Proposed “Investment” Regulation - 18728.6
For Consideration at the September 22, 2011 Commission Meeting

Below is a revised version of the proposed regulation reflecting comments made at and after the June 7, 2011 Interested Persons’ Meeting. The major changes are:

- Moving the new rule from a regulation defining “investment” (Regulation 18237 in the prior draft) and placing it in a regulation addressing reporting of investments (Regulation 18728.6).
- Adding a requirement for exemption: “The public official who has an investment in the fund does not exercise responsibility for the management or investment of government funds.”
- Specifying that certain exchange traded funds and funds held in certain employee plans are exempt.
- Moving the requirement that a fund “does not have a stated policy of concentrating its holdings in a single industry” to a new paragraph defining “diversified.”

**Regulation 18728.6 Reporting of Investments**

(a) A public official required to disclose an investment in a business entity, as defined in Section 82005, is not required to report an investment in a fund that is substantially similar to a “diversified mutual fund registered with the Securities and Exchange Commission under the Investment Company Act of 1940” if all the following are met:

1. The fund is a diversified bona fide investment fund that pools money from more than 100 investors and invests the money in stocks, bonds, or other securities.
2. The fund holds securities of more than 15 issuers.
3. The public official who has an investment in the fund does not exercise responsibility for the management or investment of government funds.
4. The public official does not influence or control the selection of any specific investment purchased and sold by the fund.

(b) For purposes of subdivision (a)(1) and (a)(2), an exchange traded fund (ETF) is presumed to have more than 100 investors and hold securities of more than 15 issuers.

(c) A public official is not required to report an investment in a fund that meets all the requirements of subdivision (a) and is an exchange traded fund or a fund that is held in an employee plan qualified under Section 401(k), 403(b), 457 or similar provision of the Internal Revenue Code.
(d) For purposes of Section 82034 and this regulation, a diversified fund means a fund that does not have a stated policy of concentrating its holdings in the same industry or business.

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