



Board of Retirement Regular Meeting

Sacramento County Employees' Retirement System

Agenda Item 22

MEETING DATE: January 19, 2021

SUBJECT: Board and Staff Personal Information Policy

SUBMITTED FOR: ___ Consent X Deliberation and Action ___ Receive and File

RECOMMENDATION

Staff recommends the Board adopt the proposed Board and Staff Personal Information Policy, which prohibits SCERS from agreeing, in investment contracts, to provide personal information about members of SCERS' Board of Retirement and staff.

PURPOSE

This item supports the Strategic Management Plan objectives to promote transparency, fairness, and consistent compliance with laws and regulations, and ensures effective oversight of the investment program.

DISCUSSION

When entering into private market and hedge funds as a limited partner investor, SCERS negotiates "side letter" contracts with fund managers and general partners. In those negotiations, a recurring issue is whether SCERS would agree to provide, upon the fund manager's request, personal information or personal identification documents (e.g., passports) about SCERS' staff and Board of Retirement members ("trustees"). Typically, fund counsel argue that they need SCERS' commitment in that regard to satisfy potential regulator inquiries. Regulators, as the argument goes, may require funds to provide detailed personal information about their limited partner investors pursuant to anti-money laundering and anti-terrorism laws.

Historically, SCERS has agreed to provide business contact information (including name, position, and signature samples) for certain staff members, but has refused to agree to disclose other personal information about staff and trustees. (Alternatively, SCERS has negotiated for terms and conditions that would, as a practical matter, ensure that an obligation to disclose personal information would never arise.) SCERS has taken that position for several reasons. Foremost, SCERS' trustees and staff have privacy rights protected under California law. SCERS has not obtained universal consent from its trustees and staff to release their personal information, and they may well withhold such consent if asked in the future. Relatedly, identity theft is a serious and ubiquitous problem, and SCERS' trustees and staff should not have to

expose themselves to that danger by virtue of working with SCERS. Significantly, SCERS' experience has been that its position on this issue is not a negotiation "deal-breaker" or fatal to investment opportunities. Although fund counsel raise the specter of regulator inquiry, they understand that public pension systems are highly transparent government entities, and that the identities of trustees and staff are a matter of public record. Thus, regulators investigating SCERS' legitimacy can almost certainly be placated by other, less invasive identify-establishing documents.

Although SCERS' position on this issue has not derailed any investments thus far, a written policy reflecting SCERS' position would further strengthen its negotiating hand. During negotiations, fund counsel often ask whether SCERS has a written policy setting out its position on not disclosing trustee and staff personal information. Fund counsel has indicated that such a written policy would make it easier for the fund to concede the point to SCERS, because a written policy tends to inoculate the concession from "most favored nation" treatment with respect to other investors.

The proposed policy preserves a measure of negotiating flexibility for SCERS by providing that it may agree to disclose the Chief Executive Officer's state-issued identification card (e.g., a driver's license). However, the proposed policy provides that SCERS may agree to such disclosure only under exceptional circumstances, at the Chief Executive Officer's discretion, and only if the fund would agree to various protective terms.

Prepared by:

/S/

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General Counsel

Reviewed by:

/S/

Eric Stern
Chief Executive Officer



BOARD AND STAFF PERSONAL INFORMATION POLICY

PURPOSE

The purpose of this policy is to prohibit SCERS from entering into investment contracts that would require it to disclose personal information or personal identification documents about Board of Retirement members (“trustees”) or staff.

POLICY

In entering into any investment contract (including, but not limited to, side letters with private fund general partners and managers), SCERS shall not agree to provide sensitive personal information or personal identification documents about SCERS trustees or staff – including, but not limited to, passports, driver’s licenses, or social security cards/numbers. However, SCERS may agree to provide business identification information about the Chief Executive Officer and investment staff, including their names, title/position at SCERS, business contact information, and signature samples. To this end, SCERS’ investment contracts shall include language substantially similar to the following:

To the extent that the [Counter-parties] require any Investor staff- or trustee-specific information to be delivered to it in the course of the Investor’s investment in the [Investment] (and to the extent that Investor delivers such information), they agree to (a) hold such information in the strictest confidence and prevent the release of any such information by employing all commercially reasonable efforts, and (b) jointly and severally indemnify the provider of such information for any harm that arises related to the release or unauthorized use of such information.

Notwithstanding the foregoing or anything to the contrary in the Agreement, in no event shall the Investor be required to provide any sensitive personal information or personal identification documents regarding of its staff, trustees, or consultants, including (without limitation) passports, driver’s licenses, or social security cards/numbers. However, members of the Investor’s staff directly involved in the oversight of its investment activities may be required to provide their names, positions with the Investor, signature samples, and business (but not personal) identification documents and business contact information.

Notwithstanding the above, in exceptional circumstances, and at the sole discretion of the Chief Executive Officer, SCERS may agree to provide a copy of the Chief Executive Officer’s California-issued identification card (including but not limited to a driver’s license) to satisfy a specific and final regulator demand. The foregoing sentence does not extend to any other personal identification document or any other staff member or trustee. Any agreement to

provide the Chief Executive Officer's identification card in response to a regulator demand must be accompanied by contractual protections substantially similar to the following:

Necessity/Exhaustion of Alternatives: The [Counter-parties] shall use best efforts to satisfy all applicable obligations by the submission of business contact information from individuals associated with the Investor, and without any requirement that the Investor provide the CEO's California-issued identification card ("CEO ID Card"). In addition, Investor shall not be required to provide a CEO ID Card unless (a) the [Counter-parties] have provided the Investor with an opinion of the [Counter-parties'] counsel, which is, in form and substance, acceptable to the Investor in the Investor's sole discretion, to the effect that such documentation must be provided as a result of a legal mandate and no alternative means of satisfying such mandate is available; (b) the [Counter-parties] provide the Investor with a promise, in form and substance acceptable to the Investor in its sole discretion, to make whole the persons providing such information for any losses arising directly or indirectly from any unauthorized release of or access to the CEO ID Card, which promise shall specify that the CEO is the intended third-party beneficiary thereof; and (c) if the requirement to provide the CEO ID Card arises in connection with a specific investment or investments, the Investor is given the option, to be exercised in its sole discretion, to be excluded from such investments or investments in lieu of providing the identification card.

Limits on Usage and Disclosure: The Investor agrees that the [Counter-parties] (a) may use the CEO ID Card only for the purpose of establishing and maintaining compliance with applicable laws, including but not limited to anti-money laundering and anti-terrorism and similar legislation or regulatory provisions or policies designed to comply therewith, and any other regulation, legislation or law enacted pursuant thereto, (b) may disclose the CEO ID Card on a "need to know" basis to the [Counter-parties'] officers, members, managers, partners, employees, affiliates, and professional advisors that are subject to a general duty of confidentiality or contractual confidentiality obligations in connection with the operation and affairs of the [Counter-parties], and (c) may disclose the CEO ID Card with the prior written consent of the Investor.

BACKGROUND

In the course of negotiating side letters with private fund managers and general partners, SCERS is often asked to agree to provide personal information or personal identification documents about SCERS' trustees and staff in the event of a request by a regulator. Historically, SCERS' practice has been to refuse. SCERS has taken this position due to concerns about trustee and staff privacy, their right to withhold consent, and the dangers of identity theft. In addition, SCERS' experience has been that, given its status as a public pension fund, regulators can be satisfied by with other identity-establishing documents that are less invasive. This policy formalizes SCERS' historical practice.

RESPONSIBILITIES

Executive Owner: General Counsel

POLICY HISTORY

Date	Description
01/19/2021	Staff to recommend Board approve policy.