

THE RULE THAT NEVER CAUGHT A CROOK: THE SEC MOVES TO REPEAL THE PAY-TO-PLAY RULE

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On 3 September 2026, the Securities and Exchange Commission (SEC) proposed to rescind, in its entirety, Rule 206(4)-5 under the Investment Advisers Act of 1940 (Advisers Act), commonly known as the “pay-to-play” rule, along with the related recordkeeping requirements in Rule 204-2(a)(18).¹ For more than 15 years, the rule has barred an investment adviser from receiving compensation from a state or local government client for two years after the adviser, or certain of its executives and employees, contributes more than a small amount to an official who can influence the hiring of advisers for that client.

The SEC now says the rule operates as a de facto strict liability regime in which small “foot faults” trigger severe consequences, and it has led many firms simply to ban employee political giving. In the SEC’s current view, the Advisers Act antifraud provisions, an adviser’s fiduciary duty, the compliance rule, and the code of ethics rule are likely sufficient to address pay-to-play without a separate rule.² SEC Chairman Paul Atkins put it more directly: The SEC is not the nation’s elections regulator.³

This proposed rescission is important because it would replace a bright-line rule with a principles-based regime. That is largely good news, but it is not the end of pay-to-play compliance. Advisers will still need policies tailored to their own risks, and a dense web of state, local, and self-regulatory organization (SRO) requirements will remain. Advisers should therefore maintain their existing programs while the proposal is pending and, following any final rescission, carefully consider appropriate modifications rather than simply eliminating their current controls.

THE ROAD TO THE RULE: SCANDALS, THE MSRB, AND THE STATES

“Pay-to-play” refers to making political contributions or other payments to public officials in order to win government business. The concern is simple. When contributions, rather than skill and price, drive decisions on who manages government money, in particular retirement plans, these plans may end up with weaker managers and higher fees, and the retirees and taxpayers who invest in those plans bear the cost.

The first federal approach to prohibit “pay-to-play” in the investment space came in the municipal bond market. In 1994, after reports that dealers were contributing to officials who could influence the choice of underwriters, the SEC approved Municipal Securities Rulemaking Board (MSRB) Rule G-37. Rule G-37 generally bars a dealer from doing municipal securities business with an issuer for two years after the dealer or certain of its personnel contribute to an official of that issuer. In 1995, the US Court of Appeals for the DC Circuit (DC Circuit) upheld Rule G-37 against a First Amendment challenge in *Blount v. SEC*. Rule G-37 became the template for everything that followed.

The SEC first proposed a similar rule for investment advisers in 1999, but did not adopt it.⁴ Over the next decade, a series of public pension scandals changed the calculus, including the following:

- In Connecticut, the SEC charged former State Treasurer Paul Silvester and two private equity firms in a scheme in which Silvester awarded contracts to manage hundreds of millions of dollars of pension investments to his friends and political associates, in exchange for fees kicked back to him.⁵
- In New York, the top political adviser to the state comptroller extracted sham “placement agent” fees from managers seeking investments from the New York Common Retirement Fund. One private equity principal, the SEC alleged, also arranged a US\$50,000 contribution to the comptroller’s reelection campaign; a month later, the fund increased its investment with his firm from US\$100 million to US\$150 million. The former comptroller and his political adviser both went to prison.⁶

When the SEC finally re-proposed an adviser pay-to-play rule in 2009—what would become Rule 206(4)-5—it cited enforcement actions and criminal cases in New York, New Mexico, Illinois, Ohio, Connecticut, and Florida.⁷

States and localities also acted, adopting contribution limits, disclosure requirements, contracting bans, and placement agent restrictions. New York’s comptroller, for example, banned the use of placement agents by the New York Common Retirement Fund in 2009. In adopting the final pay-to-play rule, the SEC cited the potential patchwork as one reason for a uniform federal rule, which it adopted on 1 July 2010.

THE RULE AS IT STANDS TODAY

The rule, as adopted, applies to SEC-registered advisers, exempt reporting advisers, and foreign private advisers, and it is structured somewhat differently than other SEC rules in the sense that it does not directly proscribe “pay-to-play.” Instead, it prohibits investment advisers from providing investment advisory services for compensation to a “government entity” following certain political contributions. In plain terms, it does the following:

Two-year Timeout

An adviser may not receive compensation for advising a government entity for two years after the adviser or a “covered associate” contributes to an “official” of that entity. An official is an incumbent or candidate for an office that can influence the hiring of an adviser or that appoints people who can.

Broad Covered Population

Covered associates include general partners, managing members, executive officers, employees who solicit government entities and anyone who supervises them, and political action committees (PACs) controlled by the adviser or its covered associates.

Lookback

Contributions made before a person becomes a covered associate count against the adviser for two years if the person solicits clients or for six months if the person does not.

De Minimis Exception

Individuals may contribute up to US\$350 per election to an official they can vote for and up to US\$150 per election to an official they cannot vote for.

Limited Cure

An adviser can escape the timeout for a covered associate's contribution of US\$350 or less, but only if the adviser discovers it within four months and the money is returned within 60 days of discovery. An adviser may rely on this exception only a few times a year and only once for any given contributor.

Solicitation and Coordination Bans

An adviser may not pay a third-party placement agent to solicit government business unless the third party is a registered adviser, broker-dealer, or municipal adviser subject to its own pay-to-play restrictions. Advisers and covered associates also may not solicit or coordinate contributions to officials, or payments to state or local political parties, where the adviser is seeking or doing government business, and they may not do indirectly what they cannot do directly.

Records

Registered advisers must keep detailed records of covered associates, government clients, and contributions.

THE LEGAL CHALLENGES

The pay-to-play rule was never popular and faced persistent constitutional objections, but it never lost in court.

Four years after its adoption, in 2014, the New York Republican State Committee and the Tennessee Republican Party sued in federal district court, arguing that the rule violated the First Amendment and exceeded the SEC's authority. In 2015, the DC Circuit affirmed dismissal of the case, holding that challenges to Advisers Act rules must be brought directly in a federal court of appeals within 60 days of the rule's adoption. Because the parties had waited roughly four years, their challenge was time-barred, and the court never reached the merits.⁸

The same parties then made a timely challenge to the SEC's 2016 approval of Financial Industry Regulatory Authority (FINRA) Rule 2030, which imposes a similar two-year ban on placement agents, and they lost on the merits. In 2019, the DC Circuit held that the SEC had authority to approve the rule, that its approval was not arbitrary and capricious, and that the rule did not violate the First Amendment in light of *Blount*.⁹ The US Supreme Court denied review in January 2020.¹⁰

The constitutional debate never went away. The US Supreme Court has continued to insist that limits on political contributions be justified by the prevention of quid pro quo corruption or its appearance, and the SEC's discussion in the release proposing rescission of the pay-to-play rule leans on that line of cases in explaining why the SEC is now uncomfortable with a rule that effectively leads many firms to bar political giving altogether.¹¹

THE PRACTICAL REALITY

Advisers have made similar complaints about the scope and application of the rule for more than a decade.¹²

Strict Liability

The rule prohibits receipt of compensation for two years automatically upon a covered person making a contribution (other than a *de minimis* contribution). It does not matter whether the contributor intended to influence anyone, whether the adviser knew of the contribution, or whether the official receiving the contribution had any actual role in the selection of investment managers. An adviser with an exemplary compliance program can still

violate the rule because one employee wrote one check. The SEC itself describes the rule as creating a de facto strict liability standard. The broad definition of “official” adds to the problem. It captures governors, mayors, and others who appoint pension board members even where they have no practical involvement in manager selection.

Very Low De Minimis Thresholds

The *de minimis* thresholds (US\$350 to a candidate that the contributor can vote for and US\$150 to others) have not changed since 2010. By comparison, the federal limit on individual contributions to federal candidates is US\$3,500 per election. Under the rule, a US\$200 contribution to an out-of-state gubernatorial candidate can cost a firm two years of fees from that state's pension plan. Given the high consequences and low contribution limits, many firms find it easier to simply ban contributions.

Lookback Periods

The rule not only applies to adviser personnel, but it also requires advisers to review the political contributions of people they want to hire or promote into covered roles, including contributions made while working elsewhere. As a result, a contribution that posed no pay-to-play risk when made can later disqualify a strong candidate or cost a firm fees from an existing client. The SEC acknowledges that advisers have declined to hire qualified people for this reason.¹³

Limited Ability to Cure

While there is an ability to cure noncompliance by obtaining a refund of a contribution, this exception is capped at US\$350. Because contributions up to that amount to an official the contributor can vote for are already exempt, in practice this exception helps only with contributions between US\$150 and US\$350 to officials the contributor cannot vote for. It also requires quick discovery and return of the contribution, and the actual resolution is out of the adviser's control: The adviser cannot require a campaign to return money. If the funds have been spent or the campaign does not cooperate, the cure fails despite the adviser's best efforts.¹⁴

Prophylactic Reach Regardless of Intent

Finally, the rule does not ask whether a contribution was part of a scheme. It applies the same consequence to a firm that has managed a pension plan's money for a decade as to a firm pursuing a new mandate, as well as a contribution to a losing candidate as to one to a sitting official. The mismatch is starkest for closed-end private funds. There, a government investor typically committed its capital years earlier and can neither add to nor withdraw from its investment, so a later contribution cannot affect that investment. Yet, an adviser whose employee makes a nonexempt contribution may become prohibited from accepting any fees from that government investor, but in this instance, the adviser cannot simply return the investor's money or walk away. It must keep managing the fund, including the government investor's share, while forgoing compensation on that share for two years.¹⁵ As to that investment, the rule penalizes the adviser without protecting the pension plan from anything. Any concern about influence over a future fund commitment could be addressed directly, rather than by forfeiting fees on a commitment already made.

EXEMPTIONS AND ENFORCEMENT

The Exemptive Process

Rule 206(4)-5(e) allows the SEC to exempt an adviser from the two-year timeout. The factors the SEC considers include whether the adviser had policies reasonably designed to prevent violations before the contribution, whether the adviser knew of the contribution, whether it took all available steps to obtain its return, the timing and amount of the contribution, and the contributor's apparent intent.¹⁶

In practice, the process has been uncertain and expensive. The SEC did not grant its first order until late 2013, more than three years after the rule was adopted. That order went to Davidson Kempner, which had escrowed fees from three government clients, reportedly as much as US\$20 million, after one of its executives gave US\$2,500 to the Ohio state treasurer's US Senate campaign.¹⁷ Pershing Square Capital Management (Pershing Square) and Lime Rock Management sought relief in 2016, did not obtain it, and were then charged with violating the rule.¹⁸

The SEC has granted orders since and as recently as January 2026,¹⁹ but Commissioner Hester Peirce has observed that this is rare.²⁰ The SEC estimates outside counsel costs of about US\$15,500 for a well-precedented application and US\$52,800 for one of medium complexity,²¹ before counting internal time, months of uncertainty over the fees at stake, and the reputational cost of a public filing describing an employee's political contribution.

Enforcement: Technical Violations, Not Corruption

The SEC's publicly announced cases under the rule share common features: small contributions, government relationships that predated the contribution, and no finding that any contribution was made to win business.

The first case, against TL Ventures in 2014, set the pattern. A covered associate gave US\$2,500 to a candidate for mayor of Philadelphia and US\$2,000 to the governor of Pennsylvania. The SEC stressed that no showing of quid pro quo or intent was required, and its enforcement director said advisers would be held strictly liable.²² Ten more settlements followed in January 2017. In almost every case, the contribution came years after the pension plan had invested, and the orders contained no finding that it influenced any investment decision.²³ Pershing Square's violation stemmed from a single US\$500 contribution by an employee to a candidate for governor of Massachusetts, which the employee asked for and got back. Because the contribution exceeded US\$350, the cure was unavailable.²⁴

Four settlements in September 2022 involved one-time, small-dollar contributions by advisers whose government relationships predated the contributions. In one, the contributor was not a covered associate when he gave and became one only when promoted two months later.²⁵ In 2024, Wayzata Investment Partners (Wayzata) settled over a single contribution affecting a state investment board that had invested in its closed-end funds years earlier,²⁶ and Obra Capital Management (Obra) settled over a contribution made by an individual (before Obra hired him) to an official connected to a Michigan pension fund that had invested in Obra's closed-end fund two years earlier and could neither add to nor withdraw its investment.²⁷ Commissioner Peirce dissented in the 2022 cases, Wayzata, and Obra, calling the rule a poorly conceived means to pursue laudable ends.

None of these orders alleged a quid pro quo. The proposing release itself acknowledges that, since the rule's compliance date, the SEC has not brought the kind of fraud-based pay-to-play cases that it brought before the rule was adopted.²⁸

The Curious Case of the Missing Disgorgement

The penalties are also telling. The rule's core consequence is a two-year ban on compensation, so the natural remedy for a violation is to give the compensation back. The SEC did exactly that in its first case. TL Ventures disgorged US\$256,697, the fees it collected during the timeout, and paid interest and a US\$35,000 penalty, although that order also included findings that the firm had acted as an unregistered adviser. In the later settlements, the reported sanctions were typically limited to a censure, a cease-and-desist order, and a civil penalty between US\$35,000 and US\$100,000, with no disgorgement. Pershing Square illustrates the contrast. It applied for an exemption so that it could keep its fees from the Massachusetts pension plan, did not obtain relief, and ultimately paid a US\$75,000 penalty with no disgorgement; the firm was able to retain the fees earned from the Massachusetts pension plan, while only paying a fraction of those fees out as a consequence of violating the rule. This appears to have become the pattern. The public record does not show whether any adviser voluntarily refunded fees outside its settlement, but none of the SEC's announcements after TL Ventures mentions disgorgement. Nor does the US Supreme Court's 2020 decision in *Liu v. SEC*, which limited disgorgement to net profits, explain the shift because the 2017 settlements predated it.

That is a curious result for a rule whose defining feature is the forfeiture of two years of compensation. It suggests that the SEC itself was uncomfortable imposing the rule's full consequences on conduct that posed little or no risk of corruption. Put differently, the SEC's enforcement practice had drifted away from the rule's text well before the SEC proposed to rescind it.

AFTER THE RULE: WHY NOW AND WHAT REMAINS

Why Now

Industry groups had pressed for reform for years, Commissioner Peirce had repeatedly dissented from pay-to-play settlements, and, in early 2026, Chairman Atkins reportedly called the rule a trap for the unwary. In August 2026, the SEC sent the White House a proposal it described as a reform of the rule, and many expected targeted amendments. The SEC instead chose full rescission, with Commissioner Peirce stating that she was pleased to eliminate the rule rather than simply amend it.²⁹

Fiduciary Duty and the Antifraud Provisions

Critically, rescission of the pay-to-play rule would not mean pay-to-play would become lawful. Sections 206(1), (2), and (4) of the Advisers Act prohibit advisers from engaging in fraudulent, deceptive, or manipulative conduct, and the SEC repeats in the proposing release its long-standing position that pay-to-play constitutes fraudulent conduct in violation of these provisions.³⁰

The SEC may also charge firms and supervisors for failing to reasonably supervise employees who engage in pay-to-play. These are not theoretical tools; the Connecticut and New York cases were brought under them. Also, because Sections 206(2) and 206(4) do not require proof of intent to defraud,³¹ the loss of the rule's bright line does not mean the SEC must prove a bribe.

State, Local, and SRO Rules

Despite the concerns about a state and local patchwork of pay-to-play rules that motivated the adoption of the pay-to-play rule, state and local regulations remain in place and some are even more strict than the pay-to-play rule. New Jersey, for example, requires its pension system to terminate an investment manager whose

professionals make certain contributions above US\$250; Connecticut restricts contributions by principals of state contractors; and New York restricts the use of placement agents.

SRO rules are also untouched. MSRB Rules G-37 and G-38, FINRA Rule 2030, and Exchange Act Rule 15cH-6 for security-based swap dealers all remain in place, so advisers with affiliated broker-dealers and the placement agents they hire will still be subject to bright-line regimes.³² Federal bribery statutes also continue to apply.³³

One gap deserves mention. While state and local rules may continue to apply, the SEC's compliance rule and the code of ethics rule apply only to registered advisers. Exempt reporting advisers and foreign private advisers would be subject only to the antifraud provisions of the Advisers Act (not the compliance and code of ethics rules), and the SEC acknowledges that as a consequence.³⁴

Transition Questions

Rescission would also raise transition questions for advisers that have a live problem when it takes effect. Agency rules generally operate only prospectively. An adviser in the middle of a timeout on the effective date should therefore be free to accept compensation for periods after that date, but compensation it received before then would still have been received in violation of the rule as it then stood. The SEC could in theory still bring a case over those earlier fees, subject to the statute of limitations period for civil penalties, although it is hard to imagine the current SEC devoting resources to enforcing a rule it has repudiated. Advisers that have escrowed fees, or that have exemptive applications pending, face the same line. Rescission may free up fees for later periods, but it would not by itself release fees for earlier ones, so applicants should not assume their applications are moot unless the final release says so. For the same reason, advisers should keep the records they created under the rule for the full retention period that applied when they were made.

BUILDING A POST-RULE COMPLIANCE PROGRAM

As noted above, the rescission of the rule does not make pay-to-play lawful; in fact, the SEC goes to some length not only to explain that existing rules prohibit pay-to-play, but also to provide a discussion of what an adviser's compliance program should look like without the rule.³⁵ The SEC frames that discussion around Rule 206(4)-7, which requires registered advisers to adopt policies reasonably designed to prevent violations of the Advisers Act and to review them at least annually. The SEC has long said that such policies should start with the adviser's identification of its own conflicts and risks.³⁶ The release mixes language of obligation with language of suggestion, and the distinction will matter in examinations if it is retained upon adoption.

What the SEC Says an Adviser Must Address

An adviser that provides or seeks to provide advisory services to state or local governments "would need" to do the following:

- Address pay-to-play in its policies.
- Identify and assess risk that the adviser or its personnel will engage in pay-to-play, including through contributions to officials, political parties, and PACs. The SEC specifically flags the size of investment and business development teams and the routing of contributions through consultants, lawyers, family members, friends, or affiliates to hide their true source.

- Design risk mitigators to address the risks it identifies.
- Address third-party solicitors and the particular pay-to-play risks they present.
- Include remedial steps or a framework for dealing with contributions that violate the adviser's policies.
- Align the code of ethics, reviewing and, if necessary, adjusting its standard of business conduct to match the adviser's pay-to-play policies.

Existing recordkeeping and Form ADV obligations relating to compliance policies, codes of ethics, and agreements with government clients and solicitors also continue.³⁷

What the SEC Says an Adviser Should Do

A smaller set of statements uses “should.” The SEC says an adviser generally should assess its code of ethics in light of its pay-to-play risks, and an adviser that restricts certain contributions in its policies should consider amending its code of ethics to reference that restriction. The SEC also reiterates that an adviser should first identify the risks particular to its business.

What the SEC Says an Adviser Could Consider

Most of the specific tools the SEC describes are framed as options. An adviser could do the following:

- Extend its pay-to-play policies to cover state and local pay-to-play and anti-corruption laws.
- Focus on its existing and prospective government relationships and on personnel, such as solicitors and senior decision-makers, who present more risk than back-office staff.
- Adopt a preclearance process and maintain reports of personnel contributions.
- Permit contributions during low-risk windows or below set thresholds.
- Require chief compliance officer approval of solicitor engagements, or limit solicitors to registered firms that have not contributed to the government entity they solicit.
- Audit preclearance requests against contribution reports.
- Scope low-risk conduct out of its code of ethics altogether.

The SEC stresses that one size does not fit all. A small adviser may decide it does not need formal preclearance, while a large adviser with several public pension clients may choose an electronic preclearance system similar to those used for personal trading.

TAKEAWAYS FOR ADVISERS

Bright Lines Out, Judgment In

A principles-based regime has real benefits, but it also places greater responsibility on advisers to assess and document their own risks. If the rule is rescinded as proposed, a contribution exceeding the current *de minimis* thresholds would no longer automatically trigger a two-year compensation ban, although it could remain relevant under antifraud, state, local, SRO, or contractual requirements. Under the current rule, an adviser that followed

the rule generally knew where it stood. After rescission, an adviser whose policies the staff views as not “reasonably designed” may be criticized even if no one engaged in pay-to-play. Careful documentation of the firm’s risk assessment will be essential.

The Loss of a Convenient Excuse

For many firms and their employees, the rule has been a welcome reason to decline requests for contributions from candidates, campaigns, and clients. “The SEC rule prevents me from contributing” is an easy answer. Without the rule, that response disappears for many contributions, and advisers may face more fundraising requests. Firms that want to keep limits on giving will need to own those limits as firm policy and should consider stating them clearly in their code of ethics.

Keep Current Controls in Place

The rule remains in effect until a final rescission takes effect, and advisers should not dismantle their programs in the meantime. When the time comes, an adviser that simply deletes its pay-to-play policies without conducting and documenting a risk assessment and adopting an appropriate replacement framework may invite scrutiny under the compliance rule.

Inventory Surviving Requirements and Tailor the Replacement Framework.

Advisers should identify the state and local restrictions, SRO rules, government-client policies, side-letter obligations, and placement-agent requirements that would survive rescission. Between those requirements and contractual commitments to government clients, many advisers may retain much of their current program while tailoring it to their actual risks, including by narrowing the population subject to preclearance or reporting, revising internal thresholds where permitted, simplifying hiring reviews, and retaining enhanced review for higher-risk personnel and jurisdictions.

Hiring and Promotions Get Easier

Rescission would end the lookback, removing a significant obstacle to hiring and promoting people with a history of political giving, although state laws with their own lookbacks may still apply.

Placement Agents

The federal ban on paying unregistered solicitors would end, but many state and local plans prohibit or restrict placement agents, and the use of any solicitor will remain a conflict that advisers must manage and, where appropriate, disclose.

Exempt reporting and foreign private advisers. These advisers would lose the most formal structure because they are not subject to the compliance and code of ethics rules. They remain subject to the antifraud provisions, however, and government investors may demand contractual protections in place of the rule.

CONCLUSION

The proposal may move quickly, but rescinding a rule is not a shortcut. Under the Administrative Procedure Act, the SEC must follow the same notice-and-comment process to repeal a rule as it did to adopt it, must respond to significant comments, and must give a reasoned explanation for its change in position. Courts review a rescission under the same arbitrary-and-capricious standard that applies to a new rule, and an agency that changes course must acknowledge the change and show good reasons for the new policy. The proposing release anticipates this

by expressly reconsidering the 2010 SEC's conclusion that policies and procedures alone could not adequately address pay-to-play. A final rescission will therefore be open to challenge, just as the rule itself was, and the rule has defenders who see it as a check on corruption in the management of public money.

The proposal is a welcome development for many advisers. It would end a regime that frequently imposed substantial consequences for technical missteps, discouraged lawful political participation, and appeared to have been applied primarily in cases that did not involve an alleged quid pro quo. Advisers should not, however, treat rescission as permission to abandon pay-to-play compliance. Advisers that respond thoughtfully by assessing their actual risks; inventorying the state, local, SRO, and contractual requirements that will remain; retaining the controls that continue to serve a useful purpose; and documenting the basis for any changes should find the new regime more flexible and manageable.

FOOTNOTES

¹ *Political Contributions by Certain Investment Advisers*, SEC Rel. No. IA-6994 (Sept. 3, 2026), 91 Fed. Reg. 57698 (Sept. 10, 2026) (Proposing Release).

² *Id.* at 6–8, 23–24.

³ Paul S. Atkins, Chairman, SEC, Statement on Proposal to Rescind “Pay-to-Play” Rule (Sept. 3, 2026).

⁴ *Political Contributions by Certain Investment Advisers*, SEC Rel. No. IA-1812 (Aug. 1999).

⁵ SEC Litigation Release No. 16759, *SEC v. Paul J. Silvester* (Oct. 10, 2000). Other pre-rule cases are collected in Proposing Release, *supra* n.1, at 11 n.15.

⁶ SEC Press Release No. 2010-224, SEC Charges Steven Rattner in Pay-to-Play Scheme Involving New York State Pension Fund (Nov. 18, 2010); Hazel Bradford, “SEC Settles New York Pay-to-Play Charges,” *Pensions & Investments* (Mar. 11, 2014).

⁷ *Political Contributions by Certain Investment Advisers*, SEC Rel. No. IA-2910 (Aug. 3, 2009).

⁸ *N.Y. Republican State Comm. v. SEC*, 799 F.3d 1126 (D.C. Cir. 2015).

⁹ *N.Y. Republican State Comm. v. SEC*, 927 F.3d 499 (D.C. Cir. 2019).

¹⁰ *N.Y. Republican State Comm. v. SEC*, No. 19-343 (U.S. Jan. 13, 2020) (denying certiorari).

¹¹ Proposing Release, *supra* n.1, at 9, 30 (citing, among others, *McCutcheon v. FEC*, 572 U.S. 185 (2014), and *FEC v. Ted Cruz for Senate*, 596 U.S. 289 (2022)).

¹² Proposing Release, *supra* n.1, at 15–22.

¹³ *Id.* at 17–18, 60.

¹⁴ *Id.* at 14, 20–21; Rule 206(4)-5(b)(3).

¹⁵ See Hester M. Peirce, Commissioner, SEC, *Laudable Ends, Poorly Pursued: Statement Regarding Recent Pay-to-Play Rule Settlements* (Sept. 15, 2022) (noting that three of the four cases involved closed-end funds from which investors generally could not withdraw); Proposing Release, *supra* n.1, at 29–30, 61–62.

¹⁶ Rule 206(4)-5(e).

¹⁷ Davidson Kempner Cap. Mgmt. LLC, SEC Rel. Nos. IA-3693 (Oct. 17, 2013) (notice) and IA-3715 (Nov. 13, 2013) (order).

¹⁸ Caplin & Drysdale, SEC Fines 10 Investment Advisers for Pay-to-Play Violations (Jan. 27, 2017).

¹⁹ See, e.g., True Venture Mgmt., L.L.C., SEC Rel. Nos. IA-6932 (Dec. 11, 2025) (notice) and IA-6937 (Jan. 8, 2026) (order).

²⁰ Hester M. Peirce, Commissioner, SEC, There's Got to Be a Better Way: Statement of Dissent Regarding Wayzata Investment Partners LLC (Apr. 15, 2024).

²¹ Proposing Release, *supra* n.1, at 89–91.

²² *In re TL Ventures Inc.*, SEC Rel. No. IA-3859 (June 20, 2014); SEC Press Release No. 2014-120.

²³ SEC Press Release No. 2017-15, 10 Firms Violated Pay-to-Play Rule By Accepting Pension Fund Fees Following Campaign Contributions (Jan. 17, 2017)./

²⁴ Rachael Levy, “A Bunch of Funds Just Got Fined by the SEC for Violating ‘Pay-to-Play’ Rules,” *Business Insider* (Jan. 17, 2017); *In re Pershing Square Capital Mgmt., L.P.*, SEC Rel. No. IA-4608 (Jan. 17, 2017).

²⁵ SEC, SEC Charges Four Investment Advisers for Pay-To-Play Violations Involving Campaign Contributions (Sept. 15, 2022).

²⁶ *In re Wayzata Inv. Partners LLC*, SEC Rel. No. IA-6590 (Apr. 15, 2024).

²⁷ *In re Obra Cap. Mgmt., LLC*, SEC Rel. No. IA-6662 (Aug. 19, 2024); Leo Almazora, “SEC Commissioner Pans Regulator’s Latest Pay-to-Play Order,” *InvestmentNews* (Aug. 22, 2024).

²⁸ Proposing Release, *supra* n.1, at 65–66 & n.141.

²⁹ Hester M. Peirce, Commissioner, SEC, First Amendment Sense and Sensibilities: Statement on Proposed Rescission of Pay-to-Play Rule (Sept. 3, 2026).

³⁰ Proposing Release, *supra* n.1, at 8, 24–27.

³¹ See *SEC v. Cap. Gains Rsch. Bureau, Inc.*, 375 U.S. 180 (1963); *Steadman v. SEC*, 967 F.2d 636 (D.C. Cir. 1992).

³² Proposing Release, *supra* n.1, at 34, 52–53, 58.

³³ *Id.* at 23 & n.51 (citing 18 U.S.C. 201 and 666).

³⁴ *Id.* at 31–32, 67–68.

³⁵ *Id.* at 34–40.

³⁶ *Compliance Programs of Investment Companies and Investment Advisers*, SEC Rel. No. IA-2204 (Dec. 17, 2003), at § II.A.1.

³⁷ Proposing Release, *supra* n.1, at 40, 45–46

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