



Board Report 20-38

Date: October 20, 2020

To: Board of Deferred Compensation Administration

From: Staff

Subject: Financial Education and Investment Advice Services

- Fiduciary Considerations and Survey Results
- Fee Holiday Reassessment

Board of Deferred Compensation Administration

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Recommendation:

That the Board of Deferred Compensation Administration (Board) (a) direct staff to schedule a presentation from GuidedChoice regarding its platform and services at the January 19, 2021 Board meeting; and (b) defer execution of the fee holiday pending a review by the Plan Governance & Administrative Issues Committee, as part of its annual Deferred Compensation Plan resources review, of the budgetary considerations of offering financial education and investment advice services.

Discussion:

This report provides a discussion of fiduciary considerations related to the potential for offering financial education and investment advice services within the City's Deferred Compensation Plan (DCP). This report is provided in response to the Board's request for a report on this topic prior to taking further action its review of these potential services. In addition, this report contains a recommendation with respect to a prior Board action regarding a participant fee holiday and DCP budgetary considerations of offering financial education and investment advice services.

A. Background

At its meeting on **April 17, 2018**, the Board directed the Plan Governance & Administrative Issues Committee (Committee) to review the merits and feasibility of offering financial education and investment advisory services for DCP participants and develop recommendations for further consideration. At its meeting on **November 26, 2019**, the Committee considered staff's findings related to these services and approved staff's recommendations. At its meeting on **December 10, 2019**, the Board approved the Committee's and staff's recommendation to issue a Request for Information (RFI) for financial education and investment advisory services. At its meeting on **February 18, 2020**, the Board approved and authorized the release of a proposed RFI for Financial Education and/or Investment Advisory Services. At its meeting on **September 15, 2020**, the Board

reviewed a report from staff summarizing findings regarding responses received from the following providers:

- Cambridge Financial Partners, LLC and Four Square Financial Literacy Partners, Inc. (Cambridge/Four Square)
- GuidedChoice, Inc. (GuidedChoice)
- International City Management Association Retirement Corporation (ICMA-RC)
- Voya Financial (Voya)

Staff noted that each proposal differed substantially in its service offering and design, and that the findings of the review panel were that GuidedChoice provided the service design model most consistent with the goals and objectives of offering financial education and investment advice services within the DCP. Staff indicated that since expanding services to add educational or advisory services for DCP participants was a significant consideration for the Board, as a next step of the investigatory process the review panel believed it would be beneficial for the full Board to review a demonstration of the platform from GuidedChoice and have an opportunity to engage directly with the firm regarding its services. The Board requested that prior to reviewing a demonstration staff and Board counsel work together to report back with respect to the fiduciary considerations related to offering investment advisory services as well as prior survey data regarding investment advice services.

B. Fiduciary Considerations

Staff and Board Counsel reviewed the key fiduciary considerations related to offering investment advisory services as part of the DCP. Following are key findings.

(1) Retention and Oversight

As with other services provided within the DCP, the Board's fiduciary role and obligation related to the selection of contractors to provide investment advisory services resides in the retention and monitoring of those contractors. The Board's adopted Governance Policies/Bylaws ("Bylaws") establish that the Board's overarching obligation is to, "*Administer and exercise its authority under the Plan for the exclusive benefit of Plan participants and their beneficiaries.*" The Bylaws further state the Board shall, "*Exercise prudence and diligence in the selection of contractors providing support services to the Plan and in seeking legal, regulatory or interpretive advice regarding the proper administration of the Plan.*" In addition, the Bylaws state staff shall, "*under the direction of the Board, draft, execute and monitor all Plan contracts for services.*" The Board is thus responsible under its rules for acting strictly in the interests of DCP participants, being prudent and diligent in selecting contractors, and through its staff monitoring its contracts for services. These requirements encompass all of its service provider contracts, including potential contracts for investment education and/or investment advisory services.

Board Counsel advises that, beyond these obligations, there are not separate or unique fiduciary obligations imposed upon the Board for offering these services. It is expected that a condition of

offering investment advice services in particular would be that the service provider would have a fiduciary obligation to DCP participants under trust or common law with respect to any investment advisory services provided to DCP participants, and act as an “investment adviser” as that term is defined under federal or state securities law with respect to advice provided to participants. In addition, it is expected that a condition of offering investment advice services would be that the service provider fully indemnify the City, hold it harmless, and defend it from any liability, damages, losses and expenses, including attorney fees, resulting from the services provided under the contract.

In addition, the Board may, as part of its oversight responsibility, establish whatever additional monitoring duties for investment education and/or investment advisory services it deems necessary to enhance its monitoring diligence. For example, presently the Bylaws establish that the Board shall, “*Monitor no less frequently than quarterly the performance and institutional viability of its various investment providers, incorporating where applicable appropriate performance benchmarks and peer comparisons.*” Similar reporting and monitoring requirements could be established for contractors providing investment education and/or investment advisory services.

(2) Board Fiduciary Protections and Fiduciary Liability Insurance

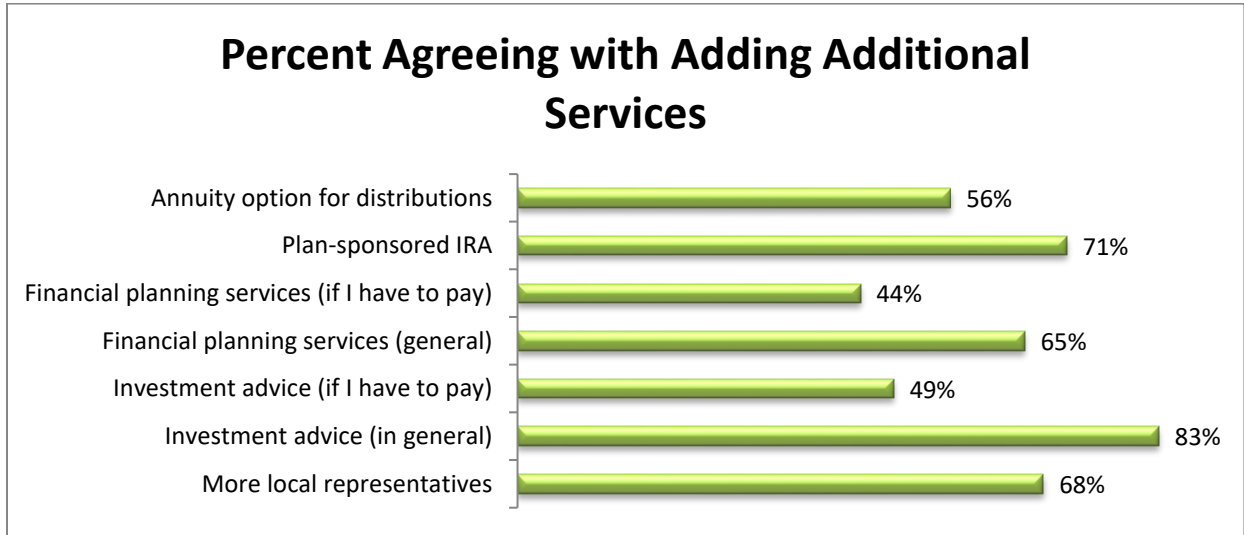
The City Council, by ordinance, established the City’s DCP in Los Angeles Administrative Code Division 4, Chapter 14. As such, Board Counsel indicates that the City has a statutory duty to defend and indemnify individual Board members and staff acting in the scope of their duties, pursuant to California Government Code (CGC) Section 995.

The City may, under Government Code Sections 995.6 and 995.8, indemnify Board members in administrative and criminal actions if it determines that (i) the action was brought on account of an act or omission in the Board member's scope of employment, (ii) the defense would be in the best interests of the City, and (iii) the Board member acted, or failed to act, in good faith, without malice and in the apparent interests of the City. The City could defer its decision whether to indemnify until after the criminal or administrative action has concluded when facts relevant to the decision have been determined. In such an instance, the accused Board member may be required to fund defense costs on an interim basis until the City provides the indemnity or fully if the City does not indemnify. If the accused Board member is found guilty, then it may be difficult for the City to make the required findings for the indemnity.

It may be possible for the Board to purchase separate fiduciary liability insurance for those situations where the City would not provide indemnification to the Board. However, there may be unique considerations to such an approach in terms of the funding of the coverage. As the Board’s Plan Governance & Administrative Issues Committee will be meeting shortly to review and revise Bylaws, the Board may wish to refer further study of this issue to the Committee.

C. Survey Findings

In November 2015 the Board and staff conducted a participant survey as part of preparing to issue a Request for Proposal (RFP) for the DCP Third-Party Administrator (TPA). The survey addressed awareness of current Plan services and features, services utilization and value, plan transaction resources utilization and value, and potential new services. In its subsequent report to the Board regarding the survey results, staff provided the following chart indicating respondent interest in offering various types of potential additional services:



Staff noted that the survey results indicated broad interest in investment advice, and to a lesser but still substantial degree financial planning services. Staff further noted the results indicated reduced interest in both services if a participant would be required to pay for it. Nevertheless, a substantial number of survey respondents (44% and 49%) indicated they would be willing to pay for financial planning and investment advice services, respectively.

D. GuidedChoice Presentation

Staff previously recommended that the Board schedule a presentation from GuidedChoice regarding its platform and services at the October 20, 2020 Board meeting. The Board deferred scheduling the presentation pending review of this report. The Board's next meeting will take place on December 8, 2020, but already includes two presentations. As a result, staff recommends that the Board direct staff to schedule a presentation from GuidedChoice regarding its platform and services at the January 19, 2021 Board meeting.

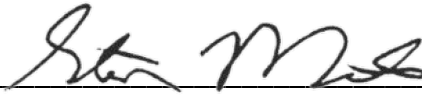
E. Fee Holiday and DCP Resource Review

At its meeting on March 20, 2018, the Board directed staff to convene the Plan Governance & Administrative Issues Committee annually to conduct DCP resource reviews. These reviews include analysis and recommendations related to: (a) assumptions for key variables approved by

the Board for the purpose of projecting future DCP Reserve Fund balances; as well as (b) modifications, if any, related to DCP participant fees or expenses. The next such review by the Committee will be conducted in November 2020.

In addition, in Board Report 20-29, staff indicated that the Board had until November 16, 2020, to postpone its previously proposed participant fee holiday beyond the fourth quarter of 2020. Given potential budgetary considerations related to offering investment advice and financial education services, staff believes the fee holiday should be reassessed. Therefore, staff recommends that the Board defer execution of the fee holiday pending a review by the Committee, as part of its annual DCP resource review, of the budgetary considerations of offering financial education and investment advice services.

Submitted by:



Steven Montagna, Chief Personnel Analyst