



ADVISOR
SOLUTIONS
GROUP, INC

COMPLIANCE UPDATE

Final Rule: Political Contributions by Certain Investment Advisers

Release Date: July 1, 2010

Effective Date: September 13, 2010

Compliance Date: Generally, March 14, 2011

Compliance with prohibition on use of certain third party solicitors is required as of June 13, 2012, and provisions applicable to advisers to registered investment companies are effective as of September 13, 2011. See release for details and exceptions.

To address “pay to play” practices by investment advisers, the SEC adopted new Rule 206(4)-5 and related rule amendments under the Investment Advisers Act of 1940. The new rule prohibits investment advisers from providing investment advisory services to a government entity for compensation for two years after a making a contribution to an official of the government entity, and prohibits payments to third-party solicitors for government business unless the solicitor is a “regulated person” (defined below) under the rule. The rule restricts pay to play practices in a number of ways:

- Receipt of Compensation – Two-Year “Time Out”
 - o Does not ban political contributions or prohibit an adviser from providing investment advisory services to a government client, but instead limits the adviser from receiving compensation for providing these services for two years after a triggering contribution is made to an official of the government entity
 - o Triggered by a political contribution by an investment adviser or covered associate to an official of a government entity who has the legal authority to hire or can influence the hiring of the adviser
 - o Advisers must “look back” at contributions made by new covered associates: generally the look back provision applies for two years from the contribution, or six months for non-soliciting covered associates
- Exceptions from Time Out
 - o De minimis contributions don’t apply: individuals can make contributions up to \$350 per election to elected officials or candidates for whom they *can* vote, and up to \$150 per election to those for whom they *cannot*
 - o If the contribution by a covered associate is discovered within four months and returned within 60 days of discovery, advisers have the ability to cure erroneous contributions up to \$350, subject to the following:
 - Advisers with more than 50 employees may cure up to three contributions per year, and advisers with 50 or fewer employees may cure up to two, but
 - Advisers may only make one exception per covered associate regardless of the time period
 - o The SEC may also make other limited exemptions upon application by the adviser

- Ban on Using Third Parties to Solicit Government Business
 - o Investment advisers cannot pay a third-party solicitor to pursue government business
 - o Ban is not applicable to “regulated persons” (SEC registered investment advisers, broker-dealers, and registered municipal advisers that themselves are subject to similarly stringent prohibitions against engaging in pay to play practices)
 - o Prohibition does not apply to compensating the adviser’s employees, general partners, managing members, or executive officers for soliciting government clients, but their contributions subject the firm to the two-year time out

- Restrictions on Soliciting and Coordinating Contributions and Payments
 - o Investment advisers and covered associates cannot circumvent the rule by coordinating or soliciting contributions to government officials or payments to state or local political parties where the adviser is providing or seeking to provide advisory services

- Direct and Indirect Contributions or Solicitations
 - o The rule also prohibits indirect payments or contributions which, if done directly, would violate the rule (e.g. funneling payments through a third party, such as an attorney, family member, friend, or affiliated firm)

- Covered Investment Pools
 - o Each of the rule’s provisions apply to an investment adviser managing government entity assets through a pooled investment vehicle as though it was providing the services to the government entity directly
 - o Affects government investments in private funds as well as in registered investment companies used as a funding vehicle in a participant-directed government-sponsored plan, such as 529 plans and 403(b) plans

- Recordkeeping – Amendments to Rule 204-2
 - o An adviser must maintain lists or other records of:
 - Its covered associates, including name, title, and business and residence address
 - All government entities to which it provides or has provided advisory services, or which are or were investors in a covered investment pool advised by the adviser, over the past five years
 - Direct or indirect contributions made by the adviser or any covered associates to government officials, or direct or indirect payments to state or local political parties and PACs
 - These records should be in chronological order and show the name and title of contributor, name and title of recipient, amount and date of each payment or contribution, and whether the contribution was subject to the exception for certain returned contributions
 - The names and business addresses of each regulated entity compensated to solicit government clients
 - o An adviser with no government entity clients would not have to maintain a list of covered associates or require employees to report political contributions

- Definitions, summarized
 - o Contributions include payments made to influence a federal, state, or local election, and includes payment of debts and transition or inaugural expenses incurred by successful state or local candidates
 - o Covered associates include any general partner, managing member, or executive officer, or

someone with similar status or function; any employee who solicits a government entity client, and their supervisors; and any political action committee controlled by the adviser or a covered associate

- o Government entity means any agency, authority, or instrumentality of a state or political subdivision of a state; a pool of assets sponsored or established by any of the above, such as a defined benefit plan or state general fund; a plan or program of a government entity; and officers, agents, or employees of the government entity, acting in their official capacity
- o Official includes any person or 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 is 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
- o Payment means any gift, subscription, loan, advance, or deposit of money or anything of value

This is only a summary of the new rule and advisers should not rely on this summary to determine compliance with the rule. The full text and release of the rule can be found at <http://www.sec.gov/rules/final/2010/ia-3043.pdf>.

For further clarification on how these changes affect you or for assistance in complying with the rule, please contact:

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