

# **BOARD OF EDUCATION RETIREMENT SYSTEM**

## **Board Meeting Agenda**

### **April 18, 2023**

1. Calendar Item 1: Noting of the Minutes of the Meeting of the Board of Education Retirement System held on March 21, 2023 – **FOR CONSIDERATION AND ACTION.**
2. Executive Director's Update – **FOR DISCUSSION.**
3. Calendar Items 2-17: Ordinary Business – **FOR CONSIDERATION AND ACTION.**
4. Calendar Item 18: Investment Strategy Overview – **FOR DISCUSSION.**
5. Calendar Item 19: Performance Report from Steven Meier, Chief Investment Officer for the New York City Retirement Systems – **FOR DISCUSSION.**
6. Calendar Item 20: Approval of Net Zero Implementation Plan – **FOR CONSIDERATION AND ACTION.**
7. Calendar Item 21: Adoption of the Actuary's Determination for the Final Fiscal Year 2023 Employer Contribution to the Board of Education Retirement System - **FOR CONSIDERATION AND ACTION.**
8. Calendar Item 22: Adoption of the BERS Qualified Excess Benefit Arrangement Plan And Trust - **FOR CONSIDERATION AND ACTION.**
9. Calendar Item 23: Amendment to the Audit Committee Charter - **FOR CONSIDERATION AND ACTION.**

**Board of Education Retirement System**  
**SUMMARY MINUTES**  
**Meeting of the Board of Trustees**  
**March 21, 2023**

**Appearances via WebEx:**

Karine Apollon	Angela Greene
Phoebe-Sade Arnold	Alison Hirsh
Tazin Azad	Jessamyn Lee
Russell Bateman Buckley	John Maderich
Chantel Cabrera	Donald Nesbit
Geneal Chacon	Alan Ong
Marjorie Dienstag	Kaliris Salas-Ramirez
Gregory Faulkner	Maisha Sapp
Sheree Gibson	Thomas Sheppard
Anthony Giordano	Ephraim Zakry

**Agenda Item 1 - Calendar Item 1:** Noting the Minutes of the Meeting of the Board of Retirement held on February 7, 2023. On a motion by Ms. Lee and a second by Mr. Giordano, this item was unanimously approved.

**Agenda Item 2:** Executive Director's Update.

*Ms. Salas-Ramirez joined the meeting at approximately 4:15 PM.*

**Agenda Item 3 - Calendar Items 2-17:** Ordinary Business. On a motion by Mr. Nesbit and a second by Ms. Lee, these items were unanimously approved.

*Mr. Zakry joined the meeting at approximately 4:33 PM*

The Board held an attorney client session. During attorney client session, the Board discussed and made a decision on a legislative matter.

**Agenda Item 4 – Calendar Item 18:** Amendment to the Audit Committee Charter. On a motion by Ms. Lee and a second by Ms. Dienstag, this Board considered this item. Mr. Faulkner motioned to adopt this resolution by unanimous consent. The motion was seconded by Mr. Giordano. Ms. Hirsh indicated that she did not consent. Mr. Faulkner then moved to reconsider the motion to adopt the resolution by unanimous consent. The motion was seconded by Mr. Giordano. Ms. Gibson objected.

Ms. Hirsh made a motion proposing that the Board separate out the first amendment to the audit committee charter for a vote and for the Board to vote on the remaining amendments together. Ms. Hirsh rescinded the motion.

Ms. Hirsh then motioned to table Calendar Item 18. The motion was seconded by Mr. Giordano. The motion to table this agenda item to the next meeting of the Board carried with trustees voting as follows:

Ms. Arnold, Ms. Azad, Ms. Green, Ms. Hirsh, Ms. Nesbit, Mr. Ong, Ms. Salas-Ramirez, Ms. Sapp, Mr. Sheppard, and Mr. Zakry voting in favor; Mr. Faulkner and Ms. Gibson voting to oppose; and Ms. Chacon, Ms. Dienstag, Mr. Giordano, Ms. Lee, Mr. Maderich, and Ms. Apollon voting to abstain.

*Ms. Apollon left the meeting at approximately 6:12 PM*

**Agenda Item 5 – Calendar Item 19:** Election of an Alternate Member of the Audit Committee. On a motion by Mr. Giordano and a second by Ms. Chacon, this Board considered this item. Mr. Giordano, Ms. Azad and Mr. Zakry volunteered to serve as Mr. Sheppard’s Alternate on the Audit Committee. Mr. Giordano was elected to serve as Mr. Sheppard’s Alternate on the Audit Committee, with trustees voting as follows: Ms. Arnold, Ms. Dienstag, Mr. Faulkner, Mr. Giordano, Ms. Green, Mr. Maderich, Mr. Ong, Ms. Sapp and Mr. Zakry voting for Mr. Giordano; Ms. Azad, Ms. Chacon, Ms. Gibson, Ms. Lee, Mr. Nesbit, Ms. Salas-Ramirez and Mr. Sheppard voting for Ms. Azad; Ms. Hirsh voting for Mr. Zakry; and Mr. Buckley voting to abstain.

**Agenda Item 6 – Calendar Item 20:** Authorization to the Comptroller of the City of New York to Invest, Sell and Exchange the Funds of the Retirement System. On a motion by Mr. Giordano and a second by Ms. Green, the Board approved this item with Ms. Dienstag voting to oppose and abstentions from Ms. Arnold, Mr. Faulkner, Mr. Giordano, and Mr. Zakry.

*Ms. Azad left the meeting at approximately 6:35 PM.*

*Ms. Salas-Ramirez left the meeting at approximately 6:36 PM.*

**Agenda Item 7: Calendar Item 21:** Authorization to Commence an Asset Allocation Study. On a motion by Mr. Giordano and a second by Ms. Gibson, this item was unanimously approved.

**Agenda Item 8: Calendar Item 22:** Approval of Net Zero Implementation Plan. On a motion by Mr. Nesbit and a second by Mr. Giordano, this Board considered this item. On a motion by Mr. Nesbit and a second by Mr. Faulkner, this agenda item was tabled with Ms. Hirsh voting to oppose and abstentions from Mr. Buckley, Ms. Gibson, and Ms. Lee.

**Agenda Item 9: Calendar Item 23:** Investment Strategy Overview. On a motion by Mr. Giordano a second by Mr. Zakry, this item was discussed. This agenda item was tabled for further discussion at the next meeting of the Board.

*Mr. Maderich left the meeting at approximately 7:13 PM.*

**Agenda Item 10: Calendar Item 24:** Adoption of the Actuary’s Determination for the Preliminary Fiscal Year 2024 Employer Contribution to the New York City Board of Education Retirement System. On a motion by Mr. Nesbit and a second by Ms. Dienstag, this item was unanimously approved.

No other items of business were presented. On a motion by Mr. Nesbit and a second by Ms. Chacon, the meeting was adjourned at approximately 7:26 PM.

**APPROVAL OF THE NET ZERO IMPLEMENTATION PLAN**

- WHEREAS,** in October 2021, the BERS Board of Trustees resolved to strive to prudently achieve net zero GHG emissions by 2040, as an aspirational goal, across the BERS investment portfolio to mitigate the systemic risks of climate change to BERS investments and the real economy, while taking into account the best available scientific knowledge and fulfilling fiduciary duty; and
- WHEREAS,** the Board adopted the Net Zero Asset Owner Commitment of the Paris Aligned Investment Initiative (PAII), allowing BERS to collaborate with and learn from other asset owners and asset managers on best practices for achieving net zero emissions; and
- WHEREAS,** the Board adopted a preliminary Climate Action Plan that required the development of a prudent implementation plan for the net zero goal; and
- WHEREAS,** the Office of the NYC Comptroller’s Bureau of Asset Management has developed a prudent implementation plan for the net zero goal consistent with the rationale and elements of guidance provided by the Board in October 2021; and
- WHEREAS,** the Board accepts the recommendations from the Bureau of Asset Management regarding the net zero implementation plan; now therefore be it
- RESOLVED,** that the Board hereby approves the net zero implementation plan as presented to the Board on March 21, 2023 and April 18, 2023.

Respectfully Submitted,

---

Sanford R. Rich  
Executive Director

April 2023

**ADOPTION OF THE ACTUARY'S DETERMINATION FOR THE  
FINAL FISCAL YEAR 2023 EMPLOYER CONTRIBUTION  
TO THE NEW YORK CITY BOARD OF EDUCATION RETIREMENT SYSTEM**

- WHEREAS,** the Board of Trustees, at its meeting held on March 15, 2022, adopted the determination of the Actuary, as contained in a letter dated March 8, 2022, establishing the Preliminary Employer Contribution to the New York City Board of Education Retirement System for Fiscal Year 2023 (i.e. July 1, 2022 through June 30, 2023) in the amount of \$225,653,303 (the Preliminary 2023 Employer Contribution); and
- WHEREAS,** the Actuary, in a letter dated April 11, 2023, determined the Final Employer Contribution for Fiscal Year 2023 to be \$233,546,202; an increase in the amount of \$7,892,899 from the Preliminary 2023 Employer Contribution; and;
- WHEREAS,** the Board of Trustees has reviewed the determination; now therefore, be it
- RESOLVED,** that the Employer Contribution to the New York City Board of Education Retirement System for Fiscal Year 2023 in the amount of \$233,546,202 is hereby approved by the Board of Trustees.

Respectfully Submitted,

---

Sanford R. Rich  
Executive Director

April 2023

**ADOPTION OF THE BERS QUALIFIED EXCESS BENEFIT  
ARRANGEMENT PLAN AND TRUST**

- WHEREAS,** Section 415 of the Internal Revenue Code of 1986 (“IRC”) imposes a limitation on the maximum annual retirement benefit amount that a qualified plan, such as the BERS Qualified Pension Plan (“QPP”), may pay to a retiree; and
- WHEREAS,** Section 415(m) of the IRC permits a governmental plan to establish a Qualified Excess Benefit Arrangement (“QEBA”) in order to pay the excess benefit to any retiree whose benefit would exceed the limits of Section 415; and
- WHEREAS,** Section 2575(24) of New York Education Law permits BERS to establish a QEBA for the sole purpose of paying benefits as permitted under Section 415(m) of the IRC; and
- WHEREAS,** the Board of Trustees wishes to establish a QEBA consistent with Section 415(m) of the IRC and Section 2575(24) of the Education Law, for the sole purpose of paying benefits as permitted under Section 415(m) of the IRC; now therefore be it
- RESOLVED,** that the Board of Trustees hereby establishes the BERS QEBA Plan and Trust, in accordance with the attached Trust Document; and be it further
- RESOLVED,** that the Board of Trustees appoints the Executive Director of BERS as Administrator of the BERS QEBA Plan and Trust.

Respectfully Submitted,

---

Sanford R. Rich  
Executive Director

**BOARD OF EDUCATION RETIREMENT SYSTEM OF THE CITY OF  
NEW YORK ("BERS")**

**QUALIFIED EXCESS BENEFIT ARRANGEMENT PLAN AND TRUST**

**A portion of the BERS 401(a) Qualified Pension Plan**

## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I. ESTABLISHMENT OF QEBA TRUST .....	1
1.01. Establishment Of Trust .....	1
1.02. Purpose.....	1
1.03. Name .....	<b>Error! Bookmark not defined.</b>
1.04. Offices.....	2
1.05. Term.....	2
1.06. Trust Fund.....	2
ARTICLE II. DEFINITIONS AND CONSTRUCTIONS .....	4
2.01. Definitions.....	4
2.02. Construction.....	6
ARTICLE III. PARTICIPATION .....	6
ARTICLE IV. PAYMENT OF BENEFITS .....	6
4.01. Benefit Amount.....	6
4.02. Time for Payment; Form of Benefit.....	6
4.03. Limitation on Payments from QEBA Trust.....	7
ARTICLE V. CONTRIBUTIONS AND FUNDING.....	7
5.01. Funding .....	7
5.02. Contributions.....	7
ARTICLE VI. QEBA TRUST .....	8
6.01. Establishment of QEBA Trust .....	8
6.02. QEBA Trust Purpose .....	9
6.03. QEBA Trust Assets.....	9
6.04. Grantor Trust.....	9
6.05. QEBA Trust Income .....	9
ARTICLE VII. ADMINISTRATION .....	9
7.01. Administrative Authority.....	9
7.02. Advice .....	11
7.03. Payment of Benefits.....	11
7.04. Delegation by Administrator.....	11



**TABLE OF CONTENTS**  
**(continued)**

	<b><u>Page</u></b>
ARTICLE VIII. PLAN TERMINATION AND AMENDMENTS.....	11
8.01. QEBA Trust Termination .....	11
8.02. QEBA Trust Amendments.....	11
ARTICLE IX. NONASSIGNABILITY AND EXEMPTION FROM TAXATION AND EXECUTION.....	11
ARTICLE X. MISCELLANEOUS .....	12
10.01. Federal and State Taxes .....	12
10.02. Investment.....	12
10.03. Conflicts.....	12
10.04. Limitation on Rights .....	12
10.05. Erroneous Payments.....	13
10.06. Release .....	13
10.07. Liability.....	14
10.08. Governing Laws.....	14
10.09. Necessary Parties to Disputes .....	14
10.10. Severability .....	14

**BOARD OF EDUCATION RETIREMENT SYSTEM OF THE CITY OF NEW YORK**

**QUALIFIED EXCESS BENEFIT ARRANGEMENT PLAN AND TRUST**

**ARTICLE I.**

**ESTABLISHMENT OF QEBA PLAN AND TRUST**

**1.01. Establishment Of Trust.** The "Board of Education Retirement System of the City of New York Qualified Excess Benefit Arrangement Plan and Trust" ("QEBA Plan and Trust") is adopted by the Board effective as of \_\_\_\_\_ pursuant to Internal Revenue Code ("IRC") Section 415(m) and the provisions of Education Law Section 2575(24) (enacted by Chapter 623 of the Laws of 2004). The QEBA Plan and Trust solely is that portion of the Qualified Pension Plan which constitutes a qualified excess benefit arrangement pursuant to IRC Section 415(m). IRC Sections 83, 402(b), 409A, 457(a), and 457(f)(1) shall not apply to the QEBA Plan and Trust.

**1.02. Purpose.** The QEBA Plan and Trust is established to receive contributions from the City to provide the part of an Eligible Participant's Excess Benefit that would otherwise have been payable from the Qualified Pension Plan, except for the limitations of the IRC Section 415(b). This QEBA Plan and Trust is deemed a portion of BERS solely to the extent required under, and within the meaning of, IRC Section 415(m)(3).

**1.03. Offices.**

(a) The principal office of the QEBA Plan and Trust, and such additional offices as the Trustees may determine to establish, shall be located at such place or places inside or outside the State of New York as the Trustees may designate from time to time.

(b) Service of process upon the QEBA Plan and Trust may be made in person upon the Trustees. The principal office of the Trustees is located at 65 Court Street, Brooklyn, NY 11201.

**1.04. Term.** The term of the QEBA Plan and Trust commenced on the date first above written and shall continue until termination of the Trust in accordance with Section 8.01 of this Arrangement.

**1.05. Trust Fund.**

(a) The Trustees shall receive and accept for the purposes hereof all contributions described herein and shall hold, invest, reinvest, manage, administer, and distribute property and the increments, proceeds, earnings, and income solely to provide Excess Benefits.

(b) The Trustees have the authority to invest and manage the assets of the Trust Fund.

(c) The Trustees shall have the exclusive right to manage the business and affairs of the Trust, and shall have all powers and rights necessary, appropriate or advisable to effectuate and carry out the purposes and business of the Trust and, in general, all powers permitted to be exercised by the Board under Education Law § 2575 and the BERS Rules and Regulations. The Trustees may appoint, employ or otherwise

contract with any persons (who may be designated as officers of the Trust) or entities for the transaction of the business of the Trust or the performance of services for or on behalf of the Trust, and the Trustees may delegate to any such person or entity such authority to act on behalf of the Trust as the Trustees may from time to time deem appropriate.

(d) The Board of Trustees of the Board of Education Retirement System of the City of New York ("Board") shall constitute the Trustees required pursuant to Education Law § 2575(24) shall have only the rights, obligations and liabilities specifically provided for in this Agreement and shall have no implied rights, obligations and liabilities with respect to the affairs of the Trust. The Trustees shall have the power and authority to execute, deliver, acknowledge and file all necessary documents and to maintain all necessary records of the Trust as required by the Education Law.

(e) No Trustee shall be required to post any bond, secured or unsecured, in connection with or as a consequence of serving as a Trustee of the Trust. Upon any Trustee ceasing to be such, such Trustee's interests in the Trust and any and all Trust property shall automatically vest, without requirement of further action, in the remaining (and/or any successor) Trustees.

(f) No Beneficiary of the Trust, by reason of its status as such, shall have any right to take part in or direct the management or control of the business of the Trust or to act for or bind the Trust or any Trustee or otherwise to transact any business on behalf of the Trust.

## ARTICLE II.

### DEFINITIONS AND CONSTRUCTIONS

**2.01. Definitions.** When the initial letter of a word or phrase is capitalized herein, it has the same meaning as defined below:

- (a) "**Actuary**" means the City's Office of the Actuary.
- (b) "**Administrator**" means the Trustees or any other entity to whom the Trustees assign, or with whom the Trustees contract, to provide services to the QEBA Plan or the QEBA Trust.
- (c) "**Beneficiary**" means an individual who is receiving a Retirement Benefit or other benefit provided under the Qualified Pension Plan.
- (d) "**BERS**" means the Board of Education Retirement System of the City of New York as established in accordance with Education Law § 2575.
- (e) "**Board**" means the BERS Board of Trustees.
- (f) "**City**" means New York City.
- (g) "**Eligible Participant**" means a Beneficiary who is entitled to Excess Benefits from this QEBA for a Plan Year in accordance with Article IV of this Arrangement.
- (h) "**Employer**" means the Board of Education of the City of New York or such other public employer which participates in the Qualified Pension Plan.
- (i) "**Excess Benefit**" means the excess benefits payable to an Eligible Participant as determined in accordance with this QEBA Plan, also referred to as "replacement benefits" under Education Law § 2575(24).

(j) "**IRC**" means the Internal Revenue Code of 1986, as amended, as applicable to a governmental plan, or corresponding provisions of any subsequent federal income tax law.

(k) "**Plan Year**" means the calendar year.

(l) "**Qualified Pension Plan**" or "QPP" means the qualified governmental defined benefit pension plan, including variable supplements funds, administered by BERS.

(m) "**QEBA Plan**" means this qualified excess benefit arrangement authorized by Education Law § 2575(24) and established within the meaning of IRC Section 415(m) for the sole purpose of paying Excess Benefits that are subject to the limitations of IRC Section 415(b) for purposes of the Qualified Pension Plan administered by the Board.

(n) "**QEBA Trust**" means this separate Trust, which constitutes a valid trust under the law of the State.

(o) "**Retirement Fund**" means the master trust funds administered by the BERS Board of Trustees in accordance with Education Law § 2575 for the payment of Retirement Benefits which are not Excess Benefits from this QEBA Plan.

(p) "**Retirement Benefit**" means the amount of retirement income payable to a Beneficiary, without regard to any limitations on that retirement income or benefit under IRC Section 415(b).

(q) "**State**" means the State of New York.

(r) "**Trustees**" means the trustees of the QEBA Trust, serving from time to time in accordance with this Arrangement. The Trustees shall be members of the Board.

**2.02. Construction.**

Any use of gender words in this QEBA Trust shall be construed to include all other genders and is not restrictive. Any words used in this QEBA Trust in the singular or plural shall be construed to include the plural or singular where appropriate.

**ARTICLE III.**

**PARTICIPATION**

All Beneficiaries in BERS are eligible to and shall participate in this QEBA Plan if their Retirement Benefits from the Qualified Pension Plan for a Plan Year would exceed the limitations imposed by IRC Section 415(b). The Administrator determines for each Plan Year which Beneficiaries shall be Eligible Participants for this QEBA Plan. Participation in the QEBA Plan begins each Plan Year once a Beneficiary has an Excess Benefit in that Plan Year. Participation in the QEBA Plan ends for any Plan Year in which the Retirement Benefit of a Participant is not limited by IRC Section 415(b) or when all benefit obligations under the QEBA Plan to an Eligible Participant have been satisfied.

**ARTICLE IV.**

**PAYMENT OF BENEFITS**

**4.01. Benefit Amount.** The amount of any benefit payable to an Eligible Participant for any Plan Year will be determined by the Actuary in accordance with IRC Section 415 and pursuant to the terms of this QEBA Plan.

**4.02. Time for Payment; Form of Benefit.** In accordance with Education Law § 2575(24), the Administrator will pay from the QEBA Trust the Excess Benefit in the same form,

at the same time, and to the same persons as such benefits would have otherwise been paid as a monthly pension under the Qualified Pension Plan, except for the limitations under IRC Section 415(b). No election is provided at any time to the Eligible Participant, whether directly or indirectly, to defer compensation under the QEBA Plan.

**4.03. Limitation on Payments from QEBA Trust.** Neither the Trustees nor BERS is responsible for paying Excess Benefits other than from contributions from Employers.

## **ARTICLE V.**

### **CONTRIBUTIONS AND FUNDING**

**5.01. Funding.** The QEBA Plan is, and will remain, unfunded and the rights, if any, of any person to any benefits under the QEBA Plan is limited to those specified in this QEBA Plan. The QEBA Plan constitutes a mere unsecured promise by the Employer to make excess benefit payments as provided under this QEBA Plan.

**5.02. Contributions.**

(a) The amount of contributions necessary to pay the Excess Benefits under the QEBA Plan for each Plan Year will be determined by the Actuary. The required contribution for each Employer will be the aggregate of the Excess Benefits payable to all Eligible Participants for the Plan Year, as well as an amount determined by the Board to be a necessary and reasonable expense of administering the applicable QEBA Plan and Trust. Contributions will not be calculated in a manner designed to pay future Excess Benefits. Under no circumstances will Employer contributions to fund the Excess Benefits be credited to or commingled with contributions paid into and accumulated in the Retirement Fund. Any contributions not used to pay the Excess Benefits for a current Plan Year, together with any income accruing to the QEBA Trust, will be used, as determined by the Board, to pay the administrative expenses of the



QEBA Plan and Trust for the Plan Year. Any contributions not used to pay the Excess Benefit for the current Plan Year that remain after paying administrative expenses of the QEBA Plan and Trust for the Plan Year will be used to fund administrative expenses or benefits of Eligible Participants in future Plan Years.

(b) Benefits under the QEBA Plan will be paid from the QEBA Trust to the extent funded by the Employer. If the Employer's contributions are inadequate to pay all Excess Benefits of Eligible Participants of that Employer from the QEBA Trust for the applicable Plan Year, the Administrator may in its sole discretion make a pro-rata distribution of Excess Benefits from the QEBA Trust Excess Benefit to Eligible Participants.

(c) The consultants, independent auditors, attorneys, and actuaries performing services for the Trustees, the Board, or the Qualified Pension Plan may also perform services for the QEBA Plan and the QEBA Trust; but, any fees attributable to services performed with respect to the QEBA Plan and the QEBA Trust will be payable solely from the QEBA Trust as determined by the Board consistent with its fiduciary standards.

## **ARTICLE VI.**

### **QEBA TRUST**

**6.01. Establishment of QEBA Trust.** The QEBA Trust is established as a valid trust under the law of the State, separate from the Retirement Fund, to hold Employer contributions. Contributions to this QEBA Trust will be held separate and apart from the funds comprising the Retirement Fund and will not be commingled with assets of the Retirement Fund, and must be accounted for separately.

**6.02. QEBA Trust Purpose.** The QEBA Trust is maintained solely to provide Excess Benefits under the QEBA Plan and to pay administrative expenses of this Arrangement.

**6.03. QEBA Trust Assets.** All assets held by the QEBA Trust, including all amounts of Employer contributions made under the QEBA Plan, all property and rights acquired or purchased with these amounts and all income attributable to these amounts, will be held separate and apart from other funds of the Employer, and will be used to pay Excess Benefits to Eligible Participants and for the Employer's general creditors. Eligible Participants shall have no preferred claim on, or any beneficial interest in, any assets of the QEBA Trust. Any assets held by the QEBA Trust are subject to the claims of the Employer's general creditors under federal and state law in the event of insolvency.

**6.04. Grantor Trust.** The QEBA Trust is intended to be a Rabbi Trust and a grantor trust, of which the Board is the grantor, within the meaning of subpart E, part I, subchapter J, chapter 1, subtitle A of the IRC, and will be construed accordingly. This provision will not be construed to create an irrevocable trust of any kind.

**6.05. QEBA Trust Income.** Income accruing to the QEBA Trust under the QEBA Plan constitutes income derived from the exercise of an essential governmental function upon which the QEBA Trust is exempt from tax under IRC Section 115, as well as IRC Section 415(m)(1).

## **ARTICLE VII.**

### **ADMINISTRATION**

**7.01. Administrative Authority.** The Trustees have the exclusive authority to control and manage the operation and administration of the QEBA Trust.

(a) The Trustees have the power and authority (including discretion with respect to the exercise of that power and authority) necessary, advisable, desirable or convenient to:

(1) establish procedures to administer the QEBA Trust not inconsistent with the QEBA Plan and the IRC, and to amend or rescind these procedures;

(2) determine, consistent with the QEBA Trust and QEBA Plan, applicable law, rules or regulations, all questions of law or fact that may arise as to eligibility for participation in the Plan and eligibility for distribution of benefits from the Plan, and the status of any person claiming benefits under the Plan;

(3) make payments from the QEBA Trust to Eligible Participants pursuant to the QEBA Plan;

(4) contract with third parties, as necessary, to perform designated administrative services under the QEBA Trust;

(5) construe and interpret the QEBA Trust as to administrative issues and to correct any defect, supply any omission or reconcile any inconsistency in the QEBA Trust with respect to same, subject to and consistent with the IRC.

(b) Any action by the Trustees that is not found to be an abuse of discretion will be final, conclusive and binding on all individuals affected thereby. The Trustees may take any such action in such manner and to such extent as the Trustees in its sole discretion may deem expedient.

(c) The Trustees may delegate any of their authority to BERS' Executive Director and/or the New York City Comptroller's Office, or such other designee with respect to the investment of the QEBA Trust and other matters.

(d) The Trustees may seek appropriate rulings from the Internal Revenue Service with regard to the status of the QEBA Trust under the IRC.

**7.02. Advice.** The Trustees may employ one or more persons to render advice with regard to its responsibilities under the QEBA Trust.

**7.03. Payment of Benefits.** If in doubt concerning the correctness of their action in making a payment of a Replacement Benefit, the Trustees may suspend payment until satisfied as to the correctness of the payment or the person to receive the payment.

**7.04. Delegation by Administrator.** The Administrator will handle the day-to-day operation of the QEBA Trust and may delegate any and all functions to a third party.

## **ARTICLE VIII.**

### **PLAN TERMINATION AND AMENDMENTS**

**8.01. QEBA Trust Termination.** The Trustees may terminate the QEBA Trust at any time in the Trustees' sole discretion. Upon termination, any principal remaining of contributions made will be returned to the Employers, net of any expenses.

**8.02. QEBA Trust Amendments.** The Trustees may amend any or all of the provisions of the QEBA Trust for any purpose. Any amendment made must be in compliance with applicable law and the IRC.

## **ARTICLE IX.**

### **NONASSIGNABILITY AND EXEMPTION FROM TAXATION AND EXECUTION**

In accordance with Education Law § 2575(24)(g), the interests of Eligible Participants under the QEBA Plan prior to distribution from the QEBA Trust are exempt from any state, county, municipal or local tax, and are not subject to execution, garnishment, attachment, or any other process of law whatsoever, and are unassignable and nontransferable, except as otherwise provided by Article VI.

## ARTICLE X.

### MISCELLANEOUS

**10.01. Federal and State Taxes.** The Trustees, Board, and BERS do not guarantee that any particular Federal or State income, payroll, or other tax consequence will occur because of participation in the QEBA Plan.

**10.02. Investment.** The Trustees may hold a portion of the QEBA Trust uninvested as it deems advisable for making distributions under the Plan, or may invest assets of the QEBA Trust pending the Excess Benefit payments in short-term investment grade instruments or as otherwise permitted by law.

**10.03. Conflicts.** In resolving any uncertainty as to the meaning or intention of any provision of the QEBA Plan and Trust, the prevailing interpretation will be the one that (i) causes the QEBA Plan to constitute a qualified governmental excess benefit arrangement under the provisions of IRC Section 415(m) and the QEBA Trust to be exempt from tax under IRC Sections 115 and 415(m), (ii) causes the QEBA Plan and the Administrator to comply with all applicable requirements of the IRC, (iii) causes the QEBA Plan and the Administrator to comply with all applicable State laws, including Education Law § 2575, and (iv) causes the QEBA Trust to constitute a grantor trust under the IRC.

**10.04. Limitation on Rights.** Neither the establishment or maintenance of the QEBA Plan and QEBA Trust, nor any amendment to the QEBA Plan and QEBA Trust, nor any act or omission under the QEBA Plan and QEBA Trust (or resulting from the operation of the QEBA Plan and QEBA Trust) may be construed:

- (a) as conferring upon any Eligible Participant or any other person a right or claim against the Board, Trustees, Employer, or Administrator, if any, except to the extent that the right or claim is specifically expressed and provided in the QEBA Plan;

(b) as creating any responsibility or liability of the Employer for the validity or effect of the QEBA Plan or QEBA Trust;

(c) as a contract between the Employer and any Eligible Participant or other person, or conferring upon any Eligible Participant or person any rights as a third party beneficiary of a contract;

(d) as being consideration for, or an inducement or condition of, employment of any Eligible Participant or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights or obligations of the Employer or any Eligible Participant or other person to continue or terminate the employment relationship at any time;

(e) as giving any Eligible Participant or other person the right to be retained in the Employer's service or to interfere with the Employer's right to discharge any Eligible Participant or other person at any time; or

(f) as giving any Eligible Participant or other person the right to payment of an Excess Benefit from the QEBA Trust other than that determined to be payable from the QEBA Trust in accordance with and subject to the terms of the QEBA Plan.

**10.05. Erroneous Payments.** Any benefit payment that should not have been made, according to the terms of the QEBA Plan and the benefits provided hereunder, may be recovered by the Administrator as provided by law.

**10.06. Release.** Any payment to any Eligible Participant will, to the extent thereof, be in full satisfaction of the Eligible Participant's claim being paid thereby, and the Administrator may condition the payment on the delivery by the Eligible Participant of the duly executed receipt and release in a form determined by the Board.

**10.07. Liability.** The Administrator will not incur any liability in acting upon any paper or document or electronic transmission believed by the Board or Trustees to be genuine or to be executed or sent by an authorized person, including an Employer, an Eligible Participant, or a service provider.

**10.08. Governing Laws.** The Laws of the State and City of New York apply in determining the construction and validity of the QEBA Trust.

**10.09. Necessary Parties to Disputes.** The only party necessary to any accounting, litigation or other proceedings relating to the QEBA Trust is the Trustees. The settlement or judgment in any case in which the Trustees are duly served will be binding upon all affected Eligible Participants in the Plan, their beneficiaries, estates and upon all persons claiming by, through or under them.

**10.10. Severability.** If any provision of the QEBA Trust is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the QEBA Trust will continue to be fully effective.

IN WITNESS WHEREOF, the undersigned, being all of the Trustees of the Trust, have caused this Qualified Excess Benefit Arrangement Trust to be duly executed as of this \_\_ day of \_\_\_\_\_, 2022.

**TRUSTEES:**

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Date



April 2023

**AMENDMENT TO THE AUDIT COMMITTEE CHARTER OF THE BOARD OF EDUCATION RETIREMENT SYSTEM**

**WHEREAS,** in January 2020, the Board established an Audit Committee and adopted an Audit Committee Charter to provide structured, systematic oversight of BERS' governance, risk management, and internal control practices; and

**WHEREAS,** the Board thereafter amended the Audit Committee Charter in February 2020, January 2021 and September 2022; and

**WHEREAS,** the Board seeks to further amend the Audit Committee Charter to: 1) amend the requirement that the Chair of the Audit Committee rotate annually to state that, in the event that no Audit Committee members volunteer to stand for election, the Committee may re-elect the incumbent; 2) state that the election of Audit Committee Chair shall occur at the second Committee meeting of the year; 3) clarify the Audit Committee's responsibilities relating to external auditors and review of financial statements; and, 4) state that the Audit Committee is empowered to review disagreements between management and internal auditors; now therefore be it

**RESOLVED,** that the Board hereby adopts the amended Audit Committee Charter in the form presented to the Board and attached hereto as Exhibit A.

Respectfully Submitted,

---

Sanford R. Rich  
Executive Director

# Exhibit A1

## **1. AUTHORITY**

The Audit Committee Charter (the “Charter”) sets out the authority of the Committee to carry out the responsibilities established for it by the Board as articulated within the Charter.

In discharging its responsibilities, the Committee will have unrestricted access to members of management, employees, and relevant information it considers necessary to discharge its duties. The Committee also will have unrestricted access to records, data, and reports, and BERS’ management and staff should cooperate with the Committee’s requests. If access to the requested documents is denied due to legal or confidentiality reasons, the Committee and/or the Director of Internal Audit will pursue a mutually acceptable resolution of the matter.

The Committee is empowered to:

- a) Review any disagreements between BERS management and **internal or** external auditors regarding financial reporting and other matters.
- b) Review all audit and non-audit services performed by auditors, accountants, or other advisors.
- c) Seek counsel from the General Counsel of BERS.

## Exhibit A2

### i. Audit Committee Chair

- a) The Committee Chair (the “Chair”) shall rotate annually and be appointed by the members of the committee. **Notwithstanding the above, in the event that no other member of the Committee wishes to serve as Chair, the Committee may re-elect the current Chair.**
- b) The Chair should have knowledge of changing issues within the public sector, pension administration, Enterprise Risk Management (ERM), Internal Controls, the nature of the internal audit environment, BERS’ risk profile and its business priorities.
- c) If the Chair is unable to attend a meeting, the members will be polled and a substitute Chair, for the purposes of that meeting only, will be identified among those who have indicated that they will be present.

## Exhibit A3

### i. Audit Committee Chair

- a) The Committee Chair (the "Chair") shall rotate annually and be appointed by the members of the committee.
- b) The Chair should have knowledge of changing issues within the public sector, pension administration, Enterprise Risk Management (ERM), Internal Controls, the nature of the internal audit environment, BERS' risk profile and its business priorities.
- c) If the Chair is unable to attend a meeting, the members will be polled and a substitute Chair, for the purposes of that meeting only, will be identified among those who have indicated that they will be present.
- d) ***The election of the Chair shall occur at the first Committee meeting of every year.***

---

## Exhibit A4

### **1. RESPONSIBILITIES AND DUTIES OF THE AUDIT COMMITTEE**

The responsibilities and duties of the Committee shall include the following:

#### **i. Financial Statements and Reporting**

- a) Report periodically to the Board on audit activities, findings and recommendations, and management's response and remediation efforts.
- b) ~~Review the audit report of BERS' financial statements by external auditors.~~
- c) Review with management, the external auditors, and/or the Internal Auditor, as required, the results of all audit activities, including any difficulties encountered.
- d) Review all significant recommendations, suggestions and/or adjustments proposed by the external auditors or the Internal Auditor.
- e) Review the annual management letter provided by the external auditors for any significant deficiencies or material weaknesses in the accounting controls.

**Note: Financial statements preparation and reporting by external auditors is reviewed by the NYC Audit Committee. The external auditors report annually to the full BERS Board of Trustees on the results of their audit.**



# BERS Investment Strategy Overview

4/18/2023



# BERS Investment Strategy Overview and History

---

History & Context

---

Governance & Policy

---

Asset Allocation & Portfolio Construction

---

Manager Selection & Projects

---

Moving Forward

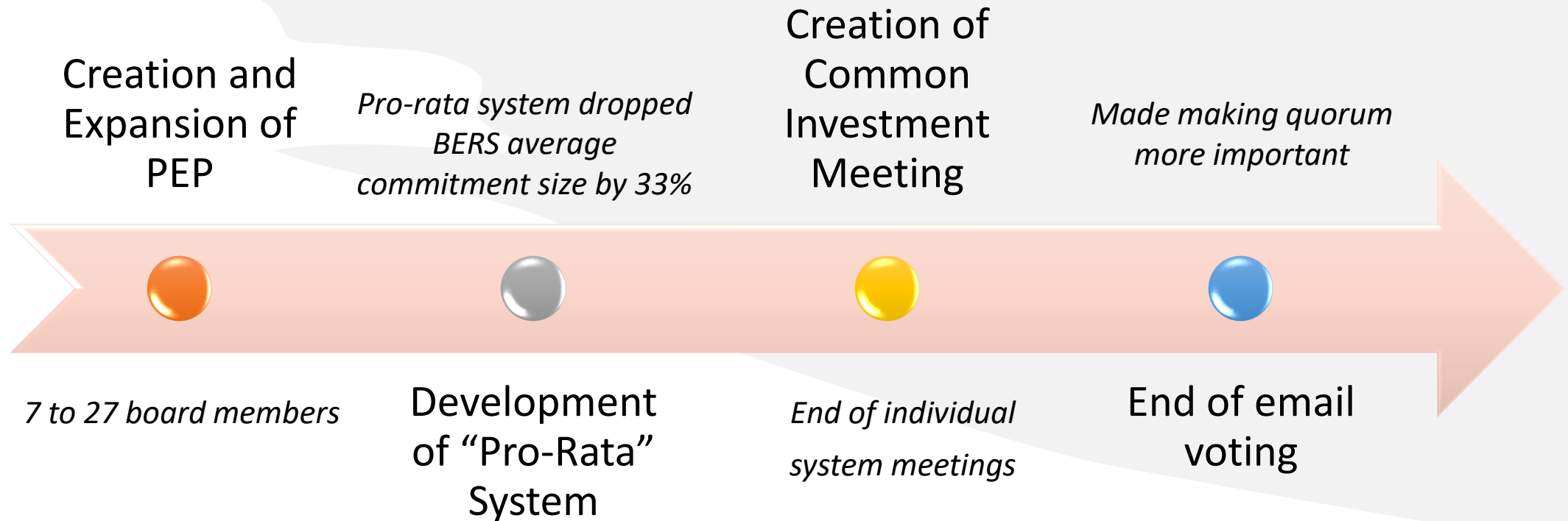
# History and Context

---

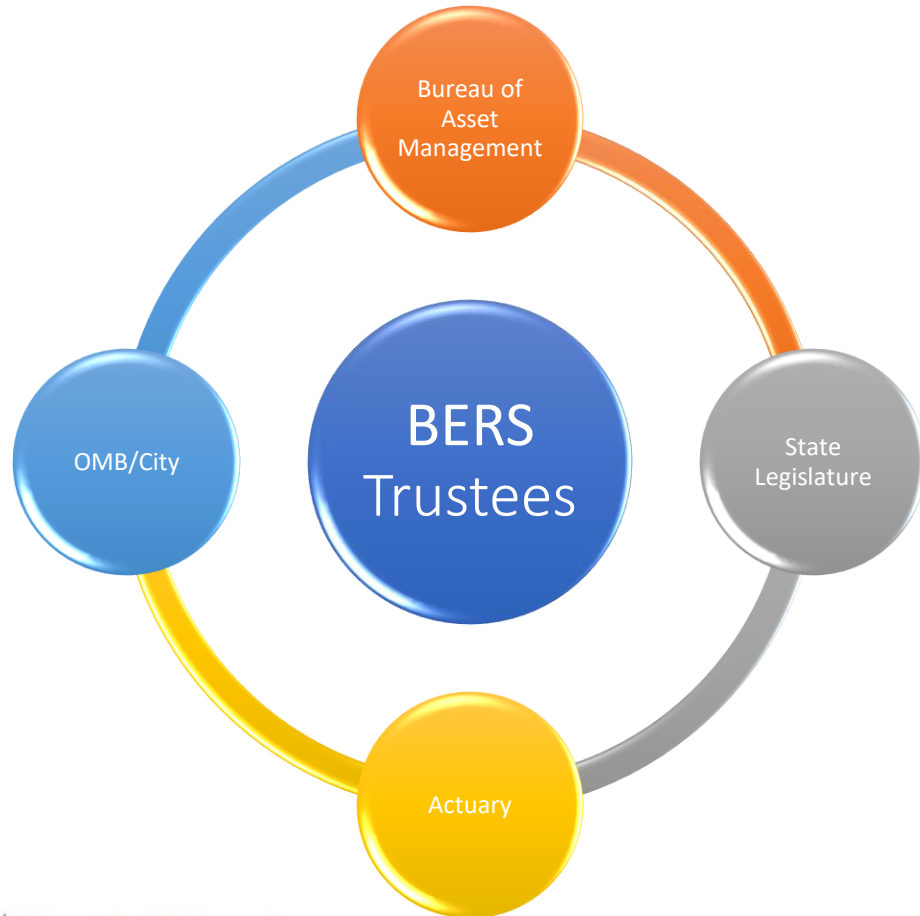




# Four events were catalyst for the creation of Investment Strategy



# With so many stakeholders, governance will always be a challenge



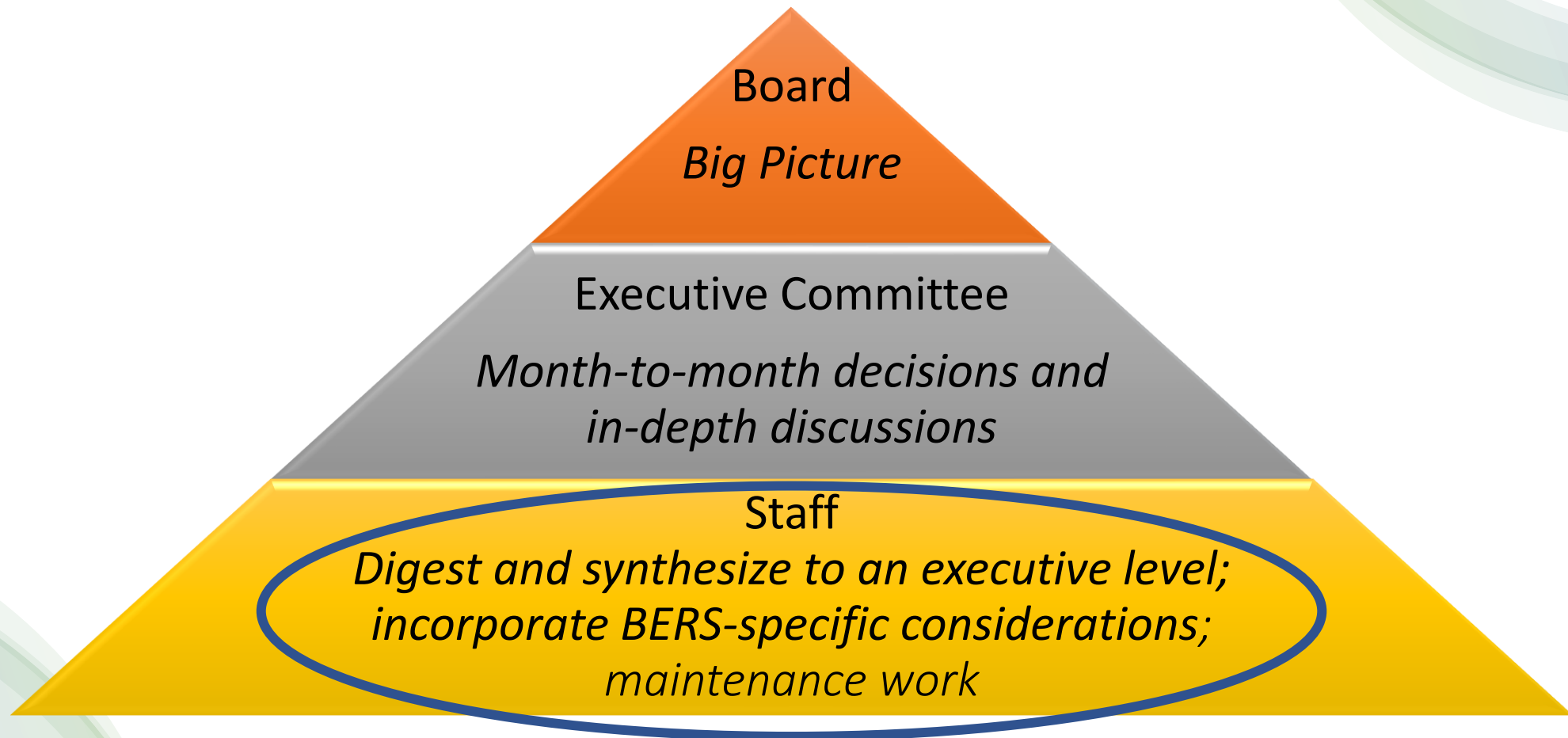
- Trustees: Ultimate fiduciary
- Bureau of Asset Management: Investment Advisor and Custodian
- State Legislature: Sets benefit structure and discount rate
- Actuary: Sets contributions and recommends discount rate
- City/DOE: Plan Sponsor

# Governance and Policy

---



Division of labor was our attempt to



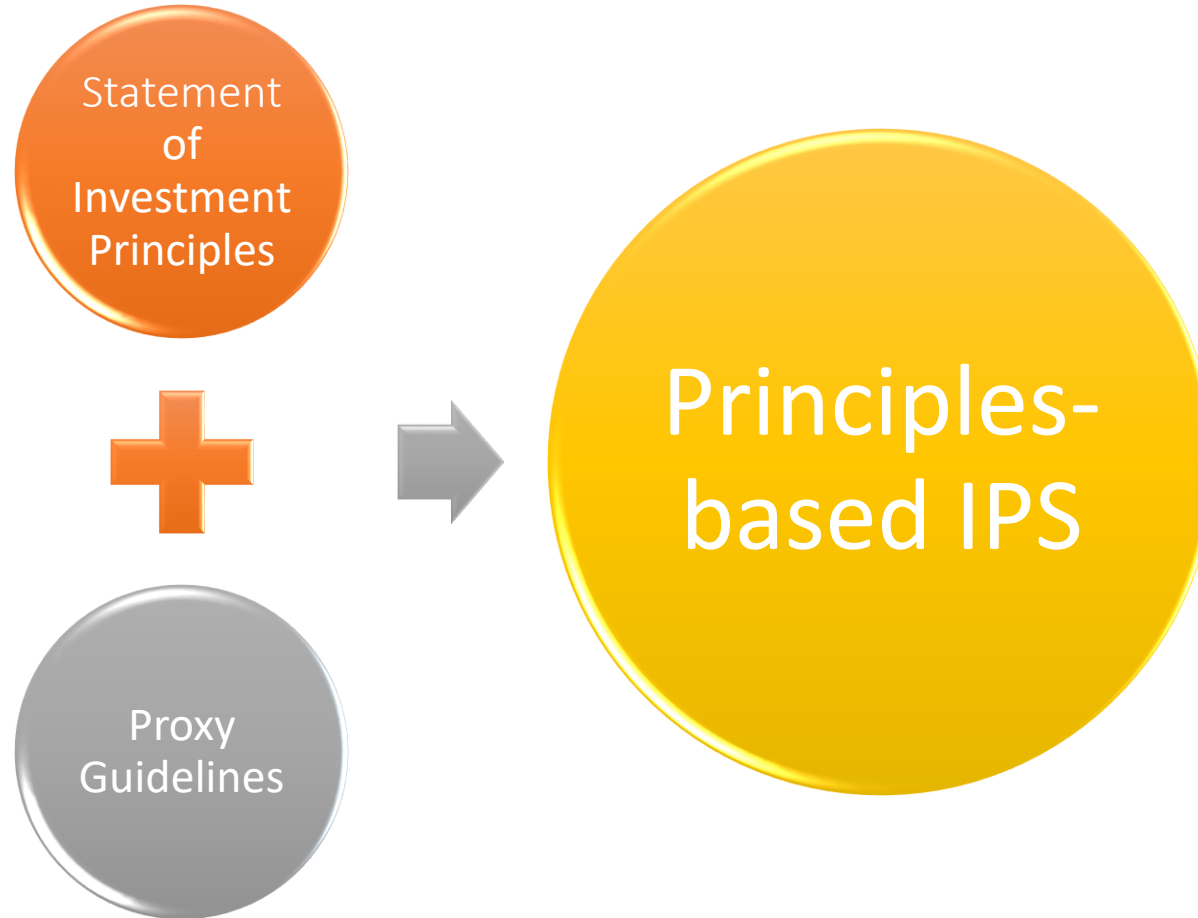


# BERS in 2018

---

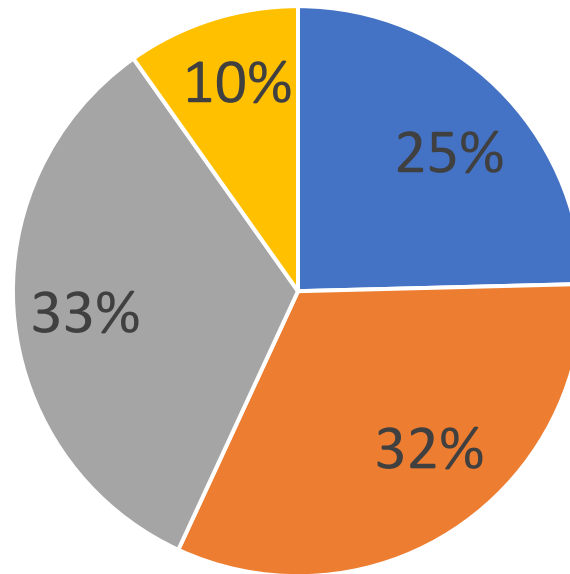
- IPS had not been fully updated in nearly a decade
- No private markets consultant
- Little historical record for investment decisions
- Board meeting 1 hour before PEP meetings, barely able to get through the calendar
- No time for higher level discussions
- Voluminous amounts of information

# For the IPS, we turned a prescriptive document into high-level policy document



# Executive committee created in 2020 to spend more time on bigger picture issues

Allotted Time Since EC Creation



■ Asset Allocation/ALM/Portfolio Construction   ■ Governance and Policy   ■ Manager Selection   ■ Performance and Risk

# Facilitated additional access to information

---

Investment Book of Record makes portfolio information more readily accessible

Synthesized manager write-ups

SharePoint site for additional information



# Asset Allocation and Portfolio Construction

---



# Several key plan characteristics

Sponsor always pays ARC

Returns are smoothed over  
5/6 years

Cash flow negative since FY2021

Fixed TDA is  
28% of assets

Legislative cap  
on alternative  
assets

Discount rate  
amortization  
ends in 2033

COLA is 50%  
CPI (1-3%)

Thousands of  
potential new  
members

# Plan characteristics drive investment strategy

- BERS has a larger percentage of its portfolio in growth assets
- As a result, on a one-year basis, BERS typically has the highest measured standard deviation of the five New York City Retirement Systems
- However, things change if we define risk as the *probability of not reaching our goals*
- Modeling needs to be multi-period and specific to the plan



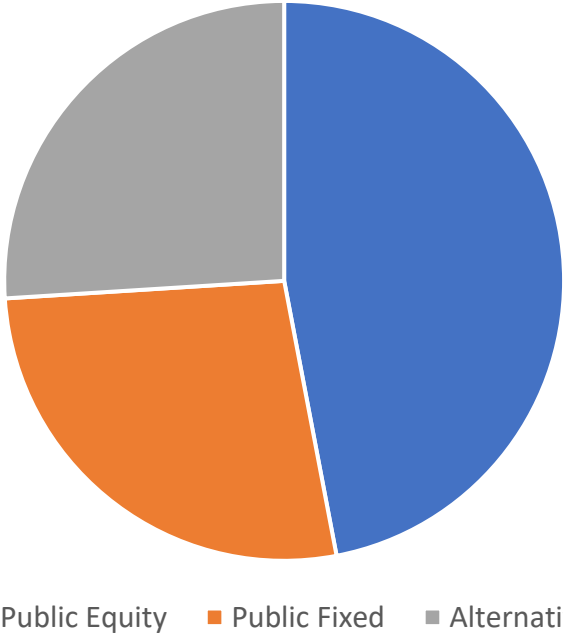
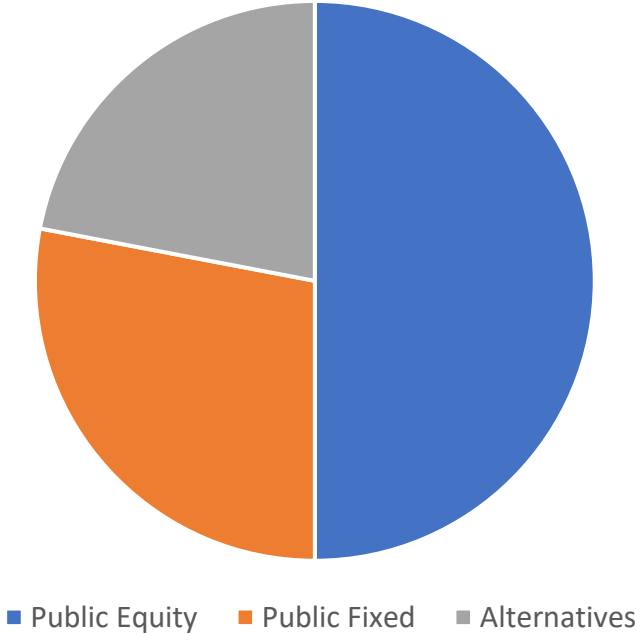
Last asset allocation we increased alternatives allocation, increased US overweight, and increased credit vs. government fixed income

**Pre-2020 Asset Allocation**

**2020-Present Asset Allocation**

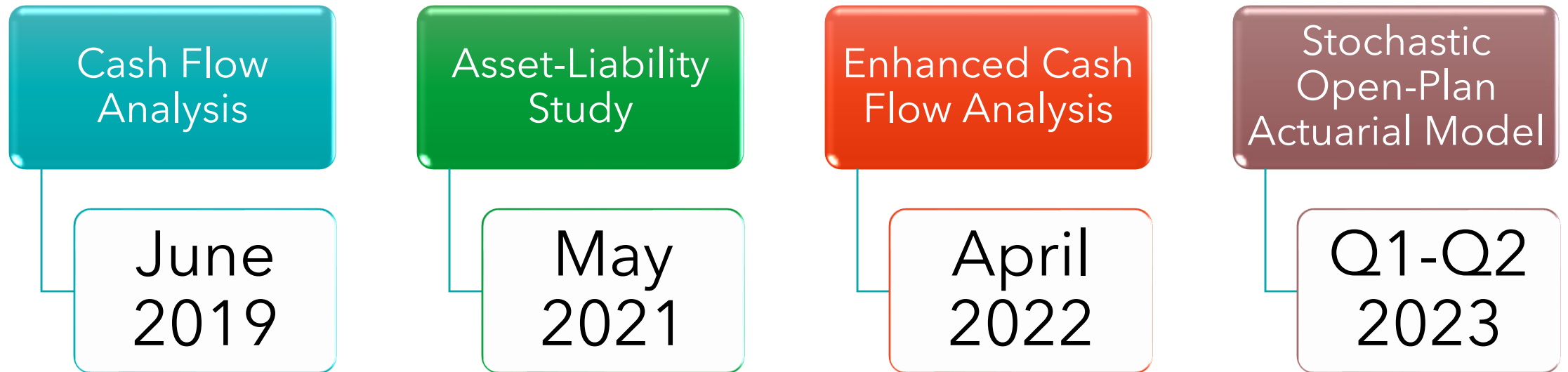
Pre 2020 AA

2020-Present AA

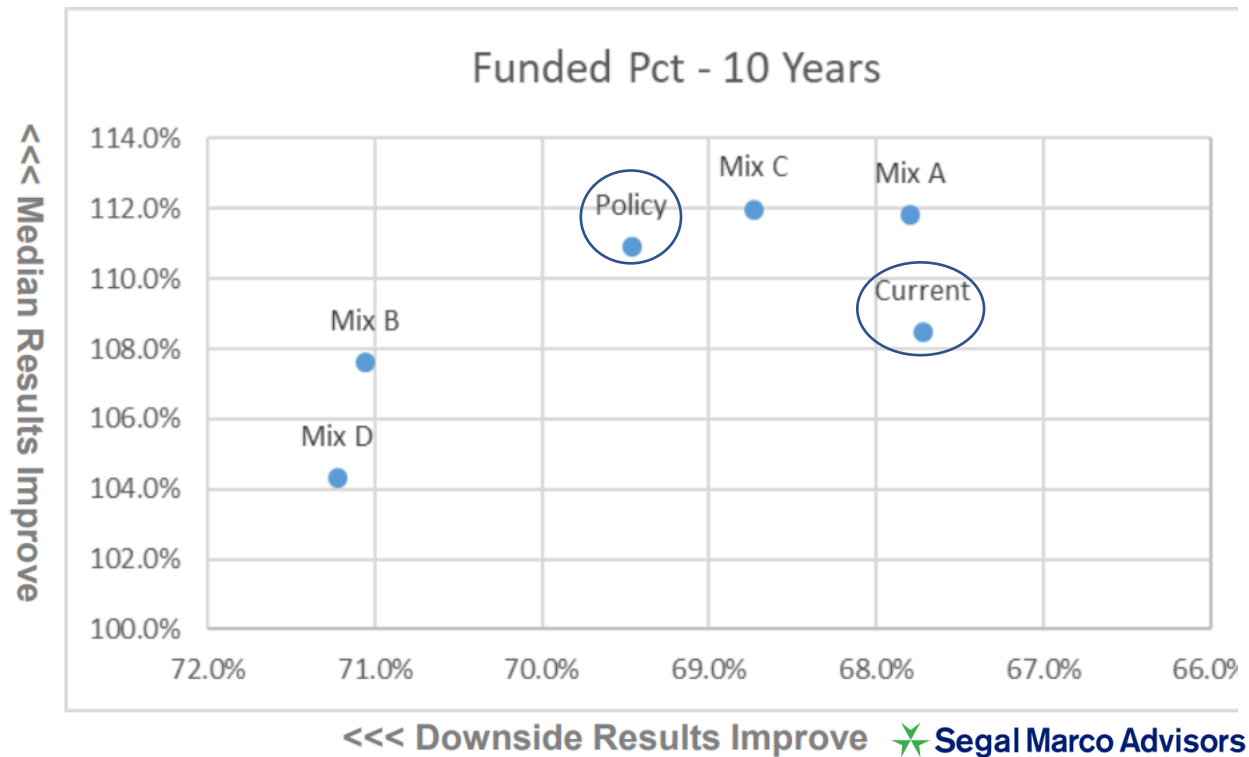


# BERS Milestones for ALM and Cashflow Analysis

---



# Implications of 2021 Asset-Liability Study: getting to policy was paramount



- Segal Marco Advisors analyzed several different portfolios to understand average and worst-case characteristics
- In most cases, there is a tradeoff between better median results or better downside results
- Policy portfolio performs better than our current in both median and downside scenarios

In 2021, the board passed a plan to get to policy targets



Commitment Sizing: Increased minimum to \$25 million



Pacing: Used 7% plan growth rate for pacing assumptions



"Parking Places" for Real Assets: Sought open-ended or listed alternatives to real asset parking places



Active/Passive decision for public markets: Started analysis on the appropriate level of active risk

# Manager Selection and Other Projects

---





# Largely agreement on manager selection

---

- Bureau of Asset Management, as investment adviser, is the conduit for investment manager recommendations
- ~90% of recommendations have been approved since 2018
- Rejections of recommendations have been rare and have typically fallen into four categories
  - Sizing: Below \$25 million on a case-by-case basis
  - Headline Risk: Board felt there was unacceptable headline risk
  - Fund-of-fund structure: Additional fees in asset classes
  - Consultant did not recommend: Did not pass consultants investment committee

# Customization reaches its limit?

- Independent investment manager recommendations have been episodic
  - Mesirow Private Equity (2006, 2008, 2011)
  - Franklin Templeton Real Estate (2011)
  - Global Listed Infrastructure (2022)
  - Base10 Advancement Initiative II (2023)
- Our attempt to implement some of the goals established by the Board of Trustees
- Clear that we need a solution that works for all stakeholders

Investment Strategy has also been active on additional projects



Research

Custom ESG Analytics  
Commitment sizing



Modeling

Market volatility and its relationship to contribution volatility



Member Communications

Social media posts  
"BERS Words" newsletter  
Future in-person sessions



Defined Contribution Plans

Variable TDA RFP  
"Chancellor's Plan"



Annual Training

Trustee on-boarding, glossary

# How do we move forward?

- Is customization viable?
- Who bears the cost?
- How to implement?
- STAR Committee may answer some of those questions





# BERS INVESTMENT MEETING

## PUBLIC SESSION



March 15, 2023



# PUBLIC MARKET RETURNS, Q4-2022

Asset Class	Index	Q4-22	1 Year	3 Year	5 Year	Expected*
Equities - U.S.	Russell 3000	7.18%	-19.21%	7.07%	8.79%	5.80%
Equities - Developed Intl	MSCI World ex USA IMI Net	16.04%	-15.26%	1.05%	1.59%	6.80%
Equities - Emerging Intl	MSCI EMERGING MARKETS	9.70%	-20.09%	-2.69%	-1.40%	8.30%
Debt - US Govt Long Duration	FTSE Treasury 10+	-1.24%	-29.75%	-7.60%	-2.32%	2.65%
Debt - US Government	NYC Treas/Agency +5	0.02%	-20.58%	-4.81%	-0.99%	2.60%
Debt - Investment Grade	Bloomberg U.S. Corporate IG	3.63%	-15.76%	-2.87%	0.38%	3.60%
Debt - High Yield	Bloomberg U.S. HY -2% Issuer Cap	4.17%	-11.18%	0.03%	2.24%	4.80%

\*Average of consultant long-term arithmetic expected market returns as of 1H '20

Source: State Street, BAM



# BERS NET PUBLIC MARKET RETURNS BY STRATEGY AS OF 12/31/22

Investment Strategy	AUM				
	(Millions)	3 Month	1 Year	3 Year	5 Year
U.S. Equity	2,281	7.3	(20.4)	6.6	8.6
World ex-U.S.	671	14.4	(24.8)	1.3	2.2
Emerging Markets	399	11.8	(22.7)	(4.1)	(3.0)
Core Fixed Income	1,083	1.6	(13.0)	(2.0)	0.5
TIPS	280	1.9	(11.9)	1.2	2.1
High Yield	718	4.4	(9.6)	1.2	2.9
ETI	39	1.2	(11.2)	(2.1)	0.7
Cash	90	0.9	1.6	1.2	1.4

Source: State Street



## BERS NET PRIVATE MANAGER RETURNS BY STRATEGY

Investment Strategy	1 Year	3 Year	5 Year	10 Year	Since Inception
Private Equity	1.7	21.0	18.5	17.1	14.4
Private Real Estate Core	20.3	14.6	11.4	10.8	10.9
Private Real Estate Non-Core (Opp.)	12.0	11.9	11.8	13.9	13.7
Infrastructure	9.1	11.8	11.5	n/a	12.0
Opportunistic Fixed*	2.2	0.0	0.0	0.0	12.8

Returns for periods ended September 30, 2022, unless otherwise noted.

\* Returns through December 31, 2022.

Source: Aksia, State Street

## BERS NET PLAN PERFORMANCE AS OF 12/31/22

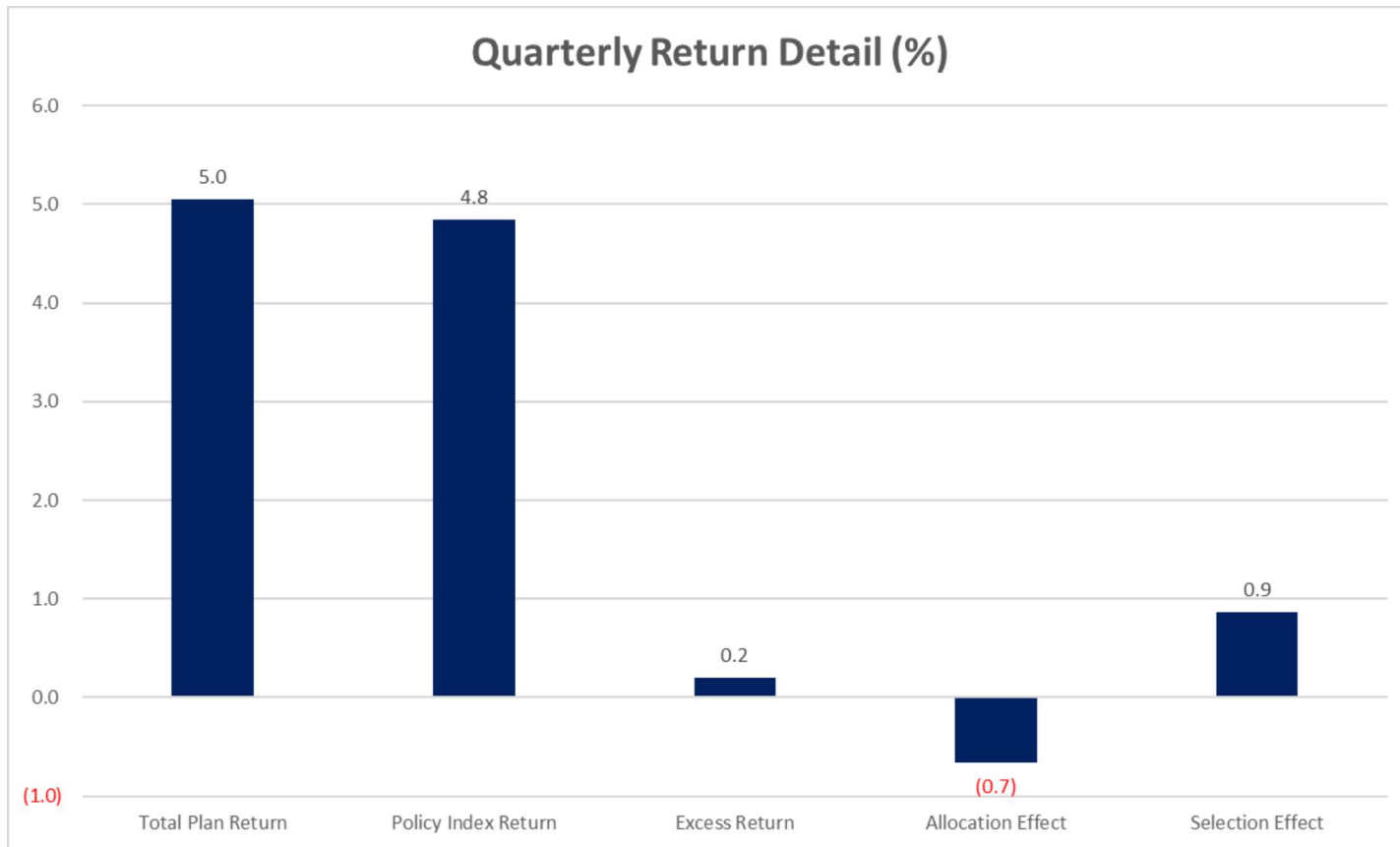
Aggregate Performance	3 Month	1 Year	3 Year	5 Year
BERS Total Plan	5.0	(12.6)	5.2	6.1
BERS Policy Return	4.8	(13.3)	4.2	5.5
Public Market Equivalent 65/35 Portfolio	7.6	(15.7)	2.7	4.5
Median Fund TUCS	4.7	(10.2)	5.8	6.2

Source: SSB





# BERS TOTAL PLAN ATTRIBUTION 4Q-2022



# BERS PUBLIC MARKETS EXCESS RETURNS IN BP, Q4-2022

Investment Strategy	Benchmark	3 Month Excess	1 Year Excess	3 Year Excess	5 Year Excess
U.S. Equity	Russell 3000	8	(123)	(47)	(14)
World ex-U.S.	MSCI World ex-U.S. IMI	(160)	(955)	28	65
Emerging Markets	MSCI Emerging Markets	212	(266)	(143)	(158)
Core Fixed Income	NYC Custom Structured Index	(31)	12	(39)	(49)
TIPS	BB Global Inflation Linked TIPS	(11)	(7)	(1)	(1)
High Yield	NYC Custom High Yield Benchmark	23	159	115	68
ETI	NYC Custom ETI Benchmark	(75)	(39)	12	43
Total BERS	BERS Policy Benchmark	20	74	95	62

Source: State Street



# BERS PRIVATE MARKETS EXCESS RETURNS IN BP

Investment Strategy	Benchmark	1 Year Excess	3 Year Excess	5 Year Excess	10 Year Excess	Since Inception Excess
Private Equity	Russell 3000	2090	1600	1140	730	520
Private Real Estate Core	NCREIF ODCE Net	(65)	317	216	92	34
Private Real Estate Non-Core (Opp.)	NCREIF ODCE Net	(898)	50	253	394	314
Infrastructure	5-year Rolling CPI +400bp	134	404	374	n/a	424
Opportunistic Fixed*	50% JPM Gbl HY/50% CS Levered Loan	1042	0	0	0	1165

Returns vs. benchmark for periods ended September 30, 2022, unless otherwise noted.

\* Returns through December 31, 2022.

Source: Aksia, State Street



# BERS SUMMARY OF REBALANCING ACTIVITIES

- Activities between October 1, 2022 and December 31, 2022

	From	Amount (\$MM)	To	Amount (\$MM)	
<b>BERS</b> Fixed Income	Credit	94	Fixed Income	Short Term Treasury	20
	Mortgages	33		Credit	34
	Long Intermediate Treasury	33		Mortgage	33
US Equity	Large Cap	25		Long Intermediate Treasury	33
	Large & Mid Cap	10		Intermediate Term Treasury	25
World ex USA	Large & Mid Cap	20		Long Term Treasury	15
	Small Cap	15	Cash		70
<b>Total Outflow</b>		<b>230</b>	<b>Total Inflow</b>		<b>230</b>

Source: BAM Risk





# BERS INVESTMENT MEETING



March 21, 2023



# NET ZERO IMPLEMENTATION PLAN

# BERS'S NET ZERO COMMITMENT

In October 2021, BERS set an aspirational goal to achieve net zero GHG emissions by 2040 across its investment portfolio to mitigate the systemic risks of climate change to its investments and the real economy, taking into account the best available scientific knowledge and fulfilling fiduciary duty.

- ✓ Adopted Net Zero Asset Owner Commitment of the Paris Aligned Investment Initiative (PAII)
- ✓ Adopted preliminary Climate Action Plan that requires development of a Net Zero Implementation Plan in a year



# NET ZERO GOAL: BROADER FRAMEWORK

**GOAL** To decarbonize the market, not just our portfolio, and keep fossil fuels in the ground, consistent with our fiduciary duties.

**CONDITIONS** We can't do this alone — requires collective action by governments, regulators, companies, and investors on both the demand side and the supply side, in energy and all sectors, especially utilities, transportation, real estate, industrials, and materials, to keep global temperature rise well below 2° C.





# NET ZERO PLAN OVERVIEW

1. Disclose emissions & risk
2. Invest in climate change solutions
3. Engage for alignment & action
4. Divest to de-risk



# DISCLOSE EMISSIONS & RISK

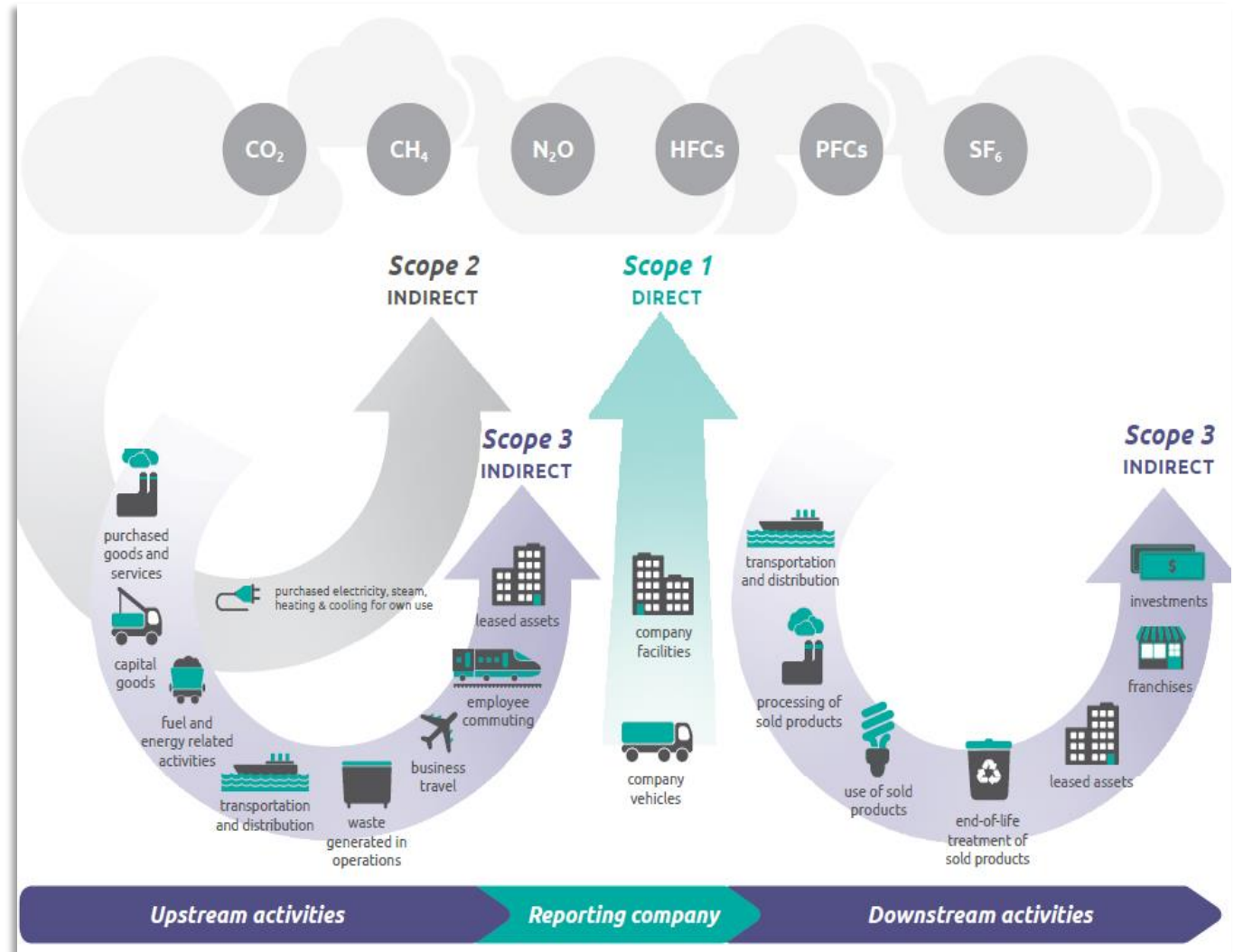
- Annually measure & report Scopes 1, 2 and 3 public portfolio emissions and progress of plan
- Public markets Scopes 1 & 2 emissions reduction targets: 22% by 2025 and 49% by 2030 + set targets for Scope 3 by 2025
- Develop interim portfolio emissions reduction targets for private markets



# DISCLOSE EMISSIONS AND RISK

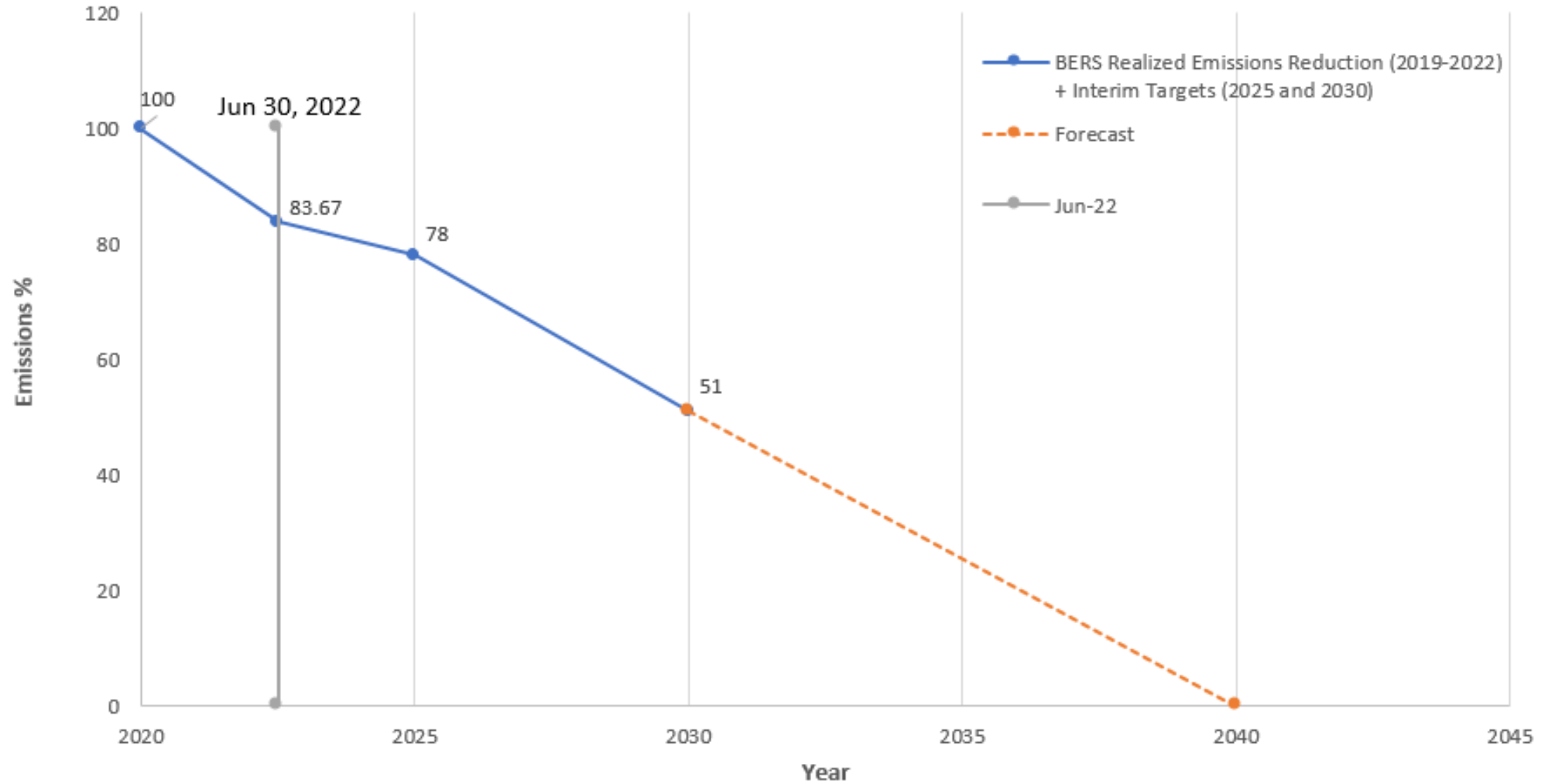
## Measure and Disclose

- Annually measure and disclose GHG emissions of public equity and corporate bonds covering Scopes 1, 2 and 3 financed emissions
- Evaluate tools and data for measuring emissions of private markets
- Evaluate tools and data for assessing additional climate risks
- Annual report



# DISCLOSE EMISSIONS AND RISK

## BERS Interim Emissions Targets



# ENGAGE FOR ALIGNMENT & ACTION

- Increase science-based targets coverage to:
  - 70% of Scopes 1 & 2 portfolio emissions by 2025
  - 90% of Scopes 1, 2 & 3 portfolio emissions by 2030
- Engage highest corporate emitters + collaborate with other institutional investors
- Aim for all managers to have net zero goals or science-based targets and plans by 2025
- Develop Just Transition assessment



# MANAGER NET ZERO ALIGNMENT

Aim for all managers to have a net zero goal or science-based targets (SBTs) and implementation plan, consistent with fiduciary duty, covering, at a minimum, assets managed for the System, by June 30, 2025.

## Managers should seek to:

- Cover Scopes 1 & 2 and material Scope 3 emissions of investments
- Develop plan for Scope 3 if inadequate data
- For GPs, have control investments adopt SBTs during holding period if no net zero goal

## BAM to:

- Develop proposal for non-control investments, in consultation with managers
- Review proxy voting records of public markets managers
- Provide Boards with interim report in 2023 and in-depth progress report in 2024
- Recommend in 2025 potential actions for managers without targets and plans, or an acceptable alternative approach



# INVEST IN CLIMATE CHANGE SOLUTIONS

## Total Climate Change Solutions Investments: 2Q22 Amounts & Goals

Year	Amount (% of AUM)
2Q 2022 (invested & unfunded)	\$201 million (2.6%)
2025 goals	\$400 million (4.4%)
2035 goals	\$1.8 billion (14.4%)

Assess whether and how strategic asset allocation may be constructed to prudently increase allocations to climate solutions investments across multiple asset classes consistent with fiduciary duty and our investment objectives.

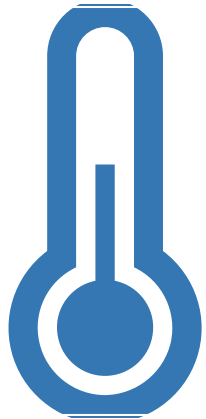


# CONSIDERATION OF EXCLUSIONS



## Private Markets

- Consistent with the Boards' fossil fuel divestment resolution, ask all private markets managers to exclude exploration, extraction and production of oil, gas and thermal coal or provide opt-out of such investments. If manager does not agree, Boards decide on investment consistent with fiduciary duty.



## General

- If investment managers or publicly-traded companies fail to comply with the parameters to align with science-based pathways to maintain global warming to 1.5 degrees Celsius as provided in this implementation plan, Boards may consider potential actions to exclude them from our portfolio prospectively, consistent with fiduciary standards.





## **Audit Committee Charter**

---

### **1. STATEMENT OF PURPOSE**

The purpose of the Committee is to provide structured, systematic oversight of BERS' governance, risk management, and internal control practices, by advising the Board on the adequacy of initiatives around the governance structure, risk management, system of internal controls, financial statements and reporting, oversight of internal audit activity, external auditors and other providers of assurance, compliance with applicable laws and regulations, and other assignments as the Board may deem necessary or appropriate.

### **2. AUTHORITY**

The Audit Committee Charter (the "Charter") sets out the authority of the Committee to carry out the responsibilities established for it by the Board as articulated within the Charter.

In discharging its responsibilities, the Committee will have unrestricted access to members of management, employees, and relevant information it considers necessary to discharge its duties. The Committee also will have unrestricted access to records, data, and reports, and BERS' management and staff should cooperate with the Committee's requests. If access to the requested documents is denied due to legal or confidentiality reasons, the Committee and/or the Director of Internal Audit will pursue a mutually acceptable resolution of the matter.

The Committee is empowered to:

- a) Review any disagreements between BERS management and **internal or** external auditors regarding financial reporting and other matters.
- b) Review all audit and non-audit services performed by auditors, accountants, or other advisors.
- c) Seek counsel from the General Counsel of BERS.

### **3. COMPOSITION**

Appointment of the members of the Committee shall occur at a general meeting of the Board. The Committee shall consist of three (3) or five (5) members of the Board, at least one (1) of whom shall be an employee member. The members should collectively possess a working knowledge of audit, finance, pension administration industry knowledge, IT, law, governance, risk and control.

For each member appointed by the Board to the Committee, the Board may designate an alternate Committee member to serve for the member's duration on the Committee in the event of the death, disability, disqualification or withdrawal of the Committee member. In the event of a Committee member's absence from a meeting of the Committee, and the absence of that Committee member's alternate, another alternate Committee member may assume all of the powers and responsibilities of said Committee member for the duration of the meeting. In such instances, the alternate Committee member shall possess all of the powers and responsibilities of said Committee member for the duration of the meeting. The alternate Committee member's presence at the meeting shall be counted for the purpose of establishing a quorum, however, in no event shall an alternate Committee member attend a meeting on behalf of more than one Committee member. Notwithstanding the foregoing, the powers and responsibilities of the Chancellor may be assumed only by a Chancellor's designee, and the powers and responsibilities of an employee member may be assumed only by that employee member's respective alternate employee member.

### **4. CONFLICT(S) OF INTEREST**

Committee members should adhere to the highest ethical standards, consistent with their fiduciary duty as members of the Board. Potential conflicts of interest on the parts of Committee members are addressed by Chapter 68 of the New York City Charter and the Rules of the New York City Conflicts of Interest Board (COIB). Members are required to recuse themselves from any Committee activities related to the conflict of interest on a case by case basis. As members of the Board, Committee members are required to file an annual financial disclosure with the COIB.

## **5. ORIENTATION AND TRAINING**

The Committee should receive training on the internal audit function and the Committee's role. Training specific to functional areas within BERS may be led by BERS management in that specific area as needed.

## **6. OPERATIONAL PROCEDURES**

### **i. Authority of the Board of Trustees**

- a) The Board shall have the power to adopt or amend the Charter.
- b) The Committee will review and assess the adequacy of the Charter as may be required. The Committee will submit proposed revisions to the Board for its approval.

### **ii. Audit Committee Chair**

- a) The Committee Chair (the "Chair") shall rotate annually and be appointed by the members of the committee. **Notwithstanding the above, in the event that no other member of the Committee wishes to serve as Chair, the Committee may re-elect the current Chair.**
- b) The Chair should have knowledge of changing issues within the public sector, pension administration, Enterprise Risk Management (ERM), Internal Controls, the nature of the internal audit environment, BERS' risk profile and its business priorities.
- c) If the Chair is unable to attend a meeting, the members will be polled and a substitute Chair, for the purposes of that meeting only, will be identified among those who have indicated that they will be present.
- d) **The election of the Chair shall occur at the first Committee meeting of every year.**

### **iii. Term**

- a) The term of office for a Committee member is two (2) years.

### **iv. Meetings**

- a) The Committee shall meet quarterly, with authority to convene additional meetings, as the Chair and/or the Director of Internal Audit may deem necessary or appropriate.
- b) The Director of Internal Audit and the Chair are required to attend all Committee meetings.
- c) Notice of Committee meetings may be given by electronic mail.
- d) The Committee shall conduct its meetings in compliance with Article 7 of the New York Public Officers Law, also known as the Open Meetings Law.
- e) The Committee may enter into executive session pursuant to Section 105 of the New York Public Officers Law, or into attorney client session as required.
- f) Members of the Committee will be provided with an agenda two weeks in advance of each meeting to allow participants adequate time to formulate questions and conduct any necessary preliminary research prior to the meeting. Committee meeting agendas shall be the responsibility of the Chair, with input from Committee members, executive management, and the Director of Internal Audit.
- g) The Committee will communicate its requirements for information, which will include the nature, extent and timing of information. Information will be provided to the Committee at least one week prior to each Committee meeting.
- h) Meetings should be conducted in accordance with Robert's Rules of Order, and minutes will be recorded and circulated to attendees for approval at the next meeting.
- i) All members of the Resource Team (defined in Section 9, below) shall make themselves available to attend meetings of the Committee upon request.

### **v. Quorum**

- a) A majority of the members of the Committee shall constitute a quorum.
- b) In the absence of a quorum, a lesser number may adjourn the meeting.
- c) The concurrence of one employee representative and one non-employee representative shall be necessary for an act of the Committee.

## **7. RESPONSIBILITIES AND DUTIES OF THE AUDIT COMMITTEE**

The responsibilities and duties of the Committee shall include the following:

### **i. Financial Statements and Reporting**

- a) Report periodically to the Board on audit activities, findings and recommendations, and management's response and remediation efforts.
- b) Review the audit report of BERS' financial statements by external auditors.
- c) Review with management, the external auditors, and/or the Internal Auditor, as required, the results of all audit activities, including any difficulties encountered.
- d) Review all significant recommendations, suggestions and/or adjustments proposed by the external auditors or the Internal Auditor.
- e) Review the annual management letter provided by the external auditors for any significant deficiencies or material weaknesses in the accounting controls.

**Note: Financial statements preparation and reporting by external auditors is reviewed by the NYC Audit Committee. The external auditors report annually to the full BERS Board of Trustees on the results of their audit.**

## **ii. Fraud, Ethics and Values**

- a) Oversee and challenge management and the Internal Auditor to ensure that BERS has appropriate antifraud programs and controls in place to identify potential fraud and to ensure that investigations are undertaken if fraud is suspected or detected.
- b) Ensure that appropriate action is taken against known perpetrators of fraud.
- c) Provide oversight of the mechanisms established by management to establish and maintain BERS' values and high ethical standards for all managers and staff.
- d) Review, identify and deal with any legal or ethical violations.

## **iii. System of Risk Management and Control**

- a) Annually review BERS' risk profile.
- b) Provide oversight on significant risk exposures and internal control issues, including fraud risks, governance issues, and other matters needed or requested by senior management and the Board.
- c) Review and provide advice on the risk management policies and processes established and maintained by management.
- d) Review the assessment of any other regulatory body or consultant relating to BERS' system of risk management.
- e) Review the effectiveness of the BERS' internal control framework, including information technology security.

## **iv. Internal Audit Activity**

- a) Review and approve the Internal Audit Charter annually to ensure it accurately reflects the purpose, authority and responsibility of the Internal Audit Department.
- b) Assure and maintain the independence and objectivity of the internal audit function through direct functional reporting by the Internal Auditor to the Committee.
- c) Provide governance over ethics or Whistleblower complaints.
- d) Review, provide input, and approve the Internal Audit Plan, objectives, performance measures, and outcomes.
- e) Ensure there are no unjustified restrictions placed on the Internal Auditor and that there is full access to all necessary documents, information and systems within BERS.
- f) Review all internal audit reports and other communications to management.
- g) Review the responsiveness and timeliness of management's follow-up activities and implementation of corrective actions.
- h) In conjunction with BERS' Executive Director, periodically review the performance of the Internal Auditor.
- i) Review the effectiveness of the Internal Audit function, including compliance with applicable standards.
- j) Ensure the internal audit activity is quality oriented and has a Quality Assurance and Improvement Program (QAIP) process administered by a qualified assurance provider.

## **v. Compliance**

- a) Review the effectiveness of the system for monitoring compliance with applicable laws and regulations and the results of management's investigation and follow-up (including disciplinary action) of any instances of noncompliance.
- b) Review the observations and conclusions of internal and external auditors and the findings of any regulatory agencies.
- c) Obtain regular updates from management and the BERS General Counsel regarding compliance matters.

**vi. Organizational Governance**

- a) Review and provide advice on the governance process established and maintained within BERS and the procedures in place to ensure that the process is operating as intended.

**8. COMMUNICATIONS**

The Committee will report orally or in writing to the Board on all matters discussed at each Committee meeting.

**9. RESOURCES**

**i. Resource Team**

The following Resource Team will attend and participate in Committee meetings at the request of the Committee:

- a) Executive Director
- b) Director of Fiscal Operations
- c) Director of Internal Audit
- d) Legal Counsel (Law Department and/or BERS General Counsel)
- e) External Auditors

The Committee may request other parties, such as representatives from the New York City Office of the Actuary or New York City Office of the Comptroller, to attend and participate in Committee meetings as may be required.

**ii. Outside Advisors**

The Committee may, with the consent of the Board, retain any external advisors and consultants (collectively "Advisors") it deems necessary to carry out the Committee's responsibilities.

**10. EFFECT**

This Charter shall be effective immediately upon its adoption by the Board.