



**INVESTMENT FUNDS UPDATE**

## **California Legislature Passes Bill to Clarify Lobbyist Requirements for Marketers**

California has enacted new legislation, SB 398, that clarifies requirements imposed earlier this year on persons who market investment managers and their funds to California public pension plans. The bill is effective immediately.

The earlier legislation, AB 1743, affects many people and firms that are involved in offering investment managers' services to state public pension plans such as CalPERS and CalSTRS. Very generally, it requires people involved in marketing to those plans to register with California's Secretary of State as lobbyists, subjecting them to reporting requirements and some substantive limitations on compensation and activities. It excludes from that regulation people whose only activities are on behalf of SEC or state-registered investment advisers responding to certain competitively-bid requests (RFPs) from state-level plans such as CalPERS and CalSTRS. AB 1743 also subjects people and firms involved in offering to California local public pension plans to "applicable" local lobbyist regulations (more on that below), and didn't provide a similar competitive-bid exclusion from this local-plan provision.<sup>1</sup>

The new bill extends the competitive-bid exclusion to qualifying arrangements with local public pension plans and, separately, restates the types of investment manager services that trigger lobbyist registration requirements. In this restatement, SB 398:

- States more explicitly and unequivocally that marketing interests in any type of private investment fund to a public retirement system (not just marketing direct investment management services through managed accounts) is covered activity, subjecting those who engage in it to lobbyist registration and regulation (unless they qualify for an exclusion). These funds include private equity funds, public equity funds, venture capital funds, hedge funds, fixed income funds, real estate funds and infrastructure funds.
- Clarifies that personnel of broker-dealers and underwriters will not be subject to lobbyist registration requirements as a result their firms' executing securities transactions with or on behalf of state and local public retirement systems.

These clarifications are generally consistent with the interpretations of AB 1743 issued by the California Fair Political Practices Commission, and do not substantially change how AB 1743 applies. In light of that fact, SB 398's greatest importance may be that it demonstrates the Legislature's continued commitment to the lobbyist regime as a way of regulating the offering of investment advice and products to California government pension plans. Yet some local

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<sup>1</sup> See the Sidley Update "Lobbyist Regulations' Impact on Investment Managers – California, New York and Beyond," February 1, 2011: <http://www.sidley.com/newsresources/highlights/detail.aspx?news=4708>.

governments seem to be heading in a different direction, at least for the time being. While AB 1743 says that those who market to local government pension plans are subject to “applicable” local lobbyist regulation, several California cities and counties have opined that AB 1743 does not “automatically” subject marketers to local registration and that whether marketing activities subject them depends on local definitions of “lobbyist” and “lobbying.” These include the City of Los Angeles, the City of San Diego, the City and County of San Francisco and the City of San Jose. And some jurisdictions have even stated that their definitions do *not* require those who market investment services and funds to their retirement plans to comply with their lobbyist-related ordinances. Los Angeles County, Orange County and San Diego County are among these.

Despite these interpretive opinions, the applicability of lobbyist regulations remains an area of uncertainty in many California cities and counties. Before marketing to a particular local retirement system, investment managers should be careful to evaluate local lobbyist-related ordinances and whether interpretations are available that would relieve them of local lobbyist treatment, based on their particular facts.

If you have any questions regarding this update, please contact the Sidley lawyer with whom you usually work.

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