SCFA Retirement Subcommittee
October 3, 2016
Minutes of the Meeting

These minutes reflect discussion and debate at a meeting of a committee of the University of Minnesota Senate; none of the comments, conclusions or actions reported in these minutes represents the views of, nor are they binding on, senate, the administration or the Board of Regents.

[**In these minutes**: Retirement Plan Governance Committee Overview; Overview of Recent Litigation Against Sponsors of 403(b) Plans; Period-Ending June 30, 2016 Investment Performance Results; Agenda Items for Future Meetings]

PRESENT: Murray Frank, chair, Frank Douma, Pamela Enrici, Carol Rachac, Joe Jameson, William Seefert, Kenneth Horstman, Stuart Mason, Dan Feeney, Roland Guyotte, Roberta Humphreys, Thomas Shier, Gerald Rinehart

REGRETS: Merrie Kaas

ABSENT: Kathryn Brown

OTHERS ATTENDING: Dan Fisher, retirement programs coordinator, Office of Human Resources; Noelle French, executive assistant, Office of Investments and Banking; Nora Hayes, senior communications consultant, Office of Human Resources; Rosalie O'Brien, counsel to the committee, Office of the General Counsel; Andrew Parks, senior director of investment strategy and research, Office of Investments and Banking

1. **Call to order**: Professor Frank convened the meeting, welcomed those present, and called for a round of introductions.

2. R**etirement Plan Governance Committee overview**: Professor Frank called on Stuart Mason, associate vice president & chief investment officer, and Andrew Parks, senior director of investment strategy and research, Office of Investments and Banking, to provide information about the creation of the Retirement Plan Governance Committee.

By way of background, said Mr. Mason, about one and a half years ago the Retirement Plan Fiduciary Advisory Committee (RPFAC) recommended to Vice President Pfutzenreuter that an expert consultant be retained to review the functioning, governance, and structure of the University's retirement plans in order that they continue to be aligned with applicable best practices. After conducting a RFP and reviewing presentations by several well-qualified firms, the RPFAC recommended that the University retain the services of Jeffrey Slocum & Associates. Over the course of about a year, Slocum worked with University personnel in the Offices of Human Resources and Investments and Banking to develop a thorough understanding of its retirement plans and made some recommendations. More recently, the University has engaged Slocum for a second phase of this project to further address certain aspects of the University's retirement plans.

Mr. Parks noted that one outcome of these recommendations was the establishment by President Kaler of a cross-functional Retirement Plan Governance Committee (RPGC), which will, pursuant to the implementation authority delegated to the President by the Board of Regents policy: *Faculty and Staff Retirement*, serve as the fiduciary body responsible for management and governance of University retirement programs. Mr. Parks turned members' attention to a slide outlining who will serve on the RPGC and how it will be structured. The RPGC's membership will include 1) the senior vice president for finance and operations, 2) the vice president of human resources, 3) the chief investment officer, 4) the chair of the Retirement Subcommittee, and 5) a presidential appointee who is a participant in the Faculty Retirement Plan (FRP). Mr. Parks emphasized the distinction between fiduciary responsibilities and representative responsibilities. He also noted that Professor Colleen Manchester from the Carlson School of Management is the first presidential appointee to the committee. In addition to the RPGC membership, regular attendees of these meetings will be 1) an Office of the General Counsel (OGC) representative, 2) the director of Total Compensation of the Office of Human Resources, and 3) a director-level staff member of the Office of Investments and Banking. Lastly, Mr. Parks turned members' attention to a Venn diagram that outlined tentative items on next year's project plan, e.g., evaluate the merits of recordkeeper consolidation, conduct additional participant behavior analysis, fee & service benchmarking, revisit target date fund design/selection.

What will be the role of the Retirement Subcommittee given the establishment of the RPGC, asked Professor Feeney? Mr. Mason said he would characterize it as not much of a change as members of the Retirement Subcommittee will continue to generate ideas having to do with the plan structure, investment options, etc.

Does the RPGC have a formal, written charge, asked Professor Frank, and, if so, can that be distributed to the members of the Retirement Subcommittee? Rosalie O'Brien, counsel to the committee, said that the RPGC will have a written charge, which is currently being finalized. Once finalized, it will be shared with the Retirement Subcommittee.

Professor Shier asked for a more detailed definition of 'fiduciary' so members of the Retirement Subcommittee can better understand what it can and cannot influence. If the question is whether members of the Retirement Subcommittee have fiduciary responsibility, said Ms. O'Brien, the answer is no. The role of the Retirement Subcommittee is to facilitate communications between various groups across the University who are participants in the plans and those serving on the RPGC. To be clear, the Retirement Subcommittee is not a decision-making committee, but the RPGC is a decision-making committee. Mr. Mason reiterated that the role of the Retirement Subcommittee has not changed. The Retirement Subcommittee never had fiduciary responsibilities prior to or after the creation of the RPGC. Members of the Retirement Subcommittee will continue to perform their functions as observers and communicators to support and inform the decisions to be made by the RPGC. Ms. O'Brien noted that in the legal context a fiduciary is a person who is charged with the responsibility of acting in the best interest of others, in this case the participants in the University's retirement plans. Mr. Horstman added that the notion behind a representative committee like the Retirement Subcommittee is that it is an idea generator, and this will continue to be a significant role for this committee. Professor Frank thanked Mr. Mason and Mr. Parks for the update and overview.

3. **Overview of recent litigation against sponsors of 403(b) plans**: Professor Frank reported that a number of prestigious universities have had lawsuits launched against them alleging they did not uphold their fiduciary duty, e.g., employees paid unreasonable and excessive fees, employees had too many investment options in their retirement plan(s), etc. Professor Frank said he was interested in hearing more about these suits and any implications they could have for the University, and, as a result, asked Ms. O'Brien, counsel to the committee, to speak to this matter.

Ms. O'Brien began by referencing an August 9, 2016 New York Times article *M.I.T., N.Y.U. and Yale Are Sued Over Retirement Plan Fees*. She noted that while historically suits had been filed from time to time against for-profit employers with respect to their 401(k) plans, lawsuits are now occurring in the not-for-profit arena, with respect to 403(b) plans. It is important to keep in mind that the University, as a governmental agency, is not subject to the federal Employee Retirement Income Security Act of 1974 (ERISA), but rather its obligations related to retirement plans are governed by Minnesota Law.

After providing additional background information, Ms. O'Brien proceeded to share some of the assertions outlined in the complaints to give members a sense of the concerns being raised in the current lawsuits. Assertions included 1) having a large number of duplicative funds, 2) offering actively managed funds rather than index funds, 3) under-performing investments were imprudently retained in plans, 4) having multiple recordkeepers resulting in higher fees, 5) failing to ensure the lowest cost classes of fees, and 6) failing to use a competitive bid process when hiring a recordkeeper(s). Ms. O'Brien noted that these are only assertions made on behalf of the plaintiffs in the cases, and the universities that are named as defendants have not yet responded and may well have good answers to them. She said that the importance of the issues is illustrated by the following statement by the Department of Labor: due to the compounding of investment returns, a 1% difference in the fees paid by a participant over an average career length of 35 years, could result in an overall 28% decrease in retirement assets.

In response to a question from Professor Shier, Mr. Mason clarified that it is not currently expected that the University will offer any new retirement plans, but rather will seek to identify opportunities to improve the performance of the existing plans, particularly the 403(b). It will continue to evaluate the number and performance of investment managers, the funds in each plan, its recordkeeping framework, and to seek opportunities to improve plan performance. It is not inconceivable that there could be changes to the plans after this analysis is completed, noted Mr. Mason. He added that while the University is not subject to ERISA, it looks to ERISA for best practices guidance in how it exercises its fiduciary responsibility.

Does the Retirement Subcommittee get information about the fees for the various plans, asked Professor Shier? The committee regularly gets reports from Securian, the primary recordkeeper for the 403(b) plan, and the RPGC will also make periodic reports to the committee on the work it is doing and its findings. Members will have plenty of opportunity to evaluate the information so it can make informed recommendations to the RPGC.

Professor Frank asked the administration to systematically go through the lists of funds outlined in the various lawsuits to verify the University is not needlessly paying too high of fees. Mr.

Mason said his office appreciates the importance of benchmarking and monitoring fees and will continue its activities in that respect.

Mr. Jameson commented on how the number of investment options makes it difficult for everyday people to figure out what investment options will provide them with the most optimal outcomes for their particular situation. Mr. Parks said that behavioral scientists call this practice ‘analysis paralysis,’ which impacts participants’ decision-making capabilities. The chronology that Ms. O’Brien walked the committee through earlier is important in understanding how the industry evolved. In the past, when defined contribution plans were only supplemental to employees’ defined benefit pension plans, the investment results of the defined contribution plans did not constitute as a significant portion of an employee’s total retirement funds. Now, with the shift away from defined benefit plans to defined contribution plans, many employees are dependent on their defined contribution plan funds for much or all of their retirement income. In light of this industry evolution, the Office of Investments and Banking in conjunction with the Office of Human Resources, and the Retirement Subcommittee, are working to simplify decision-making for participants while at the same time meeting a broad range of participant expectations with respect to investment options. Mr. Parks noted that it can be difficult to distinguish between financial *education* and financial *advice*, and that the University policy prohibits it from providing the latter. Mr. Mason added that the issue Mr. Jameson has described is well known. As the industry has moved toward defined contribution plans, education and other efforts to enable participants to make well-informed decisions have become much more important. The University is continually working to improve those processes while refraining from providing financial advice.

The discussion then briefly segued into talking about what constitutes a ‘complex’ plan, and concluded that this is debatable. Professor Frank thanked the committee for a good discussion. He noted that it is clear from today’s discussion that the University of Minnesota is not alone in looking at and adjusting its plans.

4. **Period-Ending June 30, 2016 Investment Performance Results**: Professor Frank called on Dan Fisher, retirement programs coordinator, Office of Human Resources, to speak to the period-ending June 30, 2016 investment performance results for the Faculty Retirement Plan [401(a)], Optional Retirement Plan [403(b)], and the Section 457 Deferred Compensation Plan, which were distributed to members along with the agenda. He then took a couple minutes to walk members through the spreadsheets.

Mr. Fisher pointed out that the current investment policy states that for actively managed equity funds if there is a difference of 200 basis points between the benchmark and the fund, the funds will be put on a watch list. For indexed funds, the criterion is a 75 basis point difference between the benchmark and the fund, and for fixed income funds, the criterion is 100 basis points. With that said, there are four funds currently on the watch list and they will be monitored closely. The four funds are:

- Vanguard Windsor II Fund
- Vanguard Mid-Cap Index Fund
- Templeton Global Bond Fund

- Vanguard Wellington Fund

Professor Frank requested that the next time the committee gets this report that it includes a standard errors or some measure of variance for each of the funds. Without this information, it makes it impossible to assess how risky the funds are.

5. **Agenda items for future meetings**: Professor Frank asked members if there are particular issues they think the committee should explore this year. Professor Shier suggested looking at the service performance of each of the vendors because some vendors do a much better job than others.

Ms. Enrici noted that new employees coming from other institutions who have a substantial amount of their retirement funds invested in TIAA-CREF funds often wonder why the University has not permitted contributions or transfers to TIAA-CREF since July 1, 2007. She pointed out that it would be helpful if the University could do a better job of explaining why it made this decision.

6. **Adjournment**: Hearing no further business, Professor Frank adjourned the meeting.

Renee Dempsey
University Senate Office