



National Association of Insurance and Financial Advisors

2901 Telear Court • Falls Church, VA 22042-1205 • (703) 770-8188 • www.naifa.org

October 6, 2009

Ms. Elizabeth M. Murphy, Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Via Electronic Mail: rule-comments@sec.gov

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

Dear Ms. Murphy:

This letter will present the views of the National Association of Insurance and Financial Advisors (“NAIFA”), in response to the Securities and Exchange Commission’s request for comments on proposed rule 206(4)-5 and the proposed amendments to rules 204-2 and 206(4)-3, concerning “Political Contributions by Certain Investment Advisers.”

Founded in 1890 as the National Association of Life Underwriters, NAIFA comprises more than 700 state and local associations representing the interests of approximately 200,000 agents and their associates nationwide. NAIFA members focus their practices on one or more of the following: life insurance and annuities, health insurance and employee benefits, multiline, and financial advising and investments. The Association’s mission is to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of its members. NAIFA's website can be accessed at www.naifa.org.

The proposed “pay-to-play” rule 206(4)-5 for investment advisers (the “Proposed Rule”) provides that an investment adviser may not receive compensation for providing advisory services to a government entity for the two year period after the adviser makes a political contribution to a public official who is in a position to influence the awarding of advisory business with respect to the government entity. NAIFA recognizes the importance of the objective of the Proposed Rule and we applaud the SEC’s efforts to expose and eliminate corruption related to the management of public pension funds. However, we are concerned about the potential (and presumably unintentional) effects of the Proposed Rule on broad-based political giving by investment advisers and their associates.

The general purpose of the rule is to prohibit an investment adviser from making political contributions to an official of a state or local entity for which the adviser acts as investment adviser or manager. The Proposed Rule is specific and nuanced and is presumably intended to apply only to particular situations that can resemble “pay-to-play” schemes. The scope of the Proposed Rule is limited to situations in which investment advisers provide investment advisory services to state or local governmental entities or to investment pools in which those governments invest. The Proposed Rule prohibits an investment adviser from advising or managing a state or local government entity's funds for compensation for 2 years if the investment adviser, its PAC, or a covered associate contributes to an official of that government entity. The range of political contributions and government entities that may be affected by the Proposed Rule is broad: affected contributions would include political contributions to a government official's election fund, and those to an official's inaugural and transition committees. Additionally, affected government entities would include, among others, public pension funds, local pooled funds, and 403(b) and 457 retirement plans. However, the Proposed Rule does not state that all political contributions to these entities are inappropriate, only those which may create an appearance of impropriety.

Importantly, the Proposed Rule does not prohibit all political contributions and does not suggest that investment advisers should prohibit their employees from making political contributions. Nevertheless, NAIFA remains concerned because the enactment of Municipal Securities Rulemaking Board Rules G-37 and G-38 prompted many broker-dealers that underwrite municipal bonds to prohibit their employees from making any political contributions.

This result severely and unnecessarily restricted the freedom of employees to express support for a political belief, and is a path that should be avoided. The Proposed Rule is modeled after MSRBR Rules G-37 and G-38, and in fact many of the provisions in the Proposed Rule are taken word-for-word from these Rules. NAIFA is therefore concerned that the Proposed Rule will be interpreted in the same manner as Rules G-37 and G -38, and NAIFA recommends that the SEC take appropriate steps prevent this undesirable outcome.

Although there may be numerous issues with respect to the breadth of the rule and compliance by advisers and their associates, our principal concern is that the limitations on political contributions could ultimately be much broader than the SEC intends or the Proposed Rule requires. Our concern is that investment advisers, out of an abundance of caution and with the intent to be fully compliant with the Proposed Rule, may establish internal rules prohibiting a broad range of political contributions, including contributions to political action committees (PACs). NAIFA believes the SEC should make clear that the Proposed Rule is not meant to be interpreted as to impose a "blanket" ban on all political contributions by investment advisers, because such an interpretation will lead to company policies that inappropriately and unnecessarily restrict the freedom of their employees to support a political belief.

For that reason, we ask that you clarify the reach of the Proposed Rule. It is critical that the SEC clarify to investment advisers that the Proposed Rule is meant to apply only to certain political contributions made under a narrow set of specific circumstances and does not contemplate a blanket ban on all political contributions by the employees of investment advisers. A clarifying statement is essential to delineate the boundaries of the Proposed Rule so investment advisers do not create overbroad policies that will unnecessarily restrict political contributions, and to prevent unnecessary limitations to the rights of employees of investments advisers to champion a political cause.

Thank you for your consideration of our views. Please contact Gary Sanders, NAIFA Vice President for Securities and State Government Relations at 703-770-8192 or gsanders@naifa.org if you have any questions regarding our comments.

Yours Truly,

/s/ Thomas D. Currey

Thomas D. Currey

NAIFA President