The Regents of the University of California

COMMITTEE ON FINANCE
July 18, 2002

The Committee on Finance met on the above date at UCSF–Laurel Heights, San Francisco,

Members present: Regents Atkinson, Connerly, Hopkinson, Lee, Ligot-Gordon, Lozano, Montoya, Moores, Parsky, Preuss, and Sayles

In attendance: Regents Davies, Johnson, Kozberg, Lansing, Marcus, Sainick, and Terrazas, Regents-designate Bodine and Seigler, Faculty Representatives Binion and Viswanathan, Associate Secretary Shaw, General Counsel Holst, Treasurer Russ, Provost King, Senior Vice Presidents Darling and Mullinix, Vice Presidents Broome, Drake, Gurtner, and Hershman, Chancellors Berdahl, Cicerone, Córdova, Dynes, Tomlinson-Keasey, Vanderhoef, and Yang, Executive Vice Chancellor Kelly representing Chancellor Bishop, Vice Chancellor Michaels representing Chancellor Greenwood, and Recording Secretary Bryan

The meeting convened at 10:00 a.m. with Committee Chair Hopkinson presiding

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4. INDEMNIFICATION OF TRUSTEES OF CAMPUS FOUNDATIONS

The President recommended that The Regents indemnify and defend members of the Boards of Trustees of the Campus Foundations as to all claims and liability that may arise or occur in the course and scope of the performance of their duties in connection with the investment and reinvestment of assets held for the benefit of the University, including split-interest trusts and similar arrangements, to the same extent as afforded individual Regents, provided that actions giving rise to the claims or liability are in connection with the Campus Foundation investments which are invested in accordance with University policies and guidelines respecting the investments of Campus Foundations, and further provided that the indemnification and defense shall be secondary to any entitlement the trustees may have to indemnification and defense from insurance carried by the Campus Foundations. The President shall issue any guidelines necessary to implement the policy.

It was recalled that the University is indebted to the volunteer leadership of the Campus Foundations for their invaluable assistance in fund raising, public outreach, and other activities that support the University's mission. They have been instrumental in the success of those efforts, with private support totals exceeding $1 billion in each of the last two years.

Campus Foundations have been established on each campus, operating pursuant to policy approved by The Regents on September 15, 1995 and guidelines issued by the President in April 2002. The policy and guidelines also permit the Campus Foundations, as separate entities staffed exclusively by University personnel, to hold and invest endowments for the long term, provided that the payout from the endowments is distributed to the University.

Because of the relationship of the Campus Foundations to the University, the Office of the General Counsel has advised that the fiduciary duties with respect to Campus Foundation assets are also shared by The Regents. Accordingly, the Regents' Investment Advisory Committee (IAC) at its August 2002 meeting will review a recommendation from Wilshire Associates for acceptable ranges for asset allocation of endowment and other long-term assets held by the Campus Foundations. Assuming the recommendation is accepted by the IAC, it will be submitted for consideration and approval by the Committee on Investments and to The Regents.

As a result of campus gift solicitation practices, an increasingly large share of new gifts for endowments is directed to the Campus Foundations rather than to The Regents. As of June 30, 2001, the Campus Foundations held an aggregate of $1.55 billion in endowment assets, $335 million of which was invested with the Office of the Treasurer. As of the same date, The Regents held endowment assets of $4.65 billion. Under the University policy and guidelines, the trustees of the Campus Foundations are responsible for decisions respecting the investment of the assets in the respective Foundation endowment portfolios.

Campus Foundations also serve as trustees for charitable remainder trusts and other split-interest trusts which typically pay an income to donors or other individuals for their lifetimes or for a period of years, after which the assets are either transferred directly to the University or are held as endowment by the Campus Foundation for the benefit of the University. In that capacity, the Campus Foundation trustees are also responsible for decisions respecting the investment of the assets in those charitable remainder and split-interest trusts. Thus, the Campus Foundation trustees are acting as fiduciaries both to the University and to the life-income beneficiaries of the trusts. As of June 30, 2001, The Regents served as trustee for approximately $48 million in such split-interest arrangements, and the Campus Foundations were trustees for an aggregate of approximately $260 million, for a combined total of approximately $308 million.

The trustees of the Campus Foundations, and especially the members of investment committees or other Campus Foundation bodies having responsibility for decisions relating to the investment of assets of the charitable remainder and other split-interest trusts, have expressed concern about potential liability for actions they take with respect to the investment of the assets of these trusts. University policies require Campus Foundations to obtain general liability and directors' and officers' liability insurance. However, such insurance increasingly does not provide adequate coverage for legal defense of actions which arise in connection with investment activities. Accordingly, certain Campus Foundations have asked the University if it will indemnify and defend their trustees for claims and causes of action against trustees which arise out of actions taken on behalf of the Foundations and of the University.

In January 1988, The Regents adopted a policy on defense and indemnification of individual Regents in civil proceedings. This action will provide the same level of protection for a trustee of a Campus Foundation as for an individual Regent with respect to investment matters. As such, the indemnification is limited to the circumstances in which the party acted, or failed to act, in good faith, in a manner such party believed to be in the best interest of the University, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. In addition, the defense and indemnification of members of the Campus Foundation Boards will be limited to actions taken with respect to investment decisions of the trustees of the Campus Foundations concerning the investment of endowment, charitable remainder trusts, and other split-interest trusts, provided that such investments are invested in accordance with University policies and guidelines respecting Campus Foundations. It is also secondary to any entitlement the trustees may have to indemnification and defense from insurance carried by the Campus Foundations. The Office of Risk Management will assist the campuses in obtaining continuing insurance coverage. The source of any payments for defense and indemnification will be from funds available to the Chancellor of the campus affected.

Committee Chair Hopkinson noted that, in line with common practice, the indemnification will exclude items such as fraud.

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