



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

March 26, 2025

Katie Doerr
Deputy City Attorney
City of Santa Monica
1685 Main Street, Room 310
Santa Monica, California 90401

Re: Your Request for Informal Assistance
Our File No. I-25-031

Dear Ms. Doerr:

This letter responds to your request for advice regarding the statement of economic interest reporting provisions of the Political Reform Act (the “Act”).¹ Please note that we are offering informal assistance. Because your question relates to multiple investments identified only as “separately managed account products” and “third-party managed accounts,” your question does not identify a specific investment for analysis and is general in nature. Therefore, we are unable to provide formal written advice.²

Please note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

Are Commissioner Landres’s interests in third-party managed accounts at Aperio/Blackrock reportable investments on his Form 700?

CONCLUSION

Yes. Interests held in these third-party accounts are reportable because Commissioner Landres holds the securities directly rather than as part of a pooled fund and he has the ability to exclude specific companies rather than just general categories of stocks; therefore the requirements

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

of Regulation 18237's "mutual fund exception" to the definition of reportable "investments" are not satisfied.

FACTS AS PRESENTED BY REQUESTER

J. Shawn Landres is currently serving as a City of Santa Monica Planning Commissioner. He is the trustee or co-trustee of several trusts whose holdings are subject to the Act. Investments for each of these trusts are partly or wholly managed by Laird Norton Wetherby ("LNW"), a registered independent advisor ("RIA"), to which he has granted a power of attorney with respect to the purchase and sale of securities. For three of the trusts under management, LNW has allocated certain funds to what you describe variously as "separately managed account products" and "third-party managed accounts" managed by a third-party firm, Aperio/Blackrock ("the firm").

Included with your request was a letter from the firm stating that:

- "[T]here are more than one hundred investors in the firm's investment product(s) in which [Commissioner Landres] participates..."
- Those "product(s) hold more than 15 securities."
- Commissioner Landres "does not have direct or indirect influence or control over the trading of the Account(s), nor over the selection or deselection of any specific investment to be purchased or sold. This does not include closing the account, changing the account manager, updating the account mandate or general strategy (including positive and negative screens for certain broad categories of investments, such as environmental, social, or governance (ESG) priorities...), or deposits/withdrawals."
- The firm makes "all investment decisions in the Account(s) without informing [Commissioner Landres] as to the transactions until after the transactions had been effected," and that the firm "neither seeks nor obtains from [Commissioner Landres] approval or direction for any trade either prior to or following execution."
- Discussions between Commissioner Landres and the firm "are limited to general investment objectives, investment strategies and asset allocation only, and do not involve discussions regarding individual securities, whether or not held in the Account(s)."
- The "product(s) do not concentrate holdings in the same industry or business."

Attached to the firm's letter was document titled "Aperio Direct Indexing Values-Alignment Menu" which states that it "identifies strategies, tilts, and exclusions to create a portfolio aligned with your values." The menu gives the option to:

- "Choose a preconfigured strategy building block," examples of which include "General ESG Strategy," "Environmental Strategies," and "Faith-Based Strategies."

- “Tilt toward companies whose behavior aligns with your values,” with examples of available tilts such as “Low-Carbon Footprint,” “Disability Inclusion,” and “Clean Technology Solutions.”
- “Exclude companies with undesirable business activities,” such as “Fossil-Fuel Focused Utilities,” “Factory Farming,” and “Predatory Lending.” This portion of the menu contains a field for “Company and Industry Exclusions” and “Specific Companies” to be excluded (with the Exclusion Descriptions further stating, “Clients may select specific companies for exclusion by listing their ticker symbol, CUSIP, or SEDOL in the Values-Alignment Menu. Be sure to list each share class offered by the company... This option seeks to exclude a company from your entire investable universe.”).

The firm’s website for “Aperio Direct Indexing” states that “Direct indexing is a form of passive investing that allows investors the opportunity to directly own individual securities that seek to track returns of a benchmark...”³ This web page for “Aperio Direct Indexing” is listed among other products offered by the firm among its “SMA [Separately Managed Account] Solutions.” On the section of its website describing “How SMAs work,” the firm also states,

With mutual funds and ETFs, an investor is a partial shareholder in a professionally managed fund that owns a diversified basket of securities... With SMAs, instead of owning a share in the fund, clients own the individual securities (stocks, bonds) in their account. These accounts are professionally managed by an SMA manager who is granted trading access to the account.⁴

ANALYSIS

An express purpose of the Act is to ensure that the assets and income of public officials that may be materially affected by their official actions be disclosed in order to avoid conflicts of interest. (Section 81001(b).) The Act’s conflict of interest provisions ensure that public officials will perform their duties in an impartial manner, free from bias caused by their own financial interests. (Section 81001(b).) To that end, the Act specifically requires that certain officials must file a statement of economic interest disclosing reportable investments, business positions, interests in real property, and source of income upon assuming office, each year thereafter, and upon leaving office. (Sections 87200-87204.)

At issue here is the disclosure of Commissioner Landres’ third-party managed accounts, and whether the assets in these accounts meet the definition of the term “investment” such that they must be reported on a Form 700. Relevant to this matter, Section 82034 provides the following definition, in pertinent part:

“Investment” means any financial interest in or security issued by a business entity, including, but not limited to, common stock, preferred stock, rights, warrants, options, debt

³ <https://www.blackrock.com/us/financial-professionals/investments/tax-managed-equity-sma-aperio> (accessed March 18, 2025).

⁴ <https://www.blackrock.com/us/financial-professionals/insights/understanding-separately-managed-accounts> (accessed March 18, 2025)

instruments, and any partnership or other ownership interest owned directly, indirectly, or beneficially by the public official, or other filer, or that person's immediate family, if the business entity or any parent, subsidiary, or otherwise related business entity has an interest in real property in the jurisdiction, or does business or plans to do business in the jurisdiction, or has done business within the jurisdiction at any time during the two years prior to the time any statement or other action is required under this title. An asset shall not be deemed an investment unless its fair market value equals or exceeds two thousand dollars (\$2,000).

Section 82034 excludes the following types of interests, including as relevant here, certain “diversified mutual funds,” from the definition:

[A] time or demand deposit in a financial institution, shares in a credit union, any insurance policy, interest in a diversified mutual fund registered with the Securities and Exchange Commission under the Investment Company Act of 1940 or in a common trust fund created pursuant to Section 1564 of the Financial Code, interest in a government defined-benefit pension plan, or any bond or other debt instrument issued by any government or government agency.

In adopting Regulation 18237, “Definition of Investments,” in 2011 to interpret and clarify the “mutual fund exception” in Section 82034, the Commission recognized there are types of funds that share key characteristics with mutual funds and may also fall under the exception. Regulation 18237 states:

(a) For purposes of Section 82034, the term “investment” does not include a fund, including an exchange traded fund (ETF), closed-end fund or fund held in a plan qualified under Sections 401(k), 403(b), 457 or similar provision of the Internal Revenue Code (qualified plan), that is substantially similar to a “diversified mutual fund registered with the Securities and Exchange Commission under the Investment Company Act of 1940” if all the following are met:

- (1) The fund is a bona fide investment fund that pools money from more than 100 investors and invests the money in stocks, bonds, or other securities.
- (2) The fund holds securities of more than 15 issuers.
- (3) The public official did not influence or control the decision to purchase or sell the specific fund on behalf of the official's agency during the applicable reporting period.
- (4) The public official does not influence or control the selection of any specific investment purchased and sold on behalf of the fund.
- (5) The fund does not have a stated policy of concentrating its holdings in the same industry or business.

You assert that your understanding is that Commissioner Landres’ accounts fall within this standard because “Commissioner Landres is not one, but two powers of attorney removed from

decisions regarding the managed account. Landres has given power of attorney to LNW, which has in turn given power of attorney to [the firm].”

Turning to the information provided, it does not appear that these accounts fulfill all of the required criteria listed in Regulation 18237. Regardless of whether Commissioner Landres has given power of attorney over the accounts to external managers, the regulation also requires that the accounts be “a bona fide investment fund that pools money from more than 100 investors” and that the public official not “influence or control the selection of any specific investment purchased and sold on behalf of the fund.”

According to the firm’s website, its direct indexing products such as Aperio Direct Indexing are “a form of passive investing that allows investors the opportunity to directly own individual securities...” By definition, a portfolio of securities directly owned by an individual investor cannot also be a pooled fund in which shares are owned by more than 100 investors. The firm’s website also expressly contrasts separately managed accounts (“SMAs”) from “mutual funds and ETFs” by stating that, “With SMAs, instead of owning a share in the fund, clients own the individual securities (stocks, bonds) in their account.” We have previously advised that accounts which track an index but are comprised of securities individually held by a public official do not meet the exception to the definition of an “investment” relating to mutual funds in either the above Section 82034 or Regulation 18237. (*Watson* Advice Letter, No. A-22-088.)

In your request, you refer to Commissioner Landres’ account as a “separately managed account” which by the description on the firm’s website cannot be a pooled account with 100 or more investors. The firm’s statement in its letter accompanying your request that there “are more than one hundred investors in the firm’s investment product(s) in which [Commissioner Landres] participates...” is ambiguous because it does not specify whether those investors jointly own shares in one fund, or if they each own separate “products” of the type in which Commissioner Landres “participates.” We were unable to get clarification on this point in our efforts to inquire further.

In addition, while the firm states in its letter that Commissioner Landres has no “direct or indirect influence or control over... the selection or deselection of any specific investment to be purchased or sold,” the “Aperio Direct Indexing Values-Alignment Menu” provided with the request contradicts this statement and allows for the possibility of excluding specific companies and stocks. While we have previously advised that the ability to request that a fund’s investments not include certain categories would not amount to the “selection of any specific investment,” we have also advised that “to the extent that the ability to request exclusions of investments from certain categories becomes overbroad or extensive, so as to significantly limit or influence the selection of specific investments purchased on behalf of the managed accounts... this conclusion will not apply.” (*Pahland* Advice Letter, I-24-088.)

To the extent that Commissioner Landres’ accounts meet all of the criteria established in Regulation 18237, the “mutual fund exception” would apply and these would not be reportable investments. However, based upon the information available, we can only conservatively advise that it appears that Commissioner Landres’ investments in these accounts do not meet those criteria and therefore must be reported accordingly.

If you have other questions on this matter, please contact me at sirussell@fppc.ca.gov.

Sincerely,

Dave Bainbridge
General Counsel

A handwritten signature in black ink, appearing to read 'SR', is positioned above the typed name of Simon Russell.

By: Simon Russell
Commission Counsel

SR:aja