PAPERS

Pennsylvania Association of Public Employee Retirement Systems
PO Box 61543, Harrisburg, PA 17106-1543
Website: ***www.pa-pers.org***

Spring 2022

In This Issue

Conferences Go Hybrid in 2022

With COVID concerns still impacting our lives, PAPERS has decided both of its 2022 conferences – *Spring Forum & Fall Workshop* – will be offered in hybrid format. Some sessions will be offered only in virtual on-line format while other sessions will be available both in-person and on-line.

This issue gives details about the Spring Forum. Early Bird registration rates expire on April 10th and Standard Rates become effective 4/11/2022.

Conference information is also posted on the PAPERS website www.pa-pers.org and is updated as changes occur.

2022 PAPERS Spring Forum

Held in Hybrid Format

Virtual Sessions May 10 & 11, 2022

(mornings only)

In-Person Sessions May 24 & 25, 2022

@ Harrisburg Hilton Hotel *(on-line connection available)*

(Tuesday morning; Wednesday afternoon)

See Pages 3-4 for registration form; Pages 5-6-7 for agenda

Registration is Now Underway

A 2022 PAPERS membership (Participating, Sustaining, Associate or Affiliate) for your pension plan or firm is required for your representative(s) to participate in PAPERS' two annual conferences.

Corporate sponsorships for this conference are welcome from PAPERS' Associate and Affiliate Members. *Contact PAPERS Director of Operations Doug Bonsall (717-921-1957 OR douglas.b@verizon.net) for details about becoming a sponsor.*

Become a PAPERS Member

For details about PAPERS four membership categories, check the "Join Now" section of the PAPERS website **www.pa-pers.org** or contact:

- **Mail - PAPERS, PO Box 61543, Harrisburg, PA 17106-1543**
- **Phone – (717) 921-1957**
- **Email - douglas.b@verizon.net**

From the Executive Director

Ahhh, March!! There are many changes in the air; it appears the last of the winter weather has showered us with snowflakes and the pandemic may be slowly moving to the endemic stage. Even with many changes, there has been one constant - our diligence to protect and respect public dollars in our pension plans. Some of the tools we've traditionally used to help us achieve our fiduciary responsibilities may have been challenging during the worst of COVID.

A recent Supreme Court decision has brought our attention to changes in monitoring and investment strategy. So now more than ever we need to stay current with changes, so we never lose sight of our responsibility. I thank all the contributors to our newsletter who help bring us timely information so we can do our jobs better and a special thanks to all the speakers who have volunteered to make presentations either virtually or in person for our May Forum. These are the tools we can always count on to help us with our job. We are incredibly grateful for you sharing your talent, your wisdom and best practices.

I hope to see you all in May

Karen Deklinski

PAPERS Executive Director

kdeklinski@msn.com; 717-979-5788

Membership Categories

- **Participating** ($125/year early bird rate; $150/year after 3/31/2021) - *Public employee retirement systems (pension funds)*
- **Associate** ($1,500/year) - *Corporate providers of legal and investment services to pension plans*
- **Affiliate** ($750/year) - *Corporate providers of other services, exclusive of legal and investment services, to pension funds.*
- **Sustaining** ($75/year) - *Individual membership open only to those persons with an interest in public pensions but not affiliated with an organization which qualifies for group membership in any other category above*

PAPERS 2022 Spring FORUM Registration

May 10 & 11, 2022 (virtual); May 24 & 25* (in-person) at Harrisburg Hilton

PAPERS will continue to monitor the COVID pandemic situation and will announce by e-mail updates any changes in format that may become necessary. There will be a virtual connection option available for the presentations on May 24 & 25 for registered participants unable to attend the in-person sessions.

Each individual planning to participate in the Fall Workshop must submit a separate registration form.

Individual's name ______________________________

Preferred name for name tag ______________________________

Representing (name of pension plan or firm) ______________________________

Mailing address ______________________________

City, State, Zip ______________________________

Telephone number (_____) ____-_______ E-mail address ______________________________

Please check all conference events in which you plan to participate.

<u>Tuesday, May 10, 2022</u> (virtual only)

☐ Morning on-line sessions

<u>Wednesday, May 11, 2022</u> (virtual only)

☐ Morning on-line sessions

<u>Tuesday, May 24, 2022</u> (choice of in-person or virtual)

☐ Lunch (in-person only)

***Select one only*:** ☐ Afternoon in-person sessions **OR** ☐ Afternoon on-line sessions

☐ Cocktail reception/mixer (in-person only)

<u>Wednesday, May 25, 2022</u> (choice of in-person or virtual)

☐ Breakfast (in-person only)

***Select one only*:** ☐ Morning in-person sessions **OR** ☐ Morning on-line sessions

Please include full payment of all fees due with this form.

(see reverse for registration rates)

Please indicate appropriate category (check one only):

Pension Plan Representatives – Current (2022) PAPERS **Participating** Membership for plan required
Each individual from pension plan

- ☐ $125 Early bird registration payment received or postmarked by 4/10/2022
- ☐ $150 Standard registration payment made on or after 4/11/2022

Associate Member Representatives – Current (2022) PAPERS **Associate** Membership for firm required
Firms providing investment management and legal services

- ☐ $750 Early bird registration payment received or postmarked by 4/10/2022
- ☐ $825 Standard registration payment made on or after 4/11/2022

Affiliate Member Representatives - Current (2022) PAPERS **Affiliate** Membership for firm required
Firms providing consulting services, exclusive of investment/legal

- ☐ $375 Early bird registration payment received or postmarked by 4/10/2022
- ☐ $425 Standard registration payment made on or after 4/11/2022

Sustaining Members - Current (2022) PAPERS **Sustaining** Membership for eligible individual required
Available only to those persons with an interest in public pensions but not affiliated with an organization which qualifies for group membership in any other category above

- ☐ $75 Early bird registration payment received or postmarked by 4/10/2022
- ☐ $100 Standard registration payment made on or after 4/11/2022

Platinum Sponsors - Current (2022) PAPERS **Associate** or **Affiliate** Membership required

- ☐ Four complimentary registrations

Each additional individual from firm (refer to **Associate** or **Affiliate** Member rates above)

Gold or Silver Sponsors Current (2022) PAPERS **Associate** or **Affiliate** Membership required

- ☐ Two complimentary registrations

Each additional individual from firm (refer to **Associate** or **Affiliate** Member rates above)

☐ **Check if interested in *Certified PA Public Retirement Plan Professional* Program**

Registration Payment Methods

1. ***To pay by check.*** Please make check payable to: **PAPERS** and return with this application to: **PAPERS, P.O. Box 61543, Harrisburg, PA 17106-1543**
2. ***To pay by credit card or PayPal.*** Please access the PAPERS website (www.pa-pers.org) and click on the "Spring Forum" tab. Near the bottom of this page click on the drop down box, select the appropriate membership category/registration fee and follow the directions to pay the applicable amount electronically to PAPERS. To complete the registration process, this completed *Spring Forum Registration* must be submitted and may either be mailed to: ***PAPERS, PO Box 61543, Harrisburg, PA 17106-1543*** or scanned, saved and e-mailed to: ***douglas.b@verizon.net***.
3. ***To pay by ACH transfer.*** Please contact PAPERS by e-mail douglas.b@verizon.net to request the bank account and routing information you'll need to pay by this method. If you require a signed form to initiate the ACH transaction, please send the form to this e-mail address and it will be completed/returned promptly. Then, submit your completed *Forum Registration* as note in #2 above so it can be matched with the ACH payment.

PAPERS Pennsylvania Association of Public Employee Retirement Systems

Agenda for PAPERS 2022 Spring Forum

(As of 3/11/2022 – Subject to Change)

This will be a Hybrid Forum!

As the world adjusts to the continuing COVID-19 pandemic, the PAPERS Board has considered how to hold its 2022 conferences in a way that best serves the wishes of all stakeholders. The result is conferences offering both on-line and in-person educational sessions. Your registration will entitle you to attend any or all of the sessions, spread over four different days in two different formats.

On-Line Sessions

On the business day prior to each date below, registered participants will receive a unique log-in link by e-mail for to access each of the sessions.

Tuesday, May 10, 2022

8:00 a.m.. .... *Pension 101: Everything You Want to Know about Pension Plans*

Speakers .... **Jason Fine & David Driscoll** – *Buck*

This session will discuss economic and demographic assumptions including inflation, how an appropriate contribution should be determined, impact of employee contributions, how liabilities grow and the purpose of actuarial valuations.

9:00 a.m.. .... *Cyber Security and Its Growing Importance*

Speaker .... **To be announced** – *Neuberger Berman*

In a world where an ever-increasing amount of our business and personal lives are online, the importance of cyber security increases exponentially. This session exams cyber security's importance and tools you can use to stay safe.

Wednesday, May 11, 2022

8:00 a.m.. .... *Basics of the RFP Process & Managing the Vendor Relationship*

Speakers .... **Jennifer Mills & Bev Hudson** – *PSERS*

The Request for Proposal (RFP) process is as manageable as it is important. Learn tips to make the process and managing the resulting vendors effectively and efficiently.

9:00 a.m.. .... *Selecting & Hiring a Financial Advisory Firm*

Speaker .... **Ken Decker** – PensionBid

This presentation covers the basics of when, how and why to issue a Request for Proposals (RFP) for an investment advisory firm. This includes complying with Act 44 of 2009, developing selection criteria, conducting the RFP process, making the selection and hiring the firm.

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In-Person Sessions

Location – Hilton Hotel, One North Second Street, Harrisburg, PA 17101

Tuesday, May 24, 2022

10:00-11:30 a.m. .... PAPERS Board Meeting (Board members only)
Commonwealth Board Room – First Floor

12:00 p.m. .... Registration & Sponsor Exhibits
Pennsylvania Ballroom Prefunction

12:30 p.m. .... Luncheon
Delaware Room

Workshop sessions will be held in the Juniata Room. The sessions will also be live streamed for anyone unable to attend the in-person presentation. A log-in link will be provided on the preceding business day to registered participants not planning to attend in-person.

1:30-2:20 p.m. .... How Inflation Impacts Public Pension Plan Design, Options & Fixed Income
Panelists .... **Chris Adair & Richard Familetti** – *SLC Management*
.... **James Anderson** – *Gabriel, Roeder, Smith*

The end of the COVID pandemic may be in sight but the consequences are likely to linger with high inflation serving as one of the more challenging for pension funds. This session will address inflation relative to Fixed Income investments and review various aspects of plan designs and operations that may be affected by elevated inflation.

2:20-3:10 p.m. .... Investing in Market of Inflation Anticipation
Speaker .... **Chris Brokaw** – *AndCo Consulting*

Why is inflation occurring now and what factors have driven inflation; what investments have performed well and how can you position your current portfolio in this inflationary environment.

3:10-3:20 p.m. .... Break
Juniata Room Prefunction

3:20-4:10 p.m. ....The Cyclic Nature of Active Management
Speakers .... **Geoff Gerber & Sam Gerber** – *TWIN Capital*

Discussion of differences, benefits and shortcomings of using active and passive approaches to equity investing. Presentation of research on cyclicality of active manager performance.

4:10-5:00 p.m. .... How To Be the Best Fiduciary You Can Be!
Speaker .... **State Representative Frank Ryan** – *PA 101st District*

Current member and Vice Chair of the Public School Employees' Retirement System (PSERS) Board, Mr. Ryan will share his perspective on fiduciary best practices. This session promises to be lively and informative!

5:00 p.m. .... Rooftop Reception
TRIAD Strategies, 300 North Second Street *(a short walk from the Hilton)*

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Wednesday, May 25, 2022

7:30 a.m. .... **Registration & Sponsor Exhibits**
Pennsylvania Ballroom Prefunction

8:00-8:45 a.m. .... **Buffet Breakfast**
Delaware Room

Workshop sessions will be held in the Juniata Room. The sessions will also be live streamed for anyone unable to attend the in-person presentation. A log-in link will be provided on the preceding business day to registered participants not planning to attend in-person.

8:45-9:35 a.m. .... **Risk Management for Pension Plans**
Panelists .... **Jason Fine** – *Buck*
Charles Friedlander – *Municipal Finance Partners*

An integrated discussion identifying the key risks and how pension plans can effectively manage those risks to provide a more stable and sustainable plan. This panel will identify the variety of risks and how they impact a plan.

9:35-10:25 a.m. .... **Risk Management in the Face of Unexpected Positive Returns in 2021 and 2022**
Speakers .... **David Kausch & James Anderson** - *Gabriel, Roeder, Smith*

Many plans now find themselves in stronger financial positions than expected to be for at least a decade. With the speed of the increase in the financial markets, many future return forecasts are being decreased, while stakeholders are interested in reversing previous benefit cuts or contribution increases. This session will look at how the current situation should be view in a large risk management context.

10:15-10:45 a.m. .... **Break**
Juniata Room Prefunction

10:45-11:35 a.m. .... **Moving Beyond Traditional Fixed Income**
Speakers .... **Michael Hunter** – *Nuveen*
Max Guimond – *Schroders*

This panel discussion will weave alternatives and discuss how these alternatives can help diversify income for Plan cash flow needs and more effectively manage a portfolio to better withstand a probably period of increased market volatility.

11:35 a.m.-12:25 p.m. .... **Fiduciary Standards: Investment Selection & Monitoring Best Practices for Defined Contribution Plans**
Moderator .... **Richard Hazzouri** - *Morgan Stanley*
Panelists .... **Rob Luciana** – *Prudential*
Hannah Ross – *Bernstein, Litowitz, Berger & Grossmann*

This panel will discuss the impact of a recent Supreme Court Ruling on investment selection and monitoring.

After registering to participate in the Forum, a confirmation e-mail is sent along with driving directions, parking information and details for making room reservations at the Hilton Hotel if you require overnight lodging. A special group rate of $152/night is available for reservations made on or before May 2nd, pending availability of rooms.

Supreme Court reaffirms duty to continuously monitor plan investments and service provider fees

Submitted by the Compliance Consulting Practice of Buck

In *Hughes v. Northwestern University*, the U.S. Supreme Court unanimously reversed the Seventh Circuit Court of Appeals and ruled that a claim for fiduciary breach cannot be dismissed solely because a plan offered a wide variety of investment options from which participants can choose, some of which were prudent.

Background

ERISA requires fiduciaries to administer plans prudently according to their terms and for the exclusive benefit of participants and beneficiaries. The fiduciary's duty of prudence includes, among other things, the duty to diversify investments (unless it is clearly prudent not to do so), prudently select and monitor the plan's investments, and ensure that expenses charged to the trust are limited to reasonable expenses of administering the plan.

In 2015, the Supreme Court ruled on a similar case involving a claim of breach of fiduciary duty (see *Tibble v. Edison*). The *Tibble* decision relied heavily on the trust-law principle that a fiduciary must "conduct a regular review of its investment with the nature and timing of the review contingent on the circumstances." Under trust law, which courts frequently look to in analyzing ERISA's fiduciary duties, a trustee has a continuing duty to monitor investments and remove imprudent ones.

In *Hughes v. Northwestern University*, plan participants alleged that the fiduciaries of two defined contribution plans' (both of which were IRC section 403(b) plans) violated ERISA by:

- Failing to monitor and control recordkeeping fees by permitting investment in funds with high expense ratios, and employing multiple recordkeepers, resulting in higher than necessary indirect costs to the participants;
- Offering several retail-class mutual fund shares in the plan's investment menu that carried higher fees than similar "institutional" share investments; and
- Offering too many investment options (242 in one plan, and 187 in another), which caused confusion and led to poor investment decisions by participants.

The plaintiffs also claimed that the fiduciaries engaged in prohibited transactions by allowing imprudent funds to be offered, and not negotiating lower "per-capita" based fees on the plan's behalf.

Upholding a district court decision, the U.S. Court of Appeals for the Seventh Circuit affirmed its dismissal of the entire case because the low-cost index investments the petitioners preferred were also available under the plans, which eliminated any concerns that other plan options might be imprudent. Also, the Seventh Circuit reasoned that since the plan's recordkeeping expenses were paid indirectly through the plans' investments, participants (who directed their own investments) could have directed their investments into lower expense funds. The Seventh Circuit stated that there is no requirement under ERISA to have fees determined on a per-capita basis. The prohibited transaction claims were also dismissed for the same reasons.

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Supreme Court reaffirms duty….

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Lower court erred in relying on participant choice to dismiss claims of excessive cost and potentially imprudent investment options

A unanimous Supreme Court held that the Seventh Circuit erred in relying on participants' investment choice to excuse potentially allowing imprudent investment options to remain in the plan. In doing so, the Seventh Circuit failed to apply the *Tibble* guidance regarding the continuing duty to monitor investments — a well-worn principle of trust law. In *Tibble*, the Supreme Court stated that "plan fiduciaries are required to conduct their own independent evaluation to determine which investments may be prudently included in the plans menu of options." As in *Tibble*, the Supreme Court did not define the scope of the duty to review existing plan investments but sent the case back to the Seventh Circuit to determine what that duty requires and whether the fiduciaries fulfilled such requirements.

The Supreme Court stated that the duty of prudence is context-specific, based on the circumstances then prevailing, acknowledging that "at times, the circumstances facing an ERISA fiduciary will implicate difficult tradeoffs, and courts must give due regard to the range of reasonable judgments a fiduciary may make…".

Scope of monitoring still unclear

While holding that the Seventh Circuit erred by failing to consider the continuous duty to monitor all investment options, the Supreme Court did not determine the scope of the fiduciaries' monitoring responsibilities. It also did not address the issue of whether the plan's use of multiple recordkeepers (as is not unusual for 403(b) plans) caused the plan to overpay for administrative services. Thus, it remains unclear whether the fiduciaries' review of the funds in question was sufficient. Indeed, the

Supreme Court carefully avoided expressing any view on the merits of the participants' claims, so it is possible that after the Seventh Circuit considers trust-law principles, it could conclude that the fiduciaries acted prudently.

In closing

It is now up to the Seventh Circuit to decide when and whether the funds in question should have been examined and removed from the plan's investment line-up. Fiduciaries aiming to avert challenges to their own decisions should ensure processes for periodically reviewing the continued appropriateness of each ongoing plan investment are in place, duly documented, and rigorously applied.

Best Practices for Monitoring Your Securities Portfolio

By: Adam T. Savett, Esq., Director of Communications and Institutional Research
Levi & Korsinsky LLP / CORE Monitoring Systems LLC

Fiduciaries have a responsibility to monitor investment portfolios, protect and maximize assets, and ensure that no money is left unclaimed. If investment funds are lost due to fraud or mismanagement, then best efforts must be used to reclaim those assets. Despite this, every year millions of dollars go unclaimed by investors. What can be done to ensure that your institution is not leaving money behind?

The answer is to implement best practices. These portfolio monitoring practices will limit unclaimed funds and help fulfill your fiduciary responsibilities:

1. Implement a Securities Litigation Policy

Imitation is the sincerest form of flattery, and it is no exception when it comes to creating your securities litigation policy. While there is no "one size fits all" policy, don't reinvent the wheel. Peer institutions often post their policy online and trade groups are also excellent resources for sample policies.

2. Hire Multiple Firms to Monitor Your Portfolio

Using outside law firms provides an efficient and prudent means of monitoring investment portfolios. These firms will inform you of portfolio losses due to mismanagement or fraud and provide advice on appropriate actions.

A portfolio monitoring agreement should not be limited to one law firm. Rather, advice from multiple firms provides you with a range of viewpoints. With competition among firms, the risk of receiving poor or self-interested legal advice is mitigated, and firms will also compete on price, resulting in the best deal for your institution.

The RFP process can be an effective tool for selecting outside counsel, allowing you to analyze the monitoring tools and procedures offered by various firms.

3. Oversee Those Firms

Your institution should receive regular updates from firms about investment losses, the cause(s) of any such losses, potential claims, and legal options available. Decision-making authority must belong to your institution and demonstrates that your institution is informed, engaged, and that the advice received from outside counsel is disinterested and not frivolous.

While your institution may seek advice from counsel, it is ultimately the institution's decision as to whether to bring legal action.

You should remain actively involved in the monitoring process, to keep your institution informed and track litigation impacting your portfolio. Seek to retain the firms offering the best technology platform – it will result in more accurate information, transparency to the institution, and higher recoveries.

4. Don't Forget to File

Millions from class action settlements remain unclaimed every year. To ensure your institution is collecting everything, it should monitor all settlements. This ensures your institution is aware of settlements impacting it, has time to consider options (including to opt out or file a claim), and allows a timely response. The institution will be leaving money on the table if it cannot accurately determine losses, filing deadlines, or if other information slips through the cracks.

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Best Practice for Monitoring Your Securities Portfolio

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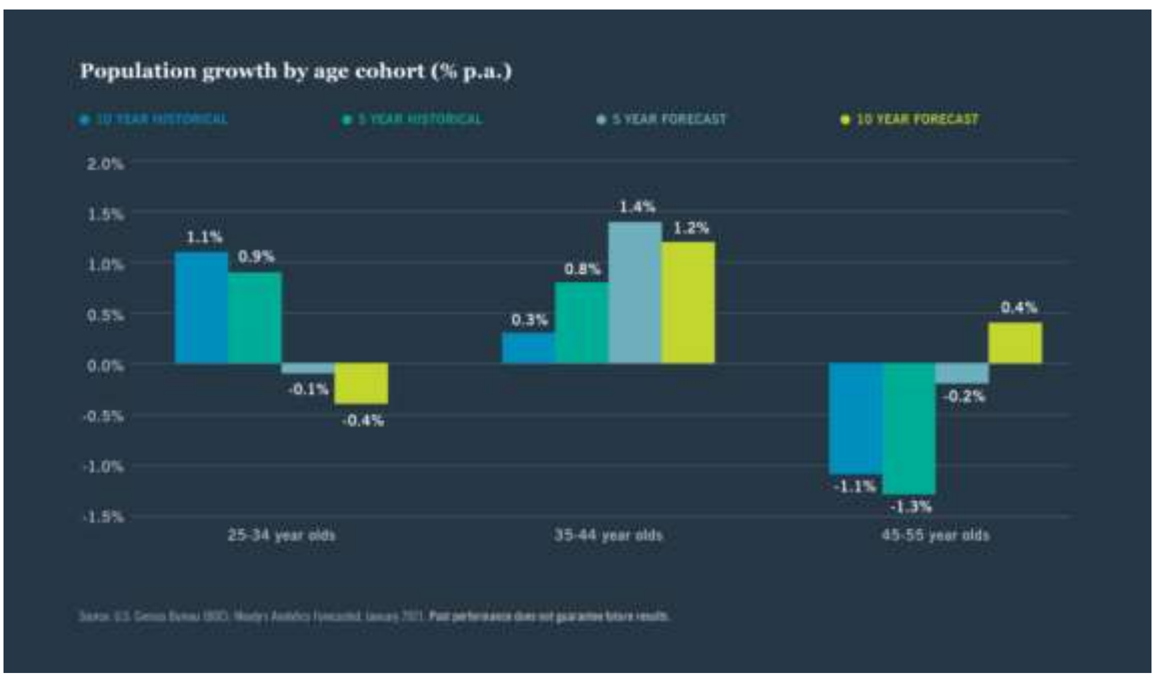
Accurate and accessible documentation on trading histories for your securities portfolio assists in determining settlement eligibility. Given that settlement notices are often sent years after litigation starts, documentation must be maintained for long periods to submit valid claims.

For more than 20 years, **Adam Savett** has advised some of the largest and most sophisticated institutional investors on securities and other complex litigation. Adam is a nationally recognized expert on complex litigation and class actions. He is a frequent speaker, author, and commentator on class actions and securities litigation. Adam was previously named one of the 100 Lawyers You Need to Know in Securities Litigation by *Lawdragon Magazine* and has been an invited speaker before industry groups, including the Federal Judicial Center, National Conference on Public Employee Retirement Systems, National Council on Teacher Retirement, and SIFMA's Global Corporate Actions Forum.

Demographic shifts to fuel alternative housing demand

By: Michael Hunter, *Nuveen Real Estate*

Certain key demographic shifts occurring in the United States over the next decade will have profound implications for "alternative" housing sectors, including single-family rentals and self-storage. The aging of millennials into the key single-family rental cohort (ages 35-44) is a critical secular tailwind as this demographic is projected to grow 1.2% per annum during the next 10 years, compared to 0.5% per annum for the overall U.S. population. Furthermore, the suburban resurgence forecasted for this decade has accelerated as a result of the COVID-19 pandemic, fueling demand for single-family rentals and self-storage. Across the majority of metropolitan areas in 2020, net migration rates were stronger in suburban areas than urban areas. We expect this trend to continue over the medium term, benefitting single-family rentals and self-storage.



Throughout the last decade, millennials have been a major driver of conventional apartment demand. As millennials age, start families and work remotely more frequently in a post-COVID-19 environment, they are likely to outgrow their one and two bedroom apartments and demand more space. Yet, only 12% of apartment units in the U.S. have three

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Demographic Shifts…..

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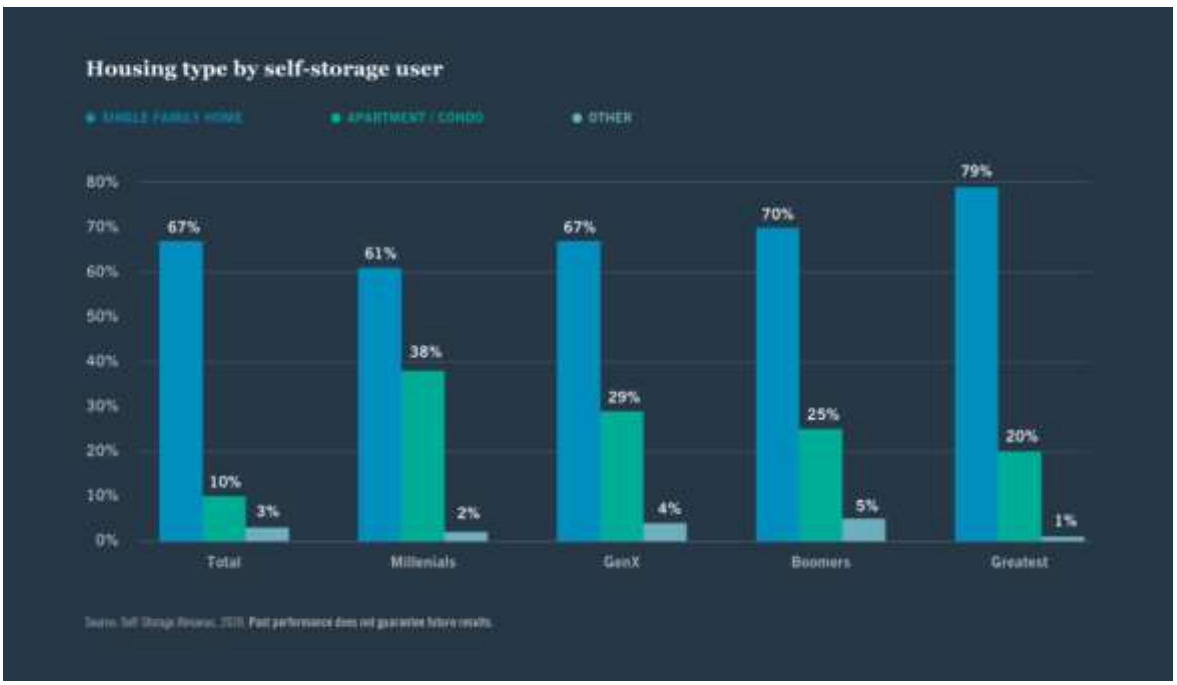
or more bedrooms, compared to 65% for single-family homes, according to the U.S. Census Bureau. The limited share of three bedroom apartment units will likely cause millennials to move into single-family rentals that accommodate their evolving lifestyles.

Homeownership is presumably the next ordinary step for the majority of 35-44 year olds, but millennials have experienced two recessions in their young adult lives (the Great Recession and COVID-19) and are largely unable to afford a down payment and mortgage due to their high amounts of debt and relatively low credit scores. These headwinds will further position millennials to pursue single-family rental opportunities. Those in their thirties who have recently purchased a home, though, have overwhelmingly chosen single-family homes. According to the National Association of Realtors' 2020 Home Buyers and Sellers Generational Trends Report, 88% of homes purchased by those aged 30-39 were single-family homes, solidifying this age cohort's preference for living in single-family homes over apartment and condominium units.

The self-storage sector is a beneficiary of major life events, such as moving, marriage and family growth. According to the Self-Storage Almanac, the two primary reasons customers need self-storage units are (1) to store items for which they do not have room in their homes and (2) to temporarily store items while changing residences. Despite single-family homes' offering more space than apartments and condominiums, single-family renters and owners generally demand more space, as 67% of self-storage users reside in a single-family home. The COVID-19 pandemic has prompted millions of people to re-evaluate their primary living situations and ultimately move to new locations. As a result, year-over-year self-storage rental growth for new tenants began to hit double digit rates in late 2020. Millennials currently comprise the largest segment of self-storage users and will continue to propel future self-storage demand.



Single-family rentals and self-storage properties have demonstrated their resiliency and ability to outperform throughout the COVID-19 pandemic. In our view, the demographic wave of millennials growing into their thirties and forties during the next 10 years will underpin future demand for these alternative housing sectors.

Michael Hunter, *Global Head of Real Estate Alternatives and Strategic Transactions, oversees investment strategy and execution for all alternative real estate sectors globally for Nuveen Real Estate. In addition, he leads Nuveen Real Estate's global strategic transaction business function. He is a member of the Global Executive Leadership Team and a voting member of the Americas Investment Committee. Before joining the firm in 2017, he served as senior investment officer for the New York State Common Retirement Fund. He has also worked in an acquisitions capacity for Blackpoint Partners and Griffin Capital. Michael graduated with a B.S. in Environmental and Business Economics from Rutgers University.*

Should I Stay or Should I Go?

Opting Out of Securities Class Actions

By: Laura S. Stein, Esq., *Robbins Geller Rudman & Dowd LLP*

Plan trustees often face a key question when they have suffered a significant investment loss due to suspected fraud: whether they should join a securities class action or consider opting out of the class to pursue a direct action to maximize the recovery of their losses.

The answer is, of course, it depends. Opting out of a class action is a tool. Like any other, it should be used strategically after a careful analysis of all the plan's goals and dependencies; it is not a tool that should be exercised reflexively or often.

In the context of a securities fraud case, the first step is assessing the market loss suffered during the class period, including identifying the portion of a market loss that is likely attributable to the omissions or disclosures indicating possible wrongdoing. The magnitude of financial harm suffered as a result of alleged securities fraud will likely be a primary factor in a plan's assessment of its litigation options. An experienced law firm with in-house accountants and damage analysts can assess exposure in a variety of ways, depending on the potential claims alleged, nature of the case and its venue, as well as whether the assessment is performed at the beginning of a case or at the settlement stage.

In some cases, the best option may be watchful waiting – monitoring the class action litigation and submitting a claim form at the conclusion of the case to secure a portion of any recovery. But plans with significant losses may decide to take a more active role in securing a substantial recovery. In that circumstance, a plan can seek appointment as lead plaintiff or class representative to lead class action litigation, or opt out of the class and pursue an individual action directly against the defendants.

The key is performing a thorough legal and financial analysis of the plan's potential claim – and the risks associated with active litigation, including potential discovery obligations. At times, plans may be inclined to opt out based on concerns that the class action will <u>not</u> include all of the plan's transactions or the class-wide settlement is too modest in proportion to the plan's losses. For example, in a case involving a mid-size fund, the fund opted out and recovered $31 million – approximately ten times greater than the percentage of recovery class members obtained in the related class action case. Yet, the opposite can also be true, as in the recent high-profile case against American Realty Capital Properties, Inc., in which several large investors opted out of the class action but received substantially less than what they would have recovered by staying in the class.

The key is making a careful, data-driven analysis to strategically identify when opting out will maximize the plan's recovery. A prudent plan will have securities litigation and asset recovery policies in place, along with a pre-qualified securities law firm, to provide timely advice on how to best maximize securities fraud claims, whether that means staying in or opting out of the class.

Laura Stein *is Of Counsel and manages the Robbins Geller Rudman & Dowd LLP's Philadelphia office. Since 1995, she has practiced in the areas of securities class action litigation and complex litigation, and is a frequent educational presenter. Ms. Stein has served as one of the Firm's and the nation's top asset recovery experts focusing on minimizing losses suffered by shareholders due to corporate fraud and breaches of fiduciary duty. She also seeks to deter violations of federal and state securities laws by reinforcing good corporate governance. Ms. Stein works with over 500 institutional investors across the nation and abroad. Her clients have served as lead plaintiff in cases that recovered billions of dollars and achieved groundbreaking corporate governance. Ms. Stein is a member of the Bar in Pennsylvania, New Jersey, and Washington, D.C. She received her Bachelor of Arts degree and her Juris Doctor degree from the University of Pennsylvania.*

New Research Points to Advantages of Larger REIT Allocations

Submitted by: Nareit

About the Authors

Thomas R. Arnold is the former Global Head of Real Estate of the Abu Dhabi Investment Authority and is currently a Senior Advisor to McKinsey & Company, and a Visiting Scholar in the Eugene F. Brigham Finance, Insurance& Real Estate Department, Warrington College of Business, University of Florida, Gainesville, FL, tra622@ufl.edu

David C. Ling is the McGurn Professor of Real Estate in the Eugene F. Brigham Finance, Insurance & Real Estate Department, Warrington College of Business, University of Florida, Gainesville, FL, tling@ufl.edu

Andy Naranjo is the John B. Hall Professor of Finance & Chairman in the Eugene F. Brigham Finance, Insurance & Real Estate Department, Warrington College of Business, University of Florida, Gainesville, FL, andy.naranjo@warrington.ufl.edu

As pension plans have sought to boost their returns to meet growing obligations to plan participants, many have increased their allocations to real estate, primarily through closed-end private equity real estate funds. Since these funds typically employ more leverage and are less liquid than publicly listed REITs, many investors expect them to provide higher returns. In our recent article *Private Equity Real Estate Fund Performance: A Comparison to Listed REITs and Open-end Core Funds*, published in the *Journal of Portfolio Management* Special Real Estate Issue, we explored whether comparative performance data support the assumption of higher returns.

Unlike other analyses of public versus private market real estate performance that compare returns on investable public real estate market indices to uninvestable private market indices, such as ODCE or NCREIF, our research compares the actual performance of individual closed-end private real estate funds to the performance each fund's investors would have realized had they invested in an index of equity REITs over the same investment horizon.

Our study includes 375 head-to-head comparisons between closed-end private equity real estate funds that invest primarily in the U.S. and the FTSE/Nareit U.S. index over various time periods between 2000 and 2014. Our exclusion of post-2014 funds minimizes the risk of including funds whose performance was not final.

Our initial comparison showed that the REIT index outperformed 53% of the closed-end private equity real estate funds; the average IRR outperformance was 165 basis points. However, we believe this understates the extent to which the equity REIT index outperformed contemporaneous investments in closed-end funds. This is because private real estate funds (a) typically employ more leverage than equity REITs, (b) are less liquid than equity REITs, (c) are more likely to invest in in development projects or assets in need of renovation and re-tenanting, and (d) impose an additional opportunity cost on investors because the timing of capital calls is uncertain, requiring investors to maintain "dry powder."

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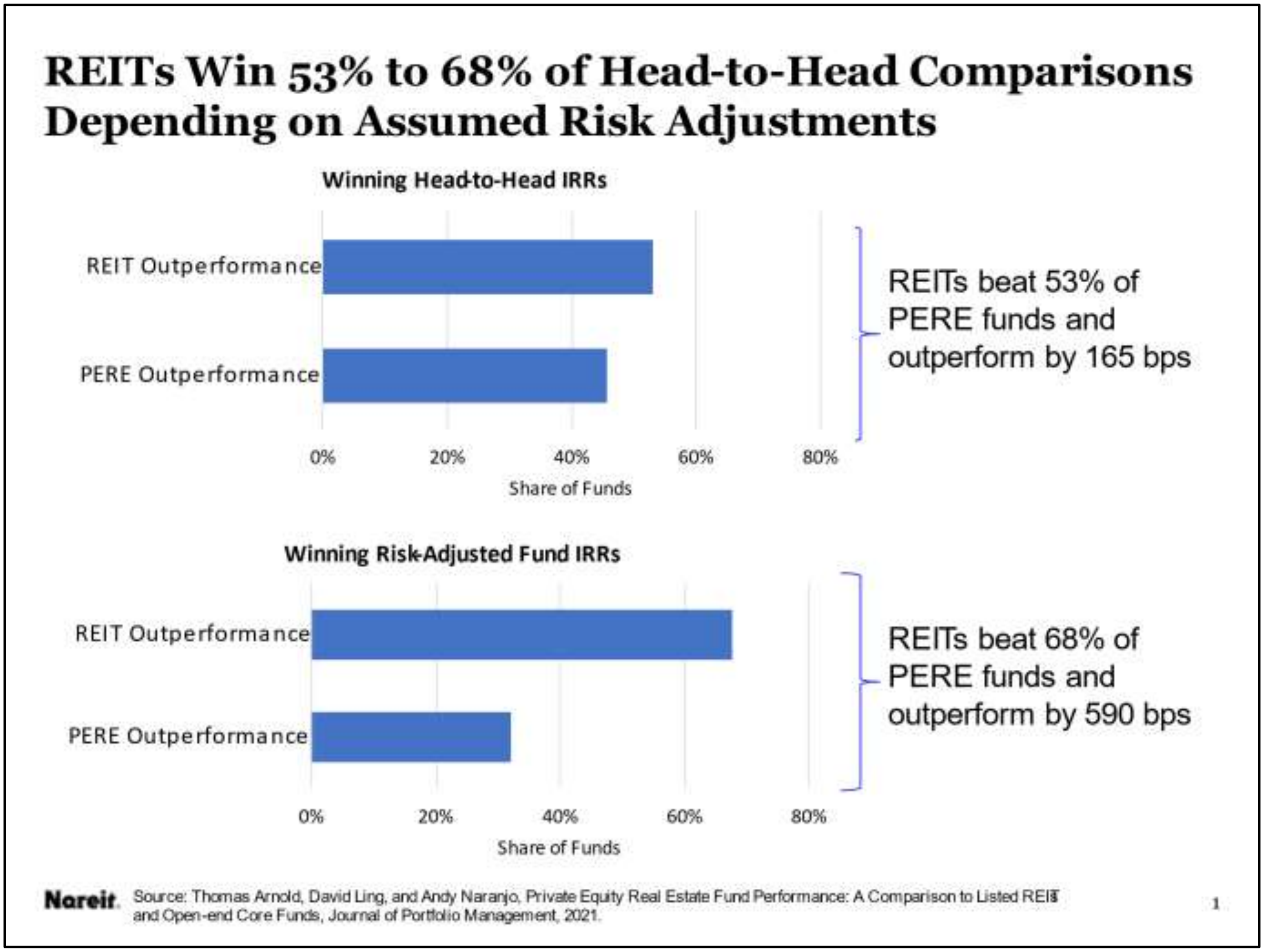
The additional expected return required to compensate LP investors for the increased risk and illiquidity associated with closed-end fund investments varies over time and across investor class, even among similar types of investors. However, we incorporated what we believe to be a conservative incremental expected rate of return for leverage (100 basis points), illiquidity (200 basis points), and the opportunity cost of maintaining dry powder (125 basis points). With this 425-basis point IRR risk-adjustment, the REIT index outperformed the private equity real estate funds with which it was matched 68% of the time. The average REIT IRR outperformance was 590 basis points (165 basis points plus the 425 basis points for the additional risk premia).



We find similar results when comparing closed-end private equity real estate funds invested in non-U.S. properties to a global REIT index that excludes U.S. REITs.

These findings suggest that investors may benefit from reweighting their real estate allocations, using REITs to gain general market and sector specific exposures and private real estate funds more tactically to gain exposures not otherwise obtainable through public markets.