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October 5, 2009

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

Re: Comments on Proposed Rule on "Political Contributions by Certain Investment Advisers. Release No. IA 2910
File No. S7-18-09

Dear Ms. Murphy:

Standard & Poor's Investment Advisory Services LLC (SPIAS) and Standard & Poor's Securities Evaluations, Inc. (SPSE) are pleased to comment on the SEC's proposal of new rule 206(4)-5 under the Investment Advisers Act of 1940, which aims at addressing "pay to play" practices by investment advisers.[1]

SPSE and SPIAS are both registered investment advisers. SPIAS provides a range of investment advisory services, including non-discretionary investment portfolio strategies, fund research reports and recommendations, and asset allocation advice; it serves as sub-adviser, on a non-discretionary basis, to registered investment funds whose investors may include government entities.[2] SPSE provides evaluated prices, primarily for fixed-income instruments, to various institutional investors and financial services providers; its clients have customers, who thus are indirect end-users of SPSE's prices, that may include government entities.

We support the SEC's overall goal of addressing political contributions designed to exert inappropriate influence on decisions of state and local governments in retaining advisers or investing in their pooled investment funds. However, we believe that certain aspects of the proposal, as drafted, are overbroad or not sufficiently clear and should be revised or clarified to ensure that the rule will not apply to certain sub-advisory or other relationships in which an adviser has no direct client relationship with a government entity that is an investor or an indirect end user of the adviser's services. Such revisions and clarification will facilitate compliance by investment advisers and avoid disproportionately punitive consequences to advisers from ordinary contributions that had no intent or effect of influencing investment decisions by covered government officials.

Specifically, we recommend that, if the SEC determines to proceed to adopt some version of rule 206(4)-5, it limit and clarify the scope of the rule as set forth below.

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[1] Inv. Adv. Act Rel. No. 2910 (Aug. 3, 2009).
[2] This letter uses the phrase "government entity" as defined in proposed rule 206(4)-5.

1. The SEC Should Not Apply the Rule to Fund Sub-Advisers That Are Not Actively Involved in Fund Marketing.

The Commission's requests for comment in the proposing release indicate that the phrase "investment advisory services" in rule 206(4)-5 as proposed would encompass both direct advisory relationships and sub-advisory relationships. The SEC acknowledged potential concerns on this point when it requested comment about the appropriateness of subjecting fund sub-advisory relationships to the rule: "[A]re there sub-advisory arrangements in which a sub-adviser would not know or be able to influence whether, or which, government entities are being solicited for a covered investment pool. If so, how should we define those sub-advisers?"[3] It also noted that "we are generally less concerned that the investment company's adviser would be motivated by pay to play considerations if, for example, the adviser has not bid for or solicited the government entity's business."[4]

In our experience, the sub-adviser of a fund generally does not participate in the active marketing of the fund or have any influence whether government entities are being solicited to invest. Marketing generally is performed by the fund's distributor, which typically is an affiliate of the fund's main adviser but in some instances may be unrelated to the main adviser. In these circumstances, as the Commission acknowledged in requesting comment, the role of the sub-adviser does not raise the concerns that rule 206(4)-5 is intended to address, and it would be unduly harsh to apply the prohibition in paragraph (a) to fund sub-advisers.

Accordingly, we recommend that the Commission modify the proposed rule text to exclude from the scope of the rule a sub-adviser to a covered investment pool that meets the following requirements:

(i) The sub-adviser is not a related person of the adviser or distributor of the fund or other investment pool; and

(ii) The sub-adviser has adopted written policies and procedures reasonably designed to ensure that it and its personnel are not actively involved in the marketing or sales of the fund to government or other investors and have no influence over whether government entities are being solicited.

The requirement that the adviser and its personnel not be actively involved in marketing should not preclude some limited involvement by the sub-adviser in marketing or require total information barriers between the sub-adviser and investors. For example, it would be appropriate for the sub-adviser to have the ability to comment on the fund's prospectus or other marketing materials that describe the sub-adviser and its services. Similarly, it would be entirely appropriate for a sub-adviser to assist the adviser with responses to investor questions or with informational meetings with fund investors to discuss the management of the fund. While such communications or meetings may inform the sub-adviser of the identity of one or more investors, they do not appear to present any realistic likelihood that the sub-adviser could affect a government investor's investment decision or influence which government entities are solicited to invest in the fund.

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3 *Id.* at 67.
4 *Id.* at 64.

The exception for sub-advisers that we recommend should not be limited to specific types of government entity investments such as short-term investments for cash management.[5] The sub-advisory relationships described above in practice involve a full range of investment strategies not limited to cash management.

2. The Rule Should Not Apply to Indirect Use of an Adviser's Services by a Government Entity to Which the Adviser Does Not Provide Those Services.

The proposed rule uses the phrase "provide advisory services" without defining the scope of that phrase. There are various circumstances in which an adviser's services (some of which may be non-discretionary) may be used by a client of the adviser in providing services to a government entity, but the adviser has no direct or indirect client relationship with the government entity, has no role in soliciting or influencing the soliciting of that entity, and may well be unaware of the identity of the government entity.

In these circumstances, even though the government entity is not a client of the adviser, it receives indirectly some or all of the adviser's services, and we are concerned that the rule could be stretched expansively to take the position that the adviser is providing advisory services to the government entity. Under these circumstances, we submit it would be unfair to apply the prohibitions of rule 206(4)-5 to the adviser that is the original provider of the advisory services.

For example, SPIAS and other investment advisers provide model portfolios or model buy and sell recommendations to managers that have government entities or private parties as clients, have full investment discretion over those clients' accounts, and use the model in managing the clients' accounts. In these instances, the government entity would be the client of the other manager and not a client of the model provider; and the government entity would have no contractual or other direct relationship with the model provider. Like the sub-advisers discussed above, the model providers have no role in or influence over the managers' solicitation or acceptance of their clients and generally would be unaware of the identities of government entities or other clients of the managers.

Similarly, SPSE provides evaluated prices to a range of clients, which may include registered and unregistered investment funds. Its clients also include intermediaries such as custodians and administrators, which use prices from SPSE in valuing the portfolios of the intermediaries' clients, which may include government entities as well as a range of financial services firms and other companies. In these instances, SPSE contracts only with, and markets only to, its own clients, including such intermediaries, and does not influence marketing by such intermediaries to government entities. It also generally is unaware of the identity of such government entities, unless the intermediary relays to SPSE a challenge or inquiry from the government entity or unless a government entity or other prospective client requests additional information about SPSE's methodology during its negotiations with the intermediary; in such cases, SPSE may communicate with the intermediary's prospective client, but solely to describe its pricing methodology, and it does not participate in the intermediary's decision of which prospective clients to approach or in any negotiations over the terms of the relationship between the intermediary and the prospective client.

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[5] *See id.* at 67 (requesting comment on whether to exclude funds with certain limited investment strategies).

Therefore, we request that the Commission clarify that such providers, which may include non-discretionary providers, of investment models or other impersonal advisory services are not "providing advisory services ... to a government entity" when they provide their models to another firm , which manages assets of the government entity or provides other services (such as pricing) to a government entity.

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We appreciate the opportunity to provide comments on this proposal. If you have any questions about our comments or would like additional information, please contact Anita Whelan at (212) 438-1109.

Sincerely,

Louis V. Eccleston, President
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cc: Andrew J. Donohue, Director, Division of Investment Management
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