

Client Alert

Current Issues Relevant to Our Clients

July 1, 2015

SEC Sets Compliance Date for Pay-to-Play Rule Prohibition on Certain Payments to Solicitors

The Securities and Exchange Commission (“SEC”) recently set the compliance date for the ban on certain payments to third-party solicitors under Rule 206(4)-5 of the Investment Advisers Act of 1940 (the “Pay-to-Play Rule”) as July 31, 2015. The SEC release providing notice of the compliance date is available [here](#). The SEC separately clarified in its “Staff Responses to Questions About the Pay to Play Rule” that it would not recommend enforcement actions against investment advisers for payments to third-party solicitors under the Pay-to-Play Rule until equivalent or more stringent pay-to-play rules are adopted by the Financial Industry Regulatory Authority (“FINRA”) and the Municipal Securities Rulemaking Board (“MSRB”) and are effective. The guidance is available [here](#) under Question I.4.

The Pay-to-Play Rule includes a prohibition for 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 is a “regulated person.” A regulated person is defined to include an SEC-registered investment adviser, a broker-dealer subject to pay-to-play rules adopted by a registered national securities association such as FINRA, or a registered municipal advisor subject to pay-to-play rules adopted by the MSRB. The SEC must find, by order, that the rules applicable to broker-dealers and municipal advisors impose substantially equivalent or more stringent restrictions than the Pay-to-Play Rule and are consistent with its objectives. The Pay-to-Play Rule became effective on September 13, 2010, and the compliance date for the ban on payments to third-party solicitors was set as September 13, 2011. When the SEC added municipal advisors to the definition of regulated person in 2011, the SEC also extended the compliance date for the ban on payments to third-party solicitors to June 13, 2012. In the absence of a final municipal advisor registration rule, the SEC further extended the compliance date to nine months after the compliance date of the final municipal advisor registration rule. The compliance date for the ban on payments to third-party solicitors has been set as July 31, 2015.

Currently, neither FINRA nor the MSRB have adopted the pay-to-play rules required under the Pay-to-Play Rule. In August 2014, the MSRB proposed to expand Rule G-37 to apply its existing pay-to-play restrictions to registered municipal advisors. For more information on the MSRB’s proposed expansion of Rule G-37, see our Client Alert available [here](#). In December 2014, FINRA proposed a series of rules that are substantially similar to the Pay-to-Play Rule prohibitions except that the FINRA rules would focus on the receipt of compensation by FINRA members for providing services as a third-party solicitor of government entities. For more information on the proposed FINRA rules, see our Client Alert available [here](#). Since the compliance date has been set as July 31, 2015 and appropriate FINRA and MSRB rules have not yet been adopted, the SEC has clarified that it would not recommend enforcement actions against investment advisers for payments to third-party solicitors until the later of the effective date of such a FINRA or MSRB pay-to-play rule. After July 31, 2015, once the appropriate FINRA and MSRB rules become effective, the SEC may begin to recommend enforcement actions for violations of the Pay-to-Play Rule’s ban on payments to third-party solicitors

For More Information

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