

**KANSAS BOARD OF REGENTS**  
**Retirement Plan Committee**  
**March 16, 2017**

Curtis State Office Building  
1000 SW Jackson, Suite 520  
Topeka, KS 66612

**AGENDA**

Kansas Board of Regents  
Retirement Plan Committee  
March 16, 2017 at 10:00 a.m.  
Regents Board Room

1. Approve: Minutes from September 13, 2016
2. Segal Semi-Annual Review through December 31, 2016 – Craig Chaikin
3. KBOR Mandatory Plan Fee Overview – Craig Chaikin
4. Good of the order
5. Next meeting –*tentatively scheduled for* Tuesday, September 19, 2017, in the Board Room

KANSAS BOARD OF REGENTS  
**Retirement Plan Committee**  
MINUTES  
September 13, 2016

The September 13, 2016, meeting of the Kansas Board of Regents Retirement Plan Committee was called to order by Regent Brandau-Murguia at 12:30 p.m.

Members Participating:

Regent Ann Brandau-Murguia	Mike Barnett, FHSU
Dr. Dipak Ghosh, ESU	Leisa Julian, KU
Dr. Rick Lecompte, WSU	Gary Leitnaker, KSU
President Martin, FHSU	Stacy Snakenberg, KU Medical Center
Madi Vannaman, KBOR	

Members participating by conference call were Regent Bangerter and Michele Sexton, PSU.

Also present: Craig Chaikin, Segal Rogerscasey consultant; from TIAA were Nicolette Dixon, Senior Relationship Manager; and Tom Carmody, Senior Director Retirement Plan Sales; Adam Polacek, Managing Director Portfolio Management; and Brad Mitchell, Client Service Manager; from Voya, John O'Brien, Regional Vice President; Cindy Delfelder, Key Account Manager; Amy Goodale, Strategic Relationship Manager; and Bernie Heffernon, Senior Vice President of Distribution; Theresa Schwartz, Associate General Counsel for the Kansas Board of Regents and Elaine Frisbee, Vice President Administration and Finance, Kansas Board of Regents.

**Introductions** – Chair Regent Brandau-Murguia introduced the two new RPC members: President Martin, FHSU, representing University CEOs and Leisa Julian, KU Vice Chancellor and CEO representing University of Council of Business Officers.

**Minutes**

The minutes from the March 22, 2016, meeting were approved unanimously.

**Fiduciary Duties**

Theresa Schwartz, KBOR's associate general counsel reviewed information contained in the Fiduciary Duties memo relative to the KBOR Mandatory Retirement Plan. The information shared how the Board of Regents exercises fiduciary duties for the plan by and through the Retirement Plan Committee and expert consultants hired to assist the RPC and staff in meeting these obligations.

**Follow-up regarding information to participants when a Lifecycle/Target Date fund expires**

TIAA confirmed that participants will receive information when a Lifecycle fund converts to the Lifecycle Income Fund in addition to the prospectus update. VOYA confirmed that participants will receive a confirmation statement at the time of the transaction when a Target Date fund expires and is merged into the Target Date Income Fund, in addition to the information contained in the fund prospectus.

**Segal Semi-Annual Review through June 30, 2016**

Craig Chaikin provided the following information:

- A. This week, Segal Rogerscasey announced it has entered into an asset purchase agreement to acquire Marco Consulting Group, an investment consulting firm based out of Chicago. Marco consults primarily multi-employer or collectively bargained plans. Segal Rogerscasey will be

rebranded to Segal Marco Advisors when the transaction closes January 1, 2017. Additional research resources will be available to clients as well as proxy voting services. Outside of the added resources, there will be no direct impact to the KBOR Mandatory Plan as Craig Chaikin will remain the day-to-day consultant for the Plan.

- B. At the last RPC meeting, there was discussion about several lawsuits brought by participants regarding excessive fees and compensation paid in their 401(k) retirement plans. Similar lawsuits have recently been brought against higher education 403(b) retirement plans subject to ERISA and most of those lawsuits have been brought by a single St. Louis law firm, Schlichter Bogard. Many of the 401(k) lawsuits have been settled prior to litigation although none of the record keepers or plan sponsors have admitted to doing anything wrong, but decisions have been made to settle in order to minimize damages. Dr. LeCompte stated that the KBOR fees are lower than those in the plans being sued. Craig Chaikin stated that many of those plans have multi-vendors (three or more) which makes it harder to secure competitive fees and economies of scale. The KBOR plan was proactive in going to two vendors which has allowed it to realize greater asset consolidation and competitive fees in the marketplace. Mike Barnett asked if there is any risk posed by the KBOR voluntary plan and Theresa Schwartz responded that there is a lot less risk because that plan is not subject to ERISA and falls within the safe-harbor provisions. Additionally, KBOR has taken a hands-off, non-managerial approach with regard to the voluntary plan and therefore should be in good shape to defend any lawsuit impacting the voluntary plan. Craig Chaikin stated that the chance of a lawsuit being brought against a public entity is not very good as it is really hard to sue the government. Theresa Schwartz added that anyone can sue any entity but suing government it is not as lucrative and it is harder to win such suits.

Regent Bangerter stated that it appears that the industry is heading toward a flat fee for retirement plans, if they are not already there, and asked if Craig Chaikin would address where he saw the KBOR plan heading in regards to flat fees and what to anticipate for administrative expenses. Craig Chaikin responded that fees are the biggest reason why the lawsuits are being brought and that most people do not understand hidden fees. The RPC, in conjunction with Segal Rogerscasey, TIAA and Voya, have done significant work regarding fee transparency and will have an update ready for the March 2017 meeting. In the corporate market, there is a definite shift to per participant fees and, Segal Rogerscasey is looking at what plans are doing in the other markets and what changes are being made.

- C. Craig Chaikin briefly discussed the financial environment for the last six months of calendar year 2016 and changes to the KBOR Mandatory Retirement plan through June 30, 2016. Assets in the plan increased to \$3.3 billion, with the bulk of the assets, \$2.7 billion, invested with TIAA.

For TIAA, as a whole, the lineup has performed very well. There is some underperformance for the quarter, but most of that can be explained by style or stock picking. CREF Growth has struggled over the shorter time periods due to stock selection; however, there are no long-term concerns with the strategy. The Royce Opportunity Fund has continued to struggle from stock selection and was recently hurt by selections in health care and information technology. Segal Rogerscasey is recommending the Royce Fund be placed on watch due to consistent underperformance and will be reevaluated at the next meeting in March. Placing a fund on watch is the first step toward possible termination of that investment option. Reasons for putting a fund on watch include several criteria such as portfolio manager change, organizational issues,

style drift and consistent under-performance versus peer group and bench marks, over the longer term 3-5 years. Dr. Lecompte commented that the fund has the highest fee in the line-up, and there are other funds in the same small cap space. At this time, there are no other small cap value options in the line-up.

The CREF Money Market meets the definition of a government fund, but as of April 2017, fees will no longer be waived on the fund. Therefore, it is possible that there might be negative returns for that fund. Nicolette Dixon, TIAA, stated that there has been an ongoing communication with participants about the money market reform and also a special campaign targeted those with 80% or more allocated to the Money Market fund. TIAA's core campaign will continue to communicate with that cohort to encourage participation in advice sessions or reallocation of assets.

Gary Leitnaker asked if there was any concern with the CREF Global Equities account, noting that long term performance has not been too bad but recently it appears to have not performed as well. Craig Chaikin responded that short-term selection and allocation have both caused the fund to lag, but the fund is competitive versus both the benchmark and peers, when looking at it longer term, i.e. the 3-5 year performance.

For Voya, Craig Chaikin explained the difference in asset totals on the Voya plan activity versus the plan asset summary. The plan activity did not include legacy assets, which are assets from the old fund lineups before the KBOR plan consolidated from four to two vendors. The assets in the legacy lineup are invested in funds that are no longer utilized by Voya and the KBOR mandatory retirement plan, but because the contracts are individual and not a group contract, those assets can only be moved when a participant elects to move the funds.

The PIMCO TR fund has been on watch since Bill Gross' departure in September 2014. Performance has been average, with both ups and downs. Though personnel turnover has slowed, recently a new president was named to the firm, and asset flows have stemmed. The fund will remain on watch due to the continued personnel movement and will be reevaluated at the March 2017 RPC meeting.

Voya funds have performed well with a few "hiccups," with the most notable being Parnassus Core Equity Fund which experienced the biggest challenge for the quarter because it was underweight in energy, which has rallied. Voya Oppenheimer Global Fund has also struggled over the last year significantly trailing the benchmark and peers. The magnitude of underperformance has made the 3-5 year results look poor. Recently, the fund was underweight to energy and overweight to IT which did not perform well. Stock selection in several sectors detracted as well. Craig Chaikin indicated they will keep watching the fund but will not formally put it on the watch list at this time. Voya Real Estate Fund has struggled over the one-year period but there is no recommendation for action on that fund at this time.

For the frozen vendors, Lincoln and Security Benefit Group, currently the only information Segal Rogerscasey receives is market values (asset balances) for what is invested in KBOR contracts. As those vendors and funds are no longer available for new contributions they are not actively monitored. Craig Chaikin indicated that additional information will be requested from the frozen vendors and shared with the RPC at the next meeting.

**Updates**

Craig Chaikin reviewed new information that will be captured in the semi-annual report for the “Recordkeeper Administrative and Fund Line-up Updates.” The new information captures fund change recommendations by the RPC at the previous meeting, changes that were made and the status of funds on the watch list. For this meeting those include TIAA’s administrative revenue decrease effective July 1, 2016, from 0.11% to 0.095%, a change of approximately \$400,000 based on the June 20, 2016 market values.

**Good of the Order**

1. Voluntary retirement companies – Dr. Lecompte asked how the number of KBOR Voluntary Retirement Plan companies can be reduced. Madi Vannaman responded that annually information is provided by the campuses and any company with less than 1% of the total number of participants is frozen. Only current participants can continue to use the frozen vendor and no new enrollment is allowed. Therefore, over time, the frozen company’s participation drops to zero and that company is removed. Currently there are six companies that can be chosen by any employee eligible to participate in the KBOR voluntary retirement plan and seven that are frozen.
2. Madi Vannaman shared that she will be drafting RPC members to form a sub-committee to work with Craig Chaikin, TIAA and Voya to discuss fee and expense information. The information developed by this sub-committee will be shared at the next RPC meeting.

**Next RPC meeting:**

The next regular RPC meeting is *tentatively* scheduled for 12:30 p.m. on Tuesday, March 14, 2017, in the Board Room.

# KBOR Plan Fee Overview

*March 16, 2017*

Craig Chaikin, CFA  
*Vice President*



1. Fiduciary standard
2. Current litigation
3. Current legislation
4. Industry direction
5. What has been reviewed
6. What should be done moving forward



# What is the Fiduciary Standard?

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- To act solely in the interests of plan participants and beneficiaries
  - To act for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable costs of administration
  - To act with the care, skill, prudence and diligence of a prudent person, acting in a like capacity and familiar with these matters, would use in the conduct of an enterprise with the same character and aims
  - Diversify investments to minimize risk of large losses
  - To act in accordance with plan documents (to the extent consistent with ERISA)
  - With regard to investments, per the US Supreme Court (in *Tibble v. Edison International*), plan fiduciaries have an ongoing duty to prudently monitor and select investments
- The current lawsuits are based on plan fiduciaries breaching the fiduciary standards set forth in ERISA §3(21)
- As a governmental employer, KBOR is not subject to ERISA and is less likely to be sued for any similar breaches in fiduciary responsibility
- However, most states have laws that may have similar requirements to “do right” by state employees
  - The State of Kansas passed the Kansas Uniform Prudent Investor Act,” K.S.A. 58-2401a et seq., which includes many of the components listed above

**While ERISA requires and State laws encourage plan fiduciaries to make prudent decisions, the recent lawsuits push toward “perfect” decision making.**

# Current Litigation

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## ➤ Higher Education Lawsuits

- Twelve suits were filed in August 2016 against large private universities including:
- Duke – Johns Hopkins - Yale
- Vanderbilt – MIT – Emory – NYU
- Key issues alleged include:
  - Breach of ERISA fiduciary duty by plans overpaying for investments when better, lower priced options were available
  - Breach of ERISA fiduciary duty by plans overpaying for recordkeeping and administration; particularly when plans offer multiple recordkeepers
  - Excessive menu of investment options is confusing and not in participants best interests
  - Plans have not been competitively bid in many years, resulting in higher fees

**Current higher education lawsuits have been against private entities NOT public ones; lawsuits are recent and have not been settled or decided**

## ➤ Corporate Lawsuits

- Dozens of suits have been filed against corporations over the last six years. Some of the corporations sued include:
- Oracle – Anthem Health – Intel
- Verizon – Chevron – Boeing
- Key issues alleged include:
  - Alleged breach of ERISA fiduciary duty by plans overpaying for investments
  - Alleged breach of ERISA fiduciary duty by plans overpaying for recordkeeping and administration
  - Alleged breach of ERISA fiduciary duty by selecting funds not solely in the benefit of participants and beneficiaries
  - Alleged excessive fees received by recordkeepers through prohibited transactions (revenue sharing)
  - Alleged no prudent process for monitoring fees and choosing investments

**Many of the corporate lawsuits have been settled; settlements have totaled hundreds of millions of dollars**

# Current Legislation and Regulations

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## ➤ Fiduciary rule update

- DOL determined current rule no longer provided adequate protection to plans or participants
- Expanded the definition of who is an investment fiduciary under ERISA §3(21)
  - More investment advisers will be fiduciaries subject to ERISA fiduciary standards
  - Fiduciaries must provide “best interest” advice
  - Fiduciaries may receive only reasonable compensation
- Expanded the scope of covered advice to include advice to participants about distributions and rollovers
- Not covered under the rule are:
  - Plan sponsor employee communications to plan fiduciaries or co-workers
  - Investment education provided it does not include specific recommendations
  - General communications provided it is not reasonably viewed as investment recommendations
    - » At this time, the current administration has only asked for a review of the impact of this rule but has not delayed the effective date

## ➤ Tibble vs. Edison

- “A trustee has a continuing duty – separate and apart from the duty to exercise prudence in selecting investments at the outset – to monitor, and remove imprudent, trust investments.”
- There is a continuing duty to monitor investment decision

## ➤ 408(b)(2) and 404(a)(5) Fee Disclosure

- Plan fiduciaries must follow a prudent, decision making process
- Must determine the reasonableness of fees being paid in light of plan specifics

**Regulations are currently focused on plans subject to ERISA;  
*KBOR is NOT subject to ERISA, however these regulations  
help shape industry best practices***

# Industry Direction for Covering Administration

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## Fee Payment Arrangements

- **Revenue sharing:** Participants pay a weighted average of revenue sharing from the investment options
  - Participants may pay different amounts
  - Invisible to participants (implicit fee)
  - Investment line-up connected to administration; “best” investment may not meet revenue requirements
- **Per participant dollar:** Participants pay a flat dollar fee (e.g. \$12/quarter)
  - Participants all pay the same amount
  - Seen as an explicit charge to participant accounts
  - Larger percentage of assets for participants with small balances
  - Unbundling of investment line-up with administration
- **Per participant basis points:** Participant pay fixed basis point fee (e.g. 0.25%)
  - Participants all pay the same percentage of account
  - Seen as an explicit charge to participant accounts
  - Larger dollar amount for participants as asset balances increase
  - Generally unbundles investment line-up with administration
- **Combination:**
  - More complex
  - Tries to address potential shortcomings of previous options

**Revenue sharing has traditionally been the most common method of paying administrative expenses. *It is the current method used by KBOR.***

**As fees have become a bigger focus of legislators and lawsuits, Plan Sponsors, especially those with larger asset bases, have begun moving to more transparent, explicit (per participant dollar and/or per participant basis points) fee structures for covering administrative expenses.**

# What has been reviewed

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## ➤ Fee overview for general education:

- Fee environment
- Types of fees
- Who pays what
- Investment vehicles (403(b) plans can only use mutual funds & annuities)
- Fee payment arrangements
- Return options for excess revenue
- Benchmarking challenges

## ➤ Review of KBOR's investment and administrative fees:

- Current investment expenses and potential lower share classes
- All-in weighted average annual expense and revenue sharing projection
- Five year administrative revenue look-back

## ➤ Potential benchmarking:

- Provided fee ranges and average for similar Segal plans
- Outside of NAGDCA (nearly all 457(b) & 401(a)), no good third party resources for public plan fee information
- Significant variability in plan pricing since many factors impact pricing, not just assets and participants

# What should be done moving forward

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## ➤ **Continue focusing on fiduciary process**

- Plan fiduciaries should be trained on their duties to the plan
- Plan fiduciaries should follow written procedures
- Plans must adhere to provisions contained in the plan document and all regulations

## ➤ **Conduct a Request for Information to include:**

- General Plan information
- Suggested Plan services (e.g. onsite representatives)
- Investment line-up flexibility
- Administrative pricing (Plan and participant level)
  - Request a la carte cost for services as well

## ➤ **Determine servicing structure:**

- Amount and types of participant communication
- Level of onsite servicing

## ➤ **Determine fee structure:**

- Implicit versus explicit fee arrangements
  - KBOR is currently using revenue sharing, or an implicit fee arrangement to cover administration
- Use of excess revenue
- Returning excess revenue to participants

- A Request for Information (RFI) is shorter in scope and results in data and information gathering, not the award of a contract.
- A Request for Proposal (RFP) is similar to an RFI but broader in scope and generally results in the award of a contract.
  - Both an RFI and RFP would be issued publically.