3PM
THIRD PARTY MARKETERS ASSOCIATION

August 27, 2009

Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: File Number S7-18-09

Dear Commission Members,

The Third Party Marketers Association ("3PM") believes that a general ban on the use of legitimate Placement Agents and other third party intermediaries is an unreasonable and unjustified response that affects an entire industry segment as a result of the improper and illegal misconduct of a few. This response is inappropriate, unfair and unwarranted for several reasons:

- First, it tarnishes the image and reputation of the vast majority of industry participants who have done nothing wrong, are professional, ethical and provide important services to the industry stakeholders who include investment managers, potential investors and their consultants. This includes the very public funds which this proposed rule is aimed at protecting.

- Second, it introduces inefficiencies into the investment process that will effectively limit access to investment opportunities from investment managers who may not have adequate resources to directly approach potential investors. This approach will result in a reduced pool of investment opportunities which in turn is likely to limit diversification, reduce the rate of return earned by Pension Plans (and other public entities) and possibly increase the need to require additional funding to offset any underfunded liability.

- Third, and perhaps most importantly, this approach inadvertently reduces the transparency and oversight needed to promote greater integrity in the investment decision making process by the pension fund's staff. Essentially, we believe the proposed rule would be ineffective and counter-productive.

The Third Party Marketers Association (3PM)

3PM began in 1998. Today, the Association is comprised of more than 75 member firms. 3PM was formed to maintain a standard of excellence in the industry and to share information and ideas among independent sales and marketing firms. The Association helps to cultivate relationships and business opportunities among its members, and works to provide them with information and ongoing education about the investment management industry. 3PM's goal is to enhance our profession's standards, integrity and business practices. This is accomplished by advancing ongoing agendas in the areas of regulation and compliance as well as adherence to the highest standards and best practices utilized throughout the financial services industry.

A typical 3PM member firm consists of two to five highly experienced investment management marketing executives with, on average, 10+ years of experience of selling success in the institutional and/or retail distribution channels. The Association's members run the gamut in terms of the products they represent. Approximately 50% of the Association's members work with traditional separate account managers covering strategies such as domestic and international equity, as well as fixed income. In the alternative arena, Members represent fund products such as mutual funds, hedge funds, private equity, fund of funds and real estate. More than two thirds of 3PM's members offer both types of product offerings.

3PM member firms that work with traditional separate account managers are typically registered under the investment adviser rules with the States in which they solicit business. Since the Association's members do not manage money they generally are not eligible to register directly with the SEC. For the Association's members that work with Fund products, these firms are either registered with FINRA as broker/dealers or work as Registered Representatives of an established broker/dealer to offer securities. Regardless of the structure within which 3PM members operate, they do fall under the scrutiny of some regulatory authority.

The Role of a Third Party Marketer

For the purpose of this comment letter, we will use the term "Third Party Marketer" to encompass the myriad of terms used to describe paid intermediaries which includes terms such as placement agent, solicitor, or third party intermediary. The term "investment manager" or "investment adviser" will be used to collectively include firms or individuals that oversee the management of client assets in a specified investment strategy. This group includes registered investment advisers as well as managers that do not legally require registration with the SEC, FINRA or other governing bodies.

Most Third Party Marketers provide investment managers with value added sales and marketing services. A Third Party Marketer's role is much more than merely arranging a meeting between an investment manager and potential investors. In fact, most Third Party Marketers aid in identifying the most appropriate target market for the manager's products and identify which distribution channels

would be most effectively and efficiently utilized. This efficiency and effectiveness is of enormous benefit to both the investment manager represented as well as the potential investor. A small or emerging firm will generally not have the resources or background to recognize how to prioritize and approach the most likely prospective investors within a universe numbers in excess of 3,000 institutions. Conversely, institutional investors find value in knowing that products represented by Third Party Marketers will generally be more attuned to that institution's investment program and strategy preferences.

Third Party Marketers assist investment managers define and position their products in what has become a very competitive industry. This typically will include creating marketing materials such as presentation books, assisting in the drafting of private placement memoranda, RFPs (Requests for Proposals), due diligence questionnaires and other collateral materials used in the sales and marketing process. Third Party Marketers do not just set up meetings, but they create meeting agendas, organize the required materials, attend the meetings along with the firm's portfolio professionals, moderate the meeting, and help to ensure the clarity of manager's message as well as the investment objectives of each potential investor. Once the investment manger has been selected, the Third Party Marketer may continue to have an ongoing client servicing role which helps to facilitate communication between the adviser and the potential investor.

Third Party Marketers will generally be compensated through a retainer and a success fee that is determined by the amount of assets raised through the marketing and sales process. This incentive approach to compensation is consistent with other commission based programs utilized within investment management firms and within the financial services industry in general.

Agreement that Change is Appropriate

While we agree with the Commission's view that additional regulatory action should be taken, we strongly disagree with its proposal to prohibit the use of external agents to assist in the marketing of investment products to government entities. 3PM also disagrees with the general perspective and foundation used to determine the reforms which would curtail "pay-to-play" activities. We believe that this erroneous foundation has resulted in an approach which will not only be ineffective but also counter-productive. Simply stated, the proposed rule will not work and may in fact exacerbate the underlying pay-to-play issue.

The proposed rule's intent is to eliminate the pay-to-play issue and suggests "… prohibiting the use by advisers of placement agents (or other types of consultants) to help secure government business". The footnotes of the text are intended to support this prohibition by evidencing the issue, but only list one instance in which a placement agent was allegedly "engaged in pay-to-play". In contrast, the footnotes refer to 9 separate instances in which placement agents were not involved in the inappropriate behavior.

While the proposal indicates that public officials have approached the Commission in support of a rule that would prohibit the use of placement agents, the accompanying footnotes to the text of the rule indicate that the Commission has actually only been approached by two public entities, i.e., the City of New York and the State of New York. The proposal also fails to indicate that at least five other state pension programs, namely California, Massachusetts, Missouri, New Jersey and Pennsylvania, have all rejected this prohibition by endorsing the role of a Third Party Marketer and by calling for an increase in transparency through the expansion of required disclosures. Additionally, both the States of New Jersey and Missouri have submitted comments to the Commission expressing their views on the proposed ban as well as their support for the use of Third Party Marketers. Furthermore, the proposal also fails to indicate that at the most recent meeting of State Attorney's General, the prohibition of placement agents did not receive an abundance of endorsement or support beyond four states, namely New York, New Mexico, Illinois and Ohio. Even in the cases of New York and New Mexico, current articles in the media seem to indicate a move towards a less restrictive approach versus their initial stance which supported a full ban.

It is unclear as to why the Commission has restricted its proposed rule to dealings with governmental entities. This limited approach raises serious questions regarding the ability and/or authority of the Commission to impose restrictions exclusively on local and state governments, and/or to ignore the application of these rules to the broader investor universe.

The following commentary is intended to provide the Commission with insights and information that will allow it to reassess current market practices and to suggest changes that would appropriately address the deficiencies of the current proposal.

COMMENTS

Section II A 1 – Advisers subject to the rule.

Should we apply the rule to state-registered advisers? Should we limit the rule only to advisers registered (or required to be registered) with us? Should we apply the rule to advisers that are exempt from registration in reliance on Advisers Act section 203(b)(3)? We request comment on whether we should extend the scope of the rule to apply to advisers exempt from registering with us pursuant to any or all of the other categories under Advisers Act section 203(b). To the extent that they are able to have government clients at all, are any of these advisers likely to engage in pay-to-play?

In order to facilitate the implementation of any rule, the rule should be applied uniformly across all constituencies that perform the same or similar functions. If this is not done, the result will likely be failure. The restriction that has been proposed would present the opportunity for some industry participants to search for loopholes as a way to avoid the rule and could lead to the creation of convoluted organizational structures that would be used to bypass the proposed regulation. We submit that any rules implemented by the SEC should include all investment advisers and their fund raising

activities, regardless of their organizational approach and current structure. We also believe that any rule implemented by the Commission should apply evenhandedly to all investment advisers subject to the Advisers' Act, to State Registered investment advisers, as well as to those that do not currently fall under the oversight of the SEC such as Private Equity, Real Estate and Hedge Fund managers.

The SEC has stated that the proposed rule is needed because of inconsistent oversight. We submit that this inconsistency is due in part to the failure of the SEC to approach the entire investment industry in a uniform manner. For example, on July 15, 2008, the Commission issued an interpretive letter stating that Rule 206 (4) – 3 generally does not apply to advisers soliciting investors to a private fund, although it does apply to advisers managing separate accounts. Additionally, the SEC's proposed rule seemingly has been designed without the consideration of oversight activities that are already imposed through FINRA and/or the States. It is also not clear from any of the evidence provided by the Commission that any one group of investment advisers, whether registered or not, would be any more or less likely to commit fraud or engage in pay-to-play activities than any other group.

Rather than provide a uniform and comprehensive approach to the issue of pay-to-play, the proposed rule offers another example of a patchwork approach that simply will contribute to the inconsistency that the SEC is seeking to correct.

3PM believes that the Commission should consistently apply their rules to all investment advisers and third party marketers who perform the same or substantially the same services. Quite simply, we believe that all investment advisers and related marketing activities should be treated similarly if any rule is to be effective in eliminating pay-to-play.

Section II A 2–Relationship with MSRB Rules: Alternative Approaches.

Comment is requested on whether we should use rules G-37 and G-38 as the models for proposed rule 206(4)-5. If not, are there alternative models that would be more appropriate? Are there significant differences in governments' selection process for municipal underwriters and investment advisers that we have not addressed but that should be reflected in the rule? Would our approach adequately protect public pension plans, their sponsors and participants against the adverse effects of pay-to-play practices?

3PM submits that MSRB rules G-37 and G-38 are inappropriate models for designing a remedial (or prophylactic) approach to curtail the pay-to-play issue. While we do not disagree with the general view that these activities should be prohibited, the MSRB model does not directly transfer to the investment advisory arena for three very specific reasons.

First, the provision of services in the municipal securities markets is generally transaction oriented and does not entail long term fiduciary obligations or services. Fees and compensation are driven more by a singular event (i.e., underwriting and issuance) rather than long-term management contracts.

Consequently, a two year prohibition from receiving payment is likely to be far more detrimental to the municipal securities firm than to a private equity general partner who manages a ten year fund and is compensated through back-loaded incentives.

Secondly, the municipal securities industry is generally dominated by large, established organizations, with dedicated staffs of professionals focused on compliance, sales and marketing, and the like. Conversely, there are very few small or emerging firms similar to those that exist in the investment arena.

Thirdly, in the case of G-37 and G-38, a governmental entity is the issuer of the investment product rather than a passive investor. As an issuer, the entity is more engaged in the design, the general distribution, and the on-going management of the municipal securities offering. As such, the governmental entity has a continuing responsibility and liability to security purchasers.

The proposed draft suggests that use of these MSRB rules is appropriate for two reasons. One is that pay-to-play was transferred from the municipal bond arena to the pension arena once the MSRB rules were adopted. The support for this position is two anecdotal comments listed in footnote 24, both dated 1996. Neither comment is current nor convincing. The second justification is the limited number of trustees or fiduciaries who may have authority over decisions regarding the hiring and/or retention of investment advisers. We suggest that a fiduciary obligation exist regardless of the number of "authorized" decision makers. 3PM does not believe it is within the purview of the Commission to determine how state and local governments organize their investment programs nor do we believe that investment rules governing an entire industry should be tailored by decisions made by one local jurisdiction.

Furthermore, we do not believe that the proposed approach would adequately protect public pension plans, their sponsors or participants against the adverse effects of pay-to-play practices. The Commission contends that by eliminating Third Party Marketers they will eliminate the pay-to-play issue. They have not considered that by eliminating Third Party Marketers from the investment process that they would effectively be removing the regulatory oversight currently provided by the States and by FINRA.

The Commission has stated that rather than hiring a Third Party Marketer, investment advisers should hire internal employees to handle their sales and marketing needs. Nowhere in this proposed rule is there evidence that supports the Commission's inference that internal sales persons are less likely to engage in pay-to-play practices than a Third Party Marketer. We note that the basis of compensation for internal sales professionals is very similar to that of a Third Party Marketer. In general, both receive commissions based on assets raised. As such, we submit that it is unfair and grossly inaccurate for the Commission to assume or believe that independent Third Party Marketers, are more likely to engage in pay-to play than internal employees who may have no regulatory oversight.

In the great majority of cases, Third Party Marketers are required to be registered in some form. For those offering Separate Account services to investors, the States provide oversight through their individual investment adviser rules. Alternatively, anyone offering Fund products must be registered with a FINRA member, whether by owning their own broker dealer or by affiliating with an already established one. A sales professional employed by a registered investment adviser may be subject to oversight by the SEC or the States. It is noted that these registrations and oversight are accompanied by actual review and enforcement activities by the respective jurisdictions. While the Commission proposes extending the pay-to-play rules to exempted advisers, it is noted that there is no practical means to provide regulatory oversight or enforcement.

We understand many advisers have established restrictions on pay-to-play practices in their codes of ethics and compliance policies. Instead of, or in addition to, adopting a new rule to address pay-to-play practices, should we amend our code of ethics rule or our compliance rule to require all registered advisers to adopt policies and procedures designed to prevent them from engaging in pay-to-play practices? Should we instead, or also, require an executive officer of each adviser to certify annually that the adviser or its covered associates did not participate in pay-to-play? Should some other employee of the adviser, such as the chief compliance officer, make the certification?

The idea of including restrictions on pay-to-play practices in an adviser's code of ethics or in the compliance rule would be a preferable adoption to the proposed rule in its current form. This approach presumably would be similar to those taken with anti-money laundering and CEO certifications, which have been effectively implemented by FINRA. On an annual basis, all associated persons might be required to certify that they read and understood the firm's rules and regulations which could be expanded to include policies and procedures used to prevent pay-to-play activities. Any time a senior executive is required to sign-off on a rule, they are given the added incentive to ensure that their staff fully understands and complies with its contents. This is a positive way to ensure all associated persons are fully aware of the proposed rule. It also allows for more latitude in crafting enforcement options versus the formulaic approach that has been taken from the municipal bond rules.

In 1999, we considered proposing a different approach to address pay-to-play, which would have required an adviser to disclose information about its political contributions to officials of government entities to which it provided or was seeking to provide investment advisery services. We decided not to propose such an approach at that time because we thought that disclosure would not be effective to protect public pension plan clients. Disclosure to a pension plan's trustees might be insufficient because, in some cases, the trustees would have received the contributions. Disclosure to plan beneficiaries also would likely be insufficient because they are generally unable to act on the information by moving their pension assets to a different plan or reversing adviser hiring decisions. Moreover, disclosure requirements may not stop pay-to-play practices and can be circumvented. Accordingly, we do not believe that relying on disclosure is sufficient to address these problematic practices. We request comment on whether we should, nonetheless, consider this approach, as well as potential alternative approaches that may be more effective or less costly.

3PM agrees that the pay-to-play issue will not be completely solved by disclosure. However, we do believe that the adverse effect of pay-to-play can only be minimized if the investment process becomes more transparent. We do not believe that a singular ban on all Third Party Marketers will in any way advance this objective.

In order to curtail the abusive practices that have occurred, the Commission should implement a series of rules, regulations and guidelines that will increase transparency in the investment process and eliminate potential conflicts of interest by mandating full disclosure of any direct or indirect compensation that could affect or compromise the investment process. These rules should be applied evenhandedly across all groups of investment advisers and should cover all sales professionals whether they operate independently or are direct employees of an investment manager. Furthermore, the Commission should consider extending the scope of rules that already exist to include those constituencies not currently covered by them. As an example, Rule 206 (4)-3 is aimed at providing disclosure to an area where a perceived conflict of interest exists. The rule could be extended to all investment managers that provide the same or virtually the same services. Additionally, this rule could be extended to include other forms of compensation cited by the Commission including political contributions and other forms of non-monetary compensation that could impact investment decisions. 3PM does not suggest that these contributions were inappropriate. We do suggest that a formulaic approach would not resolve these allegations, and that these issues are best addressed through a policy approach that encourages disclosure and transparency applicable to all investment advisers and their representatives, whether or not they are registered under the Investment Advisers Act.

It is also our belief that for this process to be effective, disclosure must be provided by any party, which would include investment advisers, Third Party Marketers, public officials or other trustees, who are involved in the investment decision making process and may by the nature of their position have the ability to exert undue influence on the process. While we understand that the SEC is limited in the constituencies for which it can propose legislation, it is in the best interest of everyone for the Commission to work with the pension community, FINRA and the State regulators to develop meaningful policies that address these issues and monitor the conduct all parties involved in the investment process.

Section II A 3 –Pay-to-play Restrictions

(a) Two Year "Time Out" for Contributors

We request comment on whether two years is an appropriate length of time.

3PM does not believe a two year cessation of compensation would be a sufficient deterrent to curtail pay-to-play practices. We believe that this proposal should be amended to include the right of an investor to rescind an investment decision should pay-to-play activities be uncovered. In the

case of an illiquid investment, this might extend to no management or incentive fees being earned while investment is held by the manager.

***Contributions* - We request comment on our proposed definition of "contribution."**

While 3PM agrees that a rule prohibiting pay-to-play is appropriate, we submit that limiting the rule to "political contributions" is too narrow. The definition should be amended to broaden its scope and should include any form of compensation that would compromise or influence of any decision, especially as it relates to the investment decision making process.

***Covered Associates* – We request comment on the scope of the proposed rule and, in particular, those persons associated with the advisers whose political contributions would trigger the application of the two-year "time out" and would be prohibited from soliciting political contributions from others.**

Rather than a straight prohibition on the use of Third Party Marketers, we believe that Third Party Marketers should be viewed in the same light as "covered associates". It is 3PM's belief that investment advisers should be held accountable for actions of the Third Party Marketers that they engage. In general, an investment adviser's responsibility extends to violations of general advertising and solicitation, and to the penalties associated with omission or misrepresentation of materials facts. Using the same logic, we see no reason why the same extension would not apply to pay-to-play activities.

Consequently, the Commission should consider adding such a provision which would levy similar penalties on investment advisers that are found to have failed to provide adequate supervision over the activities of a Third Party Marketer who is found to have engaged in pay-to-play practices, as those applied to other rule violations such as general advertising and solicitation, or to material misleading representations. Essentially, this approach would allow investors to rescind their investment decision and would allow them to seek a remedy that would be most appropriate under the given circumstance. It would also expose the violating party to damages that could be substantially higher than the two year moratorium might provide.

***De Minimis Contributions* - Comment is requested on the scope of the exception**

The Commission's proposed exception of $250 is acceptable and we agree with the assessment that generally contributions of this amount are typically not made with the intent to influence decisions.

(b) Ban on using Third Parties To Solicit Government Business

3PM strongly objects to the blanket prohibition on the use of Third Party Marketers to market investment advisery services to government entities. The proposed prohibition represents a

substantial deviation from other parts of the proposed rule in that it focuses on the structure through which services are provided rather than a focus on the deviant behavior that should be addressed. By simply banning "placement agents", the proposed rule is using a broadly or perhaps ill-defined term that encompasses registered, regulated, and compliant firms, whether they are broker dealers or registered with the appropriate state authorities, i.e., those same jurisdictions that this rule is purported to protect.

In its commentary regarding the issues occurring after the implementation of G-37, the commission equates the employment of third party consultants or "lobbyists" that were hired by municipal securities dealers to solicit government clients to an investment adviser hiring a Third Party Marketer. Let us be clear that although Third Party Marketers are paid intermediaries, we are not lobbyists. This comparison is undeniably inaccurate and assumes that every Third Party Marketer has connections with the people who are in a position to influence investment decisions whether they are politicians or the internal staff members of a public pension plan.

The manner in which Third Party Marketers are compensated is no different than any success-based compensation program, whether it applies to third parties or internal employees, or whether it applies to marketers, sales personnel, portfolio managers or traders. Financial markets are driven by incentive compensation. Clearly, the critical point for consideration is to understand who is being incented and how that influences investment decisions.

Third Party Marketers are not hired with the intent of circumventing a new rule which was the case in the municipal securities arena when the MSRB adopted Rule G-37. Third Party Marketers provide a value added service to investment managers and work with them throughout the investment process. Third Party Marketers provide investment managers with a myriad of services and advise them as to the best way to present their firm's strategies. Our role is not to adversely influence the decision makers but rather to help present the manager in a way that best demonstrates its investment capabilities. In order for this approach to be successful, these managers need to receive fair and equal consideration and participate in an environment where awards are made on the basis of merit rather than undue influence.

Third Party Marketers also provide an important service to investors who may not have the time, resources or experience to review all potential opportunities that cross their desks. In order to be successful, Third Party Marketers need to conduct a thorough and comprehensive review of any investment manager it is considering representing. Not only must the review examine the manager's current performance, but it must include a detailed assessment of the product to ensure it will meet the minimum criteria investors for which are looking. Bypassing this step would result in a failed business strategy for third party marketers, both in the near and long term. Sales professionals rely on their reputations to garner new business. If investors believe that a marketer is credible in the products he or she represents, the investor will probably return the marketer's phone calls and respond to their emails understanding that they are likely to be introduced to

quality managers. Alternatively, if a marketer consistently presents the potential investor with inferior managers, with undesirable investment strategies or uncompetitive performance, eventually, the sales professional will be viewed negatively and will be ignored by the prospect. As a result, many investors have come to rely on Third Party Marketers to identify superior managers they would be interested in meeting.

The Commission asserts that "…placement agents have played a central role in each of the enforcement actions against investment advisers that we have brought in the past several years…", and "Government authorities in New York and other jurisdictions have prohibited, or are considering prohibiting, the use of consultants, solicitors or placement agents by investment advisers to solicit government investment business." We note that the support for these assertions is seemingly limited to the factual situation surrounding SEC v. Henry Morris, et al., and to the ban implemented by the State of New York. It fails to highlight that a total ban has been considered and rejected by the pension funds of many jurisdictions including the States of California, Massachusetts, Missouri, New Jersey and Pennsylvania. Further, the proposed rule offers public relations and media articles as legal and factual justification to support this extreme and unfair rule. It also fails to mention current articles in the press which indicate that that the State and City of New York are both re-evaluating their proposed ban and are considering reversing their previous actions. We believe that it is incumbent on the Commission to practice the tenants behind the rules it proposes to enact. Investment advisers are always required to present information in a fair and balanced manner. In this case, the Commission has failed to do that.

In our comments in Section II A 2 – Relationship with MSRB Rules, 3PM touched upon the role of "related persons" and why we believe that limiting the use of "third-party" solicitors will not alone combat the pay-to-play issue. To reiterate, the basis of compensation for an internal sales professionals is very similar to that of a Third Party Marketer. In general, both receive commissions based on assets raised. It is grossly inaccurate to assume that independent Third Party Marketers, most of whom are properly registered, are more likely to engage in pay-to play practices than internal employees with no regulatory oversight.

In Section II A 3 – Covered Associates, we commented that we believe that investment advisers should be held accountable for actions of the Third Party Marketers that they engage. We maintain this stance and refer to FINRA's practice of allowing broker dealers to provide supervision to registered representatives that work for the firm on a contract basis. In some instances, these contract employees may not work in the office in which they are supervised. A similar approach can be applied to supervision of the Third Party Marketer by the investment adviser. While the Third Party Marketer would not be an employee of the adviser, such a policy would allow the firm to ensure the marketer is acting in a responsible manner and is not engaging in pay-to-play practices.
While 3PM is adverse to the Commission's prohibition on the use of Third Party Marketers in the solicitation of government business, we would not be opposed to the Commissions suggestion of narrowing the proposed prohibition if the third parties (and their related persons) commit not to

contribute to (or solicit contributions for) officials of any government entity from which any adviser that hires them is seeking business. We further believe that it would be reasonable to require Third Party Marketers to fully disclose any contributions made to public officials or other politically oriented persons with the ability to influence the investment process.

3PM believes that pay-to-play practices can manipulate the market for advisory services by creating an "uneven playing field" among investment managers. This uneven playing field can and has disadvantaged smaller advisers, may have jeopardized investment performance by having a big firm focus, and may have impeded the introduction and development of new investment products and strategies. It is important to note that this proposed ban will certainly have an immediate and substantial negative impact on smaller investment managers, which includes woman- and minority-owned firms as well as other emerging managers. These firms already face a significant disadvantage when competing against large global multi-product firms and the significant restriction of their sales and marketing options can only further, negatively affect their viability.

We also note that the proposed rule suggests that solicitation of governmental entities by employees of "related entities" may be allowable because of "efficiencies" that may be captured by the investment adviser. While the proposed suggestion may be well intended, these "efficiencies" would only benefit large organizations, some of which may include third party marketing activities. This preferential treatment would also seriously discriminate against small and emerging firms, as well as international investment advisers who do not have a presence within the US. As mentioned earlier, we strongly believe that the Commission has an obligation to consistently apply rules regardless of their affiliation and as such object to any preferential treatment being provided to large organizations who engage in third party marketing. Instead of leveling the playing field between small and larger firms, a ban on Third Party Marketers would create an environment that favored large investment managers with internal marketing staffs.

Section III – Cost / Benefit Analysis

The Commission requests comment on the effects of the proposed rule and rule amendments on pension plan beneficiaries, participants in government plans or programs, investors in pooled investment vehicles, investment advisers, the advisory profession as a whole, government entities, third party solicitors, and political action committees. In addition, we request data regarding our assumptions about the number of unregistered advisers that would be subject to the proposed rule, and the number of covered associates of these exempt advisers. As discussed below, section 202(c)(1) of the Advisers Act does not apply to proposed new rule 206(4)-5 or the proposed amendments to rule 206(4)-3. Nonetheless, in the context of the objectives of this rulemaking, we are interested in comments that address whether these proposed rules will promote efficiency, competition and capital formation. We solicit comment on the effect the proposed rule would have on the market for investment advisory services and third-party solicitation services.

3PM believes that the Commission has grossly under-estimated the number of new registrations that would be required and furthermore has over-estimated its capacity to provide meaningful review. We also suggest that mere registration will not alleviate the practical burdens that small and/or emerging managers would face when attempting to offer legitimate investment advisory services to governmental entities. As discussed in further detail below, the proposed ban on placement agents would represent a substantial and destructive barrier to entry for hundreds if not thousands of investment advisers.

The Commission's proposal states that there are 1,764 investment advisers that would be affected by the new rule. It also states that there are approximately 2,000 exempted firms that would be expected to comply. We suggest that these estimates are misleading in three respects. First, they focus only on the number of firms which would be expected to comply with the proposed record keeping requirements. Secondly, they completely ignore the number of firms that would be impacted by the inability to utilize Third Party Marketers. Thirdly, the estimates the Commission has utilized in its calculations are not representative of the true number of exempted funds. To illustrate this point, 3PM collected information from Preqin, regarding the Private Equity arena and from Hedge Fund Research regarding the Hedge Fund space.

Preqin is a UK based research firm that specializes in monitoring the performance and fund raising progress of investment firms specializing in Private Equity and Real Estate. As noted in its website (www.preqin.com):

> *Preqin has built a reputation in the alternative assets industry for providing comprehensive and extensive information. Preqin's teams of multi-lingual analysts go to great lengths in order to ensure that products and publications are as complete as possible, both through monitoring regulatory filings, making FOIA requests, monitoring news sources, and most importantly through methodically contacting private equity professionals and investors to ask them questions and to ensure that information is accurate and up to date.*
>
> *Leading alternative assets professionals from around the world rely on our services daily, and our data and statistics are regularly quoted by the financial press.*

As of June 30, 2009, Preqin's database includes 4,327 advisers that have raised capital for private equity and real estate investments, totaling approximately $2.2 trillion in assets under management. The following table provides a general breakdown of the geographic location and fund sizes of these advisers.

		Number of Private Equity Firms (including RE and Infrastructure)			
			Last Fund Size		
Geographic focus	AUM ($millions)	Total Number	> $1 Bn	$500 - $999	<$500
Global	2,204	4,327	370	497	3,460
Europe	465	1,182	93	128	961
Asia and ROW	192	857	50	85	722
North America	1,548	2,288	227	284	1,777

There are several notable facts in the above table. First, the number of firms that are generally exempted from registration is over two times the estimate of the Commission. Furthermore, this figure does not include advisers managing hedge fund investments. Second, 80% of these firms raised less than $500 million during their last fund raise, evidence that the vast majority of Private Equity managers are small in size, and may not be beneficiaries of the so-called "efficiency exemption" proposed by the Commission.

Preqin also reports that from 2006 to 2008, the proportion of private equity firms that used a Third Party Marketer increased from 40% to 54%, confirming the fact that Third Party Marketers represent an increasingly important resource in the competitive fund raising environment. Stated differently, it is a fair estimate that roughly one half of the 4,327 private equity firms utilized the services of a Third Party Marketer during the three year period ending 2008.

As of July, 2009, Preqin estimated that there were more than 896 private equity funds currently in the market trying to raise capital. In aggregate, these funds are hoping to raise approximately $299 billion. Preqin further notes that the ten largest buyout funds are seeking to raise approximately $68 billion of this total. Removing those ten firms from the aggregate, we find that the remaining 886 funds are targeting $231 billion in capital, or on average each fund is targeting approximately $260 million.

This data is important for several reasons. First, it shows that the market place continues to be very competitive and that there are a lot of funds seeking capital. Second, it proves the point that the vast majority of private equity firms are relatively small. Third, the "efficiency" exception that the Commission has suggested will benefit only a limited number of large advisers and put smaller managers at a disadvantage when it comes to fund raising. Finally, considering the extremely large number of potential private equity investments, it is unrealistic to assume that public entities would have the resources to allow them to effectively screen this large universe of managers without external assistance.

Preqin also tracked the level of private equity investing among US public pension funds. It reports that since 2006, these public entities have made more than 2,455 separate commitments to private equity, real estate and infrastructure funds, totaling approximately $484 billion. These commitments have come from more than 230 different entities, which are summarized in the table below:

	Private Equity	Private Real Estate	Infrastructure	Hedge Funds
# Public Pensions actively investing	230	249	77	194
# Considering entering asset class	18	5	27	42
Aggregate Allocation (US$ Bn)	193	193	16	82

Overall, the Preqin data confirms that private equity investing goes far beyond the preferences of a few state entities. It comprises a central component of the investment programs of a majority of public pension plans. It also suggests that despite the Commission's allegation that the industry is rampant with imprudent and illegal behavior, the majority of funds have entered into transactions which are legal, ethical and proper. Further, that more than 50% of private equity managers utilize the services of a Third Party Marketer, it should be noted that the over-whelming majority of these commitments were achieved without pay-to-play activities occurring.

Hedge Fund Research, Inc. (HFR) is a private research and data collection firm located in Chicago. As noted in its website (www.hedgefundresearch.com):

> ***Hedge Fund Research, Inc.*** *(HFR) is a research firm specializing in the aggregation, dissemination and analysis of alternative investment information. The company produces the HFR Database, the industry's most widely used commercial database of hedge fund performance, as well as HFR Industry Report, a comprehensive quarterly offering of the most current information on and analysis of the hedge fund industry. HFR also produces and distributes the HFRX Indices and HFRI Monthly Indices - industry standard benchmarks of hedge fund performance.*

As of the second quarter, 2009, HFR estimates that there are approximately 6,700 hedge funds and approximately 2,233 funds of hedge funds. Together these 8,923 investment funds account for approximately $ 1.4 trillion. Of the total number of hedge funds, HFR reports that approximately 77% of these funds manage less than $500 million. These funds, although the majority in terms of numbers in fact comprise less than 8% of the total hedge fund assets currently under management. Conversely, 23% of the funds account for more than 90% of the total assets allocated to hedge funds. Once again, the evidence shows that there are far more small hedge funds than there are larger ones and that any exception made for larger firms because of "efficiencies" would dramatically favor these firms over the small investment advisers looking to raise capital. It is also our belief that this rule will also create an unfair advantage to the large advisers who offer their client's capital introduction and prime brokerage services.

Currently, 3PM estimates that there are more than 500 Third Party Marketers. Conservatively, these agents represent more than 1,000 different investment advisers, or approximately 8% of the total investment adviser universe. These investment advisers represent more than $100 billion in assets under management, with each averaging less than $250 million. Most of these are smaller firms that do not have an internal sales and marketing capability.

When estimating the cost of implementing the proposed rule, we believe the Commission must also consider the indirect costs that the ban on placement agents would create. First, it would place those 1,000 firms mentioned above at a substantial competitive disadvantage, resulting in less market exposure and higher rates of business failure. Second, without Third Party Marketers, the vast majority of these firms will no longer be available to public entities, which in turn will deny them the opportunity of selecting the most attractive and appropriate strategy for their respective plans. Quite simply, the public entities need assistance in screening, evaluating and understanding which of the thousands of firms available might be most appropriate for their investment portfolios. And thirdly, the Commission should closely evaluate the scope of the proposed rule and how it will propose to extend its reach to include the more than 13,000 investment funds that are not currently subject to registration and reporting.

V. INITIAL REGULATORY FLEXIBILITY ANALYSIS

We encourage written comments on matters discussed in this IRFA. In particular, the Commission seeks comment on the number of small entities, particularly small advisers, to which the proposed rule and rule amendments would apply and the effect on those entities, including whether the effects would be economically significant;

The definition of small can vary greatly. As stated in the text "under Commission rules, for the purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is a small entity if it: (i) has assets under management having a total value of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had $5 million or more on the last day of its most recent fiscal year. 3PM believes that although this definition may be appropriate for other discussions it is not the one that should be used to assess the impact of the proposed rule. Accordingly, we believe that a more relevant definition to measure the impact of this rule would be to use the investment industry's definition of small as it relates to asset raising and manager selection.

In the investment industry small managers are often referred to as emerging managers. At one time the term emerging manager referred exclusively to minority and women owned investment firms. In recent years, the emerging manager universe has expanded out to include small firms regardless of the sex or

race of their owners. Today, investors are even conducting searches in the alternative investment space and including both private equity and hedge fund emerging managers in their capital allocations. The impetus for the growth and evolution of this sector has been investors searching for superior performance returns. Over time, there have been many studies which show that small firms have consistently outperformed larger firms. In one such recent paper published by Northern Trust in July 2009, titled "Insights on Emerging Managers; Emerging Managers Holding Their Edge Versus Elephants, Ted Krum, Vice President of Portfolio Management writes "In six studies of emerging investment manager performance spanning 16 years of stock market history, Northern Trust has demonstrated that the smallest firms, collectively accounting for only 1% of institutional market share, enjoy a consistent advantage over industry leaders."

In a 2008 article entitled "Successful Emerging Manager Strategies for the 21st Century" written by Thurman White, President and CEO of Progress Investment Management Company, LLC, it states that the New York City pension plans, who actively invest in emerging managers, defines them as follows "In the public markets 'emerging managers' are defined as those managers with zero to $1 billion in assets under management. In private equity, NYC defines 'emerging' as zero to $400 million under management in first and second-time funds, while in real estate, 'emerging' is defined as zero to $300 million in first and second-time funds. 3PM believes that this definition is especially relevant in this instance not only because it corresponds to the beliefs of one of the largest investors in the emerging manager space, but it also represents the opinion of a public fund, the exact constituency which the Commission's proposed rule is intended to protect.

According to Altura Capital, a firm that specializes in the emerging manager universe, their Emerging Manager Information Platform shows that the total assets managed by the emerging manager universe, which is tracked by their database, totals $233.2 billion and represents more than 1,300 managers. This suggests an average of $180 million of AUM per investment adviser. Of this total, $71.2 billion is managed by 138 firms that are 50% or more owned by women, minorities or both. According to the website of Leading Edge Investment Advisers, a provider of multi-manager products utilizing emerging managers, the firm follows "over 1,200 asset managers in the traditional asset categories and another 1,000 in the alternative asset categories."

While the number of emerging managers tracked varies between the two sources, the numbers quoted above were obtained from independent industry sources. As such, we believe them to be a much truer representation of the number of managers that will actually be affected by the Commission's proposal. The Commission states that of the 706 small advisers that that are registered under the Advisers Act, only 57 indicate that they have state or local government clients. We further believe that this statistic represents an under-estimation of the real story regarding the number of managers that will be affected by this rule. One reason for this relates to the ability of investment advisers to sub-advise assets to another manager. For example, in the emerging manager arena, pension plans can select from a variety of approaches by which to allocate capital. One such way is by selecting an emerging manager of managers (MoM) to handle the allocation. The MoM is a registered investment adviser and is the party

that directly contracts with the pension plan. The MoM's role is to construct a diversified portfolio of investments by sub-advising assets to group of emerging managers who will manage a portion of the total account in a specified investment style. Under such an approach, a pension plan could get access to 20 or more emerging managers with just a single investment to the MoM platform. Furthermore, none of the 20 underlying managers would be required to check the box in the IARD system stating that they are managing government assets since the manager's client is actually the MoM and not the public pension plan.

This type of a mandate would also affect the Commission's definition of a small manager as outline in Section III – Cost / Benefit Analysis of the proposed rule. In sub-section B, Costs, the Commission uses the number of covered associates in each investment firm to define the size of a firm. The result is the following: fewer than 5 covered associates would be categorized as a small firm, between five and 15 covered associates a medium sized firm, while those firms with more than 15 covered associates would be considered a large firm. If we were to apply these definitions to the MoM platforms, in which the number of covered associates could vary dramatically and in some cases be as few as two or three, we may see a firm with three covered associates, classified as a small firm. This small firm however could control billions of dollars of public pension plan assets although it actually allocating these funds to a multitude of managers. Accordingly, utilization of the Commission's approach would be inappropriate as it would provide skewed results rather than the reality of the situation.

The Commission estimates that there are approximately 231 unregistered investment advisers that may manage pooled investments vehicles in which government client assets are invested and who would be subject to the proposed rule. In Section III – Cost / Benefit Analysis, we provided information from Preqin and Hedge Fund Research regarding the actual number of Private Equity and Hedge Fund managers operating in the industry. This number was more than five times the Commission's estimates. Our comments also went on to discuss the number of small managers in these areas and again the Commission's estimates were dwarfed by the true numbers, i.e., the Commission's estimates are roughly only ten percent of the actual number of small managers that would be affected.

The Commission's information also does not at all consider the number of women and minority firms that would be affected by the prohibition. In a study titled Venture Capital Funds Investing in Minority Owned Businesses: Evaluating Performance and Strategy, conducted in part by the Ewing Marion Kauffman Foundation, William Bradford, Professor of Finance at the University of Washington said "The way we see it, the minority business is growing three times faster than the primarily white (owned) businesses." If this proposed rule is enacted, the probability that these firms will succeed will be greatly diminished. Furthermore, it is counterintuitive that in an era where the government is encouraging diversity, that this proposed rule has not explored the affects this proposed ban will have on women and minorities. It is our belief that this legislation will likely have a detrimental and discriminatory impact on these businesses.

To understand the implications of the proposed rule, it is also important to understand who exactly is placing capital with Emerging Managers. Below is a list of 72 institutional investors that have allocated capital to Emerging Managers. The information in this list comes from the paper Successful Emerging Manager Strategies for the 21st Century" written by Thurman White, President and CEO of Progress Investment Management Company, LLC, and from Fin Searches, a database tool created by Financial Investment News, which contains information and data from articles and interviews written for Emerging Manager Monthly, Non-Profit News and FinDaily.

Institutional Investors Allocating Capital to Emerging Managers

1199 SEIU Employees Benefit and Pension Funds	Massachusetts Bay Transportation Authority Retirement Fund
Alameda County Employees' Retirement Association	Michigan Department of Treasury
Arkansas Teacher Retirement System	Milwaukee County Employees Retirement System
Austin Community College	Minnesota State Board of Investment
Bank of America Corporation	Municipal Employees' Annuity & Benefit Fund of Chicago
Boeing Company, The	New York City Board of Education Retirement System
Boulé Foundation	New York City Employees' Retirement System
California Public Employees' Retirement System	New York City Fire Department Pension Fund
California State Teachers' Retirement System	New York City Police Pension Fund
Chicago Community Trust	New York State Common Retirement Fund
Chicago Policemen's Annuity & Benefit Fund	New York State Insurance Fund
Chicago Transit Authority Pension Plan	New York State Teachers' Retirement System
City of Baltimore Employees' Retirement Systems	Ohio Public Employees Retirement System
City of Kansas City Employees' Retirement System	Oregon Public Employees Retirement Fund
City of Philadelphia Board of Pensions and Retirement	Patterson Foundation
City of Pontiac Retirement Division	Pennsylvania Public School Employees' Retirement System
City of West Palm Beach	Pennsylvania Treasury Department, The
Coca Cola Master Retirement Trust	PG&E Corporation
Contra Costa County Employees' Retirement Association	Philadelphia Public Employees Retirement System
Cook County Annuity and Benefit Fund	PPL Services Corporation
Detroit Fire and Police Retirement System	Public School Teachers' Pension & Retirement Fund of Chicago
Detroit General Retirement System	Retirement System of Allegheny County
District of Columbia Retirement Board	San Antonio Fire & Police Pension Fund
Exelon Corporation	San Diego County Employees Retirement Association
Freedom Forum	San Francisco City & County Employees' Retirement System
GE Asset Management	San Joaquin County Employees' Retirement Association
IBM Retirement Funds	Seattle City Employees' Retirement System
Illinois Municipal Retirement Fund	Shell Oil Company
Illinois State Board of Investment	Stanislaus County Employees Retirement Association
Indiana Public Employees' Retirement Fund	State of Connecticut Retirement Plans & Trust Funds
Kentucky Retirement Systems	State Universities Retirement System of Illinois
Liberty Mutual Retirement Benefit Plan	Teacher Retirement System of Texas
Los Angeles City Employees' Retirement System	Teachers' Retirement System of the City of New York
Los Angeles County Employees Retirement Association	Teachers' Retirement System of the State of Illinois
Los Angeles Fire and Police Pension System	Texas Treasury Safekeeping Trust Company
Maryland State Retirement & Pension System	Verizon Communications, Inc.

The information in the table above is important for two reasons. First it shows that large institutional investors have discovered the value of investing in small firms. Second, it indicates that the vast majority of these investors are in fact public pension plans.

While the proposed rule will only impact business with government entities, it is this group of investors that collectively represents one of the largest pool of assets available to investment managers in the US. According to the Pension & Investments Top 200 Pension Funds survey, these largest institutional investors represent approximately $4.7 trillion in assets. Of the top 200, approximately 45% of these investors are government entities and represent more than 60% of the aggregate assets. Removing these investors from the potential pool of investors will be detrimental not only to investment advisers, but also to Third Party Marketers who count on public funds for a substantial portion of their revenue.

Section VII – Consideration of Impact on the Economy

Under SBREFA, a rule is considered "major" where, if adopted, it results in or is likely to result in: (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effects on competition, investment or innovation.

As discussed in Section III – Cost / Benefit Analysis, we discussed what the investment industry believes are the actual numbers of investment managers operating in the private equity and hedge fund space. Add to this the number of registered investment advisers falling under the Commission's purview and it is readily apparent that there are literally thousands upon thousands of investment managers offering product to the investment community. The investment opportunity set is further expanded by the fact that many investment firms manage more than one product. The result is a massive investment universe for investors to consider.

As a practical matter, it is unreasonable to expect that all of these investment managers will have the resources, experience, staff, or marketing acumen to adeptly represent themselves to institutional investors as they try to raise assets. In our collective experience, we have found that investment advisers will generally not have the revenue base to support a broad and effective marketing program until its assets under management have reached a level that is substantially higher than the average firm size noted above in Section V, i.e., $180 million. As point in fact, according to 3PM's members, most Third Party Marketer's most successful relationships with traditional investment managers has been with firm's managing between $100 – 500 million in assets. The decision by these investment advisers to out-source a portion of their business activities is totally consistent with other business decisions through which activities such as custody, recording keeping, reporting and compliance are outsourced. These out-sourced functions are critical business functions, involve fiduciary and regulatory obligations, and are fully permissible under current regulatory regimes.

It is also unrealistic to expect that any pension fund's internal investment staff will have sufficient people to interview, conduct due diligence on, and effectively evaluate the myriad of investment opportunities available in the marketplace. Given these realities, it is our belief that the investment opportunities most likely to be missed or dismissed will be those offered by first time or emerging

managers, minority managers or advisers that are focusing on new and upcoming sectors or geographies.

Generally, when resources are constrained, investment staffs have to find new ways to reduce down this enormous universe of potential investment opportunities and focus on those that are likely to outperform. Given this fact, it is not unreasonable to believe that some investors will stick with the tried and true belief that "bigger is better". There is a common misconception amongst some investors who believe that investments in large advisory firms will provide them with higher returns and less risk than if they had invested in a small firm. Thurman White, President and CEO of Progress Investment Management, states, in his 2008 study entitled "Successful Emerging Manager Strategies for the 21st Century", "many studies over time have shown that small, employee-owned investment companies outperform their larger competitors. It has almost become a truism in our industry that the greater the assets under management (AUM) the less the likelihood of outperformance". Furthermore, Ted Krum, Vice President of Portfolio Management at Northern Trust states in his July 2009 paper Insights on Emerging Managers, Emerging Managers Hold Their Edge Versus Elephants that "we hear over and over again that institutional clients hire the largest firms because they view them as safer than emerging firms. In reality, this decision is just another over-crowded trade that may expose clients to excess volatility and nasty surprises, without adequate compensation in terms of full-cycle performance."

Alternatively, investment staffs may decide to continue to invest with "known" products rather than investing in new or innovated technologies or geographic regions. Classic examples of these strategies would include investments in emerging markets, venture capital, clean technology, infrastructure, socially and/or economically targeted investments, to mention a few. Looking back in our history, investments in emerging markets were considered the exception rather than the norm. Now, it is not unusual for investors to have dedicated allocations to these countries or to extend their international equity mandates to include investments in emerging countries. Furthermore, it is not uncommon to see country or regionally focused funds concentrating their investments in China, India or Eastern Europe. . In the current marketplace we have seen many new private equity funds being launched with a focus on companies developing these new technologies such as clean-energy. The same can be said for socially responsible investments which have also extended to the public markets. At one time or another, these strategies as well as the advisers managing them, were all called emerging. It is exactly these firms that require the services of Third Party Marketers to help them promote their innovative strategies.

With the abundance of investment opportunities that exist, investment staffs often rely on Third Party Marketers to bring them superior products. If this proposed rule is enacted public entities will have much more limited access to small managers, many of whom are represented by Third Party Marketers. It is also likely that many of them will miss an opportunity to further diversify their allocations, reduce the plan's overall risk profile, increase its performance and provide security to their pensioners. For public pension plans, such an action could also adversely affect the State or Municipality where it is located, i.e., through lower returns, higher unfunded liabilities, and the need for higher plan contributions

Without small firms the industry will be dominated by large investment advisers who can afford to hire an internal staff to handle their sales and marketing needs. Not only would this make the environment less competitive, but it would also reduce a pension plan's ability to properly diversify its investment program by eliminating managers who offer different but complementary approaches to similar strategies. A less competitive environment could also result in higher fees being charged by the remaining large firms.

An Alternative Approach to 206 (4) - 5

Rather than prohibiting Third Party Marketers from participating in the solicitation of government business, 3PM recommends that the proposed rule be amended in two respects. First, third parties should be permitted to market to governmental entities provided they are registered with the proper regulatory authority whether it be FINRA or with the States under their Investment Advisers regulations. Further, we recommend that registered placement agents be considered the equivalent of "covered associates" as proposed in the first part of the rule.

We contend that these recommendations are consistent with the intent of the Commission's proposed rule. We also believe that these recommendations are consistent with the obligations imposed on Third Party Marketers by FINRA and the States.

Third party marketers contribute to the investment process by making it more efficient and effective. For this reason, 3PM believes the ban on the use of third party marketers unfairly and unnecessarily impacts an entire industry, the majority of who conduct themselves in an ethical, professional and legally compliant manner. Such a ban will also result in the unintended consequence of limiting the universe of potential opportunities investors have to consider and could negatively impact the investor by decreasing the plan's overall rate of return.

3PM fully endorses a framework that increases the integrity of the investment decision making process. 3PM urges institutional investors to develop meaningful policies and procedures that can effectively monitor the conduct of all parties (transparency) and can appropriately identify individual interests that may influence investment policies and practices (disclosure). The changes required should include enough transparency to identify those who will receive compensation from investment activities and disclose the interests they have in recommending such investments. It should also require disclosure by any individual or firm that has made campaign contributions or participated in a political campaign of any state officer who participates in the investment process. Moreover, it is our belief these policies should take into consideration some of the disclosure requirements already enacted by the SEC, FINRA and the state regulatory authorities which are currently being followed by third party marketers.

If you have any questions or comments regarding any of the information contained in this letter or would like to discuss any of these comments in further detail, please feel free to contact me directly by phone at (212) 209-209-3822 or by email at donna.dimaria@tesseracapital.com.

Thank you in advance for your consideration.

Regards,

Donna DiMaria
President of the Third Party Marketers Association

Please note that this comment letter has been submitted on behalf of all of 3PM's Members
For more information on 3PM or its members, please visit www.3pm.org