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To: Chair Miadich, Commissioners Cardenas, Hatch, and Wilson

From: Dave Bainbridge, General Counsel, Legal Division
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Subject: Update of Commission Regulations Governing Statements and Reports to Improve their Clarity and Guidance with respect to Electronic Filing

Date: September 4, 2020

Summary of Proposed Actions

Staff proposes for prenotice discussion an update of the Commission's regulations governing the filing of statements of economic interests to provide greater clarity and guidance with respect to processes associated with the electronic filing of those statements. Among other changes, the proposed update would revise filing officers' duties with respect to these statements and reports by providing separate processes for the review of statements submitted in paper format and those submitted electronically, and would expressly provide that a statement of economic interests electronically filed through an electronic filing system that has been approved by the Commission is an original statement.

In order to reduce duplicative filings and to improve staff efficiency, the proposed update would specify filing processes for statements of economic interests of certain public officials who hold multiple positions subject to filing requirements. The proposed update would also revise processes for certain specified officials' filing of statements of economic interests so that those processes better accord with the capabilities of approved electronic filing systems, and make other technical, non-substantive changes.

Background & Proposed Update

Section 81010 sets forth a filing officer's duties with respect to reports and statements required by the Act, including statements of economic interest, and requires the filing officer to: supply the necessary forms and manuals prescribed by the Commission (subdivision (a)), determine whether required documents have been filed and whether those documents conform on their face with the Act's requirements (subdivision (b)), notify persons who have failed to file as required by the Act (subdivision (c)), report apparent violations of the Act (subdivision (d)), and compile a current list of all filed reports and statements (subdivision (e)).

Adopt Regulations 18115, 18115.1, and 18115.2

Sections 87202 and 87203 govern the filing of statements of economic interests by certain specified public officials, including public officials specified in Section 87200 (Section 87202(a) and Section 87203) and elected state officers (Section 87202(b)).

Section 87300 requires every agency to adopt and promulgate a Conflict of Interest Code pursuant to the Act, provides that a Conflict of Interest Code shall have the force of law, and provides that a violation of a Conflict of Interest Code shall be deemed a violation of the Act. Section 87302 sets forth the required contents of a Conflict of Interest Code, and generally governs the filing of a designated employee's statements of economic interests (subdivision (b)). Section 87302.6, however, governs the filing of statements of economic interests by a member of a board or commission of a newly formed agency.

Section 87500 sets forth processes for the filing of statements of economic interests by statewide elected officers, candidates for statewide elective office, members of the Legislature, members of certain specified State boards or commissions (including the Commission), certain specified high-level State agency officials, certain high-level county and city officials, and designated employees of the Legislature and other specified agencies, among others.

Existing Regulation 18115 sets forth a filing officer's duties with respect to statements of economic interests under Section 81010. However, that regulation only addresses filing officer duties with respect to statements of economic interests filed in paper format and does not expressly address a filing officer's duties with respect to the electronic filing of those statements.

In order to provide greater clarity as to the distinct filing officer duties applicable to a statement of economic interests submitted in paper format and one submitted electronically, the proposed update would:

- Repeal existing Regulation 18115 and add new Regulation 18115, which would set forth filing officer duties which apply to both statements of economic interests filed in paper format and those filed online or electronically;
- Add new Regulation 18115.1, which would consolidate and contain filing officer's duties regarding a statement of economic interests filed in paper format; and
- Add new Regulation 18115.2, which would consolidate and contain filing officer's duties with respect to a statement of economic interests filed online or electronically, and expressly provide that a statement of economic interests electronically filed through an approved electronic filing system is an original statement in subdivision (c).

Adopt Regulation 18723.1

Public Officials Who Hold Multiple Positions Specified in Section 87200

Section 87200 identifies the public officials subject to the reporting requirements of Article 2 of the Act (Sections 87200 – 87210). Certain state laws require a public official specified in Section 87200 to also serve in an additional position specified in Section 87200. For example, the state Treasurer is an “elected state officer” specified in Section 87200; Section 20090(d) provides that the Treasurer is a member of the Board of Administration of the California Public Employees’ Retirement System (“CalPERS”), and such a member is also specified in Section 87200 on account of being an “official who manages public investments.” In the recent past, there has been confusion regarding whether an official who holds multiple positions specified in Section 87200 must file a statement of economic interests with each agency in which the official holds a position specified in Section 87200.

The proposed update would expressly provide that a public official that holds a position specified in Section 87200 and is required by law to serve in an additional position specified in Section 87200 due to holding the primary position is only required to file a single statement for the primary position if that statement contains all required disclosure for all jurisdictions.

Section 87200 Filers

The proposed update would include language expressly stating that a filer in a Section 87200 position is not required to file a separate statement of economic interests under the conflict of interest code for any agency with the same jurisdiction as, or a narrower jurisdiction than, the agency in which the filer holds the Section 87200 position. This exception, which alleviates duplicative filings for Section 87200 filers, is consistent with current practices as well as Section 82019(b)(1), which provides that a public official who is specified in Section 87200 is not a “designated employee.” However, an official specified in Section 87200 would have to file as a designated official if designated in a conflict of interest code of any agency with a broader jurisdiction than the agency in which the filer holds the Section 87200 position.

Expanded Statements of Economic Interests

Footnote 1 of Regulation 18730(b)(3)(C) authorizes a designated employee who is required to file a statement of economic interests under any other agency’s conflict of interest code, or under Article 2 of the Act for a different jurisdiction, to file an expanded statement to cover reportable interests in both jurisdictions, and sets forth the process for filing such a statement in paper format. The proposed update would recast this provision as new Regulation 18723.1(d) and would incorporate an additional process for filing such a statement electronically.

Local Public Officials and Expanded Statements of Economic Interests

Under existing law, a public official specified in Section 87200 is required to file a statement of economic interests for each additional designated position the official holds with another agency that has a broader jurisdiction than the agency in which the official holds a position specified in Section

87200. For example, a city councilmember that also serves in a designated position with the county is required to file a statement of economic interests for each position due to the county having a broader jurisdiction than the city.

The proposed update would instead provide that a county supervisor, city councilmember, planning commissioner, or mayor (each of which is specified in Section 87200) who also holds a designated position with another agency that has a broader jurisdiction than the agency in which the official holds a position specified in Section 87200 is authorized to file an expanded statement for each position containing all reportable interests for all jurisdictions. However, if such an official assumes or leaves the designated position at issue on a different date than the official assumes or leaves the position specified in Section 87200, that official would be required to file a separate assuming or leaving office statement, as applicable, with respect to the designated position. The proposed update would expressly provide that if the expanded statement is filed with another agency, other than the agency in which the official holds the position specified in Section 87200, that duplicative statement would be prohibited from being forwarded to the Commission.

Amend Regulation 18732.5

Existing Regulation 18732.5 specifies the manner in which a statement of economic interests required to be filed with an abolished agency or an to-be-abolished agency shall be handled in regard to filing, processing, and retention. Subdivision (f) of that regulation requires any agency required to receive a statement under the regulation to perform all filing officer duties prescribed in existing Regulation 18115.

The proposed update would amend existing Regulation 18732.5(f) by revising the cross reference to Regulation 18115 so it would instead refer to proposed new Regulations 18115, 18115.1, and 18115.2, and by making other technical, non-substantive changes.

Amend Regulation 18735

Existing Regulation 18735(b) specifies the manner in which a designated employee who transfers to the position of board member, commissioner, head of an agency, executive director, or other chief executive officer within the same agency is required to file statements of economic interests after assuming office, and requires that former designated employee to amend his prior statement, as specified, rather than filing a leaving office statement for the former position and an assuming office statement for the new position. Approved electronic filing systems, however, are incapable of administering the filing process set forth in existing Regulation 18735(b).

To resolve this problem, the proposed update would strike existing Regulation 18735(b) and replace it with proposed new Regulation 18735(b), which would instead require such an official, who transfers from a designated position to a specified executive position within the same agency, to file leaving and assuming office statements under Section 87202(a) or Section 87302(b) as applicable.

Existing Regulation 18735(e) specifies the manner in which a designated employee of the Legislature who holds a position with the same disclosure requirements as a member of the Legislature and who leaves that designated position to become a member of the Legislature authorizes that former designated employee to file an annual statement, as specified, in lieu of filing leaving or assuming office statements. Approved electronic filing systems, however, are incapable of administering the filing

process set forth in existing Regulation 18735(e).

To address this issue, the proposed update would amend existing Regulation 18735(e) to instead require such an official, who leaves a specified designated position to become a member of the Legislature, to file leaving and assuming office statements of economic interests under Sections 87202(b) or 87302(b) as applicable. The proposed update would also require that a member of the Legislature who leaves office and becomes a designated employee of the Legislature to file a leaving office statement pursuant to Section 87204 and an assuming office statement pursuant to Section 87302(b). The proposed update would also make technical non-substantive changes to existing Regulation 18735.

Amend Regulation 18754

Section 87302.6 requires a member of a board or commission of a newly created agency to file a statement of economic interests at the same time and manner as a public official specified in Section 87200, as provided in Section 87203, and pursuant to Section 87302 once the agency adopts an approved Conflict of Interest Code.

Existing Regulation 18754 governs the filing of statements of economic interests by a member of a board or commission of a newly created agency under Section 87302.6, authorizes such a member's leaving office statement to serve as the member's annual statement in certain circumstances (subdivision (b)(3)(B)), and deems that such a member who completes a term of office and begins a term of the same office or another such office in the same jurisdiction does not assume or leave office for the purposes of filing statements (subdivision (b)(4)).

The proposed update would amend Regulation 18754 to align its provisions with the capabilities of approved electronic filing systems by instead requiring a member of a board or commission of a newly created agency to file assuming office statements under Section 87302 or Section 87304 as applicable.

Currently, the Commission interprets the provisions of Regulation 18754 to be applicable to both members of boards and commissions of newly created agencies (i.e., those subject to Section 87302.6) as well as members of newly created boards and commissions of existing agencies. In order to ensure this interpretation's consistency with the Act, proposed new Regulation 18754(b) would expressly apply the provisions of Regulation 18754 to members of newly created boards and commissions of existing agencies, except that such a member would be required to file an assuming office statement under Section 87302(b) rather than Section 87203.

Summary

The proposed update would overhaul Commission Regulations governing the filing of statements of economic interests to provide greater clarity and guidance with respect to the electronic filing of those statements; specify filing processes for statements of certain public officials who hold multiple positions subject to filing requirements; revise Commission Regulations pertaining to statements to ensure that those regulations align with the capabilities of electronic filing systems approved by the Commission; and make other technical non-substantive changes to those regulations. Staff looks forward to discussing the proposed update and addressing any

questions or concerns.

Attachments:

Proposed Repeal of Regulation 18115

Proposed Adoption of New Regulation 18115

Proposed Adoption of New Regulation 18115.1

Proposed Adoption of New Regulation 18115.2

Proposed Adoption of New Regulation 18723.1

Proposed Amendment of Regulation 18732.5

Proposed Amendment of Regulation 18735

Proposed Amendment of Regulation 18754