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VIA Fax (502-695-8822) and FedEx

Mr. Joseph P. Bowman
General Counsel, Non Advocacy
Kentucky Retirement System
Perimeter Park West
1260 Louisville Road
Frankfort, Kentucky 40601

Re: Response to Your June 27th Letter to Aurora Advisors

Dear Mr. Bowman:

I represent Aurora Advisors Incorporated (“Aurora”). You sent Aurora a letter dated June 27, 2017 threatening action if Aurora did not remove certain limited partnership agreements “related to Kentucky Retirement System” from the www.nakedcapitalism.net website. I have carefully reviewed your request and must respectfully decline.

Kentucky Retirement System (“KRS”) has no basis for making this demand. New York’s Shield Law provides an absolute privilege with respect to confidential information, and the sources from which it is obtained in the newsgathering process. New York Civil Rights Law § 79-h (absolute protection for confidential information). Disclosure of the information is in the public interest to the extent it reveals how the assets of the KRS are being managed, or indeed mismanaged, putting the well-being of the System’s beneficiaries at risk.

The First Amendment to the U.S. Constitution also provides robust protection for the newsgathering process, including both sources and information. See, e.g., *Bartnicki v. Vopper*, 532 U.S. 514 (2001) (unconstitutional to penalize a journalist for publishing information unlawfully intercepted phone call by third party); *Smith v. Daily Mail Publ'g Co.*, 443 U.S. 97, 103 (1979) (“[I]f a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need . . . of the highest order.”) (emphasis supplied); *New York Times Co. v. United States*, 403 U.S. 713 (1971) (Pentagon Papers”); *Zyprexa Litig.*, 474 F. Supp. 2d 385 (E.D.N.Y. 2007) (refusing to enjoin websites from publishing drug company documents covered by a protective order).

Your claim that you “recently” learned of these documents is untenable, making your claim of confidentiality, at the least, suspicious. KRS was well aware before threatening Aurora that these and other limited partnership agreements have been prominently, continuously, and notoriously displayed since their publication nearly three years ago. Naked Capitalism is also widely read by public pension fund staff members and trustees and is a frequent subject of conversation at industry conferences. Aurora has published other limited partnership agreements that it obtained from sources both before and after the date it published the ones you cited. Aurora’s analytics show that, since the original posting, there have been hundreds of thousands of unique user visits and downloads.

In addition, the Naked Capitalism website (www.nakedcapitalism.com) has repeatedly referred to and linked to the Document Trove in which the limited partnership agreements at issue appear. Naked Capitalism has published many articles that cite and link to specific limited partnership agreements and quote text from them. These posts have performed an important public service by using this material to demonstrate how general partners have, among other things, violated IRS regulations, violated their own agreements, and misled limited partners. It is thus disturbing to see KRS acting to suppress research and investigation that is clearly in its and the general public’s interest.

Even more important, private equity general partners typically provide fund marketing materials and private placement memoranda without requiring prospective investors to sign confidentiality agreements. The private placement memorandum summarizes all the major points in the limited partnership agreement, including, most importantly, the key economic terms, and also contains a much more extensive discussion of the fund’s prospective investment strategy than is set forth in the limited partnership agreement. That is consistent with

Aurora's argument (www.nakedcapitalism.com/2014/05/private-equity-limited-partnership-agreement-release-industrys-snowden-moment.html) which no one has disputed, that these agreements do not contain trade secret material. If you wish to pursue this matter to litigation, we will vigorously contest the confidentiality of these documents and argue that they should be publicly available as a matter of law, as well as interposing the Shield Law and other newsgathering defenses.

Please feel free to contact me by email or at 202-246-6639 if you have additional concerns.

Sincerely,

James A. Moody