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Insights

SEC PROPOSES TO RESCIND THE INVESTMENT ADVISER "PAY-TO-PLAY" RULE

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On September 3, 2026, the Securities and Exchange Commission (the "SEC" or the "Commission") proposed to rescind Rule 206(4)-5 under the Investment Advisers Act of 1940 (the "Advisers Act"), commonly known as the "pay-to-play" rule, along with related recordkeeping requirements. The rule currently prohibits investment advisers from providing compensated investment advisory services to a government client for two years after the adviser or certain of its associates makes a political contribution to certain elected officials or candidates. If adopted, the proposal would eliminate this framework in its entirety, leaving pay-to-play conduct to be addressed through the Advisers Act's existing antifraud, fiduciary duty, compliance, and code of ethics requirements, as well as state, local, and federal election laws.

Key Takeaways

The SEC has proposed rescinding Rule 206(4)-5 and amending the Advisers Act recordkeeping rule to remove associated recordkeeping obligations.

The Commission cited significant unintended consequences from enforcement of the rule, including operational difficulty, a de facto strict liability standard, and outsized penalties for small or inadvertent contributions.

Other applicable Advisers Act protections such as the antifraud provisions, fiduciary duty obligations, the compliance rule, and the code of ethics rule would remain in place and, in the Commission's view, provide a sufficient framework to address pay-to-play conduct.

The public comment period will remain open for 60 days following publication of the proposing release in the Federal Register.

Background

Adopted in 2010, Rule 206(4)-5 was designed to reduce the risk that campaign contributions and other political support provided by investment advisers and their "covered associates" to elected officials or candidates could result in fraudulent pay-to-play arrangements in the award of government advisory business. The rule imposes a two-year “time-out” on compensated advisory services to a government client following a triggering contribution, together with related restrictions and recordkeeping obligations.

According to the SEC’s fact sheet accompanying the proposal, the Commission has determined that the rule has produced a number of unintended consequences over more than fifteen years of implementation, including:

- Advisers reporting that the rule is operationally challenging to implement and functions as a de facto strict liability standard, under which small donations or inadvertent “foot faults” can trigger substantial prohibitions;
- Advisers being prevented from hiring or promoting qualified individuals into “covered associate” roles for six months or two years following a contribution, even where the contribution has little or no relationship to pay-to-play practices and/or was made prior to their employment as a “covered associate”;
- Public pension plans being unable to retain the most qualified or cost-effective advisers, or losing existing advisers, because of a covered associate’s contributions during the two-year lookback period;
- Difficulty in identifying which persons qualify as an “official” able to influence the hiring of an investment adviser by a government entity, and in applying the “covered associate” definition; and
- A costly and time-consuming exemptive application process for advisers seeking relief from the rule’s prohibitions.

Statements from the Commission

SEC Chairman Paul S. Atkins stated that after more than fifteen years of experience administering the rule, it has proven “overly prescriptive” and has imposed serious penalties for small, often impulsive donations to candidates of both parties, including penalizing firms for contributions made by an employee before that person even joined the business. Chairman Atkins further stated that the rule’s implementation has effectively resulted in the suppression of political speech, noting that although the rule includes a de minimis allowance, many firms simply impose blanket prohibitions on employee political contributions rather than navigate the rule’s complexity, and that matters involving political contributions are more properly governed by local ordinances, state laws, and federal election regulations rather than by the SEC. He emphasized that rescission would not open the door to fraud, given that advisers remain subject to Advisers Act antifraud requirements, fiduciary duty obligations, and compliance and ethics rules.

Commissioner Mark T. Uyeda likewise supported the proposal, framing it in part as a constitutional matter. He emphasized that the Commission's regulations "must reflect both sound policy and constitutional principles," and that campaign contributions are a form of political expression protected by the First Amendment. Commissioner Uyeda observed that Rule 206(4)-5's prescriptive framework, including an automatic two-year ban triggered by even small contributions, "swept far beyond its intended target," chilling political participation without regard to whether any actual quid pro quo corruption occurred, and that many advisers responded by imposing blanket bans on employee contributions rather than navigating the rule's complexity. He noted that cases brought under the rule have rarely demonstrated actual quid pro quo conduct, and that the rule has instead operated as a strict liability regime imposing severe penalties for technical violations. He further noted that Sections 206(1) and (2) of the Advisers Act, which prohibit fraudulent, deceptive, or manipulative practices, have supported pay-to-play enforcement actions even before the rule's adoption, and that these provisions, together with the compliance and code of ethics rules, can continue to address pay-to-play conduct without resorting to blanket restrictions on political speech.

Commissioner Hester M. Peirce, a longtime critic of the rule, also supported the proposal, describing rescission as consistent with the First Amendment's protections of political speech. Commissioner Peirce stated that, although ensuring campaign donations do not drive adviser selection "makes sense," the rule "effectively functions as a restriction on political speech" that is broad in scope and narrow in its exceptions, and that the Commission's enforcement has "not moderated its breadth." She emphasized that the SEC "must tread carefully in curtailing such speech" and that rescission would not pave the way for pay-to-play practices, noting that the Advisers Act's antifraud provisions supported enforcement actions against pay-to-play conduct even before the rule was adopted. Commissioner Peirce also raised two questions for public comment. First, whether related political contribution rules (including MSRB Rule G-37, Exchange Act Rule 15Fh-6, and FINRA Rule 2030) should also be rescinded. Second, whether advisers will continue to impose blanket prohibitions on employee political contributions even after rescission, and whether Commission guidance could help prevent that outcome.

What the Proposal Would Do

Specifically, the proposal would: (i) rescind Rule 206(4)-5 in its entirety, eliminating the two-year time-out on compensated advisory services to government clients following a covered political contribution; and (ii) amend the Advisers Act recordkeeping rule to remove the provisions requiring registered investment advisers to make and keep records in connection with the political contribution rule. Other Advisers Act requirements, including the antifraud provisions, fiduciary duty obligations, the compliance rule, and the code of ethics rule, would remain fully applicable and, in the Commission's view, provide a sufficient framework to deter and address pay-to-play misconduct going forward.

Next Steps and Considerations for Advisers

The proposal is subject to a 60-day public comment period following publication in the Federal Register, and the rule remains in effect, unchanged, until the SEC takes further action to adopt a final rule.

Investment advisers, particularly those managing assets for government entities or public pension plans, should continue to comply with Rule 206(4)-5 in its current form while monitoring the rulemaking process. Advisers may wish to consider submitting comments on the proposal, particularly with respect to how any transition away from the current rule would affect existing compliance policies, employee political contribution restrictions, and recordkeeping practices. Advisers should also bear in mind that, even if the rule is ultimately rescinded, pay-to-play arrangements could still give rise to liability under the Advisers Act's general antifraud provisions and fiduciary duty standards, as well as under applicable state, local, and federal election laws.

We will continue to monitor developments in this rulemaking and provide further updates as the comment period progresses and as the Commission moves toward a final rule.

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