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To: Chair Remke and Commissioners Audero, Casher, Wasserman, and Wynne

From: Hyla P. Wagner, General Counsel
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Subject: **Lobbying Definition: Ride-Along Exception**
Adoption of Amendments to Regulation 18239

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The Political Reform Act¹ defines a lobbyist as any individual who receives \$2,000 or more in a calendar month or whose principal duties as an employee are *to communicate directly* with a qualifying official to influence legislative or administrative action. (Section 82039.) Existing Regulation 18239 provides an exception, known as the ride-along exception, to what activity qualifies as “direct communication” and therefore who qualifies as a lobbyist. The proposed amendments seek to curb potential abuses by clarifying this narrow exception applies only to employees who are subject matter experts who attend meetings with a lobbyist to add substantive information on a particular issue.

I. Background

Prior to a lobbyist being defined by a monetary threshold or as an employee whose principal duties are to directly communicate with a qualifying official (Section 82039), an individual became a lobbyist if he or she had a certain number of “contacts” with a qualifying official in a calendar month. An individual would track the contacts he or she had and if it reached a certain threshold, the individual would register as a lobbyist. In some cases, another employee or a person with subject matter expertise would also attend the meeting. The lobbyist would count the meeting as a “contact” for his or her record-keeping, but the subject matter expert would not under a “ride-along exception.”

After the voters passed Proposition 208 in 1996, the contacts test was replaced by the definition of lobbyist that exists today - an individual who receives \$2,000 or whose principal duties as an employee are to communicate directly or through agents with a qualifying official. The Commission defined “principal duties” to mean an employee who spends one-third or more of his or her time in direct communication with a qualifying official, and “direct communication” as “appearing as a witness before, talking to (either by telephone or in person), corresponding with, or answering questions or inquiries from, any qualifying official, either personally or

¹ The Political Reform Act (Act) is set forth in Government Code Sections 81000 through 91014, and all further statutory references are to this code. The Commission’s regulations are contained in Division 6, Title 2 of the California Code of Regulations, and all regulatory references are to this source.

through an agent who acts under one's direct supervision, control, or direction." (Regulation 18239(c) & (d)(3).)

Shortly after the definition of lobbyist was changed, the Commission voted to maintain the ride-along exception to allow a knowledgeable person to attend meetings with qualifying officials along with his or her employer's lobbyist and not become a lobbyist him or herself. The exception is a limited one to allow a lobbyist employer to provide its lobbyist with a person who adds substantive information to the exchange to facilitate the meeting.

It has come to light that in some cases public affairs consultants and other political operatives are meeting with legislators in the presence of a lobbyist and claiming that they do not need to register as a lobbyist because they are covered by the ride-along exception. An enforcement case involving facts like these ended in a warning letter due to the vagueness and breadth of the ride-along provision's current language. (Advisory Letter – Cruz Bustamante, FPPC No 12/1210, September 1, 2015.) This broad interpretation, however, was never the Commission's intent in adopting the ride-along exception.

II. Proposed Changes

After the enforcement case concerning the ride-along exception and an advice letter request questioning its parameters, staff proposes that the Commission amend Regulation 18239 to clarify its limited nature.

While the current regulatory language could be read to apply to persons who are not employees of the entity that hired the lobbyist, or to persons who might be engaging in lobbying and excused from registration because they accompany a lobbyist, the regulation was never intended to apply so broadly. First, basic rules of statutory construction require that exceptions to general rules should be applied narrowly. Second, the exception was intended to allow a person who is employed by the entity that hires a lobbyist and is more knowledgeable about a topic than the lobbyist to attend a meeting to provide substantive information. The exception applies to a person who *accompanies* the lobbyist to provide substantive information relevant to his or her employer's business or organization, but not one who attends for the principal reason of lobbying, i.e., direct communication to influence a qualifying official.² Finally, a broader interpretation could render the definition of "lobbyist" virtually meaningless as anyone could avoid the classification, and more importantly the accompanying registration and restrictions, by simply having a lobbyist "ride-along" as he or she seeks to influence public officials.

Staff proposes two key changes to Regulation 18239 to accomplish the purpose of the exception. The first is to clarify that the accompanying person must be an employee of the lobbyist employer. The second is to require that the accompanying person participates in the meeting only as a subject matter expert regarding a legislative or administrative action at issue. The requirement that the individual participates in the meeting accompanying a lobbyist remains. An employee in this context also includes a member of a bona fide trade association or membership organization.

² If the lobbyist employer sends an employee to such a meeting and the person does not qualify under this exception, the employee would keep track of this time for purposes of the one-third test for whether one qualifies as a lobbyist.

After an interested persons meeting to discuss the regulation, staff received helpful feedback and questions about the new language. Foremost among questions and concerns was the term “subject matter expert.” Several people expressed that the term could be too high of a threshold if only an “expert” may attend the meeting. Others, including staff, read the language to mean that a person with particularized knowledge or experience on the topic at hand could attend. Indeed, Merriam Webster defines “expert” as “having or showing special skill or knowledge because of what you have been taught or what you have experienced.” Accordingly, staff believes “subject matter expert” is consistent with the intended scope of the exception.

As examples, under this proposal, the ride-along exception would apply to:

- A teacher to inform a qualifying official regarding classroom realities;
- A human resources employee or director regarding personnel regulations, privacy issues, employee training, etc.;
- A safety foreman when a bill regards changes in oilfield regulations;
- A lead engineer when the matter involves a technical aspect of a bill’s impacts;
- A car dealership manager when a bill impacts a car dealers association (a membership organization) as a representative of the association.

III. Staff Recommendation

The proposed regulatory amendments will clarify that the ride-along exception is limited in application and will prevent abuses that result in a lack of disclosure of lobbying activity. Staff recommends the Commission adopt the proposed amendments to Regulation 18239.