

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RAYMOND J. DONOVAN, Secretary)
of Labor,)
)
)
Plaintiff,)
)
v.) Civil Action No.
) 78 C.342
)
FRANK FITZSIMMONS, et al.,)
)
)
Defendants.)

CONSENT DECREE

Plaintiff Raymond J. Donovan, Secretary of Labor ("the Secretary") has filed a complaint in this matter against the named individual defendants, former trustees of the Central States, Southeast and Southwest Areas Pension Fund ("the individual defendants"), pursuant to the Employee Retirement Income Security Act of 1974 as amended ("ERISA"), alleging, inter alia, that the individual defendants violated section 404(a)(1) of ERISA, 29 U.S.C. § 1104(a)(1) (1976), and section 405 of ERISA, 29 U.S.C. § 1105 (1976). The Secretary moved this Court for leave to amend the complaint, inter alia, to include the Central States, Southeast and Southwest Areas Pension Fund ("the Pension Fund") as a party to the litigation and has filed with this Court an amended

complaint. This motion was previously denied by the Court insofar as it sought to join the Pension Fund and is presently under advisement with the Court pursuant to the Secretary's motion for reconsideration.

The Pension Fund consents to the filing of the amended complaint insofar as it seeks to join the Pension Fund as a party defendant, acknowledges service of the amended complaint, and admits the jurisdiction of this Court.

The Pension Fund expressly waives Findings of Fact and Conclusions of Law and consents to the entry of this Consent Decree as a full and complete resolution of the issues raised in the amended complaint with respect to the Pension Fund.

Neither the Secretary nor the Pension Fund waives any claims against the individual defendants, and this Consent Decree in no way affects the liability of the individual defendants with respect to the allegations set forth in the complaint and the amended complaint. Nothing in this Consent Decree shall constitute or be deemed an admission of any fact alleged in the complaint or the amended complaint in this case.

The Court has jurisdiction over the Pension Fund and the subject matter of this action, and the Court is

empowered to provide the equitable and remedial relief following.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Secretary's motion for leave to file an amended complaint, insofar as it relates to the Pension Fund, is hereby granted and further that the Pension Fund shall perform the following undertakings:

I. COMPLIANCE

The Pension Fund shall operate in full compliance with ERISA and with any conditions contained in determination letters issued by the Internal Revenue Service as to the qualification of the Pension Fund under section 401 of the Internal Revenue Code and as to the exemption of the trust to which the Pension Fund relates under section 501 of the Internal Revenue Code ("the determination letters").

The Pension Fund shall require that its administrators, fiduciaries, officers, trustees, custodians, counsel, agents, employees, advisers, providers of goods or services, consultants, representatives in any capacity, and all persons who serve in any capacity that involves decisionmaking authority or custody or control of the moneys, funds, or assets of the Pension Fund, as

a condition of maintaining their respective relationships with the Pension Fund, discharge their duties to the Pension Fund in full compliance with ERISA and not take any action in the discharge of such duties that is inconsistent with the Pension Fund's full compliance with ERISA or with the conditions of the determination letters or with the Pension Fund's performance of the undertakings in this Consent Decree.

The Pension Fund shall provide a copy of this Consent Decree to the individuals and entities described above within 30 days after its entry and to all such new individuals and entities at the beginning of their respective relationships with the Pension Fund, whichever is later.

II. ASSET MANAGEMENT

A. Appointment of a Named Fiduciary

The Court understands that The Equitable Life Assurance Society of the United States ("Equitable") is the named fiduciary of the Pension Fund under contractual arrangements which expire on October 3, 1982 ("the Equitable Contract"). At the expiration or termination of the Equitable Contract, all assets of the Pension Fund, except for those liquid assets held in reserve for payment of benefits and administrative expenses, which

liquid assets shall be defined and managed in accordance with section III of this Consent Decree, shall continue to be managed for the duration of this Consent Decree by a named fiduciary, as defined in section 402(a)(2) of ERISA, 29 U.S.C. § 1102(a)(2) (1976), in accordance with section II of this Consent Decree. At least 60 days before the expiration of any named fiduciary's appointment, the Pension Fund shall request the Court's approval of a successor named fiduciary and give the Secretary notice of the request for approval. The Secretary shall present any objection to the appointment of the successor named fiduciary within 30 days of the filing of the Pension Fund's request for approval. The successor named fiduciary's appointment shall not become effective until the Court expressly approves the appointment of the successor named fiduciary. To be eligible for appointment, a successor named fiduciary must meet the qualifications for the named fiduciary set forth in section II.C. of this Consent Decree.

B. Authority of the Named Fiduciary

1. Authority Over Fund Assets

The named fiduciary shall have exclusive responsibility and authority to control and manage all assets of the

Pension Fund identified in section II.A. of this Consent Decree.

2. Authority Over Appointment of Investment Managers

The named fiduciary shall have exclusive authority to appoint, replace, and remove such investment managers and real estate investment managers as it shall in its sole discretion determine are necessary to manage the assets of the Pension Fund. These appointments, replacements, and removals need not be approved by the Court.

3. Authority and Responsibility Over Investment Managers

The named fiduciary shall have exclusive responsibility and authority to allocate available investment assets of the Pension Fund among different types of investments and different investment managers and to allocate available real estate investment assets among different types of real estate investments and different real estate investment managers. The named fiduciary shall also have responsibility and authority to monitor the performance of all investment managers and real estate investment managers. This monitoring function of the named fiduciary shall not diminish the obligation of the board of trustees of the Pension Fund under ERISA to monitor such performance or relieve any trustee of any liabil-

ity under part 4 of title I of ERISA for any act of such trustee.

4. Authority to Set Investment Objectives and Policies

The short-term and long-term investment objectives and policies of the Pension Fund shall be developed by the named fiduciary, after consultation with the board of trustees of the Pension Fund, with appropriate regard for the actuarial requirements of the Pension Fund. Attached hereto as an Exhibit is the investment policy statement setting forth the current short-term and long-term investment objectives and policies of the Pension Fund, including objectives and policies governing the acquisition of new securities-related assets and new real estate-related assets. The board of trustees of the Pension Fund and Equitable have represented that this investment policy statement has been developed with appropriate regard for the actuarial requirements of the Pension Fund. The attached investment policy may only be changed by the named fiduciary, after consultation with the board of trustees of the Pension Fund, and such change shall be reported immediately to the Independent Special Counsel

established by section V of this Consent Decree and to the Secretary. Any such change shall not remain in effect more than 90 days except with leave of Court for good cause shown after 60 days' notice to the Independent Special Counsel and to the Secretary.

Neither the board of trustees of the Pension Fund nor any administrator, officer, trustee, agent, or employee of the Pension Fund shall authorize or recommend any future acquisitions, investments, or dispositions of Pension Fund assets on a direct or indirect basis. All present and future investments of Pension Fund assets shall be managed solely by the named fiduciary or such other independent investment managers or real estate investment managers as defined in section II.C. of this Consent Decree as the named fiduciary shall appoint.

C. Qualifications of Named Fiduciary
and Appointed Investment Managers
and Real Estate Investment Managers

1. Named Fiduciary

The named fiduciary must qualify as an investment manager under ERISA section 3(38), 29 U.S.C. § 1102(38) (1976), and accept appointment as such in writing. If the named fiduciary is a bank, it shall be a bank as defined in section 202(a)(2) of the Investment Advisors Act of 1940,

15 U.S.C. § 80a-2 (1976), and shall rank, on the basis of its equity capital on the last day of its most recent fiscal year, among the twenty-five largest banks in the United States. If the named fiduciary is an insurance company, it shall be qualified to do business in and be subject to regulation in at least six states and shall rank, on the basis of assets on the last day of its most recent fiscal year, among the twenty-five largest insurance companies in the United States. If the named fiduciary is an investment adviser registered under section 202(a)(2) of the Investment Advisers Act of 1940, 15 U.S.C. § 80a-2 (1976), it shall rank, on the basis of total client assets under its management and control at the close of its most recent fiscal year, among the twenty-five largest investment advisers in the United States that have either (1) shareholders' or partners' equity in excess of \$50,000,000 or (2) all of their obligations and liabilities assumed or guaranteed by a bank or insurance company having the characteristics described above, or by a broker or dealer registered under section 15(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 780(a) (1976), that has a net worth in excess of \$50,000,000 as of the last day of its most recent fiscal year. In addition, the named fiduciary must

meet the qualifications set forth below for appointed investment managers and real estate investment managers.

2. Investment Managers

To be eligible for appointment as an investment manager by the named fiduciary under section II.B.2. of this Consent Decree, an investment manager must:

- a. Have at least 10 years of experience in operations as an investment management organization managing portfolios of, or providing investment advice with respect to, stock or other securities, and have demonstrated results of performance which are audited and a matter of public record;
- b. Excluding any Pension Fund assets, have at least \$500 million of assets under management, with the Pension Fund's assets allocated to the investment manager constituting not more than 25% of the total of all assets under management;
- c. Have previously served or be serving as an investment manager to employee benefit plans or other tax-exempt trusts with assets exceeding \$100 million subject to its control or advice;
- d. Charge a fee that shall be no more than is reasonable and shall not exceed the fees charged by the manager for comparable services to comparable clients;

- e. Not be affiliated with any administrator, officer, trustee, agent, or employee of the Pension Fund; and
- f. Review and agree to abide by the investment policy statement set forth in the Exhibit to this Consent Decree or such modification of it as may occur as provided in section II.B.4. of this Consent Decree.

3. Real Estate Investment Managers

To be eligible for appointment as a real estate investment manager by the named fiduciary under section II.B.2. of this Consent Decree, a real estate investment manager must:

- a. Have at least 10 years of experience in operations as a real estate investment management organization;
- b. Excluding any Pension Fund assets, have at least \$100 million of real estate assets under management, with the Pension Fund's assets allocated to the real estate investment manager constituting not more than 25% of the total of all assets under management; and
- c. Meet all the qualifications set forth in sections II.C.2.d., e., & f. of this Consent Decree.

4. Current Investment Managers and Real Estate Investment Manager

The qualifications set forth in sections II.C.2. and II.C.3. need not be met by any investment manager or real estate investment manager serving under the Equitable Contract.

D. Termination of the Named Fiduciary

A named fiduciary appointed pursuant to this Consent Decree shall be subject to removal without cause shown on six months' written notice from the Pension Fund, a copy of which shall immediately be provided to the Secretary, and at any time by the Court for good cause shown after 60 days' notice to the named fiduciary and the Secretary. Before the removal of a named fiduciary, there shall be appointed a successor named fiduciary under the procedure provided in section II.A. of this Consent Decree, which appointment shall become effective immediately upon the removal of the then current named fiduciary.

III. ASSETS HELD FOR BENEFITS AND
ADMINISTRATIVE EXPENSES AND
MAINTENANCE OF QUALIFIED INTERNAL
AUDIT STAFF

A. All assets received by the Pension Fund shall be transferred to the named fiduciary in accordance with section II of this Consent Decree, except as provided in sections III.B. through III.E. below.

B. The Pension Fund may retain assets that it has determined are reasonably necessary for the payment of benefits and administrative expenses in a particular month. The Pension Fund's determination shall take into account sums that could be made available to the Pension Fund by the named fiduciary and the investment managers and may include a reserve for benefits or administrative expenses that might become payable during the month. Assets retained for the payment of benefits and administrative expenses must be used exclusively for those purposes. The Pension Fund's determination for each month shall be made during the last 10 days of the preceding month and shall include a report setting forth the reasons for the determinations with supporting computations. Copies of the report shall be made available to the Independent Special Counsel and on request to the Secretary and the Court.

C. Notwithstanding the preceding section III.B., for each month the average daily balance of all assets retained by the Pension Fund, including assets held pending transfer to the named fiduciary (determined as of the close of business each day) shall not exceed 2 1/2 times the sum of the benefits and administrative expenses paid in the preceding month. In no event will the disbursements for admin-

administrative expenses for any month exceed 2 1/2 times the administrative expenses in the previous month.

D. Funds held for benefits and administrative expenses shall be managed and invested in accordance with the advice of a qualified independent investment adviser having the characteristics of the named fiduciary described in section II.C.1. of this Consent Decree, which investment adviser's appointment shall be subject to the approval of the Court after notice to the Secretary.

E. The Pension Fund shall maintain a qualified Internal Audit Staff to monitor its affairs. Responsibilities of the staff shall include the review of benefit administration, administrative expenditures, and the allocation of Pension Fund receipts as to investments and administration. The Internal Audit Staff, in cooperation with the Executive Director of the Pension Fund, shall prepare monthly reports setting forth its findings and recommendations, copies of which shall be made available to the Independent Special Counsel and on request to the Secretary and the Court.

IV. REMOVAL OF CONVICTED PERSONS

Within 30 days after the entry of this Consent Decree, the trust agreement and other appropriate instruments under which the Pension Fund is maintained shall be amended to provide that:

A. No person shall serve, or be permitted to serve, as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee, adviser, provider of goods or services, consultant, representative in any capacity, or in any capacity that involves decisionmaking authority or custody or control of the moneys, funds, or assets of the Pension Fund if such person has been convicted of:

robbery, bribery, extortion, embezzlement, fraud, grand larceny, burglary, arson, a felony violation of Federal or State law involving substances defined in section 802(6) of title 21, murder, rape, kidnaping, perjury, assault with intent to kill, any crime described in section 80a-9(a)(1) of title 15, a violation of any provision of ERISA, a violation of section 186 of title 29, a violation of chapter 63 of title 18, a violation of sections 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of title 18, a violation of the Labor-Management Reporting and Disclosure Act of 1959, or any felony involving abuse or misuse of such person's labor organization or employee benefit plan position or employment; or conspiracy to commit any such crimes; or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element; or a misdemeanor involving a breach of fiduciary responsibility.

B. Upon conviction for any of the crimes set forth in section IV.A. of this Consent Decree, such person shall immediately be removed from and disqualified from serving in

any capacity set forth in section IV.A. of this Consent Decree, provided that upon final reversal of such conviction, such person, unless otherwise ineligible, shall thereafter be eligible to serve; and provided further that this disqualification shall cease to be operative ten years after such conviction or after the end of imprisonment on such conviction, whichever is the later, unless prior to the end of such ten-year period, in the case of a person so convicted or imprisoned, (a) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (b) the United States Parole Commission, pursuant to applicable law, determines that such person's service would not be contrary to the best interests of the Pension Fund.

V. INDEPENDENT SPECIAL COUNSEL

Due to the scope and complexity of this Consent Decree, the parties agree that the Court should appoint an Independent Special Counsel to further the objectives of this Consent Decree. The parties believe that the appointment of an Independent Special Counsel will serve the Court by assisting in identifying and resolving any problems or issues that may arise in connection with the Pension Fund's performance of the undertakings in this Consent Decree.

The parties anticipate that the Independent Special Counsel will give special attention in the conduct of his office to compliance with the fiduciary responsibility provisions in part 4 of title I of ERISA and with conditions contained in determination letters issued by the Internal Revenue Service. The parties further anticipate that the Independent Special Counsel ordinarily will not find it necessary or appropriate to examine, oversee, or report on matters relating to the establishment of contribution rates or benefit levels or to benefit determinations with respect to individual participants and beneficiaries of the Pension Fund, although the parties recognize that occasions may arise in which the Independent Special Counsel, in his discretion, will find it necessary or appropriate to exercise such powers, duties, and responsibilities.

Accordingly, within 30 days after the entry of this Consent Decree, the Court shall appoint an Independent Special Counsel from a list of three individuals recommended by the Pension Fund and agreeable to the Secretary. Such Independent Special Counsel, in the conduct of his office as generally described above, shall have the following powers, duties, and responsibilities.

A. The Independent Special Counsel shall have full authority to examine the future activities of the Pension Fund and to oversee and report on performance of the undertakings in this Consent Decree, giving special attention to compliance with the fiduciary responsibility provisions in part 4 of title I of ERISA and with conditions contained in determination letters issued by the Internal Revenue Service.

B. The Independent Special Counsel may, with leave of Court for good cause shown, employ attorneys, accountants, investigators, and others reasonably necessary and appropriate to aid him in the exercise of his powers, duties, and responsibilities.

C. The Independent Special Counsel shall have full access to all documents, books, records, personnel, files, and information of whatever type or description in the possession, custody, or control of the Pension Fund. In addition, the administrators, fiduciaries, officers, trustees, custodians, counsel, agents, employees, advisers, providers of goods or services, consultants, representatives in any capacity, and all persons who serve in any capacity that involves decisionmaking authority or custody or control of the moneys, funds, or assets of the Pension Fund shall be required, as a condition of maintaining their respective

relationships with the Pension Fund, to cooperate fully with the Independent Special Counsel in the performance of his duties and responsibilities. The Independent Special Counsel may attend meetings of the board of trustees of the Pension Fund, of any committees thereof (including closed or executive sessions), and any meetings of any attorneys' or review committees. He shall receive notice in advance of and agenda of such meetings in the same manner and to the same extent as the other participants in the meetings. In addition, the Independent Special Counsel may attend any other meetings of any type whatsoever at which Pension Fund related matters are discussed or considered including conferences with counsel to the Pension Fund and meetings attended by administrators, fiduciaries, officers, trustees, employees, custodians, counsel, agents, advisers, providers of goods or services, consultants, representatives in any capacity, and all persons who serve in any capacity that involves decisionmaking authority or custody or control of the moneys, funds, or assets of the Pension Fund.

D. The Independent Special Counsel shall be free to consult with the Department of Labor, the Internal Revenue Service, and other federal, state, and local governmental agencies concerning any activities which he performs.

E. The Independent Special Counsel shall provide access to the Department of Labor upon its request to any documents, books, interview notes, or records of any type reviewed, compiled, or prepared by the Independent Special Counsel in the exercise of his powers, duties, and responsibilities.

F. After not less than 10 days notice to the board of trustees of the Pension Fund, to the affected individual or entity, and to the Secretary, the Independent Special Counsel may petition the Court for appropriate orders to compel cooperation by the Pension Fund and any administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee, adviser, provider of goods or services, consultant, representative in any capacity, or person who serves in any capacity that involves decisionmaking authority or custody or control of the moneys, funds, or assets of the Pension Fund.

G. The Independent Special Counsel shall file quarterly reports with the Court, with copies to the Secretary and the Pension Fund, and any other reports he deems necessary or appropriate.

H. The Independent Special Counsel shall have such other powers, duties, and responsibilities as the Court may subsequently determine are appropriate.

The Independent Special Counsel shall not be discharged or terminated during the duration of this Consent Decree except by leave of Court. Upon the termination, discharge, death, incapacity, or resignation of an Independent Special Counsel during the term of this Consent Decree, the Court shall appoint a successor Independent Special Counsel from a list of three individuals recommended by the Pension Fund and agreeable to the Secretary. Recommendations for a successor Independent Special Counsel shall be made within such periods as the Court, by further order, may provide.

No attorney-client or other privilege shall be applicable to any communication between the Independent Special Counsel and the Pension Fund, or its administrators, fiduciaries, officers, trustees, custodians, counsel, agents, employees, advisers, providers of goods or services, consultants, representatives in any capacity, or persons who serve in any capacity that involves decisionmaking authority or custody or control of the moneys, funds, or assets of the Pension Fund.

On a monthly basis, the Pension Fund shall pay the Independent Special Counsel reasonable fees and expenses reasonably and actually incurred by the Independent Special Counsel in the exercise of his powers, duties, and responsibilities.

Nothing herein shall be construed (1) to limit the powers and responsibilities of any officer or employee of the United States under ERISA or any other law, (2) to relieve the Pension Fund or any of its administrators, fiduciaries, officers, trustees, custodians, counsel, agents, employees, advisers, providers of goods or services, consultants, representatives in any capacity, or persons who serve in any capacity that involves decisionmaking authority or custody or control of the moneys, funds, or assets of the Pension Fund of any duty or responsibility under ERISA or any other law, or (3) to confer on the Independent Special Counsel any fiduciary responsibility under part 4 of title I of ERISA or otherwise.

VI. COOPERATION WITH THE SECRETARY

In recognition of the terms and rationale of the Court's order herein on June 8, 1981, which determined that the attorney-client and work product privileges are not available with respect to certain Pension Fund documents, the Pension Fund shall cooperate fully with the Secretary, both in the prosecution of this action and in the exercise of his other enforcement responsibilities under ERISA, by promptly providing such documents, information, and persons under its control as the Secretary from time to time may request.

Nothing herein shall be construed to limit the rights the Secretary otherwise enjoys of access to documents, information, or persons; to preclude the Pension Fund from seeking appropriate orders from this Court protecting against the Secretary's unauthorized dissemination of documents or information; or to waive or restrict the exercise by any individual of his or her constitutional rights.

VII. RETENTION OF JURISDICTION

This Court shall retain jurisdiction over the parties and subject matter of this action for the purpose of enforcing the terms of this Consent Decree. After a period of 10 years from the entry hereof, the Pension Fund, after notice to the Secretary, may petition the Court to dissolve the Consent Decree for good cause shown. After a period of 15 years from the entry hereof, the Pension Fund, after notice to the Secretary, may petition the Court to dissolve the Consent Decree and, absent good cause shown by the Secretary establishing a need for continuing this Consent Decree, the Consent Decree shall be dissolved.

VIII. NOTICE

Provisions of this Consent Decree requiring notice to the board of trustees of the Pension Fund shall be satisfied by delivering it in writing to the Pension Fund in care of:

Executive Director
Central States, Southeast and Southwest
Areas Pension Fund
8550 W. Bryn Mawr Avenue
Chicago, Illinois 60631.

Provisions of this Consent Decree requiring notice to the Secretary shall be satisfied by delivering it in writing to:

The Administrator
Pension and Welfare Benefit Programs
U.S. Department of Labor
200 Constitution Avenue, N.W.
Room S-4516
Washington, D.C. 20210;

with a duplicate delivered to:

The Solicitor of Labor
U.S. Department of Labor
200 Constitution Avenue, N.W.
Room S-2002
Washington, D.C. 20210.

Provisions of this Consent Decree requiring notice to the Independent Special Counsel shall be satisfied by delivering it in writing to him at such address as he designates with the Court.


The parties to this Consent Decree and the Independent Special Counsel may, as they deem necessary, change from time to time the designation of persons to receive notice on their behalf by filing with the Court notification of such change and serving a copy thereof on the other party or par-

ties to this Consent Decree and on the Independent Special Counsel, as the case may be.

IX. ENTRY OF JUDGMENT

There being no just reason for delay, the Clerk of the Court is hereby expressly directed to enter this Consent Decree forthwith in accordance with the provisions of Rule 54(b) of the Federal Rules of Civil Procedure.

Entered: September 29, 1982


James B. Moran
United States District Judge

The undersigned consent to the entry of the foregoing decree:

Raymond J. Donovan
RAYMOND J. DONOVAN,
SECRETARY OF LABOR, Plaintiff

T. Timothy Ryan, Jr.
T. Timothy Ryan, Jr.
Solicitor of Labor

David H. Feldman
David H. Feldman
Associate Solicitor for
Special Litigation

Office of the Solicitor
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Attorneys for Plaintiff

CENTRAL STATES, SOUTHEAST AND SOUTHWEST
AREAS PENSION FUND, Defendant

By: Loran W. Robbins
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Marion M. Winstead
Marion M. Winstead

Harold J. Yates
Harold J. Yates

Earl L. Jennings, Jr.
Earl L. Jennings, Jr.
EMPLOYEE TRUSTEES

Howard McDougall
Howard McDougall

Robert J. Baker
ROBERT J. Baker

R. V. Pulliam, Sr.
R. V. Pulliam, Sr.

EMPLOYER TRUSTEES

George W. Lehr
George W. Lehr

EXECUTIVE DIRECTOR

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James G. Walsh, Jr.
8550 W. Bryn Mawr Avenue
Chicago, Illinois 60631

Attorney for Defendant,
Central States, Southeast and
Southwest Areas Pension Fund

Central States, Southeast and Southwest Areas

Pension Fund

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This Investment Policy Statement has been developed by The Equitable Life Assurance Society of the United States, after consultation with the board of trustees of the Central States, Southeast and Southwest Areas Pension Fund.

I. INTRODUCTION

A. The purpose of this Statement is to set forth the principal considerations and policies that will govern the investment management of the assets of the Central States, Southeast and Southwest Areas Pension Fund ("Fund"). The primary objectives and obligations of the board of trustees ("Trustees") of the Fund are, among other things, to ensure that:

- (1) The Fund is actuarially sound;
- (2) Benefits due or those expected to become due to participants and beneficiaries are paid; and
- (3) The investment earnings of the Fund are maximized considering acceptable and reasonable return/risk combinations.

Accordingly, the Named Fiduciary of the Fund, The Equitable Life Assurance Society of the United States ("Equitable"), after consultation with the Trustees, has adopted this Investment Policy Statement.

B. This Investment Policy Statement has been formulated by Equitable, after consultation with the Trustees, and will be reviewed and modified by Equitable or any successor named fiduciary ("Named Fiduciary" or "Fiduciary") on a periodic basis, after consultation with the Trustees. Any changes resulting from such re-

views will be communicated by the Named Fiduciary to the investment managers.

- C. The Named Fiduciary, shall be responsible for, among other things, the communication and monitoring of investment policy and its implementation.
- D. Each investment manager shall be responsible for investing and managing the Fund assets entrusted to it in a manner consistent with the intent and provisions of this Statement.
- E. This Statement supersedes the Statements dated December 1, 1979 and September 14, 1977 and the supplements thereto dated June 23, 1978, August 10, 1978 and January 11, 1979.

Investment Philosophy

- A. Given the above factors, the overall investment philosophy shall be to manage Fund assets in a prudent, conservative, yet productive manner. The investment managers shall seek to increase the aggregate value of assets under management, while conscious of the need to preserve asset value, in order to enhance the ability of the Fund to meet its obligations to plan participants and beneficiaries.
- B. The Fund shall be investment-quality oriented.

- C. The Fund shall be invested in a manner which seeks to avoid excessive volatility in Fund asset values. Control of such aggregate risk is the responsibility of the Fiduciary.
- D. The Fund shall be broadly diversified among and within principal classes of investment. The Fiduciary retains the responsibility to assure that the Fund is adequately diversified. Accordingly, individual securities managers should remain aware that their portfolios are but portions of the total Fund's assets. The diversification of their specific portfolios is of secondary importance to the Fund since Fund diversification is achieved by aggregating the individual securities managers' portfolios.
- E. Fund assets shall be managed in order to achieve desired objectives over a longer-term time horizon.
- F. Investment managers shall not be concerned with maintaining a liquidity reserve in order to meet benefit payments unless advised otherwise by the Fiduciary.
- G. Fund assets shall not represent too substantial a portion of the investment management business of any securities investment manager. Funds allocated to a securities investment manager shall not be greater than

20% of the total tax-exempt assets under management by the organization after such an allocation.

Plan and Fund Characteristics and Considerations

Investment policy shall take into consideration the following factors:

- A. This is a jointly managed Taft-Hartley plan providing for collectively bargained contribution rates and defined benefits.
- B. The accrued liability and the value of benefits accrued to date exceed the assets of the Fund, as is typical with defined benefit pension plans.
- C. Net allocable cash flow will probably be declining over the next five years due to increasing benefit payments and administrative expenses. Thus the Fund's future investment results will be more heavily influenced by the disposition of current Fund assets; new cash flow will probably play a less important role.
- D. In the Actuarial Report as of January 1, 1980, the Fund's actuary has assumed investment earnings rates scaled from 8.5% to 6.5% ten years hence. To the extent that earnings are achieved consistently in excess of these assumed rates so does the Fund's asset/liability posture improve. Accordingly, the re-

duction in investment return volatility is a key component of investment policy.

II. TOTAL FUND

A. Investment Objectives:

- (1) The minimum average annual rate of return over a five year period shall be at least 8.35%.
- (2) Other benchmark annual rates of return are:
 - . 7 1/2% - the average "scaled" interest assumption over ten years.
 - . 12% - a rate which could bring the asset/liability relationship of the Fund into a more positive condition and as a proxy for achieving a real rate of return of 3%.
- (3) The reduction of volatility and the control of risk are key facets of investment policy.
- (4) Asset combinations will be selected that are most likely to achieve these benchmark earnings rates. This likelihood will be expressed in terms of probability. Success in achieving these objectives will be significantly affected by broad economic and capital market conditions.
- (5) Rate of return shall mean total rate of return, that is, investment income plus realized and un-

realized capital gains and losses, provided that, for purposes of calculating rate of return, investment values and changes therein shall be determined as provided in paragraph A (6) next following. Rate of return shall be calculated on a time-weighted basis by linking dollar-weighted quarterly rates of return.

(6) Investments shall be valued in the case of securities-related assets in accordance with the provisions set forth in the applicable Investment Management Agreement in the section titled "Compensation"; and, in the case of real estate-related assets and other assets, in accordance with the valuation procedures employed with respect to such assets since October 3, 1977.

(7) Achievement of all benchmark objectives will be assessed over a five year measurement period.

B. Guidelines:

(1) The fiduciary shall be responsible for allocating Fund assets -- both new money and existing assets -- among investment managers in order to achieve the total Fund objectives.

(2) (a) The Fiduciary, guided by the investment philosophy described in Section I of this

Statement, shall seek to allocate the Fund assets among various major investment categories generally within the following ranges (percentage of total Pension Fund assets):

Mortgages/Owned Real Estate:	20-25%
Fixed Income Securities:	25-55%
Publicly Traded Bonds	
Short Term Obligations	
Other Fixed Income Instruments	
Common Stocks:	25-45%

(b) The asset distribution ranges may be modified by the Fiduciary if warranted by, among other things, the requirements of the Pension Fund or significant changes in the capital markets.

(c) At no time, however, will more than 35% of total Fund assets be invested in non-publicly traded (i.e., illiquid) assets exclusive of short term obligations.

C. Volatility Reduction Programs

(1) A new real estate investment program will be implemented to provide the Fund with a high and predictable cash flow serving to dampen aggregate portfolio volatility.

- (2) The employment of fixed income vehicles that are relatively insulated from interest rate risk will be analyzed and, if appropriate, implemented. Immunized bond portfolios and the use of floating rate instruments, and other instruments are vehicles that could help preserve the value of the fixed-income asset base during periods of prolonged rising interest rates.
- (3) Income enhancement programs such as common stock option overwriting and securities lending may be adopted, if deemed advisable by the Fiduciary, in order to enhance the likelihood of increased income return to the Fund and decreased volatility in the market value of the Fund's securities portfolio.

III. REAL ESTATE RELATED ASSETS

A. Investment Objectives

- (1) With respect to new real estate-related assets (i.e., real estate-related assets acquired after June 1, 1981):
 - (a) To achieve a stable long term rate of return with the potential for capital appreciations and growth of rental income; and

(b) to the extent such assets represent equity interests in real estate, to achieve an average annual time-weighted rate of return (net of expenses) over a reasonable period of time which is:

- . greater than the rate of inflation (GNP deflator);
- . above average relative to other real estate equity funds with comparable objectives;
- . greater than a portfolio of high quality publicly traded bonds; and
- . greater than a portfolio of high quality mortgages.

(2) With respect to existing real estate-related assets (i.e., real estate-related assets acquired before June 1, 1981):

- (a) continue to reduce the aggregate amount in an orderly and gradual manner;
- (b) preserve and enhance the value of such assets; and

- (c) optimize the income and rate of return on such assets.

B. Guidelines:

(1) New real estate-related assets:

- (a) new real estate-related assets shall be acquired only by an investment manager specifically authorized by the Fiduciary to make such investments;
- (b) new investments shall be made in order to diversify and enhance the quality of the existing portfolio of real estate-related assets; no investments shall be made in or secured by residential (including apartments) properties or resort related facilities;
- (c) all new real estate-related investments shall incorporate explicit inflation protection features without, however, severely compromising current returns, and shall be made with due regard to the quality of design and construction of existing structures and, where appropriate, to the adequacy of energy

conservation measures and functional flexibility;

- (d) owned real estate shall be limited to existing income producing properties or properties with a specific plan development; emphasis shall be on properties with rent escalation clauses, shorter term leases and participation arrangements in retail property leases.
- (e) leveraging of owned real estate properties shall be permitted only if such indebtedness is assumed as part of the acquisition of property and does not give rise to unrelated business income for tax purposes;
- (f) investments may be made in development type projects, including joint venture arrangements;
- (g) the aggregate amount invested in any one property shall not exceed \$25 million without authorization of the Fiduciary; and
- (h) no investments may be made in a pooled or commingled real estate-related investment account without the authorization of the Fiduciary.

(2) Existing real estate-related assets:

(a) the reduction objective will generally be achieved over time through the amortization of mortgage loans, and the orderly disposition of involuntary equities with particular attention to reducing concentrations of asset type and/or location;

(b) additional investments may be made in existing real estate-related assets provided that any such additional investment:

shall be deemed by the asset manager to be prudent and necessary to preserve or enhance the value of the existing assets;

shall be on terms at least as favorable as the terms currently negotiated in comparable quality real estate investments, and to the greatest extent feasible, shall be consistent with the intent of this Investment Policy Statement;

shall be subject to the prior approval of the Fiduciary for any new investment in excess of \$500,000 and to the appropriate procedures as defined in the applicable Investment Management Agreement;

- (c) sale of assets is encouraged only after comprehensive study of appropriate criteria including: evaluation reports and investigations, prospects for near and long term-appreciation, and the proposed terms of such sale and current market conditions;
- (d) no asset must be sold simply because the current return is low compared with current yields on comparable investments; and
- (e) the terms of the sale of any asset should be in the best interest of the Pension Fund.

IV. SECURITIES MANAGER OBJECTIVES

- A. All investment managers will be assigned specific investment guidelines issued in consonance with this Investment Policy Statement, and any exception to any guidelines applicable to an investment manager shall require the consent of the Fiduciary.

- B. Guidelines will have prescribed rate of return objectives, both absolute and relative, as well as quality, marketability, and operational directives.
- C. Each investment manager has full discretion within the context of the investment guidelines.
- D. Investment performance is monitored on a continuous basis by the Fiduciary. Periodic investment meetings are conducted to assure conformance to the investment policies of the Fund as well as the guidelines assigned to the investment manager.
- E. The Fiduciary has the responsibility for retaining, monitoring, and, if necessary, terminating investment managers (other than itself as securities investment manager).