

# Funds

## E-ALERT

May 1, 2009

### Ban on the Use of Placement Agents for Public Pension Investments

In response to the recent high-profile investigation into alleged “kickback” payments made to persons associated with the New York State Comptroller’s Office, the New York State Common Retirement Fund (“CRF”) has recently issued a written policy banning the use of placement agents in connection with investments made by CRF. CRF manages over \$120 billion in investments on behalf of New York State employees and is a significant investor in private equity and hedge funds. Pursuant to the new CRF policy, which took effect as of April 21, 2009, CRF is prohibited (directly or indirectly) from “engaging, hiring, investing with, or committing to” any outside investment manager that uses the services of a “placement agent, registered lobbyist or other intermediary” to assist the investment manager in obtaining investments by, or otherwise doing business with, the CRF, whether compensated on a flat fee, contingent fee, or any other basis. The new policy does not impact an investment manager’s ability to use a placement agent to raise capital from other investors as long as the placement agent is not involved in securing the investment by the CRF.

Compliance with the new policy is mandatory and requires an investment manager to provide a disclosure letter to New York state officials prior to an investment by CRF affirming that:

- it did not use the services of a placement agent, registered lobbyist or other intermediary to assist it in obtaining the investment by, or otherwise doing business with, CRF; and
- no benefit has been paid, given or promised to any of CRF’s consultants or advisors (including their affiliates) for the purpose of obtaining an introduction to CRF or a favorable recommendation with respect to the investment transaction.

Remedies for failing to comply with the disclosure requirements, and for material misstatements or omissions, may include termination of CRF’s obligation to make future capital contributions and, in the case of hedge funds, immediate redemption of the investment, in each case, without penalty to CRF.

The New York City pension system, which manages over \$80 billion of investments on behalf of New York City employees, has also announced its intention to adopt a ban on the use of placement agents. It is possible, if not likely, that the New York City ban will be modeled on the CRF policy. In addition, following the announcement that CRF was adopting its new policy, the Carlyle Group, one of the industry’s largest private equity firms, announced that it will no longer use placement agents in connection with investments by public pension funds into its funds.

These announcements come amid an increasing focus by lawmakers on transparency and integrity in the procurement of goods and services by state and local governments, evidenced by the adoption or strengthening of so-called “pay-to-play” laws in several states which impose disclosure requirements and limit political contributions by government contractors. Like New York’s ban on placement agents, these “pay-to-play” laws are designed to address corruption and prevent “influence peddling” by government officials.

There are also pending investigations into potential wrongdoing involving fees paid in connection with private equity investments made by the Los Angeles Department of Fire and Police Pensions and the New Mexico State Investment Council. As a result, it is possible that other state and local public pension funds will follow CRF’s lead in imposing limitations (if not outright bans) on the use of placement agents and other intermediaries in connection with public pension fund investments.

We will continue to monitor these developments, including whether additional public pension funds adopt similar or other policies relating to the use of placement agents by private equity and hedge funds.

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If you would like to better understand these new policies and the associated compliance requirements, or any related matters, please feel free to contact the following members of our private equity practice group:

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