



# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

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February 14, 2011

Jesse Mainardi  
The Sutton Law Firm  
150 Post Street, Suite 405  
San Francisco, CA 94108

Dear Mr. Mainardi:

You requested the Ethics Commission's interpretation of the City's Regulation of Lobbyists Ordinance ("Lobbyist Ordinance"), San Francisco Campaign and Governmental Conduct Code ("C&GC Code") § 2.100 et seq., which imposes registration and disclosure requirements on lobbyists who influence decision-making regarding local legislative and administrative matters.

The Ethics Commission provides two kinds of advice: written formal opinions and informal advice. *S.F. Charter § C3.699-12*. Written formal opinions are available to individuals who request advice about their responsibilities under local laws. Formal opinions provide the requester immunity from subsequent enforcement action if the material facts are as stated in the request for advice, and if the District Attorney and City Attorney concur in the advice. *See id.* Informal advice does not provide similar protection. *See id.*

Because you seek general advice for your clients regarding the City's Lobbyist Ordinance in light of the recently enacted Assembly Bill 1743, the Commission is treating your inquiry as a request for informal advice. For advice about the meaning of AB 1743, you should contact relevant State authorities. The Ethics Commission will provide advice regarding the Lobbyist Ordinance but not concerning your clients' compliance with AB 1743. Your questions and the Commission's responses are set forth below.

### Questions:

1. Irrespective of AB 1743, are individuals attempting to influence SFERS regarding new or increased investments with an investment management firm, whether as an employee or outside consultant of the firm, subject to the Lobbyist Ordinance? And are the investment management firms themselves subject to the Lobbyist Ordinance?
2. If the answer to your first inquiry is yes, does AB 1743 change the City's registration thresholds for these individuals and firms?
3. Are individuals who meet the requirements of California Government Code section 7513.87(b) in any case exempted from the Lobbyist Ordinance?

4. Do any of the exemptions from registration and reporting under the Lobbyist Ordinance apply to these individuals or firms?

### **Short Answers**

1. Individuals, whether employees or outside consultants, who meet the economic and contact thresholds of the Lobbyist Ordinance must register and submit disclosure reports with the Ethics Commission. Firms are not required to register under the Ordinance but they may register and submit reports on behalf of individual lobbyists whom they employ.

2. AB 1743 does not change the registration thresholds for individuals who qualify as lobbyists under the Lobbyist Ordinance.

3. Individuals who meet the requirements of California Government Code section 7513.87(b) and who otherwise meet the thresholds to qualify as lobbyists under the City's Lobbyist Ordinance are not exempt from registration and reporting requirements of the City's Lobbyist Ordinance.

4. The exemptions set forth in the Lobbyist Ordinance apply to individual lobbyists.

### **Background**

You state that you represent a number of investment management firms that do business or are seeking to do business with various state and local public retirement systems in California, including the San Francisco Employees' Retirement System ("SFERS"). You ask how Assembly Bill 1743 ("AB 1743"), which took effect on January 1, 2011, affects the requirements set forth in the Lobbyist Ordinance for individuals attempting to influence SFERS regarding the agency's investments.

In referencing AB 1743, you point specifically to California Government Code section 7513.87, which states:

(a) A person acting as a placement agent<sup>1</sup> in connection with any potential system investment made by a local public retirement system shall file any applicable reports with a local government agency that requires lobbyists to register and file reports and shall comply with any applicable requirements imposed by a local government agency pursuant to Section 81013.

(b) This section does not apply to an individual who is an employee, officer, director, equityholder, partner, member or trustee of an external manager who spends one-third or more of his or her time, during a calendar year, managing the securities or assets owned, controlled, invested, or held by the external manager.

Under the Lobbyist Ordinance, an individual qualifies as a lobbyist if he or she (1) receives or is promised economic consideration of \$3,000 or more within three consecutive calendar months for

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<sup>1</sup> California Government Code section 82047.3 defines "placement agent" as "an individual hired, engaged, or retained by, or serving for the benefit of or on behalf of, an external manager, or on behalf of another placement agent, who acts or has acted for compensation as a finder, solicitor, marketer, consultant, broker, or other intermediary in connection with the offer or sale of the securities, assets, or services of an external manager to a state public retirement system in California or an investment vehicle, either directly or indirectly."

lobbyist services, and (2) on behalf of the persons providing the economic consideration, makes any contact with an officer of the City and County, including members and the executive director of the SFERS.

You state that “AB 1734 does not clearly identify the specific trigger for registration for placement agents,” but that section 7513.86 “prevents a person from ‘acting’ as a placement agent at the state level without first registering.” You add that the new law “evidently seeks to compel local placement agents to register as local lobbyists, but again does not clearly specify a registration threshold. The new state law therefore seems to require, at a minimum, that placement agents register before they have any lobbying contacts with state officials.”

You also question whether the exemption that is set forth in Government Code section 7513.87(b) exempts from registration an individual who would otherwise be required to register under the Lobbyist Ordinance.

## **Discussion**

### 1. Qualification as a lobbyist under the Lobbyist Ordinance

As you noted, the Lobbyist Ordinance defines a lobbyist as an individual who (1) receives or is promised \$3,000 or more within three consecutive months for lobbyist services, and (2) on behalf of the persons providing the economic consideration, makes at least one contact with a City officer. *See* C&GC Code § 2.105(g). Thus, unless an exemption applies, any individual who earns the requisite economic threshold and makes one contact with a member or the executive director of the SFERS to influence his or her decision regarding new or increased investments is a lobbyist under the Lobbyist Ordinance.

An investment management firm would not qualify as a lobbyist under the Lobbyist Ordinance because it is not an individual. *See* C&GC Code § 2.105(g). However, employees or consultants of the firm – who are individuals – who receive or are promised \$3,000 or more in a three-month period and who make one contact with SFERS to influence a legislative or administrative action, qualify as lobbyists and must register and file disclosure reports under the Lobbyist Ordinance. Under Ethics Commission regulations, the firm may register and submit reports on behalf of individual lobbyists who are employed by the firm. *See* Ethics Commission Regulations Implementing Lobbyist Ordinance, Reg. 2.105(d)-1.

### 2. Registration thresholds

You suggest that while AB 1743 “does not clearly identify the specific trigger for registration of placement agents,” the state lobbyist registration requirement “is not triggered until a certain compensation or time threshold is met.” You also assert that the new law seems to require placement agents to register before they have any lobbying contacts with state officials. Because the Ethics Commission does not administer the state lobbyist laws, it will not interpret AB 1743 regarding that statute’s registration thresholds. You should direct such inquiries to the responsible state agency. We note that you have copied the advice request to the Fair Political Practices Commission, and you may also wish to seek advice from the Attorney General.

Under City law, individuals who qualify as lobbyists must comply with the Lobbyist Ordinance. Among other things, they must register with the Ethics Commission no later than five business days of qualifying as a lobbyist, and prior to making any additional contacts with any City officer. C&GC Code § 2.110(a). Unless the Lobbyist Ordinance is amended to provide otherwise, placement agents who do not otherwise qualify as lobbyists under the Lobbyist Ordinance are not required to register and file disclosure reports with the Commission. However, if a placement qualifies as a lobbyist under the Lobbyist Ordinance, he or she must register with the Commission no later than five business days of qualifying as a lobbyist and prior to making any additional contacts with any City officer.

### 3. Registration exemptions under AB 1743

You asked if individuals who are employees, officers, directors, equityholders, partners, members or trustees of an investment firm who spend one-third or more of their time during a calendar year managing the securities or assets of investment firm – and thus are not deemed placement agents under AB 1743 – are exempt from the Lobbyist Ordinance even though they otherwise meet the threshold requirements to qualify as lobbyists under City law.

The Lobbyist Ordinance sets forth certain activities that are not deemed “contacts” for the purposes of the Ordinance. *See* C&GC Code § 2.105(d)(1). Unless the Ordinance is amended to exempt placement agents who spend one-third or more of their time during a calendar year managing an investment firm’s securities or assets, individuals who otherwise qualify as lobbyists are required to register and submit disclosure reports with the Commission.

### 4. Registration exemptions under the Lobbyist Ordinance

You ask if “any of the exemptions from registration and reporting” in local law apply “to these individuals or firms,” which we interpret to mean placement agents. In general, if an individual’s activities do not qualify as contacts under the Lobbyist Ordinance, the individual would not qualify as a lobbyist under the Lobbyist Ordinance. If you have a specific question regarding particular facts, please contact our office.

I hope this information has been helpful to you. Please let us know if you have further questions.

Sincerely,

John St. Croix  
Executive Director

By: Mabel Ng  
Deputy Executive Director