

New Hampshire College Tuition Savings Plan Advisory Commission  
Minutes of the Meeting of January 26, 2009

The January 26 meeting of the New Hampshire College Savings Plan Advisory Commission (Advisory Commission), held at the offices of the New Hampshire Higher Education Assistance Foundation in Concord, was called to order at 10:00 a.m. by Dr. Edward MacKay, Advisory Commission Chair. Members present at the meeting were:

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| Edward MacKay (Chair) | Vice Chancellor & Treasurer, representing the University System of New Hampshire         |
| Harold Janeway        | State Senator  |
| William Denley        | State Senator  |
| Robert Foose          | State Representative   |
| Russell Ingram        | State Representative   |
| Tara Payne            | Vice President, representing the NH Higher Education Assistance Foundation Organizations |
| Thomas Horgan         | President & CEO, representing the New Hampshire College and University Council           |
| Ann Toomey            | Director of System Research and Grants, representing the Community College System of NH  |
| Martha Gooze          | Public Member, appointed by the Governor   |
| Michael Cryans        | Public Member, appointed by the Governor   |
| Catherine Provencher  | State Treasurer  |

Absent were:

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| Kathryn Dodge | Executive Director, Post Secondary Education Commission                          |
| Linda Hodgdon | Representative of the Governor and Commissioner of Administrative Services Dept. |

Also present were Joe Ciccariello, Jeff Troutman, Christopher Sharpe, David Pearlman, Mary Connors and Kyla Doyle from Fidelity Investments (Fidelity), Steven Hirt of PricewaterhouseCoopers LLP, Richard Mahoney, Director of the New Hampshire Audit Division, Richard Gustafson and Amy Bourgault from the Community College System of New Hampshire, Scott Power of the New Hampshire College and University Council, Judith Knapp of Postsecondary Education and Brad Jacobson, Deputy State Treasurer.

The minutes of the meeting of November 3, 2008 were reviewed and approved as written.

Senator Denley was introduced by Dr. MacKay and welcomed as the newly appointed representative of the New Hampshire Senate replacing Senator Hassan.

**Fiscal 2008 External Audit Review**

Mr. Mahoney introduced Mr. Hirt of PricewaterhouseCoopers (PWC) and advised the Advisory Commission that PWC had won an RFP process last year, conducted by the State's Audit

Division, and was awarded the audit contract for five years beginning with fiscal year 2008. Mr. Mahoney also informed the Advisory Commission that the Fiscal Committee of the State's Legislature (Fiscal) had been presented with a similar audit presentation on January 16 in accordance with State law. Ms. Provencher, who was also present during the Fiscal Committee presentation, indicated that Fiscal's response to the presentation was very positive and focused primarily on the success of the College Savings Plan program.

Mr. Hirt presented the highlights of the external audits of the UNIQUE plan and the Advisor 529 plan audits for the fiscal year ended September 30, 2008. The two plans currently consist of 50 individual investment portfolios which require 50 audit opinions since each portfolio maintains its own books and records. The audit approach focused on internal controls over daily unit value processing, re-balancing processes, participant transactions (e.g. account set-up and remittance processes), multi-class accounting and reliance on the independent audit required of Fidelity under Statement on Auditing Standards No. 70 (SAS 70), as a service corporation. This is the first year that Fidelity's SAS 70 audit included all college savings plans.

From a financial statement perspective, Mr. Hirt highlighted PWC's audit focus which included investment valuation of the Fidelity funds underlying the 50 portfolios, charging and allocation of fees and expenses, confirmation with the recordkeeping agent and the financial statement presentation and required disclosures.

The results of the audit were unqualified opinions on each of the portfolios. Only one audit adjustment, recommended by PWC and made by Fidelity, related to an incorrect classification of certain capital gains received from the underlying mutual funds. Mr. Hirt also commended the Advisory Commission for its involvement and oversight of the Plans as demonstrating "best practice" for all of the other States' plans that PWC audits.

### **Old Business**

The statuses of issues that have arisen in prior meetings, requiring further resolution were reviewed as follows:

1. Endowment Fund Asset Allocation Study  
Treasurer Provencher reported that Treasury continues to work on the Endowment Fund allocation. Treasury has received no comments on the recent proposal so Treasury is proceeding with fund selection. Treasury is also considering, due to current and expected future resource constraints, outsourcing the investment management of the endowment fund as is the practice with certain other State funds and trusts in the custody of the Treasury.
2. Status of Fidelity Advisor 529 Plan Service and Administrative Changes – Mr. Troutman informed the Advisory Commission that work on the process changes, to move certain administrative responsibilities from Fidelity to broker-dealers as discussed in previous meetings, was still underway. The intent of these changes was to make the process from

initial broker-dealer contact with customers to the opening of Fidelity Advisor 529 accounts and depositing contributions much quicker and more efficient. The status of these process changes, which will likely require future contract amendments, will continue to be reported to the Advisory Commission.

3. Status of Money Market Portfolio Fee Reduction to Avoid Negative Returns – Mr. Troutman reported that contract amendment language to permit the voluntary waiver of certain fees charged to the Advisor 529 money market portfolios had been drafted and provided to the Treasurer for review and comments. The proposal, presented at the November 3, 2008 meeting, would prevent potential negative returns to those plan participants of the money market portfolios due to low investment rates caused by the current economic downturn. Mr. Jacobson indicated that the amendment language had been reviewed by Treasury, was in the process of review by the office of the Attorney General and was expected to go before the Governor and Executive Council on February 18 for approval. (The Advisory Commission approved this proposal and delegated to the Treasurer the authority to negotiate and execute the necessary contract amendments at the November 3, 2008 meeting.)
4. Status of Members' Statements of Financial Interest – Mr. Jacobson reminded all Advisory Commission members that their annual Statements of Financial Interests are overdue and need to be filed with the Secretary of State. Furthermore, House Bill 255 if passed during this session would prevent members from carrying out their responsibilities until such time as a Statement of Financial Interest has been filed.

### **Summary of the Investment Committee Meeting**

Dr. MacKay provided the Commission members with a summary of the discussion held during the Investment Committee meeting which commenced at 9:00. Calendar year 2008 was very difficult from an investment perspective and somewhat of an historic aberration since both equity and fixed income investments lost market value simultaneously due to the severe economic downturn. This environment was even more difficult for those participants with beneficiaries who have reached or are close to matriculation and are ready to start college, even if they held age-based portfolios.

In responding to a question about lessons learned from 2008, Mr. Sharpe indicated that Fidelity has been holding internal discussions about potential age-based portfolio changes as they near the age of matriculation to mitigate portfolio volatility and market value risk experienced in 2008. To move such a portfolio to all cash at matriculation age would, however, expose participants to the risk of rapidly rising college costs making these portfolio changes very challenging.

Mr. Sharpe stated that while portfolio performance is well below Fidelity's benchmarks, their performance was somewhat better than competitors managing other States' plans when comparing age-based portfolios as Fidelity had less exposure than competitors to high-risk

assets. Mr. Sharpe indicated that he had a presentation comparing Fidelity performance to their direct competition in age-based portfolios for one, three and five years. The presentation will be emailed to Mr. Jacobson who can then forward it to the Advisory Commission members. (Sent by Mr. Jacobson on Wednesday January 28, 2009.)

### **2007 – 2008 Scholarship Report Status from Participating Institutions**

Ms. Knapp provided a summary of UNIQUE Endowment Allocation Program and UNIQUE Annual Allocation Program scholarships awarded during the 2007 – 2008 school year. Participating institutions awarded 123 scholarships from their UNIQUE Endowment Allocation Program funds totaling over \$383,000 as compared to 3 scholarship awards in the previous school year. Three institutions have not report awarding any scholarships. The 2007-2008 school year was the first year in which participating institutions were expected to be able to award scholarships since all awards are to be made out of earnings and due to other program requirements.

Over 900 UNIQUE Annual Allocation Program awards were made by those institutions reporting with total awards of \$1,035,115. Two institutions have yet to report. Once all the results are in, and as in prior years, Ms. Knapp and Mr. Jacobson will reconcile the amount of scholarships awarded by institutions to students to the amount of Annual Allocation Program funds distributed by Treasury to the institutions.

### **UNIQUE Annual Allocation Program Criteria for School Year 2009-2010**

Dr. MacKay summarized the three requirements to be determined for the subsequent academic year by the Advisory Commission every January with respect to the UNIQUE Annual Allocation Program: 1) Total Annual Award (initial disbursement of \$1.2 million in the current year), 2) Expected Family Contribution (EFC, currently \$1,000 or less), and; 3) Individual Annual Award (currently \$1,500 to be allocated between semesters). The filing deadline for the Free Application for Federal Student Aid (FAFSA), which was established by the Advisory Commission through a change to Administrative Rule Csp 600 in 2008, was not in effect in January 2008 when these requirements were established. The filing deadline for the FAFSA must, however, be in effect for the 2009-2010 school year.

Following significant discussion on the various factors and the potential impacts on student aid and the future health of the endowment trust from which scholarship funds are disbursed, and to begin the decision-making process, Ms. Gooze moved, and Mr. Horgan seconded, that the criteria for the UNIQUE Annual Allocation Program to be determined by the Advisory Commission for the 2009-2010 school year be:

1. Total initial disbursement to institutions for scholarships to be \$1,200,000. Institutions will be guaranteed reimbursement for awards made to qualified students in excess of their initial disbursement.

2. Expected Family Contribution not exceed \$1,000
3. Individual scholarship awards of \$1,500
4. FAFSA filing receipt deadline established at August 1, 2009

Additional discussion was held following this motion concerning the ongoing and long-term future health of the endowment trust. A motion was made by Senator Janeway and seconded by Representative Foose that the individual scholarship award recommended in the initial motion be amended and reduced by \$200 per student. The motion to amend the individual scholarship award and lower it to \$1,300 per student was passed by the majority of the members present.

The FAFSA deadline of August 1, 2009, was then discussed with a focus on those students of the Community College System of New Hampshire who file their FAFSA much later than August 1st and who typically are the students with the greatest financial need. Representative Foose moved and Ms. Toomey seconded a motion to amend the FAFSA filing deadline for the school year 2009-2010 to be May 1, 2010. That motion failed to pass. After more discussion Ms. Gooze moved and Senator Janeway seconded that the deadline for the receipt of the FAFSA by the institutions be amended to December 31, 2009. That motion passed unanimously.

Dr. MacKay called for a vote on the initial motion, as amended, for the following criteria to be approved:

1. Total initial disbursement for scholarships to be \$1,200,000, with a guaranteed reimbursement to institutions who award more than the initial disbursement to qualified students.
2. Expected Family Contribution not exceed \$1,000
3. Individual scholarship awards of \$1,300
4. Receipt of FAFSA filing deadline established at December 31, 2009

The amended motion passed unanimously.

### **Fidelity Contract Negotiation Status**

Dr. MacKay reported that contract negotiations with Fidelity have been completed by the ad hoc negotiating committee. The committee, consisting of Dr. MacKay, Treasurer Provencher, Senator Janeway, Representatives Foose and Ingram, Dr. Gustafson and Mr. Jacobson, has been meeting with Fidelity on many occasions over the last several months and has agreed on a recommendation to review with the Advisory Commission for approval.

Dr. MacKay proposed that the Advisory Commission enter a non-public session to discuss the results of those negotiations in detail and obtain approval by the Advisory Commission to proceed with the proposed contract amendments. Mr. Jacobson reported that the Treasury had received an opinion from the Attorney General's office that the Advisory Commission can conduct a non-public session to discuss the results of the negotiations due to their confidential nature and the fact that Fidelity could be competitively harmed by public disclosure.

It was moved by Representative Foose and seconded by Senator Janeway that the Advisory Commission enter into a non-public session in order to discuss the full and confidential results of the contract negotiations and the proposed contract amendments due to their sensitive and confidential nature and that public disclosure of the results of these negotiations and potential contract amendments would cause competitive harm to Fidelity. A roll-call vote was taken of all members present and the motion passed unanimously. Dr. Gustafson and the Fidelity staff were asked to remain in the room as they took part in the negotiations.

Following the non-public session the meeting was called to order by Dr. MacKay. Treasurer Provencher made a motion, which was seconded by Ms. Gooze, that due to the confidential nature of the discussions held during the non-public session that any minutes taken, materials reviewed and decisions reached by the Advisory Commission during this non-public session not be disclosed to the public due to the sensitive and confidential nature of this discussion and decisions reached and because such public disclosure could cause competitive harm to Fidelity Investments. The motion passed unanimously.

Mr. Cryans then moved that the Advisory Commission delegate full authority to the State Treasurer to execute all amendments to the existing contracts with Fidelity, if any are required, based on the decisions reached during the non-public session. The motion was seconded by Representative Foose and passed unanimously.

### **Proposed Administrative Rules Csp 100, Csp 200 and Csp 300**

Mr. Jacobson reported that Administrative Rules Csp 200 and Csp 300 had recently expired and need to be adopted. The “initial proposal” for Administrative Rules for the College Savings Plan requires approval of the Advisory Commission as the first step in the Administrative Rules process. The draft Rules, previously sent to the Advisory Commission members for review prior to this meeting, include recommended changes by Mr. Jacobson and Mr. Pearlman to reflect current-day practices and terminology, changes in the State’s Right-To-Know laws and changed in IRS regulations as follows:

1. Rule Csp 100 to be readopted as amended. This Rule has not expired.
2. Rule Csp 200 has expired and needs to be adopted. There are no changes proposed from the now-expired version.
3. Rule Csp 300 has also expired and needs to be adopted with changes to the now-expired Rule.

Following a brief discussion Senator Janeway moved that the “initial proposal” for Administrative Rules Csp 100, Csp 200 and Csp 300 be approved. The motion was seconded by Mr. Cryans and approved unanimously. A public hearing on these Administrative Rules will be planned for the May 18, 2009 meeting and will be followed by the adoption of the final Rules at the July 27, 2009 meeting.

### New Hampshire's 529 Program Update

Mr. Ciccariello announced that Mr. Pearlman, who has been an integral part of the New Hampshire College Savings Plan process since before its inception as well as a leader in the College Savings Plan industry, will be retiring from Fidelity in April of this year. The Advisory Commission acknowledged Mr. Pearlman's significant contributions and their sincere appreciation of his efforts over the years with a round of applause.

Due to time constraints, and since there had already been a briefing earlier in the meeting on investment market conditions, Dr. MacKay asked the Fidelity team to provide any additional highlights or urgent issues relating to the UNIQUE retail plan and the Advisor 529 plan.

Mr. Ciccariello and Mr. Troutman both indicated that due to current market conditions both plans have experienced a drop off of new account openings. Mr. Troutman reported that Fidelity continues to focus on those financial advisors who continue to view 529 plans as a secondary product line when working with their clients. Ms. Doyle pointed out that Fidelity marketing efforts and messaging will be focusing on rebuilding investor confidence in the 529 plans following the dramatic market fall.

### Endowment Fund and Scholarship Update

Ms. Provencher provided the Advisory Commission members with a very brief update on the Endowment Fund which had a market value of approximately \$16 million as of December 31, 2008. She encouraged Advisory Commission members to review the quarterly report of the Treasury and to contact her with any questions.

### Other Business

Members, other than Legislative representatives and the Treasurer, were reminded by Mr. Jacobson that their biennial Advisory Commission membership appointments are due in June and, for public appointments by the Governor, in September in every odd year. Appointment letters should be addressed to the Treasurer who retains all membership information.

There being no further business, Dr. MacKay adjourned the meeting at 12:15 p.m.

NOTE: The next regular meeting is scheduled for May 18, 2009 starting at 10:00 a.m. at the New Hampshire Higher Education Assistance Foundation in Concord.