

STANISLAUS COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

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AGENDA

BOARD OF RETIREMENT 832 12th Street, Suite 600 – **Wesley W. Hall Board Room** Modesto, CA 95354 December 11, 2013 2:00 p.m.

The Board of Retirement welcomes you to its meetings, which are regularly held on the second Wednesday and the fourth Tuesday of each month. Your interest is encouraged and appreciated.

CONSENT ITEMS: These matters include routine administrative actions and are identified under the Consent Items heading.

PUBLIC COMMENT: Matters under jurisdiction of the Board, may be addressed by the general public before or during the regular agenda. However, California law prohibits the Board from taking action on any matter which is not on the posted agenda unless it is determined an emergency by the Board of Retirement. Any member of the public wishing to address the Board during the "Public Comment," period shall be permitted to be heard once up to three minutes. Please complete a Public Comment Form and give it to the Chair of the Board. Any person wishing to make a presentation to the Board must submit the presentation in written form, with copies furnished to all Board members. Presentations are limited to three minutes.

BOARD AGENDAS & MINUTES: Board agendas, Minutes and copies of items to be considered by the Board of Retirement are customarily posted on the Internet by Friday afternoon preceding a meeting at the following website: www.stancera.org.

Materials related to an item on this Agenda submitted to the Board after distribution of the agenda packet are available for public inspection at StanCERA, 832 12th Street, Suite 600, Modesto, CA 95354, during normal business hours.

AUDIO: All Board of Retirement regular meetings are audio recorded. Audio recordings of the meetings are available after the meetings at http://www.stancera.org/sections/aboutus/agendas.

NOTICE REGARDING NON-ENGLISH SPEAKERS: Board of Retirement meetings are conducted in English and translation to other languages is not provided. Please make arrangements for an interpreter if necessary.

REASONABLE ACCOMMODATIONS: In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Board Secretary at (209) 525-6393. Notification 72 hours prior to the meeting will enable StanCERA to make reasonable arrangements to ensure accessibility to this meeting.

- Meeting Called to Order
- Roll Call
- 3. Announcements
- Public Comment
- 5. Consent Items
 - a. Approval of the November 26, 2013 Administrative/Investment Meeting Minutes View

- b. Approval of Service Retirement(s) Sections 31499.14, 31670, 31662.2 & 31810
 - 1. Allen, Kevin, CSA Effective 12/3/13
 - 2. Bank, Sebron, Sheriff Effective 12/28/13
 - 3. Bellmares, Olivia, Clerk Recorder, Effective 12/3/13
 - 4. Blueford, Carolyn, DA, Effective 12/31/13
 - 5. Hawks, Lenore, HSA, Effective 12/14/13
 - 6. Karlin, Cecilia, DCSS, Effective 12/21/13
 - 7. Love-Popp, Dorothy, CSA, Effective 12/14/13
 - 8. Mayotte, Stephen, Stanislaus County Fire, Effective 12/06/13
 - 9. Scoonover, Cynthia, HSA, Effective 12/28/13
 - 10. Teval, Charles, Library, Effective 12/14/13
- c. Approval of Deferred Retirement(s) Section 31700
 - 1. Michael Corcel, Animal Services, Effective 11/19/2013
 - 2. Johanna Salvador, HSA, Effective 09/10/2013
 - 3. Jessica Tucker, BHRS, Effective 10/05/2013
 - 4. Donna Witt, Library, Effective 08/02/2013
 - 5. Aja Verburg, Public Works, Effective 11/30/2013
- 6. <u>Strategic Investment Solutions (SIS), Inc.</u>
 - a. Capital Market Expectations Review View
- 7. Executive Director
 - a. Discussion and Action Regarding Recommendation for Custodian Bank – Kathy Herman <u>View</u>
- 8. Committee Reports and Recommendations for Action

STANDING COMMITTEES

- a. Internal Governance Committee
 - i. Discussion and Action to Approve the Revised StanCERA Bylaws View
 - ii. Discussion and Action to Approve the Compensation Assessment Policy View
- 9. Closed Session
 - a. Discussion and Action Regarding Legal Review for the Inclusion of PRIMA Mortgage Investment Trust Government Code Section 54956.81. Roll call vote required. View
 - b. Conference with Legal Counsel Pending Litigation One Case: Stanislaus County Employees' Retirement Association v. Buck Consultants, LLC, Mediation Pursuant to Evidence Code Sections 1115, 1119, 1152 Government Code Section 54956.9(d)(4)

9. Closed Session (Cont.)

- c. Conference with Legal Counsel Pending Litigation One Case:
 O'Neal et al v. Stanislaus County Employees' Retirement Association
 Stanislaus County Superior Court Case No. 648469
 Government Code Section 54956.9(d)(1)
- d. Conference with Legal Counsel Pending Litigation One Case: Nasrawi et al v. Buck Consultants, LLC, et.al, Santa Clara County Superior Court Case No. 1-11-CV202224; Court of Appeal, Sixth Appellate District, Case No. H038894 Government Code Section 54956.9(d)(1)
- 10. Members' Forum (Information and Future Agenda Requests Only)
- 11. Adjournment



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BOARD OF RETIREMENT MINUTES

November 26, 2013

Members Present:

Gordon Ford, Donna Riley, Maria DeAnda

PLEASE POST FOR EMPLOYEE VIEWING

Jason Gordo, Mike Lynch, Jim DeMartini, Darin Gharat, Michael O'Neal and Jeff Grover

Alternate Member:

Joan Clendenin, Alternate Retiree Representative

Members Absent:

Staff Present:

Rick Santos, Executive Director

Kellie Gomes, Executive Board Secretary Kathy Herman, Operations Manager

Dawn Lea, Benefits Manager

Others Present:

Fred Silva, General Legal Counsel

Doris Foster, County Chief Executive Office

1. Meeting Called to Order

Meeting called to order at 1:31p.m. by Gordon Ford, Vice Chair.

2. Roll Call

3. Announcements

Director announced that the original item regarding the custodian bank selection was pulled and rescheduled for December 11th where staff will make a recommendation. The process was delayed when staff asked a couple of the bidders to take a hard look at their prices and resubmit. At that point, staff felt it appropriate to give all the bidders a chance to resubmit.

Kellie Gomes announced that the newsletter went out last week.

Trustee Clendenin suggested that staff include phone numbers for retiree services within the newsletter.

Kellie Gomes reminded Board members to keep her informed on their anticipated attendance to the Opal Summit in January.

4. Public Comment

None

5. Consent Items

Motion was made by Maria DeAnda and seconded by Michael O'Neal to approve the following consent items as presented with the change to Department corrections for C 9 & 10 which are in red below:

Motion Carried

- a. Approval of the October 22, 2013 Investment Meeting Minutes
- StanCERA Investment Managers Peer Rankings for Quarter Ending September 30, 2013
- c. Approval of Service Retirement(s) Sections 31499.14, 31670, 31662.2 & 31810
 - 1. Anthony Andrade, HSA, Effective 11/16/13
 - 2. Sherry Banuelos, CSA Effective 11/02/13
 - 3. Dixie Barrigar, CEO Risk MGMT, Effective 11/05/13
 - 4. Linda Burk, HSA, Effective 11/02/13
 - 5. Raymond Byers, PW Roads, Effective 11/03/13
 - 6. Darlene Engebretsen, CSA, Effective 10/21/13
 - 7. Michael Handley, Library, Effective 10/21/13
 - 8. Fred Harper, City of Ceres, Effective 10/17/13
 - 9. Janey Heytz, Probation, Effective 11/02/13 HSA
 - 10. Calvin Lambert, HSA, Effective 10/11/13 Probation
 - 11. Arral Phipps, D.A, Effective 11/02/13
 - 12. John Schaper, HSA, Effective 11/01/13
 - 13. Gleen Valdez, DCSS, Effective 11/02/13
- d. Approval of Deferred Retirement(s) Section 31700
 - 1. Bryan Albers, Sheriff, Effective 11/16/2013
 - 2. Ben Bazar, Assessor, Effective 08/10/2013
 - 3. Eduardo Camacho, Sheriff, Effective 11/11/2013
 - 4. Teresa Clevenger, Child Support Svcs, Effective 09/20/2013
 - 5. Brent Dittman, Probation, Effective 10/05/2013
 - 6. Kristi Espino, CSA, Effective 09/25/2013
 - 7. Tom Fara, Sheriff, Effective 10/06/2013
 - 8. Donna Gonchar, Superior Courts, Effective 09/28/2013
 - 9. Rosanna L Hall, HSA, Effective 11/02/2013
 - 10. Janet Harwood, Alliance Worknet, Effective 10/19/2013
 - 11. Melissa Heckman, HSA, Effective 07/27/2013
 - 12. Patricia Hinojos, BHRS, Effective 09/12/2013
 - 13. Francisco Mireles, Jr, Sheriff, Effective 11/17/2013
 - 14. Mckenna Murphy, CSA, Effective 08/31/2013
 - 15. Veronica Pehl, HSA, Effective 09/04/2013
 - 16. Megan Pratt, Superior Courts, Effective 10/26/2013
 - 17. Alexander Quinlivan, Superior Courts, Effective 09/21/2013
 - 18. Molly Sims, Regional 911, Effective 11/11/2013
 - 19. Jennifer Walters, CSA, Effective 09/11/2013

5. Consent Items (Cont.)

- e. Approval of Disability Retirement Section 31724
 - 1. Andrew Hinkle, Sheriff, Service Connected, Effective 11/27/13
 - 2. Robert Johnston, Sheriff, Service Connected, Effective 09/21/13
- 6. Strategic investment Solutions (SIS), Inc.

SIS Items were heard out of order. The order was d,a,b and c.

1:41pm Trustee Darren Gharat Entered 2:03 pm Trustee Jason Gordo Entered

- a. Monthly Performance Review for the Month Ending October 30, 2013
- b. Report on "Top 10 Holdings" of StanCERA Investment Managers as of October 30, 2013
- c. StanCERA's Quarterly Manager Review List Performance Through October 30, 2013

Monthly performance – 3.22% Fiscal YTD – 8.88% Fiscal YTD alpha – 1.04% Total fund value as of October 30, 2013: \$1.667 Billion

d. Investment Performance Analysis for Third Quarter Ending September 30, 2013

Quarterly Total Portfolio Performance Analysis (Return, Benchmark and Peer Ranking.)

Fiscal YTD: 5.6%, 5.1%, 14
1 Year: 15.0%, 12.0%, 9
3 Year: 11.1%, 9.7%, 9
5 Year: 10.3%, 8.3%, 2

7. Executive Director

a. Transition Haber-Trilix to Pacific Ridge – Marilyn Freeman, Capital Prospects

Marilyn discussed that the founder of Haber Trilix, Bob Haber, was closing the firm in November. As such, our manager at that firm, Jeff Kerrigan, will not be able to continue on. While Marilyn has been quite comfortable with Jeff's results, there simply isn't enough time for Jeff to align himself with another firm or start a new one on his own. As such, Marilyn suggests that Capital Prospects and StanCERA must move on. As a result, Cap Prospects has identified HT's replacement as Pacific Ridge (PR). PR is a micro-cap value manager and has \$114AUM. PR's strategy is focused on the smallest and most inefficient segment of the U.S. equity market and should be a good fit for StanCERA's portfolio.

7. Executive Director (Cont.)

b. Discussion and Action Regarding InView Investment Management Assets Under Management – Marilyn Freeman, Capital Prospects

The Board directed staff to keep watch on the assets under management as a percentage of total StanCERA assets devoted to Inview and to report out any movements.

There was no formal action taken on this item.

c. Discussion and Action Regarding LSV Performance Based Fee Schedule

Director presented the differences between an Ad Valorem fee schedule and a performance based fee schedule. Director noted that he felt the alignment of interests between StanCERA and its managers were better served with a performance based fee schedule.

Motion was made by Jeff Grover and seconded by Maria DeAnda to approve a performance based fee schedule with LSV.

Motion Carried

d. Discussion and Action Regarding Recommendation for Custodian Bank – Kathy Herman

Item 7.d was pulled and will be presented at the December 11, 2013 meeting.

e. 2013 Quarter 3 Value Added Report -

Director presented the Quarter 3 value added report to the Board. Some notable items from this quarter's results:

- 1. All managers have added value since June 30, 2008
- 2. Managers added nearly \$9,000,000 in value added for Quarter 3
- 3. All managers have demonstrated a greater than 50% ability to earn value in any given month
- 4. Small Cap Equity is the greatest generator of value added on a relative basis
- 5. Custodial fees have remained constant
- 6. Custodial fees for managers that trade more have actually decreased
- 7. StanCERA pays a total of 35 basis points on average to have its money managed
- 8. Delaware and Cap Prospects continue to be StanCERA's best performers
- 9. Dodge and Cox Equity has rebounded quite nicely in the last year

8. Committee Reports and Recommendations for Action

STANDING COMMITTEES

- a. Internal Governance Committee
 - Discussion and Action to Approve the Revised Statement of Investment Policy

Motion was made by Maria DeAnda and seconded by Mike Lynch to approve the Revised Statement of Investment Policy with minor changes that were recommended by the committee.

Motion Carried

ii. Biennial IT Security Audit - Information Item Only

9. Closed Session

Motion was made by Maria DeAnda and seconded by Jeff Grover to enter into Closed Session.

Motion Carried

a. Discussion and Action Regarding Executive Director Annual Review

Darin Gharat, Chair reported out the following:

Motion was made by Mike Lynch and seconded by Maria DeAnda to accept the recommendation of the committee assigned to review the Executive Director's Annual progress as follows: a 5% pay increase effective November 19 2013 for the Executive Director.

- b. Conference with Legal Counsel Pending Litigation One Case: Stanislaus County Employees' Retirement Association v. Buck Consultants, LLC, Mediation Pursuant to Evidence Code Sections 1115, 1119, 1152 Government Code Section 54956.9(d)(4)
- c. Conference with Legal Counsel Pending Litigation One Case:
 O'Neal et al v. Stanislaus County Employees' Retirement Association
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9. Closed Session (Cont.)

d. Conference with Legal Counsel – Pending Litigation – One Case: Nasrawi et al v. Buck Consultants, LLC, et.al, Santa Clara County Superior Court Case No. 1-11-CV202224; Court of Appeal, Sixth Appellate District, Case No. H038894 Government Code Section 54956.9(d)(1)

Motion was made by Mike Lynch and seconded by Michael O'Neal to enter into Open Session.

Motion Carried

10. Members' Forum (Information and Future Agenda Requests Only)

Trustee Grover gave an update on the Raven fund.

Michael O'Neal congratulated staff on the outstanding service that a spouse received after a member's death.

Mike Lynch requested staff to draft up a letter regarding StanCERA's performance contained in the RV Kuhn's report and send out to plan sponsors, employee groups and media.

11. Adjournment

Meeting adjourned at 3:37 p.m.

Respectfully submitted,

Rick Santos, Executive Director

APPROVED AS TO FORM: GENERAL LEGAL COUNSEL

Fred Silva, General Legal Counsel

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STANISLAUS COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

ASSET ALLOCATION UPDATE

DECEMBER 11, 2013

STRATEGIC INVESTMENT SOLUTIONS, INC.

333 Bush Street, Suite 2000 San Francisco, CA 94104 (415) 362-3484

Paul S. Harte Sr. Vice President Nathan Pratt Consultant Analyst



Asset Allocation Review

Objective

- > Update target portfolio asset class expectations
- > Information only no action



Summary of Updated Capital Market Projections

	EXPECTED RETURN DEC 2012	EXPECTED STD DEV DEC 2012	EXPECTED RETURN DEC 2013	EXPECTED STD DEV DEC 2013
US LARGE CAP EQUITY	8.0%	18.0%	7.6%	17.0%
US SMALL CAP EQUITY	8.3%	21.0%	7.9%	19.5%
INTL DEVELOPED EQUITY	8.0%	18.5%	7.8%	20.0%
EM MARKET EQUITY	8.5%	27.5%	8.5%	32.0%
US FIXED INCOME	2.8%	4.5%	2.9%	5.0%
DIRECT LENDING	8.3%	10.0%	8.3%	10.0%
REAL ESTATE	6.6%	18.5%	6.2%	18.0%
INFRASTRUCTURE	7.1%	25.0%	6.7%	26.0%
CASH	1.5%	1.0%	1.5%	1.0%
СРІ	2.4%	1.2%	2.3%	1.2%

Equities expected return generally lowered by -40 bps and Fixed Income generally raised by +10 bps. Infrastructure lowered by -40 bps. Inflation lowered by -10 bps.

Correlation Matrix

Asset	R1000 R2	2000 B	BCAGG I	NTLEQ E				PRIV EQTY	HEDG FND	HIGH YLD	EM DEBT	TIPS	I CMMD I	BANK LOANS I			IILB HDG	CASH	CPI .	TBILLS T	10YR
R1000	1.00																				
R2000	0.86	1.00																			
BCAGG	0.15	0.06	1.00																		
INTLEQ	0.77	0.72	0.05	1.00																	
EMMKT	0.57	0.65	-0.08	0.71	1.00																
INTLBOND	0.09	0.00	0.49	0.35	0.14	1.00															
REALEST	0.64	0.71	0.16	0.56	0.50	0.00	1.00														
PRIVEQTY	0.73	0.68	-0.07	0.55	0.53	0.01	0.32														
HEDGFND	0.58	0.50	0.28	0.67	0.50	0.26	0.38														
HIGHYLD	0.69	0.73	0.34	0.60	0.59	0.28	0.70					_									
EMDEBT	0.48	0.48	0.39	0.42	0.55	0.17	0.42														
TIPS	0.10	0.05	0.66	0.04	0.09	0.44	0.27														
COMMOD	0.27	0.28	-0.06	0.30	0.38	0.11	0.28							1.00							
BANK LOANS	0.66 0.51	0.64	0.12	0.62	0.59	0.09	0.69							1.00 0.59	1.00						
REALENEP	0.51	0.56	0.42	0.49	0.44	0.21	0.53							0.39	0.53	1.00)				
IILBHDG	0.45	0.28	0.59	0.43	0.03	0.17	0.26							0.40	0.18	0.28)			
CASH	0.14	0.10	0.34	0.09	0.13	0.10	-0.16								0.34	0.28					
CPI	0.11	0.10	-0.03	0.13	0.23	0.05	0.10							0.12	0.26	0.44	-				
TBILLS	0.06	0.00	0.12	0.06	0.04	0.06	-0.03								0.18	0.13				1.00	
T10YR	-0.05	-0.10	0.41	-0.08	-0.21	0.21	-0.08	-0.11	0.05	-0.08	8 0.0	7 0.23	3 -0.13	-0.15	0.05	-0.09	0.27	0.10	-0.21	0.03	1.00

StanCERA Revised Portfolio Expectations

	Dec 2012	Dec 2012	Dec 2013	Dec 2013
	Current	New Policy	Current	New Policy
Asset	Mix	Mix	Mix	Mix
US Lrg Cap	33.10%	30.50%	33.40%	30.50%
US Sml Cap	8.30%	7.70%	8.50%	7.70%
US Fixed	37.10%	29.80%	35.60%	29.80%
Intl Stock	15.00%	13.50%	14.00%	13.50%
EM Stock	5.00%	4.50%	5.00%	4.50%
Real Est	1.50%	3.50%	1.50%	3.50%
Dir Lend	0.00%	7.50%	2.00%	7.50%
Infrastructure	0.00%	3.00%	0.00%	3.00%
Totals	100.00%	100.00%	100.00%	100.00%
Exp. Return (Gm Mean)	6.63%	7.00%	6.57%	6.86%
Std Dev	11.30%	11.65%	11.15%	11.49%
SIS Infl	2.40%	2.40%	2.30%	2.30%
SIS Real	4.23%	4.60%	4.27%	4.56%
Actuary Inflation Rate				3.25%
SIS Real + Actuary Infl.				7.81%
Actuary Assumed Rate				7.75%



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For the Board of Retirement meeting Held on December 11, 2013

12/11/13 Item#7.a

TO: Board of Retirement

FROM: Kathy Herman, Operations Manager

- I. SUBJECT: Global Custody RFP
- II. ITEM TYPE: Discussion and Action
- III. STAFF RECOMMENDATION: Staff recommends that the Board switch to Northern Trust for Global Custody and Securities Lending Services for a five-year period commencing on April 1, 2014.
- IV. ANALYSIS: On August 15, 2013 staff issued a Request for Proposals (RFP) for Global Custody and Securities Lending Services. Four responses were received on October 4, 2013, from Northern Trust (NT), Wells Fargo (WF), State Street (SS) and the Bank of New York Mellon (BNYM).

Evaluation Process: A five member evaluation team consisting of one Board of Retirement Trustee with extensive background in custody transition; a representative from Strategic Investment Solutions (SIS), StanCERA's investment consultant; the Operations Manager, the Retirement Accountant and the Executive Director began the review process on October 7, 2013.

- 1. As a result of the initial analysis, the evaluation team determined that all four vendors are considered Top Tier Banks and meet the criteria to be included in the evaluation process.
- 2. Further analysis based on the extensive criteria list noted on Attachment 1 was completed and the evaluation team recognized that all four banks met StanCERA's requirements for selection.
- 3. To ensure that StanCERA had the best and final fee proposals to analyze, each bank was provided with the June 30, 2013 listing of StanCERA's accounts, assets, non-U.S. transactions and securities lending holdings. The estimated proposed fees as analyzed by the evaluation team are listed below.

		Annual Estimate		
	Point Estimate	15% Margin For Conservatism	% Change from Current	\$ Change from Current
			moni current	
State Street	\$590,000	\$679,000	-19%	-\$139,000
Northern Trust	\$406,000	\$467,000	-44%	-\$323,000
BNYM - New	\$472,000	\$543,000	-35%	-\$257,000
Wells Fargo	\$574,000	\$660,000	-21%	-\$155,000
BNYM - Current	\$729,000	\$838,000	0%	0

Since StanCERA staff is more than satisfied with the quality of services provided by the Bank of New York Mellon and only Northern Trust proposed lower fees, the evaluation team narrowed its focus.

Due Diligence for Northern Trust and the Bank of New York Mellon

As part of the RFP process the financial statements in Attachment 2 were summarized and considered, and key issues that were of major concern to the Board are referenced in Attachment 3. In addition the following steps were performed as part of the due diligence process.

- 1. References were contacted and interviewed.
- 2. A phone survey of 37 Act Administrators regarding client relations and various banking services was conducted.
- 3. An email and phone survey was conducted with StanCERA's investment managers.
- 4. StanCERA staff traveled to San Joaquin CERA in order to carefully compare the reporting systems.
- 5. StanCERA staff conducted an intensive interview with the Fresno CERA regarding their recent custodial bank transition to Northern Trust.
- 6. Three members of the evaluation team traveled to Chicago, IL to meet with representatives from Northern Trust to review their responses to the RFP, meet the team that would be working with StanCERA and evaluate their facilities.
- 7. Since the Due Diligence Committee did an onsite visit with the Bank of New York Mellon in July 2013 and met their team at that time, a conference call was conducted to complete the interview process and review RFP responses.

Customer Service: StanCERA has consistently had a good working relationship with the Bank of New York Mellon. Their team continues to respond quickly and to assist StanCERA in all aspects of custodial banking and securities lending. This level of customer service was confirmed by both investment managers and other 37 Act systems.

Northern Trust stressed that they are "organized around clients". They explained that because they are not boxed in to processing units they are able to quickly resolve issues. The prospective Relationship Manager for this account expressed that customer satisfaction is a major component of Northern Trust's management philosophy. This philosophy was confirmed by everyone we reached out to, including our fellow 1937 Act systems.

Transition: If this Board recommends a move to Northern Trust a major transition would follow. The custody bank transition is managed by a dedicated team of professionals, who specialize in this process at the incoming bank. The assigned Relationship Manager would be the primary point of contact. The bank's process is estimated to be completed in 48-60 business days beginning with preparation one month prior to the effective transition date and following up on any issues 45-60 days later. It will take a complete accounting cycle, including the audit process to finalize the transition. Given the timing of this decision, if the Board elects to change banks, the transition will begin once contracts are in place.

All 37 Act Systems surveyed spoke highly of the services provided by their new custodial banks, but due to the workload and learning curve associated with a bank transition, they would not recommend a change unless there was a very compelling reason. Fresno CERA had recently completed a transition to Northern Trust from State Street and even though both banks were very cooperative, it was "much more labor intensive than they had anticipated."

ANALYSIS CONTINUED

	Stay with BNYM	Switch to NT
References	Excellent references; StanCERA has maintained a custodial relationship for over 60 years in one form or another with BNYM.	Excellent references; All systems surveyed spoke highly of Northern Trust.
Relationships	Staff has developed valuable professional relationships and efficiencies in the process.	It will take time for staff to build new relationships, which could cause a temporary loss of efficiency
Training	StanCERA staff is very familiar with the reporting platforms at BNYM	StanCERA staff will require training for new systems and reporting structures.
Costs	35.2% savings in fees	44.3% savings in fees – offset in the 1 st year by transition costs and Sec Lending payoff.
Securities Lending	\$450,000 Sec Lending account deficit due to Lehman bankruptcy still exists and is being paid down with earnings from the Securities Lending Portfolio.	\$13,000 lost in potential savings due to Sec Lending deficit payoff.
Transition	N/A	\$30,000 estimated transition costs due to increased workload and staffing.
		\$10,000 De-Conversion processing fee paid to BNYM

Whether or not this Board chooses to switch Custodial banks, completing this RFP process and negotiating a new agreement will allow StanCERA to recognize \$1.2 to \$1.5 million, in fee savings over the next five years.

- V. RISK: No measurable risk was identified.
- VI. STRATEGIC PLAN: Strategic Objective #4: Refine StanCERA's business and policy practices in ways that enhance stakeholder awareness, the delivery of member services and the ability of the Organization to administer the System effectively and efficiently.
- VII. ADMINISTRATIVE BUDGET IMPACT: If the Board elects to change banks, approximately \$30,000 is estimated in staffing costs due to back filling current staff through the process.

California Government Code Section 31596.1 states; the compensation of any bank or trust company performing custodial services shall be borne solely by the system and shall be considered a reduction in earnings and shall not be considered a cost of administration of the retirement system. The de-conversion and potential securities lending cost of \$23,000 is not included in the administrative budget.

Rick Santos, Executive Director

Kathy Herman, Operations Manager

Attachment 1

Bank Evaluation Criteria

- o Firm \ Staff \ Administration
 - Experience, Rating, Insurance Scale, Location, Clients, Gains and Losses Importance of Custody to the business Organization of Client Service Experience of Client Service Team Total Staff, Distribution by Function and Turnover Investment Manager Support, Oversight, Audit
- o Custody \ Transactions \ Accounting
 - Accounting & Reporting, General Ledger Loading Trade & Dividends Settlement
 \ Posting Domestic and International Trades Management Commingled Funds
 Data "Look-through" Cash Management Non-custodied Assets Accounting, Sub Custody Class Action Tracking & Crediting \ Proxy Voting Data Retention \
 Access post termination Transitions and Conversions Team and Process Trading
 Staff \ Locations \ Capabilities
- o Reporting \ Systems \ Capacity \ Security
 - Online User Tools \ Reporting \ Analysis Security Pricing Systems \ Service Subscriptions Systems Security \ Capacity \ Age of Systems Ownership \ Redundancy \ Disaster Recovery Internal Audit \ Level of Oversight
- Securities Lending
 - Volume \ Borrowers Network Coordination with Investment Managers Borrower Creditworthiness \ Quality of Collateral Indemnification on Fails and Defaults Revenue & Splits
- o References
 - Satisfaction with Overall Service
- o Fees
 - Master Trust & Custody Proposed Securities Lending Split Securities Lending and Reporting

Attachment 2

FINANCIAL STATEMENT ANALYSIS

	Northern Trust	BNY Mellon		
Return on avg Common Equity	9.34	7.1		
Return on avg Assets	0.74	0.77		
Dividend Payout Ratio	42.0	26.0		
Tier 1 Capital to Assets	12.8	15.0		
Total Capital to Assets	14.3	16.3		
Tier 1 Leverage Ratio	8.2	5.3		
(BNYM required 5% minim	ium)			
Avg Equity to Assets	7.9	11.0		
(\$ In Millions)				
Total Assets	97,464	358,990		
Cash & CE	30,176	138,747		
Securities	60,538	101,008		
Total Liabilities	89,937	321,548		
Stockholders Equity	7,527	36,431		
Debt to Equity	11.95	8.83		
CS Outstanding	238,914,988	1,254,182,209		
CS Authorized	560,000,000	3,500,000,000		
EPS Basic	2.82	2.04		
EPS Diluted	2.81	2.03		
Contingent Legal Proceedings	Sec Lending	Sentinel bankruptcy		
	Corp Stock	Lehman losses		
	Insider Trading	Madoff liquidation		
	Visa Indemnify	Medical Cap litigation		
		Fx standing instructions		
		Intercreditor agreement		
		Tax Court		
		BofA as petitioiner		

Attachment 3

Securities Lending – Lehman Brothers Bankruptcy

In 2008, StanCERA held approximately \$5,000,000 in Lehman Brothers securities as collateral for securities on loan through our Securities Lending Program. In the RFP, staff asked the banks how they specifically dealt with the Lehman Brothers crisis as it related to Securities Lending. The following is a short summary of their responses:

Northern Trust (NT)

In the weeks leading up to the bankruptcy, NT began reducing Lehman credit lines and asked and received additional collateral from Lehman Brothers itself. After Lehman filed for bankruptcy in September 2008, NT declared Lehman in default and began making collateral available to compensate clients that had loans outstanding. Shortly thereafter, NT began liquidating all collateral and repurchasing outstanding securities and crediting client accounts. Within 2 days of the bankruptcy, NT had successfully recalled 77% of the value of securities on loan. Eventually, NT was able to purchase over 95% of the value of clients' securities on loan and replaced them in client accounts.

Bank of New York Mellon (BNYM)

To help clients in the time of economic uncertainty, BNYM took the following steps:

- The supervision of all money market and cash management activities was consolidated under BNYM Cash Investment Strategies
- Increased frequency of client collateral reinvestment reports from monthly to daily
- Maintained liquidity by enacting in-kind redemptions
- Restructured existing collateral pools and developed new pooled reinvestment options free of legacy assets
- Enhanced risk management structures that featured enterprise-wide oversight
- Maintained client service excellence through proactive discussions with clients and delivery of information about events and subsequent options

Staff Note: In the weeks prior to the Lehman Brothers bankruptcy BNYM contacted StanCERA to discuss the decline in value of the securities held. Several telephone conferences were held and monthly accounting was provided. Upon the bankruptcy the securities were not liquidated and per the terms of the lending agreement the risk of the loss on investments is borne by the lenders. Also per the agreement, BNYM absorbed 30% of the Lehman loss. BNYM stepped in and provided support to all lending clients who were holders of Lehman. They provided the option to their clients to use future securities lending income to reduce the collateral insufficiency. This avoided the need to cover the collateral insufficiency in one lump sum.

Foreign Exchange Transactions (FOREX)

Beginning in 2009, several banks had lawsuits brought against them regarding questionable practices involving the pricing of foreign currency transactions for clients. Essentially, those banks were accused of executing trades at various times of the day that had favorable price points, however, charging clients transaction costs based on trading at different, unfavorable times of the day. Bank of New York Mellon was one of those banks. Some of the lawsuits initiated against BNYM have subsequently been dropped, however, there are some still ongoing that have yet to be resolved.

Northern Trust was one of those banks not accused of improper foreign currency transaction pricing. When staff visited NT on its diligence trip, staff specifically asked how NT was able to avoid the same issues that some of the other banks had faced. NT claims that they have always had transparent reporting processes regarding foreign exchange transactions. NT always reports out to clients immediately the price and time of day that the foreign currency transactions were made, thus avoiding any ambiguity regarding costs. With this information, the client was/is always able to verify transaction costs relative to the "best execution" price each day.



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For the Board of Retirement meeting Held on December 11, 2013

12/11/13 Item#8.a.i

TO: Internal Governance Committee/Board of Retirement

FROM: Dawn Lea, Benefits Manager

- I. SUBJECT: Internal Governance Recommendation for the Acceptance of the Biennial Revisions to the StanCERA Bylaws
- II. ITEM TYPE: Discussion and Action
- III. STAFF RECOMMENDATION: Accept and recommend to the full Board of Retirement the Biennial revisions to the StanCERA Bylaws
- IV. ANALYSIS: StanCERA staff has completed the biennial revisions to the StanCERA Bylaws. As a result, there are some important changes to the Bylaws incorporated into this revision.

The following is a summary of changes contained in this revision:

- All references to the title Administrator have been changed to Executive Director
- Election ballots will be distributed by the US Postal Service, not with payroll
- Performance review and compensation committee was added to section 1.7
- Added Section 1.10 Administration of Executive Director Position, Investment Classification and other Executive Level Staff
- The term "registered domestic partnership" was added in each area that referenced marriage
- Information regarding Tier 6 final compensation was added to section 7.1
- Deadline for the biennial review of bylaws was changed from November 30th to December 31st of each odd year
- Change to 9.11 allows the Board to deny a disability application, without a hearing, if the applicant fails to clearly establish one or more elements legally necessary to grant their claim for service connected or non-service connected disability
- Section 9.13 was added to allow a member to request a hearing, within 30 days of a denial of disability retirement by the Board of Retirement
- V. RISK: None
- VI. STRATEGIC PLAN: Goal 3 Strategy C: Systems and Policies: Regularly update policies, procedures, and systems to ensure organizational effectiveness and consistency.
- VII. ADMINISTRATIVE BUDGET IMPACT: None

Dawn Lea, Benefits/Manager

Rick Santos, Executive Director



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STANISLAUS COUNTY EMPLOYEES RETIREMENT ASSOCIATION BOARD OF RETIREMENT BYLAWS

Bylaws

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PDF Document created 02/06/2007

Bylaws Updated as of 12/04/2007

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Bylaws Updated as of 11/23/2010

Stanislaus County Employees' Retirement Association Board of Retirement Bylaws

ARTICLE 1 – ADMINISTRATION

1.1. NAME

The name of this association is "THE STANISLAUS COUNTY EMPLOYEES' RETIREMENT ASSOCIATION" (hereinafter "StanCERA").

1.2. PURPOSE

StanCERA is established in accordance with and subject to the Stanislaus County Employees' Retirement Law of 1937, section 31450, et seq., of the California Government Code (hereinafter "the 1937 Act"). For the purpose of carrying out the provisions of said law within Stanislaus County, California, StanCERA is governed by the 1937 Act as supplemented by these Bylaws.

1.3. DEFINITIONS

A. "Executive Director" means the StanCERA Retirement Administrator.

- B. "Applicant" means a person, the Retirement Board, or StanCERA claiming benefits, rights, or privileges under the 1937 Act.
- C. StanCERA means the Stanislaus County Employees' Retirement Association.
- D. "Retirement Board" means the StanCERA Board of Retirement.
- E. "Hearing officer" means the person designated by the Retirement Board to conduct a hearing, and make recommendation pursuant to section 31533 of the Government Code.
- F. "Part-time employee" means an employee of Stanislaus County or a contracting district who is not employed in a permanent position as established by the Board of Supervisors or other governing body by budget or ordinance or who regularly works less than fifty percent (50%) of the normal workweek.
- G. "Party" means any person disclosed by the records of the retirement system or by the application to have an interest in any subject matter including the applicant and the subject employee.
- H. "Subject employee" means the member of the retirement system on behalf of whom an application is filed.
- I. Member "contributions" are defined as the actuarially determined rate as applied to the member's compensation earnable for each pay period.

1.4. MANAGEMENT

Management of the retirement system is vested in the Retirement Board. Day-to-day administration of the retirement system is delegated to the Executive Director. Appointment or election of members of the Retirement Board shall be as provided by Section 31520.1 of the Government Code and this Article.

1.5. OFFICERS

At the first regular meeting in January, the Retirement Board shall appoint one (1) of its members as chair and one (1) of its members as vice chair, each to hold office for a term of one (1) year. The positions of chair and vice chair will rotate by succession by the number assigned to the Retirement Board member. If a member has not served at least two (2) years on the Retirement Board, that member shall skip the normal rotation and the next successor shall be appointed to chair or vice-chair. Should any officer fail for any reason to complete his term, the normal successor shall perform the balance of the unexpired term. If the unexpired term is for less than nine (9) months, then the successor shall also hold office for their normal term immediately following the completion of the unexpired term. If the unexpired term is for nine (9) months or more, the successor shall only hold office for the completion of the unexpired term. The secretary of the Retirement Board shall be the Executive Director. The alternate safety member shall serve as provided in Section 31520.1 of the 1937 Act.

Pursuant to Government Code Section 31520.1, the alternate safety member shall sit in place of the seventh member during determinations of retirement benefits of a person from the same service as the alternate safety member.

1.5. Amended 08/31/1999 and 10/31/2000

1.6. RETIREMENT BOARD MEMBER ELECTION PROCEDURES

RETIREMENT BOARD MEMBERS WHO ARE ELECTED by members of StanCERA of the same category of membership (Second and Third seats by General members, Seventh and Alternate seats by Safety members, and Eighth and Alternate Seats by Retired members) shall be elected according to the procedures set forth in this Section

StanCERA Bylaws

of the Retirement Board's Bylaws. In all cases where the word "Department" appears in this Section, the meaning shall be construed to include all Stanislaus County Departments, the City of Ceres and contracting Districts (all employers who use StanCERA for administration of retirement benefits). The Executive Director shall prepare a NOTICE OF ELECTION, which shall contain the deadlines for the submission of nomination papers, date of distribution of ballots, date of final receipt of ballots and the date for canvassing the ballots.

The distribution of the notice of election shall be made no more than sixty (60) nor less than forty-five (45) days prior to the final date for receipt of ballots. The distribution of the notice of election will be distributed by U S postal services.

The Executive Director shall prepare a NOMINATION PAPER which upon completion will contain the following information:

Name of candidate; candidate's Department (if General or Safety member) or city and state residence (if Retired member); a candidate's statement of not more than two hundred (200) words; signatures of the specific membership electorate in support of the candidate (General–twenty-five (25); Safety--ten (10); Retired--fifteen (15)); a prepared statement of willingness to serve on the Retirement Board; the Retirement Board seat number and category (General, Safety or Retired); and final date for filing the paper. Completed nomination papers must be submitted to the Executive Director by 5:00 p.m. on the date specified in the notice of election and on the nomination paper (no later than thirty (30) days before the final date for receipt of ballots). Candidates shall only be placed on the election ballot if the above nomination papers and procedures are completed. If only one (1) nomination paper is received by the Executive Director on or before the deadline specified for receipt, the Executive Director shall declare that the candidate is the new Retirement Board member of the seat for which the candidate sought election (pursuant to Government Code Section 31523) and shall prepare and distribute a declaration of election results showing a unanimous ballot for the candidate to all Departments.

If two (2) or more nomination papers are received by the Executive Director on or before the deadline for receipt, the Executive Director shall prepare ELECTION BALLOT MATERIALS which shall consist of:

A. A ballot with the candidates' names, Departments (if General or Safety member) or city and state residence (if Retired member), candidates' statements, final date for receipt of ballots and a listing of candidates' names in alphabetical order by last name with appropriate places to indicate the member's choice of a particular candidate;

- B. A "secret" envelope to hold the completed ballot;
- C. A "return to" envelope which will have the Executive Director's address for receipt of ballots, the member's name and space for the member's signature; and
- D. A cover envelope with the member's name and mailing address. The ballots must be received back in the Executive Director's Office by 5:00 p.m. on the final date indicated on the ballot or the ballot material will be voided. The date for final receipt of ballots shall be no less than twenty (20) days following the date of disbursement of the ballot material.

Ballot material may be REISSUED to members who file a notice of non-receipt of election material prepared and filed in the Office of the Executive Director. The Executive Director shall make a second and final attempt to send out any RETURNED BALLOT MATERIAL at a reasonable cost of staff time and money.

The ballots shall be CANVASSED on the business day following the final date for receipt of ballots by the Executive Director, one (1) member of the Retirement Board not associated with the election in any way, and any staff from the Executive Director's Office as may be necessary to expeditiously handle the canvassing of the ballots.

The candidate who receives the HIGHEST NUMBER OF VOTES of the ballots cast shall be declared the WINNER and new member of the Retirement Board to assume the seat for which the candidate ran at any Retirement Board meetings following the expiration of the term of the incumbent. The new member will serve three (3) years or for the remaining period of time in which a seat may become vacant for any reason other than the expiration of the incumbent's term of office.

The Executive Director shall prepare a DECLARATION OF ELECTION RESULTS to include the seat of the Retirement Board, the final date of the receipt of ballots, and the name of all the candidates who ran with their corresponding number of votes received in the election. The declaration shall also state the winner of the election and the date on which the winner assumes the seat on the Retirement Board.

The Executive Director shall telephone each candidate with the results of the election and the declaration shall be posted in a conspicuous place in or near the Office of the Executive Director in the afternoon following the canvassing. Copies of the declaration shall be mailed to each candidate and each Department (if General member or Safety member election) or the Retired Employees of Stanislaus County, RESCO, (if a Retired Member election) with a message to retirees of the winner to appear on the next retiree payroll check following the canvassing.

If any of the specific electorate desires a RECOUNT of the ballots cast, the member must make a written petition to the Retirement Board for a recount and include a \$500.00 payment for costs incurred. The petition must be received by the Executive Director no later than fourteen (14) days following the original canvassing of the ballots. The Executive Director shall forward the petition on to the Chair of the Retirement Board who shall call a special meeting of the Retirement Board for a recount. The date of the recount shall be no longer than thirty (30) days from the date of the original canvassing. The petitioner or designee must attend the recount, which shall be accomplished in the same manner as the original count. If the recount shows that a different candidate is the winner by receiving the highest number of votes, a DECLARATION OF REVISED ELECTION RESULTS shall be prepared and distributed in the same fashion as the original declaration of election results.

All member election material shall be DESTROYED thirty (30) days after the original canvassing of the ballots if there is no petition for a recount. Member election material shall be destroyed one (1) week following the completion of all procedures of a recount.

1.7. COMMITTEES

The Retirement Board has determined that the following are standing committees.

A. Due Diligence Committee. This committee shall consist of the Vice-Chair as Chair and two (2) other Board members and staff appointed by the Vice-Chair. This committee shall insure that Due Diligence visits are carried out and reports provided to the Retirement Board of investment manager and other vendor business reviews on a schedule as determined by these Bylaws and the committee.

B. Internal Governance Committee. This committee shall consist of three (3) Retirement Board members. The Committee Chair may request administrative staff and/or legal counsel to attend Committee meetings as needed. At least one of the Retirement Board members of the committee shall have sufficient background in accounting, financial or managerial matters to understand, relate to and communicate accounting and organizational matters especially as they relate to audit reports. This committee shall have the responsibility for oversight of all financial audits (both external and internal), compliance audits, Bylaw revisions, Policy revisions, Retirement Board member education and training (including ethics) and other internal governance matters.

C. Strategic Planning Objectives Committee. This committee shall consist of no less than two (2) Retirement Board members. The committee may request input from administrative staff and attendance fo staff at its meetings as the Committee so desires. The committee shall oversee and review staff reports related to the study and recommendations of Retirement Board approved strategic planning objectives. The committee shall have authority to survey, research, request actuarial and other studies as it deems necessary. The committee shall only make "final" reports to the Retirement Board or recommendations to the Retirement Board that require the Board's action.

D. Performance Review and Compensation Committee (PRCC). As needed, the PRCC will meet to discuss the performance and compensation of the position of Executive Director and any Investment Classifications that StanCERA may eventually create

The Committee's evaluation process should include but not be limited to the following criteria:

Goals: Whether the subject position's stated goals at the beginning of the evaluation period were effectively and meaningfully carried out.

Added Value: Whether the subject position added value to the retirement process in all areas of administration. Added value can be measured (but not limited) in areas such as financial, administrative efficiency, member services and internal and external communication.

Strategic Plan: Whether the subject position's actions are consistent with the Strategic Plan and whether the Strategic Plan is being meaningfully implemented.

After the Committee meets regarding performance review and compensation, the Committee will draft a memorandum with its recommendation regarding the disposition of the subject position to the full Board of Retirement for approval.

The Retirement Board Chair at his/her discretion may appoint Retirement Board members or staff to any standing or ad hoc committee as the Chair deems necessary.

1.8. POLICY PROCEDURE AND PRACTICE

In governing administration matters the following hierarchy is established in order of priority.

- A. Federal Law
- B. State Law
- C. Local ordinances and resolutions when not in conflict with higher laws
- D. StanCERA Bylaws
- E. Policies and procedures formally adopted by the Retirement Board
- F. Informal policies and procedures
- G. Practice

1.9. INDEPENDENT OPERATIONS

StanCERA is a separate legal entity from Stanislaus County and is governed by the Retirement Board. California Constitution provides that the Retirement Board has the full responsibility and authority to invest StanCERA member retirement funds and provide necessary services in administering retirement benefits as provided in the 1937 Act, and as adopted in multiple employer-employee agreements. To fulfill the mission of StanCERA, the Retirement Board hires staff, contracts with investment managers, hires consultants, adopts an administrative budget, purchases goods and services and adopts administrative policy.

To save the time and effort of establishing its own set of Personnel Policies and tracking labor laws (and in accordance with California State law), the Retirement Board hires staff who are Stanislaus County employees. This means that in general and in most instances, these staff will be treated (hired, paid, promoted, demoted, retired or fired) the same as other Stanislaus County employees in like classifications. However, given that StanCERA staff provide services to a variety of public agencies and administer retirement benefits, staff are not subject to mandates from the Board of Supervisors or its agents that would interfere with or otherwise supercede the delivery of those services. To that end this Statement of Independent Operation acknowledges that from time to time, the Retirement Board may act to overrule or set aside a personnel decision or action that emanates from Stanislaus County personnel authority involving staff hired by the Retirement Board or its Executive Director. In matters of retirement benefit administration, the Retirement Board shall have final say in its handling of staff. The Retirement Board has and will continue to utilize Stanislaus County Personnel staff to handle recruitments and Stanislaus County payroll with its contingent of payroll-related items such as: extra help, Personal Services Contracts, leave time and termination cash out payments, retirement benefits, Social Security coverage, deferred compensation program, group health insurances, unemployment insurance, long term disability, workers compensation insurance, professional development, employee assistance program, cafeteria plan cash out, auto allowance and mileage reimbursement the same as other Stanislaus County employees.

The Retirement Board has used and will continue to use its hired investment consultant to aid in its decision on specific investment managers to hire, their performance and possible termination as well as providing education on investments.

The Retirement Board has used and will continue to use a variety of special consultants and attorneys.

Since fiscal year 2003-2004, the administrative budget for StanCERA has been approved and monitored solely by the Retirement Board. While the budget includes costs for Stanislaus County services through the Stanislaus County's cost allocation plan (CAP), these services are approved for payment since they support the staff in its mission to provide the promised retirement benefits. These costs include data processing services, staff payroll services, check processing services, postage and mail delivery services and other supportive services. The Retirement Board intends on continuing its use of Stanislaus County services as needed. These services may include but are not limited to banking; staff payroll; check writing; postage metering and handling; purchasing cards; general liability and workers compensation; telecommunications; some data processing services; some Purchasing services; and security, utilities and other building maintenance and service costs associated with the condominium space at the 12th Street office. While StanCERA may not utilize Stanislaus County services 100% like that of a Stanislaus County Department (such as special or lower cost printing obtainable from a private vendor), StanCERA intends on continuing its use of and payment for the above listed services. StanCERA will not pay for general Stanislaus County costs to the extent that it does not receive services for such costs (for example a cost associated with maintaining the Chambers or other meeting room which the Retirement Board or staff do not utilize).

1.10 Administration of Executive Director Position, Investment Classification and other Executive Level Staff

Specifically regarding the position of Executive Director, future investment positions and any other executive level classifications, the Board of Retirement shall have full control over the creation, assessment and disposition of these positions, including salary, and will administer and achieve this control using the processes currently in place at the County. It is understood that the processes used to achieve this control should not be limited to the administration of existing executive level County classifications, as StanCERA, from time to time, may need to create and administer other executive level classifications that do not currently exist. The County Retirement Board will continue to work with County Personnel to ensure that any other County classifications used by StanCERA in the administration of the retirement plan are properly structured within the County's salary and position guidelines.

Article 1 amended 07/13/2005 Article 1 amended 12/04/2007 Article 1 amended 03/25/2008 Article 1 amended 11/23/2010

ARTICLE 2 – MEETINGS

2.1. REGULAR MEETINGS

Regular meetings of the Retirement Board shall be held on the second Wednesday of each month to focus on administrative and benefit issues; and on the fourth Tuesday of each month to focus on investment issues. If circumstances are such that only one regular meeting is scheduled within a certain month, all issues within the Retirement Board's jurisdiction will be addressed at that meeting. All regular meetings shall be held at 2:00 p.m. on the aforementioned days in the Wesley W. Hall Board Room located on the sixth floor of 832 12th Street, Modesto, California, unless changed by the chair and proper notice given by the Executive Director.

2.2. SPECIAL MEETINGS

Special meetings of the Retirement Board may be scheduled at any time by the chair of the Retirement Board or any five (5) members of the Retirement Board. The Executive Director shall publicly post and give each Retirement Board member the minimum notice required by the Ralph M. Brown Act.

2.3. PERSONS ATTENDING MEETINGS

All meetings of the Retirement Board shall be open to the public except as to closed sessions permitted by law.

2.4. RULES OF ORDER

ROBERT'S RULES OF ORDER shall guide the Retirement Board in its proceedings except as otherwise provided herein or in the 1937 Act. The chair shall have a vote on all questions and motions and shall not be required to relinquish the chair in order to participate in discussions. The chair shall not make or second a motion. The order of business shall include:

- A. Roll call
- B. Consent items (e.g., approval of minutes & retirements)
- C. Presentations to the Retirement Board
- D. Closed Session
- E. Executive Director
- F. Committee Reports and Recommendations
- G. Correspondence
- H. Member's forum for future agenda items
- I. Adjournment

The Retirement Board Chair may make changes in the above order at his or her discretion.

2.5. QUORUM

Five (5) members of the Retirement Board shall constitute a quorum. No business may be transacted without a quorum.

No motion may be passed without a majority of the quorum voting affirmatively.

2.6. CORRESPONDENCE

All correspondence to the Retirement Board must be in writing and received by the Executive Director two (2) weeks prior to any regularly scheduled Retirement Board meeting to appear on the Retirement Board agenda.

2.7. MINUTES

The Executive Director shall cause to be recorded in the minutes the time and place of each meeting, the name of each Board member present, a summary of official actions taken by the Retirement Board, and such other information that will concisely reflect each meeting's content. The minutes shall be presented for Retirement Board approval at its next regular meeting. Such minutes, shall be signed by the Executive Director, approved as to form by legal counsel, and shall become a part of the Retirement Board's permanent record.

2.8. COMPENSATION OF MEMBERS

Pursuant to Government Code Sections 31520.5 and 31521, those members (appointed by the Board of Supervisors

StanCERA Bylaws and the retiree representative) shall be eligible to receive the maximum allowance per meeting of the Retirement Board or meeting of a committee for not more than the maximum meetings allowed per month.

Article 2 amended 12/04/2007 Article 2 amended 11/23/2010

ARTICLE 3 - MEMBERSHIP

3.1. MEMBERSHIP DEFINED

Membership shall be as defined by the 1937 Act as supplemented by these Bylaws.

3.2. PROVISIONS FOR MEMBERSHIP

Every employee of Stanislaus County or of any district included in StanCERA who is appointed to a permanent full-time position as specified in the ordinances of Stanislaus County or of the included districts shall become a member of StanCERA. Employees hired prior to October 1, 1988, became members on the first day of the calendar month after entrance into service. Employees hired on or after October 1, 1988, shall become members on the date of hire.

3.3. CONTRACTING DISTRICTS

Whenever any contracting district is required to make an additional appropriation pursuant to Government Code Section 31627.6 for the purpose of paying for a member's service with the district prior to the district's joining StanCERA, the district may be allowed to make the additional appropriation by periodic payments over a period of time not to exceed thirty (30) years.

3.4. WAIVER BY EMPLOYEES OVER SIXTY (60)

An employee of Stanislaus County or of any district included in StanCERA appointed to a permanent full-time position who is age sixty (60) or over at time of entry may waive the StanCERA membership requirement pursuant to Government Code Section 31552.

3.5. EXCLUSIONS

Temporary, seasonal, intermittent, part-time employees, and independent and personal service contractors are excluded from membership in StanCERA.

3.6. ENROLLMENT QUESTIONNAIRE

Every member of StanCERA shall file a sworn enrollment questionnaire showing that member's date of birth, date of hire, position, classification (general or safety) and the compensation received. The questionnaire shall be in the form provided by StanCERA. Every member shall submit with the enrollment questionnaire proof of the member's date of birth within ninety (90) days of hire. If a proper questionnaire with proof of birth is not filed within ninety (90) days of hire, the rate of contribution shall be based on the highest age for the member's retirement tier and classification. When the questionnaire is filed or proof of age is submitted to the Executive Director, the normal age rates will be applied and excess contributions shall not be refunded to the member. The following documents will be acceptable for proof of birth:

- A. Any one (1) of the following:
 - 1. Infant baptismal certificate
 - 2. Census record
 - 3. School age record
 - 4. Naturalization certificate
 - 5. A photocopy of a Certified copy of a birth certificate
 - 6. Passport
 - 7. Alien registration card with photograph
- B. Any two (2) of the following:
 - 1. Marriage record if date of birth is shown
 - 2. Military record
 - 3. Child's birth certificate showing date of birth of member
 - 4. Affidavit by older relative
 - 5. Hospital birth record

3.7. PROOF OF MARRIAGE

A. Every member, at the time of retirement, shall submit a copy of a certified proof of marriage or registered domestic partnership and an affidavit that the marriage continues if a designated beneficiary is the spouse or registered domestic partner, and the option pursuant to Section 31760, et seq., of the Government Code is elected.

B. Every applicant for a spousal continuance based upon a death of a member may be required to submit an affidavit that the marriage continued up until the time of death of the member.

3.8. BENEFICIARY PROOF OF BIRTH

Every member, at the time of retirement, shall submit a certified proof of birth of all designated beneficiary or beneficiaries selected pursuant to the exercise of an option contained within Section 31760, et seq., of the Government Code.

3.9. CORRECTION OF DATE OF BIRTH

If the Executive Director determines that the member's date of birth should be corrected on the records of StanCERA, the Executive Director shall make such correction. In the event of such a correction, other than the failure to submit proof of birth, StanCERA shall refund excess contributions plus interest to the member or shall require additional contributions plus interest from the member. StanCERA may make any other adjustments to the member's benefits in order to best carry out the purposes of the 1937 Act and to provide benefits based on the member's corrected date of birth.

3.10. PROOF OF DEATH

Every applicant, at the time of application for a death benefit or continuance, shall submit a copy of a certified final death certificate or a court decree establishing the fact of death.

3.11. NEW MEMBERSHIP

A. Any Tier III member who, at the time he or she elected to become a Tier III member, was Safety Eligible, shall be entitled, at the member's option, to redeposit all contributions and interest which would have normally accrued without election to become a Tier III member. Upon full redepositing of contributions and interest in a single lump-sum payment, said member shall be reinstated to a retirement plan/tier in accordance with applicable law and local agreements.

B. Any Tier III member who transfers to a Safety Eligible position shall be required to become a contributing member of the retirement system as of the date of the transfer to the Safety Eligible position. Any Tier III member whose position becomes Safety Eligible through law or collective bargaining process shall be required to become a contributing member of the retirement system as of the effective date of the legislation or negotiated agreement.

3.12. SPOUSE/REGISTERED DOMESTIC PARTNER

Wherever in the Bylaws the term "spouse" is used, this term shall also include registered domestic partners.

Article 3 amended 12/04/2007 Article 3 amended 11/23/2010

ARTICLE 4 - MEMBERS' CONTRIBUTIONS

4.1. CONTRIBUTIONS MADE IN ACCORDANCE WITH 1937 ACT

Contributions shall be made in accordance with the 1937 Act and these Bylaws.

4.2. CONTRIBUTIONS MADE ON REGULAR COMPENSATION

Normal and cost-of-living contributions shall be made on the compensation earnable of the employee.

4.3. PARTIAL CONTRIBUTIONS PROHIBITED

Partial contributions are prohibited.

4.4. WITHDRAWAL ON TERMINATION

A member who is terminating membership may withdraw accumulated contributions pursuant to Section 31628 of the Government Code. The Retirement Board, pursuant to Section 31628 of the Government Code, hereby orders that payment may be withheld for a period not to exceed six (6) months after the date of separation. For the purposes of this section, "termination" means the member has not been paid for a minimum of two (2) full consecutive pay cycles immediately following termination and is not on StanCERA employers' payroll at the time of refund.

Pursuant to Government Code Section 31527 (d), members who receive a refund of the member's contributions can receive a lower amount than the full "regular interest" credited on the member's contributions due to a withdrawal charge up to the amount of the interest credited to the member's contributions after the effective date of this regulation.

4.5. REFUND TO DEFERRED MEMBERS

A deferred member shall, upon written request, receive a refund of contributions as follows (pursuant to Government Code Section 31701):

- A. If not covered under provisions of a reciprocal retirement system, upon receipt of request for refund;
- B. If covered under provision of a reciprocal retirement system, upon receipt of request for refund and certification of termination of membership in such reciprocal system.

4.6. RATE OF INTEREST DECLARATIONS

See Excess Earnings Policy.

4.7. MEMBER'S CONTRIBUTIONS REFUND POLICY

The contributions, which a member pays to StanCERA, are non-refundable except as explicitly provided in the Government Code. No refund of any member's contributions shall be made while the member receives a retirement allowance from StanCERA.

4.8. BUY BACKS AND REDEPOSITS

A. A member may pay for a buy back in installments on a "period for period" basis, or double the number of pay periods being purchased, but not to exceed five (5) years and all buy backs must be completed prior to retirement. (Pursuant to Government Code Section 31641.2)

- B. For purposes of Article 4 of these Bylaws, a benefit enhancement or allowable conversion of service time will be treated the same as a buy back.
- C. In the event of the death of a member prior to retirement, but before completing a buy back, the member's beneficiary shall have 120 days after the date of death of the member to complete the buy back as provided in Government Code Section 31485.7.

4.9. ROLLOVERS AND TRUSTEE-TO-TRUSTEE TRANSFERS

A member may use rollovers or trustee-to-trustee transfers to purchase permissive service credit.

- A. Rollovers and trustee-to-trustee transfers of pre-tax monies will be accepted from the following:
 - 1. Traditional IRA's
 - 2. Government 457 Deferred Compensation Plans, if a direct rollover or trustee-to-trustee transfer
 - 3. Qualified 401(a) plans, if direct rollover or trustee-to-trustee transfer

- 4. Qualified 401(k) plans, if direct rollover or trustee-to-trustee transfer
- 5. Stanislaus County-sponsored PARS plan, if direct rollover or trustee-to-trustee transfer
- 6. 403 (b) plans
- 7. Roth IRA
- B. The following types of rollovers and/or trustee-to-trustee transfers will not be allowed:
 - 1. Indirect Rollover from a 457 Governmental Plan
 - 2. Indirect Rollover from a qualified 401(a) plan
 - 3. Indirect Rollover from a qualified 401(k) plan
 - 4. Keogh Plans
 - 5. Partial distributions from any account, which contains both pre-tax and post-tax monies
 - Any other type of rollover, either direct or indirect, or trustee-to-trustee transfer not specifically noted in 4.9(a) above
- C. Non-members are not eligible to rollover, transfer or buy back any amounts except as expressly authorized in the 1937 Act.

4.10. DOCUMENTATION REQUIRED

It shall be incumbent upon the member to provide acceptable documentation on the suitability of any rollover or trustee-to-trustee transfer. The Executive Director shall have final determination on acceptable documentation.

4.11. IRS LIMITATIONS

All rollovers, whether direct or indirect, or trustee-to-trustee transfers, shall be in accordance with appropriate IRS rules and limitations, including IRC 415 limitations on contributions, Social Security wage base for Tier 6 members, salary and future benefits.

4.12. REMEDIES FOR ERRORS

The Executive Director may take whatever action deemed necessary to correct any errors which are deemed to violate Federal or State laws, or IRS code, rules or regulations including but not limited to refunding buy back amounts, repayment of excess transfers or rollovers, or reduction of the amount of service credit purchased and collection of overpayments in lump sum or by reducing a retiree's monthly allowance by no more than ten percent (10%) (or a higher amount if approved by retiree) after adjusting the allowance prospectively to the corrected monthly amount. Interest in monthly payment amount shall only be added if the reduction in allowance is insufficient to pay back to StanCERA amounts owed in less than one (1) year. For ongoing errors, corrections shall only be made from the cessation of the error back (retrospectively or retroactively) four (4) years.

4.13. REMEDIES FOR MEMBER'S REGULAR PAYROLL CONTRIBUTION ERRORS

Whenever the Executive Director finds that there is an error in a member's contribution amount(s) from the regular payroll contributions, the Executive Director shall correct the error by either refunding to the member (and/or employer if the employer pays member contributions on behalf of the member) any overpayment that was made to StanCERA or collecting any underpayment from the member (and/or employer if the employer pays member contributions on behalf of the member).

Overpayments to StanCERA can be corrected by making an immediate offset in the next payroll cycle of the amount of overpayment back to the member (and/or employer).

Underpayments shall be collected in like manner and over the same time period as the error has occurred. For example: If StanCERA staff find that a member should have contributed \$60 per payroll period, but the member only contributed \$50 per payroll period for six payroll periods, then the member's contributions will be increased to \$70 per payroll period (the corrected amount of \$60 plus the underpaid amount of \$10 per payroll period) for six (6) payroll periods.

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If the error is for a period of longer than one (1) year, semi-annual interest shall be added at the declared rate by the Retirement Board that is in effect at the start of the collection of the amount(s) necessary to correct the member's contributions.

Upon termination--Section 31628.
Upon recision of deferred status--Section 31701.
Upon transfer to STRS--Section 31565.
Upon cancellation of a disability allowance--Section 31737.
Upon death--Sections 31781, 31760.1, 31700.11, 31761.
Upon a non-County employer's withdrawal--Section 31564. Article IV Amended 08/26/03
Article 4 amended 12/04/2007
Article 4 amended 11/23/2010

ARTICLE 5 - SERVICE RETIREMENT

5.1. APPLICATION

In addition to the provisions of the 1937 Act pertaining to service retirement, an application for service retirement shall be deemed complete when the following have been complied with:

A. Application has been made to the Retirement Board in care of the Executive Director.

B. All documents required by the 1937 Act and these Bylaws have been properly completed and submitted including: a certified proof of marriage or registered domestic partnership and affidavit of continuance thereof (if a spouse is nominated as the beneficiary), a certified proof of birth of the beneficiary; and social security number of the beneficiary.

C. If member has ever designated a spouse as a beneficiary and is no longer married to that spouse, the member must submit proof of division, non-interest regarding division of community property and/or death certificate in relation to StanCERA retirement benefits.

Pursuant to Government Code Section 31672, a member's retirement date cannot be effective earlier than the date the official retirement application is filed with the Retirement Board, and not more than 60 days after filing the application.

5.2. RETIREMENT BOARD APPROVAL REQUIRED

All service retirements will be approved by the Retirement Board pursuant to Government Code Section 31670.

5.3. ANNUITY CERTIFICATES

Prior to the first payment of the retirement allowance, each member shall be provided with a document indicating the amount of his retirement allowance for the unmodified and optional methods of payments. This document shall provide for the signature of the member indicating the member's choice as to the type of allowance desired and shall constitute the annuity certificate referred to in the 1937 Act.

Article 5 Amended 07/02/2002 Article 5 Amended 12/04/2007

ARTICLE 6 - SERVICE

6.1. SERVICE CREDIT

Credit shall be given for each period of regular service rendered by a member for compensation. Overtime hours are excluded from regular service. A fractional year of service shall be determined as follows:

- A. Monthly salaried employees on the basis of twelve (12) months per year.
- B. Per diem employees on the basis of two hundred sixty (260) days per year.
- C. Hourly employees on the basis of two thousand eighty (2,080) hours per year.
- D. Credit shall be given court reporters for each period of service for which a contribution is made to the retirement system.

No credit shall be given for more than one (1) year of service in any twelve (12) month period.

Article 6 Amended 07/02/2002 Article 6 Amended 12/04/2007

ARTICLE 7 - COMPENSATION EARNABLE

7.1. COMPENSATION EARNABLE

Computed pursuant to Government Code Section 31461.

Average compensation shall be defined as all pay including allowances and pay related to special skills, knowledge or shift work. Average compensation excludes overtime, bonuses, any specific reimbursement such as for travel or professional development and excludes leave accrual payments upon termination or in excess of maximum allowable in-service payments by the employer as stated in the Auditor-Controller's earnings table from which retirement contributions are made and as approved by the Board of Supervisors (or like pay for non-County employers). Average compensation for Tier 6 members shall be base pay only.

7.2. COURT REPORTERS

Court Reporters' compensation earnable shall be computed pursuant to Government Code Section 70047.1.

7.3. AVERAGE MONTHLY FINAL COMPENSATION

A. One-Year Average

Average monthly final compensation is computed as the member's compensation over a one-year period for Tiers 1, 4 and 5. This is 2,080 hours for members paid on an hourly basis and for members normally paid eighty (80) hours biweekly. Members who are paid biweekly but on hourly schedules other than eighty (80) hours biweekly will have their average monthly final compensation for a one-year period computed by taking the member's hourly schedule over consecutive twenty-six (26) biweekly pay periods based upon the member working the full schedule or the equivalent of such schedule. The monthly final average compensation will be the total of the above divided by twelve (12). Members who are paid on a semi-monthly basis will have their average monthly final compensation for a one-year period computed by taking the member's semi-monthly schedule over consecutive twenty-four (24) semi-monthly pay periods based upon the member working the full schedule or the equivalent of such schedule. Members who are paid on a monthly basis will have their average monthly final compensation for a one-year period computed by taking the member's monthly schedule over consecutive twelve (12) semi-monthly pay periods based upon the member working the full schedule or the equivalent of such schedule

B. Three-Year Average

Average monthly final compensation is computed as the member's compensation over a three-year period for Tiers 2,3 and 6. This is 6,240 hours for members paid on an hourly basis and for members normally paid eighty (80) hours biweekly. Members who are paid biweekly but on hourly schedules other than eighty (80) hours biweekly will have their average monthly final compensation for a three-year period computed by taking the member's hourly schedule over consecutive seventy-two (72) biweekly pay periods based upon the member working the full schedule or the equivalent of such schedule. The monthly final compensation will be the total of the above divided by thirty-six (36). Members who are paid semi-monthly will have their average monthly final compensation for a three-year period computed by taking the member's semi-monthly schedule over consecutive seventy-two (72) semi-monthly pay periods based upon the member working the full schedule or the equivalent of such schedule. Members who are paid monthly will have their average monthly final compensation for a three-year period computed by taking the member's monthly schedule over consecutive thirty-six (36) semi-monthly pay periods based upon the member working the full schedule or the equivalent of such schedule

Article 7 Amended 07/02/2002 Article 7 Amended 12/04/2007

ARTICLE 8 - AMENDMENTS AND REPEALS

8.1. AMENDMENTS

The Retirement Board may, as it deems necessary and desirable, by an affirmative vote of five (5) members, amend these Bylaws to be effective when approved by the Board of Supervisors of Stanislaus County.

8.2. REPEALS

All former Bylaws and amendments thereto are hereby repealed. The foregoing regulations become effective when approved by the Board of Supervisors as provided by Section 31525 of the Government Code.

8.3. BYLAWS REVIEW

The Bylaws shall be reviewed by a committee appointed by the Chair of the Retirement Board and revisions brought before the Board on or before December 31st at each odd year.

Article 8 Amended 07/02/2002

ARTICLE 9 - CLAIMS FOR DISABILITY RETIREMENT

9.1. DEFINITIONS

In this article, unless the context or subject matter otherwise requires:

- A. "Executive Director" means the StanCERA Retirement Administrator.
- B. "Applicant" means a person, Stanislaus County, a contracting district or other legally authorized entity claiming benefits, rights, or privileges under the County Employees Retirement Law of 1937, section 31450, et seq. of the California Government Code (hereinafter "the 1937 Act").
- C. "StanCERA" means the Stanislaus County Employees' Retirement Association.
- D. "Retirement Board" means the StanCERA Board of Retirement, which is StanCERA's governing body. Applications for disability retirement are evaluated and decided by the Retirement Board.
- E. "Party" means any person disclosed by the records of StanCERA or by an application to have an interest in the subject matter of an application, including the applicant and the subject employee in the event the application is filed on behalf of an employee.
- F. "Referee" means a person appointed by the Retirement Board to make a determination pursuant to Section 31533 of the Government Code. A referee may also be referred to as a "Hearing Officer".
- G. "Subject employee" means a member of StanCERA who either files an application for disability retirement on his or her own behalf or for whom an application is filed by another person, Stanislaus County, a contracting district, or other legally authorized entity.
- H. "Disability" or "disabled" means the subject employee's permanent physical and/or mental inability to substantially perform his or her usual job duties, with or without accommodations.
- I. "Accommodations" means an agreement by the subject employee's employer, either Stanislaus County or contracting district, to modify the regularly assigned duties and/or work environment as necessary to allow the subject employee to continue to work within the limitations established by medical evidence.
- J. "Pending" file status refers to an application which has been filed with the Executive Director's office but which cannot be processed because requisite documentation and/or information (e.g., medical records, medical reports, job descriptions, employer information, completed questionnaires, etc.) has not been received by the Executive Director's office.
- K. "Active" file status refers to an application, which has been filed with the Executive Director's office and for which the Executive Director's office has received all requisite documentation and/or information necessary to process it. A "pending" file becomes "active" as of the date on which the last requisite documentation and information is received by the Executive Director's office. Any time limits or file status dates will use the date the file becomes "active" as a reference date.

9.2. FILING AND AMENDMENT OF APPLICATIONS

A. A claim for disability retirement shall be made by filing with the Executive Director's office a completed application on a form approved by the Retirement Board for that purpose together with all information required in Section 9.3 of these Bylaws. Upon the filing of an application, the Executive Director shall serve the applicant with a copy of this article. Upon receipt of all requisite information and documentation, the Executive Director shall review and investigate the matter and issue a recommendation to the Retirement Board pursuant to the provisions of this article.

- B. If during the pendency of an application there is any change in any of the facts or claims set forth in the application, or any information submitted pursuant to Section 9.3 of these Bylaws, the applicant shall immediately file with the Executive Director's office and serve on all interested parties written notice of the change. Upon the filing of such notice with the Executive Director's office, the application shall be deemed amended accordingly.
- C. In the event that the applicant modifies the basis of his or her claim for disability benefits, or changes the application from a claim for non-service to a claim for service-connected disability benefits, the date of that applicant's active filing date will be amended to reflect the later date upon which the Executive Director's office receives the additional information or modified claim. Failing to file an accurate or fully complete application form or failing to timely amend an already active application form may, at the discretion of the Retirement Board or referee, preclude the applicant from asserting or introducing evidence of the omitted or changed fact(s) or claim(s).

D. An applicant may file an application for non-service-connected disability benefits and/or service-connected disability benefits. If the applicant files an application for service-connected disability benefits only and the Retirement Board finds that the subject employee is disabled, but not on a service-connected basis, upon application the subject employee, if eligible, shall be retired for non-service-connected disability.

9.3. DOCUMENTS TO BE COMPLETED AND FURNISHED BY APPLICANT

A. The following documents must be furnished to the Executive Director's office by the applicant in connection with the initial application.

- 1. Completed Application for Disability Retirement.
- 2. Responses to Disability Retirement Questionnaire, signed under penalty of perjury.
- 3. Duly executed authorizations for release of employment/workers' compensation information, medical information, and, if applicable, psychiatric information.
- 4. Completed Treating Physician's Statement.
- 5. Copies of all medical records for the last five (5) years.
- 6. Copies of all medical records, regardless of the date, relating to the disability.
- 7. All workers' compensation records and reports on the disability.
- 8. All vocational rehabilitation documents relating to the disability, including all documents and records regarding modified work, or job accommodations offered by Stanislaus County or contracting district.
- 9. All other relevant medical reports and other relevant evidence the applicant would like the Retirement Board to consider.
- 10. Statement signed under penalty of perjury by the applicant that the materials provided are all the materials available in relation to the claim for disability benefits.

The responses on the Disability Retirement Questionnaire shall be provided under penalty of perjury, and the applicant shall sign and attach to his or her responses, the signature page which StanCERA provides with the Questionnaire. If the responses are not returned with the appropriate signature page, they shall be deemed not to have been filed and shall be returned to the applicant with additional instructions.

- B. At any time during the pendency of an application, the Executive Director, the Retirement Board, or counsel for the Executive Director may, by written notice to the applicant, request that the applicant serve within thirty (30) days, or such further time as may be designated, any or all of the following items:
 - 1. Additional copies of all pertinent medical records and reports.
 - 2. Copies of all other documents upon which the applicant relies in support of the application.
 - 3. A narrative physician's report of the subject employee's current medical condition.
 - 4. Sworn written responses to written questions concerning any matter which is either relevant to the subject matter of the application or is reasonably calculated to lead to the discovery of evidence which would be admissible at hearing including, without limitation, the subject employee's medical history, employment history, current medical condition, and current employment status.
- C. The Executive Director and/or the Executive Director's counsel may, in their sole and complete discretion, independently obtain copies of some or all of the applicant's medical records, employment records, and other relevant documents. However, in no event shall the applicant be relieved of his or her strict obligation to file and/or furnish to the Executive Director's office all medical records and necessary documents described in this section 9.3. StanCERA shall bear the costs incurred by the Executive Director and/or the Executive Director's counsel in independently obtaining copies of relevant documents. The applicant shall bear the costs he or she incurs in obtaining copies of documents filed and/or furnished by him or her in connection with the application.

9.4. MEDICAL AND PSYCHIATRIC EXAMINATIONS

A. At any time during the pendency of an application, the Executive Director, the Retirement Board, or counsel for the Executive Director may, by written notice to the applicant (and to the subject employee if the application was filed on behalf of the employee), request that the subject employee submit within thirty (30) days, or such further time as may be designated, to one or more medical examinations by physicians designated by the requesting party at the times and places specified in the notice of the examination(s). As used in this article, the words "medical" and "physician" include, without limitation, duly licensed medical doctors, osteopathic doctors, psychologists, chiropractors, and other legally recognized practitioners of the healing arts.

B. StanCERA shall bear the fees charged by the examining physician(s) in connection with any examination conducted pursuant to this section. Notwithstanding the foregoing, in the event the subject employee fails to timely appear for a duly noticed medical examination, he or she shall be liable for any cancellation fee or other fee charged by the physician in connection with the subject employee's failure to appear. In the event the subject employee is thereafter granted disability benefits, such cancellation fee may be charged against said benefits.

9.5. DISCOVERY AVAILABLE

In addition to any form of discovery available pursuant to this article, at any time during the pendency of the application, any interested party shall be entitled to any of the discovery procedures prescribed by the Code of Civil Procedure, provided that such discovery is limited to the subject matter of the application. All forms of discovery authorized by this article, and all remedies and procedures related thereto, shall be available in conjunction with any disability re-evaluation under Government Code Section 31729.

9.6. APPLICANT'S FAILURE TO FURNISH DOCUMENTS, INFORMATION, OR FAILURE TO SUBMIT TO MEDICAL EXAMINATION

A. If the applicant and/or the subject employee fails or refuses to comply with any request pursuant to section 9.3 within the time provided, or if the requesting party deems that a further response is required, or if the subject employee fails or refuses to appear for any medical examination pursuant to section 9.4 or fails or refuses to cooperate with an examining physician, or if the applicant and/or the subject employee otherwise fails or refuses to comply with any discovery request, the requesting party may move the Retirement Board for an order to compel compliance with the request.

- B. Such a motion shall be made by filing with the Retirement Board and serving on all interested parties a copy of the written request and proof of service thereof, a copy of the response, if any, and a statement of the facts and arguments supporting the motion. Upon the filing of such a motion, the Executive Director or the Executive Director's counsel shall set a hearing thereon either before the Retirement Board or a referee and serve all interested parties with notice thereof. Said motion shall be heard no sooner than 30 days after notice thereof is served on all interested parties. No later than five (5) days before the date set for hearing, any interested party may file and serve written opposition to the motion. After hearing the motion, the Retirement Board or referee shall rule thereon and serve notice of its order on all interested parties.
- C. If the applicant and/or the subject employee fails or refuses to obey an order of the Retirement Board or referee made pursuant to this section, the Retirement Board may upon the further motion of the requesting party (notice of which shall be given pursuant to paragraph 9.6.B., above) take any further action which it determines to be just and reasonable, including, but not limited to, precluding the applicant and/or the subject employee from asserting or introducing evidence of specified facts or claims, deeming specified facts or claims to be admitted, or dismissing the application with or without prejudice.

9.7. DOCUMENTS AND INFORMATION TO BE FURNISHED BY EMPLOYER

At any time during the pendency of an application, the Executive Director, the Retirement Board, or counsel for the Executive Director may issue a written request to the subject employee's department head, supervisor(s), coworkers, personnel department or the risk management department seeking information regarding the subject employee's job duties, illness or injury and other pertinent data. The department head or other designated person(s) shall provide, or direct the provision of, the necessary data in written form to the requesting party within ten (10) days of receipt of the request.

9.8. COMMUNICATION WITH INDIVIDUAL RETIREMENT BOARD MEMBERS

The members of the Retirement Board act as judge and jury in all disability retirement hearings. As such, once an application for disability benefits is filed, communications between individual Retirement Board members and interested parties or their representatives concerning any issue pertaining to the application, are forbidden until such time as the Retirement Board issues its final written decision. Any violation of this section may result in the Retirement Board member being found ineligible to participate in any discussion regarding the application, or to vote on the disability application.

9.9. RIGHT TO COUNSEL

A. Any applicant is entitled, at his/her/its expense, to be represented by legal counsel at any and all stages of the proceedings. If the applicant decides to retain legal counsel, he/she/it must immediately file, with the Executive Director's office, a written notice designating his/her/its counsel and providing the name, address and telephone number of said counsel. Absent such written designation, StanCERA is not obligated to recognize any party claiming to represent an applicant.

B. In all matters pertaining to disability retirement, the Executive Director is entitled to be represented by legal counsel chosen by the Retirement Board. In addition, the Retirement Board shall be entitled to representation by legal counsel of its choosing.

9.10. STIPULATIONS OF OTHER ENTITIES NOT BINDING

No stipulation, agreement, understanding, act or omission on behalf of the County of Stanislaus or on behalf of a contracting district by an officer, employee, or agent of the County of Stanislaus or of a contracting district in a worker's compensation or any other proceeding to which neither the Retirement Board nor StanCERA is a party, shall be binding upon the Retirement Board or StanCERA insofar as such stipulation, agreement, understanding, act or omission may be asserted to relate to disability retirement or the disposition of a particular application for disability retirement, unless such stipulation, agreement, understanding, act or omission has previously been approved by the Retirement Board through a duly adopted motion which has been recorded in the official minutes of the Retirement Board. The provisions of this section shall not be deemed to constitute a new policy, but rather a formalization and continuation of an existing unwritten policy, which has been in effect during the life of StanCERA.

9.11. ADMINISTRATIVE RECOMMENDATION

A. After reviewing the application and all other documents and information obtained in connection therewith and conducting any necessary investigation, the Executive Director shall make an appropriate recommendation to the Retirement Board. The recommendation may consist of one or more of the following:

- 1. "Grant service-connected disability retirement" where the Executive Director determines that the applicant has proved by a preponderance of the evidence all the elements legally necessary to entitle the subject employee to service-connected disability retirement.
- "Deny service-connected disability retirement" where the Executive Director determines that the applicant has clearly failed to establish one or more of the elements legally necessary to entitle the subject employee to serviceconnected disability retirement.
- 3. "Grant non-service-connected disability retirement" where the Executive Director determines that the applicant has proved by a preponderance of the evidence all elements legally necessary to entitle the subject employee to non-service-connected disability retirement.
- 4. "Deny non-service-connected disability retirement" where the Executive Director determines that the applicant has clearly failed to establish one or more of the elements legally necessary to entitle the subject employee to non-service-connected disability retirement.
- 5. "Refer for hearing" where the Executive Director determines that there is substantial evidence to support the disability claim, but the evidence does not, in the Executive Director's opinion, prove by a preponderance of the evidence all the elements necessary to grant the disability claim.
- B. The Executive Director's recommendation to the Retirement Board shall be made at a Retirement Board meeting after placing the matter on the agenda of a Retirement Board meeting.

9.12. PROCEDURE UPON ADMINISTRATIVE RECOMMENDATION

With respect to each application for which the Retirement Board has received an administrative recommendation pursuant to section 9.11, the Retirement Board shall at the first meeting where the matter properly appears on its agenda take the following action or any other action that the Retirement Board may deem appropriate: grant the disability retirement; deny the disability retirement; remand the application to the Executive Director for further investigation; or refer any or all issues for hearing.

9.13. REQUEST FOR HEARING

Whenever the Retirement Board denies an application for service-connected or non-service-connected disability retirement without a hearing, the applicant shall, upon request, be entitled to a hearing before the Retirement Board, or before a referee appointed by the Retirement Board. Any such request for hearing shall be in writing and shall be

made within thirty (30) days after notice of the Retirement Board's action denying the application is mailed by certified or registered mail to the applicant or to his or her counsel if the applicant is represented by counsel. A request for hearing shall be deemed made on the date mailed if mailed by certified or registered mail, on the date postmarked if mailed by first class mail and actually received by StanCERA, or on the date actually received by StanCERA, whichever is earlier.

9.14. SETTING FOR HEARING

A. If the Retirement Board determines that a matter is to be set for hearing, the matter shall be heard by a referee unless the Retirement Board moves to hear the matter itself. If the Retirement Board determines that the matter shall be heard by a referee, the Executive Director shall notify Executive Director's counsel who shall promptly schedule a hearing, taking into consideration the availability of a qualified referee, the availability of witnesses for the parties, and any other matter necessary and appropriate for the hearing. The Executive Director's counsel shall give written notice of the date, time and place of the hearing to all interested parties at least 30 days in advance of the scheduled hearing, unless otherwise stipulated by all interested parties.

B. The Executive Director shall maintain a list of retired judges or qualified, licensed attorneys who are approved by the Retirement Board and who are available to serve as hearing referees. The Executive Director shall appoint the referee for each hearing by determining which person on the list served last and selecting the person next in order. In the event

the person next in order declines to serve as referee or is unavailable to serve within a reasonable period of time, the Executive Director shall appoint the person on the list next in order. The notice of hearing shall include the identity of the person appointed as referee. Any interested party may promptly object in writing to the appointment of a particular referee. If said written objection is not filed with the Executive Director's office at least 10 days prior to the date first set for hearing, any such objection shall be waived. In the event such objection is timely filed, the Executive Director shall appoint as referee the person next in order on the referee list.

- C. Upon stipulation by the interested parties or upon a showing of good cause, the referee or the Retirement Board may continue a hearing to a new date.
- D. The party requesting the continuance shall bear all costs relating to the continuance unless good cause is shown to the referee or to the Retirement Board. Such costs include, but are not limited to, referee fees, court reporter fees, witness fees, and any other costs, fees and expenses incurred by the Retirement Board, by anyone on behalf of StanCERA or by any other interested party as a result of the continuance.

9.15. HEARING PROCEDURES

A. Every hearing shall be reported by a certified shorthand reporter.

- B. At any hearing, any interested party may be represented by legal counsel, at his/her/its own cost.
- C. The referee or, with respect to hearings before the Retirement Board, the Chairman or the Chairman's designee, shall exercise such control over the hearing as is reasonable and necessary including, but not limited to; setting a new date, time, and place of the hearing; prescribing the order of proof; ruling upon the admissibility of evidence; questioning witnesses; and determining whether the matter shall proceed or be adjourned subject to continuation.
- D. Except as otherwise provided in this article, any relevant evidence shall be admitted if it is the sort of evidence on which reasonable and responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objections in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in and of itself to support a finding unless it would be admissible over objection in civil actions.
- E. Oral evidence shall be taken only on oath or affirmation.
- F. On any relevant matter, each interested party shall have the right to call and examine witnesses, introduce documentary and other physical evidence, and cross-examine opposing witnesses. Any interested party who does not testify on his own behalf may be called and examined as a witness as if under cross-examination.
- G. Refusal of the applicant or subject employee to submit to examination or to answer relevant questions shall be grounds for considering such questions for the purpose of that hearing to be answered in a way unfavorable to the refusing party.
- H. The production of medical evidence in the form of written reports is favored. Such reports should include the following:

- 1. A history of the subject injury or illness;
- 2. The subject employee's prior and subsequent medical history;
- 3. The subject employee's current subjective complaints;
- 4. The findings upon examination;
- 5. The nature and extent of disability;
- 6. The anticipated nature and extent of further treatment or care;
- 7. Whether or not the subject employee has a disability, which permanently incapacitates him/her from performing his/her usual and customary job duties, and the basis for that opinion, including the specific job duties for which he/she is incapacitated and the specific medical conditions, which so incapacitate him/her.
- I. Any interested party may offer, and the Retirement Board or referee shall receive into evidence, medical records and reports, provided that copies of the said documents have been served on all other interested parties at least fifteen (15) days prior to the hearing along with written notice of intention to offer the said documents into evidence. Any other interested party may subpoena the author of such a medical report or record as a witness and examine him/her as if under cross-examination.
- J. Any interested party may offer and the referee or Retirement Board shall receive into evidence the written statement of any non-medical witness provided that:
 - 1. It is made by affidavit or by declaration under penalty of perjury; and,
 - 2. A copy has been served on all interested parties at least fifteen (15) days prior to the hearing along with notice of intention to offer the same into evidence.
- K. Any interested party may offer and the Retirement Board or referee shall receive into evidence the deposition of any witness subject to the objections available under Code of Civil Procedure Section 2025.010 et seq., notwithstanding that the deponent is not "unavailable as a witness" within the meaning of Section 240 of the Evidence Code, and no exceptional circumstances exist if:
 - 1. The deposition was taken in the manner provided for by law or by stipulation of the parties; and
 - 2. At least fifteen (15) days prior to the hearing the proponent of the deposition delivered to all interested parties notice of intention to offer the same into evidence. Any interested party upon receiving such notice may subpoena the deponent and, if he does so, at the discretion of the Retirement Board or referee, either the deposition may be excluded from evidence or the deposition may be admitted and the deponent may be further cross-examined by the party who subpoenaed him/her.
- L. For the purposes of this Article, "service" of a document or notice may be accomplished manually or by mail in the manner provided by section 9.21. If delivery is by mail, the times prescribed in this Article for delivery of documents and notices shall be increased by five (5) days.

9.16. DECISION OF THE REFEREE

- A. When a hearing is held before a referee, the referee shall prepare in writing proposed findings of fact and a recommended decision and reasons therefore.
- B. Within forty-five (45) days after the matter is submitted, the referee shall file with the Executive Director's office his or her proposed findings of fact and recommended decision, which shall include those documents received into evidence. Simultaneously therewith, he or she shall serve the proposed findings of fact and recommended decision on all interested parties. The referee shall not be entitled to remuneration for his services until the aforesaid documents have been filed and served. For the purposes of this section, a matter is considered "submitted" on the last day of the hearing, unless the referee for good cause orders otherwise.
- C. In the absence of good cause, as determined by the referee, any post hearing briefs or other pleadings shall be filed with the Executive Director's office and served on the referee and on all interested parties within 20 days of the last day of the hearing. The filing of post hearing briefs shall not extend the date the matter is submitted.

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D. Upon the service of the referee's proposed findings of fact and recommended decision, the interested parties shall have ten (10) days to submit objections thereto by filing the same with the Retirement Board and serving the same on all interested parties whereupon the said objections shall be incorporated in the record to be considered by the Retirement Board.

9.17. ACTION BY THE RETIREMENT BOARD UPON REFEREE'S DECISION

- A. Upon receiving the proposed findings of fact and recommendation of the referee, the Retirement Board may:
 - 1. Approve and adopt the proposed findings and recommendation of the referee; or
 - 2. Require a transcript or summary of all the testimony plus all other evidence received by the referee. Upon the receipt thereof, the Retirement Board shall take such action as in its opinion is indicated by such evidence; or
 - 3. Refer the matter back with or without instructions to the referee for further proceedings; or
 - 4. Set the matter for hearing before itself. At such hearing the Retirement Board shall hear and decide the matter as if it had not been referred to a referee.
- B. Upon approving and adopting the referee's decision or any subsequently modified decision thereof, the Retirement Board shall comply with Subsection 9.18.(C).

9.18. HEARINGS BEFORE THE RETIREMENT BOARD

A. Five (5) members of the Retirement Board constitute a quorum for the making of any decision at a hearing held pursuant to the provisions of this Article. No findings of fact or decision by the Retirement Board shall be valid unless:

- 1. A majority of all members present; or
- 2. Four (4) members, whichever is greater, concur therein.
- B. When a hearing is held before the Retirement Board, the Retirement Board shall, no later than the second regular meeting following the meeting at which the matter is submitted, determine all material issues and shall incorporate such determinations in a written decision and findings of fact.
- C. Within ten (10) days following the date the Retirement Board renders its decision and findings of fact, the Retirement Board shall serve all interested parties with a copy of the same together with a notice of the right to judicial review of the Retirement Board's decision as set forth in Section 9.20 below.

9.19. DATE OF FINAL DECISION AND NOTICE THEREOF

The decision of the Retirement Board shall be final on the date notice thereof is mailed to the subject employee by first class mail, postage prepaid, including a copy of the affidavit or certificate of mailing. A copy of the decision along with the affidavit or certificate of mailing shall simultaneously be mailed to the applicant, if other than the subject employee, and to all other interested parties and their respective counsel.

9.20. JUDICIAL REVIEW OF THE RETIREMENT BOARD'S DECISION

Judicial review of final retirement decisions shall be subject to Code of Civil Procedure Section 1094.6. This section has been made applicable by the Retirement Board for StanCERA and the County Board of Supervisors. Following each final decision, the Executive Director shall include in the notice of decision a statement substantially as follows: "The time within which judicial review of this decision must be sought is governed by Code of Civil Procedure section 1094.6, which has been made applicable to StanCERA by the Retirement Board and the Stanislaus County Board of Supervisors. Generally, any petition or other paper seeking judicial review must be filed in the appropriate court not later than the ninetieth (90th) day following the date on which this decision becomes final. Judicial review of a final decision is reviewable pursuant to Code of Civil Procedure section 1094.5 only if the petition for writ of mandate made pursuant to Code of Civil Procedure section 1094.06 is filed within the time limits specified in latter section."

9.21. SERVICE OF NOTICE

A. Unless otherwise provided by these Bylaws or by statute, where the provisions of this Article require service of a notice, demand, request, or other written communication, service shall be made on the party on whom service is required unless the said party has filed notice of representation by counsel in which case service shall be made upon counsel of record for that party.

B. Where the provisions of this Article require service on "interested parties," such service shall be made on the Executive Director, on all interested parties who have appeared in the subject proceedings, and on all interested parties who have not appeared in such proceedings and have filed a request to be served with documents which are served and filed in

such proceedings. Pursuant to Government Code section 31532, unless otherwise ordered by a court of competent jurisdiction or necessary for the processing of an application, sworn statements and individual records of members shall not be disclosed by StanCERA.

- C. Unless otherwise provided in these Bylaws or by statute, the service of all notices, orders, requests, and other written communications which are not personally served shall be effected by sealing the same in an envelope properly addressed to the party to be served and depositing the envelope in the United States mail with first class postage fully prepaid, and any applicable time limitations shall be extended in the manner prescribed by Code of Civil Procedure Section 1013.
- D. For purposes of determining the effectiveness of service on an applicant or subject employee, correspondence shall be deemed "properly addressed" if it bears the address specified on the application, or, if the application has been amended, the address specified on the most recently-filed amended application.

Article 9 Amended 12/04/2007 Article 9 Amended 11/23/2010

ARTICLE 10 - CLAIMS FOR BENEFITS, RIGHTS, OR PRIVILEGES OTHER THAN DISABILITY RETIREMENT

10.1. PURPOSE

The purpose of this article is to provide a procedure for acting upon applications for rights, benefits, and privileges other than applications for disability retirement under the 1937 Act to the end that applications can be expeditiously processed with a minimum lapse of time and that, when a hearing is required by law, the Applicant will have notice of the hearing and an opportunity to appear before the Retirement Board and present his or her case.

10.2. FILING AND AMENDMENT OF APPLICATIONS

A. A claim for rights, benefits, and privileges other than applications for disability retirement shall be made by filing with the Retirement Board a completed application on a form approved by the Retirement Board for that purpose together with all facts, information, and documentation supporting such claim. Upon the filing of such an application, the Retirement Board shall serve the Applicant with a copy of this article and forward the application to the Executive Director for the Executive Director's review, investigation, and recommendation pursuant to the provisions of this article.

- B. If during the pendency of an application there is any change in any of the facts or claims set forth in the application, the Applicant shall immediately file with the Retirement Board and serve on all interested parties written notice of the change. Upon the filing of such notice with the Retirement Board, the application shall be deemed amended accordingly.
- C. Failure to accurately and fully complete or timely amend an application may delay its processing or, in the discretion of the Retirement Board or referee, preclude the Applicant from asserting or introducing evidence of the omitted or changed fact(s) or claim(s).

10.3. FURTHER INFORMATION TO BE FURNISHED BY APPLICANT

A. At any time during the pendency of an application, the Executive Director, the Retirement Board, or the counsel for StanCERA may by written notice to the Applicant request that the Applicant serve within thirty (30) days or such further time as may be designated any or all of the following items: copies of all pertinent records and reports, copies of all other documents upon which the Applicant relies in support of the application, and sworn written responses to written inquiries concerning any matter which is either relevant to the subject matter of the application or is reasonably calculated to lead to the discovery of evidence which would be admissible at hearing including, without limitation, the subject employee's medical history, employment history, current medical condition, and current employment status.

B. With respect to any request pursuant to Subsection 10.2.(A), if the Applicant or subject employee fails or refuses to respond within the time allowed for response or if the propounding party deems a further response to be required, the propounding party may move the Retirement Board for an order to compel compliance with the request. Such a motion shall be made by filing with the Retirement Board and serving on all interested parties a copy of the written request and proof of service thereof, a copy of the response, if any, and a statement of the facts and arguments supporting the motion. Upon the filing of such a motion, the Executive Director shall set a hearing thereon either before the Retirement Board or a referee and serve all interested parties with notice thereof. No later than five (5) days before the date set for hearing, any interested party may file and serve written opposition to the motion. After hearing the motion, the Retirement Board or referee shall rule thereon and serve notice of the ruling on all interested parties. If the Applicant or subject employee fails or refuses to obey an order of the Retirement Board or referee made pursuant to this subsection, the Retirement Board may take any further action upon the noticed request of any interested party which it determines to be reasonable and just including, but not limited to, precluding the Applicant from asserting or introducing evidence of specified facts or claims, deeming specified facts or claims to be admitted, or dismissing the application with or without prejudice.

Nothing in this Section shall be construed to limit the right of any interested party to seek judicial review of action taken by the Retirement Board or referee pursuant to this Section.

10.4. ADMINISTRATIVE RECOMMENDATION

A. Upon review of the application and information submitted by the Applicant, and all other relevant material, the Executive Director shall make one of the following recommendations to the Retirement Board:

- 1. "Grant claim for benefits:" where the Executive Director determines from all available information that there is no substantial conflict with respect to the facts necessary to grant an application for benefits, rights, or privileges.
- 2. "Refer for hearing:" where the Executive Director is unable to find from all available information the necessary conditions to recommend granting a claim for benefits, rights, or privileges. At any time prior to hearing, the Executive Director may in accordance with the standards set forth in Subsection 10.4 withdraw his recommendation to refer to hearing and recommend that the claim for benefits, rights, or privileges be granted, and the Retirement Board may act thereon in the manner prescribed in Section 10.5.of this article.

- 3. "Deny claim for benefits" where the Executive Director determines from all available information that there is no substantial evidence to support the facts necessary to grant such a benefit.
- B. The Executive Director's recommendation to the Retirement Board shall be made at a regular meeting of the Retirement Board after placing the matter on the agenda of a Retirement Board meeting.

10.5. PROCEDURE UPON ADMINISTRATIVE RECOMMENDATION

With respect to each application for which the Retirement Board has received an administrative recommendation pursuant to Section 10.4, the Retirement Board shall at the first meeting where the matter properly appears on its agenda take the following action or any other action that the Retirement Board may deem appropriate:

- A. If the administrative recommendation is "grant claim for benefits," the Retirement Board may either grant such a claim or refer all issues for hearing.
- B. If the administrative recommendation is "refer for hearing," the Retirement Board may either refer all issues for hearing or remand to the Executive Director for further investigation.
- C. If the administrative recommendation is "deny claim for benefits", the Retirement Board may either deny such benefit, grant such benefit, or refer all issues to hearing.

10.6. SETTING FOR HEARING

A. If the Retirement Board determines that a matter is to be set for hearing, the matter shall be heard by a referee unless the Retirement Board moves to hear the matter itself. If the Retirement Board determines that the matter shall be heard by a referee, the Executive Director shall notify Executive Director's counsel who shall promptly schedule a hearing, taking into consideration the availability of a qualified referee, the availability of witnesses for the parties, and any other matter necessary and appropriate for the hearing. The Executive Director's counsel shall give written notice of the date, time and place of the hearing to all interested parties at least 30 days in advance of the scheduled hearing, unless otherwise stipulated by all interested parties.

- B. The Executive Director shall maintain a list of retired judges or qualified, licensed attorneys who are approved by the Retirement Board and who are available to serve as hearing referees. The Executive Director shall appoint the referee for each hearing by determining which person on the list served last and selecting the person next in order. In the event the person next in order declines to serve as referee or is unavailable to serve within a reasonable period of time, the Executive Director shall appoint the person on the list next in order. The notice of hearing shall include the identity of the person appointed as referee. Any interested party may promptly object in writing to the appointment of a particular referee. If said written objection is not filed with the Executive Director's office at least ten (10) days prior to the date first set for hearing, any such objection shall be waived. In the event such objection is timely filed, the Executive Director shall appoint as referee the person next in order on the referee list.
- C. Upon stipulation by the interested parties or upon a showing of good cause, the referee or the Retirement Board may continue a hearing to a new date.
- D. The party requesting the continuance shall bear all costs relating to the continuance unless good cause is shown to the referee or to the Retirement Board. Such costs include, but are not limited to, referee fees, court reporter fees, witness fees, and any other costs, fees and expenses incurred by the Retirement Board, by anyone on behalf of StanCERA or by any other interested party as a result of the continuance.

10.7. PRE-HEARING PROCESS

A. The Executive Director shall schedule a date for the hearing. The Retirement Board or referee may upon stipulation by the interested parties or showing of good cause continue a hearing to a new date. The party requesting the continuance shall bear all costs relating to the continuance unless good cause is shown to the Retirement Board.

- B. Within thirty (30) days of the date of the hearing, the Applicant shall provide a copy of all documents and writings, which the Applicant proposes to introduce at the hearing to the Executive Director, and the Executive Director shall provide a copy of documents and writings that the Executive Director intends to introduce at the hearing to the Applicant. Any interested party may request a pre-hearing conference. The Applicant or the Executive Director may set a pre-hearing conference by serving all interested parties with written notice of the conference at least fifteen (15) days in advance. Such conferences shall be attended by all interested parties and their counsel.
- C. Any interested party shall at any time after filing of the application be entitled to undertake discovery in the form of requests for admissions, interrogatories or depositions in the manner prescribed by the Code of Civil Procedure provided that such discovery is limited to the matters set forth in the application.
- D. Formal discovery shall be limited to those procedures provided in this Article and the 1937 Act except as otherwise stipulated between the parties or as authorized by the Retirement Board or referee upon a showing of good cause.

10.8. HEARING PROCEDURES

- A. Every hearing before a referee shall be reported by a certified shorthand reporter, and every hearing before the Retirement Board shall be electronically recorded.
- B. At any hearing, any interested party may be represented by legal counsel.
- C. The referee or, with respect to hearings before the Retirement Board, the Chairman or the Chairman's designee, shall exercise such control over the hearing as is reasonable and necessary including, but not limited to, prescribing the order of proof; ruling upon the admissibility of evidence; ordering medical examinations; requiring that additional relevant evidence be gathered and presented; questioning witnesses; and determining whether the matter shall proceed or be adjourned subject to continuation.
- D. Except as otherwise provided in this article, any relevant evidence shall be admitted if it is the sort of evidence on which reasonable and responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objections in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in and of itself to support a finding unless it would be admissible over objection in civil actions.
- E. Oral evidence shall be taken only on oath or affirmation.
- F. On any relevant matter, each interested party shall have the right to call and examine witnesses, introduce documentary and other physical evidence, and cross-examine opposing witnesses. Any interested party who does not testify on his own behalf may be called and examined as a witness as if under cross-examination.
- G. Refusal of the Applicant or interested party to submit to examination or to answer relevant questions shall be grounds for considering such questions for the purpose of that hearing to be answered in a way unfavorable to the refusing party.
- H. Any interested party may offer and the Retirement Board or referee shall receive into evidence the deposition of any witness subject to the objections available under Code of Civil Procedure Section 2025.010 et seq. notwithstanding that the deponent is not "unavailable as a witness" within the meaning of Section 240 of the Evidence Code and no exceptional circumstances exist if:
 - 1. The deposition was taken in the manner provided for by law or by stipulation of the parties; and
 - 2. At least thirty (30) days prior to the hearing the proponent of the deposition delivered to all interested parties notice of intention to offer the same into evidence. Any interested party upon receiving such notice may subpoen the deponent and, if he does so, at the discretion of the Retirement Board or referee, either the deposition may be excluded from evidence or the deposition may be admitted and the deponent may be further cross-examined by the party who subpoenaed him. These limitations are not applicable to a deposition admissible under the terms of Section 2025.010 of the Code of Civil Procedure.
- I. For the purposes of this Section, "delivery" of a document or notice may be accomplished manually or by mail in the manner provided by Subsection 10.14. If delivery is by mail, the times prescribed in this subsection for delivery of documents and notices shall be increased by five (5) days.

10.9. DECISION OF THE REFEREE

- A. Where a hearing is held before a referee, the referee shall prepare in writing proposed findings of fact and recommended decisions and reasons therefore.
- B. Within forty-five (45) days after the matter is submitted, the referee shall file with the Retirement Board his proposed findings of fact and recommended decision, which shall include those documents, received into evidence or rejected and shall serve the same on all interested parties. The referee shall not be entitled to remuneration for his services until the aforesaid documents have been filed and served.
- C. Within ten (10) days following the service of the referee's proposed findings of fact and recommended decision, any interested party may submit objections thereto by filing the same with the Retirement Board and serving the same on all interested parties.

10.10. ACTION BY THE RETIREMENT BOARD UPON REFEREE'S DECISION

Upon receiving the proposed findings of fact and recommended decision, the Retirement Board may:

- A. Approve and adopt the proposed findings and recommendations of the referee; or
- B. Require a transcript or summary of all the testimony plus all other evidence received by the referee and thereupon take such action as in its opinion is indicated by such evidence; or
- C. Refer the matter back with or without instructions to the referee for further proceedings; or

D. Set the matter for hearing before the Retirement Board on a date within the next forty-five (45) days. At such a hearing, the Retirement Board shall hear and decide the matter as if it had not been referred to a referee.

10.11. HEARINGS BEFORE THE RETIREMENT BOARD

A. Five (5) members of the Retirement Board constitute a quorum for the making of any decision at a hearing held pursuant to the provisions of this Article. No findings of fact or decision by the Retirement Board shall be valid unless:

- 1. A majority of all members present; or
- 2. Four (4) members, whichever is greater, concur therein.
- B. When a hearing is held before the Retirement Board, the Retirement Board shall, no later than the second regular meeting following the meeting at which the matter is submitted, determine all material issues and shall incorporate such determinations in a written decision and findings of fact.
- C. Within ten (10) days following the date the Retirement Board renders its decision and findings of fact, the Retirement Board shall serve all interested parties with a copy of the same together with a notice of the right to judicial review of the Retirement Board's decision as set forth in Section 10.14 below.

10.12. DATE OF FINAL DECISION AND NOTICE THEREOF

The decision of the Retirement Board shall be final on the date notice thereof is mailed to the subject employee by first class mail, postage prepaid, including a copy of the affidavit or certificate of mailing. A copy of the decision along with the affidavit or certificate of mailing shall simultaneously be mailed to the applicant, if other than the subject employee, and to all other interested parties and their respective counsel.

10.13. JUDICIAL REVIEW OF THE RETIREMENT BOARD'S DECISION

Judicial review of the final retirement decisions shall be subject to Code of Civil Procedure Section 1094.6. This section has been made applicable by the Retirement Board and the Stanislaus County Board of Supervisors. Following each final decision, the Executive Director shall include in the notice of decision a statement substantially as follows: "The time within which judicial review of this decision must be sought is governed by Code of Civil Procedure section 1094.6, which has been made applicable to StanCERA by the Retirement Board and the Stanislaus County Board of Supervisors. Generally, any petition or other paper seeking judicial review must be filed in the appropriate court not later than the ninetieth day following the date on which this decision becomes final. Judicial review of a final decision is reviewable pursuant to Code of Civil Procedure section 1094.5 only if the petition for writ of mandate made pursuant to Code of Civil Procedure section 1094.06 is filed within the time limits specified in latter section."

10.14. SERVICE OF NOTICE

A. Unless otherwise provided by these Bylaws or by statute, where the provisions of this Article require service of a notice, demand, request, or other written communication, service shall be made on the party on whom service is required unless the said party has filed notice of representation by counsel in which case service shall be made upon counsel of record for that party.

- B. Where the provisions of this article require service on "interested parties," such service shall be made on StanCERA, on all interested parties who have appeared in the subject proceedings, and on all interested parties who have not appeared in such proceedings and who have filed a request to be served with documents which are served and filed in such proceedings. Pursuant to Government Code section 31532, unless otherwise ordered by a court of competent jurisdiction or necessary for the processing of an application, sworn statements and individual records of members shall not be disclosed by StanCERA.
- C. Unless otherwise provided by these Bylaws or by statute, the service of all notices, orders, requests, and other written communications which are not personally served shall be effected by sealing the same in an envelope properly addressed to the party to be served and depositing the envelope in the United States mail with first class postage fully prepaid, and any applicable time limitations shall be extended in the manner prescribed by Code of Civil Procedure Section 1013.
- D. For purposes of determining the effectiveness of service on an Applicant, correspondence shall be deemed "properly addressed" if it bears the address specified on the application, or, if the application has been amended, the address specified on the most recently-filed amended application.

Article 10 Amended 12/11/2002 Article 10 Amended 12/04/2007 Article 10 Amended 11/23/2010

ARTICLE 11 - SUBPOENAS

11.1. SUBPOENAS

The Retirement Board, the Executive Director or the Referee may issue a subpoena or subpoena duces tecum in accordance with the provisions of Government Code Section 31535. The applicant or counsel for any party may request that a subpoena be issued by the Retirement Board, the Executive Director or the Referee for purposes related to the members' application. The applicant shall bear all costs related to subpoenas issued at the request of the applicant or their counsel.

Subpoenas shall be signed by the Chair of the Retirement Board, the Secretary of the Retirement Board, the Executive Director or the Referee.

Amended 12/11/2002 Amended 03/22/2005

ARTICLE 12 - Article 12

Reviewed and No Amendments Made 12/11/2002 Repealed on 12/04/2007

ARTICLE 13 - Article 13

Repealed on 12/05/2006 - See Retiree Health Allowance Policy

ARTICLE 14 - CONTINUING EDUCATION AND DUE DILIGENCE VISITATIONS

14.1. NEED FOR A POLICY

In order for the Retirement Board to make prudent and responsible decisions, as required by Government Code Section 31595, the Retirement Board adopts the following policy on continuing education and due diligence visitations.

14.2. ESTABLISHMENT OF LIST AND EVALUATION OF CONTINUING EDUCATIONAL SEMINARS AND CONFERENCES

It is the Retirement Board's desire to further educate themselves and staff through a review of information attained at continuing educational seminars and conferences, and also establish an attendance list of worthwhile continuing education sponsors. To this end, the attending representatives of the Retirement Board will:

- A. Provide a summary report to the full Retirement board of information and knowledge obtained at such gathering, which is considered by that person to be of benefit to StanCERA;
- B. Provide a recommendation as to the worthiness of the information that was presented;
- C. Provide a recommendation as to future participation.

14.3. EDUCATIONAL REQUIREMENT

The Retirement Board establishes the following guidelines regarding the Education requirements for its Retirement Board members:

- A. Recommend new trustees attend at least one (1) of the following within their first three-year term:
 - 1. Principles of Pension Management, Stanford University
 - 2. Modern Investment Theory and Practice for Retirement Systems, U. C. Berkeley
- B. All Board members must attend at least one (1) of the following within each of their three-year terms:
 - 1. CALAPRS
 - 2. NCPERS
 - 3. SACRS
 - 4. Other Board approved event
- C. It is expected that each Board member attend thirty-six (36) hours of pension related training but at least a minimum of twenty-four (24) hours as required by PEPRA legislation.
- D. The Education Committee will be responsible for monitoring the Retirement Board members educational hours earned and determining the allowable credit hours for all conferences or seminars attended.

14.4. DUE DILIGENCE VISITATIONS OF MONEY MANAGEMENT FIRMS AND CONSULTANTS

It is the Retirement Board's desire to conduct on-site due diligence visitations of money management firms and consultants which are currently retained or which the Retirement Board is considering. To this end, the Due Diligence Committee* will:

- A. Conduct on-site due diligence visitation to at least two (2) of the investment management firms each calendar year so that each firm is visited no less than once in three (3) years. The initial due diligence visit made before or upon hiring of an investment management firm will count as a regular due diligence visit;
- B. Conduct on-site due diligence visitations of the money management and consulting firms under consideration for retainment by the Retirement Board;
- C. Conduct on-site due diligence visitation to at least one (1) non-investment management firm each calendar year (e.g., investment consultant, custodian or actuary) with the goal of visiting each firm once every five (5) years.
- D. As part of the due diligence process in retaining a money management firm, consultants or actuary, there will be no acceptance of entertainment, travel, hotel or other type of gifts by the Retirement Board members and staff from a money manager, consultant or actuary under consideration for retainment.

For purposes of the above sections, meals are not considered a gift.

*Any other Retirement Board member may also participate in due diligence visits.

14.5. DUE DILIGENCE VISITATIONS OF REAL ESTATE PROPERTIES

It is the Retirement Board's desire to conduct on-site due diligence visitations of any real estate properties invested in by the Retirement Board. To this end, the Due Diligence Committee will:

Conduct on-site due diligence visitations of any real estate properties invested in by the Retirement Board. These on-site due diligence visitations will be scheduled at the Retirement Board's convenience and be conducted every two (2) years, unless the annual appraisal and/or quarterly review process requires immediate attention.

14.6. CONTINUING EDUCATION SEMINARS AND DUE DILIGENCE VISITATION REQUESTS POLICIES

All requests, by Retirement Board members and staff to attend continuing education seminars and conferences other than those sponsored by SACRS, CALAPRS, NCPERS or NAPPA will:

- A. Be discussed as a non-consent item on the Retirement Board agenda;
- B. Contain an agenda and supporting information on the pertinence and necessity of attendance or visitation;
- C. Identify the sponsors, if any;
- D. Contain specific information as to whether or not the Retirement Board member will be a speaker or panel participant;
- E. Contain specific documentation concerning the cost involved for attendance or visitation. The documentation will outline the costs borne by StanCERA and those borne by the sponsor. The cost borne by the sponsor will be subject to the Fair Political Practices Commission (FPPC). Any amount from a sponsor shall be given to StanCERA and not to any individual members;
- F. Contain a justification, if more than four (4) representatives of the Retirement Board, including staff, are to attend.

14.7. EDUCATION POLICY REPORTING REQUIREMENTS

StanCERA requires new members to educate themselves. The Internal Governance Committee will present an annual report to the Retirement Board regarding each members' efforts to educate themselves. The information will become a matter of public record, and will be posted on the StanCERA website.

14.8. DUE DILIGENCE REPORTING REQUIREMENTS

StanCERA requires the Due Diligence Committee to present a report following each visit made.

14.9. REIMBURSEMENT FOR TRAVEL EXPENSES RELATED TO EDUCATION AND DUE DILIGENCE VISITS

The Retirement Board recognizes that Retirement Board members and staff training as well as due diligence visits are necessary activities to insure that benefits are administered properly and assets are managed well. To that end, the following Travel Policy is established:

For any educational event or due diligence travel, all reasonable expenses related to the trip will be reimbursed or paid for by StanCERA. Reasonable expenses will include airfare, train fare, mileage (IRS approved rate using odometer readings or Stanislaus County Auditor-Controller mileage chart), ferry, toll bridge, parking, shuttle service, taxi service (including tip), hotel lodging, meals (including tips), necessary business phone calls, tips for portage, and other expenses that may occur which are incurred by the traveler for the approved travel. The traveler should present receipts for all items which are easily obtainable (such as lodging and meals) but may also claim amounts for such expenses as bridge toll, taxi service or tips for portage for which receipts are generally not given. The StanCERA business traveler must pay for any additional costs for a spouse or other fellow traveler who is not traveling on StanCERA approved business.

The Executive Director will review and approve the travel expenses for all Retirement Board members and other staff. A member of the Retirement Board will review and approve the travel expenses of the Executive Director. The disbursing agent for StanCERA, i.e. the Stanislaus County Auditor-Controller's Office, will allow for and pay the travel expenses of the Retirement Board members and staff that have been approved by either the Executive Director or member of the Retirement Board.

Article 14 amended 01/25/2005 Article 14 amended 12/08/2010

Historical Notes

Approved by the Board of Supervisors on September 27, 1988.

Amendment to Section 7.1. approved by the Board of Supervisors on March 14, 1989.

Amendment to Sections 9.4.(A), 9.6.(B), and 9.6.(C) approved by the Board of Supervisors on April 25, 1989.

Amendment to Sections 9.4.(A), 9.4.(B), 9.6.(C) and 9.7.(A) and deletion of Section 9.6.(D) approved by the Board of Supervisors on December 19, 1989.

Amendment to Section 1.5. approved by the Board of Supervisors on March 27, 1990.

Amendment of Section 1.2 by addition of Subsection (J) approved by the Board of Supervisors on October 2, 1990.

Addition of Section 3.11, (A), (B), and (C) approved by the Board of Supervisors on October 2, 1990.

Addition of Section 4.7. approved by the Board of Supervisors on March 26, 1991.

Amendment of Article 1, addition of Section 1.6 approved by the Board of Supervisors on April 27, 1993.

Addition of Article 13 (Sections 13.1 thru 13.7) approved by the Board of Supervisors on October 25, 1994.

Addition of Article 14 (Sections 14.1 thru 14.7) approved by the Board of Supervisors on April 2, 1996.

Amendment of Article 13 approved by the Board of Supervisors on November 6, 1996.

Revision of the Bylaws approved by the Board of Supervisors on August 18, 1998.

Amendment of Article 13 approved by the Board of Supervisors on September 29, 1998

Amendment of Article 2 approved by the Board of Supervisors on April 6, 1999

Amendment of Article 1 approved by the Board of Supervisors on August 31, 1999

Amendment of Article 13, Section 13.2, approved by the Board of Supervisors on December 21, 1999

Amendment of Article 1, Section 1.5, approved by the Board of Supervisors on October 31, 2000

Revision of the Bylaws approved by the Board of Supervisors on July 2, 2002

Revision of the Bylaws approved by the Board of Supervisors on December 11, 2002

Amendment of Article 2, Section 2.1, approved by the Board of Supervisors on December 5, 2006

Repeal of Article 13 on 12/05/2006 - See Retiree Health Allowance Policy

Revision of the Bylaws approved by the Board of Supervisors on December 4, 2007

Amendment of Article 1, Section 1.7, approved by the Board of Supervisors on March 25, 2008

Revision of the Bylaws approved by the Board of Supervisors on May 24, 2011



STANISLAUS COUNTY EMPLOYEES' RETIREMENT ASSOCIATION 832 12th Street, Suite 600 Modesto, CA 95354 P.O. Box 3150 Modesto, CA 95353-3150

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> 12/11/13 Item# 8.a.ii

For the Internal Governance Committee December 11, 2013

TO: Internal Governance Committee/Board of Retirement

FROM: Dawn Lea, Benefits Manager

- I. SUBJECT: Compensation Assessment Policy
- II. ITEM TYPE: Discussion and Action
- III. STAFF RECOMMENDATION: Recommend to the full Board of Retirement acceptance of the Compensation Assessment Policy
- IV. ANALYSIS: In January 2013, AB 340 and AB 197 (Public Employees' Pension Reform Act) was chaptered into law. These new statutes set the standard for pension formulas for new employees hired after December 31, 2012 and also included various aspects of pension administration and reform for existing employees hired prior to January 1, 2013.

Part of AB 340 added section 31542 to the Government Code. An excerpt from that section follows:

"The Board shall establish a procedure for assessing and determining whether an element of compensation was paid to enhance a member's retirement benefit."

This item is in response to that mandate. Attachment 1 lays out StanCERA's proposed Compensation Assessment Policy. Staff's intent in drafting this policy was not to get locked into a quantification of what may and may not be considered pension spiking. Staff realized that there may be unique underlying circumstances in each case that could go beyond a naive formulaic approach to determine whether spiking is present.

As such, the policy treats each determination on a case-by-case basis and relies on the following four principles to guide its decision:

- 1. Inconsistent use of special pay elements at or near the end of one's career
- 2. That frequency of the use of the elements over time appear to be random
- 3. Whether pay increases achieved at the end of one's career are typically normal for those job classifications
- 4. Whether those special pay elements were accumulated through work done on a voluntary basis or whether the work was employer directed

- V. RISK: None
- VI. STRATEGIC PLAN: Refine StanCERA's business and policy practices in ways that enhance stakeholder awareness, the delivery of member services and the ability of the Organization to administer the System effectively and efficiently.
- VII. ADMINISTRATIVE BUDGET IMPACT: Nominal increase in staff time required to monitor the new policy

Dawn Lea, Benefits Manager

Rick Santos, Executive Director

Stanislaus County Employees' Retirement Association

COMPENSATION ASSESSMENT POLICY

December 11, 2013



Purpose

The purpose of this policy is to establish fair and impartial guidelines to be used in determining if an element of compensation was paid during a member's highest final average salary period to enhance a member's retirement benefit.

Authority

Government code §31542 states that the Board of Retirement (Board) shall establish a procedure for assessing and determining whether an element of compensation was paid to enhance a member's retirement benefit.

Procedure

Upon application for retirement, StanCERA staff will perform a preliminary review of the member's final average salary period to determine if it includes elements of pay that could be used to enhance a member's retirement benefit.

If initially, the final average salary period appears higher than other similar periods of time, StanCERA staff will analyze the cause of the increase. StanCERA staff will rely on the following four principles to guide its decision:

- Inconsistent use of special pay elements at or near the end of one's career
- That frequency of the use of the elements over time appear to be random
- Whether pay increases achieved at the end of one's career are typically normal for those job classifications
- Whether those special pay elements were accumulated through work done on a voluntary basis or whether the work was employer directed

StanCERA acknowledges that there may be valid reasons for pay increases at the end of one's career. As a result, StanCERA will look at each situation on a case by case basis and consider all relevant facts.

As one example of the process, if the increase appears to be caused by the inclusion of specific elements of compensation, such as on call pay, shift differential, etc., a report of those specific elements of compensation will be used to compare the frequency of those elements of compensation during the final average salary period against other similar periods of time.

If the analysis indicates that specific elements of compensation have been routinely paid to the member during the review period at or near the same frequency as seen during the final average salary period, the final average salary will be used to determine the member's retirement benefits.

If the analysis indicates that an element of compensation was paid to enhance a member's retirement benefit, the member or the employer will be given the opportunity to present StanCERA evidence that the compensation was not paid for the purpose of enhancing the member's retirement benefit. The Executive Director will evaluate all evidence provided, and if in the opinion of the Executive Director, it still appears that an element of compensation was paid to enhance a member's benefit, he/she will deny the use of the elements in calculating the member's final average salary. If the member disagrees with the decision of the Executive Director, the member may request that the item be placed on the agenda of a future Administrative Board meeting for discussion and action by the Board of Retirement.

If the Board finds that the final average salary does not contain elements of compensation that were paid to enhance a member's benefit, the final average salary will be used to determine the member's retirement benefit.

If the Board finds that the final average salary contains elements of compensation that were paid to enhance a member's retirement benefit, those elements of compensation will not be allowed in the final average salary calculation and will not be used to determine the member's retirement benefit.

Upon final determination by the Board, that compensation was paid to enhance a member's retirement benefit, the Board shall provide notice of that determination to the member and employer. The member or employer may obtain judicial review of the Board's action by filing a petition for writ of mandate within 30 days of the mailing of that notice.

If any element(s) of pay, during the final average salary period, are still being evaluated at the time that the member's application would normally be processed for inclusion onto the retiree payroll, StanCERA will process the application, excluding the element(s) of pay in question, to avoid delay in the member receiving their first benefit payment. If, upon completion of the evaluation, it is determined that the element(s) of pay should have been included in the final average salary, StanCERA will recalculate the final average salary, including the additional element(s) of pay. The new benefit amount will begin with the next payroll process after the determination has been made and the retiree will receive a retro-active payment of the difference.

POLICY APPROVAL DATE: <u>December 11, 2013</u>

Prima Mortgage Investment Trust, LLC

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Stanislaus County Employees' Retirement Association 832 12th Street, Suite 600 Modesto, CA 95353-3150 Attn: Rick Santos, StanCERA Executive Director

Re: Prima Mortgage Investment Trust, LLC

Ladies and Gentlemen:

This letter agreement ("Side Letter") is written in connection with an investment by Stanislaus County Employees' Retirement Association ("Investor") in Prima Mortgage Investment Trust, LLC, a Delaware limited liability company (the "Fund"), pursuant to the Third Amended and Restated Limited Liability Company Agreement of the Fund, dated as of June 17, 2011, as amended from time to time (the "LLC Agreement"), and the Subscription Agreement (the "Subscription Agreement") between the Investor and the Fund. Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the LLC Agreement.

- 1. Most Favored Nation. Neither the Board of Directors of the Fund, Prima Capital Advisors LLC (the "Advisor"), nor the Fund (collectively, the "Fund Parties") has entered into any side letter or similar agreement with any investor in the Fund in connection with the admission of such investor to the Fund or otherwise (collectively, an "Other Side Letter"), on or prior to the date hereof, except as disclosed to Investor in writing on or prior to the date hereof. Investor will be given copies of any Other Side Letter entered into after the date hereof. If any one or more of the Fund Parties enter into an Other Side Letter with an existing or future investor in the Fund that has the effect of establishing rights or otherwise benefiting such investor in a manner more favorable in any respect to such investor (collectively, the "Additional Rights") than the rights and benefits established in favor of Investor by the LLC Agreement, the Subscription Agreement, this Side Letter, the Second Amended and Restated Investment Advisory and Management Agreement (the "IAMA") or any other document, instrument or agreement related to Investor's interest in the Fund (collectively the "Operative Documents"), then Investor shall promptly be given a copy of such Other Side Letter and shall automatically receive all of such rights and benefits in addition to the rights and benefits granted to Investor herein unless Investor elects otherwise by written notice to the Fund delivered within thirty (30) days of receipt by Investor of copies of such Other Side Letter.
- 2. <u>Investment Restrictions</u>. Investor shall receive advance written notice from the Board of Directors of any decision by the Board of Directors or Advisor to (a) approve any investment outside the United States, (b) cause the Fund to invest in a publicly traded security, or (c) invest more than 30% of the Fund's assets in REIT Fixed Income instruments.

- 3. Reserves. Reserves to be maintained by the Fund Parties in accordance with the LLC Agreement or otherwise shall not exceed 10% of the aggregate cash available for distribution. Upon establishing any such reserve, the Fund Parties shall provide quarterly reports to the Investor containing updates regarding the status of matters for which such reserves are being maintained.
- 4. Conflict of Interest; Allocation of Opportunities. The Board of Directors hereby agrees that it shall utilize its best efforts to avoid all conflicts of interest in the performance of services for the Fund. Any and all decisions that the Board of Directors is authorized to make under the LLC Agreement in its discretion or according to similar standards shall be made in all instances taking into full account the Board of Directors' fiduciary duties to the Members under the LLC Agreement and applicable law. The Board of Directors and Advisor shall address all conflicts of interest and the appearance thereof in the performance of services for the Fund in a manner consistent with their respective fiduciary duties. Upon Investor's reasonable request, the Advisor shall provide Investor with reports detailing the manner in which investment opportunities arising in the period covered thereby were allocated between the Fund and any other funds managed by the Advisor, the members of the Board of Directors and/or their Affiliates (collectively, "Related Parties"), and all of their other clients (together with the Related Parties, "Conflict Parties"). Whenever a Related Party engages in a transaction in a Fund investment directly or indirectly for the benefit of any Conflict Parties, the Advisor will allocate such opportunity among the Fund and any such Conflict Parties subject to, and in accordance with, the Advisor's Investment Allocation Policy and Procedures attached hereto (the "Allocation Policy"). Investor shall receive quarterly reports detailing the manner in which investment opportunities arising in the period covered thereby were allocated between the Fund and any Conflict Party. Any allocation of any such investment opportunity among the Fund and any Conflict Party that the Advisor does not intend to allocate in accordance with the Allocation Policy, and any amendments to the Allocation Policy, shall be submitted in advance to the Advisory Board for approval, or if there is no Advisory Board, to the Members. Investor shall receive copies of any amendment to the Allocation Policy, regardless of its materiality, promptly after such amendment is made.
- 5. Parallel Funds. The Board of Directors shall provide Investor advance written notice of the formation of any parallel funds or alternative investment vehicles. All transactions with respect to a given investment by the Fund, any parallel fund(s) and/or alternative investment vehicle(s) generally shall be made at the same time and on the same terms, provided, however that there may be differences due to differences in the tax, regulatory or similar circumstances of such parties.
- 6. <u>Conversion</u>. Investor shall receive prior written notice of any decision by the Board of Directors to convert the Fund into a "master-feeder" structure. No such conversion shall occur unless (a) the Fund is required to invest all or substantially all of its capital directly in the master fund, (b) all organizational and operational provisions of the master fund documents mirror the Operative Documents, (c) investors in the feeder fund have oversight and approval rights at the master fund level that mirror their existing rights at the Fund level (as modified by this Side Letter), and (d) any and all fees and carry with respect to the "master-feeder"

structure are not increased and are otherwise no different than as provided under the LLC Agreement in effect as of the date of this Side Letter.

7. Transactions With Portfolio Investments. The Board of Directors shall immediately notify Investor in writing of any transaction between the Fund, on the one hand, and any portfolio investment, on the other hand. Such notice shall include a description of the material terms of any such transaction(s), any fees charged in connection with such transaction, and a certification that such transaction is being entered into in good faith, at arms length and at rates that do not exceed those that might otherwise be available to the Fund on the open market.

8. <u>Fees and Expenses</u>.

- (a) The Operative Documents set forth all fees and compensation which the Board of Directors, the Advisor and their Affiliates are entitled to receive in connection with their services to the Fund, and the basis for reimbursement of all expenses incurred by the Board of Directors, the Advisor and any of its Affiliates. In addition, the Operative Documents disclose the terms on which the Board of Directors or Advisor may perform, or may retain any Affiliate to perform, additional services for the Fund. Any third party contracted by the Fund or the Fund Parties for the purpose of providing services to or for the benefit of the Fund shall be selected with reasonable care.
- (b) The Board of Directors shall provide Investor prompt written notice of any agreement by the Board of Directors, Advisor or any of their Affiliates to (i) waive any fees, or (ii) charge different fees in connection with the management of Fund assets, as well as the effect such waiver or modification has on the amount of the Management Fee payable by Investor. The Investor shall receive prompt written notice of any duplicate fees or expenses paid by the Fund to the Board of Directors, the Advisor and/or their Affiliates, as a result of the Board of Directors or the Advisor's relationship with their Affiliates.
- (c) The Advisor shall provide Investor with an annual budget for expenses covered by the fees described in the IAMA.
- (d) The Advisor shall provide Investor with a report of all fees earned by the Advisor from third parties.
- 9. <u>Distributions</u>. Notwithstanding anything to the contrary in Section 4.2 of the LLC Agreement, distributions shall be made to Investor no less frequently than quarterly.

- 10. Additional Fund Formation Activities. The Fund Parties will not commence any structuring or fundraising efforts without approval from the Advisory Board, or if there is no Advisory Board, advance written notice to and approval from a majority-in-interest of the Members. Additionally, the Fund Parties shall provide the Investor with advance written notice of any structuring or fund-raising efforts by a Fund Party or their Affiliates for any non-Fund related investment vehicle before the expiration of the Term, as well as such investment vehicle's strategy.
- 11. Other Activities. The Fund Parties will not engage in other investment and financial activities competitive with the Fund during the Investment Period. Investor shall receive advance written notice of any investment and financial activities by any of the Fund Parties that are competitive with the Fund. In the event of a notice pursuant to this paragraph, Investor shall have the right to redeem its interest in the Fund immediately, without restriction or penalty.
- 12. Changes to Investment Staff. Investor shall be provided with immediate notice of any changes to the investment staff, including the Chief Financial Officer, of the Advisor. In addition, in the event that the Investor receives notice that a principal of the Advisor has ceased to devote a substantial portion of his or her business time to the Fund, Investor shall have the right to redeem its interest in the Fund immediately, without restriction or penalty.

13. Co-Investments; Pooled Investment Vehicles

- (a) <u>Co-Investments</u>. With respect to all co-investment opportunities made available to others by any Fund Party, Investor shall be provided with advance written notice thereof including a description of the terms relating thereto, and a right of participation (on a pro rata basis) in such opportunity on the same terms and conditions as offered to others.
- (b) <u>Pooled Investment Vehicles</u>. The Advisor agrees that the Fund will not acquire any securities of or interest in any pooled investment vehicles, on a temporary basis or otherwise.
- 14. Ownership of the Advisor. The Advisor hereby confirms that Gregory A. White and Stephen K. Copulsky own at least 80% of the voting and economics of the Advisor.
- 15. Advisor Investment. The Advisor shall make any investments in the investments of the Fund solely through the Fund. Transfers disclosed to the Members pursuant to Section 10.4(c)(iv) of the LLC Agreement shall require approval from a majority-in-interest of the Members. If a transfer described in Section 10.4(c)(iv) is made without such approval, Investor shall have the right to redeem its interest in the Fund immediately, without restriction or penalty.
- 16. <u>Liquidation</u>. The Board of Directors agrees that, following a dissolution of the Fund, the Fund's liquidation shall be completed no later than twelve (12) months following the date of the Fund's dissolution.
- 17. Redemption Payments. Any Redemption Amount due to Investor pursuant to Section 8.13 of the LLC Agreement shall be paid to Investor no later than

days after Investor's redemption request. In the event that the Redemption Price is to be paid to the Investor in installments, such installments shall be paid to Investor within ____ days of the Fund receiving the applicable sale proceeds and interest shall accrue on such installments at a rate of ____%. Investor shall have the right to request and receive in-kind payment of the Redemption Amount within forty-eight (48) hours of such request. The Redemption Amount paid to Investor shall not be subject to any fees or withholding for reserves.

- 18. Suspensions. Investor's right to redeem its interest in the Fund shall not be suspended unless such suspension is due to an event outside of the control of the Advisor (such as a market break-down or lack of sufficient valuation information), such event is continuing and the Advisor notifies the Investor of such suspension immediately, specifying in detail the reason for suspension and the anticipated length of suspension. In the event that Investor's right to redeem is suspended due to illiquidity of the Fund's assets, such suspension shall be capped to twenty percent (20%) of the amounts requested by Investor to be redeemed. The Advisor will exercise its best efforts to eliminate any event or circumstance requiring suspension of Investor's redemption rights within sixty (60) days of occurrence. In no event shall Investor's right to redeem its interest in the Fund be suspended for more than ninety (90) days in the aggregate. In the event of any suspension, securities equal in value to the amount Investor has asked to redeem will be deposited by the Fund into a separate liquidation account on Investor's behalf, with the proceeds therefrom to be distributed to Investor in cash as such securities are liquidated following the termination of any suspension. Any and all expenses in connection with such liquidation account will be paid by the Fund.
- 19. <u>Notice of Breach</u>. The Board of Directors shall provide Investor with immediate written notice of (i) any breach of the LLC Agreement by a member of the Board of Directors or (ii) any breach of the IAMA by the Advisor.
- 20. <u>Termination For Cause</u>. The Board of Directors hereby confirms that the Fund may be dissolved upon the written consent of at least a majority-in-interest of the Members in connection with a breach of the LLC Agreement or for cause.
- 21. Removal of Directors. Notwithstanding Section 5.12 of the LLC Agreement, the Board of Directors hereby confirms that a director may be removed without cause upon the written consent of sixty-six and two-thirds-in-interest (66 2/3%) of the Members.
- 22. <u>No Mandatory Redemption</u>. The Board of Directors agrees that the Investor shall not be required to redeem its interest except for material violations of law. In such case, the Board of Directors shall provide Investor with at least thirty (30) days notice of such mandatory redemption and the opportunity to cure the basis for such mandatory redemption.
- 23. <u>Advisory Board</u>. If an Advisory Board is formed, Investor shall be entitled to appoint a representative of its choosing to the Advisory Board and Investor and its representative will be afforded all of the rights and benefits as an Indemnitee pursuant to the terms of the LLC Agreement in connection with any proceeding arising solely out of such Indemnitee's participation on the Advisory Board. The

Board of Directors shall provide Investor with the names of all other Members who have appointed or have the right to appoint representatives to the Advisory Board. The Board of Directors shall provide Investor with advance written notice of all Advisory Board meetings and minutes of the meetings of the Advisory Board, as well as copies of all other written documentation provided to the Advisory Board.

- 24. <u>Placement Fees</u>. The Fund Parties confirm that the Fund shall not pay any fees or costs to any placement agent or finder in connection with the Investor's admission to the Fund.
- 25. <u>Amendments</u>. The Fund shall provide true and correct copies of all amendments to the Operative Documents that are adopted by the Fund as soon as reasonably practicable after the adoption of such amendments. The Board of Directors shall also provide advance written notice to the Investor of any and all proposed amendments to any agreements between the Fund and any third party that are material.
- 26. <u>Votes.</u> In the event that Investor's vote, approval or consent for any action related to the Fund is sought, then Investor's failure to indicate its vote, approval or consent for the action or item at issue shall be deemed to be a vote against the action or item at issue. After submitting any action to Members for approval, the Board of Directors shall provide Investor with the vote record of all Members, indicating who voted for and against the action at issue.

27. Actions Against Fund Parties.

- A. The Fund Parties represent and warrant that (i) there are no actions, proceedings or investigations which have been threatened to be initiated or are pending before any court or governmental authority, including, without limitation, the Securities and Exchange Commission or any state securities regulatory authority, against any Fund Party or Affiliate, and (ii) during the five (5) years prior to the date hereof, none of the Fund Parties or Affiliates have been found liable for, nor settled, any such action, proceeding or investigation.
- B. The Fund Parties agree that should any such action, proceeding or investigation be initiated or threatened against any Fund Party or Affiliate, the Fund Parties shall notify the Investor within three (3) business days from the date of such event.

28. Limited Liability and Indemnification.

- A. Investor shall not be liable to any third party for any liability or other obligation of the Fund Parties or any of their Affiliates. Investor shall have no liability to the Fund or the Board of Directors for any amount other than Investor's Capital Commitment, as indicated in Investor's Subscription Agreement.
- B. Notwithstanding anything to the contrary in the Operative Documents, the Investor is an entity unauthorized by law from engaging in direct

indemnification. In addition to any and all limits on indemnification contained in the Operative Documents, indemnification rights shall not be available in situations involving a breach of any fiduciary duty. In no event shall the Fund have the authority to recall any distribution previously made to the Investor in order to satisfy any obligation of the Fund for indemnification. The Investor shall receive written notice of any advance of expenses in connection with any indemnification proceeding. The Board of Directors hereby confirms that indemnified parties shall be required to submit claims for indemnification to applicable insurance carriers before a claim is made against the Fund.

29. <u>Sovereign Immunity</u>. The Fund Parties acknowledge that the Investor reserves all immunities, defenses, rights or actions arising out of its sovereign status, including those under the Eleventh Amendment to the United States Constitution, to which it may be entitled. No provision of the Operative Documents, or any actions or omissions to act on behalf of the Investor or any representative or agent of the Investor, whether taken pursuant to an Operative Document, or prior to the entry by the Investor into the Fund, shall be construed as a waiver or limitation of such immunities, defenses, rights or actions.

30. Public Inspections; Reporting Requirements.

- (a) The Fund Parties hereby acknowledge that the Investor is a "public agency" subject to the provisions of the State of California Public Records Act (Cal. Govt. Code Sections 6250 et. seq.) (the "*Public Records Act*"), which provides generally that all records relating to a public agency's business, including but not limited to its investment in the Fund, constitute "public records or files," and are open to public inspection, disclosure and copying in the manner provided in the Public Record Act, unless specifically exempted under the Public Records Act.
- (b) The Fund Parties hereby acknowledge that the Investor is subject to the Ralph M. Brown Act (Cal. Govt. Code Sections 54950 et seq.) (the "*Open Meetings Act*"), which provides generally for open meetings for local legislative bodies.
- (c) In addition to the Public Records Act and Open Meeting Act, the Fund Parties hereby acknowledge that the Investor may also be subject to other various local and county ordinances and policies, which may also require public disclosure of certain information.
- (d) The Fund Parties further acknowledge and agree that the Investor constitutes a Public Plan Partner, and intends to disclose periodically the name of the Fund, the date the investment was made by the Investor in the Fund, the Capital Commitment of the Investor to the Fund, the amount of the Investor's cash drawn by the Fund, the amount of cash distributed to the Investor by the Fund, the market value of the Investor's investment in the Fund, and the net internal rate of return of the Fund. The Fund Parties consent in advance to such disclosures with respect to the Fund and agree that any such disclosure shall not constitute a breach of any Operative Document. The Fund Parties hereby represent and warrant that they shall not make any claim against the Investor if

the Investor makes available to the public any of the foregoing as well as any report, notice or other information the Investor receives from any Fund Party or Affiliate.

- (e) Notwithstanding the LLC Agreement, the Fund Parties shall furnish to the Investor, to the extent reasonably available, such additional information as the Investor may reasonably request in writing from time to time upon reasonable written notice as is necessary to (i) comply with the Investor's reporting requirements under all applicable laws, statutes, rules, regulations, ordinances, and policies, (ii) complete the Investor's tax or information returns, if applicable, and (iii) comply with any disclosure requirements of any governmental body, regulatory agency, official or authority having jurisdiction over the Investor.
- (f) The Fund Parties agree that they shall notify the Investor within three (3) business days from the date of any termination, resignation or replacement of the Fund's auditor or accountant.
- (g) The General Partner shall promptly provide to the Investor monthly estimates of Investor's capital account balance.
- 31. Tax Withholding. The Fund Parties acknowledge that the Investor, as a taxexempt entity under U.S. federal, state and local laws, has never been subject to, and is unlikely to be subject to, any tax withholding requirements of U.S. federal, state or local laws. Before withholding and paying over to any tax authority any amount purportedly representing a tax liability of the Investor, the Fund Parties will provide the Investor written notice of the claim of any U.S. or non-U.S. tax authority that such withholding and payment is required by law and provide the Investor the opportunity to contest such claim during any period, provided such contest does not subject the Fund to any potential liability to such taxing authority of any such claimed withholding and payment. If any such withholding is made by a Fund Party (or if any withholding of state or local taxes is made by a Fund Party), the Fund Parties agree to reasonably cooperate with the Investor if the Investor applies to obtain refunds of any amounts withheld with respect to the Investor, to the extent that the Investor has adequate legal standing to seek and obtain such refunds.
- 32. <u>UBTI Notice</u>. The Fund Parties hereby agree that they shall use their best efforts to not invest the assets of the fund in blocker corporations unless reasonably certain that direct investment in the applicable Fund investment would give rise to a material amount of unrelated business taxable income ("*UBTI*") for the Fund. Upon formation of any blocker corporation, the Fund Parties shall promptly notify Investor in writing of such formation. Such notice shall detail the investment or activity that is reasonably likely to generate UBTI and provide the Fund's estimate of the approximate amount of anticipated UBTI.
- 33. <u>Disclosure of Identity</u>. Neither the Fund nor the Fund Parties shall publicly disclose the identity of Investor as an investor of the Fund, without Investor's prior written consent. For the avoidance of doubt, the Fund and the Board of Directors shall be permitted to disclose, and Investor consents to the disclosure of, Investor's name and Investor's investment in the Fund (a) as required by law, legal process, regulation (including filings for federal, foreign and state securities

and other laws in connection with the offering of interests in and the making of investments by the Fund) or the rules of any self regulatory organization, as the Fund or the Board of Directors may reasonably deem advisable to establish compliance with any rules or regulations or the availability of an exemption therefrom or if such information is otherwise requested by a governmental agency, (b) to the legal counsel and independent accountants of the Fund, and (c) to other investors in the Fund as reasonably requested by other investors in the Fund.

- 34. <u>Independent Contractor</u>. It is understood and agreed that the Advisor, in the performance of work and services pursuant to the Operative Documents, shall act as and be deemed to be an independent contractor and not an employee of the County or Investor. It is further understood and agreed that neither the Advisor nor its officers, employees, agents or subcontractors shall obtain any right to retirement, workers' compensation or other benefits which accrue to County or Investor employees and the Advisor hereby expressly waives any claim it may have to any such right. The Advisor shall be responsible for payment of all of the Advisor's taxes, including without limitation federal, state and local income taxes and employment related taxes, arising out of the Advisor's activities.
- 35. Nondiscrimination. The Fund has adopted a non-discrimination in employment policy that is in compliance with applicable laws regarding discrimination on the basis of race, religion, creed, national origin, sex, marital status, sexual orientation, actual or perceived gender identity, or disability. In accordance therewith, the Advisor shall not in the performance of services for the Investor discriminate against any person on the basis of race, religion, creed, national origin, sex, marital status, sexual orientation, actual or perceived gender identity, or disability.
- Insurance Requirements. The Fund Parties, at their sole cost and expense, shall 36. procure and maintain for the duration of this Side Letter and the Investor's investment in the Fund, general liability insurance coverage with minimum limits of no less than ten million dollars (\$10,000,000) per occurrence and twenty million dollars (\$20,000,000) annual aggregate coverage; worker's compensation insurance coverage with minimum limits of no less than one million dollars (\$1,000,000) per accident; crime insurance coverage with minimum limits of no less than one million dollars (\$1,000,000) per accident; crime - computer theft insurance coverage with minimum limits of no less than one million dollars (\$1,000,000) per loss and one million dollars (\$1,000,000) annual aggregate coverage; employee dishonesty insurance coverage with minimum limits of no less than one million dollars (\$1,000,000) per loss and one million dollars (\$1,000,000) annual aggregate coverage; and errors and omissions insurance coverage with minimum limits of no less than five million dollars (\$5,000,000) per loss and five million dollars (\$5,000,000) annual aggregate coverage. The Fund Parties agree to maintain such insurance at all times during the term of the LLC Agreement and this Side Letter, and will provide the Investor with (a) annual confirmation of such coverage, (b) advance notification of any cancelation or reduction of such coverage and (c) prompt notification of any insurance claims made by a Member or other Person arising from, or in connection with, the

- performance of the services hereunder by any Fund Party, their agents, representatives, employees, subcontractors or other affiliates.
- 37. The Board of Director's Records. The Board of Directors shall maintain all documents and records which demonstrate performance under this Side Letter for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Side Letter. All such records or documents required to be maintained pursuant to this Side Letter or the LLC Agreement shall be made available upon written request by the Investor or its agents (including independent public accountants designated by the Investor), Secretary to the Investor, County Attorney, County Auditor, County Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to County or the Investor for inspection at the office of the Investor when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at the Fund's principal office.
- 38. Opinion of Counsel. The Fund and Board of Directors hereby confirm that the Investor may use its in-house counsel or outside counsel engaged by the Investor, including Hanson Bridgett LLP, to render any legal opinion required or permitted to be provided by the Investor.
- 39. Governing Law. This Side Letter shall be governed by the laws of the State of California, without regard to the provisions, policies or principals thereof relating to choice or conflict of laws. NOTWITHSTANDING SECTION 14.13 OF THE LLC AGREEMENT OR ANY OTHER PROVISION OF THE OPERATIVE DOCUMENTS THE FUND PARTIES ACKNOWLEDGE AND AGREE THAT THE INVESTOR HAS NOT WAIVED AND WILL NOT WAIVE ITS RIGHT TO A TRIAL BY JURY. ANY LEGAL ACTION OR PROCEEDINGS ARISING OUT OF OR RELATING TO THE OPERATIVE DOCUMENTS OR TRANSACTIONS CONTEMPLATED THEREBY MAY BE BROUGHT IN THE COURTS OF THE STATE OF CALIFORNIA, STANISLAUS COUNTY, OR OF THE UNITED STATES OF AMERICA FOR THE EASTERN DISTRICT OF CALIFORNIA AND EACH PARTY HERETO EXPRESSLY SUBMITS TO THE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS FOR THE PURPOSES THEREOF AND EXPRESSLY WAIVES ANY CLAIM OF IMPROPER VENUE AND ANY CLAIM THAT SUCH COURTS ARE AN INCONVENIENT FORUM. EACH PARTY HERETO HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH SUIT. ACTION OR PROCEEDINGS BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL. POSTAGE PREPAID TO ITS ADDRESS HEREIN OR IN THE OTHER OPERATIVE DOCUMENTS, SUCH SERVICE TO BECOME EFFECTIVE TEN (10) DAYS AFTER SUCH MAILING.
- 40. <u>Notices</u>. The Fund Parties covenant and agree that any notices, requests, demands, reports and other communications made pursuant to any Operative Document shall be sent to the Investor both (a) in accordance with such Operative Document, and (b) by e-mail transmission to retirement@stancera.org.
- 41. <u>Closing Documents</u>. Promptly after the Investor's purchase of an interest in the Fund, the Board of Directors shall provide the Investor's outside counsel, Hanson Bridgett LLP, 425 Market Street, 26th Floor, San Francisco, CA 94105, to the

attention of Scott C. Smith, copies of all closing documents (including, but not limited to, all legal opinions and side letters provided to any other investor in the Fund at such closing), and shall deliver to the Investor all original closing documents per the instructions attached to the Investor's Subscription Agreement. The Fund also shall deliver electronic copies of all closing documents to Kathy Herman at hermank@stancera.org.

- 42. <u>Effect</u>. This Side Letter supplements the Operative Documents and shall be binding upon and be solely to the benefit of each party hereto. In the event of a conflict between any Operative Document and this Side Letter, the terms of this Side Letter shall control. In no event shall this Side Letter become merged into, or superseded or cancelled by any Operative Document.
- 43. <u>Standard of Care</u>. As a fiduciary, the Board of Directors shall discharge each of its duties under the Operative Documents and this Side letter, and exercise each of its powers under the Operative Documents, with the competence, care, skill, prudence and diligence under the circumstances then prevailing and that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims, and in conformance with the California Constitution, Article XVI, Section 17 and California Government Code Sections 31594 and 31595, with Investor's Investment Guidelines, the California 1937 Act, California Government Code sections 6930 et seq., and all other applicable laws and regulations (the "Standard of Care"). The Fund Parties shall cause any and all of its officers, employees, agents, representatives, subcontractors and Affiliates to exercise the same Standard of Care.

44. Miscellaneous.

- (a) The Fund and the Board of Directors represent and warrant that the information contained in the Operative Documents, and all other documents otherwise delivered by the Fund or the Board of Directors to the Investor (each as amended or supplemented from time to time) does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances in which they are made, not misleading in connection with the organization of the Fund and the offer and sale of interests in the Fund.
- (b) Except as otherwise disclosed in the due diligence materials provided by the Fund to Investor (i) there are no actions, proceedings or investigations pending before any court or governmental authority, including, without limitation, the Securities and Exchange Commission or any state securities regulatory authority, against the Fund Parties or any of their Affiliates that claim or allege fraud, misrepresentation, breach of fiduciary duty, violation of any federal, state or other applicable securities law, rule or regulation, and (ii) during the five (5) years prior to the date hereof, none of the Fund Parties nor any of their Affiliates has been found liable for, nor settled, any such violation in any such action, proceeding or investigation.
- (c) Execution and delivery of this Side Letter by the Fund and the Advisor constitutes the representation that the signatories hereof are authorized

to execute and deliver this Side Letter. This Side Letter is binding on and enforceable against the Fund Parties and Investor.

- (d) This Side Letter and the provisions set forth in this Side Letter may be modified or waived only by a separate writing signed by the Fund Parties and Investor expressly modifying or waiving this Side Letter or such agreements.
- (e) This Side Letter may be executed in any number of counterparts, any one of which need not contain the signatures of more than one party, but all of such counterparts together shall constitute one agreement.

This Side Letter is binding on and enforceable against the Fund Parties and the Investor notwithstanding any contrary provisions in the LLC Agreement, and in the event of a conflict between the provisions of this Side Letter and the Operative Documents, the provisions of this Side Letter shall control. This Side Letter shall survive delivery of fully executed originals of the LLC Agreement and the Subscription Agreement and the Investor's admission to the Fund as a Member.

Very Truly Yours,	
FUND:	
Prima Mortgage Investment Trust, LLC, a Dela liability company	ware limited
By: Name: Title:	
ADVISOR:	
Prima Capital Advisors LLC, aliability company	_ limited
By:	

Accepted and acknowledged as of thisday of, 2013
INVESTOR:
STANISLAUS COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
Ву:
Name:
Title: