

Policy Name: Policy on Referrals of Investment Opportunities and Service Provider Candidates; Related Communications; Undue Influence
Policy Number: 2018 POL-BD-07
Effective Date: November 19, 2018
Reviewed Date: January 9, 2018
Applies To: SERS Board
Contact Person: SERS Legal Office

I. Purpose.

The Board must invest and manage the Pennsylvania State Employees' Retirement Fund (the "Fund") prudently, with the judgment, skill, and care that a prudent investor would observe under similar circumstances. As fiduciaries, Board members must invest and manage the Fund for the exclusive benefit of the members of the Pennsylvania State Employees' Retirement System ("SERS"). The Board may contract for the services of investment managers, investment advisors/counselors, and such other professional personnel as it deems advisable.

This policy describes the manner by which Board members should carry out these duties with respect to referrals of investment opportunities and service provider candidates to SERS and how Board members should handle related communications. For purposes of this policy, "Board" and "Board member(s)" include designee(s).

II. Definitions.

"*Ex parte* communication" means any material oral or written communication relevant to the merits of an administrative appeal that was neither on the record nor on reasonable prior notice to all parties that takes place between:

- (i) An interested person outside the Board (including such person's counsel); and
- (ii) Either the hearing examiner handling that proceeding or any Board member.

"Referral" shall mean, for purposes of this policy, when: (i) the Board member or their staff acting on their behalf have affirmatively contacted SERS staff or outside consultants to establish contact between a Third Party and SERS staff or outside consultants; or, (ii) the Board member or their staff acting on their behalf have affirmatively provided an endorsement of a Third Party to SERS staff or outside consultants.

"Third Party" shall mean and include any potential or existing investment manager, investment advisor/consultant, contractor, vendor, and/or service provider (and/or a representative, agent, intermediary, affiliate or advocate thereof) that is seeking an action, opportunity, and/or a specific outcome from the Board and/or SERS. This definition includes public officials.

“Undue Influence” shall mean the improper, unfair or wrongful use of power, authority, or a relationship to induce someone to act or make a decision that they otherwise would not do/make if left to act freely as a fiduciary in the exercise of prudent discretion.

III. Communication with Third Parties.

Board members have no duty or obligation to meet or communicate with Third Parties except as authorized by the Board. Any unauthorized contact or communication between individual Board members and Third Parties is in the Board member's capacity as an individual, with the understanding that individual Board members in and of themselves do not represent the Board and have no authority to bind the Board to any agreements, unless specifically authorized to do so by the Board.

Board members shall direct any Referrals regarding a prospective or existing investment transaction or contract, or any non-investment contract or selection, including any proposals, questions or communications from Third Parties regarding such Referrals to the Chief Compliance Officer, who shall notify the Executive Director, Chief Counsel, and, as applicable, the Chief Investment Officer and/or the Chief Financial Officer, of the receipt of same and report all Referrals to the Board on at least a quarterly basis and, in any event, before any Board or Board committee action is taken on the subject matter of the Referral.. Upon the making of any such Referrals, the Board member making the Referral shall not be directly or indirectly contacting, communicating, or participating in the review process and, except as to making a general inquiry to the Chief Compliance Officer as to the status of a Referral, should have no direct or indirect contact or communication with staff or outside consultants regarding the Referral in order to avoid actual or perceived pressure. Should the Board member making the Referral be contacted for information on the status of the Referral by the party making the request, the inquiring party shall be directed to the Chief Compliance Officer. In all instances, incidental contact between the proposer or its representatives and Board members, staff, or outside consultants which is exclusively social, or which clearly pertains to a matter not related to the subject process, is permissible. Contact and communications between Board members, staff, and outside consultants that is in accordance with SERS and Board normal customs and practices during the review process for any Referral would also be permissible. A simple statement of support of a Third Party to the Chief Compliance Officer, to the Board or a committee of the Board, or in a public forum, without any other action by the Board member making a Referral, shall not constitute Undue Influence.

Any inquiries or correspondence by a Third Party addressed to a Board member which the Board member wishes to direct to SERS staff ("Staff") for assistance in preparing a response, which is otherwise Board authorized, should be forwarded to the Executive Director, who shall notify the Chief Compliance Officer of the receipt of same.

IV. Disclosure of Third Party Communications and Investment Opportunities.

Board members have a duty to disclose information that is material to Board decisions or deliberations, so that co-fiduciaries may take it into consideration during due diligence reviews

and/or deliberations. Communications from or on behalf of Third Parties to Board members can be relevant to Board or Staff decisions.

Any advocacy by a Third Party to a Board member for a specified outcome in regard to an investment, contract or service provider selection must be promptly reported to the Chief Compliance Officer prior to any Board or Board Committee action thereon. Such communications shall be documented and logged by the Chief Compliance Officer, and reported to the Board.

V. Board Member Referrals and Communications.

It is acknowledged that Board members might become aware of investment and/or service provider opportunities in the normal course of their duties. Such contacts should not be considered inherently suspect. However, all investment and contracting opportunities shall go through normal Board and SERS processes, without special consideration because of a contact involving a Board member. A Board member shall make co-fiduciaries aware of their activities which involve potential influence on Board business.

Contacts from a Board member making a Referral for potential investment or service provider opportunities shall be reported to the Chief Compliance Officer, who shall notify the Executive Director, Chief Counsel and, as applicable, the Chief Investment Officer and/or the Chief Financial Officer, pursuant to Section III above. The potential investment or service provider opportunities shall go through the same due diligence process as any other opportunity. The Chief Compliance Officer shall keep a log of Board member Referrals involving advocacy in regard to an opportunity, including the ultimate disposition of the opportunity, and share it with the Board on at least a quarterly basis and in any event before any Board or Board committee action is taken on the subject matter of the Referral. Normally, the making of a Referral of a proposal in which a Board member does not have any personal, financial, or pecuniary interest does not preclude the Board member from voting on the matter, provided full disclosure of the Referral and any relationship with the parties is made; otherwise, Board members making a Referral shall adhere to the SERS Governance Policy Manual's Standards of Conduct for SERS Board regarding disclosure of interest and recusal. Notwithstanding the foregoing, the Chief Compliance Officer shall have the authority to determine whether or when a Referral creating the need for a recusal has been made.

VI. No Contact Policy During Procurements.

Board members shall not knowingly communicate with any Third Party that is financially interested in a proposed contract with SERS, once the Board issues a request for proposal ("RFP"), request for information ("RFI"), invitation for bid ("IFB"), or comparable procurement vehicle, except as provided below. If such communication occurs, it shall be promptly reported to the Chief Compliance Officer, who shall notify the Executive Director, Chief Counsel and, as applicable, the Chief Investment Officer and/or Chief Financial Officer.

Board members may communicate with a Third Party that is financially interested in a proposed contract with SERS if:

1. Communication is incidental, exclusively social, and does not involve the Board or its business, or the individual's role as a Board member;
2. Communication does not involve the Board or its business and communication is within the scope of the Board member's private business or public office and wholly unrelated to the Board;
3. Communication is part of the process expressly described in an RFP, RFI, IFB or comparable procurement vehicle;
4. Communication is part of a noticed Board or Committee meeting, or otherwise authorized by the Board; or
5. Communication occurs after the applicable contract execution with or issuance of a purchase order to the Third Party.

VII. Avoidance of Undue Influence.

Board members and Staff shall immediately disclose to the Chief Compliance Officer, who shall notify the Executive Director, Chief Counsel and, as applicable, the Chief Investment Officer and/or Chief Financial Officer, any Third Party conduct or communication that can be reasonably interpreted as an attempt to exert Undue Influence on the outcome of a Board or Staff decision, or advisor/consultant recommendation, in an investment transaction or contracting decision. Even if such conduct or communication does not rise to the level of Undue Influence, such conduct or communication may nevertheless be reported. Retaliation for good faith reporting of a potential Undue Influence incident is prohibited.

Any attempt by a Third Party to exert Undue Influence upon a Board member or Staff to a specified action, decision or course of conduct could compromise Board/SERS decision-making to the detriment of the Board/SERS as a whole, as well as the detriment of SERS members and their beneficiaries. Any Board member or Staff who thinks he or she has been subject to Undue Influence shall report the occurrence immediately to the Chief Compliance Officer, who shall notify the Executive Director, Chief Counsel and, as applicable, the Chief Investment Officer and/or the Chief Financial Officer.

Any Board member who receives or becomes aware of a report of Undue Influence shall immediately report such information to the Chief Compliance Officer, who shall notify the Executive Director, Chief Counsel and, as applicable, the Chief Investment Officer and/or the Chief Financial Officer. The Executive Director shall consult with the Chief Counsel and receive advice on appropriate response actions. Appropriate response actions may include, without limitation, informing the entire Board, notifying an external enforcement agency, and/or making a public disclosure during an open session Board meeting.

VIII. Ex Parte Communications and Conflicts in Administrative Appeals.

When considering appeals for determinations relating to benefits, the Board is required to observe a process that is fair and impartial. Board members should refrain from *ex parte* communications with parties or communications with the hearing examiner in a matter which is expected to come to the Board for a determination. Where such communications occur, or when a Board member has (even when acting in a different role than Board member) advocated within SERS for a particular party, the Board member shall immediately (i) disclose the circumstances to the Chief Compliance Officer, Executive Director and Chief Counsel, and (ii) be recused from participating in the matter going forward.

Document Properties

- a. **Document Owner:** Executive Office
- b. **Document Author:** SERS Legal Office
- c. **Summary of Changes:**

Date	Version	Author	Summary
January 9, 2018	2018 POL-BD-07	SERS Legal Office	The policy established by the Board describing the manner by which Board members should carry out the duties with respect to referrals of investment opportunities and service provider candidates to SERS and how Board members should handle related communications.