

PROPOSED RULE TEXT

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2200. COMMUNICATIONS AND DISCLOSURES

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2271. Disclosure Requirement for Government Distribution and Solicitation

Activities

(a) A covered member engaging in distribution or solicitation activities for compensation with a government entity on behalf of one or more investment advisers shall, at the time of the initial distribution or solicitation on behalf of each investment adviser, disclose to such government entity in writing (which may be electronic) the following information with respect to each investment adviser:

- (1) The fact that the covered member is engaging in distribution or solicitation activities on behalf of the investment adviser;
- (2) The name of the investment adviser on whose behalf the covered member is engaging in distribution or solicitation activities;
- (3) The nature of the relationship, including any affiliation, between the covered member and the investment adviser;
- (4) 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;
- (5) Any incremental charges or fees that may be imposed on the government entity as a result of the distribution or solicitation activities engaged in by the covered member;

(6) 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

(7) The existence of the covered member's internal policies and procedures with respect to political contributions by covered associates and other associated persons.

(b) A covered member shall, during any period in which it is engaging in distribution or solicitation activities for compensation with a government entity on behalf of an investment adviser, update in writing (which may be electronic) any material changes to the information previously provided to the government entity under this Rule within 10 business days of the date of such change.

(c) The terms used in this Rule 2271 shall have the same meaning as defined in Rule 2390.

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2300. SPECIAL PRODUCTS

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2390. Engaging in Distribution and Solicitation Activities with Government Entities

(a) Limitation on Distribution and Solicitation Activities

No covered member shall 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 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 two

years after the contribution is made).

(b) Disgorgement

If a covered member violates the prohibition in paragraph (a), in addition to any other sanction that may be imposed:

(1) Such covered members shall be prohibited from receiving any compensation or other remuneration pertaining to, or arising from, the distribution or solicitation activities that violate paragraph (a) from:

(A) The investment adviser or covered investment pool advised by the investment adviser on whose behalf the covered member was soliciting (referred to as the “affected investment adviser”); or

(B) The government entity solicited by the covered member on behalf of the affected investment adviser (referred to as the “affected government entity”).

(2) Such covered member shall pay, in the order listed, any compensation or other remuneration received by the covered member from the affected investment adviser or the affected government entity pertaining to, or arising from, the distribution or solicitation activities that violate paragraph (a) 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; and

(3) Such covered member shall not enter into any other arrangement with the affected investment adviser or affected government entity to recoup any disgorged compensation or other remuneration resulting from the provisions of paragraphs (b)(1) and (b)(2).

(c) Prohibition on Soliciting and Coordinating Contributions

No covered member or covered associate may coordinate or solicit any person or political action committee 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 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.

(d) Exceptions

(1) De minimis Exception

Paragraph (a) shall not apply to contributions made by a covered associate that is a natural person, to officials for whom the covered associate was entitled to vote at the time of the contributions and which in the aggregate do not exceed \$350 to any one official, per election, or to officials for whom the covered associate was not entitled to vote at the time of the contributions and which in the aggregate do not exceed \$150 to any one official, per election.

(2) Exception for Certain New Covered Associates

The prohibitions of paragraph (a) shall not apply to a covered member as a result of a contribution made by a natural person more than six months prior to becoming a covered associate of the covered member unless such person, after becoming a covered associate, engages in, or seeks to engage in, distribution or solicitation activities with a government entity on behalf of the covered member.

(3) Exception for Certain Returned Contributions

(A) A covered member that is prohibited from engaging in distribution or solicitation activities with a government entity pursuant to paragraph (a) as a result of a contribution made by a covered associate is excepted from such prohibition, subject to subparagraphs (B) and (C) below, upon satisfaction of the following requirements:

(i) The covered member must have discovered the contribution that resulted in the prohibition within four months of the date of such contribution;

(ii) Such contribution must not have exceeded \$350; and

(iii) The contributor must obtain a return of the contribution within 60 calendar days of the date of discovery of such contribution by the covered member.

(B) In any calendar year, a covered member that has reported on its annual Schedule I to Form X-17A-5 that it has more than 150 registered persons is entitled to no more than three exceptions pursuant to subparagraph (A), and a covered member that has reported on its annual Schedule I to Form X-17A-5 that it has 150 or fewer registered persons is

entitled to no more than two exceptions pursuant to subparagraph (A).

(C) A covered member may not rely on the exception provided in subparagraph (A) more than once with respect to contributions by the same covered associate of the covered member regardless of time period.

(e) Prohibitions as Applied to Covered Investment Pools

For purposes of this Rule, 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 in which a government entity invests or is solicited to invest shall be treated as though that 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.

(f) Further Prohibitions

It shall be a violation of this Rule for any covered member or any of its covered associates to do anything indirectly that, if done directly, would result in a violation of this Rule.

(g) Exemptions

FINRA, upon application, may conditionally or unconditionally exempt a covered member from the prohibition described in paragraph (a). In determining whether to grant an exemption, FINRA shall consider, among other factors:

(1) Whether the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this Rule;

(2) Whether the covered member:

(A) Before the contribution resulting in the prohibition was made, adopted and implemented policies and procedures reasonably designed to prevent violations of this Rule;

(B) Prior to or at the time the contribution that resulted in such prohibition was made, had no actual knowledge of the contribution; and

(C) After learning of the contribution:

(i) Has taken all available steps to cause the contributor involved in making the contribution that resulted in such prohibition to obtain a return of the contribution; and

(ii) Has taken such other remedial or preventive measures as may be appropriate under the circumstances;

(3) Whether, at the time of the contribution, the contributor was a covered associate or otherwise an associated person of the covered member, or was seeking to become an associated person, or covered associate of the covered member;

(4) The timing and amount of the contribution that resulted in the prohibition;

(5) The nature of the election (e.g., federal, state or local); and

(6) The contributor's apparent intent or motive in making the contribution that resulted in the prohibition, as evidenced by the facts and circumstances surrounding such contribution.

(h) Definitions

For purposes of this Rule:

(1) "Contribution" means 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.

(2) "Covered associate" means:

(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.

(3) "Covered investment pool" means:

(A) Any investment company registered under the Investment Company Act 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.

(4) “Covered member” means 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;

(5) “Government entity” means 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.

(6) “Investment adviser” means any investment adviser registered (or required to be registered) with the Commission, or unregistered in reliance on the exemption available under Section 203(b)(3) of the Investment Advisers Act, or that is an exempt reporting adviser, as defined in Rule 204-4(a) of that Act.

(7) “Official” means 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.

(8) "Payment" means any gift, subscription, loan, advance or deposit of money or anything of value.

(9) "Plan or program of a government entity" means any participant-directed investment program or plan sponsored or established by a state or political subdivision or any agency, authority or instrumentality thereof, including but not limited to a "qualified tuition plan" authorized by Section 529 of the Internal Revenue Code, a retirement plan authorized by Section 403(b) or 457 of the Internal Revenue Code, or any similar program or plan.

(10) "Solicit" means:

(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.

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4500. BOOKS, RECORDS AND REPORTS

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4580. Books and Records Requirements for Government Distribution and

Solicitation Activities

(a) A covered member that engages 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 shall maintain books and records that pertain to Rules 2271 and 2390, including a list or other record of:

(1) The names, titles and business and residence addresses of all covered associates of the covered member;

(2) 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 [insert the effective date of the Rule];

(3) 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 [insert the effective date of the Rule]; and

(4) 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 political action committee.

(b) Records relating to the contributions and payments referred to in paragraph (a)(4) must be listed in chronological order and indicate:

(1) The name and title of each contributor;

(2) The name and title (including any city/county/state or other political subdivision) of each recipient of a contribution or payment;

(3) The amount and date of each contribution or payment; and

(4) Whether any such contribution was the subject of the exception for certain returned contributions pursuant to Rule 2390.

(c) The terms used in this Rule 4580 shall have the same meaning as defined in Rule 2390.

(d) Any book or other record made, kept, maintained and preserved in compliance with SEA Rules 17a-3 and 17a-4, or with rules adopted by the Municipal Securities Rulemaking Board, which are substantially the same as the book or other record required to be made, kept, maintained and preserved under this Rule, shall be deemed to be made, kept, maintained and preserved in compliance with this Rule.

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