

# How to Review Vendor Disclosures

## MACRS

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# Who Files Annual Disclosure Forms?

- Annual disclosure requirements must be filed by “all investment service providers”
  - managers,
  - partnerships,
  - trusts,
  - custodians,
  - consultants,
  - proxy services,
  - securities litigation services and
  - services related to the financial information (cash books, pooled fund statements, Annual Statements)

# When Does an Investment Service Provider File?

- On or before January 1 of each year
- As part of the RFP process

# What Does an Investment Service Provider Need to Disclose?

- Disclosure of compensation paid
- Disclosure of compensation received
- Disclosure of any conflict of interest

# Disclosures Of Compensation Paid

## – Chapter 32, Section 23B(k)(1)(d)

- Under Section 23B the contractor must:  
“...annually disclose to the commission and the retirement board compensation, in whatever form, paid or expected to be paid, directly or indirectly, by the contractor or a related person to others in relation to the contractors services to the retirement board or any other client;”

# Annual Disclosure of Compensation

## Paid as Required by G.L. c.32 §23 and §23B

I publicly disclose the following facts:

Recipient of Compensation	Form of Compensation	Value of Compensation

(Attach additional pages if necessary)

# Disclosures Of Compensation Received

## – Chapter 32, Section 23B(k)(1)(c)

- Under Section 23B the contractor must:  
“...annually inform the commission and the board of any arrangements in oral or in writing, for compensation or other benefit received or expected to be received by the contractor or a related person from others in connection with the contractor’s services to the retirement board or any other client.”

# Annual Disclosure of Compensation Received as Required by G.L c.32 §23 and §23B

I publicly disclose the following facts:

Source of Compensation	Form of Compensation	Value of Compensation

(Attach additional pages if necessary)



# **Disclosures/Conflict of Interest**

## **– Chapter 32, Section 23B(k)(1)(e)**

- the statute requires that contractors disclose to:  
“the commission and the retirement board in writing any conflict of interest the contractor may have that could reasonably be expected to impair the contractor’s ability to render unbiased and objective services to the retirement board.”

## **Disclosure of Conflict of Interest as Required by G.L.C.32 §23 and §23B**

I publicly disclose the following facts:

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(Attach additional pages if necessary)

## “...any other client...”

- PERAC believes that the statute did not intend that every possible arrangement relating to all public, private and individual clients of a contractor be disclosed.
- The statutory requirement to disclose the noted compensation “... in relation to the contractors services to ... any other client” can be met by disclosing such compensation in connection with the investment service being provided to the other clients in the same product or for the same service in which the retirement board is investing.
- For example, if the retirement board is investing in Venture Capital Limited Partnership V, compensation paid in relation to the retirement boards’ investment and the investment of others in that partnership must be disclosed.
- The identity of the other client need not be disclosed.

# **“...compensation, in whatever form...”**

- The statute requires that “...compensation, in whatever form...” be disclosed.
- There exist many forms of compensation that may take place in relation to investment activities.
- For example, directing brokerage to a particular broker must be disclosed, purchase of services from a consultant to a retirement board as well as payment for attending consultant conferences must be disclosed.
- It should be noted that the types of compensation provided in this context have evolved and new mechanisms for providing compensation have developed.
- Recently some managers have initiated compensation in the form of political and/or charitable contributions made in response to requests by potential or existing investors or their representatives.

## **“...directly or indirectly...”**

- This phrase establishes the responsibility for the service provider to disclose payments that are made to all parties in connection with the services to the retirement board.
- In the case of a third party marketer or placement agent the direct payment may be made to one firm or individual and that firm or person makes payments to other parties.
- For example, manager X retains placement agent Y in connection with the solicitation of prospective investors. Placement agent Y pays party Z in connection with that solicitation. A similar situation arises if manager X has a relationship with broker Y and broker Y pays third party Z from commissions received as a result of manager X's trading for the retirement board account.
- Disclosure must be made of all arrangements that result in any compensation to any party in connection with the services provided to the retirement board.

## **“...in relation to the contractors’ services to the retirement board or any other client.”**

- The phrase “...in relation to the contractors’ services to the retirement board or any other client...” covers circumstances that are broader than payments for marketing or to placement agents.
- Clearly it encompasses the political/charitable contributions.
- In addition, it includes payments in the course of performing services, for example, legal fees associated with the services being provided, as well as other ancillary matters.

# “...related person”

- In addition the statute uses the term “related person”.
- The Commission interprets that phrase in a manner that is generally consistent with the definitions included in the SEC ADV Glossary of Terms.
- Applying that here results in a “related person” being any affiliate or any person that is under common control with the contractor.
- “Control” means the power, directly or indirectly, to direct the management or policies of a person whether through ownership of securities, by contract or otherwise.
- In short, the wisest course for a vendor and the surest way to meet the statutory requirement is to maximize disclosure even in instances in which the vendor may be uncertain as to applicability.

## **Failure to Comply under Chapter 32, Section 23B(d)**

- The statute provides that “...Failure to file disclosures or the filing of inaccurate disclosures shall subject the contractor to proceedings under section 21A.”
- Section 21A provides that contractors may be debarred from doing business with Massachusetts pension funds.