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SBA expands disclosure requirements

TALLAHASSEE, Fla. – Although the State Board of Administration already has several policies to guard against pay-for-play schemes, the public investment organization has tightened disclosure requirements in two major areas on companies doing business with the SBA.

“Sunshine is the best disinfectant,” said Ash Williams, SBA executive director and chief investment officer.

A new policy set in place Dec. 1 involves marketing agents who are typically hired by companies seeking to find investors. The other change makes the selection process of litigation firms more competitive and transparent.

Both are designed to further control outside influences with firms doing business with the SBA, one of the largest public investment agencies in the nation with oversight of \$112 billion in the Florida Retirement System and \$22 billion in other funds.

The expanded policy on marketing agents requires all SBA investment partners to disclose when they use placement agents and the fees paid them. In addition, the placement agent would be required to disclose resumes of its partners, officers or principal and to include regulatory licenses, professional designations and investment-related experience.

The SBA will review the policy when the federal Securities and Exchange Commission takes action on placement agents at a national level.

SBA Inspector General Bruce Meeks said policies and practices already in effect at the SBA have kept Florida out of the fray involving other states where charges have been filed in pay-to-play schemes, which involved millions of dollars in kickbacks from firms seeking contracts with public employees retirement systems.

“We want to be proactive,” Meeks said.

The second change at the SBA expands on disclosure in the selection process for a pool of attorneys to represent the agency in lawsuits in securities matters filed on behalf of the Florida Retirement System and other funds managed by the SBA.

Law firms seeking to be in the litigation pool are now required to disclose campaign contributions made by the firm's attorneys and other employees and to detail fees, if any, paid to third-party interests acting as middlemen.

A total of 31 law firms sent proposals to be in the litigation pool. Twelve were selected as finalists and five to eight of them will be named to the pool by a six-person committee comprised of the SBA's General Counsel, Deputy General Counsel, a principal from consulting firm Ennis Knupp, and a senior representative from each of the offices of the governor, chief financial officer and attorney general. The three sit as the SBA Board of Trustees.

When there is a particular lawsuit, attorneys named to the pool will be asked to submit strategy on the case and the SBA will select the best proposals. Such attorneys take cases on a contingency basis, which means no fees up-front but a percentage of any settlement or judgment awarded after trial.

The SBA has not filed a lawsuit since 2005 and that case is still pending.

However, the SBA has won more than \$150 million as a passive participant in settlements and judgments on class action suits in the past five years without directly paying legal fees. The SBA does not hire attorneys unless it takes an active role as the lead plaintiff in either a class action suit or an individual action.

The SBA manages, invests and safeguards assets of the Florida Retirement System Trust Fund and 34 other funds for the state of Florida and local government. The investment responsibility extends to a wide range of trust and investment funds, including the Lawton Chiles Endowment and the Florida Hurricane Catastrophe Fund (CAT Fund).