

KANSAS BOARD OF REGENTS  
**Retirement Plan Committee**  
MINUTES  
March 13, 2007

The March 13, 2007, meeting of the Kansas Board of Regents Retirement Plan Committee was called to order by Madi Vannaman at 12:30 p.m. The meeting was held in Board offices at the Curtis State Office Building, 1000 S.W. Jackson, Suite 520, Topeka.

Members Participating:

Mike Barnett, FHSU  
Lindy Eakin, KU  
Dr. Dipak Ghosh, ESU  
Dr. Ed Hammond, FHSU  
Dr. Rick LeCompte, WSU  
Gary Leitnaker, KSU  
Rick Robards, KUMC  
Madi Vannaman, KBOR

Members unable to participate: Janie Perkins, Chairperson, and Michele Sexton, PSU

Brad Tollander and Melanie Langsett, Deloitte Consulting, and Robin Kempf and Renee Wilson, KBOR, were in attendance.

**Minutes**

The February 14, 2007, RPC minutes were approved.

**RPC length of membership terms**

Madi Vannaman asked members to consider extending membership terms for an additional year because of the work facing the RPC, including work associated with the Voluntary Plan, the unknown magnitude of impact the final 403(b) regulations (expected in June 2007) will have on the Mandatory and Voluntary Plans and the expiration of the current three year contract with Deloitte Consulting in November 2007. Because of the knowledge and expertise gained from the work previously performed by the current membership, these upcoming tasks should be more efficiently and expeditiously achieved. All members present agreed to have their membership terms extended for one year, upon Board approval.

**KBOR's Voluntary 403(b) Program**

Information about the other Big XII universities' voluntary 403(b) programs was discussed. Ten of the twelve universities currently have a limit on the number of authorized 403(b) companies. Only two have twenty or more voluntary 403(b) companies (Missouri and Texas Tech).

The RPC discussed whether to take action on the current KBOR Voluntary 403(b) companies, based on the participation numbers from the January 26, 2007, snapshot or whether to wait for the final 403(b) regulations. If a recommendation could be taken to the Board this spring, final action would take place before the beginning of the next academic year.

A motion to recommend freezing Voluntary 403(b) companies with less than 1 percent of participation passed with two opposing votes. Gary Leitnaker voted no, stating it affects over 90 KSU employees, almost 10% of those who have chosen a voluntary plan. A lot of people's interests are affected. Rick Robards's opposition was based on what the regs will bring. Although he respects the majority view that raising the bar incrementally has value, he would like the RPC to bite the bullet and make the decision once, instead of drawing out the pain.

Current participants will be permitted to continue making contributions, but no new participants will be permitted to select the frozen company as a Voluntary Plan option. Based on the January 26, 2007, snapshot, this action would reduce the number of companies from 32 to 16. This recommendation will be taken to the Board.

### **Conflict of Interest**

The RPC discussed whether there was potential conflict of interest because the RPC members participate in the Board's Mandatory Plan and have access to material and information from the RPC meetings that are not available to other Plan participants. Interim General Counsel Robin Kempf indicated that all Plan participant investment choices are individual and that the RPC members might be more informed but the information provided to the RPC was not insider information. The information provided by Deloitte is also retrospective by the time the RPC receives it. Similar information can be found, by interested parties, on various websites.

Robin Kempf stated that the other question is to what extent the RPC information should also be made available to participants. As a governmental committee, the RPC is subject to the Open Meetings Act and Open Records Act, and it is prudent to be transparent and to make documents available to interested parties.

A motion to place Deloitte's Executive Summary information from the semi-annual investment review (the fund evaluation performance summary for ING and TIAA-CREF) on the Board's website passed unanimously. Deloitte will provide a pdf version of that information, with appropriate footnoting about past performance not being indicative of future performance, as well as the intent of the summary information.

### **Deloitte's draft documents (from the February RPC agenda)**

Brad Tollander and Melanie Langsett reviewed the draft documents Deloitte provided for the Board's Mandatory Plan.

1. Deloitte recommends revision to the Appendix for the Investment Policy Statement to reflect the new fund lineups effective 12/31/06 and new benchmarks. Brad Tollander provided the following responses to questions raised:

- a. Footnote #1 on page A-5 indicates that "all actively managed funds are expected to outperform the market benchmark..." Question: For those stock accounts that are both actively managed and indexed, how does the footnote apply? Answer: The footnote will be clarified to reflect that it applies to any funds managed with an active strategy, even if indexes are also used.
- b. Footnote #1 on page A-5 uses the phrase "outperform the market benchmark." Question: Is there a definition for that phrase? Answer: Deloitte looks for any performance over the index, even if,

- that is one or two decimal points. For an actively managed fund, that is what the manager is paid to do.
- c. On page A-2, the ING Lifecycle options use the same benchmark for the 2015 and 2025 portfolios and for the 2035 and 2045 portfolios. Question: Since there are different maturity dates, is using the same benchmark appropriate? Answer: The benchmark probably is not ideal. Deloitte has asked for other composite benchmarks, but ING does not have any. ING has matched them to what Morningstar has. Once ING rolls out better benchmarks, Deloitte will use them.
  - d. On page 6 and in the appendix, the general asset class category descriptions will be changed to reflect “inflation protected bond” instead of the generic “bond” category. Brad noted this will make it consistent with the nomenclature used by Morningstar.
  - e. On page 9, a new section about “Extraordinary Events” was added under paragraph V Operational Guidelines. Brad commented that this was added to address situations where a fund is doing very well but a criminal situation is uncovered that might spur the RPC to recommend action be taken quickly. This language is more contemporary than originally proposed because of activity that has taken place recently within the retirement industry and not within the KBOR Retirement Plans.

A motion was made to accept the changes and recommend approval at a future Board meeting. The motion carried unanimously.

*As test tornado drill messages blared, the RPC remained in the tornado-proof Board Room and serenaded Madi with birthday wishes.*

2. In response to an RPC request at the September 2006 meeting, Deloitte drafted a RPC Charter to outline items such as a mission statement and principal functions. A question was raised about language, found on page 1, under Composition: “The Committee shall consist of members appointed by the Board from the State Universities and a current Regent who are independent and free from any relationship that, in the opinion of the Board, would interfere with the exercise of independent action and judgment as a Committee member.” How would the Board ensure the lack of conflict of interest?

Melanie Langsett indicated that for a committee like the RPC, there is no way that the RPC or the Board can ensure that this will be the case. One approach taken by other like committees is that when a potential conflict is going to arise or has arisen, the member is obliged to recuse himself/herself from voting or influencing a decision that they are in conflict with. This is the prevailing practice, particularly in the public sector - a good-faith “gentleman’s” expectation.

Interim General Counsel Robin Kempf will research this further and will report back to the RPC.

3. In response to an RPC request at the September 2006 meeting, Deloitte drafted a Vendor Management Document to address vendors’ proposals to change their the fund lineup. After discussion about whether to add additional language directing what to do with fund accumulations when a fund is discontinued (e.g., leave them where they are, map them into other funds, whether an option is selected by the participant or mandated by the Board), and a comment from Melanie Langsett that the prevailing practice is not to restrict the RPC’s options as fact sensitive situations

cannot be anticipated, a motion to accept the Vendor Management Document, without changes, was approved and will be recommended to the Board at a future meeting.

**Deloitte's Semi-Annual Investment Review as of 12/31/06**

Brad Tollander and Melanie Langsett provided information for the semi-annual review.

1. Deselected Investment Provider data - Deselected Investment Providers, Lincoln National (LN) and Security Benefit Group (SBG), both received July 2006 letters from President Robinson informing them that they would receive periodic request for data (number of participants, total assets by asset class and total assets as a percent of assets, and a listing of funds by asset class, with plan assets). Although LN provided the information, SBG has refused to indicating that the contracts are individual and not subject to ERISA; therefore, SBG alleges it is under no obligation to provide the data.

The RPC wants this data as it provides an overall picture of plan assets and provides information about movement of assets among the Mandatory Plan Investment Providers. SBG's refusal to be responsive to the request for data will be provided to the President and CEO and Board members. Leveraging SBG's opportunity to participate in the Voluntary Plan may be considered in the future.

2. Brad Tollander reviewed the fund performance for the Mandatory Plan's new fund lineup.  
a. The performance information revealed concern about the CREF Growth Account because it "falls below benchmark on a one-, three-, five- and ten-year basis; ...also fails to post above median performance on a 1-, 3-, 5- and 10-year basis. [It] underperforms the benchmark during the past five rolling periods [and] trails median peer group manager in 4 out [of] 5 rolling 3-yr periods."

The CREF Growth Account is a true large growth fund and is therefore hurt by the comparison to funds that are a blend of growth and other fund types. To the degree a growth fund (be it mid, large or small) had a greater allocation to value sectors, the greater the likelihood it has posted stronger performance results relative to a fund (like the CREF Growth Account) that has maintained higher weightings to traditional growth sectors. There has been no deviation from strategy and no manager change. Based upon the Board's Investment Policy Statement, the length of underperformance relative to benchmark, the CREF Growth Account required a red designation.

The RPC agreed that the CREF Growth Account should be formally placed on the watch list for review in six months. TIAA-CREF will be notified of this action. And, if necessary, after the six month review, TIAA-CREF representatives will be invited to meet with the RPC to discuss this fund in more depth.

b. In further discussion of TIAA-CREF's funds, Brad Tollander addressed TIAA-CREF's Real Estate account as it is different from and cannot be compared with traditional Real Estate Investment Trust (REIT) funds, as it invests in property and provides additional diversification opportunities with considerably less down-side risk. A question was raised about the fund's cash position (if there is a call on the fund and it needed to be liquidated). The \$14 billion fund has 14 percent cash, 78 percent in real estate and 4.4 percent in REITS.

**Proposed IRS 403(b) Regulations**

Melanie Langsett stated that the 403(b) regulations, first proposed in November 2004 with an effective date of January 1, 2006, are expected to be issued in June 2007 with an effective date of January 1, 2008. A Department of Labor revenue procedure will be issued containing sample plan language to help implement plan documents for all 403(b) plans (ERISA and non-ERISA). A plan document will probably be required for the Voluntary Plan.

Melanie Langsett expects that Deloitte will have information to the RPC by late July, indicating the impact of the final regulations on the Mandatory and Voluntary Plans. It is unknown, at this time, whether some of the regulation provisions will impact ALL 403(b) plans or only those subject to ERISA. For example, discrimination testing for 403(b) plans and identification of control group members may impact physicians who have dual employment with a Medical Center and a campus and would create problems for the non-physician employees. Best practices may be required for non-ERISA plans, such as requiring certain QDRO documentation procedures or obligating KBOR to act like a plan sponsor for the Voluntary Plan (at the threshold of fiduciary responsibility).

Melanie Langsett advised that the first thing to do would be to ensure that Voluntary Plan companies are going to be able to support KBOR's new role as a plan sponsor. That may require review not only of investments, but in the new world order, the capability to administer the plans according to the plan rules. For example, do their systems allow them to flag what is allowable under the KBOR plan, can they administer hardship withdrawals and loan provisions appropriately? Some of the companies are "fronts" and another entity is administering the plan for them.

We have been approached by both ING and TIAA-CREF about their master-recordkeeping services, and the RPC may explore that option in light of the final 403(b) regulations and any associated Plan Administration requirements.

**Deloitte's Consulting Contract with KBOR**

The current contract expires on November 30, 2007, with the option of one additional three year renewal period. Melanie Langsett indicated that currently there are 49 funds, which would reduce the current annual fee total by \$1500. Otherwise, she would anticipate no changes for year three.

Going forward, Melanie Langsett suggested that the current scope of work may need to be rewritten, especially in light of the impact the final 403(b) final regs may have on the Voluntary Plan. She expects that by the time the final 403(b) regs are issued, they will be able to provide information about implications to KBOR and identify what activities can be performed within the current budget.

**Next RPC meeting:**

To be determined, but will most likely occur in late July/early August so that the RPC can address the final 403(b) regulations' impact to the Mandatory and Voluntary Plan. Additionally, what the RPC will recommend regarding the consultant contract will need to be determined as the current contract expires November 30, 2007.