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STATE OF NEW YORK
OFFICE OF THE STATE COMPTRROLLER

October 2, 2009

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

Re: S7-18-09 Proposed Rule Regarding Political Contributions by Certain
Investment Advisers

Dear Ms. Murphy:

As New York State Comptroller, I am the sole Trustee of the New York State Common Retirement Fund ("Fund") and the administrative head of the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System (together, "Retirement System"). The Fund holds and invests the assets of the Retirement System. I write to reiterate my strong support of the rule recently proposed by the Securities and Exchange Commission ("SEC") regarding "Political Contributions by Certain Investment Advisers." I offer the following comments.

I assumed the position of State Comptroller in February 2007, in the aftermath of the resignation of the prior Comptroller following his guilty plea to a felony charge of defrauding the government. Subsequently, the New York State Attorney General, the Albany County District Attorney and the SEC commenced investigations into allegations of improper influence in the Fund's investment transactions under the prior administration. The resulting well-publicized indictments of individuals connected to the former administration seriously eroded public and investor confidence in the integrity of the decision-making process surrounding investments by the Fund. In light of these events, New York State became the epicenter of the national discussion on public pension funds, "pay-to-play" practices, and the use of placement agents.

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Since becoming Comptroller, I have worked diligently to eradicate opportunities for corruption and to restore confidence in the integrity of this office and of the Fund. I have implemented a variety of initiatives grounded in ethics and accountability to reform the way the Fund does business, to increase transparency in Fund transactions, and to propose campaign finance reform and public financing of campaigns for State Comptroller.

One of my top priorities has been to restore investor and taxpayer confidence that decisions pertaining to the Fund's investments are made for the exclusive benefit of the more than one million members, retirees and beneficiaries of the Retirement System. To that end, I have already implemented many of the actions proposed in the SEC's proposed rule. Specifically, earlier this year I amended the Fund's "Placement Agent Disclosure Policy and Procedures" to prohibit the Fund from engaging, hiring, investing with, or committing to an outside investment manager that is using the services of a placement agent, registered lobbyist or other intermediary, whether compensated on a flat fee, a contingent fee or any other basis, to assist the investment manager in obtaining investments by the Fund.

More recently, on September 23, 2009, I signed an Executive Order adopting an Interim Policy that closely parallels the substance of the proposed SEC rule and that will remain in effect until such time as the SEC adopts a final rule pertaining to political contribution. The Interim Policy requires investment advisers to provide a "Political Contribution Representation" letter prior to the closing of an investment transaction stating that no contribution has been made after the effective date of the policy by the investment adviser or any covered associate of the investment adviser to the incumbent State Comptroller, any candidate for State Comptroller, or the successful candidate for State Comptroller within the two-year period preceding the date of the representation.

The reforms I have instituted with respect to the Fund are designed to eradicate opportunities for corruption, prevent conflicts of interest and the appearance of conflicts of interest, ensure that investment decisions are made for the exclusive benefit of the Retirement System's members, retirees and beneficiaries, and restore confidence in the integrity of the investment decision-making process. New York State is not alone in its efforts. In order to be fully effective, however, reform cannot be undertaken on a state-by-state or fund-by-fund basis.

Unquestionably, broad-based reform relating to political contribution is necessary. The SEC should act to effect reform on a national, industry-wide basis. Absent uniform regulation in this area, investment advisers could be subject to balkanized regulation at the local or state level as public pension funds promulgate distinct rules to deal with political contribution. Additionally, the absence of regulatory uniformity could have the unintended consequence of placing at a competitive disadvantage in investment opportunities those public pension funds that act individually to impose restrictions on "pay-to-play" practices, thereby creating a disincentive for others to curb improper conduct. In order to attain meaningful comprehensive reform, it is desirable that all investment advisers be subject to the same rules and limitations, regardless of the state in which they are doing business.

In advocating for a level playing field for investors and investment advisers that protects the integrity of the decision-making process, I note one example of variations among the jurisdictions impacted by the proposed rule that could result in disparate effects. Under New York State election laws, it is possible for a candidate to commence fundraising for an undeclared race and not definitively identify the office sought until much closer to the election than is required in other jurisdictions. In addition, New York generally permits candidates to utilize contributions raised in one election campaign in subsequent races, even if for a different office. Under the proposed SEC rule, if a candidate accepted a contribution from an investment adviser prior to declaring his or her candidacy for State Comptroller, and assuming the contribution was made at a point in time that would violate the two-year rule, it is not clear if the investment adviser would subsequently be prohibited from earning compensation for advisory services provided to the Fund. The SEC should consider clarifying in its final rule whether the contributions covered by the rule are office-specific.

In addition, I note that while the proposed rule defines "covered associates" to include general partners, managing partners, executive officers, employees who solicit government entities, and any political action committees controlled by an investment adviser, it does not include family members. The SEC may wish to consider including certain defined family members, or, at a minimum, the spouses of any of those individuals falling within the definition of a covered associate.

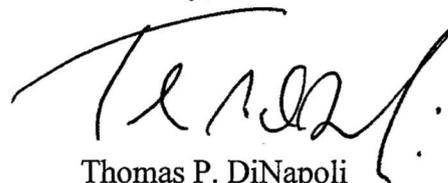
It is important that the final rule adopted by the SEC clearly articulate what behavior is prohibited in making contributions or soliciting or coordinating payments to state or local political parties. I believe compliance with the rule would be aided by greater clarity in this regard.

Further, the proposed rule is concerned with contributions to officials who are “directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity” or have “authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity.” I agree that the rule should apply to all officials whose offices could be seen as susceptible to pay-to-play practices. It would be helpful if the final rule would include greater clarification surrounding this definition to avoid the potential for confusion. For example, if an official makes one appointment to a board that manages a fund, are contributions by investment advisers to that official subject to the two-year rule because of that appointment power? Does that one appointment “influence” the hiring of an investment adviser? The final rule should reflect the SEC’s intention in this definition.

I am aware that the provisions of the proposed rule that would ban the use of placement agents have drawn opposition from some parties. In that regard, I note that, since the Fund’s ban was adopted earlier this year, the Fund’s ability to manage its investment strategies has not been impaired.

I also expect that as the SEC continues to receive comments on the proposed rule, concerns will be voiced pertaining to other issues. The dynamic nature of the SEC’s rule-making process may result in revisions to the proposed rule based on commentary received. It can be expected, then, that the final rule promulgated by the SEC may vary in some aspects from the proposed rule. I urge the SEC, as it considers all of these factors in finalizing a rule, not to waver from its fundamental goal of breaking any nexus, actual or perceived, between political contribution and investment decision-making by public pension funds. I fully support that goal.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. DiNapoli', with a large, sweeping flourish at the end.

Thomas P. DiNapoli
State Comptroller