Client Memorandum

September 9, 2026

SEC Proposes Rescission of Political Contribution Rule for Investment Advisers

Executive Summary

On September 3, 2026, the U.S. Securities and Exchange Commission (the "SEC") proposed to rescind, in its entirety, rule 206(4)-5 under the Investment Advisers Act of 1940, as amended (the "Advisers Act")—the "political contribution rule." The proposal would eliminate the corresponding recordkeeping provisions under rule 204-2(a)(18) of the Advisers Act as well.[1] The political contribution rule generally bars an investment adviser from receiving compensation for providing advisory services to a government entity for two years after the adviser or a "covered associate" makes a triggering political contribution to certain officials or candidates, and separately restricts the use of third-party solicitors and coordination of contributions.

The SEC has proposed to move away from the bright-line tests under the existing political contribution rule and instead rely on a more principles-based approach. The SEC believes that existing requirements of the Advisers Act and its associated rules, including prohibitions on fraud, fiduciary duty requirements, rule 206(4)-7 (the compliance rule) and rule 204A-1 (the code of ethics rule), are likely sufficient to address pay-to-play practices, while allowing an adviser the flexibility to implement an approach that is more appropriately tailored to its particular risks, rendering the existing political contribution rule unnecessary.

Comments on the proposal are due 60 days after publication in the *Federal Register*.

Key Takeaways

- **Existing Political Contribution Rule Will Apply Throughout the 2026 Midterm Elections**. Given the timeline of the rulemaking, the current political contribution rule will remain in place during the 2026 midterm elections.

- **Rescission Is Not Equivalent to Deregulation**. Pay-to-play activities remain prohibited under the Advisers Act's existing framework, including antifraud provisions and an adviser's fiduciary duty. In particular, the SEC notes that it has historically brought pay-to-play enforcement actions prior to the rule's 2010 adoption, and expects to continue to pursue fraudulent cases involving pay-to-play practices after the rescission. Moreover, separate pay-to-play regimes, including the Municipal Securities Rulemaking Board ("MSRB") political contribution rule (MSRB rule G-37), MSRB rule G-38, Financial Industry Regulatory Authority ("FINRA") rule 2030 and Exchange Act rule 15Fh-6, will not be altered by the rescission. Advisers—particularly those dually registered as broker-dealers or municipal advisors, or affiliated with entities subject to those regimes—should not assume that rescission of the political contribution rule meaningfully reduces their overall pay-to-play compliance burden.

[1] U.S. Securities and Exchange Commission, *Political Contributions by Certain Investment Advisers* (September 3, 2026), available here.

- **Compliance Policies Would Need to Be Reviewed**. If the political contribution rule is rescinded as proposed, advisers will need to adopt pay-to-play policies and procedures that are tailored to their specific circumstances, rather than the political contribution rule's bright-line tests.

- **Alternatives to Full Rescission**. The SEC has requested comment on a range of alternatives to rescinding the political contribution rule, including raising the *de minimis* contribution thresholds to $3,500 or another amount; reducing or eliminating the two-year timeout and lookback provisions; eliminating the "indirect" influence/supervision concept from the definitions of "official" and "covered associate"; and expanding the exemptive relief process. As such, the final rule may look different from the proposal.

Background

The political contribution rule was adopted in 2010 in the wake of the discovery of several pay-to-play schemes. It was designed to reduce the possibility that campaign contributions and other support of elected officials and candidates for public office by investment advisers and covered associates would result in fraudulent activity. The political contribution rule takes a prescriptive approach to deterring pay-to-play activities and sets forth a detailed framework that generally provides for the following:

(1) Prohibitions:

- *Ban on compensation and two-year lookback*. The political contribution rule generally makes it unlawful for an adviser to receive compensation for providing investment advisory services to a government entity (either directly or indirectly through a private fund) for a two-year period after the adviser or any of its "covered associates" makes a contribution to an official whose office is in a position to influence the award of advisory business.[2]

- *Ban on solicitation and coordination*. The political contribution rule generally prohibits an adviser from paying third parties (directly or indirectly) to solicit government entities for investment advisory services, or coordinating any contribution to an official or a political party where the adviser is providing or seeking to provide investment advisory services.[3]

- *Covered investment pools*. The restrictions under the political contribution rule extend to advisers of covered investment pools in which a government entity invests, as though the adviser is providing or seeking to provide investment advisory services directly to the government entity.[4]

(2) Exceptions:

- *De minimis*. Individuals who are "covered associates" are permitted to contribute up to $350 per election to an official for whom the contributor is entitled to vote, and up to $150 per election to an official for whom the contributor is *not* entitled to vote, in each case, without triggering the two-year timeout.[5]

- *New covered associates*. The two-year timeout is not triggered by a contribution made by a person more than six months prior to becoming a "covered associate," unless such person solicits clients after becoming a "covered associate."[6]

- *Returned contributions*. The two-year timeout is not triggered for any contribution that does not exceed $350, for which the adviser discovers the contribution within four months of the date it was made, and for which the contributor obtains its return within 60 days of the date of discovery by the adviser. [7]

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[2] *See* 17 CFR § 275.206(4)-5(a)(1).

[3] *See* 17 CFR § 275.206(4)-5(a)(2).

[4] *See* 17 CFR § 275.206(4)-5(c).

[5] *See* 17 CFR § 275.206(4)-5(b)(1).

[6] *See* 17 CFR § 275.206(4)-5(b)(2).

[7] *See* 17 CFR § 275.206(4)-5(b)(3).

- *Exemptions*. Additionally, an adviser may apply to the SEC for an order exempting it from the two-year timeout. The SEC may grant such an exemption on a case-by-case basis taking into account the relevant facts and circumstances of each application.[8]

In the years since its adoption, the rule has created operational challenges for advisers to implement due to its complexity and the breadth of its application.[9] In light of what it views as the unintended consequences of the political contribution rule, the SEC has proposed to rescind the rule in its entirety and instead permit advisers to address pay-to-play risks in a principles-based manner.

The Proposed Rescission of Rule 206(4)-5

The SEC proposes to rescind rule 206(4)-5 in its entirety, eliminating each of the prohibitions, exceptions and the exemptive-order process described above. In place of the political contribution rule's bright-line approach, the SEC would instead refer to:

- **Antifraud Provisions**. Under antifraud provisions of the Advisers Act,[10] an adviser is prohibited from making political contributions to influence an award of government business or as a quid pro quo for obtaining advisory business. The antifraud provisions would survive as an enforcement tool by the SEC to address pay-to-play practices after the proposed rescission of the political contribution rule.

- **Fiduciary Duty**. An adviser's fiduciary duty under the Advisers Act (as interpreted in the SEC's 2019 fiduciary duty interpretation[11]) requires the adviser to act in the best interests of its clients. Pay-to-play arrangements impair an adviser's ability to fulfill its fiduciary duties. This duty runs independently of rule 206(4)-5 and would apply to conduct that the rule's bright-line dollar thresholds might not otherwise capture.

- **The Compliance Rule**. Rule 206(4)-7 under the Advisers Act requires every SEC-registered adviser to implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules.[12] Under the more principles-based approach proposed by the SEC, an adviser will be required to design its own pay-to-play controls and tailor its compliance policies and procedures in accordance with its own business models and risk profiles to address its specific pay-to-play risks. This shifts significant judgment, and exposure if that judgment proves wrong, onto the adviser itself, which can be burdensome.

In connection with the rescission of rule 206(4)-5, the SEC also proposes to eliminate rule 204-2(a)(18), which requires an adviser to maintain lists of covered associates, government entity clients, contributions to officials and payments to regulated persons soliciting government business. However, notwithstanding the rescission of rule 204-2(a)(18) as proposed, advisers would continue to be required under other provisions of rule 204-2 to maintain records that address pay-to-play risk and which would be available for the SEC to review upon examination, including copies of their compliance policies and procedures and annual reviews,[13] their code of ethics and related violation records,[14] and written agreements with clients,[15] including government entity clients.

Next Steps

The proposal will be published in the *Federal Register*, opening a 60-day public comment period. Because the proposal is a rescission of an existing prescriptive rule rather than the imposition of new substantive requirements, the Commission has not proposed a transition or compliance date.

Pending finalization of the proposed rescission, the existing political contribution rule remains in full force and effect, and advisers should continue to comply with its current requirements—including, notably, throughout the 2026 midterm election

[8] *See* 17 CFR § 275.206(4)-5(e).

[9] *See supra* note 1.

[10] *See* 15 U.S.C. §§ 80b-6(1), (2), (4).

[11] U.S. Securities and Exchange Commission, *Commission Interpretation Regarding Standard of Conduct for Investment Advisers* (June 5, 2019), available here.

[12] *See* 17 CFR § 275.206(4)-7.

[13] *See* 17 CFR § 275.204-2(a)(17).

[14] *See* 17 CFR § 275.204-2(a)(12).

[15] *See* 17 CFR § 275.204-2(a)(10).

cycle. Advisers with "covered associates" who are involved in fundraising or campaign activity connected to the 2026 midterms should treat the existing dollar thresholds, lookback periods and "official" and "covered associate" definitions as fully applicable now; nothing in the proposal provides interim relief, a grace period or a safe harbor keyed to the rulemaking timeline, and the SEC's comment period alone will not conclude before the 2026 midterms are underway.

In the meantime, advisers—particularly those with existing public pension funds or state retirement plans in their current or prospective investor base—may wish to begin to assess how their compliance policies and procedures and code of ethics would need to be updated to address pay-to-play risk in a principles-based manner if the rule is rescinded as proposed, rather than waiting until a final rule is adopted to begin that assessment. Advisers may also wish to confirm which other pay-to-play regimes (state, local, MSRB, FINRA or Exchange Act rule 15Fh-6) will continue to apply to their business regardless of the outcome of this rulemaking.

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Our Investment Funds Regulatory & Compliance Contacts

John P. Cavanagh
+1-202-223-7453
jcavanagh@paulweiss.com

Prem Mohan
+44-20-7601-8769
pmohan@paulweiss.com

Eric L. Perelman
+1-212-373-3143
eperelman@paulweiss.com

Reva Raghavan
+44-20-7601-8751
rraghavan@paulweiss.com

Jennifer Songer
+1-202-223-7467
jsonger@paulweiss.com

Lindsey L. Wiersma
+1-212-373-3777
lwiersma@paulweiss.com

Associate Zhongji Wu contributed to this Client Memorandum.