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A legal update from Dechert's Financial Services Group

New York Attorney General Places Spotlight on Finders, Placement Agents, and "Pay-to-Play" Practices

Overview

Recently, the press has carried a number of reports relating to a high-profile investigation underway by the Attorney General of the State of New York ("NY AG") concerning investments by the New York State Common Retirement Fund ("Retirement Fund" or "Fund"). The Fund is among the largest pension funds in the United States. The allegations contained in the NY AG's criminal indictments, along with press releases from its Office, charge that the Deputy Comptroller of the State of New York, who acted as the Retirement Fund's Chief Investment Officer ("CIO"), among other things, required money managers to pay as much as $30 million in "sham" or unjustified "finders" or "placement" fees to certain individuals or conduits in order to obtain management assignments from the Fund. Based on his investigation, the New York Attorney General has drafted a comprehensive code of conduct for public pension funds that, among other things, bans the use of "placement agents" and limits political contributions to officials of the funds.

In addition to the criminal indictments, the NY AG has formed a task force consisting of 36 state attorneys general ("AG Task Force") that will examine so called "pay-to-play" practices involving state and local pension funds. The NY AG also has sent over 100 subpoenas to money managers and placement agents that have done business with the Retirement Fund or the City of New York, seeking to discover more information about practices in this area. At the same time, the NY AG, along with the Comptroller of the State of New York ("NY Comptroller"), has developed a comprehensive code of conduct for money managers seeking assignments from public pension funds. The Public Pension Fund Reform Code of Conduct ("Reform Code") contains sweeping provisions that, among other things, ban the use of "finders," "placement agents," and other "middlemen," including registered lobbyists; limit political contributions by advisers and their employees; and require disclosure of conflicts of interest.[1]

On the heels of the Securities and Exchange Commission ("SEC")'s own civil action related to activities involving the Retirement Fund, SEC Chairman Mary Schapiro has indicated that she will seek to have the SEC revisit a controversial 1999 rule proposal ("1999 Rule Proposal") designed to address "pay-to-play"practices in the money management industry.[2] The 1999 Rule Proposal, which was not adopted by the SEC, would effectively have prohibited political

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[1] The Reform Code is set forth as an Appendix to this *DechertOnPoint*. *See also*, *New York State Retirement Fund Placement Agent Disclosure Policies and Procedures of the Office of the State Comptroller (April 29, 2009)*, which provides, in part:

> 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.

[2] Political Contributions by Certain Investment Advisers, Investment Advisers Act Release 1812 (August 4, 1999).

contributions by investment advisers to government officials involved in the selection of money managers for public pension funds. A new version of the proposal is likely to be published by the SEC for comment this summer.

This *DechertOnPoint* highlights and explains the immediate impact of the proposed actions, and describes potential policy measures that may be forthcoming. The content is based on public information, including allegations contained in complaints published by the NY AG's office and the SEC, as well as press releases by government officials, and is not intended as a comment on the accuracy of any of the allegations.

Focus on Placement Agents and Finders

The NY AG's Investigation

According to the NY AG's indictments, the CIO of the Retirement Fund allegedly required that managers make payments that may have amounted to "kickbacks" to certain friends or associates as a precondition to receiving or maintaining money management assignments from the Fund. In some cases, the indictments claim, the managers had a pre-existing relationship with the Retirement Fund, or already had retained the services of another placement agent or finder to perform the same functions on their behalf. Those managers who refused to make the payments allegedly were denied the opportunity to do business with the Fund.

The allegations to date suggest that the payments in question were associated with alternative investments in the securities offered by either hedge funds or private equity funds, rather than advisory services offered through separately managed accounts. The NY AG's complaint alleges that some portion of the improper payments were made to placement agents who were broker-dealers registered with the SEC. These registered broker-dealers had employed friends or business associates of the CIO, and, in some cases, allegedly paid out to such individuals in excess of 90% of the monies received by the broker-dealers.

Each of the complaints by the NY AG and the SEC emphasizes that the payments made to the placement agents or finders allegedly were not for services that were actually performed on behalf of the money managers, but were "sham" payments used to disguise "kickbacks." For example, the NY AG's indictment notes:

> These payments . . . were, in fact, little more than kickbacks that were made pursuant to undisclosed *quid pro quo* arrangements or were otherwise fraudulently induced by the Defendants. [Those] who received these sham payments did not perform *bona fide* finding, placement or other services in exchange for the payments.

Ban on Managers' Use of Placement Agents and Finders for New York State Pension Funds

The NY AG's emphasis in its criminal complaint was on the *bona fide* nature of placement agent or finding services. Also, a broader inquiry by the NY AG has focused on whether or not intermediaries that assisted money managers in placing their investments with public pension funds in New York were properly registered as broker-dealers. Press releases by the NY AG indicate that 40 to 50 % of the funds which had investment assignments from the Retirement Fund or City of New York may have made payments to "finders" or other consultants that were not registered broker-dealers.[3]

The NY AG notes in its press releases that *"[u]nder state and federal law, securities brokers generally are required to be licensed and registered with a broker–dealer . . . In occasional cases, a registered broker is not required."*[4] The use of unregulated agents is described by the NY AG as a "systematic weakness" in New York's public pension fund system. As a result of the NY AG's investigation, the NY Comptroller has banned public pension funds in New York from using investment services introduced by intermediaries, including "finders" and "placement agents," whether or not they are properly licensed.[5] Moreover, in recent settlements with the NY AG, two large alternative managers have agreed to adhere to the ban on a nationwide basis.

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3 *See*, e.g., New York Attorney General Press Release (May 1, 2009).

4 *Id.*

5 It is unclear whether the ban applies to affiliated placement agents that are registered broker-dealers. In two other states, Illinois and New Mexico, public pension funds announced bans on the use of placement agents and finders.

Broker-Dealer Registration Concerns for Investment Managers

The NY AG's investigation is being followed closely in other states and may cause some managers that wish to do business with public funds in those states also to reconsider their marketing strategies. If they currently use third-party intermediaries in the sales process, they will need to closely examine their current marketing agreements in light of the ban, including the implications of terminating existing contractual agreements. A broader issue may be whether, from a legal perspective, they may use only internal resources to seek management assignments with the Fund and other investors, or whether their current marketing strategy requires the use of a registered broker-dealer intermediary.

Many managers of alternative products market their funds directly, without the use of intermediaries. However, it also has been common for alternative funds, including private equity funds, to use both placement agents, who generally are registered broker-dealers, and finders to assist in marketing their investments. Persons who engage in the business of selling securities must be registered with the SEC as broker-dealers.[6] Because interests in partnerships and limited liability companies offered by alternative managers are regarded as securities, the intermediaries who participate in the sales process may need to register as broker-dealers.[7]

"Finders" for alternative investments often operate in a gray area and may in some cases be acting as unregistered broker-dealers. While finders are a significant part of many industries, those who receive fees for referring investors to hedge funds or private equity funds must have a very limited involvement in the sales process in order not to be subject to broker-dealer registration requirements.[8] If finders are acting as unregistered broker-dealers, there may be consequences both for the fund and for the finder.

Funds that market directly generally are not required to register as broker-dealers. Nevertheless, the individual partners or employees of the manager of a fund could, in some cases, be considered brokers if they are engaged in sales activities. A "safe-harbor" rule adopted by the SEC, known as the "issuers' exemption," permits associated persons of an issuer, including funds, to offer securities without registering with the SEC as a broker-dealer, but the rule prohibits the partners or employees of the manager from receiving transaction-based compensation, including commissions and bonuses based on sales.[9]

Limits on Political Contributions

Although most of the allegations in the NY AG's indictments have centered around payments made in allegedly sham transactions, ongoing attention also is being given to political contributions by advisers seeking business from public entities. Based on statements by government officials, it appears likely that new state and federal limits on political contributions by advisers may be imposed. These laws are designed to prevent so called "pay-to-play" practices, in which advisers, either voluntarily or under duress, make political contributions to public officials that may influence investment assignments.

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6 The term "broker" is defined under Section 3(a)(4) of the Securities Exchange Act of 1934 ("Exchange Act") as any person "engaged in the business of effecting transactions in *securities for the account of others*." One hallmark of broker activity under the federal securities laws is the receipt of any "transaction-related compensation" or "commissions" that create a "salesman's stake" in the completion of the transaction.

7 Because "advisory services," including separately managed accounts, are not considered "securities," broker-dealer registration is not necessary for the advisers, their employees, or any finders they may use to market their advisory services. Third-party "finders" who have relationships with potential investment adviser clients often are used by institutional money managers and are compensated in a manner that may be similar to the adviser's internal sales personnel. The adviser is, however, required under Rule 206(4)-3 of the Investment Advisers Act of 1940 to provide its advisory clients with specific disclosure regarding the nature of the finder relationship and any compensation paid to the finder.

8 The SEC's Division of Trading and Markets has published on the SEC's website a "Guide to Broker-Dealer Registration" that discusses factors that may require a finder to be registered as a broker-dealer. A number of no-action letters by the staff of the SEC, generally in the context of mergers and acquisitions, also have indicated that persons who play a very limited role in bringing parties together may not need register as broker-dealers.

9 Rule 3a4-1 of the Exchange Act.

1994 MSRB Rule G-37 First Bans Pay-to-Play

One of the most visible "pay-to-play" restrictions was established in 1994 by the Municipal Securities Rulemaking Board ("MSRB"), a self-regulatory organization subject to oversight by the SEC, which establishes rules governing the conduct of municipal securities dealers. MSRB Rule G-37 prohibits municipal securities dealers from engaging in underwriting business with a particular municipal issuer for a two-year period if the firm, its dealer-controlled PAC, or its employees have made political contributions to the elected officials of the issuer. The MSRB's rule prohibits indirect contributions through third parties, but allows individuals within the dealer to contribute up to $250 per election to an official for whom they may vote in the election.[10] The rule also requires the dealer to file public reports of political contributions on a quarterly basis.

State and Local Regulations Governing Political Contributions

Since 1994, a large number of state and local governments have adopted legislation, patterned after Rule G-37, that limits political contributions by advisers seeking business from public pension funds. State and local laws, for example, can include provisions that require registration of persons who seek business with the state or local government, require reporting of contributions, and impose significant limitations on gifts and entertainment. Some of the largest state pension funds, including CalPERS and CalSTRS, already have specific restrictions on political contributions by advisers. The limits on contributions vary significantly from jurisdiction to jurisdiction.

New SEC Rulemaking Addressing Political Contributions by Investment Advisers

In the wake of recent announcements by the NY AG, and the SEC's own enforcement actions, Chairman Schapiro recently committed to "dust off" the previously referenced 1999 Rule Proposal based on MSRB Rule G-37 that would have effectively imposed a ban on political contributions by investment advisers doing business with state and local pension funds.[11] The 1999 Rule Proposal received a number of comments that lauded the SEC's goals but suggested that because of the diverse nature of the money management industry, among other things, compliance efforts would have been much more complex than encountered by municipal dealers under Rule G-37.[12] Commenters noted that certain practices, including the solicitation of contributions that presented conflicts of interest, already were part of the ethical limitations found in professional codes of conduct applicable to both pension fund managers and advisers.[13]

Based on statements by the SEC Chairman, a new version of the 1999 Rule Proposal may be published for comment by the SEC in the next few months. Any rulemaking initiative by the SEC will probably address comments on the 1999 Rule Proposal as well as additional interpretations and rulemaking under MSRB Rule G-37 since 1999. Among other things, this could include a more carefully defined exemptive process to address inadvertent violations by advisers, as well as stricter limits on the use of third-party finders and indirect contributions.

One of the more difficult challenges faced by the SEC, and potentially the industry if any rulemaking is adopted, will stem from addressing the more complex environment of larger organizations, and particularly banks with multiple service lines, who interact with state and local officials to provide a variety of non-advisory services. Compliance with any new SEC rule, for example, may require detailed and rigorous policies designed, among other things, to prevent cross-marketing and solicitations by non-advisory personnel who have made political contributions that may be attributed to the adviser.

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10 After its approval by the SEC in 1994, the constitutionality of the rule was challenged in court as an infringement on First Amendment rights. The Circuit Court of Appeals for the District of Columbia held that the rule was constitutional and declined to abrogate it. *Blount v. SEC*, 61 F.3rd 938 (DC Cir. 1995).

11 While the rule, if adopted, would have established a nationwide standard for registered investment advisers, they would nonetheless need to be conscious of any more stringent standards in the laws of the jurisdictions in which potential clients operate.

12 Rule G-37 has been subject to extensive interpretation by the MSRB since it first was adopted. It is likely that much of the guidance offered in connection with Rule G-37 and revised Rule G-38 (addressing solicitations) would be relevant to any new adviser regulations.

13 *See*, e.g., CFA Institute: Code of Conduct for Members of a Pension Scheme Governing Body.

NY AG's Public Pension Fund Reform Code of Conduct

Both the NY Comptroller and the NY AG also have developed a comprehensive code of conduct governing activities of firms seeking business from New York pension funds. More recently, in connection with separate settlements totaling $20 million and $30 million, two managers have agreed to adhere to the Reform Code on a nationwide basis.[14] Elements of the Reform Code, which is partly based on MSRB Rule G-37, include limits on political contributions, a ban on middlemen, public reporting of contributions, disclosure of "actual" or "apparent" conflicts of interest, and prohibitions on "revolving door" employment and improper gifts to public employees and officials. Many provisions of the Reform Code are not clear and it is not evident how they should be applied in practice.[15] However, because of the public attention generated by the NY AG's investigation, it is likely that that the Reform Code may have a broad nationwide effect on those seeking business from public funds. Portions of the Reform Code already are found in many state and local laws governing public funds, but new laws and practices are emerging that reflect at least some of the Reform Code's principles.

Conclusion

As a result of the NY AG's actions, there is likely to be increased scrutiny by states and the SEC, of advisers doing business with public pension funds, including their distribution practices. For this reason, advisers, particularly those who manage hedge funds and private equity funds, should examine their current distribution arrangements with third-party firms, including any ongoing contractual commitments. Moreover, any alternative marketing distribution strategies, including self-marketing, should be carefully considered in light of current SEC guidelines relating to broker-dealer registration requirements for agents and employees of issuers.

Further federal and state regulation of political contributions by advisers also is likely. In light of the current environment, it will become more important for advisers to be familiar with any limitations already applicable to doing business in each jurisdiction, to prevent inadvertent violations that may affect business opportunities with public entities or result in sanctions. Advisers also should revisit their ethical standards or supervisory procedures that address limits on gifts and entertainment.

At this time, it is not clear how broadly the Reform Code drafted by the NY AG will be applied. Many of its terms are complex and will be challenging to implement in larger organizations. However, investment firms that do business with public funds may wish to become familiar with the general principles set forth in the Reform Code and consider how they would be implemented if necessary.

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[14] Press Releases of New York Attorney General dated May 14, 2009 and June 11, 2009 (announcing Assurances of Discontinuance with the two parties).

[15] It appears, for example, that the Reform Code would apply not just to money managers, but perhaps more broadly to those who provide support services, including fund accounting, custody, research, and potentially execution.

APPENDIX

New York Attorney General's Public Pension Fund Reform Code of Conduct*

In response to the New York Attorney General's investigation revealing widespread corruption in public pension fund management and the recent national crisis of public corruption involving widespread misuse of placement agents, lobbyists and other politically-connected intermediaries to improperly gain access to and influence the investment decision-making of state and local Public Pension Fund trustees, this Code of Conduct establishes a new, higher level of transparency and accountability for investment firms that seek to attract investment and Investment Management Services business from Public Pension Funds.

The Investment Firm acknowledges that the assets of all Public Pension Funds must be invested and managed for the sole and exclusive benefit of Public Pension Fund beneficiaries in accordance with the strictest fiduciary and public integrity standards. Accordingly, in addition to all applicable federal, state and local laws, rules and regulations that govern investment firms seeking to attract investment from or provide Investment Management Services to Public Pension Funds, the Investment Firm hereby agrees to implement this Code of Conduct to govern its future conduct in connection with all of its transactions with Public Pension Funds located in the United States.

The Public Pension Fund Reform Code of Conduct accomplishes the following:

A. *A Ban on Placement Agents and Lobbyists:* The Investment Firm is prohibited from using third-party intermediaries to influence the investment decision-making process at Public Pension Funds;

B. *A Ban on Campaign Contributions to Avoid Pay to Play:* The Investment Firm, its principals, agents, employees and their immediate family members are prohibited from making campaign contributions above $300 to Officials of Public Pension Funds that the Investment Firm is soliciting for business or which have an investment in an Investment Firm's Sponsored Fund;

C. *Increased Transparency Through Disclosure:* The Investment Firm is required to disclose information necessary to make the interactions between the Investment Firms and the Public Pension Funds from which they seek business more transparent. The Code of Conduct will require disclosure of information relating to campaign contributions, investment fund personnel and payments to third-parties;

D. *A Higher Standard of Conduct In Connection With Public Pension Fund Business:* The Investment Firm is held to a higher, fiduciary standard of conduct with regard to its interactions with Public Pension Fund Officials and Public Pension Fund Advisors and is prohibited from, among other things, engaging in "revolving door" employment practices, misusing confidential information, and providing improper gifts to employees of Public Pension Funds; and

E. *Strengthened Conflicts of Interest Policies*: The Investment Firm is required to promptly disclose any conflicts of interest, whether actual or apparent, to Public Pension Fund Officials or law enforcement authorities where appropriate.

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* This version of the Reform Code is excerpted from two Assurances of Discontinuance announced by the New York Attorney General's Office in Press Releases dated May 14, 2009 and June 11, 2009.

Placement Agents and Lobbyists Prohibited

1. *No Placement Agents or Lobbyists.* The Investment Firm shall not directly or indirectly hire, engage, utilize, retain or compensate any person or entity, including but not limited to any Placement Agent, Lobbyist, Solicitor, intermediary or consultant, to directly or indirectly communicate for any purpose with any Official, Public Pension Fund Official, Public Pension Fund Advisor, or other Public Pension Fund fiduciary or employee in connection with any transaction or investment between the Investment Firm and a Public Pension Fund, including but not limited to (a) introducing, finding, referring, facilitating, arranging, expediting, fostering or establishing a relationship with, or obtaining access to the Public Pension Fund, (b) soliciting an investment or Investment Management Services business from the Public Pension Fund, or (c) influencing or attempting to influence the outcome of any investment or other financial decision by a Public Pension Fund,.

2. *Exception*: Paragraph 1 shall not apply to: (a) any partner, Executive Officer, director or bona fide Employee of the Investment Firm who is acting within the scope of his or her standard professional duties on behalf of the Investment Firm, (b) any person or entity whose sole basis of compensation from the Investment Firm is the actual provision of legal, accounting, engineering, real estate or other professional advice, services or assistance that is unrelated to any solicitation, introduction, finding, or referral of clients to the Investment Firm or the brokering, fostering, establishing or maintaining a relationship between the Investment Firm and a Public Pension Fund, or (c) lobbying of a government or legislature on issues unrelated to investment or other financial decisions by a Public Pension Fund, Public Pension Fund Officials or Public Pension Fund Advisors.

Limitation on Campaign Contributions

3. *No Campaign Contributions or Solicitations:* It shall be a violation of this Code of Conduct:

   (a) For the Investment Firm to accept, manage or retain an investment from, or provide Investment Management Services to, a Public Pension Fund within two years after a Contribution to an Official or Public Pension Fund Official is made by:

      (i) The Investment Firm;

      (ii) Any Related Party or Relative of a Related Party (including a person who becomes a Related Party within two years after a contribution to an Official or Public Pension Fund Official); or

      (iii) Any political party to aid an Official or Public Pension Fund Official, or political action committee controlled by the Investment Firm, Related Party, or Relative of a Related Party of the Investment Firm; and

   (b) For the Investment Firm, Related Party, or Relative of a Related Party:

      (i) To solicit any person or political party or political action committee to make, solicit or coordinate any Contribution to an Official or Public Pension Fund Official of a Public Pension Fund from which the Investment Firm has accepted an investment or to which the Investment Firm is currently providing or seeking to provide Investment Management Services for compensation; or

      (ii) To do anything indirectly which, if done directly, would result in a violation of this section.

   (c) Exception. Paragraph (3)(a) of this section does not apply to Contributions made by a Related Party or Relative of a Related Party to an Official or Public Pension Fund Official for whom the Related Party or Relative of a Related Party was entitled to vote at the time of the Contribution and that in the aggregate do not exceed $300 from each person or entity to anyone Official or Public Pension Fund Official, per election.

4. *Exception*: Any Contribution or solicitation of a Contribution made 14 days prior to the effective date of this Code of Conduct is exempt from the prohibitions contained in paragraph 3.

5. *Internal Procedures*: Within 90 days, the Investment Firm shall adopt internal written procedures to monitor and ensure compliance with paragraph 3 and provide a copy of those procedures to the Office of the New York Attorney General (the "OAG").

6. *Enforcement*: In the documentation of an investment by a Public Pension Fund in the Investment Firm, the Investment Firm will certify to the Public Pension Fund that to its knowledge after due inquiry it is in compliance with paragraph 3 of this Code of Conduct and that it will comply with paragraph 3 during the term of such investment.

Disclosures

7. *Disclosure of Political Contributions*:

   (a) As soon as practicable prior to the closing of an investment or engagement to provide Investment Management Services for compensation to a Public Pension Fund, the Investment Firm shall disclose all Contributions by the Investment Firm, Executive Officers, Relatives of Executive Officers, investor relations personnel of the Investment Firm, and any other Investment Firm personnel primarily responsible for communicating with, or responsible for soliciting, the Public Pension Fund, in the previous two calendar years in any amount made to or on behalf of any Official, Public Pension Fund Official, fiduciary of the Public Pension Fund, political party, state or county political committee, political action committee or candidate for state or federal elected office.

   (b) During the term of an investment or engagement to provide Investment Management Services for compensation to a Public Pension Fund, the Investment Firm shall by January 31, disclose all Contributions made pursuant to paragraph 3(c) above in the prior calendar year, regardless of amount, made to or on behalf of any Official, Public Pension Fund Official, fiduciary of the Public Pension Fund, political party, state or county political committee, political action committee or candidate for state or federal elected office.

   (c) For all such Contributions, the Investment Firm shall disclose:

      (i) The name and address of the contributor and the connection to the Investment Firm;

      (ii) The name and title of each person receiving the contribution and the office or position for which her or she is a candidate;

      (iii) The amount of the contribution; and

      (iv) The date of the contribution.

8. *Disclosure of Investment Fund Personnel:* The Investment Firm shall, 15 days or as soon as practicable prior to the closing of any investment with, or engagement to provide Investment Management Services to, a Public Pension Fund, and semi-annually by the last day of July and January during the term of such engagement, disclose the following information to the Public Pension Fund regarding Executive Officers, investor relations personnel of the Investment Firm, and any other Investment Firm personnel primarily responsible for communicating with, or responsible for soliciting, with the Public Pension Fund, Public Pension Fund Advisors, Public Pension Fund Officials or other Public Pension Fund fiduciaries or employees:

   (a) The names and titles for each person at the Investment Firm, other than administrative personnel, whose standard professional duties include contact with the Public Pension Fund, Public Pension Fund Offi-

cials, Public Pension Fund Advisors or other Public Pension Fund fiduciaries or employees. If any such person is a current or former Official, Public Pension Fund Official, Public Pension Fund Advisor, or Public Pension Plan fiduciary or employee, advisor, or a Relative of any such person, that must be specifically noted. Upon the Public Pension Fund's request, the Investment Firm will provide the resume, of any professional employee on that list, detailing the person's education, professional designations, regulatory licenses and investment and work experience.

(b) A description of the responsibilities of each person at the Investment Firm with respect to the transaction;

(c) Whether each person has been registered as a Lobbyist with any state or the federal government in the past two years;

(d) An update of any changes to any of the information included in the disclosure will be included in the next semi-annual report; and

(e) A certification of the accuracy of the information included in the semiannual disclosures.

9. *Disclosure of All Third-Party Compensation*: The Investment Firm shall provide, 15 days or as soon as practicable prior to the closing of any investment by or engagement to provide Investment Management Services to a Public Pension Fund, the names and addresses of all third parties that the Investment Firm compensated in any way (including without limitation any fees, commissions, and retainers paid by the Investment Firm to such third parties) and the amounts of such compensation paid in connection with the investment or transaction with the Public Pension Fund, including but not limited to all fees paid by the Investment Firm, Sponsored Fund, and Related Parties for legal, government relations, public relations, real estate or other professional advice, services or assistance. The Investment Firm shall update all disclosed information in the first semi-annual following the closing of such investment or engagement.

10. *Publication of Investment Firm Disclosures*: On a semi-annual basis, the Investment Firm shall publish all disclosures and certifications required by this Code of Conduct on the Investment Firm's website. The Investment Firm consents to publication of the disclosures and certifications on the OAG website or other website designated by the OAG.

11. *Affirmative Representation to the Pension Fund*: In its disclosures to a Public Pension Fund in connection with an investment in the Investment Firm or contract for Investment Management Services, the Investment Firm will certify that all the provisions of this Code are in full force and effect and that it is in compliance therewith.

Standards of Conduct

12. *No "Revolving Door" Employment*. The Investment Firm is prohibited from employing or· compensating in any way any Public Pension Fund Official, employee or fiduciary of a Public Pension Fund for two years after termination of such person's relationship with the Public Pension Fund unless such person will have no contact with or provide services to his or her former Public Pension Fund.

13. *No Relationships*. The Investment Firm and Related Parties may not have any direct or indirect financial, commercial or business relationship with any Public Pension Fund Official, Public Pension Fund Advisor, employee or fiduciary of a Public Pension Fund, or any Relatives of such persons, unless the Public Pension Fund consents after full disclosure by the Investment Firm.

14. *No Contact Policy*: Upon the release of any Request for Proposal (RFP), Invitation for Bid (IFB), or comparable procurement vehicle for any investment or Investment Management Services by a Public Pension Fund, the Investment Firm shall not cause or agree that a third party will communicate or interact with the Public Pension Fund, any Public Pension Fund Official, Public Pension Fund Advisor, employee or fiduciary of the Public Pension

Fund concerning the subject of the procurement process until the process is completed. Requests for technical clarification regarding the procurement process itself are permissible and must be directed to the Chief Investment Officer or other person designated by the Public Pension Fund. Nothing in this provision shall preclude the Investment Firm from complying with any request for information by the Public Pension Fund during this period.

15. *Confidential Information.*

    (a) The Investment Firm may not make unauthorized use or disclosure of confidential or sensitive information of a Public Pension Fund acquired as a result of the relationship between the Investment Firm and a Public Pension Fund. The Investment Firm receiving or having access to such sensitive or confidential information must use its best efforts to protect such information and may use such information only for performing the services for which the Investment Firm has been engaged and for legitimate Public Pension Fund or Sponsored Fund business purposes in accordance with the relevant contract or agreement.

    (b) The Investment Firm may not use confidential or sensitive information derived from a relationship with a Public Pension Fund in a manner that might reasonably be expected to diminish the value of such Public Pension Fund's investment or contemplated investment and would provide advantage or gain to the Investment Firm or any third party.

    (c) The foregoing clauses (a) and (b) shall not restrict:

        (i) disclosure of such information (A) to comply with law, rule or regulation or (B) to respond to inquiries or investigations by governmental or regulatory bodies;

        (ii) unless otherwise provided for in the governing documents of a Sponsored Fund, disclosure of the Public Pensions Fund's investment in such Sponsored Fund to investors and prospective investors in connection with their investment or prospective investment therein; and

        (iii) use and disclosure of such information in connection with the activities of a Sponsored Fund permitted or otherwise contemplated by its governing documents.

16. *No Gifts*. Neither, the Investment Firm, a Related Party nor a Relative of a Related Party shall offer or confer any gift having more than a nominal value, whether in the form of money, service, loan, travel, lodging, meals, refreshments, gratuity, entertainment, discount, forbearance or promise, or in any other form, upon any Public Pension Fund Official, employee or fiduciary of a Public Pension Fund, including any Relative of such persons, under circumstances in which it· could reasonably be inferred that the gift was intended to influence the person, or could reasonably be expected to influence the person, in the performance of the person's official duties or was intended as a reward for any official action on the person's part.

17. The Investment Firm may not participate in, advise or consult on a specific matter before a Public Pension Fund, other than in connection with an investment in a Sponsored Fund or the investment activities of a Sponsored Fund as provided in the governing documents of such Sponsored Fund, that involves a business, contract, property or investment in which the Investment Firm has a pecuniary interest if it is reasonably foreseeable that action by or on behalf of such Public Pension Fund on that matter would be likely to, directly or indirectly, confer a benefit on the Investment Firm by reason of the Investment Firm's interest in such business, contract, property or investment.

18. The Investment Firm must observe (1) accounting and operating controls established by law, and (2) with respect to a Public Pension Fund, such Public Pension Fund's regulations and internal rules and policies, including restrictions and prohibitions on the use of such Pension Fund's property for personal or other non-Public Pension Fund purposes, unless otherwise provided for in the governing documents of a Sponsored Fund.

Conflicts of Interest

19. *Disclosure of Conflicts of Interest.* The Investment Firm must promptly disclose any apparent, potential or actual Conflict of Interest in writing to the Public Pension Fund, including without limitation any relationship (without regard to whether the relationship is direct, indirect, personal, private, commercial, or business), if any, between the Investment Firm, a Related Party or a Relative of a Related Party with any Public Pension Fund Official, Public Pension Fund Advisor, employee or any fiduciary of the Public Pension Fund, including any Relative of such persons. Should the Investment Firm or any other person or entity with a duty to disclose a Conflict of Interest reasonably believe that disclosure to the Public Pension Fund would be ineffective to mitigate a Conflict of Interest, the person or entity shall disclose the conflict to the Office of the Attorney General in New York or appropriate law enforcement official in the jurisdiction of the Public Pension Fund.

20. If the Investment Firm is aware, or reasonably should be aware, of an apparent, potential or actual Conflict of Interest, it has a duty not only to disclose that conflict, but to cure it by promptly eliminating it. If the Investment Firm cannot or does not wish to eliminate the conflict, it must terminate its relationship with such Public Pension Fund as promptly as responsibly and legally possible. If the Investment Firm may prudently refrain or withdraw from taking action on a particular Public Pension Fund matter in which a Conflict of Interest exists, the Investment Firm may cure the conflict in that manner provided that

    (a) the conflicted person or entity may be and is effectively separated from influencing the action taken;

    (b) the action may properly and prudently be taken by others without undue risk to the interests of such Public Pension Fund; and

    (c) the nature of the conflict is not such that the conflicted person or entity must regularly and consistently withdraw from decisions that are normally his or its responsibility with respect to the services provided to such Public Pension Fund.

The Public Pension Fund's General Counsel, or other person designated by the Public Pension Fund, may determine that the Investment Firm need not take further action to cure a conflict, provided the disclosures by the Investment Firm are deemed sufficient under the circumstances to inform such Public Pension Fund of the nature and extent of any bias and to form a judgment about the credibility or value of the Investment Management Services provided by the Investment Firm. In such event, the Investment Firm may continue to provide such Investment Management Services without taking further action to cure the disclosed conflict.

21. If the Investment Firm is uncertain whether it .has or would have an apparent, potential or actual Conflict of Interest under a particular set of circumstances then existing or reasonably anticipated to be likely to occur, the Investment Firm should promptly inform the Public Pension Fund, which shall determine whether an actual conflict exists under the circumstances presented.

22. If the Investment Firm discloses a Conflict of Interest to a Public Pension Fund, it must refrain from providing Investment Management Services concerning any matters affected by the conflict until such Public Pension Fund expressly waives this prohibition or until the conflict of interest is otherwise cured.

23. The Investment Firm is committed to collaborate in good faith with the OAG to adopt appropriate protocols to implement the conflicts of interest principles set forth in Paragraphs 19 through 22.

24. *Conflicts of Interests Arising in the Activities by a Sponsored Fund*. The Investment Firm shall ensure that the governing documents of each Sponsored Fund in which a Public Pension Fund invests contain provisions for how to address material conflicts of interest between the Investment Firm and the Related Parties on the one hand and the Sponsored Fund on the other hand that may arise out of the investment and other activities of such Sponsored Fund, which provisions shall be disclosed to and agreed to by each Public Pension Fund prior to such Public Pension Fund's investment in a Sponsored Fund. For example, such provisions may provide that the Investment

Firm shall disclose any such material conflicts of interest in any transaction, other than those contemplated or otherwise provided for by the governing documents of the relevant Sponsored Fund, of which it has knowledge to an investor advisory committee composed of third party investors unaffiliated with the Investment Firm, one of the roles of which is to review and approve or disapprove any potential conflicts of interest that are brought before it.

Education and Training

25. *Dissemination of Code of Conduct*. Within one week of the effective date of this Code of Conduct, the Investment Firm shall provide a copy of this Code of Conduct to all of its partners, Executive Officers, directors and Employees and shall publish the Code of Conduct on its internal computer network where it can be accessed by its partners, executive officers, directors and employees.

26. *Training.* Within 90 days after the effective date of this Code of Conduct, the Investment Firm shall conduct one or more seminars for all of its partners, Executive Officers, directors and Employees who might interact with a Public Pension Fund in the course of their official duties about the requirements described herein. The Investment Firm agrees that it will train all new partners, Executive Officers, directors and Employees who might interact with Public Pension Fund personnel in the course of their official duties. The Investment Firm shall also require annual retraining of all relevant Investment Firm personnel on the provisions of this Code of Conduct and require an annual certification from those personnel attesting to their having completed the annual training.

Compliance

27. The Investment Firm will file annually a Certificate of Compliance with the terms of this Code of Conduct with respect to all Public Pension Funds with the OAG. The Investment Firm will also .send a Certification of Compliance to any other Public Pension Fund that annually requests such certification from the Investment Firm.

28. Upon a Public Pension Fund's request, this Code of Conduct, or any part thereof, shall be incorporated into any subscription material, side letter or equivalent document for each Sponsored Fund. A material violation of this Code of Conduct by the Investment Firm shall be grounds for a Public Pension Fund to (a) withdraw from the Sponsored Fund, (b) be excused from participating in all future portfolio company investments made by the Sponsored Fund In accordance with the governing documents of such Sponsored Fund, which terms shall have been appropriately disclosed to and agreed in writing with the Public Pension Fund prior to its investment in the Sponsored Fund, or (c) seek any other applicable remedies provided for under the rules, regulations, or governing laws of the Public Pension Fund.

29. In addition to any other possible criminal, civil and administrative action, if the Investment Firm's business relationship with a Public Pension Fund is terminated by a Public Pension Fund because of a violation of this Code of Conduct, the Investment Firm may be disqualified from having any further business relationship with such Public Pension Fund for a period of time up to ten years, as solely determined by the Public Pension Fund, commencing from the date of the termination of the contract or business relationship.

30. *Jurisdiction*. The Investment Firm consents to personal jurisdiction of the state of the Public Pension Fund with respect to any criminal, civil or administrative action or proceeding, including but not limited to compliance with subpoenas from state law enforcement and regulatory authorities, arising from or related to any investment by the Public Pension Fund with the Investment Firm and any contractual relationship between the Investment Firm and the Public Pension Fund.

31. To the extent that a provision of this Code would cause the Investment Firm to violate a statute, rule, regulation or policy governing any particular Public Pension Fund, the Investment Firm and the OAG will confer to resolve the conflict.

32. Any determinations, disclosures and certifications to be made by the Investment Firm pursuant to this Code of Conduct shall be made to the best of the Investment Firm's knowledge after inquiry based on the Investment Firm's best efforts.

Definitions

33. *"Conflict of Interest"* A conflict of interest exists where circumstances create a conflict with the Investment Firm's duty (consistent with fiduciary standards of care) to act solely and exclusively in the best interest of a Public Pension Plan's members and beneficiaries. For example, a conflict of interest exists when the Investment Firm knows or has reason to know that it or a Related Party has a financial or other interest that is likely to be material to the Investment Firm's evaluation of or advice with respect to a transaction or assignment on behalf of the Public Pension Fund. For the avoidance of doubt, conflicts of interest arising in the activities by a· Sponsored Fund shall be governed specifically by Paragraph 24.

34. *"Contribution"* means any gift, subscription, loan, advance, or deposit of money or anything of value made for:

    (i) The purpose of influencing any election for State or local office;

    (ii) Payment of debt incurred in connection with any such election; or

    (iii) Transition or inaugural expenses of the successful candidate for any such election.

35. *Employee"* means a person employed directly by the Investment Firm and who would be considered an employee for federal tax purposes. An Employee is not a person who is hired, engaged, utilized or retained by the Investment Firm for the purpose of securing or influencing a particular transaction, investment or decision of a Public Pension Fund, Public Pension Fund Official or Public Pension Fund Advisor or other Pension Fund fiduciaries or employees.

36. *Executive Officer"* means the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions, for the Investment Firm.

37. *"Government Entity"* means the state or political subdivision of the state, including:

    (i) Any agency, authority, or instrumentality of the state or a political subdivision;

    (ii) Plan or pools of assets controlled by the state or a political subdivision or any agency, authority or instrumentality thereof; and

    (iii) Officers, agents, or employees of the state or political subdivision or any agency, authority or instrumentality. thereof, acting in their official capacity.

38. *"Investment Firm"* means the signatory of this Code of Conduct as well as its subsidiaries and any affiliates over which it exercises exclusive control, but shall not include any Sponsored Funds or portfolio companies of Sponsored Funds or any third party investors in any Sponsored Funds.

39. *"Investment Management Services"* means:

    (a) The business of making or recommending investment management decisions (including making recommendations for the placement or allocation of investment funds) for or on behalf of a Government Entity or Public Pension Plan;

(b) The business of advising or managing a separate entity that makes or recommends investment management decisions (including making recommendations for the placement or allocation of investment funds) for or on behalf of a Government Entity or Public Pension Plan; or

(c) The provision of any other financial advisory or consultant services to a Government Entity or Public Pension Plan, such as money management or fund management services, investment advice or consulting, and investment support services (including market research, fund accounting, custodial services, and fiduciary advice).

40. *"Lobbyist"* shall mean any person or organization retained, employed or designated by any client to engage in Lobbying. A Lobbyist does not include a bona fide Employee of the Investment Firm.

41. *"Lobbying"* shall mean, for the purposes of this Code of Conduct, any attempt to directly or indirectly influence a determination by a (1) Public Pension Fund Official, (2) Official, (3) any fiduciary of a Public Pension Fund, (4) Public Pension Fund Advisor, or (5) any other person or entity working in cooperation with any of the above, related to a procurement of Investment Management Services by a Public Pension Fund, including without limitation a determination by a Public Pension Fund to place an investment with the Investment Firm.

42. *"Official"* means any person (including any election committee for the person) who was, at the time of a Contribution, an incumbent, candidate or successful candidate:

(a) For an elective office of a government entity, if the office is directly or indirectly responsible for, or can directly influence the outcome of, the Public Pension Fund's investment with or engagement of the Investment Firm; or

(b) For any elective office of a government entity, if the office has authority to appoint any person who is directly or indirectly responsible for, or can directly influence the outcome of, the Public Pension Fund's investment with or engagement of the Investment Firm.

Communication with an Official includes communications with the employees and advisors of such Official.

43. *"Placement Agent"* means any third-party intermediary that is directly or indirectly hired, engaged, utilized, retained or compensated (regardless of whether upon a fixed, contingent or any other basis) or otherwise given any other tangible or intangible item or benefit having monetary value by the Investment Firm for facilitating the placement of an investment with the Investment Firm. A Placement Agent does not include a bona fide Employee of the Investment Firm or any person whose sole basis of compensation from the Investment Firm is the actual provision of legal, accounting, engineering, real estate or other professional advice, services or assistance unrelated to soliciting, introducing, finding, or referring clients to the Investment Firm or attempting to influence in any way an existing or potential investment in or business relationship with the Investment Firm.

44. *"Public Pension Fund"* means any retirement plan established or maintained for its employees (current or former) by the Government of the United States, the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing.

45. *"Public Pension Fund Official"* means any elected or appointed trustee or other official, staff member or employee whose official duties involve responsibility for a Public Pension Fund.

46. *"Public Pension Fund Advisor"* means any external firm or individual engaged by a Public Pension Fund to assist in the selection of investments or Investment Management Services for the Public Pension Fund.

47. *"Related Party"* means any partner, member, executive officer, director or .Employee of the Investment Firm or Sponsored Fund, including any agents of such person. Limited partners of a Sponsored Fund or a managed account and portfolio companies are not Related Parties.

48. *"Relative"* means a person related by blood or affinity (including a domestic partner) who resides in the same household. A person adopted into a family is considered a relative on the same basis as a natural born family member.

49. *"Solicitor"* means any person or entity who in any way, directly or indirectly, solicits, finds, introduces or refers any client to the Investment Firm, including without limitation any intermediary, consultant, broker, introducer, referrer, finder, public-or government-relations expert, or marketer.. A Solicitor does not include any bona fide Employee of the Investment Firm or any person whose sole basis of compensation from the Investment Firm is the actual provision of legal, accounting, engineering, real estate or other professional advice, services or assistance that is unrelated to any solicitation, introduction, finding, or referral of clients to the Investment Firm or the brokering, fostering, establishing or maintaining a relationship between the Investment Firm and a Public Pension Fund.

50. *"Sponsored Fund"* means an investment fund sponsored, managed or advised by the Investment Firm.

* * *

I, the undersigned, acknowledge that I have read this Code of Conduct and am familiar with the standards that govern the conduct of the Investment Firm. I further acknowledge that I will within ten days of my signature distribute this Code of Conduct to those persons who work or represent the Investment Firm on Public Pension Fund matters, and ensure they have read this Code of Conduct and are familiar with the standards that govern the conduct of the Investment Firm.

Further, the Investment Firm shall distribute this Code of Conduct immediately to any other person with the Investment Firm who begins working or representing the Investment Firm on Public Pension Fund matters and once a year to all persons with the Investment Firm who are working or representing the Investment Firm on Public Pension Fund matters.

Practice group contacts

For more information, please contact the authors, one of the attorneys listed, or any Dechert attorney with whom you regularly work. Visit us at www.dechert.com/financialservices.

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