



October 5, 2009

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

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

Dear Ms. Murphy:

On behalf of Fortress Group, Inc. (“Fortress”), please accept this comment letter with regard to the aforementioned proposed rule set forth by the SEC. While we support certain aspects of the proposed rule, including the ban on political contributions, we respectfully disagree with the SEC’s proposal to ban all third party placement agents—including professional placement agent firms already regulated by the SEC and FINRA as registered broker-dealers—from representing investment manager clients before public pension funds. We believe that this proposal, if enacted, will have severe, unintended, adverse consequences for investment managers and public pension plans alike.

**Firm Background**

Formed in 2000, Fortress is an Atlanta-based registered broker-dealer under the Securities Exchange Act of 1934 and member firm of FINRA, the Financial Industry Regulatory Authority. All of our professionals have Series 7 and 63 licenses and our supervisory personnel also have Series 24 licenses. In addition to meeting the strict requirements necessary to become a registered broker-dealer, our firm also employs extensive internal controls to ensure rigorous compliance by all of our personnel with applicable laws and regulations, as well as stringent internal policies and procedures. Registered placement agent firms such as Fortress are already regulated by the SEC and FINRA, which have the ability to inspect all broker-dealers, including the ability to conduct on-site audits of all broker-dealer activities with unrestricted access to all books and records.

Each year, after meticulous examination, we select a limited number of fund managers, serving as their financial advisor and placement agent, to help them gain an opportunity to present their investment thesis to institutional investors, such as public and corporate pension funds, endowments, foundations, insurance companies, funds-of-funds, and other institutions. Fortress conducts thorough upfront due diligence, seeking to work only with the “best in class” fund managers. We perform comprehensive analysis and evaluation of management teams, investment strategies, track records, and key fund terms and conditions. We also conduct extensive personnel reference calls and engage outside investigative firms to conduct background checks on key individuals.

**Services Provided by Registered, Professional Placement Agents**

Fortress and other registered, professional placement agents provide fund managers with assistance in all aspects of the fund-raising process, from initial fund structuring and marketing strategy through materials preparation, investor introductions, meetings, and handling of all due diligence requests. Our firm advises each fund manager client on the optimal timing of the fund’s launch, the positioning of the fund in the marketplace, and the structuring of terms and conditions to be consistent with prevailing market terms. We utilize the information gathered during this process to work closely with the fund manager in preparing the

offering memorandum and presentation materials that convey the fund's differentiated investment strategy. Both the general partner and prospective investors ultimately benefit from this approach. The general partner's time is used more efficiently during the fund-raise process, as Fortress is able to address most investor questions and information requests directly. Likewise, investors benefit by having access to the extensive due diligence materials collected and prepared by Fortress, conserving the time and resources of the investment officer staff and enabling the institution to expedite its decision-making process without sacrificing any aspect of proper due diligence.

Fortress also provides broad fund marketing capabilities through our knowledge of and prior work with institutional investors. Through our ongoing market presence, relationships, and investor research, Fortress is able to identify and approach active institutional investors that are interested in learning more about promising fund managers that otherwise would not have the resources necessary to approach such investors directly. We identify, prescreen, and prioritize hundreds of potential investors for each fund manager's offering. We then introduce the manager, its investment strategy, and its investment vehicle to those investors whose portfolio objectives are best aligned with the fund offering. We arrange and participate in all investor meetings, collect feedback from the investor and fund manager after the meeting, and coordinate follow-up discussions to ensure that the investor's due diligence questions and all the steps in its review process are handled thoroughly and professionally.

The role of the placement agent in marketing an alternative asset investment fund is no different from that of an investment banking firm acting as underwriter for a small company's initial public offering, serving as placement agent for a large company's senior note offering to institutional investors, or handling any other type of securities offering for its corporate clients. It would be illogical and detrimental to deny investment managers access to the same valuable services of an experienced placement agent for their securities offerings simply because of improper activities by a limited number of individuals that acted illegally.

It is important to note that the costs of the services provided by placement agents that are of great value to fund managers (and also to public pensions and other institutional investors) are borne by the fund managers. Like other registered, professional placement agents, our firm's fees are paid by our fund manager clients with no additional economic cost to the investors, and no commissions or other compensation is paid to Fortress by public pensions or any other investors in the funds we represent.

### **The Proposed Rule's Unintended Consequences for Public Pensions**

Registered, professional fund placement agents also provide a valuable service to prospective investors. Our firm, for example, conducts rigorous due diligence on all potential fund-raise mandates with an emphasis on fund strategy, management team qualifications, track record, and the current market opportunity. We work with the fund managers to prepare accurate and comprehensive offering materials to increase efficiency for resource-constrained investors. Additionally, we provide comprehensive due diligence information, responses to follow-up questions, and coordination of due diligence calls and follow-up meetings. Fortress understands investors' investment priorities and screens offerings in order to match their interests with the most appropriate fund manager strategies. We also maintain an ongoing dialogue with prospective investors and provide updates on fund managers' existing portfolios, fund-raising progress, and other key events that prospective investors wish to be apprised of as they continue their evaluation of a potential fund investment.

If the proposed rule in its current form were to be enacted, public pension funds investing in alternative assets would not have the same breadth and depth of investment alternatives as are currently available to them and would be limited to choosing within a much smaller universe of investment options. Investors would also lose the added protection of the placement agent's manager screening and due diligence support and would therefore face a more inefficient due diligence review process. The proposed prohibition on placement agents would therefore actually have a negative effect on the very public pension funds the SEC is trying to protect, by limiting their access and choice of investment advisors to only those firms large enough

to have their own in-house marketing teams. Since the largest investment management firms are not necessarily the best performing fund managers, the pension funds' fiduciary duties to their investors could be compromised by not having access to the full universe of investment options.

Compensation of placement agents is largely dependent on the success of each fund-raise. Fortress and other registered, professional placement agents devote enormous resources over a long period of time to each fund-raising effort and must therefore be highly selective in choosing which clients to work with. This placement agent client selection process 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 fund manager, that client has passed the placement agent's own screening process, an important first filter that helps institutional investors focus their investment reviews on those fund offerings that are most promising.

### **The Proposed Rule's Unintended Consequences for Small / Mid-Sized Investment Managers**

The SEC proposal in its current form would not only adversely affect registered, professional broker-dealer placement agents that serve a valuable purpose, but also severely hamper smaller, emerging investment fund managers from raising capital. Smaller fund managers do not have the resources to hire and retain full-time, in-house marketing staffs and will be at a severe disadvantage in fund-raising compared to larger firms. The marketing of an alternative investment fund is a specialty and requires a skill set that is quite different from running an investment fund. The knowledge and ability to make a profit for investors as a fund manager is something quite distinct from the ability to source appropriate investors for the subject investment class and to properly explain the investment strategy to prospects.

If the placement agent prohibition were adopted, fund managers who do not have in-house marketing staffs would be disproportionately disadvantaged relative to larger firms that have those internal resources to present their funds to public pensions and other institutional investors. Placement agents serve an important role for the fund managers, effectively leveling the playing field to allow smaller and medium sized firms (many of which are emerging minority and female-owned firms) to compete with larger players when raising capital. The adoption of the proposed rule would cripple the smaller investment management firms from competing with the larger firms for public pension fund investors, since the smaller managers are financially constrained from taking on a proprietary sales force.

We believe a reduction in competition would be detrimental not only to the smaller investment firms but, more importantly, to the public pension funds who would benefit from added product choice and potentially better investment performance. Should fund managers be forced to raise their own capital without the assistance of a placement agent, they will likely need to allocate budget dollars away from their investment team to hire full-time marketing staff, or do the fund-raising themselves in order to survive. In either case, this may result in less time and capital devoted to their core business of making investments, and performance may suffer as a result, negatively impacting the returns of the very pension funds and pensioners that hired them to generate superior returns. Fund-raising is a very time-intensive process; the investment team's fiduciary duty is not to raise the money, but rather to invest the capital and deliver the best performance possible to their investors.

### **Recommendations**

Over the past decade, we have built our firm by serving as valued advisors to fund managers and by providing an important service to resource-constrained institutional investors who lack the staff resources required to identify all of the promising managers with fund strategies that match their investment parameters. Registered, professional placement agents play an integral role in helping fund managers, particularly those that are too small to afford a marketing staff, reach interested institutional investors.

As previously stated, Fortress supports certain aspects of the SEC's proposal. In particular, Fortress agrees with the prohibition on political contributions in its current format. We believe that this is a necessary reform in order to deter unregistered "finders" that may seek to use political connections to influence important investment decisions by government pension funds and other government organizations. We believe that placement agent firms seeking to do business with U.S. institutional investors of any sort should be SEC-registered, FINRA member firms and should create and foster a "compliance culture" within their organizations. Fortress also considers the proposed increased disclosure as a positive step towards improving transparency throughout the industry.

However, we believe that the proposed rule prohibiting legitimate placement agents would have unintended consequences that would negatively impact and unfairly disadvantage small and mid-sized fund managers, state pension plans and their pensioners, as well as law-abiding, registered placement agents such as our firm. There is clearly a need for appropriate regulatory measures, but a limited number of cases of individual malfeasance should not result in the abolition of the entirely legitimate activities of responsible placement agent firms that are already regulated by the SEC and FINRA and provide important services that are of value to both investment managers and public pension funds.

We submit that the proposed rule should require: a ban of political contributions; SEC registration of all placement agents; and increased transparency—which together should serve as an effective deterrent to the "finders" that have given our industry a bad name. However, a wholesale prohibition of all placement agents communicating with public pension funds would be misguided and injurious not only to placement agents like us, but also to the fund managers, public pension funds, and other institutional investors that understand the value that firms like ours bring to the alternative asset industry.

Respectfully submitted,



Bruce A. Williamson, CFA  
Managing Director & Chief Compliance Officer

cc: Hon. Mary L. Schapiro, SEC Commission Chairman  
Hon. Kathleen L. Casey, SEC Commissioner  
Hon. Elisse B. Walter, SEC Commissioner  
Hon. Luis A. Aguilar, SEC Commissioner  
Hon. Troy A. Paredes, SEC Commissioner  
Andrew J. Donahue, Esq.