October 6, 2009

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

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

Dear Ms. Murphy:

Massachusetts Mutual Life Insurance Company[1] ("MassMutual") supports the goal of the Securities and Exchange Commission ("Commission") to address pay-to-play practices that distort the process by which public pension investment advisers are selected. We appreciate the Commission's efforts to ensure that the awarding of investment advisory contracts is based solely on the merits of the competing product or service.

However, we believe that Proposed Rule 206(4)-5("Proposed Rule"),[2] as currently written, is overly proscriptive and casts too wide a net, resulting in significant compliance obligations and costs without necessarily furthering its articulated purpose. In addition, the Proposed Rule could also have a chilling effect on an investment adviser's ability to recruit and retain qualified individuals. Because of these, and other factors, we believe the Proposed Rule would have a detrimental effect on the quality of investment advisers that a public entity could select from, and thereby ultimately do more harm to the "taxpayers and million's of present and future state and municipal employees who rely on the funds for their pension and other benefits."[3]

General Competitive Issues

MassMutual, like some other life insurance companies, offers a small number of investment advisory products or services. Commission rules, however, require that the *entire* life insurance company register as an investment adviser with the Commission, even though only a few business units of the company actually provide and/or market these investment advisory services. In MassMutual's case, this means a registered investment adviser with approximately 6,000

[1] Founded in 1851, MassMutual is a leading mutual life insurance company, and is a registered investment adviser with the Commission. MassMutual provides products to help meet the financial needs of clients, such as life insurance, disability income insurance, long term care insurance, retirement/401(k) plan services, and annuities.
[2] Political Contributions by Certain Investment Advisers, 74 Fed. Reg. 39840, (proposed August 7, 2009)(to be codified at 17 C.F.R. pt. 275).
[3] Id. at 39841.

employees, less than ten (10) percent of whom are engaged in investment advisory activities. MassMutual also works with 4,800 life insurance agents who solicit insurance business on behalf of the company. Some of these life insurance agents are registered representatives of an affiliated investment adviser and/or broker-dealer and may solicit investment advisory business from government clients. Without reasonable modifications, the Proposed Rule would generate a significant compliance burden for MassMutual without providing any cognizable benefit to the integrity of the market for public retirement plan investment advisory services.

Two Year Ban on Compensation

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.[4] Of particular concern is that the Proposed Rule provides no opportunity for the Commission to look at the totality of the circumstances surrounding a political contribution, including the existence of compliance policies and procedures, before imposing the harsh penalty of a ban on compensation.

MassMutual suggests that the Commission modify the Proposed Rule to provide the Commission with some means of evaluating the facts and circumstances surrounding a contribution and to provide for a series of increasing sanctions against the investment adviser before deciding to apply the two-year ban on receiving compensation. Such sanctions could range from a "no action" letter, to a civil fine, to ultimately the application of the two-year ban on compensation. This ban would be reserved for the most egregious or repetitive infractions.

Ideally, the imposition of sanctions could be mitigated by the adviser's internal controls, self-reporting, and attempts to seek a quick refund of the impermissible contribution. MassMutual believes such an approach would allow the Commission to tailor the sanction to the nature of a potential violation in order to avoid an otherwise Draconian result.

Definition of Executive Officer Should be Refined

MassMutual believes that the definition of "executive officer" contained in the Proposed Rule is vague, exceedingly broad and includes in its scope numerous individuals employed by MassMutual who have no connection or relation to MassMutual's investment advisory business. The resulting breadth of coverage would not serve the Proposed Rule's fundamental purpose of addressing perceived abuses in the selection of investment advisers by governmental officials. As currently drafted, the Proposed Rule includes within its coverage any executive officer who supervises those who solicit clients for investment advisory business, regardless of whether such investment advisory business includes governmental clients. We suggest that the definition of "executive officer" be narrowed so that it only includes those individuals with a direct nexus to the provision of investment advisory services or solicitation of those services to government clients.

[4] Id. at 39840.

Without a revised definition of "executive officer," MassMutual and others similarly situated will be required to identify and designate a broad range of individuals as covered by the rule in order to avoid being subject to the ban on compensation for two years. Such a result would have an unwarranted, chilling effect on the opportunity for these individuals to exercise their right to participate in the political process, despite the fact that they have nothing to do with providing investment advisory services to state and local governments.

The Proposed Rule already contains language that prohibits an investment adviser from doing indirectly what it cannot do directly. In our view, the "indirectly" standard would provide adequate protection, without creating unnecessary burdens, if the definition of "executive officer" is narrowed as suggested.

Definition of Solicit Should be Significantly Narrowed

As alluded to in the discussion of the definition of executive officer, the definition of "solicit" includes the solicitation of any client for an investment adviser.[5] On its face, this definition applies to any individual who solicits *any* business for an investment adviser and is far broader then the scope of this proposed rule. We believe this can be remedied by inserting the word "government" before the word "client" in 206(4)-5(f)(10)(i).

The Two Year "Look Back" Should be Revised to Reflect the Scope of the Investment Advisory Business

The two year "look back" requirement for examining political contributions included in the Proposed Rule should be modified to recognize individuals who are new to the investment advisory business should not be penalized for their prior, unrelated political activities. The Proposed Rule would cover the prior two years of contributions by a newcomer to the investment adviser, even if he or she had nothing to do with an adviser or the investment advisory business prior to joining the firm.

Particularly in the context of new employees or newly promoted individuals, this two year look back would impose an unreasonable and awkward compliance burden on covered investment advisers. Investment advisers would be required to seek information from candidates for employment that would typically be considered inappropriate in the pre-employment stage. The responses by a candidate to such an inquiry could require the adviser to reject a qualified individual because of their personal political activity that predates his or her association with the investment adviser. In such circumstances, the adviser may be subject to challenges that the candidate's rejection was based on unreasonable interference with individual privacy or contrary to the protections afforded under various state labor and employment laws.

While the Proposed Rule's two year look back requirement may be workable in the context of MSRB Rule G-37, MassMutual is of the opinion that such a requirement will be difficult to administer with respect to investment advisers. Because municipal finance is such a narrow field

[5] 206(4)-5 (f)(10)(i)

of expertise practiced by relatively few individuals, the two year look back requirement represents an area where Rule G-37 cannot be readily translated into the far-reaching investment advisory business. It is much more likely that an investment adviser, with its broad scope of client offerings, would search for new employees from a wide range of segments within the financial services industry and from a wide variety of occupational specialties, many having nothing to do with the provision of investment advisory services to government entities. These individuals would likely have no reason to be familiar with the "pay-to-play" rule. Unfortunately, however, both the investment adviser and the prospective employee could be tripped up by this retroactive component of the rule.

Establish a Meaningful Waiver Process that Recognizes the Potential for Inadvertent Contributions

The Proposed Rule should be modified to include a meaningful, clear and expedited process for an investment adviser who discovers an otherwise impermissible contribution to seek a waiver from the Proposed Rule's two-year ban on compensation. We understand that under Rule G-37, waivers have only been granted on very rare occasions. Given the breadth of the Proposed Rule, including its two year look back requirement for new hires and the potential number of employees and solicitors impacted, the Proposed Rule must authorize a reasonable and flexible waiver process in order to avoid the proposed consequences.

Inadvertent contributions that are unrelated to any investment advisory placement decision by a government entity (or official) should be reviewed through an exemption process that offers tangible relief to a covered investment adviser with reasonable compliance procedures in place. A waiver process which recognizes that, among other things, an investment adviser should not be penalized for inadvertent contributions or contributions by a rogue employee, and should not in any way impair the proposed rule's effectiveness.

This exemptive process must move quickly due to the nature of the governmental business opportunities, often available only in a time-limited request for proposals (RFP) period. If the process does not move quickly, an investment advisor seeking such a waiver might be forced to not pursue the opportunity with a government client due to the very real risk that the provision of such services may be uncompensated for two years if the waiver is not granted.

The Proposed Rule Should Adjust *De Minimis* Contribution Amounts and Exempt them from Recordkeeping

We believe that the Proposed Rule should be modified to not require recordkeeping regarding contributions which meet certain *de minimis* standards. Currently, the Proposed Rule exempts contributions (in the aggregate) of $250 or less by an executive officer or solicitor to a candidate for whom such individual is entitled to vote. MassMutual suggests that the de minimis exception for such contributions made to a covered official to whom a covered individual donor is entitled to vote be raised to $1,000 per election. In addition, we suggest that a new de minimis exception of $250 be available for contributions to covered officials to whom a covered donor is not entitled to vote.

The creation of a new general de minimis exception recognizes that individuals have a protected right to participate in the political process and that they have legitimate purposes for supporting candidates other than those for which they are entitled to vote. Reflecting upon the increasing use of the Internet by political campaigns and the increase in "small dollar" contributions, it is entirely possible that such a contribution, if made by a covered associate of the investment adviser, could result in the adviser being subject to a two year ban on receiving compensation.

Presumably, legitimate political contributions of less than $1,000, which are subject to campaign finance laws, are unlikely to have a significant impact on the decision to influence the selection of an investment adviser to a government entity. Our suggested approach would allow individuals to reasonably exercise their right to participate in the political process without creating the risk of undue influence in the selection of the adviser.

The Proposed Rule Recordkeeping Requirement Should Only Apply Prospectively

The recordkeeping requirement of the Proposed Rule would require an investment adviser to review all of its client records across multiple business units to determine if a client meets the threshold of a covered government entity. It would be virtually impossible to do this in an automated fashion, as legacy software systems typically do not have a unique indicator that would identify governmental clients.

Even if this requirement is prospective only, the requirement to maintain records of each governmental entity being solicited would require a diverse financial services company like MassMutual to undertake significant legacy software system modifications or build an entirely new system to track each instance of a "solicitation," which could include phone calls, meetings, or responses to governmental requests. This system would then need to aggregate data across multiple business lines, many with existing systems that may not have the ability to share this data in a useful format.

All of these are costly and time consuming activities to meet a requirement that appears to add little value to the Commission's efforts to ensure compliance with the Proposed Rule. MassMutual respectfully requests that the effective date of the final rule reflect the practical difficulties investment advisers will face when implementing reasonable compliance policies and procedures to meet the proposed recordkeeping requirements.

Conclusion

MassMutual supports the Commission's initiative to address political contributions by certain investment advisers because there have been publicized reports of abuse and because of the potential conflicts of interest that result from pay-to-play practices. In addition, we strongly encourage the Commission to take into consideration the suggestions made in this letter and modify the Proposed Rule to avoid significant compliance burdens and unnecessary competitive inequities that will not in any way further the goals of the Proposed Rule.

We are willing to discuss our suggestions with you. For further information please contact either Hugh Barrett at (413) 744-2405, Chris Markowski at (413) 744-1181), or me at (413) 744-6057.

Sincerely,

Kenneth S. Cohen

Kenneth S. Cohen
Senior Vice President and Deputy General Counsel