August 25, 2009

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

Re: File No. S7-18-09, Political Contributions By Certain Investment Advisors

Dear Ms. Murphy:

Please accept this correspondence as the comment of Monomoy Capital Management, LLC to the Commission's proposed rule 206(4)-5 and proposed amendments to rules 204-2 and 206(4)-3 under the Investment Advisers Act of 1940, 15 U.S.C. 80b (the "Proposed Rules").

Monomoy Capital Management is the manager of Monomoy Capital Partners, L.P., a $280 million private equity fund focused on business restructuring and turnaround investing in smaller middle market businesses, typically businesses with annual revenues of between $40 and $300 million. Monomoy currently owns 11 basic businesses that operate in the core of the American economy, ranging from an $80 million commercial bakery located in Livonia, Michigan to a $275 million glassware manufacturer based in Lancaster, Ohio. We retained a registered placement agent to help us raise our initial (and current) fund and have retained the same placement agent to raise a second fund this year.

Monomoy does not yet include substantial direct investments by government entities or government pension funds covered by the Proposed Rules. Instead, government entities have indirectly invested in Monomoy through fund of funds vehicles and accounts managed by third parties. Over the next five years, however, public funds will become a significant portion of our capital base as we grow our business and public funds intensify their focus on emerging managers and specialized private equity strategies. We are currently in discussions with several public funds over investing in our second fund and several government entities to invest in Monomoy II.

We strongly support the Commission's efforts to expose and eliminate corruption in the administration of public pension and other investment funds. The "pay to play" practices publicized over the past few months are simply wrong and have no place in the private equity community. We also applaud the Commission's proposed limitations on political contributions that could influence investment decisions at public funds, and, if anything, would urge the Commission to strengthen those rules with more severe penalties. We just as strongly object, however, to the Commission's proposed ban on the use of legitimate placement agents to help fund managers solicit investments from government entities.

We have two, related objections to the proposed ban on placement agents.

*First*, we believe that the proposed ban would unreasonably prohibit new funds and smaller funds from seeking public investment and unfairly place such funds at a disadvantage to larger managers that operate in-house placement groups.

Monomoy's experience in this regard is typical. In 2005, we spun out of a larger distressed investment firm to create a start-up private equity fund focused on troubled businesses in the lower end of the middle market. We were, in essence, three private equity professionals and an idea. We had a limited track record from our previous fund work, no meaningful experience in raising institutional or other capital for a private equity fund, and no capital to build an in-house sales and marketing group. But we had the right investment thesis, a proven ability to fix troubled companies, and complete confidence that we could produces superior financial returns for our investors.

Our only option was to hire a placement agent – a legitimate sales and distribution organization that could help us understand the market, shape our investment product and sell our product into the marketplace. We met with six to eight placement agents, and they intensively interviewed and evaluated us. We immediately learned that the placement agent industry serves an important screening and pre-qualification function for potential investors by choosing to represent only stronger fund managers that can meet the needs of the investment community. Our placement agent chose Monomoy much more than Monomoy hired a placement agent.

Over the next six months, our placement agent helped us focus our investment thesis, identify the likely universe of investors for a first-time restructuring fund, create marketing materials, and design a marketing plan. This was a long, difficult and labor-intensive process that included over 400 hours of preparation time, drafting and revising a private placement memorandum, creating an extensive set of investor presentations and due diligence materials, and developing targeted investor communications. Our placement group helped us create a Monomoy brand. In doing so, our agent staked its reputation for providing quality financial products to investors on Monomoy's ability to execute its investment thesis and generate superior financial returns.

Following the creation of our marketing plan, our placement agent introduced Monomoy to scores of potential investors and helped us present our story at meetings with over 100 potential institutional investors in the United States and Europe (all attended by representatives of our agent). The placement agent managed all communications with potential investors, processing both positive and negative feedback so we could adjust our sales strategy to a changing market. For investors with strong interest in Monomoy, the placement agent coordinated full due diligence, resolved potential questions about our business plan, helped shape our legal documentation, organized investors into closing dates, and actually closed each investor into our fund.

The result: we raised a $280 million first-time fund from institutional investors in the United States and Europe, with a final close in January of 2007. Over the past three years, Monomoy has grown to 21 investment professionals, invested approximately $200 million, and acquired 11 middle-market businesses in the basic American economy. Collectively, our companies generate over $1.4 billion in sales; operate 42 facilities; employ over 7,000 employees in good jobs; and support over 25 communities. Monomoy businesses have remained profitable despite the recent collapse in manufacturing and consumer goods (where we do most of our investing) and are well-positioned to prosper as the economy stabilizes. We expect to make substantial financial returns for our investors despite the worst recession in 70 years and over a time period in which the public markets will perform poorly.

None of this would have been possible without Monomoy's ability to outsource sales and distribution activities to a professional placement agent and to market our product to private and public investors.

The Commission's proposed ban on placement agents would severely limit, and probably eliminate, the ability of funds such as Monomoy to seek investment from government entities through this distribution channel. Most larger funds – say, managers with $3 billion or more in capital – have created their own marketing, sales and distribution departments. The proposed ban would have little or no impact on these managers. Start-up funds and smaller managers, by contrast, lack the resources to create an in-house sales team and cannot hope to secure public investment capital without the services of a professional placement agent. Even today, as an established firm with extensive holdings, Monomoy lacks the operating funds necessary to create an internal placement group, and it would take us years to develop the expertise, contacts and distribution channel that a placement agent provides. Such funds cannot raise capital from public funds without a placement agent.

As a result, the Proposed Rules might as well state as follows: "All emerging managers or small to medium sized private equity funds are hereby prohibited from soliciting investment from government entities." This result, we submit, serves neither the purposes of the Investment Advisor Act nor the interests of the investor community.

We would go one step further and argue that the proposed ban on placement agents would eventually – and significantly – reduce the number of start-up and smaller private equity funds in the market. Public entities and pension funds manage a substantial and growing portion of the investment capital allocated to alternative assets. Without access to that capital, many start-ups and spin-offs will not be able to raise an initial fund, and many smaller funds will find it impossible to grow in a business that demands continuous growth and innovation. By definition, a rule that locks start-ups and smaller funds out of the largest source of investment funds in the alternative asset universe will eventually lead to fewer such funds. And it will eventually impair the ability of funds like Monomoy to grow our product offering.

Finally, we worry that the proposed ban would cause many legitimate placement agents to go out of business (or, more likely, move to another line of business) once they can no longer represent fund clients before public entities. This result would substantially disrupt the current distribution channel for alternative investments and materially reduce the competition for services and fees as placement agents compete for fund managers as clients. Fewer placement agents may not harm larger funds with in-house sales and distribution armies. But a dwindling number of professional placement groups will further injure start-up funds and smaller funds.

Should the Commission care about impairing smaller funds and limiting the number of new entrants and start-up groups in private equity? We think so.

Smaller funds like Monomoy provide some of the highest investment returns in the alternative asset class and create much of the real value in the private equity business. We bring professional management to smaller business; we make the businesses we buy better at what they do; and we provide the small business sector with the ability to survive downturns and the resources to grow in a stable economy. The smaller businesses we buy and own provide the vast majority of economic growth, competition and employment in the American economy. Over time, a rule that so sharply restricts capital for smaller and start-up funds is sure to harm the middle market and reduce the resilience of the overall American economy.

In the aggregate, these negative consequences are significant. Every private equity fund started somewhere, and most started small. The proposed ban on placement agents would put current and future generations of start up and smaller funds at a marked disadvantage to the mega-funds that operate in-house placement groups; will substantially limit the capital available to such funds; and, eventually, will reduce the number of such funds in the market. This, we submit, is not good public policy and should encourage the Commission to seek other, more carefully tailored rules to eliminate the small number of bad actors in the public investment system.

*Second*, we believe that the proposed ban on placement agents penalizes the wrong party.

In the private equity community, it is well know that there are two types of “placement agents.” On the one hand, there are the legitimate, professional placement agents that provide an important, but essentially unremarkable, distribution channel for private equity products. These placement agents, often divisions of investment banks or broker dealers, serve the same function that sales brokers provide in the general economy. They determine the market preferences of potential consumers (here, institutional investors); they screen potential clients for the best products to sell (here, private equity funds); they create brand identities, sales programs and marketing materials (here, private placement memoranda, investor presentations and due diligence materials); they help the seller and the buyer resolve issues concerning potential investment and managers (typically through scores of meetings, calls and follow-up presentations); and they work with both parties to close the transaction.

These private placement groups are marketing firms, sales representatives and communications specialists; they are no different in kind from the desk at Goldman, Sachs that raises equity for public companies or the salesman who pitches office supplies on behalf of Staples. They create value for buyers and sellers (and are paid accordingly) by matching the right private equity fund to the right institutional investor. They are almost always registered with the Commission as broker dealers and are typically regulated by FINRA. These legitimate placement agents comprise the overwhelming majority of all fund solicitors out there..

On the other hand, there is a second, darker world of influence peddlers who occasionally masquerade as fund solicitors in murky universe of state and local politics. This small group of individuals have only one thing to offer: they tell you that they can "make things happen" with a government fund because they are "connected" to the officials, or agency or organization that makes investment decisions. They might suggest that fund managers make political contributions to political candidates or organizations to help secure a public fund investment. Or they might not. Either way, they do little else than pass your name to the "right" people, make a phone call or two to set up a meeting, and disappear into the mist.

Everyone in private equity knows that this netherworld exists. And everyone knows that the influence peddlers stink of graft, corruption and, probably, bribery. We have no idea why any fund manager would hire an influence peddler. We suspect that the wrongful transaction originates with a corrupt public official (quietly telling a potential fund manager, perhaps through an intermediary, that she will not receive investment approval unless she hires and compensates the influence peddler) and that the transaction eventually gets done because a shaky fund manager is willing to take short cuts or cannot raise capital without paying off the influence peddler.

Whatever the real genesis of a "pay for play" scheme, we are quite certain that no ethical fund manager would ever – ever – associate his or her fund with this dark world. The influence peddlers and their shady masters are not good people. They are entirely obvious (and obviously bad guys). They bear no resemblance whatsoever to a legitimate placement agent. Anyone in the private equity community with an ounce of integrity knows full well not to do business with them.*

Against this background, the proposed ban on all placement agents in the public fund investment process is easily the least effective means of eliminating this nonsense. The wrongdoers here are the public officials who solicit benefits in return for influencing investment decisions and the fund managers who pay influence peddlers to secure public fund investments through direct or indirect bribery. It is well within the power of the Commission and its sister agencies to regulate such misconduct directly by prohibiting – and, we would urge, criminalizing – the actions of the public officials and fund managers who create and benefit from these unlawful transactions.

Suppose, for example, that the Commission (and the appropriate criminal authorities) adopted the following strict liability rule as an alternative to the proposed ban on private placement agents in the public fund investment process:

> If a public official or public fund manager receives a direct or indirect benefit in connection with a public fund investment in fund X, then (1) the public official, the culpable fund manager and any intermediary goes to jail, (2) every manager of an intermediary who receives a fee in connection with such investment is banned from the financial services industry for life, and (3) all members of the general partner of fund X are banned from the financial services industry for life.

Such a rule (or perhaps something a bit more precise and articulate along these lines) and its vigorous enforcement would immediately put every influence peddler out of business without disrupting the sales and distribution channel that supports the alternative investment industry. Why isn't this approach both the preferred and the most effective solution to this problem?

In theory, the Proposed Rules might indirectly achieve some of the Commission's goals by banning placement agents from the public fund investment process without distinguishing between the good guys and the bad guys. From our perspective, however, the proposed approach is simply too overbroad to withstand scrutiny. Our experience

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* In its Notice of Proposed Rulemaking, the Commission suggests that "pay to play" schemes are hard to identity by fund managers and that fund managers cannot always monitor and control the activities of their solicitors. With great respect to the Commission's expertise, neither proposition is remotely correct. Any fund manager can spot these fraudulent transactions from a mile away and should be held fully responsible for doing so. How difficult is it to understand what's going on when you are told by representatives of a public investment fund that you need to hire (and pay for) consultant X, or make contributions to candidate Y to secure a particular public fund investment? Fund managers in the alternative asset universe are among the most experienced and practiced professionals in the entire financial services industry. None are properly thought of as victims of uncontrollable sales agents, and those who cannot control their solicitors should be forced by the Commission to find another line of work.

suggests that the overwhelming majority – nearly all – of the registered placement agents in the industry are the real deal: they are professional sales and distribution representatives for alternative asset fund managers. A rule that penalizes the entire industry for the misdeeds of the very few is not just throwing the baby out with the bath water. It's throwing out the entire family. And all future generations. And the bathtub itself.

In the end, the Commission must answer the following basic question: will the proposed ban on placement agents really do very much to prevent corrupt politicians from selling their influence to dubious funds managers willing to take short cuts? We doubt it. Unhappily, there will always be bad public officials and bad fund managers out there, and the wrongdoers will find some way to betray the public trust with or without a ban on placement agents. If so, the proposed ban on placement agents under the Proposed Rules will achieve very little at enormous cost to the financial services industry and to funds such as Monomoy Capital Partners.

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For these reasons, we urge the Commission to reconsider the proposed ban on the use of placement agents to solicit investments from government entities and to pursue a narrower set of rules more carefully tailored to eliminate bad actors without disrupting the distribution channel that sustains the alternative asset industry.

Respectfully submitted,

Stephen Presser
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