



## MEMORANDUM

To: Charles Campbell-King, Chair of the Audit & Governance Committee  
From: John Meyer, Director of Contributions and Plan Management  
Date: June 8, 2018  
Re: Committee Recommendations

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The Audit & Governance Committee (“AGC”) held a meeting on May 15, 2018. The AGC discussed several matters, some of which were tabled for discussion at a future AGC meeting. The following recommendations and action items are presented for the consideration by the Plans Management Board (“Board”).

### **Recommendations Regarding Legacy Fees**

1. *457(b) Legacy Fees* – The 457(b) plan has \$864,775 in “legacy fees” that were deducted from the plan prior to the transfer of recordkeeping to Voya Financial. The AGC discussed options concerning the fees, including possible reimbursement of legacy fees to participants. Based on Ice Miller’s advice and concerns related to such reimbursement, the AGC decided to recommend that (a) legacy fees be used to offset future plan expenses and (b) state administration fees on the 457(b) plan be suspended for four calendar quarters starting in June 2018. To address potential concerns with former participants who would not benefit from the suspension of fees, the AGC recommended that a carve-out be established for the benefit of such participants. The amount of the carve-out will be established at a later date.

**Action Item:** Motion to use legacy fees to offset future plan expenses and suspend state administration fees through June 2019, subject to a carve-out (amount to be determined later) for former participants.

2. *2017 Unused Administrative Fees* – At the end of 2017, the 457(b) plan had a balance of \$19,863 in unused administrative fees collected by Voya. The AGC recommended treating the unused 2017 fees in the same manner as legacy fees.

**Action Item:** Motion to use the 2017 unused administrative fees to offset future plan expenses.

3. *Voya Performance Guarantee* – The agreement with Voya contained a performance guarantee that required Voya to increase the participation rate for the 457(b) and 403(b) plans by 2% per year. Voya did not meet the performance guarantee for 2017 and is obligated to remit \$20,000 back to the plans. The AGC recommended that the \$20,000 payment be allocated to the two plans pro-rata and treated the same way as legacy fees.

**Action Item:** Motion to allocate the \$20,000 payment to the 457(b) and 403(b) plans pro-rata and treat such amount in the same manner as legacy fees.

4. *Employee Salaries and Benefits* – The deferred compensation plans are supported by four employees of the Office of State Treasurer (“OST”). Pursuant to budgets approved by the Board, three of the OST positions are funded by administrative fees collected from the plans on a pro-rata basis. One OST position receives General Fund appropriations. The AGC recommended that the fourth OST position be funded by administrative fees in the same manner as the other OST positions, with the question of the proper allocation method to be researched and determined at a later date.

**Action Item:** Motion to fund the fourth OST supporting position (salary and benefits) with administrative fees in accordance with existing allocation methods and budget limits, subject to reconciliation if the allocation method changes.

#### **Recommendation Regarding Audit Contract Increase**

**Background:** Audit firm Belfint, Lyons & Shuman (“BLS”) incurred additional costs in completing the investment vehicle audit for the 529 Plan. BLS was requesting additional fees in the amount of \$55,000. Further information is provided in **Exhibit 1**. The AGC recommended a budget increase in the amount of \$55,000 for the external auditor request.

**Action Item:** Motion to approve the budget increase request for the 529 external audit expenses by \$55,000.

#### **Recommendation Regarding Ice Miller Contract Extension**

**Background:** The Ice Miller contract has a five-year term with the option of two (1) year extensions. Ice Miller’s five-year term expired on April 10, 2018. Further information is provided in **Exhibit 2**. The AGC recommended to extend the Ice Miller contract for one year through April 2019 and complete a request for proposal during the extension period.

**Action Item:** Motion to extend the Ice Miller contract one-year through April 2019 and complete a request for proposal for tax counsel during that extended period.

#### **Recommendation Regarding Fiduciary Training Proposal**

**Background:** Ice Miller provided a proposal for fiduciary training for the Board and Committee members. Further information is provided in **Exhibit 3**. The AGC recommended to accept Ice Miller’s proposal for fiduciary training.

**Action Item:** Motion to accept Ice Miller’s proposal for fiduciary training, request Ice Miller to prepare presentation material for review at AGC’s August Meeting and schedule training session in or around October 2018.



April 24, 2018

Memo

To: The Plans' Management Board

From: Maria Hurd

**Re: Fee for Additional Engagement to Meet SEC Requirements**

As requested by the Office of the State Treasurer (OST), I am writing this memo to respectfully request an additional payment for the completion of the audits of the financial statement for each of the 36 portfolios offered by the Delaware College Investment Plan (DCIP), as required by the SEC. Auditing the financial statements for each of the 36 portfolios by 120 days after the plan's year end was an unexpected engagement that was not included in the contract to audit the DCIP trust, which was scheduled to start in May. Upon learning of the SEC requirement and deadline, BL&S expeditiously endeavored to complete the 36 required audits within the compressed period, mostly with supervisory and management personnel.

Although I am proud to have served the State of Delaware, the time charges for the unexpected audits amount to approximately \$90,000. Although BL&S doesn't normally discount services during the tax season compression period, we have always done the State work at discounted rates, and request \$55,000 for the procedures performed to complete the portfolio financial statement audits. The requested discounted fee excludes time spent that will also serve as procedures performed at the trust level and audit setup time.

As the original contract required, we are available to complete the trust audit beginning in May. The fee for the trust audit originally provided in the contract would remain the same, since the portfolio audits constitute investment company audits that do not take into consideration the financial activity at the account holder level.

I sincerely appreciate the support and participation of the personnel at the OST throughout this process and thank the Board in advance for its consideration of this request.

Sincerely,

Maria T. Hurd, CPA



## MEMORANDUM

To: Audit & Governance Committee (“AGC”) of the Plans Management Board (“PMB”)  
From: John Meyer, Director of Contributions and Plan Management  
Date: May 08, 2018  
Re: Ice Miller Contract

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### I. Introduction

This memo provides an overview of the contract with Ice Miller LLP (“Ice Miller”) and a recommendation from the Office of the State Treasurer (“OST”) to the AGC on whether to extend it.

### II. Contract Background

The Deferred Compensation Council (“DCC”), one of the two predecessor entities of the PMB, entered into a contract with Ice Miller effective April 10, 2013. Ice Miller was procured to serve as tax counsel to ensure compliance with sections 401(a), 403(b), and 457(b) of the Internal Revenue Code (“IRC”). This consists of legal services related to tax, trust, compliance, audit and other issues. The contract had a five-year term with the option of two one year extensions.

OST, acting on behalf of the PMB, amended the contract on May 1, 2017 and expanded the scope of Ice Miller’s services to cover the college savings plan under section 529 of the IRC and the ABLE plan covered under section 529(a).

### III. Current Status

Ice Miller’s five-year term expired on April 10, 2018.

### IV. Recommendation

OST recommends that the AGC make a recommendation to the PMB to exercise the one-year extension option. This would put Ice Miller under contract through April 10, 2019. Ice Miller has been billing on a rate schedule from 2013 and a new 2018 update schedule is attached (Attachment 1 –Rate Schedule). There are important legal tasks that OST will be facing, including audits, in the second half of this year and having Ice Miller’s counsel is vital to meeting these challenges.

### V. Conclusion

Ice Miller has been a valued partner and OST wishes to continue with Ice Miller for another year. Doing this will ensure stability and adherence to requisite legal and regulatory standards and protect the legal status of the plans.

Attachment 1-Rate Schedule

<b>Attorney</b>	<b>Current 2018 Standard Hourly Rate</b>	<b>2018 15% Discount</b> *indicates discount in excess of 15%
Matt Ehinger, Partner	\$425	\$361.25
Audra Ferguson-Allen, Partner	\$425	\$361.25
Robert Gauss, Partner	\$560	\$476.00
Marc Sciscoe, Partner	\$645	\$500.00*
Tara Sciscoe, Partner	\$575	\$488.75
Chris Sears, Partner	\$575	\$488.75
Eric Dawes, Actuary	\$590	\$500.00*
Lisa Erb Harrison, Senior Counsel	\$560	\$476.00
Shalina Schaefer, Of Counsel	\$425	\$361.25
Austin Anderson, Associate	\$320	\$272.00
Raven Merlau, Associate	\$340	\$289.00
Lindsay Knowles, Staff Attorney	\$290	\$246.50
Taretta Shine, Paralegal	\$360	\$250.00*
Greg Wolf, Paralegal	\$340	\$250.00*

**Note:** The standard hourly rates for these personnel are subject to change from time to time.

April 23, 2018

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***Via Electronic Mail***

Mr. John Meyer  
Director, Contributions and Plan Management  
Delaware Office of the State Treasurer  
820 Silver Lake Blvd., Suite 100  
Dover, DE 19904

***RE: Fiduciary Training for Deferred Compensation and College Investment Plan***

John:

You have asked us to provide information regarding the topics that we would propose covering in a fiduciary training. We would estimate that the training would last 1 hour – 1 /12 hours. If you were thinking of a different time frame, please do not hesitate to let us know.

In addition, we would propose the following topics:

- Who is a fiduciary?
- Standards of conduct expected of a fiduciary
- Incorporation of relevant Delaware Code Sections
- Fiduciary liability considerations
- Considerations related to participant directed investments
- Mitigating liability

We have attached a sample slide deck (which will be used during a presentation this summer). The sample slide deck does not include a section on the 403(b) litigation, but we would include that in the fiduciary training. Additionally, we would incorporate the relevant Delaware statutory provisions.

Mr. John Meyer  
April 23, 2018  
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For an in-person training, the fees and expenses would not exceed \$10,000. For a webinar or video conference, the fees would not exceed \$8,000.

As always, please do not hesitate to let us know if you have any questions or if we can provide additional information.

We hope this is helpful.

Very truly yours,  
ICE MILLER LLP

A handwritten signature in black ink, appearing to read "Robert L. Gauss".

Robert L. Gauss

A handwritten signature in black ink, appearing to read "Audra Ferguson-Allen".

Audra Ferguson-Allen

Attachment: Sample Slide Deck