

**NEW MEXICO EDUCATIONAL RETIREMENT BOARD**

**ACTION SUMMARY**

**June 23, 2017**

<u>Item</u>	<u>Action</u>	<u>Page</u>
APPROVAL OF AGENDA	Approved	2
<u>APPROVAL OF MINUTES</u> April 21, 2017	Approved	3
CLO AND HEDGING INVESTMENTS TRAINING SESSION	Informational	3
<u>INVESTMENT REPORTS</u> Q1 Investment Report Investment Committee meeting summary	Informational	4
CAPITAL IMPROVEMENT REQUEST	Approved submittal	5
REVIEW OF PROPOSED CHANGES TO ERB RULES AND APPROVAL TO PUBLISH NOTICE OF RULEMAKING PUBLIC HEARING	Approved	6
AGE & SERVICE RETIREMENTS	Approved	8
DISABILITY ACTIONS	Approved	8
<u>DIRECTOR'S REPORT</u> Update 2017 Retirement Season NMRHCA Update Refund interest Rate Rebranding and ERB website RFP	Informational	9
<u>EXECUTIVE SESSION</u> Administrative appeal; pending litigation; Limited personnel matters	Actions taken	10

**MINUTES OF THE**  
**NEW MEXICO EDUCATIONAL RETIREMENT BOARD**  
**REGULAR MEETING**

**June 23, 2017**

**1. CALL TO ORDER: QUORUM PRESENT**

A Regular Meeting of the New Mexico Educational Retirement Board was called to order on this date at 9:05 a.m. in the Educational Retirement Board Conference Room, 6201 Uptown Boulevard, N.E., Ste. 203, Albuquerque, New Mexico.

**Members Present:**

Ms. Mary Lou Cameron, Chairwoman  
Mr. H. Russell Goff, Vice Chairman  
Mr. Hipolito J. Aguilar, Secretary  
Dr. Donald W. Duszynski [left during Executive Session]  
The Hon. Tim Eichenberg, State Treasurer  
Mr. Larry Magid

**Members Excused:**

None.

**Staff Present:**

Ms. Jan Goodwin, Executive Director  
Mr. Bob Jacksha, CIO  
Mr. Roderick Ventura, General Counsel  
Ms. Susanne Roubidoux, Deputy General Counsel  
Ms. Norma Henderson, CFO  
Ms. Kay Chippeaux, Deputy CIO  
Mr. Alan Myers, Portfolio Manager  
Ms. Monica Lujan, Member Services Director  
Ms. Lealia Nelson, Outreach Coordinator  
Ms. Liz Lorang, Executive Assistant  
Mr. Lawrence Esquibel, Chief Information Officer

**Others Present:**

Mr. Allan Martin, NEPC  
Ms. Amanda Karlsson, NEPC  
Ms. Lori Chavez, Assistant Attorney General  
Ms. Cholla Khoury, Assistant Attorney General  
Ms. Anne Hanika-Ortiz, LFC Analyst  
Mr. Joseph Simon, LESC Analyst  
Mr. Joe Goldberg, Attorney

Ms. Judith Beatty, Recorder  
[See sign-in sheet.]

**b. Approval of Agenda**

**Mr. Goff moved approval of the agenda, as published. Dr. Duszynski seconded the motion, which passed unanimously by voice vote.**

**c. Approval of Minutes – April 21, 2017**

**Mr. Aguilar moved approval of the April 21 minutes, as submitted. Mr. Goff seconded the motion, which passed unanimously by voice vote.**

**d. Introduction of Guests**

Ms. Goodwin introduced Chief Financial Officer Norma Henderson, who joined NMERB staff two weeks ago.

Chairwoman Cameron welcomed guests.

**2. SWEARING IN OF NEW BOARD MEMBER -- Placeholder**

[None.]

**3. CONSENT AGENDA: BOARD TRAVEL**

There were no requests.

**4. CLO AND HEDGING INVESTMENTS TRAINING SESSION**

[Presenters: NEPC advisor Allan Martin and NEPC research consultant Amanda Karlsson.]

Mr. Jacksha stated that this session is scheduled because there have been some attractive opportunities in the last couple of years in the CLO equity-related space. Although the NMERB has not invested in this area previously, it may be something the board would like to consider in the future.

Mr. Martin commented that one of the things that has driven the NMERB's performance and allowed it to have relatively low volatility versus its peers, while achieving extraordinary return, has been its investments in opportunistic credit. He said that whole concept is now catching on, and the opportunity is lasting much longer, with banks being forced to sell good loans off their books because they lack the capital structure to support them. The NMERB has already participated in direct lending and distressed lending, but it has not done as much in structured credit, where credit instruments are put into a structure (to be described by Ms. Karlsson) which allows investors to choose where they want to be in the capital structure by buying tranches of these portfolios.

Ms. Karlsson made a presentation to the board.

Board members agreed that staff should continue this discussion at the Investment Committee level and report back.

Mr. Martin made a presentation on hedging ("Approaches to Mitigate Portfolio Risk.")

Mr. Aguilar said the board voted at the last meeting to reduce the fund's expected return as part of guidance it received from the actuaries, which he voted against. He feels the board may have made this long-term decision based on short-term data, and that he would like a better sense of what the risk really looks like. Not meeting the anticipated goal over time is a problem, obviously, and he was concerned about newspaper coverage in recent days about the "\$800 million hole," and the need to increase contributions as one option. He asked that the next agenda include a discussion on what the real risk is.

Ms. Goodwin commented that it is important to remember that the long-term earnings assumption is forward looking and is not just based on past performance; as every investment consultant knows, past performance is no guarantee of future results. Even though the NMERB has exceeded its earnings assumptions in the long term, expectations in the future do not look as promising.

**5. INVESTMENT REPORTS: BOB JACKSHA, CIO**

**a. Q1 Investment Report**

Mr. Martin presented this report, with the following highlights:

- Since 5/31, the fund has been up another 2.4 percent.
- Over the past five years, the fund returned 7.9 percent per annum, outperforming the fund's actuarial rate of return of 7.75 percent.
- Over the past three years, the fund returned 6.5 percent per annum.
- For the year ending March 31, 2017, the fund experienced a net investment gain of \$1.31 billion, which includes a net investment gain of \$494 million during Q1.
- Assets increased from \$11.15 billion one year ago to \$12.08 billion on March 31, 2017, with \$379 million in net distributions during the year.
- The fund returned 11.8 percent, outperforming the policy index by 45 basis points.
- Three-year results by asset class show that virtually all of the asset classes (with exception of US small cap and non-US developed) outperformed the benchmark and all are in the top half of the peer group on a risk-adjusted basis.

Mr. Aguilar congratulated Mr. Jacksha and his staff for the work that they've done. In trying times, the fund has continued to outperform, which is commendable.

[Break.]

**b. Investment Committee Meeting Summary**

Mr. Jacksha summarized yesterday's actions at the Investment Committee:

- Approved One William Street, an opportunistic credit manager, for a \$100 million commitment.
- Voted to give Brookfield, a REIT manager, a new contract that had run the four years plus the two-year extension allowed by policy. The consultant and staff did a search and recommended that Brookfield be rehired.
- Approved an investment of \$40 million in Five Point Midstream Fund III, a midstream energy fund.
- Approved an investment of \$50 million for I Squared Infrastructure Fund II.
- Discussed the GoldenTree contract, which is a limited partnership contract without a termination date. By policy, staff brings these back every four years to authorize continuing with them. This was approved for another four years.
- Went through the Q4 Real Estate and Natural Resources Report. Also discussed the fact that two of the NMERB's consultants are being acquired by larger groups: Real Assets Portfolio Management is being acquired by Hamilton Lane, a private equity group, and Caledon is being acquired by CBRE, a real estate group. Staff expects that the NMERB will continue to receive the same level of service.
- Heard report on small purchase contract approvals made by the Executive Director during the fiscal year.

**c. Other Investment Reports**

None.

**6. CAPITAL IMPROVEMENT REQUEST: NORMA HENDERSON, CFO**

Ms. Henderson presented the NMERB's Infrastructure Capital Improvement Plan for FY 2019-23. She commented that this is the same plan the agency has submitted for the past several fiscal years. To date, there has been no feedback on the plan, but the agency will continue to submit the plan with the hope that it will eventually move forward.

Ms. Henderson said the NMERB's needs are twofold:

- Santa Fe office. The office has been renovated a couple of times, but any further renovation would not provide the space needed. The investment team in Santa Fe is housed in a separate facility, which is not ideal. The hope is to purchase and renovate a building, or to construct a new building. The estimated budget is \$7 million with a two-year timeline to completion.

-- Albuquerque office. This is a leased space and does not provide for any additional growth right now. The agency would look to purchasing and renovating an existing building or constructing a new building. Estimated cost is about \$1 million.

Mr. Aguilar asked if the board has the ability or the authority to use the fund to purchase a building.

Mr. Jacksha responded that the board has the authority, but it would be difficult to justify how the purchase of a building to house the NMERB would fit the return requirements of an investment portfolio. He said he would generally say it does not.

Mr. Aguilar wondered if this was something the New Mexico Finance Authority might be willing to fund from its Public Project Revolving Fund (PPRF). He said the money spent on leases every year could be used to make payments back to the fund.

Ms. Goodwin responded that the only lease savings would be from the Albuquerque office, because the NMERB owns the Santa Fe building. It also has sufficient cash flow to purchase something, and would be selling the Santa Fe office. She said she would look into Mr. Aguilar's suggestion to investigate possible financing through the PPRF.

**Mr. Goff moved approval to submit the NMERB's Infrastructure Capital Improvement Plan for FY 2019-23 to the Department of Finance & Administration. Mr. Aguilar seconded the motion, which passed unanimously by voice vote.**

**7. REVIEW OF PROPOSED CHANGES TO ERB RULES AND APPROVAL TO PUBLISH NOTICE OF RULEMAKING PUBLIC HEARING (2.82.1 THROUGH 2.82.7 AND 2.82.11 NMAC)**

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Mr. Ventura said these proposed rule changes are based primarily on changes made to the Educational Retirement Act due to passage of SB 28 in the 2017 legislative session, but staff is proposing additional changes as well, and his presentation would cover each area separately.

Mr. Ventura said SB 28 did three basic things to the Educational Retirement Act: 1) eliminated most references to provisional members; 2) revised the way disability appeals were done, changing the language to acknowledge the current practice of using an outside contractor to review medical records of disability applicants; and 3) changed words to make them gender neutral, and eliminated various outdated provisions. Most of the proposed rule changes track changes made in SB 28.

Mr. Ventura reviewed the additional proposed rule changes:

**2.82.1 (Rule 1) General Provisions:**

1. Allow committee chairs to temporarily appoint members to the committee when necessary to achieve a quorum.

-- Currently the Investment Committee has this set out in its charter, but the other committees do not. Addition of this rule will provide committee chairs the ability to obtain a quorum more easily.

Chairwoman Cameron noted that anyone who is appointed to any committee would have to be a member of the Board of Trustees.

2. Authorize the executive director to decide whether NMERB will seek lead plaintiff status in class action lawsuits. Allows director to make decisions between board meetings. Decisions need to be ratified by the board.

-- Language will allow agency to act in between board meetings on lead plaintiff status in class actions, as the board only meets every two months and sometimes there are deadlines for deciding on who will be lead plaintiff. Rule change is supported by the Attorney General's Office, which in the past has asked the NMERB to take on lead plaintiff status.

Mr. Eichenberg said he felt this placed too much of a burden on the Director if for some reason the Director were to make a decision that the board later refused to ratify. He stated that a judge would certainly allow an extension to allow time for the board to hold a special meeting and make such a decision.

Mr. Ventura said he would amend the language in 2.82.1.17(D) to say:

"The director is authorized to decide whether the agency will seek lead plaintiff status in securities class action lawsuits...The director shall promptly apprise the chair of such decisions. All such decisions shall be presented at the next board meeting...."

### 2.82.3 Rule 3) Member and Administrative Unit Contributions

3. Clarify rule regarding contributions for those whose salary is less than \$20,000. Clarifies situations in which an employee begins work with a salary level of less than \$20,000, but then during the year their salary level rises above \$20,000 due to increased hours or additional employment.

-- Under this proposed rule, one must consider the member's annual salary at the beginning of the fiscal year. However, if the member's total salary level rises above \$20,000 during the course of the year through either additional employment, or a change in position, the member shall pay the higher contributions beginning the first day of the month of the action that causes the change in salary.

4. Set out standards for purchase of non-reported service due to employer's failure to deduct member contributions. Require employers to remit both employer and employee contributions when non-reported service is due to employer's failure.

-- Occasionally, an LAU neglects to remit employer contributions and deduct employee contributions for a member. When this occurs, current rule states that the member must purchase non-reported service at the time it is discovered.

-- Proposed language to the rule adds that payment of non-reported service shall be at the contribution rate in effect at the time the non-reported service is discovered. The full fiscal year salary for the position for which the member was hired must be considered when determining whether the

member pays the lower contribution rate for those who earn less than \$20,000 each year. If the non-reported service is the result of inaction by the local administrative unit, then the LAU must remit both the member and employer contributions that are due, plus interest.

#### 2.82.6 NMAC (Rule 6) Disability Benefits

5. Delete outdated provisions that applied to school bus owner-drivers.

-- Existing rule presumed school bus owner-drivers could be employees or independent contractors and still be NMERB members.

#### NMAC (Rule 7) Annuitants and Disability Recipients

6. Deletion of redundant provisions dealing with direct deposit of retiree payments.

#### 2.82.11 NMAC (Rule 11) Administrative Appeals

7. Specifies that administrative hearings shall be held in Santa Fe.
8. Clarifies that parties at administrative hearings can be represented, but only by a New Mexico licensed attorney.
9. Parties must appear in person at hearings unless it is difficult or impossible for claimant to appear in person and the hearing officer approves. Witnesses may appear by phone or videoconference with hearing officer approval.

Chairwoman Cameron commented that there may be an unusual case where a person living a great distance from Santa Fe can't participate in videoconferencing for whatever reason, and asked how the NMERB would address that. She said perhaps there should be language allowing for an exception in such cases. Mr. Ventura responded that the logistics would be very challenging and expensive, as everyone involved would then be expected to travel to the other location.

10. Written closing arguments may be filed if permitted by hearing officer. Parties must file simultaneously.

**Mr. Goff moved that the board publish in the New Mexico Register and distribute in all ways required by law, the Notice of Rulemaking and Public Hearing regarding proposed revisions to NMAC 2.82.1 through 2.82.7 and 2.82.11. Mr. Magid seconded the motion, which passed unanimously by voice vote.**

#### **8. AGE & SERVICE RETIREMENTS: MONICA LUJAN, MEMBER SERVICES DIRECTOR**

Ms. Lujan presented this report, reflecting a grand total of 1,004 applications processed during the months of April and May. This is 178 more than were processed at this time last year and 264 more than the prior year. She added that Member Services staff was prepared for this increased volume and recognized them for their hard work.



Mr. Aguilar moved to accept this report. Mr. Goff seconded the motion, which passed unanimously by voice vote.

**9. DISABILITY ACTIONS: MONICA LUJAN, MEMBER SERVICES DIRECTOR**

Ms. Lujan presented this report, reflecting 4 approved new claims and 6 approved periodic reviews.

Mr. Goff moved for approval. Mr. Magid seconded the motion, which passed unanimously by voice vote.

**10. DIRECTOR'S REPORT**

**a. Update 2017 Retirement Season**

Ms. Goodwin reported that NMERB has received 1,076 July 1 retirement applications, as compared to last year's 1,134.

**b. NMRHCA Update**

Ms. Goodwin stated that the NMRHCA has a new Executive Director, David Archuleta, who was originally with the LFC.

Ms. Goodwin reported that the Wellness Committee had a meeting this week, and the agency plans to focus on diabetes prevention as a means of reducing future healthcare costs.

Ms. Goodwin said the NMRHCA will hold its annual retreat next month, at which time the board will set the rates for contributions for the next calendar year.

**c. Refund Interest Rate – 7/1/2017 – 6/30/2018**

Ms. Goodwin said the refund interest rate, which the members receive when they refund their contributions, will be 1.93 percent for the next fiscal year. This rate is tied to the market yield on the 5-year Treasury Note in effect as of March 31.

**d. Rebranding and ERB website RFP**

Ms. Goodwin said the deadline for receiving proposals is July 7, and NMERB will award a contract in September. She said the plan is to make the website easier to use for the members.

**e. Other**

Ms. Goodwin reported that a stakeholder group meeting was held yesterday to discuss the experience study approved by the board at its April meeting. She said the meeting was very well attended and there was a lot of interest. She plans to meet with the Superintendents Association next, and will meet with any other groups who are interested in this topic.

Chairwoman Cameron said she attended the stakeholder group meeting yesterday, and felt it was very positive.

Ms. Goodwin said copies of "A Practical Guide for Board Governance" are available in the library should board members be interested in borrowing one.

**11. EXECUTIVE SESSION: 12:30 P.M.**

- a) **Deliberations regarding the Hearing Officer's Recommended Decision in the Administrative Appeal of David Gorman (session closed pursuant to NMSA 1978, Section 10-15-1(H)(3);**
- b) **Pending Litigation – Update on State ex rel. Foy v Vanderbilt Capital Advisors (session closed pursuant to NMSA 1978, Section 10-15-1(H)(7);**
- c) **Limited Personnel Matters – (session closed pursuant to NMSA 1978, Section 10-15-1(H)(2) Compensation of Executive Director, Deputy Director and General Counsel and agency practices in regard to compensation;**
- d) **Limited Personnel Matters – (session closed pursuant to NMSA 1978, Section 10-15-1(H)(2)) Performance evaluation of Executive Director.**

Chairwoman Cameron moved that the board go into executive session pursuant to Section 10-15-1(H)(3) for the purpose of discussing the administrative appeal of David Gorman; and pursuant to Section 10-15-1(H)(7) for the purposes of discussing pending litigation; and pursuant to Section 10-15-1(H)(2) for the purposes of discussing limited personnel matters. Mr. Magid seconded the motion, which passed on the following roll call vote:

**For: Chairwoman Cameron; Vice Chair Goff; Secretary Aguilar; Dr. Duszynski; Mr. Eichenberg; Mr. Magid.**

**Against: None.**

**12. ACTION FROM EXECUTIVE SESSION: 4:20 P.M.**

Chairwoman Cameron moved that the board come out of executive session. The only matters discussed during the executive session were an administrative appeal, pending litigation and limited personnel matters, as set forth on the agenda. Mr. Aguilar seconded the motion, which passed on the following roll call vote:

**For: Chairwoman Cameron; Vice Chair Goff; Secretary Aguilar; Mr. Eichenberg; Mr. Magid.**

**Against: None.**

Mr. Aguilar moved to approve the Hearing Officer's recommended decision in the matter of David Gorman, Case #ERB 16-04, with two amendments: 1) to paragraph 12 of the conclusions of law to amend reference to Finding of Fact #71 with Finding of Fact #60; and 2) to paragraph 41 of the conclusions of law to amend reference to Findings of Fact #57 to Finding of Fact # 38. Mr. Magid seconded the motion, which passed unanimously by voice vote.

Mr. Aguilar moved that the NMERB grant Rod Ventura a salary increase of \$10,000 effective upon all the necessary approvals thereto. Mr. Magid seconded the motion, which passed unanimously by voice vote.

Chairwoman Cameron made the following statement on behalf of the Board of Trustees: "We continue to support the recommendations awaiting action at DFA, and we will follow up with those."

Mr. Aguilar noted that the board has had a number of discussions today with Mr. Joe Goldberg, the attorney who has been asked to support the board in its deliberations regarding the salaries and employment actions for exempt employees. He asked that the board direct the Executive Director and General Counsel that all conversations that have taken place between Mr. Goldberg and the board are considered attorney-client privilege and not to be discussed with staff, including the Executive Director or the General Counsel. He would also direct the Executive Director and General Counsel that any discussions that need to take place regarding some investigations regarding statutes and timelines that were discussed with Mr. Goldberg are exempt from that and can be discussed with the Executive Director and the General Counsel.

Chairwoman Cameron said Ms. Goodwin's evaluation results are available to review, and she will set up a time within a week to go over them.


13. **NEXT MEETING: FRIDAY, AUGUST 25, 2017 – ALBUQUERQUE**

14. **ADJOURN**

Its business completed, the Educational Retirement Board adjourned the meeting at 4:25 p.m.

  
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Russell Goff, Vice Chairman

ATTEST:

  
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Hipolito J. Aguilar, Secretary