August 26, 2009

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

Subject: File No. S7-18-09

This is in response to the proposed rule change 2009-168 issued by the Securities and Exchange Commission on July 22, 2009. The SEC voted unanimously to ban an investment adviser from paying a third party, such as a solicitor, placement agent or marketing consultant, to solicit a state or local government pension fund client on its behalf.

Chaldon Associates LLC is a retainer-based third party marketing consultant/solicitor/placement agent firm specializing in marketing investment-related products and services to public and union funds. We have been conducting our marketing consulting business legally for 14 years and have never been cited by a federal or state jurisdiction of violating any laws. We provide a valuable service to small-and-medium sized investment managers (less than $5 billion in assets under management) who can not afford to hire a full-time in-house marketing team to sell to these funds nationally. By out-sourcing their marketing to a firm such as Chaldon; the smaller emerging firms, women-owned firms and minority-owned investment managers (i.e., small business owners) gain access to the public funds market and can compete with their much larger investment brethren at a reasonable cost. Since Chaldon has five retainer-based clients (four investment managers and a law firm), the SEC's misguided rule would effectively put us out of business.

There already exists an SEC guideline mandating that a solicitor must disclose its finder's fee to the pension fund client. It is called the "Solicitor's Disclosure Statement," pursuant to the Investment Advisers Act of 1940 and 17 C.F.R. § 275.206(4)-3 "Cash Payments for Client Solicitations." This document must contain the percentage of the fee the solicitor will receive and that it will not affect the fee the fund pays to the investment advisor. The pension fund signatory must sign this document prior to signing the investment contract with the investment advisor. In addition, the investment advisor who utilizes the services of a solicitor must also disclose the fee sharing arrangement to the pension fund client prior to the pension fund signing an investment contract, pursuant to 17 C.F.R. § 275.204-3, "Written Disclosure Statement."

We believe the SEC's proposed rule change is an overreach, which would negatively impact legitimate small businesses such as ours and those mentioned above, operating in accordance with SEC regulations. This is an overreaction to corrupt business practices used in conjunction with the New York State Common Fund; the five New York City Public Pension Funds; New Mexico State Investment Council; California Public Employees Retirement System; California State Teachers Retirement System and the State of Illinois. If the fee sharing arrangement between the various solicitors and their investment adviser clients had been disclosed to the pension fund board of trustees, NO LAWS OR REGULATIONS WOULD HAVE BEEN VIOLATED. The SEC should not adopt this proposed rule because a few solicitors and investment advisors did not follow current law. We suggest that all marketing consultants/solicitors/placement agents adhere to the current law, instead of banning a legitimate business practice.

Other public fund officials/experts agree. Blackstone Chairman Stephen Schwarzman defended the practice of using placement agents as his firm's placement agent unit, Park Hill, has raised over $100 billion for 65 funds since its creation in 2005. Schwarzman does not agree to an outright ban, only greater transparency with the disclosure rules. Bill Atwood, Executive Director of the $10 billion Illinois State Board of Investments; Michael Travaglini, Executive Director of the $34 billion Massachusetts Public Employees Fund; Greg Kulka, Director of the private equity program at the $15 billion New Mexico State Investment Council, all insist that the majority of placement agents are legitimate businesses, conform to current disclosure rules and defend placement agents as providers of valuable services, including marketing and investor relations. All argue that hiring a third-party marketing firm is no different than hiring an outside accountant and enforcing fee disclosures is a better option than an outright ban. They also believe an outright ban on third-party marketing firms would hurt more than just the marketers; they suggest small-to-medium sized investment managers as well as many plan sponsors/public funds would be affected as the pension funds would have difficulty finding investment professionals with the expertise they seek.

In regards to the SEC proposed rules to "curtail" pay-to-play activities in the public fund sector, it seems to us that the SEC is more concerned with a few "bad apples" in the public pension fund arena than with the greatest fraud of our times: Madoff. Chaldon's opinion is that the SEC is attempting to circumvent the 50 state constitutions and strip each retirement system and its trustees of their fiduciary responsibility. As an example, a state treasurer receives a $250.00 political contribution from an employee of an investment advisor. Six months later the retirement system conducts/issues an RFP (Request For Proposal) for an investment advisor. It so happens that the political contributor's company qualifies to compete in the announced RFP search. The investment advisor is vetted by the investment consultant, which was hired by the retirement system to assist with the due diligence on the RFP respondents and is approved as a finalist to present to the board of trustees. In most circumstances, the RFP asks whether the investment advisor and/or any of its employees have contributed to any political campaigns in the state. If the respondents have contributed, it is revealed within the RFP and everyone involved in the process, from the consultant; the state's investment staff; the board of trustees to the legal counsel of the retirement system is aware of the political contribution. Since the state treasurer (elected in 37 states) is just one member of a typical state's retirement system's nine to eleven trustees, will it matter to the other trustees that the state treasurer received a $250.00 contribution? Is the SEC assuming a $250.00 contribution to one member of a nine-member board of trustees is illegal and if so, why is the SEC interfering or treading on the board of trustee's fiduciary decision? Is the SEC saying it would over-rule the board of trustees for a $250.00 contribution and demand the board hire a non-contributor? How is the SEC going to assert this new power and authority to oversee countless board of trustees across the country? In addition, given this new mandate of the SEC, now every metropolitan retirement system's board of trustees will have to answer to the SEC over their investment decisions? Your proposed "pay-to-play" rule is a pure power-play and an attempt to needlessly meddle in a state's constitutional right to conduct its own pension fund/retirement business. The public fund sector has never been overseen by any federal jurisdiction and it does not need the federal government to involve itself now.

If we can answer any questions please feel free to call us.

I look forward to hearing your opinion on this matter.

Sincerely,

Arthur R. Marcus
Managing Partner

Bruce R. Piatt
Partner