



# NYS DEFERRED COMPENSATION BOARD

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DIANA JONES RITTER

EDWARD M. CUPOLI

JOSEPH F. PENNISI

November 20, 2009

**Memorandum To:** Files

Minutes of the November 20, 2009  
Public Meeting of the  
New York State Deferred Compensation Board

A public meeting of the New York State Deferred Compensation Board (the "**Board**") was held on November 20, 2009, in Conference Room 2E at the offices of Shearman & Sterling LLP, 599 Lexington Avenue, New York, NY 10022. The meeting began at approximately 9:00 a.m. and adjourned at 3:00 p.m. A separate memorandum to the files, also dated November 20, 2009, lists the materials prepared for and referred to during the meeting, a copy of which is included as an attachment hereto.

**In attendance:**

Board Members:	Diana Jones Ritter, Edward M. Cupoli
Staff Members (" <b>Staff</b> "):	Edward Lilly, David Fischer, Sharon DiMura, Craig Dickinson, James Kiyonaga
Shearman & Sterling LLP (" <b>Counsel</b> "):	Kenneth Laverriere, Elizabeth Roseman, Veronica Wissel, Lee Lowenthal (Legal Assistant)
Nationwide Retirement Solutions (" <b>NRS</b> "):	Ric Whetro, Brenda Anderson, Patrick Ray, Tom Weber, Jill O'Callaghan, Anne Arvia, Cara Brody
Evaluation Associates LLC (" <b>EAI</b> "):	Linda Schlissel, Kathy Bajorinas
The Bank of New York Mellon (" <b>BNYM</b> "):	Mary Dunleavy, John Fox, Katherine Dinella
Dwight Asset Management (" <b>Dwight</b> "):	David Starr, Marie Mastro
Clifton Gunderson:	Thomas Heseltine
The Vanguard Group (" <b>Vanguard</b> "):	Gerald Giardinelli, Jeffrey A. Johnson, Frank Satterthwaite
Members of the Public:	Larry Dais

Diana Jones Ritter served as Chair and Lee Lowenthal acted as Secretary of the meeting. Ms. Ritter called the meeting to order and Edward Lilly presented a brief overview of the agenda. Ms. Ritter welcomed Larry Dais, who had been appointed as a member to the Board by Senator Malcolm Smith, President Pro Tem of the Senate. Mr. Dais's appointment was subsequently withdrawn by Senator Smith. Mr. Dais thanked the Board for its service and for welcoming him, and then Mr. Dais excused himself from the meeting. Mr. Lilly then announced that Senator Smith appointed Joseph F. Pennisi to the Board on November 19. Mr. Pennisi was unable to attend the Board meeting because the Senate was in session.

## **I. APPROVAL OF MINUTES**

After reviewing the minutes of the public meeting and executive session of the Board held on September 3, 2009, Edward Cupoli moved to approve the minutes, Ms. Ritter seconded the motion, and the Board unanimously approved the minutes.

## **II. REVISED INVESTMENT POLICY**

Mr. Lilly presented the Board with recommended modifications to the Board's current investment policy, with additional revisions from the investment policy presented to the Board at the September 3, 2009 public Board meeting. After discussion of the amended investment policy and the additional revisions, Mr. Cupoli moved to approve the proposed investment policy, Ms. Ritter seconded the motion, and the Board unanimously approved the policy.

## **III. SECURITIES LENDING**

John Fox of BNYM provided an overview of the Plan's current securities lending program. The Board inquired about the benefits and risks associated with a securities lending program. Mr. Fox discussed the risks associated with securities lending and the anticipated returns generated on the Plan assets lent under the program. Linda Schlissel of EAI noted that the Board's decision on whether to increase the Plan's securities lending capacity would depend on the Board's determination as to whether the benefits of increasing the amount of securities on loan outweigh the risks and that, in EAI's opinion, either decision was reasonable. Following additional discussion of the expected returns in relation to the potential risks posed by the program, the Board decided not to increase the level of the Plan's securities lending activity at this time.

## **IV. PLAN ISSUES**

### **A. Preliminary Budget Presentation**

Mr. Lilly presented the Board with an overview of the Plan's anticipated budget for fiscal year 2010-11. Mr. Lilly noted that the 2010-11 budgeted expenditures are expected to be substantially similar to those in fiscal year 2009-10. Mr. Lilly noted that Staff anticipates an estimated \$400,000 surplus from the asset-based fee imposed in April and October 2009 will be remaining at the end of fiscal year 2009-10 and that this surplus will be considered by Staff when calculating its recommendation of the asset-based fee to be imposed in April 2010. Ms. Schlissel advised the Board that EAI may recommend conducting a Request for Proposals for a new international investment manager, which would increase anticipated expenses set forth in the current draft of the fiscal year 2010-11 budget.

### **B. Plan Document**

Mr. Lilly advised the Board that certain provisions in the Plan document must be updated by December 2012 to comply with applicable laws and regulations. Accordingly, Mr. Lilly recommended that Staff and Counsel review the Plan document and prepare any recommended amendments to be presented to

the Board at the September 2010 Board meeting. Mr. Lilly also recommended that the revised Plan document be submitted to the Internal Revenue Service for a private letter ruling on its conformance with the Internal Revenue Code of 1986, as amended, and the applicable rules and regulations (collectively referred to as the “*Code*”). Mr. Lilly noted that the Plan has not requested a private letter ruling since December 2003.

### **C. Automatic Enrollment**

A discussion then ensued regarding issues pertaining to the implementation of an automatic enrollment feature for the Plan. Mr. Lilly provided an overview of the factors and challenges that would need to be considered prior to adopting an automatic enrollment feature. Ms. Ritter inquired with the representatives from NRS about automatic enrollment among other 457(b) governmental plans. The Board discussed the benefits and drawbacks of automatic enrollment. Ms. Ritter noted that while automatic enrollment would increase participation in the Plan and could enhance retirement savings among New York governmental employees, the issues raised by Staff and Counsel weighed against adopting automatic enrollment. Accordingly, the Board agreed not to move forward with an automatic enrollment feature at this time, but instructed NRS to continue to encourage voluntary participation in the Plan.

### **D. Plan Loans**

Mr. Lilly then opened a discussion of the Plan’s loan program with respect to loans subsequent to a default. David Fischer explained that the Plan document states that loans subsequent to a default are not permitted until the expiration of the original loan period and only to the extent permitted by Section 72 of the Code. Mr. Fischer also noted that certain participants who have defaulted on a Plan loan have requested an additional loan (since the maximum term of the original loan has now expired). Mr. Fischer noted that the Code permits a plan to grant a second loan to a participant with an outstanding defaulted loan, but only if the participant either provides additional collateral for the second loan or agrees to repayment of the second loan via payroll deductions. Staff also noted, however, that if the original loan that is in default is repaid prior to the origination of the new loan, the Code permits a plan to issue a new loan, provided that the new loan complies with the limitations set forth in the Code. Following a discussion, the Board agreed that given the issues surrounding collecting collateral and implementing payroll deductions, second loans to participants who have defaulted on a loan should be available only after the participant repays the first loan plus interest. Ms. Ritter then moved for Counsel to draft a clarifying amendment to the Plan document that provides that “loans will not be granted subsequent to a default until the original loan and accrued interest are satisfied,” or substantially similar words to that effect. Mr. Cupoli seconded the motion, and the Board unanimously approved the motion.

### **E. Managed Accounts**

Mr. Lilly commenced a discussion on managed accounts in relation to a presentation that was made to Staff by an investment firm. Following a discussion, the Board determined that the retirement date funds and balanced funds offered through the Plan provided participants with adequate asset allocation options.

## **V. EXECUTIVE SESSION**

Ms. Ritter moved that the Board enter executive session to discuss the performance audit of NRS and matters related to legal issues pertaining to NRS. Mr. Cupoli seconded the motion and the motion passed. The Board then conducted its business in executive session, whereupon Ms. Ritter moved to adjourn the executive session, which was seconded by Mr. Cupoli, and the Board returned to public session.

## **VI. NRS AUDIT PENALTY**

The Board reviewed the findings of Clifton Gunderson in the Performance Audit of NRS. Based upon the determinations of Clifton Gunderson and the recommendations of Staff, Ms. Ritter moved to impose penalties totaling \$75,800 for the Plan year 2008-09, Mr. Cupoli seconded the motion, and the motion was passed.

## **VII. MODEL PLAN ISSUES**

Mr. Lilly noted that it had come to Staff's attention that several local plan sponsors may not be in compliance with certain aspects of the Board's Rules and Regulations, including the maximum contract length and annual audit requirements. Ms. Ritter moved to instruct Staff to send a letter to all local plan sponsors reminding them of their obligation to comply with the Rules and Regulations and to forward such letter to the New York State Attorney General. Mr. Cupoli seconded the motion and the Board unanimously approved the motion.

## **VIII. STABLE INCOME FUND (THE "FUND") PRESENTATION**

Marie Mastro of Dwight reviewed the performance and current structure of the Fund. Ms. Mastro noted the Fund's performance and that cash flows to the Fund have not been as substantial as in previous months due primarily to strengths of the equity markets. Ms. Mastro noted, however, that contributions into the Fund continue to be strong.

David Starr of Dwight provided an overview of current industry trends in the stable value marketplace. Mr. Starr noted that wrap capacity in the market remains limited due to risk concerns and the significant wrap contracts held by AIG that AIG is trying to transfer to other providers. In addition, wrap providers are generally demanding higher fees. A discussion ensued regarding the challenges that the Fund will face with the upcoming maturity of several bond portfolios. Mr. Starr discussed the availability of separate account wrap products that are being offered by New York Life and Met Life. Met Life would require the Plan to impose an equity wash with respect to the self-directed investment window. The Board requested that Mr. Starr continue discussions with New York Life and Met Life and continue pursuing other options with respect to finding additional wrap capacity.

## **IX. NRS PRESENTATION**

Anne Arvia was introduced as the new Senior Vice President of Nationwide, replacing Bill Jackson, who is retiring December 2009. She previously served as President of Nationwide Bank. Patrick Ray of NRS then gave an overview of NRS's recent activities, including National Save for Retirement Week activities, new employee mailings, and presentations at key worksite locations. Mr. Ray then informed the Board that NRS became aware that participating employers were submitting deferrals from disability payments made pursuant to Section 207-c of the New York General Municipal Law that are not eligible to be deferred under the Plan. Mr. Ray described the remedial actions taken by NRS, in consultation with Staff, including sending a letter to all participating employers reminding them that 207-a and 207-c payments are generally not eligible for deferral into the Plan and distributing all the erroneous deferrals back to relevant participants.

Jill O'Callaghan then provided the Board with an overview of the HELPLINE, noting that 86 percent of all incoming calls to the Telephonic Counseling Service were answered in twenty seconds or less. Mr. Ray also noted that the number of loans initiated in 2009 increased 22 percent over the same period in 2008, total enrollment numbers increased, and 71 new local jurisdictions adopted the Plan in 2009. Mr.

Ray also noted that NRS will be conducting the first of three contractually required participant satisfaction surveys in 2010.

**X. EAI PRESENTATION**

Kathy Bajorinas of EAI gave an overview of the investment performance of the domestic equity investment options during the previous quarter. Ms. Bajorinas noted that during the quarter, equity markets were generally stronger than in the previous quarter, and Plan investment option performance was generally positive. Ms. Bajorinas noted that several of the Plan's investment options did not perform as well as their peer groups for the last quarter as a result of their conservative investment strategies (strategies that helped them to outperform their peers during the market downturn). The international investment managers experienced a similar underperformance to their peer group, and EAI indicated that it will continue to evaluate the international portfolios to determine whether it would be advisable to introduce an additional international investment manager.

**XI. VANGUARD PRESENTATION**

Gerald Giardinelli, Jeffrey A. Johnson and Frank Satterthwaite from Vanguard provided an overview of the investment options offered by Vanguard, including PRIMECAP, Capital Opportunity, and the Wellington Fund. Messrs. Satterthwaite and Johnson discussed the funds' investment strategies and the performance of the funds. A general discussion then followed regarding the contents of this presentation.

**XII. ADJOURN**

There being no further matters for discussion, Ms. Ritter moved to conclude the public meeting. Mr. Cupoli seconded the motion, and the Board unanimously approved the motion. The Board meeting was then adjourned at approximately 3:00 p.m.

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Lee Lowenthal  
Secretary of the Meeting