

Compliance Summary of CMA & CMA High Income Equities Portfolios to the Illinois Pension Code for Firefighter and Police Funds

The relevant sections of the Code are **Bolded** and **Underlined** that apply to “allowed Investments” making the **CMA High Income Equities Portfolios** compliant with the Code, and provisions of the Code that CMA meets as a Registered Investment Advisor to any Ill Pension Fund.

What investments are authorized by the Illinois Pension Code?

Investments by suburban and downstate police and firefighter pension funds are limited to those authorized by the legal list contained in Illinois Pension Code Section 1-113.1 thru 1.113.4.

(40 ILCS 5/1-113) (from Ch. 108 1/2, par. 1-113)

Sec. 1-113. Investment authority of certain pension funds, not including those established under Article 3 or 4. The investment authority of a board of trustees of a retirement system or pension fund established under this Code shall, if so provided in the Article establishing such retirement system or pension fund, embrace the following investments:

(1) Bonds, notes and other direct obligations of the United States Government; bonds, notes and other obligations of any United States Government agency or instrumentality, whether or not guaranteed; and obligations the principal and interest of which are guaranteed unconditionally by the United States Government or by an agency or instrumentality thereof.

(2) Obligations of the Inter-American Development Bank, the International Bank for Reconstruction and Development, the African Development Bank, the International Finance Corporation, and the Asian Development Bank.

(3) Obligations of any state, or of any political subdivision in Illinois, or of any county or city in any other state having a population as shown by the last federal census of not less than 30,000 inhabitants provided that such political subdivision is not permitted by law to become indebted in excess of 10% of the assessed valuation of property therein and has not defaulted for a period longer than 30 days in the payment of interest and principal on any of its general obligations or indebtedness during a period of 10 calendar years immediately preceding such

investment.

(4) Nonconvertible bonds, debentures, notes and other corporate obligations of any corporation created or existing under the laws of the United States or any state, district or territory thereof, provided there has been no default on the obligations of the corporation or its predecessor(s) during the 5 calendar years immediately preceding the purchase. Up to 5% of the assets of a pension fund established under Article 9 of this Code may be invested in nonconvertible bonds, debentures, notes, and other corporate obligations of corporations created or existing under the laws of a foreign country, provided there has been no default on the obligations of the corporation or its predecessors during the 5 calendar years immediately preceding the date of purchase.

(5) Obligations guaranteed by the Government of Canada, or by any Province of Canada, or by any Canadian city with a population of not less than 150,000 inhabitants, provided (a) they are payable in United States currency and are exempt from any Canadian withholding tax; (b) the investment in any one issue of bonds shall not exceed 10% of the amount outstanding; and (c) the total investments at book value in Canadian securities shall be limited to 5% of the total investment account of the board at book value.

(5.1) Direct obligations of the State of Israel for the payment of money, or obligations for the payment of money which are guaranteed as to the payment of principal and interest by the State of Israel, or common or preferred stock or notes issued by a bank owned or controlled in whole or in part by the State of Israel, on the following conditions:

(a) The total investments in such obligations shall not exceed 5% of the book value of the aggregate investments owned by the board;

(b) The State of Israel shall not be in default in the payment of principal or interest on any of its direct general obligations on the date of such investment;

(c) The bonds, stock or notes, and interest

thereon

shall be payable in currency of the United States;

(d) The bonds shall (1) contain an option for the redemption thereof after 90 days from date of purchase or (2) either become due 5 years from the date of their purchase or be subject to redemption 120 days after the date of notice for redemption;

(e) The investment in these obligations has been

approved in writing by investment counsel employed by the board, which counsel shall be a national or state bank or trust company authorized to do a trust business in the State of Illinois, or an investment advisor qualified under the Federal Investment Advisors Act of 1940 and registered under the Illinois Securities Act of 1953;

(f) The fund or system making the investment shall

have at least \$5,000,000 of net present assets.

 (6) Notes secured by mortgages under Sections 203, 207, 220 and 221 of the National Housing Act which are insured by the Federal Housing Commissioner, or his successor assigns, or debentures issued by such Commissioner, which are guaranteed as to principal and interest by the Federal Housing Administration, or agency of the United States Government, provided the aggregate investment shall not exceed 20% of the total investment account of the board at book value, and provided further that the investment in such notes under Sections 220 and 221 shall in no event exceed one-half of the maximum investment in notes under this paragraph.

(7) Loans to veterans guaranteed in whole or part by the United States Government pursuant to Title III of the Act of Congress known as the "Servicemen's Readjustment Act of 1944," 58 Stat. 284, 38 U.S.C. 693, as amended or supplemented from time to time, provided such guaranteed loans are liens upon real estate.

(8) Common and preferred stocks and convertible debt securities authorized for investment of trust

funds under the laws of the State of Illinois, provided:

(a) the common stocks, except as provided in subparagraph (g), are listed on a national securities exchange or board of trade, as defined in the federal Securities Exchange Act of 1934, or quoted in the National Association of Securities Dealers Automated Quotation System (NASDAQ);

(b) the securities are of a corporation created or existing under the laws of the United States or any state, district or territory thereof, except that up to 5% of the assets of a pension fund established under Article 9 of this Code may be invested in securities issued by corporations created or existing under the laws of a foreign country, if those securities are otherwise in conformance with this paragraph (8);

(c) the corporation is not in arrears on payment of dividends on its preferred stock;

(d) the total book value of all stocks and convertible debt owned by any pension fund or retirement system shall not exceed 40% of the aggregate book value of all investments of such pension fund or retirement system, except for a pension fund or retirement system governed by Article 9 or 17, where the total of all stocks and convertible debt shall not exceed 50% of the aggregate book value of all fund investments, and except for a pension fund or retirement system governed by Article 13, where the total market value of all stocks and convertible debt shall not exceed 65% of the aggregate market value of all fund investments;

(Note: A Fund could allocate up to 65% of assets to the CMA Equity Portfolio.)

(e) the book value of stock and convertible debt investments in any one corporation shall not exceed 5% of the total investment account at book value in which such securities are held, determined as of the date of the investment, and the investments in the stock of any one corporation shall not exceed 5% of the total

outstanding stock of such corporation, and the investments in the convertible debt of any one corporation shall not exceed 5% of the total amount of such debt that may be outstanding;

(f) the straight preferred stocks or convertible preferred stocks and convertible debt securities are issued or guaranteed by a corporation whose common stock qualifies for investment by the board; and

(Note: All of CMA Portfolio preferred stock selections are issued by public companies, where its common stock meets the Code requirements.)

(g) that any common stocks not listed or quoted as provided in subdivision 8(a) above be limited to the following types of institutions: (a) any bank which is a member of the Federal Deposit Insurance Corporation having capital funds represented by capital stock, surplus and undivided profits of at least \$20,000,000; (b) any life insurance company having capital funds represented by capital stock, special surplus funds and unassigned surplus totalling at least \$50,000,000; and (c) any fire or casualty insurance company, or a combination thereof, having capital funds represented by capital stock, net surplus and voluntary reserves of at least \$50,000,000.

(9) Withdrawable accounts of State chartered and federal chartered savings and loan associations insured by the Federal Savings and Loan Insurance Corporation; deposits or certificates of deposit in State and national banks insured by the Federal Deposit Insurance Corporation; and share accounts or share certificate accounts in a State or federal credit union, the accounts of which are insured as required by the Illinois Credit Union Act or the Federal Credit Union Act, as applicable.

No bank or savings and loan association shall receive investment funds as permitted by this subsection (9), unless it has complied with the requirements established pursuant to Section 6 of the Public Funds Investment Act.

(10) Trading, purchase or sale of listed options on underlying securities owned by the board.

(11) Contracts and agreements supplemental thereto providing for investments in the general account of a life insurance company authorized to do business in Illinois.

(12) Conventional mortgage pass-through securities which are evidenced by interests in Illinois owner-occupied residential mortgages, having not less than an "A" rating from at least one national securities rating service. Such mortgages may have loan-to-value ratios up to 95%, provided that any amount over 80% is insured by private mortgage insurance. The pool of such mortgages shall be insured by mortgage guaranty or equivalent insurance, in accordance with industry standards.

(13) Pooled or commingled funds managed by a national or State bank which is authorized to do a trust business in the State of Illinois, shares of registered investment companies as defined in the federal Investment Company Act of 1940 which are registered under that Act, and separate accounts of a life insurance company authorized to do business in Illinois, where such pooled or commingled funds, shares, or separate accounts are comprised of common or preferred stocks, bonds, or money market instruments.

(14) Pooled or commingled funds managed by a national or state bank which is authorized to do a trust business in the State of Illinois, separate accounts managed by a life insurance company authorized to do business in Illinois, and commingled group trusts managed by an investment adviser registered under the federal Investment Advisors Act of 1940 (15 U.S.C. 80b-1 et seq.) and under the Illinois Securities Law of 1953, where such pooled or commingled funds, separate accounts or commingled group trusts are comprised of real estate or loans upon real estate secured by first or second mortgages. The total investment in such pooled or commingled funds, commingled group trusts and separate accounts shall not exceed 10% of the aggregate book value of all investments owned by the fund.

(15) Investment companies which (a) are registered as such under the Investment Company Act of 1940, (b) are diversified, open-end management

investment companies and (c) invest only in money market instruments.

(16) Up to 10% of the assets of the fund may be invested in investments not included in paragraphs (1) through (15) of this Section, provided that such investments comply with the requirements and restrictions set forth in Sections 1-109, 1-109.1, 1-109.2, 1-110 and 1-111 of this Code.

The board shall have the authority to enter into such agreements and to execute such documents as it determines to be necessary to complete any investment transaction.

Any limitations herein set forth shall be applicable only at the time of purchase and shall not require the liquidation of any investment at any time.

All investments shall be clearly held and accounted for to indicate ownership by such board. Such board may direct the registration of securities in its own name or in the name of a nominee created for the express purpose of registration of securities by a national or state bank or trust company authorized to conduct a trust business in the State of Illinois.

Investments shall be carried at cost or at a value determined in accordance with generally accepted accounting principles and accounting procedures approved by such board.

(Source: P.A. 92-53, eff. 7-12-01.)

(40 ILCS 5/1-113.1)

Sec. 1-113.1. Investment authority of pension funds established under Article 3 or 4. The board of trustees of a police pension fund established under Article 3 of this Code or firefighter pension fund established under Article 4 of this Code shall draw pension funds from the treasurer of the municipality and, beginning January 1, 1998, invest any part thereof in the name of the board in the items listed in Sections 1-113.2 through 1-113.4 according to the limitations and requirements of this Article. **These investments shall be made with the care, skill, prudence, and diligence that a prudent person acting in like capacity and familiar with such matters**

would use in the conduct of an enterprise of like character with like aims.

Interest and any other income from the investments shall be credited to the pension fund.

For the purposes of Sections 1-113.2 through 1-113.11, the "net assets" of a pension fund include both the cash and invested assets of the pension fund.

(Source: P.A. 90-507, eff. 8-22-97.)

(40 ILCS 5/1-113.2)

Sec. 1-113.2. List of permitted investments for all Article 3 or 4 pension funds. Any pension fund established under Article 3 or 4 may invest in the following items:

(1) Interest bearing direct obligations of the United States of America.

(2) Interest bearing obligations to the extent that they are fully guaranteed or insured as to payment of principal and interest by the United States of America.

(3) Interest bearing bonds, notes, debentures, or other similar obligations of agencies of the United States of America. For the purposes of this Section, "agencies of the United States of America" includes: (i) the Federal National Mortgage Association and the Student Loan Marketing Association; (ii) federal land banks, federal intermediate credit banks, federal farm credit banks, and any other entity authorized to issue direct debt obligations of the United States of America under the Farm Credit Act of 1971 or amendments to that Act; (iii) federal home loan banks and the Federal Home Loan Mortgage Corporation; and (iv) any agency created by Act of Congress that is authorized to issue direct debt obligations of the United States of America.

(4) Interest bearing savings accounts or certificates of deposit, issued by federally chartered banks or savings and loan associations, to the extent that the deposits are insured by agencies or instrumentalities of the federal government.

(5) Interest bearing savings accounts or certificates of deposit, issued by State of Illinois

chartered banks or savings and loan associations, to the extent that the deposits are insured by agencies or instrumentalities of the federal government.

(6) Investments in credit unions, to the extent that the investments are insured by agencies or instrumentalities of the federal government.

(7) Interest bearing bonds of the State of Illinois.

(8) Pooled interest bearing accounts managed by the Illinois Public Treasurer's Investment Pool in accordance with the Deposit of State Moneys Act and interest bearing funds or pooled accounts managed, operated, and administered by banks, subsidiaries of banks, or subsidiaries of bank holding companies in accordance with the laws of the State of Illinois.

(9) Interest bearing bonds or tax anticipation warrants of any county, township, or municipal corporation of the State of Illinois.

(10) Direct obligations of the State of Israel, subject to the conditions and limitations of item (5.1) of Section 1-113.

(11) Money market mutual funds managed by investment companies that are registered under the federal Investment Company Act of 1940 and the Illinois Securities Law of 1953 and are diversified, open-ended management investment companies; provided that the portfolio of the money market mutual fund is limited to the following:

(i) bonds, notes, certificates of indebtedness,

treasury bills, or other securities that are guaranteed by the full faith and credit of the United States of America as to principal and interest;

(ii) bonds, notes, debentures, or other similar

obligations of the United States of America or its agencies; and

(iii) short term obligations of corporations organized in the United States with assets exceeding \$400,000,000, provided that (A) the obligations mature no later than 180 days from the date of purchase, (B) at the time of purchase, the obligations are rated by at least 2 standard national rating services at one of their 3 highest classifications, and (C) the obligations held by the mutual fund do not

exceed 10% of the corporation's outstanding obligations.

(12) General accounts of life insurance companies authorized to transact business in Illinois.

(13) Any combination of the following, not to exceed 10% of the pension fund's net assets:

(i) separate accounts that are managed by life

insurance companies authorized to transact business in Illinois and are comprised of diversified portfolios consisting of common or preferred stocks, bonds, or money market instruments;

(ii) separate accounts that are managed by insurance

companies authorized to transact business in Illinois, and are comprised of real estate or loans upon real estate secured by first or second mortgages; and

(iii) mutual funds that meet the following requirements:

(A) the mutual fund is managed by an investment

company as defined and registered under the federal Investment Company Act of 1940 and registered under the Illinois Securities Law of 1953;

(B) the mutual fund has been in operation for at

least 5 years;

(C) the mutual fund has total net assets of \$250

million or more; and

(D) the mutual fund is comprised of diversified

portfolios of common or preferred stocks, bonds, or money market instruments.

(Source: P.A. 90-507, eff. 8-22-97; 91-887, eff. 7-6-00.)

(40 ILCS 5/1-113.3)

Sec. 1-113.3. List of additional permitted investments for pension funds with net assets of

\$2,500,000 or more.

(a) In addition to the items in Section 3-113.2, a pension fund established under Article 3 or 4 that has net assets of at least \$2,500,000 may invest a portion of its net assets in the following items:

(1) Separate accounts that are managed by life

insurance companies authorized to transact business in Illinois and are comprised of diversified portfolios consisting of common or preferred stocks, bonds, or money market instruments.

(2) Mutual funds that meet the following requirements:

(i) the mutual fund is managed by an investment

company as defined and registered under the federal Investment Company Act of 1940 and registered under the Illinois Securities Law of 1953;

(ii) the mutual fund has been in operation for

at least 5 years;

(iii) the mutual fund has total net assets of

\$250 million or more; and

(iv) the mutual fund is comprised of diversified

portfolios of common or preferred stocks, bonds, or money market instruments.

(b) A pension fund's total investment in the items authorized under this Section shall not exceed 35% of the market value of the pension fund's net present assets stated in its most recent annual report on file with the Illinois Department of Insurance.

(Source: P.A. 90-507, eff. 8-22-97.)

(40 ILCS 5/1-113.4)

Sec. 1-113.4. List of additional permitted investments for pension funds with net assets of \$5,000,000 or more.

(a) In addition to the items in Sections 1-113.2 and 1-113.3, a pension fund established under Article 3 or 4 that has net assets of at least \$5,000,000 and has appointed an investment adviser under Section 1-113.5 may, through that investment adviser, invest a portion of its assets in common and preferred stocks authorized for investments of trust funds under the laws of the State of Illinois. The stocks must meet all of the following requirements:

(1) The common stocks are listed on a national

securities exchange or board of trade (as defined in the federal Securities Exchange Act of 1934 and set forth in Section 3.G of the Illinois Securities Law of 1953) or quoted in the National Association of Securities Dealers Automated Quotation System National Market System (NASDAQ NMS).

(2) The securities are of a corporation created or

existing under the laws of the United States or any state, district, or territory thereof and the corporation has been in existence for at least 5 years.

(3) The corporation has not been in arrears on

payment of dividends on its preferred stock during the preceding 5 years.

(4) The market value of stock in any one corporation

does not exceed 5% of the cash and invested assets of the pension fund, and the investments in the stock of any one corporation do not exceed 5% of the total outstanding stock of that corporation.

(5) The straight preferred stocks or convertible

preferred stocks are issued or guaranteed by a corporation whose common stock qualifies for investment by the board.

(6) The issuer of the stocks has been subject to the

requirements of Section 12 of the federal Securities Exchange Act of 1934 and has been current with the filing requirements of Sections

13 and 14 of that Act during the preceding 3 years.

(b) A pension fund's total investment in the items authorized under this Section and Section 1-113.3 shall not exceed 35% of the market value of the pension fund's net present assets stated in its most recent annual report on file with the Illinois Department of Insurance.

(c) A pension fund that invests funds under this Section shall electronically file with the Division any reports of its investment activities that the Division may require, at the times and in the format required by the Division.

(Source: P.A. 90-507, eff. 8-22-97.)

CMA Complies as a Registered Investment Advisor under the Code

(40 ILCS 5/1-113.5)

Sec. 1-113.5. Investment advisers and investment services.

(a) The board of trustees of a pension fund may appoint investment advisers as defined in Section 1-101.4. The board of any pension fund investing in common or preferred stock under Section 1-113.4 shall appoint an investment adviser before making such investments.

The investment adviser shall be a fiduciary, as defined in Section 1-101.2, with respect to the pension fund and shall be one of the following:

(1) an investment adviser registered under the federal Investment Advisers Act of 1940 and the Illinois Securities Law of 1953;

conduct a
trust business in Illinois;

transact
business in Illinois; or

registered

under the federal Investment Company Act of 1940 and registered under the Illinois Securities Law of 1953.

(a-5) Notwithstanding any other provision of law, a person or entity that provides consulting services (referred to as a "consultant" in this Section) to a pension fund with respect to the selection of fiduciaries may not be awarded a contract to provide those consulting services that is more than 5 years in duration. No contract to provide such consulting services may be renewed or extended. At the end of the term of a contract, however, the contractor is eligible to compete for a new contract. No person shall attempt to avoid or contravene the restrictions of this subsection by any means. All offers from responsive offerors shall be accompanied by disclosure of the names and addresses of the following:

(1) The offeror.

(2) Any entity that is a parent of, or owns a
controlling interest in, the offeror.

(3) Any entity that is a subsidiary of, or in which a
controlling interest is owned by, the offeror.

Beginning on July 1, 2008, a person, other than a trustee

or an employee of a pension fund or retirement system, may not act as a consultant under this Section unless that person is at least one of the following: (i) registered as an investment adviser under the federal Investment Advisers Act of 1940 (15 U.S.C. 80b-1, et seq.); (ii) registered as an investment adviser under the Illinois Securities Law of 1953; (iii) a bank, as defined in the Investment Advisers Act of 1940; or (iv) an insurance company authorized to transact business in this State.

(b) All investment advice and services provided by an investment adviser or a consultant appointed under this Section shall be rendered pursuant to a written contract between the investment adviser and the board, and in accordance with the board's investment policy.

The contract shall include all of the following:

(1) acknowledgement in writing by the investment

adviser that he or she is a fiduciary with respect to the pension fund;

(2) the board's investment policy;

(3) full disclosure of direct and indirect fees,

commissions, penalties, and any other compensation that may be received by the investment adviser, including reimbursement for expenses; and

(4) a requirement that the investment adviser submit

periodic written reports, on at least a quarterly basis, for the board's review at its regularly scheduled meetings. All returns on investment shall be reported as net returns after payment of all fees, commissions, and any other compensation.

(b-5) Each contract described in subsection (b) shall also include (i) full disclosure of direct and indirect fees, commissions, penalties, and other compensation, including reimbursement for expenses, that may be paid by or on behalf of the investment adviser or consultant in connection with the provision of services to the pension fund and (ii) a requirement that the investment adviser or consultant update the disclosure promptly after a modification of those payments or an additional payment.

Within 30 days after the effective date of this amendatory Act of the 95th General Assembly, each investment adviser and consultant providing services on the effective date or subject to an existing contract for the provision of services must disclose to the board of trustees all direct and indirect fees, commissions, penalties, and other compensation paid by or on behalf of the investment adviser or consultant in connection with the provision of those services and shall update that disclosure promptly after a modification of those payments or an additional payment.

A person required to make a disclosure under subsection (d) is also required to disclose direct and indirect fees, commissions, penalties, or other compensation that shall or may be paid by or on behalf of the person in connection with the rendering of those services. The person shall update the disclosure promptly after a modification of those payments or an additional payment.

The disclosures required by this subsection shall be in writing and shall include the date and

amount of each payment and the name and address of each recipient of a payment.

(c) Within 30 days after appointing an investment adviser or consultant, the board shall submit a copy of the contract to the Division of Insurance of the Department of Financial and Professional Regulation.

(d) Investment services provided by a person other than an investment adviser appointed under this Section, including but not limited to services provided by the kinds of persons listed in items (1) through (4) of subsection (a), shall be rendered only after full written disclosure of direct and indirect fees, commissions, penalties, and any other compensation that shall or may be received by the person rendering those services.

(e) The board of trustees of each pension fund shall retain records of investment transactions in accordance with the rules of the Department of Financial and Professional Regulation.

(Source: P.A. 95-950, eff. 8-29-08.)