



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

June 3, 2011

Thomas W. Hiltachk
Bell, McAndrews & Hiltachk, LLP
455 Capitol Mall, Suite 600
Sacramento, CA 95814

Re: Your Request for Advice
Our file No. A-11-048

Dear Mr. Hiltachk:

This letter responds to your request for advice, on behalf of SL Capital Partners, LLP, regarding the lobbying provisions of the Political Reform Act (the "Act").¹ The Fair Political Practices Commission ("the Commission") will not advise with respect to past conduct. (Regulation 18329(b)(8)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place. Any conclusions contained herein apply only to prospective actions.

In addition, this letter is based on the facts presented. The Commission does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTION

Do the placement agent registration and disclosure requirements apply to limited partnerships that manage fund of fund vehicles in which CalPERS is a limited partner?

CONCLUSION

In some cases, yes. See below for factual situations in which registration requirements apply.

¹ 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.

FACTS

You represent SL Capital Partners, the manager of several fund of fund vehicles and the manager of ESP Golden Bear Fund Europe LP (“ESP GB”) a Scottish Limited Partnership. The limited partners are CalPERS (approximately 97%) and Standard Life Investments (a wholly owned subsidiary of Standard Life PLC (approximately 3%). SL Capital Partners, LLP, as external manager of ESP GB, has complete discretion over investment decisions (within certain size and geographical parameters set out in the limited partnership agreement).

As a limited partner, CalPERS has no discretion over the specific investment decisions of the manager. Because ESP GB invests in European-based private equity funds, it is not unusual for SL Capital Partners to receive solicitations/offers to invest in such funds by various other fund managers and/or placement agents retained by the fund manager. You stated that these solicitations are not made directly to CalPERS or any other public retirement system, but are instead made to ESP GB or its other managers or partners.

ANALYSIS

The legislature passed, and the governor signed, Assembly Bill 1743 (“the Bill”), a series of laws adding to the Government Code. The Bill makes a key change to the Act that includes “placement agent” in the Act’s definition of “lobbyist.” The rules and regulations regarding lobbyists therefore now apply to placement agents, per the Bill. The Bill codifies the policy of requiring certain disclosures of individuals who will solicit the business of California Public Retirement Systems. We are restricted to the language of the statutes presented in the Bill, and analyze your situation on that basis.

The Bill makes several amendments and additions to the Act to effectuate the overall goal of including placement agents under the definition of lobbyists and providing Californians with more information about their public retirement systems. Specifically, the Bill:

- Amends the definition of “administrative action” to include decisions by a 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).)
- Adds a definition of “external manager” as either “a person who is seeking to be, or is, retained by a state public retirement system in California to manage a portfolio of securities or other assets for compensation” or “a person who is engaged, or proposes to be engaged in the business of investing, reinvesting, owning, holding, or trading securities to a state public retirement system in California.” (Section 82025.3.)
- Adds “placement agent” to the definition of “lobbyist.” (Section 82039(a)(2).)
- Adds a definition for placement agent. (Section 82047.3, copy enclosed.)

The Bill defines an external manager as:

- 1) A person who is seeking to be, or is, retained by a state public retirement system in California to manage a portfolio of securities or other assets for compensation; or
- 2) A person who is engaged, or proposes to be engaged, in the business of investing, reinvesting, owning, holding, or trading securities or other assets and who offers or sells, or has offered or sold, securities to a state public retirement system in California.

Additionally, a “placement agent” is:

“any person who “is hired, engaged, or retained by, or serving for the benefit of or on behalf of, an external manager, or on behalf of another placement agent, who acts or has acted for compensation as a finder, solicitor, marketer, consultant, broker, or other intermediary in connection with the offer or sale of the securities, assets, or services of an external manager to a state public retirement system in California or an investment vehicle, either directly or indirectly.” (Section 82047.3(a).)

By registering as a lobbyist, an individual makes it publically known that he or she will be working with public entities and also files certain disclosures. A placement agent, as discussed above, “is hired, engaged, or retained by, or serving for the benefit of or on behalf of, an external manager.” (Section 82047.3(a).) Additionally, the placement agent works for compensation regarding “the offer or sale of the securities, assets, or services of an external manager to a [state retirement] board or investment vehicle, either directly or indirectly.”

The Bill defines “investment vehicle” as:

“a corporation, partnership, limited partnership, limited liability company, association or other entity, either domestic or foreign constituting or 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 management services of, other external managers.” (Section 82047.3(d).)

ESP GB: Your facts describe a limited partnership in which CalPERS is a majority investor. Based on the above definition, the limited partnership, ESP GB, is an investment vehicle. Consequently, any individual who fits the definition of placement agent, above, who contacts this investment vehicle in the manner listed above (definition of “placement agent”) must register as a lobbyist unless an exception applies.

SL Capital: Further, this same conclusion applies to individuals whom SL Capital hires as well as those who are paid to solicit SL Capital

Other Investment Vehicles: This same conclusion also applies to or any other investment vehicle in which CalPERS is a majority investor, individually or through ESP GB. To the extent that ESP GB invests in other funds and it (as an "investment vehicle") holds a majority (over 50%) in that fund, that fund is also an investment vehicle and placement agents that solicit that fund must register as lobbyists under the Bill. If ESP GB is not a majority investor, the registration provisions do not apply.

Thus, to summarize, if CalPERS, or any fund that qualifies as an investment vehicle under the Bill, holds a majority of a fund, the placement agent registration provisions apply.

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

Sincerely,

John W. Wallace
Assistant General Counsel



By: Heather M. Rowan
Counsel, Legal Division

HMR:jgl

Enclosure

