

LEGAL UPDATES

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Service

Corporate

Professionals

STEVEN F. CARMAN  
KANSAS CITY:  
816.983.8153  
STEVE.CARMAN@  
HUSCHBLACKWELL.COM

DAVID E. GARDELS  
OMAHA:  
402.964.5027  
DAVID.GARDELS@  
HUSCHBLACKWELL.COM

KIRSTIN P. SALZMAN  
KANSAS CITY:  
816.983.8316  
KIRSTIN.SALZMAN@  
HUSCHBLACKWELL.COM

## New Rule Restricts Political Contributions from Investment Advisers to Government Clients

In a unanimous vote, the Securities and Exchange Commission recently adopted a new rule aimed at preventing so called “pay to play” efforts, in which investment advisers try to garner approval from politicians by donating to their campaigns. The new rule prohibits advisers from providing advisory services for compensation to a government client for two years after the adviser or certain of its representatives make a contribution to elected officials or candidates with influence over the government’s selection of advisory services. The prohibition will not apply to most small advisers that are registered with the state securities authorities and certain other advisers that are exempt from registration with the Commission, such as intrastate investment advisers.

The rule prohibits an adviser from paying a third party to solicit advisory business from any government entity on behalf of the adviser, unless the third party is also a registered broker-dealer or registered investment adviser and, therefore, subject to the rule. An adviser cannot solicit or coordinate contributions from others, including political action committees, on behalf of covered officials or candidates or their political party in localities where the adviser is providing or seeking to provide advisory services to a government entity. Finally, an adviser cannot use a spouse, lawyer or company affiliate to make contributions that the adviser is otherwise prohibited from making.

Covered representatives include executive officers, employees and their supervisors who solicit government clients, and political action committees controlled by the adviser or these representatives. The two-year look back period applies even after the covered representative who made the contribution leaves the firm and follows the representative to employment

with other advisory firms. Thus, a covered adviser must continuously monitor and review all contributions made during the previous two years by the adviser's covered representatives even if such covered representatives were not employed by the covered adviser during the entire two year review period.

The Commission created an exception for certain de minimis contributions that allow an adviser or its covered representatives to contribute \$350 per election—primary and general—to covered political incumbents and challengers if the covered representative is entitled to vote for the candidate. The limit is \$150 if the representative cannot vote for the candidate. A limited exception applies to certain inadvertent contributions that are discovered and remedied within four months. Covered representatives may also continue to contribute to politicians seeking offices that do not oversee public funds at levels otherwise permitted under federal election law.

The new rule becomes effective 60 days after its publication in the Federal Register, the date of which has not yet been announced.

Compliance with this new rule will require rigid policies and procedures. In order to continue to service government clients, investment advisers should be aware of, and limit, political contributions made by their covered representatives. Moreover, registered advisers will be required to maintain certain records concerning their political contributions and those of their covered representatives. In addition, the advent of political fundraising over the Internet may present unique challenges to effective monitoring and record keeping. Covered advisers should prepare for the new rule by proactively reviewing and revising internal policies concerning political contributions on behalf of the organization and covered representatives so as to avoid any compliance issues.

The Financial Industry Regulatory Authority is preparing similar rule amendments for consideration that would prohibit broker-dealers acting on behalf of investment advisers from soliciting advisory business from a government entity unless they comply with pay to play restrictions.

### **Contact Info**

If you have any questions about this or other investment management matters, please contact your Husch Blackwell Sanders attorney.

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