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OFFICE OF THE CITY COUNCIL

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March 11, 2016
12:00 p.m.

FINAL REPORT

TO: The Honorable Bill Gulliford, Chair
Finance Committee

FROM: Anna Lopez Brosche, Chair
Finance Subcommittee on Subpoenas Related to Police and Fire Pension Fund

RE: Final Report of the Subcommittee on Subpoenas Related to Police and Fire Pension Fund

BACKGROUND:

The Finance Committee issued subpoenas to the Police and Fire Pension Fund (PFPF) Board of Trustees Custodian of Records and Robert D. Klausner, Esq. as a result of unfulfilled requests for information stemming from the forensic investigation of the PFPF conducted by Benchmark Financial Services, Inc.

In response to such subpoenas, the PFPF Board of Trustees Custodian of Records appeared before and presented documents to the Finance Committee at its regular meeting on November 16, 2015. Separately, Henry M. Coxe, III, Esq., attorney for Robert D. Klausner, Esq., sent letters dated November 25, 2015 and December 30, 2015.

CHARGE:

- 1) Does the material presented to the committee fully answer the questions asked?
- 2) Should Finance Committee require Robert D. Klausner, Esq. and/or PFPF Board of Trustees Custodian of Records to appear before Finance Committee to answer questions?
- 3) What further action would the subcommittee recommend that Finance take, if any?
- 4) Anything else that the subcommittee would deem important to heading in a pertinent direction?

MEMBERS: Anna Lopez Brosche, Chair
Danny Becton
John R. Crescimbeni

CONCLUSIONS/ RECOMMENDATIONS:

The Subcommittee conducted three noticed meetings and addressed its charge for each of the subpoenas.

Subpoena Issued to Police and Fire Pension Fund Board of Trustees Custodian of Records

With the full cooperation of the PFPF Interim Director, the Subcommittee approved limiting the scope of documents and information requested, and directed the Council Auditor to select and review commission recapture agreements and related transactions. The Council Auditor issued a memorandum to the Subcommittee dated February 26, 2016 outlining the request, procedures, and findings, a full copy of which is attached.

Based on the meetings, discussions, and procedures performed, the Subcommittee offers the following responses to Finance Chairman Gulliford's charge:

- 1) The material presented to the Finance Committee does not fully answer the questions asked; however, the Subcommittee directed the performance of alternative procedures and the materials presented fully responded to such alternative procedures.
- 2) The Finance Committee should not require the PFPF Board of Trustees Custodian of Records to appear before Finance Committee to answer questions.
- 3) The Subcommittee recommends no further action regarding the subpoena issued to the PFPF Board of Trustees Custodian of Records at this time.
- 4) The Subcommittee has no information or recommendations at this time.

Subpoena Issued to Robert D. Klausner, Esq., General Counsel for the Police and Fire Pension Fund

The communications from Mr. Coxe did fully address the subpoena, while they did not fully respond to the subpoena. The letters and materials provided did generate additional questions and requests for information from the PFPF Board of Trustees, and the PFPF Interim Director willingly and fully responded. Specific questions and responses are attached. Of particular note in the PFPF Interim Director responses is the lack of reference in PFPF Board of Trustees meeting minutes of the approval of securities litigation fees received directly by Robert D. Klausner, Esq. Ms. McCague reported that the PFPF Board of Trustees had working knowledge of at least the maximum legal fees that could be paid to the Klausner firm for work performed in relation to securities litigation, and noted that his only real involvement with class action suits on behalf of the PFPF would be in cases where the PFPF was the lead plaintiff. There are documented retainer agreements in several of the files in which the Fund has been lead plaintiff.

The Council Auditor reviewed the additionally requested and provided information and concluded the materials provided were responsive to the Subcommittee's request. Of particular note during such review by the Council Auditor was that PFPF policies allow the Fund Administrator to decide, without separate Board approval, whether or not to commence separate litigation or apply to the judge for lead plaintiff or co-lead plaintiff status.

Based on the meetings, discussions, and materials and information provided, the Subcommittee offers the following responses to Finance Chairman Gulliford's charge:

- 1) The material presented to the Finance Committee does not fully answer the questions asked, although material presented in response to additional inquiries and requests for information fully answered such additional questions.
- 2) The Finance Committee should not require Robert D. Klausner, Esq. to appear before the Finance Committee to answer questions at this time.
- 3) The Subcommittee recommends no further action regarding the subpoena issued to Robert D. Klausner, Esq. at this time.
- 4) The Subcommittee has no information or recommendations at this time.

I appreciate the opportunity to chair this Subcommittee to explore further the responses to the Finance Committee's requests for information regarding a matter of great importance to the community and our taxpayers. I extend my thanks: to my fellow Subcommittee members for their active involvement in this process; to the Council Auditor and his team for carrying out review procedures; and to the Finance Department and Office of

General Counsel for their participation and guidance. And, with emphasis, I thank the PFPF Interim Director, Board of Trustees, and staff members for their cooperation, prompt responsiveness, regular communication, and active interest in satisfying the Subcommittee requests.

Anna Lopez Brosche
City Council Member, At-Large Group 1

ALB/js

Attachments:

- 1) Subpoenas Issued to Police and Fire Pension Fund Board of Trustees Custodian of Records and to Robert D. Klausner, Esq. dated October 23, 2015
- 2) Memo from Council Auditor Regarding PFPF Commission Recaptures dated February 26, 2016
- 3) Klausner Subpoena Questions and Responses dated February 26, 2016

cc: Council Members/Staff
Cheryl L Brown, Director/Council Secretary
Jeff Clements, Chief – Research Division
Dana Farris, Chief – Legislative Services
Rachel Merritt, Information System Administrator
Kirk Sherman, Council Auditor
Media Box



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SUBPOENA DUCES TECUM

**RE: Forensic Investigation of City of Jacksonville Police and Fire Pension Fund
Authorized by Ordinance 2015-200-E**

**TO: Jacksonville Police and Fire Pension Board of Trustees
Custodian of Records**

YOU ARE HEREBY COMMANDED to appear before the City Council Finance Committee at its regular meeting on Monday, November 16, 2015, at 9:30 a.m., at 117 West Duval Street, Council Chambers, 1st Floor, City Hall, Jacksonville, Florida, to testify and to speak the truth in the above matter and to have with you at that time and place, for inspection and copying, all documents within your possession, custody or control relating to the following:

Commissions recaptured or rebated, since 1987, and the use, expenditure, and accounting of those commissions.

Annual gross and net investment performance of the Jacksonville Police and Fire Pension Fund, since 1987.

You may bring copies in lieu of originals and may condition the preparation of copies upon payment in advance of reasonable costs.

This subpoena duces tecum is issued under the authority of Sections 5.09 and 18.01, Charter of the City of Jacksonville, and Chapter 134, Jacksonville Ordinance Code. This subpoena is continuing in nature; if you are not served at least seven (7) days prior to the above Finance Committee meeting, you are required to appear at the next regular Finance Committee meeting that is more than seven (7) days after service.

WITNESS my hand and the Seal of the City of Jacksonville, Florida, this 23rd day of October, 2015.



Cheryl L. Brown
Cheryl Brown
Council Secretary
Jacksonville City Council



OFFICE OF THE CITY COUNCIL

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SUBPOENA DUCES TECUM

**RE: Forensic Investigation of City of Jacksonville Police and Fire Pension Fund
Authorized by Ordinance 2015-200-E**

**TO: Robert D. Klausner, Esquire
Attorney to Jacksonville Police and Fire Pension Board of Trustees**

YOU ARE HEREBY COMMANDED to appear before the City Council Finance Committee at its regular meeting on Monday, November 16, 2015, at 9:30 a.m., at 117 West Duval Street, Council Chambers, 1st Floor, City Hall, Jacksonville, Florida, to testify and to speak the truth in the above matter and to have with you at that time and place, for inspection and copying, all documents within your possession, custody or control relating to the following:

Fees, compensation and other payments received by you or your law firm, since 1987, relating to any class action lawsuit involving the Jacksonville Police and Fire Pension Fund ("PFPE").

Fees, compensation and other payments received by you or your law firm, since 1987, from vendors or other contractors providing professional services to the PFPE or the PFPE Board of Trustees including, but not limited to, money managers, investment consultants, actuaries, accountants and other attorneys.

You may bring copies in lieu of originals and may condition the preparation of copies upon payment in advance of reasonable costs.

This subpoena duces tecum is issued under the authority of Sections 5.09 and 18.01, Charter of the City of Jacksonville, and Chapter 134, Jacksonville Ordinance Code. This subpoena is continuing in nature; if you are not served at least seven (7) days prior to the above Finance Committee meeting, you are required to appear at the next regular Finance Committee meeting that is more than seven (7) days after service.

WITNESS my hand and the Seal of the City of Jacksonville, Florida, this 23rd day of October, 2015.

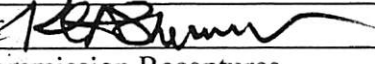



Cheryl Brown
Council Secretary
Jacksonville City Council

OFFICE OF THE COUNCIL AUDITOR
Suite 200, St. James Building



MEMORANDUM

Date:	February 26, 2016
To:	Finance Subcommittee on the PFPF Subpoenas Anna Lopez Brosche, Chair Danny Becton John R. Crescimbeni
From:	Kirk A. Sherman, Council Auditor 
Subject:	Police and Fire Pension Fund – Commission Recaptures

Subcommittee Request

The subcommittee directed the Council Auditor's Office to gain an understanding of the commission recapture arrangements of the Police and Fire Pension Fund (Fund). Specifically, we were requested to perform a detailed review of the transactions with one of the Brokers in which the Fund has a recapture agreement. This includes checks written directly to the Fund and other transactions that may be payments on behalf of the Fund. Please note that this is not an audit. Thus it is not an audit or attestation conducted in accordance with Government Auditing Standards.

Separately the subcommittee requested the Fund to provide contracts for all Brokers that the Fund has entered into recapture agreements with since 1997. We have a listing of these firms at the end of this memorandum.

Background on the Commission Recaptures Program

The Police and Fire Pension Fund's (Fund) Financial Custodian is Northern Trust. This is the party responsible for maintaining security over the Fund's stocks and other financial assets.

The Fund engages with several Money Managers who are tasked with investing assets of the Fund. The Money Managers are selected and directly contracted by/with the Fund. These Money Managers utilize Brokers who actually execute the trades. These Brokers charge a commission/fee to the Money Managers to process the trades. In general the Money Managers are to select Brokers based on best price/execution. Included in the commission (in addition to the actual cost of processing the trade) can be research and other similar costs.

The commission recaptures that are being discussed by the subcommittee stem from the fact that the Fund can enter into contracts directly with Brokers whereby the Broker will rebate part of the commission back to the Fund directly in exchange for the Fund requesting the Money Managers to execute trades through the Broker.

What the Council Auditor's Office Did

Due to previous requests of the Fund, the Fund had already contacted the current recapture Brokers for a detailed listing of all commission recaptures. The Fund provided us with this detail listing of the commission recapture remittances for three applicable Brokers. To verify that one of these three firms was the appropriate Broker to review, we tied the remittance detail provided by the Fund to the City's general ledger for the period 10/1/12 to 9/30/15. (Please note that the information in the City's general ledger is input by the Police and Fire Pension Fund.) During this process we noted a few issues:

- 1) There were adjustments that appear to have overstated recapture revenue by a net amount of \$2,394.45 over two fiscal years. This appears to have resulted in a net understatement to another revenue subobject.
- 2) We do not always agree with the fiscal year the funds were credited, but in total we tied the individual remittances.
- 3) We found a \$10,582.87 deposit that was recorded in the recapture revenue line. After going through the bank statement detail as explained below, we were able to determine the check was from National Financial Services LLC. The Fund states that this is associated with a recapture account with Reynders, Gray & Co. and based on the account number listed on the check and other detail provided by the Fund we agree with the assertion. We do still have questions surrounding why the funds had been sitting in this account since at least December 2010 until October 2013 when the funds were remitted to the Fund.

We then determined what percentage of the revenue was from each firm to assist in determining which Broker to select for further research as requested by the subcommittee. Based on this we were able to determine that Convergex accounted for 89% of the dollar value of the deposits and that no other firm had revenue deposited with the Fund since August 2014. Below is the activity for period of 10/1/12 through 9/30/15 with a brief explanation of the activity:

- Convergex (\$268,285.58) – Activity almost every month during selected period.
- CAPIS (\$21,277.07) – Last activity in August 2014.
- KCG (\$0) – No activity since May 2012.
- Reynders, Gray, & Co (\$10,582.87) – This was the firm not included in the data originally provided. As stated above, the revenue appears to be associated with periods prior to our review period.

Based on the facts identified above, we selected Convergex as the recapture Broker to contact to verify the amounts credited/paid related to the Police and Fire Pension Fund account. We were able to tie the amounts provided directly to us from Convergex to the amounts previously provided by the Fund without exception.

Next, we tied the support provided by Fund for the three recapture firms to the Police and Fire Pension Fund bank statements. During this review we also identified the \$10,582.87 deposit identified above, but did not find evidence of any other recapture deposits. The remaining deposits were mainly office and parking rental revenues plus replenishment checks from the Northern Trust account.

Lastly, we tied the amounts included in the City's general ledger to the amounts included in the funds financial statements for FY 2012/13, FY 2013/14 and FY 2014/15.

What We Found

Based on work performed, it appears that the monies credited/paid to the Police and Fire Pension Fund as indicated by Convergenx for the period 10/1/12 through 9/30/15 were deposited into the Fund's bank account and were subsequently reported in the Fund's audited financial statements.

Listing of Recapture Brokers Approved by Board Since 1997:

- 1) Abel Noser Brokerage
- 2) Andes Capital Group
- 3) CAPIS (Other names: Capital Institutional Services)
- 4) Cheevers & Co
- 5) Convergenx (Other names: Lynch, Jones, & Ryan Inc.)
- 6) ~~Dominick & Dominick (Other Names: Ticonderoga Securities; Reynders, Gray & Co)~~
- 7) First Honolulu Securities Inc.
- 8) KCG (Other names: Knight Transmission Management, Knight Capital Group; Knight Equity Market LP; Donaldson & Co.)
- 9) ~~MAGNA Securities Corp.~~
- 10) Merrill Lynch/Citation Group

The Finance Subcommittee on PFPF Subpoenas has the following questions related to the subpoena issued to Robert D. Klausner, Esq. for the Police and Fire Pension Fund (“PFPF”) Board of Trustees. Beth McCague, PFPF Interim Director, provided responses to each of the questions in the Finance Subcommittee meeting on February 26, 2016, which have been compiled and are listed below in red.

1. In connection with securities litigation cases in which the PFPF is a party, please provide:
 - a. The name of each case that has been settled or is in active litigation
 - Nextcard, settled
 - Merck 2013, settled
 - United Health 2009, settled
 - El Paso Energy 2007, settled
 - NII, just settled
 - DISH Network, case pending in court
 - Tower Insurance, settled
 - b. The settlement amounts received by the PFPF, as applicable
 - Nextcard \$13,842.92
 - Merck 2013 \$22,554.69
 - United Health \$35,477.02
 - El Paso Energy \$32,054.50
 - No record of amounts received on other cases
 - c. The date(s) such settlements were received, as applicable
 - Nextcard 9/25/09, 4/24/08
 - Merck 2013 See separate Northern Trust report provided
 - United Health 2009 See separate Northern Trust report provided
 - El Paso Energy 2007 See separate Northern Trust report provided
 - d. The bank account(s) in which such settlements were deposited, as applicable
 - The Custodian (Northern Trust) for the JP&FPF tracks any settled securities litigation cases in which the Fund holds stock in the defendant company. Northern Trust files a claim on our behalf. When the court distributes payment, the payment is sent directly to Northern Trust. Northern Trust accepts the payment and posts the proceeds to our account. Note: Northern Trust reports that settlement proceeds may not be distributed for 18-24 months after claim filing. The exception to this process was the first case, Nextcard. Those proceeds were sent directly to the Fund and deposited. See attached documentation.
 - e. The general ledger account to which such settlements were recorded, as applicable
 - The general ledger account credited for these amounts was 36907 Miscellaneous Sales and 36979 Miscellaneous Settlement.
 - f. Evidence of PFPF Board of Trustees approval for all settlement decisions, including an indication of the PFPF Board of Trustees’ advance approval of the fees received by Mr. Klausner, as applicable
 - See Board minutes attached.
2. With regard to the PFPF Securities Litigation Policy and in reference to the securities litigation cases noted in item #1 above, please provide:
 - a. Evidence of the PFPF Board of Trustees’ approval of securities litigation counsel
 - Please see Board minutes and the Fund’s Securities Litigation Policy.

- b. Evidence of the PFPF Board of Trustees' regular monitoring of the status of the securities litigation during the course of the cases, i.e. reports from the "Monitoring Legal Firm(s)"
Please see Board minutes and examples of Monitoring Reports
3. With regard to the PFPF Securities Litigation Policy, please provide:
 - a. An explanation of the PFPF Board of Trustees' consideration of the ERISA provisions regarding parties-in-interest and prohibited transactions, i.e. the evaluation of the role of the "General Counsel" in the Securities Litigation Policy and how such roles and responsibilities comply with and/or consider parties-in-interest and prohibited transaction laws [NOTE: While the PFPF is a public pension plan not legally subject to the provisions of ERISA, the PFPF Statement of Investment Policy adopted by the PFPF Board of Trustees and dated December 20,2012 adopts the fiduciary provisions of ERISA]
Under ERISA lawyers are expressly EXCLUDED as parties in interest. ERISA lawyers do these cases more than public plans. The prohibited transaction rules are to prevent loans of assets or improper purchases of company stock. The Fund cannot loan and has not loaned its assets to any member or employee of the Fund. The Fund cannot make illegal purchases of stock because no stock of the Fund or the City of Jacksonville exists which could be purchased. For these reasons the ERISA parties in interest and prohibited transactions don't apply to public plans. What we adopted was the ERISA standard of care (what a prudent person would do in a like enterprise with like aims. A trustee is the one whose conduct is at issue - can't hire your relatives. If our attorney shared fees with trustees or staff; which he does not, it would be an ethics issue In the case of securities class action suits our attorney represents and is paid by the class, not the Fund. In the cases above the attorneys were never parties in interest. They acted as attorneys for the class. They had no stake in the outcome of the case as members of the class of plaintiffs.