

September 14, 2009

Subject: File No. S7-18-09

From: Robert F. Muhlhauser III

I have a number of friends/associates in the private equity industry and have read about the 'pay-to-play' scandals affecting the New York Common pension fund. I strongly agree that steps need to be taken to try and curb "pay to play" practices. However, I fiercely disagree with your proposed regulation banning an entire industry of placement agents as it is both highly ineffective and a gross injustice.

Placement agents/third party solicitors have played a significant value-added role in the private equity investment management business for many, many years and thus, the SEC's proposed ban of their entire professional industry should be prohibited because:

- Public pension funds represent a majority of all the capital invested in the private equity investment management business and eliminating access to this magnitude of capital will devastate the placement agent business
- The vast majority of emerging, small and middle-market investment managers rely extensively on placement agents to gain access to pension fund capital. Without these services, many of these companies will simply not survive or be forced to operate at a untenable disadvantage
- Pension funds will be unnecessarily harmed because without placement agents, there will be a dramatic reduction in their access to potential opportunities from emerging, small and middle-market investment managers
- Pension funds will no longer be able to use placement agents to help them identify, pre-screen and evaluate potential investment manager candidates
- The placement agent and investment management industry will incur dramatic job losses

As I understand it, there are a number of large and highly sophisticated public pension funds, such as the Teacher Retirement System of Texas, that have adopted extensive licensing and regulatory policies addressing 'pay-to-play' schemes and *none of them have proposed to eliminate the use of placement agents*. As such, I have attached a copy of Texas Teacher's Investment Policy below for your consideration. This is a far more rational approach and emphasizes that public pension funds, such as Texas Teachers, want to ensure their continued access to the services provided by qualified placement agents.

Thank you for considering my views on this very important matter.

Sincerely,

Robert F. Muhlhauser III

Teacher Retirement System of Texas – Investment Policy Statement

1. Prohibitions.

Neither TRS nor any TRS investment shall be burdened with or liable for any Placement Fee. No TRS investment may be made if the transaction involves either (a) a Placement Agent who is not registered with either of the Securities and Exchange Commission or the Financial Industry Regulatory Authority (“FINRA”), or (b) the sharing of a Placement Fee with a non-registered person or entity. No TRS investment may be made if an authorized officer or the board, in consultation with legal counsel, determines that a disclosed contact with a TRS board member or Texas Elected Official, or a contribution to a Texas Elected Official, has created an unacceptable risk to the integrity and reputation of the TRS investment program or has been made in violation of a TRS policy or applicable law. A contact-based referral, without more, by a trustee of either an investment opportunity or a Manager or Fund Party contact to the Executive Director, Chief Investment Officer, or Deputy Chief Investment Officer does not constitute such a risk or a violation of this policy.

-AND-

C) Placement Agents and Placement Fees. Is or was the Fund or Manager Party a party to any agreement or arrangement (whether oral or written) to pay a Placement Fee to or for the benefit of any Placement Agent in connection with TRS’s prospective investment in a fund or engagement of an external manager?

- 1) If the answer to C) is “yes,” please provide a copy of the written agreement or agreements creating the obligation to pay a Placement Fee. If the agreement is not written, please provide a written summary of the agreement. Additionally, please state the amount of the Placement Fee (or the formula for its determination if the amount is not yet determined) and the date of its payment or anticipated payment.
- 2) If the answer is “yes,” please list the name(s) of the person or entity. If the party to the agreement is an entity, please also list the names of the principal owners, officers, directors, or managing members of the Placement Agent and provide a resume for each such person.
- 3) If the answer is “yes,” state whether the Placement Agent, or any of its Affiliates, is registered as a lobbyist with any state government or the federal government and identify the registrants and the applicable jurisdictions where registered.
- 4) Will or did any TRS Person or any Relative of a TRS Person receive, has any such person received, or might any such person receive, any compensation or payment, directly or indirectly, of a commission, finder’s fee, or any other consideration or benefit to be paid to a Placement Agent (a “Placement Fee”) in connection with TRS’s investment? If the answer is “yes,” please list the name or names of the TRS Person or Relative of a TRS Person and provide details about the terms of the Placement Fee.
- 5) Will or did any Texas Elected Official or a Relative of a Texas Elected Official receive a Placement Fee in connection with TRS’s investment? If the answer is “yes,” please list the name or names of the official and provide details about the terms of the Placement Fee, including the amounts and timing of payments.
- 6) Did (or will) any third party person or entity who is not employed or otherwise affiliated with a Placement Agent, including a current or former TRS Person, either (a) recommend the Placement Agent or (b) receive a share of a Placement fee or any other economic benefit in connection with TRS’s investment, whether directly or indirectly through a Placement Agent engaged by you?
- 7) If the answer to 6) is “yes,” please list the name of the person or entity, the relationship of the person or entity to the Placement Agent and your firm, and provide a description of the arrangement and the reason for the payment.

8) State whether the Placement Agent or any of its Affiliates is registered with the Securities and Exchange Commission or the Financial Industry Regulatory Association, or a similar agency outside the United States. Provide details about registration or explain why registration is not required.