



October 6, 2009

VIA INTERNET COMMENT FORM

Elizabeth M. Murphy, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

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

Dear Ms. Murphy,

Please accept our comments to the U.S. Securities and Exchange Commission's (the "Commission's") proposed rule regarding Political Contributions by Certain Investment Advisers (the "Proposed Rule"). MarketCounsel understands the Commission's concern regarding the conflicts of interest that result when elected officials allow political contributions to play a role in the management of public assets, and that certain contributors may be given preferential consideration by the elected officials, otherwise known as "pay to play" arrangements. MarketCounsel supports the Commission's attempt to reduce conflicts of interest that may arise through political contributions but we oppose certain provisions within the current form of the Proposed Rule. The Commission's interests in curtailing pay to play practices needs to be balanced against the interests of advisers and advisers' employees to make political contributions to elected officials or candidates.

MarketCounsel is a business and regulatory compliance consulting firm to some of the country's preeminent entrepreneurial investment advisers. In addition, our affiliated law firm, the Hamburger Law Firm, renders coordinated legal services to a similar but more expansive universe of clients. All told, we render professional services to more than 700 investment advisers. We host an outsourced compliance platform for registered investment advisers ranging from start-ups with little or no assets under management to firms managing billions of dollars.

DE MINIMIS CONTRIBUTIONS

The Proposed Rule contains a *de minimis* exception that would permit "covered associates" (as defined in the Proposed Rule) to make aggregate contributions of \$250 or less, per election, to an elected official or candidate if the person making the contribution is entitled to vote for the official or candidate. Outside the *de minimis* exception, contributions by covered associates would subject the adviser to a two-year lock out period during which it would be unable to conduct advisory business for compensation with any government entity over which the candidate would be in a position to influence the award of advisory business.

The *de minimis* exception presents a fair compromise for routine contributions that allows covered associates to make a contribution to elected officials and candidates without subjecting the adviser to the lock-out period. However, the \$250 *de minimis* exception is currently set at too low of a threshold. MarketCounsel proposes raising the *de minimis* exception to \$1,000, per election, to an elected official or candidate if the contributor is entitled to vote in that election. MarketCounsel supports maintaining the provision allowing primary and general elections to be considered separate elections. The \$250 threshold in the Proposed Rule is based upon the amount currently excepted from MSRB rule G-37. As the Proposed Rule points out, the \$250 threshold is an amount established in 1994 that has not been adjusted for inflation. The Proposed Rule also points out that the Commission is hesitant to adjust the \$250 threshold for ease of maintaining a round number. The interest of individuals being able to support the candidate of their choice through political contributions substantially outweighs the Commission's desire to have a round number.

MarketCounsel further supports the inclusion of a second *de minimis* exception that would allow covered associates to make political contributions in elections even where they are not entitled to vote. While individuals may not be entitled to vote in an election, they may be impacted by the elected officials in that jurisdiction, especially if they have business interests in that jurisdiction. MarketCounsel proposes establishing a *de minimis* exception of \$1,000 for candidates for whom the contributor is not entitled to vote, but for whom the firm could have voted if it were a natural person. For example, the firm should be allowed to support a local candidate that could impact the taxes, zoning, and other issues that affect the firm.

BAN ON USE OF THIRD PARTIES TO SOLICIT GOVERNEMENT BUSINESS

MarketCounsel believes that the proposed ban on using third parties to solicit government business is unnecessary and unfairly impacts advisers. The Commission expressed concern that advisers would use third parties to circumvent the prohibition on contributions to elected officials or candidates. The Investment Advisers Act of 1940, as amended (the "Advisers Act") prohibits advisers from doing indirectly what they cannot do directly. This restriction would prohibit advisers from using solicitors to circumvent the Proposed Rule without having to ban the use of solicitors outright.

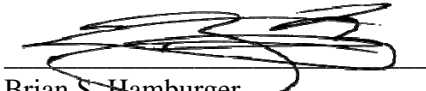
Should the Commission adopt this restriction, an uneven playing field would be established between advisers and other financial industry participants that are permitted to utilize third party solicitors to recruit business. The Commission is seeking to place an unnecessary burden on advisers rather than on the solicitors who may be making contributions in order to direct government business or the government officials who may be allowing campaign contributions to influence their decisions. The regulation is misdirected. As such, MarketCounsel believes that advisers should be permitted to utilize third parties to solicit government business, subject to the existing provisions of Rule 206(4)-3 of the Advisers Act.

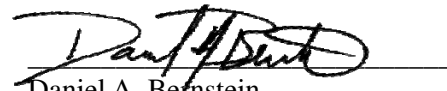
CONCLUSION

MarketCounsel believes that the Proposed Rule requires modification prior to adoption. MarketCounsel believes that the *de minimis* allowable contribution (without triggering the two-year lock out) should be raised to \$1,000 for contributions made where the contributor is eligible to vote for the candidate. In addition, there should be a *de minimis* exception of \$1,000 established where the contributor is not eligible to vote for the candidate. The Commission may wish to consider tailoring this additional *de minimis* exception to candidates that have a direct impact on the adviser. Additionally, MarketCounsel believes that the ban on the use of third parties to solicit government officials is unnecessary and serves as an unfair impediment to investment advisers with no substantial benefit to the financial services industry or potential clients.

MarketCounsel hopes that our comments, made on behalf of us and our entrepreneurial, closely held investment adviser clients are beneficial to this process. Thank you for the opportunity to provide input and should you have any questions or require any additional information regarding any of the foregoing, we remain available at your convenience.

Best regards,
MARKETCOUNSEL, LLC


By: Brian S. Hamburger
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Daniel A. Bernstein
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