

On January 6, 2012, Mr. Rosenstiel filed an assuming office Statement of Economic Interests, Form 700, but while he disclosed his underwriter clients and institutional investor clients, he declined to report individuals who are investors through the company. Instead, consistent with Regulation 18740, he attached a brief statement as follows:

“De La Rosa & Co. sells bonds to both individual and institutional customers. I am not disclosing the identity of individual customers. Pursuant to Regulation s-p of the United States Securities and Exchange Commission privacy rules promulgated under Section 504 of the Gramm-Leach-Bliley Act, broker-dealers (such as De La Rosa & Company) are prohibited from disclosing any non-public personal information about their individual customers without those customers’ express permission. Disclosing that someone is a customer of De La Rosa & Co. and purchased an amount of bonds that would produce a \$10,000 proportional share for me is non-public personal information that De La Rosa & Co. is prohibited from disclosing. To the best of my knowledge I have not and will not make, participate in making, or in any way attempt to use an official position to influence a governmental decision when to do so constituted or would constitute a violation of Government Code section 87100.”

Under the procedure established by Regulation 18740, the matter was presented to the Executive Director as an “exemption request.” After review of the law and facts, the Executive Director concluded that this exemption request had merit. However, the Commission is required to approve any exemption, and Regulation 18740(e) provides that the official’s explanation for non-disclosure, if approved, shall be treated as an opinion request.

IV. Analysis

As a preliminary matter, in requesting the exemption, Mr. Rosenstiel affirms that he has not and would not make, participate in making, or in any way use an official position to influence a governmental decision in violation of Section 87100 concerning any source of income or other economic interest. Mr. Rosenstiel’s request for exemption from the Act’s requirement that candidates and public officials disclose their financial interests touches on one of the Act’s most important purposes, as described in section 81002(c):

“(c) Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided.”

The general provision governing disclosure of income under the Act is Section 87207, and Mr. Rosenstiel's request implicates in particular subdivision (b)(2) of the statute, which requires disclosure of:

"The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from that persona was equal to or greater than the thousand dollars (\$10,000) during a calendar year."

However, as Mr. Rosenstiel points out, his disclosure of the financial data in question is also controlled by federal law. According to the Federal Trade Commission's Gramm-Leach-Bliley Act ("GLBA") Outline:

"Subtitle A of Title V of the Gramm-Leach-Bliley Act ("GLB Act") has privacy provisions relating to consumers' financial information. Under these provisions, financial institutions have restrictions on when they may disclose a consumer's personal financial information to nonaffiliated third parties. Financial institutions are required to provide notices to their customers about their information-collection and information-sharing practices. Consumers may decide to "opt out" if they do not want their information shared with nonaffiliated third parties. The GLB Act provides specific exceptions under which a financial institution may share customer information with a third party and the consumer may not opt out. All financial institutions are required to provide consumers with a notice and opt-out opportunity before they may disclose information to nonaffiliated third parties outside of what is permitted under the exceptions."

The GLBA is enforced administratively by the Federal Trade Commission and Section 6823 of the GLBA provides for criminal penalties under limited circumstances.

On the basis of the information provided by Mr. Rosenstiel, the Executive Director concluded that nondisclosure is justified because of the existence of a privilege and the privacy mandate of the federal law. The Executive Director recommended that the Commission issue an opinion to that effect, pursuant to all the requirements of Regulation 18740 (d) and (e).

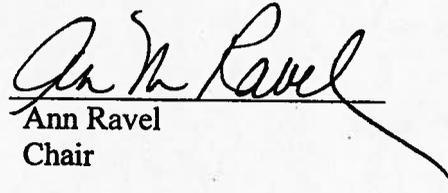
Mr. Rosenstiel's exemption request requires us to balance the public interest in disclosure under the Act, against his fiduciary obligations with respect to his client information under federal law. After reviewing the Executive Director's memorandum, along with Mr. Rosenstiel's statements on the factual basis of his exemption request, we concur in the recommendation of the Executive Director, finding that nondisclosure is appropriate under the peculiar circumstances of this case.

While the facts do not fit squarely in the language of the regulation, we note that disclosure of private financial information is a particular concern of federal statutory law,

and that granting this exemption, under the facts before us, creates no risk that undisclosed conflicts of interest might threaten the integrity of governmental decisionmaking.

The Commission agrees that the requested exemption was appropriate in this case.

Approved by the Commission on September 13, 2012. Concurring: Chair Ravel, Commissioners Montgomery, and Rotunda. Commissioners Eskovitz and Garrett were not present for the vote.


Ann Ravel
Chair