

July 2, 2010

MEMORANDUM

RE: SEC Unanimously Adopts "Pay to Play" Restrictions

On June 30, 2010, the Securities and Exchange Commission voted unanimously to impose strict limitations on investment advisers engaging in the practice known as "pay to play." The new rule – proposed in July 2009 – relates to the practice of making campaign contributions to political figures who may be in a position to influence the hiring of money managers by public pension funds and "section 529" college savings plans.

As stated in the SEC's press release, the new rule contains three elements:

- It prohibits an investment adviser from providing advisory services for compensation — either directly or through a pooled investment vehicle — for two years, if the adviser or certain of its executives or employees make a political contribution to an elected official who is in a position to influence the selection of the adviser.
- It prohibits an advisory firm and certain executives and employees from soliciting or coordinating campaign contributions from others — a practice referred to as "bundling" — for an elected official who is in a position to influence the selection of the adviser. It also prohibits solicitation and coordination of payments to political parties in the state or locality where the adviser is seeking business.
- It prohibits an adviser from paying a third party, such as a solicitor or placement agent, to solicit a government client on behalf of the investment adviser, unless that third party is an SEC-registered investment adviser or broker-dealer subject to similar pay to play restrictions.

Note that the restrictions apply both to the adviser and to certain of its executives and employees. "Elected officials" include both incumbent officials and candidates for office, and we assume that being in a position to influence the selection of an adviser will broadly include both persons who sit on hiring boards as well as those who recommend or appoint board members.

There are *de minimis* exceptions for individuals, who may contribute \$350 per candidate in any election in which the individual is entitled to vote, and \$150 per candidate in any election where the contributor is not entitled to vote. The press release did not address whether there are any per-adviser aggregate limitations; however, there are limitations on funding contributions through proxies, such as spouses, lawyers or affiliated companies.

As of this writing, the actual text of the regulation has not been released. The rule will become applicable 60 days after the date of its publication in the Federal Register. The SEC's press release is available at: <http://www.sec.gov/news/press/2010/2010-116.htm>

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