



October 6, 2009

Via E-Mail: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

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

Dear Ms. Murphy,

**Re: File Number S7-18-09: Proposed Rules related to Political Contributions to Certain Advisors**

I am writing on behalf of the California Public Employees' Retirement System (CalPERS), the largest state public pension fund with approximately \$200 billion in global assets. We welcome the opportunity to comment on the SEC's Proposed Rules related to Political Contributions to Certain Advisors (File Number S7-18-09).

With some recommended modifications as set forth in this letter, CalPERS strongly supports the Commission's proposals, specifically:

- To prohibit an investment adviser from providing advisory services for compensation to a government client for two years after the adviser or its executives or employees makes a contribution to certain elected officials or candidates.
- To prohibit an adviser from soliciting from others, or coordinating, contributions to certain elected officials or candidates where the adviser is providing or seeking government business.

With regard to the Commission's proposal to prohibit an adviser from providing or agreeing to provide payment to any third party for solicitation of advisory business from any government entity on behalf of such adviser, CalPERS has determined that the issues with placement agents can be appropriately and effectively addressed by requiring disclosure and registration by placement agents. A copy of CalPERS Statement of Policy for Disclosure of Placement Agent Fees can be accessed at the following link:

[Disclosure of Placement Agent Fees Policy](#)

In addition, the California Legislature, in Assembly Bill 1584, has taken a similar approach to that adopted by CalPERS in regulating pay-to-play issues relating to placement agents. Assembly Bill 1584 can be accessed at the following link:

[AB1584](#)

Both the CalPERS policy and California legislation are intended to ensure transparency and accountability in the activities of placement agencies that provide services to CalPERS and, more widely, government funds across California.

CalPERS offers the following additional comments to the proposed rule:

- CalPERS agrees that the scope of the proposed rule would capture most if not all external managers who have discretion over the investment of public pension fund assets, including hedge fund managers, real estate managers, private equity managers, traditional long-only managers, money managers, and others, regardless of whether the managers are registered investment advisors. CalPERS supports application of the rule to investment advisers, as defined in the proposed rule.
- If the Commission's final rule does not include a ban on placement agents as proposed, CalPERS believes the Commission should consider expanding the scope of the proposed rule so that it applies to placement agents in addition to investment advisers or should enact other means of regulating placement agents directly.
- CalPERS is concerned that the two-year "time out" coupled with the "look back" provision of the proposed rule may give rise to unintended consequences, in areas such as those where illiquid investments are concerned. While the Commission's commentary indicates that the advisor "would likely, at a minimum, be obligated to provide (uncompensated) advisory services for a reasonable period of time," the proposed rule does not impose an affirmative duty on advisors to perform these services without compensation, and this may, in any event, be an impractical or insufficient solution for long-term investments. We understand this is a complex issue, but are not convinced this provision is workable in practice.
- CalPERS agrees that the proposed rule should apply to contributions to both incumbents and candidates if the office is directly or indirectly responsible for, or can influence the outcome of, the selection of an investment adviser. Likewise we agree that this should include circumstances where the person has authority to appoint someone who is directly or indirectly responsible for or can influence the outcome of the selection of an investment adviser.

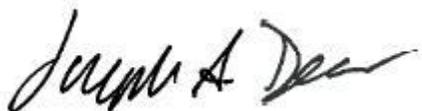
- However, CalPERS believes that:
  - The rule should not apply to contributions provided to a political action committee, even one closely associated to an official, unless the official solicits the contribution from the advisor.
  - The rule should not apply to contributions provided to a state or local political party unless the official solicits the contribution from the advisor.
  - The rule should not restrict an official's ability to solicit contributions to charitable non-profit organizations, specifically 501(c)(3) organizations.

We also want to highlight that if a placement agent ban is adopted, the proposed rule may encourage third-party solicitors to go "in-house" at a number of different firms in an attempt to evade the intent of the rule. The Commission may want to address this potential loophole in the final rulemaking.

Finally, the proposed rule states that "The prohibitions on providing investment advisory services and payments to solicit... arise only from contributions and payments, respectively, made on or after [the effective date of this section]." CalPERS requests that the rule be clarified to state that the look back period will similarly be applied only to contributions made on or after the effective date of the rule.

Thank you for considering our comments. If you would like to discuss any of these points, please do not hesitate to contact me directly at (916) 795-3675.

Yours sincerely,



Joseph A. Dear  
Chief Investment Officer

cc: CalPERS Board of Administration  
Anne Stausboll, Chief Executive Officer – CalPERS