



September 14, 2009

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

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

Dear Ms. Murphy:

Credit Suisse Securities (USA) LLC (“Credit Suisse”) appreciates the opportunity to comment on the Securities and Exchange Commission’s (the “SEC” or “Commission”) proposed rule 206(4)-5 under the Investment Advisers Act of 1940 (the “Proposed Rule”) published for comment on August 3, 2009.<sup>1</sup> Credit Suisse is the United States broker-dealer subsidiary of Credit Suisse Group, which has been operating continuously in the United States since 1932, when the First Boston Corporation was founded. As one of the world’s leading banks, Credit Suisse Group provides its clients with private banking, investment banking and asset management services worldwide.

Credit Suisse strongly endorses the Commission’s effort to curb “pay-to-play” abuses that undermine the legitimate process by which government pension plans and other municipal investors (collectively “municipal investors”) select investment advisers and investment funds. Credit Suisse also agrees with the Commission that Municipal Securities Rulemaking Board Rules G-37 and G-38 (together, the “MSRB Pay-to-Play Rules”) provide an appropriate regulatory analogy for addressing these issues.

However, we strongly believe that a more complete analogy to the MSRB Pay-to-Play Rules would not preclude regulated broker-dealers from performing placement agent services in the context of municipal investors, as the Proposed Rule would do. Notably, the MSRB Pay-to-Play Rules do not preclude SEC-registered broker-dealers from acting as placement agents to municipal issuers. Instead, the MSRB Pay-to-Play Rules subject such placement agents to “pay-to-play” restrictions and requirements and preclude them from retaining unregulated third-party finders and solicitors.

As a result, we believe that the MSRB Pay-to-Play Rules support a limited exception to the Commission’s proposed placement agent ban that would preserve the legitimate and critical capital formation function that regulated broker-dealers perform as placement agents,

<sup>1</sup> See Release No. IA-2910; 17 CFR Part 275 (the “Release”).

while precluding the use of finders or solicitors who are retained solely to take advantage of their relationships with specific municipal officials in order to inappropriately influence the investment adviser selection process. Accordingly, in keeping with the paradigm established under the MSRB Pay-to-Play Rules, we respectfully recommend that the Commission create a narrowly tailored exception to the proposed placement agent ban that, among other requirements described below, would:

- (A) limit authorized placement agents to registered broker-dealers (and their registered representatives) who regularly engage in the business of raising capital as placement agents from a broad spectrum of investors;
- (B) subject such broker-dealers (and their registered representatives) to “pay-to-play” restrictions and requirements analogous to those set forth in MSRB Rule G-37; and
- (C) preclude investment advisers and authorized placement agents, consistent with MSRB Rule G-38, from using any third-party intermediary that does not satisfy the requirements described in clauses (A) and (B) immediately above.

We believe the foregoing approach is consistent with the paradigm established under the MSRB Pay-to-Play Rules and necessary in order to preserve the important benefits that professional placement agents provide to investment advisers and municipal investors generally and to smaller investment advisers and municipal investors in particular.

#### **I. Role of Placement Agents.**

Credit Suisse and other professional placement agents perform a valuable service both to investment advisers seeking to raise capital and to municipal (as well as other) investors who seek reputable investment advisers and opportunities that meet their stated investment objectives. Placement agents are engaged and compensated by their investment adviser clients, usually on the basis of capital raised from investors. By serving as a bridge between investment advisers and municipal investors, placement agents perform a critical capital formation role, just as they do in the context of corporate issuers and non-municipal investors.

There are several business units within Credit Suisse that perform a placement agent function. For purposes of this letter, we will describe the services performed by the Private Fund Group, a business unit of Credit Suisse that specializes in identifying third-party investors and placing their capital commitments with private investment funds throughout the United States. Although the Private Fund Group places investments from a broad spectrum of investors, approximately 25% of the capital so invested represents municipal investor commitments. As a result, municipal investors are an important investor constituency in this sector and, conversely, private investment funds comprise a significant investment category for municipal investors.

The Private Fund Group performs four key functions as part of the placement process: (i) due diligence, (ii) project management, (iii) distribution and (iv) roadshow organization.

*Due Diligence.* Each year, the Private Fund Group identifies several hundred investment adviser prospects through a variety of sources and undertakes an extensive evaluation, culling and selection process. Of these prospects, the Private Fund Group will generally meet and interview approximately half of the investment advisers, comprehensively review approximately 100 investment advisers and subsequently conduct extensive professional and reputational due diligence on approximately 50 or so investment advisers. As part of its due diligence process, the Private Fund Group will complete an extensive quantitative and qualitative analysis that is similar to many private fund investors' internal review processes. Specifically, the Private Fund Group will complete on-site due diligence sessions with the investment adviser to thoroughly review the investment adviser's historical track record, including an investment-by-investment review of deal sourcing, structuring and post-investment value add, investment process and investment strategy(ies). Moreover, the Private Fund Group will rigorously scrutinize the management team, including extensive reference and background checks. Based on the results of its due diligence, the Private Fund Group generally selects as clients fewer than 5% of the investment advisers initially identified.

*Project Management.* The Private Fund Group project management team advises the investment adviser client as to its fundraising strategy, including timing of the marketing launch, optimal fund size and key differentiating characteristics of the offering. The Private Fund Group project management team also assists in the preparation of offering documents, marketing materials and due diligence questionnaires requested by investors to inform their evaluation processes. The Private Fund Group project management team generally manages the operational aspects of the offering process and liaises with the client and the Private Fund Group distribution team, discussed below. Additionally, the Private Fund Group project management team monitors and provides updates to the client on fundraising progress. Finally, the Private Fund Group project management team advises the client on investment terms and conditions, including advising on any changes in the market terms required by investors, and arranges the closing and related logistics.

*Distribution.* The Private Fund Group distribution team's primary role is to match the client's investment strategy with the objectives identified by prospective investors, both municipal investors and others. The Private Fund Group distribution team devotes significant time and effort to understanding each investor's current portfolio exposure, risk appetite, investment strategy interests and diligence requirements. The Private Fund Group distribution team is also responsible for developing the strategic marketing program, contacting prospective investors, scheduling and advising the client with respect to investor meetings and presentations, and communicating investor feedback to the client.

*Roadshow.* A key element of the offering process is the fundraising roadshow. The Private Fund Group roadshow team develops the roadshow schedule and handles all of the logistics of the roadshow for the Private Fund Group distribution team and the client.

These activities significantly benefit both investment adviser clients and municipal investors. By using their substantial expertise to structure, organize and conduct the distribution of private fund interests and related marketing activities, placement agents bring experience that investment advisers, particularly smaller investment advisers and new entrants, simply cannot duplicate. In addition, by making available their extensive buy-side contacts, placement agents vastly expand the universe of investors that investment advisers are able to reach. Moreover, by performing these functions, placement agents enable investment advisers to focus on their core expertise, investment management, and to avoid the necessity of developing the costly in-house resources necessary to raise capital directly. Finally, by conducting due diligence and carefully screening and vetting the investment advisers, placement agents are able to appropriately assess the investment advisers' credentials, investment processes and strategies.

Municipal (as well as other) investors also benefit directly from the services performed by placement agents. As a result of their extensive contacts in the private investment fund sector, placement agents are able to bring to the attention of municipal investors a far broader range of investment opportunities than municipal investors might otherwise be able to identify on their own. In particular, placement agents enhance the ability of municipal investors to diversify their investment portfolios and to identify new entrants and smaller and less well-known investment advisers, such as minority- and women-owned businesses, or particular niche investment strategies, such as healthcare and energy/renewable energy focused funds, that it is their policy to foster and promote.

Equally, the due diligence conducted by placement agents, and the related screening and vetting of investment advisers, provides a valuable direct benefit to municipal investors who, in many cases, and particularly in the case of smaller municipalities, lack the resources to conduct such due diligence across a broad spectrum of investment advisers. Importantly, while some but not all municipal investors also engage consultants to advise them on their portfolios and to assist them in their due diligence, placement agents further expand the offerings that municipal investors can access and provide additional due diligence information, all at no cost to the investor. Without placement agents, municipal investors would face sharply reduced investment alternatives and would have less certainty regarding the *bona fides* of the funds and investment advisers they select. Notably, the Credit Suisse Private Fund Group has a fully dedicated origination and due diligence team with significant collective fund evaluation, diligence and other relevant experience for the specific purpose of vetting and ultimately engaging with high-quality investment advisers.

By acting as a bridge between investment advisers and a broader universe of investors, placement agents play an important role in promoting competition and facilitating the capital formation of smaller funds, less well-known investment advisers and new entrants. Over the long term, the promotion of smaller funds and new entrants will help mitigate the concentration of capital with fewer, very large and well-known funds, a phenomenon that may itself diminish competition and have a negative impact on municipal investors' long-term returns.

Professional placement agents are registered broker-dealers whose capital raising activities are extensively regulated by the Commission and by the Financial Industry Regulatory Authority (“FINRA”). Finders, on the other hand, are generally unregulated entities. The activities undertaken by seasoned, regulated placement agents, and the benefits they provide, differ significantly from the activities of finders who are typically hired to “open doors” through influential relationships. Unlike finders, who generally target senior officials because they hold positions of influence, placement agents typically interact with the personnel at municipal investors who are responsible for executing the investment function in order to learn more about the municipal investors’ mandates and investment strategies and provide fundraising market commentary and research. Moreover, unlike finders, who are generally engaged to further a particular municipal relationship, placement agents and their professional staff of registered representatives work with a broad range of issuers and investors and engage in a broad range of due diligence and offering-related activities that finders do not, and are not qualified to, undertake.

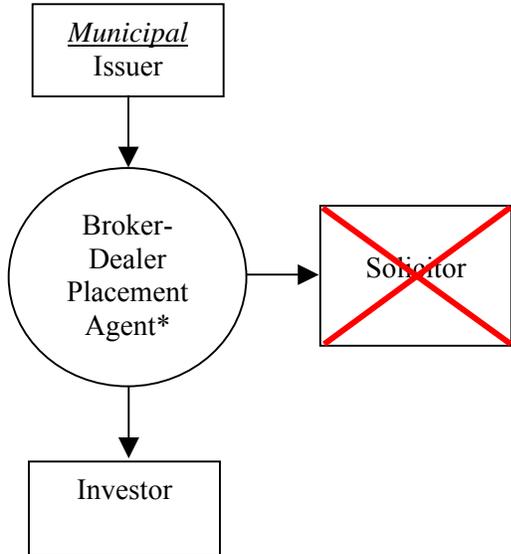
## **II. Proposed Rule & MSRB Pay-to-Play Rules.**

The MSRB Pay-to-Play Rules address “pay-to-play” practices in the municipal securities markets. Under MSRB Rule G-37, registered broker-dealers who solicit underwriting business from municipal issuers are subject to direct “pay-to-play” restrictions regarding political contributions and the coordination or solicitation of political contributions. In order to prevent broker-dealers from circumventing such “pay-to-play” restrictions, MSRB Rule G-38 prohibits them from using unregulated third parties to solicit underwriting or placement agency business from municipal issuers. Registered broker-dealer placement agents are not prevented under MSRB Rule G-38 from soliciting business from or acting for municipal issuers.

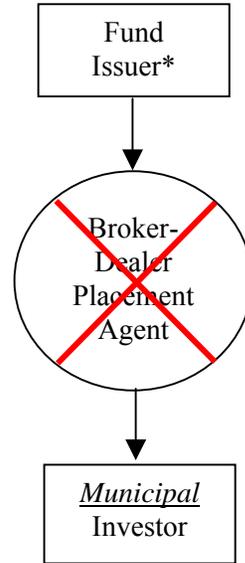
Under the Proposed Rule, in addition to requiring that investment advisers adhere to “pay-to-play” restrictions regarding political contributions and the solicitation or coordination of political contributions, the Commission would also prohibit investment advisers from using any third-party intermediary, including placement agents registered as broker-dealers with the Commission, to solicit municipal investors on their behalf. Although the Proposed Rule’s ban on third-party intermediaries has been analogized to MSRB Rule G-38, this analogy fails to recognize the distinction that exists under MSRB Rule G-38 between broker-dealer placement agents who are permitted to solicit and interact with municipal issuers, on the one hand, and finders and other solicitors who are not, on the other hand.

The difference in approach is depicted diagrammatically below:

**MSRB Rule G-38**

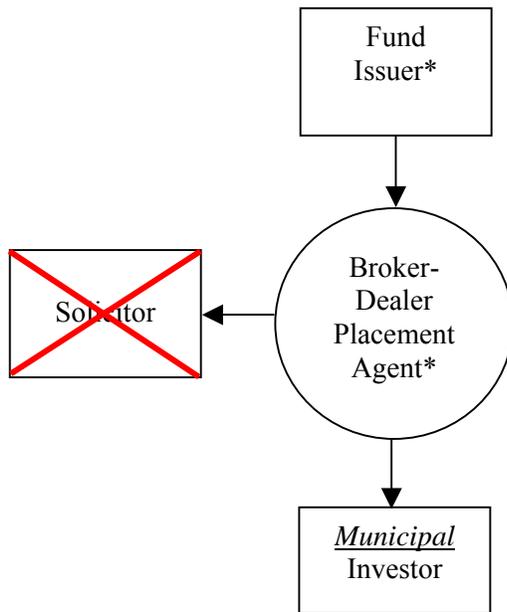


**Proposed Rule**



The proposed approach to harmonizing the Proposed Rule with the MSRB Pay-to-Play Rules is depicted diagrammatically below:

**Alternative Approach**



\*Subject to “pay-to-play” restrictions

As the foregoing diagrams depict, the Proposed Rule would impose a complete ban on the use of all third-party intermediaries between municipal investors and investment advisers, both unregulated finders and solicitors and registered broker-dealer placement agents. The most direct analogy to the MSRB Pay-to-Play Rules, however, would be to require direct dealings between registered broker-dealer placement agents and municipal investors and to preclude the use by such placement agents (and by investment advisers) of any third-party intermediary who is not a registered broker-dealer or does not satisfy all of the conditions the placement agent would itself be required to satisfy under a revised rule. It would not be consistent on a policy level to adopt the position that, while registered broker-dealers can be trusted to solicit and deal directly with municipal issuers, they cannot be trusted to do so with municipal investors, a position that is implicit in the Proposed Rule.

The outright ban on the use of placement agents contemplated under the Proposed Rule would have serious adverse ramifications for the capital raising activities of investment advisers. It would also adversely impact the ability of municipal investors to best achieve their investment objectives. As noted above, these effects would undoubtedly be most pronounced in the case of smaller investment advisers and municipalities. In addition to being undesirable from a commercial and policy perspective, such an outcome also seems directly contrary to one of the Commission's objectives under the Proposed Rule: to redress inequities between larger investment advisers, who are better positioned financially to "pay-to-play", and smaller investment advisers, who are not.<sup>2</sup>

### **III. An Alternative Approach.**

We believe it is possible for the Commission to achieve its twin objectives of curtailing "pay-to-play" abuses and promoting a more level playing field for smaller investment advisers while concurrently preserving the important role that seasoned, regulated placement agents play in raising capital for investment advisers and broadening the universe of investment opportunities available to municipalities. Moreover, we believe these objectives can be achieved by applying the tested paradigm established by the Commission in the context of municipal issuances under the MSRB Pay-to-Play Rules.

Specifically, we respectfully recommend that the Commission adopt a limited exception to the ban on the use by investment advisers of third-party intermediaries. Under this limited exception:

1. *Authorized Placement Agents.* Authorized placement agents would be limited to registered broker-dealers (and their registered representatives). In order to distinguish *bona fide* placement agents from finders or solicitors by reference to factors other than their regulated status, we recommend the Commission consider an additional requirement limiting authorized placement agents to those

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<sup>2</sup> In the Release, the Commission notes that "pay-to-play" practices may create "an uneven playing field among investment advisers" and "hurt smaller advisers that cannot afford the required contributions".

who regularly engage (and whose relevant personnel regularly engage) in the business of raising capital as placement agent from a broad spectrum of investors, including both municipal and non-municipal investors.<sup>3</sup>

2. *Direct Placement Agent “Pay-to-Play” Prohibitions.* In addition to the proposed “pay-to-play” restrictions on investment advisers covered by the Proposed Rule, authorized placement agents would be subject (*mutatis mutandi*) to direct “pay-to-play” restrictions, reporting and related requirements analogous to those set forth in MSRB Rule G-37. These provisions would apply to personnel of the placement agent who perform functions analogous to the functions performed by “municipal finance professionals” under MSRB Rule G-37. This framework could be administered directly by the Commission, or the Commission could require authorized placement agents to report to, and comply with the framework as administered by, FINRA (by analogy to the role of the MSRB under MSRB Rule G-37).
3. *No Third-Party Intermediaries.* Consistent with MSRB Rule G-38, investment advisers and authorized placement agents would be prohibited from using any third-party intermediary to solicit municipal investors that does not satisfy the requirements described in paragraphs 1 and 2 immediately above.
4. *Placement Agent Certifications.* In order to promote compliance with the framework, each authorized placement agent would be required to certify to each investment adviser by whom it is engaged that it is eligible to act as a placement agent under the rule. Each investment adviser would be required to obtain such a certification from each placement agent it engages and retain such certifications for an appropriate retention period.
5. *Disclosures Regarding Placement Agent Arrangements.* Investment advisers would be required to disclose to municipal investors solicited by authorized placement agents in the offering documents or otherwise the fees or other consideration paid or payable to the placement agents in respect of the municipal investors’ investments with the investment advisers, as well as the nature of the services to be performed by the placement agents on behalf of the investment advisers.<sup>4</sup>
6. *Prohibition on Indirect Violations.* In keeping with requirements applicable to investment advisers under the Proposed Rule, authorized placement agents and

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<sup>3</sup> This requirement, together with the prohibition against “indirect” violations of the rule (see paragraph 6 below), would prohibit placement agents from retaining individuals (including as registered representatives) for the purpose of soliciting specific municipal investors.

<sup>4</sup> In contrast to the predecessor to current MSRB Rule G-38, such disclosure requirements would, as described above, be augmented by “pay-to-play” restrictions imposed directly on authorized placement agents.

their covered personnel would be prohibited from doing anything indirectly which, if done directly, would result in a violation of any of the foregoing requirements.

#### **IV. Conclusion.**

By limiting placement agents to registered broker-dealers who regularly engage (and whose relevant personnel regularly engage) in the business of raising capital from a broad spectrum of investors, and subjecting such placement agents and the investment advisers who retain them to the requirements outlined above, we believe the foregoing approach would effectively curtail abuses such as the corruption scandals in New York and other states involving allegations of politically connected individuals claiming to act as placement agents in order to sell access to municipal pension fund money in exchange for kickbacks and political favors.

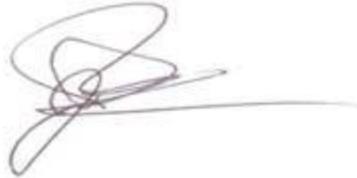
The foregoing approach would also promote the use by investment advisers of registered, experienced broker-dealers—who, as the Commission is aware, are subject to substantial regulatory obligations and liabilities with respect to their private placement activities—in order to raise capital, rather than incentivize (or effectively mandate) direct capital raising by investment advisers who likely are not subject to a regulatory and self-regulatory framework that is geared to the oversight and regulation of their capital raising activities. Moreover, as discussed above, this approach would put smaller investment advisers on a more equal footing with larger, better-established advisers in marketing their services to municipal investors, a key objective of the Commission under the Proposed Rule, and, at the same time, would help to meet the needs of smaller municipal investors.

As the Commission is aware, various states and municipalities have begun to develop their own “pay-to-play” restrictions. These restrictions range from outright bans on the use of placement agents to disclosure and other substantive requirements and restrictions applicable to placement agents’ fees, activities, political contributions, *etc.* If the Commission were to flatly prohibit the use of registered broker-dealer placement agents by investment advisers, it would effectively deny states and municipalities the flexibility to develop their own individualized solutions to stemming “pay-to-play” abuses.

The Commission could, however, play a positive role by revising the Proposed Rule to permit registered broker-dealers to serve as placement agents between municipal investors and investment advisers subject to the requirements discussed above, and encouraging states and municipalities to adopt a complementary set of uniform standards for placement agents providing services to municipal investors in their respective jurisdictions.

We sincerely appreciate the opportunity to provide our comments on the Proposed Rule. If you should have any questions regarding these comments, please do not hesitate to contact our counsel, Edward J. Rosen of Cleary Gottlieb Steen & Hamilton LLP at 212-225-2820.

Very truly yours,

A handwritten signature in purple ink, appearing to read "John C. Robertshaw", with a long horizontal line extending to the right.

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John C. Robertshaw  
Managing Director and Co-Head  
Private Fund Group

cc: Hon. Mary L. Schapiro  
Hon. Kathleen L. Casey  
Hon. Elisse B. Walter  
Hon. Luis A. Aguilar  
Hon. Troy A. Paredes  
Andrew J. Donohue, Esq.