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SEC Proposes Rescinding Investment Adviser Pay-to-Play Rule

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The proposal would eliminate Rule 206(4)-5's two-year compensation ban, covered associate framework and third-party solicitor restrictions. Actual pay-to-play conduct would remain a potential antifraud and fiduciary-duty violation.

On September 3, 2026, the US Securities and Exchange Commission (SEC) proposed rescinding Rule 206(4)-5 under the Investment Advisers Act of 1940 (Advisers Act) – the investment adviser "pay-to-play" rule – in its entirety, together with the related political contribution recordkeeping requirements in Rule 204-2(a)(18).

The proposal does not mean that advisers are now free to enter quid pro quo arrangements. The SEC repeatedly emphasizes in the proposing release that such conduct remains fraudulent under the Advisers Act. The change is in the regulatory mechanism. Instead of a prophylactic rule that can impose serious consequences based solely on the showing of a covered contribution and the provision of compensated advisory services – without any showing of improper intent – the SEC would rely on the antifraud provisions, advisers' fiduciary duties and, for SEC-registered investment advisers (RIAs), the compliance rule and the code of ethics rule.

Exempt reporting advisers may see the biggest change

Rule 206(4)-5 is one of the relatively few substantive Advisers Act provisions that applies to exempt reporting advisers (ERAs) as well as RIAs. Rescission therefore would be particularly meaningful for private fund advisers that operate as ERAs. RIAs would continue to be subject to the compliance rule, Rule 206(4)-7, and the code of ethics rule, Rule 204A-1, which the SEC identifies as part of the framework for addressing pay-to-play risk after rescission. Since ERAs are not subject to those requirements, the principal federal constraint for them would be the antifraud framework itself. The SEC acknowledges in the release that the reduction in deterrence could therefore be greater for ERAs than for RIAs and expressly requested comment on that point.

What would go away

Rescission would eliminate the following Rule 206(4)-5 provisions:

- The two-year prohibition on receiving compensation from a government entity following a covered political contribution.
- The lookback provisions, which can reach contributions made before an individual joined the adviser or moved into a new role.

- Restrictions on soliciting or coordinating contributions to officials and payments to state and local political parties.
- The bar on paying third parties to solicit government business unless they qualify as "regulated persons."

Why the SEC is proposing it

In the release, the SEC points to several problems with the current rule. It describes Rule 206(4)-5 as operationally difficult, burdensome and unclear, noting that, in practice, the rule can function as a "de facto strict liability standard." A modest contribution or a compliance foot fault can cost two years of compensation even where there is little apparent relationship between the contribution and the award of business. The SEC also points to the rule's effect on hiring and promotion, the difficulty of determining whether a candidate is an "official" able to influence adviser selection, the breadth of "covered associate," and de minimis thresholds of $350 and $150 – available only to natural person covered associates – that have not been adjusted since 2010.

First Amendment concerns are also central to the proposal. The SEC focuses, in particular, on the rule's practical effect on political activity. Advisers may respond to its complexity and potentially severe consequences by prohibiting employee political contributions altogether, including contributions that present little or no pay-to-play risk. In practice, some firms go further, extending contribution restrictions to employees who are not covered associates and even to family members.

What would remain

Rescission would leave several important constraints in place.

Rescission would change, but not eliminate, the basis for SEC enforcement. The release states that the "Commission's ability to bring cases against investment advisers for fraudulent practices and violations of fiduciary duty for engaging in pay-to-play practices would remain unchanged. Investment advisers' fiduciary duty obligations and the broad anti-fraud provisions under the Federal securities laws would continue to apply following the proposed rescission of the political contribution rule." From an enforcement perspective, the difference is the requisite showing of intent. Unlike Rule 206(4)-5, the antifraud provisions require a showing of intent, even if only to establish negligence. Cases brought solely under the antifraud provisions would therefore generally require a more developed factual record than merely showing a prohibited contribution above a fixed threshold, as is sufficient for a Rule 206(4)-5 violation. However, where such factual record exists, the SEC could still bring enforcement actions for breaches of fiduciary duty and fraud under the antifraud provisions for quid pro quo arrangements.

In addition, for RIAs with government business, rescission would not eliminate pay-to-play from the compliance program. Rule 206(4)-7 would still require policies and procedures reasonably designed to prevent Advisers Act violations, including fraudulent pay-to-play practices. Under the proposal, preclearance, contribution thresholds, solicitor controls and monitoring would become tools an adviser could tailor to its actual risk profile rather than requirements imposed by Rule 206(4)-5. The SEC also suggests that advisers assess their codes of ethics in light of their particular pay-to-play risks and, if necessary, adjust the standard of business conduct to align with the policies and procedures they adopt.

The federal antifraud provisions are not the only potential source of exposure. Depending on the facts, state pay-to-play and anti-corruption laws, federal program bribery, and honest-services fraud statutes may also come into play. In addition, placement agents would not get a free hand. Pay-to-play rules of the Financial Industry Regulatory Authority and the Municipal Securities Rulemaking Board, as well as Rule 15Fh-6 under the Securities Exchange Act of 1934, would remain in place under the proposal. Commissioner Hester M. Peirce separately invited feedback on whether those rules should be rescinded as well.

Existing contractual requirements would also need to be reviewed. Limited partnership agreements, side letters, subscription documents and public plan investment management agreements often include representations, disclosure schedules or covenants keyed to Rule 206(4)-5. Those provisions would not automatically fall away if the rule is rescinded. Some sponsors may therefore continue to maintain elements of their current compliance framework because of contractual or investor requirements.

What should advisers do now?

For now, nothing about advisers' obligations under Rule 206(4)-5 has changed. This is a proposal, and the current rule, including its contribution limits, lookback provisions, compensation ban and solicitor restrictions, remains in effect unless and until the SEC adopts a final rescission. Existing compliance programs should keep running.

The more immediate compliance risk is practical. The proposal comes in the middle of a midterm election cycle, when covered associates may be receiving requests for political contributions. One foreseeable risk over the next several months is that a covered associate sees a headline about the SEC scrapping the pay-to-play rule and assumes the restrictions no longer apply. A short reminder that nothing has changed may be useful while the proposal is pending.

Two issues are worth watching in the comment process. One is transition, including how any final rule addresses conduct occurring before the rescission becomes effective. The other is scope. The release asks whether Rule 206(4)-5 should be rescinded entirely or instead modified – for example, by raising the de minimis limits, shortening the two-year timeout or lookback, narrowing the definitions of “official” and “covered associate,” or expanding the exemptive process. Comments will be due 60 days after publication in the Federal Register.

Firms also should not equate rescission with elimination of pay-to-play risk. The proposal would change where the line is drawn between an automatic regulatory violation and permissible political activity. It would not change the more serious question of whether a contribution was made to obtain or retain advisory business.

E.g., Section 206 of the Advisers Act, Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934, and Rule 17(a) of the Securities Act of 1933.

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