



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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# EXECUTIVE STAFF REPORTS

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*May 17, 2018 Commission Hearing*

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# I. ENFORCEMENT DIVISION

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STAFF: GALENA WEST, CHIEF OF ENFORCEMENT

During the period of April 6, 2018 through May 3, 2018, the Enforcement Division received 73 complaints, opened 16 for investigation, and rejected 29. The Enforcement Division received 48 non-filer referrals during this time.

Also during this time, the Enforcement Division closed a total of 74 cases including:

- 19 warning letters,
- 21 no action letters,
- 21 as a result of the adoption of stipulations at the April Commission meeting, and
- 13 committees were administratively terminated.

The Division had 916 cases in various stages of resolution at the time of the April Monthly Report and currently has approximately 905 cases in various stages of resolution, including the 15 cases before the Commission as listed in the May 2018 agenda.

On May 1, 2015, the Division received from the Secretary of State's office 2,460 \$50 Annual Fee non-payers for 2013 fees. Of those, 13 remain pending. On October 22, 2015, the Division received the \$50 Annual Fee non-payers for 2014 fees, which totaled 1,786. Of those, 26 remain pending. We are receiving 2015, 2016, and 2017 as referrals periodically through the Electronic Complaint System.

At Commissioner Audero's direction, the Enforcement Division is in process of gathering and organizing the case pendency by type data. This project is difficult because the new Case Management System was only recently implemented and contains no simple method to obtain accurate and useful case pendency by type data.

However, we have provided what information we have currently on the next page. This chart details the annual statistics for enforcement complaints, referrals and cases. The information in the chart has been gathered from public reports, information from the defunct and inactive database, and data that has been converted into current form, so the numbers are close estimates in some instances.

	<b>Year</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
1	Complaints Received	1,228	609	1,180	564
2	Referrals Received	614	596	350	1,616
3	Total Complaint and Referrals Received	1,842	1,205	1,530	2,180
4	Cases opened	1,405	2,273 <sup>1</sup>	1,315	1,480
5	Cases closed	1,869	1,253	1,803	1,477
6	Cases with resolutions approved by the Commission <sup>2</sup>	332	333	311	340
	a Streamline cases approved by Commission	234	258	234	262
	b Mainline cases approved by Commission	86	69	70	66
	c Default cases approved by Commission	12	6	7	12
7	Total fines imposed by the Commission	\$744,868	\$703,821	\$894,257	\$1,126,933
8	Warning letters issued	673	442	489	505
9	Administrative terminations	69	116	668	297
10	Cases closed with violations found <sup>3</sup>	1,074	891	1,468	1,142
11	Advisory letters issued	10	19	14	17
12	No action closure letters	453	343	321	318

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<sup>1</sup> In 2015, the Enforcement Division received information regarding 2,460 \$50 Annual Fee non-payers in May and another 1,786 in October of that year. None of these came through the typical “referral” process and had to be evaluated for: whether the committee had been terminated locally or with SOS, whether the committee never qualified, whether the fees were paid prior to the referral, and whether records existed to evaluate the committee, before the information could be opened into a case. Therefore, these do not appear in the Referral line since they did not follow that process.

<sup>2</sup> Total for lines 6a, 6b, and 6c.

<sup>3</sup> Total for lines 6, 8, and 9.

## II. LEGAL DIVISION

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**STAFF:****BRIAN LAU, ACTING GENERAL COUNSEL****TRISH MAYER, ASSISTANT CHIEF****JOHN FESER, SENIOR COMMISSION COUNSEL IV****A. Pending Litigation***Howard Jarvis Taxpayers Association, et al. v. Edmund Brown, et al.*

On December 12, 2016, the Howard Jarvis Taxpayers Association and retired State Senator and Judge Quentin L. Kopp filed a lawsuit against Governor Brown and the Commission to invalidate a new law that would allow public funds to be used for political campaigning. In September of 2016, the Governor signed Senate Bill 1107 which authorizes the use of public funds to finance campaigns if a jurisdiction adopts a law or ordinance creating a public financing program. Plaintiffs allege the new law improperly eliminates the prohibition against public financing of campaigns, implemented pursuant to Proposition 73 in 1988, because it was done without voter approval. In addition, plaintiffs allege that the new law violates the Political Reform Act<sup>4</sup> (the Act) because it does not “further the purposes of the Act,” an express requirement in the Act for legislative amendment. The Attorney General’s Office is representing both Governor Brown and the Commission in this litigation. A hearing was held in Superior Court on August 4, 2017. After taking the matter under submission, the Court issued a Ruling, dated August 23, 2017, “entering a judgment declaring that the amendments made to Government Code section 85300 by Senate Bill No. 1107 are void and have no legal effect; and an injunction restraining Respondents from enforcing the unconstitutional amendments made by Senate Bill No. 1107.”

In closed session at its meeting on September 21, 2017, the Commission voted to appeal the Superior Court decision. The Notice of Appeal was filed with the Third District Court of Appeal on January 9, 2018.

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<sup>4</sup> The 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 this source, unless otherwise indicated.

Frank J. Burgess v. Fair Political Practices Commission

Frank J. Burgess filed a writ of mandate in Riverside Superior Court on October 4, 2015, seeking relief from the Commission's decision and order in *In re Frank J. Burgess*, Case No. 12/516.

Mr. Burgess's case was first heard by an Administrative Law Judge (ALJ), and then Mr. Burgess challenged the ALJ's decision to the Commission. On March 19, 2015, the Commission rejected the ALJ's decision and decided the case based on the record and the parties' supplemental briefing. Ultimately, the Commission found that Mr. Burgess had violated Section 87100 of the Act and imposed a \$5,000 fine on July 7, 2015.

Mr. Burgess challenged that decision as an excess of the Commission's jurisdiction, an abuse of discretion, and a denial of due process rights. On September 15, 2016, the Superior Court issued its judgment granting the petition on due process grounds. The Court further ordered the Commission to file a Return to the Writ on or before November 7, 2016.

After a closed session discussion at the Commission meeting on October 20, 2016, the Commission voted to let the Superior Court's judgment stand and to vacate and set aside its Decision and Order in the underlying matter, thereby dismissing the administrative proceedings against Mr. Burgess. The Commission timely filed a Return to the Writ.

On November 14, 2016, Burgess filed a Motion for Attorney's Fees under Code of Civil Procedure section 1021.5 (private attorney general). The FPPC, in conjunction with the Attorney General's, office prepared an opposition to this motion which was filed on January 25, 2017. The fee motion was heard on April 3, 2017, and the Superior Court took the matter under submission after argument by the parties. On April 10, 2017, the Superior Court granted Burgess's motion for attorney's fees. The Commission voted in closed session to appeal the Superior Court's order granting Burgess attorney's fees at the June meeting.

The parties' respective appellate briefs have been timely filed: Appellant's opening brief on November 6, 2017; Respondent's opposition brief on December 5, 2017, and Appellant's reply brief on December 26, 2017. A hearing date for oral argument has not yet been set.

## **B. Outreach and Training**

None to report.

## **C. Advice**

In April 2018, the Legal Division responded to the following requests for advice:

- **Requests for Advice:** Legal Division Political Reform Consultants and attorneys collectively responded to more than 1,238 e-mail and telephone requests for advice.

- **Advice Letters:** Legal Division received 29 new advice letter requests under the Political Reform Act and completed 15 letters.
- **Section 1090 Letters:** Legal Division received eight new advice letter requests concerning Section 1090 and completed four letters. This year to date, we have received 19 advice requests regarding Section 1090.

#### **D. Advice Letter Summaries**

Full copies of FPPC Advice Letters, including those listed below, are available at:  
<http://www.fppc.ca.gov/the-law/opinions-and-advice-letters/law-advice-search.html>.

#### **Campaign**

##### **Bianca Pirayou**

[I-18-027](#)

A political committee may satisfy the Act's disclaimer display requirements for electronic media advertisements placed on social media by displaying either: (1) a hyperlink with the text "Who funded this ad?" that links to an Internet Website containing the committee's full disclosure statement, or (2) its full disclosure statement, on the profile/landing page associated with the social media platform in which the advertisement appears.

##### **Anthony Rhoades**

[I-18-042](#)

The Act does not restrict local candidates from transferring funds between their controlled committees if the committees are organized for future local elections.

#### **Conflict of Interest**

##### **Damien Brower, Esq.**

[A-18-032](#)

Councilmembers and a Planning Commissioner were not disqualified from making governmental decisions regarding proposed project to consolidate two golf courses and develop two senior housing facilities because their residences, rental property, and managed properties were sufficiently removed from the development of the senior housing facilities and the limited nature of the development proposed for the removed course holes would not significantly change the nature of the open space.

##### **Samantha W. Zutler**

[I-18-049](#)

Vice Mayor may not take part in City Council's decision to approve an agreement for a housing project with a developer if the Vice Mayor has received commission income from the developer for his real estate brokerage services aggregating \$500 or more within 12 months prior to the decision, even if the income was not received for the project before the City Council.

##### **Christina Desser**

[I-18-050](#)

County Planning Commissioner does not have a disqualifying conflict of interest in decisions merely because the Commissioner had been previously represented by the same attorney representing a client in the decision before the Commission.

**Victor Wang**[A-18-075](#)

Travel, lodging, and meal payments from a governmental entity are reportable gifts that are not subject to the gift limits.

**Eric Lucan**[A-18-077](#)

Councilmember does not have a conflict of interest in decisions regarding the creation of “parkettes,” which would turn three public parking spaces into a temporary patio for outdoor dining, on a main street in the City’s downtown business district, even though he has a residential real property interest within 500 feet of that street because of the low intensity of the proposed use and the buffer between the residential property and the downtown business district.

**Conflict of Interest Code****Brian Doyle**[A-18-039](#)

An individual who works for a private company and makes procurement decisions on behalf of the County’s Stadium Authority, pursuant to a management agreement between the company and the Authority, is a “consultant” under the Act. Accordingly, the Authority must include that individual in its Conflict of Interest Code, and the individual must file Statements of Economic Interests as required by the Act.

**Gifts****J. Carlos Orellana**[A-18-063](#)

The portion of a scholarship awarded by the American Bar Association to pay a conference registration fee for Transportation Authority’s Senior Assistant General Counsel is not a gift or income because it falls within the Act’s definition of informational material. Additionally, the portion of the scholarship to pay for lodging during the conference and the reduction in the official’s association dues, are not gifts because the scholarship was awarded through a bona fide competition open to government attorneys throughout the country. However, the payments for lodging and the reduction in association dues must be reported as income on the official’s statement of economic interests.

**Statement of Economic Interests****Emily M. Thor**[A-18-043](#)

A state employee is not required to report her interests in two trusts, which were established for her mother’s lifetime benefit, because the employee does not currently receive income from the trust and the trustees for both trusts may consume and invade the trust principal for the benefit of the employee’s mother.

**Section 1090****Dennis Sirkin**[A-17-238](#)

Neither Section 1090 nor the Act require District Director to step down upon marrying the General Manager. However, Section 1090 would prohibit the Director and the Board from

changing the General Manager's terms of employment or amending her employment contract. Additionally, the Act would prohibit the Director from taking part in any decision with a foreseeable and material effect on his personal finances such as decisions implicating the spouse or her salary.

**Sarah E. Tobias**

[A-18-031](#)

City Councilmember, who seeks to purchase land from the Healthcare District, is not prohibited under the Act or Section 1090 because the District is a separate, special district, not under the authority, control, or influence of the City Council.

**Jason R. Alcalá**

[A-18-036](#)

Airport Commissioner may not take part in Commission decisions to consider whether to recommend that the City change the Airport's Minimum Standards to accommodate the use of smaller capacity fuel tanks, as requested by his wife's employer, because the Commissioner has a disqualifying conflict of interest resulting from his interest in his wife's employer as a source of income. However, Section 1090 does not apply as the decision does not involve a "contract."

**Michael J. Maurer**

[A-18-046](#)

City Councilmember, who also serves as a Board Member for a 501(c)(3) non-profit local little league, may participate in decisions on improvements for a City-owned park for purposes of turning the park into the league's "home fields" because the Councilmember does not have an interest in the charitable organization under the Act. In addition, Section 1090 does not prohibit the Councilmember from taking part in future contracts because he does not have an interest in any City contract with the little league pursuant to Section 1091.5(a)(8).

## **E. Miscellaneous Decisions**

### **Exemption Request**

Regulation 18740 provides that an official or candidate, with the approval of the General Counsel, is not required to disclose the name of a person under Section 87207 if disclosure would violate California or Federal law. The following exemption request was approved by the General Counsel in March:

- Hon. Stacy Speiller, Exemption No. E-18-001.

## **F. Potential Upcoming Regulations**

### **June 4, 2018.**

Statement of Governance (Adopt) – The Commission will consider proposed Regulations 18308 (Commission Governance), 18308.1 (Authority of the Commission), 18308.2 (Authority of the Chair), and 18308.3 (Authority of the Executive Director), as recommended by the Ad Hoc Committee on the Commission's Statement of Governance Principles.

**June 21, 2018.**

Parent, Subsidiary, Otherwise Related Business Entity Definition (Prenotice) – The Commission will discuss possible amendments to conflict of interest rules defining parent and subsidiary corporations and otherwise related business entities and clarifying disqualification requirements when an official has an interest in a business entity and the decision implicates a parent, subsidiary, or otherwise related business entity of the business entity.

**Scheduling to be Determined.** Discussion of materiality thresholds under the Act's conflict of interest provisions including bright-line materiality standards and clarification of the 500-foot property rule.

**G. Conflict of Interest Codes****Adoptions and Amendments***State Agency Conflict of Interest Codes*

- Gambling Control Commission
- Transportation Department

*Multi-County Agency Conflict of Interest Codes*

- Connecting Waters Charter Schools
- Merced Subbasin Groundwater Sustainability Agency
- Transbay Joint Powers Agency
- Tri Valley San Joaquin Valley Regional Rail Authority

**Exemptions**

None to report.

**Extensions**

None to report.

**H. Probable Cause Hearings**

*Please note, a finding of probable cause does not constitute a finding that a violation has occurred. The respondents are presumed to be innocent of any violation of the Act unless a violation is proven in a subsequent proceeding.*

*The following matters were decided based solely on the papers. The respondents did not request a probable cause hearing.*

1. ***In the Matter of Christopher Pedigo and Christopher Pedigo for Mayor 2016, FPPC No. 16/19908.*** On April 16, 2018, probable cause was found to believe that Respondents committed the following violations of the Act:

- Count 1: The Committee and Pedigo failed to timely file the pre-election campaign statement for the September 25, 2016 through October 22, 2016 statement period in violation of Section 84200.5 and 84200.8.
- Count 2: The Committee and Pedigo failed to timely file a 24-hour report for a contribution of \$1,000 received on or about September 26, 2016 in violation of Section 84203.
- Count 3: The Committee and Pedigo failed to timely file a 24-hour report for a contribution of \$1,500 received on or about October 26, 2016 in violation of Section 84203.
- Count 4: The Committee and Pedigo failed to timely file the semiannual campaign statement for the October 23, 2016 through December 31, 2016 statement period in violation of Section 84200.

2. ***In the Matter of Michael D. Jackson for School Board 2016, Michael D. Jackson, and Kelvin Barrios, FPPC No. 17/0964.*** On April 23, 2018, probable cause was found to believe that Respondents committed the following violations of the Act:

- Count 1: Failure to Timely File a Semi-Annual Campaign Statement. The Committee, Jackson, and Barrios failed to timely file the semi-annual campaign statement due January 31, 2017, in violation of Government Code Section 84200.
- Count 2: Failure to Timely File a Semi-Annual Campaign Statement. The Committee, Jackson, and Barrios failed to timely file the semi-annual campaign statement due July 31, 2017, in violation of Government Code Section 84200.
- Count 3: Failure to Timely File a Semi-Annual Campaign Statement. The Committee, Jackson, and Barrios failed to timely file the semi-annual campaign statement due January 31, 2018, in violation of Government Code Section 84200.
- Count 4: Failure to Timely Pay the 2017 Annual Fee. The Committee, Jackson, and Barrios failed to timely pay the 2017 annual fee by the January 15, 2017 due date, and failed to pay the resulting \$150 late penalty, in violation of Government Code Section 84101.5, subdivisions (c) and (d).
- Count 5: Failure to Timely Pay the 2018 Annual Fee. The Committee, Jackson, and Barrios failed to timely pay the 2017 annual fee by the January 15, 2018 due date, in violation of Government Code Section 84101.5, subdivision (c).

3. ***In the Matter of Lilia Leon and Friends of Lilia Leon for City Council 2013, FPPC No. 16/19908.*** On April 24, 2018, probable cause was found to believe that Respondents committed the following violations of the Act:

- Count 1: Respondents Lilia Leon and Friends of Lilia Leon for City Council 2013 failed to timely file the pre-election campaign statement for the reporting period January 20, 2013, through February 16, 2013, due by February 21, 2013, and failed to disclose a required expenditure on that campaign statement, in violation of Sections 84200.5, subdivision (c), 84200.8 and 84211, subdivisions (b)(i)(j) and (k).
- Count 2: Respondents Lilia Leon and Friends of Lilia Leon for City Council 2013 failed to properly disclose required expenditures on the semi-annual campaign statement for the period February 17, 2013, through June 30, 2013, in violation of Section 84211, subdivisions (b)(i) (j) and (k).
- Count 3: Respondents Lilia Leon and Friends of Lilia Leon for City Council 2013 failed to properly disclose required expenditures on the semi-annual campaign statement for the period July 1, 2013, through December 31, 2013, in violation of Section 84211, subdivisions (b)(i)(j) and (k).
- Count 4: Respondents Lilia Leon and Friends of Lilia Leon for City Council 2013 failed to properly disclose required expenditures on the semi-annual campaign statement for the period January 1, 2014, through June 30, 2014, in violation of Section 84211, subdivisions (b)(i) (j) and (k).
- Count 5: Respondents Lilia Leon and Friends of Lilia Leon for City Council 2013 failed to properly disclose required expenditures on the semi-annual campaign statement for the period July 1, 2014, through December 31, 2014, in violation of Section 84211, subdivisions (b)(i)(j) and (k).
- Count 6: Respondents Lilia Leon and Friends of Lilia Leon for City Council 2013 failed to properly disclose required expenditures on the semi-annual campaign statement for the period January 1, 2015, through June 30, 2015, in violation of Section 84211, subdivisions (b)(i)(j) and (k).
- Count 7: Respondents Lilia Leon and Friends of Lilia Leon for City Council 2013 improperly used cash from the committee bank account in approximately one withdrawal in the amount of \$300, on February 14, 2013, during the pre-election campaign statement for the reporting period January 20, 2013, through February 16, 2013, in violation of Section 84300.
- Count 8: Respondents Lilia Leon and Friends of Lilia Leon for City Council 2013 improperly used cash from the committee bank account in approximately five withdrawals totaling \$2,350 during the semi-annual campaign statement for the reporting period February 17, 2013, through June 30, 2013, in violation of Section 84300.

- Count 9: Respondents Lilia Leon and Friends of Lilia Leon for City Council 2013 improperly used cash from the committee bank account in approximately five withdrawals totaling \$2,320 during the semi-annual campaign statement for the reporting period July 1, 2013, through December 31, 2013, in violation of Section 84300.
- Count 10: Respondents Lilia Leon and Friends of Lilia Leon for City Council 2013 improperly used cash from the committee bank account in approximately two withdrawals totaling \$700 during the semi-annual campaign statement for the reporting period January 1, 2014, through June 30, 2014, in violation of Section 84300.
- Count 11: Respondents Lilia Leon and Friends of Lilia Leon for City Council 2013 improperly used cash from the committee bank account in approximately six withdrawals totaling \$1,381.54 during the semi-annual campaign statement for the reporting period July 1, 2014, through December 31, 2014, in violation of Section 84300.
- Count 12: Respondents Lilia Leon and Friends of Lilia Leon for City Council 2013 improperly used cash from the committee bank account in approximately two withdrawals totaling 19 \$700 during the semi-annual campaign statement for the reporting period January 1, 20 2015, through June 30, 2015, in violation of Section 84300.
- Count 13: From February 27,2013, through December 10, 2014, Respondents Lilia Leon and Friends of Lilia Leon for City Council 2013 failed to pay a total of approximately \$3,638 in expenditures from the designated campaign bank account, in violation of Section 85201.
- Count 14: For the reporting periods from January 20,2013, through June 30, 2015, Respondents Lilia Leon and Friends of Lilia Leon for City Council 2013 failed to maintain adequate source documentation for committee expenditures, in violation of Section 84104 and Regulation 18401, subdivision (a)(4).
- Count 15: On August 17, 2013 and on October 14, 2014, Respondent Lilia Leon caused Friends of Lilia Leon for City Council 2013 committee to make an expenditure of campaign funds, in the amounts of approximately \$697 and \$660, respectively, totaling approximately \$1,357, which conferred a substantial personal benefit for purposes not directly related to a political, legislative or governmental purpose, in violation of Section 89512.
- Count 16: On June 1,2013, June 28, 2013, July 20,2013, February 21,2014, March 20, 2014 and August 1, 2014, Respondent Lilia Leon caused Friends of Lilia Leon for City Council 2013 committee to make six expenditures of campaign funds, in the amounts of approximately \$300 for each transaction, which conferred a

substantial personal benefit for purposes not directly related to a political, legislative or governmental purpose, in violation of Section 89512.

4. ***In the Matter of Brandon Villalpando For Chino Mayor 2016 and Brandon Villalpando, FPPC No. 17/628.*** On April 24, 2018, probable cause was found to believe that Respondents committed the following violations of the Act:

- Count 1: The Committee and Villalpando failed to timely file the semi-annual campaign statement covering the reporting period of October 23, 2016 through December 31, 2016, due January 31, 2017, in violation of Government Code Section 84200.
- Count 2: The Committee and Villalpando failed to timely file the semi-annual campaign statement covering the reporting period of January 1, 2017 through June 30, 2017, due July 31, 2017, in violation of Government Code Section 84200.
- Count 3: The Committee and Villalpando failed to timely pay the 2017 annual fee by the January 15, 2017 due date, in violation of Government Code Section 84101.5, subdivisions (c) and (d).

## III. EXTERNAL AFFAIRS AND EDUCATION DIVISION

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STAFF: COURTNEY MILLER, MANAGER

### **Phone Advice Requests**

The External Affairs and Education Division responded to 800 requests for technical assistance via phone in April.

### **Training & Outreach**

Political Reform Consultants conducted the following workshops and outreach activities:

John Kim and Glen Bailey delivered a Candidate/Treasurer workshop for Santa Cruz County. More than 35 people attended the workshop.

John Kim delivered a Candidate/Treasurer workshop for the City of Oakland Political Ethics Commission. More than 25 people attended the workshop.

Alexandra Castillo conducted an SEI Filing Officer outreach training for the City of Jackson.

### **Additional Training**

Glen Bailey and John Kim developed a video training series for lobbying reports. The series will be recorded and posted by the end of May.

Since January of this year the Form 700 training videos on the FPPC website have been viewed 1,233 times. The greatest increase in views occurred in March--close to the filing deadline. The total amount of views (to date) since the first video was posted in July 2017 is 1,469. The team has received positive feedback on the impact of these videos, and they look forward to posting the Form 460 videos and the Lobbying Reports videos later this spring.

### **Filing Schedules**

Filing Schedules for the Senate District 32 Special Election were created and posted to the website.

## IV. EXECUTIVE STAFF UPDATE

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STAFF:        ERIN PETH, EXECUTIVE DIRECTOR  
                 LORESSA HON, CHIEF OF ADMINISTRATION

For personal reasons, General Counsel, Jack Woodside is returning to a Staff Counsel position in the Legal Division. Assistant General Counsel, Brian Lau, will be serving as Acting General Counsel. Given that the proposed regulation on the governance principles will be considered at the June 4<sup>th</sup> Commission meeting, we await further instructions from the Commission on the process to be followed for hiring the new General Counsel.