

PERAC

PERAC Memo # 11 / 2018

COMMONWEALTH OF MASSACHUSETTS | PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION

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MEMORANDUM

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: Investment Related Issues and Concerns

DATE: January 31, 2018

The Public Employee Retirement Administration Commission (“PERAC”) is issuing this Memo to provide retirement boards with a review of several investment related issues and concerns.

Limit on Contract Length

As you know, the original limit on the time frame for contracts set forth in Section 23B was expanded from five years to seven years by Chapter 46 of the Acts of 2015. That period is now coming to an end and boards should review the existing time frames for contracts and institute a program to conduct and complete searches before the new deadline. April 2019 will mark the outer limit for existing relationships as seven years will have elapsed since the effective date of Chapter 176 of the Acts of 2011.

SEC Vendor Disclosures

Pursuant to Section 23B of Chapter 32 of the General Laws, investment service providers to retirement boards must provide the board with Vendor Disclosures as part of the RFP process and each year during a contractual relationship. In the former case, the board submits these disclosures to PERAC as part of the Acknowledgement Process.

In the event that a vendor has a relationship with another person in connection with offering its services, disclosures must be made directly to the board in accordance with Rule 206(4)-3(b) of the Investment Advisers Act of 1940. In addition, that Rule mandates that any person that has such a relationship with a vendor make disclosures to the retirement board regarding any relationship with another person to assist that person in fulfilling the duties provided to the vendor.



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In conjunction with reviewing the Vendor Disclosures, as part of the Acknowledgement Process, the Commission must be able to review any such disclosures. Consequently, copies of such disclosures must be submitted to the Commission by the board for review prior to the issuance of any Acknowledgement. Submission can take place as an attachment in the PROSPER system. Boards should also review those submissions as part of the RFP process.

For more details as well as examples of the SEC Solicitor Written Disclosure Statement and Acknowledgement and the SEC Solicitor Written Disclosure Statement and Acknowledgement – Sub-Solicitor please see PERAC Memo #29/2017.

Annual Disclosure Reviews

Investment service providers have been submitting Annual Vendor Disclosures to retirement boards and PERAC for several years. The Commission reminds retirement boards that, in order to protect against future controversy and to comply with fiduciary duty, boards must formally acknowledge receipt of and review these disclosures at a board meeting. In addition, the review process must be reflected in the minutes. This will assure that a record exists of the retirement board assessing the disclosures and protect the board from criticism and/or litigation.

Accounting

Consistent with the need to insure accurate recordkeeping by retirement boards, PERAC has made several revisions to its accounting procedures that will be applicable beginning in calendar 2018. These include accounting for fees paid in conjunction with investment activity as well as the tracking of “carried interest”, “catch up payments” and “ancillary expenses” related to private equity, hedge fund, real estate, and similar investment vehicles.

Retirement boards are also reminded of their duty to submit complete and accurate cash books to PERAC on a timely basis. Accounting standards require that transactions be accurately identified and properly classified. The parties to whom payments are made, or from whom payments are received, must be identified and all transactions must be classified in the proper account.

Investment Objectives/Asset Allocation

Retirement boards that are investing assets themselves should, with the assistance of their consultant, review and if necessary, revise investment objectives, asset allocation, and investment plans each year. These documents should be submitted to PERAC annually. Generally, that submission can take place through filing the relevant information from the consultant report electronically.

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There has been some confusion as to how to accomplish this review for systems that are invested in the Pension Reserves Investment Trust (“PRIT”) Fund or have committed assets to an Outsourced Chief Investment Officer (“OCIO”) strategy.

In the case of PRIT systems, a board “participating” in PRIT effectively adopts the PRIT investment objectives, asset allocation, and investment plan when it transfers assets to PRIT. It is suggested that “participating” systems also conduct periodic reviews of PRIT’s approach to these matters.

However, a retirement board that has “purchased shares” of the PRIT Fund and committed all of its assets to various sleeves of PRIT, must adopt investment objectives as well as asset allocation and investment plans. Thus, in that circumstance, the annual review noted above must be conducted.

Similarly, in the case of retirement boards that have committed all or nearly all assets to an OCIO strategy, the board must adopt and annually review and submit investment objectives, asset allocations, and investment plans.

Competitive Process

The competitive process, mandated by Section 23B and the fiduciary duty owed by the retirement board to system members and beneficiaries, requires that Requests for Proposals (“RFP”) and notices relative to the search ensure the broadest response from potential service providers possible. Restrictions on participation, such as not accepting submissions from service providers that are not active in the Massachusetts public pension fund arena, violate that statute and that duty. Points may be awarded for such experience in grading the responses, however, that criteria must not be a barrier to entry.

Reports

Submission of and/or access to manager, consultant, and custodian reports is critical to the analysis that PERAC conducts to assess board activities. Please be advised that a change in staff at the board does not necessitate the reauthorization of PERAC access or the redirection of the manager, consultant, or custodian to submit the information to PERAC.

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SEC Registration

A retirement board that seeks to invest funds with an entity that is not registered with the Securities and Exchange Commission (“SEC”) or, if applicable, the Massachusetts Office of the Secretary of State (“SOS”) will not receive an Acknowledgement Letter from the Commission and therefore may not make such an investment as the Commission has made a determination that it is in the best interest of the retirement system to withhold the Acknowledgement in circumstances in which a retirement board seeks to invest with a non-registered entity.

Those investment advisers who do not qualify for SEC registration are required to register with the SOS.

Fees

In order to assist the retirement boards in assessing fees related to investment service providers we have attached “Best Practice – Investment Fee Policies for Retirement Systems”. Please review this document and consider adopting these recommendations.

Attachment