DENISE L. NAPPIER
TREASURER

State of Connecticut
Office of the Treasurer

HOWARD G. RIFKIN
DEPUTY TREASURER

September 10, 2009

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

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

Dear Secretary Murphy:

I am pleased to have this opportunity to provide feedback to the Commission on the proposed rule under the Investment Advisers Act of 1940 concerning Political Contributions by Certain Investment Advisers.

I strongly support the proposed rule, with some recommended modifications, and commend the Commission on its thoughtful efforts to improve protections for our nation's public investors.

As the principal fiduciary for the $21 Billion Connecticut Retirement Plans and Trust Funds (CRPTF) for more than ten (10) years, I have managed my office through: (i) the aftermath of scandal, federal investigations and prosecution; (ii) legislative and policy reform; and (iii) one of the most challenging economic times in our nation's history. Several aspects similar or identical to the proposed rule were considered and implemented by the State of Connecticut in the past ten years. I believe that our experiences addressing these issues can be informative and instructive for your review process.

While I will always support efforts to provide for the highest ethical conduct in government, my experience with our own state's reforms has taught me to carefully consider the unintended consequences of certain reforms. It is with these considerations in mind that I am furnishing comments on the Proposed Rule.

I have attached an extensive discussion of the recommendations of my office, but will highlight three concerns here.

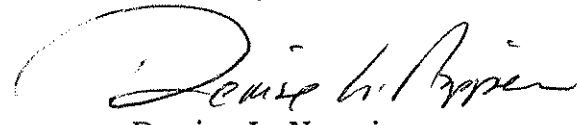
1. The SEC's definition of "covered associate" includes a person who can become a covered associate up to two years after making a campaign contribution. If implemented, the retroactive attribution of a campaign contribution to a future employer will likely have very harsh consequences for illiquid investments.

2. The proposed ban on the use of third party solicitors unduly interferes with an investment adviser's ability to organize its business as best suits its needs AND deprives institutional investors of the derivative benefit of valuable services. Rather than ban all third party solicitors, I strongly recommend that the rule LIMIT the use of third party solicitors to those individuals and entities that are licensed or registered and therefore subject to the same restrictions as other investment advisors.

3. The blanket ban on contributions to political party committees is fraught with enforcement challenges and unfairly affects party committees in states like Connecticut with limitations on campaign contributions and robust campaign finance laws.

I appreciate the opportunity to express my views on this matter. I trust that my personal experiences with similar reform and the recommendations that flow from that experience will be helpful to the Commission. Please feel free to contact me or my General Counsel, Catherine E. LaMarr, with any questions concerning these comments. I may be reached at (860) 702-3010 or Denise.Nappier@ct.gov. Attorney LaMarr may be reached at (860) 702-3018 or Catherine.LaMarr@ct.gov.

Sincerely,



Denise L. Nappier

cc: Catherine E. LaMarr
General Counsel

Attachment

Comments of the Office of the Connecticut State Treasurer
Political Contributions by Certain Investment Advisers

Office of the Treasurer – Connecticut's Experience with Reform

The Connecticut Retirement Plans and Trust Funds (CRPTF) represent the pension assets for six retirement systems, including assets invested for Connecticut's state employees, teachers, municipal employees, judges, and the like.[1] These assets are subject to the protections of some of the most restrictive campaign finance laws and robust ethics laws and policies in the nation. The CRPTF is largely externally managed in a well diversified portfolio, including traditional core liquid assets and prudent illiquid assets in our Private Investment Fund (PIF), Real Estate Fund (REF) and Alternative Investment Fund (AIF).

Treasurer Denise L. Nappier was first elected to office in 1998 as an advocate for the full funding of all pension obligations and prudent asset management. Upon the heels of her election to and assumption of office, the illegal and wholly contra-fiduciary activities of her predecessor came to light. Despite a 1995 law prohibiting the Office of the Treasurer from doing business with any person or firm that makes a political contribution to a candidate for the Office of Treasurer, or perhaps because of the enactment of the law without the inclusion of a public campaign finance option, the former Treasurer, Paul J. Silvester (who was appointed to fulfill the unexpired term of Treasurer Christopher Burnham and who was desperate to raise campaign contributions), entered into an elaborate bribery and kickback scheme to fund his election campaign and reward his supporters.

As a part of this scheme, the former Treasurer used his seven-week lame duck period to make nearly a billion dollars of investment commitments, many to illiquid assets. The Office of the Treasurer fully cooperated with and supported the investigations and prosecutions by the Department of Justice (FBI and US Attorney); the Securities and Exchange Commission; the Connecticut Ethics Commission; the Connecticut Elections Enforcement Commission and internal reviews by State Auditors. The proactive efforts of the Office of the Treasurer, supported by the US Attorney for Connecticut and the Connecticut Attorney General, resulted in recovery of capital and/or reduction of investment commitments amounting to more than half a billion dollars initially and additional recovery over time. The CRPTF suffered the stark consequence of a fiduciary making last minute investment decisions while influenced by campaign contributions, kickbacks and bribes--poor returns with respect to these last minute investments. Connecticut's electorate, taxpayers and pension beneficiaries were denied the honest services of the fiduciary responsible for managing its pension assets.

In addition to assisting law enforcement, the Office of the Treasurer also took steps to prevent these illegal acts from ever happening again in Connecticut. The Connecticut Legislature and Treasurer Nappier worked to enact a series of new laws, through the Treasury Reform Act of 2000. In addition to focusing on establishing a formal process for

[1] Teachers Retirement Fund
State Employees Retirement Fund
Municipal Employees Retirement Fund
Probate Judges and Employees Retirement Fund
State Judges Retirement Fund
State Attorneys' Retirement Fund

investment consideration, Treasurer Nappier called for the annual disclosure of all fees paid to third parties in connection with any investment decision. That disclosure is published on the Office of the Treasurer website and available in paper format upon request. Third party fees paid to anyone other than licensed securities professionals, providers of professional services ancillary to investments and legitimate marketing firms is strictly prohibited. The Office of the Treasurer carefully reviews the contract terms and work performed by third parties in an effort to prohibit influence peddling in this office. Although several states are considering or adopting similar disclosure requirements, Connecticut was the first to require such disclosure and its long experience with this requirement and the implementation of other reforms can be quite informative.

Support for Ban on Certain Campaign Contributions by Investment Advisers.

Treasurer Nappier strongly supports the proposed ban on campaign contributions. The Office of the Treasurer is confident that, following a reasonable period of implementation, the rest of the nation will be able to comply with the campaign finance restriction. Connecticut has managed through three election cycles with an even more restrictive ban on campaign contributions. Indeed, little in this proposed rule will change the way this office does business as Connecticut law has strictly prohibited campaign contributions (of any amount) from those doing business or seeking to do business with the Office of the Treasurer since 1995. The Connecticut ban encompasses the entire 4-year term of office and prohibits contributions from a broader group of potential contributors.

The Office of the Treasurer does, however, recognize that banning campaign contributions from the constituency with a natural affinity for and interest in the good government operations of pension assets will likely present challenges for campaign fundraising. The Office of the Treasurer is an advocate for public financing of political campaigns as a means of not only taking the influence (perceived or actual) of campaign contributions out of the investment decision-making process, but also a deterrence of "creative financing" efforts, leading to additional inappropriate influence issues. In other words, forcing campaign contributions underground and outside the scrutiny of campaign finance disclosure will likely create more problems that it will solve.

The Proposed Rule.

A. The "Look Back" - Consequences of Retroactive Application of the Ban

Proposed Rule 206(4)-5(a)(1) states: "As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts, practices, or courses of business within the meaning of section 206(4) of the Act [15 U.S.C. 80b-6(4)], it shall be unlawful: (1) for any investment adviser registered (or required to be registered) with the Commission, or unregistered in reliance on the exemption available under section 203(b)(3) of the Advisers Act [15 U.S.C. 80b-3(b)(3)], to provide investment advisory services for compensation to a government entity within two years after a contribution to an official of the government entity is made by the investment adviser or any covered associate of the investment adviser (***including a person who becomes a covered associate within two years after the contribution is made***)." (Emphasis mine.)

The "look back" language in the final highlighted parenthetical above effectively creates a retroactive attribution to a future employer of a campaign contribution, lawful at the time it was made and which presented no ill consequences for the contributor, the government official, the contributor's employer or any vendor or investment partner of the public pension fund. This retroactive application will create serious enforcement problems for the CRPTF's illiquid investments.

Connecticut's incumbent Treasurer has managed two election cycles with Connecticut's current ban on all campaign contributions. During the campaign cycle, the Office of the Treasurer carefully monitors all campaign contributions, scrutinizing the employers of all contributors to candidates for the office of Treasurer. Contributors to candidates for the office of Connecticut Treasurer are required to not only disclose employers, but are also required to disclose whether such contributor is the spouse or dependent child of an "investment professional."[2] It is quite simple to avoid entering into a contract where a principal of an investment services firm has made a contribution. All parties are very much aware of the contribution. If adopted, the retroactive attribution will require investors to track future hires at investment managers. Investors may need to sever existing relationships where no one made a contribution that influenced the decision to hire the firm. Severing relationships is not only disruptive, but it can also prove to be quite harmful with long-term agreements in illiquid investments. While the CRPTF's contract language may make it possible to cancel a contract for management of the liquid assets; an inability to compensate investment advisers with respect to its illiquid investments could prove to be very damaging for the CRPTF's investments.

The SEC in its discussion of the proposed rule makes it clear that "for purposes of the proposed rule, an investment adviser to certain pooled investment vehicles in which a government entity invests or is solicited to invest would be treated as though the adviser were providing or seeking services to provide investment advisory services directly to the government entity." (SEC Release No. IA-2910; File No. S7-18-09, page 20) The discussion further proffers that "an adviser would be prohibited from receiving compensation for providing advisory services to the government client during the time out." (SEC Release No. IA-2910; File No. S7-18-09, page 27) The SEC states that "this approach is intended to avoid requiring an adviser to abandon a government client after the adviser or any of its covered associates makes a political contribution covered by the rule." This approach is impractical for long-term investments, whether pooled or direct, if the SEC insists upon retroactive attribution of campaign contributions to a future employer.

Governmental investors like the CRPTF have purchased interests in long-term pooled investment vehicles that have numerous contractual obligations, including an obligation to meet capital calls for purposes of investment and to pay operating expenses and fees. Investors in each of these long-term investment funds, often limited partnerships, include both governmental and private investors. How can a General Partner justify including

[2] C.G.S. §9-612(f)(1) defines "principal of an investment services firm" as "(i) an individual who is a director of or has an ownership interest in an investment services firm to which the Sate Treasurer pays compensation, expenses or fees or issues a contract, except for an individual who owns less than five percent of the shares of an investment services firm, (ii) an individual who is employed by such an investment services firm as president, treasurer, or executive vice president, (iii) an employee of such an investment services firm who has managerial or discretionary responsibilities with respect to any investment services provided to the State Treasurer, (iv) the spouse or dependent child who is eighteen years of age or older of an individual described [herein], or (v) a political committee established or controlled by an individual described [herein]."

governmental funds in its investment pools if the limited partnership runs a risk that one or more governmental investors will be unable to meet its obligations? A single hire could retroactively limit one or more partner contributions. The investment vehicles are designed to work well when all of the partners meet their respective obligations. The investment advisers that manage these investment pools, often worth hundreds of million or billions of dollars, cannot easily be replaced (assuming the majority – or super majority – of the limited partners want to replace carefully selected management). Nor can many of the investment funds afford to furnish services without compensation for up to two years. Finally, all of such long-term pooled investment vehicles have significant, even Draconian, default provisions. Governmental investors cannot be placed in the position of potentially losing 50% or more of their capital account because a future hire triggers the retroactive attribution of a campaign contribution.

As discussed briefly above, the Office of the Treasurer has developed a careful and successful method of monitoring campaign contributions. Any contributions that are determined to be questionable are brought to the attention of the treasurer (or manager) of the respective candidate committee. That candidate committee can then further inquire or investigate the contribution and, as necessary, return the contribution, if appropriate. Indeed, the SEC has provided for an exemption for returned contributions. Under Connecticut's campaign finance laws, once an election is over and the final campaign report is filed (generally 30 to 60 days following the election), contributions cannot be returned. The Office of the Treasurer has not developed a means of tracking future employment of all contributors and is quite concerned about the challenges presented by such monitoring.

Finally, the Office of the Treasurer urges the SEC to give consideration to the tremendous burden such retroactive attribution of campaign contributions places on investment advisers. It is one thing to expect investment firms to have control or influence over the actions of their current employees. Indeed, reasonable processes can be established to monitor contributions made in jurisdictions where the firm does business. It is quite another thing for a firm to monitor all elections (local, county and state) in all 50 states and US possessions in anticipation of future hires. Certainly such monitoring would prove to be extremely expensive with such costs passed on to the investment adviser's customers, the pubic pension funds. It is even possible that a future hire may conceal a lawful contribution that might prevent him from obtaining gainful employment. While the Office of the Treasurer certainly would not condone such behavior, is it reasonable for an investment firm and a governmental investor to suffer severe consequences from an unknown contribution, even after due inquiry?

The proposed rule does prohibit the use of artifice or other means to circumvent the rule. If, for example, an investment adviser chooses to use a known future hire to solicit contributions or make contributions on behalf of the firm, such activity would likely have to produce a contribution amount that would draw attention (where individual contributions are not restricted to modest levels as they are here in Connecticut). Even without the retroactive attribution of contributions, the SEC will always have the ability to enforce intentional efforts to circumvent the rule.

The Office of the Treasurer urges the SEC to abandon "look back" language that would create a retroactive attribution of campaign contributions by future hires, except where such contributions are intended to circumvent the rule.

B. Ban on Use of Third Parties Will Harm Pension Fund Investments

The SEC has proposed a ban on the use of third parties to solicit governmental investment business. The proposed rule broadly defines "solicit" to mean: "(i) with respect to investment advisory services, to communicate, directly or indirectly, for the purpose of obtaining or retaining a client for, or referring a client to, an investment adviser; and (ii) with respect to a contribution or payment, to communicate, directly or indirectly, for the purpose of obtaining or arranging a contribution or payment." The SEC further clarifies that whether "a particular communication constitutes a 'solicitation,' therefore, depends on the specific facts and circumstances relating to the communication. The nature of information conveyed in any communication and the manner in which it is presented would be relevant factors to consider." This broad definition gives the Office of the Treasurer great pause.

The Office of the Treasurer has a good deal of experience with this issue. The former Treasurer used third parties to effectuate his kickback and bribery scheme. Indeed, it became clear through investigation that several third party "finders" were paid for little or no work at all. In some cases, those fees were funneled back to the former Treasurer and members of his family. Although analysis proved that the unnecessary fees paid did not increase costs for the CRPTF, Treasurer Nappier and her staff sought to eliminate influence peddling in the Office of the Treasurer by banning the payment of finders' fees.

Understanding at the time that the business model for private investing[3] included marketing professionals, careful thought was given to how to ban influence peddling, while maintaining opportunity for legitimate and valuable marketing services.[4] The Office of the Treasurer chose to limit the lawful payment of third party fees to investment professionals, including licensed securities professionals, licensed real estate brokers, other professionals as permitted by regulation and marketing professionals that meet certain criteria. Additionally, the Office of the Treasurer chose to require the public disclosure of all such third party fees. This disclosure is required and considered at the time an investment decision is made and annually thereafter.

Providing a means for legitimate placement agents and marketing agents to furnish valuable services allows the necessary flexibility for investment partners to determine the best means to address their fundraising needs. Not only is the difference between marketing skills and investment acumen appreciated, but the CRPTF also values having investment professionals focused on making investments, not marketing investment products.

Fundraising is critical to private investing as there must be committed capital before investments can be sourced and made. A rarified few investment funds are large enough and are fundraising often enough to justify a robust in-house marketing department. More

[3] Private investing includes private equity funds, real estate funds, hedge funds and the like.
[4] C.G.S. §3-13*l*(a) states in relevant part: No person may, directly or indirectly, pay a finder's fee to any person in connection with any investment transaction involving the state, any quasi-public agency or any political subdivision of the state. No person may, directly or indirectly, receive a finder's fee in connection with any investment transaction involving the state, any quasi-public agency or any political subdivision of the state.

common, but still rare, are investment funds with one (or two) full time marketers. Some investment funds will hire "seasonally" but find it challenging for one person to understand the nuances of scores of institutional investors across the nation, or indeed globally. Those investment funds tend to target the largest investors. Easily lost among firms with in-house marketing are mid-sized or smaller pension funds. Although an active private investor, Connecticut is often approached too late in the fundraising cycle.

The vast majority of private investing opportunities do not have in-house marketing capabilities. These investment funds hire the robust services of professional marketing firms. Public pension funds such as the CRTPF also benefit from the use of such third party marketing firms. A good placement agent can add value, not only for its client, the investment fund, but also for governmental investors.

Like most governmental investors, the CRPTF has experienced both good and bad third party marketers. Frankly, those who do not add value for the CRTPF are simply not successful and move on to other investors. From Connecticut's perspective, the types of placement agents or third party marketers that add value have the following characteristics:

- Good placement agents take the time and effort to review Connecticut's website, attend public meetings and learn about the state's investment program. They understand what types of products are sought by Connecticut and do not attempt to market incompatible products.

- Good placement agents have conducted extensive due diligence on their investment fund clients. As many placement agents are compensated only when an investment commitment is made, these placement agents need to carefully select which investment funds have developed institutional quality products that the placement agent can proudly represent. Additionally, good placement agents understand that public investors are sensitive to "headline risk" and will avoid affiliating with questionable investment funds.

- Good placement agents generally have financial education or work experience backgrounds and are registered with and regulated by the SEC, FINRA or other regulatory agencies.

- Good placement agents are responsive. They assist their investment fund clients in following up on requests from prospective investors. These placement agents assist their investment fund clients in the development of institutional quality marketing materials and investor packages. Good placement agents help to hone an effective message for institutional investors.

It is neither the intent nor desire of the Office of the Treasurer to make the case for third party marketing firms. It must, however, be stated that without the efforts of legitimate placement agents, mid-sized and smaller pension funds would not have known about a number of excellent fund opportunities, especially those from foreign, emerging and women and minority-owned investment funds.

The Office of the Treasurer is deeply concerned that the proposed ban on third party solicitors will significantly disadvantage small and mid-sized governmental investors by limiting access to investment opportunities. Such investors are simply less likely to timely know of the investment funds without the services performed by placement agents.

The Office of the Treasurer believes a better solution to any concerns about the use of third parties to circumvent the restrictions on campaign contributions is simple. The rule change should LIMIT the use of third party solicitors to those individuals and entities that are licensed or registered and therefore subject to the same restrictions as other investment advisors. Additionally, the SEC could further restrict the use of third party solicitors to those who have contractually covenanted to comply with the restrictions on campaign contributions. These solutions will have the added effect of encouraging registration and, therefore, regulation of the parties participating in the fundraising process. The Office of the Treasurer has found that regulation and disclosure have been the best deterrents to malfeasance.

C. Ban on Contributions to Political Parties Fraught with Challenges

Citing a desire to curtail use of political parties for coordination of contributions to an elected official, the SEC has proposed a ban on contributions to a party committee. While the Office of the Treasurer concurs with the goal of ending the coordination of campaign contributions, a blanket ban of contributions to political parties seems extreme.

Connecticut has moved toward public financing of campaigns, but even before the public financing limited contribution influence, there were other limits on political contributions. In Connecticut, contributions to state and town party committees are limited. Indeed, even party committees have limits on contributions they can make to candidates for statewide office, including the Office of Treasurer. Furthermore, the Treasurer of the State of Connecticut (and her staff or her behalf) is prohibited from soliciting campaign contributions for the benefit of any political party or party committee. Given the solicitation restrictions, the modest limits on contributions and the significant percentage of the Connecticut population that is employed in the financial services industry, a general ban on contributions to the political parties in the State of Connecticut will certainly harm the political process without any added protections for our pension beneficiaries.

Furthermore, the proposed restriction on party contributions is confusing. Footnote 154[5] states that the SEC "note[s] that a direct contribution to a political party by an adviser or its covered associates would not trigger the two-year time out provision ...." How could it? If a contribution cannot benefit the elected official that is in a position to influence the engagement of an investment adviser, then how could the SEC justify interference with a business relationship when none of the parties to the business relationship were benefited by a contribution to a party committee made by an adviser's employee?

Nothing in the SEC's discussion of the proposed rule indicates that contributions to political party committees have presented a significant problem in the past. It certainly is not anticipated to be a problem for Connecticut and we urge you to reconsider the blanket ban

[5] Page 54 of SEC Release No. IA-2910; File No. S7-18-09

on contributions to party committee. As argued above, nothing in this comment would prevent the SEC from taking enforcement action where a candidate, political party and/or investment advisor conspire to intentionally circumvent the rules.

Conclusion and Recommendations.

The SEC's proposed limitation on campaign contributions has Treasurer Nappier's strongest support and the Office of the Treasurer urges its swift adoption, with modifications. As the SEC considers the comment from the public, the Office of the Treasurer hopes that it will consider the comments and recommendations provided, including:

1. Retroactive attribution of campaign contributions for a future employer is problematic and should be eliminated. Instead, any intentional use of a future hire to circumvent the rule should be enforced as a use of artifice or other means to circumvent the law.

2. Regulate third party solicitors rather than ban their use.

3. Reconsider the blanket ban on contributions to party committees.