

# MEMORANDUM #34, 2011

Commonwealth of Massachusetts | Public Employee Retirement Administration Commission  
Five Middlesex Avenue, Suite 304, Somerville, MA 02145  
Ph 617 666 4446 | Fax 617 628 4002 | TTY 617 591 8917 | www.mass.gov/perac

Domenic J. F. Russo, *Chairman*

*Auditor* Suzanne M. Bump | Alan Macdonald | James M. Machado | Donald R. Marquis | Robert B. McCarthy |  
Gregory R. Mennis

Joseph E. Connarton, *Executive Director*

## MEMORANDUM

TO: All Retirement Boards  
FROM: Joseph E. Connarton, Executive Director  
RE: Placement Agent Policy  
DATE: November 30, 2011

The Public Employee Retirement Administration Commission (PERAC) is implementing the attached Policy which sets forth disclosure requirements regarding “placement agents” that act as a “finder, solicitor, marketer, consultant, broker or other intermediary in relation to the investment of assets of Massachusetts public pension systems, including any person or entity which provides proactive consultant services concerning the changing political and policy environment in New England and nationally as it relates to retirement plans, notwithstanding the description of such services as informational consulting services only not involving the referral of investment advisory services”. PERAC adopted this Policy following a Public Hearing and is taking this action in the wake of the approval of Pension Reform legislation which has altered the Commission’s approach to establishment of revised Investment Regulations.

The Commission will develop and forward appropriate forms regarding the requirements set forth in the Policy to the boards prior to January 1, 2012.

Pursuant to that policy boards and managers must meet the following requirements or take the following actions:

### Manager Responsibilities

Each manager is responsible for providing the following information to the board and PERAC in conjunction with responding to an RFP or solicitation, commencing discussions relative to amending an agreement between the manager and the board or entering into a discussion, other than informal general discussions, that may lead to any of the above referenced actions:

- a. a statement whether the manager or any principal, employee, agent or affiliate has compensated or agreed to compensate, directly or indirectly any person or entity to act as a placement agent in connection with investment by the Massachusetts public pension systems;
- b. 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 member of a retirement board, employee or consultant or immediate family of such a person that fact should be specifically noted;

- c. a description of any and all compensation of any kind provided or agreed to be provided to a placement agent and/or entity acting as a placement agent in connection with investment by Massachusetts' public pension systems, including the nature, timing and value thereof;
- d. a description of the services to be performed by the placement agent and/or entity acting as a placement agent and a statement as to whether the placement agent is used by the manager with all prospective clients or only a subset of clients or only Massachusetts public pension fund clients;
- e. a written copy of any and all agreements between the manager and the placement agent and/or entity acting as a placement agent in connection with investment by Massachusetts' public pension systems;
- f. in the event that any current or former Massachusetts public pension system board members, employees, consultants or other service providers have suggested the retention of the placement agent, the names of any current or former Massachusetts public pension system board members, employees, consultants or other service providers who suggested the retention of the placement agent;
- g. a statement that the placement agent has a minimum of three years experience in the investment field; and,
- h. a statement that the placement agent and/or entity acting as a placement agent is registered with the Securities and Exchange Commission or the Financial Industry Regulatory Authority, or, if appropriate, the Commodity Futures Trading Commission and the details of such registration.

### Board Responsibilities

The retirement board is responsible for providing the following to managers and prospective managers:

- a. a copy of this policy and appropriate PERAC forms as part of the selection process for investment or engagement;
- b. a copy of this policy and appropriate PERAC forms at the time discussions are initiated with respect to amendment of agreements or other actions noted above;
- c. reviewing placement agent and/or entity acting as a placement agent information disclosures, in detail, as part of the due diligence process;
- d. compiling an annual report containing the names and amount of compensation agreed to be provided to each placement agent and/or entity acting as a placement agent by each manager as reported in the placement agent information disclosures and disclosing the report to the public by posting on the board website and/or posting in a readily accessible site at the retirement board offices;
- e. reporting to PERAC any material violations of this policy as soon as practicable after discovery of such violations.

The policy provides for penalties for violation of the policy as follows:

### Penalties

PERAC shall withhold regulatory approvals and acknowledgments if:

- a. the placement agent and/or entity acting as a placement agent information disclosure or other information reveals that the placement agent and/or entity acting as a placement agent that the manager has used is not registered with the Securities and Exchange Commission or the Financial Industry Regulatory Authority or, if appropriate, the Commodity Futures Trading Commission; and,
- b. the placement agent and/or entity acting as a placement agent information disclosure or other information reveals that the placement agent does not possess three years experience in the investment field.

PERAC shall prohibit any manager or placement agent from soliciting new investments from any retirement board for a period to be determined by the Commission after the manager or placement agent has committed a material violation of this regulation.

In addition the policy requires that all contracts with investment managers contain the following terms:

### Contract Terms

-  
Each contract and amendment to an existing contract as of January 1, 2012 shall secure the agreement of the manager in the final written agreement between the board and the manager to provide the board with the following remedies in the event the manager knew or should have known of any material inaccuracy or omission in the placement agent information disclosure or any other violation of this policy:

- a. whichever is greater, the reimbursement of any management or advisory fees paid by the board 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 board investment;
- b. the authority to immediately terminate the investment management contract or other agreement with the manager without penalty, to withdraw without penalty from a limited partnership, limited liability company or other investment vehicle, or 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; and,
- c. provisions requiring the manager to annually inform PERAC and the board of any arrangements in oral or in writing, for compensation or other benefit received or expected to be received by the manager or a related person from others in connection with the managers' services to the board or any other client, provisions requiring the manager to annually disclose to PERAC and the retirement board any compensation, in whatever form, paid or expected to be paid, directly or indirectly, by the manager or a related person to others in relation to the managers' services to the board or any other client, and provisions requiring the manager to annually disclose to PERAC and the board in writing any conflict of interest the manager may have that could reasonably be expected to impair the manager's ability to render unbiased and objective services to the board.

Each contract and amendment to an existing contract as of January 1, 2012 shall secure the agreement of the manager in the final written agreement between the board and the manager that the manager shall be solely responsible for, and the board shall not pay (directly or indirectly), any fees, compensation or expenses for any placement agent used by the manager.

### Campaign Contributions

-  
In addition the policy requires the reporting of Campaign Contributions made to candidates for retirement board

membership:

- Candidates for board membership shall disclose to the board and the Commission the names of those who have contributed that are active in the investment field, including placement agents, and the amounts of campaign contributions made to the candidate relating to the member's campaign as Treasurer, if applicable, or his campaign to become a member of the board.

#### Effective Date

- This policy applies to all agreements with managers entered into after January 1, 2012 or agreements to amend existing agreements made after that date (including by vote, consent or waiver by limited partners/investors or a subset of the limited partners/investors or separate side agreement or agreement to amend a side agreement) to continue, terminate or extend the term of the agreement or investment period, increase the commitment of funds by the pension system or increase or accelerate the fees or compensation payable to the manager.

[Attachment: PERAC Placement Agents Policy](#)