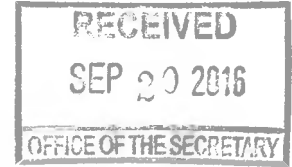


File No. _____

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549



In the Matter of

Pershing Square Capital Management, L.P.
888 Seventh Avenue, 42nd Floor, New York, NY 10019

APPLICATION FOR AN ORDER PURSUANT TO
SECTION 206A OF THE INVESTMENT ADVISERS
ACT OF 1940, AS AMENDED, AND RULE 206(4)-5(e),
EXEMPTING PERSHING SQUARE CAPITAL
MANAGEMENT, L.P. FROM SECTION 206(4) OF THE
INVESTMENT ADVISERS ACT OF 1940, AND RULE
206(4)-5(a)(1) THEREUNDER

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This Application, including Exhibits, consists of 47 pages
Exhibit Index appears on page 28

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Pershing Square Capital)	OF THE INVESTMENT ADVISERS
Management, L.P.)	ACT OF 1940, AS AMENDED,
)	AND RULE 206(4)-5(e),
)	EXEMPTING PERSHING SQUARE
)	CAPITAL MANAGEMENT, L.P.
)	FROM SECTION 206(4) OF THE
)	INVESTMENT ADVISERS ACT OF
)	1940, AND RULE 206(4)-5(a)(1)
)	THEREUNDER

I. PRELIMINARY STATEMENT AND INTRODUCTION

Pershing Square Capital Management, L.P. (“PSCM”) hereby applies to the U.S. Securities and Exchange Commission (the “Commission”) for an order for exemptive relief pursuant to Section 206A of the Investment Advisers Act of 1940, as amended (the “Act”), and Commission Rule 206(4)-5(e) (the “Rule”). PSCM requests that, if necessary, it be exempted from the two-year prohibition on compensation that may be imposed by the Rule in connection with investment advisory services provided to the Massachusetts Pension Reserves Investment Management Board (“MassPRIM”), as a consequence of a \$500 personal political contribution made by a former employee whom the Commission may consider to have been a covered associate. The former employee, who was an investment analyst and not an executive officer or its equivalent, failed to pre-clear his contribution through PSCM’s compliance department, in violation of PSCM’s policy governing political contributions. He made the contribution in 2013, in response to a solicitation from a long-time personal friend who was the potential

candidate's sister. The potential candidate unsuccessfully sought to appear as a candidate for Governor on the Massachusetts Democratic primary election ballot in 2014. The former employee played no role in obtaining or retaining MassPRIM as an investor in the PSCM fund and, to the best of his recollection and PSCM's knowledge, he never met with MassPRIM representatives. He made the contribution for purely personal reasons, more than two years after MassPRIM initially invested in funds managed by PSCM. In light of these circumstances, and for the reasons stated below, PSCM respectfully submits that even if the contribution is deemed to be covered by the Rule, the Commission should grant an exemption, in keeping with the Rule's underlying policy and purpose.

II. Statement of Facts

A. The Applicant

PSCM is a Delaware limited partnership registered with the Commission as an investment adviser under the Act. As of May 31, 2016, PSCM had approximately \$12.3 billion in assets under management. PSCM provides investment advisory services to private funds, including Pershing Square, L.P., which is excluded from the definition of "investment company" by section 3(c)(7) of the Act. As of May 31, 2016, there were 363 investors with balances in Pershing Square, L.P.

B. The Contributor

The former employee who made the contribution that is the subject of this Application is Paul Hilal (the "Contributor"). The Contributor was employed by PSCM between August 1, 2007, and February 5, 2016, and during that period he lived in New York City. At the time of the contribution in question, the Contributor was an investment analyst within PSCM's Investment Team (which includes CEO William A. Ackman, Ben Hakim, and several employees with the title "Analyst"). His primary duties as an analyst

were to identify investment opportunities for PSCM's funds and to manage those investments. He was not, however, tasked with encouraging any investors, including government entities, to initiate or maintain an investment in the PSCM funds. The Contributor was not at any time a member of PSCM's Investor Relations Team, which was responsible for regularly engaging with investors. He did not meet with most investors, and any meetings he did have with investors were collateral to his primary responsibility of assessing and managing specific investments for the funds.

At various times over the course of his employment with PSCM, the Contributor was occasionally invited by members of PSCM's Investor Relations Team to participate in meetings with potential or existing investors. In these meetings, often in response to a specific request from the potential or existing investor, the Contributor was asked to describe PSCM's investment process and to provide information regarding existing investment positions within the funds for which he was responsible. In addition, he would sometimes be asked to describe PSCM's approach to activist investing and how specific investments are consistent with PSCM's approach to investing. Like other employees, the Contributor and other analysts were subject to PSCM's internal compliance policies governing political contributions, regardless of whether they were "covered associates" within the meaning of the Rule. In some internal documents, analysts are referred to as "covered associates" out of an abundance of caution, reflecting this conservative approach to administering compliance with PSCM's policies.

PSCM submits that, on balance, the Contributor was not a "covered associate" within the meaning of the Rule, as his activities did not rise to the level of soliciting investments in PSCM's funds. PSCM is mindful that the Commission may take a

different view as to whether the Contributor was a “covered associate.” Even if the Commission nonetheless deems him to have been a covered associate, PSCM respectfully submits that an exemption is warranted in this case.

C. The Government Entity

MassPRIM (the “Client”), which invests state pension plan assets, is invested in Pershing Square, L.P. The Client’s initial investment in Pershing Square, L.P. was made by the Client’s discretionary advisor in April 2011, and the Client’s final investment was made in February 2012. The contribution at issue in this Application was made on August 27, 2013, more than two years after the initial investment, and more than 18 months after the final investment.

D. The Potential Candidate

The contribution in question was made to Juliette Kayyem, an individual who, on August 20, 2013, filed papers with the Massachusetts Office of Campaign and Political Finance to form a candidate committee, and who announced the following day that she was running for the Democratic nomination for Governor of Massachusetts. The Governor or his or her designee is an *ex officio* member of the Client’s board and has appointment authority with respect to two members of the Client’s nine-member board, meaning that the Governor is an “official” within the meaning of the Rule.

At the Democratic state party convention on June 14, 2014, however, Ms. Kayyem failed to garner the fifteen percent of state party delegate votes required for an individual to be listed as a candidate on the ballot in the primary election.¹ Accordingly,

¹ See Joshua Miller, *Grossman, Coakley, Berwick reach primary*, Boston Globe, June 14, 2014, available at <https://www.bostonglobe.com/metro/2014/06/14/democrats-rally-worcester-state-party-convention/Wvk0JOZXYD8NrGg54jVVIP/story.html>.

she was neither a candidate on the ballot in the Democratic primary election nor a candidate in the subsequent general election. No Massachusetts voter ever had an opportunity to cast a vote for Ms. Kayyem. Nor has she ever held elective office.²

Given the early demise of her nascent campaign, and the remote prospects she had of ever making it onto the ballot, the Applicant submits that Ms. Kayyem should not be treated as a “candidate” within the meaning of the Rule, though PSCM acknowledges that the Commission may take a different view.

To the best of PSCM’s knowledge, Ms. Kayyem is completely unaffiliated with the Client. She has never been a member of the Client’s board, has never had any authority or influence with respect to the Client’s selection of investment advisers, and has never had any authority to appoint any person with such authority or influence.

E. The Contribution

On August 27, 2013, the Contributor made a \$500 personal contribution to Ms. Kayyem (the “Contribution”) without PSCM’s knowledge, and without following PSCM’s written procedures for pre-clearing all political contributions. The Contributor is a long-time friend of Ms. Kayyem’s sister, and the Contribution was made in direct response to an email from his friend soliciting a \$500 contribution for her sister’s attempted candidacy. The Contribution was purely personal in nature, based on the Contributor’s relationship with the potential candidate’s sister. The Contributor relates

² On the basis of publicly available information, Ms. Kayyem is currently a Lecturer in Public Policy at the Harvard Kennedy School, a member of the Homeland Security Advisory Council, the founder of Kayyem Solutions, LLC, and the author of “Security Mom: An Unclassified Guide to Protecting Our Homeland and Your Home.”

that he never met with or spoke to the potential candidate, and he never solicited or coordinated any contributions for her.

The Contribution was not related in any way to PSCM's business generally or to its investment contracts with the Client specifically. On the basis of a review conducted by PSCM, it does not appear that the Contributor ever communicated with the Client or its representatives. The Contributor recalls that his practice was to enter all meetings with potential or existing investors in his calendar, and a review of his calendar and other relevant documents did not reveal any contact between the Contributor and any representative of the Client. Neither the Contributor nor any member of PSCM's Investor Relations Team recalls or has any record of contacts between the Contributor and the Client.

Prior to making the Contribution, the Contributor received training on multiple occasions from PSCM compliance personnel regarding PSCM's policy on political contributions, including that policy's requirement that any contribution for a federal, state, or local campaign receive prior clearance from PSCM's Chief Compliance Officer. By not following that procedure, the Contributor denied PSCM the opportunity to consider whether the contribution was in line with PSCM's policy, and also frustrated PSCM's recordkeeping procedures. The Contributor did not subsequently inform PSCM of the Contribution. To the contrary, he completed an annual compliance certification on January 27, 2014, incorrectly stating that he was in compliance with all of PSCM's policies and that he had obtained pre-approval for all of his political contributions made in calendar year 2013.

F. The Client's Investments with PSCM-Advised Funds

The process that led to the Client's investment in Pershing Square, L.P. began in 2011, when the Client's outside consultant contacted PSCM saying that it intended to invest Client's funds in Pershing Square, L.P. The Client's initial investment in Pershing Square, L.P. was made by its discretionary advisor in April 2011, with three additional contributions in May, August, and November 2011. PSCM is not aware of any direct communications between PSCM and the Client in connection with this initial investment.

The Client's second investment was made through a different investment vehicle in January 2012, based on the advice of the Client's outside consultant, with an additional contribution in February 2012. The Client has neither increased nor decreased its investment since then. In July 2012, the assets from the investment vehicle utilized for the 2011 investment were transferred to the investment vehicle utilized for the 2012 investment.

The Contributor played no role in obtaining the Client's investments. To the best of PSCM's knowledge, the Contributor did not attend any of the meetings or participate in any communications with the Client or its representatives that led to the Client's decisions to invest. By contrast, the Client's discretionary advisor and consultant both had established relationships with PSCM well before 2011, and both had other clients invested in PSCM funds.

G. The Adviser's Discovery of the Contribution

Regardless of whether the Contribution fell within the scope of the Rule, had the Contributor sought pre-clearance prior to making the Contribution, as required by PSCM policy, the Contribution either would not have been made or would have been limited to the Rule's \$150 *de minimis* threshold.

This is no mere hypothetical. PSCM Founder and CEO William A. Ackman is also a long-time friend of Juliette Kayyem's sister and received the same solicitation from his friend for a contribution to Ms. Kayyem's campaign. Before making his contribution, Mr. Ackman followed PSCM's procedures and sought pre-approval from PSCM's Chief Compliance Officer to make a \$500 contribution. PSCM in turn sought guidance from counsel, and, after receiving that guidance, Mr. Ackman was pre-cleared to make a contribution to Ms. Kayyem's campaign limited to \$150—which he made on August 30, 2013—instead of the \$500 contribution for which he originally sought approval. The Contributor clearly would have received the same guidance had he not failed to submit a request for pre-approval.

On January 27, 2014, the Contributor completed an annual compliance certification form, in which he certified that he obtained pre-approval for all political contributions made in calendar year 2013, which was not in fact the case with respect to the Contribution that is the subject of this Application. Had the Contributor properly completed PSCM's annual compliance certification, PSCM would have learned of the contribution within five months after it was made.³

Instead, PSCM did not learn of the Contribution until it began the process of responding to the Commission's May 16, 2016 letter seeking, among other things, identification of "all campaign contributions" made by PSCM or by associated

³ As a backstop to its pre-clearance and annual certification procedures, PSCM also routinely retains an outside compliance vendor who conducts quarterly sampling and review of publicly reported political contributions by PSCM's employees, as part of a larger quarterly audit of compliance with various regulatory requirements. The outside compliance consultant's quarterly sampling did not happen to catch the Contribution or identify any contributions that were not in compliance with the Rule.

individuals. Upon receipt of the Commission's letter, PSCM conducted an extensive review of internal and external records of contributions by individuals who may, by their titles or activities, be viewed by the Commission as covered associates. Out of over 100 contributions made between March 15, 2011 and the present (primarily to incumbent federal officials), and other than the Contribution at issue in this Application, PSCM found no contributions of concern and found only two other contributions of which it did not have a record.⁴

In reviewing public databases containing federal, state, and local campaign finance disclosure reports, PSCM learned for the first time of the Contribution by its former employee. PSCM informed the Commission of this discovery in its June 27, 2016 response to the Commission, and indicated that it anticipated filing this exemption application.

H. The Adviser's Pay-to-Play Policies and Procedures

At the time of the Contribution, PSCM's policy governing political contributions (the "Policy") imposed broad pre-clearance requirements upon "Access Persons," which includes all employees, as well as certain family members of Access Persons, requiring pre-clearance through PSCM's Chief Compliance Officer of:

⁴ The first exception is a contribution to Cory Booker made by Analyst William Doyle on July 5, 2013, a contribution which predated Mr. Doyle's employment at PSCM by over six months, but which we include because PSCM treats analysts as if they have a two-year "look back" period out of an abundance of caution. Thus this contribution was identified using external records instead of internal documents. The second exception is a contribution to Cory Booker made by Analyst Brian Welch on July 9, 2013. Mr. Welch had been pre-cleared for this contribution by PSCM, but Mr. Welch did not inform PSCM that the contribution had actually been made. Thus, this contribution was also identified using external records instead of internal documents. The third exception is the August 27, 2013 Contribution at issue in this Application.

Any contribution by an Access Person (or his or her Family Member), and any contribution by a PAC controlled by an Access Person (or his or her Family Member) to any federal, state or local official or candidate's campaign, or to any federal, state or local political party or political committee (e.g., a PAC), or any other political organization exempt from federal income taxes under Section 527 of the Internal Revenue Code For the purposes of this [Policy], contributions may include donations to and/or costs to attend dinners, parties and other events that have associations with political candidates or political groups.

See PSCM Compliance Manual, § G, at A-5 (“Contribution Clearance”) [appended hereto as Exhibit A].⁵

Additionally, the Policy prohibited making or soliciting political contributions or otherwise engaging in political activities where the purpose is to assist PSCM in obtaining or retaining business; soliciting political contributions based upon any representation that such solicitation is on behalf of, or in any way endorsed by, PSCM; and doing indirectly, through any other person, anything prohibited by the Policy. *Id.* § H, at A-6 to A-7 (“Prohibited Political Activities of Employees”).

Prior to hire or promotion, the Policy required prospective candidates to provide a list of “any and all” contributions made by that person during the previous two years or six months, depending on the applicable “look back” period. *Id.* § G, at A-6 (“Screening of Newly Hired or Promoted Employees”). Pursuant to the Policy, PSCM kept records of contributions made by Access Persons and certain family members, based on pre-clearance requests. *Id.* (“Recordkeeping Requirements”). As described above, PSCM also required Access Persons to complete an annual compliance certification. *Id.* § N, at A-8 (“Acknowledgment of Receipt and Compliance”). PSCM’s pre-clearance,

⁵ Exhibit A consists of relevant excerpts from the policy manual that was in effect at the time of the August 27, 2013 Contribution. Material unrelated to political contribution policies and procedures has been redacted.

recordkeeping, and annual compliance certification requirements all remain in place to this day.

The Contributor was provided with a copy of the Policy and received training regarding the Policy, including training regarding Rule 206(4)-5, prior to the date on which he made the Contribution.

III. Standard for Granting an Exemption

In determining whether to grant an exemption, Rule 206(4)-5(e) requires the Commission to consider, among other factors:

(1) whether the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act;

(2) whether the investment adviser: (i) before the contribution resulting in the prohibition was made, adopted and implemented policies and procedures reasonably designed to prevent violations of this section; and (ii) prior to or at the time the contribution which resulted in such prohibition was made, had no actual knowledge of the contribution; and (iii) after learning of the contribution: (A) has taken all available steps to cause the contributor involved in making the contribution which resulted in such prohibition to obtain a return of the contribution; and (B) has taken such other remedial or preventive measures as may be appropriate under the circumstances;

(3) whether, at the time of the contribution, the contributor was a covered associate or otherwise an employee of the investment adviser, or was seeking such employment;

(4) the timing and amount of the contribution which resulted in the prohibition;

(5) the nature of the election (e.g., whether it was a federal, state, or local election); and

(6) the contributor's apparent intent or motive in making the contribution which resulted in the prohibition, as evidenced by the facts and circumstances surrounding such contribution.

Each of these factors weighs strongly in favor of granting the relief requested in this Application.

IV. Statement in Support of Exemptive Relief

Rule 206(4)-5 is a prophylactic rule designed to guard against corruption of the process by which investment advisers are selected to advise government entities in the management of assets. *See* Political Contributions by Certain Investment Advisers, 75 Fed. Reg. 41017, 41022 (July 14, 2010) ("SEC Final Rule") (codified at 17 C.F.R. pt. 275). The quintessential example of the harm the Rule seeks to prevent is an investment adviser whose covered associate, in an attempt to obtain business, makes a contribution to a government official who then rewards the contribution by selecting the investment adviser instead of a better-qualified, lower-cost adviser, to the financial detriment of the beneficiaries of those assets. *See id.* at 41022-23.

To protect against such corruption, the Rule prohibits the provision of investment advisory services to a government entity for compensation for two years following a contribution by a covered associate to an "official" of that government entity. 17 C.F.R. § 275.206(4)-5(a)(1). The Commission intended for the Rule to be "strong medicine" to "curb[] participation in pay to play." *See* SEC Final Rule at 41027.

Accordingly, the Rule is extremely broad in scope, and it is not finely tailored to exclude contributions made based on personal political ideology, in the exercise of First

Amendment rights, or based purely on personal or familial relationships. It is prophylactic in nature and can be violated as a result of circumstances wholly unrelated to the harm the Rule was designed to prevent. The consequences of strict application of the Rule can be severe, potentially disrupting the relationship between a client and the investment adviser it selected through a merit-based selection process, as well as compelling the adviser to provide uncompensated advisory services. Despite the best efforts of an adviser, an employee's unintentional violation of the adviser's internal policies could cause the adviser to suffer a financial loss many thousands of times greater than the value of a contribution that the adviser would never have approved in the first place. This is potentially true even when, as here, the contribution was made for purely personal reasons to an unlikely potential candidate with little or no chance of ever being elected to a position with authority to appoint a minority of members to a board with the potential to influence the awarding of state pension funds.

Recognizing that strict and inflexible application of the Rule could lead to harsh and unwarranted results, and intrude upon core rights to free speech, the Commission established a formal process for seeking an exemption when "*imposition of the prohibition is unnecessary to achieve the [R]ule's intended purpose.*" *Id.* at 41049 (emphasis added). The exemption process is an essential safety valve permitting the Commission to grant relief to an investment adviser when the circumstances of a contribution potentially made in violation of the Rule are not related to the harm the Rule seeks to prevent.

Even if the Commission takes the position that the Contributor was a "covered associate" and that Juliette Kayyem was a "candidate" within the meaning of the Rule,

PSCM submits that the Contribution at issue in this Application occurred under precisely the circumstances for which the exemption process was designed. Here, an exemption from the two-year prohibition on compensation is necessary and appropriate, in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, while protecting important First Amendment rights.

In support of that conclusion, PSCM first notes that each of the Client's investments substantially pre-date the Contribution. To the best of PSCM's knowledge, the Contributor had no contact with the Client or its representatives at the time of, or subsequent to, the Client's investments. When the Contributor did interact with potential or existing investors (though not the Client), to the best of PSCM's knowledge, his role was merely to describe PSCM's investment strategy, often in response to a specific request from the investor.

Moreover, the Contribution at issue in this Application was made to an individual whose name never appeared on any election ballot and whose longshot campaign attracted the attention of the Contributor only because of his personal friendship with the potential candidate's sister, highlighting the lack of any business motive for the Contribution. As contemporaneous media reports reflect (the few that made any mention of Ms. Kayyem, that is), anyone seeking in 2013 to make a contribution to a plausible candidate for Massachusetts Governor to further their business interests would have been

exceedingly unlikely to choose Ms. Kayyem. Local media described Ms. Kayyem's entry into the race as a longshot bid, in comparison to much better known candidates.⁶

Given the absence of any connection between the Contribution and the Client's investment decisions, the purely personal basis for the Contribution, and the lack of any evidence that PSCM or the Contributor intended to, or actually did, interfere with the Client's merit-based process for the selection or retention of advisory services, the public interest is best served by issuing an exemption. Causing PSCM to forfeit compensation for the two-year period subsequent to the Contribution could result in a financial loss that is thousands of times the amount of the Contribution. The policy underlying the Rule is served by ensuring that no improper influence is exercised over investment decisions by government entities as a result of campaign contributions, and not by compelling disgorgement of compensation as a result of unintentional violations.

The other factors suggested for the Commission's consideration in Rule 206(4)-5(e) similarly weigh in favor of granting an exemption to avoid consequences disproportionate to the violation.

Policies and Procedures before the Contribution. PSCM had, at the time the Contribution was made, and still has today, a robust Policy governing political contributions and political activities by its employees. That Policy conforms to the requirements of the Rule and is reasonably designed to prevent violations. In addition,

⁶ See Joshua Miller, *Juliette Kayyem announces run for Mass. governor*, Boston Globe Aug. 21, 2013, available at <https://www.bostonglobe.com/metro/2013/08/21/juliette-kayyem-former-homeland-security-official-announces-run-mass-governor/y4SKsPCYfnMRG9zc2zmZ2M/story.html> ("Political observers do not see Kayyem's entry having an effect on whether other potential candidates jump into the fray." "Other potential Democratic candidates [include] Attorney General Martha Coakley, Mayor Joseph Curtatone of Somerville, and US Representative Michael E. Capuano.").

PSCM requires annual verification of compliance with its political contribution pre-clearance procedures, and it engages a compliance consultant to conduct periodic reviews of compliance with its political contribution policies and procedures. PSCM's recent review of publicly reported political contributions identified only the one \$500 contribution to Ms. Kayyem as presenting potential issues under the Rule. When PSCM's Policy is followed, it works, as demonstrated by Mr. Ackman's pre-clearance of his contribution to Ms. Kayyem, and the fact that his contribution was limited to \$150 after receiving guidance consistent with PSCM's Policy.

Actual Knowledge of the Contribution. The Contributor did not inform PSCM of the Contribution and incorrectly certified on an annual compliance form covering calendar year 2013 that all contributions he made during the year had been pre-cleared. PSCM therefore learned of the Contribution only in connection with efforts undertaken in response to the Commission's May 16, 2016 letter. Other than the Contributor, no PSCM employee was aware of the Contribution.

Adviser's Response After the Contribution. By the time PSCM discovered the Contribution while preparing its response to the Commission's letter, the Contributor was no longer a PSCM employee. Nonetheless, PSCM contacted the Contributor and asked him to request a full refund from Ms. Kayyem's campaign committee. The Contributor requested and received a full refund of his \$500 Contribution. PSCM also reviewed its current procedures and decided to enhance them by prohibiting state and local contributions altogether and requiring employee certifications to be submitted on a quarterly, rather than annual, basis.

Status of the Contributor. The Contributor was not a general partner, managing member or executive officer, or other individual with a similar status or function, and did not supervise any employee who solicits investors. To the best of PSCM's knowledge, the Contributor had no contact with the Client or its representative in connection with, at the time of, or subsequent to the Client's investments. The Contributor's primary job responsibility was to analyze potential investments. On the limited occasions when the Contributor did interact with potential or existing investors, generally at their request, his role was to describe PSCM's investment strategy or to discuss specific investments for which he was responsible. As discussed above, the Applicant submits that the Contributor is not a "covered associate" within the meaning of the Rule, as his activities do not rise to the level of "soliciting" investments in PSCM's funds, as that term is commonly understood. Even if the Commission determines otherwise, the remote connection between the Contributor's ordinary job duties and the conduct with which the Rule is principally concerned weighs in favor of granting an exemption.

Timing and Amount of the Contribution. The last of Client's investments took place more than 18 months prior to the August 27, 2013 Contribution. Since then, the Client has neither increased nor decreased its investment. The Contribution was in the amount of \$500, which slightly exceeds the Rule's permissible *de minimis* contribution level, but is a relatively small sum overall, particularly when compared to the outsize impact it could have on the Contributor's former employer. The Contribution would have been permissible had it been reduced in value by just \$350.

Nature of the Election. Rule 206(4)-5 does not define "candidate." Whether or not under state law Ms. Kayyem was considered a "candidate" after she filed a

declaration of candidacy with a state regulatory agency on August 20, 2013, and announced her candidacy for Governor on August 21, the Commission should not treat Ms. Kayyem as a “candidate” for purposes of the Rule, given that she never qualified for any ballot. Even if the Commission were to treat Ms. Kayyem as a “candidate,” any connection between the Contribution and the type of influence the Rule seeks to prevent was remote in the extreme. At the time of the Contribution, she was a private citizen embarking upon a longshot, unsuccessful attempt to gain enough support at a state party convention to obtain a ballot listing as a candidate in a primary election. Any link between Ms. Kayyem at the time of the Contribution and the type of influence over the selection of investment advisers that the Rule is intended to prevent was, to say the least, highly attenuated.

Contributor’s Intent or Motive In Making the Contribution. The Contributor made his Contribution spontaneously, in response to a request from a long-time friend on behalf of her sister. He does not recall ever meeting or speaking with the potential candidate. The exceptionally long odds the potential candidate faced, borne out by her failure even to make it onto the primary ballot, belie any plausible business motive for supporting her. There is no indication that the Contributor ever met with the Client or its representatives, and the Client had already been an investor in a PSCM-managed fund for more than two years at the time the Contribution was made. The absence of any business-related intent strongly weighs in favor of an exemption.

V. Precedent

Commission precedent heavily favors granting the Application. In many respects, the circumstances presented here offer a stronger basis for exemption than existed in

several of the cases in which the Commission previously granted exemptions.⁷

Moreover, the facts here are entirely unlike those in the case of the one exemption application that the Commission effectively denied.⁸

The facts here closely resemble, and in fact are more favorable than, those in the recently granted exemption application of *Brookfield Asset Management Private Institutional Capital Adviser US, LLC* (2016), as well as last year's granted application in *Crestview Advisers, LLC* (2015).

Brookfield. In *Brookfield*, the Commission granted an exemption where a covered associate made a contribution of \$400 to an incumbent New York City Councilwoman who was running for Mayor at the time of the contribution, but who lost

⁷ See *Angelo, Gordon & Co., L.P.*, File No. 803-00227 (May 2, 2016) (second amended application), Investment Advisers Act Release Nos. IA-4418 (June 10, 2016) (notice), and IA-4444 (July 6, 2016) (order); *Brookfield Asset Management Private Institutional Capital Adviser US, LLC et al.*, File No. 803-00222 (Oct. 7, 2015) (amended application), Investment Advisers Act Release Nos. IA-4337 (Feb. 22, 2016) (notice), and IA-4355 (Mar. 21, 2016) (order); *Fidelity Management & Research Company and FMR Co., Inc.*, File No. 803-00225 (Sept. 24, 2015) (second amended application), Investment Advisers Act Release Nos. IA-4220 (Oct. 8, 2015) (notice), and IA-4254 (Nov. 3, 2015) (order); *Starwood Capital Group Management LLC*, File No. 803-00223 (July 24, 2015) (fourth amended application), Investment Advisers Act Release Nos. IA-4182 (Aug. 26, 2015) (notice), and IA-4203 (Sept. 22, 2015) (order); *Crescent Capital Group, LP*, File No. 803-00219 (Mar. 12, 2015) (amended application), Investment Advisers Act Release Nos. IA-4140 (July 14, 2015) (notice), and IA-4172 (Aug. 14, 2015) (order); *T. Rowe Price Associates, Inc. and T. Rowe Price International Ltd.*, File No. 803-00224 (Oct. 29, 2014) (amended application), Investment Advisers Act Release Nos. IA-4046 (Mar. 12, 2015) (notice), and IA-4058 (Apr. 8, 2015) (order); *Crestview Advisers, LLC*, File No. 803-00217 (Nov. 13, 2014) (third amended application), Investment Advisers Act Release Nos. IA-3987 (Dec. 19, 2014) (notice), and IA-3997 (Jan. 14, 2015) (order); *Ares Real Estate Management Holdings, LLC*, File No. 803-00221 (July 15, 2014) (amended application), Investment Advisers Act Release Nos. IA-3957 (Oct. 22, 2014) (notice), and IA-3969 (Nov. 18, 2014) (order); *Davidson Kempner Capital Management LLC*, File No. 803-00215 (July 25, 2013) (amended application), Investment Advisers Act Release Nos. IA-3693 (Oct. 17, 2013) (notice), and IA-3715 (Nov. 13, 2013) (order).

⁸ *TL Ventures, Inc.*, File No. 803-00218 (Sept. 17, 2013) (application), and Investment Advisers Act Release No. IA-3859 (June 20, 2014) (cease and desist order entered prior to withdrawal of application).

the Democratic primary. In contrast, here the Contribution was made to a private citizen who never even qualified to appear on a ballot as a candidate for office. In *Brookfield*, the covered associate had actually developed a relationship directly with the official, whereas here the Contributor had no contact at all with the potential candidate and instead contributed based on a solicitation by a long-time friend. Moreover, in *Brookfield*, one of the public investor's investments in the adviser's fund took place after the contribution. Here the Client had initially invested in PSCM's funds more than two years prior to the Contribution at issue. The amount of the contribution in *Brookfield* is approximately in line with the \$500 Contribution at issue here.

Crestview. In *Crestview*, the Commission granted an exemption where a covered associate who was a senior investment professional made a \$2,500 contribution to an incumbent governor's federal campaign. The covered associate in *Crestview* interacted directly with both the governmental investor and the Governor. In contrast, to the best of PSCM's knowledge, here the Contributor never met with the Client or Ms. Kayyem. In both *Crestview* and here, the employee who made the contribution generally engaged with investors only to make substantive presentations regarding investment strategy.

As summarized below, the other exemption applications granted by the Commission likewise also provide strong support for granting this Application.

Policies and Procedures before the Contribution. PSCM's policies and procedures were on par with or exceeded the policies that other firms receiving exemptions had in place at the time the relevant contributions were made.⁹ As in all the

⁹ See *Angelo* (applicant's policies required pre-clearance of all employee contributions and annual confirmation of compliance); *Fidelity* (applicant's policies required pre-clearance of all employee contributions); *Starwood* (including a pre-clearance (continued...))

cases in which exemptions were granted, PSCM's Policy mandated pre-clearance and imposed regular certification requirements.¹⁰ Moreover, PSCM's Policy exceeded the scope of the Commission's Rule by covering all employees and advisory board members, including some family members, not just covered associates.

Actual Knowledge of the Contribution. As with all of the applications in which exemptions have been granted, no PSCM employee other than the Contributor had actual knowledge of the Contribution at the time it was made.

Adviser's Response After the Contribution. Like the advisers whose exemption applications were granted, once it learned of the Contribution, PSCM requested that the Contributor seek a refund.¹¹ The Contributor in turn obtained a full refund.

Status of the Contributor. In several of the applications that have been granted, the covered associate was a senior executive of the adviser who clearly was a covered associate because of executive officer status, which is not the case here.¹² Here, the

requirement and requiring annual certification); *Crescent* (including a pre-clearance requirement and regular compliance surveys); *T. Rowe Price* (including a pre-clearance requirement and annual compliance certification); *Ares Real Estate* (including a pre-clearance requirement and a periodic compliance certification); *Davidson Kempner* (including a pre-clearance requirement and an annual compliance certification).

¹⁰ In *Crescent*, it is not clear whether certifications were actually required, but "quarterly surveys of all covered associates" were conducted. *Crescent Capital Group, LP*, Investment Advisers Act Release No. IA-4140 (July 14, 2015) (notice).

¹¹ *Compare Angelo* (contributor received a refund), *Brookfield* (contributor received a refund), *Fidelity* (firm informed contributor "that he should request a refund immediately"), *Starwood* (contributor requested full refund), *Crescent* (applicant requested refund), *T. Rowe Price* (contributor obtained refund), *Ares Real Estate* (contributor obtained full refund), and *Davidson Kempner* (applicant and contributor obtained refund), with *TL Ventures* (refund not sought and exemption not granted).

¹² See *Fidelity* (contributor was Group Chief Investment Officer of the applicant and supervised employees who solicited investment advisory business from governmental entities); *Starwood* (contributor was firm's Chief Operating Officer and was primarily responsible for internal management and a member of firm's Executive and Investment (continued...))

Contributor was not an executive officer, and his primary responsibilities as an analyst related to investment strategy, not soliciting investors. The Contributor's activities that arguably qualify him as a covered associate were tangential to his primary responsibilities.

Timing and Amount of the Contribution. The \$500 Contribution here is near the bottom of the range for applications in which exemptions have been granted, which have involved contributions of \$400 to \$2,500.¹³ Moreover, whereas here the investments by the Client took place before the Contribution at issue, in some of the cases in which the Commission granted exemptions, the investors actually made investments in the advisers' funds after the prohibited contributions, much more squarely implicating the policy behind the Rule than is the case here.¹⁴

Nature of the Election. In prior cases in which exemptions have been granted, it was clear that the recipient of the contribution was actually a bona fide candidate for election to a covered office, or even an incumbent officeholder.¹⁵ Here Ms. Kayyem

Committees); *Crescent* (contributor was a managing partner of the applicant); *T. Rowe Price* (contributor was vice president); *Ares Real Estate* (the contributor was a senior management executive and senior partner); *Davidson Kempner* (contributor was a managing member and senior investment professional).

¹³ See *Angelo* (in-kind contribution of \$892.17); *Brookfield* (contribution of \$400); *Fidelity* (contribution of \$500); *Starwood* (contribution of \$1,000); *Crescent* (contribution of \$1,000); *T. Rowe Price* (contribution of \$250); *Crestview* (contribution of \$2,500); *Ares Real Estate* (contribution of \$1,100); *Davidson Kempner* (contribution of \$2,500).

¹⁴ See, e.g., *Angelo*; *Starwood*; *Davidson Kempner*.

¹⁵ See *Fidelity* (recipient was an independent candidate for Governor of Massachusetts); *Ares Real Estate* (official was an incumbent governor); *Davidson Kempner* (official was incumbent state treasurer).

never even qualified to be on a primary ballot, much less a general election ballot. She has never held any elective office.

Contributor's Intent or Motive Making the Contribution. As is the case here, in several of the cases in which the Commission has granted an exemption, the contribution was made not for business reasons or even political reasons, but rather because of a request from a friend.¹⁶ That the Commission granted exemptions in these cases highlights its recognition that the policy behind the Rule is not well served by imposing sanctions where a contribution was made for a non-business related reason such as personal friendship.

Notably, the one case in which the Commission did not grant an exemption, *TL Ventures*, is easily distinguishable from the facts here. In *TL Ventures*, the contributor was a managing director and co-founder; the investment adviser had no policies or procedures in place to ensure compliance with the Rule; multiple contributions were made by the senior most executive officer of the firm, in amounts of \$2,000 and \$2,500; both of the contributions appear to have been made to incumbent officials;¹⁷ there is no

¹⁶ See *Angelo* (contributor was co-host of a campaign reception to which he invited neighbors and agreed to contribute toward the cost “based on the recommendation of a former business colleague”); *Fidelity* (contributor was a social friend of the official and made contribution on that basis); *Starwood* (contributor previously worked for official and had forged a “strong professional and personal relationship”); *Crescent* (contributor made contribution in response to request by “an individual known” to contributor). The Commission has also granted exemptions where the contribution was made for ideological or personal political reasons. See *T. Rowe Price* (contributor made a contribution after he watched television coverage of “highly contentious and publicized” recall election); *Ares Real Estate* (contributor supported “general social and economic positions” and “certain political viewpoints” of official); *Davidson Kempner* (contributor had met with official and discussed non-investment-related issues, such as military service and cost-cutting measures).

¹⁷ According to relevant records from the Pennsylvania and Philadelphia campaign finance databases.

indication the contributions were motivated purely by personal friendship; the applicant argued to the Commission that it was exempt from the requirement to register as an investment adviser; and the applicant consciously chose not to request a refund of the contribution at issue. By contrast, PSCM had a robust compliance Policy in place at the time of the Contribution; a single contribution only slightly above the Rule's *de minimis* threshold occurred when a non-executive employee failed to follow the firm's policy requiring pre-clearance; and the Contribution was made in response to a request from a long-time friend to a private citizen who never qualified to be on the ballot. Even so, PSCM asked the Contributor to pursue a refund of the contribution (which the Contributor has received), and is taking remedial steps to enhance its already extensive procedures for identifying and vetting contributions.

In sum, PSCM submits that a careful review of precedent compels a finding that imposition of the two-year ban on compensation would be inconsistent with the purposes of the Rule and contrary to precedent.

VI. Request for Order

PSCM seeks an order pursuant to Section 206A of the Act, and Rule 206(4)-5(e), exempting it from the prohibition on accepting compensation, under Rule 206(4)-5(a)(1), with respect to services provided to the Client within the two-year period following the date of the Contribution.

VII. Conclusion

For the foregoing reasons, the Applicant submits that the proposed exemptive relief, based on the above representations, would be fair and reasonable under the circumstances and would serve the fundamental purposes of the Rule.

When drafting the Rule, the Commission was sensitive to First Amendment considerations. Indeed, the Commission highlighted its concern to avoid impinging on First Amendment interests in the opening section of the preamble to the Final Rule. *See* SEC Final Rule at 41023 (the Rule sought to “avoid[] unnecessary burdens on the protected speech and associational rights of investment advisers and their covered employees”). In this case, declining to issue an exemption would frustrate the purposes of the Rule by allowing it to sweep far too broadly. The facts underlying this Application are so remote from the anti-corruption purpose of the Rule that this is precisely the kind of case for which the Commission created the exemption process, as a safety valve to avoid Draconian outcomes. Any sanction sought by the Commission on these facts could raise significant First Amendment concerns. At the same time, exercising the Commission’s authority to grant this exemption application would actually strengthen the Commission’s future ability to apply the Rule vigorously when strict enforcement is called for.

VIII. Procedural Matters

Pursuant to Rule 0-4 of the rules and regulations under the Act, a form of proposed notice for the order of exemption requested by this Application is set forth as Exhibit D to this Application. In addition, a form of proposed order of exemption requested by this Application is set forth as Exhibit E to this Application.

On the basis of the foregoing, the Applicant submits that all the requirements contained in Rule 0-4 under the Act relating to the signing and filing of this Application

have been complied with and that the Applicant, which has signed and filed this application, is fully authorized to do so.

The Applicant requests that the Commission issue an order without a hearing pursuant to Rule 0-5 under the Act.

Dated: September 13, 2016

Respectfully submitted,

Pershing Square Capital Management, L.P.

By: _____

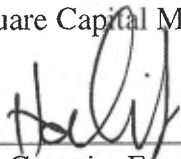

Halit Coussin, Esq.
Chief Legal Officer
Chief Compliance Officer

Exhibit Index

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Exhibit A

PERSHING SQUARE CAPITAL MANAGEMENT, L.P.

PERSHING SQUARE GP, LLC

PERSHING SQUARE HOLDINGS GP, LLC

COMPLIANCE MANUAL

May 2010

Including Certain Updated Appendices



G. Political Contributions

1. Rule 206(4)-5 – Political Contributions by Certain Investment Advisers

Limitations on Political Contributions

- (i) Under Rule 206(4)-5 of the Advisers Act, a firm may not be compensated by any government entity for advisory services for two years after such firm, its “covered associates” or any political action



committee (“PAC”) controlled by such firm or its covered associates makes any contribution to any government official with (a) authority or influence regarding a public plan’s selection of an adviser or investment pool; or (b) authority to appoint individuals with authority or influence regarding a public plan’s selection of an adviser or investment pool (e.g., a governor who appoints members of a state pension plan investment committee).

- (ii) Exception: Rule 206(4)-5 provides a *de minimis* exception, allowing a covered associate of a firm to (i) contribute up to \$350 per election to any government official or candidate described in section 1 above for whom the covered associate is entitled to vote; or (ii) contribute up to \$150 to any government official or candidate described in section 1 above for whom the covered associate is not entitled to vote.

No Solicitation or Coordination of Contributions

Under Rule 206(4)-5, a firm and its covered associates are prohibited from soliciting or organizing other persons or PACs to make contributions (i) to elected officials in a position to influence the selection of a firm or (ii) to political parties in the state or locality where a firm is providing or seeking public plan business.

Ban on Circumvention Through Indirect Contributions

Under Rule 206(4)-5, a firm and its covered associates are prohibited from doing anything indirectly which, if done directly, would violate Rule 206(4)-5, e.g., a firm and its covered associates would be prohibited from using third-party solicitors, attorneys, family members or companies affiliated with the firm to make contributions that would violate Rule 206(4)-5.

Soliciting Public Plan Fund Investors

- (i) Under Rule 206(4)-5, a firm or its covered associates shall not provide or agree to provide, directly or indirectly, payment to any third-party to solicit public plan investors for investment advisory services on its behalf, other than SEC-registered broker-dealers, municipal advisers or investment advisers that are themselves subject to pay-to-play regulation (“regulated persons”). For the avoidance of doubt, the foregoing does not affect the ability of the Firm’s personnel to solicit public plan investors directly.¹⁸

No Compensation for Advisory Services After a Prohibited Contribution

- (i) If a firm or any of its covered associates violate any of the prohibitions or limitations on contributions described in Rule 206(4)-5, the firm will be prohibited from receiving compensation for advisory services from such public plan for two years after such prohibited contribution. This is known as the “two-year time-out” provision. A firm may have a fiduciary duty to continue providing advisory services to the public plan until such time as the public plan is able to replace the adviser.
- (ii) Exemption: The SEC may waive the two-year time-out provision, upon a request for exemptive relief from a firm, under circumstances where, among other things, the firm has discovered contributions after they were made and has provided persuasive objective evidence that no “pay to play” was intended.

¹⁸ The compliance date for this provision of Rule 206(4)-5 has been postponed by the SEC as of June 12, 2012 until nine months after the compliance date of a final rule adopted by the SEC by which municipal advisor firms must register under the Exchange Act. However, state, local or internal pay to play provisions and/or lobbyist registration requirements may be triggered by payments made prior to this date.

- (iii) Exemption: A firm may also qualify for an exemption from the two-year time-out provision if a covered associate has made a contribution that inadvertently triggered the two-year time-out and: (a) the contribution was \$350 or less per election; (b) the firm discovered the contribution within four months of it having been made; and (c) within 60 days of discovery, the contributor obtained the return of the contribution. The Firm is prohibited from claiming this exemption more than two times per 12-month period and no more than once for each covered associate regardless of time period.

Other Applicable Laws, Rules and Regulations

Certain states, counties, municipalities and public pension plans have adopted regulations and/or policies limiting or completely restricting a firm from doing business with such state, locality or plan, as applicable, if political contributions are made by the firm, its employees, or, in some instances, an employee's spouse, civil union partner, or immediate family member residing in the same home. Under these laws and policies, a single prohibited political contribution to a candidate, political party, political group, PAC, or a state or municipal official, may disqualify or otherwise restrict the Funds from accepting investments by certain investors.

The Firm's Political Contribution Policy and Procedures

The Firm's CCO shall be responsible for the implementation and enforcement of the following procedures (the "*Political Contribution Policy*"). To monitor compliance with Rule 206(4)-5 and other relevant laws, rules and restrictions with respect to any state, county, municipality or public pension plan, the Firm's Political Contribution Policy applies to all of the Firm's Access Persons. Any questions concerning this Political Contribution Policy should be directed to the CCO.

Contribution Clearance

Any contribution by an Access Person (or his or her Family Member), and any contribution by a PAC controlled by an Access Person (or his or her Family Member) to any federal, state or local official or candidate's campaign, or to any federal, state or local political party or political committee (e.g., a PAC), or any other political organization exempt from federal income taxes under Section 527 of the Internal Revenue Code, must receive prior clearance by the CCO. For the purposes of this Political Contribution Policy, contributions may include donations to and/or costs to attend dinners, parties and other events that have associations with political candidates or political groups.

Any contribution that a Supervised Person (or his or her Family Member) coordinates for, or solicits on behalf of, any of the recipients listed above, must also receive prior clearance by the CCO.

Requests for clearance should be submitted at least 3 days prior to the desired date of contribution. Upon receiving a request for clearance, the CCO will determine if such contribution is permissible under Rule 206(4)-5 and other relevant laws, rules and restrictions with respect to any state, county, municipality or public pension plan.

Screening of Newly Hired or Promoted Employees

The Firm generally will not hire a new Employee or promote an existing Employee if such person's job functions (i) will include solicitation of advisory business, and such person has made a prohibited contribution within two years before being hired or promoted, or (ii) do not include solicitation of advisory business but include similar status or function to a general partner, managing member or executive officer or the supervision of someone that solicits advisory business, and such person (or his or her Family Member) has made a prohibited contribution within six months before being hired or promoted.

Prior to extending any such offer of employment or promotion, the applicable person shall be required to provide to the CCO a list of any and all contributions made by that person during the previous two years or six months, as applicable. The CCO shall determine what, if any, impact such contributions would have on the Firm's existing and potential business with public plan investors and shall inform the Firm's senior management of any such potential impact.

Recordkeeping Requirements

- (i) The Firm maintains records as to: (i) the names, titles, businesses and residential addresses of its Access Persons; (ii) contributions made by the Firm and its Access Persons (and their Family Members) to government officials (including candidates for federal, state or local office), as well as all PACs and political parties; and (iii) public plan investors in pooled investment vehicles to which the Firm has provided advisory services within the past five years.

In addition, the Firm will maintain records of any compensation that it pays to SEC-registered broker-dealers, municipal advisers and investment advisers for the solicitation of public plan investors in pooled investment vehicles managed by the Firm.¹⁹

H. Prohibited Political Activities of Employees

In addition to the above pre-approval requirement, all Access Persons are prohibited from:

- making or soliciting political contributions or otherwise engaging in political activities where the purpose is to assist the Firm in obtaining or retaining business;
- soliciting political contributions based upon any representation that such solicitation is on behalf of, or in any way endorsed by, the Firm;

¹⁹ Rule 206(4)-5 does not require the Firm to keep records of the regulated persons/entities that solicited public plans for investment advisory services on the Firm's behalf prior to June 13, 2012.

- applying undue pressure, directly or indirectly, on any other Access Person that infringes upon such Access Person's right to decide whether, to whom, in what capacity, and in what amount or extent to make contributions or engage in political activities; and
- doing indirectly, through any other person, anything prohibited by these policies.

Access Persons should understand that applicable and proposed laws, rules, regulations and/or policies governing political contributions are very complex, differ in the various jurisdictions, and are subject to continual changing legislative actions and judicial interpretations. As a result, the Firm encourages all Access Persons to consult with the CLO or the CCO regarding any questions or interpretive guidance which may arise with respect to these policies.





N. Acknowledgment of Receipt and Compliance

The Firm will provide each Access Person with a copy of the Code and any amendments hereto. Any questions regarding any provision of the Code or its application should be directed to the CCO.

Each Access Person must provide the CCO with a written acknowledgement (in the form attached as Exhibit 4 or Exhibit 5, as applicable) evidencing the fact that such Access Person has received, understands, and will comply with, the Firm's Compliance Manual and the Code.

In addition, each Access Person must provide the CCO with an annual Conflicts Questionnaire and Regulatory Compliance Certification (in the form attached as Exhibit 6) which includes, among other things, a representation that such Access Person has reported all holdings and transactions as are required to be reported in accordance with the Code, and complied with the Code in all other respects during the relevant year.

Exhibit B

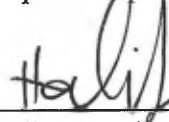
Authorization

All requirements of the Second Amended and Restated Limited Partnership Agreement dated as of January 1, 2005 (and amended from time to time, the "Partnership Agreement") of Pershing Square Capital Management, L.P. ("PSCM") have been complied with in connection with the execution and filing of this Application.

Pursuant to Section 7.1 of the Partnership Agreement of PSCM, and the authorization given by PS Management GP, LLC, the general partner of PSCM, attached hereto, the undersigned is authorized to take all actions, including making applications, on behalf of PSCM. The Partnership Agreement continues to be in force and has not been revoked through the date hereof.

PSCM has caused the undersigned to sign this Application on its behalf in New York City on this 13 day of September 2016.

Pershing Square Capital Management, L.P.



Name: Halit Coussin, Esq.

Title: Chief Legal Officer
Chief Compliance Officer

**WRITTEN CONSENT AND AUTHORIZATION OF THE MANAGING MEMBER OF
PS MANAGEMENT GP, LLC (THE “COMPANY”)**

JULY 27, 2016

WHEREAS the Company is the general partner of Pershing Square Capital Management, L.P. (“PSCM”);

WHEREAS the undersigned, being the managing member of the Company (“Managing Member”) has reviewed that certain Application for an Order Pursuant to Section 206A of the Investment Advisers Act of 1940, as Amended, and Rule 206(4)-5(3), Exempting Pershing Square Capital Management, L.P. from Section 206(4) of the Investment Advisers Act of 1940, and Rule 206(4)-5(a)(1) Thereunder (the “Exemption Application”) and desires that PSCM submit the Exemption Application to the United States Securities and Exchange Commission (“SEC”); and

WHEREAS the Managing Member desires to authorize Halit Coussin, Chief Legal Officer and Chief Compliance Officer of PSCM, to take all necessary and appropriate action to submit the Exemption Application;

NOW BE IT RESOLVED that Halit Coussin be and hereby is authorized to execute the Exemption Application and to take all necessary and appropriate action to provide for its submission to the SEC, with any changes as she deems appropriate;

AND BE IT FURTHER RESOLVED that Halit Coussin be and hereby is authorized to take all such further action and to execute and deliver all such further agreements, instruments, and documents, in the name and on behalf of PSCM, to pay or cause to be paid all expenses, and to take all such other actions as she shall deem necessary or desirable in order to carry out fully the intent and accomplish the purposes of the foregoing resolutions; that the execution and delivery of such agreements, instruments and documents and the performance of any such action shall be conclusive evidence that the same is authorized hereby; and that any and all such actions heretofore or hereafter taken by Halit Coussin within the terms of these resolutions be, and they hereby are, adopted, affirmed, approved and ratified in all respects.



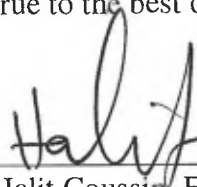
William A. Ackman
Managing Member

Exhibit C

Verification

State of New York County of New York SS: _____

The undersigned being duly sworn deposes and says that she has duly executed the attached Application, dated September 13th, 2016, for and on behalf of Pershing Square Capital Management, L.P.; that she is the Chief Legal Officer and Chief Compliance Officer of such partnership; and that all action by PS Management GP, LLC, and other bodies necessary to authorize deponent to execute and file such instrument have been taken. Deponent further says that she is familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of her knowledge, information and belief.



Name: Halit Coussin, Esq.
Title: Chief Legal Officer
Chief Compliance Officer
Pershing Square Capital Management, L.P.

Subscribed and sworn to before me, a Notary Public, this 13th day of September 2016.

Bernadette J. Jones
Official Seal



My commission expires 12/10/2016

Exhibit D

Proposed Notice for the Order of Exemption

Agency: U.S. Securities and Exchange Commission (the “SEC” or the “Commission”).

Action: Notice of application for an exemptive order under Section 206A of the Investment Advisers Act of 1940 (the “Advisers Act”) and Rule 206(4)-5(e).

Applicant: Pershing Square Capital Management, L.P.

Relevant Advisers Act Sections: Exemption requested under Section 206A of the Act, and Rule 206(4)-5(e), from the provisions of Section 206(4) of the Act and Rule 206(4)-5(a)(1) thereunder.

Summary of Application: The Applicant requests an order granting an exemption from the two-year prohibition on compensation imposed by Section 206(4) of the Act, and Rule 206(4)-5(a)(1) thereunder, to the extent necessary to permit the Applicant to provide investment advisory services for compensation to a government entity within the two-year period following a specified contribution by a potential covered associate.

Filing Dates: The application was filed on September __, 2016.

Hearing or Notification of Hearing: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on [Date], and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer’s interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Commission’s Secretary.

Addresses: Brent Fields, Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. Applicant: Pershing Square Capital Management, L.P., c/o Charles J. Clark, Esq., Schulte, Roth & Zabel LLP, 1152 Fifteenth Street, NW, Suite 850, Washington, DC 20005; Robert K. Kelner, Esq., Covington & Burling LLP, One CityCenter, 850 Tenth Street, NW, Washington, DC 20001.

For Further Information Contact: [], [Title] at [(202) ___ - ____] (Division of Investment Management, SEC).

Supplementary Information: The following is a summary of the Application. The complete application may be obtained for a fee at the Commission's Public Reference Branch.

Applicant's Representations:

The Applicant makes the following representations of fact:

1. The Applicant is registered with the Commission as an investment adviser under the Act. The Applicant advises, among other private funds, Pershing Square, L.P. This fund is excluded from the definition of "investment company" by Section 3(c)(7) of the 1940 Act. A public pension plan that is a government entity of the Commonwealth of Massachusetts (the "Client") is invested in the fund. The investment decisions for the Client are overseen by a nine-member board of trustees. The Governor of Massachusetts or his or her designee is an *ex officio* member of the board, and the Governor appoints two members of the board.
2. Paul Hilal (the "Contributor") is a former employee of the Applicant, who served as an Analyst on Applicant's Investment Team. His primary duties as an Analyst were to

identify investment opportunities for PSCM's funds and to manage those investments. He was not, however, tasked with encouraging any investors, including government entities, to initiate or maintain an investment in the Applicant's funds. The Contributor was not at any time a member of the Applicant's Investor Relations Team, which was responsible for regularly engaging with investors. He did not meet with most investors, and any meetings he did have with investors were collateral to his primary responsibility of assessing and managing specific investments for the funds. The Contributor played no role in obtaining the Client's investments. To the best of PSCM's knowledge, the Contributor did not attend any of the meetings or participate in any communications with the Client or its representatives that led to the Client's decisions to invest.

3. The Client invested in funds managed by Applicant beginning more than two years prior to the Contribution at issue in this Application, and the Client has not changed the amount of its investment since the date of the Contribution.

4. On August 27, 2013, the Contributor made a \$500 personal contribution (the "Contribution") to the campaign of Juliette Kayyem, based on a request from a long-time personal friend who is Ms. Kayyem's sister. Juliette Kayyem had filed papers one week earlier to run for Governor of Massachusetts, but she never qualified to appear, and never did appear, on the 2014 primary or general election ballots in Massachusetts.

5. The Contributor made the Contribution for purely personal reasons unrelated to PSCM. To the best of the Applicant's knowledge, the Contributor never met with the Client before or after the Contribution, and he never met with Ms. Kayyem.

6. To the best of Applicant's knowledge, at no time did any employee of the Applicant other than the Contributor have actual knowledge of the Contribution, prior to the

Applicant's discovery of the Contribution after receiving a letter from the Commission on May 16, 2016, requesting general information about political contributions by individuals associated with the Applicant. Once the Applicant learned of the Contribution, it caused the Contributor to request a refund of the Contribution. The Contributor has received a full refund of his Contribution from Ms. Kayyem's campaign committee.

7. Applicant's policies and procedures regarding political contributions in place at the time of the Contribution (the "Policy") required all employees to pre-clear, among other things, contributions to state officials and candidates, and to annually certify as to compliance with the pre-clearance requirement. The Contributor violated the Policy by failing to request pre-clearance and by certifying on an annual compliance form that all contributions he made during the calendar year in question had been pre-cleared.

Applicant's Legal Analysis:

1. Rule 206(4)-5(a)(1) prohibits a registered investment adviser from providing investment advisory services for compensation to a government entity within two years after a contribution to an official of the government entity is made by the investment adviser or any covered associate of the investment adviser.
2. Section 206A and Rule 206(4)-5(e) permit the Commission to exempt an investment adviser from the prohibition under Rule 206(4)-5(a)(1) upon consideration of, among other factors, (1) whether the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act; (2) whether the investment adviser: (i) before the contribution resulting in the prohibition was made, adopted and implemented policies and procedures reasonably designed to prevent violations of this section; and (ii) prior to or at

the time the contribution which resulted in such prohibition was made, had no actual knowledge of the contribution; and (iii) after learning of the contribution: (A) has taken all available steps to cause the contributor involved in making the contribution which resulted in such prohibition to obtain a return of the contribution; and (B) has taken such other remedial or preventive measures as may be appropriate under the circumstances; (3) whether, at the time of the contribution, the contributor was a covered associate or otherwise an employee of the investment adviser, or was seeking such employment; (4) the timing and amount of the contribution which resulted in the prohibition; (5) the nature of the election (e.g., whether it was a federal, state, or local election); and (6) the contributor's apparent intent or motive in making the contribution which resulted in the prohibition, as evidenced by the facts and circumstances surrounding such contribution.

3. The Applicant requests an order pursuant to Section 206A and Rule 206(4)-5(e) exempting it from the prohibition under Rule 206(4)-5(a)(1), if necessary, to permit it to have provided investment advisory services for compensation to the Client within the two-year period following the Contribution.

4. The Applicant asserts that the purposes of Section 206(4) and Rule 206(4)-5(a)(1) are fully satisfied without imposition of the two-year prohibition on compensation. Neither the Applicant nor the Contributor sought to interfere with the Client's merit-based selection process for advisory services, nor did they seek to negotiate higher fees or greater ancillary benefits than would be achieved in an arms-length transaction. Absent any intent by the Applicant or the Contributor to influence the selection process, there was no violation of the Applicant's fiduciary duty to deal fairly or disclose material conflicts.

5. The Applicant states that the other factors suggested for the Commission's consideration in Rule 206(4)-5(e) similarly weigh in favor of granting an exemption to avoid consequences disproportionate to the violation.

For the Commission, by the Division of Investment Management, under delegated authority.

Secretary [or other signatory]

Exhibit E

Proposed Order of Exemption

Pershing Square Capital Management, L.P. filed an Application on September __, 2016, pursuant to Section 206A of the Investment Advisers Act of 1940 (the “Act”) and Rule 206(4)-5(e). The Application requested an order granting an exemption from the provisions of Section 206(4) of the Act, and Rule 206(4)-5(a)(1) thereunder, if necessary, to permit the Applicant to have provided investment advisory services for compensation to a government entity within the two-year period following a specified contribution to an official of such government entity by a covered associate.

A notice of filing of the Application was issued on [Date] (Investment Advisers Act Release No. [insert number]). The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered and it is found, on the basis of the information set forth in the application, that granting the requested exemption is appropriate, in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Accordingly, IT IS ORDERED, pursuant to Section 206A of the Act and Rule 206(4)-5(e), that the application for exemption from Section 206(4) of the Act, and Rule 206(4)-5(a)(1) thereunder, is hereby granted, effective forthwith.

For the Commission, by the Division of Investment Management, under delegated authority.

Secretary [or other signatory]