

The Regents of the University of California

SPECIAL COMMITTEE ON REGENTS' PROCEDURES

March 16, 2005

The Special Committee on Regents' Procedures met on the above date at Covell Commons, Los Angeles campus.

Members present: Regents Dynes, Hopkinson, Kozberg, Lansing, and Marcus

In attendance: Regents Anderson, Johnson, and Pattiz, Regent-designate Rominger, Faculty Representative Blumenthal, Secretary Trivette, University Counsel Thomas, Senior Vice President Mullinix, Vice Presidents Gurtner and Hershman, Chancellors Bishop, Carnesale, Cicerone, Fox, and Vanderhoef, and Recording Secretary Bryan

The meeting convened at 2:15 p.m. with Committee Chair Marcus presiding.

1. **APPROVAL OF MINUTES OF PREVIOUS MEETING**

Upon motion duly made and seconded, the minutes of the meeting of January 19, 2005 were approved.

2. **DATES OF REGENTS' MEETINGS FOR 2006**

The President recommended that the following dates of Regents' meetings for 2006 be approved.

2006

January 18-19
March 15-16
May 17-18
July 19-20
September 20-21
November 15-16

These dates are the third Wednesday and Thursday of each month. Approval of the dates of Regents' meetings is the annual responsibility of The Regents, while the President and the Chairman of the Board, in consultation with the Secretary, are responsible for approving the locations of Regents' meetings. Based on the Committee's discussion in January, logistics and costs will be reviewed in consideration of holding up to two of these meetings at campuses other than UCLA and UCSF-Laurel Heights.

This item seeks approval of the dates of Regents' business meetings through November 2006.

Regent Anderson observed that the March meeting is scheduled for a time when students are taking their finals and the September meeting is scheduled when students have just arrived on campus. She requested that consideration be given to holding these meetings on campuses to make it easier for students to attend. Committee Chair Marcus recalled that at the previous meeting it was agreed that the cost structure and security issues related to holding Regents meetings on campuses would be analyzed before meeting sites are determined.

Regent Hopkinson noted that Regents had divergent views on the issue. She believed that holding business meetings on campuses was not a workable idea.

Upon motion duly made and seconded, the Committee approved the President's recommendation and voted to present it to the Board.

3. **GUIDELINES FOR SERVICE ON THE COMMITTEE ON AUDIT**

The Committee recommended that the Guideline below be forwarded to the Board for adoption.

Guideline for Determination of Board Member Independence

Members of the Board of Regents nominated for service on the Committee on Audit must be independent. Independence shall be determined by the Nominating Committee, after consideration of the standards set forth below.

In order to be considered independent:

- A. Regents may not be partners, members, executive officers or hold similar positions with law firms, accounting firms, consulting firms, investment banks, or financial advisory firms doing business with the University.
- B. Regents may not be employees or affiliates of any outside entity doing substantial business with the University.
 - (1) An affiliate is one who is in a position to control the direction of the management and policies of the entity through ownership of voting securities, by contract, or otherwise.
 - (2) The definition of "substantial business with the University" will be determined by the Nominating Committee after receiving a recommendation from the Senior Vice President–Business and Finance and the General Counsel at the time appointments are made.

It was recalled that at the January 2005 meeting, the Committee on Audit reached a consensus determination to forward the Guideline to the Special Committee on Regents Procedures with a recommendation that it be forwarded by that Committee to the Board as a whole for adoption. The Guideline will then be used by the Nominating Committee as it considers appointments to Board committees.

Adoption of this Guideline is recommended because Audit Committee member independence is becoming an industry standard in both private and nonprofit sectors. "Independence" essentially means sufficient detachment from management and from other interests doing business with the University to assure an objective approach to the assessment of financial statements and the adequacy of internal controls.

Under the Federal Sarbanes-Oxley statute (SOX), audit committee members are required to be independent, as are a majority of the board members. Regulations issued by the Securities and Exchange Commission (SEC) provide that audit committee members may not be employed by the corporation on whose board they serve, nor may they be in a position to receive fees as a partner, officer, or affiliate of an entity that provides accounting, consulting, legal, investment banking, or financial advisory services to the corporation. (17 CFR § 240.10A-3 (e)(8).) The SEC defines the terms "affiliate" and "control" as one who directly or indirectly has the power to direct or cause the direction of the entity's management and policies. This can be via ownership of voting securities, by contract, or otherwise. (17 CFR § 240.10A-3 (e)(8).)

Stock Exchange rules state that fees over specified amounts sent to or from another business entity destroy a director's status as "independent" if the director is an executive officer or employee of the outside business. (See, e.g., NYSE Section 303A(2)(b)(v).) The California Nonprofit Integrity Act of 2004 governing nonprofits, (CNIA), is similar, stating that members of the audit committee may not be employees and may not have a "material financial interest" in any entity doing business with the corporation. (Cal. Gov't. Code § 12586(e)(2).)

Although neither SOX nor the CNIA currently applies to the University, each has an independence requirement for members of audit committees. Because the independence requirement will be an industry standard for nonprofit board audit committees in California, and it is consistent with best practices under SOX, adoption of the Guideline is recommended.

The Guideline is intended to be flexible and calls for the exercise of business judgment by the Nominating Committee. Standards for determining independence are new under both laws, and there is no case law interpreting them. Use of business judgment after consideration of these standards will enable The Regents to develop consistent rules that reflect the University's experience as well as developments under SOX and California law.

University Counsel Thomas commented that a question had been raised as to whether one of the standards for independence, that of being employed by the University, covered the

spouses of Regents. She stated that the Nominating Committee should take such possible conflict of interest issues into account as it is making appointments. If a Regent were to have a spouse who was employed by the University, that Regent would be precluded as a matter of conflict from voting on a great many items that come before the Committee on Audit.

Upon motion duly made and seconded, the Committee approved the recommendation and voted to present it to the Board.

4. **REMARKS OF THE COMMITTEE CHAIR**

Committee Chair Marcus recalled that Regents have provided input on matters of particular interest to them such as concurrent committees, scope of committees, consent items, and frequency of meetings. He reported that he had asked Senior Vice Presidents Darling and Mullinix and Secretary Trivette to assemble the suggestions and provide a white paper that will examine the organization of Regents meetings. The goal is to arrange Regents' meetings in such a way that as to provide sufficient time to address the items that have the greatest impact on the University. The white paper will be distributed first to Chairman Parsky and President Dynes for review, following which it will be presented to the Special Committee and to all Regents for their concurrence.

The meeting adjourned at 2:20 p.m.

Attest:

Secretary