

CHAPTER 3 – SERVICE PROVIDER DISCLOSURE POLICY

SECTION 4:301 - INTRODUCTION.

(1) The Wayne County Employees' Retirement Commission ("Retirement Commission") is vested with the authority and fiduciary responsibility for the administration, management and operation of the Retirement System. The Michigan Public Employee Retirement System Investment Act, Public Act 314 of 1965, as amended ("Act 314") [MCL § 38.1132 *et seq.*], governs the Retirement Commission's fiduciary duties and responsibilities with regard to investing Wayne County Employees' Retirement System ("Retirement System") assets.

A. Purpose

- (1) Public Act 347 of 2012 ("PA 347") includes various amendments to Act 314, including new disclosure requirements applicable to the Retirement System's service providers. This policy is intended to establish a formal disclosure policy applicable to appropriate service providers in order to monitor said service providers' compliance with Act 314 and other applicable laws.

B. Investment Related Fees/Compensation

- (1) PA 347 added Section 13(7) to Act 314 [MCL § 38.1133(7)], requiring current and prospective investment service providers to disclose to the Retirement Commission all fees and other compensation associated with its relationship with the Retirement System. Section 13(7) of Act 314 provides in pertinent part as follows:

Before any investment services are provided, an investment service provider shall provide the investment fiduciary of the system with a complete written disclosure of all fees or other compensation associated with its relationship with the system. After investment services are provided to the investment fiduciary of the system, an investment service provider shall provide on an annual basis written disclosure of all fees including, but not limited to, commissions, 12b-1 and related fees, compensation paid or to be paid to third parties, and any other compensation paid by the system to the investment fiduciary of the system.

- (2) The term "investment service provider" is defined under Section 13(7) of Act 314 as follows:

any individual, third-party agent or consultant, or other entity that receives direct or indirect compensation for consulting, investment management, brokerage, or custody services related to the system's assets. Investment service provider does not include a retirement system.

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C. Political Contributions

- (1) In addition to the foregoing, PA 347 also added Section 13e to Act 314 [MCL § 38.1133e], which prohibits payment by the Retirement Commission to any service provider(s) who have made political contributions, including contributions to a legal defense fund, in violation of the Act. Section 13e(1) of Act 314 states:

An investment fiduciary shall not make a payment from the assets of a system to a service provider if the service provider or a covered associate of the service provider has made a contribution to an official of a governmental entity during the immediately preceding 24-calendar-month period, which period does not include any calendar month before the effective date of this section. An investment fiduciary, a service provider, or a covered associate of a service provider shall not do anything indirectly that, if done directly, would violate this subsection. This subsection does not apply under any of the following circumstances:

- (a) The contribution was made by a service provider or covered associate of the service provider to an official of a governmental entity for whom the service provider or covered associate of the service provider was entitled to vote at the time of the contribution and the contributions by the service provider or covered associate of the service provider to that official in the aggregate do not exceed \$350.00 per election.
- (b) The contribution was made by a service provider or covered associate of the service provider to an official of a governmental entity for whom the service provider or covered associate of the service provider was not entitled to vote at the time of the contribution and the contributions by the service provider or covered associate of the service provider to that official in the aggregate do not exceed \$150.00 per election.
- (c) The contribution was made to an official of a governmental entity by an individual more than 6 months before he or she became a covered associate of the service provider.
- (d) The contribution was made to an official of a governmental entity by a covered associate of the service provider and all of the following requirements are met:
 - (i) The service provider discovers the contribution that violates this subsection on or before the expiration of 4 months after the contribution was made.
 - (ii) The contribution that violates this subsection was for \$350.00 or less.

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- (iii) The covered associate of the service provider obtains the return of the contribution that violates this subsection on or before the expiration of 60 calendar days after the date of the discovery of the contribution under subparagraph (i).
- (3) The term “service provider” is defined at Section 13e(2)(g) of the Act which states:
- “Service provider” means a person retained to provide services to a system and includes investment advisers, consultants, custodians, accountants, auditors, attorneys, actuaries, administrators, and physicians. Service provider includes an investment service provider as defined in section 13(7). Service provider does not include a regulated investment adviser.
- (4) It is noted that the exemption for “regulated investment advisors” includes registered investment advisers under the Investment Advisers Act of 1940 (the “Advisers Act”) [15 U.S.C. §80b-1 *et seq.*]. Accordingly, those “investment service providers” registered under the Advisers Act are exempt from the disclosure requirements of Section 13e of Act 314. Notwithstanding, registered investment advisers are subject to similar disclosure rules under the Securities and Exchange Commission’s “pay-to-play” rule under the Advisers Act. Accordingly, verification that a registered investment adviser is in compliance with the requirements of the Advisers Act is analogous to verifying the “regulated investment advisor’s” compliance under Section 13e of Act 314.

SECTION 4:302 - POLICY.

A. Fiduciary Responsibility

- (1) The Retirement Commission recognizes that it is subject to the provisions of Act 314, which requires the Retirement Commission to act as a prudent investor in all transactions related to Retirement System funds and assets by discharging its duties solely in the interests of the Members, Participants, and beneficiaries, and which further requires that it act with the same care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a similar capacity and familiar with those matters would use in the conduct of a similar enterprise with similar aims; and with due regard for the management, reputation, and stability of the issuer and the character of the particular investments being considered.
- (2) In light of its fiduciary responsibility, the Retirement Commission recognizes that it is in the best interests of the Retirement System and its Members, Participants, and beneficiaries to retain the services of qualified professional service providers, including, but not limited to: investment consultants, investment managers, investment banks/brokers, custodians, actuaries, auditors, attorneys, administrators, and physicians to assist in and oversee the investments and administration of the Retirement System, and

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- (3) The Retirement Commission is aware of the various disclosure requirements and “pay-to-play” restrictions imposed on its current and prospective service providers under the provisions of Act 314 and applicable federal law, and has established this Service Provider Disclosure Policy consistent with said legal requirements and its fiduciary responsibilities to the Retirement System’s Members, Participants, and beneficiaries.

B. Investment Related Disclosures

- (1) The Retirement Commission recognizes that several of the Retirement System’s professional service providers qualify as “investment service providers” as that term is defined under Act 314.
- (2) Every year in the month of October, the Retirement System shall require each of its current “investment service providers” to disclose in writing all fees or other compensation associated with its relationship with the Retirement System for the immediately preceding fiscal year (October 1 – September 30), as required under Section 13(7) of Act 314 [MCL § 38.1133(7)], by submission of the attached Compensation Disclosure Form and the investment service provider’s most recent disclosures, if any, required under Section 408(b)(2) of ERISA or similar regulations.
 - (a) Any current investment service provider’s failure or refusal to complete and submit the Retirement System’s Compensation Disclosure Form and/or ERISA 408(b)(2) disclosures shall be deemed a violation of the requirements of Act 314 and this Policy, and shall result in appropriate action by the Retirement Commission, including the possible suspension of payment for services rendered and/or termination of the service provider’s relationship with the Retirement System.
- (3) Prior to the transfer of any Retirement System assets to a prospective “investment service provider”, the prospective “investment service provider” shall be required to disclose all fees or other compensation to be associated with its relationship to the Retirement System through completion and submission of the Fee Disclosure Form to the Retirement Commission.
 - (a) Any prospective investment service provider’s failure or refusal to complete and submit the Retirement System’s Compensation Disclosure Form and/or ERISA 408(b)(2) disclosures shall be deemed a violation of the requirements of Act 314 and this Policy, and may result in disqualification of the investment service provider’s prospective relationship with the Retirement System.

C. Disclosure of Political Contributions

- (1) The Retirement Commission recognizes that it is required to withhold payment from service providers who violate the “pay-to-play” provisions of Act 314 and applicable federal law.

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- (2) Every year in the month of October, the Retirement Commission shall require all of its professional service providers to acknowledge that they are in compliance with Section 13e of Act 314 [MCL § 38.1133e] and/or Rule 206(4)-5 under the Investment Advisers Act of 1940, for the immediately preceding fiscal year (October 1 – September 30), by completion and submission of the attached Political Contribution Disclosure Form.
- (3) All professional services providers shall have an ongoing requirement to monitor all political contributions and immediately disclose to the Retirement Commission any and all political contributions that violate the restrictions of Section 13e of Act 314 and/or Rule 206(4)-5 under the Investment Advisers Act of 1940, including the date of the contribution, the name of the contributor, the name of the recipient, and the amount of the contribution.
- (4) Any service provider's failure or refusal to complete and submit the Retirement System's Political Contribution Disclosure form shall be deemed a violation of the requirements of Act 314 and this Policy, and shall result in appropriate action by the Retirement Commission, including the possible suspension of payment for services rendered and/or termination of the service provider's relationship with the Retirement System.

SECTION 4:303 - ENFORCEMENT AND COMPLIANCE.

A. In General

- (1) Retirement System staff shall monitor each service provider's compliance with the terms of this Policy, and shall notify the Retirement Commission, at its next scheduled meeting, in the event of a violation.
- (2) The Retirement Commission shall be responsible for enforcing the terms of this Policy in the event of a violation by one or more of the Retirement System's service providers.
 - (a) In no event shall the Retirement Commission authorize a payment from Retirement System assets to a service provider who is in violation of the "pay-to-play" restrictions of Act 314 or Rule 206-4(5) under the Investment Advisers Act of 1940.
- (3) Upon this Policy's adoption by the Retirement Commission, each of the Retirement System's current service providers shall be notified in writing of their disclosure requirements under the policy and Act 314, and shall be required to sign and submit an acknowledgement of agreement and compliance.
 - (a) A current service provider's failure or refusal to execute the required acknowledgement of agreement and compliance shall be deemed a violation of this policy, and may result in the suspension of payment for services rendered and/or termination of the service provider's relationship with the Retirement System, at the discretion of the Retirement Commission.

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W.C.E.R.S. Policy – Service Provider Disclosure Policy	
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