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October 14, 2008

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Client No.
G 00000-00001

VIA HAND DELIVERY

Chairman Steven Rosenfeld
Conflicts of Interest Board of the City of New York
2 Lafayette Street, Suite 1010
New York, NY 10007

Re: *City Charter Conflict Bar to Legislative Proposal to Alter Term Limits*

Dear Chairman Rosenfeld:

I write again on behalf of our clients, Public Advocate Betsy Gotbaum and City Council Members Bill de Blasio and Letitia James, to apprise this Board of troubling new information that bears on our clients' time-urgent request for confirmation that it would violate City conflicts laws for our clients—and other term-limited Council Members—to support and enact legislation proposed at the Mayor's behest to amend New York City's term-limits provisions to permit incumbent elected officials to serve a third term in office.

Late last week, the proposed legislation was amended to make clear that it shall become effective immediately but "shall be deemed repealed upon the effective date of a lawful and valid proposal to amend the charter to set term limits at two, rather than three, full consecutive terms, as such limits were in force and effect prior to the enactment of this local law," where such proposal has been approved by a majority of qualified electors. *See* Proposed Introduction No. 845-A (as amended), attached as Exhibit A. The amended legislation, in other words, first gives current incumbents, including Mayor Bloomberg and the City Council, an immediate opportunity for an additional term in office and then explicitly anticipates reversal by the voters immediately thereafter so that successors to those positions will be limited to the two-term limit currently in effect. Such statutory language would be inexplicable, were it not for the widely-reported deal between Mayor Bloomberg and term-limits proponent Ronald Lauder that Mr.

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Lauder would not oppose a one-time—and one-time only—change to the term limits law.¹ Indeed, the very timing of the amendment makes this readily apparent: Proposed Introduction No. 845 was originally introduced on Tuesday, October 7th; Mr. Lauder formally announced his endorsement of proceeding by legislation on Wednesday, October 8th; and the legislation was amended immediately thereafter.² The amendment thus embodies and confirms the eleventh-hour deal that the Mayor struck with Mr. Lauder. Even more troubling, however, it also confirms that the purpose of this legislation is far from the careful and considered revisiting of an important public policy that has twice been ratified by city voters—something that, as we explained in our earlier letter to your Board, could easily be accomplished by special election early next year on recommendation of a Charter revision commission. Rather, the legislation's sole purpose is to secure for current incumbents, including Mayor Bloomberg and the vast majority of the City Council, a third term in office, without any possibility that the voters might upset these term-limited elected officials' self-serving plan.

Also, yesterday, in the worst kept secret in town, City Council Speaker Christine Quinn announced that she supported this legislation to alter term limits, advantaging herself and the Mayor, both of whom would otherwise have been forced by term limits to leave office next year. In an article entitled "Quinn pro quo," the New York Post reported today the following: "City Council Speaker Christine Quinn's support for a term-limit extension for Mayor Bloomberg comes at a price, according to City Hall insiders. They say that Quinn . . . will leave the council and become a deputy mayor under Bloomberg. The deal for extending term limits also includes Bloomberg—who regards Quinn highly—endorsing her for mayor in 2013."

This use of the Council's legislative process to further back-room deals—such as the one reported between the Mayor and Mr. Lauder, and the one reported between the Mayor and Speaker Quinn—intended solely to ensure current term-limited incumbents an additional term in office, is in blatant violation of Charter Section 2604(b)(3), which prohibits any "public servant" from "us[ing]" his or her "position" for any "private or personal advantage." As you know from our prior correspondence, our clients fear that they would be directly violating Charter Section 2604(b)(3) by "us[ing]" their positions to support and enact this legislation so clearly to their

¹ See David W. Chen, *Speaker Pledges Support, but Mayor Still Needs More*, N.Y. Times, Oct. 13, 2008, at A21; Sam Roberts & Eric Konigsberg, *Enigmatic Billionaire Is Drawn Back to the Term Limits Fray*, N.Y. Times, October 9, 2008, at A1; Michael Barbaro & Kareem Fahim, *Lauder Opposes Mayor on Change to Term Limits*, N.Y. Times, Oct. 6, 2008, at A21.

² See Frank Lombardi & Kathleen Lucadamo, *'Lauder Clause' Flap: Council Members Slam Mayor's Last-Minute Change to Term-Limits Bill*, N.Y. Daily News, Oct. 11, 2008, at 2; Sam Roberts & Eric Konigsberg, *Enigmatic Billionaire Is Drawn Back to the Term Limits Fray*, N.Y. Times, October 9, 2008, at A1; Frank Lombardi, *Mike's Term Bill Unleashes Unlimited Council Debate*, N.Y. Daily News, Oct. 8, 2008, at 32; see also <http://www.council.nyc.gov/downloads/pdf/Int.%20No.%20845-A.doc> (amended Intro. 845-A) (visited Oct. 10, 2008).

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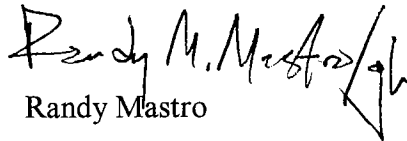
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“private or personal advantage.” Our clients also now fear that, by supporting or enacting this legislation, they would also be violating conflicts-law prohibitions on “aid[ing]” and abetting such violations by other public servants (such as the Mayor and the Speaker). *See* Charter § 2604(b)(2); Conflicts Board Rule 1-13(d) (subjecting Council Members to liability for “aid[ing]” or “agree[ing] . . . to engage in” conduct that violates any of the Charter conflicts provisions).

We thus reiterate our request that the Board provide its written confirmation and guidance to our clients that City conflicts laws bar their participation in any effort to enact this proposed legislation, and that this Board do so before the Council commences public hearings on this legislative proposal starting this Thursday, October 16, 2008.

Respectfully,


Randy Mastro

RMM/gh
Enclosure(s)

cc: Mark Davies, Esq.

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EXHIBIT A

Proposed Int. No. 845-A

By Council Member Felder (by request of the Mayor)

A Local Law to amend the New York city charter, in relation to term limits for elected officials.

Be it enacted by the Council as follows:

Section 1. Sections 1137 and 1138 of the charter of the city of New York, as added by a vote of the electors of such city at the general election held on November 2, 1993, are amended to read as follows:

§ 1137. Public Policy. It is hereby declared to be the public policy of the city of New York to limit [to not more than eight consecutive years] the time elected officials can serve as mayor, public advocate, comptroller, borough president and council member so that elected representatives are "citizen representatives" who are responsive to the needs of the people and are not career politicians. It is further declared that this policy is most appropriately served by limiting the time such officials can serve to not more than three full consecutive terms.

§ 1138. Term Limits. Notwithstanding any provision to the contrary contained in this charter, no person shall be eligible to be elected to or serve in the office of mayor, public advocate, comptroller, borough president or council member if that person had previously held such office for [two] three or more full consecutive terms [(including in the case of council member at least one four-year term)], unless one full term or more has elapsed since that person last held such office; provided, however, that in calculating the number of consecutive terms a person has served, only terms commencing on or after January 1, 1994 shall be counted.

§ 2. If any section, subdivision, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable and such constitutionality or

invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall remain in full force and effect.

§ 3. This local law shall take effect immediately and shall apply to elections held on or after the date of its enactment, provided that this local law shall be deemed repealed upon the effective date of a lawful and valid proposal to amend the charter to set term limits at two, rather than three, full consecutive terms, as such limits were in force and effect prior to the enactment of this local law, where such proposal has been submitted for the approval of the qualified electors of the city and approved by a majority of such electors voting thereon.