

Political Law Compliance and Investigations Update

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SEC Penalizes Adviser in New Rule 206(4)-5 Proceeding

On April 15, 2024, the U.S. Securities and Exchange Commission (SEC) censured and imposed a \$60,000 civil penalty on Wayzata Investment Partners LLC (Wayzata) for violating SEC Rule 206(4)-5 (the Pay-to-Play Rule). Under the Pay-to-Play Rule, an investment adviser is prohibited from receiving compensation for managing a government entity's investments for two years after either the entity, a covered employee or a PAC they control makes a political contribution to certain state or local candidates or officials.

In this case, the Minnesota State Board of Investment (SBI) had invested \$300 million in funds advised by Wayzata between 2007 and 2013. In 2022, a Wayzata covered associate¹ made a \$4,000 contribution to an SBI board member. Under the Pay-to-Play Rule, this contribution triggered a two-year "time out" on Wayzata's ability to provide investment advisory services for compensation to SBI. However, Wayzata continued to provide investment advisory services to SBI-invested funds in violation of the Rule and the SEC issued its penalties as discussed above.

Beyond the facts and penalties, the settlement is noteworthy because of the accompanying statements from the SEC commissioners. While the majority opinion underscores that the Pay-to-Play Rule "does not require a showing of quid pro quo or actual intent to influence an elected official or candidate," Commissioner Hester Peirce dissented, as she previously did on Pay-to-Play Rule cases in 2022. We previously discussed those dissents in our March 2023 article, "[The SEC Pay-to-Play Rule for Investment Advisers as it Turns 12.](#)" In this new dissent, Commissioner Peirce continued to argue that (i) the Pay-to-Play Rule intrudes on personal political activity unrelated to investment advisory business, (ii) the SEC has other tools available to punish pay-to-play activity affecting business and (iii) the SEC should consider how the Pay-to-Play Rule could be adjusted. Though Commissioner Peirce's position still does not command a majority among the commissioners, we will have to wait and see if her views gain traction within the SEC going forward.

¹ Covered associates are defined to include: (i) any general partner, managing member or executive officer, or other individual with a similar status or function; (ii) any employee who solicits a government entity for the investment adviser and any person who supervises, directly or indirectly, such employee; and (iii) any political action committee controlled by the investment adviser or by any of its covered associates. See Rule 206(4)-5(f)(2).

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