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Commission on Public Integrity Releases Draft Proposed Gift Regulations

The New York State Commission on Public Integrity recently released two sets of draft proposed gift regulations - one promulgated under the Public Officers Law and the other promulgated under the Legislative Law. The proposed regulations follow the release of a 30-plus page advisory opinion early last year, which was the subject of our May 2008 Legal Alert.

Under the proposed regulations, State officers and employees and public officials may not, directly or indirectly, solicit, accept or receive a gift, in any form, under circumstances in which 1) it could reasonably be inferred either that the gift was intended to influence him or her in the performance of his or her official duties or was intended as a reward for any official action on his or her part, or 2) accepting or receiving the gift would constitute a substantial conflict with the proper discharge of his or her duties. The regulations also prohibit the offering of such a gift.

The regulations memorialize that State officers and employees and public officials may not accept gifts of more than "nominal value." "Nominal value" is defined as being of such an insignificant value (e.g., the value of a regular cup of coffee or a soft drink) that, under the circumstances, it could not reasonably be inferred as either something intended or expected to influence a State officer or employee or public official in the performance of his or her official duties or something intended to be a reward for any official action on his or her part. The regulations specifically state that a meal or an alcoholic beverage is deemed to have a value greater than "nominal value."

There are various exclusions to the definition of "gift" and other permissible gifts, all of which require specific compliance with the terms of the relevant regulatory provisions.

As we discussed in our prior legal alert, the gift provisions, particularly the exclusions and list of permissible gifts, can be complex with significant penalties for violation. In addition, we anticipate that scrutiny of gift practices will continue to increase in the coming months, given the economic, political and regulatory climate. As such, it is imperative that companies and individuals understand the provisions. Hiscock & Barclay, LLP has significant experience in this area and provides training to clients regarding these laws, tailored for the specific client's needs. Please contact us if we can be of assistance. ■