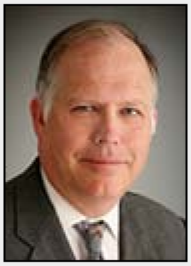
Allen Matkins Corporate and Securities



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About Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP is a California law firm with more than 230 attorneys practicing out of seven offices in Los Angeles, Century City, Orange County, Del Mar Heights, San Diego, San Francisco and Walnut Creek. The firm's broad based areas of focus include corporate, real estate, construction, real estate finance, business litigation, employment and labor law,

California Enacts Emergency Legislation to Address Pay-to-Play and Public Pension Funds

> This new law will impact investment advisers and others who use placement agents to obtain access to public retirement systems in California.

Recent news stories have featured allegations of "pay-to-play" arrangements at public employee pension funds. A pay-to-play arrangement involves directing some benefit to a pension fund official in order to obtain fund business. A direct bribe is the most obvious form of pay-to-play. However, pay-to-play arrangements are often indirect or disguised. Often they are funneled through intermediaries known as "placement agents". Investment advisers and others seeking fund contracts or investments hire placement agents to help secure those deals. Not surprisingly, pay-to-play arrangements raise serious questions about whether pension fund officials are making decisions in the public interest or in their own self interest.

New Rules

Responding to pay-to-play concerns, Governor Schwarzenegger this month signed into law a bill, AB 1584, that imposes new disclosure and prohibitions with respect to placement agents. Because the bill was enacted as an emergency statute, it takes effect immediately.

A key new requirement of AB 1584 is that the boards of all public employees' pension or retirement systems in California will be required to develop and implement a policy requiring the disclosure of payments to placement agents in connection with system investments in or through asset management firms. Among other things, these policies must include a five-year solicitation ban on external asset managers and placement agents who violate a board's disclosure policy. The five-year ban may be reduced, however, by a majority vote of the board in open session. Boards must adopt and implement a policy before June 30 of next year.

AB 1584 also requires that before acting as a placement agent in connection with a potential system investment, intermediaries must disclose to the board all campaign contributions made to any elected member of the board as well as all gifts given to any board member in the preceding 24 months. Disclosure of any subsequent contributions or gifts is also required.

In addition to imposing disclosure requirements, the law prohibits any board member or board employee from, directly or indirectly, selling or providing any investment product that would be considered an asset of the fund to any public retirement system.

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Earlier this year, the Securities and Exchange Commission (SEC) proposed new regulations to address pay-to-play arrangements. As proposed, these regulations would apply to federally registered investment advisers and to certain unregistered investment advisers. State registered advisers would not be subject to the regulations as proposed. The regulations would prohibit investment advisers from providing advisory services to a government client for two years after the adviser or certain of its executives or employees make a contribution to certain elected officials or candidates. The regulations would also ban the use of third parties to solicit government business. The SEC is also proposing to prohibit advisers from soliciting from others, or coordinating, contributions to elected officials or candidates or payments to political parties when the adviser is seeking government business. Finally, the SEC has proposed record-keeping requirements with respect to political contributions made by the adviser or certain of its executives or employees. The public comment period with respect to these regulations ended on October 6, 2009. It remains to be seen whether the SEC will adopt these proposed regulations and, if so, what their final form will be.

If you are interested in learning more, please contact us.

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