

**INSURANCE DEPARTMENT OF THE STATE OF NEW YORK  
THIRD AMENDMENT TO  
REGULATION NO. 85  
11 NYCRR 136  
PUBLIC RETIREMENT SYSTEMS**

I, Eric R. Dinallo, Superintendent of Insurance of the State of New York, pursuant to the authority granted by Sections 201, 301, 314, 7401(a), and 7402(n) of the Insurance Law of the State of New York, do hereby promulgate, as an emergency measure, the third amendment to Part 136 of Chapter IX of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 85), to take effect upon filing with the Secretary of State, to read as follows:

**MATTER IN BRACKETS IS DELETED  
MATTER UNDERLINED IS NEW**

Section 136-2.2 is amended to read as follows:

§ 136-2.2 Definitions.

The following words and phrases, as used in this Subpart, unless a different meaning is plainly required by the context, shall have the following meanings:

[(a) *Retirement system* shall mean the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.]

[(b) *Fund* shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law, which holds the assets of the retirement system.]

[(c)](a) *Comptroller* shall mean the Comptroller of the State of New York in his capacity as administrative head of the Retirement System and the sole trustee of the fund.

[(d) *OSC* shall mean the Office of the State Comptroller.]

[(e)](b) *Consultant or advisor* shall mean any person (other than an OSC employee) or entity retained by the [fund] Fund to provide technical or professional services to the [fund] Fund relating to investments by the [fund] Fund, including outside investment counsel and litigation counsel, custodians, administrators, broker-dealers, and persons or entities that identify investment objectives and risks, assist in the selection of money managers, securities, or other investments, or monitor investment performance.

(c) *Family member* shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.

(d) *Fund* shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law ("RSSL"), which holds the assets of the retirement system.

[f] (e) Investment manager shall mean any person (other than an OSC employee) or entity engaged by the [fund] Fund in the management of part or all of an investment portfolio of the [fund] Fund. “Management” shall include, but is not limited to, analysis of portfolio holdings, and the purchase, sale, and lending thereof. For the purposes hereof, any investment made by the [fund] Fund pursuant to RSSL § 177 (7) shall be deemed to be the investment of the [fund] Fund in such investment entity (rather than in the assets of such investment entity).

(f) Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the Fund.

(g) OSC shall mean the Office of the State Comptroller.

[(g)] (h) Placement agent or intermediary shall mean any person or entity, including registered lobbyists, directly or indirectly engaged and compensated by an investment manager (other than [an] a regular employee of the investment manager) to promote investments to or solicit investment by [assist the investment manager in obtaining investments by the fund, or otherwise doing business with] the [fund] Fund, whether compensated on a flat fee, a contingent fee, or any other basis. Regular employees of an investment manager are excluded from this definition unless they are employed principally for the purpose of securing or influencing the decision to secure a particular transaction or investment by the Fund.[obtaining investments or providing other intermediary services with respect to the fund.] For purpose of this paragraph, the term “employee” shall include any person who would qualify as an employee under the federal Internal Revenue Code of 1986, as amended, but shall not include a person hired, retained or engaged by an investment manager to secure or influence the decision to secure a particular transaction or investment by the Fund.

[(h)] Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the fund.]

[(i)] Third party administrator shall mean any person or entity that contractually provides administrative services to the retirement system, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits or paying benefits and maintaining any other retirement system records. Administrative services do not include services provided to the fund relating to fund investments.]

(i) Retirement System shall mean the New York State and Local Employees’ Retirement System and the New York State and Local Police and Fire Retirement System.

(j) Third party administrator shall mean any person or entity that contractually provides administrative services to the Retirement System, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits, paying benefits or maintaining any other Retirement System records. “Administrative services” do not include services provided to the Fund relating to Fund investments.

[(j)] (k) Unaffiliated Person shall mean any person other than: (1) the Comptroller or a family member of the Comptroller, (2) an officer or employee of OSC, (3) an individual or entity doing business with OSC or the [fund] Fund, or (4) an individual or entity that has a substantial financial interest in an entity doing business with OSC or the [fund] Fund. For the purpose of this paragraph, the term “substantial financial interest” shall

mean the control of the entity, whereby “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the entity, whether through the ownership of voting securities, by contract (except a commercial contract for goods or non-management services) or otherwise; but no individual shall be deemed to control an entity solely by reason of his being an officer or director of such entity. Control shall be presumed to exist if any individual directly or indirectly owns, controls or holds with the power to vote ten percent or more of the voting securities of such entity.

[(k) *Family member* shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.]

Section 136-2.4 (d) is amended to read as follows:

(d) Placement agents or intermediaries: In order to preserve the independence and integrity of the [fund] Fund, to [address] preclude potential conflicts of interest, and to assist the Comptroller in fulfilling his or her duties as a fiduciary to the [fund] Fund, [the Comptroller shall maintain a reporting and review system that must be followed whenever the fund] the Fund shall not [engages, hires, invests with, or commits] engage, hire, invest with or commit 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] Fund. [, or otherwise doing business with the fund. The Comptroller shall require investment managers to disclose to the Comptroller and to his or her designee payments made to any such placement agent or intermediary. The reporting and review system shall be set forth in written guidelines and such guidelines shall be published on the OSC public website.]

Section 136-2.5 (g) is amended to read as follows:

(g) The Comptroller shall:

(1) file with the superintendent an annual statement in the format prescribed by Section 307 of the Insurance Law, including the [retirement system’s] Retirement System’s financial statement, together with an opinion of an independent certified public accountant on the financial statement;

(2) file with the superintendent the Comprehensive Annual Financial Report within the time prescribed by law, but no later than the time it is published on the OSC public website;

(3) disclose on the OSC public website, on at least an annual basis, all fees paid by the fund to investment managers, consultants or advisors, and third party administrators;

[(4) disclose on the OSC public website, on at least an annual basis, instances where an investment manager has paid a fee to a placement agent or intermediary;]

[(5)](4) disclose on the OSC public website the fund’s investment policies and procedures; and

[(6)](5) require fiduciary and conflict of interest reviews of the fund every three years by a qualified unaffiliated person.

I, Eric R. Dinallo, Superintendent of Insurance of the State of New York, do hereby certify that the foregoing is the Third Amendment to Part 136 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation 85), entitled "Public Retirement Systems," promulgated by me on June 17, 2009, pursuant to the authority granted by Sections 201, 301, 314, 7401(a), and 7402(n) of the Insurance Law, to take effect upon filing with the Secretary of State of New York.

Pursuant to Section 202(6) of the State Administrative Procedure Act, 11 NYCRR 136 (Regulation No. 85) is being promulgated as an emergency measure. A statement of the specific reasons for the finding of the need for emergency action is attached.

---

Eric Dinallo  
Superintendent of Insurance

Date: June 17, 2009

## **Statement of the Reasons for Emergency Measure**

### **Third Amendment to Regulation No. 85 (11 NYCRR 136)**

The Second Amendment to Regulation 85 (11 NYCRR 136), effective November 19, 2008, established new standards of behavior with regard to investment of the Common Retirement Fund's assets, conflicts of interest, and procurement. In addition, it created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Insurance Department.

Nevertheless, recent events surrounding how placement agents conduct business on behalf of their clients with regard to the Fund compel the Superintendent to conclude that the mere strengthening of the Fund's control environment is insufficient to protect the integrity of the state employees' retirement systems. Rather, only an immediate ban on the use of placement agents will ensure sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments. Accordingly, emergency adoption of the regulation is necessary for the general welfare.

---

Eric Dinallo  
Superintendent of Insurance

Date: June 17, 2009