

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

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**Political Contributions by Certain Investment Advisers: Ban on Third-Party Solicitation;
Extension of Compliance Date**

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; extension of compliance date.

SUMMARY: The Securities and Exchange Commission (“Commission” or “SEC”) is extending the date by which advisers must comply with the ban on third-party solicitation in rule 206(4)-5 under the Investment Advisers Act of 1940, the “pay to play” rule. The Commission is extending the compliance date in order to ensure an orderly transition for advisers and third-party solicitors as well as to provide additional time for them to adjust compliance policies and procedures after the transition.

DATES: *Effective date:* The effective date for this release is June 11, 2012.

The effective date for the ban on third-party solicitation under rule 206(4)-5 of the Investment Advisers Act of 1940 remains September 13, 2010.

Compliance date: The compliance date for the ban on third-party solicitation is extended until nine months after the compliance date of a final rule adopted by the Commission by which

municipal advisor firms must register under the Securities Exchange Act of 1934. Once such final rule is adopted, we will issue the new compliance date for the ban on third-party solicitation in a notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Vanessa M. Meeks, Attorney-Adviser, or Melissa A. Rovers, Branch Chief, at (202) 551-6787 or IARules@sec.gov, Office of Investment Adviser Regulation, Division of Investment Management, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-8549.

SUPPLEMENTARY INFORMATION: On July 1, 2010, the Commission adopted rule 206(4)-5 [17 CFR 275.206(4)-5] (the “Pay to Play Rule”) under the Investment Advisers Act of 1940 [15 USC 80b] (“Advisers Act”) to prohibit an investment adviser from providing advisory services for compensation to a government client for two years after the adviser or certain of its executives or employees (“covered associates”) make a contribution to certain elected officials or candidates.¹ As adopted, rule 206(4)-5 also prohibited an adviser and its covered associates from providing or agreeing to provide, directly or indirectly, payment to any third-party for a solicitation of advisory business from any government entity on behalf of such adviser, unless such third-party was an SEC-registered investment adviser or a registered broker or dealer subject to pay to play restrictions adopted by a registered national securities association (the “third-party solicitor ban”).² Rule 206(4)-5 became effective on September 13, 2010, and, as adopted, the third-party solicitor ban’s compliance date was September 13, 2011. This

¹ *Political Contributions by Certain Investment Advisers*, Investment Advisers Act Rel. No. 3043 (July 1, 2010) [75 FR 41018 (July 14, 2010)] (“Pay to Play Release”).

² *See id.* at Section II.B.2.(b). The Commission must find, by order, that those restrictions: (i) impose substantially equivalent or more stringent restrictions on broker-dealers than the Pay to Play Rule imposes on investment advisers; and (ii) are consistent with the objectives of the Pay to Play Rule.

compliance date was intended to provide advisers and third-party solicitors with sufficient time to conform their business practices to the rule, and to revise their compliance policies and procedures to prevent a violation. In addition, the transition period was intended to provide an opportunity for a registered national securities association to adopt a pay to play rule and for the Commission to assess whether that rule met the requirements of rule 206(4)-5(f)(9)(ii)(B).³ It was our understanding at the time, and it still is, that FINRA is planning to propose a rule that would meet those requirements, but we also suggested that we may need to take further action to ensure an orderly transition.⁴

Not long after the Pay to Play Rule was adopted, Congress created a new category of Commission registrants called “municipal advisors” in the Dodd-Frank Act. The statutory definition of municipal advisor includes persons that undertake “a solicitation of a municipal entity.”⁵ These solicitors would be registered with us and also subject to regulation by the Municipal Securities Rulemaking Board (“MSRB”). In September 2010, we adopted an interim final rule establishing a temporary means for municipal advisors to satisfy the registration requirement.⁶ In December 2010, we proposed permanent rules and forms that would interpret the term “municipal advisor” and create a new process by which municipal advisors must

³ See note 2. While rule 206(4)-5 applies to any registered national securities association, the Financial Industry Regulatory Authority, or FINRA, is currently the only registered national securities association under section 19(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78s(b)]. As such, for convenience, we will refer directly to FINRA in this Release when describing the exception for certain broker-dealers from the third-party solicitor ban.

⁴ See *id.* at Section III.B.

⁵ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) at section 975.

⁶ The Dodd-Frank Act required municipal advisors to be registered with the Commission by October 2010. See section 975 of the Dodd-Frank Act.

register with the SEC.⁷ On January 14, 2011, the MSRB requested comment on a draft proposal to establish a number of rules applicable to municipal advisors, including a pay to play rule.⁸ In December 2011, we extended the expiration date of the interim final rule to September 30, 2012.⁹

With the understanding that municipal advisors would be subject to permanent registration requirements with the Commission and could be subject to an MSRB pay to play rule, on June 22, 2011, we amended the Pay to Play Rule to add municipal advisors to the categories of registered entities—referred to as “regulated persons”—excepted from the rule’s third-party solicitor ban.¹⁰ For a municipal advisor to qualify as a “regulated person,” it must be registered with us as such and subject to a pay to play rule adopted by the MSRB. In addition, the Commission must find, by order, that the MSRB rule: (i) imposes substantially equivalent or more stringent restrictions on municipal advisors than the Pay to Play Rule imposes on investment advisers; and (ii) is consistent with the objectives of the Advisers Act Pay to Play Rule. The Commission also extended the date by which advisers must comply with the ban on third-party solicitation from September 13, 2011 to June 13, 2012 due to the expansion of the

⁷ See *Registration of Municipal Advisors*, Exchange Act Release No. 63576 (Dec. 20, 2010) [76 FR 824, (Jan. 6, 2011)].

⁸ See MSRB, *Request for Comment on Pay to Play Rule for Municipal Advisors*, MSRB Notice 2011-04 (Jan. 14, 2011) available at <http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-04.aspx?n=1>.

⁹ *Extension of Temporary Registration of Municipal Advisors*, Exchange Act Release No. 66020 (Dec. 21, 2011) [76 FR 80733 (Dec. 27, 2011)].

¹⁰ *Rules Implementing Amendments to the Investment Advisers Act of 1940*, Investment Advisers Act Rel. No. 3221 (June 22, 2011) [76 FR 42950 (July 19, 2011)] (“Implementing Release”).

definition of “regulated persons.” The extension was intended, again, to provide sufficient time for an orderly transition.¹¹

Soon thereafter, on August 19, 2011, the MSRB filed a proposal with the Commission that included a new pay to play rule regarding the solicitation activities of municipal advisors and amendments to several existing MSRB rules related to pay to play practices.¹² On September 9, 2011, the MSRB withdrew the proposals, stating that it intends to resubmit them upon our adoption of a permanent definition of the term “municipal advisor.”¹³

In order to ensure an orderly transition for advisers and third-party solicitors as well as to provide additional time for them to adjust compliance policies and procedures after the transition, we believe that an extension of the compliance date for the Pay to Play Rule’s third-party solicitor ban is appropriate until nine months after the compliance date of a final rule adopted by the Commission by which municipal advisor firms must register under the Securities Exchange Act of 1934. Final rules as to who must register as a municipal advisor, and the

¹¹ See *id.* at section II.D.1.

¹² See *Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed New Rule G-42, on Political Contributions and Prohibitions on Municipal Advisory Activities; Proposed Amendments to Rules G-8, on Books and Records, G-9, on Preservation of Records, and G-37, on Political Contributions and Prohibitions on Municipal Securities Business; Proposed Form G-37/G-42 and Form G-37x/G-42x; and a Proposed Restatement of a Rule G-37 Interpretive Notice*, Exchange Act Release No. 65255 (Sept. 2, 2011) [76 FR 55976 (Sept. 9, 2011)]; MSRB, *MSRB Files Pay to Play Rule for Municipal Advisors and Changes to Dealer Pay to Play Rule*, MSRB Notice 2011-46 (Aug. 19, 2011) available at <http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-46.aspx>. The proposal consisted of (i) proposed MSRB Rule G-42 (on political contributions and prohibitions on municipal advisory activities); (ii) proposed amendments that would make conforming changes to MSRB Rules G-8 (on books and records), G-9 (on preservation of records), and G-37 (on political contributions and prohibitions on municipal securities business); (iii) proposed Form G-37/G-42 and Form G-37x/G-42x; and (iv) a proposed restatement of a Rule G-37 interpretive notice issued by the MSRB in 1997.

¹³ See MSRB, *MSRB Withdraws Pending Municipal Advisor Rule Proposals*, MSRB Notice 2011-51 (Sept. 12, 2011) available at <http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-51.aspx>.

process for doing so, will provide clarity to persons who may qualify as municipal advisors, and the investment advisers who may hire them, as to status and registration obligations under these future Commission rules. The new compliance date will also allow all solicitors to assess compliance obligations with pay to play rules that may be adopted by FINRA or the MSRB.

The Commission finds that, for good cause and the reasons cited above, notice and solicitation of comment regarding the extension of the compliance date for the ban on third-party solicitation under rule 206(4)-5 are impracticable, unnecessary, or contrary to the public interest.¹⁴ In this regard, the Commission also notes that investment advisers need to be informed as soon as possible of the extension in order to plan and adjust their implementation process accordingly.

By the Commission.

Kevin M. O'Neill
Deputy Secretary

Dated: June 8, 2012

¹⁴ See Section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) (“APA”) (an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are “impracticable, unnecessary, or contrary to the public interest”). This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rules to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are “impractical, unnecessary or contrary to the public interest,” a rule “shall take effect at such time as the federal agency promulgating the rule determines”). Also, because the Regulatory Flexibility Act (5 U.S.C. 601 – 612) only requires agencies to prepare analyses when the APA requires general notice of rulemaking, that Act does not apply to the actions that we are taking in this release. The change to the compliance date is effective upon publication in the Federal Register. This date is less than 30 days after publication in the Federal Register, in accordance with the APA, which allows effectiveness in less than 30 days after publication for “a substantive rule which grants or recognizes an exemption or relieves a restriction.” See 5 U.S.C. 553(d)(1).