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# **POLICY REGARDING USE OF PLACEMENT AGENTS BY INVESTMENT MANAGERS**

## **Purpose of Policy**

In order to preserve the independence and integrity of the New York State Common Retirement Fund ("CRF" or "the Fund"), the Comptroller has determined that it is in the best interest of the Fund to prohibit the Fund (directly or indirectly) from engaging, hiring, investing with, or committing to, an outside investment manager ("Investment Manager") that is using the services of a placement agent, registered lobbyist or other intermediary (collectively, "Placement Agent") to assist the Investment Manager in obtaining investments by the Fund, or otherwise doing business with the Fund, whether compensated on a flat fee, a contingent fee, or any other basis. This Policy is designed to prevent conflicts of interest or the appearance of conflicts of interest in CRF's investment decision-making process, and ensure that investment decisions are made for the sole benefit of CRF's participants and beneficiaries, as well as to ensure the integrity of the CRF decision-making process.

The Comptroller, acting as a fiduciary to CRF, has determined that the disclosure and notification requirements set forth in this Policy are a threshold issue for all Investment Managers. Compliance is mandatory and will not be waived.

It is the policy of the Comptroller that all potential Investment Managers have open access to CRF investment staff. As such, it is not necessary for an Investment Manager to use a Placement Agent to gain access to CRF staff, and the use of a Placement Agent is not part of the investment decision-making process of the Comptroller or his staff.

## **Managers That Must Provide Disclosure**

- A. The following entities must provide the appropriate disclosure as outlined in Section III below:
  - i. Investment Managers that have a direct contractual investment-management relationship with CRF or with an investment vehicle in which CRF is invested ("Direct Investments" and "Direct Investment Managers").
  - ii. Investment Managers that have an indirect contractual investment management relationship with CRF ("Indirect Investments" and "Indirect Investment Managers") through an investment vehicle that invests in funds or other pooled investment vehicles or other assets ("Underlying Investments") and for which CRF has the right to decline investments recommended by the Investment Manager or can otherwise exercise discretion with respect to investments.
- B. The investments referenced in subsections (i) and (ii) of Section I above will collectively be referred to as "Investment Transactions."

## Form of Disclosure

The Investment Manager shall provide disclosure in the form of a letter ("Placement Agent Disclosure Letter") addressing all requirements specified in Exhibit A.

## Disclosure Review Process

- A. The Chief Investment Officer, the Inspector General and the General Counsel to the Common Retirement Fund will review such disclosures and will jointly determine whether a disclosure is sufficient and will notify the Counsel to the Comptroller and the attorney assigned to the transaction of their determination.
- B. CRF staff will notify the Chief Investment Officer, Inspector General and the General Counsel to the Common Retirement Fund if a party acting in what appears to be the role of a Placement Agent contacts CRF regarding an Investment Transaction. General Counsel to the Common Retirement Fund will communicate with the Investment Manager to determine whether accurate disclosure was made and will inform the Inspector General.

## Failure to Comply with Placement Agent Disclosure Letter Requirement

- A. In the event that the Investment Manager fails to comply with the Placement Agent Disclosure Letter requirement, or makes a material misstatement or omission in such Letter, CRF shall have the option, in its sole discretion and without liability to the Investment Manager, to terminate its investment relationship with the Investment Manager. Termination of the relationship may take the following forms:
  - i. **Public equity managers:** termination of the investment management agreement. If the investments are not held by CRF's custodian, CRF will have the option of receiving a distribution of securities or requiring that the Investment Manager make payment to CRF in cash.
  - ii. **Private equity managers:** termination of CRF's obligation to make future capital contributions.
  - iii. **Real estate opportunity funds:** termination of CRF's obligation to make future capital contributions.
  - iv. **Other real estate investments:** removal of the General Partner, forfeiture of its carried interest and termination of CRF's obligation to make future capital contributions.
  - v. **Absolute return strategies:** immediate redemption of the investment.
  - vi. **Opportunistic Investments:** termination of the relationship may take any of the forms listed in i-v above.

In each case, termination of the relationship shall occur either immediately or on such date as CRF shall, in its sole discretion, specify. All contracts entered into by CRF will contain language providing for such termination.

- B. CRF will have the sole right to determine whether a misstatement or omission by an Investment Manager is material.
- C. Any management or other agreement between CRF and an Investment Manager will permit termination by CRF pursuant to this Policy without penalty to CRF.

# Notification

## A. Direct Investments.

- i. CRF staff will inform the Investment Manager in writing of the Placement Agent Disclosure requirements when staff begins full due-diligence review of the potential Investment Transaction. As applicable, the Director of Real Estate, the Director of Private Equity, the Director of Absolute Return Strategies, the Director of Opportunistic Investments or the Director of Equity Investments will be responsible for sending such written notice.
- ii. CRF will send written notice in the form of a letter (paper, fax or electronic message) to the Investment Manager ("Notice") requesting a Placement Agent Disclosure Letter. A copy of this Policy and Procedure will be made available to the Investment Manager prior to or at the time Notice is given to the Investment Manager.
- iii. Within 20 calendar days from receipt of the Notice, but no later than 15 calendar days prior to closing an Investment Transaction, the Investment Manager will provide the Placement Agent Disclosure Letter to CRF containing the information specified in Exhibit A.
- iv. The Disclosure Letter will be provided to all of the individuals currently serving in the following positions within OSC as specifically identified in Exhibit B attached hereto:
  - a. Chief Investment Officer
  - b. Inspector General
  - c. Counsel to the Comptroller
  - d. General Counsel to the Common Retirement Fund
  - e. As applicable, a copy to the director of the asset class:
    - Director of Real Estate
    - Director of Equity Investments
    - Director of Absolute Return Strategies
    - Director of Private Equity
    - Director of Opportunistic Investments
- v. The investment officer leading CRF's due-diligence review of the potential Investment Transaction.

## B. Indirect Investments

- i. The Indirect Investment Manager will inform the Investment Manager of an Underlying Fund in writing of the Placement Agent Disclosure requirements when the Indirect Investment Manager begins full due-diligence review of the potential Investment Transaction.
- ii. The Indirect Investment Manager will send Notice to the Investment Manager requesting a Placement Agent Disclosure Letter. A copy of this Policy and Procedure will be made available to the Indirect Investment Manager who will then make it available to the Investment

- iii. Manager prior to or at the time Notice is given to the Investment Manager.
- iv. Within 20 calendar days from receipt of the Notice, but no later than 15 calendar days prior to closing an Investment Transaction, the Investment Manager will provide the Placement Agent Disclosure Letter to CRF containing the information specified in Exhibit A.
- v. The Disclosure Letter will be delivered to all of the individuals currently serving in the following positions within OSC (see Exhibit B):
  - a. Chief Investment Officer
  - b. Inspector General
  - c. Counsel to the Comptroller
  - d. General Counsel to the Common Retirement Fund
  - e. As applicable, a copy to the director of the asset class:
    - Director of Real Estate
    - Director of Equity Investments
    - Director of Absolute Return Strategies
    - Director of Private Equity
    - Director of Opportunistic Investments
  - f. The investment officer leading CRF's due diligence review of the potential Investment Transaction.

## **Submission of Placement Agent Disclosure Letter**

- A. The Investment Manager will be required to submit the Placement Agent Disclosure Letter to CRF within 20 calendar days of delivery of the Notice, but no later than 15 calendar days prior to closing of an Investment Transaction. In the event of an accelerated closing where the timing requirements cannot be met, the Chief Investment Officer may waive the minimum timing requirements so long as Notice is delivered prior to closing of the Investment Transaction.
- B. As part of the closing, the Investment Manager will be required to restate the previously submitted Placement Agent Disclosure Letter and confirm the Investment Manager's agreement to the provisions contained in Exhibit A.

## **Internal Controls and Recordkeeping**

- A. CRF staff, as part of the closing process for an Investment Transaction, will comply with the following procedures:

- i. The General Counsel to the Common Retirement Fund or attorney responsible for the Investment Transaction will ensure that pre-closing disclosure was made prior to the issuance of a No Objection opinion.
- ii. The Placement Agent Disclosure Letter will be included as an essential part of the closing record in the vault file with other legal documents.

## **Designees**

- A. The Director of Internal Audit may act on behalf of the Inspector General.
- B. The Special Counsel for Ethics may act on behalf of the General Counsel to the Common Retirement Fund.
- C. The Deputy Chief Investment Officer may act on behalf of the Chief Investment Officer.

## **Amendments to Exhibits**

Exhibits to these Policies and Procedures may be amended as needed to reflect changes in CRF staff or vendors. Amendments to the Exhibits which reflect such changes in names of CRF staff and/or vendors will not affect these Policies and Procedures and do not require approval of the Comptroller.

## **EXHIBIT A-1: Applicable to Private Equity Investments**

Note that the terms used in Exhibit A-1 are designed for direct private equity investments; the terms General Partner, Partnership, Limited Partner Interest and Partnership will be modified when necessary to reflect the nature of the investment vehicle and manager. The term "Investor" refers to the Common Retirement Fund.

### **Placement Agent Disclosure**

- A. No later than 15 calendar days prior to closing, and also at closing, of the purchase by the Investor of a limited partner interest in the Partnership, the General Partner shall have delivered a written document to the Investor (the "Placement Agent Disclosure Letter") which contains a representation that:
- i. the Investment Manager did not use the services of a placement agent, registered lobbyist or other intermediary to assist the Investment Manager in obtaining investments by the Fund, or otherwise doing business with the Fund, whether compensated on a flat fee, a contingent fee or any other basis;
  - ii. no Benefit has been paid, given or promised to any person or entity (including, but not limited to, any of the Investor's consultants or advisors including their Affiliates and any person reasonably believed to be an officer, director or employee of such consultant, advisor or Affiliate, or of the Investor or the New York State Office of the State Comptroller) for the purpose, or with the effect, of obtaining (A) an introduction to the Investor or any officer or employee of the New York State Office of the State Comptroller, or other assistance in obtaining business from the Investor, or (B) a favorable recommendation with respect to the Investment Transaction; and
  - iii. all information contained in such Letter is true, correct and complete in all material respects.
- B. All disclosures shall be restated at closing.
- C. The Placement Agent Disclosure Letter, which will be provided in accordance with the established policy of the Investor that the General Partner acknowledges has been disclosed to the General Partner by the Investor, shall be addressed to the persons specified in Exhibit B.
- D. The General Partner may omit from the Placement Agent Disclosure Letter fees and expenses paid to its legal counsel and accountants in connection with the organization of the Partnership and the offering of limited partner interests therein, provided that such legal counsel and accountants have not also represented the Investor in connection with its investment in the Partnership and have not been involved in any form of solicitation relating to the Investor. Notwithstanding anything to the contrary contained in the Partnership Agreement, the Subscription Agreement or this Exhibit A-1, the General Partner agrees that the Investor may disclose the information contained in the Placement Agent Disclosure Letter to the public.

In the event that the Investor does not receive the Placement Agent Disclosure Letter within the time period specified above, it may determine not to close the Investment Transaction. If the Investor determines that the Placement Agent Disclosure Letter contains a material inaccuracy or omission, the Investor shall have the option, in its sole discretion and without liability to the Partnership, General Partner, any Limited Partner or any third party, to cease making further Capital Contributions, Contributions and/or Direct Payments to the Partnership, and to pursue all remedies that may otherwise be available to the Investor without being deemed to be a defaulting Limited Partner under the Partnership Agreement and without incurring any other penalty under any agreement to which it is a party.

## **EXHIBIT A-2: Applicable to Public Equity Managers**

Note that the terms used in Exhibit A-2 are designed for public equity managers. The term "Investor" refers to the Common Retirement Fund.

### Placement Agent Disclosure

- A. No later than 15 calendar days prior to the execution of an investment management agreement with the Investor, the Investment Manager shall have delivered a written document to the Investor (the "Placement Agent Disclosure Letter") which contains a representation that:
  - i. the Investment Manager did not use the services of a placement agent, registered lobbyist or other intermediary to assist the Investment Manager in obtaining investments by the Fund, or otherwise doing business with the Fund, whether compensated on a flat fee, a contingent fee or any other basis;
  - ii. no Benefit has been paid, given or promised to any person or entity (including, but not limited to, any of the Investor's consultants or advisors including their Affiliates and any person reasonably believed to be an officer, director or employee of such consultant, advisor or Affiliate, or of the Investor or the New York State Office of the State Comptroller) for the purpose, or with the effect, of obtaining (A) an introduction to the Investor or any officer or employee of the New York State Office of the State Comptroller, or other assistance in obtaining business from the Investor, or (B) a favorable recommendation with respect to the Investment Transaction; and
  - iii. all information contained in such Letter is true, correct and complete in all material respects.
- B. All disclosures shall be restated at closing.
- C. The Placement Agent Disclosure Letter, which will be provided in accordance with the established policy of the Investor that the Investment Manager acknowledges has been disclosed to the Investment Manager by the Investor, shall be addressed to the persons set forth on Exhibit B.
- D. Notwithstanding anything to the contrary contained in the investment management agreement, or this Exhibit A-2, the Investment Manager agrees that the Investor may disclose the information contained in the Placement Agent Disclosure Letter to the public.
- E. In the event that the Investor does not receive the Placement Agent Disclosure Letter within the time period specified above, it may determine not to execute the investment management agreement. If the Investor determines that the Placement Agent Disclosure Letter contains a material inaccuracy or omission, the Investor shall have the option, in its sole discretion and without liability to the Investment Manager or any third party, to terminate the investment management agreement and to pursue all remedies that may otherwise be available to the Investor without incurring any penalty under any agreement to which it is a party.



## **EXHIBIT B: OSC/CRF Staff**

- A. Anastasia Titarchuk, Chief Investment Officer and Deputy Comptroller, Office of the State Comptroller, Division of Pension Investment and Cash Management, 59 Maiden Lane, New York, NY 10038, atitarchuk@osc.ny.gov
- B. Michael Kelly, Director of Operations, CIO Designee, Office of the State Comptroller, 110 State Street, Albany, NY 12236, mkelly@osc.ny.gov
- C. Donnal Hinds, Inspector General, Office of the State Comptroller, 110 State Street, Albany, NY 12236, dhinds@osc.ny.gov
- D. Joyce Abernethy, General Counsel to the Common Retirement Fund, Office of the State Comptroller, 59 Maiden Lane, New York, NY 10038, jabernethy@osc.ny.gov
- E. John Gulick, Director of Compliance, Office of the State Comptroller, Division of Pension Investment and Cash Management, 110 State Street, Albany, NY 12236, jgulick@osc.ny.gov AND pafd@osc.ny.gov
- F. A copy in respect of the relevant asset class, as applicable, to:
- Manuel Casanga, Director of Real Estate and Real Asset Investments, Office of the State Comptroller, Division of Pension Investment and Cash Management, 59 Maiden Lane, New York, NY 10038, mcasanga@osc.ny.gov
  - Jennifer Cardiff, Director of Public Equities, Office of the State Comptroller, Division of Pension Investment and Cash Management, 110 State Street, Albany, NY 12236, jcardiff@osc.ny.gov
  - Joe Dawson, Director of Private Equity, Office of the State Comptroller, Division of Pension Investment and Cash Management, 59 Maiden Lane, New York, NY 10038, jtdawson@osc.ny.gov
  - Navyug Patel, Deputy Chief Investment Officer, Division of Pension Investment and Cash Management, Office of the State Comptroller, 59 Maiden Lane, New York, NY 10038, npatel@osc.ny.gov<sup>1</sup>
  - Jon Lieber, Director of Fixed Income, Office of the State Comptroller, Division of Pension Investment and Cash Management, 110 State Street, Albany, NY 12236, jlieber@osc.ny.gov
  - Sylvester McClearn, Interim Director of Emerging Managers, Office of the State Comptroller, Division of Pension Investment and Cash Management, 59 Maiden Lane, New York, NY 10038, smcclearn@osc.ny.gov
  - Michael Lombardi, Director of Credit, Office of the State Comptroller, Division of Pension Investment and Cash Management, 110 State Street, Albany, NY 12236, mlombardi@osc.ny.gov

Policy Regarding Placement Agents — Re-Adopted without Change August 8, 2018

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<sup>1</sup> Please include DCIO Patel in connection with OARS investments.