

## Policy Alert

### Are Your Marketing or Sales Professionals Lobbyists?

January 19, 2011

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In light of several high-profile scandals related to the use of placement agents, state and local jurisdictions have been focusing their attention on the activities of persons who influence investment decisions. These persons are often referred to as “placement agents,” but may even include internal employees, such as marketing and sales professionals who are involved in influencing the decisions of pension board officials and employees on behalf of their employer. As the new year begins, companies with employees who interact with public officials at state and local retirement systems and pension funds on investment matters are encouraged to review state and local lobbying laws to determine if their employees’ activities trigger lobbying registration and reporting obligations.

While certain jurisdictions such as New York City and California have issued new guidance or rules that require placement agents and internal employees to register as lobbyists, lobbying laws in other jurisdictions may be interpreted to include similar activities, thus requiring registration as a lobbyist. This alert provides specific information on New York City’s recent notice to persons involved with investment decisions and California’s new placement agent rules (We also refer the reader to our November 30, 2010 [client alert](#) and December 20, 2010 [client alert](#) on the topic of California placement agents).

#### NEW YORK CITY

New York City’s Office of the City Clerk recently contacted businesses and organizations to inform them that, beginning in January 2011, it will be reviewing the activities of individuals, businesses and organizations that are attempting to influence investment decisions made by the pension funds and retirement systems of New York City. Pursuant to an advisory opinion issued in 2010, placement agents, including internal employees, who attempt to influence the decisions of the board of trustees of the city’s five pension funds (or members of their staffs) or the comptroller (or members of his staff) with respect to the investment of those funds are considered to be “lobbying” and subject to the rules and regulations that apply to lobbyists.

The opinion highlights that the New York City Administrative Code defines “lobbying” to mean “any attempt to influence several activities, including any determination made by an elected city official or an officer or employee of the city with respect to the procurement of goods, services or construction, including the preparation of contract specifications, or the solicitation, award or administration of a contract, or with respect to the solicitation, award or administration of a grant, loan, or agreement involving the disbursement of public monies.” New York City’s Administrative Code, as pointed out by the guidance, also defines lobbying as any attempt to influence “any determination of a board or commission.”

The Office of the City Clerk’s opinion explains that the trustees of the boards of the city’s five pension systems are covered under the law as public officers and because they serve on boards. The trustees of these boards determine, by resolution, how the assets of the pension funds should be invested. The opinion further states that, when the boards of trustees of the five pension systems approve investments with funds or firms, the approvals fall within the broad scope of “determination.” The opinion concludes that, because the decision by the board to enter into agreements or contracts constitutes a determination made by public officials or a board, individuals who approach members of such boards or their staff to influence their determinations with respect to the investment of the pension systems’ funds are engaged in lobbying.

In addition to addressing communications with trustees of the board, the advice explains that, because the comptroller makes recommendations to the board, even if placement agents do not communicate directly with board members, any attempt to influence the recommendations of the comptroller (directly or through his staff) also constitutes an attempt to influence a determination of the



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boards of trustees. Moreover, as the comptroller is a member of the board of trustees of four of the five city pension funds, any attempt to influence the comptroller is equally an attempt to influence a determination of those boards.

## CALIFORNIA

Our previous alerts on California's new rules that require placement agents to register as lobbyists have focused on application of the rules at the state level for the state pension fund systems (i.e., CalPERS and CalSTRS). It is important for placement agents to remember that the new law also addresses activities with local pension fund systems. While the new law covers both state and local pension fund systems, the rules are slightly different. Registration as a lobbyist may be required prior to contacting public officials.

It is important to note that the new rules apply to internal employees, not just external or third-party agents. Employees who conduct activities as a finder, solicitor, marketer, consultant, broker or other intermediary in connection with the offer or sale of securities, assets or services of an external manager with regard to a public pension fund or retirement system may be required to register as lobbyists. (Please refer to our [November 30 alert](#) for more details on the definitions). Additionally, the registration fee for new lobbyists has increased from \$25 to \$50. (Additional details on registration are in our [December 20 alert](#)).

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## CONTACT INFORMATION

Akin Gump Strauss Hauer & Feld LLP's policy lawyers and advisors are available to assist with any questions you may have concerning these and other changes in state and local lobbying laws. If you have any questions concerning this alert, please contact —

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