



Elizabeth M. Murphy, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-0609

August 12, 2009

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

Ladies and Gentlemen,

I write to you today as a Partner of Atlantic-Pacific Capital, Inc., a Greenwich, CT based Alternative Investment Advisory & Fund Placement Firm. We would be one of the many firms drastically affected if the proposed rule banning third party marketers from doing business with public pension plans in the United States is adopted as currently written.

We feel there is a significant difference between legitimate placement firms like ours and the “finders” or “influence peddlers” implicated in the recent pay-to-play scandals that have tainted plans in New York and New Mexico. Since inception, we have been an integral part of the legitimate business practice of identifying and introducing the very best alternative investment products to the institutional investor community, always conforming to state and federal regulatory requirements as well as the securities industry’s strict codes of ethics and conduct.

We welcome and applaud the measures highlighted in the proposed rule that seek to bring tighter scrutiny and oversight to the practices that allowed pay-to-play to flourish and only request that in drafting the rule, the SEC recognize that there exists a legitimate industry of third party marketing firms who provide an essential service to the investment management and institutional investor universe.

***We ask that the proposed rule be amended to allow the use of legitimate and licensed third party marketing firms registered as broker/dealers with the SEC by investment managers and that our industry be held to the same strict standards that the Investment Management community is being asked to adhere to in the same Proposed Rule.***

We think that this would satisfy the spirit and the intent of the proposed rule to eliminate the conditions that lead to pay-to-play practices while preserving a legitimate industry that adds value to the investment management and institutional investment process.

We are already regulated by the SEC, FINRA and other state, federal and international regulatory bodies so conforming to these rules set forth in the proposed rule would not pose any additional or undue burdens on these regulators in terms of monitoring compliance. An outright ban on placement agents, however, 1) would be catastrophic for firms like ours whose only line of business is the marketing of alternative investment products, 2) would significantly curtail the quality of the deal flow seen by the public

pension community and 3) would strike a severe blow to smaller and lesser known investment management firms, those who typically require these placement services but who cannot afford to hire in-house marketing staff to help raise capital themselves.

### **Background of Atlantic-Pacific Capital, Inc.**

Atlantic-Pacific Capital is an independently owned firm founded in 1995 that employs 42 people in offices in Connecticut, New York City, Chicago, San Francisco, London (UK) and Hong Kong. We have raised in excess of \$35 billion in capital commitments for 48 private equity and real estate funds based in the United States, Canada and abroad. Atlantic-Pacific has specialized in bringing first or second time teams and funds to the market, giving those emerging managers valuable advice on their fund formation, including the management of the process of placing the funds with interested institutional investors. Over half of the funds we have placed would be characterized as such and none have ever lost investor's capital.

We are a registered broker/dealer and are regulated by FINRA in the United States, the Financial Services Authority in the United Kingdom and the Securities and Futures Commission in Hong Kong. Our six Partners have in the aggregate almost 100 years of relevant private markets placement experience and every one of our 23 professionals based in the United States has passed at least the Series 7 and 63 examinations and maintains a current and valid U-4 certification. Our overseas employees have similarly passed their local jurisdictional examinations, are registered and in good standing with the appropriate securities industry regulatory body in those jurisdictions. We are compliant in every aspect of our business with regards to our regulatory filing obligations and have maintained a level of transparency in all our dealings with public pension plans, meeting the requirements of each of those jurisdictions. Throughout the placement process for a fund, we work exclusively with the investment staff at the public plans and do not attempt to circumvent the selection process by contacting board members, elected officials or other individuals of influence within the decision making chain of command. ***Lastly, we have NEVER contributed to any political campaigns for officials responsible for the disposition of Public Pension assets in any of the 50 states or paid a third party "finder" to influence an investment by a public pension plan or other investor.***

### **Legitimate Third Party Marketers vs. Finders**

In recent months, much has been said about the roles played by placement agents in the process of raising capital for investment managers and there seems to be a clear misconception of and lack of distinction being made between the "influence peddlers" seeking to capitalize purely on relationships built through campaign contributions and political dealings and those services provided by legitimate investment advisory firms like ours whose participation in the process is widely accepted and appreciated by the investment staffs and CIOs at the same public pension plans the proposed rule seeks to ban us from.

To be clear, the introduction of the investment manager to the investor is but one in a number of advisory steps and services we provide the investment manager over the course of an engagement. For the “finders” that introduction is the ONLY service they provide. They do little or no due diligence on the manager they are seeking capital for, have no say in the marketing strategy, no hand in the creation of the marketing materials and are usually hired to target only one or two select investors, based solely on some relationship with officials who may be able to exert influence over the investment manager selection process. We do not condone the use of such finders and would welcome any prohibition against an investment manager’s use of them in marketing their funds.

### **The Placement Process**

Rather, like the pension plan staffs’ themselves, we identify and meet hundreds of managers annually who are looking to raise capital and, through a stringent selection process, we will represent only six to eight funds in any given year. Those decisions are made after an extensive period of due diligence whereby we accumulate massive amounts of materials on the manager, their investment strategy and focus, their investment process, track record of returns and other pertinent information. We will scour through all that information and formulate a specialized marketing plan that will include the identification - based on our knowledge of the market - of the most likely interested institutional investors across the Public and Private Pension, Endowment, Foundation and Asset Management universe. We are instrumental in the creation and drafting of a Private Placement Memorandum, a marketing Presentation Book and a customized Investor Due Diligence Questionnaire, among other key documents.

In conjunction with our clients, we will then organize and manage the entire road show process which entails the logistics of scheduling and attending between 100-150 meetings worldwide, responding to a myriad of investor questions and concerns derived thereof and working with fund formation counsel to manage the process of navigating the investors through the Limited Partnership Agreements that are the ultimate contracts securing the commitment of the investor to the investment manager’s fund. The final commitment to a fund by an investor is usually the result of multiple meetings, communications and exchanges of information and takes anywhere from 12 to 18 months to complete. Any fees payable for the commitment of an institutional investor to a fund is borne by the investment manager, not the institutional investor.

### **Other Value-Add Benefits to the Institutional Investors**

In addition, we provide a host of other valuable services to the institutional investors we maintain relationships with beyond the marketing of our funds. Those services include the sending of market research and information, identifying and making introductions to unrelated managers who may be of interest to the programs in question and providing references and feedback on managers whom the investment staff may be considering for investment, just to name a few. In short, the investment team at most public pension plans are understaffed and rely on industry participants, including placement agents, to vet or

identify previously unknown investment opportunities that they would not otherwise have heard about. Indeed, most plans prefer to look at funds that are represented by reputable agents because they view the decision making process the agent makes to take on the mandate as an important first screen to their own process of devoting time and resources to a particular fund. The sharing and dissemination of otherwise difficult to obtain information helps the public pension plan investment professional make better, more informed decisions and groups like ours play a critical role in that dialogue.

In closing, we ask the SEC to recognize that there is a legitimate business practice of third party marketing carried out by registered broker/dealers for the investment management community both of which the SEC already oversees and regulates and that we play a vital role in the identification, preparation and distribution of private offerings to institutional investors worldwide. As an industry, we welcome strict regulation but feel strongly that an outright ban would put firms like ours out of business and put smaller, lesser known investment management firms at a major disadvantage to their larger competitors who can afford to bring marketing capabilities in-house. It would also deprive the staff at the public pension plans themselves of the broader access to pertinent information flow that a regular dialogue with the agent community provides and potentially deprive them of high quality investment opportunities that would ultimately accrue to their beneficiaries. It is for these reasons that we respectfully request the SEC change the wording of the proposed rule from an outright ban on third party marketing firms to language that would hold our industry to the same strict standard that the proposed rule seeks to hold the investment managers themselves. This will directly address the concerns posed in this rule while also preserving a beneficial and important investment advisory industry.

With Kind Regards,



Michael Sotirhos  
Partner

For and on behalf of the employees of Atlantic-Pacific Capital, Inc.