

GOVERNMENT AFFAIRS COMPLIANCE AND PAY-TO-PLAY RESTRICTIONS

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Seminar Takeaways

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On May 17, 2013, Skadden's Political Law Group held our annual seminar on Government Affairs Compliance and Pay-to-Play Restrictions. The seminar, led by the firm's Political Law partners, explored recent developments and what we view as key industry trends in 2013. The focus of the seminar was on campaign finance, pay-to-play, lobbying and gift laws, as well as corporate shareholder initiatives. The seminar also included interactive polls of key features of client compliance programs and efforts to address shareholder initiatives. The speakers, or any of your usual contacts at Skadden, would welcome the opportunity to discuss these topics in a more specific way at your convenience.

Recent Developments in Pay-to-Play

Our speakers discussed the latest developments around MSRB Rules G-17, 27, 37 and 38, SEC Rule 206(4)-5 and CFTC Rule 23.451. There also was discussion of special considerations with regard to upcoming elections in New Jersey, Virginia, New York City and Los Angeles. Our speakers discussed various compliance strategies to deal with pay-to-play laws. Attendees were polled regarding their pay-to-play compliance programs. Results are shown below:

- **How do you comply with pay-to-play rules?**

- 52% Pre-clear all employees.
- 41% Pre-clear covered associates/larger restricted group.
- 4% Prohibit covered associates/larger restricted group.
- 3% Prohibit all employees.

- **If you pre-clear, how do you pre-clear?**

- 49% Determine if each candidate is a covered official.
- 38% Assume coverage and only ensure that within \$150/\$350 de minimus.
- 13% Determine coverage of candidate for only very senior executives, but other wise just apply \$150/\$350 de minimus.

- **Do you legally vet consultants (such as the reps and warranties in the agreement or their background)?**

- 55% Yes.
- 45% No.

Corporate Shareholder Initiatives

A major issue surrounding corporate political activity is disclosure — the question of to what extent a corporation must disclose its political contributions, lobbying and related activities to its shareholders and the public generally. Attendees working for public companies were polled regarding these issues. Results are shown below:

- **Does your company publicly disclose corporate contributions to candidates, political parties and 527 groups?**

41% Yes.

59% No.

- **Does your company publicly disclose payments to trade associations that are used for lobbying or political purposes?**

24% Yes.

76% No.

- **If so, does your company publicly disclose the full amount of the dues or just the portion used for lobbying and political purposes?**

30% Yes.

70% No.

- **Does your company impose any restrictions on the trade associations, including any restrictions on making independent expenditures?**

22% Yes.

78% No.

- **Does your company make direct independent expenditures?**

9% Yes.

91% No.

- **Does your company publicly disclose payments to other tax-exempt organizations, such as 501(c)(4)s?**

11% Yes.

89% No.

- **Does your company publicly disclose ballot measure or referenda contributions?**

21% Yes.

79% No.

- **Does your company publicly disclose company managers by position or name who have final authority on political spending decisions?**

7% Yes.

93% No.

- **Does your company have a policy on political activity?**
 - 96% Yes.
 - 4% No.
- **If so, does your company make the policy publicly available on its website?**
 - 32% Yes.
 - 68% No.
- **Does your company's Board of Directors or Board Committee regularly oversee the company's corporate political activity?**
 - 59% Yes.
 - 41% No.
- **Does the company state that outside auditors or legal compliance experts provide periodic review of political activity compliance?**
 - 24% Yes.
 - 76% No.

Implementing an Effective Compliance Program

Our Political Law partners were joined by Kevin Rooney (Cerberus), Joanne McMahon (GE) and David Gillis (JPMorgan Chase) for a discussion of best practices in operating a thorough compliance program. Attendees were polled regarding these issues. Results are shown below:

- **Does your company have a separate compliance department?**
 - 60% Yes, and it has dotted supervisory line to legal department.
 - 30% Yes, and completely separate from legal department.
 - 10% No.
- **Does your company centralize political law compliance function, or does each business take care of own compliance?**
 - 55% We centralize all political law.
 - 22% We centralize only certain areas, such as pay-to-play.
 - 15% We only have one business so question is irrelevant.
 - 8% We do not centralize.
- **Is lobbying compliance function centralized?**
 - 55% Yes, for legislative and procurement lobbying.
 - 23% Yes, but only for legislative/government affairs lobbying.
 - 22% No.
- **Do your employees use technology or an electronic tracking tool (other than mere spreadsheet, Outlook calendar or e-mail surveys) to keep track of employee lobbying activity?**
 - 24% Yes.
 - 76% No.