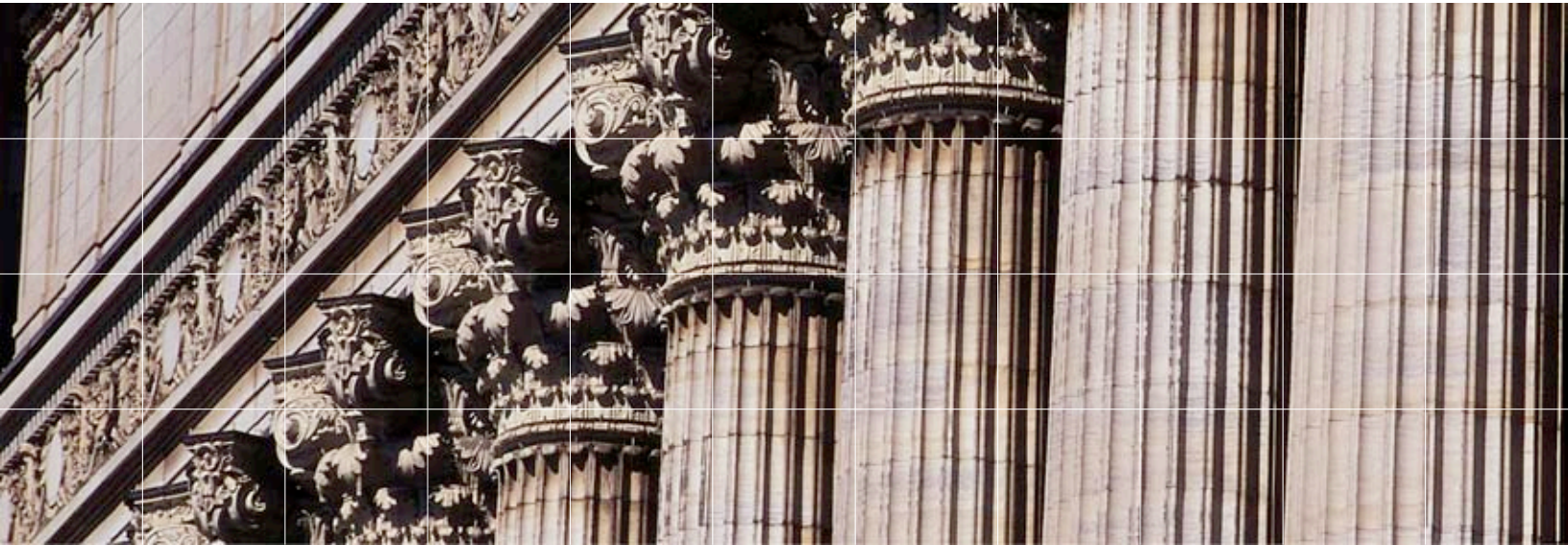




One Firm Worldwide<sup>SM</sup>



## PUBLIC PENSION PLAN INVESTORS

The Institutional Investors Practice team provides full-service representation to public pension funds and their governmental sponsors by uniting an interdisciplinary group of attorneys in offices throughout the Firm whose primary focus is serving public pension funds. This practice team includes corporate, employee benefits, health care, real estate, general tax, and litigation attorneys, located throughout the United States and abroad, who are experienced in the representation of public pension plans and who have developed an in-depth understanding of their unique policies, procedures, and concerns.

### SCOPE OF EXPERIENCE

Jones Day has extensive experience in the representation of public pension funds or their governmental sponsors, including: negotiation of private alternative

equity and real estate investments through limited partnership funds or direct investment; tax and fiduciary counseling and compliance with federal and state legal requirements; advice regarding the design, operation, administration, and funding of employee benefits plans and the impact of health care regulation on such plans; general tax advice; bankruptcy; litigation; and other governmental regulatory matters.

### INSTITUTIONAL INVESTORS PRACTICE TEAM

Jones Day's team approach emphasizes the particular legal, fiduciary, political, industry, and business considerations that are unique to public pension plans and their governmental sponsors. Although for some purposes a public pension plan may appear to operate and conduct itself as a typical private institutional

investor or financial institution, our Institutional Investors Practice team members understand that it is critical to appreciate fully the distinct environment in which the public pension plan operates. Today's public pension plan lawyer must be sensitive to the status of this entity as a tax-exempt benefit plan that (i) is governed by a political body, typically operated under open meeting, public records, and contract bidding standards that apply to the plan or governmental sponsors; (ii) is subject to a particular set of tax and fiduciary laws and standards; and (iii) typically relies upon outside investment advisers and consultants in its alternative asset and real estate investing. Accordingly, our practice team approach ensures that the Jones Day lawyer representing public pension plans will be fully familiar with the applicable regulatory and political environment in which the plans operate.

## ALTERNATIVE EQUITY INVESTMENTS

The structure of alternative equity investments has become increasingly complex, while the amount of capital committed to such investments by public pension funds has increased dramatically. Private equity investments typically take the form of limited partnership fund investments or direct investment transactions. Over the last five years, we have represented public pension plan investors in more than 100 private equity funds and other investments. Our team approach brings together highly experienced partnership, corporate, general tax, and employee benefits lawyers on a proposed investment to provide cost-effective, efficient, and complete representation. Our lawyers work closely with the office of attorney general, county counsel, city counsel, or in-house counsel for the plan, as well as its investment officers and financial consultants. These working relationships allow us effectively and efficiently to provide advice from the term sheet and due diligence stages through negotiation of definitive agreements. In the course of our representation of several major public pension plans, members of the Institutional Investors Practice team proactively have identified significant legal and business issues and have formulated policies and procedures that have established new standards in the industry, including provisions designed to realign the interests of general partners and limited partners and to protect public pension plan investors (such as exit and investment suspension provisions and indemnification limitations). These terms have become increasingly more important as private equity returns have declined and limited partners have begun

to exercise exit rights and to collect on the general partner's clawback obligations.

## REAL ESTATE INVESTMENTS

As real estate investors, public pension funds are becoming increasingly more sophisticated and seasoned in their roles, not only as direct purchasers, sellers, lenders, developers, or other participants in various commercial, industrial, residential, mixed use, and specialized properties, but also indirectly through limited partnership investment funds. Because asset management involves the creation and protection of value, our real estate lawyers provide counsel to public pension plan clients in all phases of property management, leasing, and disposition. Additionally, members of the Institutional Investors Practice team are skilled in structuring investment vehicles of various types, including co-lending, equity pooled investments, and REIT transactions, from conceptualization of the proposed investment through negotiation and implementation. Our broad-based experience covers every facet of real estate investing and provides public pension plan clients with cost-sensitive and sophisticated representation.

## GENERAL TAX ISSUES

The tax exemption enjoyed by public pension funds is key to maximizing investment returns. We have substantial experience in dealing with this tax exemption, both because public pension plans are qualified plans and because they are part of state or local government. Our tax lawyers are experienced in ensuring that investments by public pension funds are structured efficiently to preserve the benefits of tax exemption to the extent possible in transactions and structures of all kinds. Members of the Institutional Investors Practice team are experienced in the tax characterization of diverse forms of business enterprises and are skilled in resolving intricate technical problems encountered in dealing with capital accounts, special allocations, tax distributions, clawbacks, and unrelated business taxable income in limited partnerships, limited liability companies, and other pass-through entities, while preserving the economic value expected by public pension fund investors. Our tax lawyers are also experienced in planning and evaluating LBOs, tax-free combinations, and separations and liquidations, as well as redemptions and distributions involving both U.S. and non-U.S. corporations, partnerships, and other entities. This

experience is important for evaluating the tax efficiency of investment structures and exit strategies for both tax-free and taxable entities in which public pension funds may invest.

## FIDUCIARY COUNSELING

Although state and local retirement systems are not governed by the Employee Retirement Income Security Act of 1974 (“ERISA”), the fiduciary responsibilities of those who oversee and manage the operation, benefits, and investments of public plans are set forth in state law and developed through common law. While these fiduciary duties may vary slightly depending on specific law, they generally require that a fiduciary administer a system and invest trust assets solely for the benefit of plan participants. The Institutional Investors Practice team is uniquely qualified to counsel public plan fiduciaries on the challenges of their duties and responsibilities as fiduciaries. This counseling is always done in coordination with current counsel for the fund. The Firm’s broad range of counseling experience is particularly relevant in full or partial fiduciary audits of a fund. Such audits may comprise a review of the fund’s compliance with applicable laws, contracting procedures, ethical and conflict codes, and the governance and delegation policies and processes of the fund. Fiduciary audits may be conducted by Jones Day confidentially, within the scope of the attorney-client privilege, to facilitate careful and informed deliberations by the plan fiduciaries.

## EMPLOYEE PENSION AND RETIREMENT BENEFIT PLANS

Jones Day has substantial experience in representing public employers and retirement systems with respect to the wide range of state and federal law issues that relate to the provision of employee retirement and pension benefits. Institutional Investors Practice team attorneys are experienced in advising public plans and their sponsors about the consequences of operating under the dual statutory regimes of federal and state law, including how to deal with the resulting conflicts. For example, our employee benefits attorneys routinely advise public employers and plans with respect to the applicable qualification requirements of Section 401(a) of the Internal Revenue Code (the “Code”) and the design and administration of Section 457 plans and grandfathered Section 401(k) plans. In addition, Institutional Investors Practice team attorneys have advised plans with respect to expanding mandatory Social

Security coverage to governmental employees not covered under a retirement system, the establishment of qualified governmental excess benefit arrangements under Code Section 415(m), the application of Code Section 414(q) to identifying highly compensated employees of governmental employers, the drafting and interpretation of state enabling and distribution statutes, state law concepts of “vested right,” and the application of the “governmental plan” exception under ERISA. Our services have included plan design and drafting, submission of ruling and determination letter requests to the IRS with respect to eligible Code Section 457 plans, and “pick up” contributions under Code Section 414(h)(2). In addition, we worked with Congressional staff members on the issues presented by applying Code Section 415 to public pension plans in view of the constitutionally protected vested rights of public employees and by applying Code Section 457 to nonelective deferred compensation.

## HEALTH CARE REGULATION AFFECTING EMPLOYEE HEALTH AND WELFARE BENEFIT PLANS

Jones Day has one of the largest health care practices in the United States and consequently has considerable experience in health care regulatory matters, licensure, Medicare fraud and abuse, Medicare reimbursements, and managed care. Moreover, our experience in representing public agencies that are involved in health care delivery has given us a sensitivity to the unique perspective of these entities. This experience and knowledge of how the provider and managed care sectors work is invaluable in the benefits design, contracting, and negotiating for such services.

Members of the Institutional Investors Practice team have provided federal tax advice as to the design, operation, administration, and funding of employee welfare benefit plans, including health plans for employees and retirees and flexible benefit programs and cafeteria plans offered pursuant to Code Section 125. We have also advised with respect to the application to public pension plans and public employers of the Consolidated Omnibus Budget Reconciliation Act of 1985 (commonly referred to as “COBRA”), Americans with Disabilities Act, Family Medical Leave Act, the Health Insurance Portability and Accountability Act (“HIPAA”), as well as applicable state laws. We have represented several public employers and plans in establishing separate accounts under their pension plans to fund the payment of retiree health care benefits.

Jones Day tax attorneys have also addressed a number of benefit design and funding issues related to the establishment of long-term care benefit plans by public plans. In addition, we worked with Congressional staff members to craft language that ultimately was included in HIPAA, which ensured that state-run, self-insured programs would be covered by the legislation. Members of the Institutional Investors Practice team also have advised public plans that provide long-term care benefits as to (i) the applicability of the Americans with Disabilities Act; (ii) the federal tax consequences to participants who receive long-term care benefits; and (iii) the tax-exempt status of the trust that funds long-term care benefits.

## BANKRUPTCY/RESTRUCTURING

Our Bankruptcy/Restructuring practice includes attorneys who have represented a broad range of parties in debt restructurings, out-of-court workouts, chapter 11 cases, and other insolvency proceedings. We have represented official and unofficial creditors' committees, individual secured and unsecured creditors, lender groups, and purchasers of financially distressed businesses. Each workout, bankruptcy, or asset disposition involving a financially distressed entity poses unique problems that, depending upon the nature and severity of the underlying business difficulties or the particular industry involved, will demand specific, narrowly tailored solutions. Whether the public pension plan is a single investor in troubled enterprises or a

member of the creditors' committees, we can bring to bear our full range of experience in representing various parties in bankruptcy, restructuring, and workout matters to the engagement.

## LITIGATION

Public pension funds and their governmental sponsors routinely require litigation advice either as parties or as potential parties to litigation or arbitration. Our litigation practice includes a number of litigators who have litigated or arbitrated a wide range of issues and disputes, including cases involving claims for benefits, fiduciary duty matters, corporate governance, securities regulation, taxation, real estate, commercial and construction contracts, health care, environmental compliance and regulation, labor and employment, and intellectual property. We have also provided litigation advice concerning various alternative equity, real estate, and other investment disputes.

## ADDITIONAL INFORMATION

This brochure provides only an introduction to Jones Day and the capabilities of our lawyers in the Institutional Investors Practice team. For additional information, please contact your principal Firm representative or one of the lawyers listed in this publication. General e-mail messages may be sent using our "Contact Us" form, which can be found at [www.jonesday.com](http://www.jonesday.com).

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## JONES DAY GLOBAL LOCATIONS

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FRANKFURT

HONG KONG

HOUSTON

IRVINE

LONDON

LOS ANGELES

MADRID

MILAN

MOSCOW

MUNICH

NEW DELHI

NEW YORK

PARIS

PITTSBURGH

SAN DIEGO

SAN FRANCISCO

SHANGHAI

SILICON VALLEY

SINGAPORE

SYDNEY

TAIPEI

TOKYO

WASHINGTON