

California FPPC Issues New Interpretive Guidance On Placement Agent Legislation

A recently published letter from the California Fair Political Practices Commission (the "Commission") offers additional guidance on the scope and application of California's new placement agent law, Assembly Bill No. 1743 ("AB 1743"). While the letter does not constitute formal guidance from the Commission, it can offer assistance in interpreting AB 1743.

As previously described in a Ropes & Gray [alert](#), under AB 1743, any placement agent who solicits funds from a California public pension or retirement system on behalf of an external manager is required to register as a lobbyist. AB 1743 broadly defines "placement agent" to include any employee of an external manager who acts as a finder, solicitor, marketer, consultant, broker or other intermediary for compensation in connection with the offer or sale of securities, assets or services of the external manager, subject to an exception for employees who spend one-third or more of their time during a calendar year managing securities or assets. As a result, AB 1743 may require marketing, investor relations and other personnel of an investment firm who participate in solicitation of California public plan investors, whether in connection with separately managed accounts or investments in collective investment vehicles, to register as lobbyists in California. AB 1743 also restricts the types of compensation that placement agents can receive for soliciting investments from a California public pension or retirement system and imposes registration and disclosure requirements and gift and contribution limits.

In a letter dated April 7, 2011 (available [here](#)), the Commission responded informally to a series of questions and offered guidance on a number of topics. Two topics addressed in the letter are especially noteworthy:

- **Special exception for employees accompanied by a registered lobbyist.** The letter states that employees of an external manager who participate on an occasional basis in meetings with prospective state plan clients for the purpose of explaining the nature of the external manager's services and capabilities are excluded from the definition of "placement agent" under AB 1743 if they are accompanied at such meetings by a registered lobbyist retained by the external manager. The registered lobbyist could be another employee of the external manager or a third party. This helpful advice identifies a potential way for investor relations professionals at external managers to participate in fundraising meetings with state plans without having to register as lobbyists.
- **Application to plans other than CalPERS and CalSTRS.** The letter declined to limit the application of AB 1743 to only CalPERS and CalSTRS, and instead stated that AB 1743 applies to every state public employees' pension or retirement system in California (other than those created after July 1, 1991 that do not administer pension or retirement benefits). The letter specifically declined to reach a conclusion on whether AB 1743 would apply to a number of specifically identified state-run retirement plans, including the University of California Retirement System, but did note that AB 1743 should be interpreted to apply to public pension systems, but not to defined contribution plans or "traditional retirement plans" such as a 401(k) or 457 plan.

Unfortunately, the letter does not offer guidance on a number of unresolved issues under AB 1743, including:

- **"1/3 time" exception.** As noted above, employees of an external manager who spend one-third or more of their time during the calendar year managing securities or assets of the manager are excluded from the definition of "placement agents" under AB 1743. The letter offers no further guidance on how to interpret this exception.
- **Level of contact and solicitation triggering placement agent status.** The letter states that neither responding to inquiries from a state retirement plan nor inquiring whether a state retirement plan intends to contract out certain services in the future qualify as placement agent activities because these inquiries "occur before any intention to offer or sell securities is formed." The letter offers no further guidance as to the threshold when such intention to offer or sell securities would be formed or the level of solicitation that meets the definition of a "placement agent" under AB 1743.
- **Status of employees accompanied by exempt in-house personnel.** As discussed above, the letter provides that employees of an external manager who participate on an occasional basis in meetings with prospective state plan clients and are accompanied by a registered lobbyist during such meetings do not themselves have to register as lobbyists. However, the letter does not address whether such employees would be required to register as lobbyists if they are accompanied by someone who is exempt from lobbyist registration, such as another employee of the external manager who is exempt pursuant to the "1/3 time" exception.

Please contact any Ropes & Gray attorney with whom you regularly work if you have any questions or would like to discuss this development, which we will continue to monitor closely.