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CONFIDENTIAL – ATTORNEY/CLIENT PRIVILEGED COMMUNICATION

TO: Clients

FROM: Susan E. Bryant, Esq.

DATE: June 30, 2010

MATTER: Proposed Rule 206(4)-5

The SEC adopted Rule 206(4)-5 this morning. The rule limits the ability of investment advisers that are registered with the SEC to make payments to government officials who have the ability to influence the awarding of advisory contracts and limits the ability of investment advisers to pay third parties to solicit government business for them. The rule was first proposed in August 2009. The original proposal contained a complete ban on the use of solicitors/marketers in obtaining government advisory business, along with restrictions on the payment of political contributions and related activities, similar to the rules of the Municipal Securities Rulemaking Board.

The rule as adopted today retains, with some modifications, the limitations on political contributions. Most significantly and largely as a result of the united effort of third party marketers, the rule adopted today has replaced the ban with a provision that allows investment advisers to pay a third party solicitor/marketer, so long as that solicitor/marketer is itself registered as either an investment adviser with the SEC and subject to Rule 206(4)-5 or the solicitor/marketer is registered as a broker-dealer with a self-regulatory organization (FINRA) that subjects the marketer to rules similar to those imposed by Rule 206(4)-5. There is a one year moratorium on implementing the new provision during which FINRA will be developing rules that are comparable to those adopted today by the SEC governing investment advisers.

The good news is that the ban has been removed for regulated entities. However, unless the SEC allows marketers to register with the SEC as investment advisers, marketers will be required to register as broker-dealers with FINRA. Because the ban is only lifted for entities that are regulated by either the SEC or FINRA, our advice to clients has not changed and we see no alternative to registering a single entity as both an investment adviser and broker-dealer. The rule release itself, when issued, may contain additional guidance on this issue. We will update you as soon as we have any additional information.