



BOARD OF ETHICS  
CITY OF CHICAGO

**ADVISORY OPINION**

Re: Case No. 141280.A, Campaign Financing and Pension Fund Advisers

Date: December 15, 2014

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INTRODUCTION. On November 18, the Board's Executive Director received a hand-delivered letter signed by Aldermen Fioretti (2<sup>nd</sup> Ward), Waguespack (32<sup>nd</sup> Ward), and Arena (45<sup>th</sup> Ward). The letter requests an investigation "into possible violations of Chicago's ethics ordinance regarding municipal pensions and municipal advisers in the City of Chicago [Municipal] Employees' Annuity and Benefit Fund" (the "MEABF"), and cites a press report.<sup>1</sup> "That report," the letter states, "raises serious questions about whether the ethics law was violated when municipal investment advisers who receive compensation for providing advice to [the MEABF] gave massive political contributions to the campaign or political action committees of public officials who oversee or exert influence over those funds and advisors." The letter was also addressed to the City's Inspector General. As various media outlets reported, the three aldermen also wrote the Securities and Exchange Commission (the "SEC") in Washington, D.C., requesting that it, too, conduct an investigation "into possible violations of the [SEC's] rules regarding municipal pension funds and municipal advisers in the ... MEABF" (specifically, Rule 206(4)-5(a)(1)).<sup>2</sup>

EXECUTIVE SUMMARY. As explained below, while the Board cannot investigate this matter, it can and is issuing this advisory opinion to clarify how the City's "ethics law," the Governmental Ethics Ordinance (the "Ordinance"), applies here. As further explained below, the Board has determined that there is no violation of the Ordinance when firms that contract or do business with any of the City's four Pension Funds (including the MEABF),<sup>3</sup> or these firms' executives, make political contributions in excess of \$1,500 in a year to any single City elected official (or candidate for elected City office), or to his or her political committee. This determination is based on the fact that the City's Pension Funds are independent governmental entities or "bodies politic," *not* agencies or departments of the City, and thus firms that contract with them are not doing or seeking

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<sup>1</sup> We attach this letter as Exhibit A. The press report was this November 13 story in the International Business Times ("IBT"): <http://www.ibtimes.com/chicago-mayor-rahm-emanuel-accepted-campaign-contributions-financial-firms-managing-1723396>

<sup>2</sup> See: <http://www.nbcchicago.com/blogs/ward-room/Opinion-Pensions-Pols-and-Pay-to-Play-282965661.html>; <http://www.chicagobusiness.com/article/20141119/NEWS02/141119760/chicago-aldermen-ask-sec-to-investigate-emanuel-campaign>; <http://www.bondbuyer.com/news/regionalnews/chicago-aldermen-want-sec-probe-of-mayors-campaign-contributions-1068065-1.html>; <http://www.ibtimes.com/chicago-lawmakers-call-sec-investigation-mayor-rahm-emanuel-1725673>. We attach this letter as Exhibit B.

<sup>3</sup> For ease in this opinion, we refer to them collectively as "the Pension Funds." In addition to the MEABF, the other three Pension Funds for City of Chicago employees are: the Laborers' & Retirement Board Annuity and Benefit Fund of Chicago (the "Laborers' Fund"); the Firemen's Annuity & Benefit Fund of Chicago (the "Firemen's Fund"); and the Policemen's Annuity & Benefit Fund of Chicago (the "Policemen's Fund").

to do business with the City (or its sister agencies) by contracting with these Pension Funds. The Ordinance imposes contribution limitations *only* on persons or firms that do or seek to do business *with the City* (or one of its named sister agencies) or registered lobbyists. However, as also explained below, it is possible that these firms or their executives might have made contributions in violation of the Ordinance, but if so, any such violations would be for reasons *unconnected* to contracts or business with the Pension Funds.

Nonetheless, the Board is keenly aware, especially in light of recent events in Philadelphia, New Jersey, New York, California and elsewhere, that confidence in government is challenged when such firms or their executives make political contributions to elected officials with authority to appoint members to pension boards. These boards then decide how and with whom pension monies (public employees' pension monies in the U.S. are estimated to be at least \$2.63 trillion<sup>4</sup>) are invested, thereby creating a situation that is commonly called "pay-to-play." Thus, the Board concludes this opinion by discussing potential approaches to addressing this at the City level.

**JURISDICTION.** As stated above, even though this complaint was filed with the Board of Ethics, we do *not* have the authority to commence or conduct investigations, including investigations into "possible violations of Chicago's ethics ordinance." Pursuant to amendments to the City's Municipal Code that became effective on July 1, 2013, any such investigation would need to be undertaken by: (i) the Office of the Inspector General ("IG") if related to the Mayor, City Clerk, City Treasurer, or a candidate for those offices, or to campaign contributions made to any of them or their "political committees"; or (ii) the Office of the Legislative Inspector General, if related to the City Council members, or a candidate for City Council, or to campaign contributions made to any of them or their "political committees."<sup>5</sup> However, the Board explicitly *does* have the powers and duties to: (i) "receive and refer complaints of violations of any of the provisions of [the Ordinance] to [the IG]; (ii) "recommend such legislative action as it may deem appropriate to effect the policy of ... [the Ordinance]"; (iii) "conduct research in the field of governmental ethics and to carry out such educational programs as it deems necessary to effect the policy and purpose of [the Ordinance]"; and (iv) "render advisory opinions with respect to the provisions of [the Ordinance] based upon a real or hypothetical set of circumstances, when requested in writing by an official or employee, or by a person who is personally and directly involved." See §2-156-380(a), (f), (g) and (l). It is these powers and duties that we exercise and discharge by issuing this opinion.

Further, we note, "[c]omplaints to the board and ... recommendations thereon shall be confidential, except as necessary to carry out powers and duties of the board or to enable another person or agency to consider and act upon the notices and recommendations of the board." See §2-156-400. Complaints the Board receives, like this one, are confidential — Board personnel are prohibited from discussing or disclosing complaints or the persons or conduct involved in complaints with or to any person outside of its membership or staff or other investigative officials to whom it has referred the complaints — *unless* an exception applies, or (as is not the case here) the complaint has already been investigated by an inspector general and the investigative and adjudicative process provided for in §§2-156-385 and -392 of the Ordinance has resulted in a final determination or

<sup>4</sup> See <http://www.publicfundsurvey.org/publicfundsurvey/summaryoffindings.html>

<sup>5</sup> "Political committee" is defined in §2-156-010(t-1) as "a political committee as defined in Article 9 of the Illinois Election Code, codified at 10 ILCS 5/9-1 *et seq.*"

settlement. However, the Board may, in effect, “override” confidentiality and make public a complaint it receives if it determines that the exercise of its other listed powers and duties warrant doing so. That is the case here, where the Board members and staff have requested this advisory opinion, and where the Board is making legislative recommendations and forwarding notices to the public and to investigating authorities regarding any investigation of this complaint.<sup>6</sup>

Hence, the Board issues this opinion to: (i) clarify the applicable law and to educate the public, the media, and other City officials, employees, and agencies as to how the Board of Ethics has historically applied the Ordinance to concerns raised in the aldermen’s complaint and in related media reports, and how the Ordinance applies *here*; (ii) identify those issues that, in our opinion, might remain to be investigated; and (iii) suggest ways to address the general topic of “pay-to-play” at the municipal code level as it pertains to the City’s Pension Funds.

Finally, it is critical to state here that our jurisdiction is limited to the City’s Governmental Ethics Ordinance, which is chapter 2-156 of the City’s Municipal Code. Pursuant to the clarificatory changes made as a result of the work of the Mayor’s Ethics Reform Task Force, the Board of Ethics is the only agency in City government with the authority to determine whether any person has (or has not) violated the Ordinance, and to issue binding interpretations of the Ordinance. But, our authority to determine and interpret does *not* extend to Illinois state statutes, Mayoral Executive Orders, policies enacted by the four Pension Funds themselves, or federal statutes (like the Investment Advisers Act of 1940), or to rules duly enacted by federal agencies like the SEC pursuant to federal statutes.<sup>7</sup> Hence, although our discussion at the end of this opinion involves the apparent ambit of those other statutes, orders, rules and policies, we can suggest or recommend changes only at the municipal level.

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<sup>6</sup> The Board has previously issued advisory opinions based on requests from its staff or membership (*see* Case Nos. 97032.A and 13044.A (each addressing issues arising under the Ordinance’s campaign financing limitations)), or used the advisory opinion format to comment on problems in the City’s ethics laws (*cf.* Case No. 01021.A (in an opinion requested by a lobbyist, in which the Board applied the prohibition on lobbyists being compensated by contingent fees to salespersons, the Board made specific legislative recommendations to correct what it saw as a problem in then-recently enacted amendments to the Ordinance’s lobbyist registration provisions)). Moreover, the complaining aldermen themselves have made this complaint public. Hence, in this case, two important rationales for keeping complaints confidential — to protect complainants against possible retribution and to encourage complaints of misconduct — are inapposite.

However, we note that we have no authority to affect the IG’s determination as to whether *it* undertakes an investigation based on the aldermen’s request (pursuant to the IG’s powers and duties in its own enabling Ordinance, chapter 2-56 of the Municipal Code).

Finally, the Board is not unaware that this matter is, of necessity, politically charged, if not politically motivated: one of the complaining aldermen is a candidate for Mayor. Nonetheless, the Board unanimously believes it best to “set the record straight” as to the application of the Governmental Ethics Ordinance to this complaint, so as to attempt to ensure that no “ethical clouds are hanging over any candidate’s heads,” and that widely reported allegations regarding potential violations of the Ethics Ordinance are depoliticized to the extent possible, and the electorate is properly informed.

<sup>7</sup> The Investment Advisers Act of 1940, as amended through 2012, is codified at 15 U.S.C. § 80b-1, et seq. *See* <https://www.sec.gov/about/laws/iaa40.pdf>. SEC Rule 206(4)-5 can be found at 17 CFR Part 275.206(4)-5. *See* <http://www.sec.gov/rules/final/2010/ia-3043.pdf>

FACTUAL BACKGROUND. The International Business Times story reports that executives at firms that “manage Chicago pension funds” have, since 2011, contributed more than \$600,000 to the Mayor’s “campaign operations and political action committees that support [him].”<sup>8</sup> Based on this story, the aldermen identified above have “request[ed] an investigation at the soonest possible date into the possible violations of Chicago’s ethics ordinance.” Thus, we turn to the Ordinance.

LAW AND ANALYSIS. The relevant sections of the Ordinance are found in Article VI, entitled “Campaign Financing.” They provide:

**2-156-435. Anonymous and pseudonymous contributions.**

**No person shall offer or make, and no candidate for city office, such candidate’s political committee or person acting on behalf of either of them shall solicit or accept, any contribution that is (a) anonymously given; or (b) made or to be made other than in the name of the true donor.**

**2-156-445. Limitation of contributing to candidates and elected officials.**

**(a) No person who has done business with the city, or with the Chicago Transit Authority, Board of Education, including the Chicago School Reform Board of Trustees, Chicago Park District, Chicago City Colleges, or Metropolitan Pier and Exposition Authority within the preceding four reporting years or is seeking to do business with the city, or with any of the other aforementioned entities, and no lobbyist registered with the board of ethics shall make contributions in an aggregate amount exceeding \$1,500.00: (i) to any candidate for city office during a single candidacy; or (ii) to an elected official of the government of the city during any reporting year of his term; or (iii) to any official or employee of the city who is seeking election to any other office. For purposes of this section all contributions to a candidate’s authorized political committees shall be considered contributions to the candidate. A reporting year shall be from January 1<sup>st</sup> to December 31<sup>st</sup>. For purposes of this subsection only “seeking to do business” means: (i) the definition set forth in Section 2-156-010(x); and (ii) any matter that was pending before the city council or any city council committee in the six months prior to the date of the contribution if that matter involved the award of loan funds, grant funds or bond proceeds, bond inducement ordinances, leases, land sales, zoning matters, the creation of tax increment financing districts, concession agreements or the establishment of a Class 6(b) Cook County property tax classification.**

**(b) For purposes of subsection (a) above, an entity and its subsidiaries, parent company or otherwise affiliated companies, and any of their employees, officers, directors and partners who make a political contribution for which they are reimbursed by the entity or its affiliates shall be considered a single person. However, nothing in this provision shall be**

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<sup>8</sup> Our research shows that the executives named in this report apparently did not contribute to any aldermen in 2013; we have not researched contributions that may have been made in 2012 or 2011. However, the IBT report does not name any “political action committees” that received such contributions. Also, we point out that any contributors whose 2013 contributions total \$1,500 or more to any single elected City official, candidate, or their political committee will be referred by this Board to the respective inspector general, as required by §2-156-380(n-1) for any appropriate investigation of possible violations of the Ordinance’s contribution limits.

construed to prohibit such an employee, officer, director or partner from making a political contribution for which he is not reimbursed by a person with whom he or she is affiliated, even if that person has made the maximum contribution allowed under subsection (a).

(c) For purposes of subsection (a) above, a contribution to (i) any political fund-raising committee of a candidate for city office or elected official, or (ii) any political fundraising committee which, during the reporting year in which the contribution is to be made, has itself made contributions or given financial support in excess of 50 percent of that committee's total receipts for the reporting year to a particular candidate for city office, elected official, or the authorized fundraising committee of that candidate or elected official, shall be considered a contribution to that candidate or elected official.

(d) Any person who solicits, accepts, offers or makes a financial contribution that violates the limits set forth in this section shall be subject to the penalty provided in Article VII of this Chapter; provided, however, such person shall not be deemed in violation of this section if such person returns or requests in writing the return of such financial contribution within 10 calendar days of the recipient's or contributor's knowledge of the violation.

This Board has, in formal opinions issued over the 28 years of its existence, addressed how these and other sections of the Ordinance apply to contractors of the Pension Funds, and to City employees and elected officials with connections to these Pension Funds. The following numbered paragraphs summarize this case law and provide analytical commentary.

1. Through §2-156-445(a), cited above, the Ordinance limits: (i) persons who have done business with *the City or its named sister agencies* within the past four years, or (ii) persons who are seeking to do business with *the City*; or (iii) registered lobbyists with this Board, to \$1,500 in political or campaign contributions in a single calendar year to any single elected official, or to any single candidate for elected office. *No* other persons are subject to *any* political contribution limitations by the City's Governmental Ethics Ordinance,<sup>9</sup> though *all* persons and individuals *always* remain subject to the contribution limitations in the Illinois Election Code.<sup>10</sup>

<sup>9</sup> The Ordinance does limit "cash" campaign contributions from all persons to \$250 (§2-156-455). That restriction is not relevant in this case; moreover, we have determined, this cash limitation includes currency, cashier's checks and money orders, but not personal checks. See Case No. 97032.A.

<sup>10</sup> By operation of state law, specifically 5 ILCS 5/9-8.5(h), these limits have been lifted for the upcoming February 2015 Mayoral election ("the caps have been blown," as the media reports say). This means that, as of October 14, 2014, natural persons, corporations and other potential contributors are not subject to the restrictions on contributions to candidates for Mayor that would otherwise be imposed by state statute. To this Board, that fact heightens the importance of the City's own campaign contribution limitations. See <http://elections.il.gov/CampaignDisclosure/ContributionLimitOfList.aspx?Election=2015+CP>; and <http://politics.suntimes.com/article/chicago/gadflys-about-face-changed-complexion-mayoral-race/tue-12022014-322pm#bmb=1>.

2. Section 445(a) of the Ordinance also provides that all contributions to a “candidate’s authorized political committees shall be considered contributions to the candidate.”<sup>11</sup>

3. In cases dating back to 1987, the Board has consistently held that the four City Pension Funds are *not part of the government of the City of Chicago* because they are each created by their own provisions in the Illinois Pension Code (40 ILCS 5/101 *et seq.*), and are independent “bodies politic.” See Case Nos. 87100.E, 89101.A, 93007.A, and 05040.A.<sup>12</sup>

4. The Board has determined that the implication of these Pension Funds not being City agencies is that persons or investment firms that have or seek contracts with any of these four Pension Funds (to serve as investment advisers, say) *are not subject — by that fact — to the limitations on political contributions in the Ordinance.*<sup>13</sup> In Case No. 89010.A, the Board held that “a contract between an investment management firm and the Pension Funds are [sic] not ‘City contracts’ for purposes of [the limitation on contributions to elected City officials or candidates for elected City office in the Ordinance]. Therefore, the existence of those contracts would not subject contributions from the management firm to City candidates or elected officials to the contribution limitations of [the Ordinance].”

5. The Board has also determined that this means that:

(i) a City employee who represented his mother in a hearing before the Firemen’s Fund did *not* violate the Ordinance’s prohibition against representing third parties in a proceeding before *a City agency or department*,<sup>14</sup> because the Firemen’s Fund is not a City agency (See Case No. 93007.A); and

(ii) the Policemen’s Fund is not a City agency, therefore the Board of Ethics has no jurisdiction over it, and its Board members need not file Statements of Financial Interests with the Board (See Case No. 87100.E); and

(iii) persons who engage in activity before the Pension Funds that would constitute lobbying and require registration if the activity were performed before *City* employees, officials, or agencies are *not* required to register as lobbyists because the four Pension Funds are *not* City agencies — and this “exemption” from the lobbyist registration requirements includes communicating with *ex officio* members of these Pension Fund boards, such as the City Comptroller and City

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<sup>11</sup> It is important here to note that, under the Illinois Election Code (which authorizes candidates to have political committees in the first place), effective January 1, 2011, candidates may have only one such authorized committee per elected office they hold or seek. See 10 ILCS 5/9-2(b).

<sup>12</sup> These cases are all posted on the Board’s website (in redacted form) at [http://www.cityofchicago.org/city/en/depts/ethics/supp\\_info/fiduciary\\_duty\\_ao1.html](http://www.cityofchicago.org/city/en/depts/ethics/supp_info/fiduciary_duty_ao1.html). Specifically, the Policemen’s Fund is created by 40 ILCS 5/5-101 *et seq.*; the Firemen’s Fund is created by 40 ILCS 5/6-101 *et seq.*; the MEABF is created by 40 ILCS 5/8-101 *et seq.*; and the Laborers’ Fund is created by 40 ILCS 5/11-101 *et seq.*

<sup>13</sup> Until November 1, 2012, these limitations were in the former Campaign Financing Ordinance, which was chapter 2-164 of the Municipal Code. As of November 1, 2012, chapter 2-164 was folded into what is now Article VI of the Ordinance.

<sup>14</sup> This prohibition is found in §2-156-090(a).

Treasurer, because these City officials are not authorized to take (or actually taking) *City* action when acting *ex officio* as Pension Fund board members (*See* Case No. 05040.A).

6. The provisions of the Illinois Pension Code that establish these four City Pension Funds have not changed in any material, relevant ways since the Board issued these opinions.

7. For these reasons, we conclude that the Board's prior opinions, cited above, remain valid, and that the firms that have (or had), or seek contracts with, any of the Pension Funds, do not — *by that fact* — become subject to the Ordinance's campaign contribution limitations.<sup>15</sup>

8. But, what about employees, executives or officers of these firms who make (or have made) contributions in excess of \$1,500 in a year to City elected officials, or candidates, or their authorized political committees? The IBT piece reports that the firms' executives made the contributions at issue, not the firms themselves. The Ordinance addresses this as well: §2-156-445(b), cited above, provides that, for purposes of the \$1,500 per year/per candidate/per authorized committee limitation, "affiliated" companies, like subsidiaries or parent companies (and, we have held, Limited Liability Companies, or "LLCs" with the same members) are considered the same "person," subject to one single \$1,500 limitation. Notably, though, individual executives or other officers or directors are *not* considered the same person as their employers — they are *not* subject to same limit as their firms (and their contributions are not aggregated together with their employers' for purposes of the \$1,500 limitation) *unless* their contributions are reimbursed by their firms. Whether a particular executive was reimbursed for a political contribution by his or her firm can be a complex factual determination, something that only a thorough investigation could ascertain.<sup>16</sup>

9. However, such a determination — such an investigation — need be reached only if their firms were subject to the limitations in the Ordinance in the first place, for example, by doing business with the City (perhaps with the City Treasurer's Office or Department of Finance), or with one of the named sister agencies, such as the Chicago Public Schools, at any time within the four (4) years preceding the contribution, or were seeking to do business within the six (6) months prior to the contribution. If *that* were true, then the *firms* might have violated the Ordinance (depending on the

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<sup>15</sup> The Board also notes that one of the complaining aldermen stated publicly that there have been potential violations of a Mayoral Executive Order (specifically, Order 2011-4). This Board does not have the authority to interpret or enforce Mayoral Executive Orders. However, as stated above, we do have the power and duty to "consult with city agencies, officials and employees on matters involving ethical conduct." Thus, we take notice of the fact that this Order prohibits "any *City* contractor," "any owner [or spouse or domestic partner] of any *City* contractor," or any "subcontractor of any *City* contractor" from contributing any amount to the Mayor or to his "Political Fundraising Committee." (emphasis added) The Order defines "City contractor" as "a person who or entity that has submitted a bid for or enters into a Contract with the City." It defines "contract" as any *agreement with the City* that is: (i) formed under the authority of chapter 2-92 of the Municipal Code of Chicago [which is the Department of Procurement Services' enabling ordinance]; (ii) for the purchase, sale or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved and/or authorized by the City Council. Thus, it may be that advisers to and contractors of the City's Pension funds would similarly not be included within this Order's ambit, because such contracts are not *City* contracts. This Executive Order (and the others that took effect on May 16, 2011) is posted here:

[http://www.cityofchicago.org/content/dam/city/depts/ethics/general/Ordinances/ExecutiveOrders1\\_6.pdf](http://www.cityofchicago.org/content/dam/city/depts/ethics/general/Ordinances/ExecutiveOrders1_6.pdf)

<sup>16</sup> As we have long recognized, the same rationale holds for partners of an entity (like a law firm) which itself does business with the City and is thus subject to the Ordinance's contribution limitations. *See* Case No. 90060.A:

[http://www.cityofchicago.org/content/dam/city/depts/ethics/general/AO\\_CampFinancing/90060.A.pdf](http://www.cityofchicago.org/content/dam/city/depts/ethics/general/AO_CampFinancing/90060.A.pdf). We also note here that the Ordinance prohibits "pseudonymous contributions," that is, contributions that are "made or to be made other than in the name of the true donor." §2-156-435. Thus, reimbursement by an employer of a contribution made by an employee, if not properly accounted for as a contribution by the employer or recorded as such by the political committee could constitute a violation of that provision.

amounts of their contributions), but the firms' *executives* would have violated it only if they were either: (i) registered lobbyists at the time of the contribution; or (ii) were reimbursed by their firms for their contributions (this is true even if the firms were not subject to the contribution limitations—it is true for every individual contributor); or (iii) were independently and individually doing business with the City or its sister agencies or “seeking to do business” with the City during the relevant time period.<sup>17</sup>

10. What about contributions to “PACs” (political action committees) reportedly “set up by [an elected official’s associates] to support [that elected official]?” Ordinance §2-156-445(a) limits contributions to *an elected City official* or to *a candidate’s authorized fundraising committee*. But “PACs” that “support” an elected official or were “set up by [the official’s] associates” are *neither* the elected official him- or herself (of course), *nor* the official’s authorized political fundraising committee (the official’s authorized committee must be registered as such with the Illinois State Board of Elections, pursuant to the Illinois Election Code, and, as cited above in footnote 11, candidates and elected officials may have only one committee per elected office they hold or seek).

Again, the Ordinance addresses this, in §2-156-445(c), cited above. It works as follows. Assume, for purposes of illustration, that Mary Smith is an executive at Pension Advisers, Inc., a firm doing business with the MEABF. In 2013, she contributes \$5,300 to (the fictional) “Citizens for a Bolder Chicago,” a committee that is not an elected official’s or candidate’s authorized political fundraising committee, but instead was formed by that elected official’s “associates,” and “supports” that official’s “City Hall agenda.” Ms. Smith would violate the Ordinance only if:

- (i) she is *individually* subject to the \$1,500 limitation (for example, at the time of her contribution that exceeded \$1,500 in a calendar year, she was a registered lobbyist, or was *individually* doing or seeking to do business with the City); or
- (ii) she was reimbursed by her company and that reimbursement was not made known to “Citizens for a Bolder Chicago,” which then recorded the contribution as one from her (this could be a pseudonymous contribution, and might put her company in violation as well); or
- (iii) *either*
  - (a) “Citizens for a Bolder Chicago” turns out to have given more than 50% of its intake in a year in which her contributions to it exceeded \$1,500 to this elected official’s authorized political committee; *or*

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<sup>17</sup> “Seeking to do business” is defined in two places in the Ordinance. In §2-156-010(x), it means “(1) taking any action within the past six months to obtain a contract or business from the city when, if such action were successful, it would result in the person’s doing business with the city; and (2) the contract or business sought has not been awarded to any person.” And, as cited above, §2-156-445(a) adds several elements: “For purposes of this subsection only “seeking to do business” means: (i) the definition set forth in Section 2-156-010(x); and (ii) any matter that was pending before the city council or any city council committee in the six months prior to the date of the contribution if that matter involved the award of loan funds, grant funds or bond proceeds, bond inducement ordinances, leases, land sales, zoning matters, the creation of tax increment financing districts, concession agreements or the establishment of a Class 6(b) Cook County property tax classification.”



- (b) an investigation were to warrant a conclusion by the Board of Ethics that “Citizens for a Bolder Chicago” is, *de facto*, “a political fundraising committee of” this elected official, perhaps because this official personally exercises substantial control over its expenditures, and/or personally solicits for it.<sup>18</sup>

DETERMINATIONS. For the ten (10) reasons stated above, the Board determines that:

1. Firms or persons who have or seek contracts with the City’s four Pension Funds, or these firms’ officers, employees, or executives, are *not*, by that fact, doing business or seeking to do business with the City or its sister agencies, and are *not* subject to the campaign contributions limitations in Article VI of the Ordinance on this basis; and
2. Thus, any contributions in excess of \$1,500 in a year made to elected City officials (or candidates for elected City office) or to their political committees, including those referenced in the IBT article, whether made by these firms or their executives, do not constitute violations of the Ordinance, unless either: (i) the executives were reimbursed by their employers without proper attribution, in which case there may have been violations of the Ordinance’s prohibition on pseudonymous contributions, in §2-156-435; or (ii) the contributing executives themselves individually were, at relevant times, doing business with the City or its named sister agencies, or seeking to do business with the City, or were registered lobbyists; and
3. Contributions made by firms doing or seeking business with the Pension Funds would violate the Ordinance only if the contributions totaled more than \$1,500 in a calendar year (or, if made prior to November 1, 2012, in a July 1-June 30 year) to a City elected official, candidate for City elected office, or his or her authorized political committee, *and* the contributors were *also* doing business with the City or its named sister agencies in the four years prior to the contribution, or were seeking to do business with the City within six months prior to the contribution that exceeded \$1,500 in that year; and
4. Contributions in excess of \$1,500 in a year made by executives of firms doing or seeking business with the Pension Funds to any “political action committees” (including those

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<sup>18</sup> The Board has never had occasion to address this potential issue. The analogy in federal law, under the Bipartisan Campaign Reform Act of 2002, is whether this committee has “acted in concert” with the candidate, so that in effect these contributions to “Citizens for a Bolder Chicago” might be treated legally as direct political contributions to the candidate; otherwise, they would be considered “independent expenditures.” This theory is an emerging one in the federal courts. *Cf.* Regulation 1.4, Philadelphia Board of Ethics: [http://www.phila.gov/ethicsboard/PDF/BOERegNo1\\_Campaign%20Finance\\_AsAmended\\_Effective10.31.14.pdf](http://www.phila.gov/ethicsboard/PDF/BOERegNo1_Campaign%20Finance_AsAmended_Effective10.31.14.pdf) (“Contributions made through one or more political committees. ...[A] contribution is made through a political committee when: (i). A person or political committee makes a contribution to a political committee and directs, suggests, or requests, whether in a direct, indirect, express, or implied manner, that the recipient political committee use all or part of the contributed money to make an expenditure to a specific candidate. A determination that such a direction, suggestion, or request was made shall be based upon all the relevant facts and circumstances; or (ii) The contributing person or political committee has provided the majority of the contributions received by the recipient political committee, whether directly or indirectly, in the twelve months prior to the recipient political committee’s expenditure to the candidate, unless the recipient political committee can demonstrate, based on a reasonable accounting method, that money from the contributing person or political committee was not used to make the expenditure to the candidate.”)

formed “by associates of” elected City officials, or formed to “advance these officials” City Hall initiatives), would violate the Ordinance only if:

(i) the executives were reimbursed by their employers without proper attribution, in which case there may have been violations of the Ordinance’s prohibition on pseudonymous contributions, in §2-156-435; *or*

(ii) these receiving committees either:

(a) gave 50% or more of their annual intake to that elected official’s or candidates’ authorized political fundraising committee; *or*

(b) were, *de facto*, political committees “of” the elected official, because the official exercised substantial control over the committees’ expenditures, or directly solicited for them; *and*

5. Contributions in excess of \$1,500 in a year made by firms doing or seeking business with the Pension Funds to any “PACs” formed “by associates of” elected City officials, or formed to “advance these officials” City Hall initiatives, would violate the Ordinance only if:

(i) the firms themselves were otherwise subject to the Ordinance’s contribution limitations, by doing business with the City or its named sister agencies or seeking to do business with the City at the relevant times; *and*

(ii) these receiving committees either:

(a) gave 50% or more of their annual intake to that elected official’s or candidates’ authorized political fundraising committee; *or*

(b) were, *de facto*, political committees “of” the elected official, because the official exercised substantial control over the committees’ expenditures, or directly solicited for them.

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LEGISLATIVE RECOMMENDATIONS. In issuing this opinion, the Board is cognizant of “pay-to-play” stories involving contributions from pension fund advisers or their executives to state and local elected officials reported in other parts of the country: in New York, New Jersey, North Carolina, Rhode Island, New Mexico, California and Philadelphia. As the SEC put it, when adopting its “pay-to-play” or “Campaign Contribution” rules:

**Investment advisers that seek to influence the award of advisory contracts by government entities, by making or soliciting political contributions to those officials who are in a position to influence the awards, violate their fiduciary obligations. These practices—known as “pay to play”—distort the process by which investment advisers are selected and ... can harm advisers’ public pension plan clients, and thereby beneficiaries of those**

**plans, which may receive inferior advisory services and pay higher fees. In addition, the most qualified adviser may not be selected, potentially leading to inferior management, diminished returns, or greater losses for the public pension plan. Pay to play is a significant problem in the management of public funds by investment advisers. Moreover, we believe that advisers' participation in pay to play is inconsistent with the high standards of ethical conduct required of them under the [Investment] Advisers Act [of 1940].<sup>19</sup>**

It is beyond this Board's purview to comment on the application of the SEC's Rules to this or any situation, except to note that the SEC appears to be enforcing or considering enforcing this rule in several situations, and that the Rule's sanctions — a ban on contracting — appear to apply only to the contributors, not to the receiving elected official or his or her committee.<sup>20</sup> There have been reports of state regulators investigating or considering related issues as well, in New York and New Jersey (where a complaint was filed with the New Jersey State Ethics Commission against sitting Governor Christie).<sup>21</sup>

Putting aside enforcement actions and investigations, we have asked our staff to examine legislative approaches that a municipality like Chicago might consider. The SEC's "pay-to-play" rule does not pre-empt any state or local laws regarding campaign contributions.<sup>22</sup>

One approach discussed in the scholarly literature is to require persons who "lobby" pension funds or their decision-makers to register as lobbyists. This type of reform could require executives or marketing representatives who solicit business from pension funds to register with our agency once yearly, and then file quarterly reports of their lobbying activities, including their campaign contributions to City elected officials and candidates for elected City office and their lobbying compensation and expenditures. Such an approach would increase transparency, but would not actually reduce political contributions from investment firms or their executives or mitigate the negative appearances they generate. This is similar, but not identical, to approaches already in

<sup>19</sup> See <http://www.sec.gov/rules/final/2010/ia-3043.pdf>.

<sup>20</sup> See *New York Republican State Committee v. SEC* (in an opinion issued on September 30, 2014, the U.S. District Court in Washington D.C. dismissed a constitutional challenge to the SEC rule on the basis the court lacked jurisdiction, but went through a brief recitation of recent SEC enforcement actions under its "Campaign Contribution Rule"): [http://www.campaignlegalcenter.org/images/NY\\_Republican\\_State\\_Committee\\_v\\_SEC\\_Memorandum\\_Opinion\\_9-30-14.pdf](http://www.campaignlegalcenter.org/images/NY_Republican_State_Committee_v_SEC_Memorandum_Opinion_9-30-14.pdf); See also "SEC Charges Private Equity Firm With Pay-to-Play Violations Involving Political Campaign Contributions in Pennsylvania," <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370542119853#.VHoQnaTF-Q4>. And, similar to the aldermen's complaint here, a public employees' group in North Carolina has requested an SEC investigation into whether a Charlotte-based investment firm may have violated these SEC Rules: <http://www.pionline.com/article/20140902/ONLINE/140909972/employee-group-urges-sec-to-conduct-pay-to-play-investigation-in-north-carolina>; See also a piece by David Frum in *The Atlantic*—published prior to the federal court's decision in the *New York Republican State Committee* case, discussing similar issues in Kentucky, Texas, New Mexico and California: <http://www.theatlantic.com/politics/archive/2014/08/the-wrong-type-of-corruption/376109/>; see also Everett, "Kicking Back Corruption in the Public Fund Advisory Selection Process: The SEC's Proposed Rule to Curtail Pay-To-Play Practices by Investment Advisers," 29 *Boston University Review of Banking & Financial Law* 557 (2010): <http://www.bu.edu/rbfl/files/2013/09/Everett.pdf>.

<sup>21</sup> See <http://dealbook.nytimes.com/2013/11/05/new-york-is-investigating-advisers-to-pension-funds/>; [http://www.nj.com/politics/index.ssf/2014/09/nj\\_union\\_targets\\_christie\\_adviser\\_with\\_ethics\\_complaint\\_over\\_pension\\_investments.html](http://www.nj.com/politics/index.ssf/2014/09/nj_union_targets_christie_adviser_with_ethics_complaint_over_pension_investments.html).

<sup>22</sup> See "Questions About the Pay to Play Rule": <http://www.sec.gov/divisions/investment/pay-to-play-faq.htm>.

effect or being considered or advocated in California, Rhode Island and Kentucky, which do or would require pension fund managers to disclose all fees paid to advisers.<sup>23</sup>

However, this Board has *less* interest in requiring disclosure of such information from persons who are, according to Chicago's laws, not lobbying *City* employees or officials, and in thereby making their political contributions available in another place (all such contributions must be disclosed by the recipient committee to the Illinois State Board of Elections in the first place). Such increased transparency is laudable, but we have *more* interest in encouraging the City's policy-makers to find a way to regulate the political contributions themselves and the appearance they create.<sup>24</sup>

Another approach would be that the Pension Funds themselves consider tightening their ethics codes to include restrictions on political contributions from their contractors (and their contractors' executives) to elected officials who have appointing authority to their boards.<sup>25</sup>

Yet another approach might be to mirror the SEC's "pay-to-play" rule and bar those firms that make (or whose executives make) political contributions to elected officials from contracting with the government entity (or pension funds) for a period of time, perhaps two (2) years following the contribution. This is the approach taken by the Commonwealth of Pennsylvania and the City of Los Angeles. However, these legislative schemes might not translate well in Chicago, because our four Pension Funds are not agencies of the City. Therefore further research would be required to determine whether the City could impose such a sanction, or whether such a sanction would need to be accomplished through an act of the Illinois General Assembly.<sup>26</sup>

The approach that makes the most sense to us is for the Mayor and/or City Council to consider simply extending the \$1,500 limit in campaign contributions per year/per official/candidate/authorized committee to investment advisers and other firms that deal with the

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<sup>23</sup> See [http://www.kentucky.com/2014/11/28/3564011\\_question-for-legislators-how-much.html?rh=1](http://www.kentucky.com/2014/11/28/3564011_question-for-legislators-how-much.html?rh=1); <http://www.ibtimes.com/rhode-island-treasurer-gina-raimondo-wants-minimize-attention-wall-street-managers-1642888>; <http://www.fppc.ca.gov/factsheets/009-122010PlacementAgentFS.pdf> (the California measure prohibits the giving or accepting of political contributions to or by elected officials or candidates for state office by the firms, but only if the firms' agents are required to register before the government entities of those elected officials or candidates for office).

<sup>24</sup> For a thorough discussion of using lobbyist registration and regulations to address the "pay-to-play" issue, see Sumpio, "Marketing of Investment Advisers to Public Pension Plans: Achieving Transparency Through Lobbying Regulations?" 5 William & Mary Business Law Review 242 (2014): <http://scholarship.law.wm.edu/wmblr/vol5/iss1/6/>.

<sup>25</sup> Our check of the MEABF's ethics code shows that it does not address political contributions to elected officials by its contractors. See [http://www.meabf.org/publications/2013\\_ETHICS\\_POLICY.pdf](http://www.meabf.org/publications/2013_ETHICS_POLICY.pdf). But its investment managers must certify annually that they are in compliance with the SEC's pay-to-play rule. See [http://www.meabf.org/publications/INVESTMENT\\_POLICY\\_20140222\\_FINAL.pdf](http://www.meabf.org/publications/INVESTMENT_POLICY_20140222_FINAL.pdf)

<sup>26</sup> Pennsylvania's and Los Angeles's laws provide that firms or their "principals" (that is, officers, owners, or "executive level employees") who make or solicit political contributions to elected officials of the Commonwealth (in Pennsylvania) or to elected officials who actually approve agreements worth more than \$100,000 (in Los Angeles) are barred for two years from contracting with the pension funds for two years following these contributions. In Los Angeles, the two pension funds are City agencies, staffed by City employees; in Pennsylvania, the statute explicitly covers the Pennsylvania Municipal Retirement System, which includes, for example, the Board of Pensions and Retirement of the City of Philadelphia. See <http://www.phila.gov/pensions/Pages/default.aspx>; <http://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2009&sessInd=0&act=44>; [http://ethics.lacity.org/pdf/pressrelease/press\\_042511\\_New\\_Charter Amend Limits Bidder Bulletin.pdf](http://ethics.lacity.org/pdf/pressrelease/press_042511_New_Charter Amend Limits Bidder Bulletin.pdf); [http://ethics.lacity.org/PDF/laws/law\\_charter470.pdf](http://ethics.lacity.org/PDF/laws/law_charter470.pdf)

City's Pension Funds or manage their monies, and to their executives, or consider prohibiting them altogether. They would then be subject to at least the same political contribution limitations as registered lobbyists, or persons who do or have done business with the City or its named sister agencies, or who are seeking to do business with the City. This would be similar to the approach taken by New York City, where its Campaign Finance Act (the "NYCCFA") limits contributions from persons with "business dealings with the City" and makes such contributions ineligible for matching public financing; moreover, contributions from corporate entities are banned under that Act. In the NYCCFA, the term "business dealing with the City includes "any contract for the investment of pension funds, including investments in a private equity firm and contracts with investment related consultants ... from the time of presentation of investment opportunity or the submission of a proposal, whichever is earlier, and during the term of such contract and for twelve months after the end of such term." The NYCCFA imposes monetary penalties on the elected official or his or her committee, not on the contributor, for accepting prohibited contributions (after a grace period of 20 days from being notified by the New York City Campaign Finance Board, during which period the contribution can be refunded).<sup>27</sup>

In slight contrast to New York's law, however, we recommend that firms that do or seek to do business with the four Pension Funds *not* become persons "doing or seeking to do business with the City," but rather, that these firms and their principals or executives at least be made subject to the Ordinance's limitations simply on the basis that they do or seek to do business with the Pension Funds. In that event, our Ordinance would also subject both the recipient committee or elected official and the contributor to fines for excessive contributions.

This approach would also avoid vexing evidentiary problems inevitably raised by attempting to ascertain whether elected officials who receive these contributions actually do exercise control or influence over how and with whom pension monies are invested. With respect to the City's four Pension Funds, there is no allegation that any City elected official can or has: (i) directly influenced where pension monies are invested; or (ii) been influenced by such contributions to affect where or with whom pension monies are invested, or in making appointments to Pension fund boards. We note here that the Mayor does have the ability to: (i) fill a vacancy on the Firemen's Pension Board and on the MEABF if that vacancy is of an *ex officio* position (the City Clerk, Treasurer or Comptroller; the Mayor appoints the Comptroller); (ii) appoint and remove four of eight members to the Policemen's Pension Board; and (iii) as to the Laborers' Pension Board, one position is filled by the Comptroller or the Comptroller's appointee, and two by the Department of Human Resources – and the Comptroller and Commissioner of Human Resources are Mayoral appointees.<sup>28</sup> We believe that this appointing power constitutes a sufficient nexus to justify limiting contributions from these firms or their executives to at least the Mayor (though this approach would need to be evaluated as to whether it would be *ultra vires* — that is, beyond the authority of the City Council to effect as a matter of state law — given that the four Pension Funds are creations of state law). In any event, the Mayor could accomplish this by Executive Order, affecting contributions to his own political committee. Whether this might be accomplished via Executive Order (thereby affecting contributions to the Mayor only), or via a Municipal Code amendment (thereby potentially affecting

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<sup>27</sup> See §3-701.18(a) of the N.Y.C. Administrative Code, <http://www.nyccfb.info/act-program/CFACT.htm>.

<sup>28</sup> See 40 ILCS 5/1-101 *et seq.*

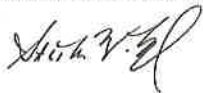
contributions to all 53 elected City officials and candidates for these offices) is something that might be considered by the City's policy-makers.

Finally, we address political contributions made by investment firms or their executives to "PACs" that are neither the elected official him- or herself nor the official's authorized political committee, but instead "support" that official. As to this issue, the SEC's thinking is persuasive: under its pay-to-play rule, a contribution to a political party, PAC or other committee or organization would not trigger a penalty (under the SEC Rule, the penalty would be a two-year ban on pension fund business), unless, an investigation reveals, it was a means or artifice to accomplish indirectly what the rule prohibits if done directly (for example, "the contribution is earmarked or known to be provided for the benefit of a particular political official").<sup>29</sup> By analogy, if an investigation were to reveal that a contribution made to a PAC were earmarked specifically for an elected official's or candidate's authorized committee, or that the PAC is effectively treated by the candidate/elected official as his or her own committee, then these contributions would count toward the \$1,500 yearly limitation from the contributor.

CONCLUSION. This Board's determinations, enumerated on pages 9-10, do not necessarily dispose of all the issues relevant to this situation, but are based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this advisory opinion. Other City orders, or other laws, such as state or federal statutes or rules, may also apply.

The Board's legislative recommendations are intended to encourage discussion, and are not intended to imply or reflect any conclusion that any political contributor, elected official or political committee has violated any law, rule, or statute. We appreciate the opportunity to opine on this matter, and are making our Executive Director available to consult with the IG or representatives of any authorized political committee of any elected City official or candidate for elected City office, or with any other City officials or employees, about our determinations and recommendations.

RELIANCE. This advisory opinion may be relied upon by any person involved in the specific transactions or activities with respect to which this opinion is rendered.



Stephen W. Beard,  
Chair

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<sup>29</sup> See "Questions About the Pay to Play Rule," <http://www.sec.gov/divisions/investment/pay-to-play-faq.htm>.



CITY COUNCIL  
CITY OF CHICAGO  
COUNCIL CHAMBER  
SECOND FLOOR, CITY HALL  
TELEPHONE 312-744-6800



November 18, 2014

Joseph M. Ferguson  
Inspector General  
740 N. Sedgwick Street  
Suite 200  
Chicago, IL 60654

Steven I. Berlin  
Executive Director  
Board of Ethics  
740 N. Sedgwick  
Suite 500  
Chicago, IL 60654

Dear General Ferguson and Director Berlin:

We are writing to request an investigation into possible violations of Chicago's ethics ordinance regarding municipal pension funds and municipal advisors in the City of Chicago Municipal Employees' Annuity and Benefit Fund (MEABF).

According to a report by the International Business Times on November 13, 2014, "*Chicago Mayor Rahm Emanuel Accepted Campaign Contributions From Financial Firms Managing City Pension Money*," municipal advisors at several City of Chicago pension funds "have since 2011 poured more than \$600,000 in contributions into Mayor Rahm Emanuel's campaign operation and political action committees (PACs)". The Municipal Employees' Annuity and Benefit Fund of the City of Chicago ("MEABF") is a governmental defined benefit plan established under Illinois State Law.

This report raises serious questions about whether the ethics law was violated when municipal investment advisers who receive compensation for providing advice to MEABF gave massive political contributions to the campaigns or political action committees of public officials who oversee or exert influence over those funds and advisors.

EXHIBIT A

Page Two  
November 18, 2014  
Joseph M. Ferguson  
Steven I. Berlin

Accordingly, we are requesting an investigation at the soonest possible date into the possible violations of Chicago's ethics ordinance, in order to ensure its proper enforcement and to restore public confidence that pay to play restrictions in our law will be upheld.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph M. Ferguson". The signature is stylized with a large, sweeping initial "J" and "F".

Alderman, 2<sup>nd</sup> Ward

A handwritten signature in black ink, appearing to read "Steven I. Berlin". The signature is cursive and somewhat difficult to decipher due to its fluid style.

Alderman, 32<sup>nd</sup> Ward

A handwritten signature in black ink, appearing to read "John Conner". The signature is cursive and features a long, horizontal stroke at the end.

Alderman, 45<sup>th</sup> Ward





CITY COUNCIL  
CITY OF CHICAGO

COUNCIL CHAMBER  
SECOND FLOOR, CITY HALL  
TELEPHONE 312-744-6800

November 18, 2014

Mr. Andrew Ceresney  
Director, Division of Enforcement  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: Chicago Pension Municipal Advisors Violations

Dear Director Ceresney:

We are writing to you today to ask your Enforcement Division to conduct an investigation into possible violations of the Securities and Exchange Commission's rules regarding municipal pension funds and municipal advisors in the City of Chicago Municipal Employees' Annuity and Benefit Fund (MEABF).

According to a report by the International Business Times on November 13, 2014, "*Chicago Mayor Rahm Emanuel Accepted Campaign Contributions From Financial Firms Managing City Pension Money*," municipal advisors at several City of Chicago pension funds "have since 2011 poured more than \$600,000 in contributions into Mayor Rahm Emanuel's campaign operation and political action committees (PACs)". The Municipal Employees' Annuity and Benefit Fund of the City of Chicago is a governmental defined benefit plan established under Illinois State Law.

It is our understanding that SEC Rule 206(4)-5(a)(1) specifically prohibits municipal investment advisers and all of their firms, including pooled investment funds or "fund of funds", from receiving compensation on fees for providing advice to a government entity like the City of Chicago's MEABF within two years after contributing to any campaigns or political action committees of public officials who oversee or exert influence over the funds and advisors. These pay to play restrictions should cover all MEABF municipal investment advisors, including fund of fund advisors.

EXHIBIT B

Page Two  
November 18, 2014  
Mr. Andrew Ceresney  
Re: Chicago Pension Municipal Advisors Violations


The taxpayers of Chicago and the members of the MEABF of the City of Chicago are the clients of these municipal advisors. We believe that the pay to play actions have violated the public trust and are a breach of the fiduciary duty and we are requesting an investigation by the

Enforcement Division of the Securities and Exchange Commission into violations of the federal pay to play rules. The pay to play actions of these Chicago municipal fund advisors in conjunction with Mayor Rahm Emanuel's campaign operation and political action committees (PACs), like "Chicago Forward," have violated the public trust and are a breach of the fiduciary duty of the givers and recipients. As you may already know, Chicago has a deep history of pay to play. Our goal is to end these tactics and protect the citizens of Chicago and employees' investments.

Our request for an investigation by the Enforcement Division of the Securities and Exchange Commission into violations of the pay to play rules will also help us determine what corrective steps need to be taken by the City Council of the City of Chicago.

Thank you in advance for your assistance on this issue.

Sincerely,



Alderman, 2<sup>nd</sup> Ward



Alderman, 32<sup>nd</sup> Ward



Alderman, 45<sup>th</sup> Ward

Enc: IBT article, 11-13-14, "Chicago Mayor Rahm Emanuel Accepted Campaign Contributions From Financial Firms Managing City Pension Money."