

Virginia Port Authority Board of Commissioners
Investment and Administrative Committee Meeting
September 26, 2006
Open Session Minutes

Committee Members Present:

Mark B. Goodwin, Chairman, Finance/Planning Committee
J. Robert Bray, Executive Director

Absent:

John G. Milliken, Chairman

Staff:

J. J. Keever, Deputy Executive Director
Rodney W. Oliver, Director of Finance
Elaine Smith, Director, Department of Human Resources
Debra J. McNulty, Clerk

Guests:

J. Jasen Eige, Senior Assistant Attorney General
Evelyn Small Traub, Troutman Sanders Mays & Valentine LLP
Robert G. Sanford, Aon Investment Consulting
Al Calvo, Great-West Retirement Services
George H. Whitmore, UBS Financial Services, Inc.
James L. McDonnell, III, Merrill Lynch
Kevin P. Furey, Merrill Lynch

Pursuant to call by Mr. Goodwin, the Investment and Administrative Committee convened an open session on this date at 9:35 a.m., in the Virginia International Terminals, Inc. (VIT) Conference Room, 601 World Trade Center, Norfolk, Virginia.

The following items were discussed:

1. Review of July 1, 2006 actuarial valuation report for Defined Benefit Pension Plan

Mr. Sanford explained that the actuarial report prepared by Aon Consulting (copies distributed) measures liabilities of the plan and computes contributions for the upcoming plan year. He referred to pages 3 and 4, "Summary of Plan Costs and Coverage", that outlines assumptions for the three categories of VPA employees – the VPA non-sworn participants, VPA sworn participants, and VRS (Virginia Retirement Service) sworn participants. Mr. Sanford reported that VPA sworn active participants grew from 46 in 2005/2006 to 64 participants for the 2006/2007 plan year. He advised that the VRS sworn participants group had decreased from 25 to 14.

(Mr. Goodwin arrived at this time.)

Mr. Sanford reported that recommended contributions for the 2006/07 plan year have increased to 7.80% of payroll from 7.05% last year due to an update of actuarial assumptions. He advised that a 4% salary increase assumption was reasonable. Mr. Oliver reported that VPA contributed to the 7.05% last year and added to the plan at year end.

Mr. Sanford reported that contributions for VPA sworn and non-sworn participants (\$424,196) and contributions for VRS sworn participants to amortize past service liabilities over 20 years from date established (\$263,477) are reasonable for the plan year given that, last year, VPA contributed a total of approximately \$896,000.

Members of the Committee approved Mr. Sanford's report and agreed to adopt Aon's assumptions and funding recommendations.

2. Review of 2nd Quarter (April-June 2006) Investment Performance for Defined Benefit Pension Plan

Mr. Whitmore distributed copies of the "VPA Employer Funded Defined Benefit/Pension Plan – Portfolio Summary" and referred to the performance fact sheet. Mr. Whitmore reported that VPA's portfolio value as of June 30, 2006 was \$2,766,494 for a total fiscal 2006 return of +9.46% versus +5.09% for the benchmark and versus 9.33% for the portfolio over the same period last fiscal year.

He advised that the annualized return since inception was +8.57% versus +4.59% for the benchmark. Portfolio value as of Friday, September 22, 2006 was \$2.801 million.

Mr. Whitmore noted that the historical performance page was added to the report at the suggestion of the Committee. He pointed out that the only poor calendar year performance was in 2002 (-4.71% for the portfolio) which held down the annualized numbers.

There was no recommended change to the asset allocation that was last revised in April 2005 - 50% diversified equity; 20% multi-asset; 25% diversified bonds; and 5% GIC (guaranteed investment certificate) and cash.

Mr. Whitmore explained that GE Capital came into the portfolio last year and has performed well with the international portfolio demonstrating the strongest growth. Due to federal rate increases and inflation, the strategic bond fund was down slightly. Mr. Whitmore reported that UBS anticipates that the Federal government will be reducing rates through 2007 and that bonds will rally over the next year. He advised that VPA's plan is in line with what is going on in the market place.

3. Review of 457 and 401(a) Defined Contribution Plans

Mr. Calvo distributed copies of the plan review prepared by Great-West Retirement Services for the VPA's 457 and 401(a) Defined Contribution Plans.

Referring to pages 4 and 5, Mr. Calvo reported that plan assets as of June 30, 2006 (\$2.78M) less assets at December 31, 2005 (\$2.49M) reflects an increase of 11.6% (\$0.29M). Contributions were \$0.26M from January 1, 2006 to June 30, 2006 and there are currently 226 participants (156 active employees).

Mr. Calvo distributed a Fund Performance Review that was prepared by AdvisedAssetsGroup, LLC. He referred to the performance summary and ratings of the various funds demonstrated on pages 5 and 6. Mr. Calvo advised that all funds are performing well with the exception of American Funds Washington Mutual A. At Mr. Oliver's suggestion, Mr. Sanford and Mr. Calvo agreed to put the fund on the "watch" list.

Mr. Calvo reported that the return analysis demonstrates that the bond market has not been the best environment for growth, reflecting negative returns, particularly with the Intermediate-Term Bond Peer Group and PIMCO Total Return A.

Mr. Calvo reviewed the Profile Series Funds for the period ended June 30, 2006, reflecting a total of five profile funds that range from aggressive to conservative.

4. Report on the recently enacted Pension Protection Act and the effect on governmental retirement plans

Ms. Traub presented highlights of the Pension Protection Act of 2006 and the impact on governmental plans. A copy of Ms. Traub's report is attached and is hereby incorporated into the minutes of the Committee.

Ms. Traub noted that the Act expands the ability of a plan sponsor to make a qualified transfer of excess defined benefit plan assets to a separate account to help fund retiree medical benefits for a period of up to 10 years. She also advised that the Act waives the 10% early distribution penalty for distributions from a governmental defined benefit plan to a qualified public safety employee who separates from service after age 50. Ms. Traub recommended that VPA determine if VPA police qualify and to take note of the Form 1099 reporting requirements.

With regard to non-spouse beneficiary rollovers (page 5) effective calendar year 2007, Ms. Traub advised that the current IRS Special Tax Notice (402(f) Notice) would need to be revised for all Plans to incorporate this rule change.

Ms. Traub advised that the VPA Plan would not have to be updated until 2010. She advised that some provisions of the Act are mandatory and some are elective. Ms. Traub explained that a proposed retiree medical account would be optional for VPA.

5. Further Discussion of Potential Post-Retirement Medical Plan for VPA Pension Plan Participants

Mr. Sanford provided a one-page outline reflecting the cost estimate for establishing a "VRS-style" post-retirement health insurance credit to the VPA Pension Plan (also included as last page of Ms. Traub's report). He explained that the current VRS Health Insurance Credit is equal to a monthly payment of \$4.00 times years of service. The health insurance credit is added to the monthly retirement check and is available to reimburse the retiree for qualifying post-retirement medical coverage. Currently, there is no post-retirement medical plan for VPA employees hired after 1998 who are under the VPA Plan.

Mr. Sanford reported that a post-retirement medical plan similar to VRS would increase the 2006-2007 percentage of payroll contributions from 7.80% to 8.10% basis points to include a credit for current VPA retirees and all current VPA employees. Mr. Sanford advised that the proposed plan would be a separate plan and there would be a cap of 30 years of service (or \$120).

Ms. Traub advised that the Pension Protection Act may affect a post-retirement medical plan and that the tax-free direct health insurance premium payment would not pertain to non-sworn employees.

Ms. Bray advised that further study is needed on the proposal.

The meeting adjourned at 10:25 a.m.

Respectfully submitted,



Debra J. McNulty
Clerk to the Board

PENSION PROTECTION ACT OF 2006 – THE IMPACT ON GOVERNMENTAL PLANS

On August 17, 2006, the President signed into law the Pension Protection Act of 2006 (the "Act"). The Act makes sweeping changes to employer-sponsored retirement plans, including governmental plans. The purpose of this e-alert is to summarize the provisions of the Act which impact governmental plans.

Please keep in mind that this e-alert is intended to serve as a very general overview. Plan sponsors are strongly encouraged to discuss with their benefits counsel how the Act specifically affects the administration and design of their plans. Plan Sponsors should also stay tuned because there will likely be a technical corrections bill enacted to address deficiencies and needed clarifications to certain provisions of the Act.

I. PROVISIONS OF EXISTING LAW CLARIFIED OR MADE PERMANENT

EGTRRA Permanence

The Act makes permanent the retirement savings rules and plan features affecting pension plans enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), which were scheduled to expire at the end of 2010. These provisions include:

- Increased limits on contributions, benefits and compensation applicable to qualified retirement plans, 403(b) plans and 457 plans
- Repealed coordination requirements for contribution limits between 457 and 403(b) plans
- Allows elective deferrals under 403(b) plans to be treated as Roth contributions
- Permitted catch-up contributions for individuals age 50 and older
- Simplified distribution rules from 457 plans and expanded rollover rights
- Clarified tax treatment of division of governmental 457 plan benefits upon divorce through domestic relations orders
- Increased portability by allowing transfers between different types of plans
- Added flexibility in distributions from governmental 457 plans
- Permitted transfers from governmental 457 plans to purchase service under governmental pension plans
- Direct rollover requirements for balances over \$1,000
- No rollover right for hardship distribution

Savers Credit

The Act made permanent the Savers Credit which had been scheduled to expire December 31, 2006. In addition, the Act indexes the gross income limits for the Savers Credit for tax years beginning after 2006. The indexed limits will be published in October when other indexed limits are published.

Purchase of Service/Trustee to Trustee Transfers

The Act modifies IRC Section 415(n) (relating to the purchase of service credit) to provide that:

- Permissive service credit includes service credit that relates to benefits to which the participant is not otherwise entitled, rather than service credit which the participant did not accrue while a participant in the plan. As a result, it is clear now that a participant can purchase an "enhanced benefit" that takes into account service that he or she already has credit for. This change is made effective as if it had been included in The Taxpayer Relief Act of 1997 (which enacted 415(n)).
- Permissive service credit includes service as an employee of an educational organization providing primary or secondary education as determined under the law of the jurisdiction in which the services are performed. The determination is no longer limited to state law. As a result, service as a teacher outside the US may be considered permissive service. This change is made effective as if it had been included in The Taxpayer Relief Act of 1997 (which enacted 415(n)).
- Trustee-to-trustee transfers under 457 and 403(b) plans to governmental defined benefit plans may be made regardless of whether the transfer is made between plans maintained by the same employer. Once the transfer to the governmental defined benefit is made, the distribution rules applicable to the defined benefit plans apply. This change is made effective as if it had been included in EGTRRA.

Funding of Retiree Medical Benefits

The Act expands the ability of a plan sponsor to make a qualified transfer of excess defined benefit plan assets to a separate account to help fund retiree medical benefits for a period of up to 10 years. A plan sponsor making this transfer will be required to maintain the plan's funded status at minimum levels during the transfer period and must maintain retiree medical benefits at certain levels for the transfer period and for 4 years thereafter. The new provisions apply to transfers made after the Act's enactment date; however, the amount that can be funded for future years is to be determined in accordance with guidance to be issued by the Secretary of the Treasury.

Automatic Enrollments and ERISA Preemption

The Act encourages the adoption of automatic enrollment features in 401(k) and 403(b) plans by providing that as long as the plan provides the required notice (as prescribed in the Act) to plan participants before each year, any state law that would prohibit or restrict automatic enrollments would be preempted by ERISA. The notice must explain an employee's right to opt out of the automatic enrollment, the employee's right to change the contribution rate and the manner in which such automatic enrollment contributions are to be invested. The notice requirement raises the question of whether a similar notice is now required in states that had previously acknowledged that ERISA did pre-empt its wage and hour laws as they related to automatic enrollment. ERISA also prescribes penalties for failure to provide the notice.

Because governmental plans are not subject to ERISA, the preemption of state law does not apply. Accordingly, state legislation may be needed to waive wage and hour laws for automatic enrollment in state or local governmental plans.

Waiver of 10% Early Distribution Penalty for Qualified Reservists

The Act waives the 10% early distribution penalty on distributions from 401(k) and 403(b) plans to qualified reservists called to active duty for a period of longer than 179 days between September 11, 2001 and before December 31, 2007. These plans will not be considered to violate in-service distribution rules for making distributions to qualified reservists. Also the reservist may repay to his IRA (on an after-tax basis), the entire amount of the distribution, any time up to 2 years after the end of active duty, without the application of the contribution limits.

II. CHANGES EFFECTIVE IMMEDIATELY ON THE ACT'S DATE OF ENACTMENT (August 17, 2006)

Good Faith Interpretation of Required Minimum Distribution Rules of 401(a)(9)

The Act provides that the Secretary of Treasury must revise its regulations under IRC Section 401(a)(9) to provide that governmental plans will comply with the required minimum distribution rules if they comply with a reasonable good faith interpretation of the statutory requirements.

Participation in 457 Plan Not Precluded by Earlier De Minimus Distribution

The Act provides that an individual is not precluded from participating in an eligible deferred compensation plan of a governmental employer by reason of having received a de minimus distribution under pre-1997 law.

10% Penalty Relief Public Safety Employees

The Act waives the 10% early distribution penalty for distributions from a governmental defined benefit plan to a qualified public safety employee who separates from service after age 50. A qualified public safety employee is an employee of a state or political subdivision of a state if the employee provides police protection, firefighting services or emergency medical services for any area within the jurisdiction of the state or political subdivision. It should be noted that this definition differs from the definition used in applying special 415 limitations.

THIS WAIVER IS APPLICABLE TO DISTRIBUTIONS AFTER AUGUST 17, 2006.

If there are any qualified public safety employees currently receiving distributions subject to the penalty, this mid-year effective date will require that distribution coding on Form 1099-R will need to reflect different penalty codes based on the date of the distribution.

Unforeseen Hardships

The Act directs the Secretary of the Treasury to expand the hardship distributions rules to permit hardship distributions from 401(k) and 403(b) plans and unforeseen emergency hardship distributions from 457 plans if the hardship exists for a person who is the designated beneficiary under the plan (not just for the participant and his or her dependents). The regulations are to be issued within 180 days of August 17, 2006 (February 13, 2007).

For example, if a person who is named as the beneficiary is the participant's brother or parent (domestic partner or any non-spouse beneficiary) and the beneficiary has unreimbursed medical expenses, then a distribution may be made to assist the beneficiary with the expense.

Regulations will need to answer questions about the timing of when the beneficiary must be designated and how the tax reporting must be done.

Tribal Governments

The Act provides that the definition of a governmental plan now includes plans established or maintained by an Indian tribal government, a subdivision of an Indian tribal government or an agency or instrumentality thereof if all the participants of which are employees of such entity substantially of whose services are in the performance of essential government functions but not in the performance of commercial activities. As a result, teachers in tribal schools may be covered but not employees of hotels, casinos, service stations, convenience stores or marinas operated by tribal governments. All governmental plans rules including purchase of service, special 415 limits for employees

of police and fire departments, and pick up provisions apply to these tribal governmental plans.

ERIPs and Employment Retention Plans of Local Education Agencies or Education Associations

The Act exempts certain early retirement incentive plans maintained by public school districts and certain education associations from the Section 457 rules applicable to nonqualified deferred compensation plans, and treats those plans as bona fide severance plans.

A voluntary early retirement incentive plan is treated as a bona fide severance pay plan for purposes of Section 457, and the amount of the payments or supplements provided under the plan are not subject to the Section 457 limits, but only to the extent that the payments or supplements could otherwise have been provided under a defined benefit plan.

The Act provides an exception from the Section 457 ineligible plan rules with respect to that portion of an employment retention plan that provides benefits not exceeding twice the 457 plan contribution limit (\$30,000 for 2006). An employment retention plan pays benefits upon termination of employment for purposes of retaining services or rewarding the employee for service.

III. CHANGES EFFECTIVE FOR CALENDAR YEAR 2007

Non-Spouse Beneficiary Rollovers

The Act allows non-spouse beneficiaries (including certain trusts which are treated as "designated beneficiaries") to make a rollover (but only by direct transfer) of distributions from an eligible retirement plan (including 401(a), 403(b) and governmental 457) to an IRA (but not to another qualified plan). Previously only spousal beneficiaries were eligible to make rollovers. The IRA is treated as an inherited IRA. As a result, the required minimum distribution rules apply based on the non-spouse beneficiary's age and the IRA cannot be further rolled over to the non-spouse beneficiary's spouse. The result is that the non-spouse beneficiary can further defer taxation of the distribution in much the same manner as a participant's spouse could prior to the Act.

The current IRS Special Tax Notice (402(f) Notice) will need to be revised for all Plans to incorporate this rule change. An eligible rollover distribution to a non-spouse beneficiary that is not transferred directly to the beneficiary's IRA will be subject to the 20% federal withholding and, if applicable the 4% state withholding.

Tax Free Direct Health Insurance Premium Payment - Public Safety Officers

The Act permits an "eligible retired public safety officer" to make an election to exclude from gross income any distributions from a governmental 401(a) plan, 403(a) plan.

403(b) plan or 457 plan for accident or health insurance, or qualified long-term care insurance premiums for the employee, the spouse or dependents of the employee as long as the premiums are paid directly by the plan to the insurance carrier. The exclusion is limited to \$3,000 per year.

An "eligible retired public safety officer" is an individual who, because of disability or attainment of normal retirement age, is separated from service as a "public safety officer" with the employer that maintains the eligible retirement plan from which distributions are made.

"Public safety officer" has the same meaning as under the Omnibus Crime Control and Safe Streets Act of 1986. **It should be noted that this definition differs from the definition used in applying special 415 limitations. Also, it is NOT the same group covered by the 10% penalty waiver.**

The exact definition is "an individual serving a public agency (includes states and local governments, departments, agencies and instrumentalities) in an official capacity, with or without compensation, as a law enforcement officer, as a firefighter, as a chaplain, or as a member of a rescue squad or ambulance crew." For this purpose a "law enforcement officer" means an individual involved in crime and juvenile delinquency control or reduction, or enforcement of the laws, including, but not limited to, police, corrections, probation, parole, and judicial officers.

The Act requires an election but neither the Code nor the committee report specify any particular form of election, or notice of election, and there is no time limit after separation from service for making the election. Thus, it appears that the plan can determine how employees may make the election.

Amounts excluded from gross income under this provision are not eligible for a medical expense deduction under IRC Sections 213 or 162(l) applicable to self-employed persons.

IV. CHANGES EFFECTIVE FOR PLAN YEARS BEGINNING IN 2007

Phased Retirement Distributions

The Act provides that a defined benefit plan may allow for in-service distributions to a participant who has reached age 62. Under current law, in-service distributions from defined benefit plans cannot be made to participants who have not reached the plan's normal retirement age, which is usually age 65. This provision applies to distributions made in plan years beginning in 2007 or later.

After-tax Rollover to 403(b)

The Act expands the portability of after-tax amounts by allowing rollovers of such amounts (including Roth accounts) between different types of employer-sponsored plans such as allowing a rollover from a qualified plan to a 403 (b) plan.

If you need further information or assistance regarding the Act, please contact any of the attorneys in the Compensation and Employee Benefits practice group at Troutman Sanders LLP.

VIRGINIA PORT AUTHORITY

COST ESTIMATE OF ADDITION OF "VRS-STYLE" HEALTH INSURANCE CREDIT TO VPA PENSION PLAN

Description of Benefit:

Health Insurance Credit is equal to a monthly payment of \$4.00 times years of service. The health insurance credit is added to the monthly retirement check and is available to reimburse the retiree for qualifying post-retirement medical coverage.

Effect On Plan Costs:

2006-2007 Percentage of Payroll Contribution	
Prior to consideration of Health Insurance Credit (VPA participants only)	7.80%
Additional amount to provide credit to current VPA employees	.29%
Additional amount to provide credit to current VPA retired employees	.01%
Total, if credit added for current VPA retirees and all current VPA employees	8.10%

June 30, 2006 Accounting Liabilities	
Projected Benefit Obligation (PBO), prior to consideration of Health Insurance Credit (VPA participants only)	\$2,435,534
Additional PBO to provide Credit to current VPA employees	56,424
Additional PBO to provide Credit to current VPA retired employees	3,846
Total PBO, if Credit added for current VPA retirees and all current VPA employees	\$2,495,804

