

Notice
Fair Political Practices Commission
Interested Persons Meeting
July 26, 2018, 10:30 a.m.
1102 Q Street, Suite 3000 Hearing Room
Sacramento, CA 95811

Fair Political Practices Commission staff will hold an Interested Persons meeting on July 26, 2018, at 10:30 a.m. to solicit public input regarding the regulatory proposal listed below regarding Regulation 18700.2. The Commission will consider the proposed amended regulation at the August 16, 2018 hearing.

Background

The Act's conflict of interest provisions prohibit an official from making, participating in making, or using his or her official position to influence a decision in which the official has a financial interest. (Section 87100.) An official has a financial interest in the decision, if it is reasonably foreseeable the decision will have a material financial effect on the official or on specified interest, including a business entity, in which the official has an investment of \$2,000 or more (Section 87103(a)); a source of income of \$500 or more in the 12 months prior to a decision (Section 87103(c)); and a business entity in which the official is a director, officer, partner, trustee, employee, or holds any position in management (Section 87103(d)).

Historically, the Commission has determined that an official with an interest in a business entity also has an interest in a parent, subsidiary, or related business entity. This is based on the fact that under Sections 82034 and 87209 an "investment" is any financial interest or security interest of more than \$2,000 in a business entity, and a "business position" is any business entity in which the official is director, officer, partner, trustee, employee, or manager, if the business entity, or any subsidiary, or otherwise related business entity does business in the jurisdiction. Former Regulation 18703.1(c) expressly stated that "[a]n official has an economic interest in a business entity which is a parent or subsidiary of, or is otherwise related to, a business entity in which the official has one of the interests defined in [Section] 87103(a) or (d)." However, this language was removed from Commission regulations in 2014.

Current Regulation 18700.2, however, still defines parent, subsidiary, and otherwise related business entities for purposes of Section 82034 and 87209 of the Act. Moreover, in defining various interests under the Act, Regulation 18700 still directs officials with an interest in a business entity to refer to the definition of parent subsidiary, and otherwise related business entity in Regulation 18700.2. (Regulation 18700(c)(6)(A)(C) and (D).) Accordingly, staff has continued to advise that an interest in a business entity may include an interest in a parent, subsidiary, or otherwise related business entity depending on the factual circumstances. (See *Chmura* Advice Letter, No. I-17-051, and *Pelletier* Advice Letter, No. I-17-144.)

Staff received direction from one of the FPPC Commissioners that there may be times when it is unclear whether a corporation is a parent corporation of a business entity and requested that staff examine Regulation 18700.2 and whether an official should be disqualified if the parent corporation has not identified the subsidiary or related business in its annual Form 10-K or 20-F Reports with the Securities and Exchange Commission.

Regulation 18700.2 -Parent, Subsidiary, Otherwise Related Business Entity: Defined.

Staff has drafted proposed amendments to Regulation 18700.2. Specifically, proposed subdivision (d) would establish an exception to the general rule that an official with an interest in a business entity also has an interest in a parent, subsidiary, or otherwise related business entity.

The exception provides that an official does not have an interest in a parent, subsidiary, or otherwise related business if all the following conditions are met: the official owns less than 5% of the shares of a corporation and is a passive shareholder, the parent corporation is required to file annual Form 10-K or 20-F Reports with the Securities and Exchange Commission and the parent corporation has not identified the subsidiary or related business on those forms or its annual report.

Just as significantly, proposed subdivision (c) is added to the regulation to clearly state that an official with a financial interest in a business entity also has an interest in a parent, subsidiary, or otherwise related business entity except as provided in the above-mentioned exception found in subdivision (d).

Lastly, in the definition of “otherwise related business entities” in subdivision (b)(3)(A) and (B), the phrase “the same person or a majority of the same persons:” is replaced with “the same person or persons together” to clarify that business entities are considered otherwise related only when the same person or people own a controlling interest in two or more businesses or the same person or people own 50 percent or more ownership interest in two or more businesses. This would apply to businesses other than a parent corporation as defined in subdivision (b)(1) of the proposed regulation.

ADDITIONAL INFORMATION.

- Proposed language for all Regulations in this notice is attached for review, and can also be found at <http://www.fppc.ca.gov/the-law/fppc-regulations/proposed-regulations-and-notices.html>.
- You may participate in this interested persons meeting in person (at the Commission’s offices).
- You may also listen to and participate in this interested persons meeting by teleconference by calling: (877) 411-9748; access code 723284.

- Finally, the Commission staff invites written comments addressing these topics. Address comments regarding all regulations referenced in this notice to Sukhi K. Brar at (916) 322-5660.

For questions about this meeting, you may contact Sasha Linker at (916) 322-5660.