Proskauer

Proskauer Submits Letter to the SEC Regarding Proposed Rescission of the Pay-to-Play Rule

November 9, 2026

Proskauer submitted a comment letter to the Securities and Exchange Commission (the "Commission") regarding its proposal to rescind Rule 206(4)-5 under the Investment Advisers Act of 1940, commonly known as the Pay-to-Play Rule. Proskauer recommends guidance and related measures to ensure that rescission provides meaningful relief while preserving protections against pay-to-play misconduct. The letter emphasizes that removing prescriptive requirements will provide limited relief if uncertainty about continuing obligations leads investment advisers to retain the same restrictions. Clear Commission guidance would help advisers tailor their compliance programs to their actual risks and provide a common framework for evaluating those programs in examinations.

Proskauer recommends that the Commission:

- Provide clear guidance on advisers' continuing obligations, distinguishing required measures from illustrative approaches to compliance.
- Establish a nonexclusive presumption that an appropriately tailored and effectively implemented program of periodic contribution monitoring satisfies advisers' pay-to-play control obligations under the Advisers Act, without requiring preclearance or prohibiting contributions above a specified threshold.
- Confirm that a policy breach or failure to detect misconduct does not, by itself, establish a violation of the Compliance Rule or Code of Ethics Rule.
- Avoid imposing separate requirements on exempt reporting advisers and foreign private advisers.
- Clarify that existing two-year time outs would not restrict compensation for advisory services provided after rescission takes effect.
- Consider opportunities to harmonize related SEC, FINRA, MSRB and CFTC pay-to-play rules that could limit the practical effect of rescission.

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