SAVANNA

August 11, 2009

Re: In Defense of Placement Agents

To Whom It May Concern:

The indictment of Hank Morris, and aide to former New York State comptroller Alan Hevesi, for alleged "pay to play" abuses involving state pension funds has put politicians on the defensive with each eager to prove to the public that they are moving quickly to clean up perceived abuses of power and influence. This reaction has been directed against greedy and unscrupulous placement agents that have been characterized in the press as profiting by providing access to dollars from pension funds and other municipal pools of capital in exchange for "kickbacks". The implication is that placement agents provide little more than an introduction in exchange for receiving millions of dollars in undeserved compensation from the public purse.

While there are no doubt instances of placement agents behaving in an inappropriate or even illegal way, the rush to be seen as putting in place tough new rules to prevent abuses risks damaging many legitimate businesses which serve a useful public purpose that delivers substantial benefits to both the public and the private sector. The proposed "fix" that is being put in place (baring placement agents from providing introductions to public pension funds), furthermore, could end up causing more damage in the long term to the pension funds and to the public than the problem that it purports to address.

Placement agents typically work with small and medium sized investment firms to help them raise money to support and grow their businesses. Several years ago, our firm hired Park Hill Real Estate Group LLC, a placement agent, to help us make a transition from investing on a deal-by-deal basis with various investment partners, to restructuring our business in a private equity fund structure with a dedicated, discretionary fund sponsored by a series of institutional investors, including private and public pension funds, foundations, endowments, banks, insurance companies and wealth management companies. In this process, the placement agent provided an invaluable series of services. The placement agent worked hand in hand with our lawyers at the beginning of the process to define a structure and a set of limited partnership agreement terms that was reflective of the then current market standards. They worked with our internal team and our third-party accountants as we prepared and audited our track record to make sure that each deal was appropriately described and accounted for. They helped us design and edit our Private Placement Memorandum - the critical document that is prepared for potential investors that outlines the background, business plan and terms of the proposed fund. They helped us create a presentation for potential investors that efficiently and accurately described our business. They then contacted over 300 institutional investors on our behalf, and set up in-person meetings with over 100 of them which they attended. They assisted and advised us in the preparation of materials so that when prospective investors came to our offices to underwrite us as a firm, we had detailed, accurate and thoughtful due diligence materials completed and ready for distribution. And finally, when investors made the decision to invest, in conjunction with our lawyers, our placement agents assisted in the negotiations with those investors to resolve the myriad of issues that inevitably come up during the closing process. Only at the end of that process, which took almost two years of hard work, was our placement agent paid. Their fee was paid by (us) the client, not the investors. Had we been unsuccessful in raising

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our fund, our placement agent would have received practically nothing after years of extraordinary expenditure of time, effort, energy, expertise and commitment.

Could we, as a small investment firm have managed this process and transitioned to an institutional fund structure without a capable placement agent? Absolutely not.

Does the placement agent's role in the process add value for the client, the investors and the public at large? Yes it does.

The biggest firms (Goldman Sachs, Morgan Stanley, Carlyle, Apollo, etc.) don't need third-party placement agents. Their size enables them to bring this function in-house. (In fact, it is not surprising that Carlyle immediately publicly endorsed the proposed restriction on placement agents, since it would not apply to their own in-house placement agent team and would reduce their competition for pension fund dollars.) Placement agents provide a "borrowed infrastructure" that levels the playing field and allows smaller and medium sized firms to compete with larger players when raising capital. Because placement agents are typically compensated if and only if they succeed in raising capital for their clients, and because many of them are highly professional firms that know that they are going to be devoting enormous resources over a long period of time to this effort before they are paid, they are highly selective in choosing which clients to work with. This placement agent client selection therefore provides a "pre-screening" which pension funds and many institutional investors find useful when evaluating potential investments. If a reputable placement agent is working with a client, that client will have passed the placement agents own screening process and will have prepared many complex materials which are required to properly evaluate the investment opportunity. Reputable placement agents provide pension funds and other pools of capital with access to highly regarded small and medium sized firms and growing businesses that are providing valuable investment services. Baring placement agents will dramatically slant the process in favor of the huge "Wall Street" firms - many of whom have not served the public particularly well in recent years.

Politicians should resist the urge to leap to a politically expedient "quick fix" by banning placement agent access to public pension funds and pools of capital. Instead, politicians should respond to this problem by providing a thoughtful regulatory framework to make sure that placement agents are registered and meet appropriate qualifications. This legislation should create a distinction between the actions of a few bad actors who peddle influence while providing little or no productive service, and the hard work of legitimate private placement businesses that serve a positive public purpose. A thoughtful response should help eliminate abuses while still allowing placement agents to provide the important and useful function that they play in the market which ultimately benefits both public pools of capital and growing private enterprises.

I would be more than happy to discuss this matter further.

Sincerely,

Nicholas Bienstock

Nicholas Bienstock is a Managing Partner of The Savanna Real Estate Fund I, LLP, an institutional real estate private equity fund, and is an Adjunct-Assistant Professor at Columbia University.