



STATE OF NEW MEXICO
Educational Retirement Board

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**EDUCATIONAL RETIREMENT BOARD
POLICY REGARDING PLACEMENT AGENT DISCLOSURES**

I. POLICY.

It is the policy of the Educational Retirement Board (the "ERB") to require complete and timely disclosure of all agreements or other arrangements (collectively, "agreements") regarding the actual or proposed compensation of a Placement Agent by an Investment Manager in connection with an investment of the Educational Retirement Fund (the "Fund"). This Policy is intended to:

- A. Assist the ERB in making investment decisions that are consistent with its Statement of Investment Goals, Objectives and Policies.
- B. Provide additional information to the ERB's staff and consultants for use in evaluating proposed investments and providing advice and recommendations to the ERB.
- C. Facilitate transparency regarding ERB investments.

Disclosure of the identity of third party marketers, and any fee, commission or retainer paid to a third party marketer, is required by Section 22-11-54 NMSA 1978 (Laws 2009, ch. 152, § 3), the text of which is set forth below.

- A. *The board shall not make any investment, other than investments in publicly traded equities or publicly traded fixed-income securities, unless the recipient of the investment discloses the identity of any third-party marketer who rendered services on behalf of the recipient in obtaining the investment and also discloses the amount of any fee, commission or retainer paid to the third-party marketer for the services rendered.*
- B. *Information disclosed pursuant to Subsection A of this section shall be included in the quarterly performance reports of the board.*
- C. *Any person who knowingly withholds information required by Subsection A of this section is guilty of a fourth degree felony and shall be punished by a fine of not more than twenty thousand dollars (\$20,000) or by imprisonment for a definite term not to exceed eighteen months or both.*

D. As used in this section, "third-party marketer" means a person who, on behalf of an investment fund manager or other person seeking an investment from the fund and under a written or implied agreement, receives a fee, commission or retainer for such services from the person seeking an investment from the fund.

The term "third-party marketers" used in Section 22-11-54 is incorporated in the term "Placement Agent" as used in this Policy.

It is further the Policy of the ERB that Investment Managers, as that term is used in this Policy, that enter into written or implied agreements with a Placement Agent to solicit or seek to secure an investment by the ERB of the Fund shall bear all costs and expenses associated with compensating such Agent.

The ERB has determined that the adoption of this Policy will facilitate implementation and enforcement of Section 22-11-54 and that the investment and reinvestment of the Fund pursuant to Section 22-11-13 will benefit from its adoption.

This Policy sets forth the ERB's requirements regarding disclosure of any agreements relating to compensation of a Placement Agent in connection with an investment of the Fund with an Investment Manager.

II. EFFECTIVE DATE OF POLICY; APPLICATION.

This Policy is effective upon its adoption and applies to all investments with Investment Managers made after the date of its adoption. The Policy also will apply to Investment Managers with an existing investment agreement with the ERB if, after its adoption, the agreement governing such investment is amended to extend the term of the agreement, renegotiate investment management fees, increase the ERB's investment with the Investment Manager, or change the agreement in any substantial manner. In the event of such an amendment to an existing investment agreement, this Policy will apply to the amendment and not to an original, un-amended investment agreement. Notwithstanding the foregoing, the ERB encourages Investment Managers with investment agreements that have not been amended to voluntarily comply with the terms of the Policy and disclose agreements to compensate Placement Agents if requested by the ERB staff.

This Policy does not apply to any employee of the ERB or the State of New Mexico whose responsibilities include managing investments of the Fund for the ERB.

In the event an Investment Manager is a manager of a "fund of funds", this Policy shall apply to the "fund of funds" in which an investment of the Fund is made, and not to each fund in which a "fund of funds" may invest from time to time.

III. DEFINITIONS.

A. Compensation – any fee, commission, retainer, or economic benefit, to be paid, provided, or given to a Placement Agent that is or will be paid, provided, or given by, at the direction or on behalf of, an Investment Manager.

B. Consultant – a person under contract with, or retained by, the ERB for the purpose of providing advice relating to the investment and management of the Fund or a portion thereof. The term “consultant” includes without limitation all partners, principals, and employees of the consultant, and any subcontractors to the consultant.

C. Investment Manager – an individual or entity, regardless of legal form (collectively, an “entity”), which makes or manages investments, including, without limitation, investment funds, mutual funds, “fund of funds,” private equity funds, real estate or infrastructure funds, separate accounts, closed-end investment vehicles of any type, and closely-held or non-publically traded companies or other entities, as all such terms are commonly used and understood in the investment management business. The term “investment manager” includes all individuals or entities, regardless of legal form, affiliated with an investment manager. The term “investment manager” does not include any employee of the ERB or the State of New Mexico whose responsibilities include managing investments of the Fund for the ERB.

D. Immediate Family Member - means a spouse, parent, stepparent, father- or mother-in-law, sibling, stepsibling, spouse of a sibling or stepsibling, brother- or sister-in-law, child, stepchild, grandchild, step grandchild, nephew and niece, step nephew or niece, whether related by natural birth or adoption.

E. Placement Agent – a person that contracts with, is engaged or retained by, or represents or otherwise acts on behalf of, an Investment Manager to solicit or seek to secure an investment by the ERB of the Fund, where such person is not an employee of the Investment Manager on whose behalf they are soliciting the investment and where any compensation received or that might be received by such person is conditioned in whole or in part upon the Fund making an investment with a specific Investment Manager. The term “Placement Agent” includes, any person who, on behalf of any investment fund manager or other person seeking an investment of the Fund and under a written or implied agreement, receives, or seeks to receive, a fee, commission or other retainer for such services from the person seeking an investment from the Fund, regardless of the term used to describe the individual or entity. The term “Placement Agent” includes without limitation, “marketer,” “marketing consultant,” “third party marketer,” “referral agent,” “sales agent,” “third party sales agent,” “sales consultant,” “broker,” “consultant,” “finder,” “solicitor” and such other terms as may be used from time to time to describe persons who provide the services described herein. The term “Placement Agent” also includes any person who under a written or implied agreement with a Placement Agent, subcontracts with, assists, facilitates, or otherwise aids, a Placement Agent to solicit or secure an investment by the ERB of the Fund and the provisions of this Policy apply to all such persons.

F. Person - an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

III. INVESTMENT MANAGER RESPONSIBILITIES.

Investment Managers shall comply with Section 22-11-54, this Policy and any other applicable state and federal statutes and rules and fully cooperate with the ERB and its staff to insure satisfactory compliance with such statutes, rules and this Policy. Investment Managers are required to:

A. Provide the following information (hereafter, the “Placement Agent Information Disclosure”) to ERB staff and consultants as part of a response to a request for proposals issued by the ERB, or, in the event that a request for proposals is not issued by the ERB, when discussions regarding a proposed investment of the Fund are initiated, and in any event no later than the date specified by ERB staff, which date shall be prior to the consideration of a proposed investment, by the ERB or in the case of a proposed amendment to an existing investment agreement as described in Section II (Effective Date of Policy; Application), approval of the proposed amendment:

1. A statement disclosing whether the Investment Manager’s principals, employees, agents or affiliates have compensated or agreed to compensate, directly or indirectly, any person to act as a Placement Agent in connection with investments being considered by the ERB, or previously made in the event an amendment of an existing investment agreement as described Section II.

2. A resume for each partner, principal, officers, and supervisor (collectively, “senior personnel”) employed by or affiliated with the Placement Agent detailing that individual’s education, professional designations, regulatory licenses, and investment experience. The resume should state whether that individual, or an immediate family member of the individual, is a member of the ERB, its staff or is a consultant. Senior personnel are required to have a minimum of three (3) years experience in the securities or investment management industry.

3. Copies of all writings and electronic communications, including without limitation contracts, agreements, correspondence, memorandums, and e-mails, addressing the relationship between the Investment Manager and the Placement Agent and describing any compensation provided or agreed to be provided to a Placement Agent, including the value, timing, and nature of the compensation.

4. A description of the services to be performed, or which are currently being performed by, the Placement Agent and a statement whether the Placement Agent is utilized with all prospective investors or a subset of prospective investors (e.g., public pension funds, pension funds within a certain geographic region, etc.).

5. The names of any member of the ERB Board Members, its staff or consultants who may have communicated in any form with the Investment Manager regarding retention of a Placement Agent. Such communications shall not include communications for the purpose of obtaining the disclosures required by this Policy.

6. Placement Agents must be registered with an appropriate regulatory body (e.g., SEC, FINRA, or state regulator). The Investment Manager must provide a statement that the Placement Agent (or any of its affiliates, if applicable) is registered

with one or more of the regulatory bodies and provide details of such registration, including of any disciplinary actions, fines, or suspensions of registration.

7. A statement whether the Placement Agent, or any of its affiliates, is registered as a lobbyist with any state or federal governmental body.

B. Provide updates of any changes to the information included in the Placement Agent Information Disclosure within fourteen (14) calendar days of the date that the Investment Manager knew or should have known of a change in the information originally provided.

C. Represent and warrant the accuracy of the information provided in the Placement Agent Information Disclosure in any final written agreement between the Investment Manager and ERB and agree to a continuing obligation to update such information in accordance with Section III (B).

IV. PLACEMENT AGENT RESPONSIBILITIES.

Placement Agents, including all persons who under a written or implied agreement with a Placement Agent, subcontract with, assist, facilitate, or otherwise aid, a Placement Agent to solicit or secure an investment by the ERB of the Fund, shall comply with Section 22-11-54, this Policy and any other applicable state and federal statutes and rules and fully cooperate with the ERB and its staff to insure satisfactory compliance with such statutes, rules and this Policy. Placement Agents who represent an Investment Manager in conjunction with a proposed investment of the Fund must:

A. Be registered with an appropriate regulatory or oversight body (e.g., SEC, FINRA, or state regulator), comply with all requirements of the regulatory or oversight body pertaining to such registration and the Placement Agent's activities, and maintain such registration in good standing at all times.

B. Provide the ERB and its staff, and the Investment Manager that has retained the Placement Agent notice of any alleged infractions of the regulatory or oversight body's rules, regulations, or guidelines that apply to the Placement Agent, or change in status of the Placement Agent's registration, immediately upon receipt of notice of such.

C. In all communications with members of the ERB and its staff, regardless of the location or setting in which the communication occurs, identify themselves as Placement Agents, if they have not previously done so in communications with the individual member of the ERB or staff member.

V. **ERB RESPONSIBILITIES.**

Under the direction of the ERB, staff is responsible for:

A. Providing Investment Managers with a copy of this Policy at the time that discussions are initiated with respect to a proposed investment or when discussion of the amendment of an existing investment agreement as described in Section II is initiated, regardless of which party initiates the discussion.

B. Confirming that the Placement Agent Information Disclosure has been satisfactorily completed and received prior to the completion of any due diligence and before any recommendation is made to the ERB or any of its committees or subcommittees regarding prospective investments or amendments to existing investment agreements or an amendment is approved.

C. Decline to retain or initiate an investment with an Investment Manager if the Placement Agent Information Disclosure reveals that a Placement Agent or one of the senior personnel of the Placement Agent is not registered with an appropriate regulatory body or if such registration has been suspended or revoked.

D. Securing in the final written agreement between ERB and the Investment Manager the following remedies in the event it is discovered that the Investment Manager knew or should have known about any material omission or inaccuracy in the Placement Agent Information Disclosure or any other violation of this Policy:

1. The reimbursement of the greater of any management or advisory fees for period of two years or an amount equal to the amounts paid or promised to be paid to the Placement Agent; and,

2. The authority to terminate immediately any agreement with the Investment 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 uncalled commitments to a limited partnership, limited liability company or other investment vehicle.

E. Confirming that the final written agreement between ERB and the Investment Manager states that such Manager shall be solely responsible for, and ERB shall not directly or indirectly pay or be charged with any cost or expense paid to or received by any Placement Agent.

F. Prohibiting any Investment Manager or Placement Agent from soliciting new investments from ERB for a two (2) year period after the ERB or its staff or consultants become aware of a material violation of this Policy.

G. Providing a copy of the Placement Agent Information Disclosure completed by an Investment Manager to the Board or any of its authorized committees or subcommittees whenever a decision to make a proposed investment or amendment of an existing investment agreement as set forth in Section II is presented for consideration or approval.

H. Compiling a quarterly report containing the names and amount of compensation agreed to be provided to each Placement Agent by each Investment Manager as reported in the Placement Agent Information Disclosures, and providing the report to the Board.

I. Reporting to the ERB at least quarterly any material violations of this Policy.