Board of Retirement Regular Meeting

Sacramento County Employees' Retirement System

Agenda Item 14

MEETING DATE: June 21, 2023

SUBJECT: Alternative Asset Investment Standard of Care Policy

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

RECOMMENDATION

Receive and file report regarding SCERS' overall record with respect to fiduciary duty of care negotiations, as presented by Foley & Lardner LLP.

PURPOSE

This item supports the Alternative Asset Investment Standard of Care Policy, which calls for conducting a periodic fiduciary "health check" of SCERS' alternative assets investment portfolio.

DISCUSSION

Michael Calabrese from Foley & Lardner will present the results of SCERS' first review of fiduciary considerations with external investment managers since the Board approved the Alternative Asset Investment Standard of Care Policy in March 2021.

Per the Policy, "staff shall periodically engage investment counsel to review its Alternative Asset Investment portfolio and confirm that SCERS' overall record with respect to duty of care negotiations meets or exceeds the industry norms and the prudent expert standard."

Alternative asset investments have shown a history of delivering strong risk-adjusted returns, leading to increased demand. This strong performance also has given top-performing fund managers leverage to negotiate more favorable contract terms. When entering into new investment manager relationships, SCERS always seeks to hold the General Partner contractually responsible for the same duty of care to which the Board is bound. However, since a contractual fiduciary standard of care can be a powerful tool for investors in litigation to recover losses, fund managers are motivated to seek a lower or non-actionable standard of care. They aim to mitigate potential legal liabilities by obtaining more lenient standards of care in their contracts.

Since the Policy was enacted, Foley & Lardner found that SCERS has been more successful at achieving a higher, preferred contractual standard of care than before the policy. Specifically, 64% of alternative asset funds that SCERS has invested in have agreed to a contractual standard of care; the remaining 36% of funds have agreed to a lower standard. Prior to the policy, only 15% of investments met the higher, preferred standard. Examples of instances where a lower standard has been accepted include:

- Existing General Partners (GPs) with whom SCERS had a prior relationship without a contractual standard of care.
- Investments that were in advanced due diligence before the policy was adopted.
- A few hard-to-access GPs.

There are several compensating factors required under the Policy to accept a lower standard of care including:

- Track record of strong performance relative to Manager/GP's targets and relative to peer funds
- Experience of Manager/GP key persons
- Track record evidencing fair treatment of limited partners historically (including during stressful circumstances)
- History and process for addressing conflicts of interest
- Other factors bearing on ethical governance and future performance

In addition, written opinions are required from investment counsel and SCERS' investment consultant before proceeding with a lower standard.

ATTACHMENT

- Board Order
- Alternative Asset Investment Standard of Care Policy
- Foley & Lardner Memo
- Foley & Lardner Presentation

Prepared by:

/S/

Jim Donohue
Deputy Chief Investment Officer

Reviewed by:

/S/

Eric Stern
Chief Executive Officer

/S/

Steve Davis
Chief Investment Officer

Retirement Board Order
Sacramento County Employees' Retirement System

Before the Board of Retirement
June 21, 2023

AGENDA ITEM:

Alternative Asset Investment Standard of Care Policy

THE BOARD OF RETIREMENT hereby approves Staff's recommendation to receive and file the report regarding SCERS' overall record with respect to fiduciary duty of care negotiations, as presented by Foley & Lardner LLP.

I HEREBY CERTIFY that the above order was passed and adopted on June 21, 2023 by the following vote of the Board of Retirement, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

ALTERNATES:
(Present but not voting)

_____
Keith DeVore
Board President

_____
Eric Stern
Chief Executive Officer and
Board Secretary

ALTERNATIVE ASSET INVESTMENT STANDARD OF CARE POLICY

PURPOSE

The purpose of this policy is to require that Alternative Asset Investment fund managers and general partners agree to a fiduciary duty of care when entering into an investment contract with SCERS. A further purpose of this policy is to set forth the narrow circumstances in which it is permissible for such contracts to contain a different duty of care.

DEFINITIONS

As used in this policy, the term "Alternative Asset Investment" shall mean an investment strategy, fund, or fund manager SCERS identifies as Absolute Return (Hedge Funds), Private Equity (including venture capital), Private Credit, Real Estate, or Real Assets.

POLICY

A. Contractual Fiduciary Duty of Care

In entering into an Alternative Asset Investment contract as a limited partner or similar capacity (including, but not limited to, side letters with fund managers and general partners), SCERS shall require anyone who exercises investment discretion over system assets to be subject to the same duty of care to which the Board and staff are subject. Such a duty of care shall be contractual in nature and enforceable by a private right of action by SCERS.

California law calls for the Board and staff to discharge their duties "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims." Cal. Const. Art. XVI, § 17; Gov. Code § 31595. Accordingly, SCERS' Alternative Asset Investment contracts shall include a provision setting out an actionable, contractual fiduciary standard of care, similar to the following:

> *Each of Manager and the General Partner agrees that it and any person acting on its behalf under the Partnership Agreement owe fiduciary duties to all Limited Partners in accordance with applicable law governing the Partnership. As such, each of the General Partner and the Manager agrees that it will act in good faith in the best interests of the Partnership and the Limited Partners with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of a like character and with like aims, will not place its interests above the interests of the Limited Partners, and with respect to all investment opportunities and investment allocation decisions, will*

allocate such opportunities among the Limited Partners and the entities managed by the General Partner, the Manager and its Affiliates on a fair and equitable basis and consistent with its duty of loyalty to the Partnership and the Investor with respect to its investment in the Partnership. Each of Manager and the General Partner acknowledges the applicability of Article XVI, Section 17 of the California Constitution and Government Code Section 31595(b) to the Investor's investment in the Partnership.

In addition, SCERS' Alternative Asset Investment contracts shall include a provision designating Sacramento County or the Eastern District of California as the jurisdiction and venue for any dispute regarding such standard of care.

B. Other Standards of Care

Experience has shown that, in negotiating Alternative Asset Investment contracts, some fund managers and general partners refuse to agree to a prudent expert or fiduciary duty of care, or to a Sacramento-based venue and jurisdiction. Experience has also shown that such fund managers and general partners may insist on a lower or non-actionable standard of care. For example:

- A fiduciary duty of care diluted by an exculpation clause (i.e., a separate clause releasing various causes of action against the general partner or manager);

- Where the general partner or manager is a Registered Investment Adviser with the Securities and Exchange Commission, a non-contractual "acknowledgement" that it is registered and therefore subject to the regulator-enforced fiduciary standards applicable to registered advisers under the Investment Advisers Act of 1940;

- Where the general partner or fund manager is not a registered investment adviser (e.g., in connection with a venture capital fund within the Private Equity asset class, or an energy partnership within the Real Assets asset class), no acknowledgment of a duty of care at all.

- Where the fund is based in Delaware, a fiduciary duty of care under Delaware law, but actionable only by the collective limited partnership and diluted by modifications and waivers (which are permissible under Delaware law);

- Where the fund, general partner, or manager is based outside the United States, a contractual or non-contractual acknowledgment that they will comply with the duty of care as required by the laws of their local jurisdiction.

Such standard of care terms, and a non-Sacramento jurisdiction/venue, are highly disfavored, as SCERS expects its investment delegates to be willing and accountable fiduciaries to SCERS. Nevertheless, and notwithstanding the foregoing Section A, SCERS may in rare circumstances accept such disfavored terms if staff complies with Section C.

C. Mandatory Protective Steps

In connection with any Alternative Asset Investment contract in which SCERS accepts a standard of care similar to those identified in Section B, or a non-Sacramento jurisdiction/venue in connection with standard of care disputes, staff shall take all of the following steps:

Importance to SCERS' Strategic Asset Allocation: Staff shall create a written record that:

- The at-issue Alternative Asset Investment belongs to an asset class of investments (with reference to sub-asset class, geography, strategy, and/or sector) that is important for SCERS to invest in in order to implement the alternative asset investment strategy under the Master Investment Policy Statement and the Growth/Diversifying/Real Return/Opportunities Investment Policies;

- The at-issue Alternative Asset Investment would play an important role in helping SCERS meet the investment objectives of that asset class;

- A written opinion from investment counsel, which may be based on general experience and familiarity with the market and industry, that:

    - SCERS would be unlikely to obtain better terms on the duty of care from similar funds (e.g., funds that would serve a function within SCERS' alternative asset investment strategy similar to the one identified above); and

    - Further negotiations are unlikely to yield a better duty of care term for that particular Alternative Asset Investment.

- A written opinion from SCERS' investment consultant explaining why the at-issue Alternative Asset Investment is important to (1) implementing the strategy set forth in the applicable asset class investment policies, including with respect to sub-asset class, geography, strategy, and/or sector, and (2) meeting the investment objectives of the asset class where the at-issue investment will reside.

Compensating Factors: Second, staff, with written input from investment consultants, shall assess whether the at-issue Alternative Asset Investment can demonstrate the ethical governance and likely performance that would proportionately compensate for the lower standard of care. Specifically, staff shall obtain written opinions from its consultant, including:

- Whether there is a track record of strong performance relative to the fund manager's or general partner's targets, and relative to peer funds;
- The experience of key persons associated with general partners and fund managers;
- A track record evidencing the fair treatment of limited partners historically, including during stressful times or circumstances when the fund performance has been less than optimal;

- A history and process for dealing with conflicts of interest (such as investing in companies held by prior or successive funds); and/or

- Other factors bearing on ethical governance and future performance.

Transparency and Notice: Third, staff shall obtain a written confirmation from investment counsel that, as a part of the investment contract or side letter, the general partner and/or fund manager have agreed to provide transparency and notice regarding any action they take that would amount to a conflict of interest or a deviation from the fiduciary standard for Registered Investment Advisers under the 1940 Act.

Periodic Global Review: Fourth, staff shall periodically engage investment counsel to review its Alternative Asset Investment portfolio and confirm that SCERS' overall record with respect to duty of care negotiations meets or exceeds the industry norms and the prudent expert standard. In addition, staff shall obtain and implement advice from such counsel with regard to market trends and whether SCERS has become "over-weighted" in sub-optimal negotiated standards of care.

BACKGROUND

When SCERS enters into an Alternative Asset Investment, fund managers and general partners acquire investment discretion over system assets and effectively become delegates of the Board. When negotiating side letters, SCERS always seeks to hold such delegates contractually responsible for the same duty of care to which the Board is bound. Experience has shown that SCERS' success in negotiating for that term can turn on sheer market supply and demand.

This policy continues SCERS' historical custom, practice, and policy of requiring Alternative Asset Investment fund managers and/or general partners to agree to a fiduciary standard of care. This policy also sets forth narrow circumstances in which SCERS may accept a lower standard, and the analytical and evidentiary record that staff must create before accepting such a standard.

RESPONSIBILITIES

Executive Owner: General Counsel

POLICY HISTORY

Date	Description
03-17-2021	Board approved new policy to replace Fiduciary Standard Policy
08-01-2018	Renumbered from Policy No. 041
01-17-2018	Board renamed and amended in revised policy format
01-16-2013	Board approved Resolution 2013-05

FOLEY

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MEMORANDUM

TO: Board of Retirement, Sacramento County Employees' Retirement System
Eric Stern, Chief Executive Officer
Steve Davis, Chief Investment Officer

FROM: Michael P. Calabrese

DATE: June 21, 2023

RE: Review of Results Under Alternative Asset Investment Standard of Care Policy

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As the SCERS Board and staff will recall, SCERS adopted a new policy on March 17, 2021, SCERS Policy No. 015, titled the "Alternative Asset Investment Standard of Care Policy."[1] Under this Policy, investment management firms in the asset classes of Absolute Return, Private Equity, Private Credit, Real Estate, and Real Assets must agree to manage SCERS' assets in accordance with a standard of care "similar to" certain language set out in Section A of the Policy. Staff and counsel have come to refer to this as the "Section A language" or the "Section A standard." This standard derives from, and to a large extent follows verbatim, SCERS' own fiduciary duties under the "prudent expert" standard of care laid out in Article XVI, §17 of the California Constitution.

Acknowledging that this standard might sometimes be difficult to successfully negotiate in these assets classes, and that in some (but certainly not all cases), it might prudently serve SCERS' investment objectives to make such investments even when the preferred standard could not be met, the Policy allows for limited exceptions in which lower standards of care will be permitted. But the Policy also specifies that such exceptions are "highly disfavored" and will only be granted "in rare circumstances." Staff and counsel have come to refer to language agreed to under this lower standard as the "Section C language" or the "Section C standard," because the guidelines for what constitutes an acceptable lower standard appear in Section C of the Policy.

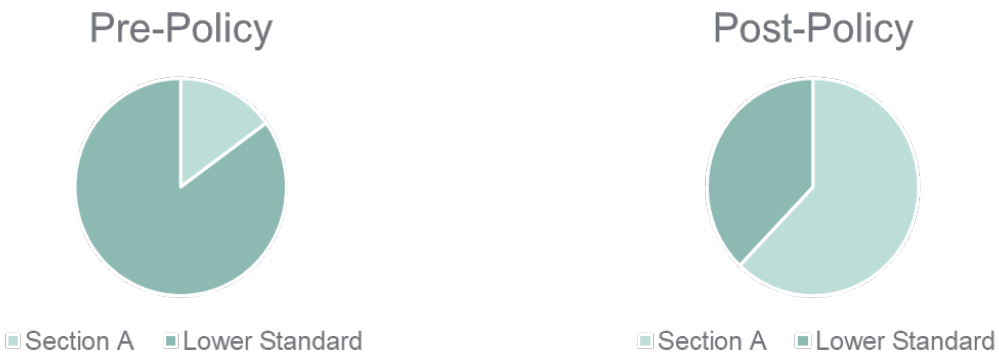
It was not possible to know, prior to the Policy's implementation, the degree to which negotiating "prudent expert" standards in these investments would be achievable on a deal-by-deal basis. There was some concern that, if the policy proved too stringent, SCERS might find itself either losing investment opportunities, on the one hand, or granting so many exceptions that it would effectively fail to adhere to the Policy as planned, on the other hand. Because of these concerns, the Policy itself requires a "Periodic Global Review" by investment counsel, working with staff, to "confirm SCERS' overall record with respect to duty of care negotiations" and whether that record "meets or exceeds the

[1] This policy replaced the former "Fiduciary Standard Policy."

industry norms and the prudent expert standard." With a little more than two years' data now available to inform such a review, Foley & Lardner has undertaken that task, which is presented here. Because this is the first such review, we have not only reviewed and quantified performance under the new Policy, but also comparable performance prior to the Policy, to help assess how, if at all, the Policy has changed SCERS' overall results with respect to negotiated standards of care in the affected asset classes.

In undertaking this review, Foley examined the negotiated results from 173 different fund investments in the classed that are now subject to the Policy. 137 of these investments closed before the Policy's effective date, while 36 closed afterward. The table and graphs below show the number of investments that have been closed both before and since the Policy's effective date, split between those where a Section A standard was achieved, and those where an exception was granted and Section C language was accepted (or, for investments closed before the Policy, simply whether a lower standard was accepted).

	Section A	Lower Standards[2]
Pre-Policy	21	116
Post Policy	23	13



A few clear patterns are clear here. First, SCERS has been far more successful in negotiating stringent standards of care in alternative asset class investments since the Policy than before, with such standards being a majority of cases (64%) today, whereas they were rare exceptions (15%) prior to the Policy. Second, exceptions are being made, in the last two years, in about 36% of deals. While it remains accurate to call these "exceptions," they are perhaps not as rare as might have been expected. However, there are reasons to believe these exceptions will be even more rare going forward. First, two of the thirteen exceptions occurred with investments closing in the weeks immediately following the Policy's adoption, where negotiations had progressed to a significant degree prior to the adoption of the new Policy.[3] Second, of the thirteen exceptions, twelve involved managers for whom SCERS had at

[2] For post-Policy investments, all those that did not meet the Section A standard necessarily met the standards of Section C, since they could not have been closed without counsel and consultant opinions to this effect. For pre-Policy investments, this cannot be assumed. However, Foley can state that a review of the applicable language makes clear that a great many of these older investments would not have complied with Section C if it had been effect when they closed.

[3] In fact, one of these managers later agreed to a Section A standard for a subsequent investment.

least two prior investments with the same manager that had been subject to lower standards. In several of those cases, the managers were also unusually prominent in their field. In such cases, very often, declining to invest in successor funds would have required a significant shift in SCERS overall investment strategies and/or a likely significant expected compromise in performance.[4] Overall, exceptions were only granted to nine managers, due to several high-conviction managers receiving more than one.

Finally even the Section C standard is a higher one than prior policy required. Thus, even where Section A standards could not be achieved, in most cases the standard of care provisions in these side letters represented a significant improvement on language in predecessor documents.[5] For example, we saw many examples in older side letters containing what we have come to call "the sky is blue" language, where the General Partner merely acknowledges things that are undeniably true at law anyway (e.g. "the Manager is a registered investment adviser and will remain so as long as the law requires it"). Such acknowledgments have no value in terms of SCERS' legal position. There were no such provisions in post-Policy side letters, because they are no longer permitted.

As noted above, this "Global Periodic Review" also requires an assessment of SCERS' performance as measured against "industry norms." While Foley has not quantified the frequency with which investors similar to SCERS achieve the various standards discussed here[6], we have canvassed Foley's larger team of private funds lawyers, which includes some who work primarily for investors, others who work mainly for sponsors, and some who do both. Consistent with the direct experience of the author (which is overwhelmingly with investors similar to SCERS), these attorneys have confirmed that a side letter containing a standard of care provision like that set forth in Section A of the Policy is a rare thing, and that SCERS' pre-policy success rate of 15% is likely consistent with general industry norms. Moreover, in our experience, to the extent there are investors who regularly achieve outcomes similar to SCERS' preferred standard, those investors have formal policies or statutes similar to SCERS' Policy. In sum, the Policy appears to have shifted SCERS' performance on this issue from being typical of similar investors, to a level approaching the performance of the highest-performing investors.

Finally, as mentioned above, the authors of the Policy harbored some concern that many managers might simply be unwilling to comply even if it meant declining SCERS' proposed allocations, and that SCERS might lose out on a significant number of potential investment opportunities as a result of the Policy. This has decidedly proven not to be the case. As noted above, SCERS has made 36 investments in classes covered by the Policy since it became effective. To date, there have been no cases where an investment could not be consummated because the manager was simply unwilling to comply with the Policy's requirements.

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[4] To be clear, not every "re-up" has involved accepting a Section C standard. To the contrary, 15 of the 23 investments that have met the Section A standard have been with managers with whom SCERS had a prior relationship.

[5] Quantifying how often this is true is not possible because it would require us to know the course of negotiations, and to make subtle judgments about then-current market conditions, for several dozen deals, some going back over a decade. However, having reviewed the specific standard of care language in each of these deals, we can state without reservation that there are many side letters from older deals that obviously would not comply with either Section A or Section C standards if they were proposed today.

[6] In addition to being logistically difficult for reasons similar to those discussed in footnote 5 above, actually measuring this would require us to use the specific language of side letters for other investors for purposes unrelated to those investors' investments in those funds, which could potentially violate the applicable confidentiality schemes.

Conclusions

1. The Policy has resulted in SCERS consistently receiving better standard of care provisions in its alternative investment side letters and similar contracts than was the case before the Policy's adoption.
2. Exceptions are occurring in a clear minority of cases, but may not be as rare as the Board or staff expected or intended. This is almost entirely attributable to "re-up" investments with prominent managers with which SCERS has long-established relationships. Exceptions are almost never granted in new relationships. Still, overall, this metric bears watching in future reviews.
3. The Policy is not proving to be a meaningful impediment to SCERS accessing its preferred investments.

Fiduciary Side Letter Provisions Presentation:

Foley & Larder, LLP

By Michael Calabrese

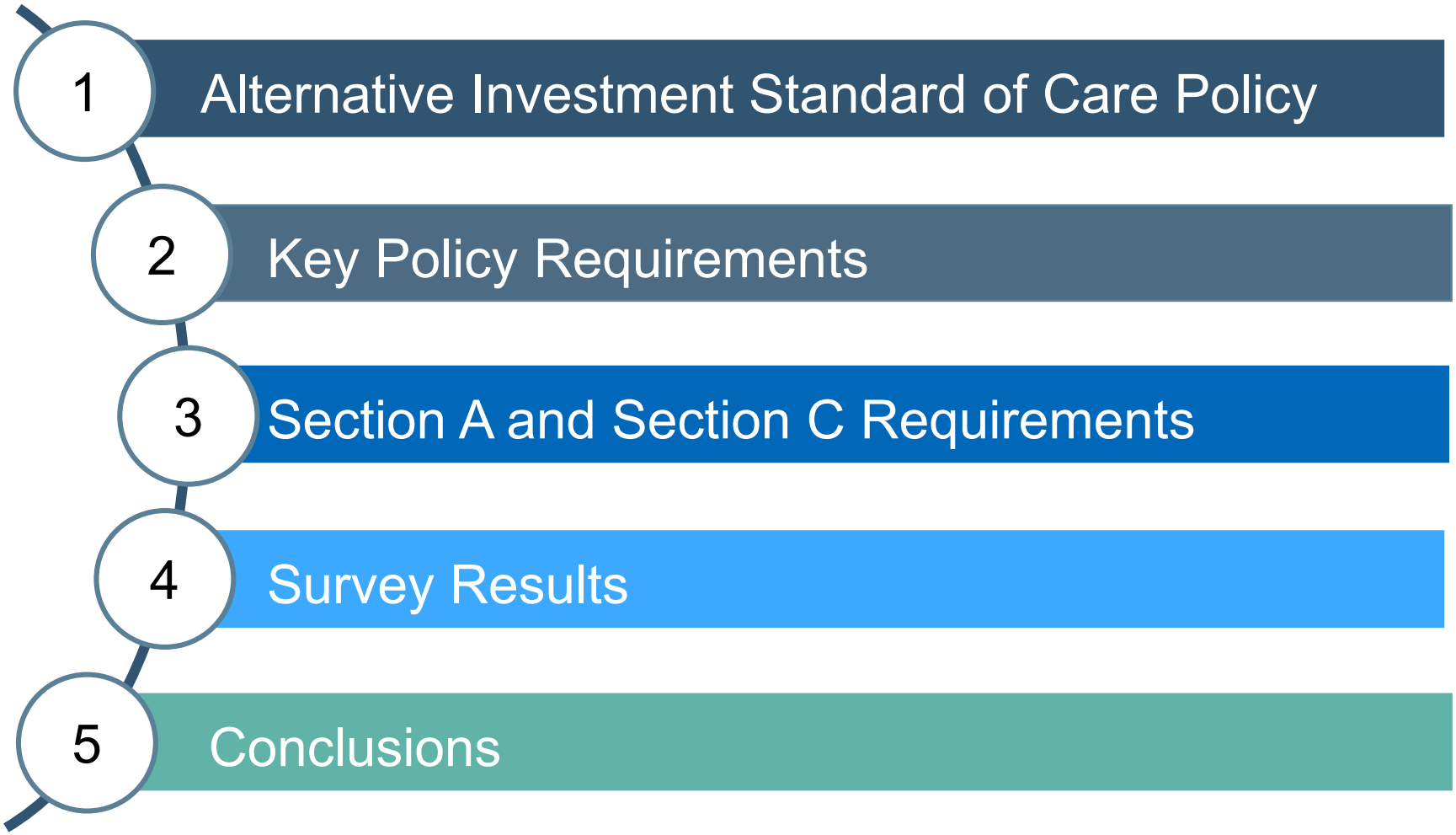
June 21, 2023

To the Board of the Sacramento County Employees' Retirement System ("SCERS")

FOLEY

FOLEY & LARDNER LLP

Agenda

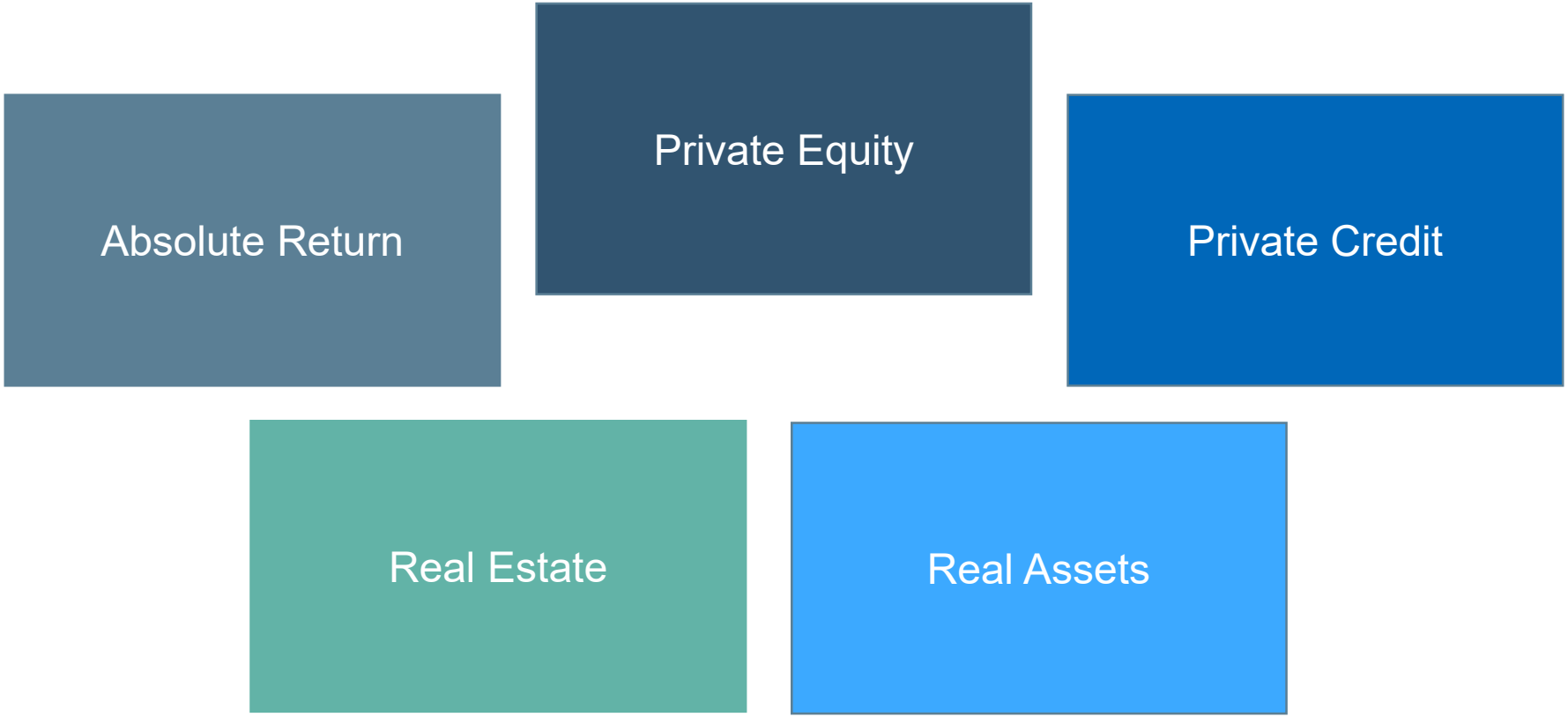

1
Alternative Investment Standard of Care Policy
2
Key Policy Requirements
3
Section A and Section C Requirements
4
Survey Results
5
Conclusions

SCERS Alternative Investment Standard of Care Policy (the "Policy")

Purpose	• To require Alternative Asset Investment fund managers and general partners to agree to a fiduciary standard of care when entering into a contract with SCERS • To provide a coherent framework for determining whether standards of care are acceptable
Policy History	• Board approved Resolution 2013-05 adopting fiduciary standard policy on 1/16/13 • Board revised format of fiduciary standard policy on 1/17/18 • Policy renumbered fiduciary standard policy to Policy No. 041 on 8/1/18 • Board approved the Policy as a replacement of fiduciary standard policy on 3/17/21
Sections	• Section A – Contractual Fiduciary Standard of Care • Section B – Other Standards of Care • Section C – Mandatory Protective Steps
Impact on Investments	• Typically requires negotiation of specific fiduciary obligations via side letter for Alternative Investment fund managers and general partners

Alternative Investment Asset Classes

Foley Legal Review:



Key Policy Requirements

Policy requires Alternative Asset Investment managers and general partners to follow specific fiduciary standard of care requirements

Section A

- Managers and GPs must be subject to same standard of care as the Board
- CA law requires prudent expert fiduciary standard of care (Cal. Gov't. Code §31595)
- Duty of care must be enforceable by SCERS
- This is the strongly preferred standard

Section B

- Some Managers and GPs refuse Section A standards and only agree to lower standard of care
  - Fiduciary duty diluted by exculpation clause
  - Non-contractual side letter "acknowledgement" that Manager is an RIA subject to Advisers Act
  - Fiduciary duty of care under DE law, *as modified* by Fund LPA
- Lower standards are "highly disfavored"; can be accepted by SCERS under only limited cases under the Policy

Section C

- For contracts with lower standards of care, requirements are:
  - Investment would play an important role in SCERS' overall strategy
  - Written opinion from investment counsel that SCERS is unlikely to obtain betters terms from similar funds or further negotiations
  - Written opinion from investment consultant explaining importance of investment
- If the requirements of Section C cannot be met, SCERS will not invest

Ideal Policy Section A - Compliant Side Letter Provision

Section A: "Each of Manager and the General Partner agrees that it and any person acting on its behalf under the Partnership Agreement **owe fiduciary duties to all Limited Partners** in accordance with applicable law governing the Partnership. As such, each of the General Partner and the Manager **agrees that it will act** in good faith in the best interests of the Partnership and the Limited Partners **with the care, skill, prudence and diligence** under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of a like character and with like aims, **will not place its interests above the interests of the Limited Partners**, and with respect to all investment opportunities and investment allocation decisions, will **allocate** such opportunities among the Limited Partners and the entities managed by the General Partner, the Manager and its Affiliates on a **fair and equitable basis** and consistent with its duty of loyalty to the Partnership and the Investor with respect to its investment in the Partnership. Each of Manager and the General Partner acknowledges the applicability of Article XVI, Section 17 of the California Constitution and Government Code Section 31595(b) to the Investor's investment in the Partnership."

Section C – Requirements

- **Importance to Strategic Asset Allocation**
  - SCERS shall create *written record* that investment belongs to an asset class important for SCERS to implement alternative asset investment strategy under Master Policy Statement and Growth/Diversifying/Real Return/Opportunities Investment Policies
  - Investment would play *important role* in helping SCERS meet investment objectives of its asset class
  - Written opinion from investment counsel that SCERS would be unable to obtain better standard of care *from similar funds* or as a result of *continued negotiations* with Manager / GP
  - Written opinion from investment consultant as to why investment is important to (1) implement SCERS' *asset class strategy* (including sub-asset geographic, strategy and sector) and (2) meet the *investment objectives of asset class* where such investment resides

Section C – Requirements (cont'd)

- **Compensating Factors**
  - Track Record of strong performance relative to Manager / GP's targets and relative to peer funds
  - Experience of Manager / GP Key Persons
  - Track Record evidencing fair treatment of LPs historically (including during stressful circumstances)
  - History and Process for addressing Conflicts of Interest
  - Other Factors bearing on Ethical Governance and Future Performance

Section C – Requirements (con't)

- **Transparency and Notice**
  - SCERS shall obtain written confirmation from investment counsel that the Manager / GP have agreed to provide transparency and notice regarding any action that would amount to a conflict of interest or a deviation from the fiduciary standard for Registered Investment Advisers under the Advisers Act
- **Periodic Global Review**
  - SCERS shall periodically engage investment counsel to review its Alternative Asset Investment portfolio and confirm that SCERS' overall record with respect to duty of care negotiations meets or exceeds the industry norms and the prudent expert standard. In addition, staff shall obtain and implement advice from such counsel with regard to market trends and whether SCERS has become "over-weighted" in sub-optimal negotiated standards of care.

Periodic Global Review of the Policy

Objectives

- When Policy approved, concern that Section A Standards could be too stringent / result in SCERS losing opportunities
- Conversely, concern with exceptions swallowing the rule
- Policy requires “Periodic Global Review” by counsel and staff
- Confirm whether investment results meet prudent expert standard and industry standards

Review

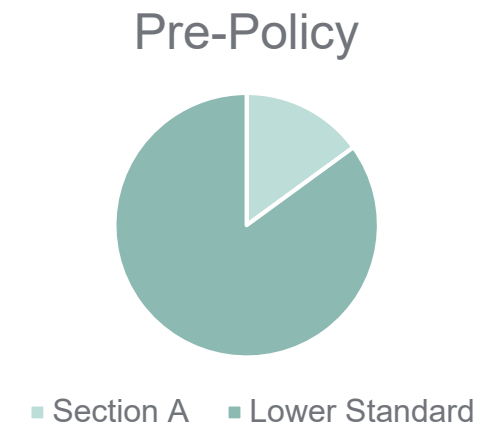
- First Periodic Global Review 2 years after Policy effective date
- Foley and Staff reviewed 173 investments subject to the Policy
- 137 investments closed prior to Policy effective date (to establish baseline)
- 36 investments closed after Policy effective date

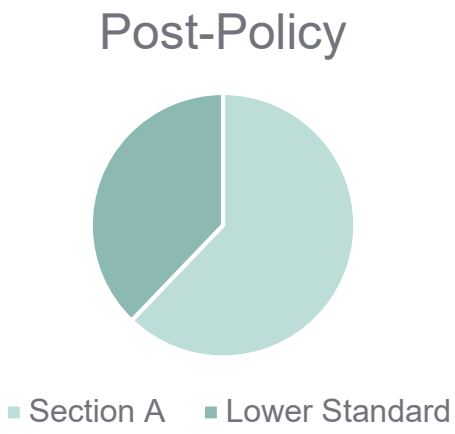
Results

- Pre-Policy Investments: 21 met Section A standards and 116 met lower standards
- Post-Policy Investments: 23 met Section A standards and 13 met lower standards
- SCERS has been substantially more successful in negotiating more stringent standards of care post-Policy, although exceptions remain significant

Periodic Global Review Table

	Section A	Lower Standards(*)
Pre-Policy	21	116
Post-Policy	23	13





- For post-Policy investments, "lower standards" necessarily means the terms meet Section C standards, since the investments could not have been closed without counsel and consultant opinions to that effect.
- For pre-Policy investments, the above cannot be assumed for "lower standard" investments. However, Foley can state that a great many of the older investments would *not* have complied with Section C if the Policy had been in effect when they closed.

Periodic Global Review Analysis

- SCERS has been far more successful in negotiating more stringent "Section A" standards of care since enactment of the Policy (64%) than before (15%).
- Section C exceptions being made in 36% of cases during the last two years: not as rare as expected, but we expect these may be rarer going forward:
  - Two of the thirteen exceptions occurred with investments closing in the weeks immediately following the Policy's adoption, where negotiations had progressed to a significant degree prior to the adoption of the Policy.
  - Of the thirteen exceptions, twelve involved managers for whom SCERS had at least two prior investments with the same manager, which investments that had been subject to lower standards.

Periodic Global Review Analysis (cont'd)

- Even *the Section C standard is more stringent* than standards of care permitted for investments pre-Policy. Comparing just those provisions that do not meet Section A standards, the review made clear that many of the standard of care provisions from pre-Policy deals would not meet even Section C standards today.
- There have been *no* proposed post-Policy investments that could not be consummated because a Manager refused to meet minimum Policy requirements.

Periodic Global Review Conclusions

- Policy has resulted in SCERS consistently receiving better standard of care provisions in its alternative investment side letters and similar contracts than was the case before the Policy's adoption.
- Exceptions are occurring in a clear minority of cases, but may not be as rare as the Board or staff expected or intended. This is primarily attributable to "re-up" investments with prominent managers with which SCERS has long-established relationships. Exceptions are almost never granted in new relationships. This metric bears watching in future reviews.
- The Policy is not proving to be a meaningful impediment to SCERS accessing its preferred investments.

Questions?