

Timely reminders about the Investment Advisers Act's pay-to-play rule

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Investment advisers should periodically refresh their personnel on rules and policies governing political contributions, and — with the 2026 midterm election cycle now underway — this is an opportune time to do so.¹ This note focuses on the so-called “pay-to-play” rule in Rule 206(4)-5 of the Investment Advisers Act of 1940 (the “Pay-to-Play Rule” or the “Rule”).²

Compliance with the Rule requires a fact-specific application of its technical requirements, and violations of the Rule are strict liability with very limited ability to cure infractions.

Against the backdrop of perennial SEC examination and enforcement interest in this area, and heightened political campaign fundraising activity in connection with the midterms, this article is intended to serve as a reminder of the Pay-to-Play Rule's technical requirements and as a practical primer for compliance.

While the Rule may be amended later this year, as discussed further below, until any such changes occur, investment advisers and their covered associates would be well-served to strictly comply with the letter of the current Rule (and seek any needed exemption from the SEC).

I. Overview of the Pay-to-Play Rule

At its core, the Pay-to-Play Rule is rooted in anti-fraud principles and is intended to prevent investment advisers from obtaining business from public pension plans or other government entities in exchange for political contributions or fundraising support.³ In its current form, however, the Rule is prophylactic and applies broadly to contributions even in the absence of any actual or intended *quid pro quo*.

The Rule makes it unlawful for an investment adviser to provide investment advisory services for compensation to a state or local government entity within two years after the adviser or any of its covered associates make a political contribution above a *de minimis* amount to an official of such government entity, subject to certain limited exceptions.⁴

Because the Rule imposes strict liability and applies to all political contributions regardless of intent, the SEC does not need to prove that the adviser or covered associate made the

contribution with the intent of influencing the government entity to hire the investment adviser in order to establish a violation.

As a result, *any* political contribution (made for any purpose) above the *de minimis* amount will generally require the adviser to forgo performing investment advisory services for compensation to the relevant government entity for two years following the contribution.

Compliance with the Rule requires a fact-specific application of its technical requirements, and violations of the Rule are strict liability with very limited ability to cure infractions.

This “time out” on receiving compensation can be economically significant for the adviser. Failure to adhere to the two-year time out places the adviser in violation of the Rule, exposing it to potential SEC investigation, monetary fines, and reputational harm.

Notably, the Rule explicitly prohibits investment advisers and their covered associates from doing anything indirectly that, if done directly, would violate the Rule.⁵

II. Key defined terms in the Rule

The key terms used in the Rule are discussed below.

Defined term: “government entity”

The definition of “government entity” is broad and encompasses, among other things, state and local pension plans, which are frequent investors in private funds.

Specifically, under the Pay-to-Play Rule, a “government entity” is any state or political subdivision of a state; this includes (i) any agency, authority, or instrumentality of the state or political

subdivision; (ii) a pool of assets sponsored or established by a state or political subdivision or any agency, authority or instrumentality thereof; (iii) a plan or program of a government entity; and (iv) officers, agents or employees of the state or political subdivision or any agency, authority or instrumentality thereof, acting in their official capacity.⁶ A government entity for the purposes of the Rule does not include federal entities.

Defined term: “official”

An “official” under the Rule can include various individuals with some level of responsibility for selecting investment advisers for a government entity. Whether a particular individual qualifies as an official under the Rule is a highly fact-dependent exercise that turns on the official’s responsibilities within the relevant state or municipality.

Specifically, an “official” under the Rule is any person (including any election committee for the person) who was, at the time of the contribution, an incumbent, candidate or successful candidate for elective office of a government entity, if the office: (i) is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity; or (ii) has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity.⁷

An official will generally include any individual who sits on a board responsible for hiring investment advisers for state retirement plans, as well as those who appoint such individuals. Officials under the Pay-to-Play Rule may include mayors, governors, or treasurers to the extent they influence the selection of investment advisers for their city or state public pension plans.

For example, the governor of Florida and the mayor of New York City are each currently an “official” under the Rule. The Rule’s reference to “an incumbent, candidate or successful candidate” is broad and even captures contributions to *unsuccessful* candidates.

Another nuance contributing to the Rule’s broad reach involves incumbent state or local officials running for federal office.

Although federal officials are not covered by the Rule (because the definition of “government entity” under the Rule is limited to states and their political subdivisions), a contribution above the de minimis threshold to a candidate for federal office who is an *incumbent state or local official* could trigger the Rule’s two-year time out.⁸

Such situations have arisen recently, including when Minnesota Governor Tim Walz ran for Vice President and Florida Governor Ron DeSantis campaigned for President.

Defined term: “covered associate”

The Pay-to-Play Rule applies to political contributions made by an investment adviser or any of its “covered associates.” Covered associates of an investment adviser include: (i) any general partner, managing member or executive officer, or other individual with similar status or function; (ii) any employee who

solicits a government entity on behalf of the investment adviser and any person who directly or indirectly supervises such employee; and (iii) any political action committee controlled by the investment adviser or by any person described in (i) or (ii).⁹

While “covered associates” are typically a subset of an adviser’s personnel, investment advisers often require pre-clearance and maintain records of political contributions made by all employees, rather than only covered associates.

Advisers may find this approach more practical to administer given that determinations of who qualifies as a covered associate can be highly fact specific. Applying the policy to all employees also helps avoid inadvertent violations when a non-covered associate later transitions into a covered associate role.

As discussed further below, contributions by covered associates have a long reach: the Rule can apply to contributions made before an individual became a covered associate (via the Rule’s look-back provision) and after an individual ceases to be a covered associate (via the Rule’s look-forward provision).

Defined term: “contribution”

Contributions covered by the Rule include typical cash and other monetary donations, but it is worth noting that “contribution” is defined broadly to include anything of value (the dollar thresholds are discussed in the next section).

Specifically, “contribution” under the Rule includes any gift, subscription, loan, advance or deposit of money or anything of value made for: (i) the purpose of influencing any election for federal, state or local office; (ii) payment of debt incurred in connection with any such election; or (iii) transition or inaugural expenses of the successful candidate for state or local office.¹⁰

III. Broad reach of the Rule

Several components of the Rule further contribute to its broad reach and draconian consequences.

Only de minimis amounts excluded

While the Rule contains an exception for de minimis amounts, the thresholds are truly de minimis.

Specifically, under the Rule’s de minimis exception, a covered associate may contribute up to \$350 in the aggregate per election to each official for whom the covered associate was entitled to vote at the time of the contribution, and up to \$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.¹¹

Any amount above these thresholds is in scope, regardless of whether such amount would be considered material by any objective standard, and regardless of the contributor’s intent in making the contribution.

Look-back period for contributions

Advisers should take note that the Rule can apply to contributions made by an individual before the individual

became a covered associate of that adviser. The look-back aspect of the Rule is designed to prevent advisers from circumventing the Rule by influencing the adviser selection process through hiring persons who have made certain political contributions.¹²

Specifically, the Rule “looks back” to apply to contributions made to officials within two years of a person becoming a covered associate if the covered associate solicits government entities on behalf of the investment adviser, and otherwise within six months.¹³ The two-year time out period begins on the date the contributing individual becomes a covered associate and continues until two years have elapsed from the date of the contribution.¹⁴

An individual who was not a covered associate at the time of a contribution may have been employed elsewhere or may have been employed at the adviser in a non-covered associate role.

In either case, the contribution can trigger the Rule’s two-year time out on providing advisory services for compensation to the applicable government entity even where the contribution was made up to two years (or six months, as applicable) before the individual became a covered associate at the adviser.¹⁵

Look-forward period for contributions

In addition to the look-back provision, the Rule also “looks forward” with respect to contributions by covered associates who cease to qualify as such. The look-forward aspect of the Rule is intended to prevent investment advisers from channeling political contributions through departing employees.¹⁶

In other words, the covered associate’s employer at the time of the contribution remains subject to the Rule’s prohibition on receipt of compensation for the *entire two-year period*, even if the individual leaves the firm or otherwise ceases to qualify as a covered associate during that period.¹⁷

Advisers should remind retiring employees and partners of their continuing obligations under the Rule and related policies. Advisers should also evaluate situations in which senior personnel step back from day-to-day operations but continue to have advisory responsibilities, to determine whether they remain covered associates following the change — and, if so, to remind them of their pay-to-play compliance obligations.

Extremely limited ability to remediate

Beyond the de minimis exception, it is currently exceptionally difficult for investment advisers to remediate after an impermissible contribution that triggers the two-year time out on receipt of compensation. This is the case even where the contribution was arguably not material and even where the adviser self-identifies the contribution that inadvertently exceeded the de minimis threshold (subject to the limited exception described below).

The Rule does include a limited exception for certain returned contributions. Specifically, the Rule’s prohibitions do not apply if

(i) the investment adviser discovers the triggering contribution within four months of the date it was made; (ii) the contribution did not exceed \$350; and (iii) the contributor obtains a return of the contribution within 60 calendar days after the adviser discovers it.¹⁸

This exception is further limited in that advisers are only entitled to a set number of returned-contributions exceptions per calendar year (two or three, depending on the adviser’s number of employees), and an adviser may not rely on this exception more than once per covered associate.¹⁹

The limited ability to remediate after-the-fact underscores the importance of ensuring that all political contributions by an adviser and its covered associates comply with the Rule before being made. Common compliance practices include firm-wide trainings, pre-clearance for all political contributions, and periodic email reminders regarding the Rule.

Seeking an exemption

The Rule also contemplates a process by which an adviser may seek a formal exemption from the SEC. Upon application, the SEC may conditionally or unconditionally exempt an investment adviser from the Rule’s prohibitions.²⁰

To make such determination, the SEC will consider, among other factors: (i) whether the exemption is in the public interest; (ii) whether the investment adviser had reasonably designed policies and procedures in place before the contribution was made, lacked actual knowledge of the contribution when it occurred, took steps to secure a return of the contribution after learning of it, and adopted any appropriate remedial or preventive measures; (iii) whether the contributor was, at the time of the contribution, a covered associate, employee of the adviser, or seeking employment at the time the contribution was made; (iv) the timing and amount of the contribution; (v) the nature of the election (e.g., federal, state or local); and (vi) the contributor’s apparent intent or motive in making the contribution.²¹

Advisers may consider requesting an exemption where they believe they satisfy the applicable factors. Given the desire of the presently constituted SEC to update the Rule, it is possible, in the meantime, that exemptions will be sought and granted with increasing frequency (and a number of exemptions have already been granted under this administration).²²

IV. Mitigating SEC examination and enforcement risk

The Pay-to-Play Rule is a perennial focus area of SEC examinations and enforcement investigations.

In examinations, SEC staff may request political contribution pre-clearance records, lists of political contributions made during the examination period, and related documentation. Exam staff may also focus on certain political

contributions that may appear on an adviser’s log of compliance exceptions, as typically requested during examinations.

The SEC has brought more than 20 enforcement actions against investment advisers under the Rule since 2014 (the Rule was adopted in 2010). Because liability under the Rule generally does not require proof of bad intent, these cases are relatively straightforward for the SEC to pursue. The settlements discussed below illustrate the consequences of even technical violations of the Rule.

The SEC from time to time conducts “sweeps” focused on compliance with the Rule, in both examinations and enforcement. Following its 2022 pay-to-play sweep, 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.²³

In all four cases, the campaign contributions made by covered associates did not exceed \$1,000, and the resulting civil penalties ranged from \$45,000 to \$95,000.²⁴ Notably, the relevant government entities tied to such contributions were already limited partners in funds managed by the advisers at the time the contributions were made (*i.e.*, they had already made a decision to invest with the adviser).²⁵

Additionally, in two of the cases, the covered associates attempted to obtain returns of their contributions.²⁶ Two of the cases also involved contributions made to candidates who were not ultimately elected.²⁷ There was no evidence that any of the contributing individuals intended to influence elected officials to hire an investment adviser.²⁸

Notwithstanding these various mitigating circumstances (*e.g.*, low-dollar contributions, pre-existing investor relationships, etc.), the SEC pursued public settlements and imposed civil penalties in response to these technical violations.

In an even more recent case, in 2024, the SEC found that an investment adviser violated the Rule by continuing to receive compensation for investment advisory services after a covered associate made a political contribution months *prior* to the covered associate being employed by the investment adviser, relying on the Rule’s look-back provision.²⁹

In this case, an individual made a \$7,150 campaign contribution to a government official and was subsequently hired as a covered associate by an investment adviser (over six months after the contribution was made).³⁰

Upon being hired by the adviser, the individual sought and obtained a return of the contribution, but the investment adviser continued to provide investment advisory services for compensation to a state retirement fund in which the government official’s office appointed five members of the investment board.

Notwithstanding that the covered associate made the contribution prior to employment with the adviser and obtained a full return of the contribution, and that the state retirement fund was already invested in the investment adviser’s fund at the time of the contribution, the SEC imposed

a \$95,000 civil penalty against the investment adviser for violations of the Pay-to-Play Rule.³¹

As stated in the Order, the Rule “does not require a showing of *quid pro quo* or actual intent to influence an elected official or candidate.”³²

In light of SEC focus on political contributions, investment advisers should take active steps to prevent any potential violations of the Rule (and take steps to remediate when necessary).

For example, advisers may choose to conduct mock exams, test compliance procedures, send reminders to covered associates, or periodically require attestations by covered associates as to whether any political contributions have been made. Many investment advisers may also choose to impose pre-clearance requirements on all political contributions made by employees.

As with any policy, advisers should exercise caution with any substantive policy provisions that are broader than the requirements in the Rule, as a policy violation, even in the absence of an underlying violation of the Rule, is potential for the SEC to pursue a Rule 206(4)-7 violation.

V. Potential rule amendment

Amendments to the Pay-to-Play Rule may be forthcoming. As reported in March of this year, SEC Chairman Paul Atkins indicated that the SEC is likely to loosen the current Rule, stating that it is currently a “trap for the unwary” that the SEC plans to address.³³

This sentiment follows years of Commissioner Hester Peirce voicing her opinion of the current Rule, in one statement referring to the Rule as “an exceedingly blunt instrument.”³⁴ No formal amendments to the Rule have yet been proposed, but industry participants remain hopeful that changes could be coming soon.

VI. Conclusion

As campaigning for the 2026 midterm elections begins to pick up, investment advisers need to understand the nuances of the Pay-to-Play Rule and should remain vigilant regarding campaign contributions. Advisers should remind employees to comply with the Rule, other applicable pay-to-play rules, and related internal policies.

Additionally, this election season and beyond, advisers should stay apprised of other developing areas of social and regulatory interest, such as event contracts and prediction markets tied to election results or other political outcomes. Advisers may take this opportunity to consider their policies in light of the growth of prediction markets.

Advisers should also monitor ongoing industry advocacy regarding the Pay-to-Play Rule itself and whether it will result in any changes to the Rule. Although change could be coming, for now, the current Rule stands — advisers should strive for strict compliance, remediate when needed, and consider seeking exemptions as appropriate.

Notes:

¹ Investment advisers covered by the Rule include registered investment advisers, exempt reporting advisers, and investment advisers relying on an applicable registration exemption.

² See 17 CFR § 275.206(4)-5. Additionally, advisers should be aware that many state and local municipalities have their own pay-to-play rules and/or disclosure requirements that apply in addition to, not instead of, the Pay-to-Play Rule.

³ See 17 U.S. Securities and Exchange Commission, Political Contributions by Certain Investment Advisers, Advisers Act Rel. No. 3043 (July 1, 2010) (hereinafter “Adopting Release”) at 11, available here: <https://bit.ly/3R9Bu2S>.

⁴ See 17 CFR § 275.206(4)-5(a)(1). While not the focus of this note, the Rule also contains two other general prohibitions. First, the Rule prohibits investment advisers and their covered associates from providing or agreeing to provide, directly or indirectly, payment to any person to solicit a government entity for investment advisory services on behalf of such investment adviser unless such person is a regulated person or affiliated with the investment adviser. Second, the Rule prohibits investment advisers and their covered associates from coordinating or soliciting a person or political action committee (a “PAC”) to make (i) any contribution to an official of a government entity to which the adviser is providing or seeking to provide investment advisory services or (ii) any payment to a political party of a state or locality where the investment adviser is providing or seeking to provide investment advisory services to a government entity. See 17 CFR § 275.206(4)-5(a)(2).

⁵ See 17 CFR § 275.206(4)-5(d).

⁶ See 17 CFR § 275.206(4)-5(f)(5).

⁷ See 17 CFR § 275.206(4)-5(f)(6).

⁸ See Adopting Release, at 45.

⁹ See 17 CFR § 275.206(4)-5(f)(2).

¹⁰ See 17 CFR § 275.206(4)-5(f)(1).

¹¹ See 17 CFR § 275.206(4)-5(b)(1).

¹² See Adopting Release, at 59.

¹³ See 17 CFR § 275.206(4)-5(a)(1) and Adopting Release, at 58-59; 17 CFR § 275.206(4)-5(b)(2) and Adopting Release, at 60-61.

¹⁴ See 17 CFR § 275.206(4)-5(a)(1) and 17 CFR § 275.206(4)-5(b)(2).

¹⁵ See Adopting Release, at 60-61.

¹⁶ See Adopting Release, at 59, n. 206.

¹⁷ See Adopting Release, at 59, n. 206.

¹⁸ See 17 CFR § 275.206(4)-5(b)(3)(i)(A)-(C).

¹⁹ See 17 CFR § 275.206(4)-5(b)(3)(ii)-(iii).

²⁰ See 17 CFR § 275.206(4)-5(e).

²¹ See 17 CFR § 275.206(4)-5(e)(1)-(6).

²² See Advisers Act Release No. 6937 (Jan. 8, 2026), <https://bit.ly/4fvdRf4>, and Advisers Act Release No. 6938 (Jan. 8, 2026), <https://bit.ly/4tOagw1>.

²³ Press Release, U.S. Securities and Exchange Commission, SEC Charges Four Investment Advisers for Pay-to-Play Violations Involving Campaign Contributions (Sept. 15, 2022), available here: <https://bit.ly/3PLjWJX>.

²⁴ See 17 CFR § 275.206(4)-5(b)(3)(i)(A)-(C); Advisers Act Release No. 6126 (Sept. 15, 2022), <https://bit.ly/4fve4Po> (imposing a civil penalty of \$95,000 related to a campaign contribution of \$1,000); Advisers Act Release No. 6127 (Sept. 15, 2022), <https://bit.ly/4nCDaht>, (imposing a civil penalty of \$45,000 related to a \$1,000 contribution); Advisers Act Release No. 6128 (Sept. 15, 2022), <https://bit.ly/4dx9Fsn>, (imposing a civil penalty of \$95,000 related to a \$1,000 contribution); and Advisers Act Release No. 6129 (Sept. 15, 2022), <https://bit.ly/4dy1ZWW>, (imposing a civil penalty of \$70,000 related to campaign contributions of \$400 and \$1,000).

²⁵ See Advisers Act Release No. 6126, <https://bit.ly/4wDboFx>; Advisers Act Release No. 6127, <https://bit.ly/4uQgywi>; Advisers Act Release No. 6128, <https://bit.ly/42MatVH>; and Advisers Act Release No. 6129, <https://bit.ly/49dbmu5>.

²⁶ See Advisers Act Release No. 6126, <https://bit.ly/4tKmXbo>, and Advisers Act Release No. 6128, <https://bit.ly/3PM2Onn>. In both cases, the Rule’s limited exception for returned contributions did not apply. See Rule 206(4)-5(b)(3).

²⁷ See Advisers Act Release No. 6128, <https://bit.ly/3RvFdYv>, and Advisers Act Release No. 6129, <https://bit.ly/49dbGch>.

²⁸ See Advisers Act Release No. 6126, <https://bit.ly/4dkQEL9>; Advisers Act Release No. 6127, <https://bit.ly/4dy2ArE>; Advisers Act Release No. 6128, <https://bit.ly/4dSHndt>; and Advisers Act Release No. 6129, <https://bit.ly/3Rlq8bZ>.

²⁹ See Advisers Act Release No. 6662 (Aug. 19, 2024), <https://bit.ly/4eW0538>.

³⁰ See Advisers Act Release No. 6662, <https://bit.ly/4eW0538>.

³¹ See Advisers Act Release No. 6662, <https://bit.ly/4eW0538>.

³² See Advisers Act Release No. 6662, <https://bit.ly/4eW0538>.

³³ See Sam Bojarski, SEC weighs changes to advisor pay-to-play rule, Citywire (Mar. 25, 2026), available here: <https://bit.ly/49cQbIA>.

³⁴ See Statement, Commissioner Hester M. Peirce, U.S. Securities and Exchange Commission, *Laudable Ends, Poorly Pursued: Statement Regarding Recent Pay-to-Play Rule Settlements* (Sept. 15, 2022) available here: <https://bit.ly/4eVQIMn>.

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