

MEMORANDUM

TO: File
FROM: James P. Sinnott
RE: Business conduct consultation with public pension plans
DATE: August 12, 2010

On August 12, 2010, Lourdes Gonzalez, Joanne Rutkowski, Cindy Oh, Tamara Brightwell, Martha Haines, Rich Ferlauto, Christine Sibille and Amy Starr of the Securities and Exchange Commission and Phyllis Cela, Katherine Driscoll, Ted Kneller, Barry McCarty, Michael Solinsky, Peter Sanchez and Todd Prono of the Commodities Futures Trading Commission consulted with Keith Bozarth (Executive Director, State of Wisconsin Investment Board), Kelly Lovell (General Counsel, Iowa Public Employees' Retirement System), Don Marlais (CalPERS Federal Representative, Lussier, Gregor, Vienna & Associates), Leigh Snell (Director of Federal Relations, National Council on Teacher Retirement), Rick Dahl (Chief Investment Officer, Missouri State Employees' Retirement System), Alan Van Noord (Chief Investment Officer, Pennsylvania Public Employees' Retirement System), Melissa Moyer (Deputy Treasurer for Financial Policy, State of Maryland), Todd Ludgate (Fixed Income Portfolio Manager, State of Wisconsin Investment Board), Bill McGrew (Senior Portfolio Manager, California Public Employees' Retirement System), Eric Baggesen (Senior Investment Officer- Global Equity, California Public Employees' Retirement System) and Mark Ready (Director, Stephen L. Hawk Center for Applied Security Analysis, Wisconsin School of Business).

The participants provided an overview of the current market environment in which they currently transact. They also discussed potential areas of concern regarding the rulemaking required under the Dodd-Frank Act, including the role of the independent representative of a special entity and potential treatment of special entities that may result in higher cost or less market access than non-special entities.

General Observations

- Diversity of the Special Entity group should be kept in mind as rules are crafted. Even within the public pension community there is a broad range of resources and investment approaches. Background information on the industry.
- Coordination of SEC and CFTC is important.
- Timing of rulemaking is important. Due deliberation required, but early clarity desirable.

Basic Principles

- Concerned over any treatment that will result in Special Entities having higher costs or less market access than non-Special Entities.
- Not the topic for discussion on August 12, but the delineation of transactions to be conducted on exchanges or swap execution facilities will impact significantly the specific issues identified below.

Specific Issues of interest

- What will distinguish an advisory relationship?
- What is the definition of “independent representative.” Will investment staff qualify and under what circumstances?
- What will qualify as a “reasonable basis” for determining that an independent representative meets prescribed requirements?
- What will constitute “appropriate disclosure” by an independent representative?
- Further clarity on “primary purpose of hedging commercial risk of the plan?”
- Will margin and other requirements be uniform for Special and non-Special Entities? Types of collateral that may be posted?
- In general are there rules or requirements being contemplated that will not be uniform for Special and non-Special Entities?