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Political Law

Compliance and Investigations Update

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SEC Proposes Rescission of Investment Adviser Pay-to-Play Rule

Executive Summary

- **What's new:** The SEC announced a proposal to rescind Rule 206(4)-5 under the Investment Advisers Act in its entirety, including its prohibition on certain political contributions and its restrictions on the use of certain placement agents to solicit state and local government investors.
- **Why it matters:** The proposal is likely to be of particular interest to investment advisers, who have been subject to the rule's "de facto" strict-liability standard, including an automatic two-year compensation ban even for small-dollar contributions that are often inadvertent foot-faults.
- **What to do next:** Public comments may be submitted now and will be due 60 days after the proposal is published in the Federal Register.

On September 3, 2026, the Securities and Exchange Commission (SEC) announced a proposal to rescind Rule 206(4)-5 (the Rule) under the Investment Advisers Act. The proposal would rescind the Rule in its entirety — not only its prohibition on certain political contributions, but also its restrictions on the use of certain placement agents (including third parties and affiliates) to solicit state and local government investors — as well as related recordkeeping requirements. The proposed rescission follows the Office of Information and Regulatory Affairs' completion of its review of the proposal, which we described in an August 18, 2026, client alert.

In its 110-page release, the SEC sets out its reasons for proposing rescission, citing, among other things, the overbreadth of the definitions of "covered associate" and "official" and of the look-back provisions, the low de minimis contribution limits, and what it describes as the Rule's "de facto" strict-liability standard. The SEC notes that the Rule imposes an automatic and substantial penalty — a two-year ban on receiving compensation for investment advisory services from affected government investors — even for small-dollar contributions that are often inadvertent foot-faults, a result it considers unduly disproportionate.

The SEC also states that existing safeguards under the Advisers Act and related rules, including the Act's prohibition on fraudulent, deceptive and manipulative practices, are likely sufficient to address pay-to-play concerns, and it further cites applicable anticorruption laws and state and local pay-to-play laws. Although the SEC considered alternatives to rescission, including targeted amendments, it criticizes features inherent in the Rule's design, including the "de facto" strict-liability ban on certain contributions. The SEC also acknowledges that the Rule has led many advisers to prohibit political contributions by employees altogether, raising serious First Amendment concerns.

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The proposal now moves to the public comment stage, with the SEC posing 20 questions for comment. Many of the questions invite industry participants and other commenters to weigh in on the SEC's stated concerns with the Rule. Additionally, below are some of the more notable questions, which are likely to be of particular interest to advisers:

- The SEC asks whether, rather than rescinding the Rule outright, it should instead:
  - merely amend specific provisions it views as most problematic — such as the definitions of "official" and "covered associate" and the look-back periods; or
  - replace the current strict-liability regime with a principles-based framework.
- The SEC recognizes that rescission of the Rule may require advisers to revise their policies and procedures to address pay-to-play concerns in the Rule's absence. It asks whether, and to what extent, it should prescribe how advisers address those concerns through policies and procedures and codes of ethics adopted under Rules 206(4)-7 and 204A-1, respectively, including by requiring certain minimum elements or providing additional interpretive guidance.
- The SEC asks whether, if the Rule is rescinded, it should impose enhanced disclosure obligations, such as requiring advisers to disclose to the SEC how their policies and procedures address pay-to-play risks.
- The SEC asks how rescission of the Rule would affect the application of other federal pay-to-play rules (MSRB Rule G-37, FINRA Rule 2030, CFTC Rule 23.451 and SEC Rule 15Fh-6).
- The SEC asks for data on the Rule's impact on competition in the market for investment advisers to government clients and in the investment adviser labor market, as well as on the extent to which advisers use third parties to solicit government entities.

Public comments may be submitted now and will be due 60 days after the proposal is published in the Federal Register.

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