Materials on placement agent policies

Title 2. California Public Employees' Retirement System

SECTION 559. DISCLOSURE OF PLACEMENT AGENT FEES, GIFTS AND CAMPAIGN CONTRIBUTIONS

TO

ARTICLE 2 OF CHAPTER 2 OF DIVISION 1 OF TITLE 2 OF THE CALIFORNIA CODE OF REGULATIONS

(a) Definitions:

(1) *Amendment.* Amendment means any modification to an agreement with an External Manager (including by a vote, consent, or waiver by the limited partners/investors or a subset of the limited partners/investors, or separate side agreement or amendment to a side agreement) to continue, terminate, or extend the term of the agreement or the investment period, increase the commitment of funds by CalPERS, or increase or accelerate the fees or compensation payable to the External Manager.

(2) *CalPERS Vehicle*. CalPERS Vehicle means a corporation, partnership, limited partnership, limited liability company, association or other entity either domestic or foreign, constituting or managed by an External Manager in which CalPERS is the majority investor and that is organized in order to invest with, or retain the investment manager services of other, External Managers, i.e., a fund of funds.

(3) *CalPERS Vehicle Manager*. CalPERS Vehicle Manager means the general partner, managing member, or investment manager of a CalPERS Vehicle.

(4) *Consultant*. Consultant means an individual or firm, and includes an individual designated in a CalPERS contract as a key personnel of a Consultant firm who is contractually retained or has been appointed to a pool by CalPERS to provide investment advice to CalPERS but who do not exercise investment discretion.

(5) *External Manager*. External Manager means either of the following:

(A) A Person who is seeking to be, or is, retained by CalPERS or by a CalPERS Vehicle to manage a portfolio of securities or other assets for compensation, or

(B) A Person who manages an Investment Fund and who offers or sells, or has offered or sold an ownership interest in the Investment Fund to CalPERS or a CalPERS Vehicle.

The External Manager usually has full discretion to manage CalPERS assets, consistent with investment management guidelines provided by CalPERS and fiduciary responsibility. A CalPERS Vehicle Manager is an External Manager.

(6) *Investment Fund.* Investment fund means a private equity fund, public equity fund, venture capital fund, hedge fund, fixed income fund, real estate fund, infrastructure fund, or similar pooled investment entity that is, or holds itself out as being, engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, owning, holding, or trading securities or other assets. Notwithstanding the above, an investment company that is registered with the Securities and Exchange Commission pursuant to the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.) and that makes a public offering of its securities is not an investment fund.

(7) *Person.* Person means an individual, corporation, partnership, limited partnership, limited liability company, association or other entity (whether domestic or foreign).

(8) *Placement Agent.* Placement Agent means any Person directly or indirectly hired, engaged, retained by, or serving for the benefit of or on behalf of an External Manager or an Investment Fund managed by an External Manager, and who acts or acted for compensation as a finder, solicitor, marketer, consultant, broker or other intermediary in connection with the offer or sale to CalPERS or a CalPERS Vehicle either of the following:

(A) In the case of an External Manager within the meaning of section (a)(5)(A), the investment management services of the External Manager, or

(B) In the case of an External Manager within the meaning of section (a)(5)(B), an ownership interest in an investment fund managed by the external manager.

Notwithstanding the above, a Placement Agent shall not include any individual who is an employee, officer, director, equity holder, partner, member, or trustee of an External Manager who spends one-third or more of his or her time, during a calendar year, managing the securities or assets owned, controlled, invested or held by the External Manager.

(9) *Placement Agent Information Disclosure*. Placement Agent Information Disclosure is defined in subsection (b)(1).

(b) Each External Manager and CalPERS Vehicle Manager is responsible for providing:

(1) The following information (collectively, the "Placement Agent Information Disclosure") to CalPERS staff or, if applicable, to the CalPERS Vehicle Manager within 45 days of the time investment discussions are initiated by the External Manager or the CalPERS Vehicle Manager, but in any event, prior to the completion of due diligence. For proposed and new investments, the Placement Agent Information Disclosure shall be provided by utilizing the "CalPERS Placement Agent Information Disclosure Form -- Proposed and New Investment Agreements" revised August 12, 2010 and incorporated herein by reference. For Amendments to existing investments, the Placement Agent Information Disclosure is required prior to execution of the Amendment and shall be provided by utilizing the "CalPERS Placement Agent Information Disclosure Form – Amendments" revised August 12, 2010 and incorporated herein by reference.

(A) A statement whether the External Manager, or any of their principals, employees, agents or affiliates has compensated or agreed to compensate, directly or indirectly, any Person (whether or not employed by the External Manager or the CalPERS Vehicle Manager) to act as a Placement Agent in connection with the offer of assets, securities, or services to CalPERS or a CalPERS Vehicle.

(B) The name and relationship for each Placement Agent in connection with the investment by CalPERS, and attach a resume for each Placement Agent detailing the person's education, professional designations, regulatory licenses and investment and work experience. If any such Person is a current or former CalPERS Board member, employee or Consultant or a member of the immediate family of any such person, such information shall be specifically noted. When an entity is retained as a Placement Agent, any officer, director, or employee actively providing placement agent services with regard to CalPERS or receiving more than 15% of the placement agent fees shall provide information required by this subsection.

(C) A written copy of any and all agreements between the External Manager and the Placement Agent related to the assets, securities or services offered to CalPERS.

(D) A description of any and all compensation of any kind provided or agreed to be provided to a Placement Agent

related to the assets, securities, or services offered to CalPERS, including the nature, timing and value thereof.

(E) A description of the services to be performed by the Placement Agent and a statement as to whether the Placement Agent is utilized by the External Manager for all prospective clients or only with a subset of the External Manager's prospective clients.

(F) The names of any current or former CalPERS Board members, employees, or Consultants who suggested or otherwise assisted in the retention of the Placement Agent.

(G) A statement that the Placement Agent is registered with the Securities and Exchange Commission or the Financial Industry Regulatory Authority or the Commodity Futures Trading Commission, and the details of such registration. If, however, the Placement Agent is located and operating outside of the United States and interacts exclusively with CalPERS Vehicles formed and operating outside of the United States, the statement may indicate that the Placement Agent (or any of its affiliates as applicable) is registered with a recognized non-U.S. financial regulatory authority and the details of such non-U.S. registration.

(H) A statement whether the Placement Agent, or any of its affiliates, is registered as a lobbyist with any state or national government.

(2) An update of any changes to any of the information included in the Placement Agent Information Disclosure within 14 calendar days of the date that the External Manager knew or should have known of the change in information.

(3) Representation and warranty as to the continuing accuracy of the information included in the Placement Agent Information Disclosure in any final written agreement with a continuing obligation to update any such information within 14 calendar days of the date that the External Manager knew or reasonably should have known of any material change in the information. A CalPERS Vehicle Manager does not need to represent and warrant as to the accuracy of information provided to them by an External Manager with whom the CalPERS Vehicle invests.

(c) Each Placement Agent shall, prior to acting as a Placement Agent, disclose to CalPERS (1) all campaign contributions made by the Placement Agent to any CalPERS Board Member or person(s) who has the authority to appoint a person

to the CalPERS Board during the prior 24-month period and (2) all gifts, as defined in Government Code section 82028, given by the Placement Agent to any CalPERS Board Member or person(s) who has the authority to appoint a person to the CalPERS Board during the prior 24-month period. Additionally, any subsequent campaign contribution or gift made by the Placement Agent to any CalPERS Board Member or person(s) who has the authority to appoint a person to the CalPERS Board during the time the Placement Agent is receiving compensation in connection with a CalPERS investment shall also be disclosed.

(d) CalPERS staff and, except as specified below, CalPERS Vehicle Managers are responsible for all of the following:

(1) Providing External Managers with a copy of this regulation at the time that discussions are initiated with respect to a prospective investment or engagement.

(2) Confirming that the Placement Agent Information Disclosure has been received within 45 days of the time investment discussions are initiated, but in any event, prior to the completion of due diligence and any recommendation to proceed with the contract or Amendment.

(3) For new contracts and Amendments, declining the opportunity to retain or invest with the External Manager if the Placement Agent Information Disclosure reveals that the External Manager has used a Placement Agent that is not registered with the Securities and Exchange Commission or the Financial Industry Regulatory Authority or, if appropriate, the Commodity Futures Trading Commission. Notwithstanding the above, CalPERS Vehicle Managers may invest in External Managers where the Placement Agent is registered with a recognized non-U.S. financial regulatory authority consistent with subsection (b).1.g.

(4) For new contracts and Amendments, securing the agreement of the External Manager in the final written agreement between CalPERS or the CalPERS Vehicle and the External Manager to provide CalPERS or the CalPERS Vehicle the following remedies in the event the External Manager or CalPERS Vehicle Manager knew or should have known of any material omission or inaccuracy in the Placement Agent Information Disclosure or any other violation of this section:

(A) Whichever is greater, the reimbursement of any management or advisory fees paid for the prior two years or an amount equal to the amounts paid or promised to be paid to the Placement Agent as a result of the CalPERS or CalPERS Vehicle investment or engagement; and

(B) At CalPERS or the CalPERS Vehicle's option, as appropriate, and without any default, penalty or liability on the part of CalPERS or the CalPERS Vehicle to the External Manager, the authority to terminate immediately the investment management contract or other agreement with the External Manager, to withdraw without default, penalty or liability on the part of CalPERS or the CalPERS Vehicle from the limited partnership, limited liability company or other investment vehicle, or alternatively at CalPERS or the CalPERS Vehicle's discretion to cease making further capital contributions (and paying any fees on these recalled commitments) to the limited partnership, limited liability company or other investment vehicle without penalty; provided, however, that notwithstanding the foregoing, CalPERS or the CalPERS Vehicle shall pay when due all obligations due to a third party lender with respect to commitment debt secured by CalPERS or the CalPERS Vehicle's unfunded commitment.

(5) For new contracts and Amendments, confirming that the final written agreement between CalPERS or the CalPERS Vehicle and the External Manager provides that the External Manager shall be solely responsible for, and CalPERS or a CalPERS Vehicle shall not pay (directly or indirectly), any fees, compensation or expenses for any Placement Agent used by the External Manager.

(6) Rejecting any External Manager or Placement Agent's solicitation for any new offer of assets, securities, or services for five years after they have committed a violation of this section unless the Investment Committee reduces the penalty in an open session upon a showing that the violation was immaterial, unintentional, and that a reduction of the penalty is consistent with the fiduciary responsibilities of the Investment Committee as described in Article XVI, section 17 of the California Constitution.

(7) Providing copies of the Placement Agent Information Disclosure to the CalPERS Senior Investment Officer for the asset class for which the External Manager performs investment services, the CalPERS Chief Investment Officer, the CalPERS Chief Executive Officer, the CalPERS Chief of the Office of Enterprise Compliance and CalPERS' General Counsel. The CalPERS Vehicle Manager shall only be responsible for providing a copy of the Placement Agent Information Disclosure to CalPERS staff.

(8) Providing the Investment Committee with a copy of the Placement Agent Information Disclosure whenever the Investment Committee makes or

approves the decision to invest with the External Manager. This obligation does not apply to the CalPERS Vehicle Manager.

(9) Compiling a monthly report containing the names and amounts of compensation agreed to be provided to each Placement Agent by each External Manager as reported in the Placement Agent Information Disclosures, providing the report to the Investment Committee, and disclosing the report to the public by posting it to the CalPERS website. The CalPERS Vehicle shall only be responsible for providing this information to CalPERS staff. The report will also include campaign contributions and gifts to CalPERS Board Members reported by Placement Agents. Notwithstanding the above, CalPERS staff may provide the required disclosure confidentially to the Investment Committee if disclosure involves a proposed investment and public disclosure will impair CalPERS' ability to maximize its investment returns. In such cases, disclosure will be made at the first open meeting of the Investment Committee that is held after the final decision is made whether to invest with the External Manager. The disclosure will include a detailed explanation why the disclosure was originally made confidential.

(10) Reporting to the Investment Committee at least quarterly any material violations of this section. The CalPERS Vehicle shall only be responsible for providing this report to CalPERS staff.

(e) External Managers and Placement Agents shall comply with this section and cooperate with CalPERS staff in meeting CalPERS staff's obligations under this section.

(f) CalPERS staff is responsible for implementing this section for CalPERS Vehicles by seeking the written agreement of CalPERS Vehicle Managers to comply with this section. If any such CalPERS Vehicle does not agree in writing to comply with this section, CalPERS staff shall report to the Investment Committee the refusal.

(g) All parties responsible for implementing, monitoring and complying with this regulation should consider the spirit as well as the literal expression of its provisions. In cases where there is uncertainty whether a disclosure should be made, this regulation shall be interpreted to require disclosure.

(h) Only the Investment Committee can grant exceptions to this regulation, except that the CalPERS Chief Investment Officer can agree to an exception for an Amendment, where the decision cannot be delayed until the next Investment Committee meeting. Any exceptions agreed to by the Chief Investment Officer shall be reported out to the public and the Investment Committee within 60 days. The Investment Committee and Chief Investment Officer shall only provide exceptions that are consistent with their fiduciary responsibilities as described in

Article XVI, section 17 of the California Constitution, and provided further that all such exceptions are fully disclosed to the public.

(i) The Placement Agent Information Disclosure and their attachments shall be public records subject to disclosure under the California Public Records Act except as provided in subsection (d)(9). No confidentiality restrictions shall be placed by the External Manager or the Placement Agent on any information provided pursuant to this section.

NOTE: Authority cited: Sections 7513.85(a), 20120, and 20121, Government Code. Reference: Sections 7513.8, 7513.85, and 7513.9, Government Code.

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CalPERS Placement Agent Disclosure Form

This form facilitates the disclosures and contractual obligations required pursuant to the CalPERS Statement of Policy for the Disclosure of Placement Agent Fees ("Policy"). Please see the Policy and the Glossary of the Policy.

Name of Investment Transaction/Investment Management Contract with CalPERS: MAGNUM CAPITAL L.P. (the "Investment" or "Contract").

Name of CalPERS Contact (if applicable): John S. Greenwood

Contact Person: Alan Tooker/ Ramona Bowry

Company Name: Magnum Capital Management GP Limited

Street Address (No. P.O. Box): 4th Floor, Scotia Centre, P.O. Box 268

City: Gran Cayman

State/Province: Gran Cayman

Country: Cayman Islands

E-mail Address: atooker@arcdirectors.com; rbowry@arcdirectors.com

Phone No: +1 345 769 3400

Fax No: +1 345 769 3404

Have you, your firm or your firm's principals, employees, agents, or affiliates compensated or agreed to compensate, directly or indirectly, any person (whether or not employed by you) or any entity to act as a Placement Agent in connection with the Investment or the Contract by CalPERS? (Policy § IV.A.1.a.)

☒ Yes. ☐ No.

In relation to the letter sent by CALPERS' Chief Investment Officer, where he states that "CALPERS Investment Committee adopted a new policy requiring all external managers … to disclose fees and other information about the placement agents *that they hire to seek CALPERS business*", we consider very important to highlight that Magnum's Placement Agent *was not hired to seek CALPERS business.* It was hired under a general fund-raising mandate to seek non-Iberian investors, where no target investor names where included or even discussed.

Please list the names for each officer, partner, or principal of the Placement Agent (and any employee providing similar services) in connection with the investment by CalPERS, and attach a resume for each of them detailing each person's (i) education, (ii) professional designations, (iii) regulatory licenses and (iv) investment and work experience. Please check the box if any person listed is a current or former CalPERS Board member, employee, or Consultant, or a member of the immediate family of any such person.* (Policy § IV.A.1.b.)

The Placement Agent is a well-known international financial firm: “Credit Suisse Securities (Europe) Limited” (“CS”). We do not currently have the resumes of the people involved in our mandate. We could get them for you, if you wanted, but given that it is a well-known international Firm, it is perhaps not necessary.

To the best of our knowledge, none of Credit Suisse’s professionals involved with us had any professional or family relationship with CALPERS.

* Explain below the relationship for any individual where the box is checked. (Policy § IV.A.1.b.)

N/A

Provide a description of any and all compensation of any kind provided or agreed to be provided to a Placement Agent, including the nature, timing and value thereof: (Policy § IV.A.1.c.)

Magnum agreed to pay a cash fee equal to:

a) A fixed amount to compensate CS for the help provided in preparing the investment documents, information memorandum, DD report, etc
b) A low percentage on all the funds raised with Iberian and some Friends & Family investors
c) A staggered percentage on all remaining investors, increasing with the amount of funds raised, up to the hard cap.

These amounts were financed by CS and are being paid in arrears over 4.5 years by the General Partner

The specific amounts are subject to a confidentiality clause with CS. We cannot provide them to you unless we seek clearance with them.

Describe the services to be performed by the Placement Agent, including whether the Placement Agent is utilized by you for all prospective clients or only a subset of your prospective clients. (Policy § IV.A.1.d.)

As said, CS acted as overall Placement Agent for Magnum, covering from the creation of the investment papers and materials to presenting prospective international investors to us. (The Iberian investors were covered directly by us).

☐ Please attach a copy of any and all agreements between you and the Placement Agent and check the box to confirm that the agreements have been attached. (Policy § IV.A.1.e.)

As said, the Agreement has Confidentiality Clauses with Credit Suisse. Given our relationship with and trust in CALPERS, we would not have any problem in providing a copy of the contract to you. However, we also understand that CS may want to preserve the confidentiality of its business terms. If you consider it really important to have it, we would have to seek clearance from them.

Please list the names of any current or former CalPERS Board members, employees, or Consultants who suggested the use of the Placement Agent(s) noted above. (Policy § IV.A.1.f.)

Absolutely none. We did not know anybody within CALPERS or its Consultants before this investment.

☒ Please check the box to indicate whether the Placement Agent is registered with the SEC or FINRA and provide the details of such registration below. Please note exactly what entities or principals are registered. (Policy § IV.A.1.g.)

CS is authorized and regulated by the United Kingdom Financial Services Authority, as stated in the aforementioned Contract.

☐ Please check the box to indicate that the Placement Agent or any of its affiliates is registered as a lobbyist with any state or federal government. If so, provide the names of those registered along with the jurisdiction in which they are registered. (Policy § IV.A.1.h.)

To the best of our knowledge, it is not a registered lobbyist, since it is a Financial Firm.

By executing this form the undersigned represents and warrants that the information set forth herein is true and correct. The undersigned agrees to update this information within 14 days of any changes. (Policy § IV.A.2.)

The execution and delivery of this form has been authorized by all necessary action by the undersigned.

Name of Firm: Magnum Capital GP Limited

Name: Ramona Bowry

Date: 1st September 2009

Title: Director

Please e-mail this form and all related attachments to:
placementagentdisclosure@calpers.ca.gov

Questions related to this form and the Policy can be directed to the above e-mail address.

NEW YORK STATE COMMON RETIREMENT FUND

PLACEMENT AGENT DISCLOSURE

POLICIES AND PROCEDURES

OF

THE OFFICE OF THE STATE COMPTROLLER

Approved By:

_____

THOMAS P. DiNAPOLI
State Comptroller

_____

VICKI FULLER
Chief Investment Officer & Deputy Comptroller
Division of Pension Investment and Cash Management

Last Date: September 11, 2013
Original Date: July 24, 2007

Policy Regarding Use of Placement Agents by Investment Managers

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.

I. 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."

II. Form of Disclosure

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

III. Disclosure Review Process

A. The Chief Investment Officer, the Inspector General and the Deputy Counsel 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 Deputy Counsel if a party acting in what appears to be the role of a Placement Agent contacts CRF regarding an Investment Transaction. Investment Counsel will communicate with the Investment Manager to determine whether accurate disclosure was made and will inform the Inspector General and the Deputy Counsel.

IV. 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 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
vii. Real Asset Investments: : termination of the relationship may take any of the forms listed in i-v above
viii. Fixed Income manager: termination of the investment management agreement. If 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.

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.

V. 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 the respective asset class 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. Deputy Counsel to the Comptroller
e. Investment Counsel
f. As applicable, a copy to the Director of the respective asset class
g. 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 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 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. Deputy Counsel to the Comptroller
e. Investment Counsel
f. As applicable, a copy to the Director of the respective asset class:
g. The investment officer leading CRF's due diligence review of the potential Investment Transaction.

VI. 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.

VII. 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 Investment Counsel 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.

VIII. 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 Deputy Counsel

C. The Investment Counsel may act on behalf of the Chief Investment Officer.

IX. 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.

The Placement Agent Disclosure Letter must also clearly disclose the name of the investment and, if an Indirect Investment, the name of the entity making the investment.

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.

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 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.

The Placement Agent Disclosure Letter must also clearly disclose the name of the investment and, if an Indirect Investment, the name of the entity making the investment.

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) Vicki Fuller, Chief Investment Officer, Office of the State Comptroller, Division of Pension Investment and Cash Management, 633 Third Avenue, New York, NY 10017 vfuller@osc.state.ny.us

b) G. Stephen Hamilton, Inspector General, Office of the State Comptroller, 110 State Street, Albany, NY 12236, shamilton@osc.state.ny.us

c) Nancy G. Groenwegen, Counsel to the Comptroller, Office of the State Comptroller, 110 State Street, Albany NY, 12236, ngroenwegen@osc.state.ny.us

d) Helen M. Fanshawe, Deputy Counsel to the Comptroller, Office of the State Comptroller, 110 State Street, Albany, NY 12236, hmfanshawe@osc.state.ny.us

e) David Riley, Investment Counsel, Office of the State Comptroller, 59 Maiden Lane, New York, NY 10038, driley@osc.state.ny.us

f) As applicable, a copy to the director of the asset class:

- Everett B. Miller III, Director of Real Estate, Office of the State Comptroller, Division of Investment and Cash Management, 59 Maiden Lane, New York, NY 10038, emiller@osc.state.ny.us

- Robert Arnold, Director of Global Equity Investments, Office of the State Comptroller, Division of Investment and Cash Management, 110 State Street, Albany, NY 12236, RArnold@osc.state.ny.us

- Anastasia Titarchuk, Director of Absolute Return Strategies, Office of the State Comptroller, Division of Investment and Cash Management, 633 Third Avenue, New York, NY 10017, ATitarchuk@osc.state.ny.us

- Brian Hughes, Interim Director of Private Equity, Office of the State Comptroller, Division of Investment and Cash Management, 110 State Street, Albany, NY 12236, BDHughes@osc.state.ny.us

- Tyson Pratcher Director of Opportunistic Investments, Office of the State Comptroller, Division of Investment and Cash Management, 633 Third Avenue, New York, NY 10017, tpratcher@osc.state.ny.us

- Director of Real Assets, Office of the State Comptroller, Division of Investment and Cash Management, 110 State Street, Albany, NY 12236

- Donna Benson, Director of Fixed Income, Office of the State Comptroller, Division of Investment and Cash Management, 110 State Street, Albany, NY 12236, dbenson@osc.state.ny.us

NORTH CAROLINA DEPARTMENT OF STATE TREASURER
INVESTMENT MANAGEMENT DIVISION

Placement Agent, Political Contribution, and Connection Disclosure Policy

I. Purpose

A. Background. The North Carolina State Treasurer (the "Treasurer") and the North Carolina Department of State Treasurer (the "Department") strive to model excellence in state government through accountability and prudent investment of entrusted assets. The Treasurer maintains the investment program for the North Carolina Retirement Systems defined in N.C.G.S. § 147-69.2(b)(8) and other investment funds (collectively, the "NC Funds"). The Investment Management Division ("IMD") serves as the investment arm of the State Treasurer. Because IMD is limited in the number of staff it can hire and the Department lacks legal authority to invest directly in certain asset classes, outside Investment Managers (as hereinafter defined)[1] manage a majority of the investments made on behalf of the NC Funds.

Since the first version of this Policy was adopted in 2009, the Treasurer and the Department have adopted several policies and procedures that govern the selection of outside Investment Managers. Among these policies are the Investment Policy Statement, the External Investment Manager and Vehicle Selection Policy and Procedure (the "Selection Policy"), the Code of Ethics and Conduct, the IMD Investment Committee Charter, and the External Investment Management Conflict of Interest Certification. The Treasurer's overarching goal, in adopting this set of policies, has been to develop the best possible procedures for selecting investments and to maintain high ethical standards.

B. Role of Placement Agents. A Placement Agent is, in essence, a marketing specialist hired by an outside Investment Manager. Placement Agents often serve a valuable function by exposing new and emerging Investment Managers to investment funds which might otherwise have not received information about those Investment Managers' opportunities. Placement Agents can help smaller managers learn how to market themselves as effectively as their larger counterparts. The Securities and Exchange Commission noted the helpful functions of Placement Agents in 2010, determining that it was prudent to allow Investment Managers to continue hiring Placement Agents so long as those Placement Agents are registered and regulated by an organization such as FINRA. *See* Release on SEC Rule, 75 Fed. Reg. 41,017 at 41,038 and 41,041 (July 14, 2010).

As the SEC observed, however, Placement Agents have been implicated in improper conduct affecting several public pension funds. If an Investment Manager hires a Placement Agent to utilize a pre-existing relationship between the Placement Agent and the public pension fund's staff, the Placement Agent does not serve any useful function, and instead could cause a fund to make decisions on factors other than the potential investment's strategy and expected performance.

C. Goals of this Policy. In this Policy, the Treasurer has chosen to impose limitations on Investment Managers' use of Placement Agents to ensure that Placement Agents will play only a proper role in marketing investment opportunities. More broadly, the Policy seeks disclosures of connections or relationships between Investment Managers, Placement Agents, and persons affiliated with the Department. The Policy has three basic features:

[1] Capitalized terms not otherwise defined in the text of this Policy have the meanings stated in Section XI herein.

- First, the Policy requires comprehensive disclosures from the Investment Manager and Placement Agent.

- Second, the Policy provides for attorney review of the disclosed information to ensure that any Placement Agent or Investment Manager was hired for professional expertise, not for his or her connections to the Treasurer, board members, or staff. The Treasurer's Compliance Counsel will also evaluate any relationships to determine appropriate action, such as recusal.

- Third, the Policy restricts Investment Managers from using and compensating Placement Agents unless the Placement Agent is providing an introduction for an Investment Manager who has not managed any investments for the NC Funds within the last two years. *See* Section VII(C).

II. Application

This Policy applies to all Investment Transactions and Substantive Amendments entered into by the Treasurer on or after September 29, 2009. Revised requirements of this version of the Policy shall apply to agreements entered into or modified pursuant to a Substantive Amendment on or after December 1, 2013.

For purposes of agreements with Investment Managers entered into prior to September 29, 2009, when a Substantive Amendment is made with the consent of the Treasurer to such agreement, this Policy shall apply prospectively to the amended agreement and not to the original agreement. As to pre-2009 Investment Managers to whom this Policy does not apply pursuant to the foregoing, the Treasurer has previously requested that each such Investment Manager voluntarily comply with this policy.

This Policy applies whenever the Treasurer is seeking to engage, hire, invest with or commit to invest, or to do business with an Investment Manager, whether the applicable agreement is directly with the Investment Manager or with an investment vehicle affiliated with the Investment Manager. Investment Managers should note that, although Placement Agents' services are generally considered more applicable to the general partners, managers, and sponsors of private equity, real estate, absolute return, and other private market investment funds, this Policy also applies to public market Investment Managers.

III. Required Disclosures

A. Disclosure Letters. For each Investment Transaction, prior to entering into an agreement or Substantive Amendment with the Treasurer, or at such time as provided in Section II above, an Investment Manager shall provide to the Treasurer's Compliance Counsel the following (collectively, the "Disclosure Letters"):

1. A disclosure from the Investment Manager substantially in the form of Appendix 1 to this Policy (an "Investment Manager Disclosure Letter"); and

2. If and only if there is a Placement Agent for the Investment Transaction, a disclosure from each Placement Agent substantially in the form of Appendix 2 to this Policy (a "Placement Agent Disclosure Letter").

For Substantive Amendments, whether or not any Disclosure Letter was provided at the time of the agreement's original execution under this Policy, Investment Managers and Placement Agents (if any) shall complete Disclosure Letters based on the circumstances surrounding the proposed Substantive Amendment, not the original agreement.

B. Content of Disclosure Letters. Each Disclosure Letter shall be in substantially the form of Appendix 1 or Appendix 2 to this Policy, as applicable, containing the following:

1. **Response 2.1.** A statement as to whether or not the Investment Manager (or any officer, partner, principal, or affiliate thereof) has elected to use or Compensate a Placement Agent to assist the Investment Manager in obtaining investments from, or business with, any of the NC Funds.

2. **Responses 2.2(e)-(f).** A statement confirming that (i) no Placement Agent is being, or will be, Compensated, directly or indirectly, to assist the Investment Manager in obtaining investments from (or business with) the NC Funds, except as disclosed in the Disclosure Letter and (ii) the Investment Manager, not the Treasurer or the NC Funds, shall bear the entire cost of the Placement Agent fees and expenses disclosed in the Disclosure Letter.

3. **Responses 2.3(a)-(g).** The name of the Placement Agent and a resume (or other summary) for all Placement Agent personnel who played a role in marketing or outreach for the Investment Transaction, all Placement Agent personnel who will receive Compensation as a result of the NC Funds' investment in the Investment Transaction, and each officer, partner, or principal of the Placement Agent. Such resume or other summary shall detail each person's education, work experience, and professional designations. If any such person is a current or former North Carolina Department of State Treasurer employee, IMD Contractor or Consultant, North Carolina State Treasurer, or Investment Advisory Committee member, or a member of the Immediate Family of any such person, this fact shall be specifically noted, and any financial benefit to such person from the Investment Transaction shall be identified.

4. **Response 2.6.** The terms of the agreement or arrangement (oral or written) with the Placement Agent that (i) describe any and all Compensation provided or agreed to be provided to a Placement Agent including the nature, timing, and value and (ii) create an obligation to pay a fee to or for the benefit of any Placement Agent. If the contract or agreement between the Investment Manager and Placement Agent is not written, the full extent of such agreement shall be written and summarized, succinctly describing the terms of such agreement or arrangement with the Placement Agent, including details of the nature, timing, and value of the Compensation or benefit provided. Where the Placement Agent is an employee of the Investment Manager,[2] Compliance Counsel may accept, in lieu of the detailed response described above, a general disclosure providing the employee's role and responsibilities and stating any known effect on the employee's Compensation directly attributable to the NC Funds' proposed investment.

5. **Response 2.7.** A statement as to whether the Placement Agent has been the subject of any actions or investigations by any federal, state, or local government agencies or regulatory bodies in the last ten (10) years and/or anticipates being the subject of such actions or investigations in the future.

6. **Responses 2.2(a)-(d) and 2.8.** A statement confirming that (i) the Placement Agent is registered with the Securities and Exchange Commission or the Financial Industry Regulatory Association; (ii) the individual officers, partners, principals, employees, or other representatives of the Placement Agent hold all required securities licenses (e.g. Series 7, 63);

[2] Note that Investment Manager employees are "Placement Agents" within the definition of this Policy only if subject to SEC or FINRA registration requirements. *See* this Policy's definition of "Placement Agent" in Section XI(K).

(iii) no placement fee has been or will be shared with any person or entity not so registered; and (iv) the Placement Agent is in the habitual systemized business of acting as a Placement Agent. In addition, the Placement Agent shall provide a statement that provides details of relevant persons' registrations, the number of years employed by the Placement Agent, and the number of years of experience directly related to such business.

7. **Response 3.2.** A statement as to whether a current or former North Carolina State Treasurer, Department of State Treasurer employee, IMD Contractor or Consultant, or Investment Advisory Committee member suggested the retention of the Placement Agent. If so, the name of such individual(s) shall be provided.

8. **Responses 3.1 to 3.5.** Disclosures of connections or relationships in accordance with Section VIII of this Policy.

9. **Response 4.** A statement indicating whether the Investment Manager or the Placement Agent (as applicable), or any of its officers, partners, principals or affiliates, is registered as a lobbyist with any state government and, if applicable, the name and positions of such persons and the registrations held.

10. **Responses 5.1 and 5.2.** Disclosures concerning Political Contributions in accordance with Section IX of this Policy.

C. Change of Information. The Investment Manager and Placement Agent shall provide a written update of any material changes to any of the information found in their Disclosure Letter within fourteen (14) days after such person or entity knew or should have known of the change in information.[3]

D. Representations and Warranties

1. **By Investment Manager.** In the Investment Manager Disclosure Letter, the Investment Manager shall represent and warrant that the statements found in the Investment Manager Disclosure Letter are true, correct, and complete in all material respects. The Investment Agreement shall contain substantially the same representation and warranty, and it shall provide for a remedy on breach consistent with § IV of this Policy.

2. **By Placement Agent.** The Placement Agent Disclosure Letter shall include a declaration under penalty of perjury that the Placement Agent Disclosure Letter is true, correct, and complete in all material respects.

E. Internal Disclosure in Investment Recommendation Memorandum. For certain IMD transactions, the Selection Policy requires staff to complete an Investment Recommendation Memorandum. In each Investment Recommendation Memorandum, the Asset Class Director will provide a brief statement that describes (1) the person or persons, if any, who initially suggested the investment opportunity to IMD and (2) any persons who appeared before IMD in the marketing or due diligence process on behalf of the Investment Manager and who were not employees of the Investment Manager or one of the Investment Manager's affiliates.

[3] The Disclosure Letters ask several questions about social relationships, shared work history, and family or marital relationships. These answers to these questions will inevitably change over time. The Investment Manager and Placement Agent need not provide updates to Responses 3.3 to 3.6, but must update Responses 3.1(a), 3.1(b), or 3.2.

F. Website Posting. Disclosure Letters shall be public documents. Any designation by an Investment Manager or Placement Agent of Disclosure Letter text as a trade secret under N.C. Gen. Stat. § 132-1.2(1) shall be supported by a statement identifying how the text designated as a trade secret satisfies the test of N.C. Gen. Stat. §§ 66-152(3)(a.),(b.) and 132-1.2(1)(b.)-(d.). On a quarterly basis, the Department shall electronically collate Disclosure Letters for all proposed Investment Transactions that were accepted and signed by the Treasurer and make such collations available through its website and other means.

IV. Failure to Comply – Remedies

A. By Investment Managers.

1. Each Investment Agreement shall include remedial provisions that apply in the event the Investment Manager (i) fails to comply with the Disclosure Letter requirements, (ii) makes a material misstatement or omission in its Disclosure Letter, (iii) fails to update a Disclosure Letter as required by Section § III(C) of this Policy, or (iv) otherwise materially violates this Policy (items (i) through (iv) collectively hereinafter, a "Violation of This Policy").

2. All remedial actions for Violations of This Policy shall be at the Treasurer's sole discretion, without liability by the Treasurer to the Investment Manager, and the Treasurer may choose not to exercise any such remedy if the Treasurer determines that such exercise may not be in the best interest of the NC Funds.

3. The remedial provisions for a Violation of This Policy shall provide that the Investment Manager shall repay to the Treasurer the greater of (a) the aggregate amount of any management or advisory fees paid to the Investment Manager for the most recent two years in respect of the investments or business of the Treasurer, whether paid directly by the Treasurer or an investment vehicle in which the Treasurer is an investor and without regard to any offset reducing such fees (e.g., for placement fees, special fees, fund expenses, etc.) or (b) an amount equal to the amounts paid or promised to be paid to the Placement Agent with respect to investments or business with the Treasurer.

4. The Treasurer shall also seek, in the remedial provisions in an Investment Agreement for a Violation of This Policy, language that allows for immediate termination of the Investment Agreement without penalty; or, for a limited partnership, limited liability company, or other investment vehicle, language that allows for an orderly withdrawal of the Treasurer from such investment vehicle without financial penalty to the Treasurer or the NC Funds.

5. The Treasurer may also impose a ban on future Investment Transactions with the Investment Manager.

6. The remedies set forth in this Section shall be in addition to any other remedies that the Treasurer may be entitled to at law or in equity, by contract or otherwise.

7. As to any existing Investment Manager voluntarily complying with the policy as described in Section II, the remedies described in this Section shall not apply to any use of a Placement Agent prior to the approval date of this policy that is described in the Disclosure Letter of the existing Investment Manager first submitted following such approval date, except to the extent the Disclosure Letter is not true, correct and complete in all material respects.

B. By Department Personnel. Failure to comply with this Policy by Department employees or IMD Contractors or Consultants may result in penalties up to and including termination.

V. Notification & Review Process

A. Notice. At the time that discussions are initiated with respect to a prospective Investment Transaction or Substantive Amendment, the Treasurer's staff will provide the Investment Manager with a copy of this Policy along with the Supplemental Ethics Policy, the Charitable Donations Policy, the Prohibition of Gifts to State Employees Policy, and the Travel Policy. As applicable, the Director for each asset class, or his or her designee, will be responsible for sending such written notice.

B. Timing of Disclosure Letters. Unless exceptional circumstances exist, the Disclosure Letters shall be provided to the Compliance Counsel at least one month before the anticipated closing of the Investment Transaction.

C. Review before Closing. Before closing of the Investment Transaction and execution of contractual documents, the Compliance Counsel shall review Disclosure Letters in accordance with Section VI of this Policy.

D. Implementation. As part of the closing of an investment or engagement or any amendment thereto to which this Policy is applicable as described in Section II hereinabove, the Investment Manager will be required to (i) represent and warrant that its Disclosure Letter is, as of the date of closing, true, correct and complete in all material respects and (ii) confirm the Investment Manager's agreement to the remedial provisions contained in Section IV.

VI. Evaluation of Disclosure Letters

A. Information Reviewed. The Compliance Counsel shall review the Disclosure Letter. When provided in the Selection Policy, the Compliance Counsel shall be provided with Investment Recommendation Memoranda or other documents related to the proposed transaction. The Compliance Counsel may contact Department personnel, the Investment Manager, or the Placement Agent to address questions.

B. Standard of Review. The Compliance Counsel shall determine whether in his or her view, based on the information reviewed:

1. The Disclosure Letters are responsive, complete, and sufficient in all material respects;

2. Whether there is a reasonable chance that any aspect of the Investment Transaction's recommendation, negotiation, or approval may violate any law, regulation, or Department policy; and

3. Whether any aspect of the Investment Transaction's recommendation, negotiation, or approval (a) creates a material risk that the professional judgment or actions of persons currently affiliated with the Department have been or will be unduly influenced by a direct or indirect personal interest; or (b) raises significant reputational risk concerns related to Conflicts of Interest.

Any approval by the Compliance Counsel will be made in writing. These criteria are intended to be identical to the criteria in Section VII of the Selection Policy, and the Compliance Counsel's review under this Policy and under the Selection Policy may be combined into one effort.

C. Corrective Procedures.

1. **For issues under § VI(B)(1).** If the Compliance Counsel determines that the test stated by Subsection (B)(1) above is not met, he or she shall contact the Investment Manager or Department staff to seek correction of the Disclosure Letters.

2. **For issues under § VI(B)(2) or (3).** If the Compliance Counsel determines that the test stated by Subsections (B)(2) or (B)(3) above may not be met, the Compliance Counsel will promptly notify the Chief Investment Officer and General Counsel. The issue will be jointly resolved following the procedures set out in Section VII of the Selection Policy. In accordance with Section VII(A) below, the Investment Agreement or Substantive Amendment may not be signed by the Treasurer without approval by the General Counsel or the General Counsel's attorney designee. The resolution of the issue raised by the Compliance Counsel will be documented in writing and provided to the Treasurer before execution.

VII. Prohibitions

A. Prohibition on Investment without Approval under This Policy. This Policy prohibits the Treasurer or Department personnel from entering into any Investment Transaction or Substantive Amendment unless, in compliance with Section VI above, it has been approved by either the Compliance Counsel, the General Counsel, or the attorney designated by the General Counsel to perform review of the contract under N.C.G.S. § 114-8.3(b1).

B. Eligibility Criteria for Placement Agent. The Treasurer will not transact business on behalf of any NC Funds with an Investment Manager that has elected to use a Placement Agent unless the following criteria are met in all material respects:

1. The Placement Agent must be registered with either the Securities and Exchange Commission or the Financial Industry Regulatory Authority.[4]

2. The placement fee must not be shared with a person or entity that does not meet the criteria in Subsection (B)(1) above.

3. The person or entity acting as the Placement Agent must be in the habitual, systematized business of acting as a Placement Agent.

4. The Investment Manager must represent and warrant in the Investment Agreement that the information disclosed is true, correct, and complete in all material respects, as set forth in Section III(D).

5. The Investment Manager must agree in the Investment Agreement to the remedies for material omission or inaccuracy in the Disclosure Letter, as set forth in Section IV.

6. The Investment Manager agrees in the Investment Agreement that the Investment

[4] For international Investment Transactions, any Placement Agents outside the United States must have a substantially equivalent foreign registration.

Manager, not the Treasurer or the NC Funds, shall bear the entire cost of all Placement Agent fees and expenses.[5]

C. Prohibition on Use of Placement Agents if Investment Manager Currently Manages, or Recently Managed, North Carolina Investments.

1. **Prohibition.** The Treasurer shall not enter into an Investment Transaction if the Investment Manager (or its affiliate) currently manages an NC Funds investment or has managed an NC Funds investment within the last two years, but the Investment Manager has elected to use and Compensate a third-party Placement Agent with respect to the Investment Transaction. Such a transaction is not barred if the Investment Manager engages a Placement Agent, but the Placement Agent is not Compensated, directly or indirectly, for the NC Funds' investment.[6]

2. **Internal or Affiliated Placement Agents.** The ban on third-party Placement Agents set out in Subsection (C)(1) above does not restrict Investment Managers from utilizing Placement Agents who are employees or employees of an Investment Manager's affiliate, so long as Compensation to the Placement Agent is disclosed in accordance with Section III(B)(4) of this Policy.

3. **No Placement Agents to Promote or Market Amendments.** The Treasurer shall not enter into an amendment or consent to amend an existing contract if the Investment Manager hired a third-party Placement Agent to promote or market the amendment.

4. **No Tail Fees.** The Treasurer shall not enter into an Investment Transaction if a Placement Agent or other solicitor (a) is not utilized to promote the current Investment Transaction by the Investment Manager, (b) nonetheless, the Investment Manager would Compensate the Placement Agent based on the NC Funds' investment for the current transaction, and (c) such Compensation would be the result of the Placement Agent's status, in a prior investment transaction, as the Placement Agent to the NC Funds.

D. Prohibitions on Conduct of Department-Affiliated Personnel. The Treasurer, Department of State Treasurer staff, IMD Contractors or Consultants, and Investment Advisory Committee members ("Department-Affiliated Persons") shall not:

1. Suggest to an Investment Manager or the Department's investment staff that a Placement Agent be engaged with respect to an Investment Transaction or Substantive Amendment; or

2. Make an initial call or contact to a Placement Agent about an investment opportunity, unless that Placement Agent meets the standards of Subsections (B)(1) and (B)(3)

[5] An investment vehicle in which the Treasurer is an investor may make a payment to the Placement Agent as an offset to the NC Funds' future fees or compensation to the Investment Manager if and only if (i) the terms of the management fee offset are fully disclosed, (ii) the Placement Agent and its Compensation are fully disclosed in approved Disclosure Letters under this Policy, and (iii) the NC Funds do not ultimately bear any Placement Agent fees and expenses.

[6] In some situations, an Investment Manager hires a Placement Agent for a small flat fee to assist in preparing marketing materials for all potential investors in the fund. Subsection (C)(1) does not prohibit the Investment Transaction if the flat fee is not based on the size of the Investment Manager's fund, the flat fee is not based, directly or indirectly, on the size of the NC Funds' investment, and the Placement Agent does not appear personally in front of North Carolina.

above and the contact will be disclosed in the transaction's Investment Recommendation Memorandum and Disclosure Letters required under this Policy.

VIII. Disclosure and Evaluation of Connections or Relationships

A. General Principles. Each Disclosure Letter shall contain the statements requested in this section disclosing any connections or relationships that may exist between the Investment Manager or Placement Agent (as applicable) and Department-Affiliated Persons. The Investment Manager and Placement Agent must, in good faith, make their responses materially complete. In preparing their responses, the Investment Manager and Placement Agent may rely on lists provided by the Department of State Treasurer of current and past Department personnel and Investment Advisory Committee members.

The Compliance Counsel will evaluate the disclosures in accordance with the standard of review set out in Section VI(B) of this Policy, following the principles set out in this Section VIII. Some types of connections or relationships are the ordinary result of doing business. Based on the facts and the principles set out in this section of the Policy, the Treasurer's Compliance Counsel will determine what actions are required. It may be warranted, in the circumstances, to recuse Department personnel or engage a neutral third party to perform an independent evaluation of the proposed transaction.[7]

B. Responses 3.1(a) and (b): Financial Benefit or Current Employment

1. **Disclosure.** The Disclosure Letter shall list whether any current Department-Affiliated Persons or any member of their Immediate Family (i) are personnel, officers, directors, partners and/or principals of the Investment Manager or Placement Agent, or (ii) would receive a financial benefit to themselves derived from the Compensation provided to the Investment Manager or Placement Agent.

2. **Resolution.** If such a connection is disclosed, the Compliance Counsel shall ensure: (i) the affected Department-Affiliated Person shall be recused from the Investment Transaction and shall play no part in its consideration or approval; and (ii) if the Department-Affiliated Person has already played a substantive role in the consideration or approval of the Investment Transaction, the Investment Transaction shall be prohibited. The Chief Investment Officer, Department's General Counsel, and Treasurer shall be notified in writing of the connection.

C. Responses 3.2(a) and (b): Who Recommended Placement Agent

1. **Disclosure.** The Disclosure Letter shall list whether any current or former Department-Affiliated Person suggested to the Investment Manager or to the Department's investment staff that the Placement Agent be retained for the Investment Transaction.

2. **Resolution.** If such a suggestion is disclosed, the Compliance Counsel shall review the disclosure; notify the Chief Investment Officer, General Counsel, and Treasurer; and ensure that appropriate action is taken as prescribed by this subsection.

a. If a <u>current</u> Department-Affiliated Person suggested that a Placement Agent be retained with respect to a proposed Investment Transaction or Substantive

[7] Any neutral third party engaged under this subsection shall be hired, compensated, and directed by the Department (not the Investment Manager or Placement Agent) and shall be paid on a basis that is not dependent on whether the transaction proceeds to closing.

Amendment, the Compliance Counsel will seek disciplinary action against the Department-Affiliated Person under Section VII(D)(1) of this Policy. Moreover, the proposed transaction or amendment shall be prohibited if the Investment Manager retained the suggested Placement Agent. If the Investment Manager did not retain the suggested Placement Agent, recusal of the Department-Affiliated Person and mandatory neutral third-party due diligence is required.

b. If a former Department-Affiliated Person suggested that a Placement Agent be retained, the Compliance Counsel shall determine whether recusal, a ban on the investment, or mandatory third-party due diligence is warranted based on the likelihood that the suggestion resulted in a Conflict of Interest.

D. Response 3.3: Family Relationships

1. **Disclosure.** The Disclosure Letter shall list any instance in which the current (i) Treasurer, (ii) Department of State Treasurer Senior Staff, (iii) Investment Advisory Committee members, (iv) Investment Management Division Senior Staff, or (v) IMD staff who played a role in due diligence for the Investment Transaction are Immediate Family members of either (a) principal members of the project team for the Treasurer's account at the Investment Manager or (b) Placement Agent officers, partners, or principals; Placement Agent personnel who played a role in marketing or outreach for the Investment Transaction; or Placement Agent personnel who will receive Compensation, directly, or indirectly for the Investment Transaction.

2. **Resolution.** If such a connection is disclosed, the Compliance Counsel shall ensure that (i) the Chief Investment Officer, General Counsel, and Treasurer are notified in writing of the connection and (ii) the Department-Affiliated Person with such a connection is recused from the Investment Transaction, has played no part in its consideration or approval, and will play no part in its consideration or approval. If recusal is not practical in the circumstances, or the Department-Affiliated Person has already played a role in the consideration or approval of the Investment Transaction, the Compliance Counsel may either designate the Investment Transaction as prohibited by this Policy or, at the option of the Compliance Counsel, allow the Investment Transaction to go forward if a neutral third party hired by the Department performs an independent evaluation of the proposed transaction and recommends it for investment.

E. Response 3.4: Former Department Personnel or Officials

1. **Disclosure.** The Disclosure Letter shall list any instance in which any personnel of the Investment Manager or Placement Agent (if applicable) are former Department-Affiliated Persons. Any financial benefit to such former personnel or officials shall be identified.

2. **Resolution.** If such a connection is disclosed, the Compliance Counsel shall ensure that (i) the Chief Investment Officer, General Counsel, and Treasurer are notified in writing of the connection; and (ii) the decision-making of the Department with respect to the Investment Transaction does not appear to have been unduly influenced by the presence of former Department-Affiliated Persons at the Investment Manager or Placement Agent.

F. Response 3.5: Prior Working Relationships

1. **Disclosure.** The Disclosure Letter shall list and describe any professional or working relationships that have existed in the past between persons who are now (i) IMD employees, (ii) IMD Contractors or Consultants, (iii) the State Treasurer, or (iv) Department of

State Treasurer Senior Staff, on the one hand, and, on the other hand, (a) the Investment Manager's project team for the Treasurer's account or (b) Placement Agent personnel who would receive Compensation (directly or indirectly) for the Investment Transaction or who played a role in marketing or outreach for the Investment Transaction. For purposes of this response, "professional or working relationships" includes occasions where persons worked together on the same projects at the same company, at the same fund, or as part of a client-consultant relationship; the term does not include prior engagements of the Investment Manager by the Department of State Treasurer or prior occasions in which the Placement Agent marketed a fund to the Department of State Treasurer.

2. **Resolution.** If such a connection is disclosed, the Compliance Counsel shall ensure that the decision-making of the Department with respect to the Investment Transaction does not appear to have been unduly influenced by the prior working relationship.

G. Response 3.6: Social Connections or Personal Relationships

1. **Disclosure.** The Disclosure Letter shall list and describe any pre-existing relationships involving social contacts outside of business between (i) IMD employees, (ii) IMD Contractors or Consultants, (iii) the State Treasurer, or (iv) Department of State Treasurer Senior Staff, on the one hand, and, on the other hand, (a) the Investment Manager's project team for the Treasurer's account or (b) Placement Agent personnel who would receive Compensation (directly or indirectly) for the Investment Transaction or who played a role in marketing or outreach for the Investment Transaction.

2. **Resolution.** If such a connection is disclosed, the Compliance Counsel shall ensure that the decision-making of the Department with respect to the Investment Transaction does not appear to have been unduly influenced by the social relationship. If the social relationship appears to be significant and long-lasting, the Compliance Counsel shall notify the Chief Investment Officer, General Counsel, and Treasurer in writing of the social relationship and suggest, based on the facts, whether recusal or an independent evaluation of the transaction by a neutral third party should be provided.

IX. Political Contributions

A. Prohibition. The Treasurer will not transact business with an Investment Manager if it has been determined that a Political Contribution to the Treasurer or any incumbent, nominee, or candidate for such elective office has been made, coordinated or solicited (i) in violation of applicable state or federal law or (ii) in a manner that would make it unlawful, under the SEC Rule, for the Investment Manager (or its affiliate) to seek Compensation for services to the Treasurer and/or the NC Funds.

B. Disclosure. Each Disclosure Letter shall contain a list of Political Contributions made, coordinated, or solicited by the Investment Manager and Placement Agent (as applicable) and their respective officers, partners, principals or affiliates for the campaign of (a) any incumbent, nominee, candidate, or successful candidate for North Carolina State Treasurer or (b) for the campaign of the current State Treasurer running for a different office.

C. Use of Disclosure. The Disclosure contemplated by Subsection (B) above shall <u>not</u> be used by the Treasurer or Department of State Treasurer staff for political purposes, but shall be used exclusively as a check on compliance with the SEC Rule and this Policy.

X. Interpretation of this Policy

A. Authority. Questions concerning the meaning of this Policy shall be resolved by the Department's General Counsel or by his or her designee.

B. Application of Policy to Particular Situations

To the extent any other text in this Policy conflicts with the more specific treatment of an issue in this Section X(B), the text in this section shall govern.

1. Fund of Funds. This Policy applies to the North Carolina Innovation Fund and all other investments (hereinafter, "Fund of Funds") in which the Treasurer selects an Investment Manager (a "First-Level Manager") who then selects several sub-Investment Managers ("Second-Level Managers"). For Fund of Funds, the First-Level Manager shall provide Disclosure Letters to the Treasurer when seeking the Treasurer's commitment to do business with the First-Level Manager. The Second-Level Managers shall provide Disclosure Letters if the Treasurer is asked to consent to the investment of funds with a Second-Level Manager.

2. Secondary Market. This Policy does not apply to "secondary market" and other similar transactions in which the Treasurer is acquiring an interest in an existing investment vehicle from a third party that is not affiliated with the Investment Manager in a transaction in which the Investment Manager is not materially involved (e.g., where the Investment Manager's only material involvement is consenting to the transaction).

3. Supplemental Retirement Plans. If this Policy is approved by the North Carolina Supplemental Retirement Board of Trustees, this Policy shall apply prospectively to all Investment Transactions and Substantive Amendments, entered into after the approval date, between the North Carolina Supplemental Retirement Board of Trustees and, directly or indirectly, its Investment Managers.

XI. Definitions

The following terms when used in this Policy shall have the meanings set forth below.

A. "Compensation": Compensation of any kind (including flat fees, contingent fees, or any other form of tangible or intangible compensation or benefit) provided as a result of the NC Funds' investment in the Investment Transaction. If a Placement Agent receives a flat fee based on the size of an Investment Manager's fund, the Placement Agent receives "Compensation" under this Policy if the NC Funds' investment is included in the fund size number that is used to calculate the Placement Agent's fee. A Placement Agent also receives "Compensation" under this Policy if the Investment Manager increases the Placement Agent's flat fee with the understanding, or in part because, direct payment to the Placement Agent based on the NC Funds' investment would be barred under this Policy. "Compensate" means to provide Compensation.

B. "Compliance Counsel": An attorney designated by the Department's General Counsel.

C. "Conflict of Interest": Circumstances that create a material risk that professional judgment or actions regarding the transaction's recommendation, approval, or execution have been or will be unduly influenced by a direct or indirect personal interest.

D. "IMD Contractor or Consultant": A natural person engaged by the Department (whether directly or indirectly through a staffing agency, limited liability entity, or other organization) to consult and advise IMD on potential investment opportunities; *provided*, *however*, that the term "IMD Contractor or Consultant" shall not include (i) State of North Carolina employees, (ii) the Treasurer or members of governing boards for NC Funds, and (iii) persons given authority or discretion by the Treasurer to make decisions, such as Investment Managers.

E. "Department of State Treasurer Senior Staff": The Department's Chief of Staff, Deputy Chief of Staff, General Counsel, attorneys in the General Counsel's Office with responsibility for IMD, Director of Communications, and the Treasurer's Executive Assistant.

F. "Investment Agreement": The final written agreement or contract between the Treasurer and the Investment Manager with respect to an Investment Transaction.

G. "Immediate Family": Mother, father, brother, sister, wife, husband, or child, either by birth, by marriage, by engagement to be married, or through a live-in domestic partnership that is similar to marriage; lineal ascendants (grandparents, etc.); and lineal descendants (grandchildren, etc.).

H. "Investment Manager": A person or entity, other than Department employees, given authority or discretion by the Treasurer to make decisions concerning the investment of NC Funds, the investment management of NC Funds, or the transfer or transition of invested NC Funds. In the case where the Treasurer invests in a limited partnership, limited liability company, or other similar investment vehicle, "Investment Manager" shall mean solely the general partner, manager, or other similar managing entity. This Policy is intended to apply broadly to all of the types of investment partners with whom the NC Funds does business, including the general partners, investment managers and sponsors of hedge funds, private equity funds, limited liability entities, and real estate funds, as well as investment managers (whether through a separate account or commingled trust) retained pursuant to a contract.

I. "Investment Transaction": A business undertaking agreed upon between the Treasurer and an Investment Manager to invest NC Funds, to commit to invest NC Funds, to manage invested NC Funds, or to transfer or transition invested NC Funds.

J. "Investment Management Division Senior Staff": Asset Class Directors, the Chief Administrative Officer, the Risk Officer, and the Chief Investment Officer.

K. "Placement Agent": Any person or entity that is directly or indirectly hired, used, engaged, retained, Compensated, or otherwise given anything having monetary value or benefit, tangible or intangible, by an Investment Manager to assist the Investment Manager in securing investment commitments or other ongoing investment management business from any of the NC Funds. For purposes of this Policy, the term "Placement Agent" includes, but is not limited to, all placement agents, lobbyists, solicitors, brokers, meeting arrangers, "cap intro" firms, finders, third-party marketers, or any other entities or persons engaged by an Investment Manager and/or its affiliates, directly or indirectly, for the purpose of marketing and/or securing investor commitments or other ongoing investment management business from any of the NC Funds. Notwithstanding the foregoing, the term "Placement Agent" shall include natural persons who are employees, officers, directors or partners of an Investment Manager (or its affiliate) only if they are subject to registration requirements with the Securities and Exchange Commission or the Financial Industry Regulatory Authority.

L. "Political Contribution": Any "Contribution" as defined under the SEC Rule or any other political or campaign contribution under any applicable state or federal law, including, without limitations, any gift, reward, promise of future employment or reward, subscription, loan, advance,

deposit of money, or anything of value furnished for the purpose of influencing an election for a federal, state or local office, including any payments for debts incurred in such an election and transition or inaugural expenses incurred by a successful candidate for office.

M. "SEC Rule": The Securities and Exchange Commission rule on Political Contributions by Certain Investment Advisers, 75 Fed. Reg. 41,017 (July 14, 2010), amending 17 C.F.R. §§ 275.204-2, 275.206(4)-3, and 275.206(4)-5. Upon any future amendment to the SEC Rule, this reference shall automatically update to include those amendments.

N. "Substantive Amendment": An amendment to, or consent to amend, an Investment Agreement which modifies the term, increases the commitment of funds by the Treasurer, materially changes the Investment Manager's fees or Compensation, or otherwise materially amends the economic terms of the agreement. For clarification, the following are not Substantive Amendments and do not require the submission of Disclosure Letters: (i) consents or elections that solely diminish the Investment Manager's fees, Compensation, rights to distributions or other economic rights, but do not otherwise materially amend the economic terms of the agreement; and (ii) consents of advisory committees, unless they materially amend the economic terms of the agreement.

O. Definition Cross-References

"Department," "IMD," "NC Funds," "Selection Policy," and "Treasurer" are defined in Section I of this Policy. "Disclosure Letter," "Investment Manager Disclosure Letter," and "Placement Agent Disclosure Letter" are defined in Section III(A) of this Policy. "Violation of This Policy" is defined in Section IV(A) of this Policy. "Department-Affiliated Persons" is defined in Section VII(D) of this Policy. "First-Level Manager," "Fund of Funds," and "Second-Level Managers" are defined in Section X(B) of this Policy.

XII. Revision History and Effective Date

Version/Revision	Date Approved	Description of Changes
1	Sep. 29, 2009	Original version
1.1	Oct. 19, 2009	Clarifications to Policy; voluntary compliance requested from all existing investment managers
1.2	March 14, 2011	Clarifications to Policy; new section on political contributions
2	Date listed below	Clarifications to Policy and form Disclosure Letter; Disclosure Letters now required from Placement Agents; prohibition on compensation of Placement Agent if Investment Manager recently managed NC Funds; new section on connections or relationships

Original Policy Approved by State Treasurer Janet Cowell on September 29, 2009
This Version of Policy Approved by State Treasurer Janet Cowell on November 19, 2013

North Carolina Department of State Treasurer Placement Agent,
Political Contribution, and Connection Disclosure Policy

Form Disclosure Letter for Investment Managers

From: The Investment Manager listed below

To: The Treasurer of the State of North Carolina
325 North Salisbury Street
Raleigh, North Carolina 27603-1385

Re: Disclosure Letter pursuant to Placement Agent and Political Contribution Policy

Ladies and Gentlemen:

Under the Placement Agent, Political Contribution, and Connection Disclosure Policy (the "Policy") adopted by the Treasurer of the State of North Carolina (the "Treasurer"), the Treasurer requires Investment Managers and Placement Agents to make disclosures at certain times specified by the Policy. Pursuant to and in accordance with the Policy, the undersigned Investment Manager hereby makes the following disclosures. Capitalized terms not otherwise defined in this Disclosure Letter have the same meanings as specified in the Policy.

1. Basic Information

Name of Investment Manager:	

This letter is submitted in connection with the below-listed Investment Transaction.

List below the name of the fund in which the Treasurer is investing. For investment management agreements, list the name of the separate account or the name of the investment strategy.

☐ This form is submitted in connection with an amendment to the Investment Agreement or a proposed consent to amend the Investment Agreement. *If this box is checked, provide responses on this form based on the amendment, not based on the original contract.*

☐ This form is an update to a previously submitted disclosure letter.

2. Disclosures and Representations Concerning Placement Agent

2.1. Use of Placement Agent

Check the appropriate box.

☐ The Investment Manager (or any officer, partner, principal, or affiliate thereof) has elected to use or Compensate a Placement Agent to assist the Investment Manager in obtaining investments from, or business with, any of the NC Funds.

See the definition of "Placement Agent" in Section XI of the Policy. Please be aware that this definition includes (without limitation) not only persons who hold themselves out as "placement agents," but also lobbyists, solicitors, brokers, meeting arrangers, or any other entities or persons engaged for the purpose of obtaining investments from NC Funds.

☐ No Placement Agent has been, or will be, used or Compensated by the Investment Manager (or any officer, partner, principal, or affiliate thereof) to assist in obtaining investments from, or business with, any of the NC Funds. *If this box is checked, proceed to question 3.1.*

2.2. Representations

The Investment Manager hereby confirms and represents:

a. The Placement Agent is registered with the Securities and Exchange Commission or the Financial Industry Regulatory Association;
b. The individual officers, partners, principals, employees, or other representatives of the Placement Agent hold all required securities licenses;
c. No placement fee has been, or will be, shared with any person or entity not so registered;
d. The Placement Agent is in the habitual systematized business of acting as a Placement Agent;
e. Other than as disclosed in this document, no Placement Agent is being, or will be, Compensated, directly or indirectly, to assist the Investment Manager in obtaining investments from, or business with, any of the NC Funds; and
f. The Investment Manager, not the Treasurer or the NC Funds, shall bear the entire cost of all Placement Agent fees and expenses disclosed in this document.

2.3. Placement Agent Information

a. The name of the Placement Agent is:

b. Is the Placement Agent an affiliate or employee of the Investment Manager?
☐ Yes ☐ No

Note that the definition of "Placement Agent" includes not only third parties, but also employees or affiliates of an Investment Manager who were used or Compensated to assist in obtaining North Carolina business and who were subject to registration with the Securities and Exchange Commission or the Financial Industry Regulatory Association.

c. The names of the Placement Agent personnel who have played a role in marketing or outreach for the Investment Transaction are:

d. The following Placement Agent personnel will receive Compensation, directly or indirectly, as a result of the NC Funds' investment in the Investment Transaction:

Note that throughout this Disclosure Letter, "Compensation" to a Placement Agent is deemed to include a flat fee, contingent fee, or any other form of tangible or intangible compensation or benefit. See the Policy's definitions for further details.

e. To the Investment Manager's knowledge, the officers, partners, or principals of the Placement Agent, not listed above, are:

f. **Attached** is a resume (or other summary) for each person listed above detailing the person's education, work experience and professional designations.

g. Are any persons listed above, or any other Placement Agent officers, partners, and/or principals, current or former (i) North Carolina State Treasurers; (ii) Investment Advisory Committee members; (iii) North Carolina Department of State Treasurer employees, contractors, or consultants; or (iv) members of the Immediate Family of persons listed in (i) to (iii) above?

☐ Yes ☐ No

If your answer is "Yes," list the persons and identify whether those persons would receive a financial benefit from the Investment Transaction.

2.4. Recent Management of North Carolina Investments by Investment Manager

☐ The Investment Manager (or its affiliate) currently manages an NC Funds investment or has managed an NC Funds investment within the last two years. *If this box is checked, Department policy bars the Compensation of any third-party Placement Agent (in other words, a Placement Agent who is not an employee or affiliate of the Investment Manager) in connection with the Treasurer's investment in the Investment Transaction.*

☐ The Investment Manager (or its affiliate) has <u>not</u> managed an NC Funds investment within the last two years.

2.5. Whether Placement Agent is Being Compensated

☐ The Placement Agent is <u>not</u> being Compensated, directly or indirectly, as a result of the Treasurer's investment in the Investment Transaction. *If this box is checked, skip question 2.6.*

☐ The Placement Agent is being Compensated, directly or indirectly, as a result of the Treasurer's investment in the Investment Transaction.

2.6. Terms of Placement Agent Compensation and Placement Agent Agreement

Check one of the three boxes below. You may attach additional pages.

☐ Attached are the provisions of the Investment Manager's contract with the Placement Agent that describe the Placement Agent's Compensation and services. These provisions describe any and all Compensation of any kind provided or agreed to be provided to the Placement Agent.

☐ The contract or arrangement between the Investment Manager and the Placement Agent is oral, not written. Below is a description of the terms of that oral contract that create an obligation to pay a fee to or for the benefit of any Placement Agent, including but not limited to a description of all terms concerning Compensation of any kind provided or agreed to be provided to any Placement Agent. This description includes the nature, timing and value of such Compensation.

☐ The Placement Agent is an employee of the Investment Manager. Below is a general disclosure providing the employee's role and responsibilities and stating any known effect on the employee's Compensation that is directly attributable to the NC Funds' proposed investment.

2.7. Actions and Investigations Involving Placement Agent

Check one of the two boxes below.

a. Has the Placement Agent (or any officer, partner, principal or affiliate thereof) been the subject of a non-routine inquiry, action, or investigation by a federal, state, or local government agency or regulatory body in the last ten (10) years?

☐ Yes ☐ No

If your answer is "Yes," describe any such actions or investigations. Attach additional pages as necessary.

b. To the Investment Manager's knowledge, does the Placement Agent (or any officer, partner, principal or affiliate thereof) anticipate being the subject of such inquiries, actions or investigations in the future?

☐ Yes ☐ No

If your answer is "Yes," describe any such actions or investigations. Attach additional pages as necessary.

3. <u>Connections or Relationships</u>

3.1. Conflicts

a. Are any personnel, officers, directors, partners and/or principals of the Investment Manager current North Carolina Department of State Treasurer employees, persons who serve as consultants or contractors for the Department's Investment Management Division, or Investment Advisory Committee members?

☐ Yes ☐ No
If the answer is "Yes," enclose a statement providing further information.

b. Will any current North Carolina Department of State Treasurer employees, persons who serve as consultants or contractors for the Department's Investment Management Division, or Investment Advisory Committee members receive a financial benefit to themselves or to a member of their Immediate Family derived from the Compensation provided to the Investment Manager or Placement Agent for the Investment Transaction?

☐ Yes ☐ No
If the answer is "Yes," enclose a statement providing further information.

3.2. Recommendations of Placement Agent

a. Did a current or former Treasurer, Department of State Treasurer employee, Investment Management Division contractor or consultant, or member of the Investment Advisory Committee suggest to the Investment Manager that it retain the Placement Agent?

☐ Yes ☐ No

If your answer is "Yes," list the person who suggested retention of the Placement Agent.

b. To the Investment Manager's knowledge, did a current or former Treasurer, Department of State Treasurer employee, Investment Management Division contractor or consultant, or member of the Investment Advisory Committee suggest to the Department's investment staff that the Placement Agent be retained for the Investment Transaction?

☐ Yes ☐ No

If your answer is "Yes," list the person who suggested retention of the Placement Agent.

3.3. Family Relationships

Are any of the persons listed in box (1) a member of the Immediate Family of a person listed in box (2)?

Box (1)	Box (2)
• The State Treasurer • Department of State Treasurer Senior Staff • Members of the Investment Advisory Committee • Investment Management Division Senior Staff • Investment Management Division staff who played a role in due diligence for the Investment Transaction	• A principal member of the project team for the Treasurer's account at the Investment Manager • Any person associated with the Placement Agent listed in the responses to Question 2.3

☐ Yes ☐ No

If your answer is "Yes," list the persons and describe the relationship.

The following questions ask about past or present connections, friendships, or relationships that may exist between the Treasurer's staff and the Investment Manager's staff. Some types of connections or relationships are the ordinary result of doing business. The Treasurer's Compliance Counsel will evaluate this form to determine whether recusal, additional due diligence, or other actions are required.

3.4. Former Department Personnel or Officials

Are any Investment Manager personnel former North Carolina Department of State Treasurer employees or contractors, North Carolina State Treasurers, or Investment Advisory Committee members?

☐ Yes ☐ No

If your answer is "Yes," list the persons and identify whether those persons would receive a financial benefit from the Investment Transaction.

3.5. Prior Working Relationships

List below any professional or working relationships that the Investment Manager's project team for the Treasurer's account have had in the past with persons who are now Investment Management Division personnel, Investment Management Division consultants or contractors, the State Treasurer, or Department of State Treasurer Senior Staff.

Please list in this section any occasions where persons worked together on the same projects at the same company, at the same fund, or as part of a client-consultant relationship. You need not list prior occasions in which the Investment Manager did business for the Department of State Treasurer.

3.6. Social Connections

List below any social connections or relationships between the Investment Manager's project team for the Treasurer's account and Investment Management Division personnel, Investment Management Division consultants or contractors, the State Treasurer, or Department of State Treasurer Senior Staff.

Please list in this section any pre-existing relationships involving social contacts outside of business.

4. Lobbying Information

Check one of the two boxes below.

☐ The Investment Manager (and/or any officer, employee, partner, principal or affiliate thereof) is registered as a lobbyist with a state government. If this box is checked, the following are the names and positions of such persons and the registrations held (attach additional pages as necessary):

☐ Neither the Investment Manager nor any officer, employee, partner, principal or affiliate thereof is registered as a lobbyist with any state government.

5. Political Contributions

5.1. Representation

The Investment Manager hereby confirms and represents that none of the Investment Manager and its respective officers, partners, principals or affiliates has made, coordinated or solicited any Political Contribution to the Treasurer or any incumbent, nominee, candidate or successful candidate for such elective office (i) in violation of applicable state or federal law or (ii) in a

manner that would make it unlawful, under the SEC Rule, for the Investment Manager (or its affiliate) to seek compensation for services to the Treasurer and/or the NC Funds.

5.2. Disclosure

During the last five years from the date of this letter, have the Investment Manager or its respective officers, partners, principals or affiliates made, coordinated, or solicited any Political Contributions for the campaign of (a) any incumbent, nominee, or candidate for North Carolina State Treasurer or (b) for the campaign of the current State Treasurer running for a different office?

☐ Yes ☐ No

If your answer is "Yes," list applicable Political Contributions below.

Date	Person or company making, coordinating, or soliciting	Person or entity receiving	Amount

[Signature Page Follows]

6. Signature

By signing below, the Investment Manager hereby (i) represents and warrants that the information found in this Disclosure Letter is true, correct, and complete in all material respects, and (ii) agrees that it shall provide the Treasurer with a written update of any material changes to any of the information in this Disclosure Letter within fourteen (14) days from the date the Investment Manager knew or should have known of the change of information.

Sincerely,

_____,
on behalf of the Investment Manager listed above

By: _____
(print name)

Title: _____

Date: _____

North Carolina Department of State Treasurer Placement Agent,
Political Contribution, and Connection Disclosure Policy

Form Disclosure Letter for Placement Agents

From: The Placement Agent listed below

To: The Treasurer of the State of North Carolina
325 North Salisbury Street
Raleigh, North Carolina 27603-1385

Re: Disclosure Letter pursuant to Placement Agent and Political Contribution Policy

Ladies and Gentlemen:

Under the Placement Agent, Political Contribution, and Connection Disclosure Policy (the "Policy") adopted by the Treasurer of the State of North Carolina (the "Treasurer"), the Treasurer requires Investment Managers and Placement Agents to make disclosures at certain times specified by the Policy. Pursuant to and in accordance with the Policy, the undersigned Placement Agent hereby makes the following disclosures. Capitalized terms not otherwise defined in this Disclosure Letter have the same meanings as specified in the Policy.

1. Basic Information

Name of Investment Manager:	

This letter is submitted in connection with the below-listed Investment Transaction.

List below the name of the fund in which the Treasurer is investing. For investment management agreements, list the name of the separate account or the name of the investment strategy.

☐ This form is submitted in connection with an amendment to the Investment Agreement or a proposed consent to amend the Investment Agreement. *If this box is checked, provide responses on this form based on the amendment, not based on the original contract.*

☐ This form is an update to a previously submitted disclosure letter.

2. Disclosures and Representations Concerning Placement Agent

2.1. Use of Placement Agent

The below-signed person or entity confirms that it is serving as a Placement Agent for the Investment Transaction listed above.

2.2. Representations

The Placement Agent hereby confirms and represents:

a. The Placement Agent is registered with the Securities and Exchange Commission or the Financial Industry Regulatory Association;
b. The individual officers, partners, principals, employees, or other representatives of the Placement Agent hold all required securities licenses; and
c. The Placement Agent is in the habitual systematized business of acting as a Placement Agent.

The Placement Agent hereby confirms and represents, to the best of its knowledge:

d. No placement fee has been, or will be, shared with any person or entity not so registered;
e. Other than as disclosed in this document, no Placement Agent is being, or will be, Compensated, directly or indirectly, to assist the Investment Manager in obtaining investments from, or business with, any of the NC Funds; and
f. The Investment Manager, not the Treasurer or the NC Funds, shall bear the entire cost of all Placement Agent fees and expenses disclosed in this document.

2.3. Placement Agent Information

a. The name of the Placement Agent is:

b. Is the Placement Agent an affiliate or employee of the Investment Manager?
☐ Yes ☐ No

Note that the definition of "Placement Agent" includes not only third parties, but also employees or affiliates of an Investment Manager who were used or Compensated to assist in obtaining North Carolina business and who were subject to registration with the Securities and Exchange Commission or the Financial Industry Regulatory Association.

c. The names of the Placement Agent personnel who have played a role in marketing or outreach for the Investment Transaction are:

d. The following Placement Agent personnel will receive Compensation, directly or indirectly, as a result of the NC Funds' investment in the Investment Transaction:

Note that throughout this Disclosure Letter, "Compensation" to a Placement Agent is deemed to include a flat fee, contingent fee, or any other form of tangible or intangible compensation or benefit. See the Policy's definitions for further details.

e. The officers, partners, or principals of the Placement Agent, not listed above, are:

f. **Attached** is a resume (or other summary) for each person listed above detailing the person's education, work experience and professional designations.

g. Are any persons listed above, or any other Placement Agent officers, partners, and/or principals, current or former (i) North Carolina State Treasurers; (ii) Investment Advisory Committee members; (iii) North Carolina Department of State Treasurer employees, contractors, or consultants; or (iv) members of the Immediate Family of persons listed in (i) to (iii) above?

☐ Yes ☐ No

If your answer is "Yes," list the persons and identify whether those persons would receive a financial benefit from the Investment Transaction.

2.4. Recent Management of North Carolina Investments by Investment Manager

☐ To the Placement Agent's knowledge, the Investment Manager (or its affiliate) currently manages an NC Funds investment or has managed an NC Funds investment within the last two years. *If this box is checked, Department policy bars the Compensation of any third-party Placement Agent (in other words, a Placement Agent who is not an employee or affiliate of the Investment Manager) in connection with the Treasurer's investment in the Investment Transaction.*

☐ To the Placement Agent's knowledge, the Investment Manager (or its affiliate) has not managed an NC Funds investment within the last two years.

2.5. Whether Placement Agent is Being Compensated

☐ The Placement Agent is not being Compensated, directly or indirectly, as a result of the Treasurer's investment in the Investment Transaction. *If this box is checked, skip question 2.6.*

☐ The Placement Agent is being Compensated, directly or indirectly, as a result of the Treasurer's investment in the Investment Transaction.

2.6. Terms of Placement Agent Compensation and Placement Agent Agreement

Check one of the three boxes below. You may attach additional pages.

☐ Attached are the provisions of the Investment Manager's contract with the Placement Agent that describe the Placement Agent's Compensation and services. These provisions describe any and all Compensation of any kind provided or agreed to be provided to the Placement Agent.

☐ The contract or arrangement between the Investment Manager and the Placement Agent is oral, not written. Below is a description of the terms of that oral contract that create an obligation to pay a fee to or for the benefit of any Placement Agent, including but not limited to a description of all terms concerning Compensation of any kind provided or agreed to be provided to any Placement Agent. This description includes the nature, timing and value of such Compensation.

☐ The Placement Agent is an employee of the Investment Manager. Below is a general disclosure providing the employee's role and responsibilities and stating any known effect on the employee's Compensation that is directly attributable to the NC Funds' proposed investment.

2.7. Actions and Investigations Involving Placement Agent

Check one of the two boxes below.

a. Has the Placement Agent (or any officer, partner, principal or affiliate thereof) been the subject of a non-routine inquiry, action, or investigation by a federal, state, or local government agency or regulatory body in the last ten (10) years?

☐ Yes ☐ No

If your answer is "Yes," describe any such actions or investigations. Attach additional pages as necessary.

b. Does the Placement Agent (or any officer, partner, principal or affiliate thereof) anticipate being the subject of such inquiries, actions or investigations in the future?

☐ Yes ☐ No

If your answer is "Yes," describe any such actions or investigations. Attach additional pages as necessary.

2.8. Registration of Placement Agent and Licensing of Placement Agent Representatives

a. The Placement Agent's registration details are as follows:

b. For each individual officer, partner, principal, employee and other representative of the Placement Agent, the registrations, number of years of employment by the Placement Agent and the number of years of experience directly related to such business are as follows (attach additional pages as necessary):

3. Connections or Relationships

3.1. Conflicts

a. Are any personnel, officers, directors, partners and/or principals of the Placement Agent current North Carolina Department of State Treasurer employees, persons who serve as consultants or contractors for the Department's Investment Management Division, or Investment Advisory Committee members?

☐ Yes ☐ No

If the answer is "Yes," enclose a statement providing further information.

b. Will any current North Carolina Department of State Treasurer employees, persons who serve as consultants or contractors for the Department's Investment Management Division, or Investment Advisory Committee members receive a financial benefit to themselves or to a member of their Immediate Family derived from the Compensation provided to the Placement Agent for the Investment Transaction?

☐ Yes ☐ No

If the answer is "Yes," enclose a statement providing further information.

3.2. Recommendations of Placement Agent

a. To the Placement Agent's knowledge, did a current or former Treasurer, Department of State Treasurer employee, Investment Management Division contractor or consultant, or member of the Investment Advisory Committee suggest to the Investment Manager that it retain the Placement Agent?

☐ Yes ☐ No

If your answer is "Yes," list the person who suggested retention of the Placement Agent.

b. To the Placement Agent's knowledge, did a current or former Treasurer, Department of State Treasurer employee, Investment Management Division contractor or consultant, or member of the Investment Advisory Committee suggest to the Department's investment staff that the Placement Agent be retained for the Investment Transaction?

☐ Yes ☐ No

If your answer is "Yes," list the person who suggested retention of the Placement Agent.

3.3. Family Relationships

Are any of the persons listed in box (1) a member of the Immediate Family of a person listed in box (2)?

Box (1)	Box (2)
• The State Treasurer • Department of State Treasurer Senior Staff • Members of the Investment Advisory Committee • Investment Management Division Senior Staff • Investment Management Division staff who played a role in due diligence for the Investment Transaction	• Any person associated with the Placement Agent listed in the responses to Question 2.3

☐ Yes ☐ No

If your answer is "Yes," list the persons and describe the relationship.

The following questions ask about past or present connections, friendships, or relationships that may exist between the Treasurer's staff and the staff of any Placement Agent. Some types of connections or relationships are the ordinary result of doing business. The Treasurer's Compliance Counsel will evaluate this form to determine whether recusal, additional due diligence, or other actions are required.

3.4. Former Department Personnel or Officials

Are any Placement Agent personnel former North Carolina Department of State Treasurer employees or contractors, North Carolina State Treasurers, or Investment Advisory Committee members?

☐ Yes ☐ No

If your answer is "Yes," list the persons and identify whether those persons would receive a financial benefit from the Investment Transaction.

3.5. Prior Working Relationships

List below any professional or working relationships that Placement Agent personnel listed in the responses to Questions 2.3(c) or (d) have had in the past with persons who are now Investment Management Division personnel, Investment Management Division consultants or contractors, the State Treasurer, or Department of State Treasurer Senior Staff.

Please list in this section any occasions where persons worked together on the same projects at the same company, at the same fund, or as part of a client-consultant relationship. You need not list prior occasions in which an Investment Manager utilized the Placement Agent to market a potential investment to the Department of State Treasurer.

3.6. Social Connections

List below any social connections or relationships between Placement Agent personnel listed in the responses to Questions 2.3(c)-(d) and Investment Management Division personnel, Investment Management Division consultants or contractors, the State Treasurer, or Department of State Treasurer Senior Staff.

Please list in this section any pre-existing relationships involving social contacts outside of business.

4. Lobbying Information

Check one of the two boxes below.

☐ The Placement Agent (and/or any officer, employee, partner, principal or affiliate thereof) is registered as a lobbyist with a state government. If this box is checked, the following are the names and positions of such persons and the registrations held (attach additional pages as necessary):

☐ Neither the Placement Agent nor any officer, employee, partner, principal or affiliate thereof is registered as a lobbyist with any state government.

5. Political Contributions

5.1. Representation

The Placement Agent hereby confirms and represents that none of the Placement Agent and its respective officers, partners, principals or affiliates has made, coordinated or solicited any Political Contribution to the Treasurer or any incumbent, nominee, candidate or successful candidate for such elective office (i) in violation of applicable state or federal law or (ii) in a manner that would make it unlawful, under the SEC Rule, for the Investment Manager (or its affiliate) to seek compensation for services to the Treasurer and/or the NC Funds.

5.2. Disclosure

During the last five years from the date of this letter, have the Placement Agent or its respective officers, partners, principals or affiliates made, coordinated, or solicited any Political Contributions for the campaign of (a) any incumbent, nominee, or candidate for North Carolina State Treasurer or (b) for the campaign of the current State Treasurer running for a different office?

☐ Yes ☐ No

If your answer is "Yes," list applicable Political Contributions below.

Date	Person or company making, coordinating, or soliciting	Person or entity receiving	Amount

[Signature Page Follows]

6. Signature

I declare under penalty of perjury that the foregoing is true and correct. I shall provide the Treasurer with a written update of any material changes to any of the information in this Disclosure Letter within fourteen (14) days from the date I knew or should have known of the change of information.

Sincerely,

_____,
on behalf of the Placement Agent listed above

By: _____
(print name)

Title: _____

Date: _____

Policy: CalPERS Board of Administration Gift Policy

Background

In general, the receipt of material gifts by members of the CalPERS Board of Administration may be perceived as creating a potential conflict with the interests CalPERS is committed to place above all others -- the interests of CalPERS members. CalPERS members and the public may perceive such gifts as creating a conflict of interest or an attempt to influence or reward official government actions and decisions. The Report of the CalPERS Special Review by Steptoe & Johnson LLP emphasized "the corrosive effect on CalPERS' reputation" of the gift issues it had faced, and stated, "Whether a free dinner, an expensive bottle of wine or a trip overseas, the acceptance of these types of gifts raises issues that vary only by degree. These are serious issues, and CalPERS should take the lead in making sure that no one can ever claim in the future that a decision at CalPERS was swayed by the receipt of a gift, no matter how small." In addition, the adoption and disclosure by the CalPERS Board of an explicit policy concerning the receipt of gifts is both recommended and noted as a leading practice by *Achieving the Right Balance, CalPERS Board Governance Study*, Final Report, September 2011, by Funston Advisory Services LCC. On the other hand, Board members may be in situations where they are conducting business on behalf of CalPERS and accept a de minimus gift incidental to this business. In order to ensure that Board members do not accept a gift that may be perceived as creating a potential conflict with the interests of CalPERS members, the CalPERS Board establishes for its members and representatives an annual gift limit of $50.

CalPERS Policy

Members of the CalPERS Board of Administration shall not accept gifts with an aggregate value in excess of $50 during a calendar year from one source that is any of the following:

(1) any person or entity:
    a. doing business with CalPERS;
    b. seeking to do business with CalPERS; or
    c. that is the type of entity that does business with CalPERS (e.g., any law firm, any health services provider, or any information technology company, even if the entity is not currently doing or seeking to do business with CalPERS); or
(2) a finder, solicitor, marketer, consultant, broker, placement agent or other intermediary of such an entity.

A source does not include any of the following:

(1) A trade association or entity organized and operated for charitable, scientific, educational, philanthropic, social welfare, employee association or similar purposes (e.g., Council of Institutional Investors, National Association of Public Pension Attorneys, Stanford Institutional Investors Forum, Pacific Pension Institute, CERES, International Corporate Governance Network, etc.), if the only business that CalPERS conducts with the entity is the payment of membership dues or fees to them;
(2) An advisory committee of a governmental agency of which CalPERS is a member; or
(3) An entity that issues publicly-traded securities, provided that the only business that CalPERS does with the company is the purchase, holding, or sale of such a security.

The term “doing business” means a contractual or other transactional relationship between any person or entity and CalPERS.

The term “gift” has the same meaning as the term is defined in Government Code Section 82028 and as interpreted by regulations and opinions issued by the Fair Political Practices Commission. (See, *Limitations and Restrictions on Gifts, Honoraria, Travel and Loans*, dated March 2012, attached. Board members are counseled to refer to the most current version of this publication, which is available at www.fppc.ca.gov.)

This policy does not replace or supersede the provisions and requirements of the Political Reform Act or regulations promulgated thereunder. Board members remain subject to the annual gift limit under Government Code section 89503, and the requirement to report gifts of $50 or more and multiple gifts totaling $50 or more from a single source.

Resources

Government Code Section 82028
http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=81001-82000&file=82000-82054

Fair Political Practices Commission – Gift FAQs
http://www.fppc.ca.gov/forms/700-11-12/012-012012_FAQGifts.pdf

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Effective Date

This Gift Policy is effective April 18, 2012.

Materials on state/local policies that restrict fund's ability to invest if political contributions were made

New Jersey clears Massachusetts governor of pension fund pay-to-play violations

BY **ROBERT STEYER** | JANUARY 30, 2015 2:40 PM | UPDATED 11:12 AM

The New Jersey Department of Treasury cleared Massachusetts Gov. Charlie Baker of violating the state's pay-to-play guidelines regarding political contributions by investment management executives whose firms do business with the $76.8 billion New Jersey Pension Fund, Trenton.

Wikimedia Commons

Massachusetts Gov. Charlie Baker

RELATED CONTENT

New Jersey investment council exempts Prologis exec on pay-to-play violation

Political groups appeal SEC pay-to-play rule

Public pension funds play supporting roles in state elections

Employee group urges SEC to conduct pay-to-play investigation in North Carolina

The department also made several recommendations for changing the administration and monitoring of the pay-to-play policy.

As a private citizen, Mr. Baker made a $10,000 contribution to the New Jersey Republican State Committee in May 2011, noting on a political contribution form that he was a partner of General Catalyst Partners, a venture capital firm, said a Treasury Department audit report made public Thursday.

In December 2011, the state division of investment, which manages investments for the pension fund, made a $25 million commitment to General Catalyst Group VI. In January 2012, the commitment was reduced to $15 million. In September 2014, the division sold the investment "and no longer has any investments" with General Catalyst, the audit report said.

According to the audit report, the pay-to-play policy says the division of investment cannot do business with an investment management firm "if within two years prior to such engagement," the firm or "investment management professional" in the firm made a contribution to a political party covered by the guidelines. The penalty is termination of the firm's contract.

The audit report said Mr. Baker was an “investment management professional.” However, it cleared him because he was associated with another General Catalyst fund — not the one for which the division of investment had made a commitment. His political donation “did not need to be reported and there was no violation” of the pay-to-play policy, the audit report said.

The results of the audit were announced Thursday toward the end of the meeting in Trenton of the State Investment Council by Christopher McDonough, director of the division of investment. The audit report was completed Nov. 20, two weeks after Mr. Baker was elected governor. The audit started in May 2014.

The council, which governs investment policies of the division of investment, is expected to discuss the audit report at its next scheduled meeting in March.

The report's recommendations include revising the pay-to-pay policy to remove ambiguity in the definitions of “investment management professional” and in the concept of a professional being “associated with” a firm. It also recommends having the division of investment take a more active role in checking political contributions made by firms and executives.

The division's “due diligence for compliance ... relies on self-reporting” by the investment firms or individuals, the audit report said. Division staff members have begun searching a political contribution database as part of the division's compliance efforts, the report added.

— Contact Robert Steyer at rsteyer@pionline.com | @Steyer_PI

REPRINTS PRINT

Filed under: New Jersey Division of Investment, Public pensions

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SUBCHAPTER 4. STATE INVESTMENT COUNCIL'S POLICY CONCERNING POLITICAL CONTRIBUTIONS AND PROHIBITIONS ON INVESTMENT MANAGEMENT BUSINESS

N.J.A.C. 17:16-4.1 (2015)

§ 17:16-4.1 Purpose

(a) It is the policy of the Council to ensure that the selection of investment management firms to provide investment management services to the State Pension and Annuity Funds is based on the merits of such firms and not on the political contributions made by such firms. This subchapter is designed to protect the beneficiaries of the Pension and Annuity Funds, the State taxpayers and the public interest by:

1. Prohibiting investment management firms from being engaged to provide investment management services to the State if certain political contributions have been made; and

2. Requiring investment management firms that provide or are applying to provide investment management services to the State to disclose certain political contributions, as well as other information, thereby allowing meaningful public scrutiny of the selection of investment management firms.

HISTORY:

Amended by R.2006 d.317, effective September 5, 2006.

See: *38 N.J.R. 2039(a)*, *38 N.J.R. 3632(a)*.

In introductory paragraph of (a), deleted "State Investment" preceding "Council", and substituted "Pension and Annuity Funds" for "pension funds" in two places.

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N.J.A.C. 17:16-4.2 (2015)

§ 17:16-4.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Control" means the power to exercise a controlling influence over the management or policies of an investment management firm or political action committee.

"Investment management firm" means one or more natural persons, corporations, partnerships or other entities, incorporated or unincorporated, that provide investment management services.

"Investment management professional" means:

1. Any person associated with an investment management firm who is primarily engaged in the provision of investment management services;

2. Any person associated with an investment management firm involved in client development or the solicitation of business from pension fund clients, including pension fund clients that are not State Pension and Annuity Fund clients;

3. Any person associated with an investment management firm who is a supervisor of any person described in 1 or 2 above, up through and including the Chief Executive Officer or similarly situated official; or

4. Any person associated with an investment management firm, its parent company, or any other entity that controls the investment management firm, who is a member of the executive or management committee of such firm or controlling entity, or similarly situated officials, if any.

"Investment management services" means:

1. The business of making or recommending investment management decisions for or on behalf of a State Pension and Annuity Fund;

2. The business of advising or managing a separate entity which makes or recommends investment management decisions for or on behalf of a State Pension and Annuity Fund, including as general partner, investment manager, or similar entity of an investment vehicle; or

3. The provision of financial advisory or consultant services to a State Pension and Annuity Fund.

"Investment vehicle" means an investment in which a State Pension and Annuity Fund invests directly under *N.J.A.C. 17:16-23.2(a)*2, 71.2(a)1, 90.2(a)1, or 100.2(a)1.

"Payment" means any gift subscription, loan, advance, or deposit of money or anything of value.

"Political contribution" means any gift, subscription, loan, advance, or deposit of money or anything of value made:

1. For the purpose of influencing any election for State office;

2. For the purpose of influencing any election for local office by a person who is also:

i. A State official; or

ii. An employee or advisor of either the State or a State official;

3. For payment of debt incurred in connection with any such election; or

4. For transition or inaugural expenses incurred by the successful candidate in any such election.

"Political party" means any political party or political committee organized in the State, including, without limitation, State legislative leadership committees, county committees, and independent committees. The term "political party" does not include a Federal or national campaign committee or a non-State political committee, even if such Federal or national or non-State political committee makes payments or contributions to which this subchapter would otherwise apply.

"Separate account" means an investment vehicle in which a State Pension and Annuity Fund is the sole investor that is unaffiliated with the investment vehicle's sponsor or manager.

"State official" means any person (including any election or political action committee for such person) who was, at the time of the political contribution, an incumbent, candidate or successful candidate for Governor or for a seat in the Legislature. Communication with a State official includes communication with the employees and advisors of such official.

"State Pension and Annuity Fund" means any Pension and Annuity Fund or any Common Pension Fund.

"Supervisor" means a person who has supervisory responsibility (whether or not related to investment management activities) for an investment management professional.

"Third party solicitor" means a third party placement agent or lobbyist who solicits investment management business through direct or indirect communication with a State officer, employee, or official on behalf of an investment management firm, but does not include any person whose sole basis of compensation from the investment management firm is the actual provision of legal, accounting, engineering, real estate, or other professional advice, services, or assistance. The term "third party solicitor," when used with respect to a particular investment management firm, shall not include a third party placement agent or lobbyist who solicits clients other than the Division to engage that investment management firm to provide investment management services, or a third party placement agent or lobbyist who solicits the Division on behalf of another investment management firm.

HISTORY:

Amended by R.2005 d.275, effective August 15, 2005.

See: *37 N.J.R. 1126(a)*, *37 N.J.R. 3050(a)*.

Rewrote 4. in "Investment management professional" definition.

Amended by R.2006 d.317, effective September 5, 2006.

See: *38 N.J.R. 2039(a)*, *38 N.J.R. 3632(a)*.

Rewrote definition "Control"; deleted definitions "Council" and "State"; in definition "Investment management services", substituted "Pension and Annuity Fund" for "pension fund" throughout; in definition "Political party", delete quotes preceding and following "independent"; in definition "Third party solicitor", deleted "the state or" following "communication with" and inserted "officer, employee or" preceding "official".

Amended by R.2014 d.038, effective March 3, 2014.

See: *45 N.J.R. 1477(a)*, *46 N.J.R. 442(a)*.

Rewrote paragraph 2 of definition "Investment management professional"; rewrote definitions "Investment management services", "Political party", and "Third party solicitor"; and added definitions "Investment vehicle", "Separate account", "State Pension and Annuity Fund", and "Supervisor".

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N.J.A.C. 17:16-4.3 (2015)

§ 17:16-4.3 Restrictions

(a) The Division shall not engage an investment management firm to provide investment management services for the benefit of a State Pension and Annuity Fund, and shall not recommend that a separate account invest with an investment management firm, if, within the two years prior to such engagement or recommendation, any political contribution or payment to a political party covered by this subchapter has been made or paid by:

1. The investment management firm, its parent company, or any other person or entity that controls the investment management firm;

2. Any investment management professional associated with such investment management firm;

3. Any third party solicitor associated with such investment management firm; or

4. Any political action committee controlled by the investment management firm, its parent company, or any other entity that controls the investment management firm, or by an investment management professional of such investment management firm or controlling entity.

(b) The Division shall terminate the contract of any investment management firm if it is discovered that, within the two years prior to such engagement or during the term of such engagement, any political contribution or payment to a political party covered by this subchapter was made or paid by:

1. The investment management firm, its parent company, or any other person or entity that controls the investment management firm;

2. Any investment management professional associated with such investment management firm;

3. Any third party solicitor who solicited the Division to engage the investment management firm and was still associated with the investment management firm at the time of the contribution or payment; or

4. Any political action committee controlled by the investment management firm, its parent company, or any other entity that controls the investment management firm, or by an investment management professional of such investment management firm or controlling entity.

(c) The provisions of (a) and (b) above shall not, however, prohibit the engagement or require the termination of an investment management firm, or prohibit the recommendation of an investment, if the only political contributions made by a person noted above within the two years prior to, and during, any such engagement were/are made by the contributor to State officials for whom the contributor was/is entitled to vote. Political contributions made by a contributor, pursuant to this subsection, shall not exceed $ 250.00 per State official, per election.

(d) The provisions of (a) and (b) above shall not, however, prohibit the engagement or require the termination of an investment management firm, or prohibit the recommendation of an investment, if the only payments to any political party made by a person noted above within the two years prior to, and during, any such engagement did/do not exceed $ 250.00 per political party, per year.

(e) The provisions of (a) through (d) above shall apply to political contributions and payments to political parties made by any individual or entity for the 12-month period prior to such individual or entity becoming an investment management firm, investment management professional, or third party solicitor.

HISTORY:

Amended by R.2005 d.275, effective August 15, 2005.

See: *37 N.J.R. 1126(a)*, *37 N.J.R. 3050(a)*.

Rewrote (a)1 and 4.

Amended by R.2006 d.317, effective September 5, 2006.

See: *38 N.J.R. 2039(a)*, *38 N.J.R. 3632(a)*.

In introductory paragraph of (a), substituted "Pension and Annuity Funds" for "or its pension funds".

Amended by R.2014 d.038, effective March 3, 2014.

See: *45 N.J.R. 1477(a)*, *46 N.J.R. 442(a)*.

Rewrote the section.

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N.J.A.C. 17:16-4.4 (2015)

§ 17:16-4.4 Solicitations

(a) Any investment management firm, investment management professional or third party solicitor that is engaged or is seeking to be engaged in providing investment management services to the State shall not:

1. Solicit any person or political action committee to make a political contribution or payment to a political party;

2. Coordinate political contributions or payments to a political party;

3. Fund political contributions or payments to a political party made by third parties, including consultants, attorneys, family members or persons controlling the investment management firm; or

4. Engage in any exchange of political contributions or payments between State officials or political parties to circumvent the intent of this policy.

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N.J.A.C. 17:16-4.5 (2015)

§ 17:16-4.5 Indirect violations

(a) No investment management firm, investment management professional, or third party solicitor shall, directly or indirectly, through or by any other person or any means whatsoever, do any act which would violate the provisions of *N.J.A.C. 17:16-4.3* or *4.4*.

(b) Indirect violations shall include, but are not limited to:

1. A family member or other person making political contributions or payments to a political party on the person or entity's behalf;

2. A person or entity making payments to a Federal party committee or other political committee or organization for the purpose of influencing State or local elections governed by this subchapter; and

3. A third party solicitor making political contributions or payments to a political party in order to encourage the engagement of an investment management firm for which it is not directly soliciting business from the Division.

HISTORY:

Amended by R.2005 d.275, effective August 15, 2005.

See: *37 N.J.R. 1126(a), 37 N.J.R. 3050(a)*.

Added "any" preceding "means", "whatsoever" following "means" and ", or otherwise circumvent the intent of this policy" following "4.4".

Amended by R.2006 d.317, effective September 5, 2006.

See: *38 N.J.R. 2039(a), 38 N.J.R. 3632(a)*.

Deleted ", or otherwise circumvent the intent of this policy" at end of paragraph.

Amended by R.2014 d.038, effective March 3, 2014.

See: *45 N.J.R. 1477(a)*, *46 N.J.R. 442(a)*.

Inserted designation (a); in (a), inserted a comma following "professional"; and added (b).

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N.J.A.C. 17:16-4.6 (2015)

§ 17:16-4.6 Reporting

(a) Except as otherwise provided in (b) and (c) below, each investment management firm that is engaged to provide investment management services to the State shall, prior to engagement and by the last day of the month following the end of each calendar quarter during the term of such engagement, send to the Council and the Division the following information:

1. A list of those persons who qualify as investment management professionals, and any updates to this list;

2. For all political contributions and payments to political parties made by persons described in *N.J.A.C. 17:16-4.3(a)* or (b), excluding any political contribution or payment to a political party made pursuant to *N.J.A.C. 17:16-4.3(c)* and (d):

i. The name and address of the contributor;

ii. The name and title of each State official or political party receiving the political contribution or payment;

iii. The amount of the political contribution or payment to the political party; and

iv. The date of the political contribution or payment to the political party.

3. Whether any reported political contribution or payment to a political party is the subject of an exemption pursuant to *N.J.A.C. 17:16-4.10*, and the date of such exemption; and

4. For any payment made to a third party solicitor: the name and business address of the recipient, the services provided by the recipient, the compensation arrangement between the investment management firm and the recipient, and the total dollar amount of payments made during the report period.

(b) No investment management firm shall be required to report to the Council and the Division for any calendar quarter in which such investment management firm has no additions or revisions to information that was already

reported in a prior report.

(c) Once a political contribution or payment to a political party or third party solicitor has been disclosed on a report, the investment management firm need not disclose that particular contribution or payment on subsequent reports.

(d) The information required by this section shall be reported on forms provided by the Division.

HISTORY:

Amended by R.2006 d.317, effective September 5, 2006.

See: *38 N.J.R. 2039(a)*, *38 N.J.R. 3632(a)*.

Rewrote introductory paragraph of (b); and rewrote (c).

Amended by R.2014 d.038, effective March 3, 2014.

See: *45 N.J.R. 1477(a)*, *46 N.J.R. 442(a)*.

Rewrote the section.

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N.J.A.C. 17:16-4.7 (2015)

§ 17:16-4.7 Public disclosure

The Council and the Division shall make available to the public a copy of each report received from an investment management firm within 30 days of its receipt or as otherwise required by law.

HISTORY:

Amended by R.2014 d.038, effective March 3, 2014.

See: *45 N.J.R. 1477(a), 46 N.J.R. 442(a)*.

Deleted "of Investment" following "Division"; and inserted "available to the".

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N.J.A.C. 17:16-4.8 (2015)

§ 17:16-4.8 Additional information

The Council and the Division will accept additional information related to political contributions, payments to political parties, and payments to third party solicitors voluntarily submitted by investment management firms or others.

HISTORY:

Amended by R.2014 d.038, effective March 3, 2014.

See: *45 N.J.R. 1477(a), 46 N.J.R. 442(a)*.

Deleted "of Investment" following "Division"; and inserted a comma following "parties".

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N.J.A.C. 17:16-4.9 (2015)

§ 17:16-4.9 Contract termination

The Division shall provide in each contract with an investment management firm that a violation of the provisions in this subchapter shall be cause for immediate termination of such contract. In the case of a violation by a general partner, investment manager, or similar entity of an investment vehicle, the governing documents of the investment vehicle shall provide that the State Pension and Annuity Fund shall have the right to terminate its relationship with the investment management firm.

HISTORY:

Amended by R.2014 d.038, effective March 3, 2014.

See: *45 N.J.R. 1477(a), 46 N.J.R. 442(a)*.

Deleted "of Investment" following "Division"; and inserted the second sentence.

NOTES:
Chapter Notes

1 of 1 DOCUMENT

NEW JERSEY ADMINISTRATIVE CODE

*** This file includes all Regulations adopted and published through the ***
*** New Jersey Register, Vol. 47 No. 8, April 20, 2015 ***

TITLE 17. TREASURY -- GENERAL
CHAPTER 16. RULES OF THE STATE INVESTMENT COUNCIL
SUBCHAPTER 4. STATE INVESTMENT COUNCIL'S POLICY CONCERNING POLITICAL CONTRIBUTIONS AND PROHIBITIONS ON INVESTMENT MANAGEMENT BUSINESS

N.J.A.C. 17:16-4.10 (2015)

§ 17:16-4.10 Exemptions

(a) An investment management firm that would otherwise be prohibited from being engaged to provide investment management services to the State pursuant to *N.J.A.C. 17:16-4.3* shall be exempt from such prohibition, subject to (b) and (c) below, upon satisfaction of the following requirements:

1. The investment management firm demonstrates in writing to the Division that:

i. The firm discovered the political contribution or the payment to a political party that resulted in the prohibition on business within four months of the date of such contribution or payment;

ii. Such political contribution or payment to a political party did not exceed $ 250.00; and

iii. The contributor obtained a return of the political contribution or payment to the political party within 60 calendar days of the date of discovery of such contribution or payment; or

2. The investment management firm demonstrates in writing that the violation of this subchapter was unintentional and inadvertent, and the Council determines that the beneficiaries of the Pension and Annuity Funds, the State taxpayers, and the public are best served by such an exemption.

(b) An investment management firm is entitled to no more than two exemptions in any 12-month period.

(c) An investment management firm may not utilize more than one exemption relating to political contributions or payment to a political party by the same investment management professional or third party solicitor regardless of the time period.

HISTORY:

Amended by R.2006 d.317, effective September 5, 2006.

See: *38 N.J.R. 2039(a)*, *38 N.J.R. 3632(a)*.

Rewrote (a).

Amended by R.2014 d.038, effective March 3, 2014.

See: *45 N.J.R. 1477(a)*, *46 N.J.R. 442(a)*.

In the introductory paragraph of (a), substituted "would otherwise be" for "is", and substituted "shall be exempt" for "may exempt itself"; in the introductory paragraph of (a)1, inserted "to the Division"; and in (b), substituted "in any" for "for every".

NOTES:
Chapter Notes

1 of 1 DOCUMENT

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N.J.A.C. 17:16-4.11 (2015)

§ 17:16-4.11 Restrictions on Council members

(a) Each Council member shall comply with the reporting provisions of *N.J.A.C. 17:16-4.6* for his or her term as a member of the Council.

(b) It is prohibited for any Council member to receive any form of compensation, gratuity, gift, service, or payment in connection with the hiring or retention of any investment management firm by the Division during the Council member's term and for a two-year period immediately following the completion of such Council member's term. This subsection shall include any compensation, gratuity, gift, service, or payment to the Council member, the Council member's immediate family, or any partner or associate of the Council member. For the purposes of this subsection, "immediate family" shall mean a person's spouse, child, parent, or sibling residing in the same household or a person's domestic partner as defined in P.L. 2003, c. 246 (*N.J.S.A. 26:8A-3*).

HISTORY:

Repeal and New Rule, R.2014 d.038, effective March 3, 2014.

See: *45 N.J.R. 1477(a), 46 N.J.R. 442(a)*.

Section was "Effectiveness".

NOTES:
Chapter Notes

NorthJersey.com
NO. 1 IN BREAKING LOCAL NEWS

Roseland law firm loses Paterson contract over questions or political contributions

FEBRUARY 18, 2015, 11:26 AM LAST UPDATED: WEDNESDAY, FEBRUARY 18, 2015, 6:24 PM

BY JOE MALINCONICO
PATERSON PRESS

RECORD FILE PHOTO

Paterson City Hall

PATERSON – Questions over political contributions have prompted the city not to rehire a prominent northern New Jersey la officials say had handled Paterson's bond work for the past 20 years.

The firm, McManimon and Scotland, had made $500 contributions last May to Mayor Jose "Jose" Torres and Councilman An the top two rivals in the city's most recent mayoral election. The city's pay-to-play law says professional service providers like l not receive municipal contracts for up to one year after making political donations that exceed $300 to local officials.

Paterson officials were ready to renew the city's annual $33,000 contract with the McManimon firm late last year, but stopped questions arose about the political contributions. The city this year issued a new request for proposals from law firms intereste counsel contract, officials said.

Five firms – including McManimon – submitted applications, according to Paterson Business Administrator Nellie Pou. But M entry was discounted because it was deemed "incomplete," Pou said. The Roseland-based firm had not submitted the requisite saying that it had not made any political donations to local officials that exceeded the municipal pay-to-play limit, the busines administrator said.

Pou emphasized that the decision to drop McManimon had nothing to do with the quality of the firm's work. "They've always b rate," she said. "We've had nothing but excellent relations with them."

Edward McManimon did not respond to a phone message seeking his comment for this story.

City officials say they recently realized that the pay-to-play ordinance had not been enforced as well as it should have been in t particular, officials said Paterson had been asking would-be professional service vendors to sign off on a certification regardin contributions that was less rigid than what the local law requires.

Councilman Kenneth Morris, chairman of the finance committee, said losing the McManimon firm would hurt the city.

"They have a long history, they're current with any changes in the law and they have a wealth of experience," Morris said of the "Obviously, there's a trust."

Morris said Paterson would have been better off if no one took contributions from the firm because there's a "greater value to t having McManimon as bond counsel. Morris said the city's pay-to-play law has come up in discussions in his own campaign fu efforts.

"I've had some vendors say to me over the years, 'Look Ken, I'd like to help you out, but I can't because I do work for the city a pay-to-play law,'" said Morris.

Under the city's regulations on contracts with political donors, Paterson could have waited until mid-May – when the one-yea would have expired – and then rehired McManimon, officials said. But the city has immediate needs for bond counsel, includi phase of financing for Torres' $37 million road repair program, and could not wait that long, officials said.

The City Council next week is scheduled to vote to approve a $33,175 contract with Teaneck-based DeCotiis, Fitzpatrick and C bond counsel duties for 2015.

Materials on federal rule barring compensation to an external investment manager if political contributions were made above the de minimis threshold

SEC Rule on Political Contributions by Certain Investment Advisers, as amended

Originally adopted by 75 FR 41017 (July 14, 2010)
Amended by 76 FR 42950, 43013 (July 19, 2011)
Amended by 77 FR 28476, 28477 (May 15, 2012)
Compliance date for § 275.206(4)-5(a)(2) extended by 77 FR 35263 (June 13, 2012)

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17 CFR 275.204-2

*** This document is current through the April 23, 2015 ***
*** issue of the Federal Register ***

TITLE 17 -- COMMODITY AND SECURITIES EXCHANGES
CHAPTER II -- SECURITIES AND EXCHANGE COMMISSION
PART 275 -- RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

17 CFR 275.204-2

§ 275.204-2 Books and records to be maintained by investment advisers.

(a) Every investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b-3) shall make and keep true, accurate and current the following books and records relating to its investment advisory business:

* * *

(18)(i) Books and records that pertain to § 275.206(4)-5 containing a list or other record of:

(A) The names, titles and business and residence addresses of all covered associates of the investment adviser;

(B) All government entities to which the investment adviser provides or has provided investment advisory services, or which are or were investors in any covered investment pool to which the investment adviser provides or has provided investment advisory services, as applicable, in the past five years, but not prior to September 13, 2010;

(C) All direct or indirect contributions made by the investment adviser or any of its covered associates to an official of a government entity, or direct or indirect payments to a political party of a State or political subdivision thereof, or to a political action committee; and

(D) The name and business address of each regulated person to whom the investment adviser provides or agrees to provide, directly or indirectly, payment to solicit a government entity for investment advisory services on its behalf, in accordance with § 275.206(4)-5(a)(2).

(ii) Records relating to the contributions and payments referred to in paragraph (a)(18)(i)(C) of this section must be listed in chronological order and indicate:

(A) The name and title of each contributor;

(B) The name and title (including any city/county/State or other political subdivision) of each recipient of a contribution or payment;

(C) The amount and date of each contribution or payment; and

(D) Whether any such contribution was the subject of the exception for certain returned contributions pursuant to § 275.206(4)-5(b)(2).

(iii) An investment adviser is only required to make and keep current the records referred to in paragraphs (a)(18)(i)(A) and (C) of this section if it provides investment advisory services to a government entity or a government entity is an investor in any covered investment pool to which the investment adviser provides investment advisory services.

(iv) For purposes of this section, the terms "contribution," "covered associate," "covered investment pool," "government entity," "official," "payment," "regulated person," and "solicit" have the same meanings as set forth in § 275.206(4)-5.

* * *

(h)(1) Any book or other record made, kept, maintained and preserved in compliance with §§ 240.17a-3 and 240.17a-4 of this chapter under the Securities Exchange Act of 1934, or with rules adopted by the Municipal Securities Rulemaking Board, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this section, shall be deemed to be made, kept, maintained and preserved in compliance with this section.

(2) A record made and kept pursuant to any provision of paragraph (a) of this section, which contains all the information required under any other provision of paragraph (a) of this section, need not be maintained in duplicate in order to meet the requirements of the other provision of paragraph (a) of this section.

* * *

17 CFR 275.206(4)-3

*** This document is current through the April 23, 2015 ***
*** issue of the Federal Register ***

TITLE 17 -- COMMODITY AND SECURITIES EXCHANGES
CHAPTER II -- SECURITIES AND EXCHANGE COMMISSION
PART 275 -- RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

17 CFR 275.206(4)-3

§ 275.206(4)-3 Cash payments for client solicitations.

* * *

(e) Special rule for solicitation of government entity clients. Solicitation activities involving a government entity, as defined in § 275.206(4)-5, shall be subject to the additional limitations set forth in that section.

* * *

17 CFR 275.206(4)-5

*** This document is current through the April 23, 2015 ***
*** issue of the Federal Register ***

TITLE 17 -- COMMODITY AND SECURITIES EXCHANGES
CHAPTER II -- SECURITIES AND EXCHANGE COMMISSION
PART 275 -- RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

17 CFR 275.206(4)-5

NOTE: This has been corrected from the rule as held on Lexis, which has not been updated to reflect the changes to the rule made by 76 FR 42950, 43013.

§ 275.206(4)-5 Political contributions by certain investment advisers.

(a) Prohibitions. As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts, practices, or courses of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b-6(4)), it shall be unlawful:

(1) For any investment adviser registered (or required to be registered) with the Commission, or unregistered in reliance on the exemption available under section 203(b)(3) of the Advisers Act (15 U.S.C. 80b-3(b)(3)), or that is an exempt reporting adviser, as defined in section 275.204-4(a), to provide investment advisory services for compensation to a government entity within two years after a contribution to an official of the government entity is made by the investment adviser or any covered associate of the investment adviser (including a person who becomes a covered associate within two years after the contribution is made); and

(2) For any investment adviser registered (or required to be registered) with the Commission, or unregistered in reliance on the exemption available under section 203(b)(3) of the Advisers Act (15 U.S.C. 80b-3(b)(3)), or that is an exempt reporting adviser, or any of the investment adviser's covered associates:

> (i) To provide or agree to provide, directly or indirectly, payment to any person to solicit a government entity for investment advisory services on behalf of such investment adviser unless such person is:
>
> > (A) A regulated person; or
> >
> > (B) An executive officer, general partner, managing member (or, in each case, a person with a similar status or function), or employee of the investment adviser; and

(ii) To coordinate, or to solicit any person or political action committee to make, any:

(A) Contribution to an official of a government entity to which the investment adviser is providing or seeking to provide investment advisory services; or

(B) Payment to a political party of a State or locality where the investment adviser is providing or seeking to provide investment advisory services to a government entity.

(b) Exceptions.

(1) De minimis exception. Paragraph (a)(1) of this section does not apply to contributions made by a covered associate, if a natural person, to officials for whom the covered associate was entitled to vote at the time of the contributions and which in the aggregate do not exceed $ 350 to any one official, per election, or to officials for whom the covered associate was not entitled to vote at the time of the contributions and which in the aggregate do not exceed $ 150 to any one official, per election.

(2) Exception for certain new covered associates. The prohibitions of paragraph (a)(1) of this section shall not apply to an investment adviser as a result of a contribution made by a natural person more than six months prior to becoming a covered associate of the investment adviser unless such person, after becoming a covered associate, solicits clients on behalf of the investment adviser.

(3) Exception for certain returned contributions.

(i) An investment adviser that is prohibited from providing investment advisory services for compensation pursuant to paragraph (a)(1) of this section as a result of a contribution made by a covered associate of the investment adviser is excepted from such prohibition, subject to paragraphs (b)(3)(ii) and (b)(3)(iii) of this section, upon satisfaction of the following requirements:

(A) The investment adviser must have discovered the contribution which resulted in the prohibition within four months of the date of such contribution;

(B) Such contribution must not have exceeded $ 350; and

(C) The contributor must obtain a return of the contribution within 60 calendar days of the date of discovery of such contribution by the investment adviser.

(ii) In any calendar year, an investment adviser that has reported on its annual updating amendment to Form ADV (17 CFR 279.1) that it has more than 50 employees is entitled to no more than three exceptions pursuant to paragraph (b)(3)(i) of this section, and an investment adviser that has reported on its annual updating amendment to Form ADV that it has 50 or fewer employees is entitled to no more than two exceptions pursuant to paragraph (b)(3)(i) of this section.

(iii) An investment adviser may not rely on the exception provided in paragraph (b)(3)(i) of

this section more than once with respect to contributions by the same covered associate of the investment adviser regardless of the time period.

(c) Prohibitions as applied to covered investment pools. For purposes of this section, an investment adviser to a covered investment pool in which a government entity invests or is solicited to invest shall be treated as though that investment adviser were providing or seeking to provide investment advisory services directly to the government entity.

(d) Further prohibition. As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts, practices, or courses of business within the meaning of section 206(4) of Advisers Act (15 U.S.C. 80b-6(4)), it shall be unlawful for any investment adviser registered (or required to be registered) with the Commission, or unregistered in reliance on the exemption available under section 203(b)(3) of the Advisers Act (15 U.S.C. 80b-3(b)(3)), or that is an exempt reporting adviser, or any of the investment adviser's covered associates to do anything indirectly which, if done directly, would result in a violation of this section.

(e) Exemptions. The Commission, upon application, may conditionally or unconditionally exempt an investment adviser from the prohibition under paragraph (a)(1) of this section. In determining whether to grant an exemption, the Commission will consider, among other factors:

(1) Whether the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Advisers Act (15 U.S.C. 80b);

(2) Whether the investment adviser:

(i) Before the contribution resulting in the prohibition was made, adopted and implemented policies and procedures reasonably designed to prevent violations of this section; and

(ii) Prior to or at the time the contribution which resulted in such prohibition was made, had no actual knowledge of the contribution; and

(iii) After learning of the contribution:

(A) Has taken all available steps to cause the contributor involved in making the contribution which resulted in such prohibition to obtain a return of the contribution; and

(B) Has taken such other remedial or preventive measures as may be appropriate under the circumstances;

(3) Whether, at the time of the contribution, the contributor was a covered associate or otherwise an employee of the investment adviser, or was seeking such employment;

(4) The timing and amount of the contribution which resulted in the prohibition;

(5) The nature of the election (e.g, Federal, State or local); and

(6) The contributor's apparent intent or motive in making the contribution which resulted in the prohibition, as evidenced by the facts and circumstances surrounding such contribution.

(f) Definitions. For purposes of this section:

(1) 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 Federal, 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 State or local office.

(2) Covered associate of an investment adviser means:

(i) Any general partner, managing member or executive officer, or other person with a similar status or function;

(ii) Any employee who solicits a government entity for the investment adviser and any person who supervises, directly or indirectly, such employee; and

(iii) Any political action committee controlled by the investment adviser or by any person described in paragraphs (f)(2)(i) and (f)(2)(ii) of this section.

(3) Covered investment pool means:

(i) An investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a) that is an investment option of a plan or program of a government entity; or

(ii) Any company that would be an investment company under section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)), but for the exclusion provided from that definition by either section 3(c)(1), section 3(c)(7) or section 3(c)(11) of that Act (15 U.S.C. 80a-3(c)(1), (c)(7) or (c)(11)).

(4) Executive officer of an investment adviser means:

(i) The president;

(ii) Any vice president in charge of a principal business unit, division or function (such as sales, administration or finance);

(iii) Any other officer of the investment adviser who performs a policy-making function; or

(iv) Any other person who performs similar policy-making functions for the investment adviser.

(5) Government entity means any State or political subdivision of a State, including:

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

(ii) A pool of assets sponsored or established by the State or political subdivision or any agency, authority or instrumentality thereof, including, but not limited to a "defined benefit plan" as defined in section 414(j) of the Internal Revenue Code (26 U.S.C. 414(j)), or a State general fund;

(iii) A plan or program of a government entity; and

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

(6) Official means any person (including any election committee for the person) who was, at the time of the contribution, an incumbent, candidate or successful candidate for elective office of a government entity, if the office:

(i) Is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity; or

(ii) Has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity.

(7) Payment means any gift, subscription, loan, advance, or deposit of money or anything of value.

(8) Plan or program of a government entity means any participant-directed investment program or plan sponsored or established by a State or political subdivision or any agency, authority or instrumentality thereof, including, but not limited to, a "qualified tuition plan" authorized by section 529 of the Internal Revenue Code (26 U.S.C. 529), a retirement plan authorized by section 403(b) or 457 of the Internal Revenue Code (26 U.S.C. 403(b) or 457), or any similar program or plan.

(9) Regulated person means:

(i) An investment adviser registered with the Commission that has not, and whose covered associates have not, within two years of soliciting a government entity:

(A) Made a contribution to an official of that government entity, other than as described in paragraph (b)(1) of this section; and

(B) Coordinated or solicited any person or political action committee to make any contribution or payment described in paragraphs (a)(2)(ii)(A) and (B) of this section;

(ii) A "broker," as defined in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)) or a "dealer," as defined in section 3(a)(5) of that Act (15 U.S.C. 78c(a)(5)), that is registered with the Commission, and is a member of a national securities association registered under 15A of that Act (15 U.S.C. 78o-3), provided that:

(A) The rules of the association prohibit members from engaging in distribution or solicitation activities if certain political contributions have been made; and

(B) The Commission, by order, finds that such rules impose substantially equivalent or more stringent restrictions on broker-dealers than this section imposes on investment advisers and that such rules are consistent with the objectives of this section; and

(iii) A "municipal advisor" registered with the Commission under section 15B of the Exchange Act and subject to rules of the Municipal Securities Rulemaking Board, provided that:

(A) Such rules prohibit municipal advisors from engaging in distribution or solicitation activities if certain political contributions have been made; and

(B) The Commission, by order, finds that such rules impose substantially equivalent or more stringent restrictions on municipal advisors than this section imposes on investment advisers and that such rules are consistent with the objectives of this section.

(10) Solicit means:

(i) With respect to investment advisory services, to communicate, directly or indirectly, for the purpose of obtaining or retaining a client for, or referring a client to, an investment adviser; and

(ii) With respect to a contribution or payment, to communicate, directly or indirectly, for the purpose of obtaining or arranging a contribution or payment.

U.S. Securities and Exchange Commission

Updated as of July 27, 2012

Staff Responses to Questions About the Pay to Play Rule

The staff of the Division of Investment Management (the "Division") has prepared the following responses to questions about rule 206(4)-5 (the "pay to play rule") under the Investment Advisers Act of 1940. We may update this posting from time to time with responses to additional questions or to make other modifications, such as if the rule is amended. These responses represent the views of the staff of the Division. They do not constitute a rule, regulation, or statement of the Securities and Exchange Commission, and the Commission has neither approved nor disapproved this information. The adopting release for the pay to play rule, dated July 1, 2010 (the "Adopting Release") can be found at: http://www.sec.gov/rules/final/2010/ia-3043.pdf.

I. Compliance Dates

Question I.1. *Compliance Date for Recordkeeping Obligations*.

Q: When must an adviser subject to the pay to play rule begin to comply with the related requirement in Advisers Act rule 204-2 to make and keep a record of all government entities to which it provides or has provided advisory services (or which are or were investors in any covered investment pool to which the adviser provides or has provided investment advisory services)?

A: An adviser subject to the pay to play rule that is also subject to Advisers Act rule 204-2 must begin to keep such a record on March 14, 2011 (see section III.C. of the Adopting Release). However, an adviser to a registered investment company that is a covered investment pool need not begin to keep such a record of government entities that are or were investors in such covered investment pool until September 13, 2011 (see section III.D of the Adopting Release). (Posted March 22, 2011).

We note that the staff of the Division issued a letter on September 12, 2011 regarding an adviser to a registered investment company's compliance with these requirements in Advisers Act rule 204-2. A copy of this letter is available at: http://www.sec.gov/divisions/investment/noaction/2011/ici091211-204.htm.

Question I.2. *Coverage Period for Recordkeeping Requirements*.

Q: Advisers Act rule 204-2 provides that an adviser subject to the pay to play rule must make and keep a record of all government entities to which it provides or has provided advisory services (or which are or were investors in any covered investment pool to which the adviser provides or has provided advisory services) for the past five years, but "not prior to September 13, 2010" (see rule 204-2(a)(18)(i)(B)). Does this mean that an adviser's records must extend back to September 13, 2010?

A: No. An adviser must begin to create and maintain a list of current government clients (if it has any) on March 14, 2011, except clients that are registered investment companies with respect to which it must begin to create and maintain such list on September 13, 2011. (Posted March 22, 2011).

Question I.3. *Compliance Date for Regulated Person Recordkeeping*

Q: The Commission recently extended the compliance deadline for the pay to play rule's ban on third-party solicitation from June 13, 2012 to nine months after the compliance date of a final rule adopted by the Commission by which municipal advisor firms must register under the Securities Exchange Act of 1934 (see Investment Advisers Act Release No. 3418). May an adviser also delay compliance with the related recordkeeping requirements?

A: The Division would not recommend enforcement action to the Commission if an adviser does not comply with the requirement of Advisers Act rule 204-2(a)(18)(i)(D) to "make and keep a list of the name and business address of each regulated person to whom the adviser provides or agrees to provide, directly or indirectly, payment to solicit a government entity for investment advisory services on its behalf" until it is required to comply with the rule's third-party solicitation provisions (Modified July 27, 2012).

II. Definition of "Covered Associate"

Question II.1. *Parent Company.*

Q: Footnote 179 in the Adopting Release states that, depending on facts and circumstances, there may be instances in which a person who formally resides at an adviser's parent company, but who supervises an adviser's covered associate, could also thereby be considered a covered associate. Would the parent company itself be considered a covered associate?

A: No. Rule 206(4)-5(f)(2) provides that only natural persons (and political action committees ("PACs") controlled by those natural persons or by the investment adviser) can be covered associates. (Posted March 22, 2011).

Question II.2. *Managing Members' PACs.*

Q: If a company is the managing member of an investment adviser, would its PAC be a covered associate?

A: No. The definition of covered associate only includes managing members who are individuals (*i.e.*, natural persons) (see rule 206(4)-5(f)(2)). Therefore, unless the adviser or any of its covered associates has the ability to direct or cause the direction of the governance or the operations of the managing member's PAC, that PAC would not be a covered associate. (Posted March 22, 2011).

Question II.3. *Affiliates.*

Q: Can an adviser choose to treat its affiliated company or that affiliate's personnel as covered associates of the adviser in order to enable them to solicit on behalf of the adviser?

A: No. Covered associates include only an investment adviser's general partner, managing member or executive officer, or other individual with a similar status or function; any employee who solicits a government entity for the investment adviser and any person who supervises, directly or indirectly, such employee; and any PAC controlled by the investment adviser or by another covered associate.

As of the compliance date of the pay to play rule's prohibition against paying a third party for solicitations, if an affiliated company receives payment from the adviser to solicit government entities on the adviser's behalf, the affiliated company must be a regulated person under the pay to play rule (see rule 206(4)-5(a)(2)(i)). Likewise, as of that date, if the affiliated company's personnel receive such payment directly, they must be

employed by a regulated person and covered by the pay to play restrictions to which the regulated person is subject.

We note that, depending on facts and circumstances, there may be instances in which a person who formally resides at an adviser's affiliated company, but who supervises an adviser's covered associate, could also thereby be considered a covered associate, such that his or her contributions could trigger the rule's two-year time out provision for the adviser (see footnote 179 in the Adopting Release, Question II.1. above, and II.9. and II.10. below). Additionally, rule 206(4)-5 and section 208(d) of the Advisers Act prohibit doing anything indirectly that would be prohibited if done directly (see rule 206(4)-5(d)). (Modified July 27, 2012)

Question II.4. *Adviser-Affiliated PACs.*

Q: On December 12, 2010, the MSRB issued guidance about PACs affiliated with dealers and municipal finance professionals (see Guidance on Dealer-Affiliated Political Action Committees Under Rule G-37, *available at* http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-37.aspx?tab=2). Does the Commission take a similar view?

A: MSRB guidance does not provide authoritative interpretations of the Commission's pay to play rule. However, where the MSRB's rule G-37 interpretations directly address an issue that the Commission has not addressed, such as this guidance on dealer-affiliated PACs, the interpretations may be useful to consider (see also Question V.2. below). (Posted March 22, 2011).

Question II.5. *Chain of Contributions through PACs.*

Q: If an adviser or a covered associate of an adviser contributes to a trade association PAC that then contributes to a candidate, would the trade association PAC be a covered associate?

A: Under the rule, a PAC is a covered associate only if the adviser or any of its covered associates has the ability to direct or cause the direction of the governance or the operations of that PAC (see section II.B.2(a)(4) of the Adopting Release). However, a chain of contributions through PACs made for the purpose of avoiding the pay to play rule, would violate the rule's, and section 208(d) of the Advisers Act's, general prohibitions against doing anything indirectly which would be prohibited if done directly (see rule 206(4)-5(d)). (Posted March 22, 2011).

Question II.6. *Covered Associates' Family Members.*

Q: Are contributions by an advisory employee's family members covered under the rule?

A: Generally not. However, rule 206(4)-5 and section 208(d) of the Advisers Act prohibit doing anything indirectly which would be prohibited if done directly (see rule 206(4)-5(d)). (Posted March 22, 2011).

Question II.7. *Independent Contractors.*

Q: If certain personnel of an investment adviser are considered "independent contractors," rather than "employees," for state law or tax law purposes, will they still be regarded as covered associates if they solicit or supervise those who solicit government entities on behalf of the adviser?

A: The term "employee" is not defined in the Advisers Act. The staff interprets the term "employee" to include "independent contractors" acting on behalf of an investment adviser (see Interpretive Release No. IA-1000, at II.C.3). (Posted March 22, 2011).

Question II.8. ***Employees of a Dual Registrant.***

Q: If a firm is registered as both an investment adviser and as a broker-dealer, would all of its employees who solicit government entities for investment advisory services be covered associates?

A: Yes. (Posted March 22, 2011).

Question II.9. ***Employee Solicitor's Supervisors.***

Q: In certain circumstances, an adviser's employee solicitor may be supervised by a person who is employed by the adviser's affiliated company, not by the adviser. In such circumstances, would the supervisor be considered a covered associate?

A: Yes. The definition of covered associate contains no requirement that the supervisor be an employee of the advisory firm. (See also Questions II.1. and II.3. above and footnote 179 in the Adopting Release). (Posted November 8, 2011).

Question II.10. ***Affiliate Solicitors and the Compliance Date of Third-Party Solicitor Ban.***

Q: Until the compliance date of the prohibition against paying a third party for solicitations in rule 206(4)-5(a)(2)(i), must an adviser treat its affiliate's employees as covered associates if they solicit clients on the adviser's behalf?

A: No. (See Investment Advisers Act Release No. 3221, at n.354 and accompanying text. See also Questions II.1., II.3., and II.9 above). (Modified July 27, 2012).

III. Definition of "Government Entity" and "Official"

Question III.1. ***Foreign Governments.***

Q: Does the definition of government entity include foreign governments?

A: No. (Posted March 22, 2011).

Question III.2. ***Participant-Elected Members of a Board.***

Q: Can a *participant-elected* member of a public pension board be considered an official of a government entity?

A: Yes. The pay to play rule does not differentiate between popularly elected officials and participant-elected officials. The board member would be an official if he or she was, at the time of a contribution, an incumbent, candidate or successful candidate for the office, if the office: (i) is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by the government entity; or (ii) has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by the government entity (see rule 206(4)-5(f)(6)). (Posted March 22, 2011).

IV. Third-Party Solicitors

Question IV.1. ***Trailing Compensation for Solicitation.***

Q: Under many solicitation agreements, an adviser continues to compensate a solicitor for soliciting a client for as long as the client remains a client of the adviser. If an adviser obtained a government entity client with the assistance of a solicitor (that does not qualify as a regulated person) prior to the pay to play rule's compliance date applicable to the adviser, would trailing payments after that date be prohibited?

A: If the solicitor does not solicit the government entity client after the compliance date, then the trailing payments would not be prohibited. However, solicitation is broadly defined under the rule to include (among other things) communications to *retain* a client for the adviser (see rule 206(4)-5(f)(10)(i)). Further, a compensation arrangement structured to avoid the pay to play rule's restrictions would violate the pay to play rule's and section 208(d) of the Advisers Act's general prohibitions against doing anything indirectly which would be prohibited if done directly (see rule 206(4)-5(d)). (Posted March 22, 2011).

Question IV.2. ***Shared Employee of an Adviser and Affiliated Broker-Dealer.***

Q: If an adviser's covered associate is also employed by an affiliated broker-dealer firm to solicit government entities on the adviser's behalf, would the broker-dealer firm have to be a regulated person?

A: If the adviser provides or agrees to provide, directly or indirectly, payment to the broker-dealer firm in connection with such solicitation, then the broker-dealer firm would have to be a regulated person (see rule 206(4)-5(a)(2)(i)). Regardless, the shared employee would also be a covered associate of the investment adviser (see rule 206(4)-5(f)(2)). (Posted March 22, 2011).

Question IV.3. ***Single Exception for a Returned Contribution per Employee Does Not Travel with the Employee.***

Q: The exception for returned contributions may be used only once per advisory employee (see rule 206(4)-5(b)(3)(iii)). If that employee becomes employed by another firm, would the new firm be prohibited from relying on the exception with respect to another contribution of that employee?

A: No. (Posted March 22, 2011).

V. Miscellaneous

Question V.1. ***Affect on State and Local Laws.***

Q: Does the pay to play rule pre-empt state and local laws regarding campaign contributions and pay to play activities?

A: No. (Posted March 22, 2011).

Question V.2. ***Reliance on MSRB Interpretations.***

Q: Can the MSRB's rule G-37 interpretations be relied on to interpret the pay to play rule?

A: No. MSRB guidance does not provide authoritative interpretations of the Commission's pay to play rule. However, where the MSRB's rule G-37 interpretations directly address an issue that the Commission has not addressed, such interpretations might be useful to consider. (Posted March 22, 2011).

Question V.3. ***Contributions to Others.***

Q: If an adviser subject to the pay to play rule, or one of the adviser's covered associates, makes a contribution to a political party, PAC or other committee or organization, but not to an official, could the adviser still be subject to a two-year time out under rule 206(4)-5(a)(1)?

A: A contribution to a political party, PAC or other committee or organization would not trigger a two-year time out under rule 206(4)-5(a)(1), unless it is a means to do indirectly what the rule prohibits if done directly (for example, the contribution is earmarked or known to be

provided for the benefit of a particular political official) (see footnote 154 of the Adopting Release).

We note, however, that the pay to play rule prohibits advisers and their covered associates from *coordinating or soliciting* any person (including a non-natural person) or PAC to make any payment to a political party of a state or locality where the investment adviser is providing or seeking to provide investment advisory services to a government entity (see rule 206(4)-5(a)(2)(ii)). (Posted March 22, 2011).

http://www.sec.gov/divisions/investment/pay-to-play-faq.htm

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PRESS RELEASE

SEC Charges Private Equity Firm With Pay-to-Play Violations Involving Political Campaign Contributions in Pennsylvania

First Case Under Pay-to-Play Rules for Investment Advisers

FOR IMMEDIATE RELEASE
2014-120

Washington D.C., June 20, 2014 — The Securities and Exchange Commission today charged a Philadelphia-area private equity firm with violating "pay-to-play" rules by continuing to receive advisory fees from the city and state pension funds following campaign contributions made by an associate in 2011 to the governor of Pennsylvania and a candidate for mayor of Philadelphia.

In the SEC's first case under pay-to-play rules for investment advisers, TL Ventures Inc. agreed to settle the charges by paying nearly $300,000.

Pay-to-play rules adopted in 2010 prohibit investment advisers from providing compensatory advisory services – either directly to a government client or through a pooled investment vehicle – for two years following a campaign contribution by the firm or certain associates to political candidates or officials in a position to influence the selection or retention of advisers to manage public pension funds or other government client assets.

An SEC investigation found that TL Ventures violated pay-to-play rules by continuing to receive compensation from two public pension funds – Pennsylvania's state retirement system and Philadelphia's pension plan – within two years after an associate made a $2,500 campaign contribution to a Philadelphia mayoral candidate and a $2,000

campaign contribution to the governor of Pennsylvania. The mayoral position appoints three of the nine members of the Philadelphia Board of Pensions and Retirement. Therefore, a mayor can influence the hiring of investment advisers for the public pension fund. The 11-member board of Pennsylvania's state retirement system includes six gubernatorial appointees. Therefore, a governor can influence the hiring of investment advisers for the public pension fund. After the contributions, TL Ventures improperly continued to receive compensation from the pension funds for those advisory services.

"We will use all available enforcement tools to ensure that public pension funds are protected from any potential corrupting influences," said Andrew Ceresney, director of the SEC Enforcement Division. "As we have done with broker-dealers, we will hold investment advisers strictly liable for pay-to-play violations."

LeeAnn Ghazil Gaunt, chief of the SEC Enforcement Division's Municipal Securities and Public Pensions Unit, added, "Public pension funds are increasingly investing in alternative investment vehicles such as hedge funds and private equity funds. When dealing with public pension fund clients, advisers to those kinds of investment vehicles should be mindful of the restrictions that can arise from political contributions."

The SEC's orders instituting settled administrative proceedings also charged TL Ventures and an affiliated adviser Penn Mezzanine Partners Management L.P. with improperly acting as unregistered investment advisers. According to the orders, TL Ventures and Penn Mezzanine separately claimed to be exempt from SEC registration in March 2012, however their operations were closely integrated and significantly overlapped. Because they were not operationally independent of each other, TL Ventures and Penn Mezzanine should have been integrated as a single investment adviser for purposes of registration requirements or determining the applicability of any exemption.

The SEC's order finds that TL Ventures violated Sections 203(a), 206 (4) and 208(d) of the Investment Advisers Act of 1940 as well as Rule 206(4)-5. TL Ventures is ordered to pay disgorgement of $256,697,

prejudgment interest of $3,197 and penalty of $35,000. TL Ventures agreed to be censured and to cease and desist from committing or causing any violations and any future violations of the provisions referenced in the order. TL Ventures neither admitted nor denied the findings in consenting to the SEC's order.

The SEC's investigation was conducted by Louis A. Randazzo and Martin F. Healey in the Boston Regional Office with assistance from Christopher McHugh of the Division of Investment Management. Mr. Randazzo is a member of the Municipal Securities and Public Pensions Unit.

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Related Materials

- SEC order against TL Ventures
- SEC order against Penn Mezzanine

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3859 / June 20, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15940

In the Matter of **TL VENTURES INC.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 203(e) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against TL Ventures Inc. ("TL Ventures" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

A. SUMMARY

1. These proceedings involve violations of: (1) the Commission's "pay-to-play" rule for investment advisers by TL Ventures, an investment adviser to venture capital funds which invest in early-stage technology companies, and (2) the Advisers Act's registration requirement by TL Ventures.

2. Rule 206(4)-5, promulgated under Section 206(4) of the Advisers Act, is a prophylactic rule designed to address pay-to-play abuses involving campaign contributions made by advisers or their covered associates to government officials who are in a position to influence the selection of advisers to manage government client assets, including public pension assets. Among other things, Rule 206(4)-5 prohibits investment advisers from providing advisory services for compensation to a government client (or to an investment vehicle in which a government entity invests), for two years after the adviser or certain of its executives or employees make a campaign contribution to certain elected officials or candidates. Rule 206(4)-5 does not require a showing of quid pro quo or actual intent to influence an elected official or candidate.

3. On April 12, 2011, a covered associate[2] of TL Ventures (the "Covered Associate") made a $2,500 campaign contribution to the campaign of a candidate for Mayor of Philadelphia, PA (the "Mayoral Contribution"). The Mayor of Philadelphia appoints three of the nine members of the City of Philadelphia Board of Pensions and Retirement ("Philadelphia Retirement Board"). In addition, on November 21, 2011, the Covered Associate made a $2,000 campaign contribution to the Governor of Pennsylvania (the "Gubernatorial Contribution"). The Governor of Pennsylvania appoints six of the eleven members of the board of the Pennsylvania State Employees' Retirement System ("SERS").

4. SERS has been an investor (called a "limited partner") in two TL Ventures funds, TL Ventures IV L.P. ("TL Ventures IV") and TL Ventures V L.P. ("TL Ventures V"), since 1999 and 2000, respectively. The Philadelphia Retirement Board has been a limited partner in TL Ventures V since 2000. As limited partners, SERS and the Philadelphia Retirement Board contractually committed to invest a stated amount of money in TL Ventures' funds and they made those investments over time. Limited partners in TL Ventures' funds are generally prohibited from withdrawing their money for the life of the fund, often 10 or more years.

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[2] "Covered associates" are officers and employees of the adviser who have a direct economic stake in the business relationship with the government client. Covered associates are defined to include: (i) any general partner, managing member or executive officer, or other individual with a similar status or function; (ii) any employee who solicits a government entity for the investment adviser and any person who supervises, directly or indirectly, such employee; and (iii) any political action committee controlled by the investment adviser or by any of its covered associates. Under the Rule, executive officers include: (i) the president; (ii) any vice president in charge of a principal business unit, division or function (such as sales, administration or finance); (iii) any other officer of the investment adviser who performs a policy-making function; or (iv) any other person who performs similar policy-making functions for the investment adviser. Rule 206(4)-5(f)(2) and (4).

5. During the two years after the Mayoral Contribution, TL Ventures continued to provide investment advisory services to TL Ventures V and continued to receive advisory fees attributable to such services. Similarly, during the two years after the Gubernatorial Contribution, TL Ventures continued to provide investment advisory services to TL Ventures IV, in addition to TL Ventures V, and continued to receive advisory fees attributable to such services. By continuing to provide advisory services for compensation to covered investment pools invested in by the Philadelphia Retirement Board and SERS within two years after political contributions by a covered associate to government officials in a position to influence the selection of investments by those pension funds, TL Ventures violated Section 206(4) of the Advisers Act and Rule 206(4)-5 thereunder.

6. Section 203(a) of the Advisers Act prohibits an investment adviser from using the mails or any means or instrumentality of interstate commerce in connection with its business as an investment adviser unless it is registered with the Commission or exempt from registration. Section 208(d) of the Advisers Act makes it unlawful for any person indirectly, or through or by any other person, to do any act or thing which would be unlawful for such person to do directly under the provisions of the Act or rule or regulation thereunder.

7. Effective March 30, 2012, TL Ventures and Penn Mezzanine Partners Management, L.P. ("Penn Mezzanine"), a related investment adviser, each claimed to be exempt from the Advisers Act's registration requirements. However, the facts and circumstances surrounding their relationship indicate that the two advisers were under common control, were not operationally independent of each other and thus should have been integrated as a single investment adviser for purposes of the applicable registration requirement and the applicability of any exemption. Once integrated, TL Ventures and Penn Mezzanine would not have qualified for any exemption from registration and therefore should have been registered effective March 30, 2012.

8. By using the mails or any means or instrumentality of interstate commerce in connection with its business as an investment adviser and not being registered with the Commission, TL Ventures, acting through or by Penn Mezzanine, violated Sections 203(a) and 208(d) of the Advisers Act.

B. RESPONDENT

9. TL Ventures is a Delaware corporation located in Wayne, Pennsylvania. TL Ventures is not registered with the Commission as an investment adviser. Prior to March 30, 2012, TL Ventures was exempt from Commission registration in reliance on Section 203(b)(3) of the Advisers Act and Rule 203-1(e) under the Advisers Act.[3] From March 29, 2012, TL Ventures

[3] The exemption from registration formerly contained in Section 203(b)(3) was repealed effective July 21, 2011 by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), and Rule 203-1(e) in effect extended that exemption until March 30, 2012. See Rules Implementing Amendments to the Investment Advisers Act of 1940, Advisers Act Release No. 3221 (June 22, 2011), 2011 SEC LEXIS 2149.

claimed to be an investment adviser solely to one or more venture capital funds and thus to be exempt under Section 203(l) of the Advisers Act from registration as an investment adviser. It has reported to the Commission as an "exempt reporting adviser" under Section 204(a) of the Advisers Act and Rule 204-4 thereunder.[4] In its exempt reporting adviser report on Form ADV dated March 31, 2014, TL Ventures reported regulatory assets under management of approximately $178 million in venture capital funds.

C. BACKGROUND

TL Ventures is an Adviser to "Covered Investment Pools"

10. TL Ventures is an adviser to venture capital funds which invest in early-stage technology companies. TL Ventures raised its last venture capital fund in 2008. TL Ventures acted as the investment adviser to several venture capital funds, including TL Ventures IV and TL Ventures V, both of which constitute "covered investment pools" as defined in Advisers Act Rule 206(4)-5(f)(3) because they would be investment companies under Section 3(a) of the Investment Company Act of 1940 but for the exclusion from the definition of investment company provided by Section 3(c)(1) of the Investment Company Act of 1940. The funds have terms of 10 years, with the possibility of two one-year extensions following the initial term if approved by a majority-in-interest of the limited partners in the fund.

Investments in TL Ventures Funds by SERS and the Philadelphia Retirement Board

11. In 1999, SERS committed to invest, and subsequently invested, $35 million of its public pension money in TL Ventures IV. In addition, in 2000, SERS committed to invest, and subsequently invested, $40 million of its public pension money in TL Ventures V.

12. In 2000, the Philadelphia Retirement Board committed to invest, and subsequently invested, $10 million of its public pension money in TL Ventures V.

13. Both TL Ventures IV and TL Ventures V have been in wind down mode since 2010 and 2012, respectively. While these funds are in wind down mode, SERS continues to be a limited partner of TL Ventures IV and TL Ventures V, and the Philadelphia Retirement Board continues to be a limited partner of TL Ventures V.

[4] The Dodd-Frank Act created a category of advisers known as exempt reporting advisers (which generally were formerly advisers relying on the private adviser exemption contained in Section 203(b)(3), which has been repealed). Although exempt from Commission registration, exempt reporting advisers are required by Rule 204-4 under the Advisers Act to file reports with the Commission electronically on Form ADV through the IARD using the same process used by registered investment advisers.

Campaign Contributions to Government Officials

14. On April 12, 2011, the Covered Associate made a $2,500 campaign contribution to a candidate for Mayor of Philadelphia, Pennsylvania. In addition, on November 21, 2011, the Covered Associate made a $2,000 campaign contribution to the Governor of Pennsylvania.

15. Both candidates had the ability to influence the selection of investment advisers for their respective public pension funds. The Mayor of Philadelphia has authority to appoint the City's Director of Finance, Managing Director and City Solicitor. Each of these city officials serves as a member of the nine member Philadelphia Retirement Board. The Philadelphia Retirement Board has influence over the retirement fund's investments and the selection of investment advisers and pooled investment vehicles for the fund. The Governor of Pennsylvania has authority to appoint six members of the eleven member SERS board. The SERS board has influence over investments by the SERS pension fund and the selection of investment advisers and pooled investment vehicles for the fund.

TL Ventures Continues to Receive Compensation From SERS and the Philadelphia Retirement Fund

16. Advisers Act Rule 206(4)-5(a)(1) prohibits any investment adviser registered with the Commission, investment adviser required to be registered with the Commission, foreign private adviser, or exempt reporting adviser from providing investment advisory services for compensation to a "government entity"[5] within two years after a contribution to an "official" [6] of

[5] A "government entity" means any state or political subdivision of a state, including: (i) any agency, authority, or instrumentality of the state or political subdivision; (ii) a pool of assets sponsored or established by the state or political subdivision or any agency, authority or instrumentality thereof, including, but not limited to a "defined benefit plan" as defined in the Internal Revenue Code, or a state general fund; (iii) a plan or program of a government entity; and (iv) officers, agents, or employees of the state or political subdivision or any agency, authority or instrumentality thereof, acting in their official capacity. Rule 206(4)-5(f)(5).

[6] "Official" includes any person who, at the time of the relevant contribution, was an incumbent, candidate or successful candidate for elective office of a government entity if the office is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity or has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity. Rule 206(4)-5(f)(6). If the governor of a state can appoint at least part of a state pension fund's board, the governor is considered to be an official of the government entity. Political Contributions by Certain Investment Advisers, Investment Advisers Act Release No. 3043 at 44 n.143 (July 1, 2010)("Adopting Release")("For example, a state may have a pension fund whose board of directors, which has authority to hire an investment adviser, is constituted, at least in part, by appointees of the governor and members of the state legislature. In such circumstances, the governor and the members of the state legislature serving on the board would be officials of the government entity"). The Adopting Release cites as an example the Pennsylvania Public School Employees' Retirement Board, of which the governor can appoint two of the six board members. Id.

a government entity made by the investment adviser or any "covered associate" of the investment adviser. Advisers Act Rule 206(4)-5 includes a provision that applies the prohibitions of the rule to investment advisers, including exempt reporting advisers that manage assets of a government entity through covered investment pools such as hedge funds, private equity funds, venture capital funds and collective investment trusts.[7] Advisers Act Rule 206(4)-5 does not require a showing of *quid pro quo* or actual intent to influence an elected official or candidate.

17. As public pension plans, the Philadelphia Retirement Board and SERS were "government entities" as defined in Advisers Act Rule 206(4)-5(f)(5). The contributor was a "covered associate" of TL Ventures as defined in Advisers Act Rule 206(4)-5(f)(2). The candidates who received the contributions were both "officials" (as defined in Advisers Act Rule 206(4)-5(f)(6)) of government entities because their respective offices had authority to appoint members who could influence the hiring of investment advisers by the respective government entities.

18. Under Advisers Act Rule 206(4)-5, the Mayoral Contribution triggered a two-year "time-out" on TL Ventures' receiving compensation for advisory services from the Philadelphia Retirement Board. During the two years after the April 2011 Mayoral Contribution, TL Ventures continued to receive advisory fees attributable to the investment of the Philadelphia Retirement Board in TL Ventures V.[8]

19. Under Advisers Act Rule 206(4)-5, the Gubernatorial Contribution triggered a two-year "time out" on TL Ventures' receiving compensation for advisory services from SERS. During the two years after the November 2011 Gubernatorial Contribution, TL Ventures continued to receive advisory fees attributable to the investment of SERS in TL Ventures IV and V.

TL Ventures and Penn Mezzanine Should Have Been Registered

The Advisers Claimed to Be Exempt From Registration

20. The Dodd-Frank Act repealed a prior exemption from registration under Section 203(b)(3) of the Advisers Act but mandated other exemptions. In connection with implementing the new exemptions, investment advisers that were previously exempt from registration under Section 203(b)(3) of the Advisers Act were required to be registered or file as exempt reporting advisers by March 30, 2012. On March 29, 2012, TL Ventures and Penn Mezzanine filed separate

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[7] Prior to the implementation of the Dodd-Frank Act, Rule 206(4)-5 applied to, among others, advisers relying on the exemptions from registration previously available under Section 203(b)(3) of the Advisers Act, which was repealed.

[8] Rule 206(4)-5 applies to investment advisers even if the government entity was already invested in the covered investment pool at the time of the contribution. Adopting Release at 44 n.130 ("[T]his deterrent effect is the basis for our view that the two-year time out should not apply only to 'new business'…").

exempt reporting adviser reports on Form ADV with the Commission each claiming to be an exempt reporting adviser, and neither TL Ventures nor Penn Mezzanine registered with the Commission as an investment adviser under Section 203 of the Advisers Act. TL Ventures claimed that it qualified for an exemption from registration with the Commission based on Section 203(l) of the Advisers Act because it was an adviser solely to one or more venture capital funds. Penn Mezzanine claimed that it qualified for an exemption from registration with the Commission based on Rule 203(m)-1 under the Advisers Act because it acted solely as an adviser to private funds and had regulatory assets under management in the U.S. of less than $150 million.

The Advisers were Operationally Integrated

21. On their exempt reporting adviser reports filed with the Commission, both TL Ventures and Penn Mezzanine report that they are under common control with each other. In addition, various employees and associated persons of TL Ventures held ownership stakes in TL Ventures and in the general partner and management company entities of Penn Mezzanine; among those, the Covered Associate and a managing director of TL Ventures held in the aggregate a majority ownership interest in TL Ventures and indirectly held in the aggregate more than a 25%, but less than a majority, ownership interest in Penn Mezzanine.

22. TL Ventures and Penn Mezzanine had several overlapping employees and associated persons, including individuals who provided investment advice on behalf of both TL Ventures and Penn Mezzanine. For example, two of the three members of Penn Mezzanine's investment committee, which had sole and exclusive authority to approve any investment by Penn Mezzanine's fund, also served as managing directors at TL Ventures and were significantly involved in providing investment advice on behalf of TL Ventures.

23. TL Ventures and Penn Mezzanine had significantly overlapping operations without any policies and procedures designed to keep the entities separate. Marketing materials for Penn Mezzanine made reference to TL Ventures and Penn Mezzanine as being a "partnership" and referenced Penn Mezzanine's ability to leverage and benefit from this relationship, including outsourcing its back office functions to TL Ventures. In addition, Managing Directors of TL Ventures, who served on Penn Mezzanine's investment committee, solicited potential investors for Penn Mezzanine's funds, including soliciting past investors in TL Ventures' funds. Moreover, neither adviser had adequate information security policies and procedures in place to protect investment advisory information from disclosure to the other. Also, employees and associated persons of Penn Mezzanine routinely used their TL Ventures email addresses to conduct business and communicate with outside parties about and on behalf of Penn Mezzanine.

The Advisers Did Not Qualify for Exemption From Registration

24. The Commission has stated that it will treat as a single adviser two or more affiliated advisers that are separate legal entities but are operationally integrated, which could result

in a requirement for one or both advisers to register.[9] Based upon the facts and circumstances, TL Ventures and Penn Mezzanine were operationally integrated and, therefore, were not eligible to rely on the claimed exemptions from registration.

25. When integrated with Penn Mezzanine, TL Ventures did not qualify for an exemption from registration with the Commission under Section 203(l) of the Advisers Act because it was not an adviser solely to venture capital funds. Accordingly, as of March 30, 2012, TL Ventures should have registered with the Commission as an investment adviser under the Advisers Act.

D. VIOLATIONS

26. As a result of the conduct described above, TL Ventures willfully[10] violated Section 206(4) of the Advisers Act and Rule 206(4)-5 thereunder, which makes it unlawful for any investment adviser registered (or required to be registered) with the Commission, or unregistered in reliance on the exemption available under Section 203(b)(3) of the Advisers Act, or that is an exempt reporting adviser, to provide investment advisory services for compensation to a government entity within two years after a contribution to an official of the government entity is made by the investment adviser or any covered associate of the investment adviser.

27. Section 203(a) of the Advisers Act makes it unlawful for any investment adviser, unless registered or exempt from registration, to make use of the mails or any means or instrumentality of interstate commerce in connection with its business as an investment adviser. Section 208(d) of the Advisers Act makes it unlawful for any person indirectly, or through or by any other person, to do any act or thing which would be unlawful for such person to do directly under the provisions of the Advisers Act.[11] As described above, TL Ventures acted through or by Penn Mezzanine to engage in the business of providing investment advice without registering as an investment adviser and, as a result, TL Ventures willfully violated Sections 203(a) and 208(d) of the Advisers Act.

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[9] See Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers, Investment Advisers Act Release No. 3222 at 125 (June 22, 2011) [76 FR 39645, 39680 (July 6, 2011)].

[10] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts.'" Id. (quoting Gearhart & Otis, Inc. v. SEC, 348 F.2d 798, 803 (D.C. Cir. 1965)).

[11] Advisers Act Sections 203(a) and 208(d) do not require a showing of scienter.

REMEDIAL EFFORTS

In determining to accept the Offer, the Commission considered remedial acts that the Respondent is undertaking, including steps to reorganize operations and separate its advisory functions from Penn Mezzanine, as well as the adoption of policies and procedures reasonably designed to ensure compliance with the applicable rules.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent TL Ventures' Offer.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent shall cease and desist from committing or causing any violations and any future violations of Section 203(a) of the Advisers Act, including committing or causing any such violations indirectly, or through or by any other person, as prohibited by Section 208(d) of the Advisers Act, and shall cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-5 thereunder.

B. Respondent is censured.

C. Respondent shall, within 10 days of the entry of this Order, pay disgorgement of $256,697 and prejudgment interest of $3,197 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or
(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying TL Ventures Inc. as the Respondent in these proceedings, the file number of these proceedings, a

copy of which cover letter and money order or check shall be sent to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 23rd Floor, Boston, MA 02110.

D. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $35,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or
(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

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By the Commission.

Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 69627 / May 23, 2013

INVESTMENT COMPANY ACT OF 1940
Release No. 30540 / May 23, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15049

In the Matter of **NEIL M.M. MORRISON** **Respondent.**	**ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTIONS 15(b)(6), 15B(c)(4) and 21C OF THE SECURITIES EXCHANGE ACT OF 1934, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940**

I.

On September 27, 2012, the Securities and Exchange Commission ("Commission") instituted administrative and cease-and-desist proceedings pursuant to Sections 15(b)(6), 15B(c)(4) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Neil M.M. Morrison ("Morrison" or "Respondent").

II.

In response to these proceedings, Respondent has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b)(6), 15B(c)(4) and 21C of the Securities Exchange Act of 1934, and Section 9(b) of the Investment Company Act of 1940 as to Neil M.M. Morrison ("Order") as set forth below.

III.

On the basis of this Order and the Respondent's Offer, the Commission finds that:[1]

Summary

These proceedings involve a "pay-to-play" scheme conducted by Neil M.M. Morrison ("Morrison"), a former vice president in the investment banking division of Goldman, Sachs & Co. ("Goldman Sachs"), a broker-dealer and registered municipal securities dealer. The scheme, which lasted from November 2008 to October 2010, resulted in violations of the Municipal Securities Rulemaking Board's ("MSRB") Rules by both Morrison and Goldman Sachs. Starting in July 2008, Morrison was employed by Goldman Sachs to solicit municipal underwriting business from, among others, the Massachusetts Treasurer's Office. During the period November 2008 to October 2010, however, Morrison was also substantially engaged in the political campaigns, including the November 2010 Massachusetts gubernatorial campaign, for Timothy P. Cahill ("Cahill"), the then-Treasurer of Massachusetts.[2] Morrison participated extensively in Cahill's gubernatorial campaign and did so at times from his Goldman Sachs office, during his Goldman Sachs work hours and using Goldman Sachs resources, such as phones, e-mail and office space. Morrison's campaign work gave him complete access to Cahill and his staff, who often provided him with information about the office's internal deliberations involving underwriter selection.

Morrison's campaign activities during his Goldman Sachs work hours and use of Goldman Sachs resources constituted valuable undisclosed "in-kind" campaign contributions to Cahill attributable to Goldman Sachs. In addition, during the same period, Morrison circumvented the pay-to-play rules by making an indirect contribution to the Cahill campaign through another person in violation of MSRB Rule G-37(d). Moreover, Morrison solicited campaign contributions for Cahill when Goldman Sachs was engaged in or seeking to engage in municipal underwriting business with the Treasurer's Office in willful violation of MSRB Rule G-37(c).

Within two years of these campaign contributions, Goldman Sachs engaged in municipal securities business with issuers associated with Cahill as Treasurer of Massachusetts and as a candidate for Governor of Massachusetts. Goldman Sachs' engagement in municipal securities business with these issuers violated Section 15B(c)(1) of the Exchange Act and MSRB Rule G-37(b).[3] Morrison caused Goldman Sachs to violate Rule G-37(b). The contributions were not

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[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

[2] In addition to Cahill's gubernatorial campaign, between November 2008 and September 2009, Morrison worked on Cahill's re-election campaign for Treasurer of Massachusetts.

[3] Rule G-37(b) is a broad prophylactic measure. It provides that no broker, dealer or municipal securities dealer shall engage in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by: (A) the broker, dealer or

disclosed on MSRB Forms G-37, and no records of the contributions were made and kept in violation of MSRB Rules G-37(e), G-8 and G-9. Morrison caused Goldman Sachs to violate MSRB Rules G-37(e), G-8 and G-9. In addition, Morrison did not disclose the attributed contributions, or campaign work or the conflicts of interest raised by this conduct in the bond offering documents. By failing to disclose the campaign work, cash and in-kind contributions and the resulting conflict of interest to the purchasers of municipal securities, Morrison willfully violated MSRB Rule G-17, which requires broker-dealers to deal fairly and not engage in any deceptive, dishonest, or unfair practice.

Respondent

1. Morrison was a vice president in Goldman Sachs' investment banking division in one of the firm's Boston, Massachusetts offices between July 14, 2008 and December 19, 2010. Morrison was also a registered representative associated with Goldman Sachs, a registered broker-dealer and municipal securities dealer. Morrison, 38 years old, is a resident of Taunton, Massachusetts.

Other Relevant Entity

2. Goldman, Sachs & Co., a New York limited partnership with its principal offices in New York, New York, is a registered broker-dealer pursuant to Section 15(b) of the Exchange Act and a municipal securities dealer as defined in Sections 3(a)(30) and 3(a)(31) of the Exchange Act. Goldman Sachs, a limited partnership, is a subsidiary of The Goldman Sachs Group, Inc., a Delaware corporation with common stock that is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is listed on the New York Stock Exchange.

Background

3. Between July 2008 and October 2010, Morrison engaged in activities that constituted solicitation of municipal securities business from certain issuers on behalf of Goldman Sachs. In addition, Morrison was listed on Goldman Sachs' list of municipal finance professionals ("MFP") during his employment with the firm. As a result, Morrison was an MFP associated with Goldman Sachs within the meaning of MSRB Rule G-37. [4]

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municipal securities dealer; (B) any municipal finance professional associated with such broker, dealer or municipal securities dealer; or (C) any political action committee controlled by the broker, dealer or municipal securities dealer or by any municipal finance professional. A violation of Rule G-37(b) does not require a showing of "quid pro quo" (i.e. that municipal securities business was actually given in exchange for the contribution.).

[4] Rule G-37(g)(iv)(B) provides that "the term 'municipal finance professional' [includes] . . . any associated person [of a broker, dealer or municipal securities dealer] who solicits municipal securities business." Morrison solicited municipal securities business by attending meetings with issuer staff, which were intended to obtain municipal securities business with the issuer and by communicating with issuer staff about Goldman Sachs' underwriting capabilities. In addition, Morrison engaged in municipal securities solicitation activities by, among other things, signing cover letters attached to responses to requests for qualifications ("RFQ") for underwriting business and by having his name appear in the

4. As the Treasurer of Massachusetts and candidate for Governor of Massachusetts, Cahill was an "official" of various municipal securities issuers in Massachusetts within the meaning of Rule G-37.[5] Specifically, as Treasurer of Massachusetts, Cahill was an incumbent who was responsible for, or had the authority to appoint persons who were responsible for, the hiring of brokers, dealers, or municipal securities dealers for municipal securities business by the Commonwealth of Massachusetts and certain related state issuers, including the Massachusetts Water Pollution Abatement Trust and Massachusetts School Building Authority. As candidate for Governor of Massachusetts, Cahill was a candidate for elective office which has authority to appoint persons who are directly or indirectly responsible for, or can influence the outcome of, the hiring of a municipal securities dealer for municipal securities business of certain issuers, including the Massachusetts Housing Finance Authority, Massachusetts Bay Transportation Authority, Massachusetts Health and Education Facilities Authority, and Massachusetts Water Resources Authority. The issuers listed in this paragraph are hereafter referred to collectively as "Issuers."

Morrison Worked Extensively on Cahill's Campaigns Using Goldman Sachs Resources

5. Starting at least as early as November 2008, Morrison began actively assisting with Cahill's re-election campaign for Treasurer of Massachusetts by soliciting contributions for fundraisers and arranging for others to solicit contributions for Cahill. Thereafter, between July 2009 and September 2009, Morrison's campaign work focused on assisting the campaign to prepare for Cahill's eventual bid for Governor of Massachusetts. This assistance included interviewing campaign consultants, preparing and reviewing campaign documents, participating on campaign conference calls, and attending campaign meetings during Goldman Sachs work hours.

6. On September 9, 2009, Cahill officially announced his candidacy for Governor of Massachusetts. Thereafter, Morrison's campaign work increased dramatically, including the number of campaign telephone calls made during work hours and the number of e-mails that he sent using his Goldman Sachs' e-mail account. Starting in September 2009, Morrison became one of Cahill's most trusted campaign advisers. As described below, he was involved in, and used Goldman Sachs resources for, numerous significant aspects of the campaign, including

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responses to the RFQs as a member of Goldman Sachs' underwriting team. Either one of these solicitation activities by itself was sufficient to make him an MFP. See John F. Kendrick, Exchange Act Release No. 62500 (July 14, 2010).

[5] Rule G-37(g)(vi) defines an "official of such issuer" as any person who was, at the time of the contribution, an incumbent, candidate or successful candidate: (A) for elective office of the issuer which office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by the issuer; or (B) for any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by an issuer.

interviewing at least one representative of a possible running mate in his Goldman Sachs office, negotiating campaign contracts and accepting contract terms on behalf of the campaign during Goldman Sachs' work hours and/or using Goldman Sachs' telephones and e-mail.

7. Morrison's work for Cahill's campaign during his Goldman Sachs' work hours was broad. Between September 2009 and October 4, 2010, Morrison engaged in (a) fundraising; (b) drafting speeches and fundraising solicitations; (c) reviewing, approving and writing campaign memos, contracts, letters, talking points, campaign position papers, and responses to campaign issues; (d) attending and preparing for press conferences; (e) approving campaign invoices and expenditures; (f) approving personnel decisions, such as salaries and hiring; (g) negotiating with campaign personnel; (h) arranging advertisements and commercials; (i) communicating with reporters on behalf of the campaign; (j) reviewing the campaign's budget; (k) recruiting supporters; (l) reviewing campaign leases for office space; (m) selecting county representatives; (n) interviewing consultants; (o) drafting campaign plans and quotations; (p) providing legal advice; and (q) assisting with debates. In engaging in these actions, Morrison at times used his Goldman Sachs e-mail account, phone and other resources and did so during ordinary work hours. During the thirteen-month period, September 9, 2009 to October 4, 2010, Morrison sent at least 364 campaign-related e-mails using his Goldman Sachs e-mail account.

Morrison Actively Solicited Underwriting Business and Attempted to Exert Influence on the Underwriter Selection Process

8. At the same time Morrison was working on Cahill's campaign, he was actively soliciting municipal securities business from the Cahill Treasurer's Office. At times, Morrison referenced his campaign work in those solicitations.

9. For example, on September 29, 2009, Morrison sent an e-mail using his Goldman Sachs e-mail account to a Deputy Treasurer discussing the selection of underwriters. In this e-mail Morrison stated:

> The boss [Cahill] mentioned to me this morning that he spoke to [the Assistant Treasurer] and that it is looking good for us [Goldman Sachs] on the build America bond deal. He then said that you would probably split it up with 2 joint bookrunners. I am ok with that if that's what you want. I actually think it will be good because it enables the boss [Cahill] to handsomely reward someone else.

10. In the same e-mail exchange, apparently referencing the upcoming election, Morrison went on to say:

> From my standpoint as an advisor/consultant/friend I am saying, PLEASE don't give these [underwriter] slots away willy-nilly. You are in the fight of your lives and need to reward loyalty and encourage friendship. If people aren't willing to be creative with their support then they shouldn't expect business. This has to be a political decision.

11. In another e-mail dated September 28, 2009, to the Deputy Treasurer, Morrison again linked his campaign work and his solicitation for underwriting business:

> I have a couple of items that I want to put out there in the interest of leaving nothing unsaid.
>
> 1. We have discussed the Build American Bond transaction and how important it is to me. You have been great keeping me up to speed. This is my number 1 priority and most important ask. Having Goldman as the lead and getting 50% of the economics would be such a home run for me.
>
> 2. There is a Taunton/Southeastern Mass function for the boss [Cahill] coming up. It looks like it will be on Oct. 26.
>
> 3. In the event that [a local municipal securities dealer] were going to have a role in the Build American Bond deal, it might be beneficial to tell me that before the local banker there. She might be more interested in being more supportive. HAVING SAID THAT, I am only pushing for number 1 above. This would help number 2, (and certainly help that banker) but I am not so aggressive as to push for more than myself at this point.

12. Morrison knew about the restrictions in Rule G-37. Specifically, Morrison was trained about the restrictions in Rule G-37 by Goldman Sachs and received numerous notices about compliance with the MSRB's rules. For example, on December 18, 2008 and October 20, 2009, Goldman Sachs' compliance office sent e-mails to Morrison containing the firm's policies and procedures relating to campaign contributions, which included, among other things, a prohibition on using firm resources, such as e-mail and office space, for political activities. In addition, the policies and procedures provided that a violation of this policy can result in the firm being disqualified from municipal securities business for two years. Moreover, the policies and procedures explained that MSRB Rule G-37 prohibits MFPs from using conduits to contribute indirectly to issuers and that a violation of this policy can lead to a two-year prohibition on municipal securities business. On September 21, 2010, Morrison certified to Goldman Sachs that he reviewed the firm's policies and procedures relating to Political Contributions and Activities and that he had disclosed to the firm all political contributions and political activities since January 1, 2009. Morrison also admitted in two e-mails on May 29, 2009 and April 2, 2010 that he had familiarity with Rule G-37.

13. In addition, during an interview with Morrison, he admitted to Goldman Sachs' compliance officials that he sent campaign-related e-mails and helped the Cahill campaign using firm resources and during work hours. Moreover, Morrison admitted to the compliance officials that he was uncomfortable helping Cahill because of the negative impact on Goldman Sachs.

Morrison's Conduct Disqualified Goldman Sachs from Underwritings

14. From November 25, 2008 to October 4, 2010, each instance of Morrison's extensive campaign work during work hours or using firm resources constituted valuable "in-kind" campaign contributions to Cahill attributable to Goldman Sachs.

15. On October 26, 2009, Morrison provided $400 in cash to an individual at a Cahill fundraiser who, in turn, made a campaign contribution for $500 rather than $100. The $400 was above the $250 *de minimis* exception provided in Rule G-37. By providing $400, Morrison violated Rule G-37(d), which prohibits a municipal securities dealer or any MFP from doing any act indirectly which would result in a violation of the rule if done directly by the dealer or MFP.[6]

16. Under Rule G-37, Morrison's indirect contribution and each "in-kind" contribution attributable to Goldman Sachs, starting on November 25, 2008 and ending on October 4, 2010, triggered a two-year ban on municipal securities business with the Issuers.

17. Despite the prohibitions contained in Rule G-37, within two years after the above contributions, Goldman Sachs, with Morrison's knowledge, participated as senior manager, co-senior manager, or co-manager for a total of thirty negotiated underwritings by the Issuers totaling approximately $9 billion. For its roles in the thirty underwritings, Goldman Sachs received fees in the amount of $7,558,942.

18. The "in-kind" contributions attributable to Goldman Sachs and the indirect cash contribution by Morrison were not disclosed as required in Goldman Sachs' quarterly reports to the MSRB on Form G-37. In addition, Goldman Sachs did not make and keep books and records of the contributions.

19. The indirect contribution by Morrison and the undisclosed "in-kind" contributions attributable to Goldman Sachs also created a conflict of interest which was not disclosed in the relevant municipal securities offerings, in violation of MSRB Rule G-17. In a July 29, 2009 e-mail to a campaign official, Morrison acknowledged the existence of this conflict, stating:

> I am staying in banking and don't want a story that says that I am helping Cahill, who is giving me banking business. If that came out, I'm sure I wouldn't get any more business.

Morrison Solicited Campaign Contributions for Cahill

20. Between November 25, 2008 and October 5, 2010, Morrison also solicited campaign contributions for Cahill by engaging in fundraising activities, including asking or

[6] A *de minimis* exception to Rule G-37(b) allows an MFP to contribute up to $250 per candidate per election if the MFP is entitled to vote for the candidate. Cahill's gubernatorial election was held on November 2, 2010.

telling others to make contributions, asking others to coordinate the collection of contributions, sending e-mails with fundraising information, and providing fundraiser tickets to potential contributors for self-use or to re-distribute to others.

21. Specifically, on November 25, 2008, Morrison used Goldman Sachs' e-mail system to solicit contributions by asking a friend to contribute to a Cahill fundraising event. In this e-mail, Morrison told his friend to make a contribution for a December 1, 2008, fundraiser. In addition, Morrison engaged in coordinating contributions by instructing at least three others to find contributors or to sell tickets for fundraisers. For example, in November 2008 and September 2009, Morrison asked a friend to help find contributors for two Cahill fundraisers. In another example, on October 8, 2009, Morrison sent an e-mail using Goldman Sachs' e-mail system to a state treasury employee regarding an October 2009 fundraiser for Cahill. In this e-mail, Morrison stated:

> Very regretfully, I have to reach out to you again regarding the Treasurer's event…If you could do anything by way of tickets it would be very helpful and would probably be a good idea for you. The tickets have a face value of …$100 but you can sell them for $50 each. I really dislike relaying this type of information and I know its not easy for anyone.

22. In addition, Morrison solicited contributions by sending fundraising literature and information, in the form of e-mails, to others. The e-mail solicitations, some of which were sent using Goldman Sachs' e-mail system, referenced, among other things, the fundraiser date, time, location and suggested contribution amounts. Moreover, Morrison solicited or coordinated contributions by providing fundraising tickets to others for self-use or to re-distribute to others. For example, around October 2009, Morrison told a friend that Cahill would be having a local fundraiser and that a campaign representative would contact him. Shortly thereafter, Morrison provided the friend with an envelope containing 10 tickets to an October 2009 fundraiser. The friend used one of the tickets himself and provided another to a friend (both contributed $100).

23. During each of Morrison's solicitations, Goldman Sachs was engaged in municipal securities business with the Massachusetts Treasurer's Office by being selected as an underwriter for Massachusetts municipal securities offerings and seeking to engage in municipal securities business by responding to two Requests for Qualifications by the Massachusetts Treasurer's Office, which were valid or active for two year periods. Therefore, Goldman Sachs was engaged in or seeking to engage in municipal securities business with the Massachusetts Treasurer's Office during Morrison's solicitation activities.

24. Morrison devoted a significant amount of time to fundraising for the Cahill campaign and his e-mails reflected this. For example, in an October 15, 2009, e-mail to a friend, Morrison stated "I am pushing hard on fundraising and recruiting supporters." In addition, in an October 19, 2009, e-mail to a family member, Morrison stated:

> I am starting to feel better but I will be happy when this fundraiser is over, as it is adding stress and combined with work and home, is wearing me out.

25. By soliciting or coordinating campaign contributions for Cahill when Goldman Sachs was seeking to engage in municipal securities business with the Treasurer's Office, Morrison violated Rule G-37(c).

Violations

26. As a result of the conduct described above, Morrison willfully aided and abetted and caused Goldman Sachs' violations of MSRB Rule G-8, which requires brokers, dealers and municipal securities dealers to make and keep current records reflecting all direct and indirect contributions to officials of issuers made by the broker, dealer, municipal securities dealer and each municipal finance professional.

27. As a result of the conduct described above, Morrison willfully aided and abetted and caused Goldman Sachs' violations of MSRB Rule G-9, which requires brokers, dealers and municipal securities dealers to preserve records reflecting all direct and indirect contributions to officials of issuers made by the broker, dealer, municipal securities dealer and each municipal finance professional for six years.

28. As a result of the conduct described above, Morrison willfully violated MSRB Rule G-17, which states that in the conduct of its municipal securities business, every broker, dealer and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.

29. As a result of the conduct described above, Morrison willfully aided and abetted and caused Goldman Sachs' violations of MSRB Rule G-37(b), which prohibits brokers, dealers or municipal securities dealers from engaging in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by (i) the broker, dealer or municipal securities dealer; (ii) any municipal finance professional associated with such broker, dealer or municipal securities dealer; or (iii) any political action committee controlled by the broker, dealer or municipal securities dealer or by any municipal finance professional, unless the contribution is exempt.

30. As a result of the conduct described above, Morrison willfully violated MSRB Rule G-37(c), which prohibits, among other things, brokers, dealers, municipal securities dealers or any municipal finance professional of the broker, dealer or municipal securities dealer from soliciting any person to make any contributions or coordinating any contributions to an official of an issuer with which the broker, dealer or municipal securities dealer is engaging or is seeking to engage in municipal securities business.

31. As a result of the conduct described above, Morrison willfully violated MSRB Rule G-37(d), which prohibits, brokers, dealers or municipal securities dealers or any municipal finance professional from, directly or indirectly, through or by any other person or means, doing any act which would result in a violation of sections (b) or (c) of Rule G-37.

32. As a result of the conduct described above, Morrison willfully aided and abetted and caused Goldman Sachs' violations of MSRB Rule G-37(e), which requires brokers, dealers, or municipal securities dealers to file quarterly reports with the MSRB disclosing all direct and indirect contributions, exceeding the *de minimis* amount, to any official of a municipal securities issuer made by, among others, the broker, dealer, municipal securities dealer and each municipal finance professional associated with such broker, dealer, or municipal securities dealer.

33. As a result of the conduct described above, Morrison willfully aided and abetted and caused Goldman Sachs' violations of Section 15B(c)(1) of the Exchange Act, which prohibits a broker, dealer or municipal securities dealer from using the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security in contravention of any rule of the MSRB.

IV.

On the basis of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in the Respondent's Offer.

Accordingly, pursuant to Sections 15(b)(6), 15B(c)(4), 21B and 21C of the Exchange Act and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Morrison shall cease and desist from committing or causing any violations and any future violations of Section 15B(c)(1) of the Exchange Act, MSRB Rule G-8, MSRB Rule G-9, MSRB Rule G-17, MSRB Rule G-37(b), MSRB Rule G-37(c), MSRB Rule G-37(d), and MSRB Rule G-37(e).

B. Respondent Morrison be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock,

with the right to apply for reentry after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent shall pay a civil money penalty in the amount of $100,000 to the Securities and Exchange Commission. Morrison shall make payment of this penalty in two installments of $50,000. Morrison shall pay the first installment of $50,000 within 10 days of the entry of this Order. Of this first installment payment of $50,000, the Securities and Exchange Commission shall transfer $25,000 to the Municipal Securities Rulemaking Board in accordance with Section 15B(c)(9)(A) of the Exchange Act and transfer the remaining $25,000 to the United States Treasury. Morrison shall pay the second installment of $50,000 within 365 days of the entry of this Order. Of this second installment payment of $50,000, the Securities and Exchange Commission shall transfer $25,000 to the Municipal Securities Rulemaking Board in accordance with Section 15B(c)(9)(A) of the Exchange Act and transfer the remaining $25,000 to the United States Treasury. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance, plus any accrued interest pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or
(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Neil M.M. Morrison as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Elaine C. Greenberg, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, Philadelphia Regional Office, The Mellon Independence Center, 701 Market Street Philadelphia, PA 19106-1532.

By the Commission.

Elizabeth M. Murphy
Secretary

Goldman Paying $12M To End Landmark SEC Pay-To-Play Case

By **Max Stendahl**

Law360, New York (September 27, 2012, 12:40 PM ET) -- Goldman Sachs Group Inc. agreed Thursday to pay $12 million to settle a first-of-its kind U.S. Securities and Exchange Commission administrative action alleging the firm won lucrative municipal underwriting business from Massachusetts by assisting the gubernatorial campaign of a now-indicted state treasurer.
The company paid $7.6 million in disgorgement, $670,000 in prejudgment interest and a $3.75 million penalty — the largest ever imposed by the SEC for so-called pay-to-play violations of a Municipal Securities Rulemaking Board rule, according to the agency.

The settlement stems from separate administrative proceedings filed Thursday against Goldman and a former vice president in its Boston office, Neil M.M. Morrison, who worked for the campaign of then -Massachusetts state treasurer Timothy P. Cahill between November 2008 and October 2010. Cahill was indicted in April on unrelated charges that he manipulated $1.5 million of the budget for state lottery advertisements to benefit his campaign.

Morrison's work disqualified Goldman from engaging in municipal underwriting business with some Massachusetts municipal issuers for two years, the SEC said. However, Goldman nonetheless participated in 30 underwritings with Massachusetts issuers and earned more than $7.5 million in fees, according to the SEC. The firm failed to properly supervise Morrison or disclose the conflicts of interest, the SEC said.

“The pay-to-play rules are clear,” SEC Division of Enforcement Director Robert Khuzami said in a statement. “Municipal finance professionals that use their firm’s resources to campaign on behalf of political candidates compromise themselves and the firms that employ them.”

Goldman spokesman Michael Duvally said the firm alerted regulators after detecting Morrison's activities and fired him in December 2010. The firm has cooperated fully with the SEC’s investigation, Duvally added.

“We accept responsibility for the consequences of his unauthorized actions under the terms of the settlements announced today and are pleased to resolve these investigations,” he said.

The firm consented to the SEC's fine without admitting or denying the allegations.

According to the SEC, Morrison helped Cahill's campaign by drafting speeches, speaking with reporters, approving personnel decisions and interviewing at least one applicant to be the candidate's running mate. Morrison sometimes cited his campaign work while soliciting underwriting business on Goldman's behalf "to curry favor during the selection process," the SEC said in a statement outlining the case.

Morrison also sent several emails to a deputy treasurer in Cahill's office, suggesting a pay-to-play arrangement was in effect, the SEC said.

"From my standpoint as an advisor/consultant/friend I am saying, PLEASE don't give these [underwriter] slots away willy-nilly," Morrison wrote in one email, according to the agency. "You are in the fight of your lives and need to reward loyalty and encourage friendship."

"If people aren't willing to be creative with their support then they shouldn't expect business," Morrison added, according to the SEC. "This has to be a political decision."

Besides working for Cahill, Morrison also made monetary contributions by giving cash to a friend who then wrote a check to the campaign, the SEC said.

In another email to a Cahill aide, Morrison allegedly wrote: "I am staying in banking and don't want a story that says that I am helping Cahill, who is giving me banking business. If that came out, I'm sure I wouldn't get any more business."

Goldman is no stranger to landmark SEC fines. In July 2010, the agency levied a then-record $550 million penalty over allegations Goldman misled investors into buying subprime mortgage products just before the housing market tanked.

Goldman is represented by Andrew Frackman, Vasu Muthyala, Jackie Roeder and Janna Rearick of O'Melveny & Myers LLP. Morrison is represented by Thomas Kiley of Cosgrove Eisenberg & Kiley PC.

The administrative cases are In the Matter of Goldman Sachs & Co., proceeding number 3-15048, and In the Matter of Neil M.M. Morrison, proceeding number 3-15049, both before the U.S. Securities and Exchange Commission.

--Editing by Eydie Cubarrubia.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NEW YORK REPUBLICAN STATE COMMITTEE, *et al.*, Plaintiffs, v. SECURITIES AND EXCHANGE COMMISSION, Defendant.	Civil Action No. 14-01345 Judge Beryl A. Howell

MEMORANDUM OPINION

The New York Republican State Committee and the Tennessee Republican Party seek declaratory and injunctive relief invalidating and enjoining the defendant, the Securities and Exchange Commission ("SEC" or "Commission"), from enforcing an SEC regulation, which was adopted over four years ago and codified at 17 C.F.R. § 275.206(4)–5 (the "Challenged Rule"). Compl. ¶ 2, ECF No. 1.[1] The Commission counters that this case "was filed in the wrong court at the wrong time by the wrong plaintiff," Def.'s Opp'n Mot. Prelim. Inj. at 1 ("Def.'s Opp'n), ECF No. 18, and should be dismissed for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). Def.'s Mot. Dismiss, ECF No. 10. The

[1] As explained in Part I.C., *infra*, in addition to the Challenged Rule, the Complaint expressly targets two other SEC regulations for invalidation as part of what the plaintiffs define as the SEC's "Political Contribution Rule": 17 C.F.R. §§ 275.204–2 and 275.206(4) –3 . *See* Compl. ¶ 2 ("Through this action, Plaintiffs challenge the lawfulness of the SEC's 'Political Contribution Rule,' 17 C.F.R. §§ 275.204–2; 275.206(4) –3; and 275.206(4) –5"); *id*. ¶ 63 ("The Political Contribution Rule is unlawful and violates the APA . . . ."); *id*. ¶ 91 ("The Political Contribution Rule creates different contribution limits based upon the speaker's identity, in violation of the First Amendment."); Prayer for Relief ("Plaintiffs respectfully pray for . . . an order and judgment declaring that the SEC's Political Contribution Rule violates the APA . . . [and] violates the First Amendment."). The plaintiffs' Motion for Preliminary Injunction also sought to invalidate the same three rules. *See* Pls.' Mot. Prelim. Inj., ECF No. 7 ("Plaintiffs New York Republican State Committee and Tennessee Republican Party . . . hereby move for a preliminary injunction in this case invalidating and enjoining enforcement of 17 C.F.R. §§ 275.204–2; 275.206(4) –3; and 275.206(4) –5 . . . ."). Nevertheless, the plaintiffs subsequently limited their challenge to only one SEC regulation, namely 17 C.F.R. § 275.206(4)–5.

Court agrees with the Commission: The plaintiffs have failed to meet their burden in establishing subject matter jurisdiction because this Court is not the proper forum for their challenge.

I. BACKGROUND

The Investment Advisers Act of 1940, 15 U.S.C. § 80b, *et seq.*, makes it unlawful "for any investment adviser . . . directly or indirectly . . . to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative." 15 U.S.C. § 80b-6. Under the Act, the Commission has the authority to promulgate "rules and regulations . . . reasonably designed to prevent such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative." *Id.* § 80b-6(4). Invoking this authority in 2010, the SEC adopted the Challenged Rule, which prohibits a registered investment adviser from providing investment advisory services for compensation to a government entity within two years after making a contribution to certain officials of the government entity. *See* 17 C.F.R. § 275.206(4)-5. The rule targets "pay-to-play" activities, whereby investment advisers "seek to influence government officials' awards of advisory contracts by making or soliciting political contributions to those officials . . . ." *See* Political Contributions by Certain Investment Advisers, 75 Fed. Reg. 41018 (July 14, 2010).

A. Adoption of the Challenged Rule

As of 2010, public pension plans totaled $2.6 trillion in assets and represented roughly one-third of all U.S. pension assets. *See id*. Government officials are responsible for holding and managing these assets and, in many instances, are responsible for selecting private investment advisers to manage a pension plan's portfolio of assets. *Id.* at 41018–19. A spate of investigations and prosecutions over the past decade revealed the reality of abusive pay-to-play activities in the selection and retention of pension plan investment advisers. *Id.* at 41019 nn.18–

25. For example, in New York, an investment management firm seeking to win investment business from the New York State Common Retirement Fund paid "kickbacks" to advisers of the New York State Comptroller in order to secure the business. *See id.* at 41019 n.18, 20 (referencing *SEC v. Morris, et al*., No. 09-cv-02518 (S.D.N.Y.)).

The Commission concluded, in light of this and other similar scandals, that "the selection of advisers . . . has been influenced by political contributions" to the government officials responsible for selection.[2] 75 Fed. Reg. at 41019. The Commission identified two problems with such influence. First, distorted selection procedures increase the likelihood that less qualified investment advisers are selected (thereby resulting in lower fund performance) and that these advisers charge higher fees (thereby resulting in a higher cost to the public). *Id.* Second, investment advisers who "seek to influence the award of advisory contracts . . . compromise their fiduciary obligations . . . and defraud prospective clients." *Id.* at 41022. In sum, pay-to-play practices "distort the process by which investment advisers are selected," and therefore create "a conflict of interest between the adviser (whose interest is in being selected) and [the] prospective client (whose interest is in obtaining the best possible management service)." *Id.* As a result, pay-to-play practices are "inconsistent with the high standards of ethical conduct required of fiduciaries under the Advisers Act." *Id.*[3]

Accordingly, on July 14, 2010, the SEC adopted the Challenged Rule, which seeks to limit pay-to-play activity by, among other things, prohibiting investment advisers from receiving

[2] The Commission attempted to address this problem in 1999, when the SEC first proposed a rule prohibiting investment advisers from receiving compensation for investment advisory services for a two year period after making a contribution to certain elected officials or candidates. *See Political Contributions by Certain Investment Advisers*, 64 Fed. Reg. 43,556 (proposed Aug. 10, 1999). A final rule was not issued, but the effort was revived in 2009.

[3] Just prior to the Challenged Rule's adoption, Chairwoman Mary Schapiro remarked that "Pay to play practices are corrupt and corrupting. They run counter to the fiduciary principles by which funds held in trust should be managed." Mary L. Schapiro, *Speech by SEC Chairman: Opening Statement at the SEC Open Meeting* (June 30, 2010), available at http://www.sec.gov/news/speech/2010/spch063010mls.htm.

compensation for work provided to a government entity when the investment adviser, or certain covered associates, provided a contribution to certain officials of that entity. The rule was "in the nature of [a] conflict of interest limitation[]" so as to regulate the fiduciary obligations of investment advisers. *Id.* at 41023. The Commission determined that a prophylactic rule was necessary in this instance because "pay to play practices are rarely explicit and often hard to prove." *Id.* at 41022. Moreover, the Commission determined that collective action problems surrounding pay-to-play activities lessened the likelihood of a private solution as both political candidates and investment advisers have an incentive to participate in the system. *Id.*

The Commission explicitly modeled the Challenged Rule on Rule G-37, adopted by the Municipal Securities Rulemaking Board in 1994, and approved by the SEC, which imposed a "two-year timeout" for municipal securities dealers who contributed to an official of a municipal securities bond issuer. *See id.* at 41020; *see also* 59 Fed. Reg. 17621 (April 13, 1994). During a "two-year timeout," a municipal securities dealer is barred from engaging in municipal securities business with an issuer if the dealer, or certain related parties, previously contributed to certain officials of such issuer.[4] The Commission believed that Rule G-37 "significantly curbed pay to play practices in the municipal securities market." 75 Fed. Reg. at 41020. Additionally, the Commission borrowed Rule G-37's timeout approach because the D.C. Circuit had previously upheld Rule G-37 against a First Amendment challenge, *see Blount v. SEC*, 61 F.3d 938 (D.C. Cir. 1995). 75 Fed. Reg. at 41023 ("[T]he *Blount* opinion has served as an important guidepost in helping us shape our rule.").

[4] The Challenged Rule differs from Rule G-37, in that an investment adviser is not barred from providing services to a government entity following a contribution to an official of that entity; rather, an investment adviser is barred from receiving compensation for the provision of services but can otherwise still provide services. *See* 17 C.F.R. 275.206(4)-5.

B. Requirements of the Challenged Rule

The Challenged Rule makes it unlawful "for any investment adviser registered . . . with the Commission . . . to provide investment advisory services for compensation to a government entity within two years after a contribution to an official of the government entity is made by the investment adviser or any covered associate of the investment adviser . . . ." 17 C.F.R. § 275.206(4)-5. Other provisions in the same Challenged Rule seek to prevent circumvention of this primary prohibition. Specifically, in addition to being unable to make the contribution directly, an investment adviser may not: (1) coordinate and solicit contributions to an official of a government entity to which the adviser provides or seeks to provide services or to a state political party where the adviser seeks to provide services, *id.* § 275.206(4)-5(a)(2)(ii); (2) pay third parties to solicit government entities unless those third parties are "regulated person[s]", *see id.* § 275.206(4)-5(a)(2)(i); or (3) do "anything indirectly which, if done directly, would" violate the rule, *id.* § 275.206(4)-5(d). The rule provides several exceptions, including a "de minimis exception," which permits contributions by covered associates to candidates of up to $350 (if the covered associate is eligible to vote for the candidate) or $150 (if the covered associate is ineligible to vote for the candidate). *Id.* § 275.206(4)-5(b)(1). The Commission was urged to adopt higher contribution limits, but declined because "[t]he $1,000 amount suggested by some commenters strikes us as a rather large contribution that could influence the hiring decision[.]" 75 Fed. Reg. at 41035.

Additional regulations, which were also initially targeted for invalidation by the plaintiffs in their Complaint, require investment advisers to "make and keep true, accurate and current . . . books and records" relating to their business, including political contributions by certain employees to a government official, entity, state political party, or political action committee, 17

C.F.R. § 275.204-2(a)(18)(i)(C), and restrict the ability of investment advisers to retain certain solicitors to assist in solicitation activities, *id.* § 275.206(4)-3.

C. The Plaintiffs' Legal Challenge

The plaintiffs, the New York Republican State Committee and the Tennessee Republican Party, have state and local officeholders running, or considering running, for federal office. *See* Declaration of Jason Weingartner ¶¶ 7–8, Pls.' Mem. Prelim. Inj., Ex. A. ECF No. 7-2 ("Weingartner Decl."); Declaration of Frederick Brent Leatherwood ¶¶ 7–8, Pls.' Mem. Prelim. Inj., Ex. B., ECF No. 7-3 ("Leatherwood Decl."). The New York Republican State Committee asserts that the Challenged Rule harms one if its members, State Senator Lee Zeldin, a candidate for the U.S. House of Representatives. Weingartner Decl. ¶ 7. As part of the plaintiffs' operations, the plaintiffs have encountered "potential donors who have declined to contribute" to certain federal candidates or have otherwise "limited their contributions to certain candidates" because of the Challenged Rule. Weingartner Decl. ¶ 10; Leatherwood Decl. ¶ 10. Likewise, "donors and potential donors" have either limited or refrained from making contributions to the state party because of the Challenged Rule. Weingartner Decl. ¶ 9; Leatherwood Decl. ¶ 9. The Complaint and the plaintiffs' initial declarations fail to identify either the names or occupations of any such donors, and also fail to allege any specific facts evidencing a decline in contributions to either individual candidates or to the state parties over the course of the four years that the Challenged Rule has been in effect.

On August 8, 2014, the plaintiffs filed a Motion for Preliminary Injunction seeking to invalidate the Challenged Rule (and the two additional rules identified in the Complaint at ¶2) and to enjoin their enforcement as applied to federal campaign contributions. *See* Pls.' Mot. Prelim. Inj., ECF No. 7. Specifically, the plaintiffs "challenge the lawfulness of the SEC's

'Political Contribution Rule,' 17 C.F.R. §§ 275.204-2; 275.206(4)-3; and 275.206(4)-5 . . . ." Compl. ¶ 2. The plaintiffs allege that the Challenged Rule, and the two other rules, "harm Plaintiffs by restricting their ability to fundraise, harm their members by restricting those members' ability to make political contributions, and harm Plaintiffs' members who are or who may become candidates for elected office." Compl. ¶ 40. As noted, although both the Complaint and the Motion for Preliminary Injunction identified three regulations, 17 C.F.R. §§ 275.204-2; 275.206(4)-3; and 275.206(4)-5, as the regulations targeted for invalidation in this lawsuit, plaintiffs' counsel clarified during the hearing on the plaintiffs' motion for a preliminary injunction that the plaintiffs only seek to enjoin 17 C.F.R. § 275.206(4)-5 as it relates to state officials running for federal office. *See* Tr. of Hearing at 6:3–6 (Sept. 12, 2014) (hereinafter "PI Hearing") ("What we're challenging is the limitation on individuals and their ability to make contributions to candidates who run for federal office . . . ."); *see also* PI Hearing 7:5–9 (clarifying in response to questioning by the Court regarding 17 C.F.R. § 275.204-2, that "if the Court invalidates the limitations on the contributions and the SEC still wants to require them to maintain records of contributions, I don't know that we're challenging that here."); PI Hearing 7:12–18 (responding to Court's question regarding whether the plaintiffs were challenging "the cash payments for client solicitations at [17 C.F.R.] 275.206(4)-3," plaintiffs' counsel stated "No."); PI Hearing 10:6–24.

Less than a week later, on August 13, 2014, the Commission filed a motion to dismiss for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1).[5] *See* Def.'s Mot. Dismiss, ECF No. 10. Thus, pending before the Court are two motions, which

[5] The Commission also sought to stay consideration of the plaintiffs' preliminary injunction motion pending resolution of the jurisdictional question but this request is denied as moot.

together raise threshold issues about whether this Court has subject matter jurisdiction to hear this case and whether the plaintiffs have standing to bring it.

II. LEGAL STANDARD

"'Federal courts are courts of limited jurisdiction,' possessing 'only that power authorized by Constitution and statute.'" *Gunn v. Minton*, 133 S. Ct. 1059, 1064 (2013) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)). Indeed, federal courts are "forbidden . . . from acting beyond our authority," *NetworkIP, LLC v. FCC*, 548 F.3d 116, 120 (D.C. Cir. 2008), and, therefore, have "an affirmative obligation 'to consider whether the constitutional and statutory authority exist for us to hear each dispute.'" *James Madison Ltd. by Hecht v. Ludwig*, 82 F.3d 1085, 1092 (D.C. Cir. 1996) (quoting *Herbert v. Nat'l Acad. of Sciences*, 974 F.2d 192, 196 (D.C. Cir. 1992)). Absent subject matter jurisdiction over a case, the court must dismiss it. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 506-07 (2006); FED. R. CIV. P. 12(h)(3).

When considering a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1), the court must accept as true all uncontroverted material factual allegations contained in the complaint and "'construe the complaint liberally, granting plaintiff the benefit of all inferences that can be derived from the facts alleged' . . . and upon such facts determine jurisdictional questions." *Am. Nat'l Ins. Co. v. FDIC*, 642 F.3d 1137, 1139 (D.C. Cir. 2011) (quoting *Thomas v. Principi*, 394 F.3d 970, 972 (D.C. Cir. 2005)). The court need not accept inferences drawn by the plaintiff, however, if those inferences are unsupported by facts alleged in the complaint or amount merely to legal conclusions. *See Browning v. Clinton*, 292 F.3d 235, 242 (D.C. Cir. 2002). Moreover, in evaluating subject matter jurisdiction, the court, when necessary, may "'undertake an independent investigation to assure itself of its own subject matter jurisdiction,'"

Settles v. United States Parole Comm'n, 429 F.3d 1098, 1107-1108 (D.C. Cir. 2005)(quoting *Haase v. Sessions*, 835 F.2d 902, 908 (D.C. Cir. 1987)), and "consider[] facts developed in the record beyond the complaint," *id.* *See also Herbert*, 974 F.2d at 197 (in disposing of motion to dismiss for lack of subject matter jurisdiction, "where necessary, the court may consider the complaint supplemented by undisputed facts evidenced in the record, or the complaint supplemented by undisputed facts plus the court's resolution of disputed facts."); *Alliance for Democracy v. FEC*, 362 F. Supp. 2d 138, 142 (D.D.C. 2005). The burden of establishing any jurisdictional facts to support the exercise of the subject matter jurisdiction rests on the plaintiff. *See Hertz Corp. v. Friend*, 559 U.S. 77, 96-97 (2010); *Thomson v. Gaskill*, 315 U.S. 442, 446 (1942); *Moms Against Mercury v. FDA*, 483 F.3d 824, 828 (D.C. Cir. 2007).

III. DISCUSSION

The Commission challenges the Court's jurisdiction to hear, and the plaintiffs' standing to bring, the present case. For the reasons stated below, this Court lacks subject matter jurisdiction to entertain the suit as judicial review of the Challenged Rule lies exclusively in the Court of Appeals. Thus, the Court need not reach the alternative threshold issue raised by the Commission about whether the plaintiffs have failed to establish standing to bring the present case.[6] *See Moms Against Mercury v. Food & Drug Admin.*, 483 F.3d 824, 826 (D.C. Cir. 2007)

[6] The Commission vigorously contests the plaintiffs' standing to bring this suit and, indeed, the plaintiffs' initial pleadings and declarations offered scant facts in support of their alleged standing. Since the plaintiffs, as political parties, are not the target of the Challenged Rule, their original standing theory suffered a central difficulty: The plaintiffs' standing relied entirely upon the independent actions of third parties not before the Court —*i.e.*, investment advisers. "When redress depends on the cooperation of a third party, 'it becomes the burden of the [party asserting standing] *to adduce facts* showing that those choices have been or will be made in such manner as to produce causation and permit redressability of injury.'" *U.S. Ecology v. Dep't of Interior*, 231 F.3d 20, 24–25 (D.C. Cir. 2000) (emphasis added) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 562 (1992)). Yet the plaintiffs offered no facts evidencing that, absent the Challenged Rule, investment advisers would take the necessary actions to ameliorate the plaintiffs' alleged injuries. The Court may not assume hypothetical facts to confer standing. As the Supreme Court explained, "[s]tanding . . . is not an ingenious academic exercise in the conceivable . . . [but] requires . . . a factual showing of perceptible harm." *Summers v. Earth Island Inst.*, 555 U.S. 488, 499 (2009) (internal quotation marks omitted, alterations in original). In this sense, the plaintiffs' initial affidavits failed. The plaintiffs did not: identify specific members harmed by the rules, *see Am. Chemistry Council v. Dep't of Transp.*, 468 F.3d

("Where both standing and subject matter jurisdiction are at issue, however, a court may inquire into either and, finding it lacking, dismiss the matter without reaching the other." (citing *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 584 (1999))).

A. The Court Lacks Subject Matter Jurisdiction

"In this circuit, the normal default rule is that persons seeking review of agency action go first to district court rather than to a court of appeals." *Am. Petroleum Inst. v. SEC*, 714 F.3d 1329, 1332 (D.C. Cir. 2013) (quoting *Nat'l Auto. Dealers Ass'n v. FTC*, 670 F.3d 268, 270 (D.C. Cir. 2012)). "Initial review occurs at the appellate level only when a direct-review statute specifically gives the court of appeals subject-matter jurisdiction to directly review agency

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810, 820 (D.C. Cir. 2006) ("[A]n organization bringing a claim based on associational standing must show that at least one specifically-identified member has suffered an injury-in-fact."); submit evidence that but for the Challenged Rule the third parties would have taken the steps desired by plaintiffs, *Crete Carrier Corp. v. EPA*, 363 F.3d 490, 494 (D.C. Cir. 2004) ("Speculative and unsupported assumptions regarding the future actions of third-party market participants are insufficient to establish Article III standing."); or demonstrate that a ruling by this Court would redress the claimed injuries, *Klamath Water v. Federal Energy Regulatory Commission*, 534 F.3d 735, 739 (D.C. Cir. 2008) ("In a case like this, in which relief for the petitioner depends on actions by a third party not before the court, the petitioner must demonstrate that a favorable decision would create 'a significant increase in the likelihood that the plaintiff would obtain relief that directly redresses the injury suffered.'" (quoting *Utah v. Evans*, 536 U.S. 452, 464 (2002))).

To cure these deficiencies, the plaintiffs first asked this Court to "assume" certain facts necessary for the plaintiffs to establish standing. *See* PI Hearing at 25:6–10. Finally, on September 17, 2014, *after* briefing on this issue was fully ripe, *after* supplementing their affidavits in their reply briefing, and *after* the hearing on the plaintiffs' motion for preliminary injunction, the plaintiffs belatedly sought leave to file a supplemental declaration from Tennessee State Senator Jim Tracy, Pls.' Mot. Leave to File Decl. of Tenn. State Sen. Jim Tracy, ECF No. 26, which the Court granted, Minute Order, September 17, 2014. Although the Court need not and does not decide the issue, the plaintiffs' supplemental filing buttresses the Tennessee Republican Party's standing. Senator Tracy's declaration avers specific facts evidencing an injury-in-fact, caused by the Challenged Rule, and capable of redress by the Court. Specifically, the Challenged Rule subjects Senator Tracy (a member of the Tennessee Republic Party and candidate in the Republican Primary for Tennessee's Fourth Congressional District) to a different contribution limit than his opponent, who was not a covered official under the Challenged Rule and who therefore may receive donations from investment advisers free of the Challenged Rule's restrictions. Additionally, the declaration identifies specific *de minimis* contributions made to Senator Tracy's campaign, in addition to contributions returned to covered associates by Senator Tracy, so as not to trigger the restrictions imposed by the Challenged Rule. The declaration even avers facts evidencing the potential harm to Senator Tracy from the reduced contributions (an electoral defeat by a scant 38 votes out of 77,504 votes cast). *See* Tracy Decl. ¶ 11. The Commission counters that Senator Tracy is not a covered official under the regulation regardless of the subjective views of Senator Tracy and his campaign supporters. Although Senator Tracy's supporters may have limited their contributions for fear of his possible status as a covered official under the Challenged Rule, "[a]llegations of subjective 'chill' are not . . . adequate" to confer standing. *See United Presbyterian Church in the U.S.A. v. Reagan*, 738 F.2d 1375, 1379 (D.C. Cir. 1984) (Scalia, J.) (alterations in original) (quoting *Laird v. Tatum*, 408 U.S. 1, 13–14 (1972)). Accordingly, whether the plaintiffs have standing to bring this case remains in doubt even in light of the plaintiffs' supplemental filings.

action." *Watts v. SEC*, 482 F.3d 501, 505 (D.C. Cir. 2007). In this case, the Commission asserts that Section 213 of the Investment Advisers Act, codified at 15 U.S.C. § 80b-13(a), strips this Court of jurisdiction and vests review exclusively in the Court of Appeals. *See* Def.'s Mot. Dismiss at 4 ("This Court lacks subject matter jurisdiction because jurisdiction to review Commission rules promulgated under the Advisers Act is committed exclusively to the court of appeals.").

Section 213 provides that "[a]ny person or party aggrieved *by an order* issued by the Commission under this subchapter may obtain a review *of such order* . . . in the United States Court of Appeals for the District of Columbia," by filing a petition within sixty days of the Commission's order. 15 U.S.C. § 80b-13(a) (emphasis added). Upon filing of the administrative record, "such court shall have jurisdiction, which . . . shall be exclusive, to affirm, modify, or set aside such order, in whole or in part." *Id.* Section 213 does not expressly address the review of "rules" promulgated by the Commission under the Investment Advisers Act. The Commission does not dispute that the Challenged Rule is in fact a "rule" and not an "order." *See* Def.'s Reply in Support of Mot. Dismiss at 2, ECF No. 24 ("[T]he Commission does not dispute that the pay-to-play rule is a rule."). Jurisdiction in the instant case, therefore, hinges on the interpretation of the word "order" in 15 U.S.C. § 80b-13(a) and whether it encompasses rules, such that jurisdiction for this case vests exclusively in the Court of Appeals. The parties have not cited, and indeed the Court has not discovered, any opinion interpreting "order" for purposes of Section 213 of the Investment Advisers Act.

The Commission contends that under *Investment Company Institute v. Board of Governors of the Federal Reserve System*, 551 F.2d 1270, 1278 (D.C. Cir. 1977), "[t]he term 'order' . . . encompasses rules." Def.'s Mem. Mot. Dismiss at 5. In *Investment Company*

Institute, the D.C. Circuit interpreted Section 9 of the Bank Holding Act, which also vests jurisdiction of "orders" in the Court of Appeals, and held that "the purposes underlying Section 9 will best be served if 'order' is interpreted to mean *any agency action* capable of review on the basis of the administrative record," including rules and regulations. *Inv. Co. Inst.* at 1278 (emphasis added). *Investment Company Institute* stated that it is the "record for review and not the holding of a quasi-judicial hearing which is . . . the jurisdictional touchstone." 551 F.2d at 1277. In making this determination, *Investment Company Institute* acknowledged that certain non-jurisdictional provisions of the Bank Holding Act specifically referenced "order or regulation," which suggested a "narrower meaning" of the word "order." *Id.* *Investment Company Institute* also recognized that the APA defined "'order' as 'the whole or a part of a final disposition . . . of an agency in a matter *other than rulemaking* . . . ." *Id.* at 1278 (emphasis added). Nevertheless, the Court determined that "the word 'order' has several frequently utilized meanings which vary in scope, and . . . that different sections of the same statute might use the word in different ways." *Id.*

In the decades since *Investment Company Institute*, despite the "clear distinction between the terms 'rule' and 'order,'" it is now "pretty much settled" that "a court of appeals [may] exercise statutory jurisdiction in a pre-enforcement review of rules where the statutory language refers only to 'orders.'" *See* Charles A. Wright & Charles H. Koch, Jr., 33 Federal Practice & Proc. Judicial Review § 8299 (1st ed.). Indeed, the D.C. Circuit has exercised direct-review jurisdiction of agency rules promulgated under the Investment Advisers Act and other statutes containing nearly identical direct appellate review authority—without jurisdictional explanation—in numerous cases since *Investment Company Institute*. *See Fin. Planning Ass'n v. SEC*, 482 F.3d 481 (D.C. Cir. 2007) (Investment Advisers Act); *Goldstein v. SEC*, 451 F.3d 873

(D.C. Cir. 2006) (Investment Advisers Act); *Chamber of Commerce of the United States v. SEC*, 443 F.3d 890 (D.C. Cir. 2006) (Investment Company Act); *Am. Equity Inv. Life Ins. Co. v. SEC*, 613 F.3d 166 (D.C. Cir. 2010) (Securities Act). In *Goldstein v. SEC*, 451 F.3d 873 (D.C. Cir. 2006), the D.C. Circuit entertained a challenge to an SEC rule promulgated pursuant to the Investment Advisers Act. The petitioners' opening brief described the parties' confusion regarding jurisdiction, noting that Section 213 provides only for review of "orders" and not "rules" and that no court had interpreted Section 213 in the context of a pre-enforcement review of a rule promulgated under the Investment Advisers Act.[7] *See* Petitioner's Opening Brief, *Goldstein v. SEC*, No. 04-1434 (D.C. Cir. June 23, 2005). Fully aware of the potential jurisdictional pitfalls, the D.C. Circuit still heard the case and never remarked on the issue of subject matter jurisdiction. Since each court has an affirmative obligation to satisfy itself of jurisdiction, *Goldstein v. SEC* strongly suggests that jurisdiction to review rules promulgated under the Investment Advisers Act vests exclusively in the Court of Appeals.

In sum, *Investment Company Institute* remains binding precedent and mandates that Section 213, 15 U.S.C. §80b-13(a), be construed to require direct appeal to a Court of Appeals. Accordingly, this Court lacks subject matter jurisdiction to hear the plaintiffs' challenge.

B. Issues in Application of *Investment Company Institute*

Although *Investment Company Institute* defined "order" to encompass "rules" for purposes of a direct review statute, the Court recognizes the multiple difficulties, including those pointed out by the plaintiffs, in applying *Investment Company Institute* to the present case. Nevertheless, these difficulties do not overcome the fundamental principle of *stare decisis*.

[7] The parties in *Goldstein* filed suit in both the district court and the D.C. Circuit in order to preserve their rights. The district court stayed proceedings pending a ruling by the D.C. Circuit. *See* Order, Goldstein, et al. v. SEC, No. 04-cv-2216, ECF No. 5. Following the D.C. Circuit's decision, *see* 451 F.3d 873 (D.C. Cir. 2006), the parties voluntarily dismissed the district court proceeding. *See* Notice of Voluntary Dismissal, No. 04-cv-2216, ECF No. 7.

Brooks v. Grundmann, 748 F.3d 1273, 1279 (D.C. Cir. 2014) ("'The doctrine of *stare decisis* compels district courts to adhere to a decision of the Court of Appeals of their Circuit until such time as the Court of Appeals or the Supreme Court of the United States sees fit to overrule the decision.'" (quoting *Owens-Ill., Inc. v. Aetna Cas. & Sur. Co.*, 597 F. Supp. 1515, 1520 (D.D.C. 1984))). First, under black letter administrative law an "order" is plainly not a "rule." Indeed, the distinction between "rules" and "orders" is the "dichotomy upon which the most significant portions of the APA are based." *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 216 (1988) (Scalia, J. concurring); *see also Ala. Power Co. v. FERC*, 160 F.3d 7, 11 n.5 (D.C. Cir. 1988) ("The APA establishes a distinction between rulemaking . . . and adjudication . . . ."). Moreover, as the D.C. Circuit recognized with respect to a different statute, "[t]he obvious difficulty with the government's position is that [the] provision putting exclusive review jurisdiction in the Court of Appeals speaks of orders, but Congress in passing the APA drew a distinction between orders, which typically follow adjudications, and regulations." *Nat'l Min. Ass'n v. Dep't of Labor*, 292 F.3d 849, 856 (D.C. Cir. 2002).[8] Notwithstanding the ordinary distinction in meaning between "orders" and "rules" in construing a review statute, the decision in *Investment Company Institute* was premised primarily upon a policy determination: "If the administrative record forms the basis for review, requiring petitioners challenging regulations to go first to the district court results in unnecessary delay and expense, . . . and undesirable bifurcation of the reviewing function between the district courts and the courts of appeals." 551 F.2d at 1276 (internal citations omitted). Yet, the Supreme Court has cautioned that, even in the context of

[8] The D.C. Circuit determined that jurisdiction was not exclusive to the Court of Appeals in *National Mineral Association* based in part upon the distinction between "rules" and "orders." The Court drew the distinction, however, only because other language within the statute at issue "ma[d]e rather clear that . . . Congress used the term 'order' to refer to an adjudicatory compensation order, not the promulgation of a regulation . . . ." *Nat. Min. Ass'n*., 292 F.3d 856; *see also* 33 U.S.C. § 921 (entitled "Review of Compensation Orders"). Notably, neither the Court nor the parties in that case referenced *Investment Company Institute*. *See id.*

administrative law, "[w]hether initial subject-matter jurisdiction lies initially in the courts of appeals must of course be governed by the intent of Congress and not by any views we may have about sound policy." *Florida Power & Light Co. v. Lorion*, 470 U.S. 729, 746 (1985); *see also Am. Petroleum Inst. v. SEC*, 714 F.3d 1329, 1336 (D.C. Cir. 2013) (same).

Second, by interpreting "order" to include rulemaking, Section 213 provides for a different meaning of the word "order" based upon the statutory section, since applying this same interpretation uniformly would render whole clauses within the statute superfluous. *See*, *e.g.*, 15 U.S.C. § 80b-11 ("The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the functions and powers conferred upon the Commission elsewhere in this subchapter."); s*ee also Erlenbaugh v. United States*, 409 U.S. 239, 243 (1972) ("[A] legislative body generally uses a particular word with a consistent meaning in a given context."); *Powerex Corp. v. Reliant Energy Servs., Inc*., 551 U.S. 224, 232, (2007) ("A standard principle of statutory construction provides that identical words and phrases within the same statute should normally be given the same meaning.").

Third, such an interpretation appears to strip jurisdiction from *any court* to hear pre-enforcement constitutional challenges to SEC rules filed after sixty days from the issuance of the rule.[9] *See* 15 U.S.C. § 80b-13 ("Any person or party aggrieved by an order issued by the Commission under this subchapter may obtain a review of such order in the United States court of appeals . . . , by filing in such court, *within sixty days* after the entry of such order, a written

[9] Although, the Section 213 uses the permissive "may" rather than the directive "shall," the D.C. Circuit has made clear that such language provides the Court of Appeals with exclusive jurisdiction. *Telecomm. Research & Action Ctr. v. Fed. Commc'n Comm'n,* 750 F.2d 70, 75 (D.C. Cir. 1984) ("[W]here a statute commits review of agency action to the Court of Appeals, any suit seeking relief that might affect the Circuit Court's future jurisdiction is subject to the *exclusive* review of the Court of Appeals."); *see also Wagner v. Fed. Election Comm'n*, 717 F.3d 1007, 1012 (D.C. Cir. 2013) ("Congress sometimes includes the word 'exclusive' to make clear that a particular statute confers exclusive jurisdiction. But the Congress also deploys 'may' as a verbal auxiliary in many statutes the courts have interpreted to confer exclusive jurisdiction.").

petition . . . .") (emphasis added). This raises grave constitutional concerns. "There may well be limits as to how severely Congress can restrict the route to judicial review of constitutional challenges when it keeps that route partially open." *Am. Coal. For Competitive Trade v. Clinton*, 128 F.3d 761, 765–66 (D.C. Cir. 1997). By the terms of Section 213, after sixty days, no court may exercise pre-enforcement jurisdiction over a constitutional challenge to an SEC rule, which is problematic in situations, like the present, where subsequent Supreme Court jurisprudence calls into question the constitutionality of the challenged rule. The SEC attempts to forestall such concerns by permitting the plaintiffs, and other similarly situated parties, to petition the SEC to amend the rule. Should the SEC reject the proposed amendment, a new sixty day clock would start within which period the party could file for review in the appropriate Court of Appeals. *See* PI Hearing 40:22–41:11; *see also Inv. Co. Inst.*, 551 F.2d at 1281 ("For example, if a regulation does not become ripe for review within 30 days, an aggrieved party can wait until sufficient information as to the regulation's concrete effect is available, petition the Board for reconsideration of the regulation on the basis of the new information, and seek review of the Board's decision in this court."); 5 U.S.C. § 553(e) ("Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.").

Fourth, the D.C. Circuit has subsequently undermined the basis for the decision in *Investment Company Institute*. While *Investment Company Institute* declined to incorporate the APA definition of order into the direct review statute, the D.C. Circuit has since instructed courts to "look to the Administrative Procedure Act . . . when an agency's direct-review statute [does] not define 'order.'" *Watts*, 482 F.3d 501, 505 (D.C. Cir. 2007) (citing *APCC Servs., Inc. v. Sprint Communic'ns Co.*, 418 F.3d 1238, 1249 (D.C. Cir. 2005)). As noted, under the APA, an "'order' means the whole or a part of a final disposition, whether affirmative, negative,

injunctive, or declaratory in form, of an agency in a matter *other than rule making* . . . ." 5 U.S.C.A. § 551(6) (emphasis added). The *Watts* framework would seem to require this Court to exercise jurisdiction over the present case, but *Watts* did not cite to or discuss the holding of *Investment Company Institute.*

Where two D.C. Circuit decisions seemingly conflict, the District Court must still attempt to harmonize the decisions. *See Maxwell v. Snow*, 409 F.3d 354, 358 (D.C. Cir. 2005) (discussing need to read cases in "harmony" because the D.C. Circuit "is bound to follow circuit precedent until it is overruled either by an *en banc* court or the Supreme Court") (citing *Brewster v. Commissioner*, 607 F.2d 1369, 1373 (D.C. Cir. 1979)). The *Watts* court addressed the issue whether an "SEC decision not to authorize its employees to give deposition testimony in response to [a] third-party subpoena" constituted an "order" as "used in Section 9 of the Securities Act and Section 25 of the Exchange Act." 482 F.3d at 505-06. *Watts* held that "a government agency's decision to assert privilege or otherwise not to comply with a subpoena in ongoing civil litigation . . . is simply an ordinary litigation decision, not an agency's 'final disposition'" and was therefore not subject to direct appellate review. *Id.* at 506. A decision to the contrary, the *Watts* court reasoned, would "frustrate the traditional role of district courts in resolving discovery disputes" and would create a "bifurcated procedure" for review, permitting review of certain discovery matters in the Court of Appeals while the underlying litigation simultaneously "chugged along in the district court." *Id.* Such a result would be "cumbersome, duplicative, and ultimately nonsensical." *Id.* The plaintiffs' legal challenge in the instant case concerns not a discovery dispute but a constitutional challenge to a final agency rule. Direct review in the Court of Appeals would not be "cumbersome, duplicative, and ultimately nonsensical," *see id.*, but would instead permit the parties to "avoid[] an unnecessary layer of

judicial review," *see Inv. Co. Inst.*, 551 F.2d at 322. Thus, although *Watts* applied a different framework for resolving the definition of "order"—by looking to the APA—the policy justifications regarding efficient judicial review animating the result in *Watts* are consistent with the justifications relied upon in *Investment Company Institute*, and favor direct appellate review in the instant case.

Finally, interpreting "orders" to mean both "orders" and "rules" creates the anomalous result seen in *American Petroleum Institute. v. SEC*, 714 F.3d 1329 (D.C. Cir. 2013). *American Petroleum Institute* concerned a challenge under Section 25 of the Exchange Act. Like Section 213 of the Investment Advisers Act, Section 25(a) provided for appellate review of SEC "orders." Unlike Section 213 of the Investment Advisers Act, however, Section 25(b) specifically provided for agency review of certain, but not all, "rules" promulgated under the Exchange Act. The D.C. Circuit declined to apply the *Investment Company Institute* framework, reasoning that "applying *Investment Company Institute* to Section 25 would render Section 25(b) superfluous since all Commission rules would be reviewable in this court under Section 25(a)." [10] *Id.* at 1333. Thus, in statutes where Congress explicitly provides for appellate review of only certain agency rules, as in Section 25(b) of the Exchange Act, Congress in effect strips the appellate court of jurisdiction to review directly all remaining agency rules even if not enumerated in the statute. *Id.* What appears to be an affirmative grant of appellate jurisdiction to review agency rules becomes, in reality, an affirmative revocation of jurisdiction to review all agency rules not otherwise enumerated in the direct review statute.

[10] On this point, *American Petroleum Institute's* reasoning is ironic, as *Investment Company Institute* explicitly recognized that its interpretation resulted in superfluous language. *See Inv. Co. Inst.*, 551 F.2d at 1278 (determining that "the word 'order' has several frequently utilized meanings which vary in scope" and that require "different sections of the same statute [to] use the word in different ways" in order to avoid superfluous language).

Accordingly, the plaintiffs' reliance on *American Petroleum Institute* is inapposite. *American Petroleum Institute* did not overturn or even cabin the default rule announced in *Investment Company Institute*. Rather, *American Petroleum Institute* determined that Congress could override the *Investment Company Institute* presumption by providing for explicit review of certain agency rules, thereby rendering district court review appropriate for all remaining rules. While this creates an anomalous result, the decision does not relieve this Court from binding precedent nor mandate a different result in the present case.

Both parties argue at length regarding the inferences to be drawn from these anomalous results and from the history surrounding *Investment Company Institute* and *American Petroleum Institute*. The plaintiffs argue that Section 25(b) of the Exchange Act demonstrates that Congress knows how to provide for direct appellate review of agency rules and that its failure to provide for direct review in the Investment Advisers Act means that jurisdiction lies in the district court. Pls.' Opp'n Def.'s Mot. Dismiss or Stay, at 11, ECF No. 20. The Commission notes that Section 25(b) was drafted prior to *Investment Company Institute*, which established a new default rule that "orders" includes agency "rules." According to the Commission, Congress has not altered the language of the Investment Advisers Act because it was satisfied that *Investment Company Institute* established direct appellate review of agency rules. Def.'s Reply in Support of Mot. Dismiss, at 7 n.1, ECF No. 24. In the end, both parties rely too heavily on inferences drawn from congressional silence. *See Michigan v. Bay Mills Indian Cmty.*, 134 S.Ct. 2024, 2052 (2014) ("[A]rgument from legislative inaction is unavailing. As a practical matter, it is 'impossible to assert with any degree of assurance that congressional failure to act represents affirmative congressional approval of' one of this Court's decisions.'" (quoting *Patterson v. McLean Credit Union*, 491 U.S. 164, 175 n.1 (1989) (internal quotation marks and citation

omitted)); *Kimbrough v. United States*, 552 U.S. 85, 103 (2007) ("[W]e decline to read any implicit directive into . . . congressional silence."); *Brown v. Gardner*, 513 U.S. 115, 121 (1994) ("[C]ongressional silence lacks persuasive significance" (internal quotation marks omitted)); *Girouard v. United States*, 328 U.S. 61, 69 (1946) ("It is at best treacherous to find in congressional silence alone the adoption of a controlling rule of law."); *Helvering v. Hallock*, 309 U.S. 106, 121 (1940) ("[W]e walk on quicksand when we try to find in the absence of corrective legislation a controlling legal principle.").

***

The Court is cognizant that the holding of *Investment Company Institute* produces curious results but that case remains binding precedent in this Circuit and on this Court.[11] This case must therefore be dismissed for want of subject matter jurisdiction.[12]

IV. CONCLUSION

The Court holds that Section 213 of the Investment Advisers Act strips this Court of jurisdiction to hear the pending challenge to the SEC's rule, 17 C.F.R. § 275.206(4)–5, regulating pay-to-play activity by investment advisers. Accordingly, the Commission's motion to dismiss for lack of subject matter jurisdiction is granted.[13] The plaintiffs' motion for a preliminary injunction is denied as moot.

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[11] The plaintiffs make one last argument in passing, claiming that even if *Investment Company Institute* remains binding on the Court, the administrative record in this case is not sufficient to permit judicial review, at least as to the plaintiffs' First Amendment claim. *See* Pls.' Opp'n Mot. Dismiss at 12. Yet, during the hearing on the plaintiffs' motion for preliminary injunction, counsel conceded that discovery was likely unnecessary. *See* PI Hearing at 16:11–17:2 (clarifying in response to questioning by the Court that "I don't think [discovery is] necessary to resolve the case, but if the Court finds it's necessary or the plaintiffs or the defendants seek it, you know, there is some limited discovery that could be helpful to the Court."). Moreover, in *Blount v. SEC*, the D.C. Circuit considered a first amendment challenge to a nearly identical rule based solely on the administrative record. 61 F.3d 938 (D.C. Cir. 1995).

[12] While the Court might ordinarily transfer the case to the Court of Appeals, both parties in this case agree that the case should be dismissed rather than transferred. *See* Pls.' Opp'n at 18 n.4; Def.'s Mem. Mot. Dismiss at 7–8.

[13] As noted, *supra* note 5, the Commission also requested a stay of the plaintiffs' preliminary injunction motion pending resolution of the jurisdictional questions, which request is denied as moot.

The case is dismissed.

An appropriate Order accompanies this opinion.

Date: September 30, 2014

_____
BERYL A. HOWELL
United States District Judge

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14-1194 **September Term, 2014**

SEC-75FR41018
1:14-cv-01345-BAH

Filed On: March 10, 2015 [1541470]

New York Republican State Committee and
Tennessee Republican Party,

Petitioners

v.

Securities and Exchange Commission,

Respondent

Consolidated with 14-5242

O R D E R

It is **ORDERED**, on the court's own motion, that the following times are allotted for the oral argument of this case scheduled for March 23, 2015, at 9:30 A.M.:

Petitioners	-	15 Minutes
Respondent	-	15 Minutes

One counsel per side to argue. The panel considering this case will consist of Circuit Judges Tatel and Pillard, and Senior Circuit Judge Edwards.

Form 72, which may be accessed through the link on this order, must be completed and returned to the Clerk's Office by March 16, 2015.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Michael C. McGrail
Deputy Clerk

The following forms and notices are available on the Court's website:

Notification to the Court from Attorney Intending to Present Argument (Form 72)