

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

**May 20, 2009**

A Special Meeting of the New Mexico Educational Retirement Board was called to order on this date at approximately 9:30 a.m. in the Educational Retirement Board Room, 6201 Uptown Boulevard, N.E., Ste. 203, Albuquerque, New Mexico.

**ROLL CALL – QUORUM PRESENT:**

**Members Present:**

Mr. Bruce F. Malott, Chairman  
Ms. Mary Lou Cameron, Vice-chair [teleconference]  
Dr. Veronica Garcia [arriving 9:45]  
Mr. H. Russell Goff, Secretary  
Mr. James B. Lewis  
Dr. Beulah Woodfin

**Members Excused:**

Mr. Gary B. Bland

**Legal Counsel Present:**

Mr. Chris Schatzman, General Counsel

**Staff Present:**

Ms. Jan Goodwin, Executive Director  
Mr. Bob Jacksha, CIO  
Ms. Linda Kissko, Executive Assistant  
Ms. LeAnne Larrañaga-Ruffy, Investment Officer  
Mr. Steve Neel, Portfolio Manager

**Others Present:**

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

**a. Approval of Agenda**

**Mr. Lewis moved approval of the Agenda, as published. Mr. Goff seconded the motion, which passed by voice vote.**

## **2. TERMINATION OF ALDUS EQUITY ADVISORY CONTRACT: BOB JACKSHA**

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Mr. Malott stated that, as everyone is now aware both from media coverage and conversation in previous meetings, there have been significant issues with Aldus Equity, the ERB's private equity advisor. He said today's meeting has been called for the specific purpose of evaluating whether the ERB wants to continue in its relationship with Aldus.

Mr. Jacksha stated that Aldus co-founder Saul Meyer was indicted in New York last month under charges of fraud and violation of New York's Martin Act. Given that situation as well as other issues of concern surrounding Aldus, including Aldus's incomplete disclosures to the ERB of placement agents, he said ERB staff is recommending that the private equity advisory contract with Aldus Equity be terminated.

Mr. Malott noted that Aldus is currently on suspension, and the Investment Committee has also voted to terminate its coinvestment relationship with Aldus, which was under a separate contract.

Mr. Jacksha noted that the ERB has done two deals with Aldus under the coinvestment contract for a total of about \$5 million.

Mr. Malott said the ERB spent \$162,000 on fees to create that contract, and recovery of those fees will be considered in a separate discussion.

Responding to questioning from Dr. Woodfin, Mr. Jacksha said the ERB was paying Aldus \$750,000 per year for its advisory contract, and stopped paying them on March 31 with suspension of the contract. He said there were fees built into the coinvestment agreement, and Aldus was also to receive a share of any profits.

Mr. Schatzman added that the ERB has referred the Aldus relationship to Foster Pepper, outside counsel to the ERB, to review potential causes of action. With respect to the advisory contract, he said an element of damages could be the \$750,000 annual advisory fee, but there may not be a basis to collect that. In terms of the coinvestment contract, he said the ERB is looking at possible actions to terminate Aldus's share of the profits. He added that there is some concern as to whether there was a material misrepresentation prior to the entry of the contract, which may give the ERB grounds to recover the \$169,000 in expenses. He asked the Board to keep in mind, however, that many other people are also suspending or terminating relationships with Aldus, and there may not be much left to recover.

Mr. Malott asked Mr. Schatzman when an answer could be expected from Foster Pepper, and Mr. Schatzman responded that he did not know, because his office has dumped a number of legal evaluations on Foster Pepper for review.

Mr. Malott asked Mr. Schatzman on behalf of the Board to get a commitment from Foster Pepper as soon as possible, because if they find that the ERB does not have cause for recovery, he would like them to explain why to the Board in person or else via speakerphone.

Responding to additional questions from Dr. Woodfin, Mr. Jacksha said the coinvestment contract is the more complicated of the two because of the carried interest element and because Aldus has invested capital with the ERB.

**Mr. Lewis moved to terminate the contract with Aldus as private equity advisor. Mr. Goff seconded the motion.**

Mr. Schatzman stated that the ERB will give Aldus thirty days' notice, and today's action confirms what the Board directed staff to do in early April. He said the ERB would not pay Aldus a fee between now and the official termination date.

Mr. Schatzman said he would like to emphasize that, although everybody wants a rapid analysis about what causes of action the ERB has against Aldus under either contract, those things do take time. He commented that it can be an advantage to allow things to evolve in an analysis because more things are uncovered over a period of time that can lead to other causes of action.

Mr. Schatzman also pointed out that some of the material parties on Aldus's side won't be talking, so even if the ERB files a cause of action, a criminal case or a bankruptcy can stall an action. He added that the ERB may get a preliminary evaluation and may continue it before recommending legal action, but some of this may go nowhere because of outside legal events.

Mr. Malott responded that the Board wants an evaluation, and then will discuss what all of the possibilities are and whether it pays to get into a lawsuit or not.

Mr. Lewis asked if all of the fees have been paid out to the placement agents on the funds in which the ERB has commitments.

Mr. Jacksha responded that it is fairly typical that, in a private equity fund with a placement agent attached, the agreement will say that the placement agent is paid as the capital is drawn down. He said it was his feeling that the majority of the fees have not been paid on the placement agent side because most of the capital has not been drawn on these funds.

Mr. Malott asked if the ERB can stop that, and Mr. Schatzman responded that the general partners pay third party marketing fees out of their own profits. He said there is a clause in the ERB contract that says if anything is paid out of the limited partnership, the ERB has a dollar for dollar offset against those fees that are paid to a third party marketer. He added that, as Mr. Jacksha has made clear to the LFC several times, the ERB has tried to pay no more than the going rate in marketing fees. He said the GP has a very good argument that they are taking a portion of their profits and using it the way they want. Given that framework, he said, it may be somewhat difficult for the ERB to direct them to terminate a contract. He said this doesn't mean the ERB will not explore this.

Mr. Schatzman asked that any deeper discussion on this issue be carried into executive session because it was a legal issue.

[Dr. Garcia joined the proceedings.]

Mr. Malott said he would like to address this as a moral matter. He suggested that, in every situation where Aldus misrepresented the placement agent to staff for some reason, the ERB write to the general partner and ask, on behalf of the Board and the ERB membership, that the general partner not continue to pay placement agent fees. He pointed out that some of these funds will be appearing before the ERB in the future seeking investments, and it may benefit them to consider the ERB's request.

Mr. Schatzman said he believed the ERB should continue to consult with outside counsel on possible actions and asked that further discussion take place in executive session.

Mr. Malott asked that the Board be informed of any capital calls that come in for deals in which there was misrepresentation from Aldus and that the ERB not pay those capital calls without Board approval.

Mr. Schatzman responded that he expected that he and Mr. Jacksha would accede to that request with direction from Ms. Goodwin.

Mr. Lewis noted that there is now a statutory requirement for full disclosure, and he wanted to make sure that all documents going forward would require that.

Mr. Schatzman responded that staff's position is to go beyond what is stipulated in the legislation. He said the Board has to formally adopt the suspension of placement agents at its June 26 meeting; however, the Director has told him and Mr. Jacksha to proceed as though that has already occurred. He said any contracts entered into will have a clause that there will be no placement agents and no fees paid.

Mr. Lewis commented that he was very uncomfortable with the idea that the ERB not only had a coinvestment agreement with Aldus, but Aldus also acted as private equity advisor. He asked if that is typical.

Mr. Jacksha responded that the ERB recognized the potential conflict and asked NEPC to do an independent evaluation of four or five entities, including Aldus.

Mr. Lewis asked that the Investment Committee and staff take a serious look at any such relationship going forward given the perception of a conflict of interest.

**The motion passed by unanimous voice vote.**

Referring to earlier discussion, Mr. Jacksha said he was in favor of not paying placement agents, as was suggested; however, contractually he was not sure what the implications would be if the Board decided not to pay on a capital call.

Clarifying his earlier point, Mr. Malott said he was concerned that, while Placement Agent X was supposed to get a fee, it was actually Placement Agent Y who got it, and his question was how much culpability the general partner had in all of that—did the GP intentionally give bad information to Aldus, or was it Aldus giving the bad information either intentionally or in error. He said he was concerned about continuing to do business with these GPs until it was clear that they were not colluding with Aldus.

Mr. Jacksha responded that, in some cases, the ERB will never know the answer to that.

Mr. Malott said he believed a moral letter, or a letter of concern, should be sent to the general partners explaining to them what happened and the breach of trust that has occurred.

Mr. Lewis asked Mr. Jacksha what the ERB is telling the LFC and other entities that are asking questions about returns on the funds recommended by Aldus.

Mr. Jacksha responded that actual performance on funds isn't really known until three to five years into an investment cycle. He said staff did tell the Investment Committee, however, that they would ask NEPC to do a re-review of the funds the ERB has invested in and offer some opinions on that.

Mr. Malott added that staff is scheduling a working session with the Board to discuss new processes to put in place, and is also having NEPC review each deal that Aldus brought to the ERB to see whether they were appropriate at the time they were originally recommended.

Mr. Lewis said he thought that made sense—not only because it was proactive rather than reactive, but would also help to restore the confidence of the constituency and the Board.

Mr. Lewis stated that legislators at the LFC hearing asked him if alternative investments were appropriate, and his response was, “You need to have tools in the toolbox,” provided the approach was conservative. He commented that some legislators believe the ERB would be able to achieve the necessary 8% annual return by returning to the traditional asset allocations of equities and fixed income.

Mr. Malott noted that the Board has heard from one consultant after another saying that this would be impossible.

Mr. Lewis stressed the importance of educating the public as well as legislators on investments and investment returns.

Mr. Malott asked Mr. Schatzman to arrange a preliminary discussion with Foster Pepper at the June 26 meeting with respect to Aldus Equity.

### **EXECUTIVE SESSION**

**Mr. Goff moved to go into Executive Session to discuss threatened or pending litigation. Dr. Woodfin seconded the motion, which passed on the following roll call vote:**

**For: Mr. Malott; Ms. Cameron; Mr. Goff; Dr. Woodfin; Dr. Garcia; Mr. Lewis.**

**Against: None.**

[The Board was in Executive Session from 10:05 until 10:30 a.m.]

**Dr. Woodfin moved to come out of Executive Session. Mr. Goff seconded the motion, which passed on the following roll call vote:**

**For: Mr. Malott; Ms. Cameron; Mr. Goff; Dr. Woodfin; Dr. Garcia; Mr. Lewis.**

**Against: None.**

### **ACTION FROM EXECUTIVE SESSION**

Mr. Malott stated that the only items discussed in Executive Session were potential, threatened and pending litigation.

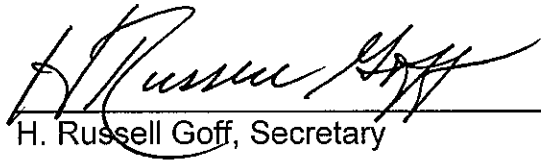
**ADJOURN**

Its business completed, the Educational Retirement Board adjourned the meeting at approximately 10:30 a.m.



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Bruce Malott, Chairman

ATTEST:



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H. Russell Goff, Secretary