Kevin K. Albert
[redacted]

October 5, 2009

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

Re: Comments on Release No. IA-2910; File No. S7-18-09; "Political Contributions by Certain Investment Advisers"

Dear Ms Murphy:

My qualifications to provide comments on this proposed rule are as follows. I was employed by the investment banking division of a bulge bracket securities firm (Merrill Lynch) from 1981 until 2005 ultimately attaining management responsibilities and the rank of "partner" (Managing Director). For approximately the last 15 years of my employment at Merrill Lynch I was responsible for managing the private placement business of the firm including its market leading "Private Fund Advisory and Placement" business. This unit is widely recognized in the industry for "founding" the placement agency business for private equity funds in the early 1980's. Moreover, since I retired from Merrill Lynch I have been employed by a leading private equity firm and former client, Elevation Partners, as their internal investor relations and fundraising professional. As a result of these two roles I am relatively current and intimately familiar with and have confronted the issues that you and other regulators are grappling with and I thought that it might be helpful if I offered you my perspective.

The Proposed Rule is One-Half Right and One-Half Wildly Misguided

Your proposal that investment advisory firms as well as their agents refrain from making political contributions to politicians or other officials in positions of influence with public pension plans is appropriate and frankly is long overdue(if such laws are not already on the books). I was under the impression and have always operated as if such laws existed already. In fact, most reputable placement agents and all placement agents affiliated with large broker-dealers have had long standing internal pay-to-play rules prohibiting these types of unethical practices. Therefore, while this new rule will not have any impact on the business practices of reputable investment firms or placement agents it will serve to reduce and hopefully eliminate the opportunity for others who have not policed themselves in the past. Frankly, since it has been my experience that most of the pay-to-play problems have been caused by elected or out-of-office politicians and their "consultants" working in concert with elected officials I feel that this restriction should also specifically target and prohibit any and all placement activities (even as an employee of a legitimate firm) by anyone fitting that very broad definition.

On the other hand, your proposal to ban all placement agents from providing their services to investment advisory firms in conjunction with any public pension plans is horribly unfair and misguided. I am hoping that it is the result of a poor understanding of how the legitimate placement business works and how those business practices differ from what has occurred with the recent "pay-to-play scandals" and that it will be corrected by the comments that you are getting from the industry. To my knowledge, which is fairly comprehensive, there has never been a scandal or prosecution of a legitimate, registered, full-service placement agent in the thirty or so years that the placement agent industry has developed**. Each and every problem has been created by independent "finders", "consultants" or politically connected individuals who have sought to exploit their contacts and relationships for "finder's fees" without providing any value added services beyond a simple introduction.** If your rule were crafted more insightfully to prohibit this practice, I would applaud it. These influence peddlers are not only bad for public pension funds but they are a big problem for the legitimate placement industry as well. It is difficult to run a legitimate, ethical business if there are individuals running around representing that investments can only be obtained from certain accounts by employing one of these unofficial gatekeepers.

A Better Way to Proceed

Why not take the time to pass a rule that differentiates between the legitimate versus the non-legitimate industry professionals? The payoff for this would be considerable for both the public pension plans (continued access to the largest possible opportunity set), investment advisory firms (maintain unfettered ability to access public plan investors) as well as for the several hundred legitimate placement professionals who would suffer severe career damage under the currently proposed rule.

This would not be terribly hard to do. The "legitimate" placement industry is characterized by several easy to assess attributes:

- Registered broker-dealers.

- Seek and maintain long-term relationships with both investors (in this case public pension plans) and investment advisory firms so that they can develop a detailed understanding of their needs so that they can serve them efficiently.

- Highly selective; will typically evaluate 10 investment advisory firms for each actual mandate taken on.

- Professional staff with demonstrated educational backgrounds, years of experience, knowledge base and analytical capabilities to perform due diligence on prospective investment advisory firms that is at least as good as what prospective investors will perform.

- Substantial advisory input and involvement with the investment advisory firm during the fundraising process regarding how to position the firm with various investors, fund terms, fund documentation, presentation of track record, return modeling, the provision of third party research, attendance at all investor meetings, attendance at due diligence sessions, involvement in terms negotiations.

- An exclusive or semi-exclusive arrangement for the duration of the fund raising campaign as evidenced by placing the placement agent's firm name on the offering memorandum.

On the other hand the "political fixers" do virtually none of the above. They are looking to be paid for a quick introduction to the handful of public pension plans where they have a relationship, period.

As a closing example I will relate to you how substantial and professional an organization we developed for this business during my time as head of the placement group at Merrill Lynch.

During most of my tenure we had approximately forty professionals engaged in this business. Approximately a dozen of these were senior institutional salespeople with ten or so years of experience. These individuals who typically had MBA's covered institutional accounts geographically (much as Merrill Lynch covered the Fidelity's of the world on the public equity side); none of them specialized on working with public plans, they serviced any active private equity investor in their region. Their job was to develop an informed, value-added relationship with each of these active investors by getting to know the investing needs and desires of each and then introducing them to the fundraising mandates we were working on which were appropriate to the needs and wants of the institution. To the best of my knowledge all of these institutional investors, including the public pension plans, appreciated our service, particularly the pre-screening that we did of investment advisory firms on their behalf which introduced some efficiency and "branding" into an otherwise messy process.

The balance of the professional pool consisted of thirty or so investment banking professionals arrayed from entry level positions (analyst) up through the ranks (associate, vice president, director) to the senior most position of Managing Director. Virtually all of these professionals were well educated professionals from top universities and most had MBA's. Virtually, everyone in this group other than the most junior interns selected this investment banking specialty to work in from the many alternatives present at t firm like Merrill Lynch and as such specialized in working full time with private investment advisory firms and institutional investors in the private equity class and generally intended to maintain this industry concentration for their entire careers. With the exception of a few public pension plan that we covered we had significantly more horsepower, continuity and experience in our group than they were able to maintain due to constrained budgets.

Finally, all of the professionals in the group had passed the various NASD licensing exams (as appropriate to their level) such as the Series 7, 24 and 63 and each had to comply with all Merrill Lynch policies and regulations including all rules related to political contributions.

Ours was a professional, ethical and competent operation and is representative of the legitimate placement business worldwide. Please do not destroy it inadvertently!

Thank you for taking the above into consideration as you decide how to move forward and please do not hesitate to contact me if I can be of further service.

Sincerely,

Kevin K. Albert
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