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ATTORNEY-CLIENT COMMUNICATION

February 22, 2011

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

Re: Rules Implementing Amendments to the Investment Advisers Act of 1940, Release No. IA-3110, File No. S7-36-10

Dear Ms. Murphy:

We are submitting this letter to address certain matters contained in Release No. IA-13110 (the "Implementing Release")[1] that are designed to give effect to certain aspects relating to the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act. This letter focuses specifically on the proposed amendment to Rule 206(4)-5 under the Investment Advisers Act of 1940 that would prohibit an adviser from paying persons to solicit government entities unless such persons are "regulated municipal advisors."

Debevoise & Plimpton LLP is an international law firm, representing a wide range of clients around the world. Our clients include sponsors and managers of private funds. Certain of these clients are private fund sponsors that have established registered broker-dealers to solicit investors for the private funds that they manage. These comments, while informed by our experience in representing these clients, represent our own views and are not intended to reflect the views of the clients of the firm.

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1 Rules Implementing Amendments to the Investment Advisers Act of 1940, SEC Release No. IA-3110 (Nov. 19, 2010).

Rule 206(4)-5, in its current form, will prohibit an investment adviser from paying solicitors or placement agents to solicit government entities unless such persons are "regulated persons"—registered investment advisers or broker-dealers subject to rules of a registered national securities association, such as the Financial Industry Regulatory Authority ("FINRA"), that restrict its members from engaging in "pay-to-play" activities.[2]

The proposed amendment would modify this provision and only permit an adviser to make such payments to a "regulated municipal advisor." A regulated municipal advisor would be a municipal advisor that is registered under newly-enacted Section 15B of the Securities Exchange Act of 1934 and subject to "pay-to-play" rules adopted by the Municipal Securities Rulemaking Board (the "MSRB").

The proposed amendment is designed to avoid the possibility that certain placement agents would be subject to two sets of rules designed to address "pay-to-play" practices: a rule that will be adopted by the MSRB (applicable to registered municipal advisers) and a rule that the Securities and Exchange Commission (the "Commission") anticipated would be adopted by FINRA (applicable to registered broker-dealers). Under the newly proposed language, such placement agents would be subject only to the MSRB rule. The proposal would, however, subject certain placement agents to additional duplicative and unnecessary regulation.

As the Commission itself recognized, the proposed amendment could require a solicitor or placement agent that is not otherwise required to register as a municipal adviser (because it controls, is controlled by, or is under common control with, the registered investment adviser for which it solicits) to do so in order to solicit potential state and local government investors.[3] It is not uncommon for a private fund sponsor to establish a broker ("Affiliated Broker") to market interests in the private funds that it sponsors. These Affiliated Brokers would now be required to register as municipal advisers even though Congress determined that such registration was not necessary.[4]

The Commission inquired whether it should amend Rule 206(4)-5 to, in effect, allow an adviser to pay an Affiliated Broker to solicit a government entity on its behalf if the Affiliated Broker and its personnel would be deemed to be "covered associates" of the investment adviser for purposes of Rule 206(4)-5.

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2 The compliance date for this provision of Rule 206(4)-5 is September 13, 2011.

3 *See* Implementing Release at footnote 224 and related text.

4 *Id.*

We believe that the Commission should amend the rule to provide such an option. This approach would allow an Affiliated Broker to avoid duplicative and unnecessary regulation when the Affiliated Broker would not otherwise be required to register as a municipal adviser (because it solicits state and local government solely on behalf of the related sponsor). Such a broker and its personnel would still be subject to restrictions on "pay-to-play" activities (as "covered associates" under Rule 206(4)-5), without being subject to a new registration requirement that would simply add complexity and cost without providing any additional protection from the conflicts of interest addressed by Rule 206(4)-5.[5]

We appreciate the opportunity to comment on the proposed rule and would be pleased to answer any questions you might have regarding our comments. Please contact Kenneth J. Berman at (202) 383-8050 or Erica Berthou at (212) 909-6134.

Respectfully submitted,

DEBEVOISE & PLIMPTON LLP

[5] Of course, if the broker opted to register as a municipal adviser, it would be subject to the MSRB rule and should not be required to be treated as a covered associate of the investment adviser.