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Minutes of the Board of Trustees' Meeting -1-

Call to Order: Chairman Pinard called the meeting to order at 8:31 a.m.

Present: Trustees: Chairman Donald Pinard, Michael Woitkowski, Richard Molan, William Sanders, and Dianne Mercier.

MECRS Staff: Gerard Fleury, Sandi Aboshar and Suzanne Wilson

Absent: Paul Porter and Mayor Gatsas

In Attendance: Attorney John Rich of the McLane Law Firm and Representatives Grady Crews and Meredith Hendershot from Cross Insurance.

Approval of the Minutes of the Previous Board Meeting:

A motion was made by Trustee Woitkowski to approve the minutes of March 13, 2012, seconded by Trustee Molan and passed unanimously by all those trustees present.

Approval of the Immediate Meeting Agenda:

A motion was made by Trustee Molan to approve the immediate meeting agenda, seconded by Trustee Woitkowski, and passed unanimously by all those trustees present.

Report of the Administrative & Accounting Committee:

Committee Chairman, Mike Woitkowski stated that he had nothing to report, however, he will be scheduling a meeting of the A&A for, a date yet to be determined, in the month of May.

New Business:

Review of Insurance Coverage –Mr. Grady Crews was in attendance to provide an overview of the types of coverage currently purchased by MECRS and the extent to which it applies to the trustees.

Mr. Crews first introduced himself as a Representative from Cross Insurance, formally known as Ferdinando Insurance, which had recently merged with Cross Financial of Bangor, Maine.

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Mr. Crews utilized a PowerPoint presentation on Fiduciary Liability Insurance as he explained the liability protection afforded the MECRS Trustees by the insurance policy. He noted that the source of risk exposure originated from the Pension Reform Act of 1974 and similar legislation, which placed certain responsibilities on the people who act as fiduciaries for Pension Trusts. Mr. Crews detailed how the policy also protects the personal assets of the persons insured by such policies. The coverage includes claims against the insured for breaches in fiduciary duty imposed by the law. He explained that the insurer will pay on behalf of the insured, all sums which the insured shall become legally obligated to pay for damages on account of any claims made against the insured for any actual or alleged breach of fiduciary duty committed by any insured or by any other person for whom an insured is legally responsible. He then listed the wrongful acts that are included in the clause.

He informed the trustees that under the Defense Costs Insuring Agreement, the limit for defense costs are included within the Liability Limit of the policy. Also, he noted that the defense cost coverage clause may use or invoke statutory agreements as a means of defense against any suit to which this insurance applies at no additional cost to the insured.

Next, Mr. Crews addressed what he described as significant, common sense, policy exclusions and noted that the insurance company shall not be liable to pay for any claim made against an insured such as acts of dishonesty, fraudulent or criminal acts or willful violation of any statute, as well as failure to procure or maintain adequate insurance on trusts, assets or property.

Mr. Crews also informed the trustees that claims against the insured for the failure to fund the Plan, in accordance with the Plan document, shall not apply to defense costs. He explained that the insurance company will defend the trustees when they are accused of wrong doing, which would result in fines and penalties.

Trustee Mercier sought to qualify Mr. Crews' statement and noted that the MECRS does not fund the Plan, the City of Manchester funds the Retirement Plan.

Mr. Crews responded that the System's Trustees are the fiduciaries of the Plan, and that the City as such, has no fiduciary liability.

Mr. Fleury explained that Article 36A of the New Hampshire Constitution, which addresses public pension funds in NH, states, that when a Board of Trustees certifies a rate determined by an actuary using generally accepted methods, the employer shall be obligated to pay that obligation. A State statute grants the board authority to hire the Plan's actuary and the exercise undertaken by the trustees at their meeting in March, certified the amount of the obligation from the City. The City now has the responsibility to pay the Plan, but certifying the rate at which the Plan is funded, and ensuring that the Plan is actuarially sound, is the fiduciary responsibility of the Board of Trustees.

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Trustee Mercier expressed her concern about the wording in Mr. Crew's PowerPoint presentation which she interpreted as, the board's failure to fund the Plan, rather than the board having the obligation to set the rate and certify the City's obligation to fund the Plan.

Attorney Rich agreed with concerns expressed and stated that he felt that the exclusion is for any monetary damages that a court deems to be appropriate. He then offered a suggestion for rewording the PowerPoint presentation to read, "liabilities imposed upon the trustee by a claimant who alleges that the trustees have failed to fund the Plan" as he thought that wording would be more accurate.

Mr. Crews explained that the law imposes certain responsibilities upon the trustees as fiduciaries, so there is the possibility for the board or individuals to have some action brought against them regarding the funding of the Plan. Mr. Crews stated that he will revise the wording of his power point slide, so that it is better understood.

Mr. Crews explained that the current policy has a \$7 million coverage limit with a \$15,000 deductible.

Trustee Sanders asked Mr. Crews, who is responsible for the \$15,000 deductible.

Mr. Fleury explained that there is indemnification language in Chapter 218:6 VI and 218:6 VII which provides for reimbursement of attorneys' fees and expenses if any claim, suit or proceeding is resolved in favor of the retirement system, board member, or retirement system employee.

Trustee Sanders expressed concern about the segment in the statute which states, "is resolved in favor of the Retirement System", and asked Mr. Fleury, "What if the retirement system loses?" He once again expressed his concern regarding the deductible, and he asked for further clarification.

Mr. Crews replied that if a suit is filed, the Plan indemnifies the trustees and the Plan is responsible for the deductible amount of \$15,000. If the law prevents that indemnification from happening or if the Plan is not providing indemnification then there is no deductible. The trustees will have first dollar coverage and the only time the retention ever comes in to play is when the insurance company is reimbursing the Plan for providing indemnification.

Trustee Sanders asked Mr. Crews if the \$7 million is coverage for the Board of Trustees or for individual trustees.

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Mr. Crews replied that the \$7 million covers the MECRS Board of Trustees as a whole.

Next, Mr. Crews gave a detailed description of the directors and officer liability, employment practices liability, security and privacy, and media liability coverage.

Mr. Crews noted that there has been concern across the country on whether or not pension trust employees are adequately protected by just purchasing fiduciary liability coverage. In his experience in covering 5 other pension trust plans, Mr. Crews stated that 3 Plans carry both the D&O and fiduciary coverage and 2 carry only the fiduciary coverage, in spite of recommendations that they consider adding such coverage. He explained that D&O covers the acts of managing the entity or organization while fiduciary covers the acts of administration of the Plan.

Mr. Crews continued by addressing Employment Practice Liability Coverage and noted that the D&O and EPL have a shared limit of coverage of \$5 million on the D&O side and a \$25,000 retention. He stated that the \$25,000 only applies to the indemnification, not to the trustees as individuals.

Mr. Crews went on to explain that in the most recent renewal, a number of enhancements were added to the D&O coverage for no additional premium, such as Insured vs. Insured, excepting for case consisting of a Derivative Claim. He explained that a Derivative Claim is when the organization brings action against a trustee or someone outside of the organization brings action against a trustee on behalf of the organization.

Trustee Mercier asked for clarification regarding the coverage of Derivative Claims.

Mr. Crews explained that a Derivative Claim has to come from the outside, so insured vs. insured on the inside would not be a Derivative Claim. The policy allows for an action by one trustee against another, except in a Derivative action, where one trustee tries to play the role of the outsider bringing the action then it would not be allowed under the terms of coverage.

The trustees continued to discuss the likelihood of a derivative action and the non-coverage issues.

Trustee Sanders asked Mr. Crews about a claim being brought against the board 3 or 4 years from today, but related to the current time period, and he asked whether the coverage extends to that point in time, to which Mr. Crews replied, that the policies have a window of coverage, going back many years.

Trustee Mercier then asked Mr. Crews, if the MECRS Board takes action 5 years from now to reduce coverage or makes revisions to the policies, and there is an action against any of the

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current trustees, would the trustees only be covered to the extent of the policy in place, to which Mr. Crews replied, that Trustee Mercier was correct in her interpretation.

Trustee Mercier expressed her concern regarding the possible actions of future boards, in making revisions to the coverage afforded by these policies.

Attorney Rich explained that the Plan is providing indemnification for trustees and that the policy insures against the defense costs which might otherwise be incurred by the Plan.

Mr. Crews provided the trustees with detailed examples of hypothetical claims and the policy coverage results.

Trustee Mercier and Trustee Sanders again asked for confirmation from Mr. Crews on the extent of coverage for the individual trustees.

Mr. Crews reiterated that this is not a reimbursement policy; it is an agreement "to pay on behalf of" where the insurance company will step in to cover the cost of defense.

Trustee Sanders stated that he would like to see an independent attorney conduct a comprehensive review regarding the Indemnification Policy and to point out areas which may need to be re-visited as to the extent of coverage for the prior trustees, current trustees and future trustees.

Mr. Fleury stated that he understands the concerns of the trustees and that he would collect information on indemnity practices used by other public plans and would work with legal counsel as well as Mr. Crews and report back to the board on exactly what the liabilities are and the areas possibly in need of revision.

Trustee Mercier stated that she is profoundly interested in the impact on current trustees, of decisions made by trustees in the future with emphasis placed on the question of who would be paying for the trustees defense, in the event of a suit.

Trustee Molan also expressed an interest in the limits of the statutory indemnification currently in place.

Lastly, Mr. Crews reported on the security and privacy liability insurance and he noted that there are privacy laws both federal and State which create a legal liability for the organizations that use and hold the personal information of those persons to which they provide services.

Trustee Mercier asked Mr. Crews about the System purchasing tail coverage, to which he responded, the only time you would normally purchase this type of coverage is if the trustees decided that they were not going to renew fiduciary or D&O coverage which presently has a component which includes tail coverage.

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Mr. Crews explained that tail coverage protects for discovery of events that happen prior to the expiration of coverage, within a certain time period.

Mr. Crews then suggested that the board may want to consider increasing the limits of the policies, which would protect past directors and officers of the System.

Trustee Mercier expressed her concern that future boards might decide to lower the limits of coverage or terminate it entirely.

Trustee Sanders stated that he would like to see the results of the comprehensive report at the next regular board meeting so that the trustees can begin to make any necessary revisions ASAP.

As Mr. Crews had completed his presentation and there being no further questions from the board, Mr. Crews and his colleague Ms. Hendershot thanked the board for their time and departed at 9:48 a.m.

Report of the Executive Director:

Redemption Order Placed with Morgan Stanley – Mr. Fleury reported that in response to action previously taken by the board, he has worked in collaboration with NEPC, and placed a redemption order with Morgan Stanley on March 15, 2012 which places MECRS in the line to receive proceeds from the liquidation of its investment with the firm at the end of the second quarter.

Request for Entry in Investment Queue – Prudential - Mr. Fleury also informed the trustees that as a follow-up to the redemption reported above, a request was filed with Prudential Real Estate to be entered into the investor queue in the amount of \$2 million with a target investment time beginning after the start of the 2nd quarter of 2012.

Request for Authorization to Invest Excess Cash with IRM – Mr. Fleury then noted that the proceeds from Morgan Stanley are apt to be in hand for months before they are called for investment by Prudential. He suggested after consultation with NEPC on that matter, that cash could be “parked” in the IRM bond fund where he thought it might be available in as little as three days. The IRM fund provides minimum volatility risk and a superior return to cash.

Mr. Fleury requested the boards’ permission to park the excess cash in the IRM bond fund until needed.

Moved by Trustee Sanders to grant Mr. Fleury authority to park the excess cash in the IRM bond fund until needed, seconded by Trustee Woitkowski and passed unanimously by all those trustees present.

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Treasury Department Filing for 2011 Completed - Next, Mr. Fleury informed the trustees that the MECRS is required annually to file Form TD F 90-22.1 with the US Treasury Department before June 30th for the period ending the preceding December 31st. Unlike 1099R and 941 forms which are prepared by service providers, the TD F 90-22.1 is prepared internally and contains information relative to all MECRS offshore investments. For 2011, that filing has been performed.

Computer System Recovery Test – Mr. Fleury reported that in the first week of April, MECRS conducted a “system restore” to test the recovery process for applications which would be needed in the event of catastrophic loss of the office facility. The test was intended to determine that the recovery process actually works and also to determine the amount of time which would likely be involved to perform a total system recovery. The system restore worked without exception and based upon the results, a complete restoration of the systems could be accomplished in two days. He noted, however, that this, of course, discounts the possibility of a wide scale regional disaster which would necessitate longer recovery times.

Request for Proposal Issued to GRS – Mr. Fleury stated that based on notes from the Special Board Meeting of March 28th, a proposal inclusive of scope of services, delivery timelines, implementation strategy and cost estimates has been requested from GRS. The response to this request will be brought before the board at a future date and will form the basis for a motion to conduct a Five Year Experience Study inclusive of the board’s long term objectives.

Before concluding his report, Mr. Fleury noted that the customary MECRS annual audit officially began on March 27th.

Chairman Pinard recessed the board meeting for an attorney/client privilege session at 10:15 a.m.

Chairman Pinard concluded the recess at 10:14 a.m.

Chairman Pinard then entertained a motion to go into Executive Session pursuant to RSA 91-A:3 II(d) at 10:15 a.m. (Consideration of the acquisition, sale, or lease of real or personal property which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general community.)

Roll Call Vote:

Ayes: Messrs. Sanders, Woitkowski, Pinard, Mercier, Molan

Nays: None

Chairman Pinard entertained a motion to reconvene the meeting at 10:17 a.m.

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Roll Call Vote:

Ayes: Messrs. Sanders, Woitkowski, Pinard, Mercier, Molan,

Nays: None

Motion Carried

Chairman Pinard then entertained a motion to seal the minutes of executive session.

Trustee Sanders moved to seal the minutes of executive session pursuant to RSA 91-A:3(III), seconded by Trustee Woitkowski and passed unanimously by all those trustees present.

Report of the Investment Committee:

Committee Chairman Molan reported that the Investment Committee met on April 5, 2012 to interview three potential Real Estate Managers, The DSF Group, TA Associates Realty and The Davis Companies. Kevin Leonard of NEPC was present to assist in the interview process and a prepared slate of relevant questions was used for all three managers. The interviews lasted approximately 2 ¾ hours in total with another 20 minutes of deliberation which resulted in the committee's recommendation.

Chairman Molan stated that it is the committee's recommendation that MECRS place \$2 million with TA Associates Realty to complement the portfolio's existing core real estate manager and to bring the portfolio in line with NEPC's recommended target allocation for this asset class based upon a number of factors including:

- The manager's use of leverage for the fund
- The geographic distribution of properties in the fund
- The total number of properties in the fund
- Distribution of property types in the fund
- Key person risk inherent in the fund or the lack of it
- The size of the investment commitment sought by each manager.

Committee Chairman Molan explained the vast difference in the fee structure and management fees between TA Realty and the other two managers.

On behalf of the Investment Committee, Chairman Molan moved to invest \$2 million with TA Realty, seconded by Trustee Mercier and passed unanimously by all those trustees present.

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Trustee Sanders inquired as to the placement of the proceeds from RMK to which Mr. Fleury responded that NEPC is planning on a rebalancing of assets which would include any amounts received from RMK.

Consent Agenda:

It was moved by Trustee Sanders to accept the Consent Agenda, seconded by Trustee Molan and passed unanimously by all those trustees present.

New Business:

Requests for Permission - Chairman Pinard indicated that the Mayor's committee on Benefits Sustainability has requested Gabriel, Roeder, Smith & Co. perform certain analysis on the Retirement System. The City would be paying for the services from its own funding source in the amount of, no more than \$5,000. Chairman Pinard noted that GRS has indicated that it will not perform those services without the consent of the Retirement Board.

It was moved by Trustee Sanders to grant permission for GRS to provide services for the Mayor's Committee, seconded by Trustee Molan and passed unanimously by all those trustees present.

Chairman Pinard indicated he wished to discuss the City's \$13,000 contractual retirement incentive, recently offered to city employees who retire within the next three years.

The trustees discussed the uncertainty of the actuarial affect associated with the retirement incentive and how the incentive impacted members' benefits at retirement.

Reminding the board of an earlier statement expressing his need to leave by 10:30, Trustee Sanders departed at 10:32 a.m.

Motion to Adjourn:

Trustee Mercier also indicated that her schedule required that she depart at this time and she moved to adjourn at 10:34 a.m. Chairman Pinard expressed concern that the issue of the incentive payments has not been fully discussed and that the board was about to lose quorum, but he seconded the motion to adjourn which then passed unanimously by all those trustees present.

Respectfully Submitted,

Gerard E. Fleury
Executive Director

