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District Court Dismisses State Parties' Challenge to SEC Rule 206(4)-5

On September 30, 2014, Judge Beryl A. Howell of the U.S. District Court for the District of Columbia dismissed a challenge to the Securities and Exchange Commission's (SEC) Rule 206(4)-5 (Rule) for lack of subject matter jurisdiction. The court found that jurisdiction for review of the Rule lies exclusively with the Court of Appeals for the District of Columbia Circuit (Court of Appeals). As detailed in our [August 11 mailing](#), the New York and Tennessee State Republican Parties sued the SEC on August 7, challenging the Rule and seeking an injunction against enforcement of the Rule's political contribution restrictions with respect to federal contributions.

In the opinion dismissing this suit, Judge Howell explained that initial review of agency rules usually occurs at the district court level unless a statute specifically grants jurisdiction for direct review to a court of appeals. In this case, the court found that the Investment Advisers Act of 1940 (Act) vests jurisdiction for judicial review of its rules in the Court of Appeals. Specifically, under Section 213 of the Act, a party aggrieved by an order issued by the SEC must obtain review of such order with the Court of Appeals, and must do so by filing a petition within 60 days of the order. Based on *Investment Company Institute v. Board of Governors of the Federal Reserve System*, 551 F.2d 1270 (D.C. Cir. 1977), and subsequent precedent, Judge Howell found that direct review of SEC rules promulgated under the Act rests within the exclusive jurisdiction of the Court of Appeals because the term "order" encompasses the term "rule" for purposes of the jurisdictional issue.

Although the court dismissed the case for lack of subject matter jurisdiction, in dicta contained in a lengthy footnote, Judge Howell also cast serious doubt over the question of the plaintiffs' standing to bring the suit.

The plaintiffs have filed an appeal of the District Court's order as well as a petition for review by the Court of Appeals presenting the same substantive challenge to the Rule.

For a copy of the District Court's memorandum opinion, click [here](#).