



FAIR POLITICAL PRACTICES COMMISSION

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September 19, 2002

Mark J. Nielsen
31621 Via Quixote
San Juan Capistrano, CA 92675

**Re: Your Request for Advice
Our File No. A-02-228**

Dear Mr. Nielsen:

This letter is in response to your request for advice regarding the Statement of Economic Interests provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. Must you report on your Statement of Economic Interests (Form 700) a diversified fund that holds over 325 stocks?
2. Must you also report your limited partnership interest in venture capital funds?

CONCLUSIONS

1. If the fund is a diversified mutual fund registered with the Securities and Exchange Commission, the fund is not a reportable investment. However, if it does not meet the definition of a diversified mutual fund as described below, you must report each stock held in that fund in which your ownership interest is valued at \$2,000 or more.
2. Yes. You must report your limited partnership interest in each venture capital fund if your investment in the fund is \$2,000 or more.

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

FACTS

You request guidance on whether certain investments need to be included on your Statement of Economic Interests (Form 700). You are a candidate for the San Juan Capistrano City Council in November. You have two types of investments for which you seek guidance.

The first is an exchange fund in which you originally deposited one stock in exchange for a share in a diversified fund of over 325 stocks. You have no control over what stocks are included in the fund, or whether those stocks are bought or sold. At the end of a seven-year period, you will then be distributed a basket of these diversified stocks reflecting your ownership of the total fund (which is less than 1%).

The second situation involves private equity funds in which you are an investor and limited partner. These are typically venture capital funds in which Merrill Lynch or JP Morgan make capital calls over a multi-year period to the limited partners and then invest that capital in either a myriad of various companies that seek venture capital funding or in other venture capital funds that then turn around and invest in individual companies. Again, your interest is under 1% in these equity funds and you have no control over in what companies the fund invests.

ANALYSIS

As a candidate for city council for the City of San Juan Capistrano, you must disclose economic interests on your candidate's Statement of Economic Interests. You must disclose, among other things, your investments, as defined by the Act. (Section 87206.) Candidates for city council report the investments held as of the date of filing the declaration of candidacy. (Section 87201.)

The Act defines "investment" to include "any financial interest in or security issued by a business entity, including but not limited to common stock, preferred stock, rights, warrants, options, debt instruments and any partnership or other ownership interest...." (Section 82034.) However, the definition of "investment" also includes several exceptions. Specifically, an "...interest in a diversified mutual fund registered with the Securities and Exchange Commission under the Investment Company Act of 1940" is not considered an "investment" for purposes of the Act.

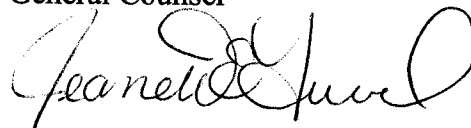
In your letter, you did not indicate if your diversified fund is a diversified mutual fund registered with the Securities and Exchange Commission. If your fund meets the definition as described above, it would not need to be reported. However, if the fund does not meet that definition, you must report each stock held in the fund in which your ownership interest is \$2,000 or more on Schedule A-1 of the Form 700. (Section 87206.)

Additionally, your investment as a limited partner in the venture capital funds must be reported if the value of your investment in the fund is \$2,000 or more. Since you indicated that your interest is less than 1 percent, the venture capital fund is reported on Schedule A-1 and reported as a Merrill Lynch venture capital fund, or a JP Morgan venture capital fund.²

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

Sincerely,

Luisa Menchaca
General Counsel



By: Jeanette E. Turvill
Political Reform Consultant
Technical Assistance Division

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² If this fund invests in a particular company, the nature of your investment may change from a limited partnership in the fund to stock ownership in that company. Should you be successful in your election and that should occur, you would then report your stock holdings in that company if the value of that stock is \$2,000 or more.