

KANSAS BOARD OF REGENTS  
**Retirement Plan Committee**  
MINUTES  
March 11, 2008

The March 11, 2008, meeting of the Kansas Board of Regents Retirement Plan Committee was called to order by Chairman Lykins. The meeting was held in Board offices at the Curtis State Office Building, 1000 S.W. Jackson, Suite 520, Topeka.

Members Participating:

Dan Lykins, Regent  
Mike Barnett, FHSU  
Lindy Eakin, KU  
Dr. Dipak Ghosh, ESU  
President Ed Hammond, FHSU  
Gary Leitnaker, KSU  
Dr. Rick LeCompte, WSU  
Rick Robards, KUMC  
Michele Sexton, PSU  
Madi Vannaman, KBOR

Also in attendance were Regent Jerry Boettcher; Theresa Bush, KBOR's associate general counsel; Renee Burlingham, KBOR; Bernie Heffernon, Peggy Reed and Brett Round with ING; and Chris Drazen, Paul Gallagher, Evan Giller, and John Middlebrook with TIAA-CREF.

**Report from the Chair**

Regent Dan Lykins briefly recapped the February 14, 2008, RPC meeting.

**Minutes**

The February 14, 2008, RPC minutes were approved.

**ING's response to RPC letter about Vanguard Fund Merger/Share Class Change**

The RPC discussed ING's information related to Vanguard's "interfund exchange." KBOR, as a retirement plan shareholder should have previously qualified for the Signal shares and not have been screened out because of the \$1,000,000 minimum asset size. Thus, Vanguard decided to "grandfather" Admiral shareholders into the Signal shares.

Brett Round confirmed this did not change the value of each shareholder's assets and that the expense ratios and investment objectives and management of the Signal shares are precisely the same as the Admiral shares. The only difference was the "NAV" or price of the Signal shares as compared to the Admiral shares which is a function of the different "birthdays" or Fund Inception Dates.

Dr. LeCompte commented that this exchange appears to be straightforward, but he cautioned that participants need clear educational information about NAV changes especially in light of what occurred in the early 2000's, when mutual funds were buried so that past performance history was hidden.

Lindy Eakin stated that as a plan participant he was surprised to receive notification from ING that inaccurately stated that this change had been made at the direction of the Plan Sponsor.

Brett Round confirmed that in the future more thorough information will be provided to the RPC. Brett indicated that the information ING received from Vanguard occurred within a short amount of time and that ING will discuss this with Vanguard to ensure that in the future KBOR and the RPC receive adequate advance notice of such matters.

**TIAA-CREF's response to RPC letter about Changes to Expense Deductions**

The RPC discussed TIAA-CREF's information about the revision to annual expense deduction estimates that will result in an estimated \$1 million increase in KBOR participants' total investment expenses and increase the average expense ratio from 0.67% to 0.72%.

Chris Drazen confirmed that the expense revision will impact the funds that were included in the old fund line-up and will not impact the new institutional and third party mutual fund options

Gary Leitnaker stated that with the KBOR Mandatory Retirement Plan consolidation that was effective in December 2006, he was surprised that the expense changes occurred without first presenting the information to the RPC.

John Middlebrook stated that the expenses incurred in managing TIAA-CREF's retirement program are fully bundled and are imbedded in each of the accounts. The administrative charges include servicing participants via the call centers, in face to face meetings and counseling. The governance of each of the products in the fund line-up is different for annuities, institutional mutual funds and other mutual funds. Each governance entity calculates its expenses differently and changes are vetted through its board of overseers. There is no profit built into the TIAA-CREF funds.

Dr. Hammond stated that the response letter explained how the expenses are determined but does not address how the expenses are changed and whether they can be changed at any time. John Middlebrook stated that yes they can be changed at any time, subject to the board of overseers' approval.

Dr. Hammond stated that when TIAA-CREF provided its best and final response to the RPC's Request for Information in 2006, many RPC members assumed that the costs would be maintained at least for a longer period. John Middlebrook stated that this is an unprecedented expense adjustment. In the late 1990's, expenses were lowered. Now, there are increasing pressures that have forced TIAA-CREF to increase its expenses, even though the TIAA-CREF Board is making every effort to reduce these expenses over time. Participants can look at the expense history of TIAA-CREF and know that expenses have increased infrequently and that they have, on occasion, been lowered.

Dr. Hammond asked why information about this unprecedented expense increase was not provided to the RPC before it was distributed to participants. John Middlebrook stated that there is no excuse; TIAA-CREF should have done a better job of communicating the information to the KBOR and/or RPC before participants were notified.

Regent Lykins asked whether other competitors were lowering expenses, as our Deloitte Consultants had indicated. John Middlebrook replied that he did not know of any other competitors that are lowering costs.

Regent Lykins asked whether TIAA-CREF will always notify the RPC before expenses are raised, and Chris Drazen responded affirmatively.

Regent Lykins asked what documentation states that expenses can be raised without notice and how many years have fund expenses decreased. Chris Drazen replied that there is no contract or document with that information, but the “at cost” details and how expenses are calculated are in the annuity fund prospectus. John Middlebrook did not know how many years’ fund expenses had decreased, but recalled there was a stretch, of a couple of years in the 1990’s where there was a decrease, and agreed that notice should be provided of any changes in expenses, up or down, to give participants a better assessment of expenses fluctuating over cycles.

Regent Lykins asked how the estimated \$1 million increase would cost each participant. Chris Drazen responded that it would depend upon fund allocation. John Middlebrook stated that it would most likely impact participants with assets in the old fund line-up less so than new participants who are selecting LifeCycle funds which were not impacted by the expense increase. Dr. LeCompte’s quick calculation indicated that for an asset balance of \$500,000, spread over five to six of the impacted funds, results in an additional \$250 paid a year.

Regent Lykins asked whether TIAA-CREF would forecast the future and impact to expenses. John Middlebrook stated that given the financial situation today, if asset values do not grow, there will be a financial impact. There is tremendous pressure within the financial and retirement sectors because of requirements being added to service participants, requirements imposed by the IRS/statutes and asset values decreasing.

Rick Robards made a comment to both partners, ING and TIAA-CREF, that the items discussed are perhaps, on the grand continuum, not as significant as other things, but the RPC’s angst is that communication to the RPC was lacking. The RPC has been tasked, by the Board of Regents, to provide oversight for the Board’s mandatory retirement plan and ensure that reasonable fees are paid, and the RPC is displeased when we are not informed of changes impacting the plan or its participants. Rick also went on to state that even with the expense changes, the overall expense platform is still very competitive industry-wide and does not rise to the level of the excessive fees of the deselected vendors.

### **TIAA-CREF’s Compliance Solution**

Paul Gallagher, TIAA-CREF’s Vice President for Service Strategy, Institutional Client Services, presented information about their proposed Compliance Coordinator Solution. (PowerPoint presentation is filed with the minutes.)

The Compliance Solution will initially focus on compliance with loan limits and hardship withdrawal regulations through enhanced reporting, as those are specifically addressed in the 403(b) regulations. Future consideration will be given to include transfer and withdrawals.

This “standards driven solution” will use model standards such as those currently used in the banking and financial services arenas. All interactions must be electronic and web based utilizing a “best-in-class” data aggregation company that will partner with TIAA-CREF. All of the data will be maintained by that company. A minimal amount of data will be captured; no additional biographical

will be collected and vendors will only have access to data they need for loans and hardship withdrawals.

Paul Gallagher provided an example of how their Compliance Solution would work for a loan. The participant would request the loan from the vendor; the vendor would query the database to see if the participant was eligible for a loan; if eligible, the loan would be processed by the vendor, otherwise it would not be processed. The Plan Sponsor would check reports monthly to view loan activity information.

Rick Robards asked what obligations, if any, there would be for loans on the books before the data is loaded. Evan Giller stated that the regulations do not change actual responsibility; loans are already required to be administered according to the regulations. The reports can help identify any non-compliant loans so that corrective action can be taken. The fundamental issue arises when a participant with multiple vendors takes out loans from many vendors which cumulatively exceed the limit. Looking forward, each approved vendor has to agree to data share and will have responsibility to check this tool to ensure processing of loans and hardships meet compliance requirements. The data sharing agreement should include some sort of enforcement mechanism, with financial penalty, if rules are not followed.

Rick Robards stated that in using a third party administrator, KBOR would delegate ministerial functions but not its fiduciary responsibility, and if rules are not followed, KBOR would ultimately be responsible if the plan fails to be in compliance. Evan Giller stated that it would not be something that is fatal. Fiduciary failure consequences are financial; therefore, the KBOR agreements should cover ultimate liability for fiduciary breach with financial penalties.

Paul Gallagher stated that for this partnership work, vendors will be required to participate and to share standardized data with predetermined frequency and format. The benefit to this solution is that it provides a proactive approach to compliance; it aggregates individual participant and cross-vendor views of loans and hardship withdrawals within the Plan and it is transparent to the participant. TIAA-CREF will pilot the program in the third quarter of 2008 with a select group of clients and a large scale rollout is scheduled to begin in the fourth quarter of 2008.

Madi Vannaman asked in light of TIAA-CREF's current focus on loans and hardship withdrawals, how they compare to the number of transfers and plan withdrawals which are also areas of concern for the RPC to ensure compliance. John Middlebrook stated that company-wide there are 45,000 annually and KBOR loans are less than peers, and hardship withdrawals would be less while withdrawals would be higher and numbers of transfers is unknown.

Paul Gallagher stated that transfers among approved vendors is straightforward and is a standard piece of data that may be included in the first version. The withdrawal aspect is something TIAA-CREF is performing now also and is a static piece of data that should be easy to add. Evan Giller stated that the TIAA-CREF application does have the ability to include information about permissible transfers as part of the overall rules vendors are to follow.

Evan Giller stated that he is not 100% clear that this application adds much for withdrawals except for one thing: consistency. TIAA-CREF assumes that each vendor will process withdrawals

appropriately on their own. But, a future possibility would be that employers could use this application by including employment status information so vendors could look at that data also.

Madi Vannaman asked how TIAA-CREF's solution would handle review of documentation for hardship withdrawals. Evan Giller stated that there is a hot discussion occurring with the IRS whether employee self-certification will be permissible for 403(b) hardships. The regs currently state that self-certification is not permitted, but TIAA-CREF has received verbal information from the IRS that their intent for hardship withdrawals was to mirror the 401(k) rules that allow self-certification. TIAA-CREF has asked that the IRS provide this information in writing.

Rick Robards asked whether the financial services industry is designing a cost recovery model for this compliance endeavor that would be levied to the plan sponsor. Paul Gallagher stated there is no industry discussion about cost recovery on a collective basis and that TIAA-CREF's provision of this solution would be to KBOR at no expense, now or in the future

Regent Lykins asked when TIAA-CREF would like to know a decision and John Middlebrook responded hopefully within the next thirty days.

#### **ING's Planwithease.com Compliance Solution**

Peggy Reed, ING's Vice President--Education Market 403(b) Regulations, briefly recapped the Planwithease.com compliance solution information presented at the RPC November 2007 meeting. They began work on the compliance solution when the draft 403(b) regs were issued three years ago, and they are about 85% complete. Peggy Reed stated that their approach is philosophically different in that it is based on participant input and not vendors accessing data.

Planwithease.com also includes modules for education and training for participants and will address all distribution events: loans, hardships, withdrawals and transfers. Peggy Reed agreed that data standards need to be developed and they are part of the industry discussion group. They have already established relationships with fifty companies and are reaching out to other vendors regarding data sharing standards.

In a loan situation, the participant will go to Planwithease.com to request a loan; Planwithease.com will review accumulation and loan data across vendors and, if the loan is approved, the participant will be provided with an approval letter that the participant will give to the vendor, along with the vendor's specific loan paperwork. Planwithease.com is adding clear disclosure information to ensure participants understand that they have just *begun* the process. When the loan request is "approved" participants will be informed they still need to complete the applicable vendor paperwork to initiate the loan disbursement.

The vendor is not asked to check the data and make approval. Because paperwork is still the rule of the world and each vendor has its own nuances, the participant will have to secure and complete the vendor specific paperwork.

In response to Rick Robard's question about information from vendors who process loan withdrawals, Peggy stated that vendors will be asked to communicate back to ensure that Planwithease.com can update information on the loan requests to change the status to loan taken. If a participant only elects to process one loan from one vendor when three loan requests have been

approved, two loan requests will be outstanding on the planwithease.com system and will need to be cancelled. If the participant does not "cancel" the other two outstanding requests, Planwithease.com will cancel the request on the system after 90 days to ensure calculations for any future loan requests use appropriate account values. Once the participant's loan amount has been processed by the first (and now the only vendor), that vendor will be asked to communicate back to Planwithease.com the amount taken out in the loan on the next scheduled electronic feed. This process will "close the loop."

Regent Lykins asked when ING would like to know a decision and Brett Round responded when convenient.

**Recap of Compliance Solution Information**

Paul Gallagher recapped TIAA-CREF's proactive compliance solution stating that it is a business to business solution, with no participant interaction required. The focus is on making the process easier for the participant and not adding additional responsibilities to the participant. Paul will secure estimated timelines for adding the transfer and withdrawal pieces.

Peggy Reed recapped Planwithease.com's compliance solution stating that the landing page on the website will include enrollment tools and educational information for 403(b) plan participants, there will be varied levels of security available at the participant and sponsor levels, it can handle all distribution types and will be able to perform contribution limit testing across all vendors. Planwithease.com is already in place and is being used by clients in the higher education, K-12 and government markets. They recognize that all of the proposed solutions are only as good as the data being provided and the users who access the tools. Brett Round will provide the RPC with names of clients.

**Next RPC meeting:**

The RPC will convene its next meeting via telephone conference call to allow those members who wish to discuss the compliance solution options time to visit with campus staff. Date and time will be communicated later. The RPC will then decide upon a recommendation which will then be taken to the Board.

Board staff will continue to work with Ice Miller on the KBOR 403(b) plan documents. If necessary, an RPC meeting will be called to discuss the plan documents or the third party administration.

The next RPC meeting at Board offices will be scheduled for the month of September for Deloitte's semi-annual analysis. Date and time will be communicated later.