

SEC Proposes Pay-to-Play Ban for Investment Advisers

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On August 7, 2009, the Securities and Exchange Commission (SEC) published proposed rules that would impose a pay-to-play contribution ban on investment advisers who work for or seek to work for states and localities.

In short, under the proposed rules, if an investment adviser or certain of its officers, managing members or employees directly or indirectly makes a covered contribution to an elected state or local official or candidate who is directly or indirectly responsible for the selection of investment advisers (or could influence the outcome of such a selection), then the investment adviser would be banned from providing advisory services to a government client, such as a pension fund, in that jurisdiction for two years. The proposed ban also would apply to the solicitation and coordination with others of covered candidate contributions and payments to political party committees in the relevant state or local jurisdiction.

The proposed rules are a response to recent scandals in the states relating to investment advisers and are modeled after Municipal Securities Regulatory Board (MSRB) Rules G-37 and G-38, which apply a contribution ban to professionals in the municipal securities business. The proposed rules also aim to ban the use of unrelated third-parties to solicit government entities for advisory business.

Wiley Rein has a long history of advising financial companies and others about all aspects of MSRB Rules G-37 and G-38. Wiley Rein also has been intimately involved for years in advising companies of all types with respect to state and local pay-to-play laws and, among other things, produces and maintains a comprehensive and detailed

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survey of such rules. Comments on the SEC's rulemaking are due by October 6, 2009. Please contact any of the attorneys below if you would like to discuss the proposed rules, would like to formulate comments or would like to discuss state and local pay-to-play rules.