



# Exhibit 9

# BLANKROME

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September 15, 2022

## **VIA FEDEX AND EMAIL**

David Testore  
Chief Administrative Officer  
Aon Investments USA Inc.  
10 South Riverside Plaza, Suite 1600<sup>1</sup>  
Chicago, IL 60606

## **VIA FEDEX AND EMAIL**

David Testore  
Chief Administrative Officer  
Aon Investments USA Inc.  
200 East Randolph Street, Suite 700  
Chicago, IL 60601

Re: **Commonwealth of Pennsylvania, Public School Employees’ Retirement System (PSERS) – Demand for Indemnification, Reimbursement, and/or Compensation and for Access to and Preservation of All Relevant Records**

Dear Mr. Testore:

We are counsel to the Commonwealth of Pennsylvania, Public School Employees’ Retirement System (“PSERS”). This letter constitutes PSERS’ formal demand that Aon Investments USA Inc., formerly known as Aon Hewitt Investment Consulting, Inc. (“Aon”) promptly take the following actions:

First, reimburse and compensate PSERS for the significant harm it has suffered as a direct result of errors and mistakes Aon admits it made in providing professional investment consulting services to PSERS, and for its misrepresentations about such mistakes, which PSERS justifiably relied on to its detriment. This obligation to reimburse and compensate includes Aon’s duty to indemnify and hold harmless PSERS, the Commonwealth of Pennsylvania, the Public School Employees’ Retirement Board (the “Board”), the Public School Employees’ Retirement Fund (the “Fund”), and the School Employees’ Defined Contribution Trust (the “Trust”), as well as their beneficiaries, directors, officers, agents, and employees (collectively, the “Indemnitees”), from and against all claims, demands, actions, or liability of any nature, including attorneys’ fees and court costs, that are based upon or arise from Aon’s errors, omissions, mistakes, and/or

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<sup>1</sup> This address is to be used for providing notices or other correspondence under the parties’ contract. In recent correspondence sent to PSERS by Aon, however, Aon has used the East Randolph Street address. We are sending this letter to both addresses, in an abundance of caution.

September 15, 2022

Page 2

misrepresentations.

Second, provide PSERS with direct access to Aon's databases and records so that PSERS can ensure that Aon is continuing to maintain, use and follow the process improvements, quality controls and other measures Aon promised it implemented after it disclosed its errors and mistakes to PSERS to prevent such errors and mistakes from occurring again.

Third, preserve all documents and records related in any way to the claims and other matters discussed herein and confirm in writing it has done so.

**I. Aon Must Indemnify, Compensate, and/or Reimburse PSERS and/or the Other Indemnitees For The Harm They Have Suffered**

As you are aware, Aon provides professional, investment consulting services to PSERS, the Board, the Fund, and the Trust pursuant to the Purchase Order and accompanying Terms and Conditions entered into by Aon and PSERS on September 27, 2019, for the period of October 1, 2019 through September 30, 2024 (the "Contract").<sup>2</sup> Those services include the preparation and provision of quarterly written reports containing performance measurement attribution and analysis for PSERS' various investments.<sup>3</sup> Those reports are used and relied upon by PSERS for, among other things, making a triennial, statutorily-required risk share determination of whether PSERS' investment returns have met the benchmark return rate calculated by PSERS' actuarial consultant. Whether this "hurdle rate" has been met, in turn, dictates whether mandatory contributions to the Fund by certain classes of PSERS members will increase, decrease, or remain the same over the next three school years.

A few months after PSERS certified and publicly announced in 2020 that the hurdle rate had been met and there would be no change to member contribution rates, Aon, for the first time, disclosed that it had made certain errors and mistakes in calculating and reporting the investment return information on which PSERS had relied. Following this disclosure, Aon sent PSERS two letters and an email further and repeatedly admitting that its "errors" and "mistakes" had caused the data on which Aon had based its calculation and reporting of PSERS' historic performance to be entered incorrectly into Aon's system and/or "corrupted."<sup>4</sup> As a result, the reports Aon provided to PSERS (and on which PSERS relied in making the risk share determination) were wrong.<sup>5</sup> Aon stated it was investigating the cause of its errors and mistakes and would implement

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<sup>2</sup> Sections A and B of the Contract set forth the specific and lengthy list of consulting, performance management, risk, and attribution services Aon agreed to provide to the Fund, while Section C sets forth the specific consulting services that Aon agreed to provide to the Trust. Various subsections of the Contract set forth the services Aon agreed to provide to the Board. *See, e.g.*, Sections A(3), A(13), A(16), A(17), A(20), A(22), A(25), and A(26).

<sup>3</sup> *See* Contract at Sec. B(2).

<sup>4</sup> *See* March 5, 2021 and April 16, 2021 letters and April 18, 2021 email from Aon to PSERS.

<sup>5</sup> *See id.*

September 15, 2022

Page 3

“process improvements” to avoid future errors and mistakes.<sup>6</sup>

The impact of Aon’s errors and mistakes has been quite significant. After Aon provided a corrected rate of return for the trailing 9-year period, PSERS had to publicly repudiate its prior certification that the hurdle rate had been met. PSERS then was required to reverse course, publicly announcing that the mandatory contributions of certain classes of its members would, in fact, increase.

Since that public announcement, PSERS has been the subject of—and/or been subpoenaed for extensive documentation and depositions in—criminal and civil investigations and litigation. All of this was caused by Aon’s negligence, breaches of the Contract,<sup>7</sup> breaches of the fiduciary duties Aon owes to PSERS, and other conduct by Aon.<sup>8</sup> As a result, PSERS has been forced to spend millions of dollars defending and responding to these various, ongoing proceedings. And still more claims and lawsuits could arise.

Among PSERS’ other remedies, Section D(2) of the Contract expressly requires Aon to indemnify PSERS and the other Indemnitees for all fees, costs, and other expenses that they have incurred or will incur as a result of Aon’s admitted errors:<sup>9</sup>

The CONSULTANT [Aon] shall hold the Commonwealth of Pennsylvania, the Board, PSERS, the Fund and the Trust, their beneficiaries, directors, officers, agents, and employees harmless from and indemnify the Commonwealth of Pennsylvania, the Board, PSERS, the Fund and the Trust, their beneficiaries, directors, officers, agents, and employees against any and all claims, demands, actions, or liability of any nature, including attorneys’ fees and court costs, based upon or arising out of (a) any breach of this Agreement,

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<sup>6</sup> See April 18, 2021 email from Steve Voss at Aon to PSERS’ CIO.

<sup>7</sup> Aon agreed it would perform all services under the Contract “subject to that degree of judgment and care under the circumstances then prevailing which persons of prudence, discretion, and intelligence who are experts in such matters, exercise in the management of like matters . . .” Contract at Sec. D(28). This language imposes upon Aon the heightened standard of care owed by a “prudent expert” under ERISA. Aon’s performance of its calculation and reporting services fell woefully below this standard. In addition, Aon’s failure to fully cooperate with and support PSERS, as well as its various misrepresentations regarding errors in its reporting and their causes, constitutes a breach of the implied covenant of good faith and fair dealing.

<sup>8</sup> Aon further agreed and acknowledged in Section D(28) of the Contract that “it is a ‘fiduciary’ with respect to PSERS and the Fund as that term is defined in the Employee Retirement Income Security Act of 1974 (ERISA), regardless of the applicability of ERISA to the Purchase Order.” Aon failed to meet the standard of care of a fiduciary to PSERS, the Fund and the other Indemnitees.

<sup>9</sup> In addition, because Aon’s reporting error rendered the prior calculations unreliable, Aon is legally responsible for paying for a third party to recalculate PSERS’ historical investment returns starting in 2013, as this data will continue to be needed and relied upon by PSERS.

(b) negligence, (c) fiduciary breach or (d) failure to comply with applicable law, in each case by or of the CONSULTANT, its directors, officers, employees, and agents under the Purchase Order and shall, at the request of PSERS, defend at the CONSULTANT's expense actions brought against the Commonwealth of Pennsylvania, the Board, PSERS and/or the Fund, based upon any such claims or demands, and the costs of such defense shall be borne by the CONSULTANT and shall not constitute any expense of, nor shall be paid out of, FUND, Board, PSERS or Commonwealth of Pennsylvania assets.

Contract at Sec. D(2).

PSERS encloses, as Exhibit A, a chart outlining various expenses incurred by PSERS and/or the other Indemnitees to date due to Aon's errors. These include attorneys' fees, expert fees, consultant fees and other expenses, and the list may not be exhaustive. The total of such expenses as of July 31, 2022 is **\$8,782,611.64**. See, Ex. A. ***PSERS demands that Aon indemnify, compensate, reimburse, and/or otherwise hold PSERS and the other Indemnitees harmless for these and all other and ongoing fees, expenses and damages arising out of Aon's conduct.***

## **II. Aon Must Provide PSERS With Access to Aon's Records**

Since Aon first disclosed to PSERS that it had made certain errors and mistakes in its calculation and reporting of PSERS' investment returns, and despite PSERS' repeated requests, Aon has failed to provide many of the details related to why and how its errors occurred. This is a further breach of Aon's contractual and fiduciary duties. PSERS requires access to Aon's records and databases (including to any software needed to access, compile and/or analyze such information)<sup>10</sup> so it can review and monitor the process improvements, quality controls, and other protocols put in place to prevent similar errors from occurring to confirm they remain in place and are continuing to be used by Aon in the provision of its services to PSERS, the Board, the Fund, and the Trust.

Aon is obligated to provide PSERS with such access and information. In addition to its duty of good faith and fair dealing, the Contract requires Aon to, among other things, "make available [to PSERS] all firm research, including proprietary research, regardless of the firm department in which it was created" and "provide access and consultation with [Aon's] research staff."<sup>11</sup> The Contract also requires Aon to "provide and maintain a secure, client-facing, web-

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<sup>10</sup> This includes arranging for PSERS to have access to Aon's Performance Analysis and Reporting Information System, or "PARis". The PARis system is described in the Investment Consultant Performance Reporting Policy (amended 12/21/2016) (the "Policy") as "a Windows-based desktop application supporting performance measurement, analysis, and performance reporting."

<sup>11</sup> Contract at Sections A(14) and A(15).

based platform” that is “frequently updated and continuously available to PSERS” and contains “at least 20 years of PSERS historical performance data, by investment portfolio, asset class, and at the total fund level.”<sup>12</sup> It is further specified that these services and this information must be “made available directly to PSERS through [Aon’s] proprietary tools (‘AON Tools’) or indirectly through licensed third party applications (‘Third Party Tools’).”<sup>13</sup> The Contract also gives PSERS, “from time to time upon reasonable notice,” the broad right to audit Aon’s “records, books, and accounts for all purposes authorized and permitted by law.”<sup>14</sup>

***PSERS demands that it (and any independent forensic experts PSERS retains) be given access to all relevant records and databases, and any summaries, reports or analyses prepared by Aon or at Aon’s request regarding any and all errors made by Aon relating to its calculation and reporting of PSERS’ investment returns. PSERS also demands that Aon provide answers to the questions set forth in Exhibit B hereto about its databases, records, and related issues.***

### **III. Aon Must Preserve All Potentially Relevant Data, Documents and Other Records**

Finally, ***PSERS demands that Aon institute a comprehensive legal hold on all documents, data and other records that may be relevant in any way to any of the issues referenced in this letter.*** This includes all documents, records, materials, and information, in any form whatsoever, including emails and text messages, that: may be potentially relevant to the subject matters referenced in this letter; might be discoverable in any potential action arising out of this dispute; relate in any way to the errors and mistakes Aon made in 2020 when calculating and reporting the historical performance of PSERS’ investments; and/or were used or relied upon in any way in determining whether the risk share hurdle rate was met. No such documents may be altered, deleted, or destroyed.

In addition to its legal, ethical, and common law obligations to preserve such documents, the Contract requires Aon to maintain and preserve all such documents, in accordance with generally accepted accounting principles, during the term of the Contract, any extension thereof, and for four years thereafter:

CONSULTANT [Aon] shall maintain such records, books, and accounts pertaining to services and payments under the [Contract] in accordance with generally accepted accounting principles consistently applied. All such records, books, and accounts shall be maintained and preserved during the term of the [Contract] and any extension thereof and for four years thereafter.<sup>15</sup>

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<sup>12</sup> *Id.* at Sec. A(19).

<sup>13</sup> *Id.*

<sup>14</sup> Contract at Sec. D(21).

<sup>15</sup> *Id.*

September 15, 2022

Page 6

***Please confirm in writing within ten (10) days of your receipt of this letter that Aon will honor its legal and other obligations to PSERS as detailed in this letter.*** If Aon refuses to do so, PSERS is fully prepared to take any and all steps necessary to protect the rights and interests of itself and the other Indemnitees, and to recover the significant and ongoing damages Aon has caused PSERS to suffer. PSERS expressly reserves, and does not waive, any of its rights, claims, causes of action and remedies, including any that may not be detailed in this letter. PSERS also reserves the right to terminate the Contract, whether for “convenience,” “if PSERS determines termination to be in its best interest,” or for any other reason<sup>16</sup>, in light of Aon’s negligence, breaches, and other conduct as described above.<sup>17</sup>

Please govern yourselves accordingly.

Sincerely yours,



CHARLES S. MARION

cc: Terrill J. Sanchez, Executive Director, PSERS (via email)  
Joseph J. Indelicato, Jr., Special Advisor, PSERS (via email)  
Letitia A. Schubauer, Acting Chief Counsel, PSERS (via email)  
Jonathan Scott Goldman, Esquire (via email)  
John P. Wixted, Esquire (via email)

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<sup>16</sup> *Id.* at Sections D(16) and D(29)(a).

<sup>17</sup> Pursuant to Sec. D(16) of the Contract, “Such termination shall not relieve [Aon] of any liability that may be incurred for its activities in connection with the [Contract] prior to said termination.”

**Exhibit A – Fees, Costs, and Expenses Incurred To Date by PSERS  
and/or the Other Indemnites<sup>18</sup>**

Matter	Law Firm or Consultant	Fees, Costs, and Expenses as of July 31, 2022
Internal Investigation into the circumstances preceding and following PSERS’ certification of member contribution rates based upon Aon’s incorrect investment performance returns reporting (the “Womble Investigation”).	Womble Bond Dickinson (US) LLP	\$1,156,314.65
Hiring consultant to provide PSERS with an additional level of internal controls with respect to investment performance reporting following Aon’s admission of making certain errors in calculating and reporting investment returns.	Verus Advisory, Inc.	\$1,460,000.00
FBI’s and federal prosecutors’ criminal probe into risk share calculation based on incorrect data provided by Aon, which was commenced through the issuance and service of a subpoena for testimony before a grand jury or the production of various documents on PSERS in March 2021 (the “DOJ Investigation”).	Cohen Milstein Sellers & Toll PLLC – PSERS’ fiduciary counsel which helped with the initial work done to comply with and respond to the subpoena.	\$201,330.00
DOJ Investigation	Lewis Brisbois Bisgaard & Smith LLP – involved in representing PSERS in first few months after DOJ subpoena served on PSERS.	\$15,645.00
DOJ Investigation	Morgan, Lewis & Bockius LLP – has represented PSERS with respect	\$3,097,162.64

<sup>18</sup> Because some of the investigations and other matters arising from or related to Aon’s errors remain active and ongoing, the amounts set forth below are not final, and PSERS and the other Indemnites reserve the right to supplement as they continue to accrue costs, expenses, and other losses caused by Aon.



	to DOJ Investigation since April 2021.	
DOJ Investigation	Dilworth Paxson LLP – Provided analysis and advice to PSERS as to which employees PSERS is required to provide defense/indemnification of legal fees.	\$43,657.50
DOJ Investigation	Pillsbury Winthrop Shaw Pittman LLP – Represents the Board in investigation.	\$782,037.85
Independent review and analysis of historical performance of PSERS’ investments following Aon’s admission of making certain errors in calculating and reporting such returns.	ACA Group.	\$24,000.00
Analysis, preparation and provision of opinion regarding PSERS’ ability to recertify whether the risk share hurdle was met.	Duane Morris LLP.	\$18,324.00
Analysis, preparation and provision of opinion regarding PSERS’ ability to recertify whether the risk share hurdle was met.	Morgan, Lewis & Bockius LLP.	\$40,688.60
United States Securities and Exchange Commission’s investigation into the errors made by Aon with respect to the calculation, re-calculation, and/or analysis of the rates of returns for PSERS’ investments for the 9-year trailing period which was commenced through the issuance and service of a subpoena for the production of various documents on PSERS in September 2021 (the “SEC Investigation”) <sup>19</sup> .	Morgan, Lewis & Bockius LLP – represents PSERS with respect to SEC Investigation.	\$170,993.50

<sup>19</sup> The SEC Investigation is still active and ongoing.

# BLANKROME

September 15, 2022

Page 9

SEC Investigation	Pillsbury Winthrop Shaw Pittman LLP – Represents the Board in investigation.	\$74,488.40
DOJ Investigation	Cohen Seglias Pallas Greenhall & Furman PC – indemnification counsel for PSERS employee.	\$58,621.42
DOJ and SEC Investigations	Saul Ewing Arnstein & Lehr - indemnification counsel for PSERS employees.	\$113,574.67
DOJ Investigation	Ferro Law Firm - indemnification counsel for PSERS employee.	\$17,730.49
DOJ and SEC Investigations	Kleinbard LLC - indemnification counsel for PSERS employee.	\$249,956.10
DOJ Investigation	Myers, Brier & Kelly, LLP - indemnification counsel for PSERS employee.	\$59,569.33
DOJ and SEC Investigations	Pietragallo Gordon Bosick Alfano & Raspanti, LLP - indemnification counsel for PSERS employee.	\$371,166.39
DOJ Investigation	Tucker Arensberg, P.C. - indemnification counsel for PSERS employee.	\$49,682.30
United States Securities and Exchange Commission’s issuance and service of a subpoena upon the Pennsylvania Treasury, related to errors made by Aon with respect to the calculation, re-calculation, and/or analysis of the rates of returns for PSERS’ investments for the 9-year trailing period.	Volkov Law Group - represents Treasury with respect to SEC Investigation (PSERS agreed to pay for Treasury’s representation).	\$39,182.09
Representation of PSERS in responding to non-party subpoena for broad categories of documents and depositions of PSERS’ representatives in <i>Steinke v. Aon Investments USA, Inc., et al.</i> (June Term,	Blank Rome LLP	\$389,655.83

# BLANKROME

September 15, 2022

Page 10

2021, No. 210601197, Phila. Ct. of Common Pleas) (the “Steinke Litigation”) <sup>20</sup> .		
Representation of PSERS’ wholly-owned subsidiary 812 Market Inc., which was originally named as a Defendant in the Steinke Litigation, but which PSERS eventually succeeded in having dismissed from that action.	Blank Rome LLP	\$195,259.08
Representation of PSERS in seeking indemnification, damages, and other relief from Aon of the above-referenced fees and expenses arising from Aon’s calculation and reporting errors that affected the risk share calculation.	Blank Rome LLP	\$153,571.80
<b>TOTAL AS OF 7/31/2022</b>		<b>\$8,782,611.64</b>

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<sup>20</sup> The Steinke Litigation is still active and ongoing.

## Exhibit B – Specific Questions and Requests Concerning Aon’s Databases and Records

Aon’s Investment Consultant Performance Reporting Policy (amended 12/21/2016) (the “Policy”) provides that several different sources are used for the PARis system. ***PSERS requests answers to the following questions about each source within 10 days of Aon’s receipt of this letter:***

- Reports from the Custodian Bank (BNY):
  - *Does Aon maintain copies of the original data it receives from BNY, before it is input into PARis?*
  - *Does Aon maintain copies of any restatement letters received from BNY? (See reference to these letters in Section II(a) of the Policy.)*
- Reports from Investment Managers (Absolute Return, High Yield, and Risk Parity):
  - *Does Aon maintain copies of the original data it receives from the Investment Managers?*
  - The Policy also provides that for these investments, Aon will “document” any adjustments that are made in situations where revisions to NAVs/cash flows occur after finalizing and publishing the quarterly report.
    - *Please provide all such documentation for the time period January 1, 2014 to June 30, 2020.*
- Reports from “the System” (Illiquid LP Structures)
  - *What is “the System” referenced in Section II(c) of the Policy?*
  - *Does Aon maintain copies of this original data?*

In Aon’s March 5, 2021 letter, it explained that when undertaking reconciliation, “any exceptions and discrepancies deemed material” will be brought to the attention of PSERS staff and “reasons for deviations are documented accordingly.”<sup>21</sup>

- *Please provide all documentation reflecting how Aon defines “material,” all documentation of such material exceptions and discrepancies being brought to the attention of PSERS staff, and all documented reasons for any deviations.*

Finally, please provide us with any other reports, summaries, statements, or other documents relating in any way to the errors and mistakes made by Aon with respect to the calculation and reporting of the historical PSERS investment returns that were used in 2020 to determine whether the risk share hurdle was met.

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<sup>21</sup> See March 5, 2021 Aon letter to PSERS, at 3.