

D.C. Circuit Upholds FINRA Pay-to-Play Rule

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On June 18, 2019, a panel of the U.S. Court of Appeals for the D.C. Circuit upheld the validity and the constitutionality of the pay-to-play rule of the Financial Industry Regulatory Authority (FINRA). *N.Y. Republican State Comm. and Tenn. Republican Party v. SEC*, No. 18-1111 (D.C. Cir. June 18, 2019). Despite the way in which the rule affects federal, state, and local political contributions and association for a large number of people across a given financial services enterprise, the court followed its own 1995 precedent and found the rule “closely drawn” to serve the sufficiently important government interest of avoiding corruption and the appearance of corruption.

FINRA Rule 2030, modeled on the U.S. Securities and Exchange Commission’s (SEC) pay-to-play rule and enacted to prevent circumvention of the SEC’s rule, prohibits, among other things, a FINRA broker-dealer member from receiving compensation for investment advisory services from state and local pension and other funds for two years after the FINRA member and its covered associates make a prohibited contribution to a candidate for, or holder of, an elected office that awards such investment advisory business or appoints the persons who make such awards.

The opinion can be found at <https://www.courthousenews.com/wp-content/uploads/2019/06/staterepubsec.pdf>.

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