April 30 / 2019 Edition / Issue VIII

Skadden

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An Update for Financial Institutions on Presidential Candidates Covered Under Federal Pay-to-Play Rules

Financial institutions and their employees may be subject to the following federal pay-to-play rules: SEC Rule 206(4)-5 for investment advisers; CFTC Rule 23.451 for commodities-backed swap dealers; FINRA Rule 2030 for broker-dealers that act as placement agents for investment advisers or their managed funds; and MSRB Rule G-37 for broker-dealers that underwrite municipal securities and municipal advisors.

Now that the 2020 Democratic presidential field has risen to roughly 20 candidates, we want to alert you that three of the announced candidates are covered under the above federal pay-to-play rules. In particular, these rules cover certain sitting state and local elected officials running for federal office. The three candidates are:

- Pete Buttigieg – the mayor of South Bend, Indiana;
- Wayne Messam – the mayor of Miramar, Florida; and
- Jay Inslee – the governor of Washington.

In accordance with the rules, an employee at a financial institution (1) may only give up to the applicable *de minimis* amount to such candidate, and (2) may not solicit or fund-raise for the candidate if the broker, dealer or adviser is engaging in, or seeking to engage in, covered business with an affected government entity. The amounts are:

- $350 per election under rules 206(4)-5, 23.451 and 2030; and
- $250 per election under Rule G-37.

The *de minimis* amounts above are based on the idea that any U.S. citizen is entitled to vote for a candidate for president.

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