

October 5, 2009

Via Email

Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F St. NE  
Washington DC 20549-1090

Re: Political Contributions by Certain Investment Advisers (File No. S7-18-09)

Dear Ms. Murphy:

We write on behalf of Lazard Frères & Co. LLC (“Lazard”), a broker dealer registered with the Commission under the Exchange Act.<sup>1</sup> Lazard welcomes the opportunity to provide comments on the Commission’s proposed rule, *Political Contributions by Certain Investment Advisers*.

Lazard applauds all efforts aimed at restoring faith in government and confidence in the securities industry and capital markets. At the heart of those efforts has to be the aggressive pursuit of those who abuse their positions, including those public officials who betray the public’s trust by yielding to improper influence. From a policy standpoint, we completely agree with the Commission that there is no place for "pay to play" in the process by which public plans determine how to invest plan participants' assets, just as there is no place for it in any process by which governments hire registered broker-dealers (e.g., for municipal finance, brokerage or advisory services) or, for that matter, any other third-party service providers.

Accordingly, Lazard supports the Commission’s preventive proposal to eliminate “pay to play.” A clear, uniform rule with regard to political contributions, applicable in all states and protecting all public plan participants, is preferable to the patchwork of different rules, regulations or procedures that might otherwise be promulgated by many states, political subdivisions or individual public plans.<sup>2</sup> Lazard believes that appropriate limitations on the political contributions of relevant professionals can strike an appropriate balance between the ability of individuals to participate in the electoral process and the need to avoid the perception of conflict of interest in public fund investments.

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<sup>1</sup> Lazard also owns Lazard Asset Management LLC, an investment adviser registered with the Commission under the Advisers Act. Lazard Asset Management, together with its global affiliates, manages over \$100 billion in customer assets.

<sup>2</sup> Lazard of course seeks to comply with current rules in place at the state, local and fund level and will continue to do so.

Lazard believes, however, like numerous others who have commented on the proposal, that the prohibition on placement agents is a mistake, as it is too broad, unnecessary to meet the objectives of the proposed rule, and likely to have a negative impact on fund managers, public funds and their plan participants, as well as on Lazard's legitimate business (and that of its broker-dealer competitors) of providing placement agent and advisory services to investment managers of private funds. In addition to assisting managers of private investment funds — the placement agent's clients in these engagements — Lazard and its competitors substantially benefit investors, including public funds, by bringing knowledge, expertise and professional experience to the marketplace. Indeed, the important capital raising function that regulated broker-dealers perform as placement agents — like the municipal finance and advisory services that certain broker-dealers provide directly to government entities — serves the public interest. Accordingly, the placement agent function should not be singled out from these other important broker-dealer services and simply banned. A more narrowly tailored provision with respect to placement agents can accomplish all of the goals of the rule, while preserving the important market functions that placement agents serve, without denying public funds (and their beneficiaries) potential investment opportunities that, as a practical matter, might otherwise be unavailable to them.

**The Commission should take an alternative approach with respect to placement agents.**

**A. Background – the services provided by advisers and placement agents**

Lazard provides advisory and placement services to managers of private equity, real estate and other investment funds that seek capital from institutional investors. These advisory and placement services – similar to those provided by other broker dealers – assist in raising capital for these investment funds, primarily from institutional investors, including pension funds (corporate and public), endowments, foundations and financial institutions. Virtually all the capital raisings for these investment funds are structured as private placements.

Managers of private investment funds engage advisers like Lazard to provide professional advice and assistance with respect to raising capital from institutional investors. The Private Fund Advisory Group at Lazard employs over twenty-five professionals, many of whom have more than a decade of experience in the private fund raising business. Private Fund Advisory Group professionals who deal with investors are required to become FINRA registered representatives, and supervisors in the Group are registered principals.

Placement agents for private investment funds enhance the efficiency and effectiveness of the investment process by providing valuable market functions, including:

- a) meeting regularly with investors to develop an understanding of their criteria and preferences for investments in private funds;
- b) identifying, evaluating and screening many potential fund offerings for quality, as well as compatibility with investor preferences, to select a relative few to present to investors;
- c) selecting and representing investment managers who will likely meet the investment criteria of a variety of institutional investor types;

- d) assisting investment managers in the preparation of offering documents that are designed to aid investors in evaluating a particular offering;
- e) arranging and attending informational meetings between managers and prospective investors, and determining which investors to approach based on the placement agent's knowledge of institutions' investment criteria and preferences;
- f) providing investors, on an ongoing basis, with information on a variety of offerings that the agent is placing and providing updates and intelligence on the general private fund market; and
- g) assisting investment managers in preparing timely responses to investors' requests for additional information in connection with their evaluation of particular investments, including advising on the content and format of how particular investors prefer to receive such information.

In short, advisers and placement agents such as Lazard provide valuable services to their clients, as well as to the institutional investor community, by (i) assisting investment managers in identifying and contacting appropriate institutional investors for their investment funds, and (ii) providing investors with the opportunity to invest in the kinds of offerings that meet their investment criteria, as well as with the quality and type of information they require to evaluate the offerings. These are the services Lazard provides, and they have nothing to do with the untoward political influence that the proposed rule appropriately seeks to address.

**B. The Proposed Rule would adversely impact public funds and certain private investment funds.**

The proposed ban on the use of placement agents by investment managers to solicit and interact with public funds would have several adverse effects on public pension funds and managers of private investment funds.

As discussed, firms like Lazard that provide high quality advisory and placement agent services maintain extensive contacts and relationships with institutional investors, including pension funds (public and corporate), endowments, foundations and financial institutions. Private investment managers engage advisers and placements agents like Lazard to assist in identifying and raising capital from multiple categories of institutional investors, including public funds. If such agents could not be retained by private investment fund managers to solicit public funds, public funds may:

- a) not have access to or become aware of certain private investment fund offerings that might meet the public fund's investment criteria, as the private investment fund managers may not have the knowledge of the detailed criteria of the many public funds;
- b) receive a significant number of unsuitable investment fund offerings because, again, investment fund managers, without regular insight into a public pension fund's investment criteria, are unlikely to be intimately familiar with the investment objectives of particular public funds; and

- c) face a far more difficult and inefficient evaluation process of particular investments because investment fund managers are unlikely to know the detailed informational requirements of the many public funds.

In summary, if advisers and placement agents were not able to interact with public funds in connection with private fund offerings, public funds may be deprived of attractive opportunities to evaluate and invest in certain funds and may be placed at a significant disadvantage relative to other institutional investors.

In addition, most managers of private investment funds raise capital infrequently, in contrast to asset managers like mutual funds which continually solicit and accept investments. Accordingly, many of these managers do not employ staff to provide core fundraising functions, including maintaining: up-to-date knowledge of the universe of prospective investors, organizational information (including contact persons at institutional investors), and familiarity with the current investment criteria and objectives of prospective investors. Furthermore, many of these private fund managers are not familiar with the type and quality of information that is required by particular institutional investors in their consideration of investment opportunities.

Indeed, the proposed rule would have a disproportionately negative impact on newer or smaller private investment funds, as these types of managers are the least likely to have the internal staff and resources to develop a knowledge of, and contacts with, the institutional investor market, including public funds. Newer or smaller private investment managers typically engage third-party advisers and placement agents and are the firms most likely to continue to benefit from the services of firms like Lazard. Depriving newer and smaller funds access to the market will reduce the investment options available to public funds.

**C. Instead of a blanket prohibition on placement agents, the proposed rule should provide that placement agents, as in the MSRB context, be subject to pay-to-play restrictions.**

The proposed rule is designed to address pay-to-play activities by limiting contributions to public officials. Since the goals and incentives of internal fundraising staff are substantially the same as those of third party placement agents, the purpose of the proposed rule can be fully and equitably effectuated by permitting placement agents to provide advisory assistance in raising funds from government entities so long as they are subject to the same pay-to-play restrictions as the clients who retain them. As in the municipal securities context, where the MSRB rules do not preclude registered broker-dealers from acting as placement agents to municipal issuers but subject them to pay-to-play restrictions and prohibit them from retaining unregulated third-party finders and solicitors, the proposed rule should similarly provide that a registered or exempt investment adviser may engage for placement services any person registered as an investment adviser or broker dealer with the Commission that is subject to the same contribution limitations and recordkeeping requirements as the employees of their investment adviser client. Like a significant number of advisers to managers of investment funds, Lazard Frères & Co. LLC is registered as a broker dealer with the Commission and is a member of FINRA. Its current policies prohibit all contributions by professionals in its Private Fund Advisory Group to public officials responsible for public fund investments. Indeed, Lazard's legitimate placement agent activities bear no resemblance to the types of pay-to-play activities that the Commission is appropriately seeking to eliminate, as they do not have

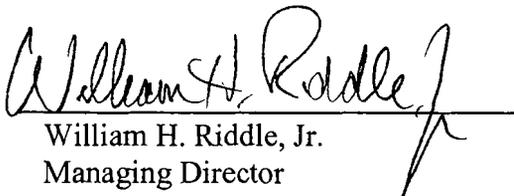
anything to do with political influence. While there have been well-publicized allegations of inappropriate conduct by a handful of agents, this does not justify banning the entire legitimate placement agent industry.

The proposed rule should be amended to provide in Section 275.206(4)-5(a)(2) that an investment adviser could not “provide or agree to provide, directly or indirectly, payment to any person to solicit a government entity for investment advisory services on behalf of such investment adviser (*other than a person registered with the Commission under the Exchange Act or the Advisers Act that is in compliance with subpart 1 of this rule*).<sup>3</sup>

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Lazard appreciates the opportunity to express its views on this matter. Should the Commission or its Staff have questions or desire additional information, we encourage you to contact us. We can be reached at (212) 632-6000.

Sincerely,

  
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William H. Riddle, Jr.  
Managing Director  
Co-Head Private Fund Advisory Group

  
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Benjamin J. Sullivan, Jr.  
Managing Director  
Co-Head Private Fund Advisory Group

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<sup>3</sup> A parallel change at the end of Section 275.206(4)-5(a)(1) would provide: *or for a person to solicit funds for a client from a public entity within two years after a contribution to an official of the government entity is made by the person or any covered associate of the person.*