

The Education Trust Board of New Mexico

THE HONORABLE SUSANA MARTINEZ
GOVERNOR OF NEW MEXICO

DR. JOSÉ Z. GARCIA, CABINET SECRETARY
NEW MEXICO HIGHER EDUCATION DEPARTMENT



BOARD MEMBERS
DR. JOSÉ Z. GARCIA, CHAIRMAN
ROBERT J. DESIDERIO, VICE-CHAIR
ROBBIE HEYMAN, ESQ.
TREVOR SERRAO

Meeting Minutes of May 15, 2012, 1:00 p.m.

New Mexico Higher Education Department
5201 Eagle Rock NE, Suite 1A Albuquerque, NM 87113

Board Members in Attendance

Dr. José Garcia, Chair
Robert Desiderio, Vice-Chair
Trevor Serrao, Student Member
Robbie Heyman, Member (By Phone)

APPROVED

Other Individuals in Attendance

Kevin Deiters - Executive Director
Angela Gallegos - Board Secretary
Javier Machuca – REDW (By Phone)
Alan Demir - REDW
Rosemary Becchi - Partner - Patton Boggs
Phil Feigen - Partner - Patton Boggs
Jeremy Thiessen - Managing Director - Pension Consulting Alliance
Andrea Feirstein – Director – AKF Consulting Group
John Boyd - Freedman Boyd Hollander Goldberg & Ives, P.A. (By Phone)
Sonya Balle - OppenheimerFunds
Bill Rainor - OppenheimerFunds
Ken Henry - OppenheimerFunds
Rocky Granahan - OppenheimerFunds
Ross Burkstaller - OppenheimerFunds
Adrian Ruffle - OppenheimerFunds
Brendan Egan - Rothstein Law Firm
Michele Nelson - W & A - Court Reporter

AGENDA

1) **CALL TO ORDER**

Chairman Garcia called the meeting to order at 1:05 p.m. A quorum was present.

2) **PUBLIC COMMENT**

Chairman Garcia called for public comment. There was no public comment.

3) **APPROVAL OF AGENDA**

Mr. Desiderio made a motion to approve the agenda. Mr. Serrao seconded the motion. The agenda was approved unanimously.

4) **MEETING MINUTES OF FEBRUARY 9, 2012**

Mr. Heyman made a motion to adopt the minutes of February 9, 2012. Mr. Desiderio seconded the motion. The minutes were approved unanimously.

5) **MEETING MINUTES OF FEBRUARY 17, 2012**

Mr. Desiderio made a motion to adopt the minutes. Mr. Serrao seconded the motion. The minutes were approved unanimously.

6) **MEETING MINUTES OF FEBRUARY 22, 2012**

Mr. Desiderio made a motion to adopt the minutes. Mr. Serrao seconded the motion. The minutes were approved unanimously.

7) **MEETING MINUTES OF MARCH 5, 2012**

Mr. Desiderio made a motion to adopt the minutes. Mr. Heyman seconded the motion. The minutes were approved unanimously.

8) **MEETING MINUTES OF MARCH 21, 2012**

Mr. Desiderio made a motion to adopt the minutes. Mr. Heyman seconded the motion. The minutes were approved unanimously.

9) **EXECUTIVE SESSION**

Mr. Serrao made a motion for the Board to go into Executive Session to discuss program litigation. The motion was seconded by Mr. Desiderio. A roll call vote was taken and all members voted to adjourn to Executive Session at 1:11 p.m. The Chairman asked the Board, Legal Counsel and Executive Director to attend Executive Session and he directed the rest of the audience to wait in the lobby.

The Chairman made a motion for the Board to go back into open session at 2:15 p.m. The motion was approved by acclamation.

10) **SETTLEMENT UPDATE** - Rocky Granahan, Senior Vice President, OppenheimerFunds, Inc.

Chairman Garcia stated there was no discussion of Agenda Item 10.

11) COLLEGE SAVINGS INDUSTRY UPDATE - Andrea Feirstein, AKF Consulting Group

Chairman Garcia called on Ms. Andrea Feirstein to give an update on the College Savings Industry Landscape.

Ms. Feirstein provided the Board with an overview of her report entitled "College Savings Industry Landscape." She discussed New Mexico's demographics, plan marketing, and comparison of plan fees. Ms. Feirstein discussed the difficulty in "jump-starting" a college savings plan and the limitations of matching programs to encourage people to save. She stated that New Mexico needed to improve its outreach in the state and provide new products for consumers.

12) INVESTMENT POLICY STATEMENT AND MONITORING GUIDELINES - Jeremy Thiessen, Pension Consulting Alliance, Inc. and Rosemary Becchi, Patton Boggs LLP

Chairman Garcia called on Mr. Thiessen and Ms. Becchi to review and discuss the proposed investment policy statement and monitoring guidelines.

Mr. Thiessen provided an overview of the proposed investment policy statement and monitoring guidelines. He stated the investment policy identifies the objective of the program and the roles of the Board, the investment consultant, and program manager.

Mr. Thiessen explained that the investment policy identifies the investment process that the Board will use going forward. The Monitoring Guidelines outline the process for measuring investment performance and for monitoring underperforming funds.

Mr. Thiessen directed the Board to Section 2 in the draft policy statement regarding the proposed guidelines for derivative investments. Mr. Desiderio asked Mr. Thiessen regarding the use of derivative investments for speculation and the role that Pension Consulting Alliance would play in monitoring derivative exposure in the portfolios.

Mr. Thiessen responded that the proposed policy would prohibit the use of derivatives for speculation or leverage. He explained that his firm would not monitor the portfolios on a daily basis, but that given its exposure to the markets, it would be able to advise the Board if it learns something it feels is unusual. Mr. Thiessen also stated that he would review the use of the derivatives in his initial discussion with fund managers when the Board is considering a new investment.

Mr. Heyman asked Mr. Thiessen to discuss the program objectives and the selection of underlying funds. Mr. Thiessen explained the objective is to construct a program composed of funds in the top half of their peer universe over a full market cycle. He also discussed how the policy imposes a quarterly performance reporting process and an annual asset allocation review.

Mr. Serrao inquired if the proposed investment performance benchmarks were the same as the benchmarks used by Oppenheimer Funds in their quarterly performance reports. Mr. Thiessen responded that they were the same because both reports used the prospectus primary benchmark for each underlying fund.

Mr. Thiessen then addressed the proposed monitoring guidelines. He explained that his firm will monitor individual portfolios and underlying investments on an on-going basis. Each quarter he will rate the investment performance of each fund using a four-category system composed of Positive, Acceptable, Caution, and Watch.

Mr. Thiessen explained that the Board will need to vote to place a fund on or off the Watch List. He will make recommendations to the Board; however, it will be the responsibility of the Board to add or remove funds from the watch list.

Mr. Thiessen clarified in response to a question from Mr. Deiters that the Watch-List process did not prevent the Board from terminating a fund at any point.

Mr. Serrao questioned the process whereby a fund might remain on watch for 18 months considering that a fund may have underperformed for a period of six months prior to inclusion on the watch list. Mr. Thiessen acknowledged Mr. Serrao's concerns and explained that it was important that the Board have a consistent trend of underperformance and have an appropriate replacement fund before a change is made.

Chairman Garcia called upon Ross Burkstaller with OppenheimerFunds to discuss the proposed documents. Mr. Burkstaller requested that the record reflect that OppenheimerFunds did not receive the proposed investment policy statements and monitoring guidelines until the previous Thursday and that their attorneys have not had sufficient time to review the documents.

Mr. Desiderio made a motion to adopt the investment policy statement and monitoring guidelines as presented. Mr. Heyman seconded the motion. A roll call vote was taken and all four members voted to support the motion.

Mr. Deiters stated that he will work with OppenheimerFunds to address their concerns about the investment policy statement and monitoring guidelines and that he bring any substantive changes back to the Board at the next meeting.

13) PROGRAM MANAGER REPORT

a) **Marketing Report** - Ross Burkstaller, OFIPI

Chairman Garcia called on Ross Burkstaller to give an overview of the Board's marketing efforts.

Mr. Burkstaller provided the Board with a brief overview of the history of the account since Oppenheimer became the plan manager in 2005 and explained how demographic and regulatory changes had impacted the marketing of college savings plans. He also provided an overview of the marketing report in the *OFI Private Investments New Mexico 529 Quarterly Report for the Period Ending March 31, 2012*.

Chairman Garcia commented that the Board would be interested in reviewing the marketing plan in detail and discussing marketing strategies for target populations.

Mr. Burkstaller pointed out that they are using web analytics and making sure that our dollars are working smarter and harder. Mr. Burkstaller welcomed the opportunity to meet with Dr. Garcia and the Board to review the marketing strategy.

b) **Quarterly Investment Performance Report** - Ken Henry, OFIPI

Mr. Burkstaller yielded to Mr. Ken Henry to give his Quarterly Investment Performance update.

Mr. Henry announced that *Saving for College.Com* ranked the Education Plan 8 out of 49 plans for the one-year return for the period ending March 31, 2012. He also reported the Scholar's Edge plan ranked 14th out of 33 plans, which is in the top half.

Mr. Henry provided the Board with an overview of investment performance as reported in *OFI Private Investments New Mexico 529 Quarterly Report* for the period ending March 31, 2012. He reported that seven of the 12 actively-managed funds in the Scholar's Edge advisor-sold portfolios outperformed their benchmarks during the quarter.

Mr. Henry indicated that two of the funds, the Capital Appreciation Fund and the Oppenheimer Value Value Fund, modestly underperformed their benchmarks. The Invesco Mid Cap Core, which is a very conservative fund, underperformed during the run-up in the first quarter. The Main Street Small Cap that outperformed the International Growth, significantly outperformed its benchmark.

Mr. Henry stated the two funds added last year, the International Growth Fund and the Thornburg International Fund, contributed significantly to that one-year performance numbers.

14) **INVESTMENT CONSULTANT QUARTERLY REVIEW** - Jeremy Thiessen, Pension Consulting Alliance, Inc.

Chairman Garcia called on Jeremy Thiessen to give his quarterly review of the plan's investment performance from his memorandum of May 4, 2012.

Mr. Thiessen provided the Board with an overview of his May 4, 2012, memorandum detailing investment performance for the quarter ending March 31, 2012. His report included an overview of economic performance, investment markets, and the performance of the portfolios in the college savings plans.

15) **WATCH LIST** - Jeremy Thiessen, Pension Consulting Alliance, Inc.

Chairman Garcia called on Mr. Thiessen to present his recommendations for the investment Watch List.

Mr. Thiessen brought to the Board's attention a revised Watch List memo dated May 14, 2012 and provided an overview of the memorandum and the process that he will follow each quarter.

Mr. Thiessen advised the Board that three funds qualified for the Watch List. He recommended to the Board that it vote to add the Capital Appreciation Fund, INVESCO Mid Cap Core Fund, and Oppenheimer Value Fund to the Watch List.

Chairman Garcia called for a motion to adopt the recommendation of the Board's investment consultant to add the Capital Appreciation, INVESCO Mid Cap Core, and Oppenheimer Value to the Watch List.

Mr. Serrao moved to add the three funds to the "Watch List." The motion was seconded by Mr. Desiderio. A roll call vote was taken and all four members voted to adopt the motion.

Mr. Heyman asked if Kevin Deiters could send him the May 14th memo. Mr. Deiters responded that he would.

Chairman Garcia had to leave the meeting at 4:14 p.m. and Vice-Chair Robert Desiderio assumed the Chair for the remainder of the meeting.

16) FY 2011 and FY 2012 AUDIT - Alan Demir, CPA, REDW LLC.

Vice-Chair Desiderio called on Alan Demir to give an update on the 2012 Audit.

Alan Demir gave an update about the 2011 and 2012 financial audits. He stated that REDW will issue two reports. One report will cover the two fiduciary funds and the other report will cover the administrative fund. He explained that REDW could not complete their audit of the administrative fund until the completion of the 2008-2010 audit by KPMG. Mr. Demir also indicated REDW's intent to start the 2012 audit sooner so that the the report can be completed by December 2012.

Mr. Heyman made a motion to approve the recommendation to the state auditor authorizing REDW to conduct the Fiscal Year 2012 audit at a cost of \$58,000 plus tax. Mr. Serrao seconded the motion. The motion was approved unanimously.

17) FY 2008-2010 AUDIT - Kevin Deiters, Executive Director

Vice-Chair Desiderio called on Kevin Deiters to give an update on the FY 2008 – 2010 Audit.

Mr. Deiters provided an overview the supporting documents for the agenda item in the Board Book.

Mr. Deiters stated that KPMG was asking for an additional \$58,000 because of the delays associated with completing the audit; however, a problem exists because the Board's contract with KPMG expired in October 2011. Furthermore, KPMG is owed approximately \$26,000 for the services it provided prior to the expiration of the contract. Mr. Deiters requested the Board's authority to pay \$50,000 to KPMG for the additional services.

Mr. Heyman made a motion to direct Mr. Deiters to discuss with the state purchasing agency the permissibility of paying KPMG for the \$50,000 in additional services and the \$26,000 in services provided under the expired contract. Mr. Serrao seconded the motion. The motion was approved unanimously.

18) FY 2013 BUDGET - Kevin Deiters, Executive Director

Vice-Chair Desiderio called on Kevin Deiters to give an update on the budget.

Mr. Deiters updated the Board on the 2013 budget which was approved by the Board in November 2011. Mr. Deiters asked the Board for authority to transfer the amount of money needed to pay for the fund's administration. Any remaining FY 2012 Funds will be transferred to FY 2013, reducing the amount needed in Board funding and Mr. Deiters will notify the Board with the final amount prior to executing the transfer.

Mr. Heyman made a motion to approve the budget as amended by reducing the expense of the scholarship from \$800,000 to \$500,000. Mr. Serrao seconded the motion. The motion was approved unanimously.

19) OUTSIDE COUNSEL SEARCH UPDATE - Kevin Deiters, Executive Director

Vice-Chair Desiderio called on Kevin Deiters to give an update on the outside counsel search.

Mr. Deiters stated that the Board issued an RFP on April 23rd for outside counsel based on Board authority at the February 9th meeting. Mr. Deiters appointed an evaluation committee comprised of himself, Mr. Desiderio and Mr. Heyman to evaluate the proposals with the intent of issuing a contract award no later than August 1.

20) EXECUTIVE DIRECTOR'S REPORT - Kevin Deiters, Executive Director

Vice-Chair Desiderio called on Kevin Deiters to present the Executive Director's Report.

Mr. Deiters provided the Board with an overview of the material presented in the Executive Director's Report of May 8, 2012. He provided an update on the reserve fund, fee revenues, Core Bond Fund settlement account, and Core Bond Fund Settlement distributions.

21) ADJOURNMENT

Mr. Heyman made a motion to adjourn the meeting. Mr. Serrao seconded the motion. The motion was approved unanimously.

Vice-Chair Desiderio adjourned the meeting at 4:45 p.m.