



**ADMINISTRATIVE MEMORANDUM No. 134**

**SUBJECT: OAS 401(m) Plan Administration Committee (“PAC”)**

**CONSIDERING,**

That in accordance to Staff Rule 107.2, staff members who are not required to participate in the OAS/Retirement and Pension Fund may participate in the 401(m) Plan, which is a qualified retirement savings account formed under the laws of the Headquarters country;

Pursuant to Article 9 of the OAS 401 Plan, the Plan Administrator “has responsibility for the general administration of the Plan and for carrying out its provisions;”

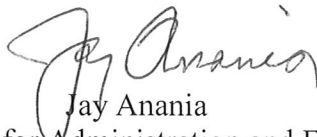
Recalling that on December 19, 2005, the Secretary for Administration and Finance by means of a Memorandum of Decision (attached) created the OAS 401(m) Plan Administration Committee (“PAC”) to assign it the functions of Plan Administrator under the Plan, and to designate it as the Plan’s named fiduciary for purposes of the Plan Administration; and,

That the PAC is a tripartite body comprised by the Secretary-Treasurer of the OAS Retirement and Pension Fund who also acts as Chairperson, a representative of the Secretary General, and a representative of the OAS Staff Committee.

**THE DECISION:**

1. To instruct the PAC:
  - a. To carry out its duties in strict adherence to the Plan, its Investment Policy Statement, the requirements of contracts executed for the implementation of the Plan, and in accordance with its fiduciary duties;
  - b. To keep minutes of its meetings and make those minutes available to plan participants and the Secretariat for Administration and Finance as requested;
  - c. To attempt to take all its decisions by consensus, but where consensus cannot be reached, then to take them by a majority vote of its members;
  - d. To conduct its meetings in a way that assures full participation of its members and to use, when necessary to achieve that purpose, teleconferencing and other similar methods; and
  - e. To notify the Secretary for Administration and Finance of any potential liabilities or other significant problems arising out of Plan administration.

2. To assure the members of the PAC that their duties as PAC members are official duties as staff members of the OAS General Secretariat (GS/OAS), and that with respect to any plan participant and other third-party claims that might be filed against them in relation to those duties carried out in good faith and without willful misconduct or gross negligence:
  - a. They enjoy the full protection of the privileges and immunities accorded. under the OAS Headquarters Agreement, the agreements on privileges and immunities between the GS/OAS and its Member States, and national legislation conferring similar privileges and immunities to GS/OAS staff members; and
  - b. GS/OAS shall hold them harmless and provide them with counsel in relation to their defense.
3. To confirm the composition of the PAC as composing three members:
  - 1) The Secretary-Treasurer of the OAS Retirement and Pension Fund, who serves as Chairperson of the PAC;
  - 2) A representative of the Secretary General of the PAC, designated by the Secretary for Administration and Finance;
  - 3) A representative of the OAS Staff Association.
4. To assign the Department of Human Resources (DHR) the functions of Technical Secretary of the PAC. In the role of Technical Secretary, the DHR will have the responsibilities of:
  - Scheduling periodic meetings (at least two per year) of the PAC, preparing minutes of said meetings and distributing the minutes within two weeks of the meeting date.
  - Maintaining current information regarding the OAS 401(m) plan on the OAS intranet (or if advantageous, internet) web site.
  - Receiving feedback from plan participants, and if necessary coordinating with the plan administrator on issues which may arise concerning service to 401(m) plan participants.
  - Scheduling periodic informative sessions about the 401(m) plan. Such sessions could be conducted by DHR personnel or the plan administrator, in person or remotely.
5. Hereby revoking all provisions of the Memorandum of Decision of 2005 that are in conflict with the provisions of this Administrative Memorandum.



Jay Anania  
Secretary for Administration and Finance

Date: February 15, 2017

Original: English

Attachment A: Memorandum of Decision: Appointment of OAS 401(m) Plan Trustee and Creation of OAS 401(m) Plan Administration Committee.



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## MEMORANDUM OF DECISION

### DIRECTOR OF THE ASSISTANT SECRETARIAT FOR ADMINISTRATION AND FINANCE

RE: Appointment of OAS 401(m) Plan Trustee and Creation of OAS 401(m) Plan Administration Committee

Pursuant to the authority conferred under Executive Order 05-13 and Article 10 of the OAS 401 Plan ("the Plan"), I, Frank Almaguer, Director of the Assistant Secretariat for Administration and Finance, hereby take the following decisions:

1. To remove Northern Trust Bank of Florida, N.A., as the Plan's Trustee and Custodian and to appoint in its place Charles Schwab Trust Company, subject to the execution of the pertinent documents, by February 1, 2006.
2. To create the OAS 401(m) Plan Administration Committee ("PAC"), to assign it the functions of Plan Administrator under the Plan, and to designate it as the Plan's named fiduciary for purposes of Plan Administration.
3. To appoint to the PAC the following members:
  - a. The Secretary-Treasurer of the OAS Retirement and Pension Fund, currently Mr. Daniel Vilarino;
  - b. The Representative of the Secretary General, currently Mr. Sergio Pino, and
  - c. The Representative of the OAS Staff Committee, Ms. Patricia Richardson.
4. To appoint the Secretary-Treasurer of the OAS Retirement and Pension Fund, currently Mr. Daniel Vilarino, as Chairman of the PAC and to confer upon him the sole authority to sign and otherwise execute all documents on behalf of the PAC and the sole authority to direct the PAC's instructions to its agents, the Trustee, and other service providers to the PAC and the Plan.
5. To instruct the PAC:
  - a. To carry out its duties in strict adherence to the Plan, its Investment Policy Statement, the requirements of contracts executed for the implementation of the Plan, and in accordance with its fiduciary duties;
  - b. To keep minutes of its meetings and make those minutes available to plan participants and the Secretariat for Administration and Finance as requested;

- c. To attempt to take all its decisions by consensus, but where consensus cannot be reached, then to take them by a majority vote of its members;
  - d. To conduct its meetings in a way that assures full participation of its members and to use, when necessary to achieve that purpose, teleconferencing and other similar methods; and
  - e. To notify the Assistant Secretary for Administration and Finance of any potential liabilities or other significant problems arising out of the administration of the Plan.
6. To assure the members of the PAC that their duties as PAC members are official duties as staff members of the OAS General Secretariat ("GS/OAS"), and that with respect to any plan participant and other third-party claims that might be filed against them in relation to those duties carried out in good faith and without willful misconduct or gross negligence:
- a. They enjoy the full protection of the privileges and immunities accorded under the OAS Headquarters Agreement, the agreements on privileges and immunities between the GS/OAS and its Member States, and national legislation conferring similar privileges and immunities to GS/OAS staff members; and
  - b. GS/OAS shall hold them harmless and provide them with counsel in relation to their defense.

SIGNED, this 19<sup>th</sup> day of December 2005.

  
Frank Almaguer

Distributees with regard to the interest of the spouse or former spouse. It also means "nonspouse beneficiary" for the purpose of applying Section 402(c)(11) of the Code; and

(iv) "Direct rollover" means a payment by the Plan to the eligible retirement plan specified by the Distributee.

**8.08 Waiver of Notice Period**

Except as provided in the following sentence, if the value of a Member's Accounts exceeds \$5,000, an election by the Member to receive a distribution prior to age 65 shall not be valid unless the written election is made (a) after the Member has received the notice required under Section 1.041(f)-1 of the Income Tax Regulations and (b) within a reasonable time before the effective date of the commencement of the distribution as prescribed by said regulations. Such distribution may commence less than 30 days after the notice required under Section 1.402(f)-1 of the Income Tax Regulations is given, provided that:

- (i) the Plan Administrator clearly informs the Member that he or she has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and
- (ii) the Member, after receiving the notice, affirmatively elects a distribution.

**ARTICLE 9. ADMINISTRATION OF PLAN**

**9.01 Appointment of Plan Administrator**

- (a) The Plan Administrator has responsibility for the general administration of the Plan and for carrying out its provisions.
- (b) GS/OAS shall appoint the Plan Administrator, who shall serve at GS/OAS's pleasure. The Plan Administrator shall accept the appointment by filing a written acceptance with GS/OAS. The Plan Administrator may resign by delivering a written resignation to GS/OAS, in accordance with such notification requirements as GS/OAS may establish.

**9.02 Duties of Plan Administrator**

The Plan Administrator may authorize any agent to execute or deliver any instrument or make any payment on his or her behalf; may retain counsel, employ agents and provide for such clerical, accounting, and consulting services as he or she may require in carrying out the provisions of the Plan; and may delegate to other persons all or such portion of his or her duties under the Plan, other than those granted to the Trustee under the trust agreement adopted for use in implementing the Plan, as he or she, in his or her sole discretion, shall decide.

- 9.03 ***Individual Accounts***  
The Plan Administrator shall maintain, or cause to be maintained, records showing the individual balances in each Member's Accounts. However, maintenance of those records and Accounts shall not require any segregation of the funds of the Plan.
- 9.04 ***Compensation***  
No Plan Administrator shall receive any compensation from the Plan for his or her services as such.
- 9.05 ***Establishment of Rules***  
Subject to the limitations of the Plan, the Plan Administrator from time to time shall establish rules for the administration of the Plan and the transaction of his or her business. The Plan Administrator shall have discretionary authority to construe and interpret the Plan (including, but not limited to, determination of an individual's eligibility for Plan participation, the right and amount of any benefit payable under the Plan and the date on which any individual ceases to be a Member). The determination of the Plan Administrator as to the interpretation of the Plan or any disputed question shall be conclusive and final to the extent permitted by applicable law.
- 9.06 ***Prudent Conduct***  
The Plan Administrator shall use that degree of care, skill, prudence and diligence that a prudent man acting in a like capacity and familiar with such matters would use in his conduct of a similar situation.
- 9.07 ***Service in More Than One Fiduciary Capacity***  
Any individual, entity or group of persons may serve in more than one fiduciary capacity with respect to the Plan and/or the funds of the Plan.
- 9.08 ***Limitation of Liability***  
The Employer, the Plan Administrator, and any officer, employee or agent of the Employer shall not incur any liability individually or on behalf of any other individuals or on behalf of the Employer for any act or failure to act, made in good faith in relation to the Plan or the funds of the Plan. However, this limitation shall not act to relieve any such individual or the Employer from a responsibility or liability for any fiduciary responsibility, obligation or duty under Part 4, Title I of ERISA.
- 9.09 ***Indemnification***  
The Plan Administrator and the officers, employees and agents of the Employer shall be indemnified against any and all liabilities arising by reason of any act or omission in relation to the Plan or the funds of the Plan, including, without limitation, expenses reasonably incurred in the defense of any claim relating to the Plan or the funds of the Plan, and amounts paid in any compromise or settlement relating to the Plan or the funds of the Plan, except for acts or omissions made intentionally, with gross negligence or otherwise reckless disregard of the Plan's provisions, or in bad faith. The foregoing indemnification shall be to the extent of reasonable insurance policies (in accordance with prevailing industry practices) purchased by the Plan Administrator for this purpose and to the extent permitted under the Code and other applicable law.

Except as required to purchase said insurance policies, the funds of the Plan shall not be used to provide for said indemnification unless otherwise required and permitted by law without prejudicing the qualified status of the Plan. GS/OAS and IICA shall not be liable for providing such indemnification.

9.10 ***Appointment of Investment Manager***

GS/OAS may, in its discretion, appoint one or more investment managers (within the meaning of Section 3(38) of ERISA) to manage (including the power to acquire and dispose of) all or part of the assets of the Plan, as the Employer shall designate. In that event, authority over and responsibility for the management of the assets so designated shall be the sole responsibility of that investment manager.

9.11 ***Named Fiduciary***

For purposes of ERISA, the Plan Administrator shall be the named fiduciary of the Plan.

## **ARTICLE 10. MANAGEMENT OF FUNDS**

10.01 ***Trust Agreement***

All the funds of the Plan shall be held by a Trustee appointed from time to time by GS/OAS under a trust agreement adopted, or as amended, by GS/OAS for use in providing the benefits of the Plan and paying its expenses not paid directly by GS/OAS. GS/OAS shall have no liability for the payment of benefits under the Plan nor for the administration of the funds paid over to the Trustee.

10.02 ***Exclusive Benefit Rule***

Except as otherwise provided in the Plan, no part of the corpus or income of the funds of the Plan shall be used for, or diverted to, purposes other than for the exclusive benefit of Members and other persons entitled to benefits under the Plan and paying the expenses of the Plan not paid directly by the Employer. No person shall have any interest in, or right to, any part of the earnings of the funds of the Plan, or any right in, or to, any part of the assets held under the Plan, except as and to the extent expressly provided in the Plan.

## **ARTICLE 11. AMENDMENT, MERGER AND TERMINATION**

11.01 ***Amendment of Plan***

GS/OAS reserves the right at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions of the Plan. However, no amendment shall make it possible for any part of the funds of the Plan to be used for, or diverted to, purposes other than for the exclusive benefit of persons entitled to benefits under the Plan. No amendment shall be made which has the effect of decreasing the balance of the Accounts of any Member or of reducing the nonforfeitable percentage of the balance of the Accounts of a Member below the nonforfeitable percentage computed under the Plan as in effect on the date on which the amendment is adopted, or if later, the date on which the amendment becomes effective.