October 5, 2009

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

Re: S7-18-09 Proposed Rule Regarding Political Contributions by Certain Investment Advisers

Dear Ms. Murphy:

I am a registered series 24 principal and a partner in an investment banking firm and have been involved in the real estate investment management business for nearly twenty five years in a variety of roles, including consultant, financial advisor, and placement agent. As such, I feel compelled to respond to some of the points made by NY State Comptroller, Thomas DiNapoli, in his recent letter to the SEC, dated October 2, 2009.

While I fully agree that more needs to be done to curb pay- to-play schemes, it is critical that any new SEC regulations be targeted directly at those individuals that are in the most opportune position to actually influence/control investment decision making process for illegal gains through pay-to-play schemes.

There are three distinct corrupt and complicit parties involved in a pay-to-play scheme: 1) pension fund employees; 2) investment manager employees; and 3) placement agent employees. The first two parties are always involved and the third, placement agents, are NOT always involved in that process and NOT always engaged by an investment manager. Therefore, it seems unreasonable and unjust for the SEC to suggest a ban on the one party that is in the least position of authority to effectuate pay-to-play schemes.

As Mr. Di Napoli states “New York State became the epicenter of the national discussion on public pension funds ‘pay to play’ practices and the use of placement agents”. For all of those that have become informed of this situation, it is very important to note that there was no third party placement agent involved in the pay to play scam promulgated by the NY State Comptroller’s office. While Hank Morris has been labeled a “finder” he was in no way, shape or form, a “legitimate” placement agent. This fact is made very clear by the SEC in its case against Morris and Logiscli, the former CIO of the New York Common Fund. Additionally, it is also made clear by the SEC, that Morris as the gatekeeper with the full support of Logiscli, demanded monies directly from investment managers and not through any placement agents that may have been hired by those same investment managers.

Mr. DiNapoli states that he supports greater reforms for political contributions. I agree completely with Mr. DiNapoli on this issue and would prefer to see an absolute ban on political contributions by and between anyone one involved in the investment decision making process at pension funds, including investment management firms, consultants, and placement agents.

Although Mr. DiNapoli goes to great lengths to espouse his efforts and goals to enact internal reforms, he does not describe any such reforms that might regulate and help deter the employees and/or elected officials of the New York State pension plans from repeating pay-to-play schemes in the future. Instead, he points the finger of blame to the private sector and directly at investment managers and placement agents. Although not specifically stated by Mr. DiNapoli, the pay to play policies that have been adopted by New York State pension plans, have, in large part, also been adopted by many state pension funds across the country, but with the notable exception that the overwhelming majority of other state pensions plans policies do NOT ban placement agents, Rather, the policies of most pension plans protect their rights to do business with placement agents and instead require stringent disclosure about political contributions, relationships, etc that might lead to pay-to-play scenarios.

Mr. DiNapoli states that since adopting the ban on placement agents "the funds ability to manage its investment strategies has not been impaired". When reflecting on this comment, it is important to note a couple of things. First, the new placement agent ban in New York was instigated less than six months ago and thus it very hard to imagine that the full ramifications of such a dramatic change can be effectively understood and/or evaluated in such a small time frame, particularly in such a moribund investment climate as this. Secondly, the operative word here is "manage". Placement agents play no role in a pension plan 'managing' its investment strategy. However, a ban on placement agents would severely restrict the diversification and number of investment opportunities that a pension fund would be made aware; a scenario that the pensioners of the State of New York will, over the long term, be disadvantaged by.

Mr. DiNapoli notes that the proposed ban on placement agents has "drawn opposition from some parties". The opposition from "some" is a bit misleading. I took the time to review each and every letter to the SEC posted during the 60 day comment period and quantified the profile of those commenting and their position on the proposed ban of placement agents. The table below (updated as of October 5th at 4 pm PST), provides some very interesting statistics and conclusions. A few of the more compelling conclusions are:

- There were 128 respondents in total and 100 of these, or nearly 78%, appear to be directly involved in the institutional investment business and include pension fund representatives, registered broker dealers/placement agents, investment advisors/managers and industry groups. The remaining 28 (22% of the total) are individuals, pensioners, attorneys or politicians that are not directly involved in the investment management business, that I simply grouped as Others.
- Of the 100 respondents that are actively engaged in the investment management business, all but one (Mr. Chris Tobe, the trustee from Kentucky Retirement Systems[1]) suggested that the SEC eliminate its proposed ban on placement agents.

[1] Mr. Chris Tobe supported the SEC's proposal and did not make specific mention of the ban on placement agents. He did cite many instances of what he thought were improprieties at KRS and not one of those instances involved a placement agent.

- Of the 28 posted comments from Other respondents not directly involved in the investment management business, 19 (70% of the total) suggested that the SEC consider other alternatives and eliminate its proposed ban on placement agents.
- In fact, only one of the respondents specifically stated their direct support for the proposed ban on placement agents, and that distinction belongs to Mr. DiNapoli

Position onProposed Ban of Placement Agents		Oppose the Ban		Support the Ban		No Position Stated	
Respondents	Total	**No.**	**%**	**No.**	**%**	**No.**	**%**
Directly involved in the investment management business	**100**	**99**	**99%**	**0**	**0%**	**1**	**1%**
Pension Funds/Investors	16	15	94%	0	0%	1	6%
Investment Managers/Advisors	38	38	100%	0	0%	0	0%
Brosker Dealers/Placement Agents	41	41	100%	0	0%	0	0%
Industry groups	5	5	100%	0	0%	0	0%
Others	**28**	**19**	**68%**	**1**	**4%**	**8**	**29%**
Individuals (lawyers, politicians, teachers, etc.)	27	19	70%	0	0%	8	30%
Thomas DiNapoli	1	0	0%	1	100%	0	0%

Based on the breadth and diversity of the comments posted, I certainly hope that the SEC recognizes the overwhelming magnitude of opposition to the proposed ban on placement agents. As intimately aware as Mr. DiNapoli may be of the situation that occurred in New York and the politically charged environment that has followed, the rest of the country has had an opportunity to respond thoughtfully and have resoundingly rejected the concept of a ban.

Respectfully submitted,

Robert J. Vogelzang