September 1, 2009

Triton Pacific
Capital, LLC

Dear SEC Commissioners:

RE: SEC Proposed Rule 206(4)-5 and proposed amendments to rules 204-2 and 206(4)-3 under the Investment Advisers Act of 1940

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

INTRODUCTION

This letter is being sent in response to the above noted proposed regulation by the Securities and Exchange Commission (SEC). We strongly support the SEC's efforts to expose and eliminate corrupt 'pay to play' practices and to incorporate limitations on political contributions that could influence investment decisions at public funds. However, we very strongly object to the SEC's proposed ban on the use of any placement agents to help investment managers solicit business from government entities. This rule unfairly and unnecessarily bans an entire placement agent industry, the majority of who conduct themselves in an ethical, professional and legally compliant manner. This particular provision is also very detrimental to emerging, smaller and middle-market investment managers (many of which are minority-owned or women-owned), as well as the very public pension funds the SEC is trying to protect. We suggest that the only fair and equitable treatment for placement agents would be to have that industry group subject to the same regulatory guidelines and restrictions that are being proposed in Rule 206(4)-5 for all the other parties (investment advisors, government trustees, pension funds, consultants, etc.) that potentially might be involved in 'pay-to-play' schemes.

WHO WE ARE AND WHY ARE WE RESPONDING

Triton Pacific Capital, LLC (TPC) is located in Los Angeles, California, and is a registered broker-dealer that is fully licensed and regulated by two government agencies; the SEC and the Financial Industry Regulatory Authority (FINRA).

Since its formation in 1996, TPC has had one business and that is to act as financial advisors in helping a select group of qualified real estate companies achieve their growth capital needs by forming mutually beneficial investment partnerships with institutional investors (such as public pension funds, endowments, foundations, corporate pension funds, and insurance companies). We are quite proud of our accomplishments and to the best of our knowledge, all of the investment vehicles we have helped our clients to establish have preformed very well relative to their competitive peers.

Given the nature of TPC's business, all of our professional staff are required to have advanced educational credentials, such as an MBA and/or CPA. In addition, we are all required to be properly licensed by FINRA (Series 7, 24 and 39, etc.), and are subject to various mandatory educational testing of our business acumen to maintain those licenses.

Because TPC's sole business is helping real estate companies establish mutually beneficial investment relationships with institutional investors (a great many of which are public pension funds), the proposed SEC regulations banning placement agents would very likely put TPC out of business and force the discharge of all its employees.

TPC prides itself on trying to ensure that every client engagement it undertakes is carefully evaluated, vetted and responsive to the needs of the institutional investor/pension plan community. TPC conducts four to six months of extensive due diligence/evaluation of a company's organization, strategy and track record before electing to accept any client engagement, and certainly before introducing any clients or any investment opportunity to the pension fund community. Equally important, TPC spends an enormous amount of time, listening to and interfacing with, the pension plan community so that it can better understand what types of investment opportunities and managers best fit their particular risk and reward objectives. As a result, the investment opportunities that TPC introduces to institutional investors/pension plans are well received. In fact, TPC's executives serve shoulder-to-shoulder with a number of public pension funds in industry organizations, and those individuals consistently inform us that TPC provides a valuable service to them and to the real estate industry as a whole. We can certainly provide references from pension fund executives supporting these statements.

In addition to our own due diligence, all of the transactions TPC has been involved with are fully vetted by the investment staff, consultants/fiduciaries and legal counsels of each institutional investor/pension plan before they invest with any of our clients. It is important to note that the costs associated with TPC's services, and generally for its placement agent brethren, are always paid solely by an investment manager, and thus, they do not affect the performance of the institutional investor/pension plan's investment.

In over thirteen years of business, we have never been involved in any disreputable activities or litigation associated with any client or any institutional investor, nor have we been asked to participate in any political contributions or 'pay-to-play' schemes. We have never sought out political connections, nor have we ever used lobbyists. We are a highly experienced and knowledgeable financial advisor who adds significant value at all stages of the investment process for both our clients and the institutional investor community.

As a registered Broker Dealer, TPC is subject to broad oversight by FINRA and the SEC, including very extensive monthly, quarterly and annual financial and transactions reporting requirements. In addition, we are subject to an intensive audit by both the SEC and FINRA every other year, at a minimum. We are quite proud of our clean record and, as such, it is with great confusion that we, and many other firms like us, are being subjected to potential new regulations that, if allowed to become operative, would virtually exterminate TPC's business.

WHAT IS DRIVING THE NEWLY PROPOSED SEC REGULATIONS?

As we understand it, the SEC's newly proposed regulation (Rule 206(4)-5) was designed to respond to the recent and highly publicized event in New York where the corrupt actions of one solicitor (Hank Morris, who had never acted as a legitimate placement agent) and one government employee (David Logiscli, the former CIO and Deputy Comptroller for New York Common Fund) surreptitiously orchestrated a 'pay-to-play' scheme that over a number of years was able extract millions of dollars of illegal kick-backs from equally complicit investment managers for providing those managers with access to investments from the New York Common pension fund. The New York State

Attorney General took action to punish all the parties involved. We concur with those actions. However, in addition to taking actions against the parties directly and identifiably associated with the corrupt activities, the New York State Attorney General elected to make a political statement and mandated a total ban on the entire placement agent industry from doing business with the New York Common Fund and, potentially, all other New York government employee funds.

We find the State of New York's ban on placement agents and the one in the SEC's newly proposed regulation (Rule 206(4)-5) misguided and inappropriate for the reasons noted below, and we intend to fight vigorously to overturn these provisions, as they directly threaten our livelihood, and the livelihoods of thousands of other hard-working and law-abiding placement agents.

APPLICABLITY OF NY COMMON CASE TO THE SEC'S NEWLY PROPOSED REGULATIONS

Interestingly, even though the actions of the "solicitor" noted above in the New York case were the driving force behind the New York State Attorney General's total banning of all placement agent professionals, the "solicitor" had never been a "placement agent" prior to being placed in this role of influence by David Logiscli, the CIO of the New York Common Fund. This is supported by the SEC, as demonstrated in following statements released by the SEC on March 19th regarding Hank Morris, the defendant (the "solicitor"):

- "Morris, who was a professional political strategist and had little, if any, experience in the investment field, set himself up as a purported "finder" or "placement agent" for private equity and hedge fund managers seeking investors".
- "Morris did not perform *bona fide* finding, placement or other services in exchange for the payments."
- "The typical role of a legitimate finder or placement agent is to identify and introduce the client to potential investors and help the client solicit the investors for business. Genuine placement agents and finders often perform a variety of specific services, such as helping to craft marketing materials and presentations to investors."

The SEC's use of such terms as "bona fide," "legitimate" and "genuine" to describe the typical role of a placement agent lends solid support to our argument that there is absolutely no rationale that an entire industry of legitimate and genuine placement agents should be banned when only a few corrupt individuals that "set themselves up as a purported finder or placement agent" were the actual individuals that perpetrated the crime.

These 'pay-to-play' schemes have always been illegal, and we applaud the SEC for attempting to prevent these types of nefarious activities from occurring. However, we believe it is imperative that the SEC recognize that these 'pay-to-play' schemes ALWAYS require at least two parties; and at least one of them MUST include the complicit actions of a government employee (as was the case in New York). We find it disconcerting and unfair that there is absolutely nothing in the SEC proposal that addresses the illegal activities of government employees, yet the SEC would propose to unilaterally ban an entire industry of placement agents. Equally troubling is the fact that the SEC states in its proposal that: ". . . .indeed, we have alleged that third-party solicitors have played a central role in each of the enforcement actions against investment advisers that we have brought in the past several years involving 'pay-to-play' schemes," yet in their own footnotes, the SEC only lists one instance in which a placement agent was allegedly "engaged in 'pay-to-play', while those same footnotes refer to nine separate instances in which placement agents were NOT involved in the inappropriate behavior. And interestingly, there is no mention by the SEC that, without the direct complicity of both an investment manager and a corrupt government employee, there would be NO way to facilitate a 'pay-to-play' scheme.

As support for their proposed ban of placement agents, the SEC indicates that a number of public officials have approached the Commission in support of their position; however, upon close reading of their own footnotes, the Commission has actually only been approached by two public entities, (i.e., the City of New York and the State of New York), but they failed to disclose that at least five other state pension programs (California, Massachusetts, Missouri, New Jersey and Pennsylvania) have all rejected a ban of placement agents, endorsing their role and instead, calling for increased transparency and disclosures to deal with 'pay-to-play' issues.

WHY DOES THE SEC CHOOSE TO BAN PLACEMENT AGENTS RATHER THAN REGULATING THEM?

In the past, the SEC has addressed potential 'pay-to-play' concerns by proposing that investment advisors oversee and regulate placement agents. This historical position is described in the newly proposed regulations that state: "In our 1999 proposal, contributions to a government official by an adviser's third-party solicitor, engaged by the adviser to obtain clients, would have triggered a two-year 'time out' for the adviser. Several commenters opposed inclusion of contributions by third-party solicitors as a trigger for the 'time out' . . . because these solicitors were not, according to the commenters, controlled by advisers." This statement is very disconcerting, in that we do not understand why the SEC appears unwilling to assume responsibility for regulatory compliance of placement agents on 'pay-to-play' issues. Since investment advisors have always taken the position that they are not legally well suited to regulate placement agents, the SEC appears to incorrectly conclude that they only have one remaining option and that is to simply ban all placement agents from dealing with public pension funds. We categorically disagree with the SEC's approach. We believe that all placement agents are (or if not, should be) properly registered and licensed by the SEC and thus, the SEC should implement appropriate regulatory oversight guidelines specifically dealing with 'pay-to-play' schemes, and those directives should match those imposed on investment managers.

SEC'S REQUEST FOR COMMENT ON SPECIFIC QUESTIONS

SEC Question - Is our proposed prohibition on the use of third-party solicitors an appropriate means to deter pay to play practices?

We strongly suggest that the SEC include, as part of its proposal, that the activities of a placement agent/third party solicitor only be allowed by a fully licensed SEC and FINRA registered Broker Dealer, where the professional supervising the placement agency business is a registered Series 24 principal. As stated above, we believe that the SEC and FINRA should treat its broker dealers/placement agents in exactly the same manner as registered investment advisers; with a two-year ban on doing business with any governmental agency to which it makes a prohibited contribution.

SEC Question - We propose to prohibit only third-party solicitors as likely posing a significant threat to investor protection; certain related-party solicitors would, instead, be subject to the time out limitations of proposed rule 206(4)-5(a)(1). Is this differentiation appropriate?

We see no rationale for singling out third-party solicitors, since the SEC has sought action against a number of investment advisers that directly involved corrupt or complicit government employees in 'pay-to-play' schemes where there was NO placement agent involved. As such, it is obvious that third-party solicitors are NOT the only ones posing a threat to investor protection. Therefore, we suggest registered investment advisers and registered broker dealers, acting as placement agents, be treated in exactly the same way regarding 'pay-to-play' schemes.

SEC Question - Should we subject advisers to the two-year time out for contributions made by their third party solicitors although, as noted above, commenters in 1999 indicated that such a requirement may impose significant compliance challenges?147 If the differentiation is appropriate, should we also have a two-year look back restriction for any contributions made by the third party?

We believe that both registered broker dealers and investment advisers are totally independent entities and that neither should be responsible for regulating the other. We recognize the legal implications of agency law, but that is not the issue here. As noted, the SEC and FINRA are fully responsible for (and fully capable of) overseeing and enforcing its regulations of its registered broker dealers. Any proposal to implement additional SEC-regulated oversight or disclosure guidelines on placement agents, instead of a banning of the entire industry, is a far more rational and equitable conclusion. As such, we agree that there should be a two-year "time out" (not a look back) for any contributions made by a third-party solicitor/placement agent similar, but independent of, the one suggested for investment managers. As such, if a third-party solicitor/placement agent made a contribution without the knowledge and approval of the investment adviser, the two-year "time out" would apply only to them and not the investment adviser. The reverse should also be true. If both parties are involved with contributions to an equally complicit government pension employee, both the investment advisor and the third-party solicitor/placement agent should be subject to the two-year ban.

SEC Question - Is there a different approach that would be effective at eliminating circumvention of the rule through the use of third parties? For example, should we consider narrowing the prohibition to accommodate government solicitation activities by third parties if such third parties (and their related persons) commit not to contribute to (or solicit contributions for) officials of any government entity from which any adviser that hires them is seeking business?

Yes, we fervently agree that narrowing the prohibition to include government solicitation activities by third parties (and their related persons) who contribute to (or solicit contributions for) officials of any government entity from which they seek investment business is far more appropriate and fair than an outright ban of all placement agents. In fact, we would support an SEC ban on any investment manager, consultant or broker dealer from making, or soliciting to make, ANY contributions to any government entity with which they are soliciting business.

SEC Question - To what extent might the proposed ban on using third parties to solicit government business disproportionately impact the ability of certain investment advisers, such as those that are smaller and less established, to compete in the market to provide advisory services to government clients?

Since the vast majority of the access to public pension fund capital for emerging, small, and middle-market investment managers comes through placement agents, the ban would have a profoundly negative impact on these companies and would likely cause significant job loss. In addition, the ban would unfairly force these firms to operate at a tremendous disadvantage to larger investment managers that have the internal resources to hire experienced in-house placement groups to access capital.

Public pension funds, and their constituents, will also be adversely affected by the ban on placement agents. The investment universe is continually evolving and becoming ever more complex. As such, the public pension fund community requires more, not fewer, investment alternatives and more, not fewer, avenues to try to better understand, and gain access to, viable and attractive investment options. If the SEC's proposed ban on placement agents is allowed to pass, public pension funds' access to investment opportunities sponsored by small, emerging, and middle-market investment managers (many of which are minority-owned or women-owned) will be severely curtailed, since these firms universally garner their access to the public pension fund community through third-party placement agents. A ban of placement agents will force the public pension fund community to deal almost exclusively with large investment management firms that have the resources to hire and pay "internal" placement agents, further monopolizing the investment management business by large companies. This might actually exacerbate the threat to investor protections by consolidating influence over investment choices by a relatively small number of large investment managers. In addition, this will put the public pension funds, and their constituents, at a disadvantage to other institutional investors (such as endowments, foundations, corporate pension funds, etc.) that will continue to interact with placement agents and gain access to a much broader cadre of attractive managers (not just large managers).

Since the NY Common scandal, many public pension funds (such as California Public Employees' Retirement System) have already adopted more stringent 'pay-to-play' policies. The SEC ban would negatively impact the public pension plan community from setting its own course as to how, and with whom, it invests.

The vast majority of investment managers will be adversely impacted by a ban on third-party placement agents, but the effects on the emerging, small and middle-market investment managers will be especially brutal as these firms don't have the resources or experience to gain access to a prospective investor universe consisting of thousands of institutions spread across hundreds of US cities.

These same investment management firms depend greatly on placement agents for the following additive services:

a) Defining and refining a structure and a set of partnership terms that are reflective of both the investment strategy to be employed and current investor preferences;
b) Assisting the investment manager's senior executives (as well as any internal or third-party accountants) prepare a fully vetted and auditable track record of the manager's past performance;
c) Designing and refining an investment manager's story, including their investment strategy, organization, skills, experience, etc.;
d) Working directly with the investment manager's attorneys to refine and finalize a Private Placement Memorandum;
e) Preparing a presentation for potential investors that efficiently and accurately describes the investment opportunity, as well as the investment manager;
f) Identifying and pre-screening potential interested investors;
g) Arranging meetings with prospective investors;
h) Attending prospective investor meetings, moderating these meeting, and helping ensure that the manager's message is communicated clearly and done in a way that addresses an investor's objectives, concerns and questions
i) Collecting feedback/questions from investors after meetings and ascertaining their level of potential investment interest;
j) Helping orchestrate investor due diligence and responses to investor questions; and
k) Working in conjunction with attorneys to assist in investor negotiations and the ultimate execution of subscription documents.

In many instances, the emerging, small and middle-market investment management firms will likely be put out of business because they typically only raise funds every couple of years and, therefore, cannot afford to hire a qualified, full-time placement agent professional to replace the services of an experienced third-party placement agent firm.

The SEC's ban on placement agents will also place an almost insurmountable 'barrier to entry' on companies that are not yet currently established investment managers but may wish to become one in the future. These aspiring investment managers will be forced to seek investment and growth capital from less sophisticated investors such as private individuals. These venues are less regulated, more likely to be the victimized by fraudulent schemes (such as Madoff) and thus not in the public's best interest.

The placement agent industry is a vibrant industry that employs thousands of reputable, hard-working professionals and supporting staff. In what is already a very difficult economic environment, the proposed SEC ban would put thousands of U.S. taxpayers out of work.

Even though the SEC's regulations are 'proposed,' they have already caused irreparable harm to the placement agent business. Because of the lack of clarity as to what, how and when such proposed SEC regulations might be implemented or become effective; certain investment managers have already chosen to stop using placement agents in marketing to public pension funds. In addition, this lack of clarity is further stifling the already stagnant transaction and capital markets. Should a ban on placement agents actually take effect, the impact will become dramatically worse.

The proposed SEC ban on placement agents is, in our opinion, a dangerous first step towards what could potentially become a misguided trend to ultimately ban any intermediaries (such as commercial real estate brokers, travel agents, consulting firms, etc.) from doing business with public pension plans.

SEC Question - Conversely, to what extent might the proposed ban benefit smaller or less established advisers who are currently unable or unwilling to engage in pay to play practices to compete for government business?

The above statement is quite disturbing because, by its very nature, it implies that in order to compete successfully, smaller or less established investment advisers MUST utilize 'pay-to-play' tactics. We categorically disagree with this statement. As described above, TPC has worked with numerous advisers of this profile and are highly confident that those same advisers would tell the SEC that, without the services we provided, they would not have been successful.

Since it was the Deputy Comptroller and CIO of New York Common who came up with the idea of a 'pay-to-play' scheme, recruited the "solicitor" (placement agent), and directly facilitated the transactions, why did the SEC choose to ban all placement agents rather than focus their disciplinary or banning actions against governmental employees/trustees with investment responsibilities? At a minimum, shouldn't the SEC focus on incorporating more regulation, oversight and/or independent board review of government employees who control, or greatly influence, investment decision making, and are in a position to establish 'pay-to-play' schemes similar to those executed by corrupt government employees in New York, New Mexico, Illinois, etc.? Such SEC-driven regulation, oversight and/or independent board review structures would do far more to prevent 'pay-to-play' schemes than banning all placement agents.

The SEC contends that by eliminating placement agents, they will eliminate the 'pay-to-play' issue. However, we contend that this action is not only misdirected but it will directly hamper their efforts because the banning of placements agents will effectively remove a powerful tool from the investment process; the SEC's and FINRA's regulatory oversight. In addition, we submit that it is both unfair and grossly inaccurate for the SEC to assume that independent placement agents are more likely to engage in 'pay-to-play' issues, than internal employees who provide the same services and who may not be subject to any regulatory oversight.

The SEC further contends that that solicitation of public pension funds by placement agent type employees of "related entities" should be allowable because of "efficiencies" that may be captured by the investment adviser. While this concept is probably well intended, these "efficiencies" would only benefit large organizations (some of which may provide third-party placement agent services), and thus seriously discriminate against small, emerging firms and middle market firms that cannot afford internal marketing staffs.

According to a recent *Pension & Investments* survey, the largest 200 U.S. institutional investors represent nearly $5 trillion in assets and approximately 60% of those aggregate funds are represented by public pension funds. Removing that magnitude of potential investor capital will have a massive detrimental impact not only on placement agents but also the thousands of investment managers that rely on them.

CONCLUSION

We implore the SEC to eliminate its proposed ban on placement agents and instead recommend that 'pay-to-play' issues be dealt with through the following reforms:

a) SEC assumes sole responsibility for oversight for any of its registered broker dealers that provide placement agent services, instead of requiring the investment managers who hire them to do so.
b) SEC initiates new "political contribution and political influencing" disclosure requirements for both placement agents and investment managers similar to what has been done by California State Teachers' Retirement System and Texas Teachers' Retirement System.
c) Placement agents are prohibited from "soliciting" institutional investors, including public pension plans, unless it is done: i) by qualified placement agents properly licensed with SEC and FINRA; and ii) by full time employees operating through a fully licensed Broker Dealer and supervised by a Series 24 principal.
d) All placement agents, investment advisers and consultants are treated exactly the same regarding prohibited contributions—a two-year ban on doing business with any governmental agency to which a prohibited contribution is made.
e) SEC implements a ban on any investment manager, consultant or placement agents from making, or soliciting to make, ANY contributions to any government entity from which they are soliciting business.
f) SEC incorporates more regulation, oversight and/or independent board review of government employees who control (or have influencing control over) investment decision making or alternatively, require these governmental entities to revise their investment decision-making structures to reduce the opportunity for such individuals of influence to perpetrate 'pay-to-play' schemes.
g) SEC requires the disclosure of any compensation made to a placement agent by an investment adviser, including any political contributions made to any government entities.

By adopting the above, the SEC can more directly curtail the illegal acts of a few individuals, rather than destroying an entire placement agent industry, causing irreparable damage to thousands of investment managers, and curtailing the investment options available to the public pension fund community.

This matter is of paramount importance to my firm, its employees and their families and as such, I am fully prepared to discuss any of the above in person.

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