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October 2, 2009

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

Re: File No. S7-18-09

Dear Ms. Murphy:

This correspondence is Sadis & Goldberg LLP's comment to the United States Securities and Exchange Commission's ("*SEC*") proposed Rule 206(4)-5 and proposed amendments to Rules 204-2 and 206(4)-3 under the Investment Advisors Act of 1940, as amended (collectively, the "*Proposed Rules*"). Sadis & Goldberg LLP is a nationally recognized law firm with one of the premier financial services practices representing hundreds of investment advisers and related investment entities (including hedge funds, private equity funds and placement agents)[1]. Our extensive experience in representing the financial community provides us with significant insight into the day-to-day operations and needs of our clients. As a result, we are uniquely positioned to understand the potential impact of the Proposed Rules. While we strongly support the SEC's efforts to eliminate corruption in connection with "pay to play" practices, the proposed ban on placement agents' solicitation of government investors is overreaching and will (1) deprive government investors of the benefits provided by placement agents, namely access to a broader range of potential investment opportunities and assistance with due diligence efforts, and (2) hinder smaller advisory firms in their efforts to attract government investors, as smaller firms generally have less in-house resources and rely more on the use of placement agents in soliciting government investors.

I. Placement Agents Benefit Government Investors

In general, the role of a placement agent is to locate, on behalf of an investment adviser, prospective investors, such as public pension plans, retirement plans and similar government investment accounts (collectively, "*government investors*"). However, it should not be overlooked that an adviser's use of a placement agent actually provides benefits to the *government investors* in at least two distinct ways: (1) a placement agent locates investment opportunities and sometimes assists advisers in tailoring such opportunities to make them more suitable for a government or other investor's specific needs; and (2) a placement agent assists government investors in conducting due diligence on potential advisers.

In our experience, we have found that government investors do not have sufficient in-house resources to identify and analyze all of the suitable investment offerings available in the market.

[1] Sadis and Goldberg LLP was ranked # 5 in the "Top Onshore Law Firm" in the 2008 Institutional Investor's Alpha Awards for hedge fund service providers with less than $1 billion in assets.

Accordingly, many government investors have come to rely on placement agents to perform an "initial filter" of the many available investment offerings, and to introduce government investors to a subset of available investment offerings that meet their particular criteria (in terms of asset class, risk/reward profile, liquidity terms, etc.). In many cases, placement agents actually go beyond merely *introducing* investment opportunities to government investors, but actually work with advisers to help tailor their products for which there is demand by the government investment community, as well as suggest modifications to advisers in connection with their operations and infrastructure, such as compliance and external third-party vendors (e.g., recommending recognized auditors, lawyers and administrators).

Once a suitable investment opportunity is located, a government investor must now perform the requisite due diligence on the adviser (the importance of which has been underscored by the various fraudulent investment schemes recently uncovered). Once again, a lack of in-house resources poses a hurdle for many government investors, as they do not have sufficient staff, expertise and capital to coordinate internally necessary due diligence. Placement agents serve a vital role in this regard, supplementing government investors' due diligence efforts with their own. Before a placement agent introduces an adviser to a government investor, the placement agent will have already conducted its own due diligence on such adviser, as a matter of good business practice and also as required under the rules of the Financial Industry Regulatory Authority. The familiarity of the placement agent with the adviser is particularly deep where the placement agent has worked intimately with the adviser to develop and vet the investment product that is being offered.

A ban on placement agents' solicitation of government investors under the Proposed Rules will deny government investors access to a broader range of investment opportunities that they would otherwise have, and will reduce the quality of government investors' due diligence efforts with respect to investment opportunities that they are forced to pursue without the benefit of placement agents.

II. Placement Agents Benefit Smaller Advisory Firms; "Leveling the Playing Field"

The SEC's release relating to the Proposed Rules provides that "curtailing 'pay to play' arrangements enables advisory firms, particularly smaller advisory firms, to compete on merit, rather than their ability or willingness to make contributions". We believe, however, that the Proposed Rules, instead of "leveling the field" to be fairer to smaller advisers, will have the opposite effect, and will actually provide an advantage to larger advisers.

A ban that prohibits placement agents from soliciting government investors on behalf of investment advisers will create an environment that favors a select group of larger advisers who internally employ a team of marketing professionals and otherwise have more extensive in-house capabilities. Smaller advisory firms frequently outsource all fundraising activities, as they do not have the contacts or the marketing and logistical resources to adequately represent themselves to institutional investors, such as government investors. In most cases, placement agents are compensated solely through a share in the compensation received by the advisers from the accounts of referred investors; accordingly, the placement agent industry provides smaller firms with an opportunity to "get in the game" at a reasonable cost. Further, many placement agents, in addition to soliciting investors, provide guidance to smaller advisers at the earlier stages of their business regarding the structure of each adviser's investment product, the product's investment terms, the business plan, due diligence documentation and marketing materials.

Because placement agents are considerably more important to smaller advisers than they are to larger firms, we believe that an unintended result of the Proposed Rules would be to hinder smaller advisers' marketing efforts and push more government investor business towards larger institutions. To be sure, the Proposed Rules represent a substantial and destructive barrier to entry for hundreds, if not thousands, of advisers and many of our clients. The evidence presented to the SEC shows that a supermajority (in number) of the hedge fund population is comprised of small hedge funds and, thus, any advantage given to larger advisory firms will result in less market exposure and higher rates of business failure for smaller firms and the hedge fund industry in general.

III. Conclusion

A good placement agent provides vital benefits to government investors and to smaller advisory firms in soliciting government investors. We believe that the Proposed Rules, in eliminating these benefits, effectively throw out the baby with the bathwater. Further, we question whether the Proposed Rules would be effective in accomplishing the stated goal of eliminating "pay to play" and other forms of influence—most, if not all, of the problems referenced in the SEC's release involve a few unethical fund raisers, and those inclined to cheat can always find a way to do so. As stated by Robert Gentzel, spokesman for the Pennsylvania State Employees Retirement System, "a lot of the problem in New York was not the fact that a placement agent was involved, but the fact that there were corrupt employees working for a government.... [R]egulation on placement agents is not going to change that."

We also note that certain public government entities, such as CalPERS, have already adopted more stringent "pay to play" policies aimed at increasing transparency in connection with the fees paid to placement agents doing business with public pension plans. The proposed SEC ban would interfere with such entities' own determinations as to how, and with whom, they should invest.

If you have any questions or comments regarding any of the information contained in this letter or would like to discuss any of these comments in further detail, please feel free to contact me directly by phone at (212) 573-6660 or by email at rgeffner@sglawyers.com.

Thank you in advance for your consideration.

Respectfully submitted,

Ron S. Geffner
Partner