September 2nd 2009

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

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

Dear Ms. Murphy:

MVision Private Equity Advisers USA LLC ("MVision USA") and its corporate parent, MVision Private Equity Advisers Limited ("MVision Limited" and, together with MVision USA, "MVision"), appreciate this opportunity to comment on the Securities and Exchange Commission's "pay to play" rule proposals.

MVision is a firm of fifty professionals, and operates internationally from offices in New York, London and the Asia Pacific region. MVision USA is registered with the Commission as a broker-dealer and is a member of the Financial Industry Regulatory Authority, Inc. ("FINRA"), while MVision Limited is authorized and regulated in the United Kingdom by the Financial Services Authority, as well as being registered in other countries, including Australia, Canada and Japan. Both MVision companies provide specialist corporate finance and advisory services to the sponsors and managers of numerous domestic and foreign private equity funds, including acting as private placement agent for the offering of interests in funds managed by investment advisors. MVision USA engages in this business in the United States and MVision Limited conducts business worldwide outside of the United States. In 2008, MVision closed 12 such funds, totaling over USD 27 billion, with commitments from 800 accredited and qualified institutional investors globally.

MVision is committed to the continuing professional development of private equity and has an active role in industry education and the support of industry associations. The firm is involved in the private equity programme at the London Business School, and its Partners are frequent speakers at industry conferences around the world. MVision is a member of key industry associations, including the Australian Private Equity & Venture Capital Association, the British Private Equity & Venture Capital Association, the Emerging Markets Private Equity Association and the European Private Equity & Venture Capital Association (the "EVCA"). We are supporters of the European Venture Philanthropy Association, and the Private Equity Foundation, and a signatory of the United Nation's Principles for Responsible Investment.

MVision applauds the Commission's efforts to eliminate "pay to play" practices, which we strongly believe have no place in the solicitation of investment advisory business from governmental pension plans, other governmental entities, or any entity for that matter. MVision has never engaged in "pay to play" activities and has never made a political contribution. As a member of the EVCA, MVision fully supports the organization's Code of Conduct for Placement Agents, which establishes best practice among market participants, and strictly prohibits "pay to play" practices. Importantly, the Code has been supported by the Institutional Limited Partners Association (ILPA), a non-profit association with a global membership of nearly 220 organizations, including over 80 public pension plans.

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Notwithstanding the above, MVision respectfully disagrees with the Commission's inclusion in Proposed Rule 206(4)-5(a)(2)(i) of a complete prohibition on the retention of placement agents or other third parties to solicit governmental entities for investment advisory services. We believe that this proposal will have serious adverse unintended consequences for investment advisors and public pension plans alike, as well as for the small and emerging companies whose survival and growth depends upon their capital infusions.

We feel strongly that it is essential for the Commission to distinguish between placement agents and so-called "finders". Placement agents are legitimate businesses that provide wide-ranging and valuable professional services to investment advisors, services that ultimately benefit institutional investors, including public pension plans. In contrast, "finders" are often individuals who provide no professional services, but for a fee offer to make introductions or claim to be able to influence the investment decision-making process at public pension plans.

We respectfully suggest to the Commission that a ban that includes legitimate placement agents would be inappropriate, since it would deprive every public pension plan and thousands of investment advisors of the essential services of legitimate placement agents, with severe economic consequences for many, as we will discuss in greater detail below. In addition, we believe that the Commission could effectively combat "pay to play" conduct with specific tools already at its disposal and within its authority.

Key consequences include:

Depriving Public Pension Plans of Investment Opportunities
Depriving Many Investment Advisors and Public Pension Plans of the Services of Placement Agents
Depriving Many Investment Advisors of Access to Public Pension Plan Capital
Reducing Competition in the Investment Advisory Industry
Depriving Emerging Companies of Financial Support by Investment Advisors

Depriving Public Pension Plans of Investment Opportunities

The interests of public employees are not best served if the managers of their pension plans are limited in their ability to access a wide and diversified range of attractive investment opportunities. The managers of many public pension funds depend to a large extent on placement agents directly, and indirectly through their external advisors or "gate-keepers", to keep them advised of new investment opportunities and trends, and to provide access to small and medium-sized investment advisors, particularly start-up and foreign investment advisors. The proposed total ban would reduce the range and quality of investment options open to public pension plans by removing the essential link between public pension plan investors and investment advisors that is provided by placement agents.

The managers of many public pension plans believe that legitimate and reputable placement agents provide them with investment opportunities and information to which they would not otherwise have had access. As an example, in a letter to the Commission dated August 13, 2009, Rick Dahl, Chief Investment Officer of the Missouri State Employees Retirement System, stated that placement agents have "helped introduce us to pre-screened, best of breed general partners". This sentiment is echoed in the comment letter of August 20, 2009, from Réal Desrochers, former Director of Alternative Investments at the California State Teachers Retirement System, who said that although he was "surrounded by very competent resources, certain placement agents provided me with very valuable insights into potential alternative investment opportunities."

Small and start-up firms are a particularly important part of the universe of investment opportunities for public pension plans. Many investors believe small and start-up investment advisors offer more attractive investment opportunities than large and established advisors. Utilizing new concepts and strategies, these burgeoning managers frequently provide some of the highest returns in the alternative asset class, outperforming their larger peers. New investment advisors often consist of individuals with significant talent who have left larger advisory firms where they were hindered by organizational issues. Many public pension plans such as CalPERS, CalSTRS, Indiana PERF, Pennsylvania Public School Employees Retirement System and Texas Teachers have created initiatives specifically targeting investments in new, emerging firms. In Rick Dahl's letter, referenced above, he states "It is our view that some of the best investment opportunities are with smaller firms that have spun out from larger organizations or are raising institutional capital for the first time." While many investors believe small and start-up firms offer attractive investment opportunities, they are considerably less well known by the investor community, and the investor community is typically not well known to them. To bridge this communications gap, small and start-up firms frequently use placement agents. The proposed total ban would therefore deprive many public pension plans of these investment opportunities.

Depriving US public pension plans of the services of placement agents disadvantages them relative to their non-US counterparts with respect to portfolio selection and diversification, thus denying them the potential advantages certain funds might offer and potentially adversely impacting their performance relative to their foreign peers.

Depriving Many Investment Advisors and Public Pension Plans of the Services of Placement Agents

Placement agents such as MVision do far more for their investment advisor clients than simply identifying potential investors. They provide essential assistance to investment advisors with the development of investment products and offerings, critiquing, diligencing, refining and positioning such products, and in the preparation of appropriate offering materials.

This work benefits investors and supplements significantly the due diligence process of a public pension plan and that of its gatekeepers. The proposed total ban would remove legitimate, experienced placement agents from this process, leading to adverse consequences for the quality of investment products and the efficacy of due diligence. It would greatly reduce public pension plan access to some of the highest performing investment advisors, potentially depressing plan beneficiaries' yields on their retirement funds. Many public pension plans do not maintain sufficient staff to perform thorough due diligence on all new and attractive investment advisors that come to market, and therefore the services of placement agents help to fill the gap. A number of commentators have noted the screening and prequalification function that reputable placement agents provide to both investment advisors and investors.

Placement agents typically meet and review numerous investment advisors, having proactively identified leading managers by geography, by strategy and through an understanding of investor appetites. A rigorous screening process follows, including macro research, competitive analysis, analysis of market opportunity, and deep due diligence on performance, individuals, and portfolio investments. This intensive process results in the selection of carefully researched and high quality opportunities to offer to investors, supported by detailed and extensive marketing and supporting materials. Many placement agents have regular calls with public pension plans to share their market insights on a macro-level, as well as to discuss the investment advisors that operate in these markets.

In addition to providing essential services to investment advisors that indirectly benefit investors, legitimate placement agents also provide essential services directly to investors, including public pension plans and their gatekeepers or advisors, throughout the investment process. They facilitate timely and informative communications between investors, investment advisors, and legal counsel throughout the due diligence and closing process and even subsequent to the close of a fund. Facilitating communications can be especially valuable to investors in the context of international or highly sought-after investment opportunities where the investment advisors might not have the time or ability to communicate effectively. Additionally, placement agents also facilitate the closing process by providing timely documentation and acting as an intermediary during negotiations and communications, including working with the public pension plans, and investment advisors' legal counsel.

Depriving Many Investment Advisors of Access to Public Pension Plan Capital

According to Preqin, 1,451 US funds have had closings since 2007, of which, 639, or 44%, had US public pension plan commitments. The proposed ban on third party solicitors, however, would significantly reduce, and in some cases eliminate, the ability of small and medium size investment advisors, including fund managers, to obtain public pension plan investments. Only the largest investment management firms can afford to maintain a full-time marketing staff with the ability to obtain access to public pension plan decision makers. Without the assistance of placement agents, smaller investment advisors (who form the great majority of the investment advisor universe) will either have to build the necessary infrastructure, i.e. staff, at great cost and risk, or simply limit their marketing activities to a few existing public pension relationships.

Even if smaller firms attempted to establish marketing staffs, it would be extremely difficult for them to replicate the level of service and the efficiencies provided by placement firms, and to cope with the enormous scale of the entire fundraising process. Legitimate placement agents have expended large amounts of time, effort and expense over many years to build experienced professional teams and to establish and maintain relationships with hundreds of public pension plan managers and their advisors. These relationships have allowed placement agents to deliver the most appropriate investment products to investors based on their specific needs and preferences. Moreover, since placement agents solicit investment for investment advisors from the entire spectrum of institutional investors, which includes public pension plans, family offices, financial institutions and endowments, they are far more experienced and effective than most investment advisors themselves. The development of internal marketing staffs focused on public pension plans by small and medium-sized investment advisors would be impractical and, in many cases, unviable.

In addition, placement agents have access to real-time information on developments in the market, which is critical to their investment advisor clients' ability to market effectively to public pension plans. Given that investment advisors' core business focus is transactional, it is impossible for them to maintain the same level of insight on a real-time basis that placement agents do through their specialized everyday business.

Reducing Competition in the Investment Advisory Industry

Given the potential effects on small and medium size investment advisors, noted above, it should be readily apparent that another consequence of the proposed total ban would be to reduce competition in the investment advisory industry. Only the largest firms would have ready access to public pension plan capital, increasing concentration and, perhaps, consolidation, in an industry that is far better served by ease of entry and a more level playing field. Not being able to effectively access public pension plan capital, directly or indirectly, would put small and medium-sized investment advisors at a significant competitive disadvantage. Moreover, greater concentration would likely reduce employment in an industry already suffering from contraction due to the recession and financial crisis. Furthermore, this concentration may well reduce the opportunities for emerging women- and minority-owned businesses in the investment advisory business.

Data from Preqin shows that 2011 US investment advisors are raising or have raised funds since January 2007, and of these, small and medium-sized firms predominate:

- 1621, or 81%, are small to medium-sized funds ($1b or less);
- 1327, or 66%, are small funds ($500m or less); and
- 464, or 23%, are first time funds.

A very large number of these firms will suffer as a result of the proposed ban and the competitive disadvantage it will create for them, and this in turn will adversely affect the deployment of much needed capital, operational support and expertise to small and mid market businesses throughout the US.

Depriving Emerging Companies of Financial Support by Investment Advisors

Data from Preqin shows that in 2003 52 US first time/emerging funds were raised, but that by 2008 this number had almost doubled, with 101 US emerging funds raised. This strong growth has continued, with 228 US first time/emerging investment advisors fundraising currently. The significant and steady growth of private equity has clearly shown that it is a very efficient method of organizing capital for US industry while providing attractive returns for investors. It has been demonstrated that large parts of industry in the US and abroad have benefited from the financial and operational support that private equity investment advisors have provided to start-up companies. The proposed total ban would significantly reduce the funding of investment advisors who have increasingly provided this support (as shown above, 23% of funds raised since January 2007 have been first time funds), which in turn will have a negative impact on the level and extent of capital and operational support available to emerging businesses across various industries. Ultimately it is likely that many of these emerging companies would be forced to terminate workers to compensate for this, thus increasing unemployment and weakening competitiveness in potentially every industry across the country.

The Private Equity Industry is Already Taking Strong Measures to Self-Regulate

For example, as mentioned earlier, the EVCA's Code of Conduct for Placement Agents sets out a global standard of behavior for placement agents. It sets forth best practice for market participants, emphasizes the need to adhere to the highest standards of compliance and regulation, and imposes requirements relating to transparency and accountability. The Code has been developed by a task force that I chaired, under the auspices of the EVCA's Professional Standards Committee and in extensive consultation with US gatekeepers, US public pension plans, and a wide range of EVCA LP and GP members. The Code also has the support of the Institutional Limited Partners Association (ILPA). The task force took into consideration draft and final policy and legislation from a variety of sources in devising the Code of Conduct, including legislation under consideration in the California legislature, 'AB 1584'.

It is evident that many public pension plans themselves have also reviewed their internal policies to further protect themselves against the potential for "pay to play", for example:

- CalPERS requires investment advisors to complete disclosure questionnaires detailing marketing, soliciting and placement service providers, and how they are rewarded
- MOSERS is proposing further measures
- Gatekeepers now often require a detailed questionnaire to be completed on the use of third parties

We Strongly Believe the Commission's Reliance on the MSRB Regulations is Misplaced; More Refined Regulation is Possible

In Release IA-2910, the Commission stated that it based the proposed new rule on Rule G-37 and G-38 of the Municipal Securities Rulemaking Board ("MSRB"), which addressed the "pay to play" issue in the area of municipal securities underwritings. Similar to the proposed total ban, Rule G-38 prohibits municipal securities dealers from paying consultants to solicit municipal securities businesses. Rule G-38 was, and remains, a salutary step in addressing "pay to play" abuses inasmuch as the consultants targeted by the rule were unregulated political consultants who peddled their contacts and influence with government officials and provided no valuable services to the financial services industry or investors.

In contrast, the great majority of legitimate placement agents who represent investment advisors to public pension plans are registered with the Commission and are members of FINRA. They are subject to strict regulation, oversight and stringent rules governing their conduct, as well as licensing requirements for employees and periodic examinations by the staff of the Commission, FINRA and state securities authorities. The Commission and FINRA would not need to look to investment advisors to monitor and deter "pay to play" activities by placement agents, but could directly act to do so themselves through the enforcement of current rules, as well as the adoption of new rules prohibiting political contributions and enhancing related disclosure and record-keeping, comparable to those being proposed to apply to investment advisors in Release IA-2910.

MVision would welcome regulation that requires behavior consistent with the tenets of the EVCA voluntary Code of Conduct described above, and that improves transparency through required certifications of compliance and enhanced disclosure.

Specifically, MVision would support regulation that requires certifications, compliance and enhanced disclosure such as:

- Annual declarations confirming no relevant political contributions have been made
- Breaches of regulation to carry severe penalties/punitive measures, such as loss of license
- Letters of engagement with investment advisors to contain specific language regarding prohibition of relevant political contributions

For example, the Commission's cash solicitation Rule 206(4)-3 could be revised to not only require disclosure to advisory clients of cash solicitation arrangements between investment advisors and placement agents, but also a certification by both the investment advisor and the placement agent that they have not engaged in "pay to play" practices with respect to such clients.

These steps would be highly targeted, appropriate, and effective. Unlike the proposed total ban, these initiatives would not present adverse unintended consequences to capital formation, to public pension plans' ability to maximize returns for beneficiaries through diversification beyond the largest firms, and to diversity and innovation within the investment advisory industry. Additionally, these refined steps would not punish the overwhelming majority of legitimate, registered and regulated placement agents who have done no wrong and have not, will not and have no desire to engage in "pay to play" conduct.

Accordingly, we urge the Commission to reconsider the total ban on third party solicitors contemplated in the current rule proposal in favor of the narrower, but still highly effective regulation recommended above.

Very truly yours,

Mounir Guen
Chief Executive Officer