

FORUM CAPITAL SECURITIES, LLC  
Two Grand Central Tower  
140 East 45<sup>th</sup> Street, 23<sup>rd</sup> Floor  
New York, New York 10017

October 5, 2009

Ms. Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: Release No. IA-2910; File No. S7-18-09,  
Political Contributions by Certain Investment Advisers

Dear Ms. Murphy:

We are writing in response to the request of the Securities and Exchange Commission (the "**Commission**") for public comment regarding proposed rule 206(4)-5 (the "**Proposed Rule**") under the Investment Advisers Act of 1940, as amended (the "**Advisers Act**" or the "**Act**"), regarding "Political Contributions by Certain Investment Advisers."

Forum Capital Securities LLC ("**Forum Capital**" or "**we**") is an independent private equity placement agent, based in New York City, that provides advisory and fundraising services to private investment fund managers<sup>1</sup> worldwide. Forum Capital is registered with the Commission as a broker-dealer and is a member firm of the Financial Industry Regulatory Authority ("**FINRA**").

Forum Capital appreciates and echoes the Commission's concerns regarding so-called "pay to play" practices that have recently occurred between certain public pension funds, investment advisers and intermediaries. Further, Forum Capital agrees with the Commission that "pay to play is inconsistent with the high standards of ethical conduct required of fiduciaries under the Advisers Act,"<sup>2</sup> the public pension fund administrators who invest with such investment advisers and their respective intermediaries. We believe, however, that subparagraph (a)(2)(i) of the Proposed Rule<sup>3</sup> seeks to regulate far in excess of that which is necessary to curb pay to play

---

<sup>1</sup> Throughout this comment letter, Forum Capital uses the terms "investment adviser" and "fund manager" interchangeably.

<sup>2</sup> Political Contributions by Certain Investment Advisers, Advisers Act Release No. IA-2910 (August 3, 2009) (the "**Proposing Release**") at 17.

<sup>3</sup> Subparagraph (a)(2)(i) of the Proposed Rule seeks to:

make it unlawful for any investment adviser registered (or required to be registered) with the Commission, or unregistered in reliance on the exemption available under section 203(b)(3) of the Advisers Act, or any of its covered associates, to provide or agree to provide, directly or indirectly,

practices and, further, that if effected, subparagraph (a)(2)(i) would unnecessarily ban an entire industry that legitimately contributes to the success of private investment funds and their public pension fund investors alike with very little effect on the frequency or magnitude of pay to play incidents (since successful placement agents need not, and we believe generally do not, engage in pay to play practices).

Forum Capital concurs wholeheartedly with those persons and entities that have commented on the Proposed Rule to date that banning investment advisers from compensating third-party placement agents for securing capital commitments from public pension fund investors would:

- unfairly advantage private investment firms large enough to employ an internal marketing and investor relations staff over those firms that cannot afford to employ such a staff internally;
- limit the universe of investment opportunities presented to public pension funds for their consideration (possibly limiting from consideration the private investment firms with the highest performance potential);
- deprive private investment firms of the services of legitimate placement agents that have contributed to the success of many investment advisers already existing and thriving prior to the promulgation of the Proposed Rule, thereby limiting the opportunities of new private investment firms to successfully raise funds, execute their investment strategies and grow into market leading investment firms;
- reduce competition within the investment advisory business in general and the various alternative investment asset classes in particular; and
- reduce the amount of capital available to companies that rely on private investment firms for their financial support.

Forum Capital believes that the foregoing points are well covered by other persons commenting on the Proposed Rule and will not repeat such arguments here. Rather, we submit that prohibiting investment advisers from compensating properly-registered third party placement agents for capital commitments secured from public pension fund investors is not a logical means of addressing pay to play practices and that the Commission can achieve its objective of curbing pay to play practices more effectively (and without eliminating third party placement agents altogether) by regulating the practices of investments advisers as they engage third party placement agents to assist with their fundraising activities.

---

'payment' to any person to solicit a government entity for investment advisory services unless such person is: (i) a 'related person' of the investment adviser or, if the related person is a company, an employee of that related person; or (ii) any of the adviser's employees, general partners, LLC managing member, executive officers (or other person with a similar status or function, as applicable).

### **Introduction to Forum Capital**

Forum Capital, founded in 2001, is an independent broker-dealer registered with the Commission and licensed by FINRA. Forum Capital has focused its business on identifying experienced private investment fund managers and working closely with them in their fundraising efforts. In many cases, such clients are seeking to raise their first, second or third private investment funds under management. These firms generally do not have sufficient resources to employ their own internal marketing and investor relations staffs and look to us to assist them with their sales, marketing and fundraising efforts. For our clients, we do far more than simply arrange meetings with prospective investors. We assist our private investment adviser clients by:

- helping them understand the competitive landscape for their investment products;
- educating them about the investment needs of institutional investors and which institutional investors may be interested in their particular investment strategy;
- advising them regarding strategic market positioning;
- assisting them in the preparation of their offering memoranda, other marketing materials and necessary detailed due diligence materials;
- advising them as to fund structure, terms and conditions;
- preparing them for their investor meetings by creating meeting agendas and providing training in presentation skills;
- introducing them to suitable institutional investors and helping them address the needs of their prospective investors;
- assisting them in responding to due diligence questionnaires and requests for proposal;
- scheduling and coordinating all follow-up meetings between them and institutional investors;
- helping them advance investors toward closing by providing strategic advice and negotiation assistance;
- coordinating closing logistics; and
- communicating with all parties regarding fund closing.

Forum Capital provides these services to our clients with respect to *all* of their prospective investors, irrespective of whether they are public pension funds, corporate pension funds, funds-of-funds, public or private university endowments, private foundations, family offices or other institutional investors. Although some of our services address client needs that are specific to certain prospective investors, a significant portion of our services are investor-agnostic and support clients' general fundraising activities.

Forum Capital has assisted private investment fund managers in raising investment funds with billions of dollars in capital commitments from a diverse group of institutional investors

(including public pension funds) from all over the world. During this time, Forum Capital has never paid, directly or indirectly, any public official to obtain a capital commitment to a client's fund or otherwise been involved in any pay to play incident.

### **Forum Capital's Compensation Model**

Forum Capital, like most placement agents, receives compensation from its client investment advisers generally calculated as a percentage of the amount of capital committed to a client's private investment fund. Compensation may be in cash, in direct or indirect equity interests in the fund, or a combination thereof. Importantly, investment advisers do not pay additional amounts for dollars raised from government plan investors. Just as the services Forum Capital provides assist investment advisers in raising funds from all manner of institutional investors, Forum Capital's compensation for its services does not vary based upon the source of capital. Accordingly, investment advisers are not compensating Forum Capital any differently for our services in respect of capital commitments secured from public pension funds than in respect of capital commitments secured from corporate pension funds, funds-of-funds, public or private university endowments, private foundations, family offices or other institutional investors. All investor capital commitments are treated similarly in the compensation process.

### **Banning Third Party Placement Agents is not a Logical Means of Addressing Pay To Play Practices**

Because Forum Capital receives the same amount of compensation per dollar of capital committed to a client's private investment fund irrespective of the type of institutional investor that committed the capital for which it is paid, prohibiting investment advisers from compensating third party placement agents for capital commitments from public pension fund investors means only that the placement agent will have rendered services and provided valuable benefits to its client investment advisers for which it will not be compensated. In the alternative, if subparagraph (a)(2)(i) takes effect as proposed, placement agents will change the way they charge for their services by separately pricing fundraising services that are investor-agnostic, by increasing the percentage of committed capital charged on commitments by institutional investors other than public pension funds or by some other means.

The Commission has stated that it proposed subparagraph (a)(2)(i) of the Proposed Rule because it is concerned that its proposed prohibition on political contributions by investment advisers will encourage investment advisers to instead pay amounts they otherwise would have paid to public pension fund representatives to secure capital commitments from such public pension funds to their third party placement agents and such placement agents would pay such amounts to such public pension fund representatives.<sup>4</sup> Forum Capital believes that existing regulation would forestall this practice. Specifically, FINRA Rule 2010 requires FINRA members to adhere to "high standards of commercial honor and just and equitable principles of trade." FINRA Rule 2020 prohibits FINRA members from "effect[ing] any transaction in, or induc[ing] the purchase

---

<sup>4</sup> Proposing Release at 44.

or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.” Finally, FINRA Rule 3220 states that

No member or person associated with a member shall, directly or indirectly, give or permit to be given anything of value, including gratuities, in excess of one hundred dollars per individual per year to any person, principal, proprietor, employee, agent or representative of another person where such payment or gratuity is in relation to the business of the employer of the recipient of the payment or gratuity. A gift of any kind is considered a gratuity.

Forum Capital believes that if a FINRA-licensed placement agent makes a payment to a public pension fund representative to secure a capital commitment to a client’s private investment fund, which payment is either undisclosed or in excess of \$100, that agent would be in violation of the foregoing FINRA rules governing its members and their associated persons.

For placement agents that (a) are broker-dealers registered with the Commission and licensed by FINRA, (b) are regulated by the Commission and FINRA<sup>5</sup>, (c) adhere to high ethical standards in their business dealings, and (d) do not participate in pay to play activities, the proposed prohibition will serve only to limit compensation to third party placement agents or require them to significantly curtail their activities, if not shutter their businesses altogether. For the reasons enumerated above, the proposed prohibition is not necessary to prevent pay to play practices as existing regulation already deters such practices. Accordingly, the proposed prohibition is not a logical means to address pay to play practices.

### **Alternative Regulation Would Effectively Curb Pay To Play Practices**

Forum Capital supports the Commission’s effort to eliminate pay to play practices in the award of public pension fund commitments to private investment funds. We believe that, in addition to the Commission’s Proposed Rule (other than subparagraph (a)(2)(i) thereof) regulating political contributions by investment advisers, an alternative to subparagraph (a)(2)(i) of the Proposed Rule would be effective to eradicate pay to play practices.<sup>6</sup> Specifically, investment advisers should be prohibited from compensating any third party solicitor for capital commitments secured from public pension fund investors, unless:

- The investment adviser enters into a written agreement with such third party solicitor;
- The third party solicitor is, and represents to the investment adviser in such written agreement that it is and at all times during the term thereof will be, a

---

<sup>5</sup> Securities Exchange Act of 1934, Section 15 and Rules 15b1-1 through 15b11-1 promulgated thereunder; FINRA Rules 2010, 2020 and 3220.

<sup>6</sup> This proposed alternative assumes that the Commission desires to regulate the actions of investment advisers (as distinguished from broker-dealers) because the Proposing Release deals only with regulation of investment advisers under the Advisers Act.

broker-dealer registered and in good standing with the Commission and a member firm in good standing of FINRA;

- Such written agreement prohibits such third party solicitor and its associated persons from making any political contributions that, if made directly by the investment adviser, would cause the investment adviser to be in violation of the Proposed Rule (other than subparagraph (a)(2)(i) thereof); and
- Such written agreement requires that the terms of any compensation arrangement between the investment adviser and the third party solicitor in respect of capital commitments secured from public pension fund investors be disclosed in a separate written disclosure document similar to that required by Advisers Act Rule 206(4)-3(b).

Certainly the Commission could also seek to more specifically regulate registered broker-dealers that secure capital commitments for client investment advisers or seek to work through state and local government enforcement arms to more strictly enforce high ethical standards on all representatives of public pension plan investors.

Forum Capital believes that the foregoing alternatives would effectively curtail pay to play practices without prohibiting private investment fund managers from working with third party placement agents to secure capital commitments from public pension fund investors.

[remainder of page left blank intentionally]

Ms. Elizabeth M. Murphy

October 5, 2009

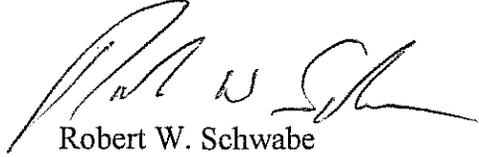
Page 7

Thank you for your consideration of our comments. We would be happy to discuss them with you at your convenience.

Very truly yours,



Jeffrey M. Stern  
Managing Partner



Robert W. Schwabe  
Managing Partner

cc: The Honorable Mary L. Schapiro  
The Honorable Kathleen L. Casey  
The Honorable Elisse B. Walter  
The Honorable Luis A. Aguilar  
The Honorable Troy A. Paredes  
Andrew J. Donohue, Esq.