

# Political Law Compliance and Investigations Update

August 6 / 2024 Edition / Issue XIV

If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

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## Contributions to Harris/Walz Campaign Are Subject to Pay-to-Play Rules

Vice President Kamala Harris announced today that she has selected Minnesota Gov. Tim Walz as her vice presidential running mate in her bid for president. Contributions to the Harris/Walz campaign are now subject to the prohibitions and restrictions under the following federal pay-to-play rules:

- SEC Rule 206(4)-5 for investment advisers.
- CFTC Rule 23.451 for swap dealers.
- MSRB Rule G-37 for broker-dealers that underwrite municipal securities and municipal advisors.
- FINRA Rule 2030 for third-party and affiliated placement agents.
- SEC Rule 15Fh-6 for securities-based swap dealers that engage in a securities-based swap with a state or local governmental counterparty.

The above rules apply because they cover certain sitting elected state officials, such as a governor, running for federal office. Similar issues arose when former President Donald Trump selected Indiana Gov. Mike Pence as his running mate in 2016.

In 2008, after presidential candidate John McCain selected Alaska Gov. Sarah Palin as his running mate, the Municipal Securities Rulemaking Board (MSRB) sent a notice to the broker-dealer industry reminding them that contributions to the McCain/Palin campaign would trigger the ban under Rule G-37. At that time, Rule G-37 was the only federal pay-to-play rule in existence.

Contributions to the Harris/Walz campaign by a dealer/adviser covered under any of the above rules, its covered employees (*i.e.*, covered associates, municipal finance professionals or municipal advisor professionals) and their controlled political action committees (PACs) would trigger the relevant two-year ban on business or compensated business with the affected Minnesota government entities.

However, the rules have a de minimis exemption for a covered individual's contribution — \$350 under the Commodity Futures Trading Commission (CFTC), Financial Industry Regulatory Authority (FINRA) and Securities and Exchange Commission (SEC) rules, and \$250 under Rule G-37 — which turns on whether the individual is entitled to vote for the candidate.

For purposes of this exemption, every covered donor may be deemed to qualify under this exemption, not only those who reside in Minnesota.

Moreover, covered persons are prohibited from soliciting or fundraising for the Harris/Walz campaign to the extent the dealer/adviser is engaging in, or seeking to engage in, covered business with an affected Minnesota government entity.

# Contributions to Harris/Walz Campaign Are Subject to Pay-to-Play Rules

Potential donors should note that there is no way to contribute to Harris' campaign without also giving to Walz, given that they run as a joint ticket and will have a single consolidated campaign.

The above prohibitions also impact contributions made to and solicited for Harris' joint fundraising committees (Harris Victory Fund and Harris Action Fund), which raise money directly for Harris (and now Harris/Walz) and various political party committees. Moreover, even contributions to the Democratic

National Committee (DNC) could be affected under the "indirect provisions" of the rules, depending on the circumstances under which the money is raised.

Giving and soliciting contributions to the Harris Victory Fund raised potential issues even before the selection of Gov. Walz, given the participation of state political parties in that committee.

Please contact us with questions.

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