

# GILBRIDE, TUSA, LAST & SPELLANE LLC

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October 5, 2009

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

Re: File Number S7-18-09 – Political Contributions by  
Certain Investment Advisers

Dear Ms. Murphy:

I am an attorney with more than 20 years of experience in private and corporate practice. I have worked with and represented placement agents, brokers, and other consultants in all sorts of capacities and transactions, and I write to offer my comments in opposition to the provisions of proposed SEC Rule 206(4)-5 which would impose a blanket ban on the use of placement agents by investment advisers seeking to do business with public funds.

As an initial matter, I would like to say that I am firmly in support of the pay to play restrictions and ban on political contributions included in the proposed rule. In my opinion these new rules will be extremely effective in helping to prevent and redress what I consider to be outrageous conduct, and they will do so in a way which will limit their adverse impact on legitimate businesses.

Conversely, I believe that the proposed blanket ban on the use of placement agents will have such significant collateral and unintended consequences that the potential incremental benefits of the rule cannot possibly justify the decimation of a proud industry whose leading participants conduct themselves in a highly ethical manner and have in fact been proactive in ridding their industry of the abuses the SEC is now addressing.

A placement agent assisting a small investment adviser find investors is not dissimilar to a real estate broker assisting a homeowner in the sale of his house. An individual homeowner sells a house maybe two or three times in his life and therefore has limited expertise in how to market his house in order to maximize his return. For that reason, he is wise to engage the services of a broker who is familiar with the marketplace and can help present his house in the best possible light to the most likely potential purchasers. This engagement greatly increases the seller's potential proceeds from the sale, and it also benefits potential purchasers who through

the broker's public listing are able to become aware of particular houses for sale they would not otherwise know about. Problems have arisen when a particular broker has represented both the seller and the buyer in a particular transaction, but the industry has addressed the problem through a rigorous disclosure system.

The proposed blanket ban on the use of placement agents by investment advisers seeking to do business with public funds is analogous to allowing a homeowner to engage a real estate broker to list his house but then not allowing a huge group of potential purchasers to view the listing. This limitation would not be because of any actual issue regarding this seller, this broker, or the restricted purchasers – it would be an arbitrary and blanket rule. This will be to the seller's detriment because his amount realized will likely be lower if he is able to sell at all, and the restricted purchasers will likewise be hurt because their universe of potential purchases will be limited to those offered by larger sellers with the means and expertise to market their houses without the aide of a broker. There would be no benefit to restricting the market on either side of this transaction, and in fact the very people the restrictions are intended to benefit would be the ones most hurt.

In my opinion the perceived abuses in the placement agent industry can be addressed effectively through disclosure and registration and adherence to a "code of conduct" such as that advocated by the Coalition of Professional, Registered Placement Agents. While I unhesitatingly support the provisions of proposed Rule 206(4)-5 restricting pay to play and certain political contributions, I do not support the ban on placement agents by firms doing business with public funds because the harm it will cause to the agents, their clients, and the funds will far outweigh any potential benefit.

Respectfully submitted,

*Lincoln W. Briggs*

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