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

**Revised December 19, 2023**

## **I. Purpose of Policy**

In order to preserve the independence and integrity of the New York State Common Retirement Fund ("CRF"), the Comptroller has determined that it is in the best interest of the CRF to prohibit CRF (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 or other intermediary as such terms are defined in Section 424-A of the New York Retirement & Social Security Law (collectively, "Placement Agent") to assist the Investment Manager in obtaining investments by the CRF, or otherwise doing business with CRF, whether compensated on a flat fee, a contingent fee, or any other basis. This policy regarding the use of Placement Agents by Investment Managers (the "Placement Agent 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 the CRF, has determined that the disclosure and notification requirements set forth in this Placement Agent 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.

## **II. 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 fund 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 (a) an investment fund that invests in funds, other investment funds, or other assets, or (b) an investment management agreement with a manager of managers, (in both instances "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 or the retention of the Indirect Investment Manager.
  - Where CRF does not have the right to decline Underlying Investments or otherwise exercise discretion with respect to Underlying Investments (including the retention of the Indirect Investment Manager, CRF requires the Direct Investment Manager to implement a similar

policy and disclosure letter procedures to ensure that no placement agent was used to obtain the investment from the Direct Investment Manager.

- B. Direct Investments and Indirect Investments referenced in subsections (i) and (ii) above will collectively be referred to as "Investments."

### **III. 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.

### **IV. Disclosure Review Process**

- A. The Chief Investment Officer, the Inspector General and the General Counsel to CRF (including their designees as provided in Section IX, the "PAFD Committee") will review such disclosures and will jointly determine whether a disclosure is sufficient and such final determination shall be provided to the Director of Compliance.
- B. The Director of Compliance will confirm that all members of the PAFD Committee have provided their written confirmation that the applicable Placement Agent Disclosure Letter is sufficient and will notify relevant PICM and Legal staff in writing of the completion of the policy requirements (such writing, a "PAFD Clearance Memo").
- C. CRF staff must notify the PAFD Committee if a party acting in what appears to be the role of a Placement Agent contacts the CRF regarding an Investment. The General Counsel to CRF will communicate with the Investment Manager to determine whether accurate disclosure was made and will inform the PAFD Committee.

### **V. Failure to Comply with Placement Agent Disclosure Letter Requirement**

- A. If the Investment Manager fails to comply with the Placement Agent Disclosure Letter requirements 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 not close the Investment or terminate its investment relationship with the Investment Manager. Remedies may take the following forms:
- i. **Public equity/fixed income 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 and/or reduction of its carried interest and/or such other remedies as may be determined by the CRF.
  - v. **Absolute return strategies/open-ended funds:** immediate redemption of the investment.
  - vi. **Opportunistic Investments:** remedy may take any of the forms listed in i-v above.

vii. **Credit Investments:** remedy may take any of the forms listed in i-v above.

viii. **Real Assets Investments:** remedy may take any of the forms listed in i-v above.

In each case, termination of funding, termination of the relationship, removal of the manager or redemption of the investment, as applicable, shall occur either immediately or on such date as CRF shall, in its sole discretion, specify. All contracts entered by CRF will contain language providing for such termination in the form appropriate to the investment.

- 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 Placement Agent Policy without penalty to CRF.

## VI. 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. The relevant asset class investment officer or Operations team member will be responsible for sending such written notice.
- ii. CRF will send written notice to the Investment Manager ("Notice") requesting a Placement Agent Disclosure Letter. A copy of or link to this Placement Agent Policy 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, the Investment Manager will provide the Placement Agent Disclosure Letter to CRF as set forth in Exhibit A.
- iv. The Placement Agent Disclosure Letter will be delivered to all the individuals currently serving in the following positions within OSC, or their permitted designees pursuant to Section IX below, in each case as identified in a list of current incumbents maintained and updated from time to time by the Director Compliance (the "PAFD Addressee List")\* \*\*:
  - a. Chief Investment Officer
  - b. Inspector General
  - c. General Counsel to the Common Retirement Fund
  - d. Director of Compliance
  - e. Director of Operations
  - f. In respect of the relevant asset class, a copy to the following, as applicable:
    - Director of Real Estate and Real Assets
    - Director of Public Equity
    - Director of Fixed Income

- Director of Credit
- Director of Private Equity
- Deputy CIO in respect of Opportunistic and Absolute Return Strategies Investments (OARS)
  - \*Director of Emerging Managers should also be copied for investments falling within the Emerging Manager Program.
  - \*\* Director of Sustainable Investments & Climate Solutions (SICS) should also be copied for investments falling within the SICS Program.

## B. Indirect Investments

- i. The Direct Investment Manager will inform the Indirect Investment Manager in writing of the Placement Agent Disclosure Letter requirements when the Direct Investment Manager begins full due-diligence review of the potential Underlying Investment.
- ii. The Direct Investment Manager will send the Notice to the Indirect Investment Manager requesting a Placement Agent Disclosure Letter. A link to this Placement Agent Policy will be made available to the Indirect Investment Manager at such time.
- iii. Within 20 calendar days from receipt of the Notice, but no later than 15 calendar days prior to closing an Investment, the Indirect Investment Manager will provide the Placement Agent Disclosure Letter to CRF as set forth in Exhibit A.
- iv. The Placement Agent Disclosure Letter will be delivered to all the individuals currently serving in the following positions within OSC, or their permitted designees pursuant to Section IX below, in each case as specifically identified in the PAFD Addressee List \* \*\*:
  - a. Chief Investment Officer
  - b. Inspector General
  - c. General Counsel to the Common Retirement Fund
  - d. Director of Compliance
  - e. Director of Operations
  - f. In respect of the relevant asset class, a copy to the following, as applicable\*:
    - Director of Real Estate and Real Assets
    - Director of Public Equity
    - Director of Fixed Income
    - Director of Credit
    - Director of Private Equity
    - Deputy CIO in respect of OARS Investments
    - \*Director of Emerging Managers should also be copied for investments falling within the Emerging Manager Program.

- \*\*Director of Sustainable Investments & Climate Solutions (SICS) should also be copied for investments falling within the SICS Program.

## **VII. 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. 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 the Notice is delivered prior to closing of the Investment.
- B. As part of the closing, the Investment Manager will be required in contracts with the CRF (or in the case of Indirect Investment Managers, in the governing contracts with the relevant Direct Investment Manager) to restate the representations and confirm the Investment Manager's agreement with the provisions contained in the previously submitted Placement Agent Disclosure Letter.

## **VIII. Internal Controls and Recordkeeping**

- A. CRF staff, as part of the closing process for an Investment, will comply with the following procedures:
  - i. CRF Operations and Compliance will ensure that pre-closing disclosure was made prior to the issuance of a PAFD Clearance Memo.
  - 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.

## **IX. Designees**

- A. The Director of Internal Audit may act on behalf of the Inspector General.
- B. A senior attorney designated by the General Counsel to CRF may act on their behalf.
- C. The Director of Operations or the Deputy Director of Operations may act on behalf of the Chief Investment Officer.
- D. A Compliance Officer designated by the Director of Compliance may act on their behalf.

## **X. Amendments to Exhibit A**

Exhibit A may be amended as needed to reflect clarifying changes consistent with this Placement Agent Policy and/or changes in investment structures or vehicles. Such amendments do not require approval of the Comptroller. Exhibit A, as may be amended, is an integral part of this Placement Agent Policy.

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## EXHIBIT A

The form letter below shall be used by both private fund managers and public equity/fixed income separate account investment managers.

Indirect Investment Managers will be provided with the appropriate form by the Direct Investment Manager managing the Underlying Investment. Remedies provided for in item II below, "Additional Requirements in respect of Placement Agent Disclosure Letters," will apply equally for the Direct Investment Manager managing the Underlying Investment.

Placement Agent and Intermediary, as used below, are defined in Section 2(b) of [New York Retirement and Social Security Law Section 424-A](#)

### I. Required Disclosure Letter for All Investments

#### [Investment Manager Letterhead]

[Date]

[Addressees and Titles]

Re: [Name of Investment Transaction]

Ladies and Gentlemen:

The undersigned Investment Manager acknowledges receipt of the CRF's Policy Regarding the Use of Placement Agents by Investment Managers, dated [ ], (the "Placement Agent Policy") and agrees to the terms thereof. In accordance with the Placement Agent Policy, the Investment Manager hereby confirms:

In connection with the CRF's proposed **[investment in [name of each investment fund] / [funding of the [name of strategy] separate account]**, (the "Investment Transaction"),

- i. No Investment Manager Party<sup>1</sup> used the services of a placement agent or intermediary (each as defined in Section 424-A of the New York Retirement & Social Security Law) to assist any Investment Manager Party in obtaining investments by the CRF, or otherwise doing business with the CRF, whether compensated on a flat fee, a contingent fee, or any other basis;
- ii. no Benefit<sup>2</sup> has been paid, given or promised to any person or entity (including, but not limited to, any

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<sup>1</sup> "Investment Manager Party" shall mean and include the Investment Manager, the General Partner, Manager, Managing Member, as applicable, of each investment fund (or in respect of the separate account strategy), to which this disclosure letter relates and each affiliate of such.

<sup>2</sup> "Benefit" shall include any fee, bonus (or other compensation), benefit or thing of value of any kind, including, but not limited to, the provision of any advantage, profit, privilege, gain or status.

of the CRF'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 CRF or the New York State Office of the State Comptroller) for the purpose, or with the effect, of obtaining (A) an introduction to the CRF or any officer or employee of the New York State Office of the State Comptroller, or other assistance in obtaining business from the CRF, or (B) a favorable recommendation with respect to the Investment Transaction;

- iii. Notwithstanding anything to the contrary in any Investment Transaction document, each Investment Manager Party acknowledges that the CRF may disclose this letter and any information contained herein to the public; and
- iv. all information contained in this Letter is true, correct, and complete in all material respects.

Sincerely,

[Investment Manager]

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[Name of Authorized Signatory]

[Specific Title of Signatory]

## II. Additional Requirements in Respect of Placement Agent Disclosure Letters

- A. **Titles:** The proper title of a senior authorized signatory i.e., CEO, CFO, Managing Partner, General Counsel, etc. must be included in the signature block.
- B. **Addressees:** The Placement Agent Disclosure Letter shall be addressed to the persons specified in the PAFD Addressee List attached to the Placement Agent Policy as of such date.
- C. **Fees to Legal Counsel and Accountants:** The Investment Manager 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 investment fund and the offering of interests therein (or in connection with the negotiation of investment management contracts), provided that such legal counsel and accountants have not also represented the CRF in connection with its investment in the investment fund and have not been involved in any form of solicitation relating to the CRF.
- D. **Restatement at Closing:** The Investment Manager Party shall restate the representations made in the Placement Agent Disclosure Letter at the closing of the Investment Transaction in the contract with the CRF; which contract shall also include agreement with the CRF remedies provided for in this Placement Agent Policy.
- E. **Failure to Comply with Policy:** If the Investment Manager does not provide the Placement Agent Disclosure Letter within the time period specified in the Placement Agent Policy or otherwise does not comply with the requirements of the Placement Agent Policy, the CRF may determine not to close the Investment Transaction. If the CRF determines that the Placement Agent Disclosure Letter contains a material inaccuracy or omission after the Investment Transaction has closed or been funded, the CRF shall have the option, in its sole discretion and without liability to any investment fund, any Investment Manager Party, any other investor in the investment fund or any third party, to exercise the remedies provided for in this Placement Agent Policy.



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## PAFD ADDRESSEE LIST - OSC/CRF Staff

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

PAFD Addressee List - Revised January 16, 2024

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