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April 17, 2009

Christopher Lund, Ph.D.
1643 Woodland Avenue #2
East Palo Alto, CA 94303

Subject: Public Records Act

Dear Mr. Lund:

This letter is the California Public Employees' Retirement System's (CalPERS) follow-up letter to our March 30, 2009 response. This will constitute CalPERS' final response to your Public Records Act request. The documents that you requested include the following:

1. All related documents pertaining to PM's Investment Plan, its PPM, or any other related material.
2. Investment list of PM's partners, however, understanding that private party's information might be confidential, list pertaining to public entities.
3. Any documents related to the Wachovia loan used to leverage the deal and whether CalPERS participated or guaranteed this loan.

As per our various conversations, we have provided a previous response addressing items two and three, above.

In response to item one, above, we found a private placement memorandum (PPM) addressing Page Mill's investment strategy as well as other documents (reports and annual reports) which are responsive to your request. We also have partnership documents, communications with legal counsel, and partnership quarterly reports which are responsive to your request. However, all of the aforementioned documents are confidential under the terms of our agreements with our partners (hereinafter referred to as "Confidential Records"), and are also otherwise exempt from public disclosure, as discussed more fully below. These documents are therefore not being produced.

As part of our response, we are providing quarterly performance reports (Performance Detail by Partnership/Account) for the periods ending June 30, 2007, December 31, 2007, March 31, 2008, June 30, 2008, and September 30, 2008. The September 30, 2008 was the latest report provided to the Investment Committee in February 2009.

California Public Employees' Retirement System
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In the event that you want additional performance reports, we will make them available. We are also providing documents that have been redacted to prevent disclosure of confidential, proprietary or privileged information, and real estate "delegation" documents, as per your request.

The Public Records Act

The Public Records Act (the Act) embodies the California Legislature's fundamental determination that all the state's business is presumptively subject to public scrutiny, by providing that "every person has a right to inspect any public record." (Sec. 6253(a).)¹ CalPERS is fully aware of the purpose of the Act and takes seriously the public policy codified by the Act that access to information concerning the public's business is a fundamental right of the people of the State of California. However, in enacting the Act, the Legislature also recognized the necessity for keeping certain documents confidential by enacting statutory exemptions to the general principle of disclosure.

The Act exempts records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege. (Sec. 6254(k).) This exemption encompasses, among other things, Evidence Code section 950, relating to attorney-client communications, Evidence Code section 1060, relating to trade secrets, and Evidence Code section 1040, relating to official information. The Confidential Records are exempt from disclosure under these provisions of the law.

In addition, the Confidential Records are also exempt from disclosure under section 6254.26² of the Act, which specifically exempts proprietary information of venture funds.

¹ All statutory references are to the California Government Code, unless otherwise specifically noted.

² Government Code section 6254.26:

(a) Notwithstanding any provision of this chapter or other law, the following records regarding alternative investments in which public investment funds invest shall not be subject to disclosure pursuant to this chapter, unless the information has already been publicly released by the keeper of the information:

(1) Due diligence materials that are proprietary to the public investment fund or the alternative investment vehicle.

(2) Quarterly and annual financial statements of alternative investment vehicles.

(3) Meeting materials of alternative investment vehicles.

(4) Records containing information regarding the portfolio positions in which alternative investment funds invest.

(5) Capital call and distribution notices.

(6) Alternative investment agreements and all related documents.

(b) Notwithstanding subdivision (a) the following information contained in records described in subdivision (a) regarding alternative investments in which public investment funds invest shall be subject to disclosure pursuant to this chapter and shall not be considered a trade secret exempt from disclosure:

(1) The name, address and vintage year of each alternative investment vehicle.

(2) The dollar amount of the commitment made to each alternative investment vehicle by the public investment fund since inception.

(3) The dollar amount of cash contributions made by the public investment funds to each alternative investment vehicle since inception.

(4) The dollar amount, on a fiscal yearend basis, of cash distributions received by the public investment fund from each alternative investment vehicle.

Finally, the Act exempts public records from disclosure when the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Sec. 6255.) All of the aforementioned statutory exceptions from disclosure recognize that there are circumstances that justify keeping otherwise public documents confidential; these exemptions are applicable to the Confidential Records.

Trade Secret Privilege

The exception to the Act set forth in section 6254(k) includes trade secrets, which are privileged under Evidence Code section 1060. This section provides that "the owner of a trade secret has a privilege to refuse to disclose the secret, and to prevent another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice." CalPERS has concluded, in consultation with its investment staff, that financial and proprietary information contained in the Confidential Records constitutes a trade secret since the information derives economic value, both actual and potential, from such information not being generally known to the public or to other persons who can obtain economic value from its disclosure or use. (See definition of "trade secret" in section 3426.1 of the California Civil Code.) The Confidential Records are therefore exempt from disclosure under the Act.

Official Information Privilege and the Balancing Test

The exception to the Act set forth in section 6254(k) also includes official information, which is privileged under Evidence Code section 1040. "Official information" includes "information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made." This is a conditional privilege in that the information must be acquired in confidence and the necessity for preserving the confidentiality of the information must outweigh the necessity for disclosure in the interest of justice.

(5) The dollar amount, on a fiscal yearend basis, of cash distributions received by the public investment funds plus remaining value of partnership assets attributable to the public investment fund's investment in each alternative investment vehicle.

(6) The net internal rate of return of each alternative investment vehicle since inception.

(7) The investment multiple of each alternative investment vehicle since inception.

(8) The dollar amount of the total management fees and costs paid on an annual fiscal yearend basis, by the public investment fund to each alternative investment vehicle.

(9) The dollar amount of cash profit received by public investment funds from each alternative investment vehicle on a fiscal yearend basis.

(c) For purposes of this section, the following definitions shall apply:

(1) "Alternative investment vehicle" means an investment in a private equity fund, venture fund, hedge fund, or absolute return fund.

(2) "Alternative investment vehicle" means the limited partnership, limited liability company, or similar legal structure through which the public investment fund invests in portfolio companies.

(3) "Portfolio positions" means individual portfolio investments made by the alternative investment vehicles.

(4) "Public investment fund" means any public pension or retirement system and any public endowment or foundation.

Christopher Lund

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CalPERS received the Confidential Records in confidence, as a party to the partnership agreement. Therefore, the first prong of the "official information" privilege is met with regard to this document.

The second prong of this privilege, the "weighing" or "balancing" test, is substantially similar to the weighing of the public interest test required by section 6255. As described below, the necessity for preserving the confidentiality of the exempted documents outweighs the necessity for disclosure.

Section 6255(a) provides that a state agency:

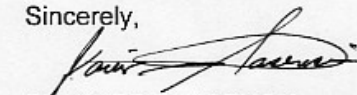
shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

CalPERS understands the public's interest in the requested documents, in light of the public's interest in CalPERS' investments. Nonetheless, CalPERS cannot release information that could negatively affect the return on CalPERS' investments. CalPERS would be jeopardizing its investment and its relationships with its business partners if it gave competitors valuable proprietary information. The Confidential Records could also reveal to the public market place, including CalPERS' competitors, valuable proprietary information and cause detriment to the value of CalPERS' investment. CalPERS' investment losses translate into financial losses to the State and to the public agencies that contract with CalPERS for benefits. CalPERS, therefore, cannot release the Confidential Records. The Confidential Records are exempt under the express provisions of section 6254(k), including the official information privilege, and the balancing test of section 6255(a).

There is a photocopying fee of ten cents per page, as provided by Government Code section 6257. The enclosure consist of 195 pages, hence the cost is \$19.50. Please make your check payable to the California Public Employees' Retirement System, and include a reference to this matter for identification purposes. Payment should be sent to my attention at the above address

Please feel free to contact me at the above telephone number if you have any questions or concerns regarding this matter.

Sincerely,



F. JAVIER PLASENCIA
Senior Staff Counsel

Enclosures