



Board of Retirement Regular Meeting

Sacramento County Employees' Retirement System

Agenda Item 11D

MEETING DATE: January 17, 2024

SUBJECT: Board and Staff Personal Information Policy

SUBMITTED FOR: Consent Deliberation and Action Receive and File

RECOMMENDATION

Approve amendments to SCERS' Board and Staff Personal Information Policy.

PURPOSE

This item supports Strategic Management Plan goals regarding effective oversight of the investment program, risk management and compliance with laws and regulations.

DISCUSSION

In January 2021, the Board approved its Board and Staff Personal Information Policy, formalizing its historic practice of declining to provide the personal information of trustees and staff upon request by investment fund managers. When negotiating investment agreements, fund counsel often contends that personal identifiable information is required to satisfy potential regulator inquiries pursuant to anti-money laundering and anti-terrorism laws. SCERS argues in response that, as a public pension system subject to governmental transparency requirements, the use of professional or business-related information that respects privacy rights and decreases the risk of identity theft is adequate. The policy was adopted in an effort to strengthen SCERS' position in negotiations, as a formal regulation by which SCERS must abide.

Pursuant to SCERS' practice of reviewing and refreshing policies every three years, Staff has re-evaluated the policy to consider whether any amendments are necessary due to legal changes or practical experience. SCERS' investment counsel has indicated that, while the policy has not yet resulted in any lost investment opportunities, the inclusion of specific language often complicates and extends negotiations because it is rarely agreeable to fund counsel. These complications can lead to increased legal costs and delayed investment commitments.

The recommended amendments are largely non-substantive, and eliminating the lengthy proposed contractual language in favor of more general requirements will provide investment counsel with flexibility while more efficiently achieving the Board's goals. The result is a

streamlined policy that is also consistent with recent stylistic changes to policies reviewed by General Counsel.

ATTACHMENTS

- Board Order
- Redlined version of policy with proposed amendments
- Clean version of policy with proposed amendments

Prepared by:

/s/

Jason R. Morrish
General Counsel

Reviewed by:

/s/

Eric Stern
Chief Executive Officer



Retirement Board Order

Sacramento County Employees' Retirement System

Before the Board of Retirement
January 17, 2024

AGENDA ITEM:

Board and Staff Personal Information Policy

THE BOARD OF RETIREMENT hereby approves Staff's recommendation to approve amendments to SCERS' Board and Staff Personal Information Policy.

I HEREBY CERTIFY that the above order was passed and adopted on January 17, 2024 by the following vote of the Board of Retirement, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

ALTERNATES
(Present but not voting):

James Diepenbrock
Board President

Eric Stern
Chief Executive Officer and
Board Secretary



BOARD AND STAFF PERSONAL INFORMATION POLICY

PURPOSE

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

POLICY

In entering into any contracts for traditional assets/public markets investments or alternative assets/private markets investments as defined by SCERS' Master Investment Policy Statement~~investment contract~~ (including, but not limited to, investment management agreements, subscription agreements, limited partnership agreements and side letters with private fund general partners and managers), SCERS shall not agree to provide sensitive personal identifiable information or personal identification documents about SCERS trustees or staff, including, but not limited to, dates of birth, home addresses, home telephone numbers, personal cellular numbers, passports, driver's licenses, or social security cards/numbers. However, SCERS may agree to provide business identification information about the Chief Executive Officer and investment staff, including their names, title/position at SCERS, business contact information, and signature samples. SCERS' investment contracts shall incorporate language acceptable to the General Counsel and/or SCERS' investment counsel to effectuate these requirements.

Additionally, in exceptional circumstances and at the sole discretion of the Chief Executive Officer, SCERS may agree to provide a copy of the Chief Executive Officer's California-issued identification card (including but not limited to a driver's license) to satisfy a specific and final regulator demand. The foregoing sentence does not extend to any other personal identification document or any other staff member or trustee. Any agreement to provide the Chief Executive Officer's identification card in response to a regulator demand must be accompanied by contractual protections acceptable to the General Counsel and/or SCERS' investment counsel, such as proof of necessity and exhaustion of alternatives, limitations on usage and disclosure, and/or the ability to transfer assets in the absence of mutually agreeable alternatives to disclosure. To this end, SCERS' investment contracts shall include language substantially similar to the following:

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

~~the provider of such information for any harm that arises related to the release or unauthorized use of such information.~~

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

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

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

~~Limits on Usage and Disclosure: The Investor agrees that the [Counter-parties] (a) may use the CEO ID Card only for the purpose of establishing and maintaining compliance with applicable laws, including but not limited to anti-money laundering and anti-terrorism and similar legislation or regulatory provisions or policies designed to comply therewith, and any other regulation, legislation or law enacted pursuant thereto, (b) may~~

~~disclose the CEO ID Card on a “need to know” basis to the [Counter parties’] officers, members, managers, partners, employees, affiliates, and professional advisors that are subject to a general duty of confidentiality or contractual confidentiality obligations in connection with the operation and affairs of the [Counter parties], and (c) may disclose the CEO ID Card with the prior written consent of the Investor.~~

BACKGROUND

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

RESPONSIBILITIES

Executive Owner: General Counsel

POLICY HISTORY

Date	Description
<u>01/17/2024</u>	<u>Board amended policy.</u>
01/19/2021	Board approved <u>policy.</u>



BOARD AND STAFF PERSONAL INFORMATION POLICY

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BACKGROUND

In the course of negotiating contracts with investment managers and general partners, SCERS is often asked to agree to provide personal identifiable information or personal identification documents about SCERS' trustees and staff in the event of a request by a regulator. This policy formalizes SCERS' historical practice of refusing such requests for personal information due to concerns about privacy, the right to withhold consent, and the dangers of identity theft, while preserving flexibility for SCERS to negotiate acceptable investment contract terms.

RESPONSIBILITIES

Executive Owner: General Counsel

POLICY HISTORY

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