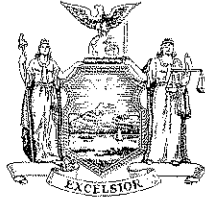


THOMAS P. DINAPOLI
STATE COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

OSC No. 11

MEMORANDUM
RE
AN ACT

to amend the retirement and social security law, in relation to prohibiting the use of placement agents by managers doing business with the common retirement fund

PURPOSE: For the purpose of maintaining the integrity of the New York State and Local Retirement System ("System") and the New York State Common Retirement Fund ("CRF" or "Fund"), as well as to increase transparency, this bill would codify the State Comptroller's policy prohibiting the use of placement agents or intermediaries by the Common Retirement Fund.

SUMMARY OF PROVISIONS: Section 1 of this bill rennumbers Section 425 of the Retirement and Social Security Law as Section 426 of such Law and adds a new Section 425 to the Retirement and Social Security Law which prohibits the CRF from engaging, hiring, investing with or committing to an investment manager that is using the services of a placement agent or intermediary to assist such investment manager in obtaining investments by the CRF, and further prohibits the CRF from engaging, hiring, investing with or commit to an investment manager without obtaining from such investment manager a certification in the form and manner prescribed by the CRF stating that such investment manager has not used the services of a placement agent or other intermediary to assist such investment manager in obtaining investments by the CRF.

This Section defines an "investment manager" as any person or entity, other than an employee of the State Comptroller, engaged by the CRF in the management of an investment portfolio of the CRF.

Additionally, this Section defines a "placement agent or intermediary" as any person or entity, including a registered lobbyist, that is directly or indirectly engaged and compensated by an investment manager to promote investments to or solicit investment by the CRF, whether compensated on a flat fee, a contingent fee, or any other basis. A placement agent or intermediary is not a regular employee of the investment manager.

Section 2 of this bill provides for an immediate effective date.

PRIOR LEGISLATIVE HISTORY:

S.5632 and A.7909 of 2011-2012

S.4238 and A.3635 of 2013-2014

S.4927 and A.5054 of 2015-2016

JUSTIFICATION: Restoring confidence in the integrity of the Fund's investment decision-making process and in the operations of the System has been a top priority of State Comptroller Thomas P. DiNapoli since he took Office. In conducting a top-to-bottom review of the way the Fund does business, reforming Fund operations and restoring the credibility of the operation, Comptroller DiNapoli determined a placement agent ban was appropriate as part of his commitment to reforming the operations of the Fund.

In order to preserve the independence and integrity of the Fund, to preclude potential conflicts of interest, and to assist the State Comptroller in fulfilling his or her duties as a fiduciary to the Fund, this bill codifies the policy that Comptroller DiNapoli adopted on April 21, 2009, which prohibits the Fund from engaging, hiring, investing with or committing to an outside investment manager who is using the services of a placement agent or intermediary to assist the investment manager in obtaining investments by the Fund. By codifying his policy, Comptroller DiNapoli is ensuring that the Fund will always be protected.

It should be noted that the enactment of this legislation would render the Emergency Regulation (DFS-14-17-00002-E, as such regulation relates to a ban on the use of placement agents) first promulgated by the Department of Insurance on June 18, 2009 and subsequently renewed by the department and its successor, the Department of Financial Services, every 90 days thereafter moot. To date, this *emergency* regulation has been published 35 times in the New York State Register.

The State Comptroller urges approval of this legislation.

BUDGET IMPLICATIONS: This bill has no significant fiscal impact.

EFFECTIVE DATE: Immediately.