September 24, 2018

Commissioners
New York State Joint Commission on Public Ethics
540 Broadway
Albany, NY 12207

Delivered via email

Dear Commissioners:

Pursuant to Public Officers Law §§ 73, 73-a, and 74, we request an investigation of the appointment of former New York State Chief Investment Officer Vicki L. Fuller to the Board of Directors of the Williams Corporation ("Williams"). Ms. Fuller's appointment calls into question the integrity of the management of the New York State Common Retirement Funds by New York State Comptroller Tom DiNapoli. Below, we review the facts, our correspondence with the Comptroller's office, and our unanswered questions, in order to demonstrate the necessity of an investigation to restore public confidence in the management of the pension funds.

Williams is a Fortune 500 developer, owner and operator of gas pipelines, including the large TransCo network as well as assets located in New York State. Williams is currently seeking state permits to build a large gas pipeline in the New York harbor. They are also involved in attempts to get approval and permits for the Constitution Pipeline. After leaving her position as the Chief Investment Officer (CIO) of the New York State Common Retirement Funds on July 30th, 2018, one day later Ms. Fuller was appointed to the Williams Board of Directors[1]. According to the company's most recent disclosures, Williams compensates its directors with a mix of cash and stock between $274,988 at the low end and $494,989 at the high end[2]. As CIO of the NYS pension funds, Ms. Fuller oversaw the pension funds $200 billion investments. As of March 31, 2017, the funds had $160 million invested Williams[3].

According to the comptroller's annual reports, at the end of the first fiscal year in which Ms. Fuller was employed as CIO, the pension fund's investments in Williams or subsidiaries totaled $74,554,408[4]. By the end of the last available year of her tenure, March 31, 2017, these investments had increased to $159,733,711[5]. This was not purely a result of shifting market value – in fact the stock price for Williams dropped between 2012 and 2017. Rather the value increased as a result of the pension fund

[1] Williams corporation announcement July 31st, 2018
https://www.businesswire.com/news/home/20180731005737/en/Williams-Appoints-Vicki-Fuller-Board-Directors
and New York State Comptroller's announcement July 26th, 2018
https://osc.state.ny.us/press/releases/july18/072618.htm

[2] Williams 2018 proxy statement at p. 67
https://investor.williams.com/sites/williams.investorhq.businesswire.com/files/report/additional/2018_Proxy_Statement_Bookmarked.pdf

[3] New York State Common Retirement Fund Asset Listing as of March 31, 2012 $74,554,408 in equities listed at p.46 https://www.osc.state.ny.us/retire/word_and_pdf_documents/publications/cafr/asset_listings_12.pdf

[4] New York State Common Retirement Fund Asset Listing as of March 31, 2017 $48,406,281 in equities listed at p.61; $86,222,130 and $25,105,300 in fixed income assets listed at p. 83;
https://www.osc.state.ny.us/retire/word_and_pdf_documents/publications/cafr/asset_listings_17.pdf

[5] $48,406,281 in equities listed at p.61; $86,222,130 and $25,105,300 in fixed income assets listed at p. 83;
https://www.osc.state.ny.us/retire/word_and_pdf_documents/publications/cafr/asset_listings_17.pdf

investing more in Williams, in particular, Williams Partners debt. Williams Partners is a wholly owned subsidiary of Williams Corporation.

2012	**Shares**	**Cost**	**Market Value (at report date)**
Williams Companies, Inc.	2,419,812	36,853,487	**74,554,408**
2017			
Williams Companies, Inc.	1,635,900	36,215,114	48,406,281
Williams Partners, LP 3.6000 3/15/22		85,000,000	86,222,130
Williams Partners, LP 4.0000 9/15/25		25,000,000	25,105,300
Total 2017		146,215,114	**159,733,711**

Ms. Fuller was appointed to her CIO position in mid-2012, near the period when activists and organizations began a prominent public campaign, which many of our organizations joined, pressing the Comptroller to divest the pension funds from fossil fuel investments[6]. Divestment activists argue that climate change poses a severe threat to New York State and that fossil investments are an excessive risk for the pension funds that are likely to continue to underperform. Divestment from fossil fuels and increasing climate regulation poses a financial threat to Williams and many of its gas company customers. Conversely, state investments in Williams and its customers are a financial benefit to the company.

As CIO, Ms. Fuller opposed divestment by the pension funds from fossil fuels. For example, Ms. Fuller testified to the Legislature in opposition to divestment in November of 2016[7]. It is clear that Ms. Fuller counseled the Comptroller against divestment from fossil fuels. We now question whether the investment advice that Ms. Fuller provided and her management of the funds was intended to lead to a future financially lucrative appointment, such as her appointment to the Williams Board of Directors.

According to correspondence from the Comptroller's office, Ms. Fuller sought advice from the Comptroller's Special Counsel on Ethics, who advised her of the contents of State Ethics Commission Advisory Opinion 6-01. (see Comptroller's Counsel letter to several of our organizations dated August 9th, 2018 as attachment). Ms. Fuller apparently disclosed that she had been offered or was in discussions to accept the appointment she later accepted to the Williams Corporation Board of Directors, because she informed the Special Counsel that Williams had "no matters pending before the [pension funds] at that time." The Comptroller's Counsel appears to have inquired with the Comptroller Operations Director, and relates that the Operations Director "confirmed that there were no investment matters involving the Williams Corporation pending during the relevant time frame of May-July 2018." (we have attached copies of our correspondence with the Comptroller's office). However, decisions related to Williams, be they to increase, decrease or hold investments, are a regular occurrence within the comptroller's office as the fund seeks to continuously adjust its investments in order to maintain profitability and returns.

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[6] NYS Comptrollers announcement May 11th, 2018
https://www.osc.state.ny.us/press/releases/may18/051118.htm

[7] See video of testimony
https://www.youtube.com/watch?v=DC1knaqRTNw&list=PLBqVCGvSHcOEHbvdCe_8SxMiwehzKSkhp

The position of the Chief Investment Officer necessarily involves responsibility for the State's investments. It defies common sense to believe that no decisions were made by the CIO that affected the State's investments into Williams, either directly through active management of the investments or indirectly through other decision-making that would have impacted the size and nature of investments into Williams. One of the responsibilities of the CIO is overseeing investment decisions, including re-balancing investments into various companies.

We also reject the proposition implicitly put forward by the Comptroller's Counsel that in order to be conflicted, Ms. Fuller would have had to have made decisions affecting Williams only in the 2 and half month period in which she was employed as CIO and was simultaneously engaged in supposedly <u>active</u> discussions with Williams about a future compensated position as a Director. Furthermore, we reject the argument that since she announced her retirement publicly in May, her discussions with Williams (and presumably other corporations) were not conflicted. The announcement of an impending retirement cannot be a shield from the obligations of ethics laws.

Public Officers Law §73(5) states:

"No statewide elected official, state officer or employee . . . shall, directly or indirectly, solicit, accept or receive any gift having a value of seventy-five dollars or more whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part. No person shall, directly or indirectly, offer or make any such gift to a statewide elected official, or any state officer or employee . . . under such circumstances."

As stated above, Williams Directors are lavishly compensated, giving this appointment a very large material value.

The Commission's Advisory Opinion No. 06-01 states:

A "gift" includes <u>***anything***</u> of value given to a State officer or employee, including "a thing or <u>***promise,***</u> or in any other form" (emphasis added). The Commission interprets the Legislature's broad definition of a gift to include a promise of future employment under certain limited circumstances. The promise or solicitation of future employment by an entity with an active matter before a State employee could be considered a reward for official action (or inaction) and an impermissible gift under Public Officers Law §73(5). Such solicitation of post-government employment also raises the appearance that the State employee's interest with such an activity is in substantial conflict with the proper discharge of his or her duties in the public interest under Public Officers Law §74(2) and (3)(a)(b)(d)(f) and (h).

Public Officers Law §74(3) further states:

"An officer or employee of a state agency . . . should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person."

and

“An officer or employee of a state agency should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.”

In this case, the material facts are that:

1. Ms. Fuller took an appointment with Williams immediately after leaving her position as CIO;
2. Ms. Fuller oversaw large public investments in Williams;
3. The size of these investments in Williams significantly increased during Ms. Fuller’s time as CIO;
4. Appointment to Williams as a Director is a lucrative and prestigious position whose duties are part-time and presumably restricted to some limited number of meetings and discussions;
5. Ms. Fuller opposed divestment from fossil fuel investments, which would have negatively impacted Williams and its customers
6. Discussions of fossil fuel divestment is an ongoing issues within the comptroller’s office and has occurred throughout the tenure of the Ms. Fuller, including during the months of May to July, 2018.

It is unconscionable that a person can one day be CIO of one of the country’s largest pension funds, responsible for managing over $200 billion of public funds, and the next day take a well-compensated appointment as a board member of the corporation into which she oversaw – or even directed – large investments while helping to shield the company from an adverse divestment decision by the fund. If a rank and file state employee is to be sanctioned for accepting a $75 gift, surely sanctions are appropriate in this egregious case. Safeguards in the Comptroller’s office also should be reviewed and strengthened to prevent this kind of conflict in the future.

We are troubled that after we contacted the Comptroller’s office regarding this matter, the Comptroller’s counsel summarily concluded that Ms. Fuller did not violate ethics law, without forwarding our inquiry to the appropriate independent agencies including, we are lead to believe, the Comptroller’s own Inspector General. The counsel also apparently did not conduct any investigation other than to consult with the Comptroller’s Special Counsel on Ethics and the Director of Operations on a very narrow question of whether Ms. Fuller made decisions specific to Williams alone in the two month period in which she was in purportedly in contact with Williams.

The Comptroller’s office has already faced a major corruption scandal. Navnoor Khan, who supervised fixed-income investments for the funds, plead guilty in 2017 to steering billions of dollars of investments to two outside firms in return for cash as well as various gifts and favors[8]. Corruption should not be tolerated in any agency. The Comptroller’s office, in particular, is handling enormous sums of the public funds held in trust for retirees. The office should be especially vigilant and ought to be held to the highest standards by outside investigative agencies and monitors.

We believe the facts as related above give “reasonable basis for the impression” of corruption in the investment decisions of the pension funds, at the very least. We urge the Commission (as well as the Comptroller’s Inspector General) to undertake an investigation of Ms. Fuller’s appointment to the Williams Corporation Board.

[8] https://nypost.com/2017/11/08/pension-official-pleads-guilty-to-sex-and-drug-fueled-corruption/ and also https://www.nytimes.com/2016/12/21/nyregion/us-charges-3-with-bribery-involving-new-york-state-pension-fund.html

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