

# SEC Adopts New Pay-to-Play Rule - Effective September 13, 2010

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July 2010

On June 30, the Securities and Exchange Commission (SEC) approved a new rule designed to curb the potential for political contributions to influence the selection and retention of investment advisers to state and local governments. The restrictions and reporting requirements described below will go into effect on September 13, 2010, which is 60 days after the rule's publication in the *Federal Register*.

Under the new rule, if an investment adviser (or certain of its executives or employees) makes a political contribution to an elected state or local official or candidate with an ability to influence the selection of an adviser, the adviser is prohibited from providing compensated advisory services to the state or local government for two years. (In its final rulemaking, the SEC noted that this prohibition would extend to federal candidates holding positions of influence in state or local government at the time they were running for federal office.) The two-year "time out" provision is similar to Rule G-37 of the Municipal Securities Rulemaking Board, which applies to municipal securities broker dealers.

The new rule does allow an executive or employee to make small contributions without violating the prohibition. Where an executive or employee is entitled to vote for the candidate, he or she is allowed to contribute up to \$350 per election. For those not eligible to vote for a particular candidate, the limit is \$150.

As part of an anti-circumvention rationale, other provisions of the new rule prohibit investment advisers from engaging in certain other practices such as bundling (e.g., where the investment adviser collects and delivers a number of small employee contributions that could not be made by the adviser due to the "time out" period) and

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soliciting/coordinating payments to state or local political parties where the adviser is seeking business. The rule also imposes new record-keeping requirements on advisors who provide investment services or who advise certain investment pools in which a state or local government is an investor. Investment advisors with no government business are excluded from the record-keeping requirements.

The new rules can be found at <http://edocket.access.gpo.gov/2010/pdf/2010-16559.pdf>.