Dear Commissioners:

I am writing to express concern about the partial ban on use of placement agents contained in SEC draft rule-making AI-2910. I believe that there is strong evidence that both public pension system investors and private equity firms, particularly smaller ones, will be harmed if the proposed placement agent ban is implemented and that the Commission should therefore reconsider its proposed rulemaking with respect to placement agents.

I am writing on behalf of New Mountain Capital LLC. We are an established alternative investment firm and manage approximately $7.3 billion of private equity commitments. Many of our investors are public pension systems, and their investments comprise the majority of our private equity investment capital. Like most funds,[1] New Mountain utilized a placement agent for our most recent private equity fund-raising in 2008. We have also used a placement agent for prior funds. New Mountain was a "start-up" company less than ten years ago.

Institutional investor opinion offers the strongest evidence of likely harm from the proposed rulemaking. Preqin, a respected private equity research firm, recently commissioned a survey[2] of institutional--and particularly public pension fund--investors in private equity in order to gauge their reaction to the proposed rule-making. Among its findings, the survey concluded that 85 percent of public pension fund respondents believe that a placement agent ban would harm the fund-raising ability of smaller firms relative to larger ones. Presumably, respondents reach this conclusion because large firms generally have in-house fundraising teams while smaller ones are more reliant on placement agents' outsourced fundraising capability. In New Mountain's case, this conclusion rings true. At the firm's inception, it had no in-house fund-raising capability, none of its employees had ever led a fund-raising, and it's therefore likely that the firm would not have been able to raise an institutional fund without the assistance of a placement agent.

No investment strategy appeals to every prospective investor, and New Mountain's private equity strategy, which emphasizes business-building and low leverage, is no different in this respect. Placement agents have played a key role in helping us to identify the subset of prospective investors, among many thousand prospects, whose investment goals and strategy make them reasonably likely to invest with us. In this role, placement agents perform a service that is fundamentally equivalent to that provided by other investment bankers or brokers. Yet the SEC's rule-making record offers no rationale for distinguishing between the role of placement agents, which the Commission

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[1] *Prequin Research Report: Potential Effects of AI-2910 Overview of Placement Agent Usage. August 2009.* www.preqin.com

[2] *Ibid.*

proposes to ban from interacting with public pension systems, and the role of stock underwriters, who remain unaffected by the rule but who provide exactly the same placement services with public pension systems on behalf of a different type of security.

Since its inception, New Mountain estimates that its investments have created approximately 7,000 net new jobs in the U.S. economy, and that the average wage of those employees substantially exceeds the U.S. average. Placement agents have played a key role in the capital formation process that resulted in that job creation. The Commission would be well served to respect the legitimate role of placement agents in capital formation rather than to make them a scapegoat.

Respectfully submitted,
Michael Flaherman
Managing Director