

BOARD OF TRUSTEES

Regular Meeting

Friday, December 9, 2005, 12:00 p.m.
Retirement Fund Conference Room

MINUTES

DEFINED BENEFITS

I. ATTENDANCE, QUORUM, AND CALL TO ORDER

After determining a quorum was present, the Retirement Fund Board of Trustees Regular Meeting for the Defined Benefits Plan was called to order at 12:20 p.m. Friday, December 9, 2005, in the Retirement Fund Conference Room. Chairman Joe T. San Agustin officiated.

Board of Trustees Present:

Joe T. San Agustin, Chairman
Wilfred P. Leon Guerrero, Vice-Chairman
James J. Taylor, Secretary
Anthony C. Blaz, Trustee
Gerard A. Cruz, Trustee
George A. Santos, Trustee

Board of Trustees Absent:

Katherine T.E. Taitano, Treasurer

Staff Present:

Pete Tajalle, Acting Director
Jackie Blas, Recording Secretary

Public Present:

Mindy Fothergill, KUAM
Joanne Grimes, Carlsmith Ball (via phone conference)

II. REVIEW AND APPROVAL OF BOARD MINUTES

A. November 10, 2005 Regular Meeting

On motion of Trustee George Santos, seconded by Trustee Anthony Blaz, and without objection, the Minutes of November 10, 2005 Regular Meeting were approved, subject to corrections. Motion passed.

III. CORRESPONDENCE

A. November 16, 2005 Letter from Joanne Grimes Regarding Open Government Law: Impact on Email Communications Among Board Members

Chairman San Agustin stated that he received a letter from Legal Counsel Joann Grimes regarding the open government law impact on email communications among Board members. Chairman San Agustin stated that there is no call to vote on the email communications. Chairman San Agustin stated that it is sharing information and that there is no decision making involved. Chairman San Agustin stated that Legal Counsel Grimes' letter is advising the Board of Trustees not to conclude business via email. Vice-Chairman Wilfred Leon Guerrero stated that he thinks that Legal Counsel Grimes does not want the Chairman to email her. Chairman San Agustin stated that he feels free to communicate with the Fund's Legal Counsel. Chairman San Agustin stated that the Board should be given the opportunity to explore the different avenues on how the Board could proceed.

B. December 1, 2005 Letter from Winton Young, First Hawaiian Bank, Regarding Custody of the Emerging Markets Growth Fund Shares – Capital International, Inc.

Chairman San Agustin stated that the Board received a letter from Winton Young regarding the custody issue with Capital. Vice-Chairman Leon Guerrero stated that, as far as the Investment Committee is concerned, this issue has not been resolved. Chairman San Agustin stated that everything has to go to the custodian bank. Chairman San Agustin stated that the correspondence from First Hawaiian Bank just reiterates their position. Trustee Gerard Cruz stated that the Investment Committee decided not to fund Capital. Chairman San Agustin asked what is to be done with Capital. Trustee Cruz stated that Capital could be funded under another arrangement.

C. December 2, 2005 Letter from Dennis Condon Regarding John Rios – Pension and Benefit Plan Fiduciary Liability

Chairman San Agustin stated that the Fund received a letter from Dennis Condon who represents the Fund's Underwriters. Chairman San Agustin stated that the letter states that the Fund is responsible for payment of the first \$35,000.00 of Loss, including Claims Expenses. Chairman San Agustin stated that he does not understand why it is up to \$35,000.00 including costs. Chairman San Agustin stated that Mr. Rios has incurred a bill of about \$200,000.00 which is being reviewed by the Fund's Legal Counsel. Chairman San Agustin stated that the Fund has received a preliminary report from Attorney Pat Mason. Chairman San Agustin stated that the preliminary report is very inconclusive. Chairman San Agustin stated that Acting Director Paula Blas stated that she will be sending the report back to Attorney Mason. Chairman San Agustin stated that Attorney Mason only interviewed Mr. John Rios and did not go beyond verifying the documentations or interviewing other employees from the Fund. Chairman San Agustin stated that Mr. Rios' statement to Attorney Mason was that he was not at the Fund at the specific instances. Chairman San Agustin stated that Acting Director Blas had stated that Mr. Rios was at the Fund during the transaction. Trustee Cruz asked if there is a procedure by which the Board or Management would use if the Board or Management wanted to seek coverage because of a lawsuit. Acting Director Pete Tajalle stated that it would take a request in writing to the Fund's Director to request for indemnification. Trustee Cruz asked if there is a statute of limitation as to when Board or Management could seek coverage. Trustee Cruz stated that coverage may or may not come from the insurance company. Acting Director Tajalle stated that there is no formalized procedure in

place. Trustee Cruz recommended that a procedure or a policy that the Board will adopt be put in place. Chairman San Agustin directed for Management to have a policy in place for adoption by the Board.

IV. DIRECTOR'S REPORT - EXECUTIVE SUMMARY

William Don Parkinson vs. Government of Guam, Guam Memorial Hospital Authority and Guam Public School System - Acting Director Tajalle stated that Mr. Parkinson is suing for the outstanding contributions from the Guam Memorial Hospital Authority and the Guam Public School System that are due to the Retirement Fund. Acting Director Tajalle stated that a copy of the lawsuit is provided to the Board of Trustees for their review.

Candelaria Rios, et al. v. Joseph Ada, et al (Special Proceeding Case No. SP206-98) - Acting Director Tajalle stated that on October 27, 1993 a petition was filed to fully implement the Retirement Fund Cost of Living Allowance. Acting Director Tajalle stated that the case has been dormant all these years and a new "Notice of Motion" has been filed. Acting Director Tajalle stated that a copy of this proceeding and Attorney David Dooley's response is provided for the Board's information.

Director's Position - Acting Director Tajalle stated that there were two applicants for the Director's position. However, only one applicant met the eligibility requirements. Acting Director Tajalle stated that an interview with the eligible applicant will be scheduled within the next two weeks with the Board of Trustees. Chairman San Agustin suggested scheduling the interview for sometime next week with the full Board.

Investment Mandate Amendments: Section 8157 and Section 8158 - Acting Director Tajalle stated that the draft legislation for Section 8157 is currently with the Investment Committee for their review. Acting Director Tajalle stated that the draft legislation for Section 8158 has been transmitted to the Legislature. Acting Director Tajalle stated that a specific date has not been set for the public hearing. Chairman San Agustin stated that he met with Speaker Mark Forbes and Speaker Forbes is trying to schedule the public hearing for sometime next week. Chairman San Agustin stated that he asked Speaker Forbes for a specific date, because the Fund may ask Mercer to assist in the testimony for the public hearing.

Organic Act/Trust Agreement - Secretary James Taylor stated that he has reviewed the proposed Trust Agreement and has generally agreed with the structural set up. Secretary Taylor stated that the action item on the Trust Agreement is the question of whether the Fund should be suing the Legislature or the Government of Guam for the full amount of the actuarial rate. Secretary Taylor stated that if the answer is "yes," then the Board needs to move forward on that before the Fund moves forward on the Trust Agreement. Secretary Taylor stated that if the answer is "no," the Board should consider the Trust Agreement. Chairman San Agustin stated to ask this question when Legal Counsel Joanne Grimes is on the conference call. Secretary Taylor asked Acting Director Tajalle if Management has asked Legal Counsel this specific question of suing the Government of Guam. Acting Director Tajalle stated that he would have to check with Acting Director Paula Blas if this specific question was asked before.

Phone Conference with Legal Counsel Joanne Grimes – 12:40 p.m.

Chairman San Agustin informed the Board that Legal Counsel Joanne Grimes will be on a conference call with the Board regarding the Don Parkinson lawsuit.

Chairman San Agustin stated that questions were raised as to why is it that the Retirement Fund Board has not filed a lawsuit against the Government for its failure to remit the required contributions on a timely basis as required by law. Chairman San Agustin asked if the Board is in a fiduciary liability by its failure to do so. Chairman San Agustin also asked the question of who will the Attorney General represent.

Legal Counsel Joanne Grimes stated that she received Chairman San Agustin's email regarding Don Parkinson's lawsuit. Legal Counsel Grimes stated that she did not look over the Parkinson lawsuit in a manner as if the Fund was a main defendant. Chairman San Agustin mentioned that Mr. Parkinson excluded the Fund from being a defendant in the lawsuit. Chairman San Agustin stated that the question being asked is if Mr. Parkinson is acting on behalf of the Retirement Fund or should the Retirement Fund Board have filed the lawsuit. Legal Counsel Grimes stated that the lawsuit is a writ of mandate. Legal Counsel Grimes stated that a writ of mandate is a very specific type of proceeding - it asks a court or agency or another court to do an action that is compelled by law. Legal Counsel Grimes stated that mandates are not appropriate to seek money damages. Legal Counsel Grimes stated that this writ seeks to compel the Guam Memorial Hospital Authority to pay the amount appropriated. Legal Counsel Grimes stated that if the money was appropriated and the agency has not remitted payment, then a writ of mandate is an appropriate action. Legal Counsel Grimes stated that the way the law is written is that the money is appropriated but only if paid if an employee is trying to retire.

Chairman San Agustin stated that the way the law was structured, the Fund gets interest and penalty and that any employee wishing to retire must have their contributions fully paid and also the agency must be fully up to date with its contributions. Chairman San Agustin stated that the questions raised is why didn't the Retirement Fund file a lawsuit and if the Board is in a fiduciary liability by its failure to do so. Legal Counsel Grimes stated that she does not know the answer to that question but her understanding is that employees were retiring. Legal Counsel Grimes asked if the Fund has been getting paid in accordance with the public law. Chairman San Agustin replied, "yes." Acting Director Tajalle asked Legal Counsel Grimes if she is referring to Public Law 28-38. Legal Counsel Grimes stated that pursuant to Public Law 28-38, the Fund is being paid. Acting Director Tajalle stated that payment is being made based on the three conditions being met.

Acting Director Tajalle stated that the other public law appropriates \$1.4 Million to allow for retirement of GMHA employees with two different parts. Acting Director Tajalle stated that \$600,000.00 was to be used for fiscal year 2005 current contributions; and \$800,000.00 was to take care of past due contributions from employees seeking to retire from GMHA. Legal Counsel Grimes asked if these have been paid. Acting Director Tajalle stated that these have not been paid. Chairman San Agustin asked if this is the subject of Parkinson's suit. Acting Director Tajalle asked if the subject of Parkinson's suit is Public Law 28-38 or Public Law 28-66. Legal Counsel Grimes stated that Parkinson's suit cites both Public Law 28-38 and Public Law 28-66. Legal Counsel Grimes stated that if the Fund was not paid in accordance to Public Law 28-66, then the question of should the Board have filed a lawsuit, then the answer might be yes. Legal Counsel Grimes further stated that if the Fund had been paid in accordance to Public Law 28-38, the answer to the question of whether the Board should have filed a lawsuit, the answer is no.

Secretary Taylor stated that the Fund has not been paid the \$15 Million and the \$16 Million and that payment to the Retirement Fund was required under law. Acting Director Tajalle stated that Secretary

Taylor was referring to the original outstanding amount of contribution which has not been paid to the Fund. Legal Counsel Grimes stated that the Board's fiduciary duty is to weigh the cost of filing a lawsuit trying to collect against the benefit of actually collecting. Acting Director Tajalle stated that the Board won't be found at fault because the Board has sought alternative means of trying to collect the money. Chairman San Agustin stated that the question raised is if the Fund can't do it, how will Parkinson's lawsuit succeed. Legal Counsel Grimes stated that many of Parkinson's requests for relief fall into a category called the separation of powers. Chairman San Agustin asked what will the Board's role since Parkinson succeeded in getting Judge Bordallo to issue a call that must be satisfied in ninety days. Legal Counsel Grimes stated that the defendants have ninety days to answer. Chairman San Agustin asked what is the Board's legal stand on this position. Legal Counsel Grimes stated that the Fund is not required to answer and the Fund could take the position that it is an interested party.

Chairman San Agustin stated that Parkinson's lawsuit seeks that failure of payment from any contributing agency, the Fund should stop payment for any retirees. Chairman San Agustin stated that Mr. Parkinson's concept is a Government of Guam retiree is a Government of Guam retiree regardless from which agency the retiree comes from. Chairman San Agustin stated that Mr. Parkinson's theory is there is just one single employer. Legal Counsel Grimes stated that Public Law 28-38 recognizes that the decision by the Board was that if GMHA is in arrears, the Fund was not going to allow new retiree applications. Legal Counsel Grimes stated that the Board has gone through the criteria in Judge Lamorena's order.

Legal Counsel Grimes stated that she had recommended that the number one suggestion to compel the Legislature to increase the mandatory contribution rate to 26% is for the Fund to pursue the amendment through the Organic Act. Chairman San Agustin asked if the Fund should proceed with the Trust Agreement, won't that mandate them. Legal Counsel Grimes replied, "no." Legal Counsel Grimes stated that the Trust Agreement will mandate a trust once money has come in. Legal Counsel Grimes stated that the Trust Agreement can not compel what comes into the Trust. Secretary Taylor stated that he disagrees with that, but would like to hear more on Legal Counsel's advocacy to the amendment of the Organic Act. Legal Counsel Grimes stated that if everyone signed the Trust Agreement then it would be a contractual obligation. Legal Counsel Grimes stated that her assumption is that the Trust Agreement will not be signed. Legal Counsel Grimes stated that, from a legal prospective, she would rather try to enforce an Organic Act provision as opposed to a contract provision. Secretary Taylor stated that the Fund should try both the Organic Act and the Trust Agreement. Chairman San Agustin asked if the nature of the Defined Benefits Plan a contractual relation. Legal Counsel Grimes stated that as long as current obligations are paid, you have not breached the contractual relation.

Secretary Taylor stated that the current situation is that 100% of the current contributions are being used to fund the current retirees and not a penny is going to fund the current employees. Legal Counsel Grimes stated that the key on the contribution rate is on the investment side. Acting Director Tajalle stated that all the assumptions have to work together. Secretary Taylor stated that Mercer had said that, under the current investment laws, the best the Fund could hope for is an additional two tenths of one percent. Legal Counsel Grimes asked who is going to take the risk on the contribution rate. Chairman San Agustin stated that 100% of the employee contributions are going in to pay for the current retirees. Chairman San Agustin stated that the government shall pay contributions at the required actuarial rate. Legal Counsel Grimes stated that the amendment of Section 8157 and Section

8158 are designed to improve the expected returns of the Fund and will improve the possibility of reducing the unfunded liability. Chairman San Agustin stated that he is still waiting for a legal opinion on the amendments. Legal Counsel Grimes stated that she sent the legal opinion to Acting Director Blas. Legal Counsel Grimes stated that she will forward the legal opinion to Chairman San Agustin.

Chairman San Agustin reverted back to the Parkinson issue. Legal Counsel Grimes stated that since the Fund has been getting paid except for the \$1.4 Million. Chairman San Agustin asked if the Fund is compelled to do anything with Parkinson's lawsuit. Legal Counsel Grimes replied, "no." Chairman San Agustin asked if there is a possibility for the Fund to be a party to the suit. Legal Counsel Grimes stated that the declaratory relief requested is not appropriate. Acting Director Tajalle asked how would you compel the Legislature to pay the actuarially determined contribution rate. Acting Director Tajalle asked if the Fund should file a lawsuit since the law said "shall." Legal Counsel Grimes stated that the Fund has the expertise to help the Legislature reduce that rate. Chairman San Agustin stated that that is the goal of pushing the amendments to Section 8157 and Section 8158.

Vice-Chairman Leon Guerrero asked about the proceeds from the Guam Telephone Authority (GTA) sale. Acting Director Tajalle stated that the unfunded liability for the GTA retirees is supposed to be paid from the proceeds of the GTA sale. Acting Director Tajalle stated that Acting Director Blas had discussed with Legal Counsel Grimes the legality of discontinuing payment of GTA annuitants due to non-receipt of the outstanding unfunded liability. Legal Counsel Grimes stated that she has not heard of this issue. Chairman San Agustin stated that the law could be repealed for the \$11 Million unfunded liability of GTA to automatically go to the General Fund. Chairman San Agustin stated that the question is, as long as the law exists, does the Fund continue to pay GTA retirees. Legal Counsel Grimes stated that she does not know if the Fund could stop payment to the GTA retirees.

Legal Counsel Grimes inquired about the public hearing on two bills. Chairman San Agustin stated that one of the bills is on the forfeiture of retirement payment of a convicted felon. Legal Counsel Grimes stated that the "bad boy" clause is prohibited under the ERISSA Plan. Chairman San Agustin stated that he asked that the public hearing be postponed. Legal Counsel Grimes stated this applies to people who plea guilty to avoid the trail.

Legal Counsel Grimes stated that Bill 226 allows for double dipping for principals and assistant principals. Legal Counsel Grimes stated that the Board does not have to enforce this bill unless there is adequate funding. Acting Director Tajalle asked if the Fund has a legal stand to prohibit this because they are entitled to the annuity because of years of service put in.

Acting Director Tajalle asked about Bill 230. Acting Director Tajalle asked if the Legislature can mandate a forfeiture of benefit. Legal Counsel replied, "they can." Legal Counsel Grimes stated that it is only prohibited by ERISSA. Legal Counsel Grimes stated that it seems that this is targeting the Defined Contributions Plan. Acting Director Tajalle stated that the Defined Benefit Plan membership is closed. Legal Counsel Grimes stated that Bill 230 states that you will forfeit your retirement benefits if you are convicted of a crime. Chairman San Agustin stated that this applies to employees who are members after the enactment of this act. Chairman San Agustin stated that this raises a lot of issues on the Defined Benefits Plan.

End of Phone Conference with Legal Counsel Joanne Grimes

Continuation of discussion of the Organic Act/Trust Agreement

Secretary Taylor stated that Legal Counsel Joanne Grimes is pessimistic about anyone signing the Trust Agreement. Secretary Taylor stated that he is pessimistic about amending the Organic Act. Secretary Taylor stated that he would like to explore doing both the Trust Agreement and the amendment to the Organic Act. Chairman San Agustin stated that he is getting an indifference approach. Chairman San Agustin stated that Attorney Michael Phillips made a statement that there is no need to amend the Organic Act. Trustee Cruz asked who would need to sign the Trust Agreement. Chairman San Agustin stated the Legislature and the Governor. Chairman San Agustin stated that it may be easier to go through with the Organic Act. Trustee Cruz stated that the Board should work on both approaches. Secretary Taylor stated that he will rework the Trust Agreement and then he'll transmit it to Legal Counsel Grimes. Chairman San Agustin stated that he will try to revive the amendment to the Organic Act with Congresswoman Madeleine Bordallo. Chairman San Agustin stated that he was disappointed with Congresswoman Bordallo, as she had the opportune time to push it. Secretary Taylor stated that he will make a presentation on the Trust Agreement to the Board of Trustees at the next meeting.

Request for Proposal: Custodial Bank Services - Acting Director Tajalle stated that Management has sent Mercer the draft supplemental agreement for their signature in order to proceed with the search and comparative analysis of a Custodial Bank. Chairman San Agustin asked if the Request for Proposal (RFP) been issued. Acting Director Tajalle stated that he is waiting for Mercer to sign the supplemental agreement.

Request for Proposal: Medical Consultant Services - Acting Director Tajalle stated that a draft Request for Proposal (RFP) for professional services to include AMA certification was submitted to the Members and Benefits Committee for their review and comments. Chairman San Agustin asked when is the Members and Benefits Committee going to report this out. Trustee George Santos stated that the Members and Benefits Committee is working on the RFP.

Request for Proposal: Defined Contribution Investment Consultant Services - Acting Director Tajalle stated that a draft Request for Proposal (RFP) for an Investment Consultant services was submitted to the Investment Committee for their review and comments. Vice-Chairman Leon Guerrero stated that the Fund is the only Pension Fund without an advisor for the Defined Contribution Plan (DC Plan). Trustee Cruz stated that the Fund had Solomon Smith Barney for both the Defined Benefits Plan and the Defined Contribution Plan. Trustee Cruz asked if Salomon Smith Barney was ever relieved of that duty. Acting Director Tajalle stated that there was a sub agreement amendment to the original contract. Chairman San Agustin asked why the RFP was for the Defined Benefits Plan only. Acting Director Tajalle stated that he believed that the RFP was for specific services. Trustee Cruz stated that Salomon Smith Barney may still be on board. Vice-Chairman Leon Guerrero stated that this matter is still with the Investment Committee for review.

Retirement Contribution Rate - Acting Director Tajalle stated that the arguments regarding the difference in the actuarial retirement contribution rate required and the legislative approved contribution rate for the past five to seven fiscal years is being drafted by Legal Counsel Grimes. Chairman San Agustin stated that the law states that the government shall pay the actuarial rate. Chairman San Agustin stated that the Legislature budgeted for the 21% actuarial rate. Chairman San Agustin maintains that the five percent (5%) differential should be covered as receivable from the Government of Guam. Chairman San Agustin stated that the auditor won't put this in their report.

Trustee Cruz stated that Legal Counsel Grimes stated to focus on the investment returns. Chairman San Agustin suggested waiting for the five percent (5%) differential. Chairman San Agustin reiterated that the auditor should carry this as an account receivable. Chairman San Agustin stated that it should show in the books.

Legal Services to Recapture Investment Losses - Acting Director Tajalle stated that Management had sent a letter on November 29, 2005 to Calvo & Clark LLP and Lujan Unpingco Aguigui and Perez LLP concluding the negotiations for the Request for Proposal (RFP). Acting Director Tajalle stated that a mutual services agreement could not be reached. Chairman San Agustin stated that since no agreement could be made, this matter was terminated. Chairman San Agustin stated that a letter was sent to Calvo & Clark and that a response has been received.

Guam Telephone Authority: Proceeds From Sale - Acting Director Tajalle stated that the proceeds from the sale of GTA allowed for \$11 Million to be paid to the Retirement Fund for the unfunded liability for GTA retirees. Acting Director Tajalle stated that the GTA transition office has not received the cash from the sale. Acting Director Tajalle stated that Legal Counsel is looking into the legality of discontinuing retirement annuities for GTA retirees until the unfunded liability has been paid.

People of Guam vs. John Rios & Carl T.C. Gutierrez - Acting Director Tajalle stated this case was referred to the Members and Benefits (M & B) Committee for their recommendation regarding the annuity calculations for Mr. Gutierrez. Chairman San Agustin asked if the M & B Committee has received the calculations. Trustee Santos stated that he has not received the calculations. Trustee Anthony Blaz asked if there have been any negotiations. Vice-Chairman Leon Guerrero stated that the Fund needs to communicate with Former Governor Carl Gutierrez on what the Board is trying to do. Vice-Chairman Leon Guerrero stated that a letter should be sent to Former Governor Gutierrez informing him that the Board is reviewing the matter.

Chairman San Agustin asked about Mr. Ralph Gutierrez's case. Acting Director Tajalle stated that Mr. Gutierrez was given two options. Acting Director Tajalle stated that the case is now going through court. Trustee Cruz stated that Mr. Gutierrez did acknowledge the debt.

Public Law 28-38 - Acting Director Tajalle stated that the Fund is processing applications for retirement for Guam Public School System (GPSS) and Guam Memorial Hospital Authority (GMHA) eligible employees. Acting Director Tajalle stated that interest payments for GPSS and GMHA for the month of December are due on December 10, 2005. Acting Director Tajalle stated that if payment is not received by Monday, December 12, 2005, applications for retirement will be suspended.

Public Law 28-66 - Acting Director Tajalle stated that Public Law 28-66 appropriated \$1.4 Million from the General Fund to the Retirement Fund as follows: 1) \$660,000 for Guam Memorial Hospital Authority (GMHA) past due contributions for FY2005; and 2) \$800,000 for outstanding retirement contributions for GMHA employees waiting to retire, who have filed notices of intent to retire with the Retirement Fund. Acting Director Tajalle stated that the \$600,000 and the \$800,000 remain outstanding. Acting Director Tajalle stated that Management is consistently sending notices to the Department of Administration (DOA) for monies due to the Retirement Fund. Trustee Cruz asked if the Fund is not retiring employees. Acting Director Tajalle replied, "no." Chairman San Agustin stated that this is one of the conditions of Public Law 28-38. Acting Director Tajalle stated that if all

of the requirements of Public Law 28-38 are in effect then Public Law 28-66 does not apply, then GMHA employees could still retire.

Century 21 Realty Management Company, Inc.: Parking Lot Lease - Acting Director Tajalle stated that a draft lease agreement is being prepared and will be forwarded to the Fund's Legal Counsel for review and comments. Trustee Cruz asked if First Hawaiian Bank has agreed to the lease agreement. Acting Director Tajalle replied, "yes." Chairman San Agustin asked about the locked parking lot. Acting Director Tajalle stated that there may be an agreement that could be worked out to open the gates.

Trustee Anthony Blaz was excused from the meeting at this time (1:53 p.m.).

Contributions - Acting Director Tajalle stated that all agencies are current with their fiscal year 2006 employee and employer contributions.

Financial Statements/FY2005 Audit - Acting Director Tajalle stated that the books for FY2005 year-end are closed and the Fund is working to begin the FY2005 audit phase. Acting Director Tajalle stated that the Fund is preparing to post the October and November transactions. Chairman San Agustin stated that the \$600,000 which was written off is not recoverable. Chairman San Agustin asked why the Fund should continue to carry it as a loss. Acting Director Tajalle stated that the recovery is adding income to the Fund. Chairman San Agustin stated to pick up the \$34 Million as an asset and the \$5 Million as an income. Trustee Cruz asked if it is a current asset or a long term asset. Acting Director Tajalle stated that the Fund would need to reclassify on the books from a current asset to a long term asset. Secretary Taylor asked what is the auditor's opinion on this matter. Acting Director Tajalle stated that the auditor believes that with Public Law 28-38, it is an asset. Trustee Cruz asked what harm it would have to keep it at where it is at. Chairman San Agustin stated that it is an accounting issue.

FY2006 Retirees' Supplemental and COLA - Acting Director Tajalle stated that the supplemental benefits for retirees and survivors for the month of November 2005 were paid. Acting Director Tajalle stated that there is a COLA provision of up to \$1,100.00 for all retirees that is subject to lapses from previous fiscal years. Trustee Cruz asked when the COLA will be distributed. Acting Director Tajalle stated that there is no definite date yet. Trustee Cruz asked if it will be distributed before Christmas. Chairman San Agustin stated that the Department of Administration (DOA) is trying to collect money.

Accountant III Position - Acting Director Tajalle stated that one of the Accountant III positions has been filled. Acting Director Tajalle stated that the Fund is still trying to fill the Investment Specialist position. Chairman San Agustin stated that the Fund needs an Investment Specialist. Acting Director Tajalle stated that the Personnel Officer position has been filled.

V. TREASURER'S REPORT OF FINANCIAL STATUS

Chairman San Agustin noted that Treasurer Katherine Taitano is absent from today's meeting.

VI. STANDING COMMITTEE REPORTS

A. Members and Benefits Committee

Trustee George Santos reported to the Board of Trustees on his Committee's November 2005 end of the month report.

Acting Director Tajalle stated that all calculations are in order.

Trustee George Santos, seconded by Trustee Gerard Cruz, moved to approve the recommendation of the Members and Benefits Committee contained on Pages 4 through 8, Item IV A and B, based on the Committee's review and findings during their meeting of November 16, 2005 and subsequent meetings thereafter (see Appendix A). Without objection, the motion passed.

B. Investment Committee

Vice-Chairman Leon Guerrero stated that Acting Director Tajalle had lost the reports that were in his computer. Vice-Chairman Leon Guerrero stated that he will work with the agenda of the Investment Committee meeting held on December 2, 2005.

1. Action Items

a) *Approval - October 12, 2005 Investment Committee Minutes*

Vice-Chairman Leon Guerrero stated that the approval of the October 12, 2005 Investment Committee Minutes was deferred until the next meeting.

b) *Approval – Motion for Board of Trustees to Direct Fund Management with Assistance from Mercer Investment Consulting to Prepare a Request for Proposal for Transition Manager Services – Check with discount broker to obtain the services*

Acting Director Tajalle stated that Management is researching if the Fund's current discount brokers have the ability of a transition manager services.

c) *Approval – Motion for Board of Trustees to Review Packet Received from Milberg Weiss Relating to "Investment Transaction Monitoring." Motion for Board of Trustees to Direct Fund Management to Develop Request for Proposal to Seek "Stock Transaction Monitoring for Fraud Services."*

Vice-Chairman Leon Guerrero stated that the Investment Committee is recommending that a Request for Proposal (RFP) be issued to retain the services of a firm to investigate fraud of stock transactions. Trustee Cruz asked who will be writing the RFP. Acting Director Tajalle stated that the RFP will be prepared by Management. Trustee Cruz asked if the RFP could be based on what the Board is looking for which is a clear contingency basis arrangement and that it should include investment monitoring of the trades transaction. Vice-Chairman Leon Guerrero stated that the RFP should also include that the firm will have the ability to file litigation and to proceed at the approval of the Board of Trustees on a contingency basis. Vice-Chairman Leon Guerrero stated that it will be with the ability to file litigation. Secretary Taylor stated that the RFP should be brought to the full Board. Chairman San Agustin stated that a clarification should be made that this will be on a contingency basis.

Vice-Chairman Wilfred Leon Guerrero, seconded by Trustee Gerard Cruz, moved to approve the issuance of a Request for Proposal to retain services for an investment transaction monitoring services. Without objection, the motion passed.

d) Approval – Motion for Board of Trustees to Fill the Position of “Investment Specialist” Due the Needs of the Investment Section of the Division

Vice-Chairman Leon Guerrero stated that the Investment Committee needs help and is at the point where the Committee would like to explore the possibility of paying overtime. However, Vice-Chairman Leon Guerrero stated that there is an Executive Order prohibiting payment of overtime to supervisors. Vice-Chairman Leon Guerrero stated that the management study won't be completed until March 2006. Chairman San Agustin asked if there is any restriction on detailing the Investment Specialist from Great West Retirement Services. Chairman San Agustin suggested checking with Great West on what is the current agreement the Fund has with them. Vice-Chairman Leon Guerrero asked if the Fund is a non-autonomous agency. Chairman San Agustin stated that the Fund needs to go to the Legislature to have them allow the Fund to create an Investment Specialist in the unclassified position. Trustee Cruz asked if the Fund is autonomous. Chairman San Agustin replied, “yes and no.”

Secretary Taylor stated that it seems that the Executive Order does not apply to non-autonomous agencies like the Fund. Chairman San Agustin stated that the Fund should request the Governor to exempt the Fund. Chairman San Agustin stated that there are three ways that the Fund could get the Investment Specialist: 1) detailed from Great West; 2) Legislative action; and 3) have the Governor amend the Executive Order to include the Fund in the exemption. Chairman San Agustin asked Acting Director Tajalle to draft a document for the Governor's signature. Chairman San Agustin stated that he will take the document to the Governor's Legal Counsel.

e) Approval – Motion for Board of Trustees to Accept the Investment Committee's Asset Rebalancing Schedule for Funding of International Managers for Approval

Vice-Chairman Leon Guerrero stated that the asset rebalancing scheduled has been reviewed with Mercer due to the new asset allocation. Chairman San Agustin requested to reproduce the rationale to be made a part of the documentation. Chairman San Agustin stated that the target is 8.0%. Chairman San Agustin stated that shifting the allocations to different categories will improve it. Vice-Chairman Leon Guerrero stated that the Fund's consultant stated that the Fund has to meet the 7.8%. Vice-Chairman Leon Guerrero stated that an additional justification to the allocation is the cash outflow.

Vice-Chairman Wilfred Leon Guerrero, seconded by Secretary James Taylor, moved to accept the Investment Committee's asset rebalancing schedule and for Management to reproduce the rationale to be made a part of the documentation. Without objection, the motion passed.

f) Approval – Motion for Board of Trustees to Approve Assignment of Citigroup Agreement to Legg Mason, Inc.

Vice-Chairman Leon Guerrero stated that this was referred back to staff. Acting Director Tajalle stated that the Investment Committee wanted to get more external information on Legg Mason prior to consideration.

g) *Approval – Motion for Board of Trustees to Fund AXA Rosenberg Based on Correspondence Received Dated December 1, 2005*

Acting Director Tajalle stated that this falls along the line with Item E to fund Axa Rosenberg. Acting Director Tajalle stated that their product is closing to new accounts by December 31, 2005.

h) *Approval – Motion for Board of Trustees to Approve Management Action of Assignment of Deutsche Asset Management Contract to Aberdeen Based on Board of Trustees Acceptance of September 9, 2005 Board of Trustees Meeting*

Acting Director Tajalle stated that this refers to the assignment of the agreement from Deutsche Asset Management to Aberdeen. Acting Director Tajalle stated that this was mutually discussed and mutually accepted at the September 9, 2005 Board meeting. However, Acting Director Tajalle stated that there was no formal motion to accept the assignment. Chairman San Agustin stated that there has been a series of assignments. Chairman San Agustin stated that this contract originated in 1969. Chairman San Agustin stated that there were two provisions – one was to seek the local economy for local investments; and the second provision was to monitor all the transactions. Chairman San Agustin suggested raising the question and asking if Aberdeen is aware of the provisions in the contract that was passed in 1969. Acting Director Tajalle stated that he will correspond with Aberdeen on the two particular points and get their feedback on it. Acting Director Tajalle stated that this was assigned to be effective November 30, 2005.

Vice-Chairman Wilfred Leon Guerrero, seconded by Trustee Gerard Cruz, moved to approve the Assignment of Deutsche Asset Management Contract to Aberdeen based on the Board of Trustees Acceptance of September 9, 2005 Board of Trustees Meeting, Without objection, the motion passed.

2. *Open Items*

a) *May 6, 2005 Minutes, Item II B – Bank of New York Acquisition of Lynch, Jones & Ryan - See Response from Mercer Investment Consulting – Prepare letter to Mercer Investment Consulting from Chairman San Agustin indicating review first*

Acting Director Tajalle stated that there was a question of the necessity of having four discount brokers. Acting Director Tajalle stated that there is a slight fee for an analysis of which discount broker to keep. Chairman San Agustin stated that Mercer had stated that the Fund needs only one discount broker. Vice-Chairman Leon Guerrero recommended for Management to respond to the letter thanking Mercer for their response and that the Investment Committee will take it under consideration. Chairman San Agustin asked what is the discount broker's commission. Trustee Cruz stated that the discount brokers are paid two cents a trade. Vice-Chairman Leon Guerrero stated that he is concerned of the difference of opinions from Mercer. Vice-Chairman Leon Guerrero stated that the impression he got from staff is that the discount brokers are getting paid if they don't do anything. Acting Director Tajalle stated that the discount brokers are paid only if the trades come through that particular account. Vice-Chairman Leon Guerrero asked why are they getting money if they are not doing anything. Secretary Taylor stated that it does not matter if there are more than one discount brokers. Vice-Chairman Leon Guerrero stated that the Investment Committee is still deliberating on this matter.

b) *September 2, 2005 Minutes, Item III B – Great-West Recommends Placing the Pioneer Emerging Markets Fund on a Watch List*

Acting Director Tajalle stated that he is still working on putting together a watch list for the Investment Committee's recommendation to the Board.

3. *Informational Items*

a) *Cash In Flow/Out Flow Comparison*

Acting Director Tajalle stated that the Fund's cash income and cash disbursement schedule is provided for the Board's information.

b) *Defined Contribution Plan – November 2005 Contribution Report*

Acting Director Tajalle stated that Mr. Vince Camacho from Great West submitted his November 2005 contribution report.

4. *Open Discussion*

a) *Status of Current Proposed Legislation Regarding Investments*

Acting Director Tajalle stated that the Fund is still waiting on the public hearing on Section 8158. Acting Director Tajalle stated that Section 8157 is still under review.

b) *Status of Request for Proposals*

i) *Custodian Bank*

Acting Director Tajalle stated that this item was discussed earlier.

ii) *Defined Contribution Plan Administration*

Acting Director Tajalle stated that this is the Request for Proposal (RFP) for the Investment Consultant Services for the 401(a) Defined Contribution Plan and 457 Deferred Compensation Plan. Trustee Cruz stated that Standard Insurance for disability is a separate vendor. Trustee Cruz asked about status of the RFP. Acting Director Tajalle stated that Management is waiting for the DC Plan Document to be finalized and the termination of Great West's relationship with Carlsmith Ball.

Trustee Cruz stated that the Board needs to put a closure on this matter. Chairman San Agustin stated that a commitment was made to the last offerors that the RFP was being cancelled because it was not conclusive. Secretary Taylor stated that Management just needs to send an email to Legal Counsel Joanne Grimes to find out if the termination was done. Trustee Cruz asked if there is another attorney to do the Request for Proposal (RFP) for the Defined Contribution Plan Administration to handle specific review of the RFP. Secretary Taylor recommended getting the documents to the Investment Committee for review.

Trustee Gerard Cruz, seconded by Trustee George Santos, moved to approve the removal of Carlsmith Ball and for Management to look for another attorney to do the Request for Proposal

for the Defined Contribution Plan Administration and to handle this specific review of the Request for Proposal. Without objection, the motion passed.

C. Audit Committee

Acting Director Tajalle reported that the deadline for the draft audit for FY2005 is March 31, 2006.

D. Governmental Liaison

No report was made at this time.

VII. TRAVEL REPORT

A. Wilfred P. Leon Guerrero, Vice-Chairman: November 13-16, 2005 – Honolulu, Hawaii

Acting Director Tajalle stated that Vice-Chairman Leon Guerrero has submitted his travel report on the International Foundation 51st Annual U.S. Employee Benefits Conference he attended on November 13-16, 2005 in Honolulu, Hawaii.

VIII. OLD BUSINESS

A. John Rios' Request for Indemnification

Chairman San Agustin stated that Pat Mason's November 23, 2005 Memorandum regarding John Rios' request for attorney fees reimbursement is inconclusive. Chairman San Agustin stated that Acting Director Blas will bounce the memorandum back to Carlsmith Ball.

IX. NEW BUSINESS

A. Custodial Bank Income Summary FY2005

Acting Director Tajalle stated that a copy of the Custodial Bank Income Summary for 2005 is provided for the Board's information. Chairman San Agustin stated that there are new figures on the custodial bank report. Chairman San Agustin stated that the Fund is looking at a real cash flow. Chairman San Agustin stated that the report shows some improvement. Chairman San Agustin stated that the investment manager fees are high. Chairman San Agustin stated that the Fund should look at the asset based fee versus the performance fees. Chairman San Agustin stated that the investment consultant made a comment that Lazard under performed but waited too long to fire Lazard. Vice-Chairman Leon Guerrero stated that the ratings are relative new.

B. Custodial Bank Income Summary FY2006

Acting Director Tajalle stated that a copy of the Custodial Bank Income Summary for 2006 is provided for the Board's information.

C. FY2005 Audit

Acting Director Tajalle stated that the FY2005 audit is on-going.

D. Cash and Income Disbursements

Acting Director Tajalle stated that a copy of the Fund's Cash Income and Disbursement is provided for the Board's information.

X. OPEN DISCUSSION / GENERAL PUBLIC INPUT

None

XI. ANNOUNCEMENTS

None

XII. ADJOURNMENT

There being no further business before the Board for the Defined Benefits Plan, on motion of Trustee George Santos, seconded by Trustee Gerard Cruz, and without objection, the meeting was adjourned at 3:12 p.m. Motion passed.

I hereby certify that the foregoing is a full, true and correct copy of the Minutes of December 9, 2005, Regular Meeting duly adopted and approved by the Government of Guam Retirement Fund Board of Trustees on February 10, 2006.

James J. Taylor, Board Secretary

RECORDING SECRETARY:

Jackie Blas