Professional Liability Fund

OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
Finance/Investment Committee

Minutes of Meeting
May 24, 2021

The Open Session of the Finance/Investment Committee met at approximately 9:30 am on May 24, 2021 via Zoom video conference.

Finance Committee Members:	**Staff:**
Present:	
Oren Haker (Chair)	Betty Lou Morrow
Michael Batlan	Carol Bernick
Chris Karlin	

Guests:	
Mark Higgins, Consultant of RVK	John Grant, BOG Liaison
Chuck Faerber, Actuary from Rudd and Wisdom	David Wade, BOG Liaison
Mike Williams of the Oregon State Bar	

Notice of the meeting was given pursuant to ORS 192.640

Agenda:

- RVK review of quarterly flash report – presented by Mark Higgins
- Assessment/Net Position discussion
- March 31, 2021 financial statements
- 2020 Audit update
- ISI update
- Deferral of Socially Responsible Investing (SRI) discussion

Betty Lou Morrow opened the meeting at 9:30 am due to the extent of topics to cover and apologized for providing the documents so close to the meeting. Ms. Morrow thanked Mark Higgins and Chuck Faerber for providing invaluable input in advance of this meeting. Ms. Morrow said the order of the agenda will slightly change, the March 31, 2021 financial statements will be after Mark Higgins gives the quarterly flash report.

RVK March 31, 2021 Flash report

Mark Higgins of RVK gave a brief overview of the Capital Markets. Looking at the current environment RVK encourages caution by not increasing risk in the portfolio at this time. RVK recommends maintaining current portfolio allocation.

Mr. Higgins provided a brief overview of the portfolio. The market started off with the strength in the first quarter and has continued into the second quarter. The March 31, 2021 market value of the portfolio is approximately $71 million. Overall the portfolio is performing in a manner consistent with the long term performance goals. There is enough diversification within the portfolio to materially add benefit without diminishing value by over diversification.

Ms. Morrow stated she rebalanced in December 2020 and does so typically once or twice a year. She asked Mr. Higgins if he envisions that she should be more proactive in rebalancing such as 2-4 times per year? Mr. Higgins said not necessarily, unless there are material changes in market conditions. It is critical to be aware of changing conditions and proceed with caution.

March 31, 2021 Draft Financial Statements

Ms. Morrow reviewed the March 31, 2021 draft internal financial statements (materials provided prior to the meeting). She noted the 2020 fiscal year has not yet been closed as the data from the PERS pertaining to PLF pension liability has not been received from the State. The State anticipates sending out this information by the end of May. The statements will be updated and closed once this information is provided.

Highlights:

- Dramatic difference across multiple benchmarks between this year (2021) and the same time last year (2020).
- Approximately 80 fewer full paid covered parties which decreases assessments by approximately $260,000 - $300,000.
- Return on investment is lower than budgeted but still ahead of budget due to a larger balance at December 31, 2020 than budgeted. New claims count is still low, currently 728. Even though there is a substantial higher cost of claims, there are fewer claims and therefore ahead of budget by approximately $400,000.
- Net position currently reflected on the balance sheet will decrease by approximately $1 million once the outstanding PERS liability adjustment has been posted.
- Salaries should be under budget until the end of the year due to two open positions in Loss Prevention and OAAP. There is no expectation of increasing FTE. Ms. Bernick stated one Practice Management Advisor announced their retirement effective June 1, 2021 and the position will be refilled.
- We are under budget across multiple operations lines. This is due to continued business closures and lack of travel associated with conferences and meetings. Excess program is ahead of budget with ceding commissions due to higher than budgeted rate increases requested by reinsurers.

David Wade asked if there was any anticipation that the Covered Party count will go back to normal due to the schools reopening and caregivers being able to return to work? Ms. Morrow responded she did an analysis in January 2021 of covered parties who had coverage in 2020 and did not renew in 2021. She did not see the demographics in her analysis that would match that assumption. Demographically, there does not appear to be a single compelling reason for the decrease in covered parties– attorneys in private practice in the State of Oregon.

Assessment / Net Position discussion

Ms. Morrow notified the committee the documents that were sent prior to the meeting had the line item for capital – Software inadvertently omitted. This is for the $2M software claims database software that the PLF is reviewing for purchase.

Net position goal has increased from 2020 by approximately $3.3 million. The three main drivers of the Net position goal is to have adequate resources to cover the cost of claims, stable assessments, and protect operations.

Chuck Faerber provided a description of what the Confidence Level is. If a confidence level is set at 80% that means the current reserve level will be adequate to cover the cost of settling outstanding claims 80% at the time. The confidence level has historically been at 80%.

Ms. Bernick stated her observation is that a more competitive compensation will need to be considered due to the demands of the job market. Hiring employees continues to become harder and harder.

Ms. Morrow noted the OAAP lease ends November 2022, not November 2021 as stated on the documentation provided to the committee prior to the meeting.

Mr. Haker asked where the potential $3,100 assessment comes from? Ms. Morrow replied it's the minimum reduction that may make a difference to covered parties. Additionally, if the assessment has to be increased in three to five years it could mean a less significant increase than if the assessment were decreased by say $500. Mr. Haker commented with the declining number of Covered Parties, he would prefer to consider a reduction at the June board meeting to start the discussion before the budget approval at the August board meeting. He would also like to raise the question, if the reduction should be more than $200 and if so, how much more?

Mr. Haker asked in addition to the number of Covered Parties what other key factors goes into increasing/decreasing the assessment. Ms. Morrow stated the last increase was due to being sufficiently above the net position goal along with stable market and other economic indicators. Mr. Haker stated there could be a loss in Covered Parties but might be an increase in salaries which could be part of the decision making.

Mr. Faerber provided a brief overview of frequency of new claims and feels 12% is a good projection. An assessment study is done annually and Mr. Faerber expressed the hope the committee would not recommend a reduction until the 2022 assessment analysis is complete. Mr. Faerber recommends not making any changes to the assessment for 2022. He recommends allowing 2021 to play out and hopefully see all relevant conditions stabilize. The 2022 assessment study for 2023 can then determine if it is fiscally prudent for the PLF to reduce the assessment. Mr. Faerber stated he understands there is currently a surplus above net position goal and the reflex to spend down the surplus. However, he also stated it is not bad position for an organization providing insurance coverage to have a surplus in excess of goal. Ms. Bernick thanked Mr. Faerber and agrees with his analysis. However she wanted to remind committee members and the board that the PLF provides captive, mandated insurance. This should be a consideration when determining where to set the assessment.

Mr. Wade stated although he isn't a member of the committee, he feels Ms. Morrow has built in so many conservative assumptions in some areas and others might be too liberal, but overall there is some protection built in. He agrees with Ms. Bernick's opinion that with a mandatory/captive program it is not appropriate to hold in net position high investment returns.

Mr. Faerber expressed the desire to respond to Mr. Wade's comment. He stated that while he understands the PLF is a unique organization, and the PLF doesn't want to accumulate too much in surplus funds, he strongly encourages the committee to let 2021 play out, leaving the 2022 at current levels. He recommends reconsidering the assessment level in 2022 for 2023. Not opposed to reducing assessment or paying a dividend or however it is handled, Mr. Faerber feels the impact of COVID has not yet been fully revealed. He asked the committee to reflect upon the PLF's own history when a $9 million surplus turned into a $7 million deficit within a three year period of time. He feels primary obligation of the PLF is to ensure there are always adequate funds to pay out claims thereby protecting the attorneys in private practice in Oregon along with the consumers of legal services in Oregon. He recognizes he views the financial situation through a different lens than the committee and respects their position.

Mr. Higgins commented on the economic environment and that although there have been exceptional returns for quite some time, it is conceivable there could be a scenario similar to the period after the pandemic of 1918 to 1920. There was an unprecedented economic boom, followed by the devastating crash of the stock market. Mr. Higgins recommends individuals check their comfort levels with the potential of that scenario unfolding again post pandemic in the United States and the impact it would have on the PLF's assessment level.

Ms. Morrow asked Mr. Wade if she understands from his earlier comment regarding her assumptions, that he feels she is being overly cautious in some of her estimations? Mr. Wade stated no, and Ms. Bernick commented she heard Mr. Wade saying the assumptions are appropriately cautious. Ms. Morrow stated the PLF relies on investment income to fund operations which explains the amount allocated in the net position goal.

Ms. Morrow pointed out the change in the net position, should the modeling be approximately accurate, could result in a $23 million surplus declining to a $7.2 million deficit within five years. The return on investments will impact results to the largest degree as it is the most volatile, high value component of the equation. Even more so than claims. Ms. Morrow reiterated it is her goal at the meeting today to provide the best possible information so the best possible decision regarding the assessment could be made.

Ms. Morrow requested direction from the committee around how to proceed. Mr. Haker would like to discuss at the June board meeting. He understands a lot of work is required to prepare something for the board. However, considering the current level of net surplus he would like to have a discussion to review the projections be brought to the board before the budget meeting in August. Mr. Haker is not suggesting there should be a recommendation come out of the June board meeting, but again, he doesn't want to wait for the August meeting for discussion. Mr. Haker reiterated prior comments that given the PLF is a mandated, captive fund, it would be appropriate for the board to be made aware of and fully understand the issues related to the setting of the assessment for 2022. Mr. Haker stated with the thinking expressed by Mr. Faerber and Mr. Higgins, the PLF needs to be cautious. However, there should be no perception the board didn't have the time to give this issue their full attention.

Mr. Karlin stated the board needs an opportunity to be fully apprised of all the data and modeling available to avoid surprises or misunderstandings at the August meeting when the board will be asked to review and approve the budget.

2020 AUDIT UPDATE

The audit is finished however it is pending the PERS liability entry. If the information is received from the State, then the auditors may be ready to present audited 2020 financials at the June board meeting.

ISI UPDATE

Outside council, a Seattle Law firm, was retained to start negotiations with ISI. Negotiations are in the very early stages and there is no update at this time. Mr. Haker asked if ISI had been in any litigations in the past? Ms. Morrow stated not that she is aware of. She will ask the Seattle firm to run a litigation search on ISI.

SOCIALLY RESPONSIBLE INVESTING DISCUSSION

Ms. Morrow stated this topic will be deferred to another meeting. Mr. Karlin replied this is a big topic and with multiple high priority projects, agrees the discussion should be delayed.

Ms. Morrow thanked everyone for attending and again to Chuck Faerber and Mark Higgins for their input and asked if they could attend the June board meeting. Both Mr. Faerber and Mr. Higgins agreed to attend the June board meeting.

These minutes were approved by Michael Batlan and Chris Karlin