



**MINUTES OF THE
NEW MEXICO EDUCATIONAL RETIREMENT BOARD
ARP COMMITTEE
TELEPHONIC/VIRTUAL MEETING**

December 3, 2021

1. a. CALL TO ORDER/ASCERTAIN QUORUM

A meeting of the Alternative Retirement Plan (ARP) Committee was called to order at 9:00 a.m. via teleconference/videoconference. A quorum was present.

Members Present:

Mr. Larry Magid, Chair
Dr. Donald Duszynski
Mr. Mario Suazo

Members Excused:

None.

Staff Present:

Mr. Rick Scroggins, Interim Executive Director
Mr. Lawrence Esquibel, Deputy Director
Ms. Susanne Roubidoux, General Counsel
Ms. Monica Lujan, Member Services Director

Others Present:

Mr. Jared Hardin, Financial Advisor, CAPTRUST
Mr. Michael Sanders, Principal, CAPTRUST
Ms. Judith Beatty, Recorder

b. APPROVAL OF AGENDA

Dr. Duszynski moved approval of the agenda, as published. Mr. Suazo seconded the motion, which passed unanimously.

2. REVIEW AND APPROVAL OF MINUTES: May 14, 2021

Dr. Duszynski moved approval of the May 14, 2021, minutes, as presented. Mr. Suazo seconded the motion, which passed unanimously.

3. WELCOME NEW COMMITTEE MEMBER: MARIO SUAZO, CHIEF OF STAFF & CHIEF FINANCIAL OFFICER, NEW MEXICO HIGHER EDUCATION DEPT.

Committee members welcomed Mr. Suazo.

**4. ALTERNATIVE RETIREMENT PLAN 101 – AN OVERVIEW OF ARP: SUSANNE ROUBIDOUX, GENERAL COUNSEL
JARED HARDIN, FINANCIAL ADVISOR, CAPTRUST**

Ms. Roubidoux and Mr. Hardin presented an overview of the Alternative Retirement Plan [page 16 of the meeting book].

5. INTERIM UPDATE: JARED HARDIN, FINANCIAL ADVISOR, CAPTRUST

- **ARP employer remittance to ERB fund increase effective July 1, 2021**

Mr. Hardin stated that, effective July 1, the ARP employer remittance to the NMERB fund increased to 4.25 percent. The rate will increase to 5.25 percent effective July 1, 2022.

- **Vanguard share class changes:**
 - **Vanguard Extended Market Index Fund – TIAA**
 - **Vanguard Inflation-Protected Securities Fund – Fidelity**

Mr. Hardin reported that there would be two share class changes, effective January 12, 2022: the Vanguard Extended Market Index Fund (TIAA) was reduced from 6 basis points to 5 basis points, and the Vanguard Inflation-Protected Securities Fund (Fidelity) was reduced from 10 basis points to 7 basis points.

- **TIAA SEC Settlement**

Mr. Hardin stated that the issues that resulted in this settlement were brought to TIAA's attention in 2017, and TIAA has been working on it since that time. The SEC stated that TIAA's Wealth Management Advisers were incentivized to recommend to participants that they roll over their retirement assets into a managed portfolio advisor account. Because this was part of the

advisors' compensation, it created a conflict of interest that wasn't disclosed to participants. Additionally, the fees associated with the TIAA portfolio advisor outside accounts were not clearly stated or documented to participants, some of whom were paying more in fees on the TIAA side than they would have had they stayed in their retirement plan. The education that TIAA was providing to their wealth advisors, as well as their fiduciary standard under which they were conducting this advice, was not clearly documented. As the SEC stated it, the training program was confusing.

Mr. Hardin referred to a two-page letter (pp. 29-30) that TIAA provided as a summary of what had occurred and actions taken to resolve the issue. The \$97 million settlement included a \$9 million fine all of which would be given back to the participants.

Mr. Hardin stated that, between January 1, 2012 and March 31, 2018, there were 380 ARP participants who talked to one of these wealth advisors; of those, 28 of them transferred their assets out of the ARP into one of the portfolio advisor managed accounts by TIAA, representing \$4.2 million in assets from the ARP that were transferred over. Of the 28 participants, 78 percent of them still have assets in a retirement plan or have annuitized as of March 31, 2021, meaning that TIAA still has record of them. The 28 participants will receive a portion of the settlement money. Five participants are currently active in the ARP program. These are individuals who have either separated from service and moved to a different school or came back to the ARP after they separated. It is more than likely that these five participants have an ARP account that they are now contributing to and the outside TIAA portfolio advisor account, so a portion of the settlement will go into the TIAA account and not the ARP account.

Mr. Hardin also noted that an independent lawsuit based on this settlement was filed by one of the leading litigation firms on behalf of three participants in some higher education plans who were impacted. The suit is in its infancy at this time. CAPTRUST will monitor the situation.

6. PLAN GOVERNANCE DOCUMENT REVIEW: JARED HARDIN, FINANCIAL ADVISOR, CAPTRUST

a. Committee Charter b. Investment Policy

Mr. Hardin said the recommended revisions to the Alternative Retirement Plan Committee Charter are based on CAPTRUST's review of hundreds of different charter documents and represent best practices.

Mr. Hardin reviewed the recommended Investment Policy Statement revisions.

Dr. Duszynski moved that the committee approve CAPTRUST's recommended edits to the Committee Charter and the Investment Policy, as presented, and that the revised documents be presented to the Board for their final approval and adoption. Mr. Suazo seconded the motion, which passed unanimously by roll call vote.

**7. RECORD KEEPING AND PLAN ADMINISTRATIVE EXPENSE REVIEW:
JARED HARDIN, FINANCIAL ADVISOR, CAPTRUST**

Mr. Hardin said CAPTRUST has seen a lot of litigation in the higher education/healthcare space related to plan fees or how fees are paid, especially over the past two to three years. This includes fees being too high; fees not being reviewed or documented; fees not being benchmarked; and share class issues with not using the lowest cost share classes available to plan participants and not negotiating those fees.

- a. TIAA and Fidelity required revenue reduction**
- b. Administrative expense reduction and payment allocation**
- c. Fee benchmarking**
- d. TIAA and Fidelity revenue credit account (RCA) disbursements**

Mr. Hardin presented the NMERB ARP 3rd Quarter 2021 Defined Contribution Plan Expense Review.

Mr. Hardin stated that the Total Administration Fee paid by participants for services to the ARP includes:

- Record Keeping Fees, which are collected from participant accounts and paid to the plan's record keepers, TIAA and Fidelity, for maintaining participant accounts and investments. Record keeping fees are negotiated with each record keeper periodically.
- Administration Fees, which are collected from participant accounts and deposited into a Revenue Credit Account to pay for investment advisory, legal, or audit services or any other services to the plan. Administration fees are reviewed periodically to ensure only the amount needed is being funded from participant accounts.

Mr. Hardin said the Revenue Credit Account is a plan-level account funded from the Administration fees collected from participant accounts. The

assets are used to pay applicable plan expenses. General principles governing the payment of plan expenses under the “exclusive benefit rule” include:

- Expenses must be reasonable in nature and must be incurred primarily for the benefit of participants
- Expenses cannot be the result of a transaction that is prohibited under ERISA.

Mr. Hardin stated that, through negotiations and review of the plan expenses over last four to five months, CAPTRUST has been able to negotiate a total plan administration fee reduction of 7.5 basis points from the TIAA program and 8 basis points from the Fidelity program. This represents almost a 70 percent reduction in the overall total plan administrative fee for participants. Projected annual savings from the TIAA program are \$565,869, or an annual average savings of \$184 per participant, and from the Fidelity program are \$147,748, or an annual average savings of \$138 per participant.

Mr. Hardin also provided benchmarking information for the record keeping and administrative fees for the ARP in comparison to CAPTRUST clients of similar asset size, participant count, and average account balance. The ARP’s newly negotiated total administrative fee for the TIAA program was well below the fee of the sample clients provided by CAPTRUST and the newly negotiated record keeping fee for the Fidelity program was at the lower end of CAPTRUST’s sample client range.

Mr. Hardin stated that the Revenue Credit Account current balance at the end of Q3 was \$366,805 on the TIAA side and \$172,302 on the Fidelity side. He said he worked with Ms. Roubidoux in the interim to analyze the expenses of each plan and how much needed to be collected to cover the expenses of the ARP. In total, about \$75,000 per year is needed from participant accounts to pay for the administration expenses, or \$60,000 on the TIAA side and \$15,000 on the Fidelity side. He said CAPTRUST recommends keeping one year’s worth of expenses in the Revenue Credit Account to pay plan fees. This is a recommended buffer to cover any unknown expenses or for any sudden decrease in plan asset size. The proposed reimbursement amounts are \$306,805 to TIAA participants and \$157,302 to Fidelity participants, or an average of \$99 per TIAA participant and \$147 per Fidelity participant.

Dr. Duszynski moved that the committee approve CAPTRUST’s recommendations regarding (1) the reduction in record keeping and administration fees for the ARP; (2) the amounts to be retained in the Revenue Credit Account for future plan expenses; and (3) the amount to be reimbursed back to participants from the Revenue Credit Account, as

presented. Chairman Magid seconded the motion, which passed unanimously by roll call vote.

**8. CAPTRUST DUE DILIGENCE REVIEW – SEPTEMBER 30, 2021:
JARED HARDIN, FINANCIAL ADVISOR, CAPTRUST
MICHAEL SANDERS, PRINCIPAL, CAPTRUST**

- Program Overview
- Industry Updates
- Economic Review
- Investment Analysis
 - CREF Money Market expense waiver
 - CREF variable annuity expense ratio reductions
- Fund Lineup Recommendations

Mr. Hardin and Mr. Sanders presented the Defined Contribution Quarterly Review.

Mr. Hardin said total program assets of the TIAA program were \$754.5 million, and for the Fidelity program were \$184.5 million.

Mr. Hardin stated that rollover transactions and the advice on rollovers have received a lot of attention from ERISA, SEC, IRS and other parties in making sure that the education and advice given to participants to roll over their money is in line with the fiduciary standard. There are a lot of incentives for advisors to get people to roll their money out of their retirement plan or IRA to a different IRA, which usually incurs some cost to the participant.

Mr. Hardin said the Department of Labor's prohibited transaction exemption (PTE) 2020-02 is an exemption from the rule prohibiting parties providing fiduciary investment advice from receiving payments that create conflicts of interest. The exemption applies to recommendations on rollovers from plans or existing IRAs. The exemption requirements are extensive; one requires a documented comparison of fees and services. He said all conditions must be met by January 31, 2022.

Discussing trends in fiduciary liability insurance, Mr. Hardin said litigation is on the rise, with 97 new ERISA fee lawsuits filed in 2020, a significant increase from 2019. Because lawsuits are on the rise, the payouts have increased and all of this has led to increased fiduciary liability insurance. This is not as applicable for the ARP in terms of the fiduciary liability insurance portion, which is covered by the state, but this is supporting documentation to say these lawsuits are having more effect than just payments and

settlements; it is also impacting the fiduciary liability insurance side, so the fee negotiation process is beneficial all around.

Mr. Sanders provided a market overview and a review of individual funds in TIAA and Fidelity, with recommendations.

TIAA:

Capital Preservation Investments

- CREF Money Market R2: CREF Money Market's expense ratio waiver will continue beyond 9.30.21 and is set to expire at some point between now and the end of the year. The waiver will reduce the possibility of negative net returns for the fund in the short term. Despite the extended expense waiver, plan sponsors with CREF Money Market should continue the use of a government or Treasury money market mutual fund within the plan.

Investment Watchlist Recommendations

- DFA Emerging Markets I: Retain on watch. The fund's bias to value and small cap stocks has been a strong headwind in recent years. The strategy maintains a consistent overweight to financials and industrials with an underweight to technology and consumer cyclical companies. Specific country underweights in high growth regions, such as China, has also hurt peer relative returns.

Chairman Magid commented that he personally believes that whatever TIAA has done to assuage everybody and get the SEC issue behind them is simply because they got caught. He said hopefully things will improve with the new SEC law addressing rollovers and the requirement for additional fiduciary responsibility.

Fidelity:

Investment Watchlist Recommendations:

- Fidelity Small Cap Discovery: Continue on watch. Given the value bias and focus on firms with low expectations, this strategy has faced stylistic headwinds in the current growth-driven market. Performance has lagged its benchmark and peer group from 2015-2018 as well as in 2020. However, the strategy's performance has strongly rebounded YTD relative to the benchmark, and security

selection drove the fund's strong results, especially in the industrials sector.

- DFA Emerging Markets I: Continue on watch. The fund's bias to value and small cap stocks has been a strong headwind in recent years. The strategy maintains a consistent overweight to financials and industrials with an underweight to technology and consumer cyclical companies. Specific country underweights in high growth regions, such as China, has also hurt peer relative returns.

Mr. Suazo moved that the committee approve CAPTRUST's recommendations for the investment watchlist, as follows:

- **DFA Emerging Markets I – retain on watch**
- **Fidelity Small Cap Discovery – retain on watch**

Dr. Duszynski seconded the motion, which passed unanimously by roll call vote.

9. OTHER BUSINESS: SCHEDULING NEXT ARP COMMITTEE MEETING (SPRING 2022)

The next meeting was scheduled for Wednesday, June 8, 2022.

10. ADJOURNMENT: 11:30 a.m.

Accepted by:



Larry Magid, Chair