

TOWN OF GREENWICH  
BOARD OF ESTIMATE AND TAXATION  
LAW COMMITTEE  
MINUTES

Wednesday, November 4, 2015  
Law Department Conference Room

Committee: Jeffrey Ramer, Chairman; Leslie L. Tarkington

Other: Eugene McLaughlin, Assistant Town Attorney; Gary S. Hammersmith, McElroy, Deutsch, Mulvaney and Carpenter, LLP, Attorneys at Law; Peter Mynarski, Comptroller; William Drake, Member, Board of Estimate and Taxation; Atiya Jones, Human Resources Retirement Benefits Administrator

The meeting was called to order at 10:03 A.M.

**1. Proposed increases by the Retirement Board of the investments in Loomis Sayles Strategic Alpha Fund and in Loomis Sayles Senior Loan Fund to \$40 million each**

The Committee reviewed the Resolutions approved at the Law Committee's October 14, 2015 meeting for proposed increases by the Retirement Board of investments in the Loomis Sayles Strategic Alpha Fund to \$40 million and in the Loomis Sayles Senior Loan Fund to \$40 million. Since that meeting the stated conditions, which are met include:

1. Receipt of a letter from NEPC dated November 3, 2015 recommending an increase in the investment to \$40 million each and further stating that these investments would meet the requirement of Section 208(a) for inclusion in the 25% that is restricted.
2. Clarification from the Investment Advisory Committee that each investment was fully approved up to \$40 million.
3. Confirmation that the Retirement Board voted on September 24, 2015 to increase the maximum investment amount for Loomis Sayles Senior Loan Fund to \$40 million and for Loomis Sayles Strategic Alpha Fund to \$40 million.
4. Confirmation that the Retirement Board, adopted a modified Investment Policy, and that the GAM Unconstrained Bond Fund and the Loomis Sayles Strategic Alpha Fund would each meet the requirement of Section 208(a) for inclusion in the 25% that is restricted.
5. Confirmation by the Town Attorney that the Loomis Sayles Funds contract documents reflect the increased investment in each Fund.

The Committee discussed with Attorney McLaughlin, the proposed increase in the investment in the Loomis Sayles Strategic Alpha Fund and the Law Department's position on whether their opinion would support the Retirement Board's recommendation that it be included in the Town Charter Section 208(a) restricted 25%. The investment had been reviewed by outside counsel, Attorney Gary Hammersmith, and his recommendation was the same as that in his Opinion Letter dated October 3, 2015. NEPC had specifically recommended the investment be included in the restricted 25%. Mr. McLaughlin discussed that within the Charter Section 208(a) and its standards established as "care of a prudent investor" that he recommends that ERISA polices regarding derivatives and swaps and the Letter from the Department of Labor to the Comptroller of the Currency be considered when evaluating the

application of Section 208(a). Attorney McLaughlin's further legal research since the Law Committee's October 14, 2015 meeting, and in response to Ms. Tarkington's question, determined that both the ERISA standards regarding derivatives and the Department of Labor letter are the most recent standards applicable from these entities.

Mr. Hammersmith commented that the issue mixes questions of law and of fact. Attorney Hammersmith commented that the Loomis Sayles Strategic Alpha Fund has an equity component. The discussion returned to what is prudent under the constraints of the Charter Section. Mr. McLaughlin had reviewed case law with prudent investor standards. The discussion incorporated the consideration of the GAM Unconstrained Bond Fund as a similar portfolio investment. Mr. McLaughlin advised that he was not prepared to opine that either the GAM Unconstrained Bond Fund or the Loomis Sayles Strategic Alpha Fund are includable in the restricted 25% until the Retirement Board adopts the said ERISA and Department of Labor standards in its investment policy statement. Mr. Hammersmith went on to say that none of the discussion issues raised are applicable to the Loomis Sayles Senior Loan Fund.

Upon a motion duly made and seconded, the Law Committee of the Board of Estimate and Taxation, members Tarkington and Ramer present, voted 2-0 to find the investment of up to \$40 million in the Loomis Sayles Senior Loan Fund to be in legal order and that the investment is includable in the Charter Section 208(a) restricted 25%.

Upon a motion duly made and seconded, the Law Committee of the Board of Estimate and Taxation, members Tarkington and Ramer present, voted 2-0 to find the investment of up to \$40 million in the Loomis Sayles Strategic Alpha Loan Fund to be in legal order, with the condition that it be noted that the Law Committee has no Opinion from the Town Attorney's Office that the investment is includable in the Charter Section 208(a) restricted 25%.

The Committee voted 2-0 to add discussion of the GAM unconstrained Bond Fund to the Agenda.

## **2. Discussion of the GAM Unconstrained Bond Fund investment up to \$40 million**

The Committee discussed that all comments during the earlier discussion on the Loomis Sayles Strategic Alpha Fund also applied to the GAM Unconstrained Bond Fund investment. The NEPC letter dated November 3, 2015 included the GAM Unconstrained Bond Fund in its recommendation for inclusion in the Section 208(a) restricted 25%. Mr. Ramer confirmed with BET Chairman Michael Mason prior to the Law Committee meeting that the GAM Unconstrained Bond Fund Investment would not be on the BET Agenda. No motion was made on the GAM Unconstrained Bond Fund investment.

## **3. Review and approval of proposed investment by the Retirement Board in Monroe Capital**

Attorney Gary Hammersmith advised that the Monroe Capital investment is organized as a traditional hedge fund. He used as an example, the usual order of cash flow returned in a waterfall structure. Twenty percent of the Monroe Capital investments will be outside of the U.S. and Canada. The documentation includes a structured Claw-Back Guaranty Agreement (true up agreement). The Retirement Board voted 4-0 to invest in the Monroe Capital Fund, and on October 29, 2015 voted 5-0 to invest \$15 million in the Monroe Capital

Credit Fund II (Unleveraged). Mr. Hammersmith commented that its investments are made to middle market, regional companies, primarily located in the U.S., and not in distressed debt. Mr. Hammersmith commented that John Chadwick confirmed that the investment would be included in the Town Charter Section 208(a) restricted 25%. At 10:30 am, the Committee received the NEPC letter recommending an investment to \$15 million in Monroe Capital Credit Fund II (Unleveraged) and further stating that the investment would meet the requirement of Section 208(a) for inclusion in the 25% that is restricted.

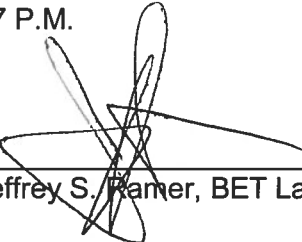
Upon a motion duly made and seconded, the Law Committee of the Board of Estimate and Taxation, members Tarkington and Ramer present, voted 2-0 to find the investment of up to \$15 million in the Monroe Capital Credit Fund II (Unleveraged) LP to be in legal order and recommended to the Board of Estimate and Taxation, with two conditions that (1) the Investment Advisory Committee approve the investment prior to the BET meeting, and (2) it be noted that the Law Committee has no Opinion from the Town Attorney's Office that the investment is includable in the Charter Section 208(a) restricted 25%

**4. Review and Approval of the Minutes**

Approval of the Minutes of the BET Law Committee Meeting of October 7, 2015 and the Special Meeting of October 14, 2015 were deferred until the December 2, 2015 meeting.

**5. Adjournment**

The meeting was adjourned at 12:17 P.M.

  
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Jeffrey S. Ramer, BET Law Committee Chairman

  
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Leslie L. Tarkington, BET Law Committee