

Memorandum

TO: OPEB Trust Retirement Board
Peralta Community College District

FROM: Liz Masson 

DATE: May 19, 2016

RE: **Status of Proposed Amendment to Discretionary Trustee Agreement**

The Retirement Board entered into the current Discretionary Trustee Agreement ("Agreement") with Neuberger Berman Trust Company National Association ("NB") in 2012. Based on action taken by the Retirement Board in Closed Session at its April 14, 2016 meeting with respect to proposed changes to the Agreement, we provided a draft amendment to the Agreement to Ed Berman of NB. Mr. Berman and NB's legal counsel provided suggested revisions to the Agreement, which we reviewed. After we provided NB and its legal counsel with subsequent changes and comments in response, the draft amendment was the subject of a telephone conference with Mr. Berman, NB's legal counsel and our firm.

We agreed that a threshold issue is the proposed change to the current arrangement regarding investment in "proprietary" and/or affiliated funds of NB. There are several provisions in the draft amendment to the Agreement that relate to this issue, none of which can be finalized until the threshold issue is resolved. It is our understanding that this change will require approval by NB's parent company, and we informed Mr. Berman that we would not move forward with making additional changes to the draft amendment, pending resolution of this issue.

In addition to provisions related to this threshold issue, no agreement was reached with respect to provisions regarding the following issues:

1. Provision by the Trustee of regular, periodic reports of each investment fund's performance that would include information about returns both gross and net of fees.
2. Indemnification of the Retirement Board for indirect, general, special or consequential damages related to or arising from the Trustee's performance of investment and other Trust asset management services. (We would request additional guidance from the District regarding this issue.)
3. Indemnification of the Trustee for legal expenses incurred in pursuing claims on behalf of the Trust (e.g., opting into class action suits related to investments) without authorization by the Retirement Board. (NB's legal counsel agreed to provide draft language to appropriately define and limit the types of claims to which this would apply.)
4. Minimum coverage limitations for errors and omissions insurance and fiduciary liability coverage. (We would request additional guidance from the District regarding this issue.)

5. Length of the term of the Agreement. (We would request additional guidance from the District regarding this issue.)

Depending on the resolution of the threshold issue explained above, we will continue our work towards finalizing an amendment to the Agreement for presentation to the Retirement Board at the next meeting.

EJM