

## PROPOSED REGULATORY ACTION BY CALPERS

### *Add 2. Cal. Code Regs. Section 557. External Investment Resource Conflict of Interest*

#### (a) Definitions:

1. *Conflict of Interest.* Conflict of Interest or Conflict means those circumstances that create the significant likelihood for the External Investment Resource to be unable to provide unbiased information, advice, or services to CalPERS. A Conflict may arise from activities and interests of the External Investment Resource, the Key Personnel of the External Investment Resource, or the Key Personnel's spouse, domestic partner, child or sibling.
2. *Consultant.* Consultant refers to individuals or firms, and includes Key Personnel of Consultant firms, who are contractually retained by CalPERS to provide investment advice to CalPERS but who do not exercise investment discretion.
3. *Disclosable Interest.* Disclosable Interest is any interest or circumstance that may give rise to an actual, potential or perceived Conflict.
4. *External Investment Resource.* Any Consultant, External Manager or other entity which provides any investment management or investment advisory services related to the administration of CalPERS investment programs. An External Investment Resource does not include a general consultant who provides strategic planning, project management or general administrative or operational services unrelated to specific investment transactions or decisions.
5. *External Manager.* External Manager means either of the following:
  - (A) A Person who is seeking to be, or is, retained by CalPERS 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.

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

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.
7. *Key Personnel.* Persons who will exercise a significant role in providing to CalPERS the services required under an assignment or contract.
8. *Staff.* Staff refers to CalPERS Investment Office staff.

(b) The disclosure responsibilities of External Investment Resources are:

1. Identify in writing the circumstances and nature of all Disclosable Interests and respond to any follow-up requests by Staff within 15 business days. In the event that the External Investment Resource is required to file a Form ADV, the External Investment Resource may provide the Form ADV to CalPERS as its initial disclosure document required by this regulation.
2. Provide sufficiently specific facts relating to its business practices so that Staff, and if appropriate the CalPERS Legal Office, can analyze each Disclosable Interest as set forth below in subsection (c)6, including but not limited to:
  - a. The circumstances and nature of all Disclosable Interests that exist pertinent to the specific assignment, recommendation, advice or other service.
  - b. Whether and under what circumstances the Disclosable Interest is likely to give rise to a Conflict.
  - c. A description of how the External Investment Resource has or intends to manage the circumstances of the Disclosable Interest in order to prevent the Disclosable Interest from resulting in a Conflict.

The disclosures required under this subsection must be made prior to the time the External Investment Resource provides the services that give rise to the Disclosable Interest, and annually, thereafter.

3. Once a Disclosable Interest has been made, the External Investment Resource shall update CalPERS within 15 business days in writing of any changes in circumstances that affect the Disclosable Interest.
4. In following this regulation, External Investment Resources are to consider the spirit as well as the literal expression of this regulation, by taking ongoing responsibility for scrutinizing their activities and transactions for Disclosable Interests and making appropriate disclosures. In cases where the External Investment Resource is unsure whether a Disclosable Interest exists, the situation or circumstances should be disclosed.

(c) Staff is responsible for the following:

1. Review all Disclosable Interests provided by External Investment Resources as set forth in Section (b) above.
2. Provide to the Committee no less than annually a summary of any actions taken by Staff to address the Disclosable Interests (including decisions not to take any actions).
3. Incorporating and including a copy of this regulation as an attachment to all Requests for Proposals and State of California Standard Agreements (“STD 213 Agreements”) between CalPERS and each External Investment Resource.
4. To the extent that the agreement outlining the services to be provided by the External Investment Resource is not a STD 213 Agreement, notifying the External Investment Resource of its obligation to provide these disclosures as set forth in Section (b) above.
5. Staff shall review all information presented by each External Investment Resource in accordance with Section (b) above and may request additional information.
6. Staff, and if appropriate the CalPERS Legal Office, will analyze each Disclosable Interest to determine:
  - a. Whether a Conflict currently exists, in which case, the assignment will be precluded;

- b. If a Conflict does not currently exist, how likely it is that the Disclosable Interest will in the future give rise to a Conflict; and,
- c. If a Conflict does not currently exist, whether there are any ways of handling or managing the circumstances of the Disclosable Interest in order to prevent the Disclosable Interest from resulting in a Conflict in the future. In addition, Staff will analyze on a case-by-case basis whether the Disclosable Interest is of a level of severity (either by itself or in combination with other Disclosable Interests) which warrants consideration or action by the Committee. Otherwise, Staff will instruct the External Investment Resource of any additional action it deems necessary or appropriate to mitigate or manage the Disclosable Interest so that it does not give rise to a Conflict.