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JANUARY 22, 2018

AGENDA ITEM 1  
ACTION ITEM

CALIFORNIA SECURE CHOICE RETIREMENT SAVINGS INVESTMENT BOARD

*Meeting Minutes for the December 18, 2017 California Secure Choice Retirement Savings Investment Board Meeting*

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Board members present:

Steve Juarez for State Treasurer John Chiang  
Karen Greene Ross for State Controller Betty T. Yee  
Eraina Ortega for Director of Finance Michael Cohen  
Edward De La Rosa  
Heather Hooper  
Robert Purcell  
William Sokol  
Yvonne Walker

Staff present:

Katie Selenski, Executive Director  
Brian Gould, Deputy Director  
Alyssa Delacruz  
Ruth Holton-Hodson  
Eric Lawyer  
Robert Hedrick, Senior Attorney, State Treasurer's Office

Consultants:

Andrea Feirstein, Managing Director, AKF Consulting Group ("AKF")  
Derek DeLorenzo, Industry Consultant, AKF  
David Morse, Partner, K&L Gates

Board Chair Steve Juarez called the meeting to order at 10:07 a.m.

**Agenda Item 1 – Approval of the Minutes of the November 27, 2017 Meeting of the California Secure Choice Retirement Savings Investment Board (ACTION ITEM)**

Public Comment

None

Board Action

Motion to approve the minutes of the November 27, 2017 meeting of the California Secure Choice Retirement Savings Investment Board (“Board”).

MOTION:	William Sokol	SECONDED:	Heather Hooper
AYES:	Edward De La Rosa, Karen Greene Ross, Heather Hooper, Eraina Ortega, Robert Purcell, William Sokol, Yvonne Walker		
NOES:	None		
ABSTAIN:	Steve Juarez		
RECUSE:	None		
ACTION	Motion Passes		

**Agenda Item 2 – Executive Director’s Report (INFORMATION ITEM)**

Katie Selenski, Executive Director, provided the Board an update on significant items including:

- Welcoming two new Board members; Robert Purcell, and Dora Westerlund
- Efforts to hire staff, noting staff will seek to hire an analyst to focus on outreach and communications, and another to support administrative duties
- No contracts were executed under the authority delegated by the Board
- An update on two stakeholder outreach working group meetings noting that more information would be provided in Agenda Item 6
- Media mentions of the Program, including some of our stakeholder group members highlighting the Program in their publications
- Recent events attended by Ms. Selenski and staff

Public Comment

None

**Agenda Item 3 – Legal Update (INFORMATION ITEM)**

David Morse of K&L Gates, LLP noted he had no significant items to provide to the Board.

Public Comment

None

**Agenda Item 4 – Resolution No. 2017-09: Authority to Execute a Contract for Investment Consulting Services (ACTION ITEM)**

Deputy Director Brian Gould provided the Board with an overview of the investment consultant evaluation process and brought forth the evaluation committee’s recommendation that a contract for investment consulting services be executed with Meketa Investment Group.

Public Comment

Mika Malone, the lead consultant from Meketa Investment Group, expressed her gratitude via the phone, noting that she and Paola Nealon, the secondary consultant, were eager and excited to get to work with the Board.

Board Action

Motion to approve execution of a contract with Meketa Investment Group for investment consulting services.

MOTION:	William Sokol	SECONDED:	Edward De La Rosa
AYES:	Edward De La Rosa, Karen Greene Ross, Heather Hooper, Steve Juarez, Eraina Ortega, Robert Purcell, William Sokol, Yvonne Walker,		
NOES:	None		
ABSTAIN:	None		
RECUSE:	None		
ACTION	Motion Passes		

**Agenda Item 5 – Resolution No. 2017-10: Authority to Release Request for Proposals for Legal Services (ACTION ITEM)**

Ms. Selenski gave an overview of the process to review and release a request for proposals (“RFP”) for legal services, noting the length (two years) and cost (not to exceed \$350,000) of the contract as well as highlighting the main points from the Scope of Work.

The Board discussed whether the requirement of \$1,000,000.00 in malpractice insurance as required by the RFP was sufficient. Staff and Program consultants noted they would research the appropriate level of insurance to be required and amend if necessary.

Public Comment

None

Board Action

Motion to direct staff to consider adjusting the malpractice insurance requirement as necessary and approve release of the RFP.

MOTION:	William Sokol	SECONDED:	Yvonne Walker
AYES:	Edward De La Rosa, Karen Greene Ross, Heather Hooper, Steve Juarez, Eraina Ortega, Robert Purcell, William Sokol, Yvonne Walker,		
NOES:	None		
ABSTAIN:	None		
RECUSE:	None		
ACTION	Motion Passes		

## **Agenda Item 6 – Update on Outreach Efforts (INFORMATION ITEM)**

Staff member Ruth Holton-Hodson provided an overview of the stakeholder outreach efforts over the past month and introduced Judy Darnell of United Ways of California. Ms. Darnell provided the Board a more detailed overview of the information gleaned from the stakeholder group working sessions and outlined a path forward.

The Board discussed how aspects of the Program should be communicated with employers, the best means for reaching certain audiences, and means of funding outreach efforts.

### Public Comment

Nicole Rice from the California Manufacturers and Technology Association noted her organization's commitment to the process going forward, and noted that the employer community needs education about the Program, not just promotion. Ms. Rice also requested the Program establish a hotline for employers to address questions about the Program.

Jonathan Karpf from the California Faculty Association provided the Board recommendations on how to phrase certain communications about the Program.

Blanca Castro of the AARP noted the resources AARP has provided to outreach efforts and requested stakeholders consider ways they can raise funds for outreach efforts as they participate in the process.

Mark Herbert of Small Business Majority thanked staff for their ongoing commitment to inclusion and seeking advice and input from the stakeholder community.

## **Agenda Item 7 – Update on Board Governance (INFORMATION ITEM)**

Executive Director Selenski briefly discussed efforts to host a facilitated discussion on Board governance.

### Public Comment

None

## **Agenda Item 8 – Report from Regulations Workshops and Summary of Public Comments (INFORMATION ITEM)**

Executive Director Selenski provided a brief overview of the status of the draft regulations and of the comments staff had received. Ms. Selenski then introduced staff member Eric Lawyer to present to the Board the items that require Board clarification on how to proceed.

### **Employer Eligibility**

Mr. Lawyer outlined the general structure of the regulations and noted the stakeholder feedback received. General consensus of the Board was to allow as much flexibility in the regulations without creating an underground regulation situation and structure the Program to allow for the maximum participation possible.

The Board discussed employer eligibility including the clarity of regulations, the best means to address tripartite employment relationships, how to treat the eligibility of employers that vacillate between eligibility and exclusion from the Program, and messaging. The Board asked staff to develop materials noting how the regulations would apply to certain hypothetical situations to accompany informational materials to employers.

The Board discussed the advantages and disadvantages of encouraging employers that hover near the five employee threshold to delay their enrollment until closer to their respective mandated date of compliance instead of joining at launch.

The Board discussed the possible benefits of expanding the mandate to include employers with one or more employees. Staff outlined the proposal to allow individuals to participate on their own via a direct connection to their bank account, completely separate from the employer-employee relationship.

#### Public Comment

Marti Fisher from the California Chamber of Commerce expressed concerns over the proposed use of data submitted by employers through the DE 9C quarterly contribution return and report of wages form, noting it can overstate the number of employees at any one time. Ms. Fisher also expressed concern regarding lowering the mandate to one employee as it raises compliance issues for entrepreneurs and may serve as a barrier to entry for small employers.

Jose Hernandez from UnidosUs commented that the fastest growing business segment is Latina-owned with fewer than five employees. He cautioned against the Program discouraging smaller employers from registering at Program launch. He noted that if employers are aware and willing to participate when the Program begins, the Program should encourage their participation at any point. If they do not begin participation at that moment of awareness and interest, these small businesses may never register, thus creating additional marketing workload and expense for the Program later.

Sarah Zimmerman from Service Employees International Union California (“SEIU California”) noted that family care providers would like to participate and inquired about the inclusion of other employer types that may have fewer than five employees.

Nari Rhee from the UC Berkeley Center for Labor Research and Education responded to a question posed by Ms. Hooper regarding firm size:

- 1 Million employees work for employers with 5-9 employees
- At least half a million employees work for employers with fewer than five employees
- Smaller employers represent 85% of the participant base for the Program
- To ensure Program stability the Program should encourage smaller employers to comply well ahead of the mandate

*The chair called for recess at 12:30. Board resumed the meeting at 12:51. The Board took up Agenda Item 11 before returning to Agenda Item 8.*

**Agenda Item 11 – Resolution No. 2017-13: Adoption of Program Name, Logo, and other Branding Concepts (ACTION ITEM)**

Executive Director Selenski provided a brief update on efforts to consider alternative names for the Program and develop brand concepts, a logo, and other graphic design work. Ms. Selenski introduced A.K. Ahuja, Kira Llagas, and Kurt Ho from *Crescendo*, a firm hired by the Program to assist in the effort.

Mr. Ahuja, Ms. Llagas, and Mr. Ho provided a brief overview of the process to date and presented four name and logo concepts, including business cards and letterhead for each design. The Board provided feedback on the concepts and the name. The Board requested another item on the topic be presented at the next Board meeting for reconsideration.

The Board took no action on the item.

Public Comment

None

**Agenda Item 8 (resumed) – Report from Regulations Workshops and Summary of Public Comments (INFORMATION ITEM)**

**Employer Registration**

Mr. Lawyer provided an overview of the timelines and processes for employer registration into the Program, focusing on utilizing electronic means whenever possible but allowing employers the ability to register with the Program via paper.

The Board discussed the 15 day timeline for requesting paper enrollment suggesting it should be extended to 30 or 60 days and inquired who would be assisting those employers in registration.

Public Comment

Marti Fisher from the California Chamber of Commerce stated their position that there should be no requirement for employers to certify their exemption and noted many instances in law that requires employers to be in compliance without requiring any notification to the State.

**Employee Eligibility**

Mr. Lawyer provided an overview of the draft regulations related to defining an eligible employee, and Ms. Selenski provided the Board with an update on our discussions to allow participation by IHSS workers.

The Board discussed that the use of W-2 wages to determine eligibility would exclude independent contractors, but they could be allowed if the Board allowed individual participation. The Board requested that staff continue to analyze the use of “common law” definition of employee and provide additional information on how the draft regulations would impact the eligibility of temporary agency employees and employees of faith-based non-profit organizations.

### Public Comment

Jonathan Karpf of California Faculty Association attempted to provide clarity regarding employers that do not pay unemployment benefits. He explained that his understanding is that because unemployment benefits come from payroll taxes, the question the Board should ask is whether or not payroll taxes are paid.

### **Identifying Exempt Employers**

Mr. Lawyer discussed three potential options the Program could utilize to identify employers who would be exempt from the requirements of the Program.

The Board discussed the requirement in draft regulations that employers provide a retirement plan to just one employee in order to be deemed exempt from the Program. Some Members believe the exemption should only apply if the plan covers the majority of employees of the organization. The Board requested staff further research the implications of the draft language particularly with respect to the prevalence of plans only provided to executives (i.e. a “top hat” deferred compensation plan).

### Public Comment

Marti Fisher of the California Chamber of Commerce requested employers not be required to do anything if they are exempt from the mandate. Therefore they prefer option 1 as presented, but need more information regarding the plan to “encourage” employers to certify their exemption.

### **Employee Enrollment**

Mr. Lawyer and Ms. Selenski outlined four options staff developed for enrolling employees into the Program. Some Board Members expressed a preference for option 2 noting the most important factor for their decision would be the ease of enrollment by employees.

The Board discussed the employee enrollment procedure including:

- Whether it is necessary for the employee to provide acknowledgement that they have read and understood the disclosures contained on the acknowledgement form before they can enroll in the Program
- Whether it is necessary for the Administrator to receive a record of employee acknowledgement in order to enroll an employee in the Program
- Whether participating employers should be required to provide a copy of the acknowledgement form to the Program
- How to best establish processes that minimizes duties for participating employers and allows the simplest process for employee enrollment
- Feedback from employer stakeholders including feedback from Marti Fisher of the California Chamber of Commerce, Nicole Rice of the California Manufacturers and Technology Association and Mark Herbert of Small Business Majority
- Whether an employee who works multiple jobs should be required to complete multiple acknowledgements

### Public Comment

Blanca Castro with AARP urged the Board to choose an enrollment method that is easiest for employees to enroll in the Program and spoke in support of option 1.

Jonathan Karpf with the California Faculty Association noted his belief that any of the options presented should be simple for employers to administer.

Marti Fisher of the California Chamber of Commerce said the intent of the statute was that employees would automatically be enrolled into the Program, with the option to opt out, and that the acknowledgement was not intended to be a requirement for participation. Ms. Fisher also noted that as a state Program, the state should have the administrative burden of collecting and retaining the acknowledgement form.

Nicole Rice of the California Manufacturers and Technology Association expressed a preference for processes that utilize the third-party administrator and don't rely on employer duties.

Mark Herbert of Small Business Majority noted that his constituency does not want to be involved with any part of the enrollment process beyond the dissemination of the disclosure forms, but noted if the employer will be required to collect acknowledgement forms, they would prefer to hold the forms on file versus transmitting them to the Program.

### **Employer Duties**

Mr. Lawyer outlined the duties required of participating employers including distribution of the acknowledgement form and remittance of contributions. Based on the recommendation of the enrollment process, an additional employer duty would be to collect and retain the acknowledgement forms.

The Board discussed the need for the third-party administrator to help define the range based on industry best practices; and the need for the third-party administrator to establish a timeframe for the remittance of contributions.

### Public Comment

None

### **Contributions**

Mr. Lawyer outlined the regulations as they relate to employee contributions, noting that staff seeks to allow non-payroll contributions from participating employees, and that the third-party administrator will have the responsibility of informing the participant if they are approaching the contribution limits for the year.

The Board sought clarification of the statement "first pay period following 30 days."

### Public Comment

None

### **IRA Type**

Ms. Selenski outlined the considerations for the default IRA type to be provided to employees, noting staff's recommendation that the Program offer both Roth and Traditional options, with Roth as the default setting.



Ms. Feirstein from AKF as well as her colleague Ellen Breslow (via phone), outlined their analysis on the impact of savings under each IRA type on a participant's eligibility for certain public programs.

The Board discussed whether the Program had the responsibility to notify participants that IRA savings may impact their ability to qualify for safety net programs and discussed educational materials designed to help participants choose between the Roth and Traditional options.

Public Comment

None

**Default Settings and Alternative Elections**

Mr. Lawyer outlined the suggested default settings for the Program, and reminded the Board that participants will be provided every opportunity to make alternate elections.

The Board discussed the possibility that a small employer may only be able to process a certain type of contribution (pre- or post-tax) and asked the staff to investigate the likelihood of such a scenario. The Board also discussed the third-party administrator's responsibility to notify participants of automatic escalation before it occurs.

Public Comment

None

**Individual Participation**

Mr. Lawyer outlined staff's recommendation to allow individual participation in the Program outside of the employer-employee relationship.

The Board discussed how individual participation could work including marketing strategies and materials for individual participants.

Public Comment

Mark Herbert from Small Business Majority applauded the staff for evaluating the possibility of individual participation.

**Withdrawals and Rollovers**

Mr. Lawyer noted withdrawals and rollovers from the Program will be subject to federal and state laws and regulations.

The Board discussed the importance of having extensive, user-friendly calculators available to participants to help them understand the effects of withdrawals and rollovers. It was noted that the third-party administrator should have tools including educational materials, calculators, and user prompts or questionnaires to aid the participants' understanding of the process and consequences of early withdrawal.

Public Comment

None

**Confidentiality and Disclosures**

Mr. Lawyer outlined the sections in draft regulations addressing confidentiality and disclosures.

Public Comment

None

**Investments**

Mr. Lawyer provided an overview on the Board's responsibilities relating to the investment lineup, and provided a timeline for those selections to be made.

Public Comment

None

**Additional Comments**

Mr. Lawyer walked through some of the additional comments that were received on the draft regulations.

Executive Director Selenski requested the Board consider whether they wanted to establish a cap on the program fees through regulations, reminding them that statute places a cap of 1% on administrative fees beginning year 7 of the Program. Ms. Selenski also highlighted the written question received during public comment regarding the use of public employees versus contractors for Program functions. Ms. Walker expressed her desire for the call center to be staffed by state employees from the inception of the contract. The Board discussed language accessibility and translation services.

**Agenda Item 9 – Resolution No. 2017-11: Authority to Initiate Emergency Rulemaking (ACTION ITEM)**

This item was not considered at the meeting. The Board took no action on the item.

**Agenda Item 10 – Resolution No. 2017-12: Authority to Release Request for Proposals for Program Administrator(s) (ACTION ITEM)**

Executive Director Selenski gave the Board an update on the comments staff received after making a draft RFP public and noted there were some very significant comments that would require Board direction going forward. Ms. Selenski proposed moving the RFP release to the February Board meeting, allowing time for further revisions to ensure a successful procurement. Ms. Selenski then introduced Andrea Feirstein and Derek DeLorenzo from AKF Consulting to walk the Board through a summary of the comments.

After a brief Board discussion halfway through the update, Mr. Sokol suggested, in light of the time, that staff and AKF distill the comments into direct points for the Board to provide direction on at the January meeting.

The Board took no action on the item.

**Public Comment**

None.

**Other Business**

None.

The meeting adjourned at 5:52 p.m.