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Memorandum

SEC Proposes Rescission of the Pay-to-Play Rule

September 4, 2026

I. Introduction

The U.S. Securities and Exchange Commission (the "SEC" or "Commission") has proposed to rescind Rule 206(4)-5 under the Investment Advisers Act of 1940[1] (the "Advisers Act"), commonly known as the "Pay-to-Play Rule".[2] Issued on September 3, 2026, the proposal (the "Proposal") follows years of industry advocacy and statements from Commissioners critical of the rule; notably, in the months leading up to the Proposal, Chairman Atkins characterized the rule as "a trap for the unwary."[3] Commissioner Hester M. Peirce, a longstanding critic of the rule, stated that she was "thrilled to eliminate rather than simply amend" it.[4] While there has been increasing speculation that the Commission would seek to modify certain aspects of the rule, the Proposal foregoes surgical updates in favor of the complete rescission of the prescriptive rule.

Rescission would likely be welcome relief for SEC-registered investment advisers and exempt reporting advisers, particularly those that advise or seek to advise state and local government pension plans or private funds in which those plans invest. However, even if the rule is rescinded, investment advisers must still comply with other securities laws, their operative policies and procedures, and any state or local pay-to-play laws. Advisers should not change current practices until they have assessed whether any proposed changes are consistent with those policies and procedures or have appropriately modified them. We provide our key takeaways for advisers in Section VII.

II. Background of the Pay-to-Play Rule

The Pay-to-Play Rule, adopted in 2010, was designed as a prophylactic measure to address the risk that investment advisers might seek to influence the award of advisory contracts by state and local government entities, including public pension plans, through political contributions to officials involved in the selection process. When proposing the Pay-to-Play Rule in 2009, the Commission detailed a series of SEC enforcement actions and criminal cases across multiple states—including New York, New Mexico, Illinois, Ohio, Connecticut, and Florida—in which investment advisers, broker-dealers, and public officials were charged with pay-to-play

[1] Rule 206(4)-5 under the Investment Advisers Act of 1940 [17 CFR 275.206(4)-5].

[2] Political Contributions by Certain Investment Advisers, Release No. IA-6994 (September 3, 2026).

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

[4] Statement of Commissioner Hester M. Peirce on Proposed Rescission of the Political Contribution Rule, September 3, 2026.

schemes involving undisclosed payments in exchange for the award of public pension fund investment business.[5] In response to these widespread practices, several states, counties, and local government entities enacted statutory and regulatory restrictions on pay-to-play activities, and public officials overseeing pension funds urged the SEC to adopt a Commission rule prohibiting investment advisers from engaging in such conduct.

Compliance with the rule requires a nuanced and fact-specific application of technical requirements, while violations are subject to strict liability with very limited ability to mitigate or cure infractions. Among other key provisions, the rule prohibits investment advisers from receiving compensation for providing investment advisory services to a state or local government entity for two years after the adviser or one of its "covered associates" makes a political contribution to an elected official or candidate who is in a position to influence the selection of the adviser. In addition, the rule prohibits investment advisers and their covered associates from paying any person to solicit a government entity for investment advisory services on behalf of the adviser unless the person is a "regulated person" (as defined in the rule) or is affiliated with the investment adviser as set out in the rule. The rule further prohibits advisers and their covered associates from (a) coordinating or soliciting a person or political action committee to make a payment to an official of a government entity to which the adviser is providing or seeking to provide investment advisory services or (b) making a payment to a political party of a state or locality where the investment adviser is providing or seeking to provide services to a government entity. The rule also contains a broad catchall, making it unlawful for an adviser or any of its covered associates to do anything indirectly which, if done directly, would result in a violation of the rule. For a detailed discussion of the Pay-to-Play Rule's technical requirements and compliance considerations, see our May 2026 client memo: The Advisers Act Pay-to-Play Rule: Timely Reminder for Investment Advisers.

III. Policy Justifications for the Rescission

The Proposal is grounded in the Commission's determination that the Pay-to-Play Rule has proven to be, in the words of Chairman Paul S. Atkins, "needlessly penalizing, burdensome and complex to implement, and misaligned with the SEC's mandate."[6] Chairman Atkins noted that "the Commission is clearly reiterating that the SEC is not the nation's elections regulator" and framed the Proposal as part of a broader effort to "return the agency to its core mission and Congressional intent." The Proposal articulates several specific policy justifications for rescission:

- **Suppression of Political Speech.** According to the Commission, the rule has led to significant unintended consequences, including the imposition by many advisory firms of blanket prohibitions on all employee political contributions at the state and local level. Based on a 2024 industry survey cited in the Proposal, approximately 12% of investment advisers prohibit all political contributions by their personnel. Chairman Atkins stated that "[p]eople should not have to choose between their political speech rights and a

[5] Political Contributions by Certain Investment Advisers, Release No. IA-2910 (August 3, 2009).

job in a particular industry," noting that the rule effectively suppresses political contributions, which are considered to be political speech that is protected by the First Amendment.

- **Strict Liability Leading to De Facto Prohibition.** The rule imposes a strict-liability standard under which even small donations or inadvertent "foot faults" can trigger a two-year prohibition on compensated advisory services to a government client. Although the rule includes *de minimis* exceptions, the thresholds are truly minimal: contributions cannot exceed $350 in the aggregate per election to each official for whom the covered associate was entitled to vote at the time of the contribution, or $150 in the aggregate per election to each official for whom the covered associate was not entitled to vote at the time of the contribution; any amount above these thresholds is in scope regardless of the contributor's intent in making the contribution. An exception for returned contributions is similarly narrow: it applies only to inadvertent contributions to officials for whom the contributor was not entitled to vote; the contribution must not exceed $350 in the aggregate per election to any one official; the adviser must discover the contribution within four months; and the contributor must obtain a return within 60 calendar days. Even then, the adviser must rely on the third party that received the contribution to effectuate the return, which may not be feasible if the funds have already been spent. Contributions that fall outside these narrow parameters, including otherwise good-faith contributions that are voluntarily returned, do not cure a violation.
- **Operational Complexity.** Investment advisers have indicated that the rule is operationally challenging due to the breadth and complexity of interpreting key definitions, including who is an "official" of a government entity (defined to include individuals who are "indirectly responsible for, or can influence the outcome of," the hiring of an adviser) and who are an adviser's "covered associates," which may be interpreted more broadly than originally intended, by including personnel whose political contributions are unlikely to raise pay-to-play concerns. Furthermore, the exemptive process available under the rule has proven costly and time-consuming and, according to the Proposal, the Commission receives only approximately two exemptive applications per year under the rule.
- **Impact on Hiring and Talent.** The rule can prevent advisers from hiring or promoting qualified personnel into "covered associate" roles for six months or two years following a political contribution, regardless of whether a contribution presents any material risk of undue influence over the selection of the investment adviser by the recipient of the contribution. The rule's coverage of triggering contributions is broad: it "looks back" to contributions made within two years (or six months, for non-soliciting covered associates) before an individual became a covered associate, and also "looks forward" such that the adviser remains subject to the rule's prohibition on the receipt of compensation for the full two-year period following a contribution, even if the individual leaves a firm or ceases to qualify as a covered associate. This can deter firms from hiring qualified individuals who have made political contributions.
- **Adverse Effects on Government Clients.** Public pension plans may lose access to the most qualified or cost-effective advisers as a result of the rule's restrictions, potentially to the detriment of plan beneficiaries.

The Commission expressed its view that the rule's objectives are better achieved through a principles-based anti-fraud approach and reliance on election-related rules. Specifically, Chairman Atkins stated that matters involving political contributions are "more properly governed by local ordinances, state laws, and federal election regulations—not by the SEC." The Commission further noted that other federal, state, and local laws regarding procurement and anti-bribery remain in effect and would not be affected by the rescission.

IV. Continued Compliance Obligations After Rescission

Following any rescission, registered investment advisers would remain subject to the Advisers Act's antifraud and supervisory provisions. Section 206 of the Advisers Act establishes federal fiduciary standards and prohibits fraudulent, deceptive, or manipulative conduct, including pay-to-play practices, and Section 203 permits the Commission to charge an adviser and its individual supervisors for failure to reasonably supervise advisory personnel who engage in such practices. Rule 206(4)-7 would also remain, requiring written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder. According to the Commission, when political contributions influence the award of advisory roles, they distort a client's selection process so that contributions to government officials, rather than advisers' competence and cost, drive the award of contracts. The Commission believes such practices create conflicts of interest and compromise advisers' fiduciary duties to public pension plans, potentially defrauding those plans, other prospective clients, and public pension plan investors.

The Commission expects an adviser's policies and procedures to address pay-to-play risks, but advisers would have flexibility to tailor their programs to their particular business models, organizational structures, governmental relationships, personnel, and use of third-party solicitors rather than follow the prescriptive requirements of the Pay-to-Play Rule. Advisers could choose either to retain existing policies or replace them with more tailored policies after assessing their risks. The Commission identified several factors for that assessment: compliance with applicable law, including state and local anti-corruption laws; risk identification tailored to the adviser's business, including its governmental relationships, the nature and roles of personnel making contributions, and the use of third-party solicitors; pre-clearance protocols for political contributions where appropriate given the adviser's risk profile; periodic monitoring and auditing of compliance; and remedial steps to address contributions inconsistent with the adviser's policies. Advisers should also review and, if necessary, update their codes of ethics under Rule 204A-1 so that the standards of business conduct align with any pay-to-play policies adopted under Rule 206(4)-7.

V. Economic Effects

The Commission's economic analysis accompanying the Proposal concludes that rescinding the Pay-to-Play Rule would eliminate ongoing compliance costs and the unintended consequences described above. The Commission estimates that all advisers would face a one-time cost to evaluate and potentially modify their compliance policies and procedures, with aggregate transition costs of approximately $51 million. The Commission acknowledged that an adviser may determine to continue to utilize its policies and procedures to manage its exposure to the risk of pay-to-play practices, but because an adviser would no longer need to account for the prescriptive requirements of the rule and the nuanced interpretations it demands, the Commission estimated that the industry would achieve annual aggregate compliance cost savings of approximately $416 million. On a per-firm basis, the Commission estimated annual savings are at approximately $3,750 for smaller firms, $161,500 for medium firms, and $323,000 for larger firms.

VI. Historical SEC Examination and Enforcement Activity

The rule has been a repeated focus area of SEC examinations and enforcement investigations and proceedings. In examinations, SEC staff routinely request political contribution pre-clearance records, lists of political contributions made during the examination period, and compliance exception logs.

The SEC has brought numerous enforcement actions against investment advisers under the rule since 2014. Because the rule imposes liability without requiring proof of intent, these cases are relatively straightforward for the SEC to pursue, based often on publicly available information. The SEC has from time to time conducted enforcement "sweeps" focused on compliance with the rule. Following its 2022 pay-to-play sweep, for example, the SEC settled charges with four investment advisers for continuing to receive advisory fees from government entities after covered associates made contributions to elected officials or candidates for elected office. In all four cases, the campaign contributions did not exceed $1,000, and the resulting civil penalties ranged from $45,000 to $95,000. Notably, the relevant government entities were already limited partners in funds managed by the advisers at the time the contributions were made. In two cases, covered associates attempted to obtain returns of their contributions, and two cases involved contributions to candidates who were not ultimately elected. None of the enforcement actions included evidence that the investment advisers or their covered associates intended to influence the selection of an adviser.

As a more recent example, in a 2024 enforcement action, the SEC found that an investment adviser violated the rule by continuing to receive compensation after a covered associate made a $7,150 contribution to a government official months before joining the adviser, notwithstanding that the covered associate obtained a full return of the contribution and that the government entity was already invested in the adviser's fund. The SEC imposed a $95,000 civil penalty and noted that the rule "does not require a showing of quid pro quo or actual intent to influence an elected official or candidate."[7]

VII. Key Takeaways for Investment Advisers

1. **The Rule Remains In Effect and Will Apply During the 2026 Midterm Election Cycle.** The Proposal does not codify a rescission of the rule, and the rule remains in effect. The Proposal will be open for comment for 60 days, a prime window during which many contributors will make contributions for the

[7] Advisers Act Release No. 6662 (Aug. 19, 2024).

2026 election cycle; because the rule remains in effect, advisers should continue to review contributions for compliance with internal policies and procedures and the rule's requirements.

2. **Review Policies and Procedures.** If the rule is ultimately rescinded, advisers will need to assess how to transition to a more tailored, principles-based compliance framework. Advisers will need to identify their specific pay-to-play risk exposures in light of their business model, client base, and organizational structure, and design updated policies accordingly. Importantly, the rescission of the federal rule would not affect state and local pay-to-play laws or public pension plan policies that independently restrict investment in funds whose managers or personnel have made political contributions to officials in their states or localities or that require reporting of applicable political contributions.

    - **Compliance with applicable law.** Policies and procedures would need to address pay-to-play practices that violate the Advisers Act and relevant anti-corruption laws and regulations, including applicable state and local laws. As noted above, even in the absence of the Pay-to-Play Rule, the SEC retains general anti-fraud authority over pay-to-play practices under Section 206 of the Advisers Act and the ability to bring actions for an adviser's failure to supervise personnel who engage in pay-to-play practices. Notably, the SEC brought enforcement actions against pay-to-play practices under these anti-fraud provisions *before* the Pay-to-Play Rule was adopted in 2010 and could continue to do so after its rescission.
    - **Risk identification.** Risks may vary substantially across advisers. Relevant factors include (a) whether the adviser has existing or prospective relationships with government entities; and (b) the contributor's role, including whether the person is in an advisory, senior decision-making, business development, back-office, administrative, or clerical position.
    - **Risk mitigators.** Policies could permit contributions during windows the adviser determines present low pay-to-play risk or establish contribution thresholds below which some policy elements, such as pre-clearance, would not apply.
    - **Pre-clearance.** Depending on its risk assessment and business model, an adviser may wish to retain pre-clearance procedures for certain contributions or transition to a more principles-based policy that restricts political contributions made with the intention of influencing the recipient for business purposes.
    - **Periodic monitoring.** Policies could provide for monitoring, including periodic audits comparing pre-clearance requests with reports documenting personnel contributions.
    - **Third-party solicitors.** Advisers should continue to address the risks associated with using third-party solicitors that solicit government entity investors, for example by requiring engagements to be approved by the adviser's chief compliance officer or requiring that such solicitors have not made political contributions to government officials in that state or locality.

3. **Compliance Risks Remain Elevated Even After Rescission.** A policy violation—even absent an underlying violation of the current Pay-to-Play Rule—could expose the adviser to a violation of Rule 206(4)-7. The proposed removal of the rule's prescriptive guardrails may heighten compliance risk for firms that do not proactively update their internal policies. Advisers should expect that SEC examiners will continue to scrutinize whether an adviser's actual practices are consistent with its stated policies, and a gap between the two could itself constitute a violation of Rule 206(4)-7.

4. **Rescission Would Eliminate Hiring Restrictions Tied to Prior Contributions.** Advisers may wish to evaluate the impact of rescission on their hiring practices, as elimination of the Pay-to-Play Rule could reduce de facto restrictions on employing qualified individuals who have made recent political contributions to covered officials.

5. **Side Letters With Public Pension Plans and Other Investors Warrant Review.** Many advisers enter into side letters with public pension plans and other governmental or quasi-governmental investors (as well as others) that include provisions addressing compliance with the Pay-to-Play Rule, pay-to-play principles generally, and/or state and local restrictions. Investment advisers should review existing side letters for provisions that incorporate the Pay-to-Play Rule by reference or that independently impose restrictions on political contributions, and assess whether rescission of the rule would alter their obligations under those agreements. Advisers should also consider these issues in connection with future side letter negotiations.

6. **The Proposal Would Not Affect State and Local "Pay-To-Play" Restrictions or Limitations.** The Commission emphasized that a rescission of the Pay-to-Play Rule would not affect state and local pay-to-play laws, which vary significantly across jurisdictions. Some jurisdictions prohibit principals of investment advisory firms from contributing to campaigns or other organizations related to offices with discretion over adviser selection. Others require public disclosures of contributions for firms with procurement contracts or disallow government entities from contracting with advisers who have made contributions to campaigns for certain government offices and restrict government contractors from making, soliciting, or pledging political campaign contributions. Some jurisdictions do not impose any restrictions similar to those in the Pay-to-Play Rule. Accordingly, advisers should map their remaining pay-to-play requirements carefully since state and local requirements, along with other federal anti-bribery and procurement laws, would continue to apply.

7. **Recordkeeping Requirements Would Be Simplified.** The Proposal would amend Rule 204-2 under the Advisers Act to eliminate the requirement that an adviser keep records of (i) covered associates; (ii) government entity clients; (iii) contributions by the adviser and its covered associates to government entity officials, or payments to state political parties or PACs; and (iv) payments to regulated persons soliciting government entities on the adviser's behalf. Advisers would nevertheless remain required to maintain copies of their policies and procedures and records documenting annual reviews, copies of their code of ethics and records of violations, and records of written agreements with government entity clients and

third-party solicitors or placement agents. Although the specific Pay-to-Play Rule recordkeeping requirements would be eliminated, advisers should evaluate whether to maintain similar records voluntarily if the rule is rescinded, as part of their compliance programs and to support their risk assessments under Rule 206(4)-7. In any case, investment advisers should ensure their policies reflect any updated recordkeeping practices.

8. **FINRA Rule 2030 and MSRB Rule G-37 May Also Be Affected.** The Proposal does not directly rescind or alter FINRA Rule 2030 or MSRB Rule G-37, which impose parallel pay-to-play restrictions on member firms that engage in distribution or solicitation activities for government entity clients and municipal advisors. Commissioner Peirce's statement issued in connection with the Proposal acknowledged these parallel rules and emphasized the Commission's request for comment as to whether the rules should be rescinded as well.[8] It remains to be seen whether FINRA or the MSRB will consider amendments or rescission to their rules, and market participants should monitor for any related developments.

VIII. Next Steps

The comment period on the Proposal will remain open for 60 days following publication of the proposing release in the Federal Register.[9] Based on the pace of recent SEC rulemaking initiatives under Chairman Atkins, a final rule could be adopted as early as the first or second quarter of 2027, though the ultimate timeline will depend on the volume and nature of public comments received, competing Commission priorities, and other rulemaking variables.

Although changes to the pay-to-play regulatory framework may be forthcoming, the current rule remains effective until any amendment or rescission is finalized and will remain in effect during the final months of the 2026 campaign season. Advisers are reminded that compliance with other applicable securities laws, including the federal fiduciary and anti-fraud standards under Section 206 of the Advisers Act and the supervisory obligations under Section 203, remains mandatory, as does adherence to any operative internal policies and procedures addressing pay-to-play risks.

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[8] Statement of Commissioner Hester M. Peirce on Proposed Rescission of the Political Contribution Rule, September 3, 2026.

[9] Comments may be submitted electronically through the SEC's website.

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