SEC Proposes to Rescind Advisers Act Pay-to-Play Rule (But Don't Delete Your Policies Yet)

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On September 3, 2026, the Securities and Exchange Commission proposed to rescind Rule 206(4)-5 under the Investment Advisers Act of 1940, commonly known as the "Pay-to-Play Rule," in its entirety. This would be a significant development for advisers that manage assets for state and local government entities, and welcome relief given the rule's strict liability framework and severe consequences for relatively minor foot faults. The proposal remains only a proposal, and any final rescission would not become effective before the 2026 midterm elections. Furthermore, rescission would not mean pay-to-play compliance disappears. Other Advisers Act obligations, state laws and local laws, pension plan policies and side letter undertakings may limit the practical impact of the rescission.

Background

Adopted in 2010 in the context of several major scandals involving selection of investment advisers by state and local public pension funds, the Pay-to-Play Rule generally prohibits an investment adviser from receiving compensation for providing investment advisory services to a state or local government entity within two years of a political contribution by the adviser or its "covered associates" to officials with direct or indirect authority to select investment advisers on behalf of such entity. The rule also applies to advisers to investment funds in which a government entity invests, and to contributions to candidates for public office in addition to officeholders themselves.

In the years since adoption, the rule has proven to be rigid and prone to overdeterrence. The release proposing the rescission of the rule identifies several concerns frequently raised by industry participants, including that it operates as a *de facto* strict liability standard, the possibility that relatively small "foot fault" contributions can trigger a two-year compensation ban, coverage of contributions far beyond those that actually affect adviser selection and the tendency of some advisers to impose broader political contribution bans than are actually required. While there is a *de minimis* exception and an exemptive process exists for advisers who identify a foot fault, they have proven cumbersome in practice. It was no secret that the SEC was taking these concerns seriously, and its Regulatory Flexibility Agenda indicated that changes were likely; however, the SEC's previous statements had suggested that the rule would be amended, not rescinded entirely.

What Would Change

If adopted as proposed, the rescission would eliminate Rule 206(4)-5, the operative provisions of the Pay-to-Play Rule, as well as Rule 204-2(a)(18), which contains specific recordkeeping requirements relating to the Pay-to-Play Rule. These rules would not be replaced with any new specific requirements.

What Would Not Change

The proposal would not eliminate rules that are closely related to the Pay-to-Play Rule. For example, broker-dealers would remain subject to FINRA rules that have similar requirements to the Pay-to-Play Rule. Registered municipal advisers would also remain subject to the Municipal Securities Rulemaking Board's own pay-to-play prohibitions (which predated and served as the model for the Pay-to-Play Rule). Similarly, securities-based swap dealers would remain subject to Exchange Act Rule 15Fh-6. Commodities-based swap dealers, which are regulated by the CFTC rather than the SEC, would remain subject to the CFTC's pay-to-play rule, Rule 23.451. Investment advisers that are dually registered as broker-dealers, municipal advisors or securities- or commodities-based swap dealers thus would remain subject to those other rules. Advisers that use third-party placement agents for government entity business also should separately assess whether those intermediaries remain subject to pay-to-play restrictions.

Importantly, many states have laws prohibiting pay-to-play conduct, in certain cases imposing prophylactic provisions generally similar to the Pay-to-Play Rule. Even when no statewide law applies, certain state pension plans have written policies with similar effects, and in many cases have required the managers of funds in which those plans invest to agree contractually (typically via side letter) to comply with those policies. If the Pay-to-Play rule is rescinded, these state laws and policies would not necessarily be similarly rescinded and a careful review of those provisions may therefore be advisable.

The Pay-to-Play Rule is a prophylactic rule designed to prevent contributions that *could* give rise to corrupt conduct, but in a way that the SEC now believes is “burdensome” and “complex”, creating “a *de facto* strict liability standard”. While the prophylactic provisions would no longer apply, the SEC is not proposing to legalize pay-to-play conduct. In fact, the proposing release emphasizes that pay-to-play practices violate the U.S. securities laws, including the antifraud provisions of the Advisers Act, and notes that the SEC brought pay-to-play cases under the antifraud provisions before the Pay-to-Play Rule was adopted.

The release also expressly ties pay-to-play practices to conflicts of interest and fiduciary duty concerns. For example, the SEC states that an adviser creates a conflict and engages in a scheme to defraud a government plan or program when it participates in an arrangement in which a government official directs plan assets to an adviser because of a political contribution rather than the adviser’s qualifications or the investment’s merits.

The SEC also noted that existing recordkeeping obligations would preserve its oversight of these activities. Although it proposes to remove the Pay-to-Play Rule’s recordkeeping requirement under Rule 204-2(a)(18), Rule 204-2’s general obligations would remain, including the requirement to keep records showing compliance with an adviser’s own policies and code of ethics, such as records “relating to preventing pay-to-play practices”. Those records would still be available for SEC review on examination. Registered advisers should therefore confirm what their policies require and either keep the records or amend the policies.

Practical Takeaways for Advisers

1. **Do not simply delete pay-to-play policies**. Even if the rescission is adopted as proposed, advisers with actual or prospective government clients would still need policies and procedures reasonably designed to prevent violations of the Advisers

Act, including fraudulent pay-to-play practices. The proposing release specifically contemplates that some advisers may replace Pay-to-Play Rule policies with more tailored policies, while others may choose to maintain existing policies as part of their broader compliance program.

2. **Contribution monitoring may still be necessary**. The proposal expressly contemplates that certain advisers may continue to use their existing procedures, including contribution pre-clearance and monitoring, as part of a tailored pay-to-play compliance framework. The SEC specifically notes that this may be appropriate for larger advisers with multiple public pension plan relationships. This is especially relevant because, as noted above and below, the Pay-to-Play Rule is not the only law or contractual requirement that could be implicated by an employee's political contribution.
3. **State laws and pension plan policies continue to apply**. The proposing release acknowledges that advisers may need to comply with state and local laws addressing political contributions and public procurement. The SEC cites examples from Rhode Island, South Carolina and Philadelphia and, in our firm's experience, similar laws exist in numerous other jurisdictions. Even when a state law does not directly prohibit the relevant contribution, a pension plan may have written policies with similar effects. Violating those policies could itself be a violation of law.
4. **Side letters often contain pay-to-play undertakings**. Many advisers have agreed in side letters or similar agreements to comply with certain provisions relating to political contributions or placement agents. Some provisions explicitly require compliance with Rule 206(4)-5, while others restate the requirements of the law directly in the contract. How the rescission (if adopted) affects such provisions will need to be assessed on a case-by-case basis. If the provisions remain in effect, advisers would need to continue to comply with them irrespective of the rescission of the Pay-to-Play Rule.

Next Steps

The proposal is a significant and welcome development for advisers that have struggled with the Pay-to-Play Rule's strict liability framework and severe consequences for minor violations, but it is not self-executing. The 2026 midterm elections will take place 60 days from today. Because the comment period will remain open for 60 days after the proposal is published in the Federal Register, any final rescission would not become effective before the 2026 midterm elections. Advisers should therefore assume that the existing rule will continue to apply during the remainder of the election cycle.

Furthermore, a wholesale rescission is not a certainty. The SEC specifically requests comment on whether the rule should be rescinded in its entirety, whether compliance policies and codes of ethics are sufficient to address pay-to-play risk, whether alternatives would be preferable and whether other federal, state and local requirements sufficiently address the underlying concerns.

Advisers who wish to submit a comment may do so within 60 days of the publication of the proposal in the Federal Register.

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