

Responses to Questions Submitted in Relation to

**REQUEST FOR PROPOSALS FROM FINANCIAL ORGANIZATIONS FOR THE PROVISION OF
TRANSITION MANAGEMENT SERVICES FOR THE DEFERRED COMPENSATION PLAN FOR
EMPLOYEES OF THE STATE OF NEW YORK AND OTHER PARTICIPATING PUBLIC
JURISDICTIONS ("PLAN")**

Q. As we review the questionnaire, there is a paragraph on Indemnification where we would like further clarification if possible. The paragraph reads as follows:

Indemnification

No proposer will be entitled to include a provision in the contract providing indemnification rights to the proposer. Any written contract with the Awarded financial organization will contain a provision acknowledging that no indemnification will be provided to the financial organization. Any contract will, however, be required to provide for the proposer's indemnification of the Board, the Plan, Plan participants, employers participating in the Plan, the Trustee and the staff of the Board in connection with the services provided.

Can our obligation to indemnify NY be limited to where our actions are negligent? We were hoping you could shed some more light on the standard used here.

A. The following is the language that is included in each contract between the Board and the service provider to the New York State Deferred Compensation Plan.

[The service provider] agrees to indemnify and hold harmless the Plan, the Plan participants, the Board and any member, agent or employee of the Board, the State and any officer, agent or employee of the State, and each Participating Employer and each officer, agent or employee of any such Participating Employer (collectively, the "*Indemnified Parties*") from and against any action, cost, damage, disbursement, expense, liability, loss, injury, judgment, deficiency, diminution in value, obligation, penalty or settlement of any kind or nature, including, but not limited to, reasonable legal and accounting fees and expenses incurred in the investigation, collection, prosecution and defense of claims (a "*Loss*"), that may be imposed on or otherwise incurred or suffered by any of the Indemnified Parties as a result of the failure to perform or the erroneous or negligent performance of the Services or [the service provider's] duties, responsibilities, obligations and commitments under this Agreement by [the service provider] or any of its officers, employees, directors or Affiliates.

[The service provider] shall not be liable to the Indemnified Parties for any Loss resulting from any material breach by the Board or any member the Board's staff of this Agreement. However, Barclays' liability shall not be limited with respect to this Agreement or the Plan in the event of [the service provider's] failure to perform or the erroneous or negligent performance of the Services or [the service provider's] duties, responsibilities, obligations and commitments under this Agreement by [the service provider] or any of its officers, employees, directors or Affiliates.