

## Investment Plans Committee

Regular Meeting  
Minutes  
November 21, 2011

A regular meeting of the Investment Plans Committee (IPC) was held on Wednesday, November 21, 2011 and convened at 8:45 a.m. and adjourned at 1:15 p.m. at 300 Lakeside Drive, 20<sup>th</sup> Floor; Oakland, California, 94612.

### Committee Members or Alternate Members Present:

Elaine M. Kurtz,	BART (acting Chair)
Peter Y. Horikoshi,	BART (acting Chair alt.)
Howard D. Jones,	SEIU
Robert Fernandez,	SEIU alt.
Carolyn Pope-Chappell,	ATU

### Committee Members or Alternate Members Absent:

Hubert LaViolette, ATU alt.

Rube Warren,	AFSCME
Jean Hamilton,	AFSCME alt.
Kory Frost,	BPOA
Michael Pon,	BPOA alt.

### Other Attendees:

Joe Ledgerwood,	R.V. Kuhns (investment consultant) (via phone)
Rose Roberts,	ICMA-RC (recordkeeper) (via phone)
Janna Dandridge,	ICAM-RC (recordkeeper) (via phone)
Brandie Barrows,	Saltzman & Johnson (legal counsel)
Marcia Beard,	R.V. Kuhns (investment consultant)
Arne Stokstad,	BART
Carolina Lopez,	BART

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

### **AGENDA ITEM 2** - Public Comment

There were no public comments at the November 21, 2011 BART Investment Plans Committee's public meeting.

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

There were no check-in items by IPC members.

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

a) Minutes October 26, 2011

The Committee reviewed the minutes and approved the following motion:

Motion: To approve the October 26, 2011 meeting minutes with the following modifications:

**Page 8 – Agenda Item 9b – Change:** “The Committee ~~is exploring~~ discussed the idea of having a BART retiree as a voting member on the Committee.”

**Page 9 – Agenda Item 10d – Change:** “The presentation took 32 minutes. This completes the 2011 AB 1234 Training for the Committee.”

b) Minutes November 2, 2011

The Committee reviewed the minutes and approved the following motion:

Motion: To approve the November 2, 2011 meeting minutes with the following modifications:

**Page 2 – Agenda Item 3 – Change:** “Portfolio managers (PMs) are supported by at least two sector specific analysts, one covering large large/mid growth stocks, the other covering small growth stocks”

**Page 3 – Agenda Item 5 – Change:** “Turnover is high (approximately 160% annually) due to trimming and adding to positions depending on the market environment”

#### **AGENDA ITEM 5 - Recordkeeper Report. Discussion and action re:**

a) August Financial Highlights and Reports The Recordkeeper reviewed the following monthly reports:

- BART 401(a) and 457 Transaction Summary Reports
- BART 401(a) and 457 Fund Information Reports
- BART 401(a) and 457 Fund Detail Reports
- BART Fund Reimbursement Reconciliation Report
- BART Vendor Reconciliation Report
- BART IPC Web Activity

<b>2011</b>	<b>457 Deferred Compensation</b>	<b>401(a) Money Purchase Plan</b>
Opening Balance as of October 1, 2011	\$403,844,149.98	\$235,302,593.56
Contributions	\$1,790,032.29	\$38,724.03
Roll-ins	\$196,573.57	\$123,096.31
Distributions	(\$1,817,759.71)	(\$984,584.98)
Adjustments	\$200.00	\$0.00
Plan-to-Plan Transfers	\$0.00	\$0.00
Earnings	\$26,743,621.89	\$13,608,339.79
Service Fees	(\$12,021.00)	(\$13,084.30)
<b>Closing Balance as of October 31, 2011</b>	<b>\$430,744,797.02</b>	<b>\$248,075,084.41</b>
<b>Change</b>	<b>\$26,900,647.04</b>	<b>\$12,772,490.85</b>

The Recordkeeper provided a review of the Transaction Summary Report highlighting total plan contributions and distributions, and highlighted the positive earnings in both the 457 Deferred Compensation Plan and the 401(a) Money Purchase Pension Plan. She also covered the activity of the Administrative Allowance accounts by reviewing the usual monthly debits and credits. She informed the Committee that we should only be receiving approximately two more payments from the participant with the emergency withdrawal error. The repayment terms to date have been met.

In reviewing the Fund Information and Fund Detail Report, the Recordkeeper noted that the plan assets continue to remain in the Stable Value Fund for both plans with more assets in the 401(a) Money Purchase Pension Plan. The share of total monthly contribution percentage is highest for the Stable Value Fund, and the T. Rowe Price Funds in total and the S&P 500 Index Fund also have high percentages in contributions. She concluded this report by stating that there was no unusual fund transfer activity for the month.

The Fund Reimbursement Reconciliation Report was reviewed in detail noting the timing of the various payments and that everything has been received on a timely basis. The Recordkeeper reviewed the expected payment dates for the upcoming quarterly payments from Dodge and Cox and DWS Scudder which are expected to arrive in December. The Vendor Reconciliation Report reflected the NAGDCA Conference activity that took place during the month of September.

b) Mobile Phone Application for Account Access

The Recordkeeper shared news of the Mobile Phone Application for Account Access rolling out to plan participants. The Recordkeeper explained that from a participant's Smartphone, an individual can see their account balance, year to date activity and their personalized performance information in a graphical representation. Transactions will still need to be performed via a computer or by accessing the full website on their phone. The Committee was pleased that

this feature has been added.

c) Communication for 401(a) Money Purchase Pension Plan Brokerage Service

The Recordkeeper reviewed the communications plan for the introduction of the Self-Directed brokerage account feature in the 401(a) Money Purchase Pension Plan. The Recordkeeper indicated that a personal letter to participants that currently have the 457 brokerage service will be mailed out. Also, a short article will appear on the BART IPC web site, along with a message in Account Access, and on the 4th Quarter 2011 participant statements. The Recordkeeper noted that all communication materials are reviewed and approved by the Staff. The Committee agreed to the suggested ideas.

d) 4th Quarter 2011 Statement Insert

In conclusion, the Recordkeeper discussed the idea of having a letter included in the 4th Quarter 2011 statements to participants in the 401(a) plan that do not currently participate in the 457 plan. The letter would showcase the features and benefits of participating in the BART 457 plan (i.e. the 457 Automatic Escalator Program). The Committee agreed to this idea and a member inquired about the number of participants that would receive the letter. The Recordkeeper noted later in the meeting that 256 participants will receive this letter.

**AGENDA ITEM 6 – Legal Counsel Report. Discussion and action re:**

a) Update on IRS Developments

Legal Counsel Barrows reported that they had not identified any relevant IRS developments.

b) Legal Update

Legal Counsel Barrows presented a Legal Update regarding the twelve point “pension reform plan” released by Governor Jerry Brown on October 27, 2011. Governor Brown’s pension reform plan proposes the following: current and future employees to pay 50% of the annual cost of their pension benefit; the implementation of a “hybrid” defined contribution/defined benefit risk-sharing pension plan for new employees; an increased retirement age for new employees (e.g., service retirement for non-safety employees at age 67); a retirement formula based on an employee’s highest three-years of final compensation; a definition of compensation for new employees limited to the employee’s “normal rate of base pay.” a limit on post-retirement employment for current and new employees; required forfeiture of retirement benefits by individuals convicted of felonies involving official duties or in connection with obtaining salary or retirement benefits; a prohibition on retroactive pension increases for new and current employees; a prohibition on pension holidays for

employers and new and current employees; a prohibition on “airtime” purchases; the appointment of two individuals with financial experience, who are not eligible for a CalPERS benefit, to the CalPERS Board of Administration; and a reduction in retiree health care costs for new employees. These proposals have not yet been reduced to proposed constitutional or statutory language.

The Committee noted that the Governor’s proposed prohibition on “pension holidays” may cause problems with the Internal Revenue Service, which disfavors situations in which a plan has more money than it needs to pay current and future liabilities.

c) HEART Act Memo

Legal Counsel Barrows presented a memo regarding the Heroes Earnings Assistance and Relief Tax Act of 2008 (“HEART Act”), which expands existing protections for and retirement plan benefits to employees performing qualified military service. First, the HEART Act requires that, when a participant dies while performing qualified military service, the survivors of the participant be provided with any additional benefits (but not benefit accruals relating to the participant’s qualified service) that would have been provided had the participant resumed employment then terminated by reason of death. This does not apply to either the Money Purchase Pension Plan or the Deferred Compensation Plan because neither plan provides any benefit that is contingent on a participant’s termination of employment because of death, and because participants are always 100% vested in their balances under both plans. Second, the HEART Act requires plans to treat differential pay (voluntary employer payments of the difference between the salary of an employee called to military service and the employee’s military pay) as compensation. This will apply to the Money Purchase Pension Plan and the Deferred Compensation Plan if BART provides differential pay to employees who perform qualified military service. Staff will review current BART employment and compensation policies to determine whether BART provides differential pay, and will report to Legal Counsel. Third, if a participant dies or becomes disabled while performing qualified military service, the HEART Act permits employers to make contributions to defined contribution plans, such as the Money Purchase Pension Plan, for the period of an employee’s military service. After discussion, the Committee decided not to recommend that BART make contributions to the Money Purchase Pension Plan for a participant who dies or becomes disabled during qualified military service. Finally, the HEART Act permits 457 plans, such as the Deferred Compensation Plan, to allow participants performing qualified military service to take distributions from their elective deferrals. After discussion, the Committee moved to permit participants in the Deferred Compensation Plan performing qualified military service to take distributions of elective deferrals. Legal Counsel was directed to bring the necessary Deferred Compensation Plan amendment to the December

2011 Committee meeting for review.

d) Roth 457 Amendment to Deferred Compensation Plan

Legal Counsel Barrows reported that the Roth 457 Amendment to the Deferred Compensation Plan will be presented at the December 2011 Committee meeting. Legal Counsel intended to bring the Roth 457 Amendment to the November 2011 Committee meeting; however, upon review of the first draft of the amendment Legal Counsel determined that this is a complicated and complex amendment that would benefit from additional review and the input of ICMA-RC. Legal Counsel noted that if the amendment is adopted to be effective in the first quarter of 2012, it is very unlikely that any participants will have already reached the \$17,000 elective deferral maximum for 2012. The Committee requested that ICMA-RC place an update on the IPC website informing participants that the Roth 457 will be offered in the 2012 plan year.

e) Update on the Interpleader

Legal Counsel Barrows reported that Saltzman & Johnson is in the process of drafting an interpleader action which will be filed with the superior court regarding the Money Purchase Pension Plan benefit of a deceased participant. The potential beneficiaries of the deceased participant cannot reach an agreement regarding the distribution of the participant's Money Purchase Pension Plan benefit; therefore the Money Purchase Pension Plan benefit will be paid in to, and adjudicated by, the superior court.

f) Update on Revision of Summary Plan Description

Legal Counsel Barrows reported that the Summary Plan Description for the BART Plans is currently being reviewed and will be presented at the December 2011 Committee meeting.

g) Update on Plan Amendments

Legal Counsel Barrows reported that Committee Legal Counsel Russ Richeda & Brandie Barrows, as well as BART representatives Peter Horikoshi and Arne Stokstad, met with BART Legal Counsel Andreas Ravas on November 7, 2011 to discuss the two pending amendments to the Money Purchase Pension Plan and the Deferred Compensation Plan. The first amendment clarifies the responsibilities of the Committee, and the second establishes a default hierarchy of beneficiaries where the participant fails to designate a beneficiary. Legal Counsel Richeda and Barrows responded to multiple questions from BART Legal Counsel Ravas. Committee Legal Counsel Richeda and Barrows, as well as Peter Horikoshi and Arne Stokstad, will meet with BART Legal Counsel Andrea Ravas again in December 2011 to discuss the progress of the amendments.

h) Update on Plan Restatement

Legal Counsel Barrows reported that the restatements of both BART Plans are currently being reviewed and will be presented at the December Committee meeting.

i) Update on Fiduciary Liability Insurance

Legal Counsel Barrows reported to the Committee that Legal Counsel Richeda had recently received a response from the Committee's insurance broker, and that he would be providing an analysis of the response to the Committee at the December 2011 meeting.

j) Brown Act Requirement on Committee Member Participating in Meeting Through Teleconferencing

Legal Counsel Barrows presented a memo on the Ralph M. Brown Act's rules regarding meeting attendance via teleconference. The Ralph M. Brown Act (the "Brown Act") permits members of a legislative body to meet by teleconference if: (1) all votes during the meeting are taken by roll call; (2) the meeting agenda is posted at all locations; (3) the meeting is conducted in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body; (4) each teleconference location is identified in the meeting notice and agenda, and each teleconference location is open to the public; (5) during the teleconference, at least a quorum of the members of the legislative body participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction; and (6) the meeting agenda provides an opportunity for members of the public to address the legislative body directly at the conference location. These requirements do not apply if only the staff members or other persons retained to advise the body appear from remote locations. Legal Counsel was directed to research the application of the teleconferencing rules to closed sessions, notice requirements where a member decides to attend the meeting after notice is posted, and public comment rules for closed meetings. Legal Counsel will report on these questions at the December 2011 Committee meeting.

**AGENDA ITEM 7 – Audit Report. Discussion and action re:**

a) 2010 Audit Findings and Discussion

Connie Perez, Certified Public Accountant, from Brown Armstrong, presented the auditor's report for the 2010 plan year to the Committee. Ms. Perez stated that the purpose of the audit is to render an opinion of the financial status of the plans.

The auditors reviewed the financial statements of the plans as well as the processes and procedures for reporting and remitting contributions to the plans

and distributions from the plans. They also reviewed administrative income and expenses for the plans.

The auditors rendered an unqualified opinion, meaning that the financial statements presented fairly, in all material respects, the plan net assets available for benefits.

A committee member requested that the auditors break out the miscellaneous line item on the audit reports. It was also requested that the auditors provide what the Government Auditing Standards are for these types of audits so that the Committee can gauge where the Committee's audit report stands.

**AGENDA ITEM 8** – Investment Consultant Report. Discussion and action re:

a) Investment Performance Update – October 2011

- At the end of October, Eurozone leaders agreed to a framework addressing the solvency issues in Europe. A rescue package for Greece and an increase in power to the European Financial Stability Facility (EFSF) were some of the major action items proposed.
- With the yen strengthening to its highest level since World War II and creating headwinds for Japanese exports, the Bank of Japan intervened into the foreign exchange market for the third time this year.
- Equity markets posted positive returns in October as the S&P 500 (capitalization weighted) Index returned 10.93% and the MSCI EAFE (Gross) Index returned 9.65%. Emerging markets returned 13.26% as measured by the MSCI EM (Gross) Index.
- The Barclays Capital (BC) US Aggregate Bond Index returned 0.11% in October, underperforming the BC US Treasury return of 1.42%, as measured by the BC US Treasury Intermediate Term Index. International fixed income markets returned 2.47%, as measured by the Citi Non-US World Government Bond Index.
- Public real estate, as measured by the Wilshire US REIT Index, returned 14.71% in October and -1.62% over the 5-year period.
- Crude oil's price increased by 17.66% during the month and 1.98% year-to-date.

Each of the Plans' funds out-performed their respective benchmarks for the month ended October 31, 2011, with the exception of the Dodge & Cox Stock Fund, which trailed the Russell 1000 Value Index by 7 basis points. It was a good month for active managers. The markets were driven by

fundamentals rather than fear.

b) Selection of Manager for Small/Mid Cap Growth Equity Option

As a follow-up to the November 2, 2011 interviews, Joe Ledgerwood (Manager Research Consultant) of R.V. Kuhns provided the IPC with the following summary of the candidates.

	Century	Kalmar	William Blair
<b>Total Firm AUM in millions</b>	\$ 2,773	\$ 4,631	\$ 46,039
<b>Product AUM in millions</b>	\$ 962	\$ 2,344	\$ 2,681
<b># PMs (Average Industry Experience)</b>	2 (20)	2 (37)	3 (19)
<b># Analysts (Average Industry Experience)</b>	4 (12)	7 (15)	15 (17)
<b>Current # of Holdings</b>	58	79	76
<b>Annual Turnover</b>	157%	33%	80%
<b>Net Client (AUM) Gain/Loss Since 2008</b>	+29 (\$907m)	+14 (\$20m)	+16 (\$210m)
<b>Tracking Error (5 year)</b>	7.24%	4.99%	5.53%
<b>Proposed Fee (Revenue Sharing)</b>	1.10% (0.0%)	.90% (0.0%)	1.10% (.15%)

(AUM is Assets Under Management)

After an in-depth discussion of the interviews and candidates, the Investment Plans Committee agreed to hire Century Capital Management as the manager for the Small/Mid Cap Growth Equity Option. The Committee instructed R.V. Kuhns to work with ICMA-RC and Saltzman Johnson to ensure a timely and smooth transition. The Committee would like to see the manager change in January 2012.

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

a) Distribution of Emergency Withdrawals Paid to Third Party

Legal Counsel Barrows presented a memo regarding the direct payment of Deferred Compensation Plan unforeseeable emergency distributions to third parties, such as a mortgage holder where the participant requests an unforeseen emergency distribution based on foreclosure. A plain reading of the Internal Revenue Code indicates that unforeseeable emergency distributions from an Internal Revenue Code Section 457 plan, such as the Deferred Compensation Plan, can only be made to a participant or beneficiary. ICMA-RC is not aware that any of the other Internal Revenue Code Section 457 plans which they administer permit payments of unforeseen emergency distributions to be made to any other party than a participant or beneficiary, and does not recommend the practice.

b) Review of Investment Plans Assistant Position

A committee member proposed that the Committee review the duties of the Investment Plans Assistant position in a similar manner to the periodic review of consultants to the Committee. The acting Chair stated that because the position is a BART staff position that this would not be possible.

c) Potential Participation of a Retiree on the Committee

This item has been deferred to the December meeting.

d) 2012 Manager Presentation Schedule (Draft)

Staff presented the proposed 2012 manager presentation schedule. The Committee requested that staff swap the dates for the Allianz and Century Capital Management presentations. Allianz will present on March, 28, 2012 and Century Capital Management will present on August 22, 2012.

e) 2012 Emergency Withdrawal Schedule (Draft)

Staff handed out the schedule for 2012; the Committee accepted the schedule as presented.

f) 2012 Proposed Budget (Draft)

This item was deferred to the December meeting.

g) 2012 Proposed Strategic Plan (Draft)

Staff presented a draft of the strategic plan. The Committee made changes to the draft; staff will bring back the revised version to the December meeting.

**AGENDA ITEM 10 - Staff Report. Discussion and action re:**

a) Monthly Budget Review - October 2011

Staff reported on the monthly budget. The Committee accepted the October budget report as presented.

b) Workshops/Seminar

A committee member attended the Pensions and Investment conference that was held October 30 – November 1, 2011. Topics discussed were the state of the economy, continued high unemployment numbers and a push for going global.

Staff continues to forward notices of workshops, seminars and web seminars to committee members.

**AGENDA ITEM 11 – Discussion and Action Concerning Closed Session**

A closed session of the Investment Plans Committee was held on Thursday, November 10, 2011 and convened at 1:00 p.m. to consider two Emergency Withdrawal Applications of which one was approved and one was denied. The Closed session was adjourned at 1:45 p.m.

There were no applications to review at this meeting.

**AGENDA ITEM 12 - Adjournment**

The Committee adjourned the meeting at 1:15 p.m.