National Conference of State Legislatures
National Association of Counties
National League of Cities
International City/County Management Association
National Association of State Auditors, Comptrollers and Treasurers
Government Finance Officers Association
National Association of State Retirement Administrators
National Conference on Public Employee Retirement Systems
National Council on Teacher Retirement

October 6, 2009

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

VIA ELECTRONIC MAIL

Re: File Number S7-18-09 – Political Contributions by Certain Investment Advisers

Dear Ms. Murphy:

On behalf of the national organizations listed above – representing state and local governments, public finance professionals and state and local retirement systems – we are writing to comment on the Securities and Exchange Commission's proposed new Rule 206(4)-5 under the Investment Advisers Act of 1940 regarding political contributions by certain investment advisers. State and local governments have strong fiduciary laws, conflict of interest statutes, and ethical standards requiring exclusive loyalty of those entrusted with the management of public funds. As the Commission acknowledges, state and local governments have additionally taken measures to end any perception that political contributions play a part in the decisions made by public fiduciaries.

Our organizations appreciate the Commission's desire to end this perception from a national perspective through its regulation of investment advisers, and its request for comments to ensure such regulations do not have unintended adverse consequences for the very governments and plan participants the rule is aimed at protecting. We would like to offer the following thoughts regarding the proposed rule for your consideration.

We commend the Commission for recognizing that differences in municipal underwriting and asset management may require different approaches to addressing the issue in these two areas, and hope the alternatives outlined in Section II.A.2 of its proposal will be further explored. Our organizations are concerned about the possible impact to both public pension funds and state and local governments arising from the abrupt termination of long-standing investment adviser relationships that would likely take place as a result of the implementation of the two-year time-out as currently set forth in the proposed rule.

We therefore welcome the Commission's interest in mitigating disruption to the government client and its recognition that changing investment advisers can be extremely disruptive to a pension fund or government. To that end, we feel that the Commission did not give adequate consideration to how the termination of these relationships would affect state and local plans and governments. While the Commission suggests an adviser might continue providing advisory services on an uncompensated basis until the plan or government obtains a new adviser, we do not believe this is reasonable or practical. It is unlikely that a Board of Trustees or government officials would accept uncompensated services, even if an adviser was willing to continue advisory services on that basis.

Furthermore, these relationships are governed by contractual agreements, which generally provide termination notice requirements and potential penalties. Abrupt cessation of services would likely be deemed a default of contractual obligations and might result in legal liability. Therefore, we would encourage the Commission to make clear that a violation of the rule by the investment adviser, which results in the termination of the contract between the government client and the adviser, is not deemed to be a breach of contract by the government client.

We also would strongly encourage the Commission to explore alternatives to its present approach in this area that reflect the fact that investment adviser services are ongoing, often long-standing relationships that provide important stability and continuity in the investment functions of government. The abrupt termination of an investment adviser will interfere with such continuity and may, for a period of time, leave the plan or government without the adequate professionals needed to focus on investing billions of dollars of employee and taxpayer money. This is particularly true for the many public plans that do not have internal investment staff and therefore rely on professional investment advisers to assist in investing their funds.

Our members are also concerned that the abrupt termination of the fund or government's long-standing investment professional that might result in order to comply with the proposed rule could undermine the fiduciary duty or authority of the plan's Board of Trustees or government officials who have the ultimate responsibility for both the selection of investment advisers and investment of public funds. If the proposed rule becomes effective as written, its impact could be far more deleterious to the public plan or government than to the investment adviser it is intended to discipline.

Finally, with regard to the Commission's question concerning whether the definition of "contribution" should be expanded, we believe that its scope should remain limited to political contributions and should not be extended to cover expenditures other than those made for the purpose of influencing an election. As for expenses an investment adviser might incur in organizing or sponsoring a conference at which a government official is invited to attend or is a speaker, we believe that the approach of the Municipal Securities

Rulemaking Board (MSRB), which applies a facts-and-circumstances test on a case-by-case basis instead of addressing meetings and conferences of this nature directly in its rules, provides a reasonable model for the Commission to consider.

Thank you for this opportunity to offer our views on this important matter. If you have any questions concerning our comments, please feel free to contact our representatives listed below:

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Barrie Tabin Berger, GFOA, (202) 393-8020
Jeannine Markoe Raymond, NASRA, (202) 624-1417
Hank Kim, NCPERS, (202) 624-1456
Leigh Snell, NCTR, (703) 684-5236