FELRA & UFCW Health & Welfare Plan

A Plan of the Food Employers Labor Relations Association
and United Food and Commercial Workers
VEBA Fund

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MINUTES OF THE MEETING OF THE BOARD OF TRUSTEES
OF THE FELRA AND UFCW VEBA FUND
VIA VIDEO CONFERENCE
MARCH 17, 2023

The following Trustees were present:

Union Trustees	**Employer Trustees**
M. Federici – Secretary	J. Paradis – Chairman
J. Chorpenning	D. Dosenbach
M. Wilson	M. Goble

Also present were:

W. Antoshak – Associated Administrators, LLC
Y. Anwar – UFCW Local 400
A. Dietrich – Slevin & Hart, P.C.
N. Eid – The Segal Company
J. Hack – UFCW Local 27
J. Harrison – UFCW Local 27
T. Hipkins – UFCW Local 27
C. Hoffman – UFCW Local 27
D. Jensen – Associated Administrators, LLC
M. Jordan – Payer Matrix
M. Kreps – Groom Law Group
B. Maiorano – Associated Administrators, LLC
C. McDonough – Investment Performance Services
B. McKiver – UFCW Local 400
R. McKnight – Associated Administrators, LLC
C. Murphy – Associated Administrators, LLC
S. Sanchez – Slevin & Hart, P.C.
A. Sims – Associated Administrators, LLC
J. Timm – The Segal Company
S. Viviano – NexClaim Recoveries, LLC
L. Walsh – Associated Administrators, LLC

I. CALL TO ORDER

A quorum being present, the Chairman called the meeting to order.

II. MINUTES

The Trustees reviewed the minutes of the last special meeting held on October 20, 2022, regular meeting held on December 12, 2022, and the Appeals Committee meetings held on October 12, 2022, November 30, 2022, and January 31, 2023, which were pre-circulated.

On Motion made and seconded, the Trustees voted unanimous approval of the following resolution:

> **RESOLVED that the minutes of special meeting held on October 20, 2022, regular meeting held on December 12, 2022, and the Appeals Committee meetings held on October 12, 2022, November 30, 2022, and January 31, 2023 are approved.**

III. FINANCIAL REPORT

A. PNC Bank

1. Summary of Activity Report – ERISA Account – February 28, 2023

Mr. Jensen presented the PNC Summary of Activity report for the period January 1, 2023 through February 28, 2023. Such report indicated a beginning market value of $2,013,643, earnings of $39,330, receipts of $21,242,095, and disbursements of $17,261,738, producing an ending market value of $6,033,330 as of February 28, 2023.

2. Summary of Activity Report – Non-ERISA Account – February 28, 2023

Mr. Jensen presented the PNC Summary of Activity report for the Non-ERISA account for the period January 1, 2022 through February 28, 2023. Such report indicated a beginning market value of $6,942,446, receipts of $15,363,134, and disbursements of $21,735,069, producing an ending market value of $570,512 as of February 28, 2023.

3. Reserves

Mr. Jensen noted that as of February 28, 2023, the FELRA VEBA Fund had $12,453,418 in reserves, representing 1.11 months of reserves, compared to .96 months as of January 31, 2023. The average expense for the four quarters ending December 31, 2022 was $11,243,156.

B. Investment Performance Services

The Trustees welcomed Mr. Chris McDonough of Investment Performance Services ("IPS") to the meeting.

1. Master Consulting Report – December 31, 2022

Mr. McDonough reviewed the Master Consulting Report for the period ending December 31, 2022. Such report indicated a beginning market value of $16,223,175, a negative net cash flow of $14,103,470, and an investment loss of $838,113, resulting in an ending market value of $1,281,593. The year-to-date performance through December 31, 2022 was negative 7.6%, gross of fees.

2. Preliminary Performance Update – January 31, 2023

Mr. McDonough reviewed the Preliminary Performance Report for the period ending January 31, 2023. Such report indicated a beginning market value of $1,281,593, net cash flow of $0, and an investment gain of $25,894, resulting in an ending market value of $1,307,486. The year-to-date performance was 2%, gross of fees.

3. Asset Allocation

Mr. McDonough reviewed IPS's updated capital market assumptions for various asset classes and annualized expected returns over the next 10-20 years which had been revised by the IPS Investment Committee as of January 2023. He noted that IPS develops and utilizes capital market assumptions for various asset classes to help determine the optimal mix of assets for the investment portfolio. Based on these changes in assumptions, Mr. McDonough presented IPS's recommendation to adjust the current Policy's asset allocations to capitalize on the positive market expectations for Intermediate Fixed Income and avoid a negative impact relating to the expected returns for the Real Estate – Core asset class. Mr. McDonough provided an overview of the current Investment Policy allocations and presented alternative portfolio options for Trustees' consideration, as detailed in the IPS Q4 Master Consulting Report.

On Motion made and seconded, the Trustees voted unanimous approval of the following resolution:

> **RESOLVED to adopt Portfolio C which reflects a target of 10% to US Large Cap Equity, 60% to Intermediate Fixed Income, and 30% to Short Duration High Yield, with an expected return (net of fees) of 5.20% and a risk assessment of 4.05.**

4. Investment Consultant Fee Request

Mr. McDonough presented IPS's fee increase request letter, dated February 27, 2023 that was previously sent to the Chairman and Secretary for consideration. He reported that the current agreement/fee of $40,000 between IPS and the Fund has been in place since November 26, 2013. Mr. McDonough noted that IPS is requesting an increase in their fee to $60,000, effective January 1, 2023 for a three year period.

The Trustees thanked Mr. McDonough for his report and he was excused from the meeting.

After discussion, and on Motion made and seconded, the Trustees voted unanimous approval of the following resolution:

> **RESOLVED to propose an amended fee structure to IPS that reflects an increase to $50,000 for the 2023 Plan Year, $55,000 for the 2024 Plan Year, and $60,000 for the 2024 Plan Year.**

IV. CONSULTANT'S REPORT

A. The Segal Company

The Trustees welcomed Mr. Josh Timm and Ms. Nancy Eid of the Segal Company and Mr. Michael Jordon of Payer Matrix, LLC, to the meeting.

1. Payer Matrix Analysis

Ms. Eid presented the Payer Matrix Specialty Carve-Out report dated March 15, 2023. Mr. Jordan provided an overview of the Payer Matrix Company and its specialty pharmacy management program. Mr. Jordan reported that the goal of Payer Matrix is to successfully procure alternative funding for high cost drugs, thus reducing the cost to the Plan by utilizing manufacturer assistance programs. He noted that 90% of Payer Matrix's funding is through fully funded Patient Assistance Programs ("PAP"), 5% is from copay assistance programs, and 5% is from other sources including alternate payers and foundations. Mr. Jordan provided an overview of Payer Matrix's relationships with various Pharmacy Benefit Managers ("PBM"), including Express Scripts ("ESI"), Navitus, and MedOne.

Ms. Eid reported that the Fund's current contract terms, pricing and rebate guarantees with Express Scripts for the Actives are contingent upon ESI being the exclusive provider of specialty drug programs and services through Accredo, with one grace fill at retail. She noted that loss of specialty drug exclusivity would provide ESI with the right to renegotiate pricing. Ms. Eid said it would be reasonable to assume that carving out the Actives' specialty drug management and moving it to Payer Matrix will trigger a change in the Fund's current pricing terms with ESI. Ms. Eid reviewed four financial models, prepared by Segal, that illustrate the Fund's 2023 potential savings using Payer Matrix: (1) Current State without Payer Matrix; (2) Specialty carve out to Payer Matrix with no changes to ESI pricing and rebate guarantees; (3) Specialty carve out to Payer Matrix with a reduction in ESI discount guarantees; and (4) Specialty carve out to Payer Matrix, assuming a new PBM contract for the Actives that has less competitive discount and rebate guarantees. She noted that

Models 1 and 2 assume no changes to ESI specialty drug discounts or per-brand claim rebate guarantees and show the variability in costs/savings attributable to Payer Matrix achieving various levels of success in securing alternate funding. The models are adjusted for the expected reduction in the number of rebate-eligible drug brand claims as well as the 25% cost avoidance fee.

Ms. Eid provided key considerations regarding the member experience, administration, and financial aspects of hiring Payer Matrix. She noted that participants would be required to obtain prior authorization on all specialty drugs, would no longer have one grace refill at retail, would be required to participate in a more extensive enrollment process including proof of income, and potentially experience a 2-6 week turnaround time for the first fill. Administration would require a Summary of Material Modification, and the possible renegotiation of the Fund's agreement with ESI or hiring a new PBM. Financially, there would be a decrease or forfeiture of annual specialty discount and rebate guarantees, non-specialty drug discounts and rebates would need to be re-negotiated with ESI and would decrease from current levels, and the Fund would pay full cost of specialty drugs not sourced by Payer Matrix.

Mr. Jordan reported that the Fund has an opportunity to lower specialty drug costs by carving out specialty drug management to Payer Matrix. He stated that Payer Matrix predicts savings ranging from $650,000 to $3.5M annually, dependent upon Payer Matrix achieving 80% or greater success in securing alternate funding for the targeted specialty drugs. Mr. Jordan suggested as a next step that the Fund ask ESI whether it would exercise its rights to renegotiate the current contract pricing terms. He reviewed the Payer Matrix pricing model which is 25% of the cost avoidance fee, capped at $75,000 per patient, with a contract term of three years and possible consideration of a one year contract.

The Trustees thanked Mr. Jordan for his presentation and he was excused from the meeting.
The Trustees asked Ms. Eid to contact ESI and ask whether ESI would agree to work with Payer Matrix and, if so, whether it would exercise its right to renegotiate its current contract terms with the Fund.

2. Reserve Analysis

Mr. Josh Timm of The Segal Company presented a Reserve Analysis report dated March 16, 2023. Mr. Timm stated that the analysis illustrates the financial performance of the Welfare Fund. He noted that the analysis illustrates the Fund's income, expenses, and reserve levels for each quarter from January 1, 2019 through December 31, 2022. Mr. Timm reported that, in accordance with the collective bargaining agreements, the

Fund spent down reserves to 2.0 months, effective December 1, 2020. As of December 31, 2022, the Fund's reserves represented 0.80 months of expenses.

Mr. Timm reported that a decrease in total Fund income and an increase in total Fund expenses in the last twelve months has resulted in an operating deficit of approximately $12.35 million. Mr. Timm reviewed the total income and expenses during the same period and noted the operating deficit for the first two quarters of 2022 was notably higher than during the prior year due to a large number of high-dollar claims. Ms. Sims noted that claims experience has begun to slow down in recent months.

Mr. Timm provided a summary of the historical contribution rates from November 1, 2018 through the present that were calculated by applying trends to actual Fund expenses for the previous four quarters. Mr. Timm reported that the November 1, 2022 contribution rates result in per capita contributions lower than the previous 12-months of per capita expenses and likely do not reflect the additional amount needed to get to 2.0 months of reserves.

3. Subrogation Services Request for Proposal ("RFP")

Mr. Timm presented the "Summary of Proposals for Subrogation Services." He noted that Segal issued a Request for Proposal ("RFP") to solicit Subrogation Services for the Fund. Mr. Timm stated that Benefit Recovery Group ("BRG"), NexClaim Recoveries, LLC ("NexClaim"), and The Phia Group, LLC ("Phia") submitted proposals for consideration. Mr. Timm provided an overview of the vendor responses, which included bidder profiles and summaries of key vendor information. He reported that BRG and NexClaim quoted a contingency fee of 25% of recoveries for years 1-3, and Phia quoted a contingency fee of 22% of recoveries, with a litigation bump to 33%.

NexClaim Recoveries, LLC.

The Trustees welcomed Mr. Scott Viviano of NexClaim Recoveries, LLC to the meeting. Mr. Viviano stated his company is independently owned and has been in operation since 2003. He stated that NexClaim has consistently recovered over 1% of annual medical spend for similar Taft-Hartley clients. Mr. Viviano reported that Nexclaim employs specialists with an advanced skill set in negotiating the highest rate of return for clients and are all licensed property and casualty adjusters with an average of 15 plus years of service. He reported that Nexclaim has consistently outperformed the industry averages and benchmarks.

The Trustees thanked Mr. Viviano and he was excused from the meeting.

After discussion, and on Motion made and seconded, the Trustees voted unanimous approval of the following resolution:

> **RESOLVED, to engage NexClaim Recoveries, LLC to provide subrogation services at the quoted contingency fee of 25% of recoveries for years 1-3.**

4. COVID-19 Over the Counter ("OTC") Test Kits

Ms. Eid reported that on January 30, 2023, the Administration issued a Statement of Administration Policy ("SAP") announcing that both the National Emergency ("NE") and Public Health Emergency ("PHE") related to COVID- 19 will end on May 11, 2023. She provided an overview of the benefit requirements that end May 11, 2023, including COVID-19 testing, Over-the-Counter COVID-19 testing and out-of-network COVID-19 vaccines. She noted that once the PHE declaration expires, the Fund is no longer required to cover over-the-counter ("OTC") COVID tests. Ms. Eid noted that the Fund is currently enrolled in Express Scripts' ("ESI") Standard COVID OTC Test Kit solution that offers eight test kits per member per 30 days with a $0 copay. Ms. Eid presented Segal's recommendation that, upon the expiration of the National Emergency, the Fund continue to offer $0 dollar coverage of four OTC COVID tests , per member, per 30 days through December 31, 2023. This would result in estimated cost reduction to the Fund of $386,765, as compared to providing 8 OTC tests per member per 30-day period.

After discussion, and on Motion made and seconded, the Trustees voted unanimous approval of the following resolution:

> **RESOLVED, to reduce the number of COVID OTC tests offered at $0 copay to participants and dependents from 8 per person per 30 days to 4 per person per 30 days, effective upon the termination of the COVID National Emergency.**

The Trustees said they would continue to monitor the usage.

V. ATTORNEY'S REPORT

A. Transparency in Coverage Final Rule and Consolidated Appropriations Act ("CAA")

Ms. Sanchez reported on the requirements of the Transparency in Coverage Final Rule and the CAA and the related final regulations.

B. COVID-19 National Emergency Ending

Ms. Sanchez reported on the expected end to the COVID-19 National Emergency.

C. CareFirst Data Breach

Ms. Sanchez reported on a CareFirst data breach.

D. Cybersecurity Request for Proposal ("RFP") Status

Ms. Sanchez reported on the RFP for a cybersecurity consultant.

After discussion, and on Motion made and seconded, the Trustees voted unanimous approval of the following resolution:

> **RESOLVED to delegate to Chairman and Secretary the authority to select a cyber consultant based on a review of the RFP responses.**

E. Fee Disclosure Notices

Ms. Sanchez reported on the status of the fee disclosure questionnaires sent to providers.

F. Mallinckrodt Bankruptcy

Ms. Sanchez reported on the Mallinckrodt bankruptcy.

G. Prescription Drug Class Actions

Ms. Sanchez reported on prescription class action filings.

H. PBM Consulting Services Statement of Work ("SOW")

Ms. Sanchez reported on the PBM consulting services SOW with Segal.

I. Express Scripts Inc ("ESI") Pricing Amendment

Mr. Sanchez reported on the amendment to the ESI contract.

J. Summary Plan Description ("SPD") Restatements

Ms. Sanchez reported on the Fund's SPD restatements.

K. Preventive Services List

Ms. Sanchez reported on the Fund's updated preventive services list.

L. Telehealth Extension Summary of Material Modification ("SMM")

Mr. Sanchez reported on the Telehealth Extension SMM.

M. Mental Health Parity Non-Quantitative Treatment Limitations ("NQTL") Analysis

Ms. Sanchez reported on Segal's draft report regarding NQTLs.

N. Subrogation Report

Mr. Jensen stated that Slevin & Hart reported subrogation recoveries of $22,836, with $5,709 payable to Slevin & Hart, for the fourth quarter 2022.

VI. ADMINISTRATIVE MANAGER'S REPORT

Fourth Quarter 2022 – Combined Fund Recap

Mr. Jensen presented the Administrative Manager's Report for the Fourth Quarter 2022. For the combined VEBA Fund, Active and Retiree Plans, total income was $30,896,828 and expenses totaled $30,658,431, producing a surplus of $238,397 for the fourth quarter 2022. Mr. Jensen noted that contributions were made on behalf of 14,641 active Plan participants.

VII. INVOICES

The Trustees reviewed the lists of invoices for the Active Plan and Retiree Plan dated March 17, 2023. It was noted there was one addition to the list.

On Motion made and seconded, the Trustees voted unanimous approval of the following resolution:

> **RESOLVED that the invoices on the lists dated March 17, 2023 for the Active Plan and Retiree Plan, including the addition, are approved for payment.**

VIII. OTHER FUND BUSINESS

A. Calibre - Audit Engagement Letter 2022

Mr. Jensen presented the Calibre Audit Engagement Letter for the Plan Year ended December 21, 2022. He noted Calibre is requesting a fee increase of $5,400 which represents a 6% increase, for a total estimated annual fee not to exceed $90,400.

On Motion made and seconded, the Trustees voted unanimous approval of the following resolution:

RESOLVED to approve the Calibre - Audit Engagement Letter for the Plan Year ended December 31, 2022 for a fee that will not exceed $90,400.

B. <u>COVID-19 Related Claims Processing</u>

Mr. Jensen provided a summary of COVID-19 medical claims experience for the period January 1, 2022 through December 31, 2022. He noted that 8,963 tests were paid at a cost of $1,177,000. Treatment was provided to 2,133 plan participants at a cost of $739,000.

C. <u>Miscellaneous Correspondence</u>

1. ESI Rebate

Mr. Jensen reported the second quarter ESI rebate was received in the amount of $1,539,000.

2. Litigation Settlements

Mr. Jensen reported the Fund received a litigation settlement from Big Lots in the amount of $30.

IX. <u>ADOPTION OF COMMITTEE RECOMMENDATIONS</u>

After review of the recommendations made by the Severance and Legal Committees during their meetings,

On Motion made and seconded, the Trustees voted unanimous approval of the following resolution:

RESOLVED, that the recommendations made by the Severance and Legal Committees are adopted.

X. <u>NEXT MEETING DATE AND LOCATION</u>

After discussion, the Trustees noted that the next regular meeting is scheduled on the following dates:

Tuesday, June 27, 2023 at 9:30 A.M.

Wednesday, September 27, 2023 at 9:30 A.M.

Monday, December 11, 2023 at 9:30 A.M.

The meeting will be held via video conference.

XI. <u>ADJOURNMENT</u>

There being no further business to come before the Trustees, the meeting was adjourned.

Respectfully submitted,

Mark Federici, Secretary

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