

Information Notice

Political Contributions by Investment Advisers

FINRA Encourages Firms to Make Reasonable Efforts to Assist Investment Advisers Seeking Information Pursuant to Rule 206(4)-5 Under the Investment Advisers Act of 1940

Executive Summary

Rule 206(4)-5 under the Investment Advisers Act of 1940 (Advisers Act)¹ curbs “pay-to-play” practices by prohibiting an investment adviser from providing advisory services for compensation to a government client for a period of time after the adviser makes a contribution to certain elected officials or candidates.

In some cases, it may be difficult for an investment adviser to identify government investors when shares in a covered investment company managed by the investment adviser are held through an intermediary. In these situations, FINRA encourages firms to make reasonable efforts to assist investment advisers seeking to comply with Rule 206(4)-5.

Questions regarding this *Notice* may be directed to Angela C. Goelzer, Vice President, Office of Investment Companies Regulation, at (202) 728-8120.

Discussion

On July 1, 2010, the Securities and Exchange Commission (SEC) adopted Rule 206(4)-5.² The rule prohibits an investment adviser from providing advisory services for compensation to a government client for two years after the investment adviser or specified executives or employees make a contribution to certain elected officials or candidates. The rule also prohibits an investment adviser from providing or agreeing to provide, directly or indirectly, payment to any third party for solicitation of advisory business from any government entity on behalf of the investment adviser, unless the third party meets certain criteria, including being subject to similar pay-to-play restrictions. Additionally, the rule prevents an investment adviser from soliciting from others, or coordinating, contributions to certain elected officials or candidates, or payments to political parties when the adviser is providing or seeking government business.

June 6, 2011

Suggested Routing

- Senior Management
- Legal
- Operations

Key Topics

- Pay-to-Play
- Political Contributions

Referenced Rules & Notices

- Rule 206(4)-5 Under the Investment Advisers Act of 1940

Among other situations, the rule's prohibitions apply when an adviser manages assets of a government entity through a "covered investment pool," which includes a registered investment company that is an investment option in a participant-directed government plan or program.³ The Adopting Release notes that when an investment company is an investment option in a participant-directed government plan or program, it is reasonable to expect that the fund's investment adviser will know, or reasonably can be expected to acquire information about, the identity of the government plan.⁴ In some cases, a fund adviser may request information from intermediaries about fund holdings through omnibus accounts, in order to determine whether the omnibus account includes holdings by a participant-directed government plan or program.⁵ For example, the SEC states that it is not uncommon for participant contributions to Sections 403(b) and 457 plans to be commingled into an omnibus position that is forwarded to the fund, making it more challenging for an adviser to distinguish government entity investors from others.⁶

The compliance date for investment advisers to registered investment companies that are covered pools under Rule 206(4)-5 is September 13, 2011.⁷ This compliance date is intended "to provide advisers to registered investment companies sufficient time to put into place those system enhancements or business arrangements, such as those with intermediaries, that may be necessary to identify those government plans or programs in which the funds serve as investment options."⁸ To the extent that the information requested is readily available, FINRA encourages firms to make reasonable efforts to cooperate with investment advisers seeking information to comply with the requirements of Rule 206(4)-5.

Endnotes

1. 17 CFR 275.206(4)-5.
2. See [*SEC Investment Advisers Act Release No. 3043*](#) (July 1, 2010) (the Adopting Release).
3. Rule 206(4)-5(f)(3) defines "covered investment pool" for purposes of the rule's prohibitions.
4. Adopting Release at 107.
5. *Id.*
6. *Id.* at n. 375.
7. A September 13, 2011, compliance date also applies to the rule's prohibition on the use of third parties to solicit U.S. government business. For all other purposes, investment advisers are required to be in compliance with the rule as of March 14, 2011.
8. *Id.* at 126.