

Federal & State Pay-to-Play Compliance

“Pay-to-play” laws regulate political contributions made by persons seeking or holding government contracts. In many cases, these anti-corruption provisions also ban, limit, or require the reporting of contributions made by individuals and entities who are affiliated with government contractors, such as subcontractors, officers, directors, salespersons, and family members. The number of jurisdictions and public entities that have adopted “pay-to-play” laws or policies is ever-growing, and their procurement and campaign finance requirements vary widely. Wiley advises clients regarding compliance with these complex pay-to-play laws at the federal, state, local, and agency levels. Failure to comply with these laws can result in penalties that are potentially severe, such as the loss of valuable contracts with public entities and preclusion from government contracts for several years.

At the federal level, we routinely counsel companies in the financial services industry, trade associations, and their political action committees (PACs) regarding Municipal Securities Rulemaking Board (MSRB) Rules G-37 and G-38, Securities and Exchange Commission (SEC) Rules 206(4)-5 and 15Fh-6, Financial Industry Regulatory Authority (FINRA) Rules 2030 and 4580, and Commodity Futures Trading Commission (CFTC) Rule 23.451. These provisions regulate investment advisers, municipal advisers, broker-dealers, swap dealers, and their related “covered associates” and affiliates.

We also assist companies and organizations in complying with the pay-to-play laws that have proliferated at the state and local levels. These laws, which impact all types of government contractors and not just those in the financial-services industry, often reach beyond corporate and PAC contributions as discussed above. Many companies that may not think of themselves as government contractors, but nonetheless do business of a relatively modest amount with public entities, and may be subject to pay-to-play laws without realizing it. Compliance requirements include pre-contract certifications and contribution reports – as well as periodic contribution reports, such as in New Jersey and Maryland.

We have helped numerous clients develop and implement pay-to-play compliance programs in order to reduce their significant risk in this area, whereby political contributions of certain directors, officers, and employees and family members are pre-cleared against the legal requirements so that the contributions do not trigger the often draconian strict liability statutes. In addition, our semiannual *State and Municipal Pay-to-Play Survey* provides a comprehensive overview of the pay-to-play laws in states and major municipalities, as well as the pay-to-play policies that many public entities and retirement funds have adopted.

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