

# CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

2 Lafayette Street, Suite 1010

New York, New York 10007

(212) 442-1400

Fax: (212) 442-1407 TDD: (212) 442-1443

Steven B. Rosenfeld  
*Chair/Board Member*

Monica Blum  
*Board Member*

Kevin B. Frawley  
*Board Member*

Angela Mariana Freyre  
*Board Member*

Andrew Irving  
*Board Member*

## **Pension Funds**

Charter Sections: 94, 394, 395, 2601(1), 2601(2), 2601(9),  
2601(19), 2604(b)(2), 2604(b)(3), 2604(b)(14),  
and 2604(d)(2)

Opinions Cited: 93-10 and 2008-1

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Mark Davies  
*Executive Director*

Wayne G. Hawley  
*Deputy Executive Director  
& General Counsel*

Julia Davis  
*Director of Financial  
Disclosure & Litigation  
Counsel*

Carolyn Lisa Miller  
*Director of Enforcement*

Alexander Kipp  
*Director of Training &  
Education*

Ute O'Malley  
*Director of  
Administration*

Derick Yu  
*Director of Information  
Technology*

## **Advisory Opinion No. 2009-3**

The Conflicts of Interest Board (the “Board”) has received an inquiry from a trustee of one of the City’s five pension systems, asking whether his position on the pension fund board of trustees subjects him and other similarly situated trustees (hereinafter referred to collectively as “the Trustees”) to City Charter Chapter 68, the City’s conflicts of interest law. More broadly, this inquiry raises questions about the applicability of Chapter 68 to the boards and staffs of all five of the City’s pension systems.

## **I. Background**

### **A. Overview of the City Pension Systems**

Most City employees participate in one of the five City-sponsored pension systems. These five systems are: (1) the New York City Employees' Retirement System ("NYCERS"); (2) the New York City Teachers' Retirement System ("TRS"); (3) the New York City Police Pension Fund ("PPF"); (4) the New York Fire Department Pension Fund ("FDPF"); and (5) the New York City Board of Education Retirement System ("BERS") (hereinafter referred to collectively as "the Funds"). The Funds, which are financially independent of each other, are pension systems to which both the City and the members contribute. The Funds provide pension benefits to retired employees based on salary, length of service, and member contributions. The Funds also provide disability pensions and death benefits. The City is required by law to make contributions to the Funds when and in such amounts as are necessary to fund the pension liabilities, based on actuarial assumptions and methodologies. Generally stated, because the Funds provide for defined benefits,<sup>1</sup> each year, for each of the Funds, the City's Chief Actuary determines each participating employer's contributions in accordance with a statutory formula that requires retirement benefits to be actuarially funded over the working lifetimes of members.

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<sup>1</sup> Not only do the Funds provide defined benefits, but the New York State Constitution states that the pension rights of public employees are contractual and that the benefits of membership in a retirement system may not be diminished or impaired. See N.Y. CONST. ART. V, Section 7.

In Fiscal Year 2008, for example, the City contributed over \$5.6 billion to the Funds. Of this total, approximately \$123 million was spent for the administrative expenses of the Funds. The City contributed over \$1 billion to NYCERS, which spent \$47 million thereof on its administrative expenses; over \$1.8 billion to TRS, which spent \$53 million thereof for its expenses; over \$1.7 billion to PPF, of which \$15 million went to its expenses; \$780 million to FDPF<sup>2</sup>; and \$137 million to BERS, of which \$8 million went to its expenses. The excess over expenses, that is, the overwhelming majority of these contributions, was paid pursuant to the City's obligation to keep the Funds actuarially sound. The Funds, in turn, paid out a total of \$9.8 billion in benefits in Fiscal Year 2008. In prior years the City paid similar large sums to the Funds. In Fiscal Year 2007 the City contributed over \$4.75 billion to the Funds. Of this total, approximately \$114 million went to the administrative expenses of the Funds. In Fiscal Year 2006 the City contributed over \$3.9 billion dollars, of which \$106 million went to the expenses of the Funds, and in Fiscal Year 2005 the City contributed over \$3.2 billion dollars, of which the Funds used \$103 million for expenses.

#### B. The Five Pension Funds

##### 1. *New York City Employees' Retirement System ("NYCERS")*

NYCERS is the largest of the City's five funds, reporting 347,412 members as of June 30, 2007. NYCERS was created by the State Legislature in 1920 (1920 N.Y. Laws

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<sup>2</sup> Unlike the other plans, FDPF does not employ its own staff. Instead, FDNY employees serve as the staff of the FDPF.

427). Its governing provisions are currently set forth in the New York City Administrative Code, Section 13-103 of which provides that NYCERS shall be governed by an eleven-person board of trustees and identifies those members as follows: (1) a “representative of the mayor who shall be appointed by the mayor” and who will serve as Chairperson; (2) the Public Advocate; (3) the Comptroller of the City; (4) the President of each borough; and (5) three employee representatives of the three public employee unions representing the largest number of NYCERS members. NYC Admin. Code § 13-103(b)(1)-(5).

The Administrative Code also specifically permits certain trustees to designate persons to act in their place in their absence.<sup>3</sup> The Mayor may designate one or more employees of his office to act in the place of his representative. The Public Advocate may designate one or more employees of her office to act in her place. Such designations must be in writing and filed with the board. The Borough Presidents may also designate a representative in a writing filed with the board, but are limited to designating the deputy Borough President, executive assistant to the Borough President, or counsel to the Borough President. The three employee representatives of the unions have the freedom to designate in writing one or more persons to act in their place, provided that the by-laws

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<sup>3</sup> Designations by the Comptroller are not addressed in the Administrative Code but in Charter Section 94(b), which states: “Any deputy comptroller or any officer or employee appointed by the comptroller may act in place of the comptroller on any board, body or committee of which the comptroller is a member whenever the comptroller shall so authorize in writing and such authorization is filed with such board, body or committee and with the city clerk.”

or constitution of the union authorizes such designation. See NYC Admin. Code § 13-103(b)(1)-(5).

The Borough Presidents' votes each constitute one-fifth of a vote, and all other trustees are afforded one vote, for a total of seven votes. The trustees appointed by City government officials thus have four of the seven allotted votes. See NYC Admin. Code § 13-103(b)(1)-(5). All votes, by resolution, require at least three and three-fifths votes. See NYC Admin. Code § 13-103(b)(5)(d). Any resolution of the trustees that establishes a budget or modifies a budget requires the approval of the representative of the Mayor or the Comptroller. See NYC Admin. Code § 13-103(d). Administrative Code Section 13-136 also provides that the Comptroller shall serve as the custodian of the fund.

The trustees appoint an Executive Director to manage the fund. See 13 NYC Admin. Code § 13-103(a)(2). The staff of NYCERS are compensated through the City's Payroll Management System ("PMS"), which is an automated payroll and timekeeping processing and record-keeping system operated by the City's Office of Payroll Administration. NYCERS staff receive City benefits, such as health insurance.

## *2. New York City Teachers' Retirement System ("TRS")*

TRS is a retirement system for teachers in New York City public schools and for certain other school and college employees. As of June 30, 2007, TRS plan membership was 195,030. TRS was created in 1917 to continue the New York City Teachers' Retirement Fund (1917 N.Y. Laws 303). TRS's governing law is now set forth in the New York City Administrative Code, Section 13-507 of which provides that TRS shall be

governed by a seven-person board of trustees and identifies those members as follows:

(1) the president of the Board of Education<sup>4</sup>; (2) the Comptroller; (3) two members appointed by the Mayor, one of whom must be a member of the Board of Education; and (4) three teacher-members, who are elected by the plan member-contributors. See NYC Admin. Code § 13-507(1)-(4).

The Administrative Code also specifically provides for the president of the Board of Education to designate an authorized representative, in a writing filed with the board, to serve as a trustee in the president's absence. The Mayor may also designate one or more alternates, provided that the alternate appearing for the mayoral appointee who is a member of the Board of Education must also be a member of the Board of Education. Such designations must be in writing and filed with the board. The Administrative Code does not provide for designees serving in the absence of other trustees.

Each TRS trustee is afforded one vote, for a total of seven votes. All decisions require concurrence of the Comptroller or one of the Mayor's representatives, plus one elected teacher-member, plus at least two other members. See NYC Admin. Code § 13-512. Administrative Code Section 13-536 provides that the Comptroller shall serve as the custodian of this fund.

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<sup>4</sup> Although now referred to as the Department of Education, the 2002 amendments to the State Education Law continued the board of education of the City and changed the composition of the board members, now referred to as the Panel on Educational Policy, to consist of thirteen members: one member appointed by each Borough President; seven members appointed by the Mayor; and the Chancellor who serves as its chair. See N.Y. Educ. Law §§ 2590-b and 2590-g.

The staff of TRS are compensated through PMS and receive City benefits, such as health insurance.

### 3. *New York City Police Pension Fund ("PPF")*

PPF is a retirement system for full-time uniformed employees of the Police Department. As of June 30, 2007, PPF plan membership was 82,100. The PPF was incorporated in 1940 (Local Law 2 of 1940) and succeeded the "Police Life and Health Insurance Fund," established in 1857. PPF's governing law is set forth in the New York City Administrative Code, Section 13-216 of which provides that PPF shall be governed by a twelve-person board of trustees and identifies those members as follows: (1) the Police Commissioner, who shall serve as Chairperson of the board; (2) the Comptroller of the City; (3) a representative of the Mayor, appointed by the Mayor; (4) the City's director of finance; (5) the president of the Patrolmen's Benevolent Association ("PBA"); (6) the first vice-president of the PBA; (7) the second vice-president of the PBA; (8) the chairperson of the board of trustees of the PBA; (9) the president of the Captain's Endowment Association ("CEA"); (10) the president of the Lieutenant's Benevolent Association ("LBA"); (11) the president of the Sergeant's Benevolent Association ("SBA"); and (12) the president of the Detective's Endowment Association ("DEA").<sup>5</sup> See NYC Admin. Code § 13-216(a)(1)-(12). The Trustees representing the PBA, CEA,

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<sup>5</sup> Administrative Code § 13-216(a)(13) further states that if the PPF invests less than 45% of its assets in equities, two "investment representatives," selected one each by the Mayor and the Comptroller, will be appointed as additional trustees to the PPF, and each will have two votes on certain investment-related matters. Because the PPF has continued to invest over 45% of its assets in equities, this provision has not been triggered.

LBA, SBA, and DEA must be members of the uniformed force. See NYC Admin. Code § 13-216(d).

The trustees representing the PBA, CEA, LBA, SBA, and DEA may authorize another uniformed officer of their respective associations to serve in case of a trustee's disability or absence, provided that the by-laws or constitution of the member's association allow the designation of such a representative. See NYC Admin. Code § 13-216(d). The Administrative Code does not provide for designees serving in the absence of other trustees.

The Police Commissioner, the Mayor's appointee, the Comptroller, and the Finance Commissioner are each afforded one and one-half votes; the trustees representing the PBA are each afforded one vote; and the President of the DEA, President of the CEA, President of the LBA, and President of the SBA are each afforded one-half of a vote, for a total of twelve votes. The trustees appointed by City government officials thus have six of the twelve allotted votes. See NYC Admin. Code § 13-216(a)(1)-(12). All votes, by resolution, require at least seven votes. See NYC Admin. Code § 13-216(b). Any resolution of the trustees that establishes a budget or modifies a budget requires the approval of the representative of the Mayor and the Comptroller. See NYC Admin. Code § 13-216(f). The Administrative Code also provides that the Comptroller shall serve as the custodian of this fund. See NYC Admin. Code § 13-235.

The staff of PPF are compensated through PMS and are entitled to City benefits, such as health insurance.

4. *New York Fire Department Pension Fund ("FDPF")*

FDPF is a public employee retirement system for full-time uniformed employees of the FDNY, created pursuant to Local Law No. 53 of 1941. As of June 30, 2007, FDPF plan membership was 29,070. FDPF's governing provisions are set forth in the New York City Administrative Code, Section 13-316 of which provides that FDPF shall be governed by a twelve-person board of trustees and identifies those members as follows: (1) the Fire Commissioner, who shall serve as Chairperson; (2) the Comptroller of the City; (3) a representative of the Mayor, appointed by the Mayor; (4) the City's commissioner of finance; (5) the president of the Uniformed Firemen's Association ("UFA"); (6) the vice-president of the UFA; (7) the treasurer of the UFA; (8) the chairperson of the board of trustees of the UFA; (9) three elected members of the executive board of the Uniformed Fire Officers' Association ("UFOA"), one with a rank above captain, one with a rank of captain, and one with a rank of lieutenant; and (10) the president of the Uniformed Pilots and Marine Engineers' Association ("UPMEA").<sup>6</sup> See NYC Admin. Code § 13-316(a)(1)-(10).

Board members from the UFA and UPMEA may authorize another officer of their respective association to serve in their absence, provided that the by-laws or constitution of the member's association allow the designation of such a representative. See NYC

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<sup>6</sup> Administrative Code § 13-316(a)(11) further states that if the FDPF invests less than 45% of its assets in equities, two "investment representatives," selected one each by the Mayor and the Comptroller, will be appointed as additional trustees to the FDPF, and each will have two votes on certain investment-related matters. Because the FDPF has continued to invest over 45% of its assets in equities, this provision has not been triggered.

Admin. Code § 13-316(d). The Administrative Code does not provide for alternates serving in the absence of the other trustees.

The Fire Commissioner, Comptroller, representative of the Mayor, and Finance Commissioner are each afforded three votes; the representatives from the UFA are each afforded two votes; the UFOA member lieutenant is afforded one and one-half votes; the UFOA member with rank above captain and UFOA member captain are each afforded one vote; and the President of the UPMEA is afforded one-half of one vote, for a total of twenty-four votes. See NYC Admin. Code § 13-316(a)(1)-(10). The Trustees appointed by City government officials thus have twelve of the twenty-four votes. Resolutions require a vote of at least seven-twelfths of the total votes, except that decisions concerning certain investment matters require at least eight-fourteenths of the total permitted votes. See NYC Admin. Code §§ 13-316(b) and (b)(1). The Administrative Code also provides that the Comptroller shall serve as the custodian of this fund. See NYC Admin. Code § 13-338. As noted above, unlike the other four pension funds, FDPF does not have its own staff. Instead, Administrative Code Section 13-316(c) directs the Fire Commissioner to assign sufficient clerical and other assistants to enable the board to efficiently fulfill its duties.

*5. New York City Board of Education Retirement System  
("BERS")*

BERS is a retirement system for employees, other than teachers, of the Department of Education and charter schools, and for certain employees of the New York

City School Construction Authority. As of June 30, 2007, BERS plan membership was 39,280. BERS was created by act of the New York State Legislature in 1921 (1921 N.Y. Laws 713). The governing provisions for BERS are set forth in Section 2575 of the New York State Education Law and Sections 5 and 5a of BERS Rules and Regulations, which provide for a fifteen-person board consisting of the Board of Education<sup>7</sup> and two employee-members elected by the plan members. The Board of Education, in turn, now consists of the following: (i) one member appointed by each of the Borough Presidents; (ii) seven members appointed by the Mayor; and (iii) the Chancellor of the Board of Education. See N.Y. Educ. Law § 2590-b.

The Chancellor of the Department of Education may delegate his or her powers and duties to a subordinate officer or employee to act as a trustee in the Chancellor's absence. See N.Y. Educ. Law § 2590-h(19). The Education Law and BERS Rules and Regulations do not provide for alternates serving in the absence of other Trustees.

Each BERS trustee is afforded one vote, for a total of fifteen votes. Thirteen of the fifteen trustees are appointed by City government officials. All acts of the Board, by resolution, require a majority vote of the Board, including at least one of the employee-members. See BERS Rules and Regulations § 5b. Any resolution of the trustees that establishes a budget or modifies a budget requires the approval of at least one appointee of the Mayor. See N.Y. Educ. Law § 2575 (23)(c).

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<sup>7</sup> See supra note 4, at 6, concerning what has been, since 2002, a thirteen-person New York City Board of Education.

New York Education Law Section 2575(23)(d) provides that employment by the retirement system shall constitute City service for the purposes of calculating the amount of City service time served. BERS employees are compensated through PMS and are entitled to City benefits, such as health insurance.

## **II. Relevant Law**

City Charter Chapter 68, which, with the exception of Section 2607 (Gifts by Lobbyists), pertains to conflicts of interest and other conduct of public servants, contains several provisions that are relevant to the question presented.

Charter Section 2601(19) defines public servants as “all officials, officers and employees of the city, including members of community boards and members of advisory committees, except unpaid members of advisory committees shall not be public servants.”<sup>8</sup>

Charter Section 2601(9) defines the City as “the city of New York and includes an agency of the city.”

Charter Section 2601(2), which defines a City “agency” for the purposes of Chapter 68, states:

“‘Agency’ means a city, county, borough or other office, position, administration, department, division, bureau, board, commission, authority, corporation, advisory committee or other agency of government,

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<sup>8</sup> Charter Section 2601(1) defines “advisory committee” to mean “a committee, council, board or similar entity constituted to provide advice or recommendations to the city and having no authority to take a final action on behalf of the city or take any action which would have the effect of conditioning, limiting or requiring any final action by any other agency, or to take any action which is authorized by law.”

**the expenses of which are paid in whole or in part from the city treasury**, and shall include but not be limited to, the council, the offices of each elected official, the board of education, community school boards, community boards, the financial services corporation, the health and hospitals corporation, the public development corporation, and the New York city housing authority, but shall not include any court or any corporation or institution maintaining or operating a public library, museum, botanical garden, arboretum, tomb, memorial building, aquarium, zoological garden or similar facility.” (Emphasis added.)

### **III. Discussion**

The Conflicts of Interest Board is presented with the question of whether the trustees and employees of the Funds are subject to Chapter 68. To answer this question the Board must determine whether the Funds are City “agencies” within the meaning of Charter Section 2601(2) and whether its trustees and employees are “officials, officers, or employees” of these Funds and thus public servants within the meaning of Charter Section 2601(19).<sup>9</sup> For the reasons set forth hereinafter, it is the determination of the Board that the Funds are indeed “City agencies” and that its trustees and employees are subject to Charter Chapter 68.

In making such determinations, the Board has previously noted that Charter Section 2601(19), which defines “public servant” for the purposes of Chapter 68, is

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<sup>9</sup> Without having expressly decided the question presented, the Board has in the past asserted jurisdiction over employees of the City’s pension systems by way of public dispositions finding them in violation of Chapter 68. See COIB v. Ramsami, COIB Case No. 2007-627 (2008), in which the Board fined the NYCERS Director of Human Resources for violating Charter Sections 2604(b)(3) and (b)(14); COIB v. Rosenfeld, COIB Case No. 2006-098 (2007), in which the Board fined a former Deputy Director of the NYCERS Retirement Benefit Unit for violating Charter Section 2604(d)(2); and COIB v. Kessock, COIB Case No. 2003-752 (2007), in which the Board fined the former Executive Director of TRS for violating Charter Section 2604(b)(2).

intended “to cover a **broad spectrum** of persons who act in an official capacity for and on behalf of the City, whether or not such persons receive a salary or other form of compensation.” See COIB Advisory Opinion No. 93-10 at 5 (emphasis added). In that opinion, the Board held that Chapter 68 applies to the Administrative Law Judges of the Parking Violations Bureau, relying in part on the following from the Charter Revision Commission Report on Chapter 68:

For the purpose of identifying those individuals who are subject to the conflicts of interest standards [contained in Chapter 68], the term "public servant" has been defined to include all officials, officers and employees of the City, whether or not they are salaried or receive compensation in the form of per diem payments, reimbursement for costs, or otherwise. The term includes all elected officials, and all other officers and employees of the city whether appointed or otherwise employed. The only individuals excluded from the application of the conflict of interest standards are unpaid members of advisory committees whether or not they receive reimbursement for costs. See Volume II, Report of the New York City Charter Revision Commission, December 1986 - November 1988, at 153. (Emphasis added).

As noted above, the definition of “agency” in Chapter 68 states that agency “means a city,...position,...board, ...authority, corporation,... or other agency of government, **the expenses of which are paid in whole or in part from the city treasury...**” See Charter Section 2601(2) (emphasis added). Accordingly, central to the Board’s analysis of whether the Funds are subject to Chapter 68 is the source of funding of the Funds.

The City’s Law Department undertook a similar analysis in its Opinion No. 11-90, considering, in the wake of the then just-completed substantial revision of the

Charter, whether and how several City regulatory systems, Chapter 68 among them, applied to a number of entities, such as the New York City Health and Hospitals Corporation, that were established by or pursuant to State law but served a governmental purpose within the City. In reviewing whether these entities were subject to Chapter 68, Opinion No. 11-90 looked at whether the entities received funds from the City treasury and thus were entities “the expenses of which [were] paid in whole or in part from the city treasury,” as defined in Charter Section 2601(2). On this standard the Law Department determined that both the New York City Housing Authority and the Health and Hospitals Corporation (“HHC”)<sup>10</sup> were subject to Chapter 68. Conversely, the Law Department deemed that the New York City Off Track Betting Corporation (“OTB”) was not subject to Chapter 68 because OTB was financially self-sufficient and did not receive any money from the City treasury. See Law Department Opinion No. 11-90 at 18, 19, 24, 28.

Here, as noted above, the Funds collectively receive billions of dollars of City funds every year in the City’s budget. Each of the Funds (except the FDPF) receives several millions of dollars each year from the City that go to its administrative expenses, ranging in Fiscal Year 2008 from \$8 million at BERS to \$53 million at TRS. Moreover, each Fund receives tens of millions of City dollars annually to fund pension obligations,

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<sup>10</sup> That the Funds, may, like HHC, “have the powers and privileges of a corporation” (see, for example, NYC Admin. Code § 13-120, which so provides as to NYCERS) likewise does not exempt them from Chapter 68, whose definition of “agency” includes a “corporation” of City government. See Charter Section 2601(2).

ranging again in Fiscal Year 2008 from \$129 million for BERS to \$1.75 billion for TRS.<sup>11</sup>

In Opinion No. 11-90 the Law Department also considered whether the City had the duty to defend the officers of the entities in question in litigation arising out of acts performed within the scope of their official duties. Charter Sections 394 and 395 provide that the Corporation Counsel is the exclusive representative for all City agencies. Here, the Law Department represents both the Funds and the trustees individually. Indeed, in Caruso v. New York City Police Department Pension Funds, 72 N.Y.2d 568 (1988), a case involving a dispute between the union member trustees and non-union member trustees of the PPF, where the former retained its own counsel and tried unsuccessfully to force the Fund to reimburse its legal costs, the Court of Appeals (and seemingly all parties) agreed that the PPF was a City agency within the meaning of Charter Sections 394 and 395.

Finally, the central role that City officials play in the governance of each of the Funds, namely, serving as or appointing a substantial number of the voting trustees of

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<sup>11</sup> A decision by the Louisiana Court of Appeals similarly relied on the use of governmental funds as part of its rationale for the conclusion that the City of Baton Rouge's pension system was a governmental entity subject to that state's code of ethics. The Louisiana court noted that the pension system was created pursuant to City ordinance by the mayor and council; employer contributions were funded by the city Council; and the retirement board was audited by the Council. See City of Baton Rouge v. Comm'n on Ethics For Public Employees, 655 So. 2d 457, 461 (La. App., 1 Cir., 1995), writ denied, 660 So. 2d 473 (La. 1995); see, also, Bd. of Trustees of the Barrington Police Pension Fund v. Village of Barrington Ethics Bd., et. al., 678 N.E.2d 671, 672-676 (Ill. App., 1 Dist., 1997), appeal denied by, 686 N.E.2d 1158 (Ill. 1997) (upholding the lower court's determination that the trustees of a municipal police pension fund were subject to the village's code of ethics).

each Fund,<sup>12</sup> the role of the City Comptroller as the investment advisor to each of the Funds, and the role of the City's Chief Actuary as the actuary of each of the Funds combine to make clear that each of the Funds is an "agency" of the City within the meaning of Charter Section 2601(2), and "all officials, officers and employees" of each Fund are accordingly "public servants" of the City subject, per Charter Section 2601(19), to Chapter 68. Since every trustee of each Fund has some voting power, and since that power controls large sums of City taxpayer money that pays the retirement benefits of current and former City employees, it is likewise clear that all Fund trustees, as well as the employees of each Fund, are subject to Chapter 68.

For the above-stated reasons, it is the Board's determination that the trustees of the Funds, the employees of the Funds, and those individuals whom the Trustees designate as their representatives to serve in their absence, pursuant to the statutory provisions permitting such designations, are all public servants for the purposes of Charter Chapter 68.<sup>13</sup>

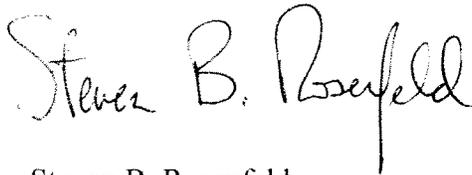
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<sup>12</sup> Between fifty and eighty-seven percent of each of the Funds' voting power is controlled by trustees appointed by City government officials. In addition, board action concerning the budget of NYCERS requires the vote of the representative of the Mayor or the Comptroller; such action by the PPF board requires the approval of both the Mayor's representative and the Comptroller; and all TRS board decisions require the vote of one appointee of the Mayor or the Comptroller. See NYC Admin. Code §§ 13-103(d), 13-216(f), and 13-512.

<sup>13</sup> The Board notes that some Fund trustees such as the Comptroller, the Public Advocate, the Police Commissioner, and the members of the board of education, are separately subject to Chapter 68 by virtue of the positions they hold in City government. Since the Board now confirms that they are also subject to Chapter 68 by virtue of their positions as Fund trustees, these officials will therefore have a second "agency served" for the purposes of such Charter provisions as Sections 2604(a)(1)(a) and (d)(2), namely, the Fund(s) they serve. With regard to Charter Section 2604(d)(2), the one-year post-employment appearance ban, for example, this means that for one year after these officials leave City service they may not appear before either the office or agency they worked for or the Fund on whose board they served. See Advisory Opinion No. 2008-1.

#### **IV. Conclusion**

The City's five pension systems, namely, the New York City Employees' Retirement System ("NYCERS"), the New York City Teachers' Retirement System ("TRS"), the New York City Police Pension Fund ("PPF"), the New York Fire Department Pension Fund ("FDPF"), and the New York City Board of Education Retirement System ("BERS") (collectively "the Funds") are each a City "agency" for the purpose of the City's conflicts of interest law. The officers and employees of each of the Funds, including without limitation, the statutorily prescribed trustees of each of the Funds, the employees of the Funds, and those individuals whom the trustees designate to serve in their absence, pursuant to statutory provisions permitting such designations, are public servants of the City within the meaning of Charter Chapter 68, the City's conflicts of interest law, and hence are subject to the provisions of that law.



Steven B. Rosenfeld  
Chair

Monica Blum  
Kevin B. Frawley  
Angela Mariana Freyre  
Andrew Irving

Dated: May 21, 2009