
JUNE 29, 2015

AGENDA ITEM 05
ACTION ITEM

CALIFORNIA SECURE CHOICE RETIREMENT SAVINGS INVESTMENT BOARD

Resolution No. 2015-04: Resolution of the California Secure Choice Retirement Savings Investment Board Relating to the Approval to Amend Agreement CSCRSIB02-14 with K&L Gates, LLP for Legal Services

Presenter

Christina Elliott, Acting Executive Director

Background

Agreement CSCRSIB02-14 (the agreement) between the California Secure Choice Retirement Savings Investment Board (Board) and K&L Gates for legal services will expire October 30, 2015. The scope of services includes work that is unlikely to be completed by October 30, 2015 such as the requirement that K&L Gates identify and advise on legal issues regarding the market analysis, feasibility study, and program design consultant services contract.

Additionally, K&L Gates has suggested that the agreement be amended to include an attorney with extensive experience and knowledge in securities law in order to advise the Board and assist Overture Financial LLC in its study and program design.

Staff Recommendation

Secure Choice staff recommends the Board approve the resolution of the California Secure Choice Retirement Savings Investment Board relating to the approval to amend agreement CSCRSIB02-14 with K&L Gates for legal services.

Attachments

- Attachment #1 – Resolution No. 2015-04
- Attachment #2 – Contract amendment (STD 213A), including amended budget detail and payment provisions and resume for the new attorney

RESOLUTION NO. 2015-04

RESOLUTION OF THE CALIFORNIA SECURE CHOICE RETIREMENT SAVINGS INVESTMENT BOARD RELATING TO THE APPROVAL TO AMEND AGREEMENT CSCRSIB02-14 FOR LEGAL SERVICES

WHEREAS, the California Secure Choice Retirement Savings Investment Board (the “Board”) is established under SB 1234 (Chapter 734, 2012; codified under Government Code section 100000 et seq.) and mandated to conduct a market analysis to determine whether the necessary conditions for implementation of the California Secure Choice Retirement Savings Trust Act (the “Act”) can be met, provided that the Board shall conduct the market analysis only if sufficient funds to initiate and complete the required market analysis are made available through a nonprofit or private entity, or from federal funding;

WHEREAS, Government Code section 100042 provides, in part, that the Act shall become operative only if the Board determines that, based on the market analysis, the provisions of the Act will be self-sustaining, and funds are made available through a nonprofit or other private entity, federal funding, or an annual Budget Act appropriation in amounts sufficient to allow the Board to implement the Act until the California Secure Choice Retirement Savings Trust has sufficient funds to be self-sustaining;

WHEREAS, Government Code section 100043 provides that the Board shall not implement the California Secure Choice Retirement Savings Program (the “Program”) if the Individual Retirement Account or Individual Retirement Annuity (collectively “IRA”) arrangements offered fail to qualify for the favorable federal income tax treatment ordinarily accorded to IRAs under the Internal Revenue Code, or if it is determined that the Program is an employee benefit plan under the federal Employee Retirement Income Security Act;

WHEREAS, the Board deemed it necessary to contract with a law firm to provide the Board with legal services to satisfy the statutory provisions, and thus entered into Agreement No. CSCRSIB02-14 (the “Agreement”) with K&L Gates, LLP for the necessary legal services;

WHEREAS, an amendment to the Agreement, which currently expires October 30, 2015, is necessary to extend the term to complete the project; and

WHEREAS, an amendment to the Agreement is also necessary to include an additional K&L Gates, LLP attorney to provide expertise on securities laws, and update the name of the Board’s Acting Executive Director;

NOW, THEREFORE, BE IT RESOLVED that the Acting Executive Director is hereby directed and authorized to prepare and take whatever steps necessary to execute an amendment to the Agreement to extend the term to January 31, 2016, add an additional K&L Gates, LLP attorney, and update the name of the Board’s Acting Executive Director.

Attest: _____
Chairperson

Date of Adoption: _____

STANDARD AGREEMENT AMENDMENT

STD. 213 A (Rev 6/03)

 CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 4 Pages

AGREEMENT NUMBER	AMENDMENT NUMBER
CSCRSIB02-14	1
REGISTRATION NUMBER	

1. This Agreement is entered into between the State Agency and Contractor named below:
- STATE AGENCY'S NAME
California Secure Choice Retirement Savings Investment Board
- CONTRACTOR'S NAME
K&L Gates, LLP
2. The term of this Agreement is 2/20/15 through 1/31/16
3. The maximum amount of this Agreement after this amendment is: \$275,000.00
Two Hundred Seventy-Five Thousand Dollars and Zero Cents
4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:
- The term of this Agreement is extended through January 31, 2016.

Attachment B.1 – Rates is revised to add Susan I. Gault-Brown, as attached hereto (1 page).
The resume of Susan I. Gault-Brown is attached hereto (3 pages).

Exhibit A – Scope of Work is revised to replace “Eric Lawyer, Acting Executive Director” with “Christina Elliot, Acting Executive Director.”

Exhibit B – Budget Detail and Payment Provisions is revised to replace “Eric Lawyer” with “Christina Elliot.”

All other terms and conditions shall remain the same.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		CALIFORNIA Department of General Services Use Only
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)		
K&L Gates, LLP		
BY (Authorized Signature)	DATE SIGNED (Do not type)	
		
PRINTED NAME AND TITLE OF PERSON SIGNING		
William P. Wade, Partner		
ADDRESS		
10100 Santa Monica Blvd., 7 th Floor Los Angeles, CA 90067		
STATE OF CALIFORNIA		
AGENCY NAME		
California Secure Choice Retirement Savings Investment Board		
BY (Authorized Signature)	DATE SIGNED (Do not type)	
		
PRINTED NAME AND TITLE OF PERSON SIGNING		
Christina Elliot, Acting Executive Director		
ADDRESS		
915 Capitol Mall, Rm. 110, Sacramento, CA 95814		
		<input type="checkbox"/> Exempt per:

Attachment B.1 – Rates (***Revised***)

William A. Schmidt (Partner)	\$892
David E. Morse (Partner)	\$675
<u>Susan I. Gault-Brown (Partner)</u>	<u>\$625</u>
Michael A. Hart (Partner)	\$637
William P. Wade (Partner)	\$760
Gwendolyn A. Kelly (Associate)	\$318
Katherine M. Morton (Associate)	\$289
Rikki A. Sapolich (Associate)	\$476
Kristina M. Zanotti (Associate)	\$488

DESCRIPTION OF CHARGE =====	STANDARD CHARGE =====	UNIT BASIS =====
Photocopying/Image Printing	\$0.20	Each copy
Color Copying/Printing	\$1.00	Each copy
CD Burning	\$25.00	Per CD

Legal Research: The Contractor pays for Lexis and Westlaw under monthly fixed fee contracts. The actual, monthly fixed fee is allocated to all users of the database each month, and client charges for such usage are directly proportional to the actual research conducted on their behalf.

Contractor will be reimbursed for out-of-pocket costs directly attributable to the work performed under the Agreement, such as courier costs (Federal Express, UPS, etc.) and long distance telephone calls. All costs will be itemized on the invoice.



Susan I. Gault-Brown

OVERVIEW

Ms. Gault-Brown is a partner in K&L Gates' Washington, D.C. office and a member of the Investment Management practice. She advises participants in the financial services industry, including FinTech companies, investment advisers, registered investment companies, commodity trading advisors, and commodity pool operators on regulatory, transactional and counseling matters involving the securities and commodities laws. She also regularly provides advice with respect to exemptions, no-action letters, and other forms of regulatory relief.

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PRIMARY PRACTICE

- Investment Management, Hedge Funds and Alternative Investments

SECONDARY PRACTICES

- Derivatives & Structured Products
- Hedge Funds and Venture Funds

FinTech. Ms. Gault-Brown regularly counsels clients with respect to crowdfunding platforms, peer lending platforms, virtual currency platforms, and other FinTech innovations. Among other things, Ms. Gault-Brown provides advice about platform structuring, documentation, and regulatory issues, including a company's status as an investment adviser, broker-dealer, or investment company, among others.

Status Determinations. Ms. Gault-Brown represents companies, including operating companies, in determining whether they are subject to regulation as investment companies, investment advisers, commodity pool operators, commodity trading advisors, or other regulated entities. Ms. Gault-Brown also assists these entities in structuring their organization and operations so as to permissibly avoid regulation, and assists in seeking no-action, exemptive and similar relief. Among other examples, Ms. Gault-Brown worked with a technology client to successfully attain a SEC exemptive order under section 3(b)(2) of the Investment Company Act, and worked with a biopharma industry client to attain a novel SEC staff no-action letter under section 3(c)(5)(A) of the Investment Company Act with respect to the company's royalty interests.

Investment Advisers Act Regulatory Advice. Ms. Gault-Brown regularly provides advice with respect to federal and state securities laws and commodities laws to both registered and unregistered investment advisers, including advisers that manage private funds and separate accounts. Ms. Gault-Brown works with advisers, including new registrants, to develop compliance policies and procedures and disclosure documents and also helps with the registration process. Among other things, Ms. Gault-Brown has counseled clients with respect to wrap programs and other managed account programs and platforms. Ms. Gault-Brown has also been involved in a number of adviser restructurings, including changes in management and adviser acquisitions.

Hedge Fund, Private Equity Fund, and Venture Capital Funds. Ms. Gault-Brown counsels sponsors and advisers to private funds, including hedge funds, private equity funds, and venture capital funds, with respect to regulatory obligations, including relevant exclusions or exemptions, under the Investment Advisers Act and Commodity Exchange Act and other relevant securities laws. Ms. Gault-Brown also helps with structuring and transactional issues, and prepares organizational and disclosure documents for private offerings of securities.

Investment Company Act Regulatory Advice. Ms. Gault-Brown counsels registered investment companies on a variety of issues, including issues raised by investments in derivatives and other structured products, such as leverage, diversification, and counterparty exposure limits. Ms. Gault-Brown also regularly provides advice about affiliated transactions issues.

Derivatives. Ms. Gault-Brown regularly counsels clients with respect to regulatory issues arising under the Commodity Exchange Act and the rules of the National Futures Association, as well as under the Investment Company Act and the Investment Advisers Act, with respect to the use of futures, options on futures, swaps, and currency derivatives by regulated and unregulated entities. Among other things, Ms. Gault-Brown regularly works with commodity trading advisors and commodity pools operators with respect to registration, disclosure, and compliance issues.

PROFESSIONAL BACKGROUND

Ms. Gault-Brown joined the firm after three years at the Securities and Exchange Commission where she was a senior counsel in the Division of Investment Management's Office of Chief Counsel. At the SEC, among other matters, Ms. Gault-Brown focused on the regulatory treatment under the federal securities laws and commodities laws of registered funds and registered advisers

that used OTC derivatives, with a particular focus on issues arising under the Investment Company Act and Investment Advisers Act. In addition, Ms. Gault-Brown regularly provided formal and informal interpretive guidance concerning a variety of issues under the Investment Company Act and the Investment Advisers Act, including investment company and investment adviser status determinations, affiliated transaction issues, and senior security issues.

Prior to joining the SEC, Ms. Gault-Brown was an associate at a leading ERISA law firm where she focused on ERISA fiduciary duty and prohibited transaction issues and provided advice concerning ERISA, federal securities laws, banking laws, and state trust and fiduciary laws.

Ms. Gault-Brown began her legal career as a judicial clerk to Judge Constance Baker Motley in the U.S. District Court for the Southern District of New York.

PRESENTATIONS

- "Finance Disrupts: FinTech Companies Changing the Industry," 100 Women in Hedge Funds, San Francisco, CA, March 18, 2015.
- "Investing Commodity and Derivatives Instruments: New Issues for Advisers," ALI CLE Investment Adviser Regulation 2014: Institutional Advisory Legal and Compliance Forum, New York, NY (April 3, 2014)
- "Advice Regarding Commodities," PLI Broker-Dealer Advisory Services 2014: Current Legal and Compliance Issues Facing Dual Registrants, New York, NY (Feb. 19, 2014)
- "CFTC Registration Requirements and New Rules Affecting Advisers," ALI CLE Investment Adviser Regulation, New York, NY (Dec. 6, 2012)
- "How the CFTC's Amendments to Regulations 4.5 and 4.13 will affect Investment Companies," K&L Gates Seminar, Boston, MA (April 18, 2012)
- "Private Equity Manager Regulation after Dodd-Frank," *K&L Gates Financial Services Reform Seminar*, Charlotte, NC (March 1, 2011)
- "Issues Related to Derivatives Investing – Dodd-Frank Title VII, and Registered Fund Issues," *K&L Gates Investment Management Conference*, Chicago (Nov. 4, 2010)
- "Hot Topic Panel: Derivatives," *K&L Gates Investment Management Conference*, Washington, D.C. (Oct. 28, 2010)
- "Mutual Fund Distribution," *K&L Gates Investment Management Conference*, Washington, D.C. (Oct. 27, 2010) and Chicago, IL (Nov. 4, 2010)
- "Use of Leverage by Registered Investment Companies," *K&L Gates Investment Management Professional Development Program*, Washington, D.C. (Sept. 24, 2010)
- "An Overview of the Dodd-Frank Act and Its Effect on Investment Advisers," *K&L Gates Financial Services Reform Seminar: The New Hedge Fund Regulatory Era Begins*, Chicago, IL (July 22, 2010)
- "No-Action Letters," *K&L Gates Investment Management Professional Development Program*, Washington, D.C. (October 29, 2009)
- "Investment Adviser Hot Topics," *K&L Gates Investment Management Professional Development Program*, Washington, D.C. (July 30, 2009)
- "Derivatives Training Seminar - Investment Company Act Issues," *K&L Gates Derivatives Training Seminar*, Washington, D.C. (June 23, 2009)

PUBLICATIONS

- Peer-to-Peer Lending Platforms: Securities Law Considerations, Investment Management Alert, 2 April 2015
- Could the SEC Regulate Bitcoin as a Security?, K&L Gates Global Government Solutions® 2015 Annual Outlook, April 2015

K&L GATES

- CFTC Adopts Harmonization Rules for Investment Advisers that are Commodity Pool Operators of Registered Funds, Investment Management Alert, 29 October 2013
- Commodity Trading Advisor Status and Regulation, PLI's Investment Adviser Regulation: A Step-by-Step Guide to Compliance and the Law, October 2012
- Commodity Pool Operator Status and Regulation, PLI's Mutual Funds and Exchange Traded Funds Regulation, October 2012
- Who's In and Who's Out? CFTC and SEC Finalize the Swap Entity Definitions, Derivatives Alert, July 9, 2012
- K&L Gates Annual Investment Management Conference 2012, presented at the K&L Gates Annual Investment Management Conference on Critical Legal Regulatory Issues for Investment Managers and Funds, 27 June 2012
- How the CFTC's Amendments to Regulations 4.5 and 4.13 will affect Investment Companies, K&L Gates Seminar, Boston, MA, April 18, 2012
- CFTC Re-Imposes Limitations on Derivative Activities by Registered Investment Companies, Investment Management Alert, February 17, 2012
- CFTC Rescinds Widely Used Private Fund Manager Exemption from Commodity Pool Operator Registration, but Retains *De Minimis* Exemption, Investment Management Alert, February 16, 2012
- SEC Issues Concept Release on Use of Derivatives by Investment Companies, The Investment Lawyer, Vol. 18, No. 12, December 2011
- Swap Definitions Rules Proposed by the SEC and the CFTC Under Dodd-Frank, Derivatives Alert, July 14, 2011
- CFTC's Proposed Rule Amendments Would Subject Operators of Private Funds that Trade Futures Contracts, Commodity Options, and Swaps to Commodity Pool Regulation and May Subject Private Fund Advisers to Dual SEC/CFTC Regulation, Investment Management Alert, February 25, 2011
- CFTC's Proposed Amendments to Rule 4.5 Would Limit the Ability of Registered Investment Companies to Invest in Derivatives and Could Result in Dual SEC/CFTC Regulation, Investment Management Alert, February 18, 2011
- CFTC and SEC Propose Joint Rules to Further Define the Terms "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant," and "Eligible Contract Participant" Pursuant to Section 721 of the Dodd-Frank Act, Derivatives Alert, January 5, 2011
- SEC Proposes Anti-Fraud and Anti-Manipulation Rule for Security-Based Swaps under Section 763(g) of the Dodd-Frank Act, Investment Management Alert, November 29, 2010
- Investment Management Update, Summer 2010
- The Regulatory Pendulum Swings Back (For Now), 2008 Hedge Fund Asset Flows & Trends Report, published by Institutional Investor News and HedgeFund.net, November 29, 2007

ADMISSIONS

- Bar of District of Columbia
- Bar of New York

EDUCATION

- J.D., University of Pennsylvania Law School, 2000, (*cum laude*; Order of the Coif; Editor, *University of Pennsylvania Law Review*)
- M.A., Washington University, 1996, (English Literature)
- B.A., Duke University, 1993, (*magna cum laude*, Phi Beta Kappa)