Regulatory Notice 14-50

Political Contributions

FINRA Requests Comment on a Proposal to Establish a "Pay-to-Play" Rule

Comment Period Expires: December 15, 2014

Executive Summary

FINRA is requesting comment on a proposal to establish "pay-to-play"[1] and related rules that would regulate the activities of member firms that engage in distribution or solicitation activities for compensation with government entities on behalf of investment advisers that provide or are seeking to provide investment advisory services to such government entities within two years after a contribution to an official of the government entity is made by the member firm or a covered associate. This proposal responds to Rule 206(4)-5 under the Investment Advisers Act of 1940 (Advisers Act), which includes a provision that, upon its compliance date, will prohibit an investment adviser and its covered associates from providing or agreeing to provide, directly or indirectly, payment to a member firm to solicit a government entity for investment advisory services on behalf of the investment adviser unless the member firm is subject to a FINRA pay-to-play rule. Specifically, FINRA is seeking comment on three proposed new rules: Rule 2271 (Disclosure Requirement for Government Distribution and Solicitation Activities); Rule 2390 (Engaging in Distribution and Solicitation Activities with Government Entities); and Rule 4580 (Books and Records Requirements for Government Distribution and Solicitation Activities).

The text of the proposed rule can be found at *www.finra.org/notices/14-50*.

Questions concerning this *Notice* should be directed to Victoria L. Crane, Associate General Counsel, Office of General Counsel, at (202) 728-8104.

November 2014

Notice Type
- Request for Comment

Suggested Routing
- Compliance
- Government Securities
- Legal
- Municipal
- Registered Representatives
- Senior Management

Key Topics
- Disclosure
- Political Contributions
- Recordkeeping

Referenced Rules & Notices
- Advisers Act Rule 204-2
- Advisers Act Rule 204-4
- Advisers Act Rule 206(4)-3
- Advisers Act Rule 206(4)-5
- MSRB Regulatory Notice 2014-15
- MSRB Rule G-37
- SEA Rule 15Ba1-1

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Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by December 15, 2014.

Comments must be submitted through one of the following methods:

- Emailing comments to pubcom@finra.org; or
- Mailing comments in hard copy to:

  Marcia E. Asquith
  Office of the Corporate Secretary
  FINRA
  1735 K Street, NW
  Washington, DC 20006-1506

To help FINRA process comments more efficiently, persons should use only one method to comment on the proposal.

Important Notes: All comments received in response to this Notice will be made available to the public on the FINRA website. In general, FINRA will post comments as they are received.[2]

Before becoming effective, a proposed rule change must be authorized for filing with the Securities and Exchange Commission (SEC) by the FINRA Board of Governors, and then must be filed with the SEC pursuant to Section 19(b) of the Securities Exchange Act of 1934 (SEA or Exchange Act).[3]

Background & Discussion

In July 2010, the SEC adopted Advisers Act Rule 206(4)-5 addressing pay-to-play practices by investment advisers (the SEC Pay-to-Play Rule).[4] The SEC Pay-to-Play Rule prohibits an investment adviser from providing advisory services for compensation to a government entity for two years after the adviser or its covered associates make a contribution to an official of the government entity, unless an exception or exemption applies. In addition, it prohibits an investment adviser from soliciting from others, or coordinating, contributions to government entity officials or payments to political parties where the adviser is providing or seeking to provide investment advisory services to a government entity.

The SEC Pay-to-Play Rule also prohibits an investment adviser and its covered associates from providing or agreeing to provide, directly or indirectly, payment to any person to solicit a government entity for investment advisory services on behalf of the investment adviser unless the person is a "regulated person." A "regulated person" includes a member firm, provided that: (a) FINRA rules prohibit member firms from engaging in distribution

or solicitation activities if political contributions have been made; and (b) the SEC finds that such rules impose substantially equivalent or more stringent restrictions on member firms than the SEC Pay-to-Play Rule imposes on investment advisers and that such rules are consistent with the objectives of the SEC Pay-to-Play Rule.[5] This SEC ban on third party solicitations will be effective nine months after the compliance date of a final rule adopted by the SEC by which municipal advisors must register under the SEA.[6] The SEC adopted such a final rule on September 20, 2013, with a compliance date of July 1, 2014.[7]

Based on this regulatory framework, FINRA is proposing a pay-to-play rule, Rule 2390, modeled on the SEC Pay-to-Play Rule that would impose substantially equivalent or more stringent restrictions on member firms engaging in distribution or solicitation activities than the SEC Pay-to-Play Rule imposes on investment advisers. FINRA is also proposing rules that would impose recordkeeping and disclosure requirements on member firms in connection with political contributions.[8]

The proposed rules would establish a comprehensive regime to regulate the activities of member firms that engage in distribution or solicitation activities with government entities on behalf of investment advisers. FINRA believes that establishing requirements for member firms that are modeled on the SEC's Pay-to-Play-Rule is a more effective regulatory response to the concerns the SEC identified in the SEC Pay-to-Play Rule Adopting Release regarding third-party solicitations than an outright ban on such activity. For example, in the SEC Pay-to-Play Rule Adopting Release, the SEC stated that solicitors[9] or "placement agents"[10] have played a central role in actions that it and other authorities have brought involving pay-to-play schemes.[11] The SEC noted that in several instances, advisers allegedly made significant payments to placement agents and other intermediaries in order to influence the award of advisory contracts.[12] The SEC also acknowledged the difficulties that advisers face in monitoring or controlling the activities of their third-party solicitors.[13] Accordingly, the proposed rules are intended to enable member firms to continue to engage in distribution and solicitation activities with government entities on behalf of investment advisers while at the same time deterring member firms from engaging in pay-to-play practices.[14]

Proposed Pay-to-Play Rule

A. Two-Year Time Out

Proposed Rule 2390(a) would prohibit a covered member from engaging in distribution or solicitation[15] activities for compensation with a government entity on behalf of an investment adviser that provides or is seeking to provide investment advisory services to such government entity within two years after a contribution to an official of the government entity is made by the covered member or a covered associate (including a person who becomes a covered associate within the two years after the contribution is made). As discussed in more detail below, the terms and scope of this prohibition are modeled on the SEC Pay-to-Play Rule.[16]

The proposed rule would not ban or limit the amount of political contributions a covered member or its covered associates could make. Instead, it would impose a two-year time out on engaging in distribution or solicitation activities for compensation with a government entity on behalf of an investment adviser after the covered member or its covered associates make a contribution to an official of the government entity. Consistent with the two-year time out in the SEC Pay-to-Play Rule, the two-year time out in the proposed rule is intended to discourage covered members from participating in pay-to-play practices by requiring a cooling-off period during which the effects of a political contribution on the selection process can be expected to dissipate.

1. Covered Members

Proposed Rule 2390(h)(4) defines a "covered member" to mean "any member except when that member is engaging in activities that would cause the member to be a municipal advisor as defined in Exchange Act Section 15B(e)(4), SEA Rule 15Ba1-1(d)(1) through (4) and other rules and regulations thereunder." As noted above, the SEC Pay-to-Play Rule includes within its definition of "regulated person" SEC-registered municipal advisors, subject to specified conditions.[17] Specifically, the SEC Pay-to-Play Rule prohibits an investment adviser from providing or agreeing to provide, directly or indirectly, payment to an SEC-registered municipal advisor unless the municipal advisor is subject to a Municipal Securities Rulemaking Board (MSRB) pay-to-play rule.[18]

A member firm that solicits a government entity for investment advisory services on behalf of an unaffiliated investment adviser may be required to register with the SEC as a municipal advisor as a result of such activity.[19] Under such circumstances, MSRB rules applicable to municipal advisors, including any pay-to-play rule adopted by the MSRB, would apply to the member firm.[20] On the other hand, if the member firm solicits a government entity on behalf of an affiliated investment adviser, such activity would not cause the firm to be a municipal advisor. Under such circumstances, the member firm would be a "covered member" subject to the requirements of the proposed rule.[21]

2. Investment Advisers

The proposed rule would apply to covered members acting on behalf of any investment adviser registered (or required to be registered) with the SEC, or unregistered in reliance on the exemption available under Section 203(b)(3) of the Advisers Act for foreign private advisers, or that is an exempt reporting adviser under Advisers Act Rule 204-4(a).[22] The proposed rule's definition of "investment adviser" is consistent with the definition of "investment adviser" in the SEC Pay-to-Play Rule.[23] Thus, it would not apply to member firms acting on behalf of advisers that are registered with state securities authorities instead of the SEC, or advisers that are unregistered in reliance on exemptions other than Section 203(b)(3) of the Advisers Act.

3. Official of a Government Entity

An official of a government entity would include an incumbent, candidate or successful candidate for elective office of a government entity if the office is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser or has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser.[24] Government entities would include all state and local governments, their agencies and instrumentalities, and all public pension plans and other collective government funds, including participant-directed plans such as 403(b),[25] 457,[26] and 529 plans.[27]

Thus, the two-year time out would be triggered by contributions, not only to elected officials who have legal authority to hire the adviser, but also to elected officials (such as persons with appointment authority) who can influence the hiring of the adviser. As noted in the SEC Pay-to-Play Rule Adopting Release, a person appointed by an elected official is likely to be subject to that official's influences and recommendations. It is the scope of authority of the particular office of an official, not the influence actually exercised by the individual that would determine whether the individual has influence over the awarding of an investment advisory contract under the definition.[28]

4. Contributions

The proposed rule's time out provisions would be triggered by contributions made by a covered member or any of its covered associates. A contribution would include a gift, subscription, loan, advance, deposit of money, or anything of value made for the purpose of influencing the election for a federal, state or local office, including any payments for debts incurred in such an election. It would also include transition or inaugural expenses incurred by a successful candidate for state or local office.[29] Consistent with the SEC Pay-to-Play Rule, FINRA would not consider a donation of time by an individual to be a contribution, provided the covered member has not solicited the individual's efforts and the covered member's resources, such as office space and telephones, are not used.[30] Similarly, FINRA would not consider a charitable donation made by a covered member to an organization that qualifies for an exemption from federal taxation under the Internal Revenue Code,[31] or its equivalent in a foreign jurisdiction, at the request of an official of a government entity to be a contribution for purposes of the proposed rule.[32]

5. Covered Associates

As stated in the SEC Pay-to-Play Rule Adopting Release, contributions made to influence the selection process are typically made not by the firm itself, but by officers and employees of the firm who have a direct economic stake in the business relationship with the government client.[33] Accordingly, consistent with the SEC Pay-to-Play Rule, under the proposed rule, contributions by each of these persons, which the proposed rule describes as "covered associates," would trigger the two-year time out.[34]

In addition, a covered associate would include a political action committee, or PAC, controlled by the covered member or any of its covered associates as a PAC is often used to make political contributions.[35] Under the proposed rule, FINRA would consider a covered member or its covered associates to have "control" over a PAC if the covered member or covered associate has the ability to direct or cause the direction of governance or operations of the PAC.

6. "Look Back"

Consistent with the SEC Pay-to-Play Rule, the proposed rule would attribute to a covered member contributions made by a person within two years (or, in some cases, six months) of becoming a covered associate. This "look back" would apply to any person who becomes a covered associate, including a current employee who has been transferred or promoted to a position covered by the proposed rule. A person would become a "covered associate" for purposes of the proposed rule's "look back" provision at the time he or she is hired or promoted to a position that meets the definition of a "covered associate."

Thus, when an employee becomes a covered associate, the covered member must "look back" in time to that employee's contributions to determine whether the time out applies to the covered member. If, for example, the contributions were made more than two years (or, pursuant to the exception described below for new covered associates, six months) prior to the employee becoming a covered associate, the time out has run. If the contribution was made less than two years (or six months, as applicable) from the time the person becomes a covered associate, the proposed rule would prohibit the covered member that hires or promotes the contributing covered associate from receiving compensation for engaging in distribution or solicitation activities from the hiring or promotion date until the two-year period has run.

In no case would the prohibition imposed be longer than two years from the date the covered associate made the contribution. Thus, if, for example, the covered associate becomes employed (and engages in solicitation activities) one year and six months after the contribution was made, the covered member would be subject to the proposed rule's prohibition for the remaining six months of the two-year period. This "look back" provision, which is consistent with the SEC Pay-to-Play Rule, is designed to prevent covered members from circumventing the rule by influencing the selection process by hiring persons who have made political contributions.[36]

B. Disgorgement

If a covered member engages in distribution or solicitation activities for compensation with a government entity on behalf of an investment adviser within two years after a political contribution has been made to an official of the government entity, proposed Rule 2390(b)(1) would make clear that the covered member cannot receive any compensation or other remuneration pertaining to, or arising from, the distribution or solicitation activities from the investment adviser, a covered investment pool advised by the adviser or the government entity.

In addition, proposed Rule 2390(b)(2) would require that the covered member pay, in the order listed, any compensation or other remuneration received by the covered member pertaining to, or arising from, distribution or solicitation activities during the two-year time out to: (A) a covered investment pool in which the government entity was solicited to invest, as applicable; (B) the government entity; (C) any appropriate entity designated in writing by the government entity if the government entity or covered investment pool cannot receive such payments; or (D) the FINRA Investor Education Foundation, if the government entity or covered investment pool cannot receive such payments and the government entity cannot or does not designate in writing any other appropriate entity. Proposed Rule 2390(b)(3) would prohibit covered members from entering into arrangements with an investment adviser or government entity to recoup the disgorged compensation or other remuneration.

Although the SEC Pay-to-Play Rule does not include a similar "disgorgement" requirement, FINRA believes that such a requirement is appropriate for a violation of its pay-to-play rule and as a means to further discourage pay-to-play practices. In addition, FINRA notes that this disgorgement requirement would be in addition to any other sanctions that may be imposed for a violation of its pay-to-play rule.

C. Prohibition on Soliciting and Coordinating Contributions

Proposed Rule 2390(c) would prohibit a covered member or covered associate from coordinating or soliciting[37] any person or PAC to make any: (1) contribution to an official of a government entity in respect of which the covered member is engaging in, or seeking to engage in, distribution or solicitation activities on behalf of an investment adviser; or (2) payment[38] to a political party of a state or locality of a government entity with which the covered member is engaging in, or seeking to engage in, distribution or solicitation activities on behalf of an investment adviser. This provision is modeled on a similar provision in the SEC Pay-to-Play Rule[39] and is intended to prevent covered members or covered associates from circumventing the proposed rule's prohibition on direct contributions to certain elected officials such as by "bundling" a large number of small employee contributions to influence an election, or making contributions (or payments) indirectly through a state or local political party.[40]

D. Direct or Indirect Contributions or Solicitations

Proposed Rule 2390(f) further provides that it shall be a violation of Rule 2390 for any covered member or any of its covered associates to do anything that, if done directly, would result in a violation of the rule. This provision is consistent with a similar provision in the SEC Pay-to-Play Rule[41] and would prevent a covered member or its covered associates from funneling payments through third parties, including, for example, consultants, attorneys, family members, friends or companies affiliated with the covered member as a means to circumvent the proposed rule.[42]

E. Covered Investment Pools

Proposed Rule 2390(e) provides that a covered member that engages in distribution or solicitation activities with a government entity on behalf of an investment adviser to a covered investment pool[43] in which a government entity invests or is solicited to invest shall be treated as though the covered member was engaging in or seeking to engage in distribution or solicitation activities with the government entity on behalf of the investment adviser directly.[44] This provision is modeled on a similar prohibition in the SEC Pay-to-Play Rule[45] and would apply the prohibitions of the proposed rule to an investment adviser that manages assets of a government entity through a hedge fund or other type of pooled investment vehicle. Thus, the provision would extend the protection of the proposed rule to public pension plans that access the services of investment advisers through hedge funds and other types of pooled investment vehicles sponsored or advised by investment advisers as a funding vehicle or investment option in a government-sponsored plan, such as a "529 plan."[46]

F. Exceptions and Exemptions

As discussed in more detail below, the proposed rule contains exceptions that are modeled on similar exceptions in the SEC Pay-to-Play Rule for *de minimis* contributions, new covered associates and returned contributions.[47]

In addition, proposed Rule 2390(g) includes an exemptive provision for covered members that is modeled on the exemptive provision in the SEC Pay-to-Play Rule[48] that would allow covered members to apply to FINRA for an exemption from the proposed rule's two-year time out. Under this provision, FINRA would be able to exempt covered members from the proposed rule's time out requirement where the covered member discovers contributions that would trigger the compensation ban after they have been made, and when imposition of the prohibition would be unnecessary to achieve the rule's intended purpose. This provision would provide covered members with an additional avenue by which to seek to cure the consequences of an inadvertent violation by the covered member or its covered associates that falls outside the limits of one of the proposed rule's exceptions. In determining whether to grant an exemption, FINRA would take into account the varying facts and circumstances that each application presents.

1. *De Minimis* Contributions

Proposed Rule 2390(d)(1) would except from the rule's restrictions contributions made by a covered associate to government entity officials for whom the covered associate was entitled to vote[49] at the time of the contributions, provided the contributions do not exceed $350 in the aggregate to any one official per election. If the covered associate was not entitled to vote for the official at the time of the contribution, the contribution must not exceed $150 in the aggregate per election. Consistent with the SEC Pay-to-Play Rule, under both exceptions, primary and general elections would be considered separate elections.[50] These exceptions are based on the theory that such contributions are typically made without the intent or ability to influence the selection process.

2. New Covered Associates

Proposed Rule 2390(d)(2) would provide an exception from the proposed rule's restrictions for covered members if a natural person made a contribution more than six months prior to becoming a covered associate of the covered member unless the covered associate engages in, or seeks to engage in, distribution or solicitation activities with a government entity on behalf of the covered member. This provision is consistent with a similar provision in the SEC Pay-to-Play Rule.[51] As stated in the SEC Pay-to-Play Rule Adopting Release, the potential link between obtaining advisory business and contributions made by an individual prior to his or her becoming a covered associate who is uninvolved in distribution or solicitation activities is likely more attenuated than for a covered associate who engages in distribution or solicitation activities and, therefore, should be subject to a shorter look-back period.[52] This exception is also intended to balance the need for covered members to be able to make hiring decisions with the need to protect against individuals marketing to prospective employers their connections to, or influence over, government entities the employer might be seeking as clients.[53]

3. Certain Returned Contributions

Proposed Rule 2390(d)(3) would provide an exception from the proposed rule's restrictions for covered members if the restriction is due to a contribution made by a covered associate and: (1) the covered member discovered the contribution within four months of it being made; (2) the contribution was less than $350; and (3) the contribution is returned within 60 days of the discovery of the contribution by the covered member.

Consistent with the SEC Pay-to-Play Rule, this exception would allow a covered member to cure the consequences of an inadvertent political contribution to an official for whom the covered associate is not entitled to vote. As the SEC stated in the SEC Pay-to-Play Rule Adopting Release, the exception is limited to the types of contributions that are less likely to raise pay-to-play concerns.[54] The prompt return of the contribution provides an indication that the contribution would not affect a government entity official's decision to award business. The 60-day limit is designed to give contributors sufficient time to seek its return, but still require that they do so in a timely manner. In addition, the relatively small amount of the contribution, in conjunction with the

other conditions of the exception, suggests that the contribution was unlikely to have been made for the purpose of influencing the selection process. Repeated triggering contributions suggest otherwise. Thus, the proposed rule would provide that covered members with 150 or fewer registered representatives would be able to rely on this exception no more than two times per calendar year. All other covered members would be permitted to rely on this exception no more than three times per calendar year. In addition, a covered member would not be able to rely on an exception more than once with respect to contributions by the same covered associate regardless of the time period. These limitations are consistent with similar provisions in the SEC Pay-to-Play Rule.[55]

Proposed Disclosure Requirements

Proposed Rule 2271 would require a covered member engaging in distribution or solicitation activities for compensation with a government entity on behalf of one or more investment advisers to make specified disclosures to the government entity regarding each investment adviser. The disclosures must be in writing (which may be electronic) and provided at the time of the initial distribution or solicitation. In addition, the disclosures must include the following information:

- the fact that the covered member is engaging in distribution or solicitation activities on behalf of the investment adviser;
- the name of the investment adviser on whose behalf the covered member is engaging in distribution or solicitation activities;
- the nature of the relationship, including any affiliation, between the covered member and the investment adviser;
- a statement that the covered member will be compensated by the investment adviser for its distribution or solicitation activities and the terms of such compensation arrangement, including a description of the compensation paid or to be paid to the covered member;
- any incremental charges or fees that may be imposed on the government entity as a result of the distribution or solicitation engaged in by the covered member;
- the existence and details of any pecuniary, employment, business or other relationships between the covered member or any covered associate and any person affiliated with the government entity that has influence in the decision-making process in choosing an investment adviser; and
- the existence of the covered member's internal policies with respect to political contributions by covered associates and other associated persons.

Proposed Rule 2271 also would require covered members to update in writing any material changes to the information provided in these disclosures within 10 calendar days of the date of such changes.[56]

Proposed Recordkeeping Requirements

Proposed Rule 4580 would require covered members that engage in distribution or solicitation activities with a government entity on behalf of any investment adviser that provides or is seeking to provide investment advisory services to such government entity to maintain books and records that would allow FINRA to examine for compliance with proposed Rules 2271 and 2390. This provision is consistent with similar recordkeeping requirements imposed on investment advisers in connection with the SEC Pay-to-Play Rule.[57] The proposed rule would require covered members to maintain a list or other record of:

- the names, titles and business and residence addresses of all covered associates;
- the name and business address of each investment adviser on behalf of which the covered member has engaged in distribution or solicitation activities with a government entity within the past five years (but not prior to the rule's effective date);
- the name and business address of all government entities with which the covered member has engaged in distribution or solicitation activities on behalf of an investment adviser within the past five years (but not prior to the rule's effective date); and
- all direct or indirect contributions made by the covered member or any of its covered associates to an official of a government entity, or direct or indirect payments to a political party of a state or political subdivision thereof, or to a PAC.

The proposed rule would require that the direct and indirect contributions or payments made by the covered member or any of its covered associates be listed in chronological order and indicate the name and title of each contributor and each recipient of the contribution or payment, as well as the amount and date of each contribution or payment, and whether the contribution was the subject of the exception for returned contributions in proposed Rule 2390.

Economic Impact Analysis

A. Need for the Rule

The SEC Pay-to-Play Rule prohibits an investment adviser and its covered associates from providing or agreeing to provide, directly or indirectly, payment to any person to solicit a government entity for investment advisory services on behalf of the investment adviser unless the person is a "regulated person." A "regulated person" includes a member firm, provided that: (a) FINRA rules prohibit member firms from engaging in distribution or solicitation activities if political contributions have been made; and (b) the SEC finds that such rules impose substantially equivalent or more stringent restrictions on member firms than the SEC Pay-to-Play Rule imposes on investment advisers and that such rules are

consistent with the objectives of the SEC Pay-to-Play Rule. Thus, FINRA must propose its own pay-to-play rule to enable member firms to continue to engage in distribution and solicitation activities for compensation with government entities on behalf of investment advisers.

B. Regulatory Objective

The proposed rules would establish a comprehensive regime to regulate the activities of member firms that engage in distribution or solicitation activities with government entities on behalf of investment advisers. FINRA aims to enable member firms to continue to engage in such activities for compensation while at the same time deterring member firms from engaging in pay-to-play practices.

C. Economic Baseline

The baseline used to evaluate the impact of the proposed rules is the regulatory framework under the SEC Pay-to-Play Rule and the MSRB pay-to-play rules. In the absence of the proposed rules, some member firms currently engaging in distribution or solicitation activities with government entities on behalf of investment advisers would not be able to receive payments from investment advisers after the SEC's ban on third-party solicitors becomes effective. Since a "regulated person" also includes SEC-registered investment advisers and SEC-registered municipal advisors subject to MSRB pay-to-play rules, member firms dually registered with the SEC as investment advisers or municipal advisors may continue to engage in distribution or solicitation activities for compensation with government entities on behalf of investment advisers.

The member firms that would have to cease their distribution or solicitation activities for compensation with government entities on behalf of investment advisers may bear direct losses as a result of the loss of this business. In addition, the third-party solicitor ban may impact investment advisers and public pension plans.

Specifically, a decrease in the number of third-party solicitors may reduce the competition in the market for solicitation services. Some investment advisers may need to search for and hire new solicitors as a result of the ban to continue their solicitation activities. Due to limited capacity of third-party solicitors, investment advisers may encounter difficulties in retaining solicitors or delays in solicitation services. These changes would likely increase the costs to investment advisers that rely on third-party solicitors to obtain government clients.

To the extent that higher costs may reduce the number of investment advisers competing for government business, public pension plans may face limited investment opportunities. Allocative efficiency in the market for advisory services may be adversely affected.

D. Economic Impacts

1. Benefits

The proposed rules would enable member firms to continue to engage in distribution or solicitation activities for compensation with government entities on behalf of investment advisers within the regulatory boundaries of the proposed rules. By preventing a potentially harmful disruption in the member firms' solicitation business, the proposed rules may help member firms avoid some of the likely losses associated with the SEC's third-party solicitor ban. The proposed rules may also help promote competition and efficiency by allowing more third-party solicitors to participate in the market for solicitation services, which may in turn reduce costs to investment advisers and improve competition for advisory services.

The proposed rules are intended to establish a comprehensive regime to allow member firms to continue to engage in distribution or solicitation activities with government entities on behalf of investment advisers while deterring member firms from engaging in pay-to-play practices. FINRA believes the proposed rules would curb fraudulent conduct resulting from pay-to-play practices and, therefore, help promote fair competition in the advisory market and protect public pension funds and investors.

2. Costs

FINRA recognizes that covered members that engage in distribution or solicitation activities with government entities on behalf of investment advisers would incur costs to comply with the proposed rules on an initial and ongoing basis. Member firms would need to establish and maintain policies and procedures to monitor contributions the firm and its covered associates make and to ensure compliance with the proposed requirements. FINRA is interested in the prevalence of member firms' distribution or solicitation activities with government entities on behalf of investment advisers and requests comment on the number of member firms that would be affected by the proposed rules.

The compliance costs would likely vary across member firms based on a number of factors such as the number of covered associates, business models of members firms and the extent to which their compliance procedures are automated, whether the covered member is (or is affiliated with) a registered investment adviser subject to the SEC Pay-to-Play Rule, and whether the covered member is a registered municipal securities dealer and thus subject to MSRB pay-to-play rules. A small covered member with fewer covered associates may expend fewer resources to comply with the proposed rules than a large covered member. Covered members subject to (or affiliated with entities subject to) the SEC Pay-to-Play Rule or MSRB pay-to-play rules may be able to borrow from or build upon compliance procedures already in place. For example, FINRA estimates that approximately 400 member firms are currently subject to the MSRB pay-to-play rules. FINRA requests comment on the number of member firms that are subject to (or are affiliated with entities subject to) the SEC Pay-to-Play Rule or MSRB pay-to-play rules and the estimated compliance costs for these member firms.

The potential burden arising from compliance costs associated with the proposed rules can be initially gauged from the SEC's cost estimates for the SEC Pay-to-Play Rule. The SEC has estimated that investment advisers would spend between 8 and 250 hours to establish policies and procedures to comply with the SEC Pay-to-Play Rule.[58] The SEC further estimated that ongoing compliance would require between 10 and 1,000 hours annually.[59] The SEC estimated compliance costs for firms of different sizes. The SEC assumed that a "smaller firm" would have fewer than five covered associates that would be subject to the SEC Pay-to-Play Rule, a "medium firm" would have between five and 15 covered associates, and a "larger firm" would have more than 15 covered associates.[60] The SEC estimated that the initial compliance costs associated with the SEC Pay-to-Play Rule would be approximately $2,352 per smaller firm, $29,407 per medium firm, and $58,813 per larger firm.[61] It also estimated that the annual, ongoing compliance expenses would be approximately $2,940 per smaller firm, $117,625 per medium firm, and $235,250 per larger firm.[62] FINRA encourages comment on whether the affected members are similar to investment advisers in size, number of covered associates and other characteristics related to compliance. FINRA also requests comment on whether the proposed rules would impose similar compliance costs to member firms as the SEC estimated for investment advisers.

In addition, the SEC estimated the costs for investment advisers to engage outside legal services to assist in drafting policies and procedures. It estimated that 75 percent of larger advisory firms, 50 percent of medium firms, and 25 percent of smaller firms subject to the SEC Pay-to-Play Rule would engage such services.[63] The estimated cost included fees for approximately 8 hours of outside legal review for a smaller firm, 16 hours for a medium firm and 40 hours for a larger firm, at a rate of $400 per hour.[64] FINRA requests comment on the number of member firms that would engage similar legal services and the magnitude of the associated costs. FINRA also requests comment on whether some of the other costs estimated by the SEC, such as the cost to retain legal counsel to determine with certainty who could be a covered government official and the cost to apply for an exemption, would apply to member firms.

The SEC estimated that the recordkeeping requirements of the SEC Pay-to-Play Rule would increase an investment adviser's burden by approximately 2 hours per year,[65] which would cost the adviser $118 per year based on the SEC's assumption of a compliance clerk's hourly rate of $59.[66] In addition, the SEC estimated that some small and medium firms would incur one-time start-up costs, on average, of $10,000, and larger firms would incur, on average, $100,000 to establish or enhance current systems to assist in their compliance with the recordkeeping requirements.[67] FINRA preliminarily believes that the proposed recordkeeping requirements would impose an ongoing burden greater than 2 hours per year. Commenters are encouraged to provide cost estimates for compliance with the proposed recordkeeping requirements.

FINRA also requests public comment on compliance costs associated with the proposed disclosure requirements. The costs may be lower than the costs imposed by MSRB Rule G-37, which requires quarterly reports.

Since member firms that are dually registered as investment advisers (and thus subject to the SEC Pay-to-Play Rule) or municipal securities dealers or municipal advisors (and thus subject to the MSRB pay-to-play rules) should already have pay-to-play compliance policies and procedures in place, FINRA expects these member firms to provide useful information on compliance cost estimates through the public comment process. FINRA staff will estimate the compliance costs associated with the proposed rules to member firms based on information obtained through the process.

The proposed rules would also impose costs on FINRA. FINRA would need to develop policies and procedures to regulate the activities of member firms that engage in distribution and solicitation activities with government entities on behalf of investment advisers. FINRA needs to establish a regulatory infrastructure to manage regulatory processes, including regulatory support to members and potential challenges to its decisions. It would also need to train its staff about the pay-to-play practices in order to conduct effective regulatory reviews.

FINRA preliminarily estimates that it would spend approximately 150 hours to develop and train staff on policies and procedures to implement the proposed rules. FINRA expects to examine a member firm periodically on a one-, two-, three- or four-year cycle based upon, among other factors, FINRA's risk assessment of the member firm. The average frequency of an examination is estimated to be 3.29 years. Based on its experience with MSRB Rule G-37, FINRA estimates that an examiner would spend between 16 to 24 hours and up to 100 hours to examine a member firm's compliance with the proposed rules. In addition, FINRA is estimated to spend approximately one hour per examination to provide consultation on the proposed rules to member firms.

3. Competitive Effects

The proposed rules do not cover member firms that are SEC-registered municipal advisors subject to MSRB pay-to-play rules. On August 18, 2014, the MSRB issued a Regulatory Notice requesting comment on proposed MSRB pay-to-play rules applicable to municipal advisors. FINRA recognizes that both its and the MSRB's proposed rules are undergoing the public comment process and subject to modifications, but welcomes comment on any potential competitive impacts to member firms that might arise on the basis of any differences in the application of these rules.

Investment advisers may engage in distribution and solicitation activities with government entities on behalf of other investment advisers. Investment advisers that are FINRA members may be subject to either the proposed rules or the SEC Pay-to-Play Rule depending on the services they are performing. FINRA invites comment on whether any differences between the proposed rules and the SEC Pay-to-Play Rule would have any impact on competition in the market for solicitation services by member firms.

E. Regulatory Alternatives

Since the SEC requires that FINRA imposes "substantially equivalent or more stringent restrictions" on member firms than the SEC Pay-to-Play Rule imposes on investment advisers, FINRA believes it is appropriate to model the proposed rules on the SEC Pay-to-Play Rule.

Request for Comment

FINRA requests comment on all aspects of the proposed rules, including any potential costs and burdens of the proposed rules. FINRA requests that commenters provide empirical data or other factual support for their comments wherever possible. FINRA particularly requests comment on the following questions:

1. The proposed pay-to-play rule is modeled on the SEC Pay-to-Play Rule. Is this approach appropriate or are there alternative models that FINRA should consider that would be as or more effective in deterring pay-to-play practices and also meet the requirement in the SEC Pay-to-Play Rule that FINRA's rules impose substantially equivalent or more stringent restrictions on member firms than the SEC Pay-to-Play Rule imposes on investment advisers?
2. The proposed pay-to-play rule applies to covered members that engage in distribution or solicitation activities for compensation with a government entity on behalf of an investment adviser that provides or is seeking to provide investment advisory services to such government entity. Could member firms engage in activities with government entities that are not covered by this rule that should be covered? If so, what are those activities and how should FINRA design a pay-to-play rule to cover such activities?
3. FINRA is proposing to interpret and apply the terms in its proposed pay-to-play rule consistent with how the SEC has interpreted the terms in the SEC Pay-to-Play Rule. Is this approach appropriate? Are there terms that require additional clarification or that should be interpreted or applied differently? Are there differences between broker-dealers and investment advisers that would warrant a different interpretation or application of terms in the proposed rule?
4. How prevalent are pay-to-play practices by member firms? What are the effects of such pay-to-play practices on the ability to obtain business from government entities?
5. How prevalent are pay-to-play practices in connection with member firms engaging in distribution or solicitation activities with government entities on behalf of investment advisers that provide or are seeking to provide investment advisory services to the government entity? Would the proposed rules be effective at deterring such practices?

6. Are the proposed recordkeeping requirements appropriately tailored to obtain information that would be relevant for purposes of monitoring for compliance with the proposed rule?
7. Are the proposed disclosure requirements appropriately tailored to provide government entities with the information necessary for the government entity to determine if there are potential conflicts of interest that could influence the selection process by the government entity?
8. What would be the likely effects on competition, efficiency and capital formation of the proposed pay-to-play rule?
9. How many member firms are expected to be impacted by the proposed pay-to-play rule? What is the estimated number of covered associates per member firm?
10. What are the sources and estimates of benefits associated with the proposed pay-to-play rule, proposed disclosure requirements and proposed recordkeeping requirements?
11. What are the sources and estimates of compliance costs associated with the proposed pay-to-play rule, proposed disclosure requirements and proposed recordkeeping requirements? Would the proposed rules impose different costs based on the size or the business model of the member firm?
12. How many member firms would engage outside legal services to assist in drafting policies and procedures to comply with the proposed rules? What are the estimated costs?
13. How many member firms that would be impacted by the proposed pay-to-play rule are subject to (or are affiliated with entities subject to) the SEC Pay-to-Play Rule or MSRB pay-to-play rules? Would the compliance costs associated with the proposed rule be lower for these member firms? What are the estimates of compliance costs?
14. The proposed pay-to-play rule does not cover member firms that are SEC-registered municipal advisors subject to MSRB pay-to-play rules. FINRA recognizes that both its and the MSRB's proposed rules are still undergoing the public comment process and subject to modifications. Would the applicability of the two sets of rules on member firms create any competitive imbalances? What are they? How substantial are they?
15. Would the proposed pay-to-play rule create any competitive imbalances among member firms because some dually registered investment advisers would be subject to the SEC Pay-to-Play Rule while others would be subject to the proposed rule?
16. Are there any other expected economic impacts associated with the proposed rules? What are they, what entities would be impacted, and what are the estimates of those impacts?

Endnotes

1. "Pay-to-play" practices typically involve a person making cash or in-kind political contributions (or soliciting or coordinating others to make such contributions) to help finance the election campaigns of state or local officials or bond ballot initiatives as a *quid pro quo* for the receipt of government contracts.

2. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. *See Notice to Members 03-73* (November 2003) (Online Availability of Comments) for more information.

3. *See* SEA Section 19 and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the Federal Register. Certain limited types of proposed rule changes, however, take effect upon filing with the SEC. *See* SEA Section 19(b)(3) and SEA Rule 19b-4.

4. *See* Advisers Act Release No. 3043 (July 1, 2010), 75 FR 41018 (July 14, 2010) (Political Contributions by Certain Investment Advisers) ("SEC Pay-to-Play Rule Adopting Release"). *See* also Advisers Act Release No. 3221 (June 22, 2011), 76 FR 42950 (July 19, 2011) (Rules Implementing Amendments to the Investment Advisers Act of 1940); Advisers Act Release No. 3418 (June 8, 2012), 77 FR 35263 (June 13, 2012) (Political Contributions by Certain Investment Advisers; Ban on Third Party Solicitation; Extension of Compliance Date).

5. *See* SEC Pay-to-Play Rule 206(4)-5(f)(9). A "regulated person" also includes SEC registered investment advisers and SEC-registered municipal advisors, subject to specified conditions.

6. *See* Advisers Act Release No. 3418 (June 8, 2012), 77 FR 35263 (June 13, 2012).

7. *See* Exchange Act Release No. 70462 (September 20, 2013), 78 FR 67468 (November 12, 2013) (Registration of Municipal Advisors).

8. In connection with the adoption of the SEC Pay-to-Play Rule, the SEC also adopted recordkeeping requirements related to political contributions by investment advisers and their covered associates. *See* Advisers Act Rule 204-2(a)(18) and (h)(1).

9. "Solicitors" typically locate investment advisory clients on behalf of an investment adviser. *See* Advisers Act Release No. 2910 (August 3, 2009), 74 FR 39840, 39853 n.137 (August 7, 2009) (Political Contributions by Certain Investment Advisers).

10. "Placement agents" typically specialize in finding investors (often institutional investors or high net worth investors) that are willing and able to invest in a private offering of securities on behalf of the issuer of such privately offered securities. *See id.*

11. *See* SEC Pay-to-Play Rule Adopting Release, 75 FR 41018, 41037 (discussing the reasons for proposing a ban on using third parties to solicit government business).

12. *See id.*

13. *See id.*

14. In response to a request from SEC staff, FINRA previously indicated its intent to prepare rules for consideration by the SEC that would prohibit its member firms from soliciting advisory business from a government entity on behalf of an adviser unless the member firms comply with requirements prohibiting pay-to-play practices. *See letter* from Andrew J. Donohue, Director, Division of Investment Management,

SEC, to Richard G. Ketchum, Chairman & CEO, FINRA, dated December 18, 2009 (requesting whether FINRA would consider adopting a rule preventing pay-to-play activities by registered broker-dealers acting as legitimate placement agents on behalf of investment advisers). *See also letter* from Richard G. Ketchum, Chairman & CEO, FINRA, to Andrew J. Donohue, Director, Division of Investment Management, SEC, dated March 15, 2010 (stating "[w]e believe that a regulatory scheme targeting improper pay to play practices by broker-dealers acting on behalf of investment advisers is... a viable solution to a ban on certain private placement agents serving a legitimate function").

15. Consistent with the SEC Pay-to-Play Rule, proposed Rule 2390(h)(10) defines the term "solicit" to mean "(A) With respect to investment advisory services, to communicate, directly or indirectly, for the purpose of obtaining or retaining a client for, or referring a client to, an investment adviser; and (B) With respect to a contribution or payment, to communicate, directly or indirectly, for the purpose of obtaining or arranging a contribution or payment." The determination of whether a particular communication would be a solicitation would depend on the facts and circumstances relating to such communication. As a general proposition, any communication made under circumstances reasonably calculated to obtain or retain an advisory client would be considered a solicitation unless the circumstances otherwise indicate that the communication does not have the purpose of obtaining or retaining an advisory client. *See also infra* note 37.

16. *See* SEC Pay-to-Play Rule 206(4)-5(a)(1).

17. *See supra* note 5.

18. *See* SEC Pay-to-Play Rule 206(4)-5(a)(2)(i)(A) and 206(4)-5(f)(9).

19. *See* Exchange Act Section 15B(e)(9) and Rule 15Ba1-1(n) thereunder (defining "solicitation of a municipal entity" to mean "a direct or indirect communication with a municipal entity or obligated person made by a person, for direct or indirect compensation, on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser . . . that does not control, is not controlled by, or is not under common control with the person undertaking such solicitation for the purpose of obtaining or retaining an engagement by a municipal entity or obligated person of a broker, dealer, municipal securities dealer, or municipal advisor for or in connection with municipal financial products, the issuance of municipal securities, or of an investment adviser to provide investment advisory services to or on behalf of a municipal entity.")

20. On August 18, 2014, the MSRB issued a Regulatory Notice requesting comment on draft amendments to MSRB Rule G-37, on political contributions made by brokers, dealers and municipal securities dealers and prohibitions on municipal securities business, to extend the rule to cover municipal advisors. *See MSRB Regulatory Notice 2014-15* (August 2014).

21. FINRA notes that a person that is registered under the SEA as a broker-dealer and municipal advisor, and under the Advisers Act as an investment adviser could potentially be a "regulated person" for purposes of the SEC Pay-to-Play Rule. Such a regulated person should follow the rules that apply to the services it is performing.

22. *See* proposed Rule 2390(h)(6).

23. *See* SEC Pay-to-Play Rule 206(4)-5(a)(1).

24. Consistent with the SEC Pay-to-Play Rule, proposed Rule 2390(h)(7) defines an "official" to mean: "any person (including any election committee for the person) who was, at the time of the contribution, an incumbent, candidate or successful candidate for elective office of a government entity, if the office: (A) Is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity; or (B) Has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity."

25. A 403(b) plan is a tax-deferred employee benefit retirement plan established under Section 403(b) of the Internal Revenue Code of 1986 (26 U.S.C. 403(b)).

26. A 457 plan is a tax-deferred employee benefit retirement plan established under Section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457).

27. A 529 plan is a "qualified tuition plan" established under Section 529 of the Internal Revenue Code of 1986 (26 U.S.C. 529). Consistent with the SEC Pay-to-Play Rule, proposed Rule 2390(h)(5) defines a "government entity" to mean "any state or political subdivision of a state, including: (A) Any agency, authority or instrumentality of the state or political subdivision; (B) A pool of assets sponsored or established by the state or political subdivision or any agency, authority or instrumentality thereof, including but not limited to a "defined benefit plan" as defined in Section 414(j) of the Internal Revenue Code, or a state general fund; (C) A plan or program of a government entity; and (D) Officers, agents or employees of the state or political subdivision or any agency, authority or instrumentality thereof, acting in their official capacity."

28. *See* SEC Pay-to-Play Rule Adopting Release, 75 FR 41018, 41029 (discussing the terms "official" and "government entity").

29. Consistent with the SEC Pay-to-Play Rule, proposed Rule 2390(h)(1) defines a "contribution" to mean "any gift, subscription, loan, advance, or deposit of money or anything of value made for: (A) The purpose of influencing any election for federal, state or local office; (B) Payment of debt incurred in connection with any such election; or (C) Transition or inaugural expenses of the successful candidate for state or local office."

30. *See* SEC Pay-to-Play Rule Adopting Release, 75 FR 41018, 41030. The SEC also noted that a covered associate's donation of his or her time generally would not be viewed as a contribution if such volunteering were to occur during non-work hours, if the covered associate were using vacation time, or if the adviser is not otherwise paying the employee's salary (*e.g.*, an unpaid leave of absence). *See id.* at 41030 n. 157. FINRA would take a similar position in interpreting the proposed rule.

31. Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) contains a list of charitable organizations that are exempt from Federal income tax.

32. *See* SEC Pay-to-Play Rule Adopting Release, 75 FR 41018, 41030 (discussing the scope of the term "contribution" under the SEC Pay-to-Play Rule). *But see* proposed Rule 2390(f) providing that it shall be a violation of Rule 2390 for any covered member or any of its covered associates to do anything that, if done directly, would result in a violation of the rule.

33. *See* SEC Pay-to-Play Rule Adopting Release, 75 FR 41018, 41031.

34. Consistent with the SEC Pay-to-Play Rule, proposed Rule 2390(h)(2) defines a "covered associate" as: "(A) Any general partner, managing member or executive officer of a covered member, or other individual with a similar status or function; (B) Any associated person of a covered member who engages in distribution or solicitation activities with a government entity for such covered member; (C) Any associated person of a covered member who supervises, directly or indirectly, the government entity distribution or solicitation activities of a person in subparagraph (B) above; and (D) Any political action committee controlled by a covered member or a covered associate."

35. *See id.*

36. Similarly, consistent with the SEC Pay-to-Play Rule, to prevent covered members from channeling contributions through departing employees, covered members must "look forward" with respect to covered associates who cease to qualify as covered associates or leave the firm. The covered associate's employer at the time of the contribution would be subject to the proposed rule's prohibition for the entire two-year period, regardless of whether the covered associate remains a covered associate or remains employed by the covered member. Thus, dismissing a covered associate would not relieve the covered member from the two-year time out. *See* SEC Pay-to-Play Rule Adopting Release, 75 FR 41018, 41033 (discussing the "look back" in that rule).

37. Proposed Rule 2390(h)(10)(B) defines the term "solicit" with respect to a contribution or payment as "to communicate directly or indirectly, for the purpose of obtaining or arranging a contribution or payment." This provision is consistent with a similar provision in the SEC Pay-to-Play Rule. *See* SEC Pay-to-Play Rule 206(4)-5(f)(10)(ii). Consistent with the SEC Pay-to-Play Rule, whether a particular activity involves a solicitation or coordination of a contribution or payment for purposes of the proposed rule would depend on the facts and circumstances.

38. Consistent with the SEC Pay-to-Play Rule, proposed Rule 2390(h)(8) defines the term "payment" to mean "any gift, subscription, loan, advance or deposit of money or anything of value." This definition is similar to the definition of "contribution," but is broader, in the sense that it does not include limitations on the purposes for which such money is given (*e.g.*, it does not have to be made for the purpose of influencing an election). Consistent with the SEC Pay-to-Play Rule, FINRA is including the broader term "payments," as opposed to "contributions," to deter a covered member from circumventing the proposed rule's prohibitions by coordinating indirect contributions to government officials by making payments to political parties. *See* SEC Pay-to-Play Rule Adopting Release, 75 FR 41018, 41043, n. 331 and accompanying text (discussing a similar approach with respect to restrictions on soliciting and coordinating contributions and payments).

39. *See* SEC Pay-to-Play Rule 206(4)-5(a)(2).

40. *See* SEC Pay-to-Play Rule Adopting Release, 75 FR 41018, 41043 (discussing restrictions on soliciting and coordinating contributions and payments).

41. *See* SEC Pay-to-Play Rule 206(4)-5(d).

42. *See* SEC Pay-to-Play Rule Adopting Release, 75 FR 41018, 41044 (discussing direct and indirect contributions or solicitations).

43. Consistent with the SEC Pay-to-Play Rule, proposed Rule 2390(h)(3) defines a "covered investment pool" to mean: "(A) Any investment company registered under the Investment Company Act of 1940 that is an investment option of a plan or program of a government entity, or (B) Any company that would be an investment company under Section 3(a) of the Investment Company Act but for the exclusion provided from that definition by either Section 3(c)(1), 3(c)(7) or 3(c)(11) of that Act." Thus, the definition includes such unregistered pooled investment vehicles as hedge funds, private equity funds, venture capital funds, and collective investment trusts. It also includes registered pooled investment vehicles, such as mutual funds, but only if those registered pools are an investment option of a participant-directed plan or program of a government entity.

44. Consistent with the SEC Pay-to-Play Rule, under the proposed rule, if a government entity is an investor in a covered investment pool at the time a contribution triggering a two-year time out is made, the covered member must forgo any compensation related to the assets invested or committed by the government entity in the covered investment pool.

45. *See* SEC Pay-to-Play Rule 206(4)-5(c).

46. *See* SEC Pay-to-Play Rule Adopting Release, 75 FR 41018, 41044 (discussing the applicability of the SEC Pay-to-Play Rule to covered investment pools).

47. *See* SEC Pay-to-Play Rule 206(4)-5(b).

48. *See* SEC Pay-to-Play Rule 206(4)-5(e).

49. Consistent with the SEC Pay-to-Play Rule, for purposes of proposed Rule 2390(d)(1), a person would be "entitled to vote" for an official if the person's principal residence is in the locality in which the official seeks election. For example, if a government official is a state governor running for re-election, any covered associate who resides in that state may make a *de minimis* contribution to the official without causing a ban on the covered member being compensated for engaging in distribution or solicitation activities with that government entity on behalf of an investment adviser. If the government official is running for president, any covered associate in the country would be able to contribute the *de minimis* amount to the official's presidential campaign. *See* SEC Pay-to-Play Rule Adopting Release, 75 FR 41018, 41034 (discussing the applicability in the SEC Pay-to-Play Rule of the exception for *de minimis* contributions).

50. *See* SEC Pay-to-Play Rule Adopting Release, 75 FR 41018, 41034.

51. *See* SEC Pay-to-Play Rule 206(4)-5(b)(2).

52. *See* SEC Pay-to-Play Rule Adopting Release, 75 FR 41018, 41034 (discussing the applicability of the "look back" in the SEC Pay-to-Play Rule).

53. *See id.*

54. *See* SEC Pay-to-Play Rule Adopting Release, 75 FR 41018, 41035.

55. *See* SEC Pay-to-Play Rule 206(4)-5(b)(3). The SEC Pay-to-Play Rule includes different allowances for larger and smaller investment advisers based on the number of employees they report on Form ADV.

56. The SEC imposes similar disclosure requirements on solicitors in connection with cash payments by investment advisers to solicitors with respect to solicitation activities. *See* Advisers Act Rule 206(4)-3.

57. *See* Advisers Act Rule 204-2(a)(18) and (h)(i).

58. *See* SEC Pay-to-Play Rule Adopting Release, 75 FR 41018, 41056.

59. *See id.*

60. *See* SEC Pay-to-Play Rule Adopting Release, 75 FR 41018, 41055.

61. *See supra* note 58.

62. *See id.*

63. *See* SEC Pay-to-Play Rule Adopting Release, 75 FR 41018, 41057.

64. *See id.*

65. *See* SEC Pay-to-Play Rule Adopting Release, 75 FR 41018, 41063.

66. *See* SEC Pay-to-Play Rule Adopting Release, 75 FR 41018, 41061.

67. *See supra* note 65.