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May 30, 2006

Paul L. Shechtman
Chairman
New York State Temporary Commission on Lobbying
Two Empire State Plaza
18th Floor
Albany, NY 12223

Dear Chairman Shechtman:

The Bond Market Association ("Association") appreciates this opportunity to comment on the New York Temporary State Commission on Lobbying's ("Commission's") Proposed Draft Guidelines (last revised March 20, 2006) regarding the New York State Lobbying Act amendment ("Lobbying Act Amendment"). In particular, the purpose of the Lobbying Act Amendment is to afford the "fullest opportunity . . . to the people to petition their government" while "preserving the integrity of the governmental decision-making process" through the disclosure of lobbying activity [Lobbying Act § 1-a]. We recognize the difficulty of striking this fine balance and commend the Commission's efforts to do so.

If implementation of the Lobbying Act Amendment is too broad, it may result (and in fact has resulted) in possibly hundreds of employees registering as lobbyists on behalf of a single company, even though most of those employees are junior staff and only incidentally involved in interacting with New York agencies. Capturing such incidentally involved employees does not advance the purpose of the Lobbying Act Amendment while chilling the ability of vendors to provide the most efficient and cost effective services to the State and its localities. To help avoid such unintentional consequences under the Lobbying Act Amendment, the Association provides the following comments.

I. Interpretation of Restricted Contact Period Ban Should be Consistent With the New York State Finance Law

The Lobbying Act Amendment prohibits a lobbyist or his or her employer from lobbying a covered agency (e.g., a state agency or a local public corporation) regarding a procurement process by communicating with anyone other than a designated official during the Restricted Period ("Restricted Period Contact Ban") [*Id.*, § 1-n]. The Restricted Period starts with the issuance of the RFP and ends with the "final contract award and approval" [*Id.*, § 1-c(m)]. The Proposed Draft Guidelines attempt to interpret the Restricted Period Contact Ban as well as the term "Restricted Period." To the extent

the Commission decides to interpret these provisions, however, it should do so in a manner that is consistent with the State Finance Law which contains the same Restricted Period Contact Ban provision.

The Finance Law [§ 139-j(3)(a)] provision is based on a pre-existing executive order (EO 127) and imposes the same prohibition on Restricted Period contacts as the Lobbying Act Amendment. In fact, the Lobbying Act Amendment refers to the Finance Law when setting forth the Ban. Given that this Finance Law Ban is being implemented by the Advisory Council on Procurement Lobbying ("Council"), the Commission should not issue separate interpretations regarding the Restricted Period Contact Ban. Issuing separate interpretations creates the potential that the Commission and the Council could establish conflicting standards under the Finance Law and the Lobbying Act. Such a result would be contrary to any public interest and clearly not intended by the Lobbying Act Amendment.

For example, the Proposed Draft Guidelines interpret the Restricted Period Contact Ban to apply to the negotiation of a contract after the tentative award of a contract [Proposed Draft Guidelines, § 3(O)]. The State Finance Law [§ 139-j(3)(a)(5)], however, expressly exempts such contract negotiations from the Ban. Moreover, even the Lobbying Act's version of the Ban is limited in scope to "lobbying activities" -- a term that is defined under the Lobbying Act [§§ 1-n, 1-c(I)] to not include post-tentative award contract negotiations. Thus, we respectfully submit that the proposed interpretation described above should be withdrawn. More importantly, this illustrates the danger of the Commission and the Council separately interpreting the Restricted Period Contact Ban.

II. Clarify Criteria for "Determination of Need"

The Proposed Draft Guidelines state that contacts with an agency made to generate interest in a vendor's product do not qualify as lobbying activity until the agency makes a determination that the need for the product exists ("Determination of Need"). Thus, even pre-RFP marketing activity would be exempt if an agency has not yet made such Determination of Need. The Association agrees that this approach is a reasonable method to capture those who are substantively attempting to influence a procurement contract while avoiding the unintended consequence of capturing those whose involvement is incidental. Indeed, until there is a Determination of Need, it is difficult to say that a procurement contract even exists which one can attempt to influence.

However, we request that the Commission clarify when a Determination of Need is deemed to have been made. For example, one option would be that an agency is not considered to have made a Determination of Need until it informs the prospective vendor in writing of such determination. Also, the Commission should confirm that the Determination of Need threshold applies to procurement contracting processes that do not involve formal RFPs.

Moreover, to the extent the process involves an RFP, the definition of lobbying activity after the Determination of Need should be limited only to those who are attempting to influence the terms of the RFP that will be issued. This would eliminate individuals only incidentally involved and lower level vendor staff that may be present at the meeting with an agency. At the same time, it would capture the more senior vendor staffs who are discussing substantive issues and matters with the agency. In fact, after the Determination of Need, the terms of the RFP are arguably the only things left to influence.

III. Activities After a Firm is Selected as a Part of a Pool of Vendors to Underwrite Securities Should Not Qualify as Lobbying

Municipal securities underwriters are in many instances selected by a New York agency through a pool. Typically, the agency issues an RFP to select the pool of firms it will use to underwrite its bond issuances for a pre-determined period of time (usually several years). This RFP process terminates with the selection of the pool. Once in the pool, a member firm will meet with the agency regarding the specific underwriting services that it can provide and eventually enter into specific underwriting contracts (bond purchase agreements) with the agency. In many cases, there is no RFP process regarding these specific contracts.

We request the Commission confirm the activity occurring after the selection of the pool (i.e., regarding the specific contracts) does not qualify as lobbying under the Lobbying Act. The Lobbying Act did not contemplate the pool arrangement. This activity, however, should be viewed as falling within the exemption for negotiating the terms of a contract after tentative selection [Lobbying Act, § 1-c(I)]. Although it is not clear which issuance a firm will underwrite when it is selected to a pool, it has been tentatively selected for a contract to provide a specific service. Thus, the pool is the equivalent of the master contract and the specific contracts are equivalent to the terms of that contract. Alternatively, this activity could be viewed as qualifying under the exemption for providing services pursuant to an existing contract. Again, the pool is equivalent to the master contract and specific underwritings merely constitute the services provided under that contract. Regardless of which exemption is used, exempting post-pool selection activity is consistent with the purpose of both of the above exemptions.

IV. Clarify that Exempt Gifts do not Need to be Reported

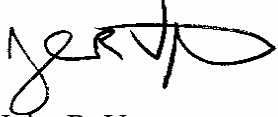
The portion of the Guidelines that were approved and finalized by the Commission at its March 16, 2006 meeting exempts from the definition of a Reportable Expense those items and events specifically exempted from the definition of a gift [Guidelines, § 5(A)(2)]. However, this exemption from the term Reportable Expense is not present in

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the current Proposed Draft Guidelines. We presume that this was a clerical oversight on the part of the Commission and request that the exemption be added back in.

Please call us with any questions or to further discuss these comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. R. Vogt', with a stylized flourish at the end.

John R. Vogt
Executive Vice President