

The Education Trust Board of New Mexico

THE HONORABLE SUSANA MARTINEZ
GOVERNOR OF NEW MEXICO



DR. BARBARA DAMRON, CABINET SECRETARY
NEW MEXICO HIGHER EDUCATION DEPARTMENT

BOARD MEMBERS
DR. BARBARA DAMRON, CHAIR
ROBERT J. DESIDERIO, VICE-CHAIR
MARK JARMIE
DR. JOSE Z. GARCIA

THEODORE MILLER
EXECUTIVE DIRECTOR

Telephone Meeting Minutes of June 25, 2015

2044 Galisteo Street, Suite 4, Santa Fe, New Mexico 87505

APPROVED

Board Members in Attendance

Dr. Barbara Damron - Chairman
Robert Desiderio - Vice Chairman (by telephone)
Mark Jarmie – Member (by telephone)
Dr. Jose Z. Garcia—Member (by telephone)

Other Individuals in Attendance

Theodore Miller - Executive Director ETB
Vera Lyons, Board Secretary
David Mathews - HED/ETB Attorney
Helen Atkeson - Partner, Hogan Lovells US LLP (by telephone)
Steve Dombrower – OppenheimerFunds (by telephone)
Bill Raynor – OppenheimerFunds (by telephone)
Michele Nelson - Court Reporter

Vera Lyons
Board Secretary
7/16/15

AGENDA

1) CALL TO ORDER

Chairwoman Damron called the meeting to order at 1:06 PM. The roll was called and three out of four Board members were present. A quorum existed.

2) PUBLIC COMMENT

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

3) APPROVAL OF AGENDA

Chairman Damron turned to the agenda and asked if there was any discussion. There being no discussion she called for a motion to approve the agenda. Mr. Desiderio so moved. Dr. Garcia seconded the motion. All present voted to approve the agenda as presented to the meeting.

4) APPROVAL OF MINUTES

The Board then turned to the draft minutes of the meeting of April 22, 2015. Chairman Damron asked if there was any discussion relative to these minutes. There being no discussion, she called for a motion to approve the minutes of both meetings. Dr. Garcia so moved. Mr. Desiderio seconded the motion. All present voted to approve the minutes of the February 20, 2015 and March 27, 2015 Board meetings.

5) LEGAL MATTERS

a) Custody Contract and Oppenheimer Letter of Understanding

Ms. Atkeson presented the draft form of custody agreement between Oppenheimer as program manager and Citibank as custodian. She stated that Oppenheimer had not been able to negotiate successfully with Citibank to include certain provisions in the custody contract. In particular Citibank would not make the Board a third party beneficiary of the contract, and Citibank would not agree to refrain from placing a lien on trust assets in its custody to secure the repayment of any cash advanced to the trust in the course of performing its custodial duties.

She noted that the lien language in the custody had been somewhat limited by adding the requirement that such a lien would occur only if Oppenheimer directed Citibank to advance funds to the trust in the ordinary course of business.

She then addressed the Letter of Understanding between Oppenheimer and the Board. In the Letter of Understanding Oppenheimer agrees to limit and to direct the circumstances under which the trust will request cash advances from Citibank, and thus incur the imposition of a lien on trust assets for repayment. Oppenheimer also acknowledges its responsibility for Citibank's performance as custodian and for any losses that the Board may incur as a result.

Ms. Atkeson that the Board approve the Citibank custody contract and the Letter of Understanding together.

Ms. Atkeson also noted that Citibank had furnished a fee schedule for its custody services. This was an important part of the custody contract, in particular because the new program manager agreement called for custody fees to be assessed against account owners as opposed to being paid by Oppenheimer as they had in the past.

Mr. Miller explained that the fee for custody services was .055 basis points. A basis point is 1/100 of one percent. So the fee was .00055 % of trust assets. Assuming trust assets of \$2.4 billion. This was an annual fee of about \$13,200.

Both Mr. Dombrower and Ms. Atkeson noted that this appeared to be a lower fee than previously charged by Citibank.

At this point Mr. Jarmie noted that he had joined the meeting at 1:09 PM.

Mr. Desiderio asked Mr. Miller to walk through the calculation of the fee based on a \$100,000 account. Mr. Desiderio summed up the discussion by stating that the fee on \$100,000 in assets would be $(\$100,000/\$2.4 \text{ billion}) * \$13,200$. Mr. Miller stated that the calculation was correct.

Mr. Jarmie inquired as to what the custody duties of Citibank would be. Mr. Miller explained that Citibank was the custodian of the Portfolios established under the trust. Citibank would account for the cash and securities (primarily mutual funds) which are in each Portfolio, and, applying any necessary expense accruals and other necessary adjustments, provide a net asset value for each Portfolio. This net asset value per Portfolio would be then used to create a unit value for the units in the Portfolio. They would also interact with Oppenheimer and the underlying funds to ensure that the necessary transactions were made with those funds on behalf of each Portfolio in the trust.

Mr. Desiderio asked Ms. Atkeson to review the major points involving the custody contract and Letter of Understanding.

Ms. Atkeson said that the Letter of Understanding confirms some of the basic premises in the program manager agreement, such as the responsibility of Oppenheimer for the acts of its subcontractors. The Letter of Understanding specifically addresses the relationship with the custodian. There are several points in the Letter of Understanding. Oppenheimer confirms that it is responsible for the custodian's performance. Oppenheimer also agrees not to approve any assignment or amendment to the custody without Board approval. Oppenheimer will give the Board notice of the appointment of any sub-custodians by the custodian. Oppenheimer will keep individual client account information confidential from the custodian. Oppenheimer will be responsible for directing any advancement of cash by the custodian to the trust. Oppenheimer will be responsible to the Board for any breach by the custodian of its obligations under the custody contract. Finally, Oppenheimer will be liable for any indemnities that the Board must provide to third parties based on any breach or nonperformance by the custodian.

Mr. Desiderio asked if there were any other custodians that might have agreed to give us these protections directly. Ms. Atkeson noted that large custody banks like Citibank resist provisions, but that some smaller regional banks have sometimes done so. She noted that with a trust of this size and the kinds of services provided it is not unusual.

Mr. Miller noted that custody banks have what is known as "settlement risk" in which they are directly exposed financially to third parties for short periods of time. The banks want protection in the event that a liability is incurred while properly carrying out client instructions.

Dr. Damron asked if Oppenheimer had chosen Citibank as custodian. Ms. Atkeson noted that under the program manager agreement Oppenheimer had the right to choose custodians subject to Board approval. Mr. Miller noted that Citibank had historically been the custodian for the trust.

Dr. Damron also asked if Citibank served as a custodian for Oppenheimer in other relationships. Mr. Dombrower confirmed that it did.

Chairwoman Damron called for a motion to approve the custody contract and the Letter of Understanding in the form presented to the meeting conditioned upon the execution of the Letter of Understanding by Oppenheimer.

Dr. Garcia so moved. Mr. Desiderio seconded the motion. The Board members were polled for their votes. Dr. Damron voted "Aye". Mr. Jarmie voted "Aye". Mr. Desiderio vote "Aye". Dr. Garcia voted "Aye".

The motion was carried unanimously.

b) Esparza Contract

Ms. Atkeson noted that Oppenheimer had subcontracted with the Esparza Agency for marketing services for the program. She had reviewed the contract and, after some revisions, had concluded that it conformed to the requirements of the program manager agreement.

Dr. Garcia questioned whether or not the contract would permit the Board to review the work and suggest changes as to content, style and other matters. Mr. Mathews noted that the Esparza contract was broad in terms of the type of services that can be provided to Oppenheimer. He was of the view that the Board could direct Oppenheimer to direct Esparza in particular matters.

Dr. Damron stated that the Board had to have flexibility to work with Esparza.

Mr. Raynor stated that Oppenheimer was committed keeping the Board informed on marketing matters, and to listening to any Board concerns.

Ms. Atkeson noted that through the relationship with Oppenheimer the Board had the opportunity to review the work done by Esparza and would have input into it.

Dr. Damron called for a motion to consent to Oppenheimer entering into the contract with Esparza in the form presented to the Board. Dr. Garcia so moved. Mr. Desiderio seconded the motion. The Board members were polled individually.

Dr. Garcia voted "Aye". Mr. Desiderio voted "Aye". Mr. Jarmie voted "Aye". Dr. Damron voted "Aye". The motion was carried unanimously.

c) Second Amendment to the PCA Contract

Mr. Miller stated that when the PCA contract had been amended the first time some ministerial errors had been made. In order to correct these errors and to allow for some additional funds to permit AKF Consulting to appear at Board meetings semiannually, the PCA contract needed to be amended. The additional dollar amount was \$20,000.

Dr. Damron asked if there were questions or comments. Hearing none she called for a motion to approve the execution of the second amendment to the PCA contract in the form presented to the

meeting. Mr. Desiderio so moved. Dr. Garcia seconded the motion. The Board members were polled individually.

Mr. Desiderio voted "Aye". Dr. Garcia voted "Aye". Mr. Jarmie voted "Aye". Dr. Damron voted "Aye". The motion was carried unanimously.

d) Ping Lu/OFI Settlement

Mr. Mathews updated the Board on recent developments in the Ping Lu/Oppenheimer lawsuit. He noted that the Ping Lu plaintiffs and Oppenheimer had entered into a settlement agreement that was awaiting the approval of the judge in the case. The parties have sought the approval of the Board to the settlement. The proposed settlement appears to release more claims than were assigned by the Board to the plaintiffs. Counsel for the Board, Joe Goldberg is negotiating with the parties. We don't object to the settlement but the language is too broad in counsel's view.

Mr. Mathews noted that no action was required at this time. Mr. Desiderio asked if the Board could receive a copy of the motion and order. Mr. Mathews said that he would get out as soon as the language is arrived at.

6) ADJOURNMENT

Dr. Damron called for a motion to adjourn. Dr. Garcia so moved. The motion was seconded by Mr. Desiderio. The vote to adjourn was unanimous. The meeting adjourned at 1:55 PM.