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CLIENT ALERT

SEC Proposes to Rescind Investment Adviser Pay-to-Play Rule

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On September 3, 2026, the Securities and Exchange Commission (the "SEC" or "Commission") proposed to rescind Rule 206(4)-5 under the Investment Advisers Act of 1940 (the "Advisers Act"), commonly known as the "Pay-to-Play Rule."[1] The proposal would rescind the rule in its entirety, together with related recordkeeping requirements under Rule 204-2.

The Commission states it believes that the Rule's prescriptive requirements impose significant compliance burdens and may unnecessarily restrict political speech, while the Advisers Act's existing antifraud, fiduciary duty, and compliance requirements provide a more appropriate framework for addressing pay-to-play practices. The Rule remains in effect unless and until the Commission adopts a final rescission.

[1] Political Contributions by Certain Investment Advisers, Investment Advisers Act Release No. 6994 (Sept. 3, 2026) (the "Proposing Release"), https://www.sec.gov/files/rules/proposed/2026/ia-6994.pdf.

Overview of Rule 206(4)-5

Rule 206(4)-5 (the "Rule") applies to registered investment advisers, exempt reporting advisers and foreign private advisers (i.e., advisers unregistered in reliance on Section 203(b)(3) of the Advisers Act). It generally prohibits an adviser from receiving compensation for providing investment advisory services to a government entity, including through an investment in a pooled investment vehicle managed by the adviser, for two years after the adviser or one of its "covered associates" makes a contribution above specified de minimis thresholds to an "official" of that entity.[2] The Rule imposes a lookback that can attribute to an adviser those contributions made before an individual becomes a covered associate and contains additional restrictions on paying third parties to solicit government entities and coordinating or soliciting certain political contributions and payments.

The Commission's Rationale for Rescission

The Commission grounds its proposal to rescind, rather than amend, the Rule in its experience administering the Rule since its adoption in 2010. The Commission states that the Rule's complexity and breadth have created implementation difficulties and unintended consequences, including the capture of conduct that may not warrant the two-year compensation prohibition.[3]

The proposing release highlights the Rule's de facto strict-liability framework, under which relatively small contributions or technical violations may trigger significant consequences regardless of any connection to pay-to-play activity. The Commission also notes that the Rule may affect hiring and promotion decisions because contributions made before an individual becomes a covered associate may later be attributed to the adviser.[4]

The Commission emphasizes the Rule's effect on political speech, noting that some advisers prohibit political contributions altogether despite the Rule's de minimis exceptions because of the Rule's complexity and potential consequences. The proposal questions whether those burdens on First Amendment-protected speech remain justified.

Existing Advisers Act Requirements Would Continue to Apply

In the Commission's view, existing Advisers Act requirements already prohibit pay-to-play activity even in the absence of a targeted rule with respect to such contributions. The Commission states that, "[a]s a fundamental matter," investment advisers engaging in pay-to-play practices violate the federal securities laws, including the Advisers Act's antifraud provisions.[5] The Commission also notes that, before adopting Rule 206(4)-5, it brought enforcement actions related to pay-to-play practices under Sections 206(1) or 206(2) of the Advisers Act, and that payments to state officials as a quid pro quo for obtaining advisory business, as well as other pay-to-play conduct,

2 The Rule's de minimis exceptions generally permit a covered associate who is a natural person to contribute up to $350 per election to an official for whom the covered associate is entitled to vote and up to $150 per election to an official for whom the covered associate is not entitled to vote. 17 CFR 275.206(4)-5(b).

3 See Proposing Release at 15–21.

4 See id. at 17.

5 See id. at 24.

violate those provisions.[6] The release further explains that pay-to-play practices involve conflicts of interest inconsistent with an adviser's fiduciary obligations and constitute fraud under the federal securities laws.[7] Rescission therefore would not change the Commission's ability to bring actions for fraudulent practices or fiduciary-duty violations arising from pay-to-play conduct.[8]

For registered investment advisers, the Commission also points to Rules 206(4)-7 and 204A-1, which require policies and procedures and a code of ethics, respectively. The proposal contemplates that advisers could address pay-to-play risks through those principles-based requirements, with controls tailored to their current and anticipated course of dealing with government entities and the particular risks associated with management of assets on behalf of such entities. The Commission also recognizes that Rules 206(4)-7 and 204A-1 by their terms do not apply to exempt reporting advisers and foreign private advisers, although those advisers currently are subject to Rule 206(4)-5.[9] The Commission notes, however, that the anti-fraud provisions of the Advisers Act apply to all investment advisers, including exempt reporting advisers and foreign private advisers, and specifically requests comment on whether rescission would increase the risk of pay-to-play conduct for those advisers that are not registered with the SEC.[10]

Related Recordkeeping Requirements

The Commission also proposes to eliminate Rule 204-2(a)(18), which requires certain registered advisers to maintain records concerning covered associates, government entity clients, political contributions and certain payments to persons soliciting government business.[11]

Rescission would not eliminate all relevant recordkeeping obligations. Registered advisers would continue to be required to maintain copies of their compliance policies and procedures, annual-review records, certain code-of-ethics records and written agreements relating to their advisory business, including agreements with government entity clients. If those records relate to pay-to-play prevention, they remain subject to applicable Rule 204-2 requirements and should be made available to the Commission during an examination.[12]

Considerations for Investment Advisers

If adopted, the proposal would give advisers greater flexibility to address political contributions and related pay-to-play risks on a more tailored basis consistent with their business, but would not necessarily support advisers eliminating political-contribution controls altogether, particularly SEC-registered advisers. The Commission

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6 See id.

7 See id. at 8. The Commission states that its ability to bring cases for fraudulent practices and violations of fiduciary duty relating to pay-to-play practices "would remain unchanged" and later reiterates that rescission would not prevent it from continuing to pursue fraudulent pay-to-play cases.

8 See Proposing Release at 8.

9 See Proposing Release at 32-32; 17 CFR 275.206(4)-7; 17 CFR 275.204A-1.

10 See Proposing Release at 31–32, 45.

11 Proposing Release at 45; 17 CFR 275.204-2(a)(18).

12 See Proposing Release at 45–46; 17 CFR 275.204-2(a)(10), (12), (17).

contemplates that advisers with government business would assess their particular pay-to-play risks and determine whether to modify or retain existing policies and procedures.

Advisers would also need to continue considering requirements outside of the Rule. The Commission states that rescission would not curtail existing criminal and civil laws addressing public-sector corruption or affect federal, state and local laws and regulations governing public procurement, including the award of investment advisory mandates. Government entities and public pension plans may have their own requirements that remain relevant after rescission. In particular, side letters with government pension funds often contain requirements that the adviser and certain affiliates and other related persons have not made political contributions to government officials for the purpose of influencing the award of the advisory contract. Other regulatory pay-to-play regimes, including MSRB Rule G-37 and FINRA Rule 2030, would remain unaffected by the Commission's rescission of the Pay-to-Play Rule.

While the proposal is pending, Advisers must continue to comply with the existing Pay-to-Play Rule.[13] If the Commission adopts a final rescission of the Rule, advisers should assess their existing and prospective government client and investor base, applicable state and local requirements, use of solicitors and placement agents, obligations under applicable side letters, and particular pay-to-play risks before deciding whether and to what extent to modify existing political contribution policies.

Willkie remains available to assist advisers in assessing the proposal and preparing for any changes that may follow final Commission action.

13 There will be a 60-day comment period after the Commission's proposal is published in the Federal Register and then there will be a period while the Commission considers the comments.

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