act (ERISA) of 1974
 - Uniform Prudent Investor Act (UPIA)
 - Internal Revenue Code
 - Case law
 - Attorney General Opinions

Relevance of ERISA—Why is this important to public pension plans?

- ERISA is the federal law that governs the operations and administration of private pension plans and welfare benefit plans
- ERISA does not apply to governmental plans, such as OIC
 - ERISA is very influential in providing guidance about how fiduciaries should act
 - Fiduciary standards governing public funds entities are typically modeled after ERISA



B. Overview of Key Fiduciary Standards

Who is a Fiduciary?

- A fiduciary is one who owes to another the duties of good faith, trust, confidence and candor...” [Black’s Law Dictionary]
- There are two ways in which one is deemed to be a fiduciary
 - Typically, its based on a functional test
 - **Test:** whether a person has discretion and control over the administration of the plan or management of the plan’s assets
 - A fiduciary may not avoid fiduciary status through documentation stating they are not a fiduciary
 - Usually those performing ministerial tasks are not fiduciaries
- Maybe by designation—in statute or by a written delegation of discretion
 - Investment managers and investment consultants are fiduciaries; however, not all outside service providers are (lawyers, auditors, actuaries, etc.)
 - Certain staff—identified by statute or by delegation of discretionary authority
- A person’s fiduciary duty is limited to the scope of responsibility delegated to them

The OIC’s statutory language doesn’t set forth a “fiduciary” designation or definition

Who is a Fiduciary?

A person is a fiduciary with respect to a plan to the extent that he or she:

1. Exercises any discretionary authority or discretionary control with respect to management of the plan or exercises any authority or control with respect to the management or disposition of plan assets;
 2. Renders investment advice for a fee or other compensation, direct or indirect, with respect to any plan assets or has the authority or responsibility to do so; or
 3. Has any discretionary authority or discretionary responsibility in the administration of the plan
- ERISA Section 3(21)(A)

You don't have to be identified as a fiduciary or accept fiduciary status to be a fiduciary.

Three types of ERISA Fiduciaries

- § 3(16)—Plan Administrator—ERISA requires designation—often the Plan Sponsor
- § 3(21)—Exercises discretion over plan assets (board members), traditional investment consultant (provides advice without discretion)
- § 3(38)—Investment Managers and some investment consultants (delegated fiduciary, OCIO)

Overview of Key ERISA Fiduciary Standards

Key ERISA Fiduciary Duties

Prudent Expert

- Care, skill and diligence
- Prevailing facts and circumstance
- Focus on prudent process

Exclusive Benefit/ Duty of Loyalty

- Act solely in the interest of the participants
- Exclusively to provide benefits
- Reasonable fees/expenses

Diversification

- Diversify to minimize risk unless imprudent to do so

Follow Plan Document(s)

- To the extent consistent with applicable law

Prohibited Transactions

- No self-dealing
- No transactions benefitting nonparticipants
- No acting against plan interests
- Limited exceptions

ERISA reflects relevant trust law and its “spirit” is typically followed by the courts in the absence of a stated standard in state law.

There are different prudence standards

Which one applies to my actions?

- Three standards
 - Prudent “reasonable” man
 - **Prudent investor**
 - Prudent expert
 - Often confusion exists regarding which prudence standard is applicable
- **Prudent “reasonable” man**—lower standard, “*the trustee shall observe the standards in dealing with the trust assets that would be observed by a prudent man dealing with the property of another...*” Model Prudent Man Statute.
 - In making investment of trust funds, “the trustee is under a duty to the beneficiary in administering the trust to exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property; and if the trustee has or procures his appointment as trustee by representing that he has greater skill than that of a man of ordinary prudence, he is under a duty to exercise such skill.” Restatement of Trusts 2d (1959).

Prudent Investor Rule

- Higher standard than prudent “reasonable” man
 - A trust’s entire investment portfolio is considered when determining the prudence of an individual investment (*whole portfolio theory*)
 - Diversification is explicitly required as a duty for prudent investing
 - No category or type of investment is deemed inherently imprudent
 - A fiduciary is permitted to delegate investment management and other functions to third parties



The Uniform Prudent Investor Act (UPIA) was adopted in 1992 by the American Law Institute (Restatement of Trust 3d)

Prudent Investor Standard of Care

“A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.”

Prudent Investor Act, Section 2

ERISA Duty of Prudence—Section 404(a)(1)

Prudent Expert

"A fiduciary shall discharge his duties with respect to a plan "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims"



OIC Follows the Prudent Investor Rule

- *“The investment funds shall be invested and the investments of those funds managed as a **prudent investor** would do, under the circumstances then prevailing and in light of the purposes, terms, distribution requirements and laws governing each investment fund.”*
- *“The standard requires the exercise of reasonable care, skill and caution, and is to be applied to investments not in isolation but in the context of each investment fund’s investment portfolio and as a part of an overall investment strategy, which should incorporate risk and return objectives reasonably suitable to the particular investment fund.” [ORS 293.726 (1) and (2)]*
- The statutory duty of the OIC is to make the investment funds as productive as possible subject to the required standards of judgment and care. [ORS 293.721]

Duty of Prudence



Fiduciaries are judged by the prudence of their process.

“The test of prudence is one of conduct, and not a test of the result of performance of the investment. The focus of the inquiry is how the fiduciary acted in his selection of the investment, and not whether his investment succeeded or failed.”

Donovan v. Cunningham, 716 F.2d 1455, 1467 (5th Cir.1983)

Duty of Prudence

- A good process is more important than a good outcome and is the best defense to potential liability
 - **Written documentation is critical** in order to demonstrate that you acted prudently. Hard to prove your conduct or process if it is not documented.
- The law requires prudence, not perfection
- The “prudent expert” standard contemplates comparison to peers—prudent fiduciary behaves as other similarly situated fiduciaries would behave—of like character and with like aims.
- **The OIC is subject to prudent investor language not prudent expert language.**
 - Notwithstanding, the prudent investor standard requires knowledge of *“the circumstances then prevailing”*.

Know Who Your Peers Are—Other Investment Boards/Councils

- Alaska State Pension Investment Board
- Connecticut Office of the Treasurer Investment Division
- Florida State Board of Administration
- Illinois State Board of Investments
- Massachusetts Pension Reserves Investment Management Board
- Michigan Bureau of Investments
- Minnesota State Investment Board
- Montana Board of Investments
- Nebraska Investment Council
- New Jersey State Investment Council
- New Mexico State Investment Council
- North Carolina State Treasurer Investment Management Division
- North Dakota Investment Council
- South Carolina Retirement Investment Commission
- South Dakota State Investment Council
- Washington State Investment Board
- West Virginia Investment Management Board

When determining a peer, it's important to know the details: asset size, type of entity, level of autonomy, asset classes used, etc.

Examples of Areas Where Duty of Prudence Usually Comes into Play



Setting the asset
allocation



Documentation
of processes



Retaining expert
assistance



Reviewing
performance



Managing
Risk



Delegation of
authority

Standards of Prudence Evolve

Prudence standards evolve over time.

- As prudence standards evolve over time, fiduciaries need to keep up
- Due diligence practices of the past may not be enough
- Investments with the potential for high returns are often higher risk and require more due diligence

Decisions should be made using contemporary standards of prudence.

- More specialized advice from independent consultants/service providers
- More written opinions rather than verbal “off the cuff” comments

Duty of Prudence—Delegation

*A trustee has a duty personally to perform the responsibilities of trustee **except as a prudent person might delegate those responsibilities to others**. In deciding whether, to whom and in what manner to delegate fiduciary authority in the administration of a trust, and thereafter in supervising agents, the trustee is under a duty to the beneficiaries to **exercise fiduciary discretion and to act as a prudent person would act in similar circumstances**.* Restatement of Trusts 3rd

- Delegation is allowed and even encouraged by the Prudent Investor Act and ERISA

“...the council and the investment officer must ...act with prudence in deciding whether and how to delegate authority and in the selection and supervision of agents
{ORS 293.726 (4)(b)}

- Failure to delegate may be a fiduciary breach
- To be prudent, when delegating the following generally applies:
 - Duty of prudence in selecting qualified professionals
 - Duty to specify the scope of the delegation
 - Duty to monitor the professionals to ensure the delegation is carried consistent with the delegation, and that the delegation continues to be prudent
- Board members may delegate but cannot abdicate their responsibility

Duty to Monitor

Continuous Monitoring

- U.S. Supreme court opinion held fiduciaries have a continuing duty—separate and apart from the duty to exercise prudence in selecting investments at the outset—to monitor and remove imprudent investment options. *Tibble v. Edison International*, 135 S.Ct. 1823 (2015).

Establish Policies & Procedures

- The OIC's role is to establish policies and procedures that staff can implement to protect the funds and ensure the highest level of services from staff and external advisors.

Reporting

- Adequate reporting is necessary for prudent monitoring.

Trust but Verify

Duty of Loyalty

“...the council and the investment officer must ...conform to the fundamental fiduciary duties of loyalty and impartiality... [and]....incur only costs that are reasonable in amount and appropriate to the investment responsibilities imposed by law. [ORS 293.726 (4)(a) and (c)]

- The “duty of loyalty”, also known as the “exclusive benefit” rule, requires an unwavering commitment to act solely in the best interests of the beneficiaries, or in the case of an investment board, each trust or fund. The ‘duty of impartiality’ emanates from the duty of loyalty and requires a fiduciary to deal fairly and objectively with all beneficiaries.
- Sample language from the laws of other state-wide investment entities
 - SWIB—*“must administer assets of each trust or fund solely for the purpose of ensuring the fulfillment of the purpose of each trust or fund at a reasonable cost and not for any other purpose.” Wis. Stat. § 25.15(2)(c)*
 - NIC—*“as fiduciaries, the appointed members of the council and the state investment officer shall discharge their duties with respect to the assets of state funds solely in the interests of the citizens of the state within the limitations and according to the powers, duties, and purposes prescribed by law. NE Code 72-1239.01(b)(2019)*

Duty of Loyalty in Practice



Avoid conflicts; if you cannot, then disclose and recuse

The OIC has a statutory process for handling conflicts



When making decisions, fiduciaries may not balance interests



When acting as a fiduciary, you may not put others' interests ahead of the beneficiaries interests



The duty of loyalty has not evolved—courts strictly interpret

Duty to Diversify

“...In making and implementing investment decisions, the Oregon Investment Council and the investment officer have a duty to diversify the investments of the investment funds unless, under the circumstances, it is not prudent to do so.”
[ORS 293.726 (3)]

- The duty to diversify emanates from the duty of prudence
- Modern Portfolio Theory applies:
 - Diversify plan assets unless it has been reasonably determined that the trust is better served by not diversifying
 - Consider each investment within the context of the entire portfolio
 - Create an “optimal” portfolio given the board’s/committee’s risk/return preferences



Duty to Follow Plan Documents

- A fiduciary shall discharge his or her duties with respect to the plan in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of the law. ERISA § 404(a)(1)(D)
 - **Plan document** can include multiple documents (By-laws, Investment Policy Statement, Policies adopted by the governing fiduciaries)
- Fiduciaries cannot be arbitrary and capricious in their application of applicable law(s) or plan
- Familiarity with plan documents is essential
- Examples of OIC plan documents: Oregon Law (ORS Chapter 293), the Statement of Investment Objectives and Policy Framework, the Statement of Fund Governance, etc.





C. Fiduciary Liability and Prohibited Transactions

Fiduciary Liability

- The laws governing public fund fiduciaries from time to time specifically impose liability for a breach of duty
- Under ERISA, a fiduciary who fails to discharge any of their fiduciary responsibilities
 - “[S]hall be personally liable to make good to such plan any losses to the plan resulting from each such breach”
 - Shall also be personally liable to restore any profits which have been made through use of plan assets
 - Shall be subject “to such other equitable or remedial relief as the court may deem appropriate”
- Fiduciary liability = personal liability for losses
 - Restoration of profits
 - Loss of reputation
- Attorney-client privilege may run to the fund rather than the fiduciary

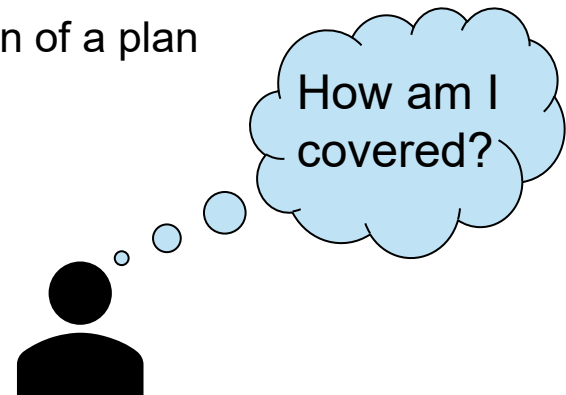
Co-Fiduciary Liability Concept

- Co-fiduciary liability means “you are your brother’s keeper”
- ERISA imposes co-fiduciary liability on any fiduciary who participates “knowingly in, or knowingly undertakes to conceal. . . [a breach] knowing [it] is a breach”
 - A fiduciary has a duty to prevent or halt a co-fiduciary’s breach
 - A fiduciary is liable for a co-fiduciary’s breach of their duties if the fiduciary. knowingly participates in, conceals, or enables the co-fiduciary’s breach
 - If you know of another’s fiduciary breach and you do nothing about it, you are breaching your fiduciary duty
 - A fiduciary’s inaction or failure to act promptly to halt another fiduciary’s breach can give rise to co-fiduciary liability
 - For liability to attach, you must have actual knowledge of an action you know to be a breach
- The courts have said that fiduciaries have a duty to speak up and take reasonable steps to prevent or remedy the breach
 - Resignation from your position is typically not sufficient
 - Steps might include obtaining an injunction



Fiduciary Liability Insurance and D&O

- There is no requirement to obtain liability insurance. However, some public fund fiduciaries obtain insurance to protect their personal assets. In other cases, the state may provide indemnification
- Fiduciary liability insurance and D&O are not the same
 - D&O liability insurance policies typically exclude from coverage any claims based on or arising from an ERISA (fiduciary) violation
 - Fiduciary Liability Insurance is designed to provide insurance protection for the plan and persons in his/her capacity as a fiduciary or trustee of a plan. Covered claims include:
 - Breaches of fiduciary duty
 - Acts, errors, or omission in the administration of a plan



Concept of Prohibited Transactions



Prohibited Transactions = Conflicts of Interest.



Conflicts of interest can arise if personal financial gain impairs objective decision-making.



ERISA bars fiduciaries from engaging in certain transactions to avoid conflicts.

Prohibited Transactions

- Conflicts of interest can arise if personal financial gain impairs objective decision-making
- ERISA bars fiduciaries from engaging in certain transactions
 - “Parties-in-interest “—are prohibited from doing business with the plan
 - Parties-in-interest = the employer, the union, plan fiduciaries, service providers, and statutorily defined owners, officers, and relatives of parties-in-interest
 - “Prohibited transactions” include:
 - A sale, exchange, or lease of any property between the plan and party-in-interest;
 - Lending money or other extension of credit between the plan and party-in-interest; and
 - Furnishing goods, services, or facilities between the plan and party-in-interest

OIC Prohibited Transactions—Conflicts

When a person who is a member of the OIC becomes aware that action on a matter pending before the OIC might lead to private pecuniary benefit or detriment to the person, to a relative of the person or to a business with which the person or a relative of the person is associated, the member shall notify in writing the State Treasurer or the Deputy State Treasurer that any action, decision or recommendation by the member might constitute an actual or potential conflict of interest. The member shall provide the notice not later than three business days after the member becomes aware of the possibility of an actual or potential conflict. [ORS 293.708(2)]

- ORS 293.708(2)] does not apply if the pecuniary benefit or detriment arises out of circumstances described in ORS 244.020
- ORS 244.020 defines an “actual conflict of interest and ORS 244.120 provides methods of handling conflicts
 - OIC member are subject to compliance with ORS 244.120 (Methods for handling conflicts)
- Important to periodically engage in conflicts and ethics training

Self-dealing is Prohibited

- Prohibited “self-dealing” includes:
 - Using the plan’s assets in their own interest;
 - Acting on both sides of a transaction involving the plan; or
 - Receiving anything of value for their personal account from any party doing business with the plan related to that business

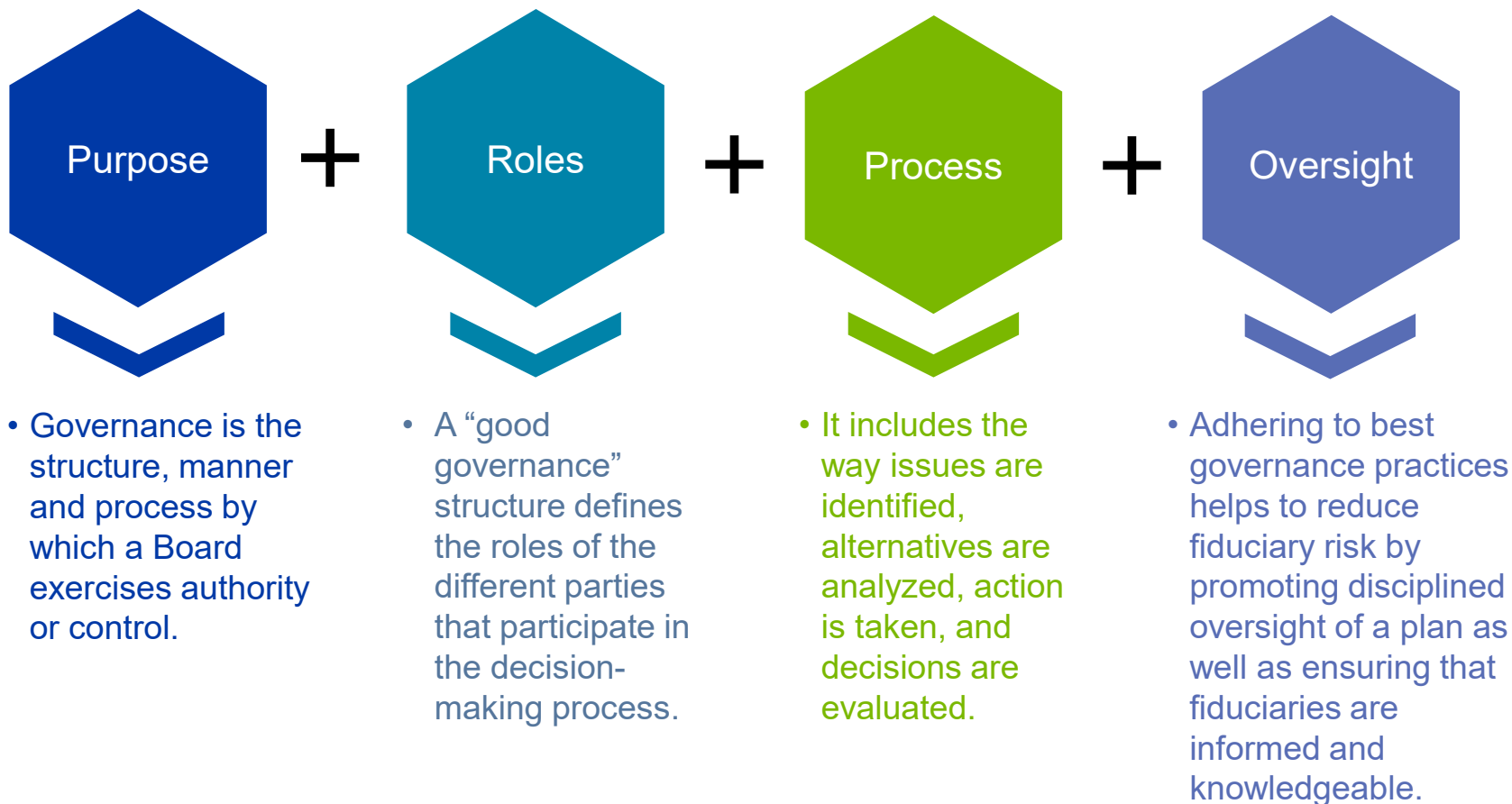


II. Governance



A. What is Governance & Why is it Important?

What is Governance?



Why is Good Governance Important?

Fulfill
Fiduciary
Responsibilities

- Good governance policies and practices can help boards meet their fiduciary responsibilities

Prevent
Fiduciary
Breaches

- Good governance helps to prevent fiduciary breaches and minimize risk

Add Value

- Good governance adds value:
 - Studies have shown that “good governance” is associated with increased returns
 - It can reduce the likelihood of litigation
 - Good governance fosters stakeholder confidence
 - It can make service on the Board more rewarding (and less stressful and time-consuming)

Good Governance Best Practices



The Stanford Institutional Investors' Forum, Peter Clapman

“Good governance helps to ensure better organizational performance, fewer conflicts of interest, higher probability that goals and objectives will be attained, and less opportunity for misuse of corporate or fund assets”



B. Pitfalls

What are Some Characteristics of “Poor” Governance?

Lack of transparency and accountability

- Roles are not properly defined and understood
- Failure to disclose activities
- Inadequate oversight and reporting

Poor documentation

Inconsistent decision-making

High tolerance for conflicts

Micromanagement

No strategic plan/direction

Examples of Fiduciary Pitfalls

Failing to operate
the Fund
prudently

Failure to
document
decisions

Failure to
periodically
review policies

Failure to engage
in ongoing
education

Failure to engage
in succession
planning

Inconsistent
actions

Failure to identify
problems and
take action when
needed

Rubber stamping
staff and service
providers

Failure to
evaluate staff
and key service
providers

Failure to
document
processes

Examples of Fiduciary Pitfalls

Failure to follow
plan documents
(unless inconsistent
with law)

Overreaction to
recent
information

Failure to have a
strategic plan
and/or follow it

Failure to
properly select
and monitor
service providers

Operating in a
vacuum, not
knowing what the
industry and your
peers are doing

Failure to
appropriately
delegate

Failure to adopt
an annual work
plan

Failure to
engage in self-
evaluation

Giving mixed
signals to staff

Lack of
autonomy
needed to carry
out mission



C. Governance Practices to Mitigate Pitfalls

Elements of Good Governance



Examples of Board Governance Best Practices



Skilled Leadership

- Commitment to face tough issues in a manner consistent with your fiduciary duties
- Coordinated efforts among OIC members
- A consensus of what is best and speaking with “one voice”

QUESTIONS TO ASK:

- ☐ Beyond legal requirements, does the OIC know what it is supposed to do?
- ☐ Is leadership shared among OIC members?
- ☐ Are the responsibilities of OIC members documented?
- ☐ Are meetings run in an effective efficient manner?
- ☐ Does staff receive a unified message from the OIC?

Policies and Procedures

- Good policies are a fundamental component of good governance
- Policies and procedures establish expectations and protocols
- They also serve to institutionalize best practices

QUESTIONS TO ASK:

- ☐ Do you know the written policies with which the OIC must comply?
- ☐ Are policies clear and unambiguous?
- ☐ Do policies address the right issues?
- ☐ Does the staff understand how to carry out the policies?
- ☐ Do the policies reflect ever-evolving best practices in the industry?
- ☐ Is policy compliance formally monitored? How often do you receive a compliance report?

Benefits of Having Policies and Procedures

- **Provides a paper trail**
 - Provides documentation to the extent decisions are ever questioned
- **Ensures continuity**
 - When members or staff change, the policy and procedures assist new people in understanding the framework in which decisions are made and how the organization is monitored
- **Reassures stakeholders**
 - Stakeholders know a policy has been written that ensures that the funds will be administered prudently
- **Identifies responsibilities**
 - Provides a road map to fiduciaries and their providers on who has what responsibility

Effective, Efficient Meetings

- Meetings are where the work gets done
- Good meetings facilitate good decision-making
- Act as a single body and not as individual members in carrying out your duties

QUESTIONS TO ASK:

- ☐ Does the OIC have the right number of meetings to accomplish its work?
- ☐ Is there good attendance at the meetings?
- ☐ Are agendas established appropriately?
- ☐ Is there a proper allocation of time?
- ☐ Are meeting materials useful and provided sufficiently in advance?
- ☐ Are different points of view allowed to be heard?
- ☐ Are discussions kept focused on the issue at hand?
- ☐ Are all relevant factors considered in decision-making?
- ☐ Do OIC members try to balance multiple roles when the duty of loyalty requires an undivided loyalty?

Effective Meeting Minutes

- The fundamental role of minutes is to preserve an accurate and official record of meeting proceedings
- Well-kept minutes
 - serve as a record of decisions
 - reflect board member dissent where appropriate
 - offer guidance for future board action
 - serve as a valuable source of contemporaneous evidence in regulatory or judicial proceedings
 - reduce misunderstanding as to the intent of the board
- Minutes serve as documentation of the deliberative process and are essential to establishing that the board has acted consistently with its fiduciary duties
- Maintaining careful minutes of meetings helps to minimize fiduciary liability

Transparency And Accountability

- Transparency and accountability are tenets of good governance
- Collectively and individually, these principles aid fiduciaries in demonstrating their actions are consistent with their duties of loyalty and prudence
- The principles are not easily separated as both encompass many of the same actions
- Both are critical in cultivating public trust in public entity's decision-making process
- A lack of transparency and accountability can send the wrong message

Transparency And Accountability

- Transparency and accountability are enhanced by:
 - ☐ Conducting business in open meetings
 - ☐ Clearly reporting decisions
 - ☐ Establishing written policies
 - ☐ Maintaining control procedures
 - ☐ Publishing meeting minutes
 - ☐ An annual report
 - ☐ An internet website with relevant information regarding the activities of the OIC

Delegation and Oversight

- The OIC is the ultimate governing fiduciary
- The duty of prudence allows fiduciaries to delegate
- Ongoing oversight and adequate reporting is required of all delegations
- Adequate monitoring assists governing fiduciaries in fulfilling their oversight responsibilities

Questions to ask:

- ☐ Are the right people at the right levels making the decisions?
- ☐ Is there clear documentation of what authority has been retained and what has been delegated and to whom ?
- ☐ Are reports sufficient for the OIC to fulfill its oversight responsibility?
- ☐ Are staff and outside service providers held accountable?
- ☐ Are you overly reliant on staff and/or service providers—have you delegated or abdicated?

Know the Investment Funds Under the Purview of the OIC

- Public Employees Retirement Fund
- Oregon Short Term Fund
- Deferred Compensation Fund
- Industrial Accident Fund
- Consumer and Business Services Fund
- Oregon Student Assistance Fund
- Insurance Fund
- Forest Development Revenue Bond Fund
- Trust for Cultural Development Account
- Oregon War Veterans' Fund
- Oregon War Veterans' Bond Sinking Account
- World War II Veterans' Compensation Fund
- World War II Veterans' Bond Sinking Fund
- Unclaimed Property Revolving Fund
- The Oregon Lottery – Megabucks Fund
- Local Government Employer Benefit Trust Fund
- Public University Fund
- Education Stability Fund
- Funds in the Common School Fund
- Funds under the control and administration of the Department of State Lands
- Employment Department Special Administrative Fund
- Moneys made available to the Commission for the Blind
- Funds derived from the sale of state bonds
- Social Security Revolving Account
- Elderly and Disabled Special Transportation Fund
- State Library Donation Fund



III. Hot Topics for Institutional Investors

HOT TOPIC: Fiduciary Responsibility for Cybersecurity?



- DOL guidance provides that plan sponsors and fiduciaries should:
 - Undertake **focused inquiries** in selecting and monitoring service providers
 - **Understand the practices** that service providers have in place to avoid data breaches and compare them to the best practices identified by the DOL
 - **Educate** plan participants about how to protect their personal information

Good best practices guidance for public funds

HOT TOPIC: Cybersecurity—Fiduciary's Possible Next Steps

- **Establish a Fiduciary Process**

- Valuate data security safeguards—DOL guidance confirms fiduciaries should have a process to mitigate cybersecurity risks
- Review both internal safeguards and safeguards of third-party service providers
- Some portion of expenses may be payable from plan assets as these are related to the administration of the plan

- **Perform Baseline Assessment**

- Assess what safeguards have been established to date
- Consider independent review of existing data security safeguards
- Evaluate applicability of existing safeguards to plan data

- **Mitigate Fiduciary Risk** – Confirm if data is adequately protected—from an administrative, physical, or technical standpoint

- **Document Actions**

- Document review process to demonstrate prudence
- Update data security safeguards to the extent necessary

HOT TOPIC: New ESG and Proxy Voting Rule

- Under the prior Administration, DOL finalized an ESG Rule on 10/30/2020 and a Proxy Voting Rule on 12/11/2020.
- In March of 2021, DOL announced it would not enforce its ESG and proxy voting regulations.
- The Rules, however, are **still technically in effect**
- On October 14, 2021, DOL issued a proposed rule entitled “***Prudence and Loyalty in Selecting Plan Investment and Exercising Shareholder Rights*** (the “Proposed Rule”).” The proposed rule addresses ESG investing and proxy voting. The proposed rule is a significant change from the current rules which do not allow the consideration of non-pecuniary factors. Comments to the proposed rule are due by December 13, 2021

Chronology of ESG Investing Rule

January 12,
2021

- “*Financial Factors in Selecting Plan Investments*” issued 10/30/2020 became effective:
 - ERISA plan fiduciaries should not offer investment option(s) if they **subordinate returns or increase risk for the purpose of nonpecuniary objectives**
 - Prohibits ERISA fiduciaries from including investment strategies that “consider, include, or indicate the use of non-pecuniary factors” as a plan’s QDIA

March 10,
2021

- Department of Labor (DOL) announces a new **non-enforcement policy** regarding:
 - “Financial Factors in Selecting Plan Investments”
 - “Fiduciary Duties Regarding Proxy Voting and Shareholder Rights”

October 13,
2021

- The DOL issued the Proposed Rule which explicitly permits fiduciaries to consider climate change and other environmental, social, and governance (ESG) factors when selecting investments and exercising shareholder rights
 - The Proposed Rule is open for public comment until **December 13, 2021**, 60 days from publication in the Federal Register
- The DOL will review the public comments and may revise the Proposed Rule before issuing a final rule in 2022

Overview of ESG Proposal

- In contrast to the prior Administration's Rule, the Proposed Rule sets forth a framework that would amend the "investment duties" regulation under ERISA (as it stands under the current Rule) to reflect the following:

1. Fiduciary Duty of Prudence

- Allow for the evaluation of the economic effects of climate change and other ESG criteria in an investment analysis
 - **May even require** the consideration of such factors when evaluating an investment's risks and returns
- Confirms that an ERISA fiduciary may **consider any factor material to the risk-return analysis**, including:
 - A corporation's exposure to real and potential economic effects of climate change
 - Board composition, executive compensation, and transparency and accountability in corporate decision-making
 - Workforce practices, including the corporation's progress on diversity, inclusion, and other drivers of employee hiring, promotion, and retention

Source: Latham & Watkins LLP

Overview of ESG Proposal

2. Fiduciary Duty of Loyalty

- Eliminates the Rule's use of the term "pecuniary factors," and confirms that **consideration of all material factors** is consistent with ERISA's duty of loyalty
- Modifies the prohibitive "tie-breaker" standard in the Rule
 - If an ERISA fiduciary prudently concludes that competing investment choices equally serve the financial interests of participants, a fiduciary can choose the investment based upon collateral benefits other than investment returns
- Eliminates the Rule's specific documentation requirements for tie-breaker cases that single-out and create burdens for investments providing collateral benefits
 - Adds a new requirement that, for such choices, the collateral-benefit characteristics **must be prominently displayed in disclosure materials** provided to participants and beneficiaries
- Eliminates the Rule's prohibition of certain investment alternatives as a Qualified Default Investment Alternative (QDIA) if the fund, product, or model portfolio reflects non-pecuniary objectives
 - The collateral-benefit characteristics **must be prominently displayed in disclosure materials** provided to participants and beneficiaries

Source: Latham & Watkins LLP

Overview of Proxy Voting Rule

- The proposed rule reaffirms that proxies should be voted as part of the investment process, unless it determines that voting proxies is not in the plan's best interest (e.g., when voting involves significant costs or efforts)
- It removes language indicating that fiduciaries are not required to vote proxies unless there is a financial benefit
- The burdensome documentation requirements were eliminated as well as certain specific monitoring requirements
 - Monitoring is still expected consistent with the duty of prudence
- The Proposed Rule reaffirms that fiduciaries should (1) be prudent in the selection and monitoring of third-party proxy voting service providers and (2) periodically review their proxy voting policies

Practical Implications for Proposed Rule

- The Proposed Rule continues to emphasize the DOL's longstanding policies that **an ERISA fiduciary may not:**
 - Subordinate the interests of participants and beneficiaries in their retirement income or financial benefits under the plan to other objectives
 - May not sacrifice investment return or take on additional investment risk to promote goals unrelated to the plan and its participants and beneficiaries
- We believe ERISA fiduciaries should continue to monitor the situation closely until there are more details on if, when, or what changes might occur
- If adopted, the Proposal will amend the DOL Financial Factors in Selecting Plan Investments Rule which was published in November 2020

The word "Quiz!" is written in a large, white, chalky font on a green chalkboard background. The letters are slightly irregular and textured, giving it a hand-drawn appearance. The exclamation mark is also large and white.

Take Home Self-Test

Take Home Self-Test

1. Which of the following external service providers would be considered to be a fiduciary?
 - a. The investment consultant
 - b. The actuary
 - c. Brokers
 - d. External attorney
 - e. All of the above
2. Delegation is allowed and encouraged under ERISA but not under the Prudent Investor Act. True or False?
3. If you know another fiduciary is participating in a breach of fiduciary responsibility and you resign your position, you have taken sufficient action to protect yourself from co-fiduciary liability. True or False?
4. The duty of loyalty has evolved but not the duty of prudence. True or False?
5. The duty of prudence applicable to the OIC is modeled after the duty of prudence in ERISA. True or False?
6. A good process is more important than a good outcome and is the best defense to potential fiduciary liability. True or False?

Take Home Self-Test

7. Which of the following statements regarding fiduciary liability is true?
 - a) A fiduciary is responsible for the actions of a fellow fiduciary only if they knew of the actions of the other fiduciary.
 - b) A fiduciary is never personally liable for any failed fiduciary duty.
 - c) Hiring an expert eliminates any fiduciary responsibility.
8. Which of the following are elements of a good governance framework?
 - a) Clearly defined roles and responsibilities
 - b) Ongoing education
 - c) A strategic plan
 - d) An annual work plan
 - e) All of the above
 - f) Only a and d
9. You don't have to be identified as a fiduciary or accept fiduciary status to be a fiduciary. True or False?
10. Under the Proposed Rule, board composition, executive compensation, and transparency and accountability in corporate decision-making continue to be risk factors that may not be considered in ESG investing. True or False?

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TAB 5 – Actuarial Concepts

Actuarial Concepts OIC Educational Session

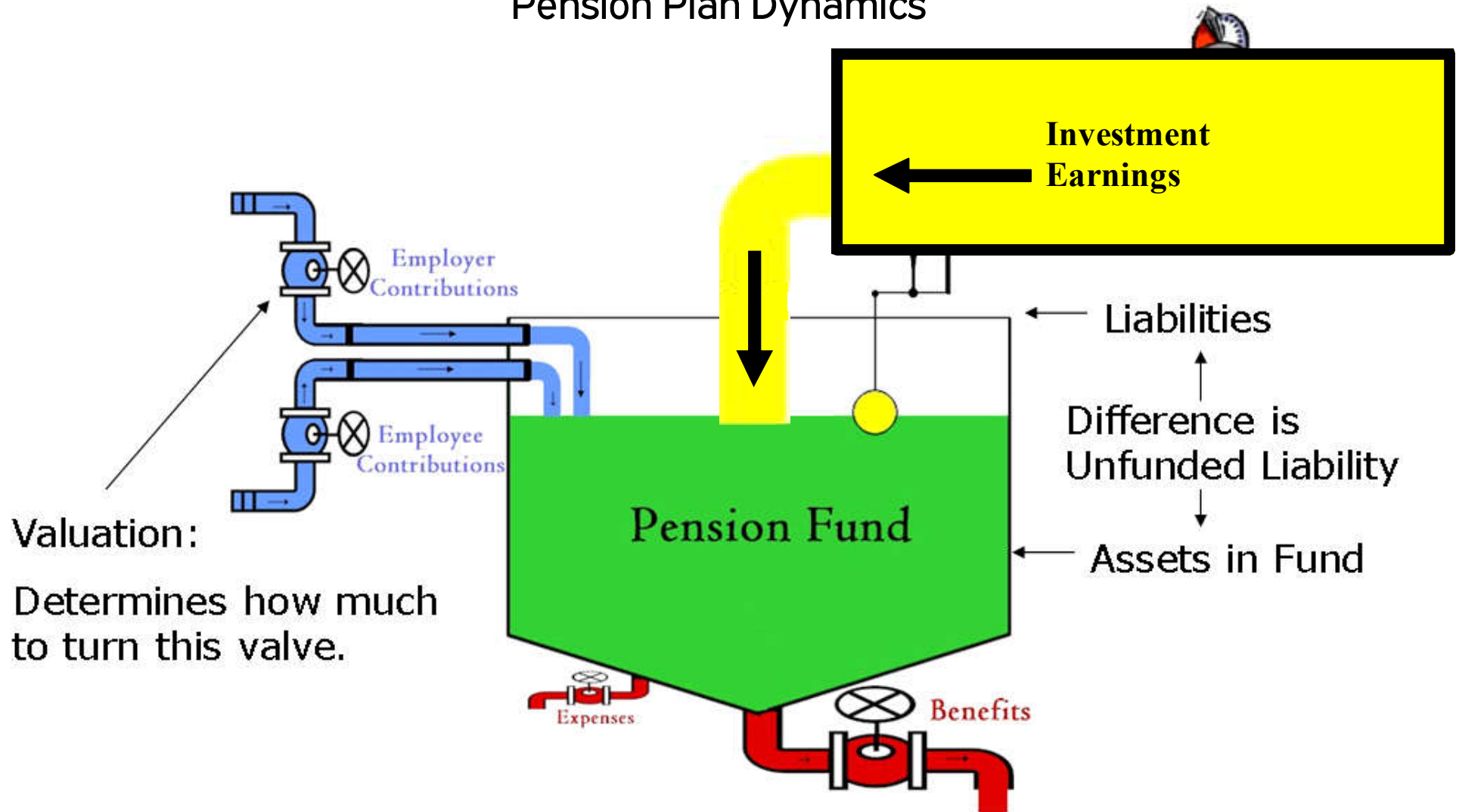
December 1, 2021



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Pension Basics

Pension Plan Dynamics



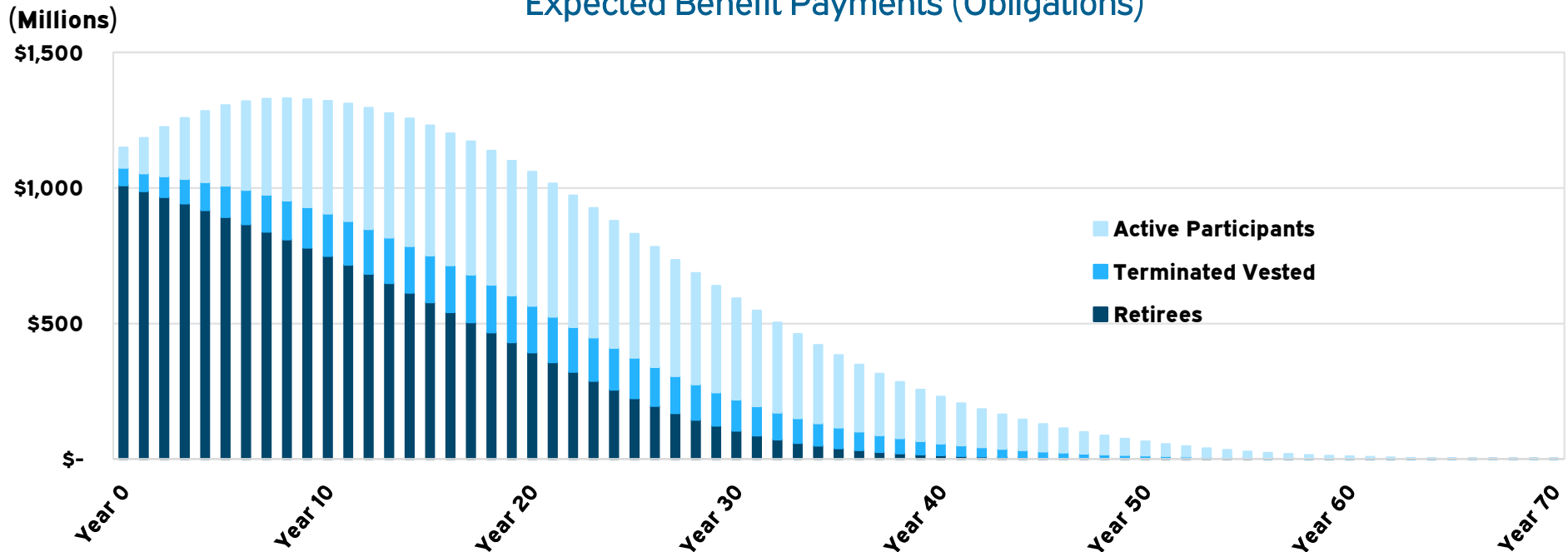
Source: Cheiron.



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Example: Expected Benefit Payments and Plan Liability

Expected Benefit Payments (Obligations)



- Benefit payments are determined by the provisions of the plan, generally based on how long participants work and salary earned.
- *Expected* benefit payments are determined by the plan's actuary using many assumptions, such as future mortality and salary increases.
- The liability is calculated by discounting the expected benefit payments using the assumed long-term actuarial rate.



- The funded status is an assessment of whether the assets are large enough to satisfy the obligations earned to-date, assuming all actuarial assumptions are met.

$$\frac{\text{Assets}}{\text{Liabilities}} = \text{Funded Status (Ratio)}$$

- If the funded status is less than 100%, the actuary will recommend the plan sponsor contribute assets to the plan to:
 1. close the funding gap; and
 2. fund the benefits expected to be earned by participants in the upcoming year
- If the funded status is more than 100%, the actuary could recommend a smaller contribution or no contribution at all.



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Funded Status

- The actuarial value of assets (AVA) and actuarial accrued liability (AAL) change from one year to the next in a formulaic fashion.
 - Note: actuarial losses/gains are important considerations that are generally related to experience vs. assumptions.

Example: Change in AVA and AAL

AVA at Beginning of Year

+ Contributions

+ Actual return (accounting for any smoothing)

- Benefits paid

- Expenses

= AVA at End of Year

AAL at Beginning of Year

+ Service cost (benefits accrued during year)

+ Interest cost

+/- Actuarial losses/gains during the year

- Benefits paid

= AAL at End of year



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Moody's Measure

- For underfunded plans, one metric to monitor is Moody's "Tread Water" Measure.
- This metric is the bare minimum for a system to maintain solvency.

Moody's "Tread Water" Measure:
Service Costs + Interest Costs on UAAL \approx Minimum Contribution Threshold

**(i.e., contributions cover accrual of new benefits + interest costs,
meaning UAAL is not increasing)**

$$\frac{\text{Actual Contributions}}{\text{Service Costs + Interest Costs on UAAL}} > 1.0$$

- If the ratio of a plan's employer contributions to its Tread Water Measure > 1.0 , then the plan exhibits a sustainable ability to continue financing its long-term obligations, otherwise, it is not even "treading water."



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Key Terms

- **PBO (projected benefit obligation)**
 - Actuarial present value (at an assumed discount rate) of all future pension benefits earned to date.
 - Includes:
 - Remaining benefits for currently retired employees;
 - Retirement benefits earned to date for active employees;
 - Impact of future salary increases and service on the benefits for active employees.
- **AAL (actuarial accrued liability)**
 - For most public plans, this is the same as the PBO.
- **AVA (actuarial value of assets)**
 - The asset value for valuation purposes. Can be based on market value + any “smoothing” methods.
- **UAAL (unfunded actuarial accrued liability)**
 - $AAL - AVA = UAAL$
- **Funded Status (Ratio)**
 - $AVA/AAL = \text{Funded Status (Ratio)}$
- **Discount Rate**
 - The interest rate used to compute the present value of benefits and current service costs. The actuarial recommendation is for this rate to stay at or below the portfolio’s expected long-term rate of return.
- **Expected Return**
 - The expected return of the investment portfolio. This may or may not equal the discount rate.



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Key Terms

- **Normal Cost or Current Service Cost**
 - Present value of benefits expected to be earned during the upcoming period.
- **Interest Cost**
 - Increase in the liability due to the passage of time.
- **ADC or ARC (actuarial determined contribution or actuarial required contribution)**
 - The amount needed to fund benefits over time.
 - Typically, this is the amount necessary to fund the normal cost and amortize the unfunded liability per the amortization schedule (if applicable).
- **Valuation Report**
 - Utilizing current assumptions, an annual report that describes the financial position of a plan.
- **Experience Study**
 - A study performed every few years to ensure the assumptions are in-line with the plan's demographic and economic experience.
- **Actuarial gains/losses**
 - Changes in the AAL due to alterations in assumptions/methods (e.g., discount rate) or experience (e.g., salary growth).



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Important Assumptions

Discount Rate (recent change = 6.9%)

- The rate at which expected benefit payments are discounted.
- A decrease in the rate of return assumption increases the present value of liabilities.

Inflation (recent change = 2.4%)

- General increase in prices and fall in the purchasing power.
- Future retirement benefit increases are influenced by inflation, leading to a larger liability.

System Payroll Growth (recent change = 3.4%)

- Estimate of year-to-year payroll increases.
- Payroll estimates are important from two perspectives: higher salaries lead to larger expected contributions and larger participant benefits.



The purpose of an asset-liability study...

- Complete a comprehensive analysis of the unique characteristics of the cash flows (i.e., net benefit payments, expenses, contributions, etc.);
- Identify material risks to the amounts of the cash flows, and;
- Align an asset allocation to match the plan sponsor's risk tolerance.



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Asset-Liability Process

- Funded ratios and valuation reports are *point-in-time* viewpoints of a system.
 - Any forward-looking projections assume all assumptions are perfectly met.
- Asset-Liability models seek to incorporate more probabilistic elements into the analysis, in particular, how volatility in the investment portfolio impacts the system.
 - Process examines potential ranges/probabilities for various actuarial metrics, such as the funded ratio, over long periods of time (e.g., 30 years).
 - Additionally, certain elements of the system (e.g., contribution rate) can vary over time depending on how the investment portfolio performs.

Project Goal:

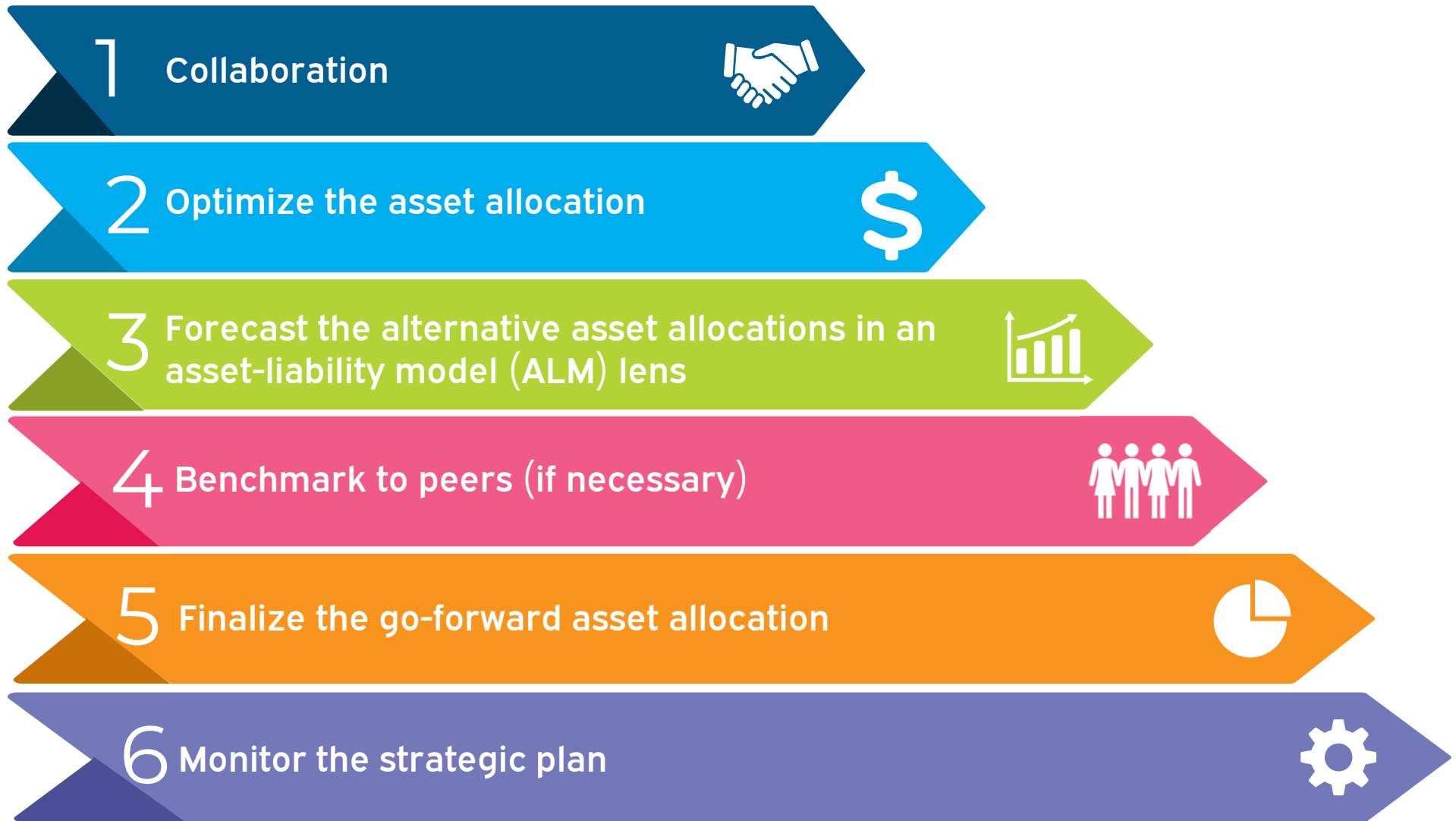
To review and possibly modify a plan's Strategic Allocation Policy, reflecting the decision maker's unique definition, tolerance for, and beliefs about investment risk.



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Asset-Liability Process

Asset-Liability Modeling Process





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Asset-Liability Process: Stakeholder Viewpoints

Stakeholders Perspectives on Risks/Implementations are Paramount

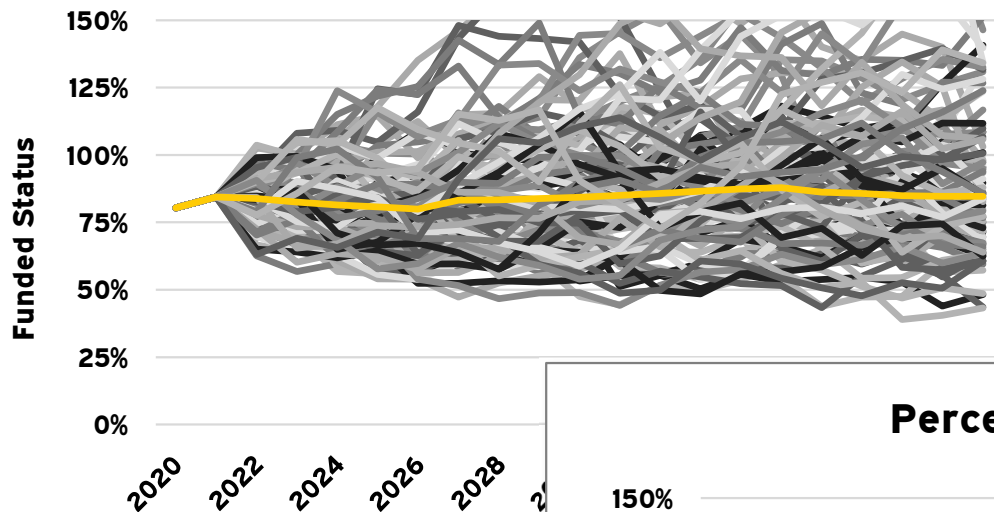
- Example Survey Questions
 - **Objective** - Rank the following priorities:
 - Maintain progress along the “funding path”.
 - Minimizing total portfolio declines of -10% or more in a fiscal year.
 - Achieving 100% funded in X years.
 - Minimizing contribution uncertainty.
 - **Subjective** - Agree or Disagree?
 - During a market crisis, the plan sponsor will be able to increase its contribution rate.
 - Alternative asset classes can help stabilize the total portfolio.
 - The cash-flow position is a key consideration when constructing an investment portfolio.
 - Producing a return pattern that is different than peers is a risk (given the same long-term return).
 - Different strategies and/or asset classes are interchangeable if they perform similar portfolio functions.
- Answers to such questions help frame the optimization parameters and guide the ultimate decision-making process.



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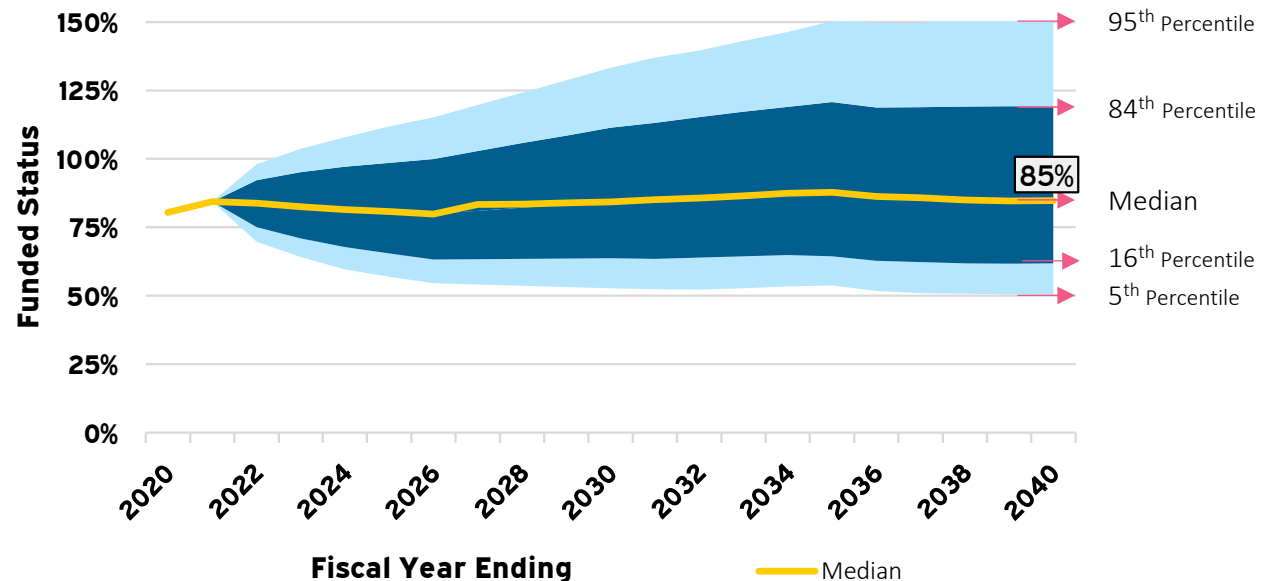
EXAMPLE: Public Pension Asset-Liability Output

Individual Simulations



- The chart to the left displays a simulation of funded status outcomes based on the current investment policy, funded status, projected pension benefit payments and funding policy.
- The chart below summarizes those results into corridors of percentiles.
- **Example:** There is a 50% probability the funded status in 2040 is expected to be greater than 85%.

Percentile Grouped Simulations



Analysis based on limited data from TCERA's website.



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Asset-Liability Process

- OIC is unique in that it is an investment council and not the board of an entire system.
- While the OIC is focused on the asset side of the equation, several policy statements explicitly or implicitly guide the OIC to be aware of the asset-liability interactions:
 - Examples:
 - *IPS*
 - “The Council evaluates risk in terms of both short-term asset price volatility and long-term plan viability.”
 - *Statement of Investment and Management Beliefs*
 - “The OIC must weigh the short-term risk of principal loss against the long-term risk of failing to meet return expectations.”
 - “The timing and magnitude of projected employer contributions and future benefit payments have significant cash flow implications and thus will receive explicit consideration during the OIC’s asset allocation decision-making process.”

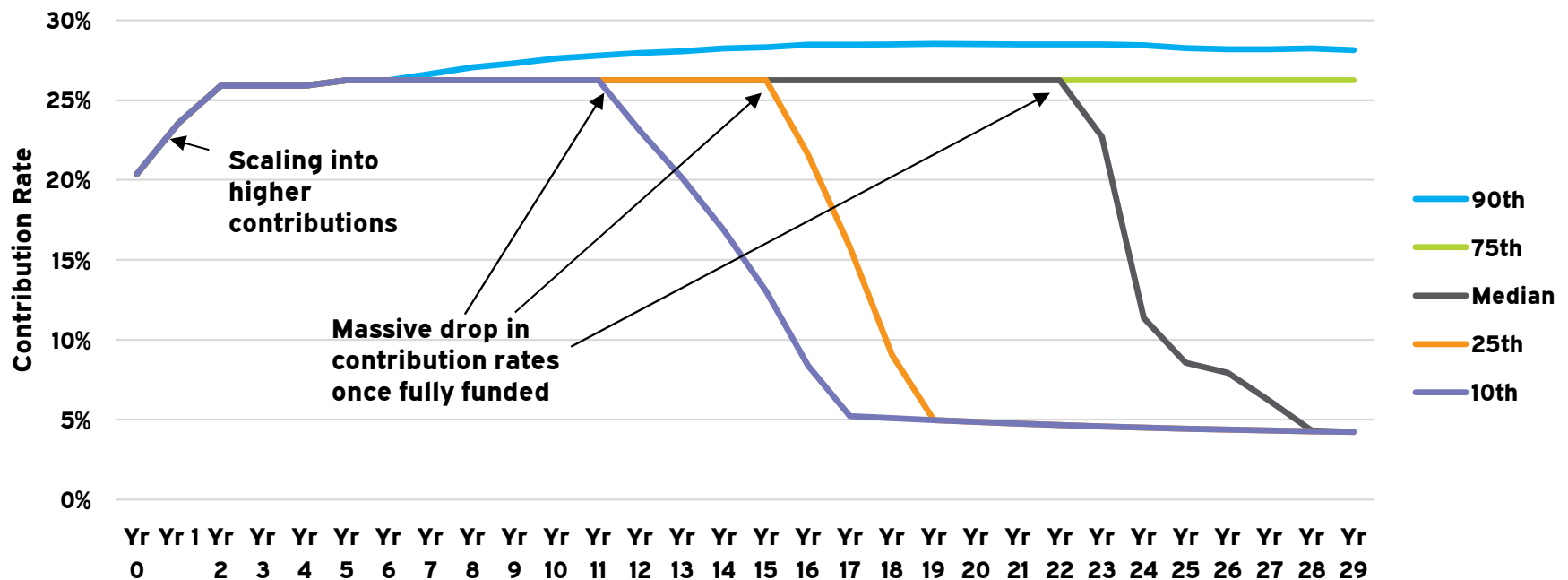


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Asset-Liability Process

- The contribution policy is a primary area of focus during an asset-liability study.
- In addition to ranges for funded ratio, decision makers can also examine the probabilistic projections for contributions levels on a year-by-year basis and in aggregate.
 - While contribution policies fall outside of the OIC's purview, it is another mechanism to examine long-term plan solvency and risk.

Example: Employer Contribution Rate for Fiscal Year





- A defined benefit plan can ultimately be treated as a balance sheet:
 - Left side = assets
 - Right side = liabilities (benefits)
- Actuarial methods determine how the left and right side of this balance sheet are determined and calculated.
 - These methods are complex, but they can be treated in a more simplified manner to improve decision-making.
- Asset-Liability Studies seek to examine this balance sheet over a long-term period in a probabilistic manner that examines a wide range of scenarios and metrics.



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TAB 6 – Investment Program

Investment Program Review OIC Educational Session

December 1, 2021



Investment Program Review OIC Educational Session

Investment Program

The Oregon Investment Council (“OIC”) is responsible for setting overall Investment Beliefs, Policy, Asset Allocation, Benchmarks, and providing oversight of consultants, service providers, and staff. As such, the OIC is ultimately responsible for the Investment Program.

OIC Investment Beliefs

- 1 THE OIC SETS POLICY AND IS ULTIMATELY RESPONSIBLE FOR THE INVESTMENT PROGRAM
 - A Investment management is dichotomous - part art and part science.
 - B The OIC is a policy setting council that largely delegates investment management activities to the OST and qualified external fiduciaries.
 - C The OIC is vested with the authority to set and monitor portfolio risk. Both short-term and long-term risks are critical.
 - D To exploit market inefficiencies, the OIC should be long-term, contrarian, innovative, and opportunistic in its investment approach.
- 2 ASSET ALLOCATION DRIVES RISK AND RETURN
 - A Asset allocation is the OIC's primary policy tool for managing the investment program's long-term risk/return profile.
 - B Portfolio construction, including diversification and correlation considerations, is essential to maximizing risk-adjusted returns.
- 3 THE EQUITY RISK PREMIUM WILL BE REWARDED
 - A Over the long-term, equity-oriented investments provide reliable return premiums relative to risk-free investments.
- 4 PRIVATE MARKET INVESTMENTS CAN ADD SIGNIFICANT VALUE AND REPRESENT A CORE OIC/OST COMPETENCY
 - A The OIC can capitalize on its status as a true, long-term investor by making meaningful allocations to illiquid, private market investments.
 - B Dispersion in private market investment returns is wide; accordingly, top quartile manager selection, diversification across vintage year, strategy type, and geography, and careful attention to costs are paramount.



Investment Program Review OIC Educational Session

Investment Program

OIC Investment Beliefs (continued)

5 CAPITAL MARKETS HAVE INEFFICIENCIES THAT CAN BE EXPLOITED

- A Inefficiencies that can be exploited by active management may exist in certain segments of the capital markets.
- B Passive investment management in public market will outperform the median active manager in those markets over time.

6 COSTS DIRECTLY IMPACT INVESTMENT RETURNS AND SHOULD BE MONITORED AND MANAGED CAREFULLY

- A All fees, expenses, commissions, and transaction costs should be diligently monitored and managed in order to maximize net investment returns.
- B External incentive structures should be carefully evaluated to ensure proper alignment with investment program objectives

7 FAIR AND EFFICIENT CAPITAL MARKETS ARE ESSENTIAL FOR THE LONG-TERM INVESTMENT SUCCESS

- A The OIC recognizes that the quality of regulation and corporate governance can affect the long-term value of its investments.
- B The OIC also recognizes that voting rights have economic value.

8 THE INTEGRATION OF ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG) FACTORS, SIMILAR TO OTHER INVESTMENT FACTORS, MAY HAVE A BENEFICIAL IMPACT ON THE ECONOMIC OUTCOME OF AN INVESTMENT AND AID IN THE ASSESSMENT OF RISKS ASSOCIATED WITH THAT INVESTMENT

- A The consideration of ESG factors within the investment decision-making framework is important in understanding the near-term and long-term impacts of investment decisions.
- B Over time, there has been an evolution of multifactor, or more holistic approaches, to identify

9 DIVERSITY, IN ALL ASPECTS, IS ACCRETIVE TO MEETING OIC OBJECTIVES

- A By embracing and enhancing diversity and inclusion efforts, the OIC ensures that the investment program will be exposed to and informed by a wide range of perspectives, ideas and opinions.



Investment Program Review OIC Educational Session

Investment Duties of OIC

The following areas fall under the purview of the OIC's responsibilities:

Investment Policy: Important document that sets forth the goals and objectives of the Program, and establishes guidelines for the implementation of the investment strategies within the Oregon Public Employee Retirement Fund ("OPERF").

Goal of the Overall Investment Program: *Provide the highest possible return at a level of risk that is appropriate for active and retired OPERF members (INV 1203).*

Asset Allocation, reviewed every 2 years, is the primary policy tool for managing the investment program's long-term risk/ return profile. The OIC recognizes that decisions regarding the asset allocation will have the largest impact on realized return and risk and as such, will be a particular area of focus to the Council.

In June 2021, the Board voted and approved a slight modification to the asset allocation. Private equity was increased from 17.5% to 20% with a downward adjustment of 2.5% within public equity. In addition, real assets and diversifying strategies were separated into dedicated asset classes in an effort to improve transparency within the Alternatives portfolio. Further modifications to the AA will be considered in 2022 when the Asset Liability Study (ALS) is undertaken.

2021 Expected Return on current portfolio target = 6.6% over 20 years.

Asset/Liability Study, a study of OPERF's assets and liabilities, is done every 4 years. These studies review investment mixes and return expectations against OPERF's liability structure, funded status and liquidity needs. Next A/L Study: 2022.

The current actuarial rate today is 6.9%, approved in October 2021 (down from 7.2%).



Investment Program Review OIC Educational Session

Investment Duties of OIC

The following areas fall under the purview of the OIC's responsibilities:

OPERF Portfolio:

Asset Class	Role	Policy Target
Public Equity	Enhanced returns, diversification	30
Private Equity	Enhanced returns, diversification	20
Fixed Income	Diversification, liquidity	20
Real Estate	Returns, diversification	12.5
Risk Parity	Returns, liquidity, diversification	2.5
Real Assets	Real return over inflation, diversification	7.5
Diversifying Strategies	Returns, diversification	7.5
Opportunity Portfolio	Enhanced returns and/or diversification	
		100

Oversight of investment performance and selection of benchmarks: While the OIC sets strategic policy which includes risk measurement and performance monitoring, much of the day-to-day policy implementation decisions lie with Staff/ SIO's with the approval of the CIO.

Additionally, the operations team provides reconciliation and verification of performance.



Investment Program Review OIC Educational Session

Investment Duties of OIC

Investment Program (continued), involvement of additional parties:

OIC's role and role of Treasury staff: The Oregon State Treasurer, through the Investment Division of the Office of the State Treasure ("OST"), provides staff support for the Council and, as the Council's statutorily designated "investment officer", invests and manages financial assets in accordance with Council policy.

Role of Investment Staff*: The OIC tasks OST Staff (as well as external managers, consultants and other service providers) with policy implementation. Investment staff roles are delineated by asset classes. Investment management activities are largely designated to the OST Staff, as well as external fiduciaries.

OST-Investment Division consists of highly skilled, and seasoned staff of roughly 30 FTE's. Led by asset class heads, investment staff perform the day-to-day investment activities under the direction of the council. This includes identifying, retaining, managing and disposing of investment funds as well as re-balancing discretion where appropriate.

Risk Management*: An area that has evolved over the last decade, and grown in size and importance through investing in systems and people. Team monitors risk levels across OPERF plan (using Aladdin) and asset classes and reports findings to the Council on an on-going basis.

* See OST Investment Division organizational chart included for additional team members and responsibilities.



Investment Program Review OIC Educational Session

Investment Division Organizational Chart





Investment Program Review OIC Educational Session

Investment Division Functional Organizational Chart

Oregon Investment Council

Investment oversight and fiduciary responsibility for Oregon investment portfolios and public trust funds

Investment Division

Capital Markets		Alternatives			Investment Operations		Risk Management		
Public Equity	Fixed Income	Private Equity	Real Estate	Alternatives	Accounting	Operations	Portfolio Risk	Corporate Governance	ESG
<ul style="list-style-type: none">• Manage portfolio structure• Due diligence and monitoring• Research and propose new investments to OIC• Trading/Internal portfolio management• Proxy voting	<ul style="list-style-type: none">• Manage portfolio structure• Due diligence monitoring• Research and propose new investments to OIC• Trading/Internal portfolio management	<ul style="list-style-type: none">• Manage portfolio structure• Due diligence and monitoring• Research and propose new investments to OIC• Relationship management• Contract negotiations (alongside Legal)	<ul style="list-style-type: none">• Manage portfolio structure• Due diligence and monitoring• Research and propose new investments to OIC• Relationship management• Contract negotiations (alongside Legal)• Property valuations	<ul style="list-style-type: none">• Manage portfolio structure• Due diligence and monitoring• Research and propose new investments to OIC• Relationship management• Contract negotiations (alongside Legal)	<ul style="list-style-type: none">• Investment accounting• Cash management• Financial reporting• Fee oversight• Portfolio administration	<ul style="list-style-type: none">• Reconciliation• Data administration• Trade operations• Internal/External reporting	<ul style="list-style-type: none">• Maintain/develop investment policies• Manage asset allocation• Produce Capital Market assumptions• Monitor risk profile of funds	<ul style="list-style-type: none">• Proxy voting• Develop engagement programs with public companies• Due diligence and monitoring for defined contribution programs	<ul style="list-style-type: none">• Evaluate risk factors• Risk mitigation strategies



Investment Program Review OIC Educational Session

Investment Duties of OIC

- **Role of Consultants:**
 - **General Consultant:** Policy work, Asset Allocation, focus on OPERF, reporting, manager searches
 - **Secondary Consultant:** Asset Allocation collaboration, Policy work, focus on Common School Fund. Additional resource to Board and staff.
 - **Specialty Consultant(s):** Substantial Due diligence on investment opportunities within the respective asset classes: Real Estate, Private Equity, Alternatives
- **Role of Custody Bank (State Street)** consists primarily of 1) being tasked with the performance reporting calculations and 2) the safekeeping of OPERF assets
- **Other Investment Program Service Providers:**
 1. BlackRock's Alladdin: Risk Analytics
 2. Glass Lewis: Proxy Voting
 3. Russell Investments: Overlay Manager retained to better align the actual Fund portfolio with the approved policy mix, primarily through futures contracts
 4. Commission Recapture Program: Commissions Rebate Program



Investment Program Review OIC Educational Session

Disclaimer

WE HAVE PREPARED THIS REPORT (THIS "REPORT") FOR THE SOLE BENEFIT OF THE INTENDED RECIPIENT (THE "RECIPIENT").

SIGNIFICANT EVENTS MAY OCCUR (OR HAVE OCCURRED) AFTER THE DATE OF THIS REPORT AND THAT IT IS NOT OUR FUNCTION OR RESPONSIBILITY TO UPDATE THIS REPORT. ANY OPINIONS OR RECOMMENDATIONS PRESENTED HEREIN REPRESENT OUR GOOD FAITH VIEWS AS OF THE DATE OF THIS REPORT AND ARE SUBJECT TO CHANGE AT ANY TIME. ALL INVESTMENTS INVOLVE RISK. THERE CAN BE NO GUARANTEE THAT THE STRATEGIES, TACTICS, AND METHODS DISCUSSED HERE WILL BE SUCCESSFUL.

INFORMATION USED TO PREPARE THIS REPORT WAS OBTAINED FROM INVESTMENT MANAGERS, CUSTODIANS, AND OTHER EXTERNAL SOURCES. WHILE WE HAVE EXERCISED REASONABLE CARE IN PREPARING THIS REPORT, WE CANNOT GUARANTEE THE ACCURACY OF ALL SOURCE INFORMATION CONTAINED HEREIN.

CERTAIN INFORMATION CONTAINED IN THIS REPORT MAY CONSTITUTE "FORWARD - LOOKING STATEMENTS," WHICH CAN BE IDENTIFIED BY THE USE OF TERMINOLOGY SUCH AS "MAY," "WILL," "SHOULD," "EXPECT," "AIM," "ANTICIPATE," "TARGET," "PROJECT," "ESTIMATE," "INTEND," "CONTINUE" OR "BELIEVE," OR THE NEGATIVES THEREOF OR OTHER VARIATIONS THEREON OR COMPARABLE TERMINOLOGY. ANY FORWARD - LOOKING STATEMENTS, FORECASTS, PROJECTIONS, VALUATIONS, OR RESULTS IN THIS PRESENTATION ARE BASED UPON CURRENT ASSUMPTIONS. CHANGES TO ANY ASSUMPTIONS MAY HAVE A MATERIAL IMPACT ON FORWARD LOOKING STATEMENTS, FORECASTS, PROJECTIONS, VALUATIONS, OR RESULTS. ACTUAL RESULTS MAY THEREFORE BE MATERIALLY DIFFERENT FROM ANY FORECASTS, PROJECTIONS, VALUATIONS, OR RESULTS IN THIS PRESENTATION.

PERFORMANCE DATA CONTAINED HEREIN REPRESENT PAST PERFORMANCE. PAST PERFORMANCE IS NO GUARANTEE OF FUTURE RESULTS.

TAB 7 – Operations

December, 2021

Investment Operations

Dave Randall
Chief Investment Operating Officer

Debra Day
Investment Reporting Manager

Kristi Jenkins
Investment Operations Manager

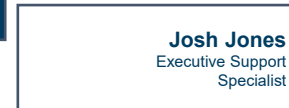


OREGON
STATE
TREASURY

Investment Operations Organizational Chart



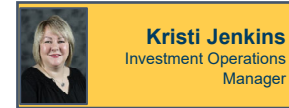
David Randall
Chief Investment
Operating Officer



Josh Jones
Executive Support
Specialist



Debra Day
Investment Reporting
Manager



Kristi Jenkins
Investment Operations
Manager



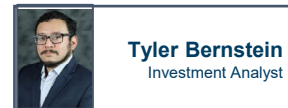
Roy Jackson
Senior Investment
Accountant



Jo Recht
Senior Investment
Accountant



Mark Selfridge
Data Investment
Analyst



Tyler Bernstein
Investment Analyst



Mohammed Quraishi
Trade Support Analyst



Caitlyn Wang
Data Investment
Analyst



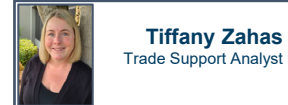
Monique Sadegh
Investment
Accountant



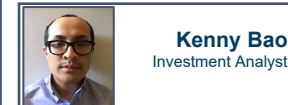
Tim Miller
Investment
Reporting Analyst



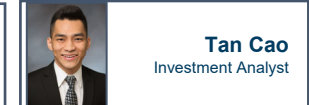
Aliese Jacobsen
Trade Support Analyst



Tiffany Zahas
Trade Support Analyst



Kenny Bao
Investment Analyst



Tan Cao
Investment Analyst

Investment Operations – Core Functions



Background - Timeline

The Investment Division has undergone a multi-year business transformation that includes the addition and assimilation of dedicated operational resources as well as the acquisition and integration of the BlackRock Solutions (BRS) Aladdin platform. Today, OST's Aladdin utilization rates are top among peers, and the Investment Operations Unit is now comprised of 15 FTEs across Investment Accounting, Performance, Reporting, Reconciliation, Trade Operations, and Data Management.



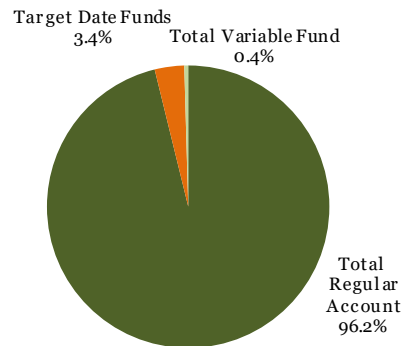
Assets Under Management

As of 9/30/2021

\$133.1
BILLION

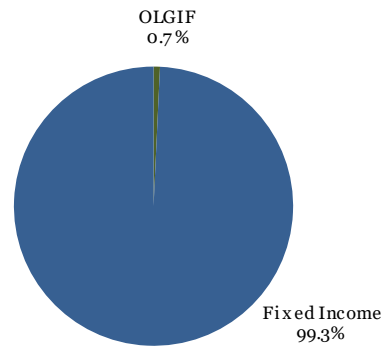
Public Employee Retirement

PERS - \$97.2 Billion



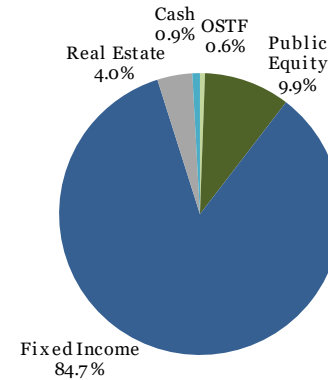
Oregon Short-Term Fund

OSTF - \$30.7 Billion



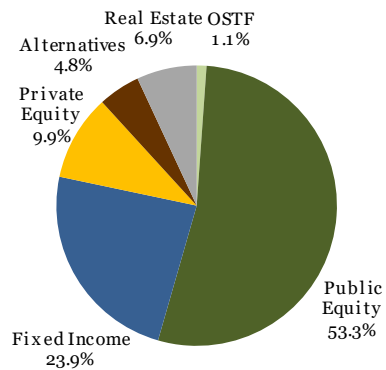
State Accident Insurance Fund

SAIF - \$5.0 Billion



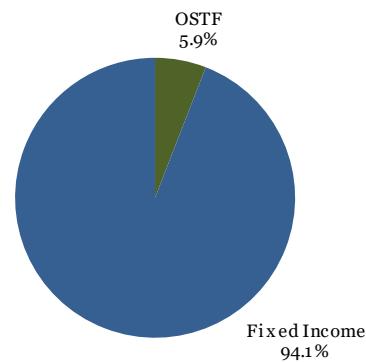
Common School Fund

CSF - \$2.2 Billion



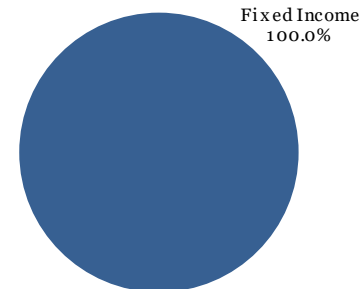
Oregon Intermediate-Term Pool

OITP - \$0.4 Billion



Local Government Intermediate Fund

OLGIF - \$0.2 Billion



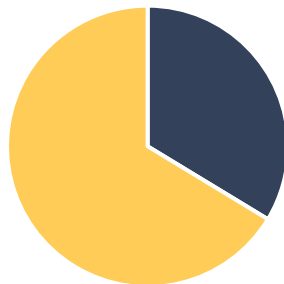
OREGON
STATE
TREASURY

Sum of all individual plans will not foot to Total of State Funds due to intra-fund investing.

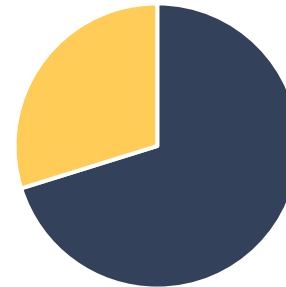
Investment Operations Review

Internally/Externally Managed Assets

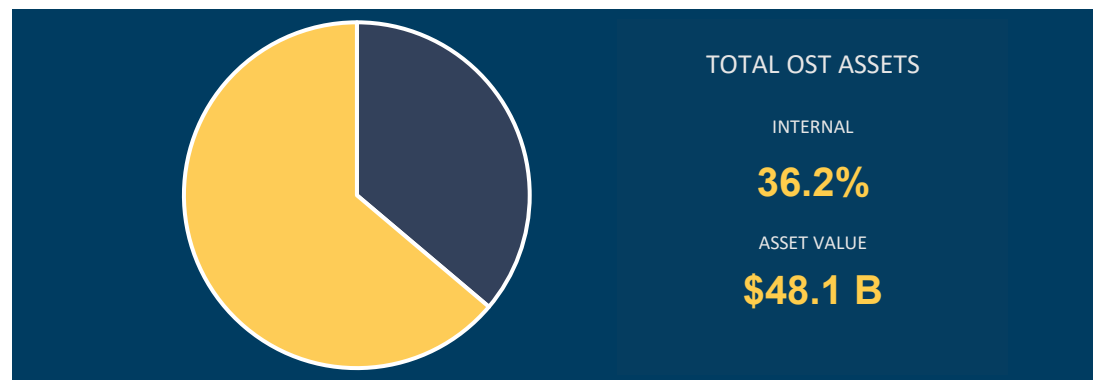
As of 9/30/2021



PUBLIC EQUITY
INTERNAL 33.7%
EXTERNAL 66.3%

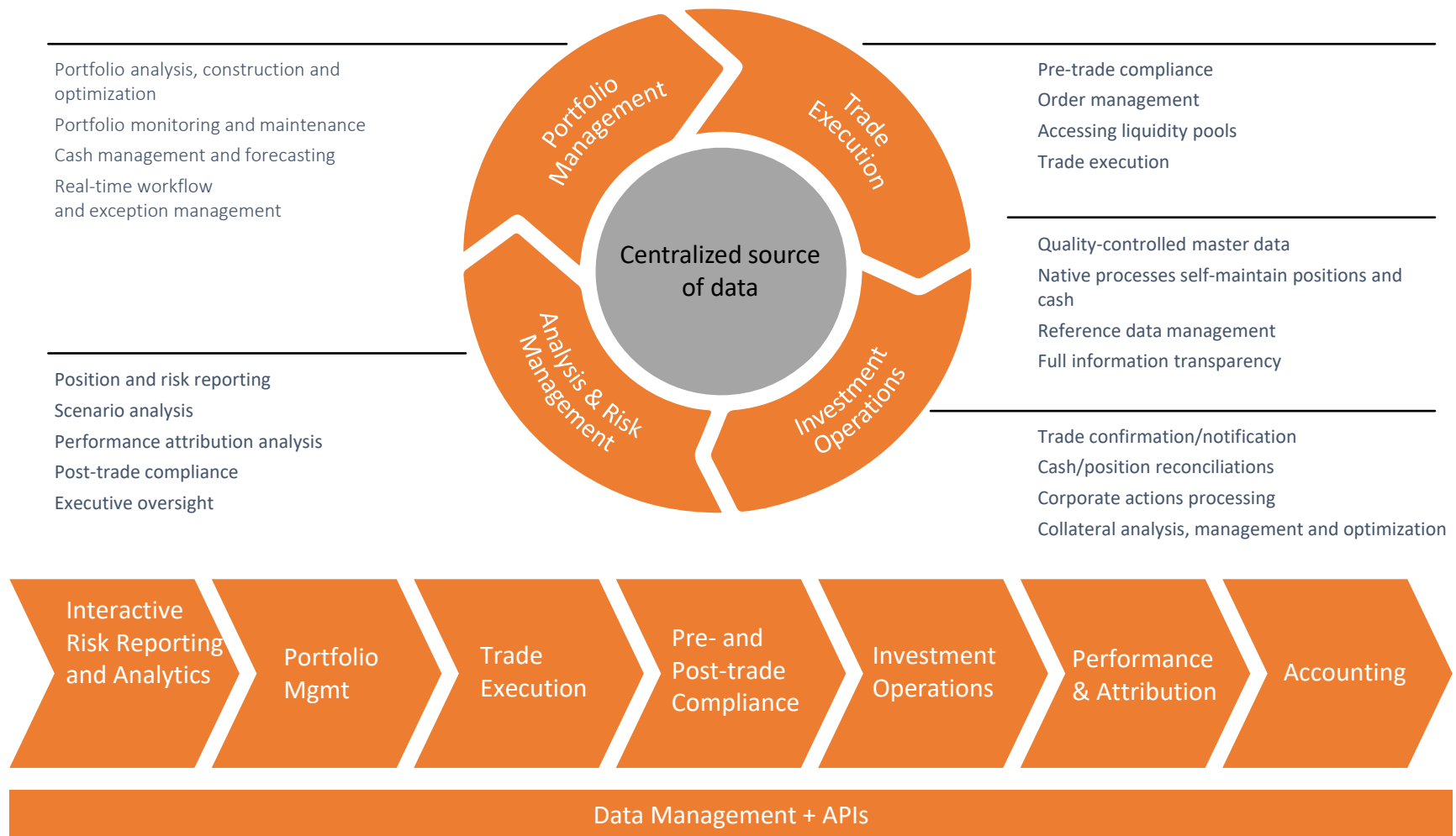


FIXED INCOME
INTERNAL 70.2%
EXTERNAL 29.8%



Aladdin is an end-to-end investment platform

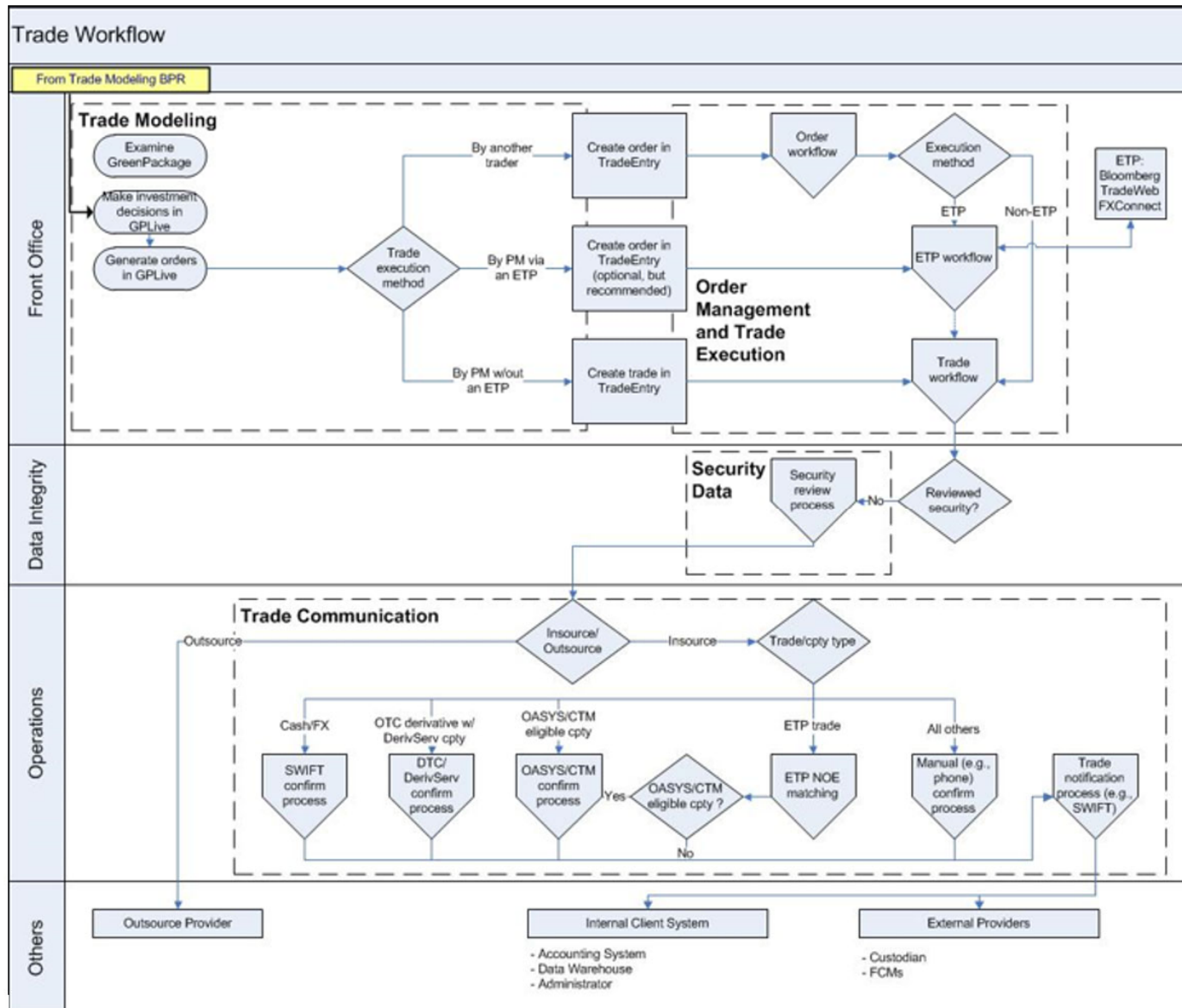
Connecting the data, people and tools needed to manage money in real-time



OREGON
STATE
TREASURY

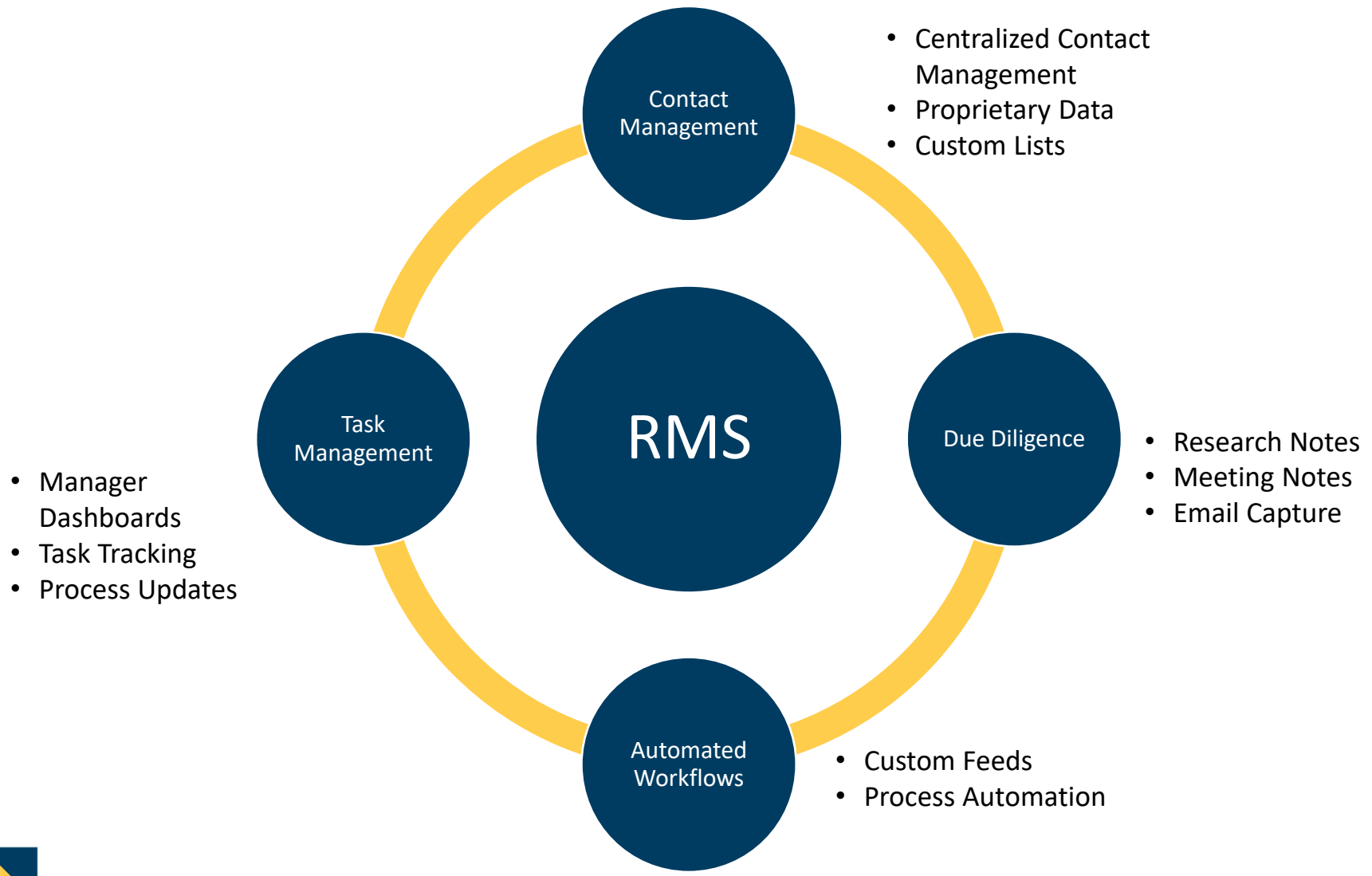
Limited - Not For Further Distribution - OST
RESTRICTED: NOT FOR FURTHER DISTRIBUTION

Trade Operations: Trade Workflow

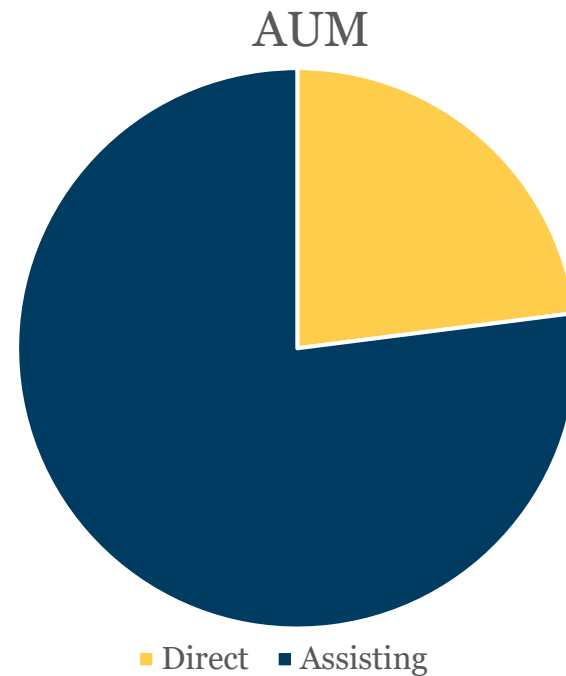
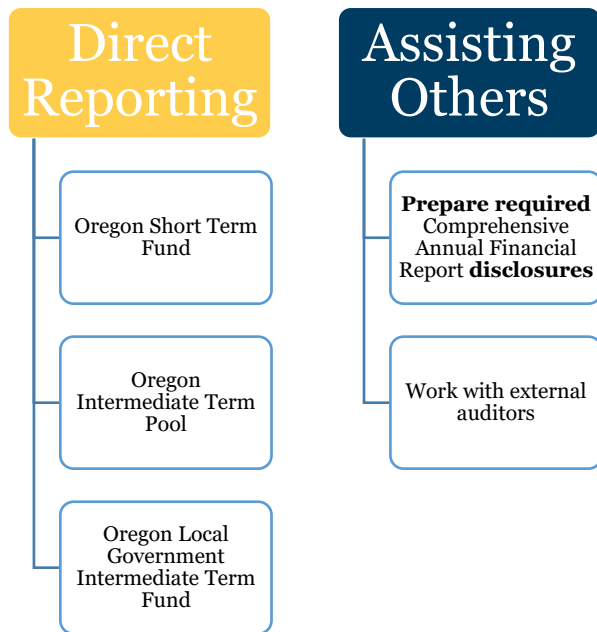


FactSet RMS

Multi Asset Research Management



Financial Reporting – Core Functions



Financial Reporting – Direct Reporting

- Annual financial statements are prepared in compliance with GAAP requirements
- Concurrently audited by Secretary of State
- Utilized by the State and local governments in their own financial statements

Oregon Short Term Fund
\$ 30.7 B

Oregon Intermediate Term Pool
\$371 M

Oregon Local Government Intermediate Fund
\$ 249 M

Financial Reporting

Supporting our Agency Partners

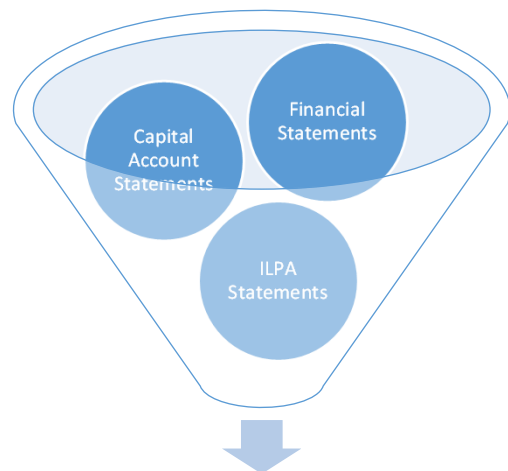
- Each agency has a unique set of holdings and reporting requirements
- Provide investment accounting and financial reporting guidance as subject matter experts
- Prepare and assist in quarterly regulatory reporting
- Prepare investment data for annual financial statements and accompanying notes
- Engage with external auditors

- **Oregon Public Employees Retirement Fund**
- **Department of State Lands (CSF)**
- **State Accident Insurance Fund**
- **Department of Administrative Services**
- **Consumer and Business Services**
- **Housing and Community Services**
- **Oregon State Lottery**
- **Department of Veterans Affairs**
- **Department of Transportation**
- **Oregon Universities**

Financial Reporting

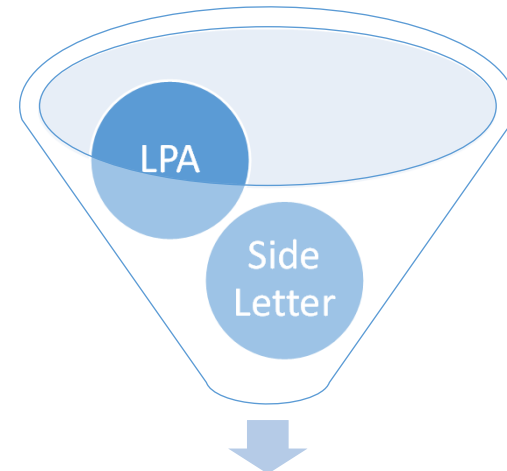
Fee Monitoring and Oversight

Alternatives Fees & Expenses: Validation Process



Reported/Charged

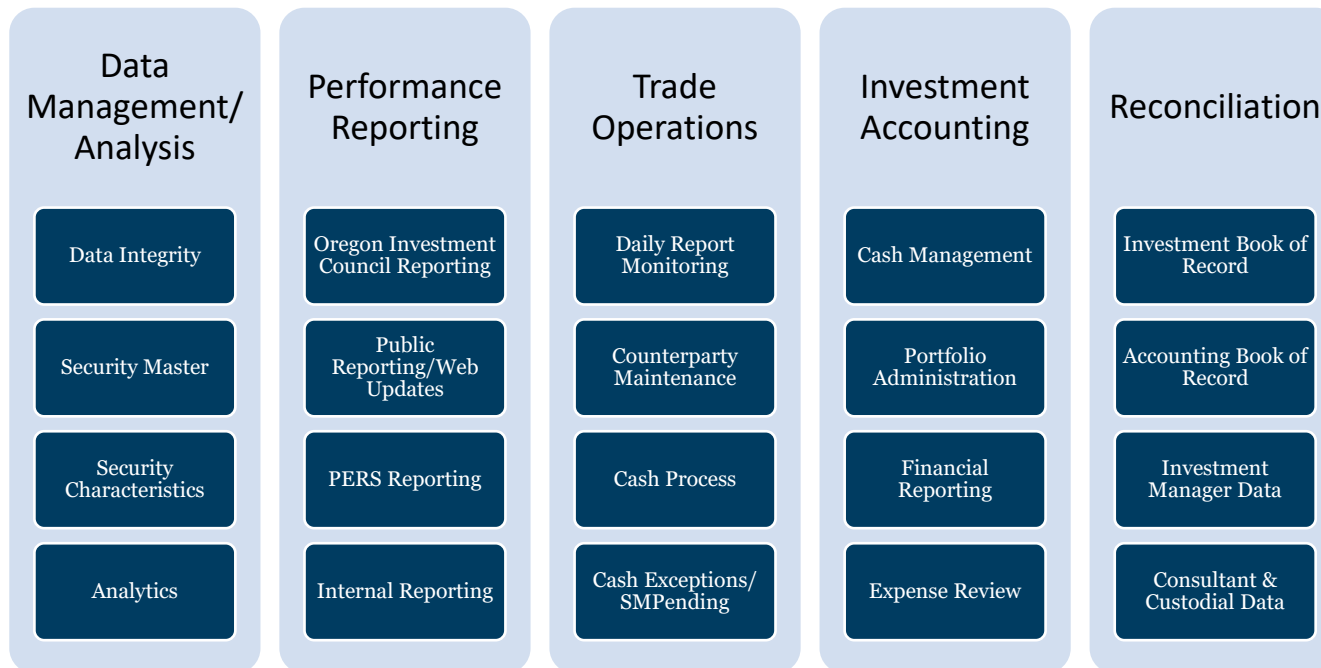
VS



Expected

- Reported Expenses & Fees: Data extracted from capital account statements, financial statements, and ILPA statements provide us with a snapshot of expenses and fees that have been charged to the fund.
- Expected: Data extracted from LPAs and side letters provide economic terms, which allow us to calculate and model expected expenses and fees.
- The 'recipe' for validating alternatives fees and expenses is to compare what is reported against what is expected. Should a difference between the two amounts arise, further investigations will ensue.

Investment Operations – Questions?





OREGON STATE TREASURY

Tobias Read
Oregon State Treasurer

350 Winter St NE, Suite 100
Salem, OR 97301-3896

oregon.gov/treasury

TAB 8 – Legal and Legislative



Oregon

Kate Brown, Governor

Government Ethics Commission

3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1544

Telephone: 503-378-5105

Fax: 503-373-1456

Email: ogec.mail@oregon.gov

Website: www.oregon.gov/ogec

July 1, 2019

Wendy McGrane, Board Member
Oregon Growth Board
775 Summer Street NE #200
Salem, Oregon 97301

Steven Marlowe, Assistant Attorney General
Oregon Department of Justice
General Counsel Division - Tax & Finance Section
1162 Court Street NE
Salem, Oregon 97301

Dear Ms. McGrane & Mr. Marlowe:

This opinion is issued in response to your correspondence received by the Oregon Government Ethics Commission (Commission) on June 9, 2019, regarding the provisions of ORS Chapter 244 concerning conflicts of interest.

OREGON GOVERNMENT ETHICS COMMISSION STAFF ADVISORY OPINION NO. 19-136S

STATED FACTS: The following factual information is derived from a letter to the Commission from Assistant Attorney General (AAG), Steven Marlowe and Oregon Growth Board (OGB) staff member, Nate Wildfire and subsequent information each of them provided. Mr. Marlowe is the AAG assigned to the OGB and submitted the opinion request on behalf of Wendy McGrane, who was appointed on April 1, 2019, to the OGB.

The OGB has the duties, functions and powers to invest and re-invest moneys in the Oregon Growth Fund (OGF) and Oregon Growth Account (OGA) for the benefit of qualified businesses and for the purpose of earning returns for the Education Stability Fund. In addition, they enter into contracts, agreements or arrangements for the investment and management in OGF & OGA as well as other services to satisfy necessary Board duties and functions. The Board collaborates, cooperates and enters into agreements with local governments, state agencies, financial institutions and other entities for economic development.

The OGF is formed in the State Treasury and is separate and distinct from the General Fund. Interest earned by the OGF must be credited to the fund. Moneys in the fund are continuously appropriated to the Oregon Business Development Department (OBDD) for the use of the OGB for purposes set forth in statute. The OBDD may use moneys in the



fund to pay the administrative costs associated with the fund and with administering the program.

Pursuant, in part, to ORS 348.702(6), which says, "The investment of funds in the Oregon Growth Account shall be governed by the Oregon Growth Board", the OGB votes to invest money from the OGA with investment managers. These investment managers are mainly limited partnerships or limited liability companies but they may be existing customers of financial institutions, such as: U.S. Bank National Association, AKA US Bank, when they ask for an investment from the OGB.

Board member Wendy McGrane, is a Vice President at US Bank. Among the members appointed to the OGB by the Governor, there must be one (1) member with experience in banking. Ms. McGrane was appointed to fulfill the requirement that the board have one member with experience in banking. [ORS 284.883]

The following LLC and LP entities apply to the Oregon Growth Board for funding: venture capital funds, equity funds, angel funds, and non-traditional lenders, etc. These entities presumably have a bank account with some form of bank, and the entity could be a customer of U.S. Bank.

The OGB considers investing state funds with such investors. If a customer of U.S. Bank, the LLC or LP would be expected to receive the OGB investment as a deposit. While the investment fund would then be in control of the money, the OGB investment would be expected to stay in the LLC or LP bank account until the investment fund decides to invest in some company. When the OGB considers investing in a fund that is a customer of U.S. Bank, Ms. McGrane's employer, U.S. Bank, would be financially impacted by the actions of OGB Board members.

QUESTION: Would the Oregon Growth Board's (OGB) investment of moneys present a conflict of interest for Wendy McGrane if the investments are made to account holders in a business which she is associated?

ANSWER: Yes.

Under Oregon Government Ethics law, appointed members of boards and commissions are public officials and must comply with the provisions of ORS Chapter 244. [ORS 244.020(15)]

A conflict of interest is defined as any action, decision, or recommendation that a public official makes in their official capacity, the effect of which would or could be to the private financial benefit or detriment of the public official, their relative, or a business with which they or a relative are associated. An actual conflict of interest occurs when the effect of the official action, decision, or recommendation would have a certain private financial impact. A potential conflict occurs when the effect of the official action, decision, or recommendation could have a private financial impact. [ORS 244.020(1) and (13)]

ORS 244.020(13)(a) states that a public official does not have a conflict of interest if the financial benefit or detriment arises out of an interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position. The Oregon Government Ethics Guide for Public Officials gives the following example of when the exception applies: “[I]f a member of a state board is required by law to be employed in a specific occupation, such as an accountant or a doctor, then the official actions taken by the board member that affect all accountants or doctors to the same degree would be exempt from the conflict of interest disclosure requirements and participation restrictions.

When an appointed member of a board or commission is met with either an actual or potential conflict of interest, they must publicly announce the nature of their conflict on each occasion that the issue giving rise to the conflict occurs. If met with a potential conflict, following their public announcement, they may continue to participate in their official capacity in any discussion, debate, or vote on the issue. If met with an actual conflict, following their public announcement, they must refrain from discussion, debate, or vote on the issue. [ORS 244.120(2)] If a public official is met with an actual conflict of interest and the public official’s vote is necessary to meet the minimum number of votes required for official action, the public official may vote. The public official must make the required announcement and refrain from any discussion, but may participate in the vote required for official action by the governing body. [ORS 244.120(2)(b)(B)].

Public officials are met with a conflict of interest when taking actions in their official capacity that would or could financially affect a business with which they or their relative is associated, unless an exception applies. Ms. McGrane, in her capacity as an OGB member would be met with taking official actions that could or would financially impact U.S. Bank.

As a member of the OGB, Ms. McGrane is required to file an annual Verified Statement of Economic Interest (SEI), and any business required to be listed on one’s SEI as a source of income is a “business with which the person is associated”. [ORS 244.050(1)(q)(DD) and 244.020(3)(d)] Therefore, if U.S. Bank provides 10% or more of Ms. McGrane’s annual household income, it qualifies as a “source of income” required to be listed on her SEI, making U.S. Bank a “business with which she is associated” for purposes of the application of the conflict of interest provisions of ORS Chapter 244. [ORS 244.060(3)]

Typically, any action that a public official takes in their official capacity that would or could financially impact a business with which they are associated would present a conflict of interest for that official, however, an exception to the conflict of interest provisions apply if the financial impact arises from the public official’s membership in a particular industry that is a prerequisite for holding the official position. [ORS 244.020(13)(a)]

Although the statute forming the OGB's governing body requires that one position be held by a person with banking experience, this exception would only apply to Ms. McGrane's decisions that could or would affect members of the banking industry as a whole. For example, although any decision to invest funds potentially could affect all members of the banking industry as the money presumably would be put into some bank, the exception would apply because the conflict would arise from membership in the banking industry.

But any official decisions she were to make that would or could financially affect U.S. Bank, in particular, rather than the banking industry as a whole, would present a conflict for her. Therefore, Ms. McGrane would be faced with a conflict of interest if the OGB were to consider investments made to account holders of U.S. Bank, a business with which she is associated.

The request also raised a question regarding how a banker, who is met with conflicts of interest under ethics laws, would disclose a conflict and still comply with federal bank secrecy laws concerning identification of account holders. Although state law requires disclosure of the nature of one's conflict of interest, and then refraining from further participation if the conflict is actual, we are informed in the request that federal banking law prohibits bankers from disclosing the identity of account holders. Assuming that is so, to comply with both federal and state law, if Ms. McGrane is met with a conflict arising from the applicant's client relationship with U.S. Bank, she should publicly announce that she has a conflict of interest without providing detail, and then refrain from further discussion, debate, or vote on the issue.

THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS 244 TO THE FACTS STATED HEREIN. ANY RELEVANT INFORMATION, WHICH WAS NOT INCLUDED BY THE REQUESTER OF THIS OPINION IN THE STATED FACTS, COULD COMPLETELY CHANGE THE OUTCOME OF THIS OPINION. OTHER LAWS OR REQUIREMENTS MAY ALSO APPLY. THIS IS NOT A FORMAL ADVISORY OPINION PURSUANT TO ORS CHAPTER 244.280. THIS OPINION DOES NOT EXEMPT A PUBLIC OFFICIAL FROM LIABILITY UNDER ORS CHAPTER 244 FOR ANY ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS ONLY MY PERSONAL ASSESSMENT AS THE EXECUTIVE DIRECTOR OF THE OREGON GOVERNMENT ETHICS COMMISSION.

Please contact this office again if you would like this opinion submitted to the Oregon Government Ethics Commission for adoption as a formal advisory opinion pursuant to ORS 244.280.

Sincerely,



Ronald A. Bersin
Executive Director

ADDENDUM

RELEVANT STATUTES: The following Oregon Revised Statutes (ORS) are applicable to the issues that are addressed in this opinion:

244.020 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Actual conflict of interest" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (13) of this section.

(2) "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain but excluding any income-producing not-for-profit corporation that is tax exempt under section 501(c) of the Internal Revenue Code with which a public official or a relative of the public official is associated only as a member or board director or in a non-remunerative capacity.

(3) "Business with which the person is associated" means:

(a) Any private business or closely held corporation of which the person or the person's relative is a director, officer, owner or employee, or agent or any private business or closely held corporation in which the person or the person's relative owns or has owned stock, another form of equity interest, stock options or debt instruments worth \$1,000 or more at any point in the preceding calendar year;

(b) Any publicly held corporation in which the person or the person's relative owns or has owned \$100,000 or more in stock or another form of equity interest, stock options or debt instruments at any point in the preceding calendar year;

(c) Any publicly held corporation of which the person or the person's relative is a director or officer; or

(d) For public officials required to file a statement of economic interest under ORS 244.050, any business listed as a source of income as required under ORS 244.060 (3).

(13) "Potential conflict of interest" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated, unless the pecuniary benefit or detriment arises out of the following:

(a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

(b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged.

(c) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

(15) "Public official" means the First Partner and any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body as defined in ORS 174.109 as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services.

244.120 244.120 Methods of handling conflicts; Legislative Assembly; judges; appointed officials; other elected officials or members of boards.

(1) Except as provided in subsection (2) of this section, when met with an actual or potential conflict of interest, a public official shall...

(2) An elected public official, other than a member of the Legislative Assembly, or an appointed public official serving on a board or commission, shall:

(a) When met with a potential conflict of interest, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official; or

(b) When met with an actual conflict of interest, announce publicly the nature of the actual conflict and:

(A) Except as provided in subparagraph (B) of this paragraph, refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue.

(B) If any public official's vote is necessary to meet a requirement of a minimum number of votes to take official action, be eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises.

(3) Nothing in subsection (1) or (2) of this section requires any public official to announce a conflict of interest more than once on the occasion which the matter out of which the conflict arises is discussed or debated.

(4) Nothing in this section authorizes a public official to vote if the official is otherwise prohibited from doing so.



Oregon

Kate Brown, Governor

Government Ethics Commission

3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1680

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Fax: 503-373-1456

Email: ogec.mail@oregon.gov

Website: www.oregon.gov/ogec

February 18, 2020

Steven Marlowe, AAG
Oregon Department of Justice
1162 Court St NE
Salem, OR 97301

Re: Advice Number 20-019I

Dear Mr. Marlowe:

This letter of advice is provided in response to your request received on January 29, 2020 which presented a question regarding how a newly appointed member of the Oregon Growth Board (OGB) may comply with Oregon Government Ethics law. This advice is based upon background information obtained from the OGB's website, information supplied by you in writing, and information imparted by you in a subsequent telephone call. This analysis and advice are being offered under the authority provided in ORS 244.284 as guidance on how the current provisions of Oregon Government Ethics law may apply to the specific circumstances you have presented.

Facts as Presented

The OGB was created in 2012 to spur economic growth in Oregon by leveraging state resources to improve the availability of capital for Oregon-based high-growth companies. The Board manages two sources of investment capital—the Oregon Growth Fund and the Oregon Growth Account. Both investment sources act as a "funder of funds" exclusively but have different purposes. The OGB is comprised of nine voting members and appointment to the board requires Senate approval.

An individual recently appointed to the OGB, Elmer Huh, is employed by M.J. Murdock Charitable Trust, as the Chief Investment Officer. The Murdock Trust makes investments, including private equity investments. Some of the same Funds that the Murdock Trust has invested in are expected to appear before the OGB to request investment of state funds.

For example, the Murdoch Trust may be a Limited Partner in XYZ Limited Partnership Fund. Partners in this type of Fund typically split the profits on investments, with 80% to the Limited Partners and 20% to the General Partner. Limited Partners in such a Fund are not decision makers as to how the Fund is utilized. The General Partner controls the Fund. Of course, there is no guarantee of profits and always the possibility of loss on investment. The OGB members are



the final decision makers on investments. You have presented the following questions:

Question 1: If Mr. Huh's employer, Murdock Trust, has an equity interest as a Limited Partner in XYZ Limited Partnership Fund, does Mr. Huh have an actual conflict of interest if XYZ comes before the OGB requesting investment?

Answer: Yes. Mr. Huh would be met with an actual conflict of interest in this situation because any official action he takes as an OGB member **would** financially impact the Murdock Trust, a business with which he is associated. To comply with ORS 244.120(2)(b), he must publicly disclose the nature of his conflict and then refrain from any discussion, debate, or vote on the issue giving rise to the conflict. If, however, Mr. Huh's vote is necessary to meet a requirement of a minimum number of votes to take official action, he may be eligible to vote, but not to participate in any discussion or debate on the issue. [ORS 244.120(2)(b)(B)]

ORS 244.020(1) defines an actual conflict of interest and ORS 244.020(13) defines a potential conflict of interest. A public official is met with either an actual or potential conflict of interest when participating in an official capacity, in any action, decision, or recommendation, if the effect would or could be to the private financial benefit or detriment of the public official, their relative, or any business with which they or their relative is associated. The difference between an actual and potential conflict of interest is determined by the certainty of the private financial impact. An **actual conflict** of interest occurs when a public official participates in an official action that would have a financial impact. A **potential conflict** of interest occurs when a public official's action, decision or recommendation could have a financial impact.

ORS 244.020(2), (3)(a) and (d) make Murdock Trust a "business with which Mr. Huh is associated" for purposes of the application of the conflict of interest and use of office provisions of ORS Chapter 244. As a limited partner, Murdock Trust would have an equity interest in XYZ Limited Partnership Fund and an investment in that fund by OGB would have a financial impact on Murdock Trust's equity interests. Thus, any official action Mr. Huh took as a member of the OGB concerning an investment in XYZ would present him with an actual conflict as it would have a financial impact on his employer.

XYZ Limited Partnership Fund itself may also be a "business with which Mr. Huh is associated" under the following circumstances:

- If Mr. Huh or his relative is a director, officer, owner, employee, or agent of XYZ Limited Partnership Fund, or

- If Mr. Huh or his relative owns or has owned stock, another form of equity interest, stock options or debt instruments worth \$1,000 or more at any point in the preceding calendar year in XYZ Limited Partnership Fund, or
- If XYZ Limited Partnership Fund is a source of 10% or more of Mr. Huh's annual household income and thus required to be disclosed on his Annual Verified Statement of Economic Interest. [ORS 244.020(3)(a) and (d)]

ORS 244.120 directs public officials how to resolve a conflict of interest, depending upon the type of public position they hold. As an appointed member of a board or commission, Mr. Huh must publicly disclose the nature of his conflict once on each occasion that the matter giving rise to the conflict occurs. When met with an actual conflict of interest, Mr. Huh must then refrain from further discussion, debate, or vote on the issue. If Mr. Huh's vote is necessary to meet a requirement of a minimum number of votes for the OGB to take official action, he may be eligible to vote, but must still refrain from discussion or debate on the issue. [ORS 244.120(2)(b)(B)].

Question 2. If Murdock Trust is *actively considering* becoming a Limited Partner in XYZ Limited Partnership Fund – for example, Murdock Trust has taken identifiable steps toward investment in XYZ, but has not yet signed the Subscription Agreement and been accepted, does Mr. Huh have a potential conflict of interest if XYZ Limited Partnership Fund comes before the OGB requesting investment?

Answer: Yes. Mr. Huh would be met with a potential conflict of interest in this situation. Any official action he takes as an OGB member could financially impact the Murdock Trust, a business with which he is associated. When met with a potential conflict of interest, in order to comply with ORS 244.120(2)(a), he must publicly disclose the nature of his conflict, but then he could proceed with taking official actions in his role on the OGB.

Question 3. If Murdock Trust is *not actively considering* investing in XYZ Limited Partnership Fund, does Mr. Huh have any conflict of interest if XYZ comes before the OGB requesting investment?

Answer: No.

Prohibited Use of Office:

In addition to the conflict of interest provisions, relevant to all of the questions above, ORS 244.040(1) prohibits public officials from using or attempting to use their official position to obtain a financial gain or avoid a financial detriment for themselves, a relative, a household member, or a business with which any are associated, if the financial benefit would not have been available “but for” holding

the official position. This prohibition applies regardless of whether a conflict of interest is disclosed. [ORS 244.040(7)]

Question 4:

How would ORS 244.047, which prohibits former public officials from having a "direct beneficial financial interest" in a public contract for 2 years following their participation in the authorization of that public contract apply to a former member of the OGB in the following scenarios, which assume that the former member participated in authorizing an investment by the OGB in a private equity fund:

- a) if the former member invests in the private equity fund themselves;
- b) if the former member's employer invests in the private equity fund;
- c) if an entity controlled by and of which the former member is a beneficiary invests in the private equity fund;
- d) if an entity of which the former member is a majority interest holder invests in the private equity fund;
- e) if an entity of which the former member is a minority interest holder invests in the private equity fund?

Answer: Once an OGB member ceases to be a public official, ORS 244.047 prohibits them from having a direct beneficial financial interest in a public contract for 2 years following the date that they participated in authorizing the investment contract as a member of the OGB. As you noted, per OAR 199-005-0035(6), "authorizing" the contract means performing a significant role in the selection of the contractor or execution of the contract, including recommending approval, signing the contract, serving on a selection committee, or having the final authority to approve the contract. The prohibition does not apply if the former member did not participate in the OGB's authorization of a contract. ORS 244.047(4).

ORS 244.047 applies only to former public officials and uses narrower language than the conflict of interest and prohibited use of office provisions of ORS Chapter 244. Unlike those provisions, ORS 244.047 prohibits a "direct beneficial financial interest" in a certain "public contract" the public official authorized either individually or as a member of a governing body such as the OGB.

(a) If the former OGB member wished to invest personally in XYZ Limited Partnership Fund, ORS 244.047 would prohibit him from personally investing in the fund for 2 years after the contract was authorized, as doing so would give him a direct beneficial financial interest in a contract he participated in authorizing.

(b) If the former OGB member's employer wished to invest in XYZ Limited Partnership Fund, this would not give the former OGB member a "direct" beneficial financial interest in the contract.

(c) If the former OGB member wished to invest funds of an entity she controlled and of which she was a beneficiary, such as a family trust, she would be prohibited by ORS 244.047 from doing so for 2 years after the contract was authorized, as she would obtain a direct beneficial financial interest in the investment contract she authorized.

(d) If an entity of which the former OGB member is a majority interest holder wished to invest in XYZ Limited Partnership Fund, the response would be the same as (c) above.

(e) If an entity of which the former OGB member is a minority interest holder wished to invest in XYZ Limited Partnership Fund, this would *not* give the member a "direct" beneficial financial interest in the contract.

ORS 244.040(5) also prohibits a person who has *ceased to be* a public official from attempting to further or further the personal gain of any person through the use of confidential information gained in the course of or by reason of holding position as a public official or the activities of the person as a public official, including OGB information and records specifically made confidential per ORS 192.355(14)(a) and 192.355(17)(a).

Finally, a public official whose duties included investing public funds may not, for 2 years after *ceasing to* hold the OGB position: a) be a lobbyist or appear as a representative before the OGB; b) influence or attempt to influence the OGB; or c) disclose any confidential information gained as a public official. [ORS 244.045(4)]

If you have any additional questions regarding the application of Oregon Government Ethics law, please feel free to contact me directly.

Sincerely,



Ronald A. Bersin
Executive Director

RAB/dg

*****DISCLAIMER*****

This staff advice is provided under the authority given in ORS 244.284(1). This opinion offers guidance on how Oregon Government Ethics law may apply to the specific facts described in your request. This opinion is based on my understanding and analysis of the specific circumstances you described and should not be applied to circumstances that differ from those discussed in this request.

Oregon Investment Council – Legal and Legislative

December 1, 2021 3:35 - 4:00 pm

I. Legal and Legislative Structure with OIC

A. Department of Justice. “The Attorney General shall assign to each agency, department, board or commission an assistant who shall be the counsel responsible for ensuring the performance of the legal services requested by the agency, department, board or commission.” ORS § 180.060.

B. Special Assistant Attorneys General – Treasury Counsel

C. Special Assistant Attorneys General – “outside” law firms

D. Oregon Government Ethics Commission (OGEC)

1. Enforces Ethics and Executive Sessions.

2. OGEC can provide interpretations in advance

a) *CIO of Charitable Trust - Advice 20-019 (attached)*

b) *Vice President at bank – Advice 19-136s (attached)*

c) *OGEC approves policies too, with OIC Ethics policy currently being revised.*

II. Shareholder responsibilities - Proxy voting.

A. OIC Policy 605

B. Proxy voting is explicitly within the Treasurer’s authority under statute. ORS 293.736. The proxy vendor presents to the OIC from time to time.

III. Confidentiality/Public Meetings

A. The Public Meetings Law applies to all meetings of a quorum of a governing body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. Even if a meeting is for the sole purpose of gathering information to serve as the basis for a subsequent decision or recommendation by the governing body, the meetings law will apply. This requirement serves the policy expressed at ORS 192.620 that an informed public must be aware not only of the decisions of government, but also of “the information upon which such decisions were made.”

B. Electronic Communication

The Public Meetings Law expressly recognizes that meetings may be conducted by telephonic conference calls or “other electronic communication.” Such meetings are subject to the Public Meetings Law. ORS 192.670(1).

C. Executive Session

- 1. Private deliberations, no decision**
- 2. Legal advice or other documents exempt from disclosure**

D. Board Packet vs. Public Packet

- 1. OIC Board Packet would contain material Treasury denies in response to a public records request based upon exemptions to the OIC, e.g. ORS § 192.355.**
- 2. The Public Packet would be provided in response to a public records request.**

IV. Litigation/risks

A. Securities litigation is handled by DOJ.

B. Indemnification by State of public officers.

- 1. Statutory provision that public officers be defended, held harmless and indemnified for official acts. Attorney General makes determination.**
- 2. 2012 compliant (attached).**

a) The state covers only claims which arise in the scope or performance of state duties under the direction and control of the state. Scope and performance of duty are matters of fact, in the light of all related circumstances. *** Acting in clear and direct violation of state directives would normally exclude the board member from the coverages provided in this policy.

b) Any costs arising out of allegations of state ethics violations are not covered by this indemnity.

c) The DAS policies describe the coverage (and exclusions) and the procedures for requesting defense and are available at:

(1) <https://www.oregon.gov/das/Risk/Documents/SelfInsPolEmpLiab.pdf>

(2) <https://www.oregon.gov/das/Risk/Documents/SelfInsAgencyLiab.pdf>.

C. Headline risks (attached).

Statesman Journal

MONDAY, APRIL 15, 2019 ■ STATESMAN JOURNAL

PART OF THE USA TODAY NETWORK

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Board violated meetings law

Jefferson School Board members face complaints after hiring superintendent

Natalie Pate

Salem Statesman Journal
USA TODAY NETWORK

Jefferson School Board members violated Oregon law in late February when they chose the district's new superintendent, Brad Capener, in closed executive session without publicly voting on his selection over three other finalists, an investigation by the Statesman Journal has found.

nal has found.

The school board also may have violated state law in mid-March by not allowing public testimony before voting on Capener's contract.

Additionally, the board is taking heat from some district patrons over bios presented to the public that incorrectly stated Capener's past work experience.

The Oregon Government Ethics Commission confirmed Friday that



Capener

complaints have prompted five pending executive session violation cases regarding the Jefferson School District.

Since the cases are in preliminary review, neither the commissioners nor agency staff could comment. They also couldn't identify who filed the complaints or clarify whether Capener's contract is void without first holding a public vote to select him.

While school boards are allowed to hold hiring discussions in executive session, Oregon law expressly states

they cannot take "any final action or (make) any final decision" there. The law also stipulates public testimony must be accepted before a vote, although it can be restricted to written comment only.

Through the district's attorney, board chairwoman Kaye Jones issued a statement saying the board has been in compliance with state law throughout the hiring process.

She confirmed they "arrive(d) at a consensus on a candidate" during a Feb. 26 executive session, after which "two

See JEFFERSON, Page 3A



Legislative priorities still alive for Oregon Democrats



IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

05282

1204-05282

MICHAEL FOREST & DAVIS DYER; on
behalf of the OREGON PUBLIC EMPLOYEES
RETIREMENT FUND

Plaintiffs,

vs.

TED WHEELER, as Oregon State Treasurer and
an individual; PAUL CLEARY, as Executive
Director of Oregon Public Employees
Retirement System and an individual; PUBLIC
EMPLOYEES RETIREMENT SYSTEM
BOARD OF DIRECTORS; James DALTON, as
member of the PERS Board and as an individual;
THOMAS GRIMSLEY, aka Tom Grimsley, as
member of the PERS Board and as an individual;
Eva KRIPALANI, as member of the PERS
Board and as an individual; Michael PITTMAN,
as member of the PERS Board and as an
individual; Brenda ROCKLIN, as member of the
PERS Board and as an individual, John
THOMAS, as member of the PERS Board and as
an individual; Laurie WARNER, as member of
the PERS Board and as an individual; Pat
WEST, as member of the PERS Board and as an
individual; Rhoni WISWALL, as member of the
PERS Board and as an individual; OREGON
INVESTMENT COUNCIL, Harry DEMOREST,
as member of the Oregon Investment Council
and as an individual; Katherine J. DURANT, as
member of the Oregon Investment Council and
as an individual; Keith LARSON, as member of
the Oregon Investment Council and as an
individual; Richard B. SOLOMON, as member

Case No.:

CIVIL COMPLAINT FOR BREACH OF
FIDUCIARY DUTY; SECURITIES FRAUD;
AIDING AND ABETTING SECURITIES
FRAUD; BREACH OF CONTRACT;
PETITION FOR DECLARATORY
JUDGMENT FOR BREACH OF TRUST

PRAYER: \$1 Billion

NOT SUBJECT TO MANDATORY
ARBITRATION

JURY TRIAL REQUESTED

1 of the Oregon Investment Council and as an
2 individual; John KROGER, as Oregon State
3 Attorney General and as an individual; D. Kevin
4 CARLSON, aka Dee Carlson, as Assistant
5 Attorney General of Oregon and as an
6 individual; Hardy MYERS, as Oregon State
7 Attorney General and as an individual; Randall
8 EDWARDS, as Oregon State Treasurer and as
9 an individual; Brad CHILD as an individual;
10 PENSION CONSULTING ALLIANCE, a
11 Delaware Corporation; Nori GERARDO LIETZ,
12 an individual; Allan EMKIN, an individual;
13 HUDSON ADVISORS, LLC, a Texas Limited
14 Liability Corporation; LONE STAR FUNDS, a
15 Texas Company; LONE STAR FUND VI (U.S.),
16 a Delaware Limited Partnership; LONE STAR
17 FUND VII, (U.S.), a Delaware Limited
18 Partnership; LONE STAR REAL ESTATE
19 FUND (U.S.), a Delaware Limited Partnership;
20 LONE STAR REAL ESTATE FUND II (U.S.),
21 a Delaware Limited Partnership; and John P.
22 GRAYKEN, an individual,

23
24 Defendants.

25 The following complaint is brought by the beneficiaries of the Oregon Public Employees'
26 Retirement Fund against the Oregon Investment Council, the Treasurer of the State of Oregon, the
Oregon Public Employees Retirement Board and its Executive Director as Trustees and fiduciaries of
the fund, as agencies and individuals, for breach of fiduciary duties and breach of trust for imprudent
investing and failure to protect the assets of the Fund. Further, the Oregon Attorney General owed
and breached its duties to the Fund, along with OIC consultant Pension Consulting Alliance and its
executives. In addition, the beneficiaries bring a derivative action against John P. Grayken, Lone Star
Funds and the various Lone Star Funds sold in Oregon since 2008, for violations of Oregon's
Securities Laws, including fraud in connection with the sale of a security. Further, for their part in
aiding and abetting the fraud, the beneficiaries allege the Oregon Attorney General, the Oregon State
Treasurer, Pension Consulting Alliance, and Hudson Advisors knowingly participated and aided in