



COMMONWEALTH OF PENNSYLVANIA  
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

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Qualified Independent Representative (QIR) Policy

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### Revision History

Qualified Independent Representative Established	March 6, 2020
Policy Revised	June 11, 2021
Policy Revised	March 15, 2022



## **I. SCOPE**

This Policy applies to selection of qualified independent representatives (“QIRs”) of the Pennsylvania Public School Employees’ Retirement System (“PSERS”) in connection with its Defined Benefit Fund (“The Fund”).

## **II. PURPOSE**

This document sets forth the policy of PSERS with respect to the selection of qualified independent representatives (“QIRs”) (as defined in the rules of the Commodity Futures Trading Commission (“CFTC”)) and their involvement in swaps entered into by PSERS (“this Policy”). This Policy with respect to QIRs enables PSERS to permit Swap Dealers (“SDs”) and Major Swap Participants (“MSPs”) to comply with the CFTC’s external business conduct rules.

## **III. ROLES AND RESPONSIBILITIES**

### **A. Investment Office Professionals**

Individuals identified in Exhibit B are responsible for execution of tasks identified in this Policy.

## **IV. OBJECTIVES**

### **A. Background.**

Based on PSERS’ classification as a non-ERISA Special Entity under CFTC Rule 23.401(c)(2) or (4), each SD or MSP that wishes to enter into swap agreements with PSERS must, as a consequence of CFTC Rule 23.450, and as a precondition to proposing a particular transaction to PSERS, have a reasonable basis to believe that PSERS has a qualified independent representative that:

1. has sufficient knowledge to evaluate the transaction and its risks;
2. is not subject to a statutory disqualification;
3. is independent of the SD or MSP;
4. undertakes a duty to act in the best interests of PSERS;
5. makes appropriate and timely disclosures to PSERS;
6. evaluates, consistent with any guidelines provided by PSERS, the fair pricing and appropriateness of the transaction; and
7. is subject to restrictions on certain political contributions imposed by the CFTC, the Securities and Exchange Commission (“SEC”), or a self-regulatory organization subject to the jurisdiction of the CFTC or the SEC; provided however, that this criteria shall not apply if the representative is an employee of PSERS.<sup>1/</sup>

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<sup>1/</sup> The CFTC’s rules contemplate that a QIR for PSERS may be a PSERS employee or a third party.



CFTC Rule 23.450 further provides a safe harbor pursuant to which a SD or MSP is deemed (without further duty of inquiry in the absence of contradictory facts) to have a reasonable basis to believe that PSERS has a QIR if the following conditions are met:

1. PSERS represents in writing to the SD or MSP that:
  - i. it has complied in good faith with written policies and procedures reasonably designed to ensure that it has selected a QIR that satisfies the applicable requirements of the CFTC rules, and
  - ii. that such policies and procedures provide for ongoing monitoring of the performance of such QIR consistent with the requirements of the CFTC rules.
2. The QIR represents in writing to PSERS and any relevant SD or MSP that it:
  - i. has policies and procedures reasonably designed to ensure that it satisfies the QIR requirement
  - ii. meets the independence test in CFTC Rule 23.450; and
  - iii. is legally obligated to comply with the requirements for being a QIR by agreement, condition of employment, law, rule, regulation, or other enforceable duty.

#### **B. QIR Qualifications.**

No person may act as a QIR for PSERS unless such person meets the following qualifications:

1. Such person has sufficient knowledge to evaluate the risks, fair pricing and appropriateness of swaps consistent with PSERS' Investment Policy Statement;
  - i. If such person is a legal entity:
  - ii. it does not own 10% or more of the capital of any SD or MSP; and
2. no SD or MSP owns 10% or more of the capital of such person.

Such person is not directly or indirectly, through one or more persons, controlled by, in control of, or under common control with an SD or MSP.

Such person has not solicited or accepted orders (or supervised persons so engaged) on behalf of an SD or MSP within one year of its proposed designation as a QIR.

Such person was not referred, recommended or introduced to PSERS by a SD or MSP within one year of its proposed designation as a QIR.

Such person is not subject to a statutory disqualification.<sup>2</sup>

Such person discloses all material conflicts of interest that could reasonably affect its judgment or decision making for PSERS and complies with policies and procedures designed to mitigate such conflicts of interest.



The compensation of the QIR is not contingent on the execution by PSERS of a specific swap with a particular swap dealer.

If such person is not an employee of PSERS, he, she or it must be subject to restrictions on political contributions imposed by the CFTC, the SEC or a self-regulatory organization subject to the jurisdiction of the CFTC or the SEC.

**C. QIR Policy.**

The person(s) listed on Exhibit B are hereby designated as the QIR(s) for PSERS.

The QIR is hereby authorized as part of his or her employment duties to make, if true, the QIR representations necessary to enable a SD or MSP to have the benefit of the safe harbor in CFTC Rule 23.450.

With respect to any swap required to be approved by the QIR, the QIR must evaluate the risks, fair pricing and appropriateness of the swap, and ensure that the swap complies with all requirements set forth in the PSERS Derivatives Policy.

With respect to any Swap previously approved by a QIR, the relevant QIR must monitor the performance of the Swap.

The QIR must act in the best interests of PSERS, and must disclose all material conflicts of interest that could reasonably affect his or her judgment or decision making on behalf of PSERS in a timely manner.

The QIR must inform PSERS if it becomes subject to a statutory disqualification or otherwise ceases to have the qualifications to be a QIR set forth in this Policy.

PSERS will assess the QIR's compliance with this Policy on an ongoing basis.

See Exhibit A attached hereto.



## EXHIBIT A

**The following provisions of Section 8a(2) and (3) of the Commodity Exchange Act set forth the circumstances under which a person may be deemed to be subject to statutory disqualification by the CFTC**

**(2)** upon notice, but without a hearing and pursuant to such rules, regulations, or orders as the Commission may adopt, to refuse to register, to register conditionally, or to suspend or place restrictions upon the registration of, any person and with such a hearing as may be appropriate to revoke the registration of any person—

**(A)** if a prior registration of such person in any capacity has been suspended (and the period of such suspension has not expired) or has been revoked;

**(B)** if registration of such person in any capacity has been refused under the provisions of paragraph (3) of this section within five years preceding the filing of the application for registration or at any time thereafter;

**(C)** if such person is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction (except that registration may not be revoked solely on the basis of such temporary order, judgment, or decree), including an order entered pursuant to an agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, from

**(i)** acting as a futures commission merchant, introducing broker, floor broker, floor trader, commodity trading advisor, commodity pool operator, associated person of any registrant under this chapter, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or affiliated person or employee of any of the foregoing or

**(ii)** engaging in or continuing any activity where such activity involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, gambling, or any transaction in or advice concerning contracts of sale of a commodity for future delivery, concerning matters subject to Commission regulation under section 4 or 19 of this Act, or concerning securities;

**(D)** if such person has been convicted within ten years preceding the filing of the application for registration or at any time thereafter of any felony that

**(i)** involves any transactions or advice concerning any contract of sale of a commodity for future delivery, or any activity subject to Commission regulation under section 4 or 19 of this Act, or concerning a security,

**(ii)** arises out of the conduct of the business of a futures commission merchant, introducing broker, floor broker, floor trader, commodity trading advisor,



commodity pool operator, associated person of any registrant under this Act, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or an affiliated person or employee of any of the foregoing,

**(iii)** involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, or

**(iv)** involves the violation of section 152, 1001, 1341, 1342, 1343, 1503, 1623, 1961, 1962, 1963, or 2314, or chapter 25, 47, 95, or 96 of title 18, United States Code, or section 7201 or 7206 of the Internal Revenue Code;

**(E)** if such person, within ten years preceding the filing of the application or at any time thereafter, has been found in a proceeding brought by the Commission or any Federal or State agency or other governmental body, or by agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party,

**(i)** to have violated any provision of this chapter, the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939 [15 U.S.C. 77aaa et seq.], the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], the Securities Investors Protection Act of 1970 [15 U.S.C. 78aaa et seq.], the Foreign Corrupt Practices Act of 1977, chapter 96 of title 18, or any similar statute of a State or foreign jurisdiction, or any rule, regulation, or order under any such statutes, or the rules of the Municipal Securities Rulemaking Board where such violation involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, or

**(ii)** to have willfully aided, abetted, counseled, commanded, induced, or procured such violation by any other person;

**(F)** if such person is subject to an outstanding order of the Commission denying privileges on any registered entity to such person, denying, suspending, or revoking such person's membership in any registered entity or registered futures association, or barring or suspending such person from being associated with a registrant under this chapter or with a member of a registered entity or with a member of a registered futures association;



**(G)** if, as to any of the matters set forth in this paragraph and paragraph (3), such person willfully made any materially false or misleading statement or omitted to state any material fact in such person's application or any update thereto; or

**(H)** if refusal, suspension, or revocation of the registration of any principal of such person would be warranted because of a statutory disqualification listed in this paragraph:

Provided, that such person may appeal from a decision to refuse registration, condition registration, suspend, revoke or to place restrictions upon registration made pursuant to the provisions of this paragraph in the manner provided in sections 9 and 15 of this title; and

Provided, further, that for the purposes of paragraphs (2) and (3) of this section, "principal" shall mean, if the person is a partnership, any general partner or, if the person is a corporation, any officer, director, or beneficial owner of at least 10 per centum of the voting shares of the corporation, and any other person that the Commission by rule, regulation, or order determines has the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the activities of such person which are subject to regulation by the Commission;

**(3)** to refuse to register or to register conditionally any person, if it is found, after opportunity for hearing, that –

**(A)** such person has been found by the Commission or by any court of competent jurisdiction to have violated, or has consented to findings of a violation of, any provision of this chapter, or any rule, regulation, or order thereunder (other than a violation set forth in paragraph (2) of this section), or to have willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any such provision;

**(B)** such person has been found by any court of competent jurisdiction or by any Federal or State agency or other governmental body, or by agreement of settlement to which any Federal or State agency or other governmental body is a party,

**(i)** to have violated any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939 [15 U.S.C. 77aaa et seq.], the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], the Securities Investors Protection Act of 1970 [15 U.S.C. 78aaa et seq.], the Foreign Corrupt Practices Act of 1977, or any similar statute of a State or foreign jurisdiction, or any rule, regulation, or order under any such statutes, or the rules of the Municipal Securities Rulemaking Board or

**(ii)** to have willfully aided, abetted, counseled, commanded, induced, or procured such violation by any other person;



**(C)** such person failed reasonably to supervise another person, who is subject to such person's supervision, with a view to preventing violations of this chapter, or of any of the statutes set forth in subparagraph (B) of this paragraph, or of any of the rules, regulations, or orders thereunder, and the person subject to supervision committed such a violation: Provided, That no person shall be deemed to have failed reasonably to supervise another person, within the meaning of this subparagraph if:

**(i)** there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person and

**(ii)** such person has reasonably discharged the duties and obligations incumbent upon that person, as supervisor, by reason of such procedures and system, without reasonable cause to believe that such procedures and system were not being complied with;

**(D)** such person pleaded guilty to or was convicted of a felony other than a felony of the type specified in paragraph (2)(D) of this section, or was convicted of a felony of the type specified in paragraph (2)(D) of this section more than ten years preceding the filing of the application;

**(E)** such person pleaded guilty to or was convicted of any misdemeanor which:

**(i)** involves any transaction or advice concerning any contract of sale of a commodity for future delivery or any activity subject to Commission regulation under section 6c or 23 of this title or concerning a security,

**(ii)** arises out of the conduct of the business of a futures commission merchant, introducing broker, floor broker, floor trader, commodity trading advisor, commodity pool operator, associated person of any registrant under this chapter, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or an affiliated person or employee of any of the foregoing,

**(iii)** involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling,

**(iv)** involves the violation of section 152, 1341, 1342, or 1343 or chapter 25, 47, 95, or 96 of title 18, or section 7203, 7204, 7205, or 7207 of title 26;

**(F)** such person was debarred by any agency of the United States from contracting with the United States;

**(G)** such person willfully made any materially false or misleading statement or willfully omitted to state any material fact in such person's application or any update thereto, in any report required to be filed with the Commission by this chapter or the



regulations thereunder, in any proceeding before the Commission or in any registration disqualification proceeding;

**(H)** such person has pleaded *nolo contendere* to criminal charges of felonious conduct, or has been convicted in a State court, in a United States military court, or in a foreign court of conduct which would constitute a felony under Federal law if the offense had been committed under Federal jurisdiction;

**(I)** in the case of an applicant for registration in any capacity for which there are minimum financial requirements prescribed under this chapter or under the rules or regulations of the Commission, such person has not established that such person meets such minimum financial requirements;

**(J)** such person is subject to an outstanding order denying, suspending, or expelling such person from membership in a registered entity, a registered futures association, any other self-regulatory organization, or any foreign regulatory body that the Commission recognizes as having a comparable regulatory program or barring or suspending such person from being associated with any member or members of such registered entity, association, self-regulatory organization, or foreign regulatory body;

**(K)** such person has been found by any court of competent jurisdiction or by any Federal or State agency or other governmental body, or by agreement of settlement to which any Federal or State agency or other governmental body is a party,

**(i)** to have violated any statute or any rule, regulation, or order thereunder which involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling or

**(ii)** to have willfully aided, abetted, counseled, commanded, induced or procured such violation by any other person;

**(L)** such person has associated with such person any other person and knows, or in the exercise of reasonable care should know, of facts regarding such other person that are set forth as statutory disqualifications in paragraph (2) of this section, unless such person has notified the Commission of such facts and the Commission has determined that such other person should be registered or temporarily licensed;

**(M)** there is other good cause; or

**(N)** any principal, as defined in paragraph (2) of this section, of such person has been or could be refused registration:

Provided, that pending final determination under this paragraph, registration shall not be granted: Provided further, That such person may appeal from a decision to refuse registration or to condition registration made pursuant to this paragraph in the manner provided in sections 9 and 15 of this title.



**EXHIBIT B**

**Thomas A. Bauer  
Robert Devine  
Christopher Jones  
Susan Oh  
Christopher Baker  
Jeffrey Burton  
Mike Kondas**