CAO 2015-028

To: Miriam Ramos; Paul Matecki

From: Craig E. Leen, City Attorney for the City of Coral Gables

RE: Legal Opinion Regarding Individual Appointment To Retirement Board

Date: April 2, 2015

As indicated by the Deputy City Attorney, and pursuant to my authority to issue opinions and interpretations on behalf of the City (section 2-201(e)(1) and (8) of the City Code), if appointed by the City Commission, Michael Gold would be serving on the Retirement Board in his individual capacity. Under the City Code, Mr. Gold is legally unable to serve on the Board as a representative of a financial firm. Accordingly, by legal necessity, any actions taken on the Board would be on his own behalf as a trustee of the system. The City Code does not place any liability on the employer of a Board member serving in his or her individual capacity, nor does the City Code attribute the actions of the Board member acting in his or her individual capacity to an employer.

Herbello, Stephanie

From: Leen, Craig
Sent: Thursday, April 02, 2015 1:51 PM
To: Herbello, Stephanie
Cc: Ramos, Miriam; Figueroa, Yaneris; Chen, Brigette
Subject: FW: Michael Gold

Importance: High

Please place in opinion folder.

From: Leen, Craig
Sent: Thursday, April 02, 2015 12:07 PM
To: Ramos, Miriam; 'Paul Matecki'
Cc: 'aeglawyer@aol.com'
Subject: RE: Michael Gold
Importance: High

As indicated by the Deputy City Attorney, and pursuant to my authority to issue opinions and interpretations on behalf of the City (section 2-201(e)(1) and (8) of the City Code), if appointed by the City Commission, Michael Gold would be serving on the Retirement Board in his individual capacity. Under the City Code, Mr. Gold is legally unable to serve on the Board as a representative of a financial firm. Accordingly, by legal necessity, any actions taken on the Board would be on his own behalf as a trustee of the system. The City Code does not place any liability on the employer of a Board member serving in his or her individual capacity, nor does the City Code attribute the actions of the Board member acting in his or her individual capacity to an employer.

Craig E. Leen
City Attorney

From: Ramos, Miriam
Sent: Thursday, April 02, 2015 11:59 AM
To: 'Paul Matecki'
Cc: Leen, Craig; 'aeglawyer@aol.com'
Subject: RE: Michael Gold

Good morning Mr. Matecki,

Craig has asked me to respond to your further question regarding your desire to confirm that Raymond James would not be liable for any action resulting from Mr. Gold's service on the pension board.

Michael Gold will serve on the pension board in his individual capacity, with his own fiduciary duty to the system. He will not and cannot serve on the board in his capacity as a Raymond James employee. For that reason, any claim against Raymond James resulting from Mr. Gold's service on the board would not be actionable.

Sincerely,

Miriam S. Ramos, Esq.
Deputy City Attorney
City of Coral Gables
405 Biltmore Way, 2nd Floor
Coral Gables, FL 33134
(305) 460-5218
(305) 460-5084 direct dial

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From: Paul Matecki [mailto:Paul.Matecki@RaymondJames.com]
Sent: Wednesday, April 01, 2015 9:10 PM
To: Leen, Craig
Cc: Ramos, Miriam
Subject: Re: Michael Gold

Yes please. That would be helpful.

Paul Matecki, Esq.
Senior Vice-President-General Counsel
Raymond James Financial, Inc
880 Carillon Parkway
St. Petersburg, Fl. 33716
727-567-5180
866-208-0522 (fax)

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On Apr 1, 2015, at 8:40 PM, Leen, Craig <cleen@coralgables.com> wrote:

> Good evening. The indemnification clause protects and is focused on the individual board member. It does not extend to the company that the individual works for. Mr. Gold would be serving in his individual capacity (not as a representative of Raymond Janes) so I do not see how Raymond James could incur liability. Nevertheless, if you would like, I am happy to provide a formal interpretation on behalf of the City that Mr. Gold is serving in his individual capacity as a board member and not as a representative of Raymond James.

Best regards,

Craig E. Leen
City Attorney

Sent from my iPhone

On Apr 1, 2015, at 6:07 PM, Paul Matecki <Paul.Matecki@RaymondJames.com> wrote:

Thank you. Where is the provision that would indemnify Raymond James?

Paul Matecki, Esq.
Senior Vice-President-General Counsel
Raymond James Financial, Inc
880 Carillon Parkway
St. Petersburg, Fl. 33716
727-567-5180
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On Apr 1, 2015, at 4:27 PM, Ramos, Miriam <mramos@coralgables.com> wrote:

Dear Mr. Matecki,

As promised, attached please find the code section that provides for indemnification of board members. Furthermore, our office would defend any suit brought against a board member.

Sec. 2-200 - Indemnification of public officers, board members and employees.

(a)

The city shall protect and indemnify the city officials listed in (b) hereof from personal liability to the fullest extent authorized by F.S. §§ 111.071 and 111.072, but only to the extent that the official is not otherwise protected and indemnified by insurance purchased by the city or otherwise provided.

(b)

The officials referred to in (a) above consist solely of all members of the city commission, all members of all city boards and committees, the city manager, the city clerk, city attorney and all city department heads.

(c)

Nothing in this section shall constitute a waiver of sovereign immunity or a waiver of any other defense or immunity to such lawsuits.

(d)

Nothing in this section shall create any private right of action against the city by any third party, nor shall any insurance company providing insurance to the city or one of its boards have any subrogation rights against the city.

If you have any questions, please do not hesitate to let me know.

Sincerely,

Miriam S. Ramos, Esq.
Deputy City Attorney
City of Coral Gables
405 Biltmore Way, 2nd Floor
Coral Gables, FL 33134
(305) 460-5218
(305) 460-5084 direct dial

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