October 5th, 2009

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100F Street, NE
Washington, DC 20549-1090
Rule-comments@sec.gov

Re: ILPA Response to Securities and Exchange Commission (SEC) proposed rule on Political Contributions by Certain Investment Advisors *Release No. IA-2910*

Dear Ms. Murphy

Thank you for the opportunity to respond to Securities and Exchange Commission in regard to SEC Release No. IA-2910.

The Institutional Limited Partners Association (ILPA) is a not-for-profit association committed to serving limited partner investors in the global private equity industry by facilitating value-added communication, enhancing education in the asset class and promoting research and standards in the private equity industry. ILPA has over 215 institutional member organizations that collectively manage approximately $1 trillion of private equity assets. Our reach is both geographically and organizationally diverse - ranging from large pension funds to endowments, to single family offices – with global representation. The role of the ILPA is not only to support members on issues relating to education and research but to communicate matters that may affect business processes.

To ensure the response provided to SEC was representative of members' opinions, a survey was constructed to elicit the views of ILPA members on specific elements of the proposal. To augment the survey, round-table discussions were conducted with 180 limited partners at a recent ILPA-sponsored event. The following summary articulates those views as presented by the members of the ILPA from the roundtable discussions and via the member survey. Specific responses to the survey have been provided in the appendix.

It should be noted that only 5% of survey respondents intended to respond to the SEC directly; 95% would be responding via the ILPA survey.

Summary Comments:

1) ILPA members agree that there is no place in the market for placements agents that engage in illegal activities. Anti-bribery laws that currently exist, large fines and lengthy prison terms would go further to curtailing the behavior of those who engage in pay-to-play activities than the proposed rule.

2) ILPA members agree that the selection of fund managers should be based on competence and qualifications of management teams. Long-term returns to the private equity asset class have historically been developed on the premise of sophisticated investors conducting significant due diligence on fund managers and selecting those who will generate higher returns to pensioners and other constituents. The sustainability of the asset class depends on the ability of investment professionals to utilize all tools available to them to allow them to make these decisions including the use of placement agents in the selection process.

3) Reputable placements agents provide an important service to institutional investors and an outright ban of all agents could have an adverse affect on many pension funds. Reputable placement agents provide a service to the private equity industry by i) assisting emerging and first-time fund managers in the development of strategic marketing plans that are vital to their ability to attract institutional investors, including public pension funds ii) promoting competition iii) creating efficiencies for all parties by working with fund managers to construct institutional quality performance track record and due diligence materials iv) guiding fund managers through a given institution's decision making process and iv) acting as an additional screening filter for under staffed pension teams to review a shorter list of institutional quality funds.

4) The SEC requested comment in regard to the provisions of the proposed rule that would require an investment adviser that makes a covered contribution to either waive its fee (for two years) or terminate its relationship with the involved public pension plan (after a reasonable period of time). These provisions were seen as particularly troubling and as such limited partners were asked specifically to comment on this provision. Limited partners expressed the following concerns:

- The termination of management fees of a public pension plan that represents a significant portion of a private equity fund's total commitments could leave the adviser with insufficient funds to manage its business thus harming not only the advisor, but the other limited partners.

- The withdrawal of a public pension plan may leave the fund without adequate capital to affect its investment plans and/or meet funding obligations already in place. Accordingly, the remaining limited partners may ultimately hold a more concentrated portfolio than expected (if the fund was not fully committed at the time of the public pension plan withdrawal) and/or the remaining limited partners may be committed to a private equity fund unable to meet its funding obligations (particularly if the withdrawal takes place after the advisor had made capital commitments that were yet to be funded).
- The withdrawal of a public pension plan may affect ownership or interest limitations of remaining limited partners. That is, a number of limited partners have ownership/interest limitations based on total commitments in regard to their participation in any single private equity fund or collective set of funds managed by a single manager. The withdrawal of a public pension plan, particularly a large one, may adversely affect these concentration limits and leave remaining investors in violation of their own institution's policy or statutory law.
- Public pension plans may realize significant losses as a result of a redemption/withdrawal.
    - If a secondary agent is sought to acquire or price the interest, a discount to value may be expected as the sale may not be voluntary and not predicated on market prices
    - If the withdrawal takes place during the "J-Curve" (usually the first two to three years of a private equity fund's life in which expenses are disproportionally high and investments immature such that negative returns are likely) or early in the life of the partnership, the net asset value of the partnership is not thought to represent the ultimate value of the private equity fund. As such, a redemption or sale of the interest, even if at net asset value, will likely cause the public pension plan to redeem at a loss
    - The opportunity costs and due diligence costs to a withdrawn public pension plan are unlikely to be included in any redemption or purchase price

5) ILPA agrees that disclosure and transparency are important ingredients to ensuring proper selection of fund managers in the investment process. To that end, ILPA has supported several best practices that are of public record. The ILPA's recently published *Private Equity Principles* (posted to www.ilpa.org) supports transparency, alignment of interest and good governance practices

covering a wide variety of practices including the need to disclose third-party advisors during the due diligence process. The ILPA contributed to the creation of the EVCA's *Placement Agent Code of Conduct* which prohibits play-to-play activities. And finally, several members have publicly posted their own guidelines for the use of third-parties.

The ILPA strongly urges the SEC to reconsider its rule No. IA-2910 for as it currently reads, it will have long-term ramifications that will impact returns to pensioners and other ILPA member constituents.

I would be happy to speak to you directly on any issue.

Regards,

Kathy Jeramaz-Larson
Executive Director
Institutional Limited Partner Association

APPENDIX (SURVEY RESULTS):

Demographics of Respondents

i) Organizations represented:

- 61% Public Pension
- 9% Corporate Pension
- 9 % Insurance Companies
- 13% Endowments, Family Offices and Foundations
- 4% Investment Companies
- 4% Other

ii) Respondents were 87% North American based
iii) 96% of all respondents were investment professionals.
iv) 87% were non-US government entities

Survey Questions and Responses are as follows:

1. In regard to the *Political Contributions and Solicitation of Contributions* provisions of the proposed rule (whereby covered advisers are prohibited from receiving compensation for two years from a US government entity if they have

made a political contribution in excess of US$250 to an elected official who can influence the selection of the adviser by that government entity), **over 51% of respondents indicated that the distinction between a "payment" vs. "contribution" was not appropriately clear.**

2. When asked if the SEC's focus on pay-to-play activities that involved elected officials and candidates of a US government entity while excluding other US government officials or non-government investors that influence the selection of the adviser was appropriate, **57% either strongly disagreed or disagreed. A further 17% were neutral on the response.**

3. The *Third Party Solicitors* provisions of the proposed rule prohibit/ban advisers from providing payment to any third party non-related persons or businesses for the solicitation of US government advisory business on behalf of the adviser were **considered inappropriate by 53% of respondents**.

4. Although the *Third Party Solicitors* provisions of the proposed rule prohibit advisers from providing **payment to third parties for the solicitation of US government advisory business on behalf of the adviser, the allowance for payment to related persons for the same was considered by 35% to be appropriate but 30% provided no views on the topic.**

5. A number of years ago, the SEC had proposed a rule (not adopted) that would allow covered advisers to compensate third parties for solicitation of US government clients, but then subject advisers to the two-year compensation ban if these solicitors were found to make prohibited contributions to elected officials that influence the selection of the adviser. Despite comments received by SEC per their proposal of the earlier rule (i.e. advisers were not responsible for actions of third party solicitors, etc.), **65% of respondents felt similar restrictions and punitive measures are preferred to an outright ban of third party US government solicitors**.

6.

The prohibition of third party government entity solicitors would:					
	Strongly Disagree	Disagree	Neutral / No opinion	Agree	Strongly Agree
Inappropriately damage or burden smaller / medium sized covered advisers	4.3%	13.0%	17.4%	17.4%	**47.8%**
Inappropriately damage or burden US government entities	4.3%	4.3%	30.4%	26.1%	**34.8%**
Inappropriately damage or burden non-US government private equity participants	8.7%	13.0%	**43.5%**	21.7%	13.0%
Inappropriately damage or burden legitimate third party solicitors	0.0%	4.3%	13.0%	39.1%	**43.5%**
Adversely affect our investment process	13.0%	**21.7%**	**21.7%**	**21.7%**	**21.7%**

7.

The structure of private equity partnerships is such that a prohibition of compensation to the adviser from US government entities that hold a limited partnership interest in the partnership (due to certain political contributions made by the adviser) will be:					
	Strongly Disagree	Disagree	Neutral / No opinion	Agree	Strongly Agree
Difficult and costly for the partnership to account for / administer	8.7%	13.0%	21.7%	**43.5%**	13.0%
Overly burdensome on the Adviser	4.3%	26.1%	26.1%	**34.8%**	8.7%
Overly burdensome on the government entity involved	0.0%	17.4%	**34.8%**	**34.8%**	13.0%
Overly burdensome on the remaining limited partners	0.0%	21.7%	**47.8%**	21.7%	8.7%

8.

The structure of private equity partnerships is such that the removal or withdrawal of a US government entity from a partnership due to an SEC mandated compensation ban will be:					
	Strongly Disagree	**Disagree**	**Neutral / No opinion**	**Agree**	**Strongly Agree**
Difficult and costly for the partnership to account for / administer	0.0%	17.4%	13.0%	**39.1%**	30.4%
Overly burdensome on the Adviser	0.0%	17.4%	26.1%	**39.1%**	17.4%
Overly burdensome on the government entity involved	4.3%	13.0%	26.1%	26.1%	**30.4%**
Overly burdensome on the remaining limited partners	0.0%	0.0%	30.4%	30.4%	**39.1%**

9.

Do you believe that the proposed new rule appropriately addresses unique characteristics of private equity investing?					
	Strongly Disagree	**Disagree**	**Neutral / No opinion**	**Agree**	**Strongly Agree**
Political Contributions that result in a ban on compensation from the related US government entity [Proposed Rule 206(4)-5(a)(1)]	4.3%	**30.4%**	**30.4%**	**30.4%**	4.3%
The ban of payment to Third Parties to solicit US government clients [Proposed Rule 206(4)-5(a)(2)(i)]	30.4%	**34.8%**	21.7%	8.7%	4.3%
The Solicitation of Contributions to US government entities [Proposed Rule 206(4)-5(a)(2)(ii)]	8.7%	30.4%	**34.8%**	21.7%	4.3%
An adviser's involvement in any of the above via Indirect Contributions and Solicitations [Proposed Rule 206(4)-5(d)]	4.3%	30.4%	**39.1%**	26.1%	0.0%
The proposed new rule in its totality [Proposed New Rule 206(4)-5]	4.3%	**52.2%**	26.1%	17.4%	0.0%

10.

How effective do you think the new rule will be in regard to curtailing pay to play activities?

	Not Effective	Negligibly Effective	Somewhat Effective	More Effective than Not	Meaningfully Effective	No Opinion
Political Contributions that result in a ban on compensation from the related US government entity [Proposed Rule 206(4)-5(a)(1)]	13.0%	26.1%	**39.1%**	13.0%	8.7%	0.0%
The ban of payment to Third Parties to solicit US government clients [Proposed Rule 206(4)-5(a)(2)(i)]	**39.1%**	26.1%	21.7%	13.0%	0.0%	0.0%
The Solicitation of Contributions to US government entities [Proposed Rule 206(4)-5(a)(2)(ii)]	17.4%	**26.1%**	**26.1%**	13.0%	4.3%	13.0%
An adviser's involvement in any of the above via Indirect Contributions and Solicitations [Proposed Rule 206(4)-5(d)]	21.7%	**26.1%**	**26.1%**	13.0%	8.7%	4.3%
The proposed new rule in its totality [Proposed New Rule 206(4)-5]	26.1%	26.1%	**34.8%**	8.7%	4.3%	0.0%