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>> David Bacigalupi: Ask you if you haven't signed in, would you please sign in. We have a sign up sheet over by the desk there. Good morning, ladies and gentlemen. I'm going to call to order the meeting of the board of administration for the Police and Fire retirement plan and let the record reflect that six appointed board members are all present. The civil service representative is still vacant. Okay. Orders of the day. After item number 7 we're going to take the following items in this order, to get vendors back out, and back on their planes to go home. After 7 will be item number 18, then item number 14, then item number 15. Then item number 16. Okay. With that, item number 1, service retirements. Item 1 A, service retirement by fire captain James E. Acker, fire captain, fire department, effective December 12, 2010, 29.61 years of service. With reciprocity. entertain a motion approximately.

>> Motion to approve.

>> Rose Herrera: Second.

>> David Bacigalupi: Entertain a motion, hearing no discussion, all in favor, all opposed the motion carries. 1B, Oscar D. Bazurto, fire captain, fire department, effective December 25, 2010, What a nice Christmas present. 24.95 years of service. With reciprocity. And a service connected disability application pending. Motion?

>> Motion to approve,.

>> Second.

>> David Bacigalupi: Motion and second. Hearing no further discussion, all in favor, opposed, motion carries. Item 1C, application service nor Eric bygdnes, fire engineer, It's effective November 13, 2010, 26.22 years of service with reciprocity, SCD pending. Entertain a motion.

>> Rose Herrera: Move approval.

>> Second.

>> David Bacigalupi: Discussion? Hearing no discussion, all in favor, opposed, if motion carries. 1D Rafael A. Campos, Jr, fire engineer, fire department, effective January 22, 2011, 29.52 years of service. Entertain a motion.

>> Motion to approve.

>> Second.

>> David Bacigalupi: I have a motion and second. Any further discussion? Hearing no further discussion all in favor, all opposed, motion carries. 1E, Joseph Carrillo, battalion chief, fire department, effective January 22, 2011, 29.37 years of service. Motion?

>> Motion to approve.

>> Second.

>> David Bacigalupi: Motion and second, any further discussion? Hearing no further discussion all in favor, all opposed, motion carries. 1F, Carlos Chaboya, firefighter, fire department, effective November 27, 2010, 29.49 years of service. Entertain a motion.

>> Rose Herrera: Motion to approve.

>> Second.

>> David Bacigalupi: Motion and second any further discussion? Hearing no further discussion, all in favor, all opposed, motion carries. 1G, Randy A. Changco, police officer, police department, effective January 22, 2011. With 25.05 years of service. Entertain a motion.

>> I'll make a motion.

>> Second.

>> David Bacigalupi: Okay motion and second any further discussion on the motion? Hearing no further discussion all in favor, all opposed, motion carries. Item number 1H, Mark dessert, fire engineer, Effective January 8, 2011, 26.45 years of service.

>> Motion to approve.

>> Second.

>> David Bacigalupi: Okay, motion and second. Any further discussion? Hearing no further discussion all in favor, all opposed, motion carries, number 1I, Paul A. eden fire captain, December 12, 2010, 26.42 years of service, with reciprocity. do I have a motion?

>> Motion?

>> Second.

>> David Bacigalupi: Motion and second, hearing no further discussion, any further discussion, all in favor, all opposed, motion carries. 1J, Karen gall, arson investigator, fire department, effective January 8, 2011, 25.05 years of service.

>> Rose Herrera: Motion to approve.

>> Second.

>> David Bacigalupi: Motion and second any further discussion hearing no further discussion all in favor, all opposed, motion carries item number 1K, it's an application for service retirement for Clifford Hubbard, battalion chief, fire department, effective December 25, 2010, 27.54 years of service.

>> Motion.

>> Second.

>> David Bacigalupi: Motion and second any further discussion? Hearing no further discussion all in favor, all opposed, motion carries item number 1L is an application for service retirement for Michael P. Mattocks, police sergeant, police department, effective December 25, 2010, 25.36 years of service. Entertain a motion.

>> I'll make a motion.

>> Rose Herrera: Second.

>> David Bacigalupi: I have a motion and second. Any further discussion? Hearing no further discussion all in favor, all opposed, motion carries item number 1M is the application for service retirement from battalion chief Stewart McGehee, and that is effective January 22nd, 2011 with 29.69 years of service.

>> Notion to approve.

>> Rose Herrera: Second.

>> David Bacigalupi: I have a motion and second. Any further discussion? Any further discussion? Hearing no further discussion, all in favor, all opposed, motion carries. 1N, Gregory L. Morrill, police officer, police department, effective January 8, 2011, 25.33 years of service. Entertain a motion.

>> I'll make a motion.

>> David Bacigalupi: I have a motion and second. Hearing no further discussion all in favor, all opposed, motion carries. 1O, Charles S. O'Conner, fire engineer, fire department, effective January 22, 2011, 25.06 years of service with reciprocity. Entertain a motion.

>> Motion to approve.

>> Rose Herrera: Second.

>> David Bacigalupi: Okay, I have a motion and second any further discussion hearing no further discussion all in favor, all opposed, motion carries item number 1P is a application for service retirement for Susan Salinger, battalion chief, fire department, effective January 22, 2011, 22.5 years of service.

>> Rose Herrera: Motion to approve.

>> Second.

>> David Bacigalupi: I have a motion and second any further discussion hearing no further discussion all in favor, all opposed, motion carries item number 1Q is an application for service retirement for police officer David Schaeffer, effective December 25, 2010, 25.55 years of service. entertain a motion.

>> I'll make a motion.

>> Rose Herrera: Second.

>> David Bacigalupi: I have a motion and second. Any further discussion? Hearing no further discussion all in favor? All opposed the motion carries. Item 1R is an application for a service retirement from fire captain Dana snapp, effective January 22, 2011, 25.07 years of service with reciprocity.

>> Motion to approve.

>> Second.

>> David Bacigalupi: I have a motion and second any further discussion hearing no further discussion all in favor, all opposed, motion carries item numb number 1S, Aloysius souza, fire captain, fire department, effective January 22, 2011, 29.50 years of service. I have a motion and second. Any further discussion? Hearing no further discussion all in favor, all opposed, motion carries. 1T, Todd spellman, fire captain, fire department, effective December 25, 2010, 27.39 years of service, SCD pending.

>> Motion to approve.

>> Rose Herrera: Second.

>> David Bacigalupi: I have a motion and second any further discussion? Hearing none, all in favor, all opposed, motion carries 1U, James C. stunkel, battalion chief, fire department, effective December 25, 2010, 29.15 years of service with reciprocity.

>> Motion to approve.

>> Second.

>> David Bacigalupi: I have a motion and second any further discussion? No further discussion, all in favor, all opposed, motion carries item 1V, is an application for a service retirement from Michael J. woodworth, fire captain, effective January 22, 2011, 24.29 years of service. entertain a motion.

>> Motion to approve.

>> Rose Herrera: Second. Bernanke I have a motion and second any further discussion? On the motion? Hearing no further discussion all in favor, all opposed, motion carries are any of those new retirees service retirees in the audience? Doesn't look like it, I just want to comment that we just retired over 588 years of dedicated service to the San José community. And if any of you are listening at home, thank you very much for your time and service. Okay item number 2, it's an application for a service connected disability from fire captain Mark Skeen, effective May 13, 2009 with 19.23 years of service and continued from last month's meeting. For the record, fire captain Mark Skeen is present and is remitted by Mr. Sam swift. And let's see besides the information provided, last month, in the medical reports, there was a request for opinions from both Mollie and Russ on one-year provision basically. And you have memos in your packet that answer those questions. So I'll open it up for any further discussion. Sam.

>> Sam Liccardo: Question about process. As I understand it, we've really got very similar conclusions here. And I would have certainly expected that counsel would have talked about their conclusions and then decided simply to submit a joint memo rather than having a lot of work you know, I looked at Russ's for instance and it's seven pages very well researched and so forth but couldn't we have all just saved a lot of time and the two of you submitted opinions --

>> Mollie Dent: I think you asked for opinions from both of us we did talk before we put our memos out and we realized we had found the same case basically. So in the future I suppose you can -- I think we both thought that we were being asked to provide separate opinions.

>> David Bacigalupi: I thought that as well. But --

>> Sam Liccardo: I just think the board's spending a lot of money. On legal analysis.

>> Mollie Dent: I will say that there was a case that was pretty much directly on point it didn't take a whole lot of time.

>> Sam Liccardo: Okay, fair enough.

>> David Bacigalupi: And I also have to think that sometimes the results being very similar made it redundant but had the results not been similar --

>> Exactly.

>> Sam Liccardo: Of course. The point is counsel and opposing parties meet and confer all the time. If there's no, I guess that could have been done my own concern is board resources spent on legal services, if everybody agrees there is not a need for separate opinion.

>> There was a lot of fact-intensive work assigned to us, it required in the SRBR memo as well as this. It would have been hard to factor in a period of time that Mollie and I fashioned a memo that we agreed on and get it into the agenda. That is kind of a reality in my end during the last month.

>> Mollie Dent: I will say in the future I will certainly keep that in mind in termination of trying to get out, in terms of trying to get something quickly to Russ so he can think about it, before he starts his research. I mean I think it probably has to start at that end. So I'll certainly keep that in mind.

>> Sam Liccardo: Thank you, I appreciate that.

>> David Bacigalupi: The other end -- Sean.

>> Rose Herrera: The last time I heard this case I thought it was well documented in here that the disabilities that were mentioned and injuries that occurred, did occur while Mark Skeen was working as a public safety person, as a firefighter. And the question was, could we go ahead and award this given the fact that it occurred after that one-year period. And I think because of the conclusions of both attorneys in this matter, that I think it gives us the ability to go ahead and award that and I want to make a motion to support this.

>> Second that motion.

>> David Bacigalupi: I have a motion and second to support the conclusion for service connected disability retirement. Is there further discussion? Hearing no further discussion any further discussion mark, good luck to you, thank you for many years of dedicated service to not only the fire department but also to firefighters and your labor representation and to this board. I had an opportunity to work with you on this board and always thought you were quite a professional and it was my pleasure to work with you so good luck to you.

>> Thank you, guys, happy holidays.

>> Mr. Chairman, I don't know if this is the appropriate point. When is the right point to discuss the member handbook so it's documented on future occasions this this is how we interpret the municipal code?

>> David Bacigalupi: How would we handle that Russ?

>> Direction to staff.

>> I don't know if that's a motion to direct staff?

>> You don't need a motion for direction.

>> Can we update the member handbook to reflect? Thank you.

>> Mr. Chair, maybe even a broader issue, in both of the memos from the attorneys it states that the Muni code is ambiguous, right ?

>> Mollie Dent: It doesn't matter whether it's ambiguous or not. I don't think you need to amend the Muni code. I think the courts have held that the doctrine of equitable tolling applies in these circumstances so I any the handbook can reflect that if there is that circumstance out there the one year is calculated minus the time that their disciplinary appeal is pending. I think that if you want to put that in the handbook that's just a reflection of the law.

>> David Bacigalupi: Thank you. Rose.

>> Rose Herrera: Yeah I just want to add it was -- that's why we have the board here to sift through that and make that decision. I don't think we can cover every single aspect in the code but that was what was compelling to me is the tolling argument and that should have been considered as part of it and not that termination, separation should include that so that would extend the period.

>> David Bacigalupi: Item number 3, a request for nonservice connected disability retirement by police sergeant Garyn P. Scott.

>> Motion to approve.

>> Sam Liccardo: Second.

>> David Bacigalupi: Effective December 2, 2010 with 24.9 years of service. I have a motion and second. Any further discussion? Hearing no further discussion, all in favor, all opposed, motion carries. Item number 4 change in status. 4A, we have a request to change the status from service to service connected disability from Jerry

Buzzetta battalion chief, with 25 years of service. Mr. Buzzetta is in the audience represented by Sam Swift. DNA.

>> Battalion chief Jerry buzzetta is requesting a 25 years of service. Medical reports are listed in your packet. Work restrictions are he should avoid forceful gripping twisting or he should avoid very heavy lifting and frequent bending or twisting. He's currently service retired effective 6-30-09. Tngs he was service danlt, at the time of application he was service retired there is no permanent duty available.

>> David Bacigalupi: Thank you, Donna. Dr. Das do you have anything further?

>> Dr. Das: No I don't.

>> David Bacigalupi: We have a motion and second. Further discussion hearing no further discussion all in favor? All opposed, the motion carries. Good lung. Item 4B. Randy Sekany, fire captain, fire department, request for a change in status to service connected disability retirement effective December 27, 2008. For the record, captain Randy Sekany is in the audience. Donna.

>> Fire captain Randy Sekany, work restrictions is he cannot jump off ladders, he cannot crouch or kneel. He is currently service retired 12-27-08. At the time of separation and at the time of application he was on leave, no permanent duty available.

>> David Bacigalupi: Dr. Das do you have anything to add?

>> Dr. Das: No I don't.

>> David Bacigalupi: Sam.

>> Sam Liccardo: I know this is obvious but not totally clear to me. When captain Sekany retired, was the retirement.

>> It was for the hip.

>> Sam Liccardo: I would make the motion to approve on the basis of the hip.

>> David Bacigalupi: Okay.

>> Second.

>> David Bacigalupi: I have a motion and second. Any further discussion? Hearing no further discussion all in favor, all opposed, motion carries Randy, you too, I wish you the best of luck in retirement. Worked with you a lot as far as labor representation and I know the many years that you put in and good luck to you in retirement. Okay, item number 5 deferred vested there are none. Least favorite part of the agenda, death notifications. Item number 6, and I'm going to ask for a moment of silence after we read them but item number 6 is the notification of the death of D ale O'Roarke, retired fire engineer retired 1-27 of 96, died 10-16-10 no survivor benefits to be paid. Just comment too that Dale served often the active association for many years and stayed active for quite a long time and he'll be missed. Item number 7 is the notification of the death of Leroy Widman retired police officer retired April 4th, 1998, died on November 14th of 2010. Survivorship benefits to Karen Widman his spouse. That will also be note and file. Leroy was quite a character at the police department. Sorry to see that happen. For that reason I'd like to take a moment of silence at their passing please. [Moment of silence. Thank you. Okay. We're moving to after 7 here we're moving to item number 18. Okay this will be the second sentence, the committee of the whole that's scheduled according to the agenda those meetings that are scheduled for December 16th, the council's interviewing candidates for the retirement board so we're looking at rescheduling those meetings as everybody needs to be there. And so we are going on with the presentation of the performance monitoring report for the quarter ending September 30th, 2010 by NEPC. Welcome gentlemen.

>> Thank you, thank you Mr. Chair, thank you board members.

>> David Bacigalupi: For the record, state your name for us please.

>> Absolutely, I'm Don Streck, working in the Redwood City office for NEPC with me is Dan Lebeau who has seven years of experience and is a senior analyst in our area as well.

>> David Bacigalupi: Thank you.

>> So we've been asked to keep the presentation brief so I'll move through it pretty quickly. If anyone has any questions they want to us cover, please let us know. I'll direct your attention to page 39 first, spends one or two minutes on the economic environment. So on page 39 in the upper left-hand corner is a look at the GDP situation in the United States. You can see here that the GDP growth growth was 1.85% in the upper right-hand corner ooms we are seeing some growth in the economy but that's still quite slow. In fact at this point in the recovery, compared to oochtion some recovery but not at the rate that we would expect to see in an economic recovery. The major effect of that is on the upper right-hand side, started to trend down but only slightly. We are essentially running at a 10% unemployment rate which is really one of the reasons it doesn't feel like we've left the recession yet. I think the lower left-hand chart is also quite interesting. The green line shows home price indices over an extended period of time since 1987 and this is really the experience set that most Americans have had in this country which is a slowly rising housing price environment, until it's dramatically dropped over 20%. So it's really kind of changed psyche of a lot of homeowners in the U.S. and I think that's worth mentioning. One or two quick points lower right-hand side, CU capacity utilization is running about five%. Reasonably low capacity utilization which short term. So I think that's a worthwhile point. And the final one I'll make on the economy is the lower left-hand side of page 40 a look at corporate profits. Corporate profits are a bright spot. They have recovered quite dramatically and basically they haven't done it through tremendous GDP growth but 30 through basically not hiring anyone hence the reasonably high unemployment rate and keeping their costs steady and a little top line growth. Decent news from the corporate side but frankly not creating jobs. In I could ask you then to turn back to the beginning of the presentation to page 2 we'll just take a look at the market environment or the

index returns in the third quarter. And I'll direct your attention to the right-hand side, where the blue line is what happened in the thirst quarter, which is the pert we're covering in this report and the yellow line shows what happened for a full year. And basically a very positive quarter for the indices, risk assets were rewarted so you can see the S&P 500 up 11.3%. Small third of the way down the page you can see the blue line showing the MSCI EFA up 16.5% for the quarter so again strong equity performance that should translate into your plan doing quite well on an absolute basis but because of some asset allocations you've made we'll talk about what that means on a relative basis in a few moments. You can see high yield did quite well in the quarter and also the year. So very good news in the quarter creating some reasonably good results for the year. I'd also draw your attention to the left-hand side in the five and the ten year column. And the point I'll make is if you kind of peruse down the five year column most plans have an actuarial assumed rate of return of around 8% and you can see as you look down these numbers there are really no 8%s there. Almost every type of investments that you could invest in in the last five years did not actually return your assumed rate of return. And really the same story often a ten-year rate of return. The assets you could have had for the last ten years would be emerging assets which would not be particularly prudent to put all your assets in. This is the huge head wind that you face and other public plans face. If you could turn to page 3 couple of quick observations. We talk about a nice quarterly return it was a roller coaster return, July down August and September back up so basically a very volatile period. What we are starting to see and working on projections for returns, for next year is we are looking to bringing them down. Forward looking returns droched and so the fixed income component of your assets will generally not earn as much with the lower interest rate environment, equities have done pretty well this year and especially in the fourth quarter. So it's hard to look to them to seeing some very attractive return opportunities. We still like emerging markets. I know you're looking to making some allocations to emerging markets. We think allocations into direct lending, and very clearly, there is a illiquidity premium or an opportunity to lock your money up to earn greater returns than if you have to be more liquid. So we think that is still a very attractive area. Page 4 12 month period $250 million gain in assets, so that's about 10% of the plan which is quite good. A lot of it happened in the third quarter with about $190 million and you can see there were about 57 million net distributions during the period. For the five years the fund has returned 4%. So you know not meeting the return that you'd want to see, but that does rank in the 36th percentile and what that means is you have then outperformed 64% of the plans over $1 billion so five year numbers quite good. For the quarter and we'll talk about this in a minute 7.9% return so very nice return for the fund in one quarter. But that ranks in the 67th percentile so a little bit below median. Turn to page 5 then. This is quick update of what happened over the quarter for the plan. You did receive the City's annual contribution of $86 million in this third quarter. RS investments took over the management of the small cap fund that Russell had been overseeing for quite some time opportunistic bucket are really viewed as sort of a shorter term investment and are paying out capital as the bonds mature. Kennedy has been replaced by American realty in the real estate portfolio. And you have two active searches that we're working with you now on for small cap growth and non-U.S. emerging market equities. If -- any questions?

>> David Bacigalupi: Thank you. Questions by the board? Sam.

>> We're not quite done with the report but we could be if you would like us to be. [Laughter]

>> Sam Liccardo: Thank you for the presentation. Question about the third bullet on page 4. I understand that we certainly had good rush, we were in the 65th percentile. And I'm interested in the peer group that we're looking at. I know that we've certainly undergone significant shift in our asset allocation, recognizing that we're looking for a lower volatility, and more stable returns over time. And the question is, is the peer group that we're comparing ourselves to, for the most part, have they made similar strategic decisions in the wake of the fallout, in '08, or are we looking at a group that tends to be very heavily invested in equities and are then riding out the current wave?

>> Yes, if I could direct your attention to page 7, so I think this directly addresses it. Here we're looking at this universe of public funds over $1 billion and we are starting on the left-hand side with 2005 and where it says total fund that was your total commitment to equities. higher than the universe, in 2005. And you can see that number has decreased to being in the 81th percentile. To answer your question, you have now a significant lower comparative yufers has brought its equity commitment down as well but not to the degree that you have.

>> Sam Liccardo: Okay.

>> These plans have recognized threne they have the issues or the concerns with their plan in the way that you all have, and started to tackle it, I think it's coming but they're not there yet. You guys are ahead of the curve here.

>> I would add that the reason we are below basically the median is because if you look at a typical 60-40 plan more than 80% of the risk of the plan comes from equity risk. So we're really, what the plan is trying to do is to diversify by risk factor. And in order to do that, the idea is to bring the allocation to equity down, and the board-approved asset allocation fundamentally increased the allocation to alternatives and decreased the allocation to equity.

>> Sam Liccardo: I certainly realize that and I realize there are short term consequences to option speculative and you know I recognize that we did the right thing and for the long run the question I had I guess then generally about these larger issue equity markets I know there is a lot of debate in the media now about whether or not as we look at at least American equities, you know PE ratios whether they're historically low or not, you hear that they're somewhere in the order of 15 now across the U.S. market. But when some analysts look at a ten year rolling average they say well actually it's not quite so good because you have to look at earnings over a longer term. Do we have any particular view on that? About what's the better measure to be looking at or are equities really undervalued right now?

>> I mean I guess our view would be very similar to what Carmen just mentioned which is you know if you have a 60% allocation to equity to pick a number which was sort of the typical one you are really making if I could be a little crude a one bet decision in your portfolio. You're betting everything that equities will do well. We're not generally in a position to say equities are you know and we do tactical shifts and recommend tactical changes but I think the overall strategic idea is to have more strategic bets or investment opportunities in the portfolio, so that even if you're wrong you'll still have a much more steady return and do better in the long term. We do think that equities, after a long run, I guess we would suggest that some areas look a little less attractive, small cap large cap that's doing so much in the emerging markets but in general is overall theme is find different drivers of returns so that the portfolio is more protected, and in another 2008 or even for what's happened in the last ten years. So

in the last ten years stocks are flat. And so we have another chart we show people that talks about how in Japan, at ten years of flat performance and everybody said, well that obviously means there's going to be a bounce back. They talked about that being the lost decade in Japan and they had another lost decade. As I'm sure everyone is aware of .

>> Sam Liccardo: I certainly appreciate the strategic issues you're talking about. The question I'm looking for is it's a mixed question looking at P and E ratios, he we have a set of equities that are undervalued or overvalued.

>> There's a view that there's a crash coming soon, I'm not saying that's what's going to happen but the two views when we talked to managers the two views are out there, one is that equities could be doing well over the coming future but there is a view that equities are overvalued and there is more downturn to come. In the near, very near term.

>> Sam Liccardo: Thanks for that great news. [Laughter]

>> Either going to get better or it's going to get worse. Yeah.

>> Dan's trying to make a point too that from an asset allocation standpoint we look to the long term. We're not trying to be so tactical that we're moving assets back and forth and trying to face returns because we're not that good.

>> Sam Liccardo: I recognize that.

>> Russell Crosby: We do that .

>> David Bacigalupi: Rose.

>> Rose Herrera: I wonder if you can comment on the fixed income commitments, and talk about the long term there. We see now very low interest rates, and we're much more weighted in that, now. As I get -- as broadening our asset allocations. What are we seeing, are we looking at inflation, are you factoring that down the road or can you talk about that as a portion of our assets?

>> Significantly there's been a conscious decision made by staff, in that there are several asset classes that are part of the new asset allocation that are difficult to implement quickly. For example absolute return strategies or the long term private equity allocation for example, they call money over time, so there's been a conscious decision to overweight fixed income as a place holder and when money is called that will be pulled out of fixed income over time. You will get to that target, we are placing it there, rather than equities, we don't want the place holder to be in equities.

>> Rose Herrera: Just like a money market, if I stick my money in some maybe a cash management while I'm figuring it out.

>> Not cash but --

>> Rose Herrera: Not cash but some kind of fixed income, okay.

>> Our fixed income is not our typical Lehman fixed asset. We have allocation to credits, you've heard a lot of credit investments, so our fixed income portfolio is not your typical low-yielding portfolio. If it were the case having 35% in it would not be a good idea, because it would damping the return. So just the comment that our fixed income investments are slightly different than the rest in composition.

>> Russell Crosby: And to the extent possible uncorrelated with the underlying bond markets, they tend to move somewhat differently particularly the direct lending and some of the other things that we're doing.

>> Absolutely, absolutely. They're floating rate, which means they're not subject to interest rate risk and we have an expectation of returns somewhere between 6 to 9% on these. So they're not your typical low-yielding investments.

>> Rose Herrera: Okay.

>> We also have a significant allocation to tips which is fundamentally protecting the fund a little bit from a high inflation scenario. Although high inflation may not be a promise immediately, in the medium term, the expectation is that there would be high inflation. So really, the allocation is a bit tactical from a perspective of protecting the portfolio from inflation as well as putting us -- giving us a little bit of yield. Still, with a low volatility which is what fixed income aims to deliver.

>> Rose Herrera: And you mentioned it's going to change because there's going to be some other kinds of allocations. Where do we end up? 30 --

>> I believe it's 36.

>> Rose Herrera: 36, okay.

>> So if you wanted to look where total fixed income and you go across about six columns, it says 36%. If you go over two more columns the long term benchmark is 25% and if you come down you see core bonds will drop to only 5%, tips is a big piece, long bonds quite different from Barclay's ag, opportunistic, so.

>> We perceive that fixed income is a bit riskier. And for example, the core bond allocation composes us to interest rate risk and it doesn't provide a significant return. So over the coming meetings we will be discussing why fixed income is from a risk perspective quite dangerous to hold. And staff will be working with NEPC to come forward with some recommendations, potentially for a tactical move reducing the allocation to fixed income.

>> Rose Herrera: And recommendations of where that will go then?

>> Absolutely.

>> Rose Herrera: Okay, all right. Thank you.

>> David Bacigalupi: Sean.

>> Sean Kaldor: In page 4 points number 3 and 4 talk briefly about active management detracting value. Can you talk briefly maybe in the last quarter of the last year the value or negative value brought by active management versus market indices.

>> Sure if we turn to page 14 this might drive this message more home for you. What it shows are the gray and the blue bar are showing where you your active management has detracted value. And when you start looking over the long term say the 3 the five the ten-year, the three and the five year period, many of those managers that contributed to those underperformance have been terminated bit fund. A lot of the large that were previously there and are going after positive performance in other asset classes where we think alpha is more likely such as small cap or emerging cap equities. So I caution you to look at these numbers in that while it looks like they are underperforming, I think a big drag is because of the fixed income portfolio and if you turn to page 20, this is where a lot of the -- that underperformance comes from. Looking at the Sykes and the Makai shield portfolios, if you go over to the since inception, while we're benchmarking those portfolios against market benchmarks, I think it's more appropriate to look at those since inception returns as over 10% for Sykes over 22% for Makai shields. These are buy and hold shields, these are not actively trading portfolios. in an absolutely return I think it's a little misleading to say that the active management is detracting on a year-to-date basis when many of the managers or these strategies particularly are causing that drag. But I don't think we woo argue with a 23% return in the past year and a half from that yield manager. So --

>> I would also add that we've actually given the mandates to Sykes and Makai shields, we've asked them to be more conservative to the index. They have more higher rated bonds than the index. So this is the value detracted of the managers is misleading because we've asked them to be less aggressive than the index and that's why they're returning less.

>> To volatility --

>> Exactly. We've chosen the not exactly a good representation of the mandate that we've asked of them.

>> Sean Kaldor: Is this net of all their fees?

>> It is.

>> Sean Kaldor: It is?

>> It is yes.

>> Sean Kaldor: So just looking forward in the most recent quarter page 14, manager impact negative half a percent .4 is that what we can expect going forward or continued yovment? You mentioned the manager changes, have those all been realized in the last quarter or not yet?

>> No as I mentioned we're currently clearly there's some drag from your emerging markets managers that we're working on as well so I think you can expect that number to improve over time because we've eliminated -- I would hope so yes. That is the plan.

>> Sean Kaldor: Thank you.

>> David Bacigalupi: Okay you want to wrap up?

>> Sorry I think quickly I just wanted to touch on page 10, which shows the long term performance of the plan here. And I think it's important to recognize the performance on a relative basis over the two-year period and longer. But I'd really think that considering the changes that the plan has made and the new asset allocation, which were implemented in December of 2009, really, the calendar year to date period is the period where we want to say here is the new strategy that the plan has implemented and how are things going? And you can see on a gross of fee basis you rank in the 28th percentile of your pierce over that period so while for the quarter you didn't participate in the equity you know the equity rebound for the yeert date period which was a much more volatile period you performed much better than your peers. And a month of October so that's very preliminary but it's there so we're saying year-to-date, through October of maybe close to 10%.

>> David Bacigalupi: Thanks. Anything else? Questions by the board? Okay, thank you very much.

>> Thank you.

>> David Bacigalupi: Okay now we're going to move on to item number 14. Good morning, Andy.

>> Good morning, members of the board.

>> David Bacigalupi: Item number 14, discussion and action regarding see gal's economic suggestions for the evaluation assumption June 30, 2010 and A, review Segal's academic actuarial evaluation, around B review of Segal averages analysis of estimated employer and employee contribution rates for the pension plan for June 30, 2010 under different investment return assumptions and the overview of the 2009-2010 actuarial experience. And this will also include item number 15 which is the discussion and action regarding Segal's noneconomic assumptions for the valuation period ending June 30th, 2010. So Andy.

>> Yes, good morning members of the board, Andy Yeung with the seeingal company. The board may remember, last month you asked us to provide feedback and comments on the interest rate assumption from the 8% that was

used in the 2009 valuation to 7 much 75 for 2010 valuation and then a subsequent reduction to 7.5% for the 2011 valuation. Now we have provided the copy of the letter that we present to your board last month at the back of the report. I think you may remember when we provide that report to you last month we told you that while we have done actually seven very similar studies to look at the interest rate assumption primarily over the course of 2010, and all those seven studies with no exception would produce a lower expected rate of return for the -- that we would recommend for the 2010 valuation. The two factors that are very interesting going into a little bit of detail when we go through the report is such that number 1 expected rate of return for the different asset class have all come way down and not only that but they are the higher standard deviation the higher chance that we would not even be able to meet that expectation. So those are the two factors that we shared with the board even before we collect say that we could put together a specific recommendation that we are presenting to you through your report today. Now with that in mind, I'd like you to take a look at the November 22nd, 2010 report, now even though this report is termed economic assumptions, we look at not just the investment return suggestions but we look at the inflation assumption and a whole bunch of other assumptions but pleased to report that with the exception of the investment return assumption you're almost in the ballpark with respect to the other assumptions such as inflation. So we can certainly talk about the other assumptions but let's cut to the chase and plook at the investment assumption page 12 of that report just want to give the board kind of a road match of where we are going with the study and the model that Segal has employed for us to look at the assumption which is carryover from 2009 to 2010. On the top of the page you will see that this is the several different components that we have used to derive the investment return assumption. So this is a methodology called a building block approach. If you look at 2009 and see how that compares with 2010, like I said early on we are not recommending a change in inflation assumption stays at 3.5%. So what we do in this model is we then build on top of the inflation, an expected rate of return, that is net of inflation. So you can see for 2009, that expected rate of return was 5.6%. For 2010 that return has come down by 81 basis points, 0.81% to 4.79 pert, okay. So let's take a look and see how that 5.8% was calculated in this particular model. So with that I would like you to turn to page 6 of the report. So page 6 of the report provides to you the board's current asset allocation. So for example we have 23% allocation to domestic equity 12% to developing conventional equity and so on. So if we take those expected allocations and apply that to the expected rate of return, in this case we have two columns of information for you, we have the returns that we got early on in the year from NEPC and also the rate of return that we got in addition to NEPC nine other investment consultants that provide services to our California public place clients. So if you take the -- those expected rate of returns, and come up with the weighted average, the weight average at the bottom of this page is 4.nevada 97%. This would be the right-hand side as I said on page 12 of this report, last time this number was at 12.6 per. If you go back to now to page 12 again, then certainly one can argue well, there's an 81 basis point reduction in portfolio that we ought to go to an expected return of assumption which is at least 81 basis points lower. So that would presumably take us from the 8.1% down to 7.2%. In discussion of the model there are a couple of more pieces that we want you to take a look at. If you look at page 12 again when we developed this assumption of 8% last year what we did was we take the 3.5% inflation. He we add to it the portfolio return last year of 5.6. We subtract the 0.5 and that would give you a net return of 8.6%. So everybody looking at page 12? Okay now the model did not stop there because jeafnl speaking the model wants to come up with a return so you have a better than 50% chance of meeting that expectation. So we described this so-called readjustment which is something very unique to the Segal model and that's a provider on page 10 of this report. We try to quantify the probability of meeting or exceeding the 12% return by this so-called confidence level. Now if the board wants to be certain this year than last year to meeting the expected return 60% of the time then if you look at the fourth paragraph on page 10, then we would have come up with a -- we would have to reduce the investment return assumption all the way down to the 6.93% level. Because as we had pointed out in the second paragraph in the last paragraph this year in addition to a reduction in the expected rate of return, there's also a higher probability, a higher standard deviation that we would not be able to meet that expected rate of return. So if we want to be as certain this year as in last year, to getting 60% chance that we would be meeting the expected return assumption, we would have to reduce the assumption 6.93. So I will conclude my remarks with the comments on page 11 of this report. I think we told the board last month that generally speaking, because we are trying to set up an assumption for the very long term, even though this year there's a very dramatic reduction in the expected return assumption, our general recommendation to your board and to other retirement boards is for you to take a look at this possible reduction in the investment return assumption on a structured based. So you would take measured steps to reduce the suggestions kind of one notch at a time. With that our recommendation is for the board to consider a -- reducing the assumption to 7.75% this year and then certainly leave open the possibility with -- unless there are any strong indication otherwise to move down another notch to the 7.5% and certainly from hearing the NEPC presentation just now it doesn't sound like that silver bullet is going to appear any time in the horizon but we urge the board to at least consider 7.75 this year, make the wish be known that you want to go to the 7.5 but not put that as part of your recommendation, or your action today, so that way you leave open the possibility that to go there to 7.5 next year.

>> David Bacigalupi: Thanks Andy. Just a quick question, Carmen and Michael got a memo this year also recommending to reducing it to 7.75 and then the following year going directly to 7.5. Is there any down side to this board making that action? You kind of leave it open for the second year but it sounds like everything we've heard from NEPC and the recommendations of staff is to go ahead and make the move to step it down you know 25 basis points, this time, and then 25 more next year. Is there a down side to that?

>> Mollie Dent: I want to just make a comment. I think you can have a discussion bit but it is not agendized for to you address the 2011. So I mean it can certainly -- you can certainly have a discussion about it but it's not agendized for to you act on the 2011 evaluation.

>> David Bacigalupi: Okay keep the discussion short then since we can't move on it anyway.

>> I think it's only a minor one. It may be related to the accounting side, I know that folks from MGO is here so they might be more qualified than I am to answer these questions. My understanding is that any time the board says well this year the assumption is 7.75, you would go down to the 7.5 next year there might be an accounting requirement this year so you have to disclose in your CAFR for example liabilities calculated both under the 7.75 and the 7.5%. So instead of having a clean cut and dried answer, when somebody asks you what's your funded ratio, you now have to dance around the two numbers. The contribution rate is this level next year is going to be a hire level, likewise, the funded ratio is 8.75 and next year lower. Little tricky enough to say it cannot be done.

>> David Bacigalupi: I understand. The best recommendation then for this board is just to handle this year and drop it down to 7.75, and then with all the information we've heard now and barring anything changing next year we would go ahead and have the opportunity and drop it down to 7.5 if that still seemed prudent?

>> That would be our registers.

>> David Bacigalupi: Thank you, questions by the board? Rose.

>> Rose Herrera: Just for the sake of discussion, so why wouldn't we want to go to 7.5 now, can I hear from the staff?

>> Obviously, that's the board's decision. The idea was to move gradually down. Clearly, the numbers from Segal and from staff suggest that 7.5 is still a little bit on the high side. So there's no reason why you can't decide to make a move immediately to 7.5 except that it would have a significant immediate impact on contributions for both the employees and the city.

>> Rose Herrera: So are you, in terms of your recommendation I know we're getting a recommendation from Segal. What is --

>> We maintain the move to -- we're obviously quite open about moving to 7.5 immediately. The Federated plan has decided to move to 7.95 this year and 7.75 next year so they've kind of built in a plan. We understand that the accounting disclosures may be a little bit trickier but that is something that staff cannot handle. Ultimately, I think that both options are still available to the board. I would say neither option is more attractive than the other.

>> Rose Herrera: So the positive in doing a stepping process would be less immediate drastic impact to contribution rates?

>> Exactly.

>> Rose Herrera: If we do 7.five now and 7 of.50?

>> The advantage if you move to 7.50, we mate.

>> Rose Herrera: Gives us more certainty? Good exactly, kind of puts us in a better position.

>> David Bacigalupi: Scott then Sean.

>> Scott Johnson: On page 12 I think this is a real important schedule because it justifies amending our assumptions down to the 7.75 based on the methodology of the components that you went over. But I have a couple questions. Going back to page 6, the schedule here that shows the asset class, is this the information on NEPC's and maybe NEPC can answer this, the real rate of return that they're assuming based on the percentage of portfolio, is this our current mix of portfolio or is this related -- this specific to our benchmark where we eventually want to get to?

>> This is -- I'll take -- this is been used, absolutely, this is new asset allocation that was approved by the board. So in certain situations, we have not gotten there yet. But it's still appropriate for purposes of the actuarial rate. We always want to put in place what is the strategic recommendation. Because if we're not there immediately, we probably would be there in six months or a year. And this rate is always looking at the long term.

>> Scott Johnson: Okay. And related to that on page 6, just trying to reconcile the difference between NEPC's rate of return assumption they're assuming a 3% inflation rate?

>> That's right.

>> Scott Johnson: While on page 12 we're assuming a 3.5% inflation rate. That is because of the inflation rate we're assuming because of salary increases?

>> That's right.

>> Scott Johnson: Okay so it appears to me that I think there's justification to reduce the assumed rate down to 7.75 now. And I would support revisiting that assumption next year, based on where we're at related to our portfolio mix. I think we need to continue to look at that, because that's a big component of the rate-setting methodology that we're using with Segal. So thank you.

>> David Bacigalupi: Sean.

>> Sean Kaldor: So I mean that is kind of a key question for me. 7.5 or 7.75 all at once. And could you talk a little bit about what you said on page 11? Where you mentioned your bullet point there that you're recommending a quarter point reduction, I believe changing long term assumptions would be reasonable in making incremental approaches, was that your logic behind a kind of a long range goal and we shouldn't be chasing return numbers too much?

>> Not necessarily that but only that the fund will be here to next year and many years to come but certainly if market is coming down such as what we're looking at in one very short year, what our hope is that it may come back up a little bit maybe not as much certainly our view is that you don't have to make very dramatic changes. We'll get into in a second we have a very dramatic impact on the employer as well as the employee's rate. You hear the actuaries say we don't want you to engage in these assumption based setting policies, but this is one case where we have to be very pragmatic that the resulting rate is very dramatic, so that's why we think in circumstances like this they may make a -- there is some justifications to make incremental as opposed to 50 basis point reduction all in one year.

>> Sean Kaldor: So then just as a quick follow-up to that we're talking about a difference between 7.75 and 7.5, what is the dollar value, is there a value of what that adds up to?

>> Yes, so with that certainty, we can jump into the November 24 Segal report so this is included in the item 14B. On page 2 of the report is where we provide to the board the contribution rates calculated this year. So 2009, was a valuation, the rate that the board has 2011 fiscal year, the rate the city's paying today. You can see

the next column is 2010, so this is before we even change the interest rate songs from the 8% to the 7.75 to the 7.5. This column only takes into account the events that happen during the year. Of course we have an asset smoothing method that is in place so now we are bringing in another one fifth of the asset losses before we talk about any changes in the assumptions you can see that the employer's rate is expected to go up from the current rate of around 39.5% to 45.6, 45.7% so the dollar impact is about $15 million already if you look at the two Police and Fire departments combined together. So now if we use the $114 million or 45.7% of payroll or thereabouts as the baseline, then you can see that moving over one column at a time you can see with a 7.75% interest rate assumption the contribution rate will increase by another 4.8% of payroll or thereabouts. It's going to add another $12 million to the budget for the city. And for the employees, you can also see that there's about a 0.6% rate impact for the members and it's going to add another say 1.5 million or thereabouts in contribution rates requirement so that's only to the 7.75. So then that's four to 5% rate impact is going to be replicated again if the board were to decide to go with the 7.5% rate with this valuation. So net-net if you are looking at going from 8% this year -- I'm sorry last year to 7.5% in one step then the contribution rate for the employer for example would go up from around 39.5% all the way to 55.4%. So dollar term you are looking at a number which is very close to $40 million in one year.

>> Sean Kaldor: So just to net that out real quick we're talking about if I compare 7.75% to 7.5% the total dollars going into the plan for funding that year is $153 million 7.75 and about 167 at 7.5, so about a 15 million dollar difference if we wait a year?

>> That's right.

>> Sean Kaldor: Thank you.

>> David Bacigalupi: Sam.

>> Sam Liccardo: Couple of questions, one is, Carmen based on where you believe staff rextions are going to be draft allocations, I know we are going to be reduction significantly our exposure on fixed income. Does that

lead you to believe the numbers, if -- and you were to do the calculations with the percentage allocations that you'll be recommending, should we be seeing this number come up the aggregate expectation return?

>> Let me make --

>> Sam Liccardo: I'm sorry, just to be clear I'm clarifying for you. I'm referring to in terms of this year for total portfolio on page 6 so everybody understands. Sorry to interrupt.

>> Before I address the specific question I just want to provide context. The recommendation on page 12 from Segal which is to maintain the rate, to bring down the rate to 7.75, included really a methodology adjustment in that the risk jawment which is the best part of the Segal model was dropped from 60 basis points to 4 basis points. We believe that the risk adjustment needs to be there. And so over time, really, Segal right now is using this seat as a buffer to basically get us down the bottom point staff believes that even 7.5 is on the high side.

>> Sam Liccardo: Right.

>> So over the long term it is highly unlikely that staff will come back next year with a recommendation to bring the rates to 7.5 given the actual --

>> Sam Liccardo: I agree with that but I really wanted to focus you more on the question of just the investment return alone.

>> We don't believe that over the next four to five years the view, the market view would change. Nor do we think that there's going to be such a radical change in the asset allocation that would result in significantly higher numbers.

>> Sam Liccardo: Okay.

>> So to answer specifically your question we might be tweaking the asset allocation. We might be sweeing the investment structure. It might result in an extra 5 basis points but that might bring you from say 6.93 using the Segal approach to 7 or 7.1. It's not really going to get us to 7.75 and definitely not even 7.5.

>> Sam Liccardo: Yes, I understand it's just a drop in the bucket but it sounds like it's slightly upwards. I'm actually concerned about generational equity here and the idea of even delaying for a single year taking the very painful medicine I know we have coming, particularly knowing that our workforce is shrinking and, that is creating an added strain in terms of the number of people who are supporting a retirement plan for an increasing number of retirees so I'm very concerned about delaying this reduction at all. I think we need to move to 7.5. I know that is not the recommendation. I think we'd all admit the reasons why we are thinking about an incremental approach of 7.75 is largely a political consideration. I'm concerned about the fiscal hit to the city as well as individual employees of having to make that big an adjustment. There is no question I think in anyone's mind, I'm guessing from what I'm hearing that ultimately we have to make that adjustment anyway. And if we make that adjustment later it will be on the backs of fewer and fewer employees. So it seems to me we ought to make this decision to go to 7.5 now, and I recognize folks may not be crazy about the outcomes in terms of what we have to deal with in our budget come June. But I think it's very important for all of us to be very aware of the total cost of the current structure, the current package that we have so that we can make very intelligent decisions now to avoid digging our selves deeper in this hole. And it seems to me those decisions around the structure and around the package of benefits we have are quite likely to be made in the next 12 months in consultation with our bargaining groups. So it seems to me, making the tough decision now is one that will be in the best long term interest of everyone, so we all have our eyes very wide-open about what's coming. I don't expect to get a second but I'm going to make a motion to go to 7.5.

>> Rose Herrera: Second.

>> David Bacigalupi: Can we hear the rest of the motion?

>> Sam Liccardo: The motion is to go to 7.5 this year.

>> David Bacigalupi: Now do we have a second?

>> Rose Herrera: Second.

>> David Bacigalupi: Okay further discussion on the motion?

>> Rose Herrera: Yeah, I think it's -- it's tough. It's tough to implement, in terms of looking at the impact would make on the city which is substantial and those of us who are on the city council are certainly aware of that impact. But I think as Sam said we're facing a shrinking number of employees and a growing number of retirees and the handwriting is on the wall. It's in this report. And what concerns me is, some of the comments in the report that, in the Segal report that actually say it might even should go lower to 6.93. To so the hedging on really making this step, the 7.5 is a political consideration and political considerations are important but I think we need to do the right thing here, not only for now but for future generations. And when I heard the estimate, city council the other day, of when this plan runs out of money given the current rate, it was really scary. I think we have 17 years left in termination of paying out retirees can expect to get paid, the people out there retired the people that are going to retire. And so I take this very seerms that we have to make these decisions going forward, and this is just you know one of those decisions. So I support the motion.

>> David Bacigalupi: Thank you. Sean.

>> Sean Kaldor: So as we look at it I mean I was the one I think last time who asked for the extra information on comparing a one step versus a two step move and why not do it all at once. I completely agree with pain versus reality. I don't agree with the political considerations. It's an afnl lit call decision, it's a fact whether we need to make the move or not make the move. I'm not worried about incoming expectations. change in following years and have heard presentation that maybe we need to go lower after this. So even if we go to 7 move, it needs to be seven and a quarter, maybe it needs to be 7. That doesn't need to be reflected by a seven number when it comes down to what's the right number to get to and what's our time frame for doing it. I don't think we know the

right number to get to. I think we're hearing there's a conservative view that returns are not going to be where he we expect them to be in the need to go lower. But again we're also look at a 30 year time frame. I see a $15 million difference in contribution to the plan between making the decision now or -- I'm sorry making the decision to go 7.75 rather than 7.5. I would be comfortable doing a and maybe at that time we see we need to go lower every year chase returns and as soon as market gets good we start increasing our returns again and increasing returns again increasing returns again.

>> David Bacigalupi: So are you supporting the motion or are you more inclined towards the two step process?

>> Sean Kaldor: I'm inclined towards the two step process. I do not support the current motion.

>> David Bacigalupi: Scott.

>> Scott Johnson: Can I just ask Andy because I'm looking -- sorry, I'm looking for some data to support whatever the rate would be. And I'm relying on page 12 based on this analysis. But on page 10 Andy, there's a discussion about confidence levels. And how you know based on the confidence level that would change the minus-risk adjustment component. Because that's the biggest piece other than the real rate of return assumption which was reduced in your report. So can you help us understand the risk adjustment? Because -- and because you discuss here the confidence level if we set a 7.5 rate how the risk adjustment would change.

>> Yes, so that discussion is provided on the bottom of page 10 on this report. I think is certainly right in pointing out that in order to come up with a 7.75 recommendation, that risk jawment is only just 51% confidence level, one can certainly argue that that is just slightly better than a coin toss that you would be able to meet or exceed the 7.75 in the long term. So that I can certainly comfortably tell you that with this model we have used for all of our California public we have ever seen being applied to. So that is the reason why we don't twoobt give the board the false hope that 7.75% is it and then we're not looking at a further reduction down the road. I think if we were to go to even the 7.5% like we talk about at the imom of page 10 that confidence level would only increase by very

slight from 51 to 53%. So it's better than 51 but certainly a lot less good than it has been in the past when it was at 60%.

>> Scott Johnson: So just to follow up on that so back to page 12, if we were to get to a 7.5% rate, what components then would change?

>> It would be the risk adjustment. So now, the risk adjustment instead of being 0.04% would be higher and they would be brought up to 0.29%.

>> Scott Johnson: Okay because the portfolio return we've already made the adjustment based on you know the benchmark that the board has approved in regards to our investment allocation, right?

>> That's right, yeah, under this model.

>> So Scott just to provide more background, the typical assumption for actuarial valuation would look at what the expected return, given a specific knolled, but then there's a provision for adverse deviation. Meaning you don't want to be exactly, just have a 50% chance of making the assumption. Provide the plan with a little bit of padding in case we hit a specific period where returns are significantly lower than assumed. And basically, by going to 7.75, there's only a four basis point pad. And that really fundamentally it means there's no pad whatsoever. And in order had we kept the same provision as last year, which is to try and be around 60% chance of meeting the assumption, the rate would be 6.93. So that's really a key component of how the 7.75 recommendation is developed. But ultimately you definitely want to have the deep pad in there. You don't want to be at just the expected.

>> David Bacigalupi: Sam.

>> Sam Liccardo: Forgive me if this question sounds too basic. But Andy, if your projected net investment return assumption is 6.93%, staff's is even lower 6.75%, why wouldn't we just pick that number?

>> Only because we -- but --

>> Sam Liccardo: By the way, that's not my motion. It's important for us to actually ask the question.

>> But bear in mind that last year using this same model same process the recommendation would be at 8%. So the only point we're trying to make is it's suddenly a very big swing. The numbers speak for themselves. Very big swing over a one year period going all the way down from aye to 6.1993. The only advice we want the board to consider is do you want to make a very dramatic change in the cost of setting this assumption one year worth of data. We felt that more data would be more beneficial in this particular situation.

>> Sam Liccardo: I know projections are always highly speculative but these are essentially 30 year projections.

>> That's right.

>> Sam Liccardo: Carmen my understanding is staff recommendation last year was quite a bit lower than Andy's.

>> That's correct.

>> Sam Liccardo: I don't know what it was. I don't remember if you do.

>> It was to bring the evaluation down to 7.75 and the next year to 7 many 5.

>> Sam Liccardo: I understand but the projected median return projection.

>> Increased slightly due to the change in asset had a allocation so there was maybe a 15 basis point increase due to the new board adopted asset allocation.

>> Sam Liccardo: So it got better.

>> Yes.

>> Sam Liccardo: But it was still south of 7 of course.

>> Yes.

>> Sam Liccardo: And I guess you know Sean makes an important point and raises annal important question which is obviously we don't want to be setting our assumptions chasing investment returns but at least based on staff's model it seems to me that the probability of us pushing our assumption higher, whether we go to 7.75 or 7.5, the probability of us pushing our assumption higher in following years is extremely low, is that fair to say?

>> That is fair to say because based on our model if we go to 6.75, we only have a 50% chance of achieving that return over the next 30 years. And by the way, the staff works with NEPC and NEPC typically publishes a five to seven year forecast then staff works with NEPC to really develop something more along the range of a 30 year forecast. That's partly of the reason why if you look at the NEPC returns last year versus this year there suspect a huge shift. So the idea is to maintain the returns, as stable as possible.

>> Sam Liccardo: Right.

>> So we don't expect really huge shifts. There wasn't a huge shift between last year versus this year and we don't expect a huge shift between this year and the next.

>> Sam Liccardo: Right.

>> So we're basically the survey of consultants used by Segal typically investment consults publish only a five to seven year forecast and the numbers tend to be more volatile.

>> Sam Liccardo: Than staff's recommendation?

>> Than staff's recommendation.

>> Sam Liccardo: Okay, understood. First of all I appreciate the recommendation you guys made last year, that's why I voted for it, not successfully. But I think the point that's an important one which is taking the long view, we are very, very unlikely to be ever pushing these assumptions up ward. And for that reason I think it makes a lot of sense for us to be going to 7.5 now.

>> David Bacigalupi: Sean.

>> Sean Kaldor: This is really important I wasn't here years ago. If we look at last year and the year before regardless of how many steps that will be what was your view of what the plan returns would be? Last year you were saying it was 6.93, is that correct?

>> Last year it was lower, it was 6.6 I believe yes. It was 6.6 last year and that's the median return which means there's only a 50% chance of making that over a 30-year horizon. This year we've moved up to 6.75 and again, the improvement is due to the changes in asset allocation, the improved diversification --

>> Not a view of the market?

>> Not a view of the market.

>> Sean Kaldor: Do you know what it was the year before? Ballpark?

>> Russell Crosby: Staff didn't develop any assumptions before that. I hired her two years ago.

>> Sean Kaldor: Certainly. Ask, for you, the recommendations you gave to us for this year you're recommended a tiered step down but what is the right number for this year? Not saying to get to the right number what do we need to do, what is the right 30-year view?

>> I think I'm glad you asked the question. Actually to lead to reasonable assumptions certainly last year 8% was on that range maybe a little bit ton high end. This year 7.75 is in the range of reasonable assumptions, you can argue it is on the high end. 7.75 is on the high end of the range.

>> Follow-up I think staff view of the range is it needs to be around the median which is 6.75. So somewhere between 6.5 and 7.5 would be the range that we perceive as reasonable. And that's the part of the resign why staff would like to see the board make a decision not necessarily go to 7.5 this year but to go to 7.5 so that we know that the board is at least within the reasonable range.

>> Sean Kaldor: And you'd concur with that?

>> I'd certainly would concur with 6 -- 7.5 is in the range and I think this is where we would have to agree to disagree. We believe that 7.75 is also within the range. Certainly on the high end of the range.

>> Sean Kaldor: Okay, thank you.

>> David Bacigalupi: Further discussion by the board? Anybody else want to address the board? Okay so we have a motion to drop the evaluation for the period ending June 30th, 2010, from 8% to 7.5%. Hearing no further discussion, all in favor? All opposed? The chair will be no. I'm not sure Scott and Sean how you voted.

>> Scott Johnson: I think I'm more of an incrementalist. I'd really like to see more data to support the 7.5%.

>> David Bacigalupi: Okay.

>> Scott Johnson: I captain support the motion at this time.

>> David Bacigalupi: The vote was no?

>> Scott Johnson: Yes.

>> David Bacigalupi: Sean?

>> Sean Kaldor: In one word, no.

>> David Bacigalupi: The vote fails. Do we have a substitute motion to follow the staff recommendation or to move it to 7.75? I'll make the motion.

>> Sean Kaldor: I'll second that motion.

>> David Bacigalupi: Okay so the motion now is to drop it from 8% to 7.75 and as I was already instructed by the attorney's office we can't make any future plans but obviously we'll revisit it --

>> Mollie Dent: You can bring it back at the next meeting. If you want to revisit the 7.5 you can do so but you need to agendize it as such.

>> David Bacigalupi: Keep it short, the motion is to drop it from 8 to 7.75. Sean, discussion.

>> Sean Kaldor: I absolutely, more discussion more views, I can see where our staff is recommending for us to go back that way. I'd love for us to come back next month and preapprove for us to move in that direction. It can always be dmaingd that becomes a big issue but I would support the motion.

>> David Bacigalupi: I would say in support of my own motion, that I agree with Scott, I'm leaning more towards an incremental change. But even I believe that we'll end up at 7.5 whether we look at it next year or we look at it next month. I think it's obviously moving in that direction. And we'll need to do so. So any other discussion? Hearing no further discussion, all in favor? All opposed the motion carries.

>> Russell Crosby: And just one question on the prior vote you were no as well? So it was only Herrera and Liccardo. Got you.

>> Scott Johnson: Mr. Chair, I know we've finished this item but I just want to commend Segal. On page 1 there's that third paragraph on Page 1. I think it's what I see is this statement here, the statement in regards to this paragraph, really embodies the trustee's responsibility, fiduciary responsibilities. I really appreciate how this is stated in regards to using realistic assumptions and balancing the equity among generations to Sam's earlier points to the participants as well as taxpayers. I really appreciate the statement because for me it really states what we, as fiduciary trustees, what our responsibilities are. So thank you.

>> David Bacigalupi: Thanks Scott.

>> Russell Crosby: Is there anything else that's needed on this? That's the --

>> David Bacigalupi: Okay so 14 and 15 are completed. With that and we'll move on to item number 16. And we'll start off with 16B. This is on the audit.

>> There was Andy did have an exhibit in his report on the noneconomic assumptions, the demographic assumptions. It will just take a few minutes to go through that.

>> Russell Crosby: Is there anything that's needed?

>> Nothing of significant that's needed.

>> David Bacigalupi: Same as last year.

>> Same as last year.

>> Russell Crosby: Then just move forward.

>> David Bacigalupi: Okay.

>> Mollie Dent: I think our office is going to recommend it and will do this at a future board meeting. We are going to recommend that there be a resolution of the board recommending financial recommendations, because it has occurred to us for disclosure and reporting purposes we don't have that all consolidated in one place it is in the report.

>> David Bacigalupi: We've approved it --

>> Mollie Dent: When the evaluation report comes back we'll set forth a report ooms even though they are in the valuation report.

>> Russell Crosby: Can you just coordinate that with Carmen and Mike?

>> Mollie Dent: Oh for sure.

>> Russell Crosby: Okay.

>> Scott Johnson: Just for clarification Mr. Chair, for item number 15 did we already approve that along with 14 then? Do we have to take formal action to approve the nonfinancial assumptions?

>> David Bacigalupi: Do we have to take separate action? It says with 14 --

>> Mollie Dent: You can accept the report. It's agendized but I believe the report is for no change in the assumptions.

>> Correct.

>> David Bacigalupi: So that will be accepted as part of the report. Okay. Item 16 is the audit report we're starting off with B, acceptance of Macias, Gini & O'Connell's report of the plaintiff board of administration for the fiscal year ended 30 June 2010, and the last item will be the acceptance of the independent accountant's report on applying pension data valuations agreed upon procedures. And would you like to introduce yourselves for the audience and go ahead.

>> Thank you, Mr. Chairman. My name is Richard Green I'm the partner out of our Sacramento office on the engagement and this is eanld Louie consider mer on the engagement.

>> Macias, Gini & O'Connell is presenting the financial audit. There is a separate partner that will be presenting the AUP. Macias has been on site since I'd say June working on the financial audit. I also passed around the draft of the comprehensive annual report, it's actually the final one, there was a draft that came to the board in November. This also contains Macias's opinion. Macias has completed their report and has required communications with the management that they would like to go over today.

>> Thank you, Veronica.

>> David Bacigalupi: Veronica this was the bound one?

>> Yes.

>> Thank you, members of the board I want to thank you for the opportunity to speak to you today and also wanted to thank management and staff for your hospitality and assistance during the course of the audit process. I think it's importantly to remember, the division of responsibilities in a financial audit, our responsibilities as independent auditors is to plan and perform the audit to obtain reasonable assurance, underlying accounting standards are there questions?

>> I think it's unrelated.

>> Okay. I didn't know if there were questions. Management's responsibilities in this process is to prepare the financial statements in coordination with the underlying accounting standards and to set forth a system of internal controls to ensure that errors are either prevented or detected during the normal course of business prior to financial statement and also to set forth the set of internal controls to ensure compliance with laws and regulation significant contract provisions. I am pleased to report to you that we fulfilled our responsibilities and have obtained sufficient and use unqualified opinion on the financial statements which means again that these financial statements are prepared in accordance with underlying accounting standards and are fairly presented in all material respects. I would like to point your attention to item I believe it is 16B. It is our required communications. This document here articulation elements that must be communicated to those in charge of governance, which I'll just highlight a couple of parts of this particular document. The first speaks to the qualitative aspects of the accounting practices. The first item within this section I'd like to bring to your attention is management responsibility for the selection and the appropriate use of the accounting policies used to prepare the financial statements, those accounting policies are articulated in note 2, to your financial statements. We looked at those underlying accounting practices, and ensured that the financial transactions that flowed into the financial statements were applied to those practices properly. Not only this year but consistently with that year. Now, within that footnote we also discussed the adoption of a new accounting standard that for the accounting of financial reporting for derivatives. That was also highlighted in an explanatory paragraph in our independent auditor's reports as well. So the -- so the accounting practices and policies that are articulated in that footnote are proper under the circumstances and again were properly applied to the transactions that ultimately

were reported in the financial statements themselves. In addition to that I'd like to highlight the fact that there are certain estimates within the financial sthaiments we want to bring to your attention. Estimates by their very nature are a little tricky statements but also the fact that future events may unfold a little differently than what you anticipatory at the point in time in which estimates are made. The more significant ones in these financial statements are the valuation of certain type of investments as well as the actuarial OPEB plan. What we have done with an audit perspective is to adjust our audit procedures for that risk and predominantly sphiments that are not actively traded so we have to look at other observable inputs to get comfortable with the valuation and the process in which the evaluation are made by management it is sperst option with respect to the actuarial pension and OPEB what we have done is we had an independent actuary as part of our audit staff and as well as ourselves we look at the information being presented in the financial statements based on the actuarial work done by Segal and determined that those assumptions and ultimately the estimates that are made as a result of those assumptions conformed to the underlying accounting principles which is predominantly GASB 25 and 50 as well as the actuarial standards themselves and industry norms. I believe that the estimates are reasonable and are grounded in the appropriate accounting principles. Moving on, there is one other section I'd like to point your attention to within the required communications document. And that is, the corrected and uncorrected misstatements. Inevitably, within a set of financial statements, there are items or audit adjustments that we propose. But yet we don't adjust the financial statements for those audit adjustments. And the primary reason is because we as well as management believe that they're immaterial meaning they are inconvention to the readers of those financial statements. Materiality is viewed from two perspectives, a quantitative as well as qualitative and when considering both aspects we believe it is okay to not adjust the financial statements for the three audit adjustments that you have before you. Does not indicate a significant or significant weakness in material control but rather something items that could have been made as adjustments to the financials but were not. The other areas within this document are pretty standard. I don't need to take your time to discuss them. The final document that we have at least as my part of the presentation speaks to management comments and recommendations, I believe that is 16C, is that correct, Veronica? It has our independent auditor's report on the internal chrome for financial reporting and also compliance. This report is included whenever an independent dpawrt performance in coordination with government auditing standards. I'm pleased to present to you that we found nothing of significance that was reported as part of this work however we did have one management comment that relates to the preparation of the form 700. We had instances where there was a handful of I think management as well as members of the board that didn't complete this on a timely basis. We simply recommend they are done promptly in the future. Nothing of gafntion. And finally wonk other additional thing, as part of our work he we do loo at internal controls over financial reporting. I'm pleased to tell you that we found no significant or material dwichts, which I think is a testimony to the quality of the work that is done by management. Overall successful audit and I'd like to extend my appreciation to Veronica. This was a tough year this year with respect to financial accounting, GASB 53 is a very complicated footnote disclosure. A lot of our retirement plan systems had trouble with this but job well done and I appreciate your patience in the process. Finally. Mr. Chairman, when I met with you three months ago I made a commitment to perform a quality audit, to do so with special attention to the independent standards because of the conversations that have occurred in the past. As well as keeping somewhat of a fire wall between us and the City Auditors. I have fulfilled that commitment and future there's discussion best our firm performing the work that you consider that as well as the other board members.

>> David Bacigalupi: Thank you. As you know, it was a concern that needed to be raised and I think you've handled it quite well so thank you.

>> Thank you. I appreciate the opportunity.

>> David Bacigalupi: Anything else?

>> Any questions?

>> David Bacigalupi: Scott.

>> Scott Johnson: I just have one question, and that -- and thank you for the presentation. I appreciate the due diligence of the auditors and also want to repeat my kudos from last month. Veronica has done an outstanding job in coordinating the audit. The one thing I wanted to reference in the opinion, we as a board look for your opinion as auditors and making sure that these financial statements are in conformance with general accepted accounting

standards. But now I just wanted to point out there is a new paragraph in the opinion in regards to kind of pointing out to the reader and to the users, is this related to the actuarial valuation, the unfunded liabilities we have for both the pension as well as the OPEB obligation?

>> I'll be honest with you I don't recall what was reported in the past but what we typically do on the engagements that I partner that are in the public retirement system arena is I have been adding a couple of explanatory paragraphs to bring to the attention of the readers certain elements within the financial statement that I believe is wore think of special attention. In this case here the paragraph that you're referring to speaks to the funded status of the pension as well as the OPEB. Again, because of the high profile nature of this information, especially given the environment in which we operate today, in the public retirement system plan system, we chose to highlight that area, so the readers of these financial statement could go to the footnotes and further discuss it, and make sure they understand that this is a particular sensitive area of the fudges of financial reporting.

>> To allow the board members to catch up that would be the comprehensive annual report and they are referring to page 14 and 15 of the report.

>> And in addition to that paragraph as I'd mentioned earlier we had already added an additional paragraph regarding the implementation of the new accounting standard for derivatives as well.

>> David Bacigalupi: Okay.

>> Scott Johnson: Thank you.

>> David Bacigalupi: Any other questions?

>> Sean Kaldor: Does this include section 16A of the pension evaluation?

>> That's going to be a separate presence.

>> My partner Linda Hurley will speak on that.

>> I will mention that Macias four reviewers in total in this financial audit so I'd like to thank mages yays for their patience as well in helping me to implement GASB 53, it was a huge undertaking and there was a lot to kind of catch up on. So thank you.

>> Thank you very much.

>> David Bacigalupi: Why don't we go on to item 16A and then we can take a motion to accept all in one motion, all item 16 A, B and C after we've gotten the presentation.

>> So 16A is being presented today by Linda Hurley and Annie Louie. CancerA. In your packet.

>> Councilmember Liccardo: A bound copy that I've provided. There was a soft copy that was e-mailed out and a loss copy that was sent out UPS.

>> David Bacigalupi: Okay, introduce yourselves please.

>> Good morning members of the board my name is Linda Hurley and I'm the pattern of this particular engagement. Annie Lou e- did most of the field work, under my supervision. So after a very long processing I believe we were engaged to begin this project approximately three years ago. It's taken quite a while but I just want to first start off and thank both the management of the department as well as the Department of Finance for their cooperation in working through some of the challenges that we had in completing this project. So today, we have the final report on the project. It is an agreed upon procedures report. So I would like to first start off and highlight, this is not an audit. These were procedures that were determined by management, based on a criteria that they wanted to explore. And we executed those procedures as such. The results of our -- of the project here are reported in this report. We're not giving an opinion on them. But they are the facts that we did find in terms of

completing these procedures that are identified. In talking with staff on how to present this presentation, I know back in August, I was before you with a draft report at staff's direction. And for those of you that did review the report, this final report, the content is the same. But the format is changed quite a bit, to try and clarify the findings. Because it was a very -- the procedures were very complex. So I just wanted to point that off. Also, a lot of the -- quite a few of the differences or discrepancies that we had in the draft report, many of those had been resolved, so they -- and they are reflected in our final findings here. With that, I guess we'll discuss just the format of the report here, and then I would be happy to answer any questions or to go into any areas in further detail at the pleasure of the board. Page 1 of the report is our actual accountant's report that we've signed describing what our responsibilities are and again emphasizing that this was not an audit. On page 3, we have identified the objectives and the scope of this particular engagement in a summary form. And then we've gone on to list each of the procedures that management had asked us to perform. Beginning on page 7 are the primary results in summary form of what we found in completing the procedures. And then finally, beginning on page 18, we start with a number of exhibits that is essentially the detail behind the summarized results that we had. Now we've provided staff the various documents and schedules that support this detail. We've stripped out all the sensity information related to retirees and employees that we may have looked at. But staff does have all that detail to further explore the results of our report.

>> I think if I could just add that keep in mind when you're looking at this report that it was the first time that there had been any type of review of the employers reporting over to the plan. So the scope of this engagement was very wide. And so there was a lot of information that took, you know, over two years to gather and to sift through and really coordinate. So in Macias's report here, this really is -- we're trying to meet a timely delivery. It is really the best available condensed information that could be provided. This type of review or audit is something that is to be done on a normal basis by the plan and should continue on forward and there are some portions of the scope that were for this engagement that just couldn't be completed with the time frame that we were looking at. But still need to be visited. And there should be sort of an inventory cycle kind of look at the reporting that comes from the employer over to the plan. And I just wanted the board to keep that in mind as they are looking at each one of these results. There are pieces that staff can look at and research some of the details there was a point at which this report was not going to be really usable for the board because it has some date aspects in it as

far as what data was looked at. So keep in mind that Macias took it as far as they could as far as condensing the data. These are really results and there are some more pieces to it that need to kind of get researched further on.

>> David Bacigalupi: Okay, thank you.

>> So would you like us to walk you through the results? How would you like to proceed?

>> David Bacigalupi: Okay, everybody has a copy of this are there questions by the board? Sean?

>> Sean Kaldor: Were there areas that were identified as it seems like there's a lot of exceptions and exclusions and footnotes as to why those may or may not be. What are the action items coming out of this in terms of recognition of where data flow between systems or inaccuracy of system flow or whatever it might be?

>> If I had to summarize some of these piece there's definitely some issues with dates and functions are dates that are used for plan entry dates the majority of them are consistent, there are reasonable explingses as to why the dates are different. The city has hire dates of people that enter that aren't in the retirement plans. The retirement plan is focusing on plan entry dates. There's definitely some improvement that can happen on the consistency of the data that's coming between the two, and is noted in Macias's report. The other piece I would say would be is whenever there is historical adjustments that are being done there is some difficulty because we're working with a live system as far as maintaining accurate records that go far back to get all the information that's necessary in order to make those adjustments. Understanding that the plan is looking at a person's lifetime trying to keep pale records option kinds of maintaining a good record of that information in a way that is usable.

>> Sean Kaldor: But will there be a list of here are the systemic things, here's five systemic issues cpped hiring days versus academy versus hiring beer the city make sure we can adjust those going forwards?

>> Yes what staff is planning to do is take this report back and kind of go through each of the exceptions and come back with recommendations as far as how to follow up how to kinds of close this portion of the report as

well as to come back with a request you know to come up with a work plan to continue to do these types of reviews. There's certain portions in here, that just as I mentioned before couldn't be completed in the time frame that we're looking for and they're really separate engagements that should be handled separately, because if we take the whole thing as a whole it's too difficult and can you not close it. It's difficult to focus on so many aspects that are so detailed. L.

>> Sean Kaldor: Thank you.

>> David Bacigalupi: It is something in the future we should do, make adjustments?

>> It is something that should continue on and areas of concern that are identified acknowledge are areas of research or areas that could be improvements could be a focus of individual review.

>> David Bacigalupi: Okay, thank you. Scott.

>> Scott Johnson: Mr. Chair, first I want to acknowledge the retirement staff yesterday, they did meet with me and finance staff along with a member of the City Auditor's office in going over this report. I want to thank MGO for -- this is an extremely complex very, very broad scope. And this board has increased the scope along the way over the last three years, you know after MGO started on it. I think the biggest piece was the FLSA piece that came to our attention after we were aware of settlements that occurred years pasted that we had to retro actively work on. Issues that were brought to our attention that we started working with staff, you may recall that City Auditor's office did an audit on that and asked that MGO do an audit on that. After we met I think the best approach would be that multiple departments are involved in this I.T., finance, HR, office of employee relations and the City Auditor's office. We have already scheduled a meeting for next week to start working on a work plan on those things that require additional work. I will say that for example, on page 8 there's a reference to the interface between peoplesoft and pension gold. As we talk through this, it's probably current data rather than trying to go back 12 years because we are looking microfiche, we are looking at record retention. It is probably better to look at interface more at the live stage so that's something we need to look at. The other thing I think we

need to look at is just some more work just so we have comfort level in regards to military pay. It's -- we didn't really understand why there was for example the statement here they found no matching records or there's something wrong with this. So I don't know if there's something wrong with the system as opposed to maybe the right information wasn't provided or something like that prospect so that's something that staff the multi departments need to explore more. Also, just in from my perspective, you know putting on the director of finance hat, I've been involved in a lot of agreed-upon procedures. This is a little bit -- quite a unique presentation that I'm not that familiar with, because it is kind of hard to kind of sift through what's right, what's wrong, what do we need to do? I think that's where staff will work on bringing back to the board a corrective action plan that I think will be very useful for the board where we're identifying areas where we think need further research and more work and finally I want to commend Dan Kudomoto, dba if you can raise your hand. Dan is from the finance department, program manager responsible for both payroll and all disbursements, accounts payable and he personally has spent many, many hours related to this agreed pond procedures process, luge with folks from I.T. and HR so I think there's still some work to be done but I really do appreciate the work that has been done thus far.

>> David Bacigalupi: There was a time that was called for to have a report, a final report and we have that and it just leaves the work in progress that there is still things that the staff and city and your department needs to correct but I mean they were given a time line to finish a report and I think we have very detailed report here but it just leaves a lot of things still out there to work in progress.

>> Scott Johnson: And I think that needs clarified through the work plan we need to bring back to the board. I think we need to clarify what Veronica has stated, the credit of our retirement director you know the division of looking at dining this, our due diligence, in regards to looking at the plan sponsor, how the information is translated over to the pension system, I think we need to do this every three to five years. But I stated earlier I'm an incrementalist. Looking eighth it every three to five years that will benefit.

>> David Bacigalupi: The first year is the wrors.

>> Sean Kaldor: Mr. Chairman, what's the status of the FLSA audit, where are we on that audit?

>> If I could, what happened on FLSA is Macias did their review and it pretty much breaks down into two different categories. There is the prepeoplesoft corrections and then there's the postpeoplesoft corrections. There was a arrive done by the City Auditor's office and a review done by Macias. The scope difference between the City Auditor's and Macias audit as I understand it is management thought that going back to the source document which is the time cards would be a good indicator to make sure that all the information when it left the firefighters hands over to when it was actually paid and the correction was done was all accurate and to maintain that first we had a good starting point as far as making any kind of adjustment that whatever we had as pensionable pay in the plafn was also pensionable pay that the city was reporting. So there were a lot of additional checks that we were adding. Unfortunately when we added going back to the time card it added a huge layer of research that had to be done because a lot of the time cards weren't electronic. They were hard microfiche copies that we had of the pay stubs or the city had. And so Macias sperchlt a lot of time going back and researching to gather all that information. When they did that there were some discrepancies between the data and there were some documentation to get from the time cards over to the peoplesoft information that were adjustments that are normal adjustments that are done during payroll review or timekeeper adjustments or management adjustments and that forecast for these exceptions wasn't available to complete that process. So maybe would invite Macias to elaborate a little bit on that portion and that's where you're seeing some of the exceptions.

>> I would agree with that.

>> Scott Johnson: Can I just add to that just for clarification. For example, you know the reference of the number of exceptions. 420 of them were states time sheet for pay periods. What this relates to is that we have a direct interface with fire's telestaff system and that's their whole scheduling system we worked with them you know and Dan spent a lot of time with fire staff around I.T. to make sure that instead of the time sheets we now rely on telestaff that shoots the data over to peoplesoft so we have a direct interface so it's electronic. So it appears that the time sheets that are held in the fire department, they're not held in finance, we rely on telestaff electronic data. That information apparently watt not provided but if we need to we can work with the fire department in trying to coordinate and tie back to those specific time sheets but to Veronica's point, when the City Auditor did

the audit, those were the hours that were recorded and paid for as we have that interface. Another example is in some of these cases they are timed to time sheets as Veronica mentioned there are a lot of normal adjustments after time sheets are submitted to payroll. So you know we have a cutoff for time sheets and then supervisors or employees some people will work over time, it is after the cutoff date, routinely we make a lots of adjustments. What we have to do is look at the time sheets then you have to run a report in regards to adjustments, an adjustment report but they didn't tie it to adjustment reports they only looked at the time sheet. So this is something we can further follow up on as well.

>> So I guess Conrad to answer your questions for the procedures that management staff wanted to tie out there are still some variances there and as Scott mentioned we can go back and try to tie out those pieces to it. I have to admit though it is very labor intensive. There will be a lot of pieces. If you can imagine looking at someone's time card and making all the adjustments. I think it still adds value to have some kind of confidence in that information.

>> Scott Johnson: Can I just adds --

>> David Bacigalupi: I'll just ask, have we corrected for the future the discrepancies that was occurring on FLSA pay being incorporated into retirement, but have we come up with I know it's labor intensive but have he we gone in and looked at individuals who are either paid in too much or receiving too much and solved that problem? I mean that was a major portion of the FLSA problem, in miscommunication. Have we done anything with that?

>> Scott Johnson: Well I think you know if you look at page 9 to put it in perspective, I think we have. But based on the procedures that this board and retirement asked, you know the agreed upon procedures, for example as I mentioned they looked at time sheets but you also have to look at any adjustments after the time sheets so those we'll have to go back and look at if you want to reverify those again. If we want to rhyme on telestaff data that we used to calculate payroll versus going back and looking at the actual paper time sheet that may or may not be available. But if we look at, for the calculations that they were able to do the calculations and verify, if you look at the variances, and you think about, we're talking about 12 years' worth of payroll. And we have variances like

$200 or $317 in total. The question is, okay, well, to what level are we going to accept you know cost benefit relationship, how much do we have to go back and do all the manual work to verify, when the variances that we're seeing are so small? You know what I mean? If there's a variance of $50 or less per employee, is that good enough? Or do we have to do it --

>> David Bacigalupi: In other words the time it would take to find it isn't worth --

>> Scott Johnson: The work effort.

>> David Bacigalupi: To make the adjustment. Mollie Russ and Sean.

>> Mollie Dent: The adjustments haven't been made, let's be clear about that The adjustments have not been made. The agreed upon step in the process towards getting there when Scott talks about coming back with a work plan that's going to have to be part of the work plan. And he's also correct that in coming up with the work plan, you do need to focus, not only on the number of discrepancies but on the magnitude of the discrepancies and what the discrepancies are about. So in a discussion, there will need to be a recommendation brought back to the board about how you want to move forward. This report validates that some adjustments need to be made. They found that -- it validates that. It didn't validate every single aspect of the data. You may not need to validate every single aspect of the data. So I think part of the work plan will be coming back with what are we going do about it.

>> David Bacigalupi: That's part of a future work plan and also a new element that I hadn't heard before was, it may not be cost-effectively to go back and adjust.

>> Mollie Dent: Well it may be cost effectively to go back and adjust to the level you were able to validate. There is a level -- this validates that you do need to go back and adjust. It's a question of how much you need to adjust and then how much work do you want to go to, to find that additional amount.

>> David Bacigalupi: Okay, russ.

>> I found this very, very difficult to understand or sort of make heads or taistles and I'm sure that's my ignorance and don't understand the depth and complexity of the issues involved. But going along with what you said Dave, that was my recollection of at least one point of what I thought this was to help with. Okay, Mollie's addressed it but I myself at this point wasn't able to see apparent progress on the issue of telling us how much overpayment by the city on FLSA, how much overpayment by employees how much overreceived by twairees. I think there may be some exhibits to go to that but I think it was not particularly synthesized and summarized in a way that at least I could understand. Perhaps the board didn't have that difficulty. But to the degree that the board did have that difficulty I certainly would suggest that the board request, as part of this work plan or whatever, some type of summary and synthesis that will tell you what to do or at least give you recommendations and also a time frame. We already know it's been three years and perhaps this is a huge step forward. I couldn't tell because I couldn't understand it very well. Perhaps this is a huge step forward. But how close are we to some sort of focused staff recommendations that the board can actually consider, and evaluate? I don't know.

>> David Bacigalupi: And the other question I have pulling -- trying to pull out of this is also how do we determine that it's the labor-intensive part of reviewing that is so high that it's not reasonable to go into it? How did we determine that? I can't pull that out of here. I don't see that so --

>> Mollie Dent: That was a problem.

>> David Bacigalupi: I think the work plan is going to be very important that we see soon and what it's going to address with the time frame of when that's going to come back. Sean.

>> Sean Kaldor: A lot of this when I was starting at the board, I know that was a hot topic, active people the concern was coming up with retirees and say there was sums owed back to the plan, but there's a realization that there is some sums we owe to the retirees and we don't want to go asking for the money and end up knowing that we owe the money a month or two later. How much can we reconcile at once? I agree, let's fix the stuff, if we're

not using time cards, let's make sure that interface is working. What I want to be careful with, when we say it's not worth it to fix a certain problem, that could affect a certain individual or 20 individuals, you owe me money it's a tough process I ask you consider all that when you come one a work plan in figuring out your priorities.

>> Mollie Dent: Definitely, that's where our focus is on ensuring that the retirees and the members really are covered to the degree possible and I think that's where retirement services will have to kind of go back to the city to say is this the best available information that we have and if that's the case then that's what we have to rely upon is the best available information since the plan is only the recipient of the data. At this point though the whole purpose of this review which is only looking at the FLSA portion, notto the -- this is the overpayment not the underpayment piece that had to go back. Really we're just trying to get a comfort with the information. Finance has provided a spreadsheet with the information on how -- what they've determined to be the over-- the overpiece that went into the plan and they have corresponding adjustments in dollar arrangements per member and the city that they've proposed and so this review really was to go back and look at that information and say okay, is it -- can we rely on the information? Does the plan have a comfort with the calculation behind it and if so can now let's go forward and take the next steps to kind of get the pieces in. And so yes, Russ there are lots of pieces in the report that are difficult but FLSA there is no way to summarize it, it is very called the, lot of information to get out there so this is a beginning point.

>> Sean Kaldor: So the city is asking for money back from the plan saying it was overpaid by this amount. What's the status of that request?

>> Scott Johnson: Pending the (inaudible).

>> This is one step in the review. There's legal portions that I'd have to defer to Mollie as far as what pieces go back and when you know there's steps to validate the information, once you do that then legal steps have to happen.

>> Mollie Dent: I think the first part of the work plan is going to be based on this report how much of a variance if any there is between the finance department's calculation and what the retirement department thinks based on the data they were able to get and validate versus the data they weren't able to invalidate. That's going to be the first thing to look at and it's not just on the city contribution side it is also on the side of the individual as well.

>> That's the thing if the city needs it it trickles back to the employees ultimately so --

>> Mollie Dent: And it has been correcting on a going-forward basis for kif employees for over a year now.

>> David Bacigalupi: But before any money moves one way or the other there's a lot more work to be done. Rose.

>> Rose Herrera: I just had one question, lot of material in this report, what is the total amount if we just looked at totals in here that the city thinks it overpaid?

>> For FLSA portion?

>> Rose Herrera: Yes.

>> I believe the contributions are estimated to be about $7th,000 for the employer and $300,000 for the employee. About a million dollars.

>> Mollie Dent: I don't think what there isn't a good fix on is what the pension overpayments, because it would have been pension overpayments in this case and so there isn't a good fix on what the pension overpayments were.

>> Rose Herrera: That was my second question. I'm done.

>> David Bacigalupi: Okay any further discussion?

>> Just a quick one. On pages 12 through 17 of the report, is the first time I've seen a listing of all the earnings code and a description of whether it's pensionable or nonpensionable. And so I thought that was very interesting, important. And the only thought in my mind, which the board may or may not be interested in, is just confirming the conclusions. Some of the items that are nonpensionable look like pensionable material. But I understand that, or types of pay that would otherwise be pensionable compensation. But I understand that MOU provisions frequently class items as nonpensionable. But --

>> Mollie Dent: This was in the City Auditor's report too. This was part of the City Auditor's pensionable -- I think it's probably the exact same table.

>> It is.

>> But regardless if this raises the same issue that the board might just like to double check the accuracy rather than assume that somebody came to be --

>> Mollie Dent: We checked the accuracy in our office. If the board wants us to look at it again I can look at it again but we did that in reviewing the City Auditor's report.

>> I believe OER participated in that as well.

>> This schedule was provided by internal audit in terms of our procedures so in our calculation of the pensionable pay versus nonpensional pay we follow the internal audit itself.

>> Russell Crosby: But the internal audit had been vetted through office City Attorney and through OER so that -

-

>> Scott Johnson: And presented to this board.

>> Russell Crosby: And presented to this board, correct. So we should be safe with this list.

>> David Bacigalupi: Okay.

>> Mollie Dent: I certainly think if anybody has a specific question about any --

>> David Bacigalupi: Anybody around plus bargaining units can all be looking at this and if they see something that's off. Okay if there's no further discussion I'll entertain a motion to accept all three portions of the report.

>> Scott Johnson: Move for approval.

>> Can I speak briefly? Imping yes please.

>> Chris Platten, council to local 230 this is going to be a very difficult problem if we've had overpayments by member employees as well. This is not an issue that is unknown in pension circles. I think Mr. CBOs can correct me if I'm wrong about 2025 yearsing a and I would ask in the working documents that's going to go forward that there be some consideration taking look, doing some outreach and planning out how other pension plans have dealt with this recalculation for lack of a better term and take a look you believe in that case effectively, a solution was reached that's similar akin to a class action settlement. So that individuals who wanted to verify any credits back, any calculations forward, et cetera, had a clear opportunity to validate down to the penny any questions. Otherwise, you know what I worry about frankly is huge litigation either by repetitive individuals or class basis on these claims. I recognize that part of this issue is kicked off by my client who discovered the overpayments to the FLSA and appropriately for the integrity of the system brought it forward to the board. I ask as we formulate an approach, we formulate if mechanics of a procedure that would allow individuals to rest assured that the calculations of their individual case is correct and the fingers can be put into the wounds to

verify. I think if we start thinking about this proactively we would be better off and I appreciate Mr. Crosby's work in reaching out and finding the mechanics used in other areas to expedite that.

>> David Bacigalupi: Our staff can do that. Thank you, Mr. Platten. Any further discussion? No further discussion? Hearing no further discussion, all in favor, motion carries. Thank you very much. Okay. A lot of people here waiting. Let's move on to item number 8. It is this should move quickly the next few items. Item number 8 under new business the approval of change in retirement date from Cheryl Faltersack from November 13, 2010 to December 25, 2010.

>> Rose Herrera: Motion.

>> Second.

>> David Bacigalupi: All in favor, all opposed, motion carries. Number 9, the approval for the secretary and City Attorney to negotiate and execute the First Amendment to the agreement with Hanson bridgett LLP the board's external investment counsel, to extend the term of the agreement to June 30, 2014 and increase the maximum compensation to an amount not to exceed $250, 000 and increase 2010-11 budget by 70,000. There is a motion and second, hearing no more discussion, all in favor Opposed, the motion carries. Item number 10 is the approval for the secretary and the City Attorney to negotiate and execute the First Amendment to the agreement with ice Miller LLP for tax legal consulting services increasing compensation by $25,000 for an amount not to exceed $60,000 and to increase the 2010-11 budget by $25,000. There is a memo from Mollie in your packet. Unless there is any questions I'll entertain a motion.

>> Second.

>> Motion to approve. [Laughter]

>> David Bacigalupi: I have a motion and second. Any discussion on the motion? Hearing no discussion on the motion, any further discussion item 10.5 is the election of the board chair and vice chair for calendar year 2011. If there's discussion I'll entertain a motion.

>> Sam Liccardo: Motion to nominate current chair. Vice chair.

>> David Bacigalupi: Chair and vice chair did I understand?

>> Sam Liccardo: Yes.

>> David Bacigalupi: Can I have a second?

>> Rose Herrera: Second.

>> David Bacigalupi: Okay. Discussion on the motion? Just thank you very much for the confidence.

>> Thank you for your service.

>> Thank you.

>> David Bacigalupi: Hearing no further discuss all in favor, all opposed, motion carries okay. Item number 11 under old business continued deferred items. And I'll read the entire item number 11, obviously it's very involved here. Discussion and possible action regarding supplemental retirement benefit reserves SRBR, calculations frr the Segal exeen deferred from last month. B the adoption of resolution 3683 declaring excess earnings as of June 30th, 2010, for the purpose of transfer to supplemental retiree benefit reserve. This was also deferred from last month. C, discussion and possible action on city council action regarding SRBR payments. Continued from last month. D, the memo and adopted ordinance 28 AIDS 48 from Mollie dent dated November 23rd, 2010. E, the memo to city council from City Attorney, Rick Doyle, dates November 5, 2010. F, the memo regarding issues of

board interpretation concerning SRBR from Russ Richeda, dated November 22, 2010. I, council resolution 708 twa, H, Police and Fire retirement plan SJ code 3.36.580 SRBR, G, informational memo regarding SRBR payments compared to benefit A's from Donna Busse. Dated November 23, 2010.

>> Can we get an update?

>> David Bacigalupi: There was a motion to postpone this to get information back. Mollie why don't you start and then russ.

>> Mollie Dent: Well, you have my memo in your packet, item 11D. I don't want to speak for russ. But with respect to the questions that were asked, that we were asked to address by the board, I think we came to similar conclusions on the board's discretion with respect to the SRBR and what to do with it. I did address one additional question that Russ didn't look at. And that has to do with actually the transfer of money into the SRBR as well as the distribution out of SRBR. So that was part 1 of the question that I asked. And mainly, that has to do with the recommendation that you saw last month to transfer in extra money for a transfer in that didn't occur in 2009. So if you looked at Segal's report, you saw that there was a $295,000 amount, that they determined should have been done last year. If they were using the revised market corridor that you approved subsequent to that date. So I simply wanted to lay that issue out for the board. I think there is a question there perhaps about that transfer-in. Of course, the transfer-in also affects the payment out, too. But because questions had been raised about the fund itself, and the effect of the SRBR on the retirement plan, it's only transfers in that affect the retirement plan. So this is an issue in terms of dividing money between the regular retirement plan and the SRBR. So I addressed that issue in my memo. And the other function of my memo was to provide those that don't know it already, with a copy of the council-adopted ordinance callings for the suspension of SRBR for this -- the rest of this year through June 30th. That's the ordinance that's attached, as ordinance 28848, which is attached to my memo. And the council adopted the ordinance and referred the ordinance to the board for study. So you have the opportunity to comment back to the council on the ordinance but it has been adopted.

>> David Bacigalupi: Okay and Molly if I understood you correctly, the distribution of SRBR funds don't impact the funding of the plan. It's the transfer of the money into the SRBR fund that impacts the funding?

>> That's correct.

>> Staff agrees with that statement.

>> Mollie Dent: Right.

>> David Bacigalupi: Go ahead.

>> Rose Herrera: I wanted -- I'm interested in addressing that first piece that Dave just explained the transfer-in. In terms of the transfer, the question whether we should transfer an additional 200-some thousand from based on the change in the quarters, I'd like to have that as -- I'd like to weigh in -- I'd like us to weigh in on that one take that apart and sort of weigh in on that one. And I will speak against transferring, making that decision to transfer the additional $207-some thousand. That will negatively impact the fund if I'm understanding correctly?

>> Mollie Dent: It's true it's a debit.

>> Rose Herrera: Under the circumstances I don't think that's a responsible thing to do and I don't think we're required to do it based on what I've heard from the attorneys particularly your report on the requirement.

>> Mollie Dent: That was my clucks that I did not think you were required to do it. Russ didn't address that so I'd have to have -- he could address that himself.

>> My quick two cents on that is you're definitely not required to do it. I slightly differ from Mollie is you have the discretion to do it if you find it. You have the ability to correct prior earnings if you think it's appropriate but you by no means have to, and can you instead weigh the factors you just mentioned board member Herrera.

>> Rose Herrera: I think it sounds like you've given us wide latitude, whether to disburse or not disburse. I want to understand currently what the piece would be in terms of us allocating and how that would impact the retirement fund.

>> Let me make a comment on the $295,000 roughly. That was based on the board's decision to change the market corridor from 120% to 130%. When that was changed, that resulted in a very small investment earnings for that -- for the year ended June 30, 2009. For the current year, and our thought is that that distribution is a legitimate transfer, because the board didn't take action to change the corridor. I know there's some questions, Mollie has, about the timing of it. But the fact is the board did change the corridor at that time and that resulted in that $290 some thousand dollars. The SRBR language is that you have to use the assumptions and methods that are adopted by the board that are used by the board for the evaluation.

>> Rose Herrera: So retroactively going back?

>> Mollie Dent: That's the point, the assumptions that were made at the time the board made this decision didn't include, that's why I pointed out the date in my memo, the market value of corridors change was done after the board --

>> It all relates back to the same valuation.

>> Absolutely.

>> Mollie Dent: But the SRBR determination is not done pending the valuation. Just like you're not waiting for the 2010 valuation this year. You're doing a distribution before you have your -- you're doing all of this before you have the valuation. It always happens before you have the valuation. So I -- I'll repeat it. I think we both agree that from a legal standpoint, we do not think you have to correctly that distribution retroactively. I think staff thinks that it's the right thing to do. And I do have, you know, I laid out my concern about your authority. I wouldn't go so far

as I don't think you have the authority. I would agree with Russ on that that if you -- that if you want to revisit what you did, a year ago, you can revisit what you did a year ago. I just don't think you're compelled to do it.

>> Rose Herrera: Could I just get the other half of my question answered?

>> I'd like to comment on why staff thinks this is the right thing to do. If fundamental principle of actuarial benefit calculations is transparency. The way this is actually interpreted is any retiree who has the inclination to reproduce the actuarial number should be able by simply getting acquainted to the elements of the Muni code relating to the benefit and the financial statements that are published be able to reproduce the number. So it is extremely important to maintain that transparency. And we have had to sit down with retirees and explain how the calculation works being able to take the financials and say, these are the numbers coming straight out of the financials, that's how we get the numbers. I think is something that we would like to keep that transparency. There is also an element of the Muni code that suggests that the calculation needs to be based on the board's -- well, the board's suggestions relating to the plan which fundamentally means that to the extent the corridor is changed, the decision to change the corridor was not because of the impact on SRBR but that affects SRBR.

>> I think the reference is based on the method used for the actuarial valuations. And in our view the valuations at June 30th, 2009, was based on expanding the corridor to 130.

>> Russell Crosby: And our other concern, too, is that while the -- some might perceive that it's an unfavorable event this year we're trying to always set up processes and procedures that will carry the board off into the future. And the next time this comes up it could just as easily be the other way around. So our concern is not to be doing one-off stuff that then in future years puts you in a -- you got to make opposing decisions from one year to the next to try to steer through whatever it is you're trying to do, rather than just set up a process, set up a procedure recognize that when you make these changes it's going to have afternoon impact and then the thing works on automatic after that. Our concern is reaching into the machine and doing something different it all becomes ad hoc.

>> The only thing is, this is a very complicated little scheme and it has a ton of different rules one of which is you're not supposed to dip into principal. The declaration that is made, it could result in a deficit rather than a surplus, right?

>> Russell Crosby: Correct.

>> And then it possibly might result in a distribution of principle. Or something. Or at least somebody should think this through. Or it might violate one of the other limitations like the 5% limitation on the --

>> Russell Crosby: But that would be built into the calculations. That would be accounted for.

>> Initial calculations not in the ones that are going to be altered significantly on the actuarial assumptions that had previously been in effect and had been used to determine the declaration of excess earnings.

>> There is no impact on the principal because I believe Andy can help us out in answering that question. But my understanding is that 296 are in fact due to a small interest resulting from smoothing.

>> That's right. The board might remember that a specific provision in the code we said if the return were to become more negative you can't go back to the SRBR and grant money from the SRBR.

>> The 295 was not excess earnings.

>> Or there might be a determination that there actually are earnings and then depending on the changes made it determines you don't have any earnings because you lower the interest rate suggestions for example. And if you do what you've done in the past, you don't necessarily have to and you cut the checks in December, then you've already paid it out and you paid out money that is not you know that really wasn't there. It just seems --

>> Mollie Dent: The code calls for you to do this excess earnings valuation we're going to hear testimony later when we get into the rest of this, this has typically been done in November. Typically you do not have the valuation in November. So if you want to take the position that you have to wait until the valuation is done to do this excess earnings valuation and do the distribution you are going to be waiting this year, this year you can't -- you wouldn't do it today you would do it in March or April with the valuation comes back. If you want to have the vamtion, and know what the valuation is going to say, and have all the assumptions in place you have to wait. The assumption change that's being relied on here wasn't made until February. So --

>> Doing it that way might violate the 90 day financial statement.

>> The board has already voted on a set of economic assumptions as well as noneconomics assumptions so the assumptions for the valuation have been approved by the board.

>> Mollie Dent: This year he they were approved in November. Last year they weren't. That's my only point. So the -- and Russ is right, there is a time for doing it. And so you can't -- you may not be able to wait for the valuation. The language doesn't -- it just says the same methodology. And I'll say it again, the methodology that was in use as of June 30th of last year was the methodology that did not have this change in the quarter. Because that was not adopted until -- until February of 2010. So --

>> So does it say the methodology that was in use that date or for the --

>> It doesn't say.

>> It is Your Honor clear on that.

>> It's unclear.

>> That's the ambiguity that is up to the board to disci's decide.

>> Russell Crosby: The valuation you are giving it in year.

>> David Bacigalupi: I understand what you're saying very clearly but it seems that the rest of it is not as clear. The methodology seems very important not to be manipulating every year based on circumstances. Did you have something to say?

>> Rose Herrera: No, I thought that was going to be really clear, I thought so. Yeah.

>> David Bacigalupi: Okay, well did I get a second on Rose's motion?

>> Rose Herrera: I didn't make a motion. I was thinking about making a motion. I wanted to get answers to my questions, it wasn't as clear as I thought.

>> Can I ask a question? Mollie understanding your document here you say the timing and the A funds to be transferred into the SRBR are set forth not up to our approval or adjustment or change.

>> Mollie Dent: Right.

>> Conrad Taylor: The contribution into the SRBR into the fund?

>> Mollie Dent: The contribution into the SRBR into the fund is to be made within 90 days after you receive the financial reports, you receive the financial reports today. So you have -- you can do it today or you can wait 90 days to do it. That's set out in the municipal code.

>> Conrad Taylor: That timing is set out and based on a formula that's agreed to.

>> Mollie Dent: The amount of the transfer is investment earnings and excess earnings if there are any, in this case, you're only talking about investment earnings. There haven't been any excess earnings, that's clear. There were, and it's fairly clear that there were investment earnings for 2010, assuming that none of your assumption changes change that, the investment earnings for 2010, as of today, seem to be 6 hundred and some odd thousand dollars. The investment earnings for 2009 were negative as of June 30, 2009 as reflected in Segal's letter that went positive as of February 14th, 2010 when you changed the corridor. So you have, for the transfer-in, a choice between the full million dollars or the 600 some odd thousand dollars in my opinion.

>> Conrad Taylor: For the transfer in is no choice it has to be one of those two numbers, to transfer into the SRBR?

>> Mollie Dent: Based on Segal's letter I'd say yes, I'm looking to staff to confirm that none of the assumption changes we've made are going to change that.

>> That's correct.

>> Conrad Taylor: Once the money is transferred into the SRBR there's the discussion from that from the distribution to the numbers, once it's in the SRBR if we make a distribution to that effect our UAAL, does it affect the city's contribution rate to the plan?

>> Not once the money's transferred, no.

>> Conrad Taylor: Does it effect the city's transfer in? Does it effect.

>> The distribution itself does not.

>> Conrad Taylor: Does it affect the stability of the plan glm no, it doesn't because that money has already been separated.

>> Conrad Taylor: Thank you.

>> Russell Crosby: The transfer is the key item.

>> Conrad Taylor: Understand, the transfer is at least 600,000 and we don't have the choice, we have the other 296 to decide upon but whatever we discuss here --

>> Mollie Dent: I want to be really careful about the dollars because I'm not sure whether taking the 295 out would result in the 600 and some odd thousand to be lest bought terms of whit was considered as going in. It's pretty minor but I'm not -- you don't want me doing that math.

>> But Sean just to confirm it in the Muni code section in B-2 and B-3 there are tons of shalls, you shall do this and you shall do that.

>> Sean Kaldor: Thank you.

>> David Bacigalupi: Andy.

>> The number Mollie was referring to was $790,000. The other point I raise is this calculation that we present to the board last month was predicated on setting up the actuarial value, the smooth value of assets at 130% at the beginning of the year. So if we were to now go back and possibly let's say not want to transfer the 296,000 for the fund for the year, let's start off with the 20% corridor as the beginning of the smooth value of assets number and that would result in a totally different amount to be transferred to the SRBR for the '09-10 year. Tbhapg would have an effect on a lot of other things as well.

>> That's true.

>> David Bacigalupi: I don't think we were talking about changing the market corridor. So the discrepancy now for the 2009 is the $295,000. The $719 thousand --

>> Mollie Dent: I think what and's saying is you weren't to do cps if you didn't do the $295,000 wouldn't that change the $719,000? And the answer is yes, I don't know by how much but it would.

>> David Bacigalupi: Okay.

>> Sean Kaldor: To the degree in which there was earnings on that amount?

>> David Bacigalupi: Yes.

>> And at the beginning of the year should we start off with the 130% corridor as the asset value or should we start off with 120% as the beginning of the year. A big different.

>> David Bacigalupi: Which year Andy?

>> As of 6-30-2009.

>> Mollie Dent: To kind of lay out the choices on this first one not to call them either way but based on the information that you have, if you want to do the retroactive adjustment, you would go ahead and do the entire $1 million-plus transfer in. If you don't want to do the retroactive adjustment I think would you have to delay it in order for that $719,000 number to be recalculated. And you have the option to do that because you don't have to do it today. But you don't have to wait, either.

>> David Bacigalupi: Okay. Rose.

>> Rose Herrera: So we do have the option that's where you really exact the fund is the transfer? I just want to say notwithstanding the SRBR program, a lot of people passionately want this to move forward I'm just concerned about the fund in general and you know whether we should actually be distributing and moving forward on SRBR at this time. And it sounds like the only way not to do that would not to make the transfer in. I feel caught in a quandary and at least I definitely want to say I do not support the additional $295,000 and I'd make a motion since it is, it looks like the transfer the inevitable, to move to the transfer on the $719,000.

>> David Bacigalupi: Okay, I have a motion. Do I have a second?

>> Scott Johnson: Can you repeat the motion I'm sorry.

>> Rose Herrera: I'm making a motion to base the -- base the calculation on SRBR on the $719,000.

>> David Bacigalupi: To base it on what the effect was before the change in the market --

>> Rose Herrera: Before the market corridors were implemented.

>> David Bacigalupi: And limit the change in the market corridor's 219,000 approximate numbers.

>> Rose Herrera: I can't change but include that.

>> David Bacigalupi: I have a motion and second.

>> Dave, just to clarify, I thought Andy said that if you decide not to transfer the $296,000, then the $719,000 number will have changed, and you will -- so I think the motion --

>> Rose Herrera: I think we need to recalculate it.

>> -- is to not transfer the 296,000 in.

>> Rose Herrera: Thanks Russell. I'll take at a correction.

>> With the 130% corridor or 120% corridor. If the decision of the board is to make the distribution based on -- to make the transfer based on the 719, and to recalculate what the amount is with the 120% then we would need to task Segal with going back and recalculating the number and it would be a different number than the 719.

>> David Bacigalupi: Well I think the motion on the floor is saying to transfer what the impact with the changed corridor because we're not -- that's not on the agenda to change the corridor but not to transfer the adjustment found as a result of that corridor. If I understand the nature of the motion.

>> Rose Herrera: I'd like to restate the motion because I agree with Russell's statement to me, to not transfer the 295 and have staff go back and recalculate. The corridor is confusing me, is that in front of us? Are we making a decision on the corridor?

>> Russell Crosby: No.

>> Rose Herrera: I'm a little confused where we're going with the corridor.

>> The current calculation, the current numbers are based on the [simultaneous speech]

>> David Bacigalupi: You are trying to use this by changing the corridor and the corridor would change a whole lot of other things.

>> Mollie Dent: The point is you don't have to change the corridor you don't have to make the correction if you don't want to make the change. [simultaneous speech]

>> Mollie Dent: You can say you don't want the corridor change to be used in this calculation. I think that -- because the code doesn't-d I think that is within your discretion to say that you don't want the corridor change to be used for the purpose of making this particular retroactive adjustment.

>> Just for clarity, if this is using 130% corridor, so if basically the board decides that they don't want to reflect that, then Segal would need to go back and recalculate the amount. So I'm not suggesting to revisit the corridor decision. I'm simply stating that this is based on the 130%. And so I just want to make sure the motions are clear as to whether you expect Segal to go back around recalculate the amount based on the 120%.

>> David Bacigalupi: No I think what she wants -- if we don't transfer the 295 or 296 approximately it's going to affect the 719 number. That's what needs to be recalculated because it's not going to be 719 number.

>> Rose Herrera: I'm not -- confused why that corridor keeps coming up before us how it needs to be retake ited, use that as a calculation or not transfer the 295.

>> Russell Crosby: Could I take a stab at what I understood your motion to be? First of all to ignore the corridor change in this calculation and not to transfer the 296,000 adjustment that results from the corridor.

>> Rose Herrera: Yes.

>> Russell Crosby: And staff to return with a recalculation of the base 719 amount.

>> Based on the 130% corridor for that year. For that particular year.

>> Mollie Dent: Where the corridor went back up.

>> Russell Crosby: For that one calculation.

>> Rose Herrera: For that one calculation.

>> David Bacigalupi: Andy do you have something?

>> I want to emphasize the 2009 was predicated in no change in policy, no change in methodology. For that I mean we have used 120% corridor. When we look at this study again this year we have changed retroactively the 7-1-09 value using 130% corridor. So that's what this calculation was predicated on. If we now want to go back to how things were done in 2009, and use 120% amount as the starting point, and ending with 130% as of June 30, 2010 I want to emphasize to the board that it would result in very significant change in the 719,000 amount. The amount is not going to be -- we're not talking about thousand dollars here and there, it is a fairly significant difference. I don't have the difference with me because that was not something we were asked to do.

>> Mollie Dent: Okay let me make it clear that you are talking about two different issues. Because the board is now back to the corridor. They're back to their 120 corridor. So for your -- for your 719,000 dollar transfer, for that year, you are to use the 120 corridor because that's your current assumption. This is the -- so you have to look at the decision you're making this year versus the decision -- the question is do you want to correct last year's decision? You had it in -- last year, last year, the decision was that the earnings were negative, because of the way the corridor that was in place at that time worked. So if you -- it does not mean that you have to use the same assumption again this year. You can use the 120 corridor this year because it's the assumption that's currently in place. You only opened the corridor up for one year.

>> The key point here is that the end of year suggestions last year has to be the same as the beginning of year assumption this year, meaning, if the board decides that they do not want to change the SRBR calculation and reflect that at the end of last year the corridor was 130%, in fact you would have to start with 130% at the beginning of this year. If the board wishes to retain the corridor at the end of last year at the 120% for the purpose of the SRBR calculation then we start with that same amount at the beginning of the year because these numbers need to be the same.

>> Russell Crosby: What I understood the motion to be was simply to ignore all of the above and not do the additional 296 transfer, isn't that what I --

>> Rose Herrera: Yes.

>> Russell Crosby: And everything else trams same.

>> David Bacigalupi: The motion on the floor is --

>> Russell Crosby: To not change anything and ignore that amount and not pay the amount.

>> David Bacigalupi: While I got to floor I'm going to say I can't support the motion because I agree with Russell because of 296,000 of a $2 billion trust fund that it's better good business practice to have a consistent plan, and formula and I don't think the impact or the savings is going to be that much, other than politically, of not transferring that other $296,000. So I can't support the motion. For that reason. Sean's next.

>> Sean Kaldor: I think Russell made a good point that sometimes it helps us sometimes it hurts us but we're setting up a process for decision making. As it says in there there's a lot of shalls and wills, I believe those are the calculations we came up with and the corridor we're using, we should follow that. Some years it's going to mean we get money back and sometimes it means money accommodation out of the plan but simple following the rules is better than saying we did it one way now we're going to ignore what the conclusions were because we just don't want to take money out of the plan so I can't support it as it is.

>> David Bacigalupi: Next on the board. No further discussion?

>> Sam Liccardo: No, I had my --

>> David Bacigalupi: Oh I'm sorry Sam.

>> Sam Liccardo: Thank you. No problem. So I understand first of all the motion suspect to actually declare any excess earnings?

>> Mollie Dent: That's correct, there were no excess earnings.

>> Regular, the fund even on a smooth basis did not earn more than 8%.

>> Sam Liccardo: The motion is not to declare earnings at this point?

>> David Bacigalupi: Nothing to do with excess earnings.

>> Sam Liccardo: Thank you for clarifying my confusion. Want to make sure I follow up. With regard to the $296,000, my understanding is that the return, under the earlier corridor, would have been negative 6.7%. Based on the -- Andy's memo page 2. And purpose of this benefit is to provide additional exception to retirees in cases of excess earnings.

>> Right level earnings, there are actually two levels of credits to the SRBR. Above the 8% assume is the excess. So with the original calculation and with the current calculation, there's no excess earnings. The fund did not earn more than the 8%. However if we take the 130 percent corridor into account retroactively to 6-30-2009 there would be some regular earnings. It is only 0.87%.

>> Sam Liccardo: Right, I understand. I'm trying to understand how we got into a rabbit hole a world in which we lost 6.8% suddenly becomes a gain because we adjusted this corridor. And it's so bizarre. And frankly so difficult to explain, I think to those who are concerned about a UAAL of $2 billion or more. I just frankly don't understand there's an issue about following the rules and transparency and all that. But in law there's a well recognized rule that says you don't follow the laws off the cliff into absurdity. I don't understand a world where we are losing 6.8% and we have an unfunded liability of 6.8 billion. It doesn't make sense to me. I'll be supporting the motion.

>> If I may explain the methodology very quickly, what happened is the board adopted a methodology whereby you don't use the market rate of return, contribution rates, you don't use the market return except for interest, take any deviation from the assumed rate around then you spread it out over five years.

>> Sam Liccardo: Right I understand that. I understand how the system works.

>> The problem with the smoothing process is we hired the process to do it you allow the smoothing process to work but only up to a certain degree. Any time that thee losses are so great that it exceeds the right away. So last year the smooth losses before the relaxation of the corridor was such that you would have to recognize almost 11% of the losses right away in one year. So as a result of that, the rate of return went way down to 6.7% if we adhere to the policy of recognizing all losses above 120% of the market value of assets. But because the board later on decided to relax the corridor give the smoothing machine more time to work, as a result losses that are in excess of 120% no --

>> Sam Liccardo: I understand that, very well laid out in all the reports. All I'm saying is it produces an absurd result and at some point we have to take a step back and say we're not just going to get dragged off this cliff by said rules which bring us these kinds of results where we distribute returns at a time we know the fund lost money at a time when the fund is billions of dollars in the hole. It just doesn't make sense.

>> David Bacigalupi: Scott.

>> Scott Johnson: Mr. Chair I support the motion and for a couple of reasons. First of all I'd agree with Mollie that I think we need to use the assumptions that are in place as of the date that we have to make the calculation. Also but even nor fundamental than that I believe i'm the one who made the motion to change the corridor and the reason why I made the motion to change the corridor is because at the time, we were looking at what the actuarial valuing was in regards to our assets as of June 30th. But moving forward, when we made that decision in February of 2010, we also recognized that there was an uptick in regards to the market and the value

of our portfolio. So I was concerned that we're tying ourselves on future contribution rates, not contribution rates that we paid ending June of '09 but for contribution rates that we're paying today based on what the value is on a certain point in time when we know that there had been a little bit of improvement. And when we had that discussion there was no discussion on whether or not this would impact the SRBR. And because if there was I would have included in my motion that that should not affect the SRBR as of June 30 '09 because it wouldn't have made sense to me I wouldn't have made the motion because I was looking at the values of our portfolio after June 30 of '09. So for that reason I really -- I don't support making retroactive adjustments on the calculations for the SRBR. I think we should be using the assumptions we have in place as of the date that we're required to make that calculation.

>> David Bacigalupi: Okay.

>> Rose Herrera: I did support expanding the corridors. And I -- at the time that we voted on that and I would have put it differently now as well. It might be some small amount but I think everything we do in this board has to reflect being responsible with every penny of this money. And I think it's just irresponsible when we've lost money to go back and declare that we made money and so I support the motion.

>> David Bacigalupi: Okay.

>> Can I ask a question, based on other parts of Mollie's memo I just wanted to know what the impact is if they do want to have it reCalc, are they --

>> Mollie Dent: I'll address that, if you want I'll go to the second part of the memo and Russ can do his presentation on his memo. Because the council did adopt an ordinance to suspend the descriptions and that ordinance will be effective December 17th. And so as of that date, there would not be an ability to make a distribution because the ordinance will be changed. So you know, in -- to be candid with the board, if you want to recalculate it, and you think it is -- it may -- I don't know how mechanical it is. I don't know whether the authority could be delegated to simply do that. I think it pretty much is a -- I think it's pretty much math. I don't want to try to

do it while I'm sitting here. But I think if the motion is clear, it perhaps could be done and the board's share could be delegated authority to sign the resolution. But that would be the only way to do it. You're correct, if -- if there is a desire on the second piece of this to do a distribution this year, then having the decision not made until January puts you outside the scope of the city council approval of the ordinance. Is.

>> David Bacigalupi: Go ahead Russ.

>> I don't know if you want my two cents on that issue because it's just going to muddy the waters whereas on this issue. But what it's worth I disagree with Mollie on the vested rights issue as to the effect of the council's action. I think the council -- and I think there's vested rights only as to people who were on the active payroll as of the effective date of SRBR. I think the council, for reasons known to itself, did not preserve for itself in this SRBR the same discretion it preserved for itself with respect to Federated's SRBR, it just didn't. And it probably would have been wise to do it, but whatever, you know. They did what they did.

>> Nor distribution, correct? This motion right now we are talking about is the transfer into the SRBR so maybe we should hold that off --

>> I agree.

>> David Bacigalupi: Until we get into --

>> Yes.

>> Mollie Dent: Staff asked the question whether or not if you delay adopting your excess earnings declaration and your investment earnings declaration, if you delay that until January, I think that's the question, if you delay that until January, what is the impact of that on your ability to do a distribution? And I will say that my opinion is that you will not have the ability to do that in January because the council approved ordinance which suspends the distribution will be in effect. Now, I'll -- on the vested rights issue, I don't think we're in disagreement actually. I

only addressed when suspension of the distribution would affect a vested right. That's all I addressed. And so I think Russ maybe went a little further and looked at whether or not getting rid of it entirety or not doing it at all would have effected a vested right. I didn't go there, I just looked at suspension.

>> I appreciate Mollie's earlier comment about regardings of this fog of what happens in January, we're jumping on Dave in the context of Donna's question but to the degree further on in this discussion if the board decides that it is appropriate to make a distribution then it should, if it can, it should take that action today. Because it may lose at least in sum or in part, its authority to do so by January. So it's just something to keep in mind during the rest of the discussion today.

>> David Bacigalupi: Thank Donna. From the audience.

>> Maybe we should wait until the vote.

>> David Bacigalupi: Let's have some discussion from the ages.

>> I'm John tenant, thank you the option opportunity to speak. My client was on the periphery in 2001, this was really chamg pend by the retirees association though we agree with the benefit our concern essentially is one involving process and that is there seems to be we're coming perilously close to the violation of the meet-and-confer obligation if a distribution does not occur within a year's period. Getting into how you define a year unfortunately I don't have Ms. Dent's memo and by the way I'd like to make a formal request, could we get the packet again, we're no longer getting the packet, I don't know why that is, but it makes it difficult to address the issues, without the documents. All I've got is Mr. Richeda's memo at this point.

>> David Bacigalupi: I apologize, there's been some changes in staff and even the board has noticed there's glitches that Russell has had to take care of.

>> We stopped doing packets besides the board because we link all of the agenda and the packet material online so is there -- if there's any item that you need you can just go to that one item and download it.

>> I'm not getting an agenda anymore.

>> It came up in an earlier meeting.

>> David Bacigalupi: I can't see why the labor groups can't be ton distribution list.

>> It makes it -- having to go again if you are going to put it on us it would be much easier to have it sent to us.

>> David Bacigalupi: I'm discuss it.

>> Thank you very much. But I do want to point to a portion of Mr. Richeda's memo that I think really is sort of important to note and that is on page 8, he does say that section 3.36580D does mandate an annual distribution in an unspecified amount. We get into this unspecified amount, distribution is it aa fiscal year or clernltd year, our concern is there needs to be some sort of distribution on an annual basis. Nothing I've heard today would dissuade me or my client from believing this board has discretion not to make some sort of distribution within -- on some kind of an annual basis. And I think if you push this thing -- well we haven't gotten to the council portion of it but I concur with Ms. Dent's view if this council ordinance goes through, your hands may be tied. In other words, meet and confer issues here, my colleague Chris Platten can talk about but in terms of process we believe clearly a distribution has to occur on an annual basis and you know I think Mr. Richeda's memo and I'll let him answer if I'm speaking outside of things what you meant to say Russ please correct me, that is what I'm reading and that's what I want to draw attention to.

>> To respond to that John I wasn't factoring in the new ordinance. And I think under my reading John I think that new ordinance can apply to people who -- to recipients who do not have a vested right in this benefit. Since they don't have a vested right, the council I think has the authority to change the teems and conditions including a

suspension. But I at least think -- I'm not sure moil that -- well, that those people, which would be active employees who have retired after 1-1-02 at least in my reading of the vested rights doctrine and given the structure of what's to the Municipal Code section, do have a right to a distribution that council cannot take away from them. What is the amount of that distribution, that is totally not addressed in the Municipal Code and therefore I conclude that the board has the discretion to set what the amount is. As to those people to whom there's a vested right. I know it's confusing, there is going to be lots of people getting the SRBR that under my analysis don't have a vested right so as to them it can be suspended. This be there is another sirnlg of people who under my analysis to have a vested right and I don't think the coij can suspend.

>> David Bacigalupi: Mollie, you have a comment?

>> Mollie Dent: I'm sorry I did e-mail you by memo and I think it was to your wrong e-mail address.

>> That's okay, we've been down this road already this week so that's okay.

>> Mollie Dent: There's clearly people that don't have a vested right to the benefits. People that were retired before the benefit was adopted. There are -- there is another large group of people and I'll go to the meet-and-confer issue that don't have any right to the benefit and that's people who retired after June 30th of 2010. Remember this is just a suspension. It is not -- we're not getting rid of it, it's a suspension of for the next eight months. The only people that can get this benefit, that you would have been declaring this, today, would be people who retired before June 30th of 2010. So the meet-and-confer obligation would, in our view I mean I didn't look at it in my memo but the reason I didn't look at it is that it's only a suspension and it doesn't affect current employees or people who recently retired. There's no bargaining unit to bargain with. The people that are affected with are all by definition retired at least four, five months ago and not represented employees. So going back to the vested right issue with respect to the group that's in between 2002 and 2010, I don't think there is a vested right to a specific distribution this year. I -- I think it's questionable, whether those folks have a vested right. I laid out what I thought the questions would be. A benefit like this, that is so hard to get its hands around what it is and how meaningful it is and who it's going to is by definition the kind that would get a lot more scrutiny from a court in

terms of whether or not it's vested. The other thing that I factor into it is I think that it's the California court's view of vested rights is changing over time, and how they might have viewed a benefit ten or 15 years ago. They might not do it the same way now. So I simply concluded that, with respect to this particular distribution, there wasn't a vested right. I didn't really go beyond trying to answer a question that I think lots of people need to think more about, which is whether or not the benefit should be done, something should be done on it on some basis. Because that wasn't really what the council directed.

>> I don't agree with Mollie on the end date but we're certainly in -- there's sort of a vanishing point where our parent disagreement comes very close to agreement. I absolutely agree there is nothing in this Muni code about the amount. And therefore I conclude that that's within the reasonable discretion of the board.

>> Mollie Dent: Right and I mean part of my vested rights analysis, if the board has the discretion to say only distribute $100,000, let's say you're only going to distribute $100,000 this year, how vested was that right? What the if the board only has to distribute $50,000 this year? How vested is the kind of right where you have that discretion?

>> I think Mollie I can't think of a vested rights case that I'm aware of right now that deals with our kind of variable structure where you kind of turn a crank and you don't know what's going to come out because until a lot of the inputs are in but I strongly believe in -- I can't cite you a case so take this for what it's worth that you have a vested right in a structure. And even if that -- you don't have a vested right in any outcome because the structure by definition have factors that are variable. So the outcome is going to differ dramatically from year to year but I think you have a vested right in the structure. You didn't have to have a vested right. This could have been formulated so that either the council or the board could have varied it. And not bragged. But with respect to the drop that ordinance that I've done for other retirement systems creating new benefits in coordination with the board we've put that kind of language about modification. Because it's just prudent. For whatever reasons that wasn't included here. We're kind of left in this situation, particularly in Federated it is clear as a bell that the council can suspend, right in the municipal code, there is nothing here.

>> David Bacigalupi: John, did you want to follow up?

>> We can get legalistic, in terms of my clients' rights to meet and confer. I'm glad we're bringing up the vested rights issue but frankly it's less of concern to my client at present and just in terms of what's happening from a process standpoint. One of can imagine however, in terms of the prospective benefit, with regard to health care benefits, okay, public employer decide to unilaterally retirees. But if there was to be a pattern of reducing health care benefits for every new pool of retirees who retire every year essentially you have what I would consider to be the employer's unilateral negotiated benefit. Diswribt to retirees that would be in need of monetary help as -- and we heard stories that people ploachg the poverty line and we had no involvement with the methodology per se but certainly that was the theory of this thing and of course let's admit it was negotiated at the time, I shouldn't say negotiated, it was the retirees association working with the city and achieving really a political achievement, the council was completely on board with this. This was not a negotiated item. But the understanding from my client's perspective was it was supposed to help retirees that were in need. And the methodology was going to be left to be worked out. So the concern here is that you're basically coming peril owsly close to setting a ongoing basis we're told it's a suspension, we don't know that. If it's suspended next year and the year after and prospectively, my clients could not be assured that God knows when they retire and they would be in need of such a benefit and God willing the economy ever returns anything to anything approximating a health state, they would be in that benefit again. We go to the language, and the language as I read it quoting Mr. Richeda's memo does tend to be mandatory, in that the annual distribution has to occur. What that amount is, what the authority is, we don't have any mandate from my client's perspective, affects my client oochtion without the meet and confer application being adhered to. Bernanke thank you, John. Chris.

>> Thank you, Mr. Chairman and members, Chris Platten counsel for local 230. Just a couple of observations. I too was not involved in this particularly provision of the code being constructed so I can neither claim credit nor cast aspersion to any of the language in the document. However a couple of observations. I'm not as accomplished an attorney as Richeda but the decision Clay pool versus Wilson does leave in mind the decision out there that appears to hold that a structure that much like the the crank that Mr. Richeda describes, the structure like this is a vested right and I would commend that decision to Ms. Dent and Mr. Richeda to

review. Number two, I think what's honestly happened here is the council for whatever reason has chosen to take action for a nub number of potential reasons possibly a view that the methodology does not adequately distribute moneys to those at the lower end which was the basic intent of this provision. It would have been far better if that was in fact the intent of the council or the motivating action and say hey, we want to exercise our right to review the methodology, let's get together and take a look at that. What has happened here with the council's action in my judgment is a classic conflict of interest here for this retirement board. Because you now have the council coming in and despite the fact that we've talked about this as a temporary suspension, there's nothing temporary about it. This runs through June 30th of 2011. Whether we use a fiscal year or a calendar year that means we're not going to make a payment that's required under the shall language that Mr. Richeda has pointed to, whether you call it a fiscal year or a calendar year for a disbursement in either of those time periods. And there's no action it's not limited to June 30, could cojtd, ad infinitum. It's legal position with respect to the bargaining obligation but what I want to observe and just bring to the board's attention is the possibility that we now have litigation potential for retirees who are presumed to be entitled to some sort of distribution whether it's in the calendar year or the fiscal year which will implicate each individual member of this board depending on how you vote on motions as to whether you've breached your fiduciary duties and there is now a classic conflict of interest. So if the council's direction, usurps the authority of this board, whether it's a calendar year or fiscal year, you have a classic conflict of interest that will have to be resolved by litigation.

>> David Bacigalupi: Thank you. Okay, further discussion. Would you read back the motion that we have? Okay, notion, ignore impact of core core change in this calculation and not to transfer the $296,000 adjustment, and staff return to recalculate the 719.

>> David Bacigalupi: Okay. Everybody's heard the motion?

>> One correction. Ignoring the corridor move is what's applicable for the 295, or 297.

>> Russell Crosby: Correct.

>> But the 130% corridor was in place and that should be used.

>> Russell Crosby: And that's correct.

>> The beginning of this year.

>> For July '09 to June 30, descren.

>> Sean Kaldor: To be clear we changed it to 130% but we're going to pretend that doesn't matter for the 296 but we'll still use it?

>> Russell Crosby: Correct.

>> We are using it which means we don't need to recalculate the 719. The 719 stands if the intent of the board is to use the 130% as it was at the beginning of this year, yes.

>> Mollie Dent: The 719 stand as a firm number?

>> If the intent of the board is to use the 130% corridor as of the beginning of this year.

>> Mollie Dent: So is there -- I guess I'm --

>> We don't need to recalculate because that's what the 719 is based on.

>> David Bacigalupi: Andy --

>> Technical point. Right now Andy Yeung with the Segal company. Right now the 2. SRBR as well as the 296,000 that was sitting in the fund according to our calculations. But if we go back and not reflect the transfer of 296 then the interest earned ton principal balance will be slightly less. Slightly less than the --

>> Sean Kaldor: 2% of the 296?

>> Yes,7% of the 296.

>> Sean Kaldor: Six grand.

>> Mollie Dent: I guess someone request try to calculate it if they want to. The motion --

>> Rose Herrera: Should we subtract that from the 719?

>> Mollie Dent: The motion was to put it off but someone can calculate that if you want.

>> Rose Herrera: I don't think we need to --

>> Russell Crosby: As the lawyer said you can pick any number.

>> Mollie Dent: Not for the transfer in.

>> Rose Herrera: Can we make it 719 or can we go back --

>> You can make it 719 is my understanding.

>> Sean Kaldor: Supposed to be 10%.

>> Why don't we do that in the second motion.

>> David Bacigalupi: We have this one motion and I have a question. If this motion fails to pass, if this motion passes, approximately $719,000 gets transferred into the SRBR account.

>> Mollie Dent: If if this passions, ooms.

>> David Bacigalupi: If the motion passes. If the motion doesn't pass-

>> Mollie Dent: Somebody will have to make another motion.

>> David Bacigalupi: Obviously, another motion, and the full amount gets transferred in --

>> Mollie Dent: Depends on what the motion is and what motion passes.

>> David Bacigalupi: There has to be a transfer in before there can be any distribution.

>> Mollie Dent: It doesn't have to be done today, you have 90 days to make the transfer-in, that's very clear. So if you can get a successful motion the transfer-in will be done pursuant to the motion. It's a resolution that is adopted. So --

>> But just to clarify, by delaying beyond December 16th, you've precluded then the capability of making the distribution.

>> Mollie Dent: Yes, would you not preclude the money going in but you would preclude the distribution in my view because of the council-adopted resolution. I realize other people have a different view of that.

>> And for that purpose that raises the conflict question.

>> David Bacigalupi: Yeah, I'm still having problems understanding the impact of one motion and how it makes on the future agenda items here as far as distribution. Council's action was only to suspend distribution, not transferring money in.

>> Mollie Dent: That's correct.

>> So this motion simply says we'll not transfer the 296. It does not -- and a new number will be calculated which will be given us in January after the December 17th time line to make any distribution.

>> David Bacigalupi: Which takes away the board's ability --

>> That's how it stands.

>> David Bacigalupi: That's another reason not to support the motion. Okay, I don't have any more questions. Anybody else? Okay. All in favor? All opposed? Okay. So the motion does not pass. Is there a substitute motion? I'll make a substitute or I'll make a motion.

>> Rose Herrera: What was the vote on that? 3-3. Okay.

>> David Bacigalupi: I'll make a motion that -- and help me word this -- that we transfer the entire amount, including the $295,000, $296,000 into the SRBR fund. Do I have a second?

>> Second the motion.

>> David Bacigalupi: I have a second.

>> May I comment?

>> David Bacigalupi: Go ahead.

>> We have two pieces, the 719 and the 296. The 719 I think paying that piece satisfies the retirees' rights to retirement or at least a chunk of that satisfies that right. It does not affect the plan, the liability, I see that as a very easy one to me. The other side is the 296 and the 296 I think again is the simple, the actuary comes up with the number, the recommendations made, if there's a revision, it can help us it can hurt us but we follow where the math leads us. I understand the points made about sometimes agreements lead into unforseen situation. There is a chance for the vested members and the negotiating groups and the city and the city council to change all of this and it would make it a lot easier, there's a chance for us to change the payment methodology to more favor people who are getting less benefit out of the plan. All that should be looked at and taken place. But where we are right now I'd second the motion because I see that making sense just following the way it's laid out and encouraging this being addressed systemically and by code before next year's payment.

>> David Bacigalupi: And just to add my support for my motion is the fact that there is a process that works one way or the other way. And when you're talking about you try to set rules, that go on for the length of the plan and until it's changed, I just don't think it's the purview of this board to make that change. I think if there's an element out there that wants to change or negativate the SRBA there is a proper way to do that and that would be the meeting with the people that have the bargaining rights to change things and go on. But I think it's the process we have in motion in place and I think that we should move forward like that. So Rose.

>> Rose Herrera: Can I -- I think the attorney has said that we -- the board up here can make all of these decisions, it is the purview for us to make these decisions and the amount that is distributed is completely up to this board. It's not set. So there's all these things. I think that's part of the problem with this is we are left to a lot of problems that are not spelled out. I won't be supporting the motion. Although I want to state for the record that I -- I like the original intention of SRBR and I hope that this board and the council and whoever will be involved in it because I won't be sitting on this board I think after this meeting maybe, we're going to have new folks replacing the councilmembers that are up here. I hope that it can get back to what it was meant to be and that is to be of

benefit to those who have need. And the sad part for me is some of the ones who have the most need are not even covered by this. The suspension it is going to affect the wovens who really need it and those are the ones that I'm concerned about. A lot of those who are arguing for this going forward recent retirees are not the ones in general who would be in need. So I'm very concerned about those that should you know that this was meant for and that probably won't be getting this and I just hope that this gets -- this gets changed in the future. And that we can really direct it to those people who really need it.

>> David Bacigalupi: And just for clarification, this keeps coming up who's feeing it. It is my understanding the way it's constructed it goes to the people in most need and it's the people that were down to the poverty level the oldest retirees not the current newer retirees that you read about some deputy chief or assistant chief who's retiring at six-digit numbers but it's for the ones that are down in the 30 to 40,000 or whatever it is at this time. But I mean that was the original intent and that's the way the construction of the payout benefit is so it is supposed to go out to the ones that need it the most not the most current retirees. Go ahead Sam.

>> Sam Liccardo: I mean since this is a public hearing, point should be made I mean, there's some significant amount of discussion, of this at council and pretty clear to me this is a regressive bcht that those are the most tend to get the most and this is not I think by any means a scheme that's well suited for compensating those most in need. I think we saw that the day it was at the council. I hope we can have a discussion how to SRBR accomplishing that purpose. I won't be supporting the motion.

>> David Bacigalupi: And Scott did you have your hand raised scng.

>> Scott Johnson: I would just agree with those. As I stated last meeting. You look at the 80% and the 10% which is divined as the bonus payment. I think the board will need to relook at this calculation to make sure that moving forward it goes to those that are actually in need as it intended. Because I don't think that's how, I don't think that's what the results are based on the distributions that I've seen.

>> David Bacigalupi: You have privy to information that I haven't seen. Okay. Any further discussion? Okay, hearing no further discussion, call for the question, all in favor? Aye, all opposed? No, the motion fails.

>> Sean Kaldor: May I make a substitute motion, go for number 3 here that we commence to the transfer of the 719,000 and change and implement a payout of that same amount following payment methodology implemented by the board and the council.

>> I'll second that motion.

>> David Bacigalupi: Motion and second.

>> Russell Crosby: Could you restate it?

>> Sean Kaldor: We will make the transfer of the $719,000 of the plan into if SRBR and approve the distribution of that 719,000 and change to the beneficiaries of the SRBR.

>> Sam Liccardo: Exactly the same as the prior motion?

>> Sean Kaldor: The prior motion included the 298,000.

>> Mollie Dent: The former motion included the $296,000. The first motion that Councilmember Herrera made didn't include the distribution. So it's --

>> Sam Liccardo: I stand corrected. Thank you.

>> David Bacigalupi: Okay, I have a motion and second, discussion? Hearing no further discussion, all in favor? Aye, all opposed, no. Okay. That motion fails. Counselor, we haven't got a motion that we can pass on this.

>> Sean Kaldor: Are we still open for discussion as to thoughts?

>> David Bacigalupi: Sure.

>> Sean Kaldor: The 719,000, it's sitting in an area that has no impact on funding contribution rates, nothing, it is in a side account that doesn't effect us going forward based on how my questions were answered, I'm curious how the payment will impact the plan in those ways.

>> Sam Liccardo: My understanding is this is essentially a reserve within the retirement fund. If the SRBR, please tell me if I'm mistaken because I don't know exactly what the answer are.

>> Mollie Dent: The answer is it is a reserve.

>> Sam Liccardo: If the SRBR was refashioned, goes away or restructured in some way however that may be it is fair to say whatever is in the reserve essentially goes back to the fund until the SRBR is recrafted.

>> Mollie Dent: It would depend on what the recrafting was.

>> Sam Liccardo: Right.

>> Mollie Dent: The recrafting could be for a different form of transfers in, the recrafting could be for a different form of payments out, the recrafting could be to get rid of it entirely. I'm not saying all those things are available.

>> Sam Liccardo: The point is the ability for the council to be able to recraft something, that would preserve the assets, within the fund. Let me back up. The question is, is these dollars essentially could be moved back into the fund, could they not?

>> Mollie Dent: There would have to be a change in the code.

>> Sam Liccardo: Yes.

>> Mollie Dent: And I'm not -- I'm not going to answer today, the meet-and-confer issue on that.

>> Sam Liccardo: Let's put that issue aside because I know that's very much in dispute. The question is if this is legally recrafted however that may be, whether SRBR is restructured or goes away, it is fair to say this money could be moved back into the fund and could be moved back out into whatever lawful purposes. In other words this money belongs to the fund. By my reading of the ordinance, it says the board shall establish a reserve in the retirement fund. It is a reserve not a separate fund.

>> Mollie Dent: It is a reserve within the retirement fund, that is correct. So just looking at the transfer of money in, whether it's 713 or 719,000, once the money goes into the reserve unless it's distributed out it's still going to be there.

>> Sam Liccardo: Under the current ordinance.

>> Mollie Dent: Under the current ordinance unless it's distributed out it's still going to be there. So yes, I mean, there's possibilities to that -- if everybody agreed to do something different with that SRBR fund, among the choices that everybody agreed to is to absorb it back into the retirement fund. That's among the choices.

>> Sam Liccardo: If the ordinance is lawfully changed money can be redistributed. I guess my point in response to Sean's point which I think was a good one is, I don't think it's just an issue of this won't affect the fund, this doesn't have any affect on UAL, I understand it's a small amount of money, I get that but the point is all this money is still very much in play if in fact we're able to create an SRBR that really performance the function for which it was designed. And this money would then be better distributed than it could be under the current

formula. So I don't support the loss of the money at this point. I think this is very much at -- a point where we all need to sit down and find a better way and the current way isn't satisfactory.

>> David Bacigalupi: I'll refer to the attorneys. We're at a stalemate.

>> The only thought that comes to my mind swy not particularly useful maybe is can you agree on a lesser figure? I mean obviously there's two very distinct and incompatible points of view being expressed and obviously that may be where it ends. But the only way I can think where there might be some possibility of a compromise is to just come on some lesser figure for distribution this year. Now, however, that you know obviously sits totally uneasily with the council's action.

>> Mollie Dent: Well you have two questions in front of you. The configuration question is the transfer-in. You don't have to make that decision today. I'll say it again under the code you have 90 days to make that decision. It's within one resolution. It's in one resolution, the excess earnings and the investment earnings are both in that one resolution. You have -- you received your financial reports today. Under the ordinance, you have 90 days to decide about the transfer-in. Now, the problem is that if you -- and you can't do a distribution until you do the transfer-in. The distribution follows the transfer-in. Right now there really -- the range of -- under the code as it's currently written, the range of available transfers-in is somewhere between $713,000, and $1,015,000. That's the current rake of available transfers-in. I might not have calculated the $713,000 exactly right. The code calls for a transfer-in of this year's investment earnings, it is somewhere in that range. Once that decision is made then according to both Russ and I, you have the option to decide how much of that you want to distribute. You put the money in, but you don't have to distribute all of it if you don't want to. I think we both agree on that. I don't know what the other attorneys think. But we both agree that you could transfer $713,000 in. It would sit there in the retirement fund and distribute a lesser amount out. I think you could also not distribute anything out. You could put the money in and not distribute it out. So there are some options for you.

>> David Bacigalupi: Okay, Sean and Sam and Rose.

>> Sean Kaldor: My thought is to try to knock these down one by one or address them one by one, it seems like there will be a bunch of shams, that we have to transfer, the actuary determines the number. It's about 713. I'll make the motion that the board approve the chair to sign off on a resolution, to --

>> Substitute, did you vote on the first?

>> Sean Kaldor: Didn't vote?

>> Rose Herrera: We voted, it didn't go anywhere. [simultaneous speech]

>> Sean Kaldor: Perfect record. So that we approve the chair to assign off on a recalculation to be somewhere not to exceed 719,000 to transfer to the SRBR this year.

>> David Bacigalupi: Second for sake of discussion. Hold on a second. Sam you were next.

>> Sam Liccardo: Yeah maybe I'll race the same question I raced last time, essentially we're doing the same thing as suggested by an earlier motion which was essentially --

>> Sean Kaldor: Funding it not paying it.

>> Mollie Dent: It was a little different, first motion is to bring it back. He's doing the delegation to it can be done this year.

>> Sam Liccardo: I'm going to oppose the motion and let me just suggest that if -- you know I appreciate Russ's suggestion splitting the bash and coming one a smaller number. I'm not likely to agree with that either, if this motion fails I'll make a mowing motion to move on to the nexg item. This decision can be made in a future month if it has any impact by then, I don't know if it will or not. But since the issue the decision will simply fail and move on.

>> David Bacigalupi: Okay we already know about the impact because it goes past December 17th.

>> Sam Liccardo: Right.

>> David Bacigalupi: Rose, you're next.

>> Rose Herrera: I'll hold back, hold on for now.

>> If I'm not mistaken and please feel free to correct me, this board has never taken action on transferring the regular earnings of the SRB account into the SRBR. And notice this resolution doesn't do it. Look at the resolved. All the rosmed, I know it's stated there Mollie but that's a whereas. That doesn't have anything to do with anything. The resolution, the it's wherever, it's context it is not action. And as far as I can tell, and it was a mystery to me, in trying to get the facts before I issued my opinion, how this transfer took place. And as best as I can tell staff, we're just talking about the regular earnings, transferring the regular earnings into the SRBR reserve. That just happens automatically. It does not require board action. The only reason this has come up to you is because of the odd ball effect of your changing the smoothing which resulted in this mysterious 296 and what are we going to do. You know? And that's why it came to you. But otherwise, these issues never come to you. All you do is decide whether there's excess earnings or not and of course that's what's in the code that you're supposed to come up with it by resolution a declaration of concession earnings. So the other stuff is not action that has ever come before you before, so why is it coming before you now?

>> Mollie Dent: I would say the whereas is a finding by the board, you are making the findings that the excess amounted to $1,015,889. You made a different finding about that. This includes revising a finding you made last year so I do think it's action by the board. I think you're making a finding. And so if you change that finding, that it will drive what the transfer is, I don't think staff is going to transfer $1,015,889 if you put in your resolution that the earnings are $713,000. I don't think they're going to do that. So --

>> So maybe staff can tell us maybe the whereas functions for you as direction to how much you can transfer. It's not clear in anything you provided to me otherwise.

>> I guess my understanding of regular earnings and we can ask Mr. Yeung from Segal to comment, regular earnings is the smoothed rate of return on the assets in the SRBR fund. So my understanding is, you don't need to transfer them because this is what the fund has earned, but just simply smoothed like the actuarial valuation. Excess earnings on the other side is something that was earned by the General Fund, and we are literally moving it across into the SRBR fund.

>> And for what it's worth here the resolutions for 2009, 2008, 2007, 2006, were adopted by this board and they don't have this whereas provision. All there is is a few -- it only zero in on the excess earnings and then it concludes what's the amount. So what you've done every year prior to this one had nothing to do with regular earnings. I understand there's a whereas in this one, I don't know why it's put in but it is only in this one which you have not adopted yet and I only have them back -- scalds so you're saying no board approval is required to move the 713,000?

>> Yes.

>> Mollie Dent: I would say that the reason the whereas is here is because you do need board approval to move the $1 million because you're doing something different than you did before.

>> Not the 1 million, the extra 2.

>> Mollie Dent: Yes the are extra 2.

>> Sean Kaldor: So I withdraw my admonition that this is going to happen as a standard for the retirement services division.

>> Mollie Dent: I think not. You're going to have to give some direction to staff as to how to do -- they need the direction to do the investment earnings calculation without the 296. I mean they need that direction.

>> With it or without.

>> Mollie Dent: With or without.

>> They can't make the calculation because there's a glitch and they're asking you to exercise your authority as a board to tell them what to do in this context.

>> Mollie Dent: I think that's exactly what your motion was, your motion was to do it without the 296 and then to authorize the chair to sign off on this resolution with that 1 million number lowered down to 713 or 719.

>> Sean Kaldor: You need a board resolution because there's --

>> Once you decide the glitch you don't need to decide anything else.

>> Mollie Dent: They have to adopt the resolution for the excess earnings. It's in there.

>> It's in there surplusage.

>> Mollie Dent: The distribution is unnecessary, it's the second issue.

>> David Bacigalupi: So do you want toe to reframe the motion?

>> Sean Kaldor: Open to others. .

>> Mollie Dent: Can I make an offer for you? I think your motion was -- if you want to adopt a declaration today, the excess earnings declaration is the resolution that's in your packet. You can have the $1,015,889 number stricken and instruct staff with Segal to recalculate it as you said to something less than 719.

>> Sean Kaldor: If there's such a Robert's rules of order, I would simply, state it to transfer the 7 neighbor --

>> Sam Liccardo: That was not the motion?

>> That was going to happen anyway I understood.

>> Mollie Dent: That was miss motion this time, it was not Councilmember Herrera's motion because it was her motion to put it all --

>> Sam Liccardo: I understand.

>> The motion included the payment. This does not include the payment.

>> Rose Herrera: This is a resolution too you're saying?

>> The council's action doesn't have anything to do with transfers in .

>> Sean Kaldor: I understand that are we going to be able to make the amount of the distribution?

>> David Bacigalupi: If this motion passes money goes into the fund then there will have to be another motion for distribution and if that motion passes staff can handle distribution before the 17th. If that motion doesn't pass, then common sense would dictate to me that its going to be a stalemate past the 17th where it's no longer an option.

>> Mollie Dent: Unless -- unless the ordinance is changed by council which you do have an opportunity to weigh in on that. The ordinance has been referred to you for study. And so you can tell council you think they made a mistake in adopting that ordinance if you want to.

>> David Bacigalupi: But that's -- normally if something isn't rushed through that would have happened before it got passed, right? It's been passed and it's waiting for second reading.

>> Mollie Dent: It's past second reading.

>> David Bacigalupi: So it becomes effective.

>> Sean Kaldor: Doesn't exclude us from ultimately, moving the 296, we have to do an annual movement over this is the amount that's been calculated and we're moving it over.

>> David Bacigalupi: Okay so we have a motion and second, correct? I think I took it.

>> I'm sorry what's the motion been?

>> Russell Crosby: The motion and second I have is board to approve chair to sign on a recalculation, not to exceed 719 and to sign on the SRBR this year.

>> Mollie Dent: To sign on a resolution number 3683.

>> Well, the board has not yet dealt with the excess earnings issue.

>> Mollie Dent: This is the question.

>> I mean, we changed that --

>> David Bacigalupi: This is what the board's authorizing to be transferred if this motion passes.

>> I understand but --

>> Mollie Dent: And nothing more so there would be no excess earnings.

>> To be clear would that prevent us from reviewing that issue in the future if we say this amount is being moved ownership of over the 296 is this sayings that we don't recognize that 296 and it will never be addressed? Does that preclude us from doing that?

>> Russell Crosby: No because the next time it happens is we'll being back in front of you because of a late decision that the board made that flowed all the way through.

>> Sean Kaldor: This does not preclude us from reconsidering the 296 and a payment in the future?

>> Russell Crosby: The 2 96 per se, I think you're passing up the opportunity for this year .

>> Mollie Dent: Yeah.

>> Russell Crosby: But in another year if we finds the same kind of situation has occurred because of a late decision or something happening during the course of the year we'll be right back to you saying okay, we have another at that point, call it 350, a different amount based on that year's actual occurrence but what I understand is happening here is you're going to ignore the 296 calculation for this year and go straight to the 719 or what that gets modified down to.

>> Sean Kaldor: So the intent of my motion is not to forever forgo the 296. Deem with that because we have to make that transfer, 719 get that resolved and leave the issue of the 296 and an actual distribution still on the table for future discussion at this or --

>> Russell Crosby: Okay, the 296 in the sense of this year's 296 and three years down the road we're going to go back and say oh remember back in 2010 the 296 that we were --

>> Sean Kaldor: If this motion doesn't pass then we have a million dollars that we have to deem with. I'm going to level that resolved and the 296 unresolved.

>> David Bacigalupi: If I understand the motion correctly it would transfer the 7-something thousand dollars and worst case scenario we would never recognize the other 296 but at least we would have the progress --

>> Sean Kaldor: We would follow the city council you sham and you will and it will be calculated that way so we're not in invitation of that.

>> David Bacigalupi: Having a look at how SRBR is distributed and even though this is lost the impact can be made on I think which is what everybody wants the people that need it the most. But this moves this small piece of the puzzle over.

>> Sean Kaldor: Solves one of the three issues we have.

>> David, I had a question. My understanding is the board had 90 days from --

>> Mollie Dent: Didn't I -- I think I said 90.

>> They could come back --

>> There is another piece of legislation. That was Donna's question.

>> Mollie Dent: They have 90 days to adopt the resolution, they do to adopt the resolution of excess earnings. And you have 90 days to do your investment earnings attributable calculation too. But I mean, let's --

>> David Bacigalupi: Realistically if we put it off.

>> Mollie Dent: They will still be able to adopt this 90 days from now but they might not be able to do a distribution. Depending on whether the ordinance remains in place.

>> David Bacigalupi: Okay further discussion on the motion? Hearing no further discussion, all in favor? All opposed?

>> Sean Kaldor: Again.

>> Sam Liccardo: My motion then would be to proceed to the next item.

>> Rose Herrera: Second.

>> Mr. Chairman -- I.

>> David Bacigalupi: Hold on for a moment.

>> I don't represent the union retirees corks, I represent Ken Heridia and my family. I look on this board to make decisions based on what's in the code to provide the benefits that have been adopted by everybody and your staff and I watch this proceedings and I'm wondering, I don't mean to insult anybody but I probably will, are you thinking about doing what's best for me and my family when you make your decisions here today? Or are you trying to stop something from happening, and find places to hide? You know there are a million holes in every

legal document that's ever been written. Our intent when we negotiated this or agreed to this thing was to find a permanent way for retirees, older retirees, most older than me whose pensions have fallen behind the times and are not allowing them to keep up with today's economies. Certainly they didn't have 90% when they retired in '80 they weren't making a lot of money when they were working. We put a lot of time and effort into trying to find the system that most rewards those people who have worked the longest and retired the longest. That's what this system does. I don't agree with Councilmember Liccardo that it doesn't do what it's supposed to do. It does what it was supposed to do. Maybe you folks want to do something differently now that's fine we can have that discussion. But I'm asking you to please think about your responsibility to people like me and my family people older than me who depend upon this distribution to happen, every year. And for the ten years we've had it, the earnings have been distributed each and every year. So if --

>> Sean Kaldor: Trying to get to your microphone please.

>> I thought I was speaking loud enough.

>> David Bacigalupi: First time I've heard you need a mic.

>> I apologize for my emotions. I know loot of retired police officers and firefighters who are not making what the Mercury News say they are making. Councilmember Liccardo talks to the issue that sometimes the folly, I'll paraphrase, there's folly when there's a system that pays money out when we're losing money basically what we're talking about. Isn't there folly when you know people who are deserving and need this supplemental retirement and you withhold that money based on a political decision? I'm just asking you just to think about it for a second and no aspersions, no -- I'm not accusing anyone of anything. I think being on that board for eight years and all that stuff there is a responsibility that you have to follow the code that was adopted. If you want to change the code, I think your responsibility should be to go to the City Manager, the council and say wait a minute, this isn't doing what we think it should do, we should fix it. It's unfortunate it's coming up now it's unfortunate there's a late day. There is obviously a deadlock of 3 to 3. Just appears to me that whatever happens, whatever

compromise Sean or Dave or anybody tries to put forward it's going to be rejected based on a political promise and a political deal not ooh on a fiduciary responsibility. And I apologize for my emotions. Thank you.

>> David Bacigalupi: Sam.

>> Sam Liccardo: Just want to comment, Ken your point's well taken. I want to commenting on what our fiduciary duty is, we have a responsibility to all the families and all the members. A fiduciary duty to the plan. A lot of people future retirees who are going to be depending on this plan are not here. The folks who will become short changed if this plan becomes insolvent aren't here. We are making decisions, you might regard them as political but frankly when you're staring down the barrel of a $2 billion unfunded liability, we question the political decisions that were made to get us into the situation. And the only thing I can think of is we need to make some very difficult decisions to get us out.

>> David Bacigalupi: Rose.

>> Rose Herrera: As one of the three who are deadlocked here. I take my fiduciary duty very seriously. It would be easy to do what everybody wants in this room, I have to make decisions based on what's best for everyone and as I stated before I think in the presentation I've seen about SRBR I am not convinced that it's set up to deliver what it's supposed to which is to really focus on those who need. If that were the case right now, I would be voting differently.

>> David Bacigalupi: Scott.

>> Scott Johnson: I would just echo that. My main concerns are twofold. One is the long term financial viability of the plan and as we've seen from as a matter of fact in the opinion it is a matter of interest. This is auditor's opinion in the level of unfunded liability we have in this plan. The other thing is, one of the things I think I'd asked for at the last month's meeting and Ms. Donna Busse put together a report on the benefit amount. And my concern is that I don't really think that this plan is working the way it was intended. If I'm reading this right on page 2, assuming

that there be a $1 million distribution of SRBR, if we look at the 80% and then the what's considered the SRBR bonus, there are folks that are making, is this over $10,000 per month that would still receive an SRBR benefit?

>> Yes.

>> Scott Johnson: Right? If you look at this report on page 2 it is really telling to me as a board member that folks that are making you know, 5,000, $10,000 a month are still going to benefit from this program. From 80% of those funds. And the remaining amount will benefit those that, yes, does have the need. But the majority of the distribution the way the methodology is set today is that folks that in my mind I question whether or not there's truly a need there. If they're making you know, five, $10,000 a month from retirement benefits. And that's why I can't support the motion.

>> David Bacigalupi: Okay, any other board members? Chris.

>> Thank you, Mr. Chairman. The one thing we have to say was good the way the plan document was written even though we basically said that there are flaws in it is there was a recognition that if the council and the parties believe that the methodology for distribution wasn't accurate or adequate, that clearly can be changed prospectively. So addressing the issue raised by board member Herrera and board member Johnson that can be dealt with. As I said at the beginnings of my comments if there was imern that, you pick up the phone and you ask the parties, lets look at the methodology for distribution if that's the claim, if that's the concern if that's what the question. But there is no question that the transfer of the moneys have to come about and it is as Mr. Heridia this is pointed out not a acceptance of fiduciary duty to simply suspend the benefit and hold hostage the recipients of the benefit because you don't like the way the methodology works. You have the power to change the methodology. You can do that. That is not what can you do at the council level and if you don't act on that that's what's going to happen of a December 17th. And that puts you in a breach of fiduciary situation which I think is not where this board ought to be and that's a classic conflict between the sponsor of the plan the city council and the board. And I don't think that that is kind of action that the board ought to take.

>> David Bacigalupi: Thank you, Jay.

>> Hi, I'm Jay Wendling, I'm with retired Police and Fire. I know it's politically correct to keep saying about the retired police officers and firefighters, that earn $100,000 a year, what's lost because it's not as catchy is about 60% of our retirees become eligibility for low-income housing. In the 2001 document that I've seen, signed by the then-councilpeople, stated that the people who earned less than $25,000 should be aided by this SRBR. We've got to do something to uphold what the then-Councilman Reed set, that he does not want anybody retiring from the police department or the fire department, living on under $25,000 a year. I have both policemen and firemen who are taking home $1100 a month. And yet they face the increase in dues just about everything from gas to a tuition for the grand kids, they are the ones that need help. They are the ones that have received the most points for the years of service, points for the years of retirement. Because then, councilman Reed said, he would only sign off on this if the people who earned the least got help the most. So I want to thank Ken heridia and the council present, I urge the board to make a distribution and save us the time and expense of looking at -- into lawyers. Not a threat. It's just -- I can't stand by and watch somebody try to live on $1100 a month.

>> David Bacigalupi: Thank you, Jay. Sean.

>> Sean Kaldor: Just comment and question on the motion that's before us. I don't want to cut anyone else off if they were going to -- sorry. I assume this is going to go to the next board meeting on the agenda?

>> David Bacigalupi: I assume we would need to reagendize it because nothing passed today. We have 90 days to transfer the funds.

>> Sean Kaldor: Could we ask a review of the SRBR formula.

>> Sam Liccardo: I'll be happy to incorporate that into the motion.

>> Mollie Dent: I would like to add that I do you to -- I do want to add to your agenda item that you do make some recommendation back to the council on the suspension. The way the code is written, once you make a recommendation back to the council on the suspension ordinance they must rehear the ordinance. This process will require the ordinance to be reheard, if you make a recommendation for some sort of change. So I want that to be clear on your agenda, that you have the opportunity to make a recommendation back to the council on the suspension ordinance itself.

>> David Bacigalupi: Okay, thanks Mollie.

>> I don't think you have to take that action today.

>> Mollie Dent: No no no, I'm just saying it will be added to the agenda item. For the next meeting.

>> David Bacigalupi: Okay. So that motion failing, item numberC --

>> Sean Kaldor: The motion was to move on to the next subject.

>> David Bacigalupi: What motion? Scl Councilmember Liccardo and Herrera made the motion to move on.

>> David Bacigalupi: Okay. I have a motion and second on the floor to move on to the next item. Any discussion on that? Hearing no discussion, all in favor? Opposed? Carries. Okay, item number 12 is an oral report regarding disability process. This is continued from the November 4th meeting. I think Mollie you were going to come bang.

>> Mollie Dent: I think both Russ and I were going to talk with you briefly, the question was whether or not the board could set up some kind of subcommittee to determine or hear disability matters. And you clearly could have a subcommittee. Federated has a staff subcommittee. The question isn't whether you can have a subcommittee. It is whether or not the subcommittee can make the final decision. Under the ordinance as it's currently written I don't think you could delegate to a subcommittee the ability to make a final decision. The way

the Federated subcommittee works, the subcommittee makes a recommendation to the full board. And if the recommendation is for approval of the disability retirement, it's consent calendared. And unless someone wants to pull it, it just goes through automatically. If the committee recommendation is for denial, then there is a full hearing, before the board. You could have a similar structure, under the code as it's currently written with either a committee of staff or a committee that is board members, subcommittee that is board members. The subcommittee meetings would still need to be public meetings under the Brown Act.

>> David Bacigalupi: Because it would be a standing committee anyway.

>> Mollie Dent: Because it would be a standing committee but it could be at a different time than the board meetings, it could be in a different place than the board meetings and the other alternative is if you really wanted to go to some kind of hearing officer situation where somebody else really decides the disabilities would be to recommend to council amending the ordinance.

>> David Bacigalupi: Okay, thank you Mollie. Any discussion any questions of Mollie on that?

>> Sean Kaldor: Could the ordinance be amended to have the subcommittee make the decisions have a hearing officer do it?

>> Mollie Dent: Sure. I can say you can make the registers obviously when ordinance changes are made they go back to management and they go back to the employee groups and all of that in terms of whether or not they want that ordinance amendment made.

>> Mr. Chairman, Chris Platten again. Just four purposes of historical record my recollection is it was in the I believe 1990 negotiation at that point in time, proposal was made by the city to move to a hearing officer method and that was not agreed upon, nor was it submitted to interest arbitration I don't recall if it was or not was not adopted 50 arbitrator.

>> David Bacigalupi: I think it was taken off the table because of lack of agreement.

>> I think that sounds right.

>> Sean Kaldor: Our interest here is simply moving to a nine member panel with a significantly financial background with a disability process. If we could get it to a smaller number of people approving those maybe it could still be approved by the entire board.

>> David Bacigalupi: The time it takes for -- this was fairly light but we have sometimes many disabilities or change of statuses, and the time spent makes the meeting you know really impacts the time length on the meeting.

>> We understand and appreciate that at least I can represent for local 230 our interest of course is to ensure that disability retirements are granted in coordination with provisions, as this board has more than adequately performed in the 25 years plus that I've been around.

>> David Bacigalupi: Okay.

>> Scott Johnson: Just want to jump in, during the agenda if we can add an item where at that point where staff can come back to the board often some optional recommendations on forming such a committee?

>> Can't hear.

>> Scott Johnson: Okay, I'm sorry.

>> David Bacigalupi: Do you want to rePete that?

>> Scott Johnson: Okay. I was suggesting during the part of our agenda where we're adding items for future board meeting consideration, that we ask staff to present options, a report with options on establishing a disability retirement committee that would meet the legal requirements as stated earlier.

>> David Bacigalupi: Scott I was going to kind of suggest the same thing to the board, to come back. But I was also going to include the fact that this board structure is going to change dramatically here, and I think in the very near future and to bring it back to the new board structure -- you have more faith than I do. So I would just suggest that we do as you suggested but to be brought back to the new board.

>> Scott Johnson: Sure.

>> David Bacigalupi: Okay. Item number 13. Discussion and action regarding internal revenue code tax compliance review by ice Miller for the Police and Fire retirement plan. This was continued from last month. Item number A a review and recommendations to city council on ordinance amending chapter 3.36 of title 3 of the San José municipal code to incorporate provisions related to the proimple purpose of the Police and Fire retirement plan, the use of plan assets, prohibited retirement plan transactions, pension benefit vesting, pension benefit and contribution limits, required benefit payments, permissive purchases of service credit, rollover of employee contributions into other tax qualified plans and accounts, permissive retirement plan investment vehicles, qualified domestic relations orders and contributions, benefits, service credit for qualified military service, date of establishment of medical benefits account and to make other technical amendments related to internal revenue code provisions for qualified government retirement plans and B, adoption of a resolution 3685 authorizing submission of the following applications to the internal revenue service upon council approval of an ordinance containing the required plan tax compliance language, I application for a tax exemption letter, with a payment by the plan of the $1,000 determination letter filing fee, and II, application to the voluntary compliance program for connection of fail imrurs to adopt timely amendments to the retirement plan as required under ferld tax law and to define the establishment date of the plan's I rmpletsC 401 (h) account, with the payment of the plan of the $15,000 VCP fee. Mollie.

>> Mollie Dent: This was delayed option because the represents I think they still want some time look at it i'm recommending that you all move forward with approving this to move forward. It is a recommendation we are in the process of trying to set up a meeting to walk through the ordinance. It's not clear yet to plea if anybody has any specific concerns about it. I got it I received just yesterday a couple of minor comments from the office of employee relations but because of the timing for the tax conversation letter on January 31st, I'm recommending that you go ahead and move forward with the ordinance. We can come back to you in January, if there have been any changes that we think need to be maids to it as a result of discussions that will occur later this month. You can postpone the adoption of the resolution if you want because we're not going to file until January. But my concern at this point is, it needs to move forward. If there's going to be any chance of filing by January 31st, we need -- we need to get this thing rolling. And it would need to be presented to council sometime in January for at least first reading.

>> David Bacigalupi: Okay. Rose.

>> Rose Herrera: I'd like to make a motion to approve with the idea that parties that have information, to provide -- could still add that information, we would not be set in concrete, right? You're just moving the process forward so that we can get working on it and any input that would be coming in could be added and taken into account, it would come back before this board, too, right?

>> Mollie Dent: I certainly -- my intention would be that if there are -- and like I say, just -- it's fine with me if you just want to move item A?

>> Rose Herrera: I want to move item A and not item B.

>> Mollie Dent: And if there are any substantive changes to the ordinance between now and the first meeting in January I can certainly put it back on the agenda and explain what those changes are.

>> Rose Herrera: That's my motion if I can get a second.

>> Second.

>> David Bacigalupi: Motion and second. Discussion by the board first Sean then Scott.

>> Sean Kaldor: I didn't think we have any issues, it was a matter of Mr. Gurza and making sure the union has had a chance to look at it. If they're okay I want to make sure there's time to have their input in it.

>> Mollie Dent: They're asking for more time.

>> We need to have a meeting with the city attorney's office and evening perhaps with tax counsel to understand the changes what's happening why they need to happen understand the ramifications. We are trying to have that meeting, hopefully, it can occur sooner rather than later with the holidays.

>> David Bacigalupi: We have a January 31st -- do we need to move it forward or does council have to approve it before January 31st? Dx my recommendation would be if there are serious questions or concerns with this ordinance and it's not going to be adopted by council, or -- that -- I would -- I would question moving forward with tax qualification. If you've got problems with meeting the requirements for tax qualification you're probably not well advised to raise your hand to the IRS and say, "hey, look at me." That's my only concern. If there are issues with what's been put forth, we need to get those out and on the table and find out if there really are serious issues that people are not willing to see the ordinance amended. In a manner that -- it's not that the plan won't be qualified. That's not the question. The question is, do you want to try to get a letter from the IRS saying that you're qualified? And I -- so that's why I'm saying, don't -- you don't need to adopt the resolution if we have a whole bunch of changes that somebody wants to make to this ordinance, and our tax counsel says well if you do that you're not going to get a tax qualification letter why move forward with the tax qualification process?

>> Before we get to that stage let's just get the meeting. The overwhelm point is I think present it to John and Chris, they'll understand that except for two things that should be talked out it's merely just clarification and

enhancement of what's already in or it's the addition of what I would call tax required boilerplate. There's certain stroongs this system to filing by January 31st. It doesn't require that the ordinance actually be enacted, if it's just whatever it is, published for title or you know, I'm not using the right terms but as long as we know the employee organizations are on board, they would waive meet-and-confer satisfied, whatever mere he meet-and-confer has satisfied their concerns, then we go. I still hope we have -- that should be our goal. Maybe we can't meet it but there's going to be some negative consequences maybe not that significant from.

>> Russell Crosby: From a plan standpoint you don't want to miss this deadline because when you miss the deadline you're essentially saying look at me I've got problems and I'm not going to be there. So I think you're better off to try to move on this schedule of getting this stuff going. If you guys have issues, flag it, stop the process but try to make the process with the deadline.

>> Mollie Dent: Let me be clear. The recommendation is for the board, the board to move this ordinance forward, to recommend it as it's written. It's going to be recommended as it's written to the city council. The bargaining units and the office of employee relations can weigh in on it. We'll certainly get together with them ahead of time and to the extent things can be taken care of they will be taken care of but that's precisely the purpose of saying I think you need to move forward with it. We need to get an ordinance on the council agenda for at least first reading in January. And the way council agendas work, I need to get this ordinance to council here pretty soon. So it's not going to be done before we meet, don't worry, we're committed to meeting, we're committed to seeing what the issues are but it's time to -- it's been out there for -- it's been out there now for about a month, the draft ordinance has been out there for about 45 days probably.

>> David Bacigalupi: Chris.

>> I never wroir, I just want to make sure the board's aware of that. We can accommodate the resolution I think and I agree with Mr. Crosby that we can at least move the process forward so long as we're e-all clear here that that's subject to the meet-and-confer and subject to later developments. I will say awe have not received any comments from OER so I don't think if Mr. Rodriguez is still in the audience so if either you or Mollie could forward

that to us so we could have again the cross dmtion process. My only concern is number 1 I think board member Herrera's motion is prompt so long as we understand that's subject to meet-and-confer and number 2 we do have the holidays. We will endeavor to get meetings on this as soon as practicable consistent with all the different parties' calendars and the home days. We will probably have our own outside counsel take a look at this independently which only adds one more lawyer to the soup but we will move as quickly as we can and I have no problem with what Mr. Crosby has laid out and we can otherwise support board member Herrera's motion with that understanding.

>> David Bacigalupi: My thought is if we move forward with the motion as it is, and there's some major glitch, we can stop things in January. If we don't move forward, we're going to miss the deadline.

>> That's exactly right.

>> Mollie Dent: That's correct.

>> David Bacigalupi: At least this way we have a chance to satisfy the requirements. If we delay anymore I don't think we even stand a chance.

>> Motion and second.

>> David Bacigalupi: Okay we have a motion and second. Is there further discussion? Scott.

>> Scott Johnson: I just have a minor question Mollie. On page 5 of the ordinance. Talking about the conditions and limitations there was a section added in regards to the assets, that they cannot revert and no contribution shall be permitted to be returned. I just want to make sure, we just talked about for example FLSA, whether or not there would be contributions that would be due to the employer or the employees, would code relate to corrections I guess? ?

>> Mollie Dent: This refers to revisions, plain vanilla tax language.

>> David Bacigalupi: Added for the punch of tax lawyers.

>> Just for purposes of expediency, Ms. Dent was very kind to send us a copy of the draft ordinance, I could also ask scunges we don't have it and I don't have the independent ability to get on timely to download documents if there is a document that explains the changes from ice Miller or outside counsel that would be hex.

>> Mollie Dent: There really isn't, so when I think that we, for example, this one has the reference right in it, the revenue ruling. I can try to create a cross-reference to the particular revenue rulings and internal revenue code sections. I think I can give you that. But I don't -- I don't have a written explanation. I have where they come from in the code.

>> David Bacigalupi: Did you get the presentation materials of the --

>> Did I and I attended most of that but not all of -- at least the two questions that Mr. Richeda athrudz were not satisfied to my mind in that meeting even though I attended it and there maybe some others that our own tax counsel raises, obviously spes we have identified tax counsel we will identify tax counsel to Ms. Defnt, Mr. Richeda and they can identify that to ice Miller. Ultimately it might be best to have two tax counsels talk.

>> David Bacigalupi: That has a --

>> Chris that is just another example but that one actually touches home. I mean these calendars to coordinate you're the main culprit are impossible to coordinate. If we can just have ice Miller coordinate with any outside tax council, who is reputable.

>> You didn't specify.

>> I am now. Dx you did approve some additional money for the ice Miller contract. But in the interest of staying even within that additional money that you approved, I really do want to encourage folks to focus on, if you have two key concerns, tell me what they are.

>> I don't know what tax counsel has beyond --

>> Mollie Dent: That's what I'm saying once somebody looks at this if there are specific provisions that they are concerned about and question, let's try to focus on that so that we're not spending a lot of time talking about things that people not like the way it's worded but it's not substantive.

>> David Bacigalupi: This board would encourage you to ask your tax counsel to keep our costs down.

>> Chris, you don't have one yet as I understand?

>> We have someone in mind who has performed that job before and we'll find if they are available on an expedited basis.

>> David Bacigalupi: All in favor, all opposed the motion carries. And then we have a motion to postpone item 13B, is that what I understood the instructions Mollie that we could put that one off until next month?

>> Mollie Dent: Yes.

>> David Bacigalupi: Somebody want to make that motion?

>> Motion,.

>> Second.

>> David Bacigalupi: Motion to move 13B to next month, any discussion on that motion? Hearing that discussion all in favor, all opposed, that motion carries. Item number 17. I did address the item 17, item 18 --

>> Scott Johnson: Mr. Chair, was the 16th cancelled for the investment committee?

>> David Bacigalupi: All three meetings were cancelled, they're doing interviews for the future board, everybody is going to be tied up. We're working on rescheduling so members of the committees please get back to the retirement office for possible rescheduling dates when they get in touch with you. Motions will take care of 20 through 27.

>> Rose Herrera: Motion to approve consent.

>> David Bacigalupi: I have a motion.

>> Second.

>> David Bacigalupi: Okay, all in favor? All opposed? The motion carries. Okay, next item, education and training, there's information in your packet on available training for board members. A, B and C all listed on the agenda. Item number 2009, notification of IFEBP training. That's also listed in your agenda. And then, an important one, item 30 many I just wanted to point that, AB 1234 state mandated ethics training, class at San José City Hall, December 9th, 2010, right here in this room, 6 o'clock to 8:30 or you can do it on the computer. Board members are required to do that. Proposed agenda items. Are there any others that we didn't already suggest or we didn't get to finish, from our earlier discussions?

>> Sean Kaldor: We have plenty.

>> David Bacigalupi: Will you be able to dig then out? Any other proposed agenda items? Okay. Next item is public comment.

>> Rose Herrera: Is this our last meeting?

>> If you do your thing on the 16th.

>> Rose Herrera: I really enjoyed working with you guys and good luck. All those decisions you have to make.

>> David Bacigalupi: With that the meeting is adjourned.