

Political Contributions

SEC Approves FINRA “Pay-To-Play” and Related Rules

Effective Date: August 20, 2017

Executive Summary

The Securities and Exchange Commission (SEC) approved FINRA Rules 2030 (Engaging in Distribution and Solicitation Activities with Government Entities) and 4580 (Books and Records Requirements for Government Distribution and Solicitation Activities) to establish “pay-to-play”¹ and related rules regulating the activities of member firms that engage in distribution or solicitation activities for compensation with government entities on behalf of investment advisers.²

The rules become effective August 20, 2017.

The text of the rules is set forth in [Attachment A](#).

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Background & Discussion

In July 2010, the SEC adopted Rule 206(4)-5 under the Investment Advisers Act of 1940 (Advisers Act) addressing pay-to-play practices by investment advisers (the SEC Pay-to-Play Rule).³ The SEC Pay-to-Play Rule prohibits, in part, 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.”⁴ The SEC Pay-to-Play Rule defines a “regulated person” to include a member firm, provided that: (a) FINRA rules prohibit member firms from engaging in distribution or solicitation activities if certain political contributions have been made; and (b) the SEC, by order, 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

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Notice Type

- ▶ New Rule

Suggested Routing

- ▶ Compliance
- ▶ Government Securities
- ▶ Legal
- ▶ Municipal
- ▶ Registered Representatives
- ▶ Senior Management

Key Topics

- ▶ 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
- ▶ FINRA Rule 2030
- ▶ FINRA Rule 4580
- ▶ SEA Rule 15Ba1-1(d)(1) - (4)

Based on this regulatory framework, FINRA Rule 2030 is modeled after the SEC Pay-to-Play Rule, and imposes restrictions on member firms engaging in distribution or solicitation activities that are substantially equivalent to those imposed on investment advisers by the SEC Pay-to-Play Rule.⁶ On September 20, 2016, the SEC, by order, found that FINRA Rule 2030 imposes substantially equivalent or more stringent restrictions on members firms than the SEC Pay-to-Play Rule imposes on investment advisers and is consistent with the objectives of the SEC Pay-to-Play Rule.⁷ Furthermore, FINRA Rule 4580 imposes recordkeeping requirements on member firms in connection with political contributions.⁸

Rules 2030 and 4580 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. These rules 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.

Pay-to-Play Rule

A. Two-Year Time Out

Rule 2030(a) prohibits a covered member from engaging in distribution⁹ or solicitation¹⁰ 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).

The rule does not ban or limit the amount of political contributions a covered member or its covered associates can make. Instead, it imposes 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. The 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 and Covered Associates

Rule 2030(g)(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.”¹¹

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.¹² Under such circumstances, MSRB rules applicable to municipal advisors, including the MSRB's pay-to-play rule, would apply to the member firm.¹³ 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 Rule 2030.¹⁴

Rule 2030(g)(2) defines a "covered associate" to mean:

- ▶ any general partner, managing member or executive officer of a covered member¹⁵ or other individual with a similar status or function;
- ▶ any associated person of a covered member who engages in distribution or solicitation activities with a government entity for such covered member (and such person's supervisor); and
- ▶ any political action committee (PAC) controlled¹⁶ by a covered member or a covered associate.

2. Investment Advisers

Rule 2030 applies 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).¹⁷ Thus, it does 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.¹⁸

3. Official of a Government Entity

An official of a government entity includes 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.¹⁹ Government entities 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),²⁰ 457²¹ and 529 plans.²²

Thus, the two-year time out is 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. Accordingly, it is the scope of authority of the particular office of an official, not the influence actually exercised by the individual that determines whether the individual has influence over the awarding of an investment advisory contract under the definition.

4. Contributions

The rule's time out provisions are triggered by contributions made by a covered member or any of its covered associates. Rule 2030(g)(1) defines a "contribution" to mean any gift, subscription, loan, advance, or deposit of money or anything of value made for:

- ▶ the purpose of influencing any election for federal, state or local office;
- ▶ payment of debt incurred in connection with any such election; or
- ▶ transition or inaugural expenses of the successful candidate for state or local office.

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.²³ 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,²⁴ 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 rule.²⁵

5. "Look Back"

The rule attributes 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" applies to any person who becomes a covered associate, including a current employee who has been transferred or promoted to a position covered by the rule. A person becomes a "covered associate" for purposes of the 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 rule would prohibit the covered member that hires or promotes the contributing covered associate from receiving compensation for engaging in distribution or solicitation activities on behalf of an investment adviser 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 rule's prohibition for the remaining six months of the two-year period. This "look back" provision is designed to prevent covered members from circumventing the rule by influencing the selection process by hiring persons who have made political contributions.²⁶

B. Prohibition on Soliciting and Coordinating Contributions

Rule 2030(b) prohibits a covered member or covered associate from soliciting²⁷ or coordinating any person or PAC to make any:

- ▶ 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
- ▶ payment²⁸ 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 intended to prevent covered members or covered associates from circumventing the 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. In addition, a direct contribution to a political party by a covered member or its covered associates will not violate the rule unless the contribution was a means for the covered member to do indirectly what the rule would prohibit if done directly (for example, if the contribution was earmarked or known to be provided for the benefit of a particular government official).

C. Prohibition on Indirect Contributions or Solicitations

Rule 2030(e) provides that it shall be a violation of Rule 2030 for any covered member or any of its covered associates to do anything indirectly that, if done directly, would result in a violation of the rule. This provision prevents 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 rule.²⁹ In addition, Rule 2030(e) requires a showing of intent to circumvent the rule in order for such persons to trigger the two-year time out.

D. Prohibitions as Applied to Covered Investment Pools

Rule 2030(d)(1) provides that a covered member that engages in distribution or solicitation activities with a government entity on behalf of a covered investment pool³⁰ 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 to the covered investment pool directly.³¹ Rule 2030(d)(2) provides that 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 investment adviser were providing or seeking to provide investment advisory services directly to the government entity.

Rule 2030(d) applies the prohibitions of the rule to situations in which an investment adviser manages assets of a government entity through a hedge fund or other type of pooled investment vehicle. Thus, the provision extends the protection of the 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.”

E. Exceptions and Exemptions

As discussed in more detail below, Rule 2030(c) contains exceptions for *de minimis* contributions, new covered associates and returned contributions. In addition, Rule 2030(f) includes an exemptive provision for covered members that allows covered members to apply to FINRA for an exemption from the rule’s two-year time out. Under this provision, FINRA may exempt covered members from the 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 provides 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 rule’s exceptions. In determining whether to grant an exemption, FINRA will take into account the varying facts and circumstances that each application presents.

1. *De Minimis* Contributions

Rule 2030(c)(1) excepts from the rule’s restrictions contributions made by a covered associate that is a natural person to government entity officials for whom the covered associate was entitled to vote³² 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. Under both exceptions, primary and general elections are considered separate elections. These exceptions are based on the theory that such contributions are typically made without the intent or ability to influence the selection process of the investment adviser.

2. New Covered Associates

Rule 2030(c)(2) provides an exception from the 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. 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.³³ 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.³⁴

3. Certain Returned Contributions

Rule 2030(c)(3) provides an exception from the rule's restrictions for covered members if the restriction is due to a contribution made by a covered associate and:

- ▶ the covered member discovered the contribution within four months of it being made;
- ▶ the contribution was less than \$350; and
- ▶ the contribution is returned within 60 days of the discovery of the contribution by the covered member.

This exception allows 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. The exception is limited to the types of contributions that are less likely to raise pay-to-play concerns. 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 the contribution's 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 rule provides that covered members with 150 or fewer registered representatives may rely on this exception no more than two times per calendar year. All other covered members may rely on this exception no more than three times per calendar year. In addition, a covered member may not rely on an exception more than once with respect to contributions by the same covered associate regardless of the time period.

Recordkeeping Requirements

Rule 4580 requires 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 will allow FINRA to examine for compliance with Rule 2030. The rule requires 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 for compensation on behalf of an investment adviser, or which are or were investors in any covered investment pool on behalf of which the covered member has engaged in distribution or solicitation activities with the government entity on behalf of the investment adviser to the covered investment pool, 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 rule requires 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 Rule 2030.

Effective Date

Rules 2030 and 4580 become effective on August 20, 2017. The prohibition under Rule 2030(a) will not be triggered by contributions made prior to the effective date. Similarly, the prohibition will not apply to contributions made prior to the effective date by new covered associates to which the two years or, as applicable, six months "look back" applies.

As of the effective date, member firms must begin to maintain books and records in compliance with Rule 4580. Member firms will not be required, however, to look back for the five years prior to the effective date of the rule to identify investment advisers and government entity clients in accordance with Rule 4580(a)(2) and (a)(3).

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. See Securities Exchange Act Release No. 78683 (August 25, 2016), 81 FR 60051 (August 31, 2016) (Order Approving File No. SR-FINRA-2015-056) (Approval Order). See also Securities Exchange Act Release No. 76767 (December 24, 2015), 80 FR 81650 (December 30, 2015) (Notice of Filing of File No. SR-FINRA-2015-056) (Proposing Release).
3. See Investment 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 Investment Advisers Act Release No. 3221 (June 22, 2011), 76 FR 42950 (July 19, 2011) (Rules Implementing Amendments to the Investment Advisers Act of 1940); Investment 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).
4. See SEC Pay-to-Play Rule 206(4)-5(a)(2)(i)(A).
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. As discussed in the Approval Order and Proposing Release, FINRA interprets and applies the provisions of its pay-to-play rule consistent with the SEC Pay-to-Play Rule.
7. Investment Advisers Act Release No. 4532 (September 20, 2016), 81 FR 66526 (September 28, 2016).
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. Although the rule applies to distribution activities by covered members, the rule does not apply to distribution activities related to registered investment companies that are not investment options of a government entity’s plan or program. Thus, the rule applies to distribution activities involving unregistered pooled investment vehicles such as hedge funds, private equity funds, venture capital funds, and collective investment trusts, and registered pooled investment vehicles such as mutual funds, if such registered pools are an investment option of a participant-directed plan or program of a government entity. For a more detailed discussion regarding the rule’s applicability to distribution activities, see the Approval Order.
10. Rule 2030(g)(11) 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 is a solicitation will 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 will 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 27.
11. As noted above, the SEC Pay-to-Play Rule includes within its definition of “regulated person” SEC-registered municipal advisors, subject to specified conditions. *See supra* note 5. 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. *See* SEC Pay-to-Play Rule 206(4)-5(a)(2)(i)(A) and 206(4)-5(f)(9).
 12. *See* Section 15B(e)(9) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 15Ba1-1(n) thereunder (defining “solicitation of a municipal entity or obligated person” 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.”)
 13. *See, e.g.,* MSRB Rule G-37.
 14. FINRA notes that a person that is registered under the Exchange Act 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 would be subject to the rules that apply to the services the regulated person is performing.
 15. Rule 2030(g)(5) defines an “executive officer of a covered member” to mean: “(A) The president; (B) Any vice president in charge of a principal business unit, division or function (such as sales, administration or finance); (C) Any other officer of the covered member who performs a policy-making function; or (D) Any other person who performs similar policy-making functions for the covered member.”
- FINRA notes that whether a person is an executive officer depends on his or her function or activities and not his or her title. For example, an officer who is a chief executive of a covered member but whose title does not include “president” would nonetheless be an executive officer for purposes of the rule.
16. FINRA considers 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.
 17. *See* Rule 2030(g)(7).
 18. The rule does not apply to state-registered investment advisers as few of these smaller firms manage public pension plans or other similar funds.

19. Rule 2030(g)(8) 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.”
20. 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)).
21. 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).
22. A 529 plan is a “qualified tuition plan” established under Section 529 of the Internal Revenue Code of 1986 (26 U.S.C. 529). Rule 2030(g)(6) 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.”
23. In addition, FINRA generally would not view a covered associate’s donation of his or her time 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 was not otherwise paying the employee’s salary (*e.g.*, an unpaid leave of absence).
24. Section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) contains a list of charitable organizations that are exempt from Federal income tax.
25. Note, however, Rule 2030(e) providing that it shall be a violation of Rule 2030 for any covered member or any of its covered associates to do anything indirectly that, if done directly, would result in a violation of the rule.
26. Similarly, 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 will be subject to the 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 will not relieve the covered member from the two-year time out.
27. Rule 2030(g)(11)(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.” Whether a particular activity involves a solicitation or coordination of a contribution or payment for purposes of the rule would depend on the facts and circumstances. A covered member that consents to the use of its name on fundraising literature for a

- candidate would be soliciting contributions for that candidate. A covered member that sponsors a meeting or conference which features a government official as an attendee or guest speaker and which involves fundraising for the government official would be soliciting contributions for that government official. Expenses incurred by the covered member for hosting the event would be a contribution by the covered member, thereby triggering the two-year ban on the covered member receiving compensation for engaging in distribution or solicitation activities with the government entity over which that official has influence. Such expenses may include, but are not limited to, the cost of the facility, the cost of refreshments, any expenses paid for administrative staff, and the payment or reimbursement of any of the government official's expenses for the event. The *de minimis* exception under Rule 2030(c)(1) would not be available with respect to these expenses because they would have been incurred by the firm, not by a natural person.
28. Rule 2030(g)(9) defines "payment" as 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).
 29. This provision also covers, for example, situations in which contributions by a covered member are made, directed or funded through a third party with an expectation that, as a result of the contributions, another contribution is likely to be made by a third party to "an official of the government entity," for the benefit of the covered member. Contributions made through gatekeepers thus would be considered to be made "indirectly" for purposes of the rule.
 30. Rule 2030(g)(3) defines a "covered investment pool" to mean: "(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." 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.
 31. 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.
 32. For purposes of Rule 2030(c)(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 may contribute the *de minimis* amount to the official's presidential campaign.

33. 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).
34. See *id.*