The Voice for Public Pensions

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Message from the President

CPERS hosted our fifth Public Pension Funding Forum (Funding Forum or PPFF) September 16 – 18, 2018, in Boston, Massachusetts. This program, attended by 140 attendees, focused on the obstacles that stand in the way of closing the public pension funding gap and explore new solutions to overcome such obstacles.

The Funding Forum was over two days, beginning with a 2017 program overview and research update on September 16. September 17 began with a session on the current pension landscape and trends with Bridget Early, executive director of the National Public Pension Coalition, and Alex Brown, research manager at the National Association of State Retirement Administrators. You can view their Facebook Live session here. The second session of the day was a discussion on state and local revenue options to address pension funding with Matt Gardner from the Institute on Tax and Economic Policy and Susan Kennedy with the Alabama Education Association. Gene Kalwarksi from Cheiron and Sandy Matheson, executive director of the Maine Public Employees Retirement System led a discussion on stress testing as a tool to strength public pensions.

After lunch, the afternoon session began with a presentation from researcher Tom Sgouros from Brown University on a a critique of current public pension accounting and a preview of an upcoming research on said topic that NCPERS commissioned. William Fornia from Pension Trustee Advisors and Mark Hovey, former executive director of the San Diego City Employees Retirement System, discussed what attendees can do about pension reforms gone haywire. The afternoon continued with a presentation from Marcie Frost, CEO of CalPERS and Michael Curto from Squire Patton Boggs on their approaches to addressing pension funding issues. You can view their Facebook Live session here. The last session of the day was from Diane Oakley, executive director of the National Institute on Retirement Security, Jean-Pierre Aubry from Boston College, and Joshua Franzel from the Center for State and Local Government Excellence, was a discussion on if public pension cuts are hurting systems' ability to recruit workers.

The agenda for the second day of the forum was equally informative. The first session on September 18 was a presentation on what can be done about the politics of assaults on pensions, led by Robert CONTINUED ON PAGE 8

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Daniel Fortuna NCPERS President

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Helping Clients Invest with Purpose

By Bob Parise

ver the past 20 years we've seen interest in, and the questions around, diversity and inclusion increase in frequency and complexity among our clients – and especially within the public funds segment.

Questions range from: 'What is the ownership of your firm?' and 'How diverse are your teams?' to 'How diverse are the managers and service providers you choose?'

At Northern Trust Asset Management, we believe investing ultimately serves a greater purpose – and should be done intentionally and efficiently. Our Minority Owned Brokerage Program is a prime example of this philosophy, and one of the many ways we help our clients invest in line with their values.

In 2007, we launched the program to formalize our long-standing commitment to diversity and inclusion. We set out to do something we felt other asset management firms weren't doing enough of: meaningfully increasing the use of minority-owned brokerage firms. The program provides our clients with access to a diverse and talented pool of professionals within a community that is alltoo-often under-represented. In addition to filling that void, the program enables us to live our values.

Blazing the Trail

As a global investment manager entrusted with nearly \$946 billion* of investor assets, Northern Trust Asset Management has a long history of supporting diversity and inclusion in the financial services industry. Recent honors include:

- Best Employers for Diversity <u>Forbes</u>, 2018 <u>Ranked #1</u>
- Gender Equality Index Member *Bloomberg*, 2018
- Top 50 Company for Executive Women National Association for Female Executives (NAFE), 2017-Seventh Consecutive Year
- Top 50 Companies for Latinas to Work for in the U.S. Latina Style Magazine, 2017
- Best Places to Work for LGBT Equality Corporate
 Equality Index, 2017 Eighth Consecutive Year

Since its launch, we've found the program has been of particular interest to institutional plan sponsors and not-for-profits who are seeking ways to invest their pension, defined contribution plan or

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Bob Parise is Practice Lead, Public Funds & Taft-Hartley Plans at Northern Trust Asset Management and is a member of the Business Leadership Council. In his role, Bob collaborates across sales and client relationship management to establish business strategy and lead the delivery of investment solutions, including equity, fixed income and alternative asset classes, for these institutional segments.

Bob has more than 24 years of financial industry experience, including serving as co-head of the Americas defined benefit business for J.P. Morgan Asset Management, where he was responsible for new business development and relationship management across a group of corporate, public and Taft-Hartley defined benefit and defined contribution retirement plans. Bob earned a Bachelor of Business, Finance degree from Western Illinois University and an M.B.A. from DePaul University. He holds Series 3, 7, 24, and 63 licenses.



An Interview on Cybersecurity with Brian Bartow, General Counsel and Chief Compliance Officer of the California State Teachers' Retirement System

By Suzanne M. Dugan

Spend some time with Brian Bartow and you'll soon learn that worrying about cybersecurity is what keeps him up at night. As the General Counsel and Chief Compliance Officer at CalSTRS, Brian is responsible for enterprise information management and security. He has even taught a law school class on the topic. Brian sat down for an interview to share his knowledge and insights about cybersecurity.



Suzanne Dugan, Cohen Milstein: How serious is the cybersecurity threat to pension systems?

Brian Bartow, CalSTRS: Except for funding, it is the number one risk we face. When you assess risk, the analysis is typically two dimensional—that is, we look at the severity of the risk and the likelihood of its occurrence. With cybersecurity risk, there is an added third dimension. In addition to severity and likelihood, we assess the velocity of the risk. If a breach happens, it's going to happen immediately, whether the breach affects one record or brings down the whole system.

Dugan: Is the risk increasing?

Bartow: Attempts to breach the system are increasing at a rapid rate. We might have had 2 or 3 attempts to redirect electronic deposits two years ago, then it jumped 30-fold last year, and we are on track to triple that this year. There is so much information now available on the dark web that malefactors can capitalize on this and create synthetic identities from which they can launch targeted attacks. This uptick was fueled by the breaches where information such as social security numbers, and health information was stolen and now can be cross-referenced with other publicly available information like name, salary and workplace. Malefactors are infinitely resourceful and very motivated. We constantly monitor data analytics so that we can identify deviations in the levels of usage of data and patterns of access, from which we develop early indicators and investigate and respond immediately.

Dugan: What steps should a pension plan be taking?

Bartow: First and foremost, the cybersecurity threat must be characterized as a fiduciary responsibility and identified as a risk so that it is brought to the board's attention. That step is critical. The board must then come up with a budgetary device recognizing that this threat constitutes an expenditure line item. Addressing the

critical risk of cybersecurity requires a commitment of resources. There's no way around that.

The next step is to perform an audit, whether internal or external, looking at the existing internal controls and reporting on cybersecurity risk. This audit should lay the framework for how to address the risks. Cyber risks can fall into various categories, such as operational, financial, and reputational. Risks may come from third parties, such as employers, vendors or contractors. A cyber plan can begin to be developed from this assessment. Systems can then be developed and implemented to address the risks. Ways to manage the risks might involve purchasing cybersecurity insurance—the cost of which has come down of late—and including contractual provisions assigning risk and responsibility or providing for indemnification.

Dugan: Is there any guidance regarding best practices?

Bartow: A number of organizations, including the AICPA, National Association of Corporate Directors, the SEC and the Center for Internet Security, have begun to develop some reports that suggest ways to manage these risks. We must appreciate that the risks are ongoing and constantly evolving so that vigilance is essential. The best deterrence is knowing your data and who is touching it, as different kinds of data create different kinds of risks. Collecting information and reviewing it regularly are essential to planning and implementation.

Dugan: CalSTRS is a big fund with lots of resources. What about smaller funds with less capacity and fewer resources?

Bartow: The risks are the same for funds of any size. The appeal of the data to bad guys is the same regardless of the amount of money under management. The steps outlined here, from getting the board's attention to prioritizing these issues to assessing these risks to developing and implementing plans, are the same. It may be that resources will affect the extent of a response but should not be a barrier to an organization identifying the issue as a priority and assessing the attendant risks. Considering the operational, financial, and reputational risks, those steps are critical to fulfilling a board's fiduciary duty.

Suzanne M. Dugan is Special Counsel and leader of Cohen Milstein's Ethics and Fiduciary Counseling Practice

Claims Filing in Australia: Missed Recovery Opportunities for American Investors

any American retirement funds invest in Australian securities, and yet miss opportunities to recover losses through Australian class action settlements.

Australia enacted class action procedures more than 25 years ago, and securities class actions are now common in both its state and federal courts. Australian procedure is unique in that it allows for class actions to be brought on behalf of either opt-in or opt-out classes.

In an opt-in class action, investors must take affirmative steps to register prior to, or during the early stages of, litigation. An opt-in class typically includes all investors who purchased a specific security during the class period and entered into a

litigation funding agreement by the registration deadline. In some but certainly not all opt-in cases, the class is "re-opened" prior to mediation, giving investors a second chance to participate, and to do so without entering into a litigation funding agreement.

In an opt-out class action, class members do not need to enter into a litigation funding agreement at any stage. In these cases, just like in the United States, all investors who purchased a specific security during the class period are bound by any judgment or class settlement, unless they request exclusion. In addition, class members must file a claim form setting forth eligible transactions in order to receive payment from any class settlement. However, under Australian procedure, courts typically set claim deadlines in advance of mediation, and class members must submit a claim form before any settlement is announced, rather than after.

These options make Australia a favorable jurisdiction for securities class actions. In addition, Australian legislators are considering (i) lifting the existing ban on contingency fees for lawyers, and (ii) imposing new regulations on the litigation finance industry. These reforms could make it less expensive to bring securities class actions, and might lead to more cases being filed on an opt-out basis.

One common concern is that Australia is a cost-shifting jurisdiction – meaning unsuccessful plaintiffs can be ordered to pay a portion of defense costs – but it is important to note that an investor who does not take an active role in litigation does not become liable for legal costs simply by remaining as a class member or by filing a claim form to indicate an interest in receiving compensation.

Because many custodian banks and claims filing vendors do not cover Australian settlements, investors may need to take action to ensure receipt of all available payouts. The process includes (i)



identifying securities class actions and claims filing deadlines; (ii) reviewing transaction data to determine eligibility; (iii) submitting claim forms and supporting documents, such as account statements; (iv) corresponding with claims administrators to resolve any deficiencies or disputes; and (v) reviewing plans of distribution to ensure accurate payment amounts. Outside securities counsel may be able to assist with this process, or manage it entirely, as part of their litigation and portfolio monitoring services.

Bleichmar Fonti & Auld LLP iBleichmar Fonti & Auld LLP focuses on plaintiff-side complex litigation, including U.S. and non-U.S. securities, antitrust, and consumer actions on behalf of institutional investors. BFA's non-U.S. case evaluation services are objective, comprehensive, and thorough, due to our long-standing professional relationships throughout the world. This is a result of our strong commitment to candid and unvarnished advice, made possible by our uniform policy to remain objective with respect to all non-U.S. actions. BFA negotiates the most beneficial funding and insurance agreements on behalf of our clients who choose to join non-U.S. actions, and advises on the relevant factors and possible risks of participating in particular litigations. If you would like to learn more about our services, please contact Javier Bleichmar, Kendra Schramm, or Erin Woods, whose contact information can be found at www.bfalaw.com/team.

NCPERS Legal Report

California Supreme Court Finds City of San Diego Committed Unfair Labor Practice

By Robert D. Klausner, NCPERS General Counsel

n a long-awaited decision, the California Supreme Court unanimously found that the City of San Diego committed an unfair labor practice by refusing to meet and confer over a voter initiative sponsored by the city's mayor. In 2010, a San Diego city councilman and the mayor proposed closing the city's defined benefit retirement system to new employees and replacing it with a defined contribution plan, similar to a 401(k) plan common in the private sector. The proposals were made on city letterhead and city employees worked on the process of gathering signatures needed to place the matters on the ballot. As the mayor's proposal and the council member's proposal differed, they met and agreed to a single proposal which would place all new city employees, except police officers, in a newly-created defined contribution plan and froze the amount of compensation which could be considered for

pension purposes. City unions demanded to meet and confer under the public bargaining law. The city refused saying it was a "citizen" initiative.

The unions filed an unfair practice over the refusal to meet and confer. The Public Employee Relations Board agreed to hear the matter but the City sought an injunction which was granted by a trial court. On appeal, the appellate court found that the matter was within PERB's exclusive jurisdiction and vacated the stay. While the PERB case was pending, the measure appeared on the ballot and was approved by the electors. PERB ultimately found that the measure was a city initiative and that the mayor violated the labor law by refusing to meet and confer. PERB ordered the city to make employees whole for lost pension benefits for as long as the initiative remained in effect. The City appealed and an intermediate appellate court overturned PERB in April 2017. The California Supreme Court granted a petition for review from the unions and in August 2018 overturned the appeals court and reinstated the PERB decision. The Court found that deference to PERB on labor matters within its expertise was settled law and would not be overturned unless clearly erroneous. The Court also noted that under the statute, PERB's factual findings were conclusive. The Supreme Court found that the appeals court erred in rejecting the considerable evidence supporting the finding that the ballot measure was sponsored by the city and not by disconnected citizens. Lastly, the Supreme Court found that the duty to meet and confer was a central tenet of the

public bargaining law and the appeals court erred when it took an unduly restrictive view of that duty. The case, however, is not over. The Supreme Court found that because it did not address PERB's remedy by finding no unfair labor practice, the case was remanded to the appeals court to address remedies consistent with the ruling of the Supreme Court.

Boling v. PERB, ____P.3d____, 2018 WL 3654148 (Cal. 2018)

The case bears a close resemblance to a similar ruling by the Florida Supreme Court in 2017 finding the City of Miami committed an unfair labor practice in making unilateral pension and wage changes without bargaining.

See, Headly v. City of Miami, 215 So.3d 1 (Fla. 2017).

This article is a regular feature of PERSIST.

Robert D. Klausner, a well-known lawyer specializing in public pension law throughout the United States, is General Counsel of NCPERS as well as a lecturer and law professor. While all efforts have been made to insure the accuracy of this section, the materials presented here are for the education of NCPERS members and are not intended as specific legal advice. For more information go to www.robertdklausner.com.

How Companies Can Survive the New Industrial Revolution

By Dave Dowsett

new industrial revolution fueled by data and artificial intelligence is rapidly changing the global economy and the world we live in. That's according to Dave Dowsett, Invesco's head of strategy, research and development.

"The speed of companies coming and going has advanced. Organizations must understand where the competition is coming from - that is fundamental," he says.

Financial services companies especially need to find a way to navigate disruptive technology particularly as artificial intelligence and machine learning creates new ways of doing business and engaging with customers. Doing so, however, remains a challenge for large organizations accustomed to moving slowly and avoiding risk.

To reduce the risk of missing out on the tech revolution underway, Dowsett says companies should follow these 5 suggestions for survival

Understand the impact of machine learning

Artificial intelligence and machine learning can remove bias in decision-making and lead to faster and more accurate results – for financial services companies, this is a huge opportunity.

Fintech, and the firms that offer machine learning solutions to companies, are rapidly changing how financial services are structured, provisioned, and consumed.

From agriculture, to transportation, to healthcare, AI and machine learning are changing the landscape.

Expand your ecosystem

Fintech companies are quickly changing how consumers interact with financial services, but they're also startups that lack a focus on enterprise-wide challenges.

"Fintech startups find a gap on the value chain and they relentlessly go after it," says Dowsett. "They aren't trying to go after enterprise problems. They're going to go after a specific solution, like payments."

Therein lies a natural fit for large organizations to partner with startups and to tap into how they think and solve problems. "The competitive advantage will not be determined by the organization alone but by the strength of the partners and ecosystems you choose," he explains.





Collaborate

According to an <u>Accenture survey</u>, 75% of executives agree that their competitive advantage won't be determined alone but through collaboration.

Says Dowsett: "You have to collaborate now to compete, you can't just go away, think you'll build a five-year initiative, build some code behind closed doors and then come out and be the best."

Collaboration is key. This could be achieved by shifting away from traditional workplaces and into shared spaces that foster

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Dave Dowsett is Global Head of Strategy and Innovation for Invesco. In this role, he focuses on augmenting Invesco Technology's core roadmap with emerging financial technology in the marketplace. His role includes overseeing the identification of business needs through capabilities work, modeling strategic intelligence scenarios, and facilitating the movement of innovation and disruptive technology pipelines across the organization. Prior to joining Invesco, Mr. Dowsett lived and worked across Africa, Europe and North America, with 22 years of combined experience in applications, technology infrastructure management and digital transformation for organizations like Fidelity Investments, Unilever and Global Crossing (Level 3).

Withholding Tax Recovery: Insourcing, Outsourcing, or Strategic Partnering?

A Governable, Exception-Based Model for Closing the Funding Gap

By Tom Grande

A dministrators of U.S. based public retirement systems face quite the conundrum. They must contend with a 70% median funding gap in an environment of low interest rates and expensive domestic equities. To navigate the landscape, trustees and administrators are increasingly turning to two strategies: insourcing asset management and shifting investment allocations abroad.

While increasing focus on foreign assets can diversify portfolios and increase returns, the shift introduces foreign taxation of foreign source investment income. However, by pursuing withholding tax recovery through a strategic partnership model, retirement systems can enjoy up to 55 bps of added portfolio returns annually while reducing operating costs and fulfilling fiduciary duties.



Parallel Trends: Insourcing + International Equity Allocations

While outsourcing the chief investment officer (CIO) function has been a major trend of the last 25 years, plan administrators (especially of larger systems) have begun to re-examine the paradigm. By insourcing asset management, plans can enjoy significantly lower costs—8 basis points versus 46 for external management¹ —while obtaining comparable performance.

Representing a parallel trend, mandates that historically allocated 10% of AUM to non-U.S. equities are now apportioning closer to 20% of AUM abroad. Unfortunately, with foreign investment comes over-withheld portfolio income. Because pensions' tax-exempt status is not automatically honored overseas, foreign tax authorities often withhold up to 35% of international interest and dividend payments. With foreign tax recovery, however, pensions can often reclaim the entire withheld amount.

Withholding Tax Recovery: Finding a Strategic Partner

Despite the benefits of foreign withholding tax recovery, the process is difficult to administer. It requires the know how to correctly submit income data and legal documentation to tax authorities within short timeframes and keep up with constantly changing processes across dozens of markets. Because of this complexity, custodians and asset servicers rarely provide a global service. So, what are administrators to do? It is increasingly viewed as a best practice to pursue foreign tax recovery through strategic partnerships. This model combines the governance benefits of insourcing with the convenience of outsourcing. Through API-linked reporting portals, administrators can maintain oversight while the service provider gathers documentation, files claims, aggregates reports of claim activity from multiple custodians or prime brokers, and provides audit support. This model is exception-based: when attention is required, administrators are notified of the necessary action.

Such a model is superior to complete insourcing. It eliminates the most laborious parts of the process, removing the need for a full staff in-house. It is also superior to complete outsourcing to asset servicers, as most providers are not equipped to deliver a global offering. As such, no matter how a plan might manage the insourcing of asset management or outsourcing of operational expertise, withholding tax is a specialist area that requires specialist attention. By partnering with the right strategic provider, plans can maximize governance, meet fiduciary responsibilities, and pursue a best practice for closing the funding gap. \blacklozenge

¹ https://www.ft.com/content/41480ce8-b153-11e4-a830-00144feab7de

Tom Grande is a Managing Director of GlobeTax's Sales team. With over 25 years of experience in the asset servicing industry, he focuses on promoting the company's services to pensions and other tax-exempts seeking to recover over-withheld taxes on foreign investments.

MESSAGE FROM PRESIDENT THE CONTINUED FROM PAGE 1

Kuttner from American Prospect. The next two PPFF sessions were panel presentations on how to close the funding gap without dismantling public pensions. The first of the sessions was led by Dr. Christian Weller from the University of Massachusetts, Boston and Christopher Straub from Bank of America Merrill Lynch. The second of the sessions was led by David Wilson from Nuveen Asset Management and Robb Ruhr from Analytic Investors. The final session of the forum was on pension design innovation with Dr. Peter Diamond, Nobel Laureate in Economics from MIT.

The full presentations from the forum can be viewed at <u>www.</u> <u>NCPERS.org/fundingforum</u>. The 2019 Public Pension Funding Forum will be held in New York, New York on September 11-13, 2019. ◆

HELPING CLIENTS CONTINUED FROM PAGE 2

foundation assets in a way that mirrors their organizational values. The Minority Owned Brokerage Program provides these investors with the opportunity to express their values in a positive way.

Raising the Bar

Because promoting diversity and inclusion is a core value of Northern Trust Asset Management, we continually and intentionally explore ways to expand our relationships within the minority brokerage community. Most recently, we further enhanced our Minority Owned Brokerage Program by setting a target to execute 10% of all equity security trading commissions through minority brokers for approximately 120 common and collective investment trusts (CIT) that we manage. In addition, we expanded the program to include equity research firms owned by minorities, women and people with disabilities.

We firmly believe that by providing investors with access to diverse and talented professionals via our Minority Brokerage Program, they will benefit from innovative ideas and distinctive solutions that directly align with their values and investment goals. \blacklozenge

CLAIMS FILING IN AUSTRALIA CONTINUED FROM PAGE 4

Disclosure Statement

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NEW INDUSTRIAL REVOLUTION CONTINUED FROM PAGE 6

collaboration, like labs and campuses that identify synergies by putting startups next to enterprise organizations.

Embrace failure

"When you want to deal with disruption, you've got to think big. And that's generally quite hard for financial companies," says Dowsett adding that large financial services organizations tend to play it safe and "increment" their way forward.

But in fintech, he says, big bets are critical – and they generally fail. "You've got to be prepared for that failure and have support when you do fail because if you don't, people don't want to do that again."

• Change happens from the top

Dealing with disruption requires top down sponsorship says Dowsett.

"You can't bring in a consultant to innovate for you. You have to do it yourself. You have to find where your gaps are," he says.

Dowsett recommends leaders ask people in their organization to identify where the problems lie. "You might need help on delivery but you don't need help with consultants identifying your problems."



ADVOCACY | RESEARCH | EDUCATION National Conference on Public Employee Retirement Systems The Voice for Public Pensions

2018 Public Safety Conference October 28 – 31



NCPERS Accredited Fiduciary (NAF) Program October 27 – 28

Paris Hotel Las Vegas, NV

Early-Bird Deadline October 5

REGISTRATION NOW OPEN www.ncpers.org/psc



Calendar of Events 2018

October

NCPERS Accredited Fiduciary Program (All modules) October 27 - 28 Las Vegas, NV

Public Safety Conference October 28 - 31

Las Vegas, NV

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