



February 1, 2018

Mayor and Members of City Council  
City of Cincinnati  
801 Plum Street, Suite 150  
Cincinnati, Ohio 45202

Dear Mayor Cranley and Members of City Council:

This letter is in response to City Council Motion #201701311 which states “that the Pension Board, to the fullest extent possible and consistent with fiduciary obligations, divest from and set a policy moving forward to not invest in companies that derive at least 20% of their revenue from private prisons” and “report back to Council within 45 days with a plan for enacting this policy directive”.

The Cincinnati Retirement System Board of Trustees voted unanimously at our February 1, 2018 meeting not to institute the Motion’s policy.

**Background:**

There are several points that the Board believes are pertinent to the discussion of CRS fund investments. These include the following:

- As described in the City’s 2016 Comprehensive Annual Financial Report, both the Pension and Healthcare Trust Funds are fiduciary funds held for the benefit of parties outside of government. Fiduciary funds are not reflected in the government-wide financial statements because the resources of those funds are not available to support the City’s own programs.
- CRS Board members are fiduciaries. Generally, a “fiduciary” is a person to whom property or power is entrusted for the benefit of another person or persons.
- The Municipal Code provides that the CRS Board “shall have full power to invest and reinvest” fund assets.

- The Municipal Code also requires that, as trustees of the Pension and Healthcare Funds, the CRS Board follow the “prudent investor” rule as defined by the Ohio Revised Code and consider the following circumstances as they are relevant to the funds:
  - The general economic conditions;
  - The possible effect of inflation or deflation;
  - The expected tax consequences of investment;
  - The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;
  - The expected total return from income and appreciation of capital;
  - Other resources of members;
  - Needs for liquidity, regularity of income, and preservation of capital;
  - An asset’s relationship or special value, if any, to the purpose of the Retirement System.
- The Collaborative Settlement Agreement and associated Board reform order issued by the Court, states that “The Board shall administer the CRS for the benefit of the members of the CRS. The Board shall have the exclusive authority to govern the CRS Pension Trust Fund and the 115 Trust Fund [healthcare], subject to the terms and provisions of the Collaborative Settlement Agreement and the Consent Decree issued by the United States District Court, the Internal Revenue Code and the Cincinnati Municipal Code, provided that, in the event of any conflict, the Collaborative Settlement Agreement and Consent Decree shall control. Each member of the Board shall have fiduciary responsibility as defined under the laws of the State of Ohio.”
- The Collaborative Settlement Agreement further states that “The fiduciary responsibility shall be solely to the active and retired members of the CRS”.
- The CRS Board has an investment policy that comports with State and City laws and the Collaborative Settlement Agreement.
- As authorized by the Collaborative Settlement Agreement, the CRS Board employs the services of an investment consultant to provide independent advice regarding fund investment that the CRS Board uses to make investment decisions.

**Conclusion:**

The Board has determined that implementing the Motion would not be for the benefit of CRS active and retired members. We believe this would be contrary to the Board’s fiduciary duty and would detract from the investment performance of CRS funds. We have outlined below three negative consequences of instituting such a policy.

1. Limits investment options. Such a policy would effectively prohibit investing in many commingled investment opportunities (i.e., funds designed to pool our investments with other investors' capital to achieve economies of scale) that would limit many asset classes in which we invest.
2. Higher fees. It would raise our investment costs because in many cases we would be forced to use separate accounts to accommodate these restrictions that have higher fee structures than commingled vehicles.
3. Contagion effect. There are many other perceived worthy restrictions that the City Council and others might like to promote and apply that could further restrict the universe of investment options for the CRS. Approval of one such restriction could lead to other restrictions, the cumulative effect of which could further reduce CRS investment returns.

The financial health and security of the CRS depends heavily on the Board's ability to achieve the assumed investment return and full funding well into the future. It is our firm belief that applying the restrictions in your proposed policy would limit this ability, violate our fiduciary duty and not be in the best interest of CRS active and retired members. Therefore, we will not be instituting such a policy.

Respectfully submitted,



Thomas A. Gamel  
Cincinnati Retirement Board Chair

CC: Harry Black, City Manager; Paula Tilsley, CRS Executive Director; CRS Board