

**Client Alert**

January 30, 2009

**New Illinois Campaign Contribution and Registration Requirements May Affect Investment Funds and Managers****Areas of Interest****Private Investment Fund****Government Relations****United States**

Two new procurement and campaign contribution regulations, P.A. 95-971 (the "New Ethics Law") and Executive Order No. 3 (2008) (the "Executive Order"), are in effect in Illinois as of January 1, 2009. These regulations apply to certain state contractors and entities that bid on state contracts ("Covered Entities"), as well as certain of their corporate affiliates, owners and executive employees, and the spouse and minor children of each owner

and executive employee. A full report on the scope, applicability, and practical effect of these regulations is available below.

**[Get the full report.](#)**

These new regulations provide particular challenges for investment funds and for fund managers and advisers, which are summarized below. Because the applicability of the new regulations to a particular fund or fund manager or adviser depends upon the facts and circumstances of the investment and the relationship with the state and its beneficiaries, it is advisable to seek legal advice related to the particular circumstances of the fund's activities.

**Fund Advisers and Managers**

Fund advisers and managers that provide investment-related services to Illinois agencies or pension systems may not be subject to the New Ethics Law, but nonetheless may be subject to prohibitions under the Executive Order. The New Ethics Law applies only to contracts let or awarded pursuant to the Illinois Procurement Code, both those in effect as of the January 1, 2009, effective date of the New Ethics Law and those bid or awarded on or after January 1, 2009. Therefore, generally, a state fund adviser or manager would be subject to the requirements of the New Ethics Law only if its contracts were awarded (or if it bid on contracts to be awarded) pursuant to the Illinois Procurement Code.

The Executive Order expressly defines "state agency" to include "state retirement systems" and covers all contracts for "goods or services" bid or awarded on or after January 1, 2009, whether or not such contracts are awarded pursuant to the Illinois Procurement Code. Therefore, a fund adviser or manager is subject to the Executive Order if it has entered into a contract for "goods or services" on or after January 1, 2009. The Executive Order does not apply to contracts in effect prior to January 1, 2009. While the Executive Order does not impose registration requirements, the Executive Order prohibits Covered Entities and certain affiliated persons and affiliated entities from making political contributions to state political parties or to political committees to support state executive officeholders, state legislators, or candidates for such offices. The Executive Order does not, however, prohibit contributions to local and federal candidates.

**Funds that Invest in State Contractors**

A fund that invests in a Covered Entity may be itself subject to the new regulations. Under both the New Ethics Law and the Executive Order, a person or entity with "an ownership interest or distributive share"

greater than 7.5% in a Covered Entity is an "affiliated person" of the Covered Entity. Additionally, under the Executive Order, a "parent" of a Covered Entity is an "affiliated entity" of the Covered Entity. Therefore, if a fund invests in a Covered Entity, then the fund may be an "affiliated person" or "affiliated entity."

The New Ethics Law requires a Covered Entity, in its registration, to disclose the names and addresses of its affiliated persons and affiliated entities. A fund investment may be held solely for the beneficial interests of the investors of the fund. Nevertheless, the Covered Entity may disclose the fund on its registration form, in which case it would be advisable for the Covered Entity to denote that the fund's ownership is held solely for the beneficial interests of its investors. Affiliated persons and entities are not, however, independently required to register themselves.

To the extent that a fund and its managers are considered to be affiliated persons or entities, a fund and its managers would be subject to prohibitions on political contributions. Under the New Ethics Law, affiliated persons and entities are prohibited from making political contributions to certain state executive officeholders and candidates for such offices. Under the Executive Order, affiliated persons and entities, as well as the affiliated persons of such affiliated entities (including the executive employees of such entities) are prohibited from making political contributions to state political parties or to political committees to support state executive officeholders, state legislators, or candidates for such offices. Therefore, a fund and its executive employees may be prohibited from making such political contributions so long as the fund is an owner or parent of a Covered Entity.

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