SOURCE OF FUNDING REGULATIONS – PART 938

Title 19 NYCRR Part 938 is amended to read as follows:

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK

TITLE 19. DEPARTMENT OF STATE

CHAPTER XX. JOINT COMMISSION ON PUBLIC ETHICS

PART 938

SOURCE OF FUNDING REGULATIONS

938.1 Intent and Purpose

The Public Integrity Reform Act of 2011 ("PIRA") (Chapter 399, Laws of 2011) established the Joint Commission on Public Ethics ("Commission"). The Commission regulates lobbyists and their clients in New York State through the disclosure and enforcement provisions set in Legislative Law article one-A. PIRA amended Legislative Law article one-A by enacting unprecedented disclosure requirements to better inform the public about efforts to influence governmental decision-making through increased transparency, including the source of funding disclosure requirement set forth in Legislative Law §1-h(c)(4) and §1-j(c)(4). Effective June 1, 2012, the source of funding amendments require lobbyists who lobby on their own behalf and clients, who devote substantial resources to lobbying activity in New York State, to make publicly available each source of funding over $5,000 for such lobbying. The legislation intended for these new disclosures to provide the public with more information regarding the actual entities and individuals that support lobbying campaigns in New York State.

PIRA also requires that the Commission issue regulations implementing the new law's source of funding provisions. These regulations will clarify the source of funding reporting requirements, the procedure by which individuals and organizations may apply to the Commission for an exemption from disclosure, and the procedure by which they may appeal the Commission's denial from exemption through a review by an independent judicial hearing officer. To fulfill the legislative intent, the Commission has sought the broadest determination possible of what must be disclosed pursuant to statute and as allowed by law.

938.2 Definitions. For purposes of this section:

Affiliate Relationship shall mean

a. Two or more persons whom the Client Filer has actual knowledge live in the same household.

b. Two or more corporations, partnerships, organizations, or other entities that the Client Filer has actual knowledge or reason to know have any of the following relationships: parent/subsidiary; subsidiaries with the same corporate parent; national or regional organization and their local chapter(s); local chapters of the same national or regional organization.

c. A sole proprietorship and its sole proprietor if the Client Filer knows or has reason to know of the relationship.

d. Whether a Client Filer has "reason to know" of the relationships listed in paragraphs (b) and (c) above is based on an examination of the totality of the facts and circumstances. If a reasonable person, looking at the all the facts and circumstances, would conclude that a Client Filer should know of the existence of one or more these relationships, then the "reason to know" standard has been satisfied.

Amount of Contribution(s) shall mean, for each Contribution not specifically designated for lobbying in New York, the product of (i) the dollar amount of the Contribution and (ii) Reportable Compensation and Expenses divided by Total Expenditures. The Amount of Contribution shall also include, in addition to the amount yielded by this formula, any Contribution specifically designated for lobbying in New York.

Client Filer shall mean:

a. Any client retaining or designating a lobbyist that is required to file a semi-annual report pursuant to Legislative Law §1-j; or

b. Any lobbyist registered pursuant to Legislative Law §1-e whose lobbying activity is performed on its own behalf and not pursuant to retention by a client. (Such a lobbyist is considered its own client for reporting purposes.)

Client Semi-Annual Report shall mean the semi-annual reports filed with the Commission pursuant to Legislative Law §1-j.

Contribution shall mean any payment to, or for the benefit of, the Client Filer and which is intended to fund, in whole or in part, the Client Filer's activities or operations. Contribution shall not mean a payment in exchange for goods or services rendered or delivered directly to the individual or entity making the payment.

Expenditure Threshold consists of the following two requirements:

a. The Client Filer has spent in excess of $50,000 in Reportable Compensation and/or Expenses for lobbying in New York State during the Expenditure Threshold Period; and

b. The Client Filer's Reportable Compensation and Expenses constitute at least 3% of the Client Filer's Total Expenditures during the Expenditure Threshold Period.

Expenditure Threshold Period is determined according to the following:

a. Twelve-Month Calculation: the 12-month period preceding and including the last day of the applicable client semi-annual reporting period.

b. Calendar-Year Calculation: January 1 to the last day of the applicable client semi-annual reporting period.

Any Client Filer that does not meet the Expenditure Threshold using the Twelve-Month Calculation must then determine whether it has met the Expenditure Threshold using the Calendar-Year Calculation, and if it has, then the Client Filer is deemed to have met the statutory Expenditure Threshold.

To illustrate for the 2013 Client Semi-Annual Reports:

Client Semi-Annual Filing Date	Twelve-Month Calculation Dates	Calendar Year Calculation Dates
January 15, 2013 (covering July 1, 2012 – December 31, 2012)	January 1, 2012 – December 31, 2012	January 1, 2012 – December 31, 2012
July 15, 2013 (covering January 1, 2013 – June 30, 2013)	July 1, 2012 – June 30, 2013	January 1, 2013 – June 30, 2013

Reportable Compensation and Expenses: the phrase "reportable compensation and expenses" shall mean "compensation" and "expenses," devoted to lobbying in New York, as those terms are defined below:

Compensation: shall have the same meaning as is in Legislative Law §1-c(h), *i.e.* any salary, fee, gift, payment, benefit, loan, advance or any other thing of value paid, owed, given or promised to the lobbyist (retained or employed) by the Client Filer for lobbying but shall not include contributions reportable pursuant to article fourteen of the Election Law.

Expenses:

a. For any Client Filer who lobbies on its own behalf, the term "expenses" shall have the same meaning as in Legislative Law §1-c(g), *i.e.*, any expenditures incurred by or reimbursed to the employed or designated lobbyist for lobbying but shall not include contributions reportable pursuant to article fourteen of the election law.

b. For all other Client Filers, the term "expenses" shall mean any expenditure reimbursed to the lobbyist for lobbying, but shall not include contributions reportable pursuant to article fourteen of the Election Law.

Responsible Party shall mean the Client Filer's Chief Administrative Officer or designee who is responsible for filing the Client Semi-Annual Reports with the Commission.

Source shall mean any person, corporation, partnership, organization, or entity that makes a Contribution. A Source includes any persons, corporations, partnerships, organizations, or entities with an Affiliate Relationship. To determine if reporting is required pursuant to 938.3, a Client Filer shall aggregate the Contributions from the each person, corporation, partnership, organization, or entity with an Affiliate Relationship. If such reporting is required, the Client

Filer shall report, consistent with 938.3, Contributions from each person, corporation, partnership, organization, or entity with the Affiliate Relationship.

Total Expenditures shall mean the sum of any and all payments of cash or cash equivalents made in the ordinary course of business, or a charge against available funds in settlement of an obligation made in the ordinary course of business. Total expenditures also includes a promise to pay, or a promise of a payment or a transfer of anything of value made in the ordinary course of business for goods and services that have been provided or performed.

938.3 Contribution Reporting Requirements

a. Commencing with the Client Semi-Annual Report due on January 15, 2013, and for each Client Semi-Annual Report thereafter, a Client Filer is required to disclose Contributions received in accordance with the provisions of 938.3(b), (c) (d), and (e).

b. For the purpose of satisfying Legislative Law §1-h(c)(4), a Client Filer whose lobbying activity is performed on its own behalf and not pursuant to retention by a client need only report Contribution(s) received from each Source in a Client Semi-Annual Report and is not additionally required to report such Contribution(s) on a Lobbyist Bimonthly Report.

c. When a Client Filer has met the Expenditure Threshold during the first client semi-annual reporting period of the calendar year (January 1 - June 30), the Client Filer shall aggregate all such Contributions, regardless of the amount, received from each Source. If the sum of such Contributions is more than $5,000, then a Client Filer is required to disclose the information in 938.3(e) for each Contribution. If the sum of the Contributions received from each Source is $5,000 or less, then a Client Filer is not required to disclose any Contribution(s) from the Source in the Client Semi-Annual Report that covers the first reporting period of the calendar year.

d. When a Client Filer has met the Expenditure Threshold during the second client semi-annual reporting period of a calendar year (July 1 - December 31), the Client Filer uses the following to determine whether any Contribution(s) received from a Source shall be disclosed in the Client Semi-Annual Report covering the second reporting period of the calendar year:

(i) if during the previous reporting period (January 1 - June 30), the Client Filer did not meet the Expenditure Threshold, then no Contribution(s) received from any Source during that first reporting period are to be added to Contribution(s) received from any Source during the second reporting period.

(ii) if during the previous reporting period (January 1 - June 30), the Client Filer did not receive any Contribution(s) from the Source, a Client Filer shall add all Contributions, regardless of the amount, received from the Source during the second reporting period of the calendar year. If the sum of such Contributions is more than $5,000, then a Client Filer is required to disclose the information in 938.3(e) for each Contribution. If the sum of the Contributions received from a Source is $5,000 or less, then a Client Filer is not required to disclose any Contribution(s) from the Source in the Client Semi-Annual Report that covers the second reporting period of the calendar year;

(iii) if during the previous reporting period (January 1 - June 30), the Client Filer met the Expenditure Threshold and received Contributions(s) from a Source in excess of $5,000, then the Client Filer shall disclose all Contributions, regardless of the amount, received from the Source during the second client semi-annual reporting period of the calendar year;

(iv) if during the previous reporting period (January 1 - June 30), the Client Filer met the Expenditure Threshold and received Contributions(s) from a Source in an amount totaling $5,000 or less, then the Client Filer shall add all Contributions, regardless of the amount, received from a Source over the calendar year. If the sum of such Contributions is more than $5,000, then a Client Filer is required to disclose the information in 938.3(e) for each Contribution received during the calendar year. If the sum of the Contributions received from each Source is $5,000 or less, then a Client Filer is not required to disclose any Contribution(s) from the Source.

(v) The source of funding disclosure requirements became effective June 1, 2012. Consequently – and solely for purposes of the Client Semi-Annual Report due on January 15, 2013 – a Client Filer need not include any Contribution(s) from any Source received between January 1, 2012 and June 30, 2012.

Examples

1. Jane Doe contributes $3,000 on May 4, 2014 to Client Filer. Source Jim Smith, contributes $2,500 on October 30, 2014. Client Filer knows that Jane and Jim live in the same household.

For the purpose of filing the Client Semi-Annual Report due on July 15, 2014 (covering the period January 1, 2014 through June 30, 2014), Client Filer is not required to report the Contribution from Jane Doe.

For the purpose of filing the Client Semi-Annual Report due on January 15, 2015 (covering the period July 1, 2014 through December 31, 2014), if the Client Filer met the Expenditure Threshold during *both* reporting periods, the Client Filer must aggregate the Contributions from Jane Doe and Jim Smith as one Source because they have an Affiliate Relationship. The two Contributions exceed $5,000 when aggregated, therefore the Client Filer must disclose each Contribution in the Client Semi-Annual Report due on January 15, 2015.

2. XYZ Corp. contributes $4,000 on March 3, 2014. ABC Corp is XYZ Corp's parent and contributes $2,500 on May 6, 2014. On November 12, 2014, ABC Corp contributes an additional $1,000. On December 2, 2014, XYZ Corp. contributes an additional $2,000. The Client Filer is aware of the corporate relationship between ABC Corp and XYZ Corp.

For the purpose of filing the Client Semi-Annual Report due on July 15, 2014 (covering the period January 1, 2014 through June 30, 2014), XYZ Corp and ABC Corp have an Affiliate Relationship and therefore are deemed a Source. The Contributions from XYZ Corp and ABC Corp must be aggregated. The sum of the Contributions received from the one Source consisting of ABC Corp and XYZ Corp between January 1, 2014 and June 30, 2014 exceeds $5,000. Therefore, if the Client Filer met the Expenditure

Threshold for this period, it must disclose both the Contributions received on March 3 and May 6 in Client Semi-Annual Report due on July 15, 2014.

For the purpose of filing the Client Semi-Annual Report due on January 15, 2015 (covering the period July 1, 2014 through December 31, 2014), if the Client Filer met the Expenditure Threshold for this second period, the Client Filer must disclose the November 12 and December 2 Contributions even though these two Contributions are less than $5,000 individually and in total.

The requirement to disclose the November 12 and December 2 Contributions arises from the facts that (i) the Source (comprised of XYZ Corp and ABC Corp, because they have an Affiliate Relationship) made aggregate Contributions in excess of $5,000 during the prior reporting period in the same calendar year and (ii) the Client Filer met the Expenditure Threshold during both reporting periods in the calendar year. Therefore, the Client Filer must list as one Source each of those two Contributions made by XYZ Corp and ABC Corp in the second reporting period of the calendar year on the Client Semi-Annual Report, together with the information required in 938.3(e).

If the Client Filer did not meet the Expenditure Threshold during the second reporting period of the calendar year, then the Client Filer is not required to disclose the November 12 and December 2 Contributions.

e. Each Contribution required to be disclosed in any Client Semi-Annual Report on the form provided by the Commission shall contain the information identified below:

(i) Information Required to be Disclosed

(1) Name of person, corporation, partnership, organization, or entity making the Contribution(s)

(2) Name and address of principal place of business, if any;

(3) Date the Client Filer received the Contribution(s);

(4) Amount of the Contribution(s).

(ii) When a Source is comprised of more than one person, corporation, partnership, organization, or entity with an Affiliate Relationship, the required information must be supplied for each such person, corporation, partnership, organization, or entity.

(iii) When a corporation, partnership, organization, or entity is a Source whose Contribution is required to be disclosed, and meets any one of the requirements in 938.3(e)(iv), the Client Filer must disclose, in addition to the information in 938.3(e)(i), the following:

(1) name address and principal place of business of at least one natural person (such as an officer, director, partner or proprietors) who shares or exercises discretion or control over the activities of the corporation, partnership, organization, or entity, or

(2) the sources of the funds contributed by the corporation, partnership, organization, or entity to the Client Filer.

(iv) Conditions for Additional Required Disclosure

(1) The Client Filer makes decisions or establishes policy for the corporation, partnership, organization, or entity;

(2) The corporation, partnership, organization, or entity makes decisions or establishes policy for the Client Filer;

(3) The Client Filer has the authority to hire, appoint, discipline, discharge, demote, remove, or otherwise influence other persons who make decisions or establish policies for the corporation, partnership, organization, or entity;

(4) The corporation, partnership, organization, or entity has the authority to hire, appoint, discipline, discharge, demote, remove, or otherwise influence other persons who make decisions or establish policies for the Client Filer; or

(5) The Client Filer and the corporation, partnership, organization, or entity, share a majority of directors on their governing boards, or share a majority of executive management, or maintain banks accounts with shared signatories.

938.4 Standard for Reviewing an Application for Exemption

a. The Commission shall grant an exemption to disclose a Source of a Contribution, if the Client Filer shows by clear and convincing evidence that disclosure of the Source will cause a substantial likelihood of harm, threats, harassment or reprisals to the Source or individuals or property affiliated with the Source. Factors the Commission will consider when determining whether this showing has been made include, but are not limited to, the following:

(i) Specific evidence of past or present harm, threats, harassment or reprisals to the Source(s) or Client Filer or individuals or property affiliated with the Source(s) or Client Filer.

(ii) The severity, number of incidents, and duration of past or present harm, threats, harassment or reprisals of the Source(s) or Client Filer or individuals or property affiliated with the Source(s) or Client Filer.

(iii) A pattern of threats or manifestations of public hostility against the Source(s) or Client Filer or individuals or property affiliated with the Source(s) or Client Filer.

(iv) Evidence of harm, threats, harassment or reprisals directed against organizations or individuals holding views similar to those of the Source(s) or Client Filer.

(v) The impact of disclosure on the ability of the Source(s) or Client Filer to maintain ordinary business operations and the extent of resulting economic harm.

b. The Commission shall grant an exemption to disclose all Sources of Contributions to a Client Filer, if (i) the Client Filer has exempt status under I.R.C. §501(c)(4); and (ii) the Client Filer shows that its primary activities involve areas of public concern that create a substantial likelihood that disclosure of its Source(s) will cause harm, threats, harassment or reprisals to the Source(s) or individuals or property affiliated with the Source(s). Factors the Commission will consider when determining whether this showing has been made include, but are not limited to, the factors identified in 938.4(a)(i)-(v).

938.5 Procedure for applying for an exemption

a. The Client Filer seeking to exempt from disclosure a Contribution from a Source shall make an application to the Commission on the form supplied by the Commission together with any supporting materials signed by the Client Filer's Responsible Party. [*Note: form will include ability to submit application for a class of Sources.*]

b. A request for exemption shall be submitted no later than two days prior to the due date for the applicable Client Semi-Annual Report.

c. An application for an exemption from disclosure for one or more Sources of Contributions does not relieve the Client Filer from its obligation to timely file the Client Semi-Annual Report including disclosure of Sources of Contributions for which the Client Filer has not sought an exemption.

d. The Commission shall inform the Client Filer, in writing, whether the application for exemption has been granted or denied. Any denial issued by the Commission shall include a statement of findings and conclusions, and the reasons or basis for the denial.

e. If a request for an exemption is denied, and the Client Filer does not appeal, the Client Filer shall, within 15 business days of the date of denial, amend the Client Semi-Annual Report to include required information relating to the subject of the application for exemption.

938.6 Appeals

a. An appeal of a denial of an application for exemption to a judicial hearing officer, pursuant to Parts 938.6 and 938.7, is available only to a Client Filer who submitted an application under Part 938.4(a). A Client Filer who submitted an application under Part 938.4(b) is not entitled to such an appeal.

b. A Client Filer may appeal a denial of an application for exemption. A notice of appeal must be in writing and include the original application for exemption together with any supporting materials that were submitted pursuant to Part 938.5. The written notice of appeal must be received by the Commission no later than 15 business days after the date of the denial. Any notice of appeal received by the Commission later than 15 business days after the date of the denial will not be considered and the Client Filer will be deemed to have waived the right to appeal.

c. If the Client Filer appeals and the appeal is denied, the Client Filer shall, within 5 business days of the date of the denial of the appeal, amend the Client Semi-Annual Report to include the required information relating to the subject of the application for exemption.

938.7 Appeal Procedure and Standard of Review

a. Upon receipt of a notice of appeal in accordance with 938.6, the Commission shall assign the matter to a judicial hearing officer who is independent and not affiliated with or employed by the Commission.

b. The judicial hearing officer shall review the entire record, which shall consist of the original application for exemption together with any supporting materials that were submitted pursuant to Part 938.5 and the Commission's written denial.

c. The judicial hearing officer may reverse the Commission's denial only if such denial is clearly erroneous in view of the evidence in the record.

d. The judicial hearing officer's final decision shall be in writing and shall affirm, reverse, or remand the decision of the Commission and shall set forth a concise statement of the reasons for the judicial hearing officer's decision. The judicial hearing officer shall issue the final decision within 15 business days of the judicial hearing officer's receipt of the materials identified in 938.7(b).

e. A decision by the judicial hearing officer to affirm or reverse the Commission's denial of an exemption shall be considered a final determination by the Commission.

938.8 Public Disclosure of Exemption-Related Information

The Commission shall publicly disclose the fact that a Client Filer has submitted one or more applications for an exemption or that one or more of a Client Filer's requests for an exemption has been granted or denied. Information submitted in connection with an application for exemption or in support of an appeal from a denial of an exemption shall be publicly disclosed. Notwithstanding the foregoing, Executive Law §94(19)(a)(5), Legislative Law §1-s, and any corresponding regulations, the Commission may, in its discretion, grant a request from a Client Filer to keep confidential certain exemption-related information when particular circumstances merit confidential treatment of such information, including, but not limited to, an ongoing investigation by a governmental body or an unwarranted invasion of personal privacy. The Commission may, nevertheless, disclose such information (i) to the judicial hearing officer assigned to the appeal, (ii) to a court in a judicial review, or (iii) in response to any subpoena or court order.

938.9 Enforcement

A late filing of a Client Semi-Annual Report, or failure to file a Client Semi-Annual Report in accordance with these regulations, or the filing of a Client Semi-Annual Report that contains false, misleading or knowingly inaccurate statements are violations of either Legislative Law §1-j or §1-o and subject a Client Filer to the fines and penalties prescribed therein.

938.10 Duty to Correct

As with any filing required to be submitted to the Commission, Client Filers have a duty to file accurate and complete reports. Client Filers therefore have a duty to correct any oversights or inaccuracies within 10 days of discovery.

938.11 Statutory Exemptions from Disclosure

The following entities are statutorily exempt from the disclosure requirements promulgated herein:

a. any corporation registered pursuant to article seven-A of the executive law has exempt status under. §501(c)(3);

b. any governmental entity.