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SEC Proposes to Repeal Investment Adviser Pay-to-Play Rule — But Political Contribution Compliance Is Here to Stay

The Release sets forth a framework for the basic elements that the SEC would expect to see in an investment adviser's compliance policy on political contributions.

On Thursday, September 3, 2026, the SEC issued a rule release (the ***Release***) proposing to rescind the political contributions rule under the Advisers Act (Rule 206(4)-5) in its entirety.[1] In proposing to rescind Rule 206(4)-5, the Release cites a number of "unintended consequences" arising out of the Rule's highly proscriptive approach to regulating so-called "pay-to-play" practices, resulting in undue restrictions being imposed on the First Amendment rights of investment advisers and their personnel. Nevertheless, investment advisers will still be expected to address conflicts arising out of political contributions in their compliance programs, even if on a more flexible and principles-based basis. In addition, the overlapping state, local and self-regulatory pay-to-play regimes described below would be unaffected by the proposal.

The Release follows up on a speech given by SEC Chairman Paul Atkins in March,[2] in which he described the Rule as a "trap for the unwary." The Release expands on this critique, identifying a number of unintended consequences in the manner in which Rule 206(4)-5 has been administered in practice, including:

- Imposing *de facto* strict liability that may result in excessive penalties being imposed for minor infractions;

- Imposing undue restrictions on hiring practices due to Rule 206(4)-5's "look-back" provisions;[3]

- Overly broad and vague definitions of key terms that have led some advisers to impose blanket restrictions on political contributions by their personnel; and

- A costly and time-consuming exemption process that has not provided the necessary flexibility to make Rule 206(4)-5 work equitably in practice.

The SEC also noted that the Supreme Court has found that political contributions are a form of free speech under the First Amendment that may only be limited to prevent *quid pro quo* forms of corruption,[4] and concluded that Rule 206(4)-5 imposes significant burdens on investment advisers' First Amendment rights without a correspondingly large enough regulatory benefit.

Nevertheless, if the proposed rescission of Rule 206(4)-5 is adopted, it will not relieve investment advisers of the need to address political contributions in their compliance programs. Instead, the Release makes clear that the SEC still considers pay-to-play practices to be in breach of an investment adviser's fiduciary duties under the general anti-fraud provisions of the Advisers Act. In addition, the Release cites other applicable laws and rules that investment advisers must take into account in designing their compliance programs, including the Compliance Program and Code of Ethics Rules under the Advisers Act,[5] Section 10(b) of the '34 Act, Section 17(a) of the '33 Act, and various federal and state anti-corruption laws.

In light of these considerations, the Release sets forth a framework for the basic elements that the SEC would expect to see in an investment adviser's compliance policy on political contributions, including:

- An assessment of the investment adviser's risk profile with respect to conflicts arising from political contributions based on (i) the adviser's relationships with various government entities, and (ii) its personnel and the roles such personnel have;

- Policies and procedures reasonably designed to mitigate that risk, including (i) monitoring procedures, (ii) pre-clearance requirements, and (iii) policies on the use of third-parties to solicit government entities on behalf of the adviser; and

- Policies and procedures addressing remedial measures, including (i) seeking the return of offending contributions, and (ii) disciplinary action against non-compliant personnel.

While this portion of the Release can be read to suggest that advisers will continue to be required to impose Rule 206(4)-5-like restrictions on their personnel, the rescission of Rule 206(4)-5 would give investment advisers greater flexibility to design their political contribution policies on a more risk-based basis and to eliminate some of Rule 206(4)-5's more draconian elements — most notably the two-year "time-out" on compensation from a government client and the look-back on new hires, which have long been the provisions with the greatest practical impact on private fund advisers' fundraising and hiring decisions.

Unlike most of the rules adopted by the SEC under the Advisers Act, Rule 206(4)-5 explicitly applies to both exempt reporting advisers (***ERAs***) and registered investment advisers (***RIAs***). The Release acknowledges this and the fact that, unlike RIAs, ERAs are not subject to the Compliance Program and Code of Ethics Rules. Nonetheless, the Release notes that ERAs are still subject to the general anti-fraud provisions of the Advisers Act and could still be held liable under the Act for making political contributions that are in breach of an ERA's fiduciary duty. As a practical matter, ERAs — including many venture capital fund sponsors — should be cautious about treating rescission as an invitation to retire their political contribution policies altogether, particularly where they raise capital from state or municipal pension plans that impose their own contribution and disclosure conditions as a matter of contract.

The SEC has requested comments on the Release on a number of subjects, including whether complete rescission of Rule 206(4)-5 is warranted or whether alternative approaches such as modifying the existing Rule to make it more principles-based and flexible would be preferable. Comments may be submitted at this link and are due 60 days after publication of the Release in the Federal Register. In a separate statement on the Release, Commissioner Hester Peirce also requests comments on whether other similar pay-to-play rules applicable to brokers and municipal securities dealers should also be rescinded — a question of direct interest to sponsors that use placement agents subject to MSRB Rule G-37 and FINRA Rule 2030.

Rule 206(4)-5 remains in effect and advisers should continue to comply with its requirements until a final rule is adopted. Advisers should not relax pre-clearance, look-back diligence or recordkeeping practices in reliance on the proposal, and should be mindful that a contribution made now that triggers the two-year time-out would continue to have consequences during any transition period. That risk is heightened by the current election cycle, which is likely to drive increased contribution activity by adviser personnel while the Rule remains fully enforceable.

What This Means for Private Fund Advisers

- **State and local pay-to-play regimes would be untouched, and are often stricter.** A number of states and municipalities, as well as many public retirement systems, impose their own contribution limits, look-backs and disclosure obligations.
- **Contractual pay-to-play commitments will survive the Rule.** LPAs, side letters and public plan management agreements often hard-wire Rule 206(4)-5 by reference, so advisers should check those covenants before loosening internal policies.
- **Consider commenting — particularly on scope questions.** Advisers with public plan relationships may want to weigh in on the "covered associate" definition, de minimis thresholds, the new-hire look-back, and transition relief for contributions that have already triggered a time-out.

[1] Proposed rule; rescission: Political Contributions by Certain Investment Advisers

[2] See Jessica Corso, *SEC's Atkins Promises Changes to Adviser Pay-To-Play Rule*, Law360 (Mar. 23, 2026).

[3] For example, under Rule 206(4)-5, investment advisers can be held liable for political contributions made by new employees up to two years *prior* to the time such persons are hired by

the adviser.

[4] See *FEC v. Ted Cruz for Senate*, 596 U.S. 289, 305 (2022).

[5] Rules 206(4)-7 and 204A-1 under the Advisers Act.

The following Gibson Dunn lawyers prepared this update: Kevin Bettsteller, Marian Fowler, Shukie Grossman, Roger Singer, and Gregory Merz.

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