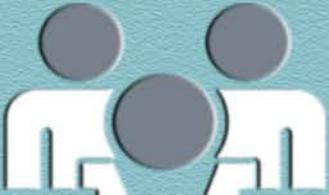


EMERGING  
ISSUES  
**FORUM**

A stylized logo consisting of three grey human figures. The two outer figures are smaller and stand on either side of a larger central figure. The figures are composed of simple geometric shapes: circles for heads and rectangular blocks for bodies.

# An Overview of PERAC Disclosures

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September 12, 2013

# Chapter 32, Section 23B Mandatory Contract Provisions

- (k)(1) In the event of a competitive process to select an investment service provider the request for proposals shall include mandatory contractual terms and conditions to be incorporated into the contract including provisions:
- (a) stating that the contractor is a fiduciary with respect to the funds which the contractor invests on behalf of the retirement board;
  - (b) stating that the contractor shall not be indemnified by the retirement board;
  - (c) requiring the contractor to 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 contractors services to the retirement board or any other client;
  - (d) requiring the contractor to 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; and
  - (e) requiring the contractor to annually 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. Other mandatory contractual terms and conditions shall address investment objectives, brokerage practices, proxy voting and tender offer exercise procedures, terms of employment and termination provisions.

# Excerpts from Memo #54, 2012

## “compensation, in whatever form”

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 vendor that provides consulting services to a retirement board as well as payment for attending conferences sponsored by such a vendor also must be disclosed (these types of arrangements are also required to be disclosed under PERAC's regulations regarding compensation as noted above). 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. Any such contributions must be disclosed.

## “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.

# Excerpts from Memo #54, 2012

## “by the contractor or a 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. Section 23B defines a “person” as “a natural person, business, partnership, corporation, union, committee, club or other organization, entity or group of individuals.” “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.

## “from others” / “to others”

[No specific guidance.]

## “in relation to the contractors services to the retirement board”

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 mentioned above. 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.

# Excerpts from Memo #54, 2012

## “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. It is the position of the Commission that 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.