

MEMORANDUM

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: Public Records Law Side Letter Provisions

DATE: July 24, 2018

During the course of the last several years retirement boards have increased their involvement with various investment vehicles structured as limited partnerships, group trusts, collective investment trusts, and similar non-traditional vehicles other than a separate account. Statutory and regulatory provisions mandate that the relationship between a retirement board and an investment service provider be governed by some terms that are outside the agreement between the parties (for example the fiduciary and disclosure provisions of Section 23B). Retirement boards assure that these provisions are met by agreeing to “side letters” with the investment service provider.

Massachusetts law also contains provisions outside Chapter 32 that apply to retirement boards. One of the most important of these items is the Public Records Law (see Chapter 4, Section 7 and Chapter 66 of the General Laws).

In reviewing the documents setting forth the terms and conditions applicable to the above referenced investment relationships, we have seen an increase in provisions that conflict with the statutory requirements of the Public Records Law. In order to clarify that the Public Records law supersedes any such terms, it is recommended that retirement boards include in a side letter relative to any such commitment language reflecting that fact. The following sample may be helpful.

Public Records Law

The General Partner acknowledges that the _____ is subject to state laws, including, without limitation, the Public Records Law (Law), which requires that public records that



MEMORANDUM - Page Two

TO: All Retirement Boards
FROM: Joseph E. Connarton, Executive Director
RE: Public Records Law Side Letter Provisions
DATE: July 25, 2018

fail to meet any of the enumerated exemptions in the Law be made available upon request to the public, and that in such capacity _____, must disclose any information required by the Law. The General Partner confirms that disclosure of any information required by the Public Records Law shall not be considered as a breach of /or default by the _____ under the Partnership Agreement, the Subscription Agreement, this Letter Agreement or any other documents to which the Investor is a party. Neither the General Partner, the Manager, nor the Fund shall make any claim against the _____ if the _____, in good faith, reasonably determines it is required by Public Records Law to disclose or make available to the public any report, notice or other information the _____ receives.

If you have any questions or comments please contact Derek Moitoso, Compliance Counsel at (617) 666 – 4446 ext. 909.