

## Investment Plans Committee

Regular Meeting  
Minutes  
June 25, 2008

A regular session of the Investment Plans Committee (IPC) was held on Wednesday, June 25, 2008 and convened at 8:35 a.m. 300 Lakeside Drive, 20<sup>th</sup> Floor; Oakland, California, 94612.

### Committee Members or Alternate Members Present:

Teresa Murphy,	BART
Elaine M. Kurtz,	BART alt.
Howard D. Jones,	SEIU

Carolyn Pope-Chappell,	ATU
Hubert La Violette,	ATU alt.
Rube Warren,	AFSCME
Jean Hamilton,	AFSCME alt.
Kory Frost,	BPOA
Michael Pon,	BPOA alt.

### Committee Members or Alternate Members Absent:

Robert Fernandez, SEIU alt.

### Other Attendees:

Iwona Scibisz,	PIMCO All Asset
Ann-Marie Carlson,	ICMA-RC
Richard Johnson,	Saltzman & Johnson
Marcia Beard,	R.V. Kuhns
Peter Horikoshi,	BART
Arne Stokstad,	BART
Carolina Lopez,	BART

### AGENDA ITEM 1 - Convene and Sign-in

The meeting convened at 8:35 a.m. and was chaired by Elaine Kurtz.

### AGENDA ITEM 2 – Public Comment

There were no public comments at the June 25, 2008 BART Investment Plans Committee's public meeting.

### AGENDA ITEM 3 - IPC Chair Report - "Check-in" by IPC Members

There were no check-in items at the June 25, 2008 BART Investment Plans Committee's public meeting.

**AGENDA ITEM 4 - Discussion and Action Concerning**

a) Minutes – May 28, 2008

The Committee reviewed the May 28, 2008 meeting minutes and approved the following motion:

Motion: To approve the May 28, 2008 meeting minutes with the following modifications:

**Page 3 - Agenda Item 5a:** Change - "The Committee discussed options to ~~draw~~ reduce the balance for plan expenses closer to the target amount."

**Page 4 - Agenda Item 5c:** Change - "A draft letter to participants regarding the July 18, 2008 fund option change was reviewed and approved by the Committee."

**Page 5 – Agenda Item 7:** Change – "The Retirement Date Funds (TRD) did not meet their benchmarks for the one year period mainly due to the wide performance gap between High Yield Bonds and High Quality Bonds which is not reflected in the benchmark Lehman Aggregate Index."

**Page 5 - Agenda Item 7:** Change - "~~Two changes which will be made to each fund's respective benchmark is the change from the Wilshire 5000 to the Russell 3000 and the MSCI EAFE will be changed to the MSCI ACWI x-US. These benchmark changes will be effective as of 5/31/08. There will be two changes to the benchmarks for each TRD fund effective May 31, 2008. The Wilshire 5000 Index will be replaced by the Russell 3000 Index as the benchmark for domestic equities. The MSCI EAFE Index will be replaced by the MSCI ACW x-US as the benchmark for non-US equities.~~"

**Page 6 – Agenda Item 8e:** – Change – "Legal counsel indicated that he would be responding to the requestor and would be denying the request."

**Page 6 – Agenda Item 9d:** - Change – "~~CalPERS~~ CALAPRS Communication and Media Policy"

Note: The Committee determined that for the May 28, 2008 minutes, the change was not necessary.

## AGENDA ITEM 5 – Discussion and Action Concerning Record Keeper Report

- a) Ann-Marie Carlson of ICMA-RC provided the following transaction summary for the 401(a) Money Purchase Pension Plan and 457 Deferred Compensation Plan for the period ending May 31, 2008.

<b>May 2008</b>	<b>401(a) MPP</b>	<b>457 Deferred Comp</b>
Opening Balance	\$271,067,334	\$416,216,430
Contributions	526,593	1,905,278
Roll-ins	0	24,881
Distributions	(1,737,186)	(1,728,849)
Adjustments	4,044	4,044
Plan to Plan Transfers	0	0
Investment Earnings	3,359,603	5,605,460
Service Fees	(60)	(139)
Closing Balance	273,220,328	422,027,105
Change	\$2,152,994	\$5,810,675

The Record Keeper advised the Committee that there was one new participant in the VantageBroker program for a total 99 participants. The Record Keeper reviewed Fund Information Report which indicated that the percentage of assets in some of the T. R. Price Retirement Funds has increased from the previous month's percentage. The percentage of total monthly contributions from the 401(a) and 457 plans into these funds was 12.57% which is down from April 2008 total monthly contributions of 13.14%. The Record Keeper reported that Airtime purchases were \$170,832 from the 401(a) plan and \$49,539 from the 457 Plan. A Committee member requested that the total number of airtime purchases be listed on future transaction summaries for each plan. In future reports the number of Airtime purchases will be noted.

A Committee member asked about an apparent discrepancy between the almost \$8,000 in contributions to the T. Rowe Price Retirement 2055 Fund and the balance at the end of the month of only \$800 in this fund. The record keeper responded that she would bring the answer to the next Committee meeting. A Committee member asked if the share of total monthly contributions for Target Retirement Date funds is greater than for the Model Portfolio funds that these funds replaced. The record keeper will check the previous transaction summaries and notify the Committee.

- b) Financial Planner Report – The Record Keeper provided information on activity of the Certified Financial Planner covering 2007 and 1/1/08 – 5/31/08. It was noted that 6 seminars have been held in 2008 with 175 attendees. There have been 30 one-on-one meetings as well as 49 general calls, letters and e-mails to participants.

A Committee member asked if there was an extensive waiting list for the financial planner's services in order to assess whether an increase in visits per month would be justified.

- c) EZ Enrollment – The record keeper brought this form to the attention of the Committee at the May 28, 2008 meeting and was asked to bring the form to the June 25, 2008 meeting. The Record Keeper handed out EZ Enrollment “Quick Start card” along with a sample 457 EZ Enrollment Form.
- The Quick Start card provides an overview of the form and instructions on how to enroll quickly.
  - The EZ Enrollment Form makes enrollment easier by providing pre-defined choices in the areas that are often the most difficult for participants (i.e. contribution amount, funds).

This form is used by other ICMA-RC plan sponsors to assist employees in enrolling in their deferred compensation plans. The form simplifies the decision making process for employees by providing the option to choose from a more limited listing of funds. The Committee expressed their concern that the EZ Enrollment form appears to steer participants towards the Target Retirement Date funds, which is only one of three tiers of funds that the Investment Plans offer.

The Committee directed staff to review the form and present modifications at the July 23, 2008 meeting. Legal counsel volunteered to review the language regarding community property states for the July 23, 2008 meeting.

- d) On-line Withdrawals – The Record Keeper provided information on On-Line Withdrawals product for terminated employees. This product is designed to free up staff time and make withdrawal requests quick, easy and secure for terminated employees. Once this is implemented terminated employees may apply for withdrawals through Account Access. There are no documents for employees to fill out or mail. The entire process is electronic. Any employees with questions can contact ICMA-RC Investor Services directly. A complete record of the transaction is available via EZ Link. BART staff will need to provide ICMA-RC a file of terminated employees.

Result: The COMMITTEE felt favorable about moving forward on this feature but would like an additional detailed review at the next meeting. This is a service that ICMA-RC offers that would allow terminated employees to withdraw money from their plans online without using paper forms. The Committee was interested in the concept but asked the record

keeper to bring more details about the service to the July 23, 2008 meeting.

On-line Beneficiary – This is another service that ICMA-RC offers that would allow participants to view and change beneficiaries online without supporting paper documentation. The Committee agreed not to proceed with this feature due to discussion and agreement that it would be safer to require an actual signature.

- e) Administrative Fee Reimbursement. Record Keeper reported that due to several factors at ICMA-RC occurring around the same time reimbursements from Dodge & Cox, T. Rowe Price and Westwood were not credited to the Administrative Allowance Account covering a period of mid-2007 to April 2008. This has now been corrected and credited to the Administrative Account. The total amount credited to the BART administrative accounts is approximately \$113,000. This money is kept in the Dwight Asset Management Stable Value Fund for both plans. Since the \$113,000 should have been credited on a monthly or quarterly basis starting in mid-2007 to April 2008 at different share prices, ICMA-RC purchased the shares in June 2008 and credited the amounts retroactively at the share price in effect on the date the money should have been credited. Information was provided to the Committee on safeguards ICMA-RC now has in place which includes the hiring of an outside consultant to cover, review safeguards and processes.

A Committee member requested information on where these funds had been invested at ICMA-RC and requested that earnings on these funds that had been held by ICMA-RC be calculated and credited to the Administrative Allowance Account. The investment analyst requested that the record keeper ask the fund managers to send a detailed accounting for all of the fee reimbursements that have been paid to date for the Money Purchase Pension Plan and the Deferred Compensation Plan. The investment analyst indicated they would call or email managers that provide an administrative fee reimbursement (D&C, Rainier, TRP and Westwood) and ask them to provide a notice to Peter and Ann-Marie when the reimbursement is being sent to ICMA-RC. The notice/statement should include date sent to ICMA-RC and amount.

Another committee member requested a workbook covering administrative flows be developed between ICMA-RC and BART. Additional discussion was held about an on-site visit to ICMA-RC.

Result: An on-site meeting will be scheduled for September 18<sup>th</sup> with the focus to review an IPC/Record keeper manual (to coincide with the Committee's attendance at the NAGDCA conference in nearby Baltimore,

Maryland). Please see agenda item 9e for more information.

- f) The Record Keeper reported on a credit that will be applied to participant accounts holding the VantagePoint LongTerm Growth fund (no longer a fund offered to participants) for the period covering 10/30/07 – 2/15/08. ICMA-RC experienced a problem with the materials that were available to the participants. The materials included a chart which showed an allocation to TIPS however the table next to the chart did not indicate a TIPS allocation. RC compared the returns of a hypothetical portfolio with TIPS (chart) to the actual return which did not include TIPS (table). The hypothetical portfolio with TIPS outperformed the actual and RC decided to reimburse participants invested in the Long-Term Model Portfolio as if they had the benefit of the TIPS allocation. Letters were sent to all affected participants on June 16<sup>th</sup> and the credit will appear in accounts no later than June 20<sup>th</sup> and on 2Q Statements. The average credit was \$29 and affected 319 participants in the Money Pension Purchase Plan and 322 participants in the Deferred Compensation Plan.

#### **AGENDA ITEM 6 – Discussion and Action Concerning**

- a) Investment Analyst Monthly Report

A performance flash report through May was presented. For the most part, equity markets continued to improve in May. The growth benchmarks outperformed their value counterparts and small and mid cap stocks outperformed large cap stocks. Manager performance relative to their benchmarks was mixed. The Target Retirement Date funds beat their respective benchmarks across the board. The Plans' Fixed Income Fund (Dodge and Cox) and Balanced Option outperformed their respective indices by a solid margin in May and are now ahead of their benchmarks year-to-date.

- b) Fund Manager Review – PIMCO All Asset Fund

In advance of the PIMCO presentation by Iwona Scibisz, R.V. Kuhns provided a more in-depth review of the PIMCO All Asset Fund. The PIMCO All Asset Fund is behind its long-term benchmark of CPI+5% year-to-date. Since inception, the Fund has beaten the long-term benchmark and also the Treasury Inflation Protected Securities (TIPS) index.

#### **AGENDA ITEM 7 – Discussion and Action Concerning**

Fund Manager Update: PIMCO All Asset Fund

Ms. Iwona Scibisz is a Vice President and a member of PIMCO's account management group. Ms. Scibisz provided the Committee with an update on the PIMCO All Asset Fund.

### **Investment Policy Guidelines:**

- For calendar years 2005 - 2007, the PIMCO All Asset fund did not meet the Investment Policy Guideline for the Fixed Income fund category because it returned an annual average of 7.01% vs. 8.54% for the CPI+5% over a 3 year period.
- For calendar years 2003 – 2007, the fund exceeded the Investment Policy Guideline because it returned an annual average of 9.05% vs. 8.15% for the CPI+5% over a 5 year period.
- The fund met the Investment Policy Guideline of not significantly increasing the expense ratio from the previous quarter by maintaining the expense ratio of 0.86%.

Iwona Scibisz presented the fund manager update for the PIMCO All Asset fund.

- Strategy - PIMCO All Asset fund seeks to outperform the CPI by five percentage points over the long term with a low target volatility of between 6 and 8%. The fund will tactically shift its allocation, meaning that PIMCO can change the allocation of investments when their research indicates that such a move will increase return or that it will protect assets from a downturn.
- Outlook and Conclusions from PIMCO's Secular Forum - In May of each year PIMCO holds a forum to discuss different perspectives on their economic outlook for the next 3 to 5 years. They invite outside speakers to provide new thoughts and ideas. Based on this year's forum, PIMCO believes that the global economy will continue to grow but at a slower pace than in the recent past and that emerging markets will be the driving force behind that growth. There are indications that the European economy is slowing down with the British housing market weakening and the economies of underdeveloped countries slowing down as well. They anticipate a decline in corporate profits due to more expensive labor costs in emerging markets. PIMCO also believes that the different financial systems are so intertwined that when there is an unusual event such as the sub-prime mortgage collapse, all of the different financial systems are affected.

A Committee member noted that although PIMCO is one of the largest fixed income funds in the world, this fund has the lowest contribution rate amongst BART's core options. In order to promote this fund the PIMCO representative will forward new marketing materials to staff.

## **AGENDA ITEM 8 – Discussion and Action Concerning**

Richard Johnson of Saltzman & Johnson Law Corporation attended the Committee meeting in place of Russell Richeda, who normally attends the Committee meetings.

### a) 2008 Restatement of the Deferred Compensation Plan

In the May 28, 2008 Committee meeting, Committee members were provided copies of the Deferred Compensation Plan Restatement and the individual amendments that have been incorporated into the restatement for review.

The Committee approved the following motion:

**Motion:** To approve the 2008 Restatement of the Deferred Compensation Plan including Amendment 11. This motion was passed unanimously.

With this approval, legal counsel and staff will work with BART's Office of the General Counsel to bring the restatement to the General Manager for acceptance by the District.

- b) Legal Updates – A number of legal updates were discussed during the meeting.
- i) California Supreme Court Decision on Same Sex Marriage – On May 15, 2008, the California Supreme Court ruled that same sex couples possess a right under the California constitution to marry. One of the essential issues was the meaning of the word 'marriage.' Under California law marriage includes same sex couples. Under Federal law, including the Internal Revenue Code, 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife. This interpretation affects the distribution of investment plans assets following a divorce through what is known as Qualified Domestic Relations Orders (QDRO). Legal counsel plans to issue a memorandum clarifying the impact of this ruling on the administration of the investment plans.
  - ii) Lexin v. Superior Court – Legal counsel presented an update of an ongoing lawsuit involving the Retirement Board of the San Diego City Retirement System. This court case is of interest to the investment plans committee even though the case involves a defined benefit plan as opposed to BART's defined contribution investment plans.

- c) Status of 2007 Audit – Proposed Contract Amendment – In the May 28, 2008 Committee meeting, the Committee directed legal counsel to negotiate terms for a contract amendment to the agreement with the current auditor. Legal counsel reported that an agreement was reached. The Committee discussed the unexpected amount of work that was required to perform the 2005/2006 audits as well as the desire to retain services of Brown Armstrong. The amendment provides for compensation of up to \$60,000 per audit for the 2007, 2008, and 2009 plan years. In recognition for the unexpected work on the 2005/2006 audits, the Committee agreed to pay an additional \$25,000 as final and complete payment for those audits.

The Committee approved the following motion:

**Motion:** To approve the amendment to the Brown Armstrong agreement for the years 2007-2009 as presented by legal counsel.

- d) IRS Tracking Report – Legal counsel noted that there had not been any amendments or changes to the Internal Revenue Code, IRS Regulations, IRS Public Revenue Rulings or Procedures, IRS Private Letter Ruling, or other IRS Guidance since the April 23, 2008 Committee meeting.
- e) Response to Public Record Act Requests – Legal counsel confirmed that the response discussed in the May 28, 2008 meeting has been sent. The Committee reiterated its request for legal counsel to coordinate with District’s general counsel on this matter.
- f) Opinion Regarding Transfers from Deferred Compensation Plan to Money Purchase Pension Plan – A participant requested to transfer his account balance from the Deferred Compensation Plan to the Money Purchase Pension Plan. The participant who made the request is an active employee and therefore not eligible to make this transfer.

**AGENDA ITEM 9** – Discussion and Action Concerning

Strategic Plan for the Committee for 2008 – Subcommittee Reports:

- a) Policy Updates – The chair for the policy subcommittee asked the Committee and staff to review a draft discussion document of the Committee’s current policies in the following areas:

- Travel
- Per Diem
- Consultant Retention
- Fund Manager Presentation
- Staff Selection Process
- Hardship Withdrawal
- Communication and Media

- Chairperson Temporary Absence
  - Annual Participant Meeting
  - Plan Structure
  - Annual Budget
- b) Participant Outreach – The subcommittee members asked the Committee to review a retirement retention concept proposal covering the following areas:
- Target employees who will be eligible to retire in five years.
  - Review current retirement procedures to see if a checklist is available that provides information on the advantages to retirees of keeping their money in the investment plans.
  - Develop a questionnaire asking retirees why they have kept their money in BART's plans or why they have taken money out of BART's plans including their experiences with the investment plans after retirement. May be able to work with BART's marketing department to develop the questionnaire.
  - Based on the survey results, prepare a promotional campaign intended to reach employees who have retired in the last year.
  - Do a better job of promoting the investment plans throughout the year. Develop an informational sheet discussing the benefits to participants of keeping their money in BART's plans.
  - Survey of the participants who attend seminars led by Bill Eagan ICMA-RC's Certified Financial Planner.
- c) CALAPRS (Conference) Communication & Media Policy – A Committee member suggested that the proposed policy (as discussed previously by the Committee) outline a process as follows:
- a. A request from the public is forwarded to the chair of the Committee.
  - b. The chair of the Committee raises the question at a Committee meeting.
  - c. The Committee makes a determination and the chair would respond to the inquiry.

Another Committee member suggested that requests through National Association of Governmental Defined Contribution Plans should go to the Committee chair through staff and legal requests should be forwarded by legal counsel for the Committee.

Result: A Committee member will review the CD with investment plans policies and will develop a written document.

d) Deferred Compensation Plan (Loans) – A Committee member raised the question of allowing participant loans from their Deferred Compensation Plan account. This issue has been discussed many times over the years, however, with the tough economic situations that many participants are facing the Committee decided to reconsider this request. Legal counsel reported that if allowed, loans could not be granted for more than \$50,000 or 50% of the account balance whichever is less. A Committee member suggested that three criteria should be met before the Committee approves loans:

- The participant pays for all associated costs of the loan
- ICMA-RC will process all of the loans (BART staff will not be responsible for processing paperwork related to the loans)
- Payroll can process the loan repayments through payroll deduction

The Committee directed the record keeper to present more information in the July 25, 2008 committee meeting.

e) Record Keeper Issues – A Committee member raised several issues involving the record keeper within the past year that have been discussed in previous monthly meetings. The record keeper addressed these issues in the current meeting under Agenda Item 5. A Committee member thought that the sum of these occurrences elicited the question of whether the record keeper is in a position to handle the unique situation of BART's Investment Plans with confidence. Factors unique to BART are, in part, BART's plans include options from different mutual fund companies instead of only including ICMA-RC options, the tracking and reporting of the administrative fee reimbursements and the method of calculating of participant fees for the administrative expenses of the plans. The Investment Analyst suggested that ICMA-RC review options for tracking the cash flow into the administrative expenses accounts such as: a money market account, or using VantageTrust to hold the money in the administrative expenses account.

The record keeper stated that the concerns of the Committee have been raised with senior management at ICMA-RC. She reiterated that ICMA-RC values the relationship with BART's Investment Plans Committee. Management of ICMA-RC acknowledges that BART's plans are unique, however, ICMA-RC handles other unique plans as well.

A Committee member proposed that ICMA-RC put together a presentation of the services provided to BART's Investment Plans. Another Committee member suggested that ICMA-RC prepare a document that discusses these services and delineates responsibilities of ICMA-RC and BART staff. This information could be presented to the Committee at ICMA-RC's headquarters in Washington D.C. when the Committee attends the

NAGDCA conference in Baltimore in September, providing that the Committee can officially meet and make decisions outside of California. The Committee asked legal counsel to verify what is allowable. The record keeper will make arrangements for the Committee to visit ICMA-RC headquarters after the NAGDCA conference.

**AGENDA ITEM 10** – Discussion and Action Concerning

- a) Monthly Budget Review and Vendor Reconciliation Report - May  
Staff presented the monthly budget review and vendor reconciliation report for May 2008. The report showed that the year-to-date expenses continued to be under budget. A Committee member suggested that staff should keep track of the money coming into and going out of the administrative expenses account. Staff is working in QuickBooks on producing an income and expenses statement.
- b) De minimis Account Deactivation – ICMA-RC provides a service to plan sponsors to distribute participant balances of less than \$1,000 when contributions have not been made for the past two years. Staff raised the issue with the Committee because there are a number of participants who have terminated their employment with BART but are not retired and have small balances in the plans. Many of these participants do not keep BART informed of their current address and the investment plans are charged a participant fee for administering their accounts. Legal counsel reported that this provision is not written in the plan documents and if the Committee wants to use this service, the Committee will need to amend the plan documents. The Committee asked ICMA-RC to provide more information on how the service is administered.
- c) 2005/2006 Audit – Management Response  
The Committee reviewed and agreed with the management response and will continue to monitor the reportable conditions and findings.
- d) Filing Project Cost Proposal – Staff prepared a proposal for the investment plans to sponsor, in part, a project to review employee benefit files to make systemic corrections and ensure that the files are complete. BART Benefits will pay for half of the temporary help costs and the follow-up work for the project.

The Committee approved the following motion:

To approve up to a maximum of \$12,000 for the filing project starting with the current employees. The money will be charged to contingent expenses and monthly status reports will be provided to the Committee.

- e) NAGDCA Conference – Staff continues attempts to reserve rooms at the conference hotel that are currently sold out. A Committee member noted

that three other comparable hotels in the area are available. The Committee continues to search for accommodations at a reasonable rate and the conference hotel has the lowest rate.

f) Workshops/Seminar – This item was deferred to a future meeting.

**AGENDA ITEM 11** – Closed Session Pursuant to Government Code Section 54957.10: Hardship Application(s)

The Committee adjourned the meeting at 3:10 p.m. to enter into closed session to consider a Hardship Withdrawal Application. The Committee reconvened the public meeting at 3:15 p.m.

**AGENDA ITEM 12** – Adjournment

The Committee adjourned the meeting at 3:15 p.m.