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October 6, 2009

Via Email:*rule-comments@sec.gov*

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: File No. S7-18-09
Political Contributions by Certain Investment Advisers (Release No. IA-2910)

Dear Ms. Murphy:

Wells Fargo Advisors ("WFA") appreciates this opportunity to comment briefly on the Securities and Exchange Commission's ("SEC" or "the Commission") proposed Rule 206(4)-5. In brief, the proposed rule would prohibit an investment adviser from providing advisory services for compensation to a government client for two years after the adviser or certain of its executives or employees make a contribution to certain elected officials or candidates. WFA firmly supports an advisory services marketplace that strives to eliminate the well acknowledged evil where decisions are made based on factors such as political connections, campaign contributions and varied kickbacks. This letter nonetheless will outline certain concerns WFA has with the rule as proposed.

WFA consists of brokerage operations that administer over $900 billion in client assets. It accomplishes this task through 15,600 full-service financial advisors in 1,100 branch offices in all 50 states and 5,900 licensed financial specialists in 6,610 retail bank branches in 39 states.[1] With the potential to engage with government clients at the state,

[1] WFA includes a number of brokerage operations that have combined as the result of the 2008 purchase of Wachovia Corporation by Wells Fargo & Company. For the ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

county and local level in all 50 states, WFA has a keen interest in the proposal concerning political contributions by investment advisers.

Proposed Rule 206(4)-5 would impose a two-year time out from receiving compensation from a government entity on any investment adviser who has made directly or through its covered associates a political contribution to a public official of that governmental entity. The public official must be in a position to influence the selection of advisers to manage the business of the government entity. The SEC points out that the rule would not ban or limit what an adviser could donate to an official. Instead, the adviser would have to choose between making the donation and losing out on the government entity business for two years. Significantly, the SEC would apply the two-year time out to donations to public officials in the two years prior to the investment adviser seeking the government entity's business. The two-year look back will apply to the money given to the public official such that it will touch covered associates of the adviser who were not affiliated with the adviser at the time in the past two years when the covered associate made the donation.

We ask that the Commission consider modifying the rule as proposed. The two-year "time out" period seems excessive under the circumstances. Unlike the municipal business, which can be episodic, the investment advisory relationship often involves a number of ongoing and long lasting decisions. While it is proper to punish an improper donation, extending that punishment to a two-year period actually imposes a considerable hardship on the government entity (often a pension fund as noted in the Commission's proposing release) which, without much advance notice, must revise its investment strategy as it brings a new adviser on board. It is likely that for a twelve-month period, the government entity could labor on, but it would be hard-pressed to carry out the full investment program for two years without the assistance of the investment adviser who devised the approach. A twelve-month or lower ban would be appropriate for a first offense, with harsher bans for any repetition of the conduct. Other possibilities in a range of sanctions could include additional, "Scarlett letter" disclosure to the current public entity company and future clients for a fixed time period; monetary penalties on a sliding scale; or having a firm and its associates listed on a "bad" list for review by future public entity potential clients. All together, the SEC could craft a "pay-to-play" enforcement scheme with flexibility to minimize disruption to a current client relationship while retaining significant deterrents to violative conduct.

We also raise concerns about the officers and employees whose contributions the rule will cover. As drafted, Proposed Rule 206(4)-5 proposes to limit application of the rule's "time out" provision to contributions made by the adviser and its "covered associates," which would include the adviser's general partners, managing members, executive officers, or other individual with a similar status or function. The Commission explains that it seeks to cover only those persons associated with an investment adviser who are more likely to have an economic incentive to make contributions to influence the advisory firm's selection. Given this rationale, we believe the SEC should enumerate those executive officers whose contributions would not trigger the two-year ban. The rule as proposed contains a prohibition on firms using individuals to do indirectly what the firm could not do directly. Thus, we believe the SEC could label specifically those types of executive officers, such as human resources or technology managers, whose contributions are not covered under Proposed Rule 206(4)-5.

The SEC would include a "look back" provision that essentially says that a person's contribution to a covered political official follows that person to any other advisory firm that hires the person as a new associate. Those covered contributions could extend to a period up to two years from the date of contribution. This provision according to the Commission would prevent advisers from circumventing the rule by funding contributions made by their recently departed employees. It also would cover advisers who try to enhance their chances of being selected to do work for a government entity by hiring persons who have made political contributions to those individuals who are decision makers for the government entity.

The "look back" provision is too draconian. It seems to imply a level of advance career planning by those making political contributions that is likely rare if not nonexistent. It also would impose on an adviser a hiring process that is almost impossible to manage. The advisory firm would have to request of a potential hire all prior political contributions, verify that it in fact received all such contributions, assess whether the contributions would be disqualifying and then make a hiring decision based upon whether it currently works for the government entities or likely would seek to do work for those entities. Such a compliance system is costly to develop and arduous to implement. It would also impose severe limitations on the career opportunities of those newly entering the investment advisory world who are weighed down by political contributions that were completely innocuous when made. Such a burden on employment or the right to contract could create legal risks to the validity of the SEC proposed regulatory scheme.

The SEC should consider a shorter look back period of six months. This shorter period, while still posing a hardship, offers advisers a more manageable task of researching and verifying prior contributions. This 6-month period is also fairer for the potential investment advisory employee as opposed to what in effect is a bar from an entire industry for up to two years. Alternatively, if the SEC wanted to maintain a two-year look back period, it should raise the monetary threshold to $1,500 or more. Perhaps the $250 threshold is warranted for current employees since they already know the rules and they might be able to make an impact by collective action (for example, 80 current employees at $250 each could be meaningful). Where the person is a non-employee of that firm, it seems less reasonable to apply the same dollar threshold. By using the higher dollar amount, arguably the Commission is on firmer footing in assuming that such a donation carries a taint of possible pay to play behavior. With any of the suggested alternatives, the SEC could also include a provision that orders the Division of Investment Management to review the effectiveness of the rule two years after its operative date, and it could expand the look back period or reduce the threshold amount if it determines that there are statistically significant results warranting that change.

Thank you for providing WFA the opportunity to comment. We believe that the SEC can modify or clarify some of the provisions in Proposed Rule 206(4)-5 as discussed above. If you have any questions regarding this comment letter, please do not hesitate to contact me.

Sincerely,

Ronald C. Long
Director, Regulatory Affairs