



STATE OF CONNECTICUT

# RETIREMENT SECURITY BOARD

CO-CHAIRS: STATE COMPTROLLER KEVIN LEMBO & STATE TREASURER DENISE NAPIER

Connecticut Retirement Security Board

Meeting Minutes

Wednesday, June 3, 2015

9:00 A.M.

55 Elm Street, Hartford, 7<sup>th</sup> Floor Treasurer's Conference Room

## Members Present:

Hon. Kevin Lembo, State Comptroller, Co-Chair  
Hon. Denise Nappier, State Treasurer, Co-Chair  
Deputy Commissioner Dennis Murphy (on behalf of Sharon Palmer)  
Michael Callahan  
Ken Floryan  
George Kasper  
William Kosturko  
Sal Luciano  
Brendan Maher (via phone)  
Jamie Mills  
James Russell  
John Sayour

## Members Absent:

Thomas Barnes

## Special Guests:

Stacy Scapino, Mercer Consulting  
Rich Nuzum, Mercer Consulting  
Rashid Hassan, Mercer Consulting  
Marla Kreindler, Morgan, Lewis & Bockius LLP  
Craig A. Bitman, Morgan, Lewis & Bockius LLP  
Professor Norman Stein, Drexel University

## Other Participants:

Genevieve N. Ballinger, Research Analyst, Office of the State Comptroller



## **A. Call to Order**

Comptroller Lembo called the meeting to order at 9:03 a.m.

## **B. Adoption of Meeting Minutes**

A motion was made by Ken Floryan to adopt the Meeting Minutes of May 6, 2015. John Sayour seconded the motion. Michael Callahan commented that on page three of the minutes the market feasibility study employee survey should be referred to as a national study and not a statewide study. The minutes were adopted with the change unanimously at 9:05 a.m.

## **C. Update on Other States**

Genevieve N. Ballinger gave a brief update on the retirement initiatives in California, Oregon, Massachusetts and Washington. In California, the market feasibility study has begun and is expected to be completed in the fall. In Oregon and Massachusetts, the legislation to create a state-sponsored retirement savings program is still in committee. The State of Washington's small business retirement marketplace bill was passed and signed by the Governor on May 18. This voluntary plan offers small employers a marketplace of private sector retirement options that meet particular requirements as set by the state.

## **D. Market Feasibility Study Update**

Stacy Scapino, Rich Nuzum, and Rashid Hassan from Mercer Consulting presented an update to the Board on the market feasibility study. The goal of Mercer's study is to provide the Retirement Security Board with analysis to support a comprehensive proposal for implementing a state-sponsored savings platform for all private-sector employees. The goals are to: (1) facilitate retirement savings for uncovered Connecticut employees, (2) provide access to low-cost retirement programs that provide high quality services and investments with full transparency, (3) manage the State's liability and fiduciary obligations, and (4) avoid unintended policy consequences. Mercer will examine several critical issues such as program design, employer/employee experience, governance, investment strategy and options. Mercer pointed out that when administratively structuring the plan it is important to stay abreast of state and federal changes. In terms of structuring the financial feasibility portion, Mercer will use the market analysis data from the Center for Retirement Research at Boston College (CRR) and Mercer's own experience in this sector to determine cost estimates and parameters. Mercer then provided the Board with an outline of the work streams. Phase one, which is almost completed, will be a straw man program design. Phases two and three will be conducted simultaneously; phase two will be conducted by CRR and includes the market analysis of the employee and employer surveys and phase three will be conducted by Mercer and will focus on the program administration design. Phase four is the financial feasibility study and phase five is the final



report. Currently, Mercer will be starting on phase three and will give program design options to the subcommittee.

Mr. Callahan asked Mercer about employers that still complete their payroll manually, as well as enforcement and annuitization concerns. Mercer stated that they are looking into annuitization and will provide the subcommittee options on enforcement and including employers that still do payroll manually into the plan. Deputy Labor Commissioner Dennis Murphy also indicated that only approximately 6% of employers within the state remit wage information by paper instead of electronically.

### **E. Legal Perspective**

Marla J. Kreindler and Craig A. Bitman from Morgan, Lewis & Bockius LLP (Morgan Lewis) presented to the Board regarding legal issues. Ms. Kreindler went over the meaning of having a public retirement plan that is not subject to ERISA and what needed to be considered. The Internal Revenue Code (IRC) Section 4975 conflict of interest/prohibited transaction rules apply to IRAs. Ms. Kreindler pointed out that it was important for the Board to think about which ERISA fiduciary standards they would like to adopt since ERISA is viewed as the gold standard. The United States Department of Labor (U.S. DOL) is currently proposing a rule change to the definition of fiduciary for investment advice, including with respect to IRAs. 401(k) platform providers would have exceptions from fiduciary status that would not apply to IRA platform providers. It was suggested that the Board consider submitting a comment to the U.S. DOL with respect to the proposed rule change. Ms. Kreindler provided insight into institutional investment structures which seek to invest through institutional funds and collective trusts for lower pricing, increased transparency and other benefits. Since collective trusts don't necessarily allow IRA investors, she suggested that the Board look at state-sponsored commingled funds, such as group trusts, which allows for IRAs and for economies of scale, such as investing with 457 plans and other State programs. Morgan Lewis suggested that it is important for the Board to think about the investment strategies up front when drafting the plan and it is important to keep in mind a plan for when the assets grow. The Board discussed prohibitive transaction rules and how they would apply. The Board also discussed providing protections similar to the employer retaliation rule to ensure that employers do not take actions against employees to prevent them from accessing a benefit they are entitled to, which would include this state program if implemented.

### **F. ERISA concerns**

Professor Norman Stein provided an overview of key ERISA issues that would affect a state sponsored plan for private sector employees. Professor Stein suggested that the way to set up a plan that is not subject to ERISA is to set up a payroll deduction IRA. U.S. DOL safe harbor rules address payroll deduction IRAs but do not address auto-enrollment. In 1994, the U.S. DOL adopted a regulation that dealt with employers offering IRAs. The regulation stated that as long as the employer does not encourage or endorse the program it is not considered an employer



plan. They can however educate employees about the plan. In 2004, a U.S. DOL ruling examined health saving accounts to which employers contributed and held that these plans did not trigger ERISA. However, the employees could do what they wanted with the employer's contributions. These accounts are similar to, but not identical to, IRAs. Professor Stein also stated that if there is one investment option, then it is less likely to be considered an employer plan. When you provide an employer with investment options it would make it more problematic because the employer could be taking a more active role and then the program would likely become an ERISA plan. If the employer makes contributions it would also likely make it an ERISA plan. Professor Stein also discussed preemption. If the state sets up a plan covered by ERISA and mandates employers to adopt it, then the plan would be preempted. Mr. Callahan inquired about opening the plan up to the private retirement sector and asked what the market share would be. Professor Stein stated that for a State plan to work it needed to be large. Mr. Nuzum from Mercer responded that the State could mandate that an employer has to do something whether that is choosing the State plan or a private plan. Professor Stein warned that allowing the employer that choice may trigger ERISA because the employer would be taking a more active role. There was discussion amongst Board members about a State plan versus a private plan and how both plan structures would impact employers.

#### **G. New Business**

Comptroller Lembo brought up to the Board an error that CRR had made in the pricing on the contract. They asked for an additional \$9,593. Mr. Callahan asked what the implications would be if the Board rejected the CRR request. There was some discussion about whether this extra expense was related to the \$3,500 that the Board had asked them to add. Comptroller Lembo explained that the \$9,593 did not relate to the \$3,500 of additional funds that were approved at the last Board meeting. This would require a contract change and a vote needed to be taken. A motion was made by Mr. Callahan to oppose their request to put in an additional \$9,593. Treasurer Nappier seconded the motion because CRR is under contract. Mr. Floryan supported CRR's request.

Comptroller Lembo also informed the Board that the U.S. DOL would be speaking to Board staff on Friday.

#### **H. Public Comment**

Ms. Karen M. Waltemath, Financial Planning and Benefit Resources

Ms. Waltemath suggested that the Board open up the door for a State plan without providing investments and allowing the private sector to offer the investment portion. She stated that the private sector could help propel the State plan. She suggested that the intent of the Board may be to provide funding for budget shortfalls.

Comptroller Lembo made it clear that a revenue stream, if any, from this plan was not intended to help the State shortfall.



## **I. Adjournment**

A motion was made by Mr. Callahan to adjourn. Mr. Sayour seconded the motion. The meeting adjourned at 10:56 AM.