

**TOUCHSTONE GROUP, LLC**

**MEMORANDUM**

Date: September 10, 2009

To: The Commissioners of the U.S. Securities and Exchange Commission

From: Timothy Cunningham, President, Touchstone Group, LLC

Subject: File No. S7-18-09: Political Contributions by Certain Investment Advisers

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Touchstone Group, LLC and our affiliated FINRA-registered broker-dealer, Bedminster Financial Group Ltd., provide professional placement agency and other marketing services to alternative investment advisors. All employees of Touchstone Group, LLC are registered with Bedminster Financial Group Ltd., and we adhere scrupulously to the FINRA, SEC, and various state securities laws and regulations.

The SEC file name "Political Contributions by Certain Investment Advisers" is aptly titled and well intentioned, and we applaud the SEC for its efforts to limit influence peddling. However the proposed ban on the use of placement agents by investment advisors seeking to do business with public funds as set forth in SEC Rule 206(4)-5 is wildly inappropriate and fails to address the problem it is intended to solve.

The SEC ought to take aggressive action against influence peddling and graft involving the selection of investment advisors. We strongly support a ban on campaign contributions to publicly elected officials by anyone seeking to do business with entities supervised or controlled by those same elected officials. We also strongly support the imposition of severe financial and other penalties on those who bribe institutional investor representatives or otherwise corrupt the institutional investor decision-making process.

However, it is impossible to understand how a Rule intended to eliminate influence peddling could lead to a proposed ban on the employment of placement agents. Those who would seek to corrupt the process would likely find a way to do so in spite of the proposed Rule.

In contrast to the extreme approach proposed by the Commission, we agree with the both the spirit and pragmatism embodied in the California Public Employees' Retirement System Statement of Policy for Disclosure of Placement Agent Fees dated May 8, 2009. We are attaching a copy of this policy statement (which is available online directly from CalPERS) for the Commission's review.

As a matter of law, the State of California is also taking other important and relevant steps to prevent influence peddling in the public sector investment decision-making process. In September 2009, the California Senate passed a bill (reportedly supported by CalPERS) that aimed at increasing transparency around the fees paid to placement agents doing business with public pension plans. The bill (as of the date of this memo, with the California Assembly) requires all California state and local pension funds to adopt a policy requiring the disclosure of fees paid to placement agents, campaign contributions and gifts made by placement agents to public retirement board members for the 24-month period prior to solicitation. It also prohibits public retirement board members from selling investment products to other public retirement systems, and lengthens "post-employment restrictions" for fund board members and executive officers

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who leave for the private sector, preventing them from lobbying former colleagues for business until five years after their departure.

In addition to these sorts of regulatory actions, the Commission should consider the matter of oversight of placement agents. Specifically, we support the requirement that all placement agents be registered with FINRA. As FINRA Registered Representatives, all email correspondence is monitored on a regular basis and archived by a third party permanently. This would provide a documented trail of communications between placement agents and prospective investors, and would insure that regulatory oversight was both practical and effective.

We are compelled to further note that, in our opinion, the overwhelming majority of professional placement agents serve a vital function both for their investment advisor clients and for the institutional investors they market to. The process of marketing to institutional investors is complicated and time consuming. Generally it is only the largest investment advisors who can afford to hire and maintain in-house staff to market on their behalf.

Professional placement agents usually serve smaller and medium-sized investment advisors who would not be able to market effectively without such assistance. We are extremely selective in the clients we choose to represent, and pre-qualify our clients in the effort to represent only those managers who can meet the needs of institutional investors. Ours is a labor-intensive process that requires highly specialized knowledge of not only the investment strategy, but also the unique ecology of the institutional investor world.

We routinely advise our clients on how to best position their investment strategy, design a marketing plan, identify the likely universe of investors, create offering memoranda and other marketing materials, and prepare a client for the arduous task of marketing to institutional investors.

We introduce our clients to hundreds of potential investors who might never otherwise have the opportunity to consider investing. We manage most communications with potential investors, dealing with a wide variety of institutional feedback to allow the manager to adjust to market realities. If an investor is interested in our client, we assist with the due diligence process, resolve potential issues as they arise, and help them manage the closing process.

In our experience, the services we offer are similar to other professional placement agents. We do not make campaign contributions to public officials involved in the institutional investor decision-making process. We do not bribe public officials or the staff members who serve institutional investor organizations. We do not threaten, peddle influence, or engage in any political activities in the effort to raise capital for our clients. Our employees are all FINRA-registered, and comply with all applicable federal and state laws and regulations.

We strenuously object to the imposition of a rule banning professional placement agents and believe such a rule is unfair, unwarranted, and inappropriate. Moreover, such a ban on professional placement agents would be largely irrelevant to the Commission's effort to eliminate "pay to play" and other forms of corrupt influence peddling because in our experience neither we nor other professional placement agents engage in these practices.

**CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATEMENT OF POLICY**

**FOR  
DISCLOSURE OF PLACEMENT AGENT FEES**

**May 8, 2009**

*This policy is effective immediately upon adoption. This policy is intended to supplement any applicable provisions of state or federal law.*

**I. PURPOSE**

The CalPERS Total Fund Statement of Investment Policy, adopted by the CalPERS Investment Committee ("Committee"), sets forth CalPERS overarching investment purposes and objectives with respect to all its investment programs.

This Policy sets forth the circumstances under which the California Public Employees' Retirement System ("CalPERS") shall require the disclosure of payments to Placement Agents in connection with CalPERS' investments in or through External Managers. This Policy is intended to apply broadly to all of the types of investment partners with whom CalPERS does business, including the general partners, managers, investment managers and sponsors of hedge funds, private equity funds, real estate funds and infrastructure funds, as well as investment managers retained pursuant to a contract. CalPERS adopts this Policy to require broad, timely, and updated disclosure of all Placement Agent relationships, compensation and fees. The goal of this Policy is to help ensure that CalPERS investment decisions are made solely on the merits of the investment opportunity by individuals who owe a fiduciary duty to CalPERS.

**II. STRATEGIC OBJECTIVES**

- A. Ensure that CalPERS investment decisions are consistent with The CalPERS Total Fund Statement of Investment Policy.
- B. Supplement the pool of information available to CalPERS Board Members, staff and Consultants when evaluating an investment opportunity.
- C. Prevent impropriety and the appearance of impropriety and provide transparency and confidence in CalPERS investment decision-making.

**III. APPLICATION**

This Policy applies to all agreements with External Managers that are entered into after the date this Policy is adopted. This Policy also applies to existing agreements with External Managers if, after the date this Policy is adopted, the

term of the agreement is extended, there is any increased commitment of funds by CalPERS pursuant to the existing agreement or there is an amendment to the substantive terms of an existing agreement, including the fees or compensation payable to the External Manager. Finally, this Policy is intended to apply to agreements with CalPERS Vehicle Managers as set forth in paragraph IV.D.

#### **IV. RESPONSIBILITIES**

- A. Each External Manager and CalPERS Vehicle Manager is responsible for:
1. Providing the following information (collectively, the “Placement Agent Information Disclosure”) to Staff and, if applicable, to the general partner, managing member, or investment manager of the CalPERS Vehicle (the “CalPERS Vehicle Manager”) at the time investment discussions are initiated by the External Manager or the CalPERS Vehicle Manager:
    - a. A statement whether the External Manager or the CalPERS Vehicle Manager, or any of their principals, employees, agents or affiliates has compensated or agreed to compensate, directly or indirectly, any person (whether or not employed by the External Manager or the CalPERS Vehicle Manager) or entity to act as a Placement Agent in connection with any investment by CalPERS or a CalPERS Vehicle.
    - b. A resume for each officer, partner or principal of the Placement Agent (and any employee providing similar services) detailing the person’s education, professional designations, regulatory licenses and investment and work experience. If any such person is a current or former CalPERS Board member, employee or Consultant or a member of the immediate family of any such person, this fact shall be specifically noted.
    - c. A description of any and all compensation of any kind provided or agreed to be provided to a Placement Agent, including the nature, timing and value thereof. Compensation to Placement Agents shall include compensation to third parties as well as employees of the External Manager or the CalPERS Vehicle Manager who are retained in order to solicit an investment from CalPERS or a CalPERS Vehicle or who are paid based upon investment commitments secured by such employees, except for those bona fide employees earning less than \$100,000 per year in salary that do not receive any incentive compensation based

entirely on CalPERS or the CalPERS Vehicle's decision to invest with the External Manager or, in the case of CalPERS, to invest in the CalPERS Vehicle.

- d. A description of the services to be performed by the Placement Agent and a statement as to whether the Placement Agent is utilized by the External Manager or the CalPERS Vehicle Manager with all prospective clients or only with a subset of the External Manager's or the CalPERS Vehicle Manager's prospective clients.
  - e. A copy of any and all agreements between the External Manager or the CalPERS Vehicle Manager and the Placement Agent.
  - f. The names of any current or former CalPERS Board members, employees, or Consultants who suggested the retention of the Placement Agent.
  - g. A statement whether the Placement Agent or any of its affiliates are registered with the Securities and Exchange Commission or the Financial Industry Regulatory Association or any similar regulatory agent in a country other than the United States and the details of such registration or explanation of why no registration is required.
  - h. A statement whether the Placement Agent, or any of its affiliates, is registered as a lobbyist with any state or national government.
2. Providing an update of any changes to any of the information included in the Placement Agent Information Disclosure within five business days of the occurrence of the change in information.
  3. Representing and warranting the accuracy of the information included in the Placement Agent Information Disclosure in any final written agreement with a continuing obligation to update any such information within five business days of any change in the information.
- B. CalPERS Investment Staff ("Staff") and CalPERS Vehicle Managers are responsible for all of the following:
1. Providing External Managers with a copy of this Policy at the time that due diligence in connection with a prospective investment or engagement begins.

2. Confirming that the Placement Agent Disclosure has been received prior to the completion of due diligence and any recommendation to proceed with the engagement of the External Manager or the decision to make any investment.
3. For new contracts and amendments to contracts existing as of the date of this Policy, securing the agreement of the External Manager in the final written agreement between CalPERS or the CalPERS Vehicle and the External Manager to provide CalPERS or the CalPERS Vehicle the following remedies in the event that there was or is a material omission or inaccuracy in the Placement Agent Information Disclosure or any other violation of this Policy:
  - a. Whichever is greater, the reimbursement of any management or advisory fees for two years or an amount equal to the amounts paid or promised to be paid to the Placement Agent; and
  - b. The authority to terminate immediately the investment management contract or other agreement with the External Manager without penalty, to withdraw without penalty from the limited partnership, limited liability company or other investment vehicle, or to cease making further capital contributions (and paying any fees on these recalled commitments) to the limited partnership, limited liability company or other investment vehicle.
4. For new contracts and amendments to contracts existing as of the date of the Policy, confirming that the final written agreement between CalPERS or the CalPERS Vehicle and the External Manager provides that the External Manager shall be solely responsible for, and CalPERS or a CalPERS Vehicle shall not pay (directly or indirectly), any fees, compensation or expenses for any Placement Agent used by the External Manager.
5. Prohibiting any External Manager or Placement Agent from soliciting new investments from CalPERS for twenty-four months after they have committed a material violation of this Policy.
6. Providing copies of the Placement Agent Information Disclosure to the Senior Investment Officer for the asset class for which the External Manager performs investment services, the Chief Investment Officer, the Chief of the Office of Enterprise Compliance and the General Counsel.

7. Providing the Committee with a copy of the Placement Agent Information Disclosure whenever the Committee makes or approves the decision to invest with the External Manager.
  8. Compiling a quarterly report containing the names and amount of compensation agreed to be provided to each Placement Agent by each External Manager as reported in the Placement Agent Information Disclosures, providing the report to the Board, and disclosing the report to the public by posting to the CalPERS' website.
  9. Reporting to the Board at least quarterly any material violations of the Policy.
- C. External Managers shall comply with the Policy and cooperate with Staff in meeting Staff's obligations under this Policy.
- D. Staff is responsible for the following:
- a. Implementing this Policy for CalPERS Vehicles. For CalPERS Vehicle contracts existing as of the date of this Policy, and for new and amended CalPERS Vehicle contracts, Staff is responsible for seeking the written agreement of CalPERS Vehicle Managers to comply with this Policy as set forth in paragraphs IV.A. and IV.B. above applying this Policy to CalPERS Vehicles and to all future investments made by CalPERS Vehicles.
  - b. If a CalPERS Vehicle or an External Manager does not agree in writing to comply with this Policy, Staff shall report to the Committee the refusal.
  - c. All parties responsible for implementing, monitoring and complying with this Policy should consider the spirit as well as the literal expression of the Policy. In cases where there is uncertainty whether a disclosure should be made pursuant to this Policy, the Policy shall be interpreted to require disclosure.
  - d. Only the Committee can provide exceptions to this Policy and any such exceptions granted shall be reported to the public within 30 days.

**V. GLOSSARY OF TERMS**

Key words used in this Policy are defined in CalPERS' Master Glossary of Terms.

Approved by the Policy Subcommittee: May 8, 2009

Asset Class Glossary: Ethics  
Policy: Disclosure of Placement Agent Fees  
May 8, 2009

**CalPERS Vehicle**

A partnership, limited liability company or other investment vehicle in which CalPERS is the majority (or greater) investor.

**Consultant**

Consultant refers to individuals or firms, and includes Key Personnel of Consultant firms, who are contractually retained or have been appointed to a pool by CalPERS to provide investment advice to CalPERS but who do not exercise investment discretion.

**External Manager**

An asset management firm that is seeking to be, or has been, retained by CalPERS or by a CalPERS Vehicle to manage a portfolio of assets (including securities) for a fee. The external manager usually has full discretion to manage CalPERS assets, consistent with investment management guidelines provided by CalPERS and fiduciary responsibility.

**Placement Agent**

Any person or entity hired, engaged or retained by or acting on behalf of an External Manager or on behalf of another Placement Agent as a finder, solicitor, marketer, consultant, broker or other intermediary to raise money or investments from or to obtain access to CalPERS, directly or indirectly, including without limitation through a CalPERS Vehicle.