October 5, 2009

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

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

Dear Ms. Murphy:

While I strongly oppose the use of inappropriate political contributions or bribes by investment advisor personnel to obtain clients, I believe the rule, as proposed, is overly broad and overreaches to achieve the goal of prohibiting "pay-to-play" arrangements. My comments focus focus on those areas that, I believe, are in need of further guidance and clarification.

The proposed ban would be triggered by a contribution to an official of a government entity in a position that is directly or indirectly responsible for, or can influence the outcome of, the selection of an investment adviser or has the authority to appoint any person who is directly or indirectly responsible for or can influence the outcome of the selection of an investment adviser. Being that the proposed ban does not require any intent by investment adviser personnel and is a strict liability offense, how is any investment adviser to know who are the relevant elected officials? I'm certain that the relevant government officials will vary by state and locality and will number in the thousands. I request that the Commission or the staff provide guidance to to how an investment adviser is to identify such officials.

The proposed rule would apply to contributions made by an investment adviser and its "covered associates." Under the proposed rule, the term "executive officer" would include the investment adviser's president and any vice president in charge of a principal business unit, division or function or any other other executive officer who, in connection with his or regular duties: (i) performs investment advisory services (or supervises someone who performs them); (ii) solicits (or supervise someone who solicits) for an investment adviser, including with respect to investors for a covered investment pool; or (iii) supervises, directly or indirectly, executive officers described in (i) or (ii). I believe the term "executive officer" should be narrowed. For example who is someone who supervises a person who performs investment advisory services. Would this include the members of a committee that reviews the portfolio manager's performance? Would this include the members of a firm's compliance department who supervise the portfolio manager's adherence to investment guidelines? Further, who is someone who solicits for an investment adviser? Would this include wholesalers registered with a mutual fund's distributor who solicit broker-dealers who, in turn, may have governmental clients? The proposed rule also includes persons who, directly or indirectly, supervise executive officers described in (i) or (ii) above. Would this include the executive officers of the parent company of a subsidiary investment adviser? The broad definition of "covered associate" will, in my view, require either Commission or staff guidance. I suggest the definition be narrowed to only include those persons who are directly involved in the solicitation of government clients.

The proposed rule also includes a "look back" provision whereby the contribution made by a covered associate of an investment adviser would be attributed to an investment adviser that employs or engages the person who made the contribution within two years after the date the contribution was made. I believe this provision is overly broad and punitive. What if the individual made a contribution to a covered government official but the prior investment adviser had no governmental clients? This act, which was not in violation, of the proposed rule is now an attributed violation by the new employer? This makes no sense. Further, what will be an investment adviser's compliance obligations to check on political contributions made by a

prospective hire? Will the investment adviser have an obligation to verify the accuracy of the information provided by the prospective employee? Is requesting this information a violation of the prospective employee's privacy? I request that the Commission or the staff provide guidance with respect to my questions.

The proposed rule contains a de minimis exception of $250 if the person is entitled to vote for the official or candidate. The amount is based on the amount excepted from MSRB Rule G-37 which was adopted in 1994. First, I believe the $250 is too low given that the figure was adopted by the MSRB in 1994 and there has been a level of inflation since then. I suggest a de minimis amount of $1,000. Secondly, I see no reason why the de minimis exception should be limited to persons entitled to vote for the candidate or official. It seems more appropriate to have a uniform exception covering all employees of an investment adviser. Further. not having a de minimis exception to cover all of an investment adviser's employees, violates, in my view, those persons' right to participate in the political process.

The proposed rule also provides for a second exception that would allow for certain returned contributions. This exception would only be available with respect to contributions that do not exceed $250 and are made by a covered associate of the investment adviser to government officials other than those for whom the covered associate was entitled to vote. First, I recommend the amount be increased to $1,000 and, secondly, the exception be expanded to cover any inadvertent contribution. In addition, I believe the two exceptions per 12-month period too low. This number may be appropriate for an investment adviser with 25 covered associates but for an investment adviser with over 500 covered associates the number is too low. I believe that absent a higher number for larger investment advisers such advisers will be unable to take advantage to this exception and will have to file frequent applications through the proposed rule's general exemptive application process.

The proposed rule also provides for specific recordkeeping requirements which for certain pooled entities, are onerous and virtually impossible to maintain. Specifically, it requires the investment adviser to maintain records of all government entities for which the investment adviser or any of its covered associates is providing or seeking to provide investment advisory service, or which are investors or are solicited to invest in any covered investment pool to which the investment adviser provides investment advisory services. This will be incredibly burdensome for mutual funds and, possibly, impossible. One problem mutual funds will have are accounts maintained on an omnibus level. If the underlying omnibus broker or sub-transfer agent does not properly identify an account as a governmental entity, the mutual fund and its investment adviser will be unable to properly identity and make a record of it. Has this issue been considered by the staff? Secondly, how will a mutual fund and its investment adviser keep a record of governmental entities that are solicited by a third-party broker-dealer? Is this situation covered since the definition of "solicit" includes indirect communications? Guidance by the Commission or staff is requested. Further, the proposed rule requires the investment adviser maintain a record of all direct and indirect contributions or payments by the adviser or a covered associate to an official of a government entity, a political party of a state or political subdivision thereof or a PAC. My understanding of the proposed rule is that it is designed to prevent investment advisers from influencing the award of advisory contracts by public pension plans and governmental entities. Basically, it is designed to prevent bribery. What relevance does a contribution to a political party or PAC have to the interest of preventing a public official from accepting a bribe? I believe this record keeping requirement overly broad and intrusive and may violate a person's privacy right with respect to participation in the political process. In addition, I believe attempting to maintain a list of governmental entities will be extremely difficult to do absent a centralized list of al;l U.S. governmental entities which I do not believe exists. Finally, a de minimis exception should apply to any record keeping requirement.

I appreciate the opportunity to comment on the proposal. Should you have any questions, feel free to contact me directly at (626) 716-6756 or (213) 244-0290.

Sincerely,

Philip K. Holl