

**MINUTES
 ARKANSAS TEACHER RETIREMENT SYSTEM
 BOARD OF TRUSTEES MEETING**

Dr. Richard Abernathy, Chair

Monday, February 9, 2009

1:00 p.m.

1400 West Third Street

Little Rock, AR 72201

Board Members Present	Staff
Dr. Richard Abernathy, Chair	Gail Bolden, Deputy Director
Hazel Coleman	Christa Clark, Chief Legal Counsel
Dr. Paul Fair	Kim Godfrey, Deputy Counsel
John Fortenberry	Wayne Greathouse, Dr. Public Markets
Candace Franks	George Hopkins, Executive Director
Beverly Leming	Manju, Dir. Data Processing
Bobby Lester	Michael Ray, Dir. Member Services
Robin Nichols	Hugh Roberts, Dir. Real Estate
Linda Parsons	George Snyder, Dir. Internal Audit/Risk M
Janelle Riddle	Jane Toledo, Secretary
Martha Shoffner	Leslie Ward, Dir. Private Equity
Steve Kelly designee for Jim Wood	
	Guests
Board Members Not Present	Michael Bacine, Franklin Park
Jim Wood	Mary Bates, Ennis Knupp
	Traci Boyd, DLA
	Erika Gee, AG's Office
	PJ Kelly, Ennis Knupp
	Joe Marzano, Ennis Knupp
	Chris Reel, Ennis Knupp
	Steve Singleton, ARTA
	Brenda West, DLA

- I. ***Call to Order/Roll Call.** Chair, Dr. Abernathy, called the Board of Trustees meeting to order at 1:00 pm. Roll call was taken and Ken James was the noted as absent due to the Board of Education meeting at the same time.

- II. ***Adoption of Agenda.**

THE MOTION FOR ADOPTION OF THE AGENDA WAS MADE BY MS. NICHOLS, SECONDED BY MS. PARSONS, AND UNANIMOUSLY ADOPTED BY THE BOARD.

- III. **Executive Summary/Director’s Report.** The Executive Summary was provided for reference with no questions or expansions on the written summary.

The Executive Director requested comments from the Board on the content of the Executive Summary. The Board’s statements were positive on the content.

- IV. ***Approval of Board of Trustee Minutes:**

- A. **Minutes of November 18, 2008 Meeting.**

THE MOTION FOR APPROVAL OF THE MINUTES OF THE NOVEMBER 18, 2008 BOARD OF TRUSTEES MEETING WAS MADE BY MS. RIDDLE, SECONDED BY MS. COLEMAN, AND UNANIMOUSLY APPROVED BY THE BOARD.

- B. **Minutes of December 2, 2008 Meeting.**

THE MOTION FOR APPROVAL OF THE MINUTES OF THE DECEMBER 2, 2008 BOARD OF TRUSTEES MEETING WAS MADE BY DR. FAIR, SECONDED BY MR. FORTENBERRY, AND UNANIMOUSLY APPROVED BY THE BOARD.

- C. **Minutes of December 8, 2008 Meeting.**

THE MOTION FOR APPROVAL OF THE MINUTES OF THE DECEMBER 8, 2008 BOARD OF TRUSTEES MEETING WAS MADE BY MS. NICHOLS, SECONDED BY MS. LEMING, AND UNANIMOUSLY APPROVED BY THE BOARD.

- D. **Minutes of January 8, 2009 Meeting.**

THE MOTION FOR APPROVAL OF THE MINUTES OF THE JANUARY 8, 2009 BOARD OF TRUSTEES MEETING WAS MADE BY MR. FORTENBERRY, SECONDED BY MS PARSONS, AND UNANIMOUSLY APPROVED BY THE BOARD.

- V. **Assignments to Committees of the Board of Trustees.** *Chair, Dr. Richard Abernathy.*

Ms. Nichols is a member of the Executive and Administrative/Personnel Committees, which was not properly noted on the handout.

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Chair, Dr. Abernathy recommended a reduction in the number of committees and referred the matter to Policy/Legislative Committee for review and a recommendation to the Board for adoption by July 1, 2009.

- VI. ***Authorization for 2009 Travel and Expense Reimbursement. (Resolution No. 2009-02)** *Christa Clark, Chief Legal Counsel.* Per the Board's previous request a report of the Board Travel for conferences in the Fiscal Years 2005, 2006 and 2007 was provided for review and discussion.
- A. **Discussion of Board of Trustees Travel Policy.** *George Hopkins, Executive Director.* To a large extent, staff will leave it to the Board to deal with Board travel issues. Staff did have recommendations concerning the use of receipts versus reimbursement of per diem and best practices that may prevent issues in the future. *The Board requested staff to provide specific recommendations in the form of written guidelines with a clear bullet pointed outline on preparation of the TR-1 (Expense Reimbursement Form) in accordance with the applicable GSA Guidelines for Board consideration at the next scheduled meeting.*

THE MOTION TO HAVE STAFF PREPARE WRITTEN GUIDELINES AND RECOMMENDATIONS FOR CONSIDERATION AT THE NEXT SCHEDULED MEETING OF THE BOARD WAS MADE BY DR. FAIR, SECONDED BY MR. LESTER, AND UNANIMOUSLY APPROVED BY THE BOARD.

The Board reviewed a Board Travel Resolution used in the past to address Board Travel in 2009. Mr. Fortenberry expressed his concern over recent director's travel expenditures, the current economic situation, and the need to "tighten our belts and keep spending down as much as possible" and the Board's need to be prudent with ATRS funds. Mr. Fortenberry made a motion to amend the Board Travel Resolution to have the following language included:

"FURTHER RESOLVED, THAT EACH BOARD MEMBER MAY BE REIMBURSEMENT FOR ONE (1) OUT-OF-STATE CONFERENCE SPONSORED BY NCTR/SCTR AND APPROVED BY THE EXECUTIVE DIRECTOR FOR CALENDAR YEAR 2009. BOARD MEMBER(S) ATTENDING THE NCTR/SCTR CONFERENCE SHALL PROVIDE A BRIEF REPORT OF THE CONFERENCE TO THE NEXT REGULARLY SCHEDULED BOARD MEETING."

The Board and Executive Director discussed the proposed language.

THE MOTION TO APPROVE THE PROPOSED SUBSTITUTE LANGUAGE TO AMEND RESOLUTION 2009-02 WAS MADE BY MR. FORTENBERRY, SECONDED BY DR. FAIR, AND FAILED TO PASS WITH NAY VOTES BY MS. RIDDLE, MS. NICHOLS AND MS. PARSONS.

The standard Board Travel Resolution was discussed with a suggestion to compromise between the past policy and the proposal that had just failed.

THE MOTION TO APPROVE THE PROPOSED SUBSTITUTION LANGUAGE FOR RESOLUTION 2009-02 WAS MADE TO CHANGE THE NUMBER OF CONFERENCES FROM “THREE (3)” TO “TWO (2)” WITH THE REMAINING WORDS IN THE RESOLUTION REMAINING THE SAME AND WAS MADE BY DR. FAIR, SECONDED BY MS. SHOFFNER, AND UNANIMOUSLY APPROVED BY THE BOARD.

The Board requested staff to provide research on the average number of conferences attended by Boards of Systems of the similar size as ATRS for discussion at the next scheduled meeting of the Board of Trustees.

TR-1 Reimbursement Form training was requested by the Board. The Executive Director and staff will provide a summary to assist Board members in filling out the TR-1 Expense Reimbursement Forms. This information will be provided to the Board in the format of training.

The Board requested that staff and Board discuss and come to a final conclusion as to whether the travel authorization should be by calendar or fiscal year.

- B. **Discussion of Staff Travel.** *George Hopkins, Executive Director.* Staff travel and educational travel will be lean this year. All necessary business travel will be closely examined by accounting and others to ensure it is justified and accurate before processing travel reimbursements forms. ATRS staff developed an internal process and form, which was implemented in September 2008, to preauthorize all travel and help avoid future problems was provided to the Board.
- C. **Quarterly Board and Staff Travel Update.** *Suzanne Davenport, Director of Fiscal Affairs.* At the Board's request, a quarterly report of Board and Staff travel was provided detailing all travel activity for the 4th quarter of 2008 (October, November and December 2008).

This quarterly report was provided at the request of the Board as a further measure to comply with their fiduciary duty to oversee all travel related expenses for ATRS since the audit findings of FY 2007. The Board approved the format and detail of this quarterly report expressing that the more detail the better and the need to be transparent and open.

VII. **Staff Empowerment.** *George Hopkins, Executive Director.* The Executive Director has attempted to ensure lawful authority exists for all powers employed by the Executive Director. Although there are provisions in the Arkansas Code empowering the Executive Director to do certain things and various limitations within ATRS policy, the specific powers of the Executive Director are not clearly delineated. In order to ensure that the Executive Director is never overstepping his authority, and appropriately receiving Board approval on all necessary and material decisions, the Executive Director placed this item on the Agenda for Board discussion to ultimately achieve a clear and understandable policy for future use.

A. ***Authority to Transact Business. (Resolution No. 2009-03)** *Christa Clark, Chief Legal Counsel.* A standard authority to transact business has been prepared to authorize the new Executive Director, newly assigned Deputy Director and Director of Public Markets the authority necessary to sign contracts and checks with the various entities that ATRS works through in its investment processes.

**THE MOTION FOR APPROVAL OF RESOLUTION NO. 2009-03
WAS MADE BY MR. LESTER, SECONDED BY MS. NICHOLS, AND
UNANIMOUSLY APPROVED BY THE BOARD.**

B. ***Specific Powers of Executive Director. (Resolution No. 2009-04)** *Christa Clark, Chief Legal Counsel.* In order to ensure that the Executive Director is never overstepping his authority, and appropriately receiving Board approval on all necessary and material decisions, the Executive Director placed this item on the Agenda for Board discussion to ultimately achieve a clear and understandable policy for future use. In the interim, to not call a Board meeting on every minor decision, a resolution has been prepared which will provide the Executive Director usual and customary powers exercised by previous Executive Directors with a limitation that any material decision must be brought to the Chair of the Board prior to any action to allow the Chair of the Board to determine whether the Board should make the decision.

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A scrivener's error was noted in Resolution 2009-05 (removing the apostrophe from the word "Director's" in two places within the resolution). The Chair corrected this before signature of the Resolution.

The Board requested staff to prepare a finalized policy to provide the Executive Director with the appropriate authority.

THE MOTION FOR APPROVAL OF RESOLUTION NO. 2009-04 WAS MADE BY MS. LEMING, SECONDED BY MS. PARSONS, AND UNANIMOUSLY APPROVED BY THE BOARD.

- C. ***Authorization to Transact Business, Appointment of ATRS as Manager of LLCs. (Resolution 2009-05)** *Christa Clark, Chief Legal Counsel.* This resolution is presented for approval of the Board and is related to the real estate holding companies, which are limited liability companies (LLCs) that ATRS has set up to own and operate four (4) of ATRS' direct real estate properties. This resolution is a change from prior practices when ATRS would annually appoint the Executive Director as the manager of the LLCs. After review of policy and statute the authority is not clear.

The recommendation for the LLCs is that ATRS be appointed as the manager and then delegate authority to the Executive Director to take any actions authorized in the operating agreements for these LLCs. The operating agreements are very clear on what can and cannot be done and would provide the Executive Director with direction without exposing any ATRS staff to authority or liability concerns. All material decisions by the Executive Director will be reported to the Chair of the Board of Trustees to determine whether any material decision should be presented to the Board of Trustees for final approval.

THE MOTION FOR APPROVAL OF RESOLUTION NO. 2009-05 WAS MADE BY DR. FAIR, SECONDED BY MS. COLEMAN, AND UNANIMOUSLY APPROVED BY THE BOARD.

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- VIII. **Discussion of Issues of Contracts with Franklin Park and Ennis Knupp Contracts.** *George Hopkins, Executive Director and Leslie Ward, Director of Private Equity.* In both of these instances (Franklin Park and Ennis Knupp) the **staff** made a mistake by beginning activities and incurring billable expenses on these contracts before they had been processed through procurement. Under Arkansas law a contract has to be procured and is not a legal contract until it has gone through the procurement process. Once

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signed by DF&A it is a legal contract and until then no services can be rendered and no services can be paid for. In both these cases services were approximately 2 months earlier than what was the legal contract period. The Executive Director wanted to make sure the Board was aware of the situation, that procedures have been put in place to avoid this type of problem in the future, DLA, Procurement and DF&A have been made aware of the mistake. ATRS is working with DF&A to cure the problem with Franklin Park's periodic contract. Since work was started two months earlier ATRS is behind \$100K (\$50K a month) and \$8,300 per month since their contract their escalated in the second year from \$50K to \$58,333K/mo.

ATRS is trying to get clear direction from the Procurement office on how to proceed and will report back to the Board. Procurement may have a way in which ATRS does not need to have a new contract with Franklin Park to continue. One of the issues to be negotiated with Franklin Park's contract would be a monthly versus quarterly payment on which staff will update the Board at the next scheduled meeting.

- A. **Board Notification of Issues Concerning Timing of Franklin Park Contract.** *George Hopkins, Executive Director.* This is explained above as part of the general discussion on timing.
- B. ***Need to Develop and Special Contract with Franklin Park to Pay for Services Rendered Prior to Contract Date.** *George Hopkins, Executive Director.* Due to Franklin Park being a periodic contract where a set fee is paid for each period, a new catch-up contract may be necessary. An update will be provided at a future meeting.
- C. **Discussion of Franklin Park Contract Renewal.** The Executive Director is to negotiate further with Franklin Park and report to the Board at a future meeting.
- D. **Board Notification of Issues Concerning Timing of Ennis Knupp Contract.** *George Hopkins, Executive Director.* This item is on the agenda to inform the Board of the issue with Ennis Knupp's Real Estate Contract. In this case payment was made after the contract date for services performed prior to the contract start date. Procurement has provided a resolution, which would simply require the Executive Director writing a letter to Procurement acknowledging that payment was rendered after the contract date for work that was performed prior to the contract start date. This would close the issue. This issue was self-reported by staff to the Department of Legislative Audit. Legislative Audit will review this. ATRS' internal audit is

working hard to find weaknesses and develop new processes to eliminate those weaknesses.

- IX. **Review of Contracts/Expiring Contracts.** *Suzanne Davenport, Director of Fiscal Affairs.* The Board annually reviews expiring contracts to ensure ATRS maintains appropriate contracts and has time to complete the procurement process before any contract expires. Due to the new annual appropriations process approved in the 2008 elections, special issues exist since ATRS will not be allowed to contract beyond the 7-year period on procedural contracts. The contracts will have to be amended and approved annually based upon the most recent information from the Department of Finance and Administration. The Board was provided with a list of all contracts including contracts expiring at the end of each fiscal year.

The Executive Director reviewed with the Board 18 limited partnerships with a concern over procurement. The Department of Finance & Administration (DF&A) has concern with these 18 agreements because they did not go through procurement. At this time these have been funded at about \$550M and when fully funded will be \$995M. DF&A feels the Limited Partnership Agreements should have gone through procurement. ATRS is working twith Board Chair, staff and DF&A's legal counsel (the Attorney General) to work through this issue to find a resolution.

The only items, which would be required new contracts at the end of the year, are Mitchell Williams and the Rose Law Firm.

The Board requested that the next report be in a larger font for ease of reading.

- X. **Discussion of Arkansas Property Tax Issue.** *George Hopkins, Executive Director.* ATRS has been paying property taxes on its Arkansas Related investments. ATRS has determined that those taxes should not have been paid and is working to determine how recovery of those property taxes paid over the last years can be made. The approximate amount in issue is \$550K per year for years 2006 through 2008 for a total of approximately \$1,700,000. The taxes are for actual tax years of 2005, 2006 and 2007. The Board was provided with the detail of taxes paid for this period, a legal memorandum, and opinion letters from two (2) outside counsel supporting ATRS' legal right to recover these funds. ATRS' 2008 tax payment for 2007 taxes were paid with a check noting "Payment Under Protest" which may better secure ATRS' ability to recover these funds.

The Executive Director's intent is to negotiate in good faith with the counties involved and get the money back voluntary. If this is not possible, it is the

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staff recommendation to be to have the Board authorize ATRS to file litigation necessary to recover the approximate \$1.7M paid.

XI. ***McDonalds Option to Purchase.** *George Hopkins, Executive Director.*

The McDonalds option to purchase included a scrivener's error in the original documents concerning the option to purchase price and ATRS' duty to address exceptions to a clear title policy.

MS. PARSONS MOVED TO ADOPT THE RECOMMENDATION OF THE INVESTMENT COMMITTEE TO ALLOW MR. HOPKINS TO NEGOTIATE THE CONTRACT FOR THE SALE OF THE MCDONALDS PROPERTY FOR \$709,050 AND IN ATRS' BEST INTEREST WITH THE INTENT THAT ATRS BE HELD HARMLESS ON ANY OTHER OBLIGATIONS THAT ATRS WOULD HAVE ON THE PROPERTY, IF POSSIBLE, WHICH WAS UNANIMOUSLY APPROVED BY THE BOARD.

XII. ***2009-2010 Employer Contribution Rate. (Resolution No. 2009-07)** *George Hopkins, Executive Director.* The Board set the Employer Contribution Rate at 14% for the 2008 year, which is the maximum rate allowed by Arkansas Code. ATRS' actuaries have recommended that the contribution rate remain at 14% due to apparent losses in the portfolio that will be valued on June 30, 2009.

THE MOTION FOR ADOPTION OF RESOLUTION 2009-07 WAS MADE BY MS. LEMING, SECONDED BY MS. RIDDLE, AND UNANIMOUSLY APPROVED BY THE BOARD.

XIII. **General Legislative Discussion.** *George Hopkins, Executive Director and Gail Bolden, Deputy Director.* A review of ATRS' specific bills at the General Assembly, legislation that may affect ATRS' impact on the annual session amendment and updates concerning the overall legislative process and ATRS' involvement in that process was reviewed for the Board.

ATRS has tried to work the issues the Board presented for activity and the one that has caused a lot of controversy and misunderstanding was Senate Bill 165. This bill would require 180 days (6 months) separation from an employer before returning to work. Some people thought that would require a 6-month separation from work before receiving their first retirement check, which is incorrect. This bill would also eliminate the earnings limitation, which has been a problem with a lot of teachers and legislators throughout the state. ATRS has been working with bill drafters and legislators to resolve this with amendments to SB 165.

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The Board was provided with and thoroughly reviewed an outline of the 2009 Legislative Initiatives. SB 155 provides authority for Board or designee to waive member receivables upon System error; SB 165 revises the return to work provision in the teacher retirement laws (updates have been posted on our website); SB 170 authorizes the ATRS Board or designee to waive employer penalties or interest due on quarterly employer reports; SB 191 is ATRS' technical corrections bill (still being worked on with bill drafters and is currently submitted as a shell bill); SB 209 deals with Section 415 code which would allow us to treat the compound COLA adjustment as automatic for purposes of determine the 415 limits for certain retirees; SB 210 addresses rescission of retirement (one time only) and clarification; SB 224 deals with the on lump sum death benefits to grandfather retirees who retired July 1, 2007 or earlier to require five years of actual service to receive the death benefit; SB 227 amends the code on T-DROP termination of covered service requirements; SB 228 amends the code on Survivor Benefits; SB 229 amends the code on lump sum death benefits to clarify tax treatment; SB 231 amends the code on the definition of "Salary" in ATRS Code; and SB 139 regarding the fiduciary duty of the Trustees of the Board to appear before the Legislative Review Committee and Procurement after a contract has been entered in certain situations and for other purposes (i.e., full disclosure on reporting on investment contracts) with an anticipated effective date of mid-August 2009. SB 139 will allow a contract to be final before review if the Board feels it is necessary to move quickly on an investment.

- XIV. **Update on Board Election Status and Candidates.** *Michael Ray, Director of Member Services.* The representative groups appeared with ATRS staff on February 1, 2009 and drew for ballot positions. The election process is under way and ATRS provided and reviewed with the Board the 2009 ATRS Regular Election Schedule and the candidates ballot positions.

Staff recommends the proposed change to the election process providing that if the election date of February 1st falls on a weekend or a Holiday, it will be held on the following business day.

There were questions from the Board about a candidate's ability to receive a printed list of member names and addresses that are eligible to vote from ATRS. The process had been addressed previously wherein candidates can submit campaign materials to ATRS which ATRS would then forward to the vendor for mailing at the candidates expense. There were complications with implementation of this process. ATRS has an FOIA exemption for any data that the retirement system collects for purposes of administering a retirement program. The request for addresses has previously been excluded under the FOIA exemption.

XV. **Committee Reports:**

A. **Investment Committee.**

1. **Report from February 9, 2009 Meeting and Recommendations.** *Chair, Beverly Leming* reported on actions taken and recommendations made by the Investment Committee at the February 9, 2009 meeting held earlier today.

INVESTMENT COMMITTEE CHAIR, MS. LEMING, MOVED THAT THE BOARD OF TRUSTEES APPROVE THE REVISED GUIDELINES FOR WELLINGTON, WHICH WAS UNANIMOUSLY APPROVED BY THE BOARD.

INVESTMENT COMMITTEE CHAIR, MS. LEMING, MOVED THAT THE BOARD OF TRUSTEES APPROVE THE REVISED GUIDELINES FOR T. ROWE PRICE, WHICH WAS UNANIMOUSLY APPROVED BY THE BOARD.

INVESTMENT COMMITTEE CHAIR, MS. LEMING, MOVED THAT THE BOARD OF TRUSTEES APPROVE THE REVISED COMMITMENT LEVELS ON CONVERSION OF MANAGER MANDATES FOR WELLINGTON AND T. ROWE PRICE (RESOLUTION 2008-09), WHICH WAS UNANIMOUSLY APPROVED BY THE BOARD.

INVESTMENT COMMITTEE CHAIR, MS. LEMING, MOVED THAT THE BOARD OF TRUSTEES APPROVE THE PROPOSED CRITERIA FOR ATRS MANAGER PRESENTATIONS, WHICH WAS UNANIMOUSLY APPROVED BY THE BOARD.

XVI. **Private Equity Update.**

- A. **Portfolio Performance Update 3rd Quarter 2008.** *Michael Bacine of Franklin Park and Leslie Ward, Director of Private Equity.* ATRS is still awaiting year-end results for Private Equity investments. Fourth quarter results from funds are usually delayed due to the fact that year-end financial information must be audited. It is expected that there will be some losses in the quarter due to portfolio company write-downs. However, commitments made by ATRS in the last 12-18 months have not been fully deployed and will be able to take advantage of more attractive buying opportunities going forward. This could allow for potentially greater returns when the markets turn upward.

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Michael Bacine of Franklin Park thoroughly reviewed and discussed with the Board of Trustees the Private Equity Portfolio Update through September of 2008. Since inception in 1996 ATRS has committed \$2 billion to 19 funds and 3 fund of funds. The portfolio has returned 1.4 times invested capital and generated a net IRR of 10.2%. The report included a summary of diversification; public market index comparison (which the portfolio has outperformed since inception); a summary of the Legacy Portfolio (in the liquidation phase which will take 12-36 months) representing 55.8% of the ATRS portfolio value and has generated a 1.6 times return, the CSFB Portfolio (in the early/late investment phase) representing 36.2% of the ATRS portfolio; and the Recent Portfolio (which is in the early investment phase) representing 8.0% of the ATRS portfolio. The CSFB and Recent Portfolio performance measures are too early to be meaningful. Mr. Bacine also reviewed the historical private equity performance comparing private equity to public equities. Private equities have outperformed public equities 17 of 20 vintage years.

Adjustments are expected after receipt of December's number and an update will be provided to the Board at that time.

- B. ***Revised Commitment to Insight Equity II/Insight Mezzanine I. (Amended Resolution 2008-65)** *Michael Bacine of Franklin Park and Leslie Ward, Director of Private Equity.* Mr. Bacine explained the new funding ratios and why the funding was reduced from the original expected commitment.

This proposal was previously presented to the Investment Committee in January and is a recommendation to amend Resolution No. 2008-65 to allow Franklin Park the flexibility to change the allocation between the private equity portion and the mezzanine portion of the Insight Private Equity/Insight Mezzanine investment. The allocation does not have to be prorated 50/50 between the funds as was originally required by the general partner. The resolution approved the total investment with Insight in an amount *up to* \$50 million. Franklin Park's final recommendation is a total commitment of \$40 million to Insight Private Equity Investment (\$25 million to Insight Equity II and \$15 million to Insight Mezzanine I) due to our reduced pacing schedule for 2009. The Staff and Consultant recommend amendment of the resolution.

The Executive Director informed that Board and consultant that the procurement process of approximately 60-90 days for State contracts

could delay further investments. This is being reviewed by outside counsel.

This item is subject to approval by the Manager of a 60-90 day waiting period.

Another issue would be a 7-year procurement on contracts. There may be some vehicles by which ATRS can allow staff and legal counsel working to get an amendment in to allow financial management contracts to extend beyond 7 years with certain justification (SB 139).

Dr. Abernathy and the Executive Director are meeting with the Attorney General's office regarding these potential problems regarding LLC, Private Equity and Real Estate investments in the ATRS portfolios.

The Board requested that all resolutions pertaining to investments contain the following language: "subject to final legal review, and Procurement". This revision was made prior to the Chair's signature of Resolution 2008-65.

THE MOTION FOR ADOPTION OF AMENDED RESOLUTION 2008-65 WAS MADE BY MS. LEMING, SECONDED BY MS. SHOFFNER, AND UNANIMOUSLY APPROVED BY THE BOARD.

XVII. Ennis Knupp Update.

- A. **Portfolio Performance Update 4th Quarter 2008.** *P.J. Kelly and Joe Marzano of Ennis Knupp and Wayne Greathouse, Director of Public Markets reviewed the ATRS Performance Update for the 4th quarter ending December 31, 2008.*

Broad equity markets suffered through one of its worst quarters on record with most major indices losing more than 1/5 of their value. The ATRS investment portfolio underperformed its benchmark during the quarter due primarily to underperformance from the fixed income asset class.

Update on New Mandates. *At the Board's request, P.J. Kelly and Joe Marzano of Ennis Knupp provided a memorandum on the new mandates and asset allocation decisions over the past two years and the impact on the ATRS portfolio for review and discussion with the Board. The changes implemented to the portfolio over the past two years have had mixed results on performance. For any investment, it*

is important to give it an appropriate amount of time (3-5 years or full market cycle) to prove its value.

- B. ***Proposed Guidelines for Wellington.** *P.J. Kelly and Joe Marzano of Ennis Knupp and Wayne Greathouse, Director of Public Markets.* At the December Board meeting, changes to the Wellington mandates were approved including a shift of approximately \$150M from the Wellington Global Research strategy to a new Global Perspectives strategy. The Global Perspectives strategy invests opportunistically in non-large cap global companies including those located in the U.S. The second change involves a shift of the remaining balance of the Wellington Global Research strategy to the current Global Opportunistic Equity Fund with both strategies benchmarked to the MSCI All Country World Index. The proposed revised guidelines for the Wellington mandate were presented, reviewed and thoroughly discussed with the Committee by Consultant and staff.

The Investment Committee addressed this item with a recommendation to the Board of Trustees (See Committee Reports - Item XV. A. 1. above).

- C. ***Proposed Guidelines for T. Rowe Price.** *P.J. Kelly and Joe Marzano of Ennis Knupp and Wayne Greathouse, Director of Public Markets.*

ATRS has explored giving all existing managers broader mandates. In particular, existing U.S. equity managers that demonstrate skills in investing internationally were given latitude to invest globally. To that end, the Board approved a motion to transition the existing T. Rowe Price Large Cap Growth strategy to the T. Rowe Price Global Equity Fund. The benchmark for the mandate will change from the Russell 1000 Growth Index to the MSCI All Country World Index. The proposed revised guidelines for the T. Rowe Price mandate were presented, reviewed and thoroughly discussed with the Board by Consultant and staff.

The Investment Committee addressed this item with a recommendation to the Board of Trustees (See Committee Reports - Item XV. A. 1. above).

- D. ***Revised Commitment Levels on Conversion of Manager Mandates for Wellington and T. Rowe Price. (Resolution 2009-08).** *P.J. Kelly of Ennis Knupp and Wayne Greathouse, Director of Public Markets.*

Due to changes in the market values of the existing Wellington and T. Rowe Price mandates Ennis Knupp and ATRS staff revisited commitment levels of funding for the new global mandates. Initially, the Wellington Global Perspectives strategy was to be funded with \$200M, while the current Wellington Global Opportunistic Fund was to be funded with an additional \$100M. The funds were to come from the current Wellington Global Research Equity Portfolio. As the value of the Wellington Global Research Equity strategy decreased in value throughout the fourth quarter, Ennis Knupp and staff propose a decrease in the commitment to the Wellington Global Perspectives strategy to \$150M. The existing T. Rowe Price Large Cap Growth mandate previously was to be funded with approximately \$200M. Due to a decrease in market value in the existing mandate during the fourth quarter, it is proposed that the T. Rowe Price Global Fund be funded solely as a transition from the existing mandate.

The Investment Committee addressed this item with a recommendation to the Board of Trustees (See Committee Reports - Item XV. A. 1. above).

- E. **Update on Global Transition (DE Shaw, Lazard & Bedlam).** *P.J. Kelly and Joe Marzano of Ennis Knupp and Wayne Greathouse, Director of Public Markets.*

The funding of the three new global managers will require a transition of approximately \$600M from existing mandates. In an attempt to minimize the cost of this large and complex transition, the Committee and Board authorized Ennis Knupp to receive bids from firms with expertise in transition management. This search and procurement process could delay this transition.

An update on the progress of this search will be provided at a future meeting.

- F. **Update on RFP Search Finalists for Hedge Fund of Funds.** *P.J. Kelly and Joe Marzano of Ennis Knupp and Wayne Greathouse, Director of Public Markets.*

ATRS requested Ennis Knupp to evaluate hedge fund of funds managers in the context of a search. Consultant presented the findings of the search in a memorandum and power point educational presentation and a report to the Board and staff in which 6 semi-finalist

candidates have been identified and the rationale for exclusion of other candidates.

Consultant would like the Board to narrow the semi-finalist candidates down to 2-3. The proposed allocation to the hedge fund of funds would be 2% of the total fund with 1% (\$80M) to each of two managers.

This process was started in September and given the current economic situation was postponed by the Investment Committee and Board.

In order to make sure the Board is comfortable with this type of investment an educational materials on hedge fund of funds was presented by Mary Bates of Ennis Knupp with a possible review of potential managers in March or April of 2009.

- G. ***Proposed Criteria for ATRS Manager Presentations.** *P.J. Kelly and Joe Marzano of Ennis Knupp and Wayne Greathouse, Director of Public Markets.*

At the January Investment Committee meeting, Ennis Knupp and ATRS staff proposed the idea of having current investment managers appear before the Investment Committee and/or Board under certain circumstances (i.e. key personnel changes, change in ownership, performance-related issues, etc.). Ennis Knupp and ATRS staff outlined the criteria that will be used to determine those circumstances that will result in a presentation to the Committee and/or Board as well as specific items that the investment manager should discuss in their presentation.

Consultant provided and reviewed with the Board a memorandum presenting the proposed “Investment Manager Onsite Criteria”.

The Investment Committee addressed this item with a recommendation to the Board of Trustees (See Committee Reports - Item XV. A. 1. above).

XVIII. Real Estate Update.

- A. **3rd Quarter 2008 Real Estate Portfolio Performance Update.** *Chris Reel and Heather Christopher of Ennis Knupp and Hugh Roberts, Director of Real Estate.*

***Action Item**

A presentation and review of the performance results for the 3rd quarter of 2008 (through 9/30/2008) for the entire Real Estate Portfolio was provided and reviewed with the Committee including performance data and updates on the funds within the portfolio.

Half of the closed-end investments within the ATRS portfolio are in the wind-down/liquidation phase, while half are in the investment period. Most liquidating funds have produced returns at or above their started targets over time with a few exceptions. There were two capital calls made totaling \$24.9M. No new commitments were made subsequent to quarter end.

B. 4th Quarter Real Estate Portfolio Update. *Chris Reel and Heather Christopher of Ennis Knupp and Hugh Roberts, Director of Real Estate.*

The performance results for the majority of real estate investments and preliminary results for the open-end funds was provided to and reviewed with the Board. Expectations for performance results among the closed-end fund managers were also discussed. It appears that real estate will have losses in value in the final 4th quarter numbers.

Managers with uncommitted capital will see buying opportunities to purchase at significant discounts. It is believed that the real estate returns will revert to their average returns over the long-term. The situation will be closely monitored to ensure that each manager in the ATRS real estate portfolio is taking prudent action given their respective circumstances in navigating through the downturn.

C. Update on RFP Search for Real Estate/Direct Investment Account Manager for Arkansas Properties. *Chris Reel and Heather Christopher of Ennis Knupp and Hugh Roberts, Director of Real Estate.*

The deadline for responses to the RFP search to be submitted to Ennis Knupp was Friday, February 6, 2009. There were 13 managers who responded to the RFP search. Ennis Knupp is now beginning a 2-3 week process of reviewing these responses and working with staff to identify the semi-finalists to conduct due diligence on.

Ennis Knupp and staff will present the semi-finalist for the Real Estate/Direct Investment Account Manager at the next scheduled Investment Committee meeting in March 2009 with a final decision by the Board in April 2009.

- D. **Update on Fidelity/FREG III Management.** *Chris Reel and Heather Christopher of Ennis Knupp and Hugh Roberts, Director of Real Estate.*

At previous meetings a proposal from Fidelity was discussed that requested consent to a virtual spin-out of the management group, which also resulted in the reduction of incentive fees paid by limited partners. An update was provided to the Board on the status of that amendment to the Limited Partnership Agreement.

Some concerns of this spin-out was that it would constitute a change in control of the General Partnership which would require renegotiation of all lending agreements of the investments that had already made. It was decided this was not in the best interest of the fund or the investors. Management of the fund went back to Fidelity and negotiated a “virtual spin-out” whereby the management group will still remain a part of Fidelity, but essentially operate autonomously with minimal support from Fidelity for 2-3 years and then spinout at that point. An amendment to the Limited Partnership was sent out to all clients detailing this change. Incentive fee was reduced to 17.5% on this investment.

ATRS Master Custodian Search Update. *P.J. Kelly and Joe Marzano of Ennis Knupp and Wayne Greathouse, Director of Public Markets,* reported at the January 20, 2009 Investment Committee and made the recommendation for State Street as they have a better understanding of the level of complexity and attention needed to service the ATRS account and is in the best position to provide a fair and accurate fee proposal. Based on State Street’s capabilities and custody service offerings, their familiarity of the investment program, competitive fee, and ATRS’ positive client service experience, Consultant and Staff recommend that ATRS retain State Street for custody and related services.

MS. LEMING MOVED THAT THE BOARD OF TRUSTEES HIRE STATE STREET AS ATRS’ MASTER CUSTODIAN, WHICH WAS UNANIMOUSLY APPROVED BY THE BOARD.

- XIX. **Policy/Legislative Committee.** *Chair, Linda Parsons* reported on items presented, actions taken, and recommendations from the February 9, 2009 Policy/Legislative Committee meeting held earlier today.

***Action Item**

A. *Ad Hoc Raise Proposal. *George Hopkins, Executive Director.*

ATRS' ad hoc pay proposal cannot be implemented at this time, but may be placed into legislative enactment for adoption by the Board when actuarially appropriate. This new proposal rewards older service over more recent service and longer service over shorter service. It is designed to give members a specific amount versus a percentage, which tends to be more beneficial to lower salaried employees. This proposal is based upon a decade process applying years of service in each decade. The more recent decades have a lower dollar weighting per service year than older decades. For instance, service years in the 2000's would be worth \$5, per service year in the 1990's a service year would be worth \$10, and service years in the 1980's would be worth \$20. Data was provided and reviewed to support this proposal. Per the actuarial study provided to the Committee, the cost of implementing this proposal would be 1.73 years of unfunded liability with a total cost of \$106M.

The Committee/Board could reduce amounts as long as the ratio between decades is equivalent.

**POLICY/LEGISLATIVE COMMITTEE CHAIR, MS. PARSONS,
MOVED THAT THE BOARD OF TRUSTEES APPROVE THE AD
HOC RAISE PROPOSAL, WHICH WAS UNANIMOUSLY
APPROVED BY THE BOARD.**

B. *Senate Bill 231 Definition of Salary Amendment. *George Hopkins, Executive Director.*

After several discussions with senior and mid-management staff, the original proposal before the Policy/Legislative Committee on anti-spiking was not workable and would lead to additional audit findings. The Executive Director and staff worked together on an alternative proposal that would take the best of three years of a member's salary at retirement and apply a mathematical formula to eliminate certain aspects of spiking. Issues to ensure fairness (i.e. concerning change of position, administrative personnel) were discussed.

The mathematical formula would take the best three years of salary, with the lowest salary becoming the base salary the next year's salary base would then be increased up 20%, becoming the new base salary. The third year would be increased by 20% and a three-year averaging used to obtain the base salary (these increases would have a cap of

20% or \$5K, whichever is greater being used. This proposal was reviewed with Legislative actuaries. The impact would prevent action such as the doubling of salary and special bonuses to manipulate the final average salary. No exceptions would be provided which would remove any staff subjectivity and make calculation of the final salary a consistent mathematical formula. This will address previous audit findings and minimize staff time on calculation of the final average salary.

POLICY/LEGISLATIVE COMMITTEE CHAIR, MS. PARSONS, MOVED THAT THE BOARD OF TRUSTEES APPROVE THE PROPOSED CHANGES TO SENATE BILL 231 (DEFINITION OF SALARY), WHICH WAS UNANIMOUSLY APPROVED BY THE BOARD.

- C. ***Interest Charged on T-Drop Distribution Deposits Due Back to ATRS When Termination Requirements Are Not Met.** *George Hopkins, Executive Director.*

While working with the technical corrections bill, the issue of recovering T-Drop withdrawals when the member did not effectively retire was reviewed with the Committee and Board. This issue becomes more important when coupled with the proposed 180-day separation period. The proposed law would allow ATRS to recover interest on a T-Drop withdrawal when the member did not effectively retire versus the System's duty to recover the payment, without interest, under the current law. The change would provide an incentive for quick recovery of the payment to ATRS.

POLICY/LEGISLATIVE COMMITTEE CHAIR, MS. PARSONS, MOVED THAT THE BOARD OF TRUSTEES APPROVE THE PROPOSED CHANGES TO SENATE BILL 227 (INTEREST CHARGED ON T-DROP DISTRIBUTION DEPOSITS DUE BACK TO ATRS WHEN TERMINATION REQUIREMENTS ARE NOT MET), WHICH WAS UNANIMOUSLY APPROVED BY THE BOARD.

- D. ***Purchase of Out-of-State Service in Technical Corrections Limited to 15 years, Not the 10 Years Proposed in the January 20, 2009 Policy/Legislative Committee Meeting.** *George Hopkins, Executive Director, and Gail Bolden, Deputy Director.*

Due to the length of the technical corrections bill discussed at the previous meeting there was concern that the Policy/Legislative Committee may not have fully discussed the issue of limiting the

purchase of out-of-state service from the current 15 years down to 10 years.

This was discussed to clarify that the Committee fully understood that the technical corrections bill would limit the purchase of out-of-state service from 15 years to 10 years.

The Investment Committee requested staff to research what NCTR's recommendation is on this issue. The Committee requested a Legislative actuarial study. Staff explained that the cost to purchase such service is high enough to offset the cost to the System.

**POLICY/LEGISLATIVE COMMITTEE CHAIR, MS. PARSONS,
MOVED THAT THE BOARD OF TRUSTEES RESCIND THE
TECHNICAL CORRECTIONS ON LIMITING PURCHASE OF OUT OF
STATE SERVICE FROM 15 TO 10 YEARS, WHICH WAS
UNANIMOUSLY APPROVED BY THE BOARD.**

- E. ***Proposed Revision to Securities Monitoring and Litigation Policy. (Resolution No. 2009-09) George Hopkins, Executive Director.**

Currently ATRS has security monitoring firms to fulfill ATRS' fiduciary duty to ensure that necessary litigation against unauthorized securities activities is monitored, and when possible, a recovery made. This proposal was presented to obtain a core policy understanding of whether the Board or the Executive Director has the final authority to authorize ATRS to become the lead plaintiff in class action securities litigation.

Authority was provided through the adoption of Resolution 2009-09 with the understanding that any significant decision regarding ATRS as lead plaintiff in any securities litigation action would be reported to the Chair of the Board of Trustees by the Executive Director to determine the necessity of bringing such a decision before the Board of Trustees for approval prior to action by the Executive Director.

**POLICY/LEGISLATIVE COMMITTEE CHAIR, MS. PARSONS,
MOVED THAT THE BOARD OF TRUSTEES APPROVE THE
ADOPTION OF RESOLUTION 2009-09 (PROPOSED REVISION TO
SECURITIES MONITORING AND LITIGATION POLICY, WHICH
WAS UNANIMOUSLY APPROVED BY THE BOARD.**

XX. **Staff Reports:**

- A. ***Medical Committee Report.** *Michael Ray, Director of Member Services* presented the Summary of Disability Applications Submitted for Consideration by the Medical Committee for the months of December 2008 and January 2009.

THE MOTION FOR APPROVAL OF THE MEDICAL COMMITTEE REPORT WAS MADE BY MS. NICHOLS, SECONDED BY MS. PARSONS, AND UNANIMOUSLY APPROVED BY THE BOARD.

- B. **Personnel Report.** *Gaye Swaim, Director of Human Resources.*
1. **Review of Grade 99 Position Descriptions.** ATRS is required to provide a description of the position and job responsibilities for all Grade 99 positions within ATRS.

Drafts of these job descriptions for Executive Director, Deputy Director, Associate Director of Investments, Associate Director of Fiscal Affairs and Associate Director of Internal Audit were provided, reviewed and approved by the Board before submission to the Office of Personnel Management.

- C. **Chief Fiscal Officer's Report.** *Suzanne Davenport.*
1. **Financial Statements** for August, September, October and November were provided and reviewed by Ms. Davenport with the Board of Trustees.
2. **2009-2010 Budget Request.** Ms. Davenport provided the Board with a memorandum and a copy of Senate Bill 100 (ATRS Appropriations Budget), which was reviewed with the Board of Trustees. The only item increased was Capital Outlaw in the amount of \$270,800 targeted to a conversion from the AS400. Increases were provided for increase in utilities for ATRS resuming occupancy of the 1st floor. The Agency received 6 of the 19 new positions requested.

Senate Bills 286 and 287 for capital improvements to the ATRS building left approximately \$117K in seed money to be used for other necessities of the System. These bills will not be passed since the building is complete and the funds are not necessary for construction.

- D. **Delinquent Employer Reporting Update.** *George Hopkins, Executive Director and Kim Godfrey, Deputy Legal Counsel.*

A memorandum was provided and reviewed with the Board outlining the background and discussion of possible options to collect monies owed by Dreamland Academy. The academy has had serious financial troubles since opening approximately two years ago. The exact amount owed for employee/employer contributions is unknown at this time. ATRS' legal options were fully discussed by staff, Executive Director and the Board of Trustees.

THE MOTION TO HAVE THE EXECUTIVE DIRECTOR PURSUE A FORBEARANCE AGREEMENT WITH DREAMLAND ACADEMY WAS MADE BY MR. LESTER, SECONDED BY MS. LEMING, AND UNANIMOUSLY APPROVED BY THE BOARD.

- E. **Payroll Report.** *Judy Brown, Supervisor Retiree Payroll* provided and reviewed the Payroll Reports for December 2008 and January 2009 with the Board.
- F. **Chief Legal Counsel Update.** *Christa Clark, Chief Legal Counsel.*
3. **Filing of IRS Determination Letter.** ATRS filed for an IRS Determination Letter Request to update ATRS approval of qualified status was filed by the deadline for Cycle C in January 2009.
 4. **Status Update on Voluntary Compliance Audit.** ATRS has completed its Voluntary Compliance Audit by the Rose Law Firm. All of the 401(a) plan requirements are in the code with notations that some of them may not be drafted the way we would like them to be which the IRS may have some comments on. Tax counsel's recommendation would be to wait on the IRS comments. Holding course and moving forward.
 5. **Update on Pending Lawsuits.** ATRS has settled one of the two outstanding nursing home lawsuits within policy limits and is now closed. The same law firm filing the first also filed the second nursing home lawsuit and a settlement is anticipated shortly.

XXI. **Other Business.**

***Action Item**

- A. **Southern Conference on Teacher Retirement.** The materials were provided for informational purposes only.

There was no other business to be addressed at today's meeting.

- XXII. ***Executive Session to Discuss Personnel Matters.** The Executive Session was postponed to a future meeting of the Board of Trustees.

Chair, Dr. Abernathy, requested legal counsel to provide an educational package as far a board responsibility, ethics, what can and cannot be said in executive session for distribution to the Board.

- XXIII. ***Adjourn.**

By announcement of the Chair, the Board of Trustees meeting was adjourned at 5:00 p.m.

Jane Toledo, Recorder

George Hopkins, Executive Director

Dr. Richard Abernathy, Chair
Board of Trustees

Date Approved