



# Board of Retirement Regular Meeting

## Sacramento County Employees' Retirement System

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### Agenda Item 15

**MEETING DATE:** October 18, 2017

**SUBJECT:** Education on Alternative Investment Fund Fee and Expense Disclosures Required by State Law (AB 2833)

**SUBMITTED FOR:**  Consent  Deliberation and Action  Receive and File

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### **RECOMMENDATION**

Staff recommends the Board receive and file the educational presentation on the requirements of California Government Code §7514.7 and the current and proposed procedures for ensuring SCERS' compliance.

### **PURPOSE**

To provide background on the new data collection and disclosure requirements applicable to all new, or new commitments to existing, alternative investment vehicles in which public pension funds such as SCERS invest on or after January 1, 2017, and describe the process Staff and Cliffwater has and will use to ensure SCERS satisfies the fee and expense disclosure requirements.

### **BACKGROUND**

Since 2014, the SEC has increased efforts to bring transparency to the private equity industry to address alternative investment managers compliance risks with a focus on "hidden" fees and commissions, the calculation (or miscalculation) of expenses and application of expense offsets.

In SCERS' observation, the private equity industry has responded with general partners/fund managers providing more detailed disclosures to investors in private placement memoranda and operational documents.

In 2015, the Institutional Limited Partners Association<sup>1</sup> (ILPA) survey of its members revealed that 52% of institutions had created custom templates to capture fee and expense information

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<sup>1</sup> The ILPA is a global, member-driven organization dedicated exclusively to advancing the interests of private equity limited partners through industry-leading education programs, independent research, best practices,

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beyond what was being provided in standard GP reporting packages. In response, the ILPA convened a working group of LPs and interested stakeholders for the ILPA Transparency Initiative to address shared reporting and compliance challenges by establishing more robust standards for fee and expense reporting as well as compliance disclosures among investors, fund managers and their advisors. In January 2016, ILPA released its Reporting Template for fees, expenses, and carried interest. The aim of the template is to encourage uniformity in these disclosures, both to provide LPs with an improved baseline of information to streamline analysis and drive decision making, and to reduce the compliance burden on general partners being asked to report against a range of disparate formats from LPs.

Since its release, more than 140 organizations, SCERS included, have endorsed the template, with more than 20 GPs among them. Additionally, it has been reported by LPs mandating ILPA Template usage that, as of third quarter 2017, more than 200 GPs are completing the Template when asked.

### **CALIFORNIA FEE AND EXPENSE DISCLOSURE LAW**

Assembly Bill 2833 was introduced by Assembly Member Cooley in the 2016 legislative year with the stated intent of “increasing the transparency of fees paid by public investment funds to alternative investment vehicles; public investment fund trustees need to be able to see and understand all of the fees they are charged in connection with these investments. This information is necessary to ensure public confidence in the integrity of investments made by retirement boards pursuant to alternative investment vehicles.”

AB 2833 was enacted as Chapter 361 on September 14, 2016, adding §7514.7 to the California Government Code. Staff refers to this new statute as the “California fee and expense disclosure law.”

This new law requires a public investment fund (defined to mean any fund of a public pension or retirement system) to require each alternative investment vehicle in which it invests to disclose the following at least annually on forms adopted by the public pension fund:

1. The fees and expenses that the public pension fund pays directly to the alternative investment vehicle, the fund manager, or related parties.
2. The public pension fund’s pro rata share of the fees and expenses, including carried interest, that are not included in paragraph (1) and that are paid from the alternative investment vehicle to the fund manager or related parties.
3. The public pension fund’s pro rata share of aggregate fees and expenses paid by all of the portfolio companies held within the alternative investment vehicle to the fund manager or related parties.

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networking opportunities and global collaborations. Initially founded in the early 1990’s as an informal networking group, ILPA currently has over 400 member organizations spanning all categories of small and large institutions including public pensions, corporate pensions, endowments, foundations, family offices, and insurance companies from North America, UK, Europe, Asia, Australia, South America, New Zealand and the Middle East representing well over US \$1 trillion in private equity assets under management.

4. The since inception gross and net rate of return of each alternative investment vehicle in which the public pension fund participates.
5. Any additional information described in subdivision (b) of Government Code §6254.26 (basic information on alternative investments in which public pension funds invest).

The public pension fund must disclose the above information at least annually in a report presented at a meeting open to the public. These required disclosures apply to all new alternative investment vehicle contracts the public pension fund enters into, or to which it makes a new capital commitment, on or after January 1, 2017. Public pension funds are also required to undertake reasonable efforts to obtain the fee and expense data for alternative investments made prior to January 1, 2017, and comply with the reporting requirement for any information obtained after January 1, 2017.

Section 7514.7 defines "alternative investment" to mean an "investment in a private equity fund, venture fund, hedge fund, or absolute return fund." Most public pension plans interpret this to include private equity, private credit, real assets and absolute return. There is less specificity with regard to private real estate investments, but SCERS will request the fee and expense disclosures from its real estate funds/managers as well.

### **SCERS' INVESTMENT DUE DILIGENCE**

Prior to the enactment of §7514.7, Staff has been actively engaging on the topic of fee and expense transparency. In 2016, SCERS endorsed the ILPA Reporting Template, which asks for information similar to the type required by §7514.7, but seeks greater depth and breadth of information. The ILPA template includes:

- Beginning and ending NAV of the fund;
- Total cash flows (contributions and distributions);
- Management fees;
- Partnership expenses;
- Offsets to fees and expenses;
- Realized gains/losses and change in unrealized gains/losses;
- Accrued incentive allocation (carried interest)

At the June 15, 2016 Board meeting, Staff, Cliffwater and SCERS' investment counsel provided an educational session on fee and expense transparency within private markets. The presentation discussed Assembly Bill 2833 (still pending in the Legislature at the time), provided background on SEC enforcements, and identified steps that SCERS had already taken, particularly through its endorsement and adoption of the ILPA template. The presentation also highlighted steps in SCERS' due diligence process, both prior to and after making a commitment to invest in a private fund, related to fee and expense transparency,.

SCERS' standard investment due diligence process includes obtaining written responses to a series of due diligence questions (DDQ) from any manager with which SCERS is contemplating investing, whether it is a first-time investment or a follow-on fund investment with an existing investment manager. The DDQ advises the manager that SCERS has adopted the ILPA Reporting Template and asks if the manager will complete the template as

part of its fund reporting. The DDQ asks both investment and legal due diligence questions. The legal questions help identify legal issues early in the process that could potentially prevent SCERS from making the investment or completing the contracting process in a timely basis, and helps SCERS minimize fees for investment counsel review of complex legal documents if the issues identified cannot be resolved to SCERS satisfaction.

Following enactment of AB 2833, SCERS modified its investment due diligence process to discuss the California fee and expense disclosure requirements early on. The DDQ has been updated to ascertain if the investment manager will provide the required information to enable SCERS to comply with the new law, which is required for SCERS to move forward with an investment.

Since SCERS adopted the ILPA Reporting Template, SCERS' requested side letter terms have included language that the investment manager will provide fee and expense reporting to SCERS using the ILPA template. While only a couple of managers have accepted this side letter language, others have indicated informally that they will report using the ILPA template even if not agreeing to it in a side letter. The further adoption of reporting through the ILPA template will evolve over time as GPs (particularly smaller GPs) develop systems and back office infrastructure to support the ILPA template.

The California law does not specify a particular format for obtaining or reporting the fee and expense information. If SCERS were to require investment managers to report using the ILPA template at this time, it would limit the number of alternative investment GPs with which SCERS could invest in asset classes where the dispersion of returns between top quartile and bottom quartile managers can be significant. Staff has been stressing to GPs the importance of standardized reporting with a template like that provided by the ILPA, as it creates economies of scale for both LPs and GPs, and is hopeful that progress will be made with this over time.

### **SCERS ALTERNATIVE INVESTMENTS EXPERIENCE**

Since November of 2016, SCERS has required, at a minimum, side letter terms that ensure the GP will provide SCERS the information that it requires to comply with the California fee and expense disclosure law.

Since this time, SCERS has made 11 commitments to private alternative investments funds (five private equity; three absolute return; one private credit; one real estate; one real assets), and has successfully secured sufficient side letter language with each as it relates to the fee disclosures.

There was one recent private equity fund that SCERS was not able to successfully negotiate sufficient language in SCERS' side letter to ensure compliance with the disclosure requirements, which was communicated to the Board. With this fund, language proposed by the investment manager required SCERS to acknowledge and agree that a reporting example the manager provided to SCERS was sufficient for purposes of the state law. The investment manager rejected amended language from SCERS to ensure that if the required information was not in the manager's reporting example, then the manager would provide additional

information as requested by SCERS to fulfill the requirements of the law. The investment manager was not willing to amend the side letter language as requested, and Staff informed the manager that SCERS would not be able to commit to the fund without the requested side letter language. Since the Fund was heavily oversubscribed, the manager gave SCERS' allocation to other LPs.

It should be noted that Staff did engage with this investment manager regarding fee and expense disclosures early in the process before the fund documents were submitted to investment counsel. Indications were that the manager was comfortable with the requirements. However, when the specific side letter language was presented, the manager's perspective changed. The lesson learned with this negotiation is that the ultimate success in achieving proper assurance that an investment manager will provide all required information for SCERS to fulfill the obligations of Government Code Section §7514.7 cannot be guaranteed until the side letter negotiation is complete.

### **OBTAINING ALTERNATIVE INVESTMENTS FEE AND EXPENSE INFORMATION**

SCERS will request the required fee and expense information from each of its alternative investment managers on an annual basis. For the initial year of reporting, SCERS expects to fulfill the annual reporting requirement using data as of December 31, 2017, with the report of aggregated data to be submitted to the Board during the first half of 2018. For future years, SCERS could potentially convert to reporting fee and expense data as of SCERS' fiscal year end (June 30th), which would align with the reporting of SCERS' Comprehensive Annual Financial Report ('CAFR').

Staff plans to obtain the required information using the following steps:

1. Staff will send a letter to the manager/GP for each alternative investment fund, as defined, and each private real estate fund in which SCERS invests explaining the requirements of Government Code §7514.7, requesting the data provided be as of December 31, 2017 (at least for the initial report), and specifying the method, contact person, and due date for submitting the information to SCERS.
  - a. For new funds or commitments made by SCERS after January 1, 2017, the letter will advise the manager is required to disclose fees and expenses in accordance with California law.
  - b. For new funds or commitments made by SCERS prior to 2017, the letter will advise that the law requires SCERS to make reasonable efforts to obtain the fee and expense disclosures and annually report the information obtained.
2. SCERS will request that all GPs use the form of the ILPA template to provide the information to SCERS, using the Level 1 Standard at a minimum, and the Level 2 Standard if possible.

If a manager declines to use the ILPA template altogether, then it is likely that the information will be provided in the annual financial statements for the fund. This is not the optimal approach, as it requires SCERS to extract the information from within the financial statements, and any required information that is not found

with the financial statements would then need to be requested from and provided by the manager.

The ILPA provides guidance using a two-tiered structure incorporated into the ILPA template. The Level 1 Standard represents high-level summary content, and the minimum baseline that the ILPA is recommending should be provided by GPs to LPs. Level 1 includes aggregated totals for partnerships expenses, management fee offsets and fees associated with underlying portfolio companies and investments. Level 2 includes a granular itemization for certain subtotals of the various types of the aggregated totals that are provided in Level 1.

Staff believes that the Level 1 Standard provides the information that is required to comply with state law, and would most likely be the level of information provided in SCERS’ annual disclosure reporting; however, Staff would prefer to have information provided according to the Level 2 Standard for internal evaluation.

Level 1 Standard	Level 2 Standard
Partnership Expenses - Total	Partnership Expenses – Accounting, Administration & IT
	Partnership Expenses – Audit & Tax Preparatory
	Partnership Expenses – Bank Fees
	Partnership Expenses – Custody Fees
	Partnership Expenses – Due Diligence
	Partnership Expenses – Legal
	Partnership Expenses – Organization Costs
	Partnership Expenses – Other Travel & Entertainment
	Partnership Expenses – Other
Total Offsets to Fees & Expenses (applied during period)	Advisory Fee Offset
	Broken Deal Fee Offset
	Transaction & Deal Fee Offset
	Directors Fee Offset
	Monitoring Fee Offset
	Capital Markets Fee Offset
	Organization Cost Offset
	Placement Fee Offset
	Other Offset
Total Fees with Respect to Portfolio Companies/Investments	Advisory Fees
	Broken Deal Fees
	Transaction & Deal Fees
	Directors Fees
	Monitoring Fees
	Capital Markets Fees
Other Fees	

**REPORTING ALTERNATIVE INVESTMENTS FEES AND EXPENSES**

Staff will review the fee and expense data submitted by SCERS alternative investment and real estate managers/GPs and forward to SCERS’ consultants (Cliffwater or Townsend, as appropriate). The consultants will use the information provided by each manager to prepare a report that complies with the requirements of §7514.7. The initial annual report will be submitted to the Board in a public meeting held in the last half of 2018.

In future years, it is expected that SCERS will have more automated accounting and reporting solutions in place as a result of the investment accounting modernization project within

SCERS' broader IT modernization program that will complement the current efforts of Staff and consultants as it relates to alternative investments fee and expense disclosure.

**ATTACHMENTS**

Staff presentation on Government Code §7514.7  
Chapter 361, Statutes of 2016 (Assembly Bill 2833, Cooley)  
Government Code Section 6254.26 (for reference)

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# EDUCATION ON ALTERNATIVE INVESTMENT FUND FEE AND EXPENSE DISCLOSURES REQUIRED BY STATE LAW



**SCERS**

SACRAMENTO COUNTY  
EMPLOYEES' RETIREMENT SYSTEM



# Topics

- Background on Government Code §7514.7 (California Fee and Expense Disclosure Law)
- SCERS' investment due diligence process
- SCERS' experience with Government Code §7514.7
- Steps to obtain fee and expense disclosures
- Reporting of fee and expense disclosures



# Background

- Since 2014, increased SEC efforts to bring transparency to the private equity industry
  - Address within alternative investment managers: hidden fees and commissions; the calculation (or miscalculation) of expenses and the application of expense offsets
  - Private equity industry has responded with more detailed disclosures in fund documents
- Effort to bring transparency to alternative assets investments, particularly the private equity industry
- Institutional Limited Partners Association (ILPA) has worked since 2015 to establish standards for fee and expense reporting as well as compliance disclosures among investors, fund managers and their advisors
  - Release of the ILPA Reporting Template in 2016



# Government Code §7514.7

- Enacted 2016 California Assembly Bill – AB 2833
  - Referred to as ‘California fee and expense disclosure law’ internally at SCERS
- Mandates that California public pension or retirement systems require each alternative investment manager with which they contract to make annual disclosures of fees and expenses charged the retirement system, and that the fund publicly disclose such information on an annual basis at an open meeting.
- Effort to bring transparency to alternative assets investments
- Required for fund investments made after January 1, 2017
  - Reasonable efforts for fund investments prior to 2017
- Effort to bring transparency to alternative assets investments
- Alternative investments defined as private equity, venture capital and hedge (absolute return) fund
  - Staff interpreting to also include private credit and real assets
  - Will request disclosures from real estate managers also



# Government Code §7514.7

- Requires the following annual disclosures:
  - The fees and expenses that the retirement system pays directly to the alternative investment vehicle, the fund manager, or related parties
  - The fees and expenses not included in paragraph (1) that are paid from the alternative investment vehicle, including carried interest, to the fund manager or related parties
  - The fees and expenses paid by the portfolio positions held within the alternative investment vehicle to the fund manager or related parties
  - The gross and net rate of return of each alternative investment vehicle since inception
  - Any additional information described in subdivision (b) of Section 6254.26 (basic information concerning the investment typically disclosed by public plans)



# Private Markets Terminology

## Private equity fund structures

- GPs and LPs

## Common fees

- Management fee
- Share of profits
- Transaction fees
- Monitoring/advisory fees
- Expenses

## Negotiating power in Private Equity transactions

- Dispersion of returns between best and rest
- More demand than supply



# 2016 SCERS Initiatives

- Prior to Government Code §7514.7
  - Endorsement of the Institutional Limited Partners Association ('ILPA') template
  - Board education on fee and expense transparency within private markets
    - Background on SEC enforcements; preview of Government Code §7514.7; standardization of fund reporting; adjustments to SCERS' due diligence process in private markets
  - Requesting of the ILPA template reporting in SCERS' side letter



# The ILPA Template

- A widely adopted standardized template among limited partners ('LPs') that requests private fund general partners ('GPs') provide disclosure on fees, expenses and incentive allocations
- Covers required information as that of Government Code §7514.7, but with greater depth and breadth of information
  - Beginning and ending NAV of the fund;
  - Total cash flows (contributions and distributions);
  - Management fees;
  - Partnership expenses;
  - Offsets to fees and expenses;
  - Realized gains/losses and change in unrealized gains/losses;
  - Accrued incentive allocation (carried interest)
- More than 120 LPs have endorsed the template
- 20 investment managers/GPs have officially endorsed the Template
  - Though more than 200 GPs are completing the template when asked, according to the ILPA



# The ILPA Template

- The ILPA provides guidance using a two-tiered structure incorporated into the ILPA template
  - Level 1 Standard - represents high-level summary content, and the minimum baseline that the ILPA is recommending should be provided by GPs to LPs
  - Level 2 Standard - introduces additional granularity and itemization for certain subtotals

Level 1 Standard	Level 2 Standard
Partnership Expenses - Total	Partnership Expenses – Accounting, Administration & IT
	Partnership Expenses – Audit & Tax Preparatory
	Partnership Expenses – Bank Fees
	Partnership Expenses – Custody Fees
	Partnership Expenses – Due Diligence
	Partnership Expenses – Legal
	Partnership Expenses – Organization Costs
	Partnership Expenses – Other Travel & Entertainment
	Partnership Expenses – Other
	Total Offsets to Fees & Expenses (applied during period)
Broken Deal Fee Offset	
Transaction & Deal Fee Offset	
Directors Fee Offset	
Monitoring Fee Offset	
Capital Markets Fee Offset	
Organization Cost Offset	
Placement Fee Offset	
Other Offset	
Total Fees with Respect to Portfolio Companies/Investments	
	Broken Deal Fees
	Transaction & Deal Fees
	Directors Fees
	Monitoring Fees
	Capital Markets Fees
	Other Fees





# SCERS' Due Diligence Process

- Post enactment of Government Code §7514.7
  - SCERS DDQ
    - Questions related to compliance with Government Code §7514.7, and use of ILPA template
  - Due diligence
    - Staff engaging with managers and their counsel early in the due diligence process to discuss fee and expense disclosure requirements, in addition to other DDQ questions
      - Identify issues early prior to hiring outside investment counsel
  - SCERS Side Letter
    - Require compliance with Government Code §7514.7 – California law does not specify the format for obtaining or reporting on information
    - Request that managers use the ILPA template for reporting disclosures
      - Few managers will agree to this in a side letter, though more are likely to informally agree to use the ILPA Template
      - Staff has been stressing the importance of standardized reporting (like ILPA) to GPs
        - » provides economies of scale for both LPs and GPs
      - Requiring managers to use the ILPA Template at this point would limit the number of GPs that SCERS is able to invest with
        - » Big dispersion of returns between top and bottom quartile managers
        - » Wide-scale adoption is an evolution



# SCERS' Alternative Investments Experience

- Post enactment of Government Code §7514.7
  - SCERS Investments
    - Since November 2016 enactment, SCERS has made 11 commitments to private market and absolute return funds
      - Successful side letter language related to the Government Code secured for all of them
    - One private equity fund commitment was not made due to failure to come to terms on side letter language related to the Government Code
      - GP was unwilling to provide any additional and required information to SCERS that was not already in the fund's financial statements



# Steps to Obtaining Alternative Investments Fee and Expense Information

- SCERS will request disclosure information from January 1, 2017 through December 31, 2017
  - Could convert in the future to fiscal year reporting to align with CAFR reporting
- Steps to obtain information
  - Will send a letter to each GP/investment manager for any fund that SCERS is invested in explaining Government Code §7514.7 and the information that a manager is required to provide
  - Will request the information from GPs both for:
    - Funds that SCERS committed to after January 1, 2017; which are required to disclose according to the law, and;
    - Funds that SCERS committed to prior to 2017; which SCERS must make a reasonable effort to attain
  - SCERS will request that all GPs provide the information in the form of the ILPA template.
    - Managers who won't use the ILPA template could provide the required information in the fund's audited financial statements



# Reporting of Alternative Investments Fees and Expenses

- SCERS will receive fee and expense disclosure data during Q1/Q2 2018
  - Staff will review and analyze manager data
- Cliffwater
  - Cliffwater will aggregate manager data and standardize it into a report
    - Data aggregation could include ILPA template data, other template formats and audited financial statements data
  - The Cliffwater report will cover all reporting requirements of Government Code §7514.7 for each relevant fund that SCERS is invested in and will be presented to SCERS' Board during the first half of 2018
    - Will Include private equity; private credit; real assets; absolute return
- Townsend
  - Real estate is not believed to fall under Government Code §7514.7, but SCERS will request the data from real estate managers, and Townsend will aggregate this on behalf of SCERS
- Reporting process will evolve over time
  - In future years, expect the investment accounting modernization project to provide automated accounting and reporting solutions to complement the process



## Assembly Bill No. 2833

### CHAPTER 361

An act to add Section 7514.7 to the Government Code, relating to retirement.

[Approved by Governor September 14, 2016. Filed with  
Secretary of State September 14, 2016.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2833, Cooley. Public investment funds: disclosures.

The California Constitution commits to the retirement board of a public pension or retirement system plenary authority and fiduciary responsibility for investment of moneys and administration of the system. Existing law requires a retirement board to develop and implement a policy requiring disclosure of payments to placement agents, as defined, in connection with system investments in or through external managers that includes prescribed elements. Existing law requires disclosure of campaign contributions or gifts made by a placement agent to any member of a public pension retirement board, as specified. Existing law requires a public retirement system to obtain an actuarial valuation of the system not less than triennially and submit audited financial statements to the State Controller who then publishes a report on the financial condition of public retirement systems.

This bill, for new contracts entered into on and after January 1, 2017, and for existing contracts for which a new capital commitment is made on or after January 1, 2017, would require a public investment fund, as defined, to require alternative investment vehicles, as defined, to make specified disclosures regarding fees, expenses, and carried interest in connection with these vehicles and the underlying investments, as well as other specified information. Consistent with requirements relating to public records, the bill would require a public investment fund to disclose the information received in connection with alternative investment vehicles and the gross and net rate of return of each alternative investment vehicle, as specified, at least once annually at a meeting open to the public. The bill would require a public investment fund to undertake reasonable efforts to obtain the above-mentioned information for any existing contract for which the public investment fund has not made a new capital commitment on or after January 1, 2017. The bill would make a statement of legislative intent. Because this bill would impose new requirements on local entities relating to the collection of information and its presentation at an open meeting, it would impose a state-mandated local program.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that

amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. It is the intent of the Legislature in enacting this section to increase the transparency of fees paid by public investment funds to alternative investment vehicles. Public investment funds pay significant fees to alternative investment vehicles and do not have sufficient information regarding the character and amount of those fees. As fiduciaries, public investment fund trustees have a duty to maximize investment returns in order to ensure promised benefits are adequately funded and to minimize taxpayer costs. Because fees paid to alternative investment vehicles reduce returns, public investment fund trustees need to be able to see and understand all of the fees they are charged.

SEC. 2. Section 7514.7 is added to the Government Code, to read:

7514.7. (a) Every public investment fund shall require each alternative investment vehicle in which it invests to make the following disclosures at least annually:

(1) The fees and expenses that the public investment fund pays directly to the alternative investment vehicle, the fund manager, or related parties.

(2) The public investment fund's pro rata share of fees and expenses not included in paragraph (1) that are paid from the alternative investment vehicle to the fund manager or related parties. The public investment fund may independently calculate this information based on information contractually required to be provided by the alternative investment vehicle to the public investment fund. If the public investment fund independently calculates this information, then the alternative investment vehicle shall not be required to provide the information identified in this paragraph.

(3) The public investment fund's pro rata share of carried interest distributed to the fund manager or related parties.

(4) The public investment fund's pro rata share of aggregate fees and expenses paid by all of the portfolio companies held within the alternative investment vehicle to the fund manager or related parties.

(5) Any additional information described in subdivision (b) of Section 6254.26.

(b) Every public investment fund shall disclose the information provided pursuant to subdivision (a) at least once annually in a report presented at a meeting open to the public. The public investment fund's report required

pursuant to this subdivision shall also include the gross and net rate of return of each alternative investment vehicle, since inception, in which the public investment fund participates. The public investment fund may report the gross and net rate of return and information required by subdivision (a) based on its own calculations or based on calculations provided by the alternative investment vehicle.

(c) For purposes of this section:

(1) "Alternative investment" means an investment in a private equity fund, venture fund, hedge fund, or absolute return fund.

(2) "Alternative investment vehicle" means the limited partnership, limited liability company, or similar legal structure through which a public investment fund invests in an alternative investment.

(3) "Fund manager" means the general partner, managing manager, adviser, or other person or entity with primary investment decisionmaking authority over an alternative investment vehicle and related parties of the fund manager.

(4) "Carried interest" means any share of profits from an alternative investment vehicle that is distributed to a fund manager, general partner, or related parties, including allocations of alternative investment vehicle profits received by a fund manager in consideration of having waived fees that it might otherwise have been entitled to receive.

(5) "Portfolio companies" means individual portfolio investments made by the alternative investment vehicle.

(6) "Gross rate of return" means the internal rate of return for the alternative investment vehicle prior to the reduction of fees and expenses described in subdivision (a).

(7) "Public investment fund" means any fund of any public pension or retirement system, including that of the University of California.

(8) "Operational person" means any operational partner, senior advisor, or other consultant or employee whose primary activity for a relevant entity is to provide operational or back office support to any portfolio company of any alternative investment vehicle, account, or fund managed by a related person.

(9) "Related person" means any current or former employee, manager, or partner of any related entity that is involved in the investment activities or accounting and valuation functions of the relevant entity or any of their respective family members.

(10) "Related party" means:

(A) Any related person.

(B) Any operational person.

(C) Any entity more than 10 percent of the ownership of which is held directly or indirectly, whether through other entities or trusts, by a related person or operational person regardless if the related person or operational person participates in the carried interest received by the general partner or the special limited partner.

(D) Any consulting, legal, or other service provider regularly engaged by portfolio companies of an alternative investment vehicle, account, or

fund managed by a related person and that also provides advice or services to any related person or relevant entity.

(11) “Relevant entity” means the general partner, any separate carry vehicle, the investor advisor, any of the investment advisor’s parent or subsidiary entities, or any similar entity related to any other alternative investment vehicle, account, or fund advised or managed by any current or former related person.

(d) (1) This section shall apply to all new contracts the public investment fund enters into on or after January 1, 2017, and to all existing contracts pursuant to which the public investment fund makes a new capital commitment on or after January 1, 2017.

(2) With respect to existing contracts not covered by paragraph (1), the public investment fund shall undertake reasonable efforts to obtain the information described in subdivision (a) and comply with the reporting requirements contained in subdivision (b) with respect to any information obtained after January 1, 2017.

SEC. 3. The Legislature finds and declares that Section 2 of this act, which adds Section 7514.7 to the Government Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

The information in the disclosures required under subdivisions (a) and (b) of Section 7514.7 of the Government Code is necessary to ensure public confidence in the integrity of investments made by retirement boards pursuant to alternative investment vehicles.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district under this act would result from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.



West's Annotated California Codes  
Government Code (Refs & Annos)  
Title 1. General  
Division 7. Miscellaneous  
Chapter 3.5. Inspection of Public Records (Refs & Annos)  
Article 1. General Provisions (Refs & Annos)

West's Ann. Cal. Gov. Code § 6254.26

§ 6254.26. Alternative investments of public investment funds; records exempt from disclosure

Effective: January 1, 2007

Currentness

(a) Notwithstanding any provision of this chapter or other law, the following records regarding alternative investments in which public investment funds invest shall not be subject to disclosure pursuant to this chapter, unless the information has already been publicly released by the keeper of the information:

- (1) Due diligence materials that are proprietary to the public investment fund or the alternative investment vehicle.
- (2) Quarterly and annual financial statements of alternative investment vehicles.
- (3) Meeting materials of alternative investment vehicles.
- (4) Records containing information regarding the portfolio positions in which alternative investment funds invest.
- (5) Capital call and distribution notices.
- (6) Alternative investment agreements and all related documents.

(b) Notwithstanding subdivision (a), the following information contained in records described in subdivision (a) regarding alternative investments in which public investment funds invest shall be subject to disclosure pursuant to this chapter and shall not be considered a trade secret exempt from disclosure:

- (1) The name, address, and vintage year of each alternative investment vehicle.
- (2) The dollar amount of the commitment made to each alternative investment vehicle by the public investment fund since inception.
- (3) The dollar amount of cash contributions made by the public investment fund to each alternative investment vehicle since inception.

(4) The dollar amount, on a fiscal yearend basis, of cash distributions received by the public investment fund from each alternative investment vehicle.

(5) The dollar amount, on a fiscal yearend basis, of cash distributions received by the public investment fund plus remaining value of partnership assets attributable to the public investment fund's investment in each alternative investment vehicle.

(6) The net internal rate of return of each alternative investment vehicle since inception.

(7) The investment multiple of each alternative investment vehicle since inception.

(8) The dollar amount of the total management fees and costs paid on an annual fiscal yearend basis, by the public investment fund to each alternative investment vehicle.

(9) The dollar amount of cash profit received by public investment funds from each alternative investment vehicle on a fiscal year-end basis.

(c) For purposes of this section, the following definitions shall apply:

(1) "Alternative investment" means an investment in a private equity fund, venture fund, hedge fund, or absolute return fund.

(2) "Alternative investment vehicle" means the limited partnership, limited liability company, or similar legal structure through which the public investment fund invests in portfolio companies.

(3) "Portfolio positions" means individual portfolio investments made by the alternative investment vehicles.

(4) "Public investment fund" means any public pension or retirement system, and any public endowment or foundation.

#### **Credits**

(Added by Stats.2005, c. 258 (S.B.439), § 2. Amended by Stats.2006, c. 538 (S.B.1852), § 233.)

#### **Relevant Additional Resources**

Additional Resources listed below contain your search terms.

#### **Editors' Notes**

### **HISTORICAL AND STATUTORY NOTES**

“The Legislature finds and declares that Section 2 of this act, which adds Section **6254.26** of the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

Notes of Decisions containing your search terms (0)

[View all 3](#)

West's Ann. Cal. Gov. Code § **6254.26**, CA GOVT § **6254.26**

Current with urgency legislation through Ch. 653 of 2017 Reg.Sess

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