

BOARD OF EDUCATION RETIREMENT SYSTEM

Board Meeting Agenda

October 24, 2023

1. Calendar Item 1: Noting of the Minutes of the Meeting of the Board of Education Retirement System held on September 26, 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: Direction to the Comptroller Regarding the Use of BIPOC Investment Managers for the Board of Education Retirement System Portfolio – **FOR CONSIDERATION AND ACTION.**
5. Calendar Item 19: Authorization to the Comptroller of the City of New York to Commit a Portion of the Real Assets Portfolio of the Board of Education Retirement System – **FOR CONSIDERATION AND ACTION.**
6. Calendar Item 20: Authorization to Enter Into an Agreement with CEM Benchmarking Inc. for the Provision of Administrative Benchmarking Services – **FOR CONSIDERATION AND ACTION.**
7. Calendar Item 21: Internal Audit Semiannual Update – **FOR DISCUSSION.**
8. Calendar Item 22: Amendment to Videoconferencing Procedures – **FOR CONSIDERATION AND ACTION.**
9. Calendar Item 23: Authorization to Permit Hardship Distributions from the BERS Tax- Deferred Annuity Program in Reliance on Self-Certification by the Applicant – **FOR CONSIDERATION AND ACTION.**
10. Calendar Item 24: Authorization to Permit Hardship Distributions from the BERS Tax-Deferred Annuity Program that Include Earnings on Contributions – **FOR CONSIDERATION AND ACTION.**

Board of Education Retirement System
SUMMARY MINUTES - AMENDED
Meeting of the Board of Trustees
September 26, 2023

Appearances:

Karine Apollon
Tazin Azad
Lilly Chan
Marjorie Dienstag*
Gregory Faulkner
Anita Garcia*
Sheree Gibson
Anthony Giordano
Alice Ho

Alison Hirsh
Michelle Joseph
Jessamyn Lee*
John Maderich
Donald Nesbit
Alan Ong
Maisha Sapp
Gladys Ward
Ephraim Zakry

*Attended via videoconference (WebEx) due to extraordinary circumstances.

Agenda Item 1 - Calendar Item 1: Noting the Minutes of the Meetings of the Board of Retirement held on June 13, 2023 and June 14, 2023. On a motion by Mr. Giordano and a second by Mr. Maderich, this item was unanimously approved.

Agenda Item 2: Executive Director's Update.

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

Agenda Item 4 – Calendar Item 18: Adoption of the Disability Committee's Recommendations. On a motion by Ms. Azad and a second by Mr. Giordano, this item was unanimously approved.

Alice Ho arrived at approximately 4:58pm.

Agenda Item 5 – Calendar Item 19: 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. Faulkner and a second by Mr. Zakry, this item was approved.

Agenda Item 6 – Calendar Item 20: Authorization to Enter into an Agreement with Savills, Inc. to Provide Real Estate Advisory Services to the Board of Education Retirement System. On a motion by Mr. Giordano and a second by Ms. Azad, this item was unanimously approved.

Agenda Item 7 – Calendar Item 21: Authorization to Amend an Agreement with Vitech Systems Sub LLC. On a motion by Mr. Maderich and a second by Mr. Giordano, this item was unanimously approved.

Agenda Item 8 – Calendar Item 22: Direction to the Comptroller Regarding the Use of BIPOC Investment Managers for the Board of Education Retirement System Portfolio. On a motion by Mr. Faulkner and a second by Mr. Zakry, this item was unanimously tabled.

Agenda Item 9 – Calendar Item 23: Ratification of Prior Acts of the Board. On a motion by Mr. Giordano and a second by Mr. Faulkner, this item was considered.

- a. Resolution to Amend the Investment Policy Statement in Relation to the Use of Black, Indigenous, and People of Color (BIPOC) Financial Institutions for the Board of Education Retirement System of the City of New York (BERS) from the June 13, 2023 meeting: On a motion by Ms. Hirsh and a second by Ms. Azad, this item was tabled.
- b. Approval of the Minutes of the May 9, 2023 Board Meeting: This item was unanimously approved.
- c. Approval of the Ordinary Business of the Board of Education Retirement System from June 13, 2023: This item was unanimously approved.
- d. Authorization to the Comptroller of the City of New York to Invest, Sell and Exchange the Funds of the Retirement System from June 14, 2023: This item was unanimously approved.

On a motion by Mr. Faulkner and a second by Mr. Giordano, the Board of Trustees voted unanimously to enter an Executive Session.

Karine Apollon left at approximately 6:08 PM.

Agenda Item 10 – Calendar Item 24: Authorization to the Comptroller of the City of New York to Commit a Portion of the Real Estate Portfolio of the Board of Education Retirement System. Ms. Azad, Ms. Chan, Ms. Dienstag, Ms. Garcia, Ms. Ho, Ms. Hirsh, Ms. Lee, Mr. Maderich, Mr. Nesbit, and Mr. Ong voted in favor. Mr. Faulker, Ms. Joseph and Ms. Sapp voted to oppose. Ms. Gibson, Mr. Giordano, Ms. Ward and Mr. Zakry voted to abstain. This item was defeated.

On a motion by Mr. Maderich and a second by Ms. Garcia, the Board of Trustees voted unanimously to exit Executive Session.

Agenda Item 11 – Calendar Item 25: Amendment to the Asset Allocation Policy for the Investments of the Board of Education Retirement System. On a motion by Mr. Maderich and a second by Mr. Giordano, this item was unanimously approved.

Calendar Item 26 through Calendar Item 29 were tabled until the next meeting.

On a motion by Mr. Maderich and a second by Ms. Garcia, the meeting was adjourned at approximately 7:31 PM.

**DIRECTION TO THE COMPTROLLER REGARDING THE USE OF BIPOC
INVESTMENT MANAGERS FOR THE BOARD OF EDUCATION RETIREMENT
SYSTEM PORTFOLIO**

WHEREAS, the Board of Trustees (Board) is committed and required to invest the members' pension assets with qualified managers to generate investment returns for the exclusive benefit of, and in order to pay retirement benefits to, BERS members and their beneficiaries; and

WHEREAS, the Board implements all policies consistent with the Trustees' fiduciary duties, BERS Investment Policy Statement (IPS), and applicable federal, state and local laws; and

WHEREAS, a "Staff FAQ Relating to Investment Adviser Consideration of DEI Factors" published by staff of the United States Securities Exchange Commission advises:

An investment adviser is required to have a reasonable belief that the advice it provides is in the best interest of the client based on the client's objectives. Such a reasonable belief that advice is in the best interest of the client typically includes consideration of a variety of factors. Accordingly, an adviser that recommends other investment advisers to or selects other advisers for their clients may consider a variety of factors in making a recommendation or selection, *including, but not limited to, factors relating to diversity, equity, and inclusion*, provided that the use of such factors is consistent with a client's objectives, the scope of the relationship, and the adviser's disclosures. Further, the adviser's fiduciary duty does not mandate restricting such a recommendation or selection to investment advisers with certain specified characteristics, such as a minimum amount of assets under management or a minimum length of track record.

and

WHEREAS, legal scholars, citing studies by prominent business schools and investment institutions, have found evidence supporting a correlation between diversity practices and financial performance, and stronger evidence that diversity is a "key ingredient for cognitively 'smart' businesses," and have posited that there is a "business argument for Diversity" based on "its impact on the corporation's reputation with regulators and key stakeholders and, by extension, on its cost of capital, access to talent and business partners, and

its attractiveness to customers ... [and] the rational basis for business leaders to conclude that attention to good [diversity, equity and inclusion] practices makes good business sense in terms of improving the likelihood that a corporation will be sustainably profitable;" and

WHEREAS, the Board is committed to integrating diversity and inclusion into its decision-making, including consideration of firmwide diversity in the selection of consultants and investment managers and supporting diversity among service providers to its investment managers; and

WHEREAS, the Board believes that professionals and decision-makers who come from diverse backgrounds contribute different points of view that enhance organizational quality and economic performance; and

WHEREAS, in order to achieve the best economic performance, the Board wishes to maximize opportunities for members of the Black, Indigenous, and People of Color (BIPOC) community, to be considered for positions as managers of BERS assets;

RESOLVED, that the Board will establish prudent parameters for investment manager searches that promote the consideration of qualified BIPOC managers and financial service providers; and

BE IT FURTHER RESOLVED, that the Board directs the Bureau of Asset Management (BAM), in coordination with BERS administrative staff, to take prudent steps to increase the use of qualified BIPOC managers. These steps shall include but not be limited to the following:

- BERS' general consultant shall include at least one BIPOC manager in recommendations to BAM for public markets searches when appropriate and consistent with the searches' evaluation criteria; and
- BERS' private asset specialty consultants and BAM shall consider qualified BIPOC private asset managers in the private asset classes in which BERS invests, when appropriate and consistent with evaluation criteria; and

BE IT FURTHER RESOLVED, that BAM and BERS staff provide the Board with an annual diversity report with a section describing assets

managed by BIPOC managers, broken out by class and manager; and a section describing diversity metrics of all managers; and

BE IT FURTHER RESOLVED

that this Direction to the Board shall, in all effects and terms, supersede the “Resolution to Amend the Investment Policy Statement in Relation to the Use of Black, Indigenous, and People of Color Financial Institutions for the Board of Education Retirement System of the City of New York” introduced to and voted on by the Board on June 13, 2023.

Respectfully Submitted,

Sanford R. Rich
Executive Director

AUTHORIZATION TO THE COMPTROLLER OF THE CITY OF NEW YORK TO COMMIT A PORTION OF THE REAL ASSETS PORTFOLIO OF THE BOARD OF EDUCATION RETIREMENT SYSTEM

WHEREAS, after review and discussion of the analyses and recommendations of BERS' investment advisor, the Comptroller of the City of New York ("the Comptroller"), and the administrative staff of BERS, who all endorse this action, Aksia TorreyCove Partners ("the Consultant") recommends that the Executive Committee ("the Committee") allocate a commitment of \$29 million of the Real Assets portfolio to an investment management fund in accordance with the recommendations of the Comptroller; and

WHEREAS, the Committee accepts the recommendations from the Comptroller, the Consultant, and the administrative staff, regarding the selection of an investment manager and has determined that funds should be committed accordingly; and

WHEREAS, the Committee has been authorized by the Board to approve additional investments in funds previously approved by the Board, or their successor funds, on substantively identical terms; now therefore be it

RESOLVED, that the Committee hereby directs the Comptroller to effectuate the foregoing process by allocating a commitment of \$29 million of the Real Assets portfolio consistent with the Comptroller's recommendation dated September 20, 2023; and be it further

RESOLVED, that the Committee directs that such allocation process shall be completed within a reasonable period of time and in a manner consistent with the Comptroller's guidelines for such transactions; and be it further

RESOLVED, that the Committee hereby directs the Comptroller to report to the Committee on the progress of such allocation and to make such recommendations to the Committee as the Comptroller shall deem appropriate with respect to such allocation.

Respectfully Submitted,

Sanford R. Rich
Executive Director

October 2023

AUTHORIZATION TO ENTER INTO AN AGREEMENT WITH CEM BENCHMARKING INC. FOR THE PROVISION OF ADMINISTRATION BENCHMARKING SERVICES

WHEREAS, BERS has determined a need for cost benchmarking, analysis and research relating to the administrative costs and services of BERS (“administration benchmarking services”); and

WHEREAS, the Board has received a recommendation from the administrative staff of BERS regarding the selection of CEM Benchmarking Inc. (“CEM”) to provide such administration benchmarking services; and

WHEREAS, BERS has determined that it is necessary to utilize a sole source procurement method as CEM Benchmarking Inc. is the only known vendor capable of providing comprehensive benchmarking services that utilize actual data collected from large U.S. pension funds; and

WHEREAS, it is the desire of the Board to contract with CEM for a period of two years commencing in fiscal year 2024, with three one-year options to renew, for a potential contract period of up to five years; now therefore be it

RESOLVED, that the Board does hereby authorize the Executive Director to enter into a contract with CEM Benchmarking Inc. to provide administration benchmarking services to the Board for a period of two years, not to exceed \$48,750, with an option to renew for up to three additional years and subject to agreement by CEM, and if any of the foregoing terms are not agreed upon by the parties, the contract will be brought back to the Board for further review and action before such a contract is executed; and be it further

RESOLVED that the Executive Director of BERS be authorized to receive and control funds and to direct the Comptroller of the City of New York to disburse funds in accordance with the agreement with CEM Benchmarking Inc.

Respectfully Submitted,

Sanford R. Rich
Executive Director

AMENDMENT TO VIDEOCONFERENCING PROCEDURES

WHEREAS, Chapter 56 of the Laws of 2022 (“Chapter 56”) amended the Open Meetings Law to establish requirements for how and when a public body may use videoconferencing when conducting its meetings; and

WHEREAS, in accordance with Chapter 56, on May 26, 2022, the Board of Trustees adopted videoconferencing procedures establishing requirements for how and when the Board and/or its committees may use videoconferencing when conducting meetings; and

WHEREAS, on May 3, 2023, Governor Kathy Hochul signed legislation enacting Chapter 58 of the Laws of 2023 (“Chapter 58”), which amended the Open Meetings Law to permit the Board, through its written videoconferencing procedures, to allow for a member of the Board with a disability to attend a Board meeting or a committee meeting via videoconference and to be considered present for purposes of fulfilling quorum requirements; and

WHEREAS, the Board wishes to amend its videoconferencing procedures pursuant to Chapter 58 so as to permit trustees with a disability to attend meetings via videoconference; now therefore be it

RESOLVED, that the Board adopts the following amended videoconference procedures on behalf of itself and its committees:

1. A quorum of Trustees must be present at one or more noticed physical locations where members of the public may attend in person. Notice of a meeting shall state the physical location(s) where the meeting will be held, where in-person attendance is possible, and state that the meeting will include a videoconferencing component and indicate where members of the public may view and, if applicable, participate in the meeting.
2. A Trustee not needed for a quorum may attend a meeting via videoconferencing in a location that is not accessible to members of the public under “extraordinary circumstances,” including, but not limited to, a disability, illness, caregiving responsibilities, or any “other significant or unexpected factor(s) or event(s).” Should a Trustee qualify to attend a meeting via videoconferencing at a location that is not accessible to members of the public, they may participate in the meeting and vote.
3. **Notwithstanding Paragraphs 1 and 2 above, any Trustee who has a disability¹ as defined in §292 of the Executive Law, where such disability renders the Trustee unable to participate in-person at any meeting location where the public can attend, shall be considered present for purposes of fulfilling the quorum requirements despite attending such meeting via videoconference, provided, however, that the remaining criteria required by the Open Meetings Law are otherwise met; and provided, further, that the Board or committee maintains at least one physical location where the public can attend such meeting.**

¹ Pursuant to §292 of the Executive Law, “the term “disability” means (a) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques or (b) a record of such an impairment or (c) a condition regarded by others as such an impairment...”.

4. Should the Board choose to use videoconferencing in a particular meeting, it will include audio and visual components that ensure that participants can be heard, seen and identified during the meeting. If a Trustee participates in a meeting by videoconference at a location which is not accessible to members of the public, members of the public will also be allowed to attend the meeting by videoconference.
5. Public sessions of Board meetings will be webcast for public viewing to the extent practicable.
6. Minutes of each meeting shall list all members of the Board who attended remotely at a location not accessible to members of the public.
7. Meetings conducted using videoconferencing will be recorded and the public session will be posted on BERS' website within five business days of the meeting and remain available for at least five years.
8. Procedures governing member and public attendance of Board meetings via videoconference will be posted on BERS' website.

Respectfully Submitted,

Sanford R. Rich
Executive Director

October 2023

**AUTHORIZATION TO PERMIT HARDSHIP DISTRIBUTIONS
FROM THE BERS TAX-DEFERRED ANNUITY PROGRAM
IN RELIANCE ON SELF-CERTIFICATION BY THE APPLICANT**

- WHEREAS,** the BERS Tax-Deferred Annuity Program (“the BERS TDA Program”) was originally established in 1970 pursuant to 26 U.S.C. 403(b) and Section 3109-A of the New York Education Law, and consistent with legacy regulations applicable to 403(b) plans, currently permits hardship distributions only when written records are submitted to support the type and amount of financial hardship; and
- WHEREAS,** on December 29, 2022, the President signed into law the SECURE 2.0 Act of 2022¹, which authorizes 403(b) plans to permit hardship distributions in reliance on self-certification by the applicant²; now therefore be it
- RESOLVED,** that the Board of Trustees hereby authorizes the Executive Director to permit hardship distributions from the BERS TDA Program in reliance on self-certification by the applicant, and delegates the implementation of any related operational revisions to the Executive Director or his authorized delegate.

Respectfully Submitted,

Sanford R. Rich
Executive Director

¹ Division T of the Consolidated Appropriations Act of 2023.

² Section 312 of the SECURE 2.0 Act.

October 2023

**AUTHORIZATION TO PERMIT HARDSHIP DISTRIBUTIONS
FROM THE BERS TAX-DEFERRED ANNUITY PROGRAM
THAT INCLUDE EARNINGS ON CONTRIBUTIONS**

- WHEREAS,** the BERS Tax-Deferred Annuity Program (“the BERS TDA Program”) was originally established in 1970 pursuant to 26 U.S.C. 403(b) and Section 3109-A of the New York Education Law, and consistent with legacy regulations applicable to 403(b) plans, currently permits hardship distributions to include only contributions; and
- WHEREAS,** on December 29, 2022, the President signed into law the SECURE 2.0 Act of 2022¹, which conforms the hardship distribution rules for Section 403(b) plans to those of Section 401(k) plans,² thus authorizing 403(b) plans to permit hardship distributions that include earnings on contributions; now therefore be it
- RESOLVED,** that the Board of Trustees hereby authorizes the Executive Director to include earnings on contributions in hardship distributions from the BERS TDA Program, and delegates the implementation of any related operational revisions to the Executive Director or his authorized delegate.

Respectfully Submitted,

Sanford R. Rich
Executive Director

¹ Division T of the Consolidated Appropriations Act of 2023.

² Section 602 of the SECURE 2.0 Act.

MEMORANDUM

FROM: SHARON KOPPULA, DIRECTOR OF CONTRACTS AND PROCUREMENT
TO: BERS BOARD OF TRUSTEES
SUBJECT: SOLE SOURCE DETERMINATION – CEM BENCHMARKING
DATE: OCTOBER 5, 2023

Below, please find a determination report regarding sole source procurement.

The New York City Board of Education Retirement System (BERS) seeks to obtain services for the provision of cost benchmarking, analysis and research relating to the administration costs and services of BERS.

BERS has previously contracted with CEM Benchmarking Inc. (CEM) as the sole source for the aforementioned services. However, as BERS wishes to continue such pension benchmarking services, BERS has performed its due diligence to determine whether any competitors have emerged in this space.

BERS has taken the following actions to determine whether CEM is the sole source for this type of service:

- Obtained a letter from CEM indicating that to their knowledge, “no other company offers a comprehensive pension administration benchmarking service that utilizes cost, service, and transaction volume data collected from U.S. pension plans.”
- Obtained a letter from BERS’ investment consultant, Segal Marco Advisors, indicating that to their knowledge, “no other firm offers an ongoing collection of data among public plans for benchmarking purposes.”
- Placed an inquiry via the National Association of Public Pension Attorneys (NAPPA) listserv, asking whether any fund/system was aware of an organization other than CEM that provided public pension benchmarking services. BERS received a response from Hank Kim, Executive Director and Counsel at National Conference on Public Employee Systems (NCPERS) indicating that NCPERS conducts an annual survey of public plans, where BERS can access the NCPERS members only dashboard and apply filters to get comparisons of like plans and their expenses. This information was brought to the attention of BERS Executive Director, Sanford Rich, who indicated that he previously discussed the issue with Mr. Kim and determined that the data provided by NCPERS is not comparable to the analysis conducted by CEM.
- Emailed the other New York City and State Retirement Systems to find out if the other systems were aware of any competitors for the service provided by CEM. BERS received responses from the New York City Employees’ Retirement System (NYCERS), New York City Teachers’ Retirement System (NYCTRS), and New York State and Local Retirement System (NYSLRS), who all indicated that they use CEM. NYCTRS further indicated that they were not aware of any other vendor who provided the services in question.

- Confirmed via email with the New York City Office of the Comptroller that the Comptroller's office contracted with CEM via sole source procurement.

Based on the foregoing, sufficient information has been obtained to make a determination that CEM is the only vendor capable of providing comprehensive benchmarking services that utilize actual data collected from large U.S. pension funds. To our knowledge, there is no competition for this service within the United States utilizing actual data collected from U.S. pension funds. Accordingly, BERS seeks to hire CEM as the sole source provide such services.

Should you have any additional questions, please do not hesitate to contact me.