

May 4, 2012

Patrick W. MacCurtain  
500 Boylston Street, Suite 1650  
Boston, Massachusetts 02116

Re: Your Request for Advice  
**Our File No. A-12-059**

Dear Mr. MacCurtain:

This letter responds to your request for advice regarding the lobbying provisions of the Political Reform Act (the “Act”).<sup>1</sup> Our advice is applicable only to the extent that the facts provided to us are correct, and all material facts have been presented. Additionally, our advice is limited to the provisions of the Act; we do not offer advice on other areas of law.

### **FACTS**

You are the Vice President of the Monument Group, a Boston-based placement agent that is registered with the SEC, a member of the Financial Industry Regulatory Authority (FINRA) and the Municipal Securities Rulemaking Board (MSRB). Monument Group solicits institutional investors for investment in third party private equity, real estate, energy, venture capital, and other alternative investment closed end funds. The Monument Group intends to solicit business from the University of California Retirement Plan (“UCRP”) and the University’s General Endowment Pool (“GEP”), which are both under the umbrella of the Treasurer of the Regents of the University of California (“the Office”).

### **ANALYSIS**

The Act regulates the activities of lobbyists, lobbying firms, and lobbyist employers. (Sections 86100 *et seq.*) These terms are defined in the Act as individuals or entities that make or receive payments for the purpose of influencing legislative or administrative action. (Sections 82038.5, 82039, 82039.5.) As of 2011, “placement agents” are included in the definition of lobbyist when influencing an administrative action on behalf of an external manager. (Section 82039(b).) With regard to placement agents, an “administrative action” includes “the decision

---

<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

by any state agency to enter into a contract to invest state public retirement system assets on behalf of a state public retirement system.” (Section 82002(a)(2).)

The Act defines a placement agent as:

“[A]n individual directly or indirectly hired, engaged, or retained by, or serving for the benefit of or on behalf of, an external manager, or an investment fund managed by an external manager, and who acts or has acted for compensation as a finder, solicitor, marketer, consultant, broker, or other intermediary in connection with the offer or sale to a state public retirement system in California or an investment vehicle either of the following:

(1) In the case of an external manager within the meaning of paragraph (1) of subdivision (a) of Section 82025.3, the investment management services of the external manager.

(2) In the case of an external manager within the meaning of paragraph (2) of subdivision (a) of Section 82025.3, an ownership interest in an investment fund managed by the external manager.” (Section 82047.3(a).)

## QUESTIONS AND CONCLUSIONS

### *1. Is Lobbyist Registration Required if a Placement Agent Lobbies the UCRP or the GEP?*

You have stated that Monument Group intends to send placement agents to solicit the UCRP and/or GEP. The UCRP is a retirement board as contemplated in the California Constitution at article XVI, section 17(h).<sup>2</sup> The GEP, however, is not. To the extent that the placement agents are marketing to the UCRP, they must be registered as lobbyists in California and comply with the accompanying requirements and restrictions. Among these restrictions is a ban on accepting contingency fees for services rendered to California state retirement systems. (Section 86205(f).)

You have posed several questions related to marketing the UCRP and the GEP with certain assumptions in place. Namely, you assume the placement agents marketing to the UCRP are required to register as lobbyists and cannot accept a contingency fee based on any administrative action. This is correct. Also, you assume that because the GEP is not a state public retirement system, as defined, any placement agent who markets to *only* the GEP is not a lobbyist and the accompanying restrictions to not apply. This also is correct.

---

<sup>2</sup> “As used in this section, the term ‘retirement board’ shall mean the board of administration, board of trustees, board of directors, or other governing body or board of a public employees’ pension or retirement system; provided, however, that the term ‘retirement board’ shall not be interpreted to mean or include a governing body or board created after July 1, 1991 which does not administer pension or retirement benefits, or the elected legislative body of a jurisdiction which employs participants in a public employees’ pension or retirement system.” Cal. Const., art. XVI, § 17(h).

You did not state whether the same individual placement agent would market to either the UCRP or the GEP, even if separately. Please note that the lobbying registration attaches to the individual if he/she engages in any lobbying activity. The distinction would come into play when the lobbyist and lobbying firm determine what expenses and income to report on their disclosure reports.

2. *If a Placement Agent Markets to Both the UCRP and the GEP and Does Not Know Which Funds Will be Invested, do Lobbyist Registration and the Contingency Fee Ban Apply?*

If a lobbyist successfully solicits both the UCRP and the GEP and the contract clearly delineates that a certain amount of funding is from the UCRP and a certain amount is from the GEP, if, and *only* if, it is clear in the contract the amount of funds from each entity that will be invested, the contingency fee ban only applies to the portion of the funding that qualifies as an “administrative action.”<sup>3</sup> The administrative action applies to a state agency’s decision to invest *state public retirement system assets*. (Section 82002(a)(2).) The GEP funds are not state public retirement system assets. As long as the contingency fee is *only* connected to the GEP funds and is a reasonable amount comparable to other similar contracts, the ban does not apply.<sup>4</sup>

3. *If the UCRP and the GEP form a Partnership and the UCRP is not a Majority Investor, Do the Lobbying Provisions Apply?*

You have also proposed a situation wherein the UCRP and the GEP combine to form a partnership with the GEP as the majority investor. The Act states that a placement agent is “one who markets to a state public retirement system in California or an investment vehicle.” (Section 82047.3.) By marketing to the partnership formed by the UCRP and the GEP, wherein the UCRP is not the majority investor, the placement agent would not technically be marketing to a state public retirement system.

The Act defines investment vehicle as:

“[a] corporation, partnership, limited partnership, limited liability company, association, or other entity, either domestic or foreign, managed by an external manager in which a state public retirement system in California is the majority investor and that is organized in order to invest with, or retain the investment manager services of, other external managers.” (Section 82047.3(3).)

---

<sup>3</sup> The burden to determine to whom one is marketing and with whom one is contracting lies with the placement agent.

<sup>4</sup> Please note that this exception is not a “work around” to the contingency fee ban and is to be conservatively applied.

To qualify as a placement agent under the Act, an individual must be hired directly or indirectly by an external manager in the offer or sale to a state public retirement system in California or an investment vehicle of investment management services of the external manager or an ownership interest in an investment fund managed by the external manager. (See full definition at Section 82047.3.) The partnership in your hypothetical 1) is not a state public retirement system and 2) is not an investment vehicle, as there is no state public retirement system as a majority investor.

While lobbyist registration would not attach in this instance, as mentioned above, if the individual engages in any other activity that qualifies as lobbying, he or she must be registered. These activities would not be reportable activity expenses under Section 86111.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Heather M. Rowan  
Counsel, Legal Division

HMR:jgl