

**MINUTES**

**OF THE**

**SPECIAL TELEPHONIC MEETING OF THE**

**BOARD OF REGENTS**

**OF**

**THE TEXAS A&M UNIVERSITY SYSTEM**

**HELD IN**

**COLLEGE STATION, TEXAS**

**February 26, 2008**

*(Approved May 22-23, 2008)*

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**MINUTES OF THE  
SPECIAL TELEPHONIC MEETING  
OF THE BOARD OF REGENTS  
February 26, 2008**

**CONVENE**

Mr. Bill Jones, Chairman of the Board, convened a special telephonic meeting of the Board of Regents of The Texas A&M University System, at 9:04 a.m., on Tuesday, February 26, 2008, in the Board of Regents Meeting Room, Memorial Student Center, on the campus of Texas A&M University, College Station, Texas.

The following members of the Board were present by telephone:

Mr. Bill Jones, Chairman  
Mr. John White, Vice Chairman  
Mr. Morris Foster  
Mr. Lupe Fraga  
Mr. J.L. Huffines  
Mr. Erle Nye  
Mr. Gene Stallings  
Ms. Ida Clement Steen  
Mr. Jim Wilson  
Ms. Cassie Daniel (Student Regent)

Mr. Jones said in accordance with the Texas Government Code that allows governing boards to meet by telephone, each party to the conference call must clearly identify himself/herself prior to speaking. Mr. Jones called the roll and announced that a quorum was present.

Mr. Jones said the posted purpose of the special meeting was to consider and take action on the following: Item 1 – Approval of a List of Candidates to Serve as Director(s) of The University of Texas Investment Management Company (UTIMCO), and Item 2 – Authorization to Execute a Settlement Agreement with the Department of Health & Human Services, Office of Inspector General, Texas A&M University.

Mr. Jones presented Item 1. He explained that Regent Erle Nye currently serves on the UTIMCO Board of Directors on behalf of Texas A&M and his term would expire April 1, 2008. Mr. Jones said the Texas Education Code states that the board (University of Texas) shall select one or more of the members of the board of directors of the corporation from a list of candidates with financial background and expertise in investments that is submitted to the board (University of Texas) by the Board of Regents of The Texas A&M University System.

Mr. Jones said as a result of these qualifications and as a result of Regent Nye's service on the UTIMCO Board, which had been admirable, he recommended that

Mr. Nye continue his service on the UTIMCO Board on behalf of The Texas A&M University System Board.

After discussion, Mr. Stallings moved adoption of the recommendation. Mr. Huffines seconded the motion. The record of the Board’s vote is as follows:

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**MINUTE ORDER 040-2008 (AGENDA ITEM 1)**

**APPROVAL OF LIST OF CANDIDATES TO SERVE AS  
DIRECTOR(S) OF THE UNIVERSITY OF TEXAS  
INVESTMENT MANAGEMENT COMPANY (UTIMCO),  
BOARD OF REGENTS  
THE TEXAS A&M UNIVERSITY SYSTEM**

Mr. Stallings moved adoption of Mr. Jones’ recommendation. Mr. Huffines seconded the motion. Mr. Jones said that he would call the regents names so their votes were properly recorded. The regents voted as follows: Foster – yes, Fraga – yes, Huffines – yes, Nye – abstain, Stallings – yes, Steen – yes, White – yes, Wilson – yes. Mr. Jones said he voted “yes”. The following minute order was adopted:

Pursuant to Texas Education Code, Section 66.08(e), the Board of Regents of The Texas A&M University System submits a list of candidates with substantial background and expertise in investments to the Board of Regents of The University of Texas System. The University of Texas System Board then selects one or more of those persons to serve on the Board of Directors of The University of Texas Investment Management Company.

The following candidate is hereby recommended:

Mr. Erle Nye

*(Secretary’s Note: A list of three names was approved at the March 11, 2008, Special Board Meeting – MO 042-2008.)*

*(Secretary’s Note: The University of Texas Board of Regents, meeting on March 26, 2008, reappointed Mr. Erle Nye to The University of Texas Investment Management Company (UTIMCO) Board of Directors, to serve for a term ending April 1, 2011.)*

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Mr. Jones said Item 1 was approved.

Mr. Jones called on Dr. Elsa Murano, President of Texas A&M University (TAMU), to present Item 2.

Dr. Murano said as of July 1, 2007, the Centers for Disease Control and Prevention (CDC), an agency of the Department of Health & Human Services, suspended Texas A&M's work on vaccine research following a report by TAMU that three individuals who were working in the laboratories had elevated titers to certain agents. On July 18, 2007, the Department of Health & Human Services, Office of the Inspector General (OIG), notified Texas A&M that it might be liable for fines and other kinds of penalties for those violations. Dr. Murano said subsequent to that, the CDC made a site visit on July 23, 2007, issued a report at the end of August 2007, and the university has been working very diligently to address all of the items in the CDC's report. She said on December 5, 2007, the university issued an official response addressing all of the items in the report. Dr. Murano said Texas A&M is awaiting a site visit by the CDC, but before anything else could proceed, they have to address the issue of fines or penalties that the OIG might deem necessary. She said Texas A&M took a proactive step on February 20, 2008, and offered to the OIG a settlement of \$1 million to cover any fines related to these violations. Dr. Murano said Texas A&M has an agreement with the OIG to accept that settlement and she was asking the Board to authorize her to execute the agreement. She said the System's Office of General Counsel would review that agreement for legal sufficiency.

Mr. Stallings said he was for the settlement and asked the source of funds. Dr. Murano said the funds would not come from any state appropriations or tuition money. She said the university has funds that are set aside for settlements that come from local funds. Mr. Stallings asked how much was set aside. Dr. Murano said several million dollars. Mr. Stallings asked for an exact figure. Dr. Murano said she would get that information for Mr. Stallings.

Mr. Jones asked about fines, possible fines and penalties. Dr. Murano said it was difficult to tell because there hadn't been a situation exactly like this, but according to the OIG they could charge \$500,000 per violation. She said according to the CDC report, there were several violations. She said the \$1 million settlement was good. She said there were 71 alleged individual violations. Dr. Murano said the OIG recognized that we have taken this seriously and recognized that Texas A&M was acting in good faith.

Mr. Stallings asked for clarification of the number of alleged violations. Dr. Murano answered that the number was 71. Dr. Murano said these violations involved such situations as a lack of appropriate training for people working in the laboratories in terms of safety and security measures, not having controls for access to the laboratories, recordkeeping on who had come in and who had used the agents and the research. She said these 71 violations were things that had been "alleged" and Texas A&M had addressed them in its report.

Dr. Michel D. McKinney, Chancellor, said "alleged" was an important word. He said we had never agreed with the number of violations and that's why we opted to make the offer of the \$1 million -- so we wouldn't have to fight over every single allegation, a number of which we would deny. Dr. McKinney said it was a global settlement and not "piece by piece" and it was not an agreement that we violated 71 different rules.

Mr. Huffines asked how many of the people who created the 71 alleged violations were still on the payroll. Dr. Murano said most of them. She said when you looked at what was done by the scientists and people working in those laboratories, there were things that were lapses that they should have known better. She said some of the scientists were taking responsibility, but it was the administration, in her opinion, that was charged with the monitoring. Dr. Murano said there had been some changes in personnel prior to her being appointed president.

Dr. McKinney responded to Mr. Huffines' question by saying there were at least three administrators who took responsibility and moved to other jobs. He said they had not necessarily made the mistake, but they were responsible for the oversight.

Mr. Stallings asked Dr. McKinney how much this had cost the university in contracts. Mr. Stallings said he thought we were turned down for consideration on a number of contracts as a result of this. Dr. McKinney said he was not sure that it was a result of this, but it probably had an influence. He said he would be afraid to speculate on the lost opportunity cost.

Mr. Huffines asked if we made this settlement, would it put us back in line for future contracts. Dr. Murano responded in the affirmative. She said if we were unable to continue to do the research, then we could lose the funding as well as lose the opportunity to do the research. Dr. Murano said she fully expected that CDC would reinstate our ability to conduct this kind of research. She said our scientists have such great expertise and are so competitive in this area that she had no doubt that they will be able to still compete for these kinds of awards, especially when we do demonstrate publicly that we have taken every step necessary to make sure that we are in compliance with the regulations.

Mr. Wilson asked the source of the "local" funding. Dr. Murano said for example, some of the funds could come from indirect cost returns that are put on grants that are basically there to cover the costs of doing business and those kinds of funds are maintained in the Office of the Vice President for Research. She said those funds could be used for a variety of reasons including supporting research for investigators. Dr. Murano said it is indirect costs from grants, not exactly grant money in the sense that it's not money earmarked for specific grant activity, but it is overhead that granting agencies provide to universities when contracts are obtained.

There being no further questions, the Board took action as set forth below:

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**MINUTE ORDER 041-2008 (AGENDA ITEM 2)**

**AUTHORIZATION TO EXECUTE SETTLEMENT AGREEMENT  
WITH THE DEPARTMENT OF HEALTH & HUMAN SERVICES,  
OFFICE OF INSPECTOR GENERAL,  
TEXAS A&M UNIVERSITY**

Mr. Nye moved adoption of the minute order. Mr. Stallings seconded the motion. Mr. Jones said he would call the regents names so their votes were properly recorded. The regents voted as follows: Foster – yes, Fraga – yes, Huffines – yes, Nye – yes, Stalling – yes, Steen – yes, White – yes, Wilson – yes. Mr. Jones said he voted “yes”. The following minute order was adopted:

Authorization is hereby granted, upon review for legal form and sufficiency by the Office of General Counsel, to the President of Texas A&M University to execute a settlement agreement with the Department of Health & Human Services, Office of Inspector General.

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**ADJOURNMENT**

On motion of Mr. Nye, seconded by Mr. White and by a unanimous vote, the special telephonic meeting was adjourned at 9:23 a.m., the same day.

Vickie Burt Spillers  
Executive Secretary to the Board  
The Texas A&M University System