Re: File Number S7-18-09 – Political Contributions by Certain Investment Advisers

This letter is being sent on behalf of a coalition of professional institutional placement agents. Our members unanimously support the proposed ban on pay for play practices, as set forth in proposed Rule 206(4)-5, that have tarnished our industry and brought discredit to some of our country's largest public funds. We also welcome and applaud the efforts of the SEC and several states to prevent political contributions and the use of personal connections to influence the investment decision making process at public funds.

However, we feel that banning our entire industry from doing business with public funds will have serious unintended consequences for the very institutional investment community the SEC and the states are trying to protect. Instead of a total ban on agents we urge the SEC and the states to adopt and enforce our proposed "Code of Conduct", submitted at the bottom of this letter.

The dramatic growth of the placement agent industry over the last 25 years has been driven by increased interest from institutional investors in alternative investment strategies, such as venture capital, private equity, real estate, etc. which are generally sold through private placements pursuant to rules established by the SEC and FINRA. Placement agents, also known as third-party marketers, also assist more traditional advisors, such as those managing stock and bond portfolios. Today there are several hundred placement agents operating worldwide ranging in size from one or two person boutiques to global operations with upwards of 100 people on staff.

Our industry represents anywhere from 30-50% of the limited partnerships being offered to institutional investors at any point in time, and virtually all of the startups and small to medium sized investment advisors use our services. In most cases a placement firm is hired on an exclusive basis to assist in the fundraising for their client, although they are often hired to augment an established advisor's internal marketing staff in order to reach a broader list of prospective investors. Collectively, placement agents are involved in the placement of in excess of a hundred billion dollars a year in institutional commitments.

The value add of a typical placement agents' engagement is a very comprehensive involvement with the formation, positioning and placement of the offering, including initial due diligence and vetting of the proposed fund, assistance in the preparation of marketing materials and offering memoranda, and ultimately generating interest from potential investors from certain regions or around the globe. Experience and a very broad reach is necessary because each offering will appeal only to a subset of the universe of possible investors, and a typical fund raise will take between one and two years to complete.

Most placement agents monitor and stay in touch with as many as 2,000 large institutions around the globe, the majority of which are located in North America and Europe. A medium or large placement firm is likely to receive commitments from up to a hundred institutional investors each year for the various funds that they represent, and it is unusual for a placement agent to do business with any particular institutional investor more than once every few years.

The typical large institutional investor has a professional staff of analysts and portfolio managers whose responsibility it is to seek out and consider any and all investment options that fit within their current investment strategy. Even the largest private institutions do not have the internal resources to identify and analyze all the investment offerings available in the market at one time, and this deficiency is aggravated in the case of public funds where the dollars invested are huge and the management resources more limited.

Consequently, public pension funds rely significantly on placement agents to expand their awareness of possible investment alternatives and help them understand the differences between various options available to them. They leverage the placement agent's due diligence and vetting process so that they can concentrate their efforts on only the most qualified investment offerings that they would likely want to consider. Finally, because the placement agent is compensated by the investment advisor, the assistance of the placement agent comes at no cost to the public fund.

For the general partner or investment advisor, placement agents eliminate the expense of maintaining an internal marketing staff, which may be needed only every few years. And the cost of any internal marketing effort can be prohibitive or impossible for an emerging, small or medium sized investment advisor. It is also inefficient for the principals and portfolio managers to conduct the marketing themselves as their time is better spent building and managing the portfolio of investments. The placement agent industry gives such firms the opportunity to reduce costs significantly by engaging an experienced, professional marketing organization only on an as needed basis.

If independent third party agents are banned from working with public funds, the unintended consequence would be a severe reduction in the number of investment firms, strategies and opportunities available to those funds. It would also reduce competition within the investment management industry and provide an unfair advantage to the larger firms that are more likely to be able to afford their own marketing departments. Pension funds would only see offerings from the larger, already established investment advisors, which would undoubtedly lower their investment returns over time.

With public funds accounting for 30% or more of a typical placement agent's prospective investor base, the market reach of placement agents will be restricted dramatically, and the public funds would not be adequately covered. The inevitable result will be a significant shrinkage in the placement agency industry generally, again reducing the amount and variety of opportunities available to all investors.

We recognize that certain abuses have taken place within our industry, and we reiterate our support for the restrictions on pay to play and political contribution that are proposed in Rule 206(4)-5. We are enraged that the unethical behavior of a few has tarnished the reputation of our industry generally, and the primary purpose of our coalition is to reassert and educate the public about the principals upon which the reputable members of our proud industry conduct their business. To that end, we have compiled a set of standards or “Code of Conduct” (summarized below) which we have all adopted and have and will continue to comply with. We have done this voluntarily, and in our view there is very little risk that any firm which complies with our Code could carry out any of the abuses the proposed rule is intended to prevent. Accordingly, we believe that mandated compliance with our Code would benefit the investment community generally while not depriving public funds of the very real value created by the involvement of placement agents.

The rules set forth in our Code are similar to those already used in several states and we believe could be enforced without a great deal of additional effort by FINRA and/or the SEC. These agencies already have very thorough registration, reporting and compliance requirements that are monitored closely. The addition a few more rules and compliance requirements, which the members of our coalition comply with already, should not be overly burdensome. Any placement agent or firm that does not adhere to these rules should be banned from doing business with all potential investors, public and private.

The investment community as a whole would benefit and only unethical placement agents would suffer.

The proposed Code of Conduct is on the next page.

Proposed Code of Conduct Supported by <u>Leading Placement Agent Firms</u>

- Placement agent firms must be registered with an appropriate regulatory body (e.g., SEC, FINRA)

- A placement agent should be either in the primary business of being a placement agent or be part of a larger financial institution, such as an investment or commercial bank or asset manager

- A placement agent's professionals should hold the requisite licenses (e.g., Series 7 and 63), including the more stringent certifications for those in a supervisory capacity (e.g. Series 24)

- Supervisory or senior personnel should have a minimum number of years in the securities industry

- Retention of the placement agents should typically be for general broader-based assignments, except in certain circumstances for a specific list of investors or geographic region

- Prohibition on the retention of sub-placement agents by the primary placement agents that do not meet the foregoing criteria and are not disclosed

- Disclosure of the fee arrangement between the agent and the GP to the potential LP

- A detailed contract specifying the scope of services the agent will perform for the GP, including reasonable due diligence by the agent of the GP

- No agent should be hired to solicit a short list of public funds

- Registration/reporting requirement for placement agents at the state level with an applicable ethics commission

- A prohibition on any employee (or their spouse) of a placement agent making a political contribution to anyone in the decision-making chain of command for a pension fund investment

- A prohibition on hiring any former employee of a pension fund, or anyone in the chain of command for an investment, to solicit that pension plan on behalf of a GP for a minimum of three years

- These requirements (or the relevant sub-set) should be made part of any engagement letter between the agent and the GP