



Political Law Alert

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Developments: Applying Federal Pay-to-Play Rules to Trump/Pence Inaugural and Transition Committees

For financial institutions subject to federal pay-to-play rules (SEC Rule 206(4)-5 for investment advisers, MSRB Rule G-37 for municipal bond underwriters and municipal advisors, and CFTC Rule 23.451 for swap dealers), questions have been raised as to whether contributions to the Trump/Pence Inaugural or Transition Committees (“Committees”) would trigger a ban under those Rules. This stems from the fact that Governor Pence will remain as the Governor of Indiana until January 9, 2017. As you may know, Governor Pence’s state office prevented financial institutions from contributing to the Trump/Pence presidential campaign because the Rules cover contributions made to covered state officials running for federal office.

We have received informal SEC staff guidance ([see attached email](#)) specifically stating that contributions to the Committees are not covered under SEC Rule 206(4)-5, which by extension means they are not covered under Rule G-37. In contrast, they are covered under CFTC Rule 23.451.

SEC Rule 206(4)-5 and MSRB Rule G-37

In defining a covered contribution, both Rules refer to “transition or inaugural expenses of the successful candidate for state or local office” without mentioning federal office. SEC Rule 206(4)-5(f)(1)(iii), MSRB Rule G-37(g)(vi)(A)(3) [emphasis added]. Moreover, footnote 154 of the SEC Release accompanying issuance of final Rule 206(5) states that “MSRB rule G-37 also covers payment of transition or inaugural expenses as contributions for purposes of its time out provision. See MSRB Rule G-37 Q&A, Question II.6. However, under neither rule does a contribution include the transition or inaugural expenses of a successful candidate for federal office.” SEC Release No. IA-3043 (Jul. 1, 2010)

As a result, even without the attached SEC staff guidance specifically referring to the Committees, there was a strong plain language argument that the Committees should not be covered. However, there was a practical question as to relaying such argument to SEC examiners. The attached guidance can act as a clear basis to relay such communication.

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CFTC Rule 23.451

Unlike the SEC and MSRB Rules, CFTC 23.451 includes in its definition of a covered contribution “transition or inaugural expenses incurred by the successful candidate for federal, state, or local office.” Rule 23.451(a)1(iii) [emphasis added]. As a result, the Committees are covered under this Rule.

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