October 6, 2009

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

Re: File No. S7-18-09; Proposed Rulemaking—Political Contributions by Certain Investment Advisers (Release No. IA-2910)

Dear Secretary Murphy:

I am writing this letter on behalf of the National Association of Securities Professionals, Inc. ("NASP"). NASP is an organization that helps people of color and women achieve full inclusion in the financial securities industry. We connect members to industry leaders and business opportunities; advocate for policies that create equal representation and inclusion; provide educational opportunities; and work to build awareness about the value of ensuring that people of color and women are included in all aspects of the investment and financial services industry. Started in 1985, the national organization is based in Washington, DC with chapters in major financial capitals throughout the United States. Our members include asset and wealth managers, brokers, public finance professionals, investment bankers, bond counsel, commercial bank underwriters, institutional investors, plan sponsors and other professionals in the investment and financial services industry

NASP appreciates this opportunity to comment on the Securities and Exchange Commission's proposed new rule 206(4)-5 under the Investment Advisers Act of 1940 (Advisers Act) regarding political contributions by certain investment advisers, known as "pay-to-play." The SEC's proposal would prohibit an adviser from providing advisory services for compensation to a government client for two years after the adviser or certain of its executives or employees make a political or campaign contribution to certain elected officials or candidates. On a related basis, the proposed rule would also prevent an adviser from soliciting from others, or coordinating, contributions to certain

elected officials or candidates or payments to political parties where the adviser is providing advisory services or seeking government business, and would require an adviser to maintain certain records of the political contributions made by the adviser and/or certain of its executives or employees. Additionally, the new rule would also prohibit an adviser entirely from providing or agreeing to provide, directly or indirectly, payment to any third party for a solicitation of advisory business from any government entity on behalf of such adviser.

Prohibitions & Restrictions Regarding Political Contributions

NASP opposes any attempts by investment professionals to "buy business" through political contributions and agrees with SEC Chairman Schapiro's public comments criticizing pay-to-play practices in the investment industry. For several years, NASP has promoted high standards of conduct for both pension-institutional management trustees and professionals and asset management professionals through its periodic industry conferences, training workshops, and events. We believe that campaign contributions made for the intended purpose of influencing the selection or retention of asset managers are contrary to an adviser's fiduciary duties. Buying business by making inappropriate political contributions has no place in the investment advisory profession and these practices should be prohibited. Accordingly, NASP supports reasonable measures that are specifically tailored to prevent and eliminate abuses that may exist although we would like to preserve the right of in industry members to participate in the political process in this important area while at the same time avoiding unintended consequences of such proposed measures.

However, NASP is equally mindful that prohibiting specified political or campaign contributions—without regard for the intent underlying such contribution—involves sensitive and serious constitutional issues that should not be pushed to the wayside without due regard for and consideration of an individual's right to participate fully in our political democracy processes. One can easily cite various legitimate considerations that are entirely unrelated to a desire or intent to influence the selection of an adviser—including political, religious, and other personal reasons—that may prompt individuals employed by asset management firms and other investment advisers to make political contributions to various public officials or candidates described in the proposed rule. The proposed rule limits the rights of certain adviser personnel to make any political contributions, without regard for the intent underlying the contribution or even the amount of the contribution. Indeed, there are substantial constitutional rights that certainly will be compromised by adoption of the proposal, and the proposed rule in its current form may be unconstitutional based upon the U.S. Supreme Court's 2006 decision in *Randall v. Sorrell* (; see also comprehensive discussion of this issue in W.H. Calcott, Esq. (Partner, Bingham McCutchen; former Assisstant General Counsel, SEC, Division of Market Regulation), Aug. 3, 2009 Individual Comment Letter to SEC ("Calcott, Esq. Comment Letter"). Clearly, this is an area where the Commission should tread extremely carefully given the serious and weighty constitutionally-protected rights involved in this "constitutional minefield."

Because of the extremely harsh penalty involved—a two-year ban on an adviser receiving compensation if there is a violation of the proposed rule—the Commission also should be mindful of the fact that investment adviser firms will err on the side of ensuring that no prohibited contributions will be made, e.g., by adopting procedures that cover employees who have any potential nexus to a public pension plan client (current or

prospective) or by banning all contributions. Thus, adoption of the proposed rule may very well result in the investment adviser adopting policies and procedures that further restrict what otherwise would be lawful and appropriate contributions by investment adviser employees and their families. The bottom line is that this proposed rule requires the Commission to engage in a serious and delicate balancing act—weighing the protection of public plan clients from undue influence that may result from certain political contributions against the individual's established constitutional right to participate in the political process.

The SEC's proposed rule would be largely duplicative of state and local rules that already govern asset managers and other investment advisers that serve public pension plans. Consequently, the Commission should also be very mindful of the fact that there is significant evidence that state and local laws and regulations are already in place and working to curb pay-to-play abuses in cases involving public pension plans, unlike the evidence that existed in the municipal securities area earlier the 1990's. In the time since Rules G-37 & 38 were released, many state and local governments have mandated restrictions or disclosures designed to deter pay-to-play practices. Further, some clients request investment advisers to disclose contributions during the bidding process. Given the laws and procedures that are in place, the Commission must carefully consider whether its proposed rules are the best approach, particularly where they effectively prohibit otherwise lawful and appropriate behavior. (Public Insight, *2007 Guide to the Regulations/Rules Governing the Top 75 U.S. Public Pension Plans*, available upon request from NASP.) The Commission acting in this arena also implicates issues involving states rights and regulations versus "indirect federal regulatory mandates" or "indirect federalization" of an area that is reserved to the states in the area of public and government pension management.

Indeed, these considerations make disclosure a more meaningful and appropriate approach than a two-year ban on business. A disclosure regime is more consistent with the Investment Advisers Act and other securities laws than is a prohibition. Some of our member firms believe that, in lieu of the current proposal, the Commission should consider adopting an anti-fraud rule under the Investment Advisers Act to prohibit contributions that are made with the intent to influence the selection of an investment adviser to manage the funds of a government entity. The SEC could bolster this approach by requiring advisers to disclose any political contributions to relevant officials of government clients or potential clients on a regular basis. The adviser would also be required to maintain records of certain political contributions for SEC inspection. We would also strongly urge the Commission to review the Comment Letter of the Hon. D. Nappier, State Treasurer & Pension Trustee of the State of Connecticut as instructive and insightful generally as one example regarding the appropriate implementation of reforms using disclosure-based mechanisms in response to pay-to-play issues and public pension reform issues.

Third-Party Placement Agent Ban

Third-party marketer/placement agent ban is unwarranted and draconian in the marketplace for investment management and pension/institutional management services. We also note that the SEC has historically focused on "disclosure regulation" versus "substantive regulation" in the U.S. and that disclosure/transparency and "sunshine practices" are much more effective and preferable than substantive limits. This is especially true in the pension/institutional fund sector where sophisticated institutional

pension investors are involved who can readily fend for themselves and who readily use institutional/pension consultants for additional guidance and support as needed in discharging their pension management and fiduciary oversight duties. We would commend the Commission's attention to the weight of responses and comments therein of the numerous pension plans who responded to this proposed rule as well as those commenters who have been operating in the pension/institutional and emerging/diverse manager sectors for several years and even decades.

Further, adoption of the placement agent blanket-ban would have a disproportionate and material competitive impact on smaller, emerging, and newer boutique investment management firms, including minority- and women-owned firms, by impeding their ability to have full access and exposure to institutional/pension asset manager mandates and to be able to expand their businesses since they do not typically have their own in-house marketing and investor relations groups–which are typically present in larger firms. The fact that the placement agent ban would have the perverse consequence of delivering a significant competitive advantage to larger or established asset management firms at the expense of smaller/emerging, minority-/women-owned and newer boutique firms should be reason enough for the Commission to reconsider its proposed placement agent ban]. Moreover, it is important to re-emphasize that this proposed ban will certainly have an immediate and substantial negative impact on smaller/emerging asset managers, which includes minority- and woman-owned firms. Such firms already face a significant disadvantage when competing against large national or global multi-product firms and the significant restriction of their sales and marketing business management options can only further, negatively affect their viability (see Third-Party Marketing Association, Comment Letter, Aug. 27, 2009).

Finally, we sincerely and earnestly hope that the Commission will seriously consider whether adoption of the proposed placement agent ban will further or inhibit robust competition in the asset management and pension investment services sector. It is worth noting that pension officials/managers have confirmed that without the efforts of legitimate placement agents, pension funds would not have known about a number of excellent fund opportunities, especially those from emerging, women- and minority-owned investment funds. In keeping with its statutory mandate to maintain orderly markets, the Commission must ensure that a level playing field is maintained among and between asset managers, investment advisers, their competitors, and other market participants. Indeed, most states and pension funds that have considered this issue have not implemented blanket third-party marketer or solicitor bans. While the Proposed Rule mentions the series of events involving the New York State pension fund as support for such a blanket ban, the overwhelming response from state officials and public pension plans has been that a ban on placement agents is not appropriate and that greater and more uniform regulation and disclosure would be a more effective approach. In such states that have focused on the matter the apparent consensus regarding the use of placement agents is that they serve a legitimate role in the investment management process and so long as they are adequately regulated and investors are informed of their involvement through appropriate requisite disclosures, there should not be any bar to their continued participation in the marketing of investment products or funds to public pension funds.

Additional Comments & Suggested Alternatives/Modifications

Regardless of the approach the Commission ultimately adopts, NASP strongly believes that particular aspects of the current proposal should be modified prior to final adoption and should be more narrowly tailored to support the Commission's objectives as a governmental agency or entity. Accordingly, we submit the following additional and specific comments in response to specific requests for comments contained in the proposed rule and also in an attempt to narrow the reach of the proposed rule to those areas where abuse may be more likely to exist.

1. Using MSRB Rules G-37 & 38 as Models for Proposed Rule (SEC Request for Comment)

We believe that consideration of the proposed rules should be gauged against the background and factual basis underlying the alleged need for the rules. The proposal explicitly states that it is premised upon MSRB Rules G-37 and G-38, adopted by the Municipal Securities Rulemaking Board in the 1990's to address pay-to-play concerns in the municipal securities area. But there are significant differences between the municipal securities industry and the investment adviser profession, as well as the facts and circumstances that led to Rules G-37 & 38 and the subject proposal. Unlike municipal dealers, investment advisers have a fiduciary relationship with each of their clients - including public pension plan clients. The investment adviser/client relationship is predicated on providing continuous, ongoing, and independent investment advice, whereas the municipal security business generally is transaction-oriented.

The potential ramifications of a Rules G-37/38-type ban for investment advisers could be extremely disruptive to the client - and ultimately to the beneficiaries of the plan - even for minor violations that have nothing to do with pay-to-play abuses. Termination of a longstanding, ongoing fiduciary relationship is a much harsher result for both client and adviser than a time-out on transactional business. Indeed, the penalty for violating the proposed rule is tantamount to a death penalty for an advisory relationship. It is extremely unlikely that a public pension plan would endure the hardships and disruptions created by a violation of the rule, go through the process of identifying and hiring a replacement adviser, and then return to the original adviser after the two-year ban ends. In all likelihood, the so-called "two-year ban" will operate as a *de facto* permanent ban. We also understand that, unlike the municipal bond business where one official (often the treasurer) has significant influence over the award of a contract, the public pension process generally is more open and involves more decision-makers, including representatives of plan participants and consultants.

2. Scope of Proposed Rule & Investment Advisers Covered (SEC Request for Comment)

We believe that the scope of the rule in whatever form finally adopted should apply to all investment advisers that operate or compete to any degree in the public and governmental pension or institutional investment management arena, whether SEC registered or not, whether a private/hedge fund manager or not (registered or unregistered), whether state registered or not, or whether exempt from SEC and state registration. To do otherwise would create fundamental unfairness in this sector and grant competitive advantages to one sub-group of investment advisers over other sub-groups of advisers in this marketplace.

3. Definition & Coverage of Third-Party Solicitors Regarding Contributions

While third-party solicitors have been removed from the coverage of “covered associates” by proposed rule, we propose the following alternative, consistent with the structure of the Advisers Act, to the extent that the Commission does not go forward with a its proposed third-party solicitor blanket-ban. Third-party solicitors currently are governed by Rule 206(4)-3, the cash solicitation rule. We suggest that the Commission amend Rule 206(4)-3 to require a solicitor who is a natural person to disclose in writing to the adviser and government entity client or prospective client any contributions the solicitor has made to an official of the government entity within the past two years. The solicitor should also certify that he or she will make no contributions in the future to any official of that government entity. The disclosure should be made in the separate written disclosure document mandated by Rule 206(4)-3(b), which the adviser is required to maintain under Section 204-2(a) (15) of the Advisers Act.

4. Definition of "Official of Government Entity"

Because the consequences of violating proposed Rule 206(4)-5 are so draconian, it is crucial that investment advisers have a very clear understanding of who is and who is not an "official" of a "government entity." The proposed definition of "official" is vague and could be quite broad. Under the proposal, an investment adviser must decide on its own whether an office is "directly or indirectly responsible for, or can influence the outcome of, the use of an investment adviser by a government entity" or an office with the authority to appoint such a person. Government entities are not required to assist investment advisers by providing a list of officials covered by the rule. Because the definition is tied to an "office" rather than a particular "official" and includes persons who can appoint such officials, investment advisers cannot simply assume that the person with whom they are in contact is the relevant "official." Relevant officials could be many layers removed from the plan.

We suggest that "official" be defined as a person who is directly involved in selecting the investment adviser. Moreover, we believe it is unfair and unduly burdensome for each asset manager to try and ascertain all officials to whom the rule may apply. To this end, we strongly urge the SEC to coordinate with state and local organizations to compile a single list of "officials" on which all investment advisers may rely for purposes of the proposed rule. At a minimum, the Commission should publish publicly a list of state "officials" and indicate those officials who are also candidates for federal office.

5. Definition of "Contribution"

The Commission proposes to define "contribution" as "any gift, subscription, loan, advance, or deposit of money or anything of value made for the purpose of influencing any election...payment of debt incurred in connection with any such election; or ... transition or inaugural expenses...." On its face, the proposal seems to apply only to election-related payments or gifts and would not apply to ordinary and usual business entertainment, such as meals, sporting events, theater tickets and similar items "of value," which are not otherwise prohibited or restricted under state or local law. It is our understanding that these types of gratuities generally are not made for the purpose of influencing an election and do not relate to debt, transitional, or inaugural expenses. Additionally, the consequences of making an inadvertent mistake in the burdensome

process of policing meals, tickets, and related items would be disproportionately severe. Therefore, we respectfully request that the final rule confirm our understanding of the definition of "contribution" in this regard.

Similarly, many officials of clients or prospective clients solicit investment advisers and their employees to make a wide array of contributions involving a charity. We assume these types of contributions in response to a solicitation are not covered by the proposed rule. If our understanding is incorrect, we would appreciate clarification in the final rule release. Finally, we would appreciate confirmation that a covered employee's volunteer time for a political campaign is not a "contribution," unless employer resources (such as providing office space for the campaign) are used.

6. *De Minimis* Exception

NASP strongly urges that the *de minimis* exception be revised to permit an employee to make contributions of $1,000 or less to any candidate, not merely those for whom the employee could vote, if registered. We firmly believe that there are serious constitutional issues at stake as noted above. One key aspect of such constitutional analysis will be the contribution level limit, and the proposed $250 limit may very well be unconstitutional (see discussion above).

Also, in today's economy, the reality is that $1,000 for any candidate is not going to buy a contract or an opportunity to be considered for a contract - it would not even buy a seat at the table. Increasing the exception to $1,000, however, would permit citizens to feel they are participating more fully in determining the quality of life in their communities. In many cases, an investment adviser employee lives in one voting district and works in another. These individuals often take a great interest in their workplace location and they should have the freedom to participate fully in supporting officials who will make decisions affecting them.

Further, limiting contributions to candidates for whom an employee can vote is inconsistent with the national goals of various legitimate groups or PACs, which sometimes name particular government officials in their contribution materials. For example, certain groups solicit contributions earmarked for specific minority or women candidates around the country or specific candidates who believe in particular platforms. In our political democracy, no one should be prohibited from expressing support for these causes through contributions; as it is, even a $250 limit would significantly limit the ability of individuals to make a meaningful statement of support for particular candidates for legitimate reasons.

Finally, the SEC's proposed rule may also conflict with federal election and campaign laws and regulations. Increasing the *de minimis* to $1,000 would make the SEC's proposal more consistent with such laws, which in 1974 established a $1,000 limit on individual contributions which still remains in effect today (see *SEC "Play-to-Pay" Rules: Its Impact with Respect to FECA*, Memorandum to The Federal Election Commission from Lawrence M. Noble, General Counsel, et al. (Sept. 20, 1999), when the SEC first proposed but ultimately withdrew its pay-to-play rule).

7. The "Look Back" Requirement

The look-back proposal presents a number of difficulties. Firms will have to question potential job applicants regarding their specific contributions and require new hires to sign a representation regarding such contributions. Currently, this query is not made of most candidates in the investment advisory profession and would inhibit advisers' competition for talent and the ability of advisory personnel to change jobs. Moreover, advisers have every reason to be concerned about potential liability in questioning applicants regarding their political contributions; such questions may elicit information from these individuals about their political, religious, sexual orientation, racial, or other views or affiliations. In essence, this provision is an invitation to lawsuits by job applicants, whether legitimate or not.

We strongly propose that the Commission eliminate the look-back provision. Eliminating the provision will in no way compromise the Commission's goals. Officials of relevant government entities are unlikely to "credit" to an advisory firm a contribution previously made by a newly hired employee (as much as two years earlier). Moreover, this provision "punishes" the advisory firm for contributions the individual made while employed at a prior firm. We are aware of no evidence that this type of conduct has occurred. In any event, we believe the "no solicitation" and "directly or indirectly" provisions of the pay-to-play proposal adequately address any illicit contributions made by employees departing a firm. If the Commission chooses to retain the look-back provision, we respectfully submit that the time period be limited to six months and that the Commission obtain from Congress some liability protection for advisory firms for asking employees and potential employees specific questions about their history of political contributions.

8. The SEC's Authority to Grant Exemptions

Because the proposed sanctions are so severe, the exemption process established by the Commission is a crucial element of the proposal. First, the exemption process must provide for a prompt response. This is simply a matter of fundamental fairness. Delays in the exemptive process will harm the adviser, the plan, and beneficiaries of the plan. We therefore suggest requiring a response to an exemptive application within 30 days. To achieve this result, we suggest that the Commission delegate to its staff authority to grant exemptions. Because of the potential for a significant number of innocent or inadvertent problems, we strongly believe that the rule should provide that an application not acted upon within 30 days would be automatically granted.

Second, because of the severity of the sanctions, the Commission should set forth specific criteria, which, if established, would result in the automatic issuance of an exemption. For example, an automatic exemption should issue if the applicant can establish that the contribution was made inadvertently or without the intent, purpose, or actual effect of influencing the selection or consideration of the adviser. Similarly, if employees or solicitors of the adviser who communicate with the government client had no knowledge of a contribution made by an employee who has no contact with the client, an exemption should issue.

Third, the Commission should factor in the differences between the municipal bond business and the investment adviser profession in fashioning exemptions. The municipal bond business is transaction-based. Forced termination of an ongoing fiduciary

relationship is a much harsher result for both client and adviser than a ban on a transactional business. For example, particular types of advisers may fill a specific niche of expertise required by a client. Whether or not a contribution has been made, in many circumstances the adviser chosen by the client may indeed be the most qualified candidate and the selection may be in the best interests of plan beneficiaries. A forced change could result in additional costs - as well as a change in performance and risk - for beneficiaries of government and pension plans.

Fourth, the text of the release states that the Commission "would apply these exemptive provisions with sufficient flexibility to avoid consequences disproportionate to the violation while accomplishing the remedial purpose of the rule." We strongly support this goal, including the proportionality concept. Firms should not be subject to forfeiture of significant revenues or important relationships because of an inadvertent error by one of many employees. We assume that the phrase "conditionally or unconditionally" in the proposed exemption language permits the Commission, through its staff, to impose alternate remedies to a two-year ban on business when it appears that a remedy is justified yet a ban is too severe under the circumstances. On a related basis, the Commission should make provision for an application for exemption made in advance of the contribution for legitimate reasons.

9. Termination of Investment Manager & Advisory Agreements under Proposed Two-Year “Time Out” Penalty Ban

Under the current proposal, an adviser and its client appear to have three options when a violation of the rule occurs: (1) the adviser could immediately resign from an account by giving the requisite notice (and not charge fees for the notice period); (2) the adviser could continue to manage plan assets for no compensation for any time period up to two years per an agreement with the client; or (3) the adviser could continue to manage plan assets while applying for an exemption from the SEC.

Virtually all advisory contracts provide a time period for termination. By contract, both the government client and the adviser mutually agree to a time period for termination. We believe that leaving the time period to contractual negotiation provides the most flexibility for an adviser and its client. However, government clients often negotiate lengthy periods for termination so that they have significant time to select a new adviser. We therefore strongly recommend that the rule permit compensation to be paid during the time period between notice of termination and until termination or until the client finds a successor adviser. The penalty of losing a significant client—which we believe will be a permanent loss of business in most cases—is severely punitive and harsh without imposing the additional penalty of uncompensated work for termination periods of up to 180 days under some contracts. Our recommendation would not only benefit the adviser but also the client, who may have legitimate concerns about the adviser’s motivation to perform during the period between notice and actual termination.

10. Potential Enhancements to Adviser Internal Controls & Compliance Programs (SEC Request for Comment)

Regarding the SEC’s questions concerning adviser code of ethics related potential amendments and/or potential mandated usage of annual adviser executive/management or chief compliance officer certifications, NASP believes such items should not be mandated since any prohibitions or limitations contained in any adopted final rule likely

will be incorporated into the existing management oversight and compliance program regarding the asset management or advisory firm. We also concur in the views on this issue expressed in the comment letter of the National Society of Compliance Professionals (NSCP, Comment Ltr to SEC, Oct. 6, 2009).

Alternatively, we believe a more effective disclosure-based approach would be to require all asset managers and investment advisers to include enhanced and additional disclosures regarding their usage of third-party placement agents or solicitors in their Form ADV-Part II (also known as the Disclosure Brochure). This is a document at the heart of the advisor fiduciary relationship and also all advisory contracts, and all advisers have an incentive to ensure that this document contains robust disclosure or they put their advisory engagements and agreements at risk of rescission or termination.

11. Proposed Recordkeeping Requirements

NASP understands the Commission's need to review records maintained by advisers to prevent pay-to-play practices by their covered employees. We submit, however, that the proposed record-keeping requirements should be more narrowly tailored to meet the Commission's objectives.

Prospective Clients: The proposed rule, in effect, requires firms to keep an ongoing, continuously updated list of prospective government clients. We oppose this proposed provision because we do not see why the required information is necessary. The remedy of a two-year ban on receiving compensation simply does not fit a situation where the adviser fails to obtain the client's business. If an advisory firm is not selected for business that firm has caused no harm to the plan or its beneficiaries. If an adviser is acting inappropriately, that conduct will be recorded when the adviser is actually chosen by a client. If the firm is never chosen, it certainly will determine that its contribution activities are for naught and will not continue them. Further, it is logistically unclear how a firm should compile this list. The burden of continuously compiling this list would be significant, with little or no benefit to the Commission or the public.

Indirect Contributions: As proposed, the rule would require each firm to maintain records of all "direct or indirect" contributions made to "an official, a political party of a State or political subdivision thereof, or a political action committee." How a firm to determine what is is an "indirect" contribution? That determination appears to require a state-of-mind assessment by an employer. The Commission's release states that spouses are not covered by the rule unless they are used to indirectly make a contribution. We strongly agree that spouses should not be covered consistent with a narrowly tailored rule. Spouses should be permitted to continue to participate in the political and civic life of their communities. However, the Commission should provide clearer guidance to firms and employees on this subject. We therefore propose that the Commission clarify the "indirect" provision by stating that it refers to contributions made with the intent, purpose, or effect of influencing an official of a government entity.

For similar reasons, the Commission also should make clear that an investment adviser may rely on self-reporting or certifications by covered employees, who could be asked to list their contributions and certify that they have not made any indirect contributions. The adviser should not have to conduct continuous expansive, invasive (and expensive) investigations of a covered employee, as well as the employee's friends and family.

Accordingly, we suggest that the Commission rephrase the provision to require the investment adviser to keep annual reports submitted by covered personnel.

Payments: Although the prohibitions of the rule apply only to "contributions," the record-keeping provisions apply to either "contributions or payments." Unlike the definition of "contribution," the term "payment" is not limited to situations involving an attempt to influence elections. It is unclear why the Commission needs records of payments that are unrelated to elections if they do not violate the rule. And, as discussed above, if the term "payment" includes ordinary and usual business entertainment expenses that are not otherwise prohibited, these record-keeping requirements will be very burdensome and difficult to follow. Moreover, such an interpretation would render completely erroneous the Commission's assumption that the proposal involves "no substantial additional burdens" in addition to records internally required for compliance with the rule. We therefore request that the Commission strike the word "payment" from the proposed amendments to Rule 204-2.

Total Ban on Employee Contributions: Advisory firms may attempt to avoid the burdens imposed by the record-keeping requirements and the possible imposition of the "death penalty" for violations of the rule by simply banning all employees or all covered employees from making political contributions. If an investment adviser wishes to take this path, it should be permitted simply to obtain a signed statement each year from each covered employee certifying that he/she has complied with the ban. This annual certification should be permitted in lieu of certain records that would be required by amended Rule 204-2.

12. Necessary Transition Period

NASP respectfully submits that [some or several] smaller/emerging asset management and adviser firms and also third-party marketer/placement agent firms will need a significant amount of time to develop and implement internal procedures and controls to comply with the proposed rule. In order to ensure that (1) procedures are in place, (2) appropriate personnel have been trained (or hired as the case may be), (3) all relevant employees have been informed of the rule and procedures, and (4) any necessary counsel/legal opinions have been obtained, we propose a transition period of 180-360 days.

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NASP opposes any practice by which investment professionals try to gain access to business through political contributions. NASP is available to assist the Commission and provide input as needed to craft an effective rule that is narrowly and appropriately tailored to eliminate pay-to-play practices without unnecessarily infringing on constitutionally-protected First Amendment and free speech rights or imposing unintended consequences or unnecessary burdens on smaller/emerging asset management firms (including minority- and women-owned firms) and on pension management officials/professionals.

NASP appreciates the Commission's consideration of our comments and trust that you will not hesitate to contact us if we may provide additional information regarding these or any other issues.

Sincerely,

Orim Graves
Executive Director

cc:
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