November 9, 2026

VIA ELECTRONIC SUBMISSION

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Political Contributions by Certain Investment Advisers; Proposed Rescission of Rule 206(4)-5 (Release No. IA-6994; File No. S7-2026-31)

Dear Ms. Countryman:

The American Investment Council ("AIC") appreciates the opportunity to comment on the proposal of the Securities and Exchange Commission (the "Commission" or the "SEC") to rescind Rule 206(4)-5 (the "Rule," commonly called the "pay-to-play" rule) under the Investment Advisers Act of 1940 (the "Advisers Act").1 AIC submits this letter on behalf of our members, which are leading private equity and private credit firms united by their commitment to growing and strengthening the businesses in which they invest. AIC's members represent a broad cross-section of the private fund industry, ranging from the largest global platforms to mid-market and emerging managers, and many of them manage capital on behalf of public pension plans that serve teachers, firefighters, police officers, and other public employees.

I. Introduction and Executive Summary

AIC supports the Commission's proposal to rescind the Rule. Many of AIC's members have been implementing it since its adoption in 2010, and that experience confirms the Commission's assessment that the Rule has produced significant unintended consequences and burdens that may not be justified by its benefits. The Rule is too complex to administer contribution by contribution and imposes disproportionate penalties for minor or inadvertent contributions that do not present meaningful risk. Moreover, experience shows that the Rule is unnecessary because relevant conduct is adequately addressed by the Advisers Act's antifraud provisions and other applicable laws.

In 2010, the Commission adopted Rule 206(4)-5 after allegations that advisers made political contributions or other payments to public officials in exchange for advisory mandates involving public pension plans and other government funds.[2] That concern was legitimate. An official

[1] *See* Political Contributions by Certain Investment Advisers, Investment Advisers Act Release No. 6994, 91 Fed. Reg. 57698 (Sept. 10, 2026) (the "Proposing Release").

[2] *See* Political Contributions by Certain Investment Advisers, Investment Advisers Act Release No. 3043 (July 1, 2010), 75 Fed. Reg. 41018, 41019-20 (July 14, 2010) (the "2010 Adopting Release").

who selects an adviser because of a contribution, rather than the adviser's qualifications, fees, or expected performance, can undermine fiduciary obligations and harm plan beneficiaries. The Rule addressed that concern through a prescriptive prophylactic regime, treating a broad range of contributions as disqualifying without requiring proof of intent, a connection to the award of business, or actual harm.

In practice, the Rule has produced consequences the Commission did not intend. Advisers responded to its strict-liability standard and the severity of its two-year compensation ban by prohibiting political contributions altogether, screening prospective hires based on lawful political activity, and declining or losing public-sector mandates when a contribution presented no material risk of corruption.[3] Ultimately, plan beneficiaries bear those costs, as public pension plans face a smaller pool of potential managers and less competition. In particular, AIC respectfully submits the following:

- **The premises on which the Rule was adopted no longer hold.** The Commission adopted the Rule because pay-to-play was hard to detect and prove and voluntary controls seemed unlikely to deter it. Today, whistleblower channels, public data, and fee-transparency requirements make improper influence easier to identify, and many private fund advisers that were unregistered in 2010 are now registered advisers subject to mandatory, examinable compliance obligations.

- **The Rule is operationally unworkable.** Its broad and vague definitions, low thresholds, look-back provisions, and automatic two-year compensation ban make contribution-by-contribution administration costly and uncertain, penalize contributions that bear no relationship to the award of advisory business, and distort hiring practices.

- **Existing federal obligations as well as state and local requirements provide sufficient safeguards to deter and identify pay-to-play activities.** Advisers' fiduciary duties and antifraud provisions under the Advisers Act, together with criminal law and contractual restrictions, would continue to deter quid pro quo conduct if the Rule is rescinded. Additionally, since the Rule's adoption, states, municipalities, and public pension systems have expanded their own pay-to-play safeguards, leaving the Rule's uniform strict-liability compensation ban as its principal incremental effect. Rescission would allow advisers to address their pay-to-play risks through principles-based compliance programs tailored to their businesses, provided the Commission confirms that its guidance on such programs is illustrative rather than mandatory.

- **The Rule has not been shown to achieve its goals, and its costs outweigh its benefits.** The Commission acknowledges that it is unclear whether the decline in enforcement actions reflects a decline in pay-to-play practices, rather than other likely deterrents, and that the Rule may have discouraged advisers from competing for public mandates; rescission, in turn, could save advisers an estimated $416 million annually.

Each of these points is discussed in greater detail below.

[3] *See* 2024 Investment Management Compliance Testing Survey, Investment Adviser Association, ACA Group and Yuter Compliance Consulting (2024) ("2024 Compliance Testing Survey"), *available at* https://www.investmentadviser.org/wp-content/uploads/2024/07/2024_IMCT-Survey.pdf.

II. Why the Rule Was Adopted and Why Its Premises Have Changed

A. The Pre-Rule Record Included Serious Misconduct, but the Rationale for the Rule Was Prophylactic

Before 2010, the Commission and state and local authorities pursued serious pay-to-play misconduct involving undisclosed payments to public officials, sham placement fees, and improper steering of public pension business.[4] The Proposing Release identifies 13 such cases, as well as two others that occurred around the time of the 2010 Adopting Release, each brought under the antifraud provisions and other existing authorities.[5] The Rule was not needed to reach that misconduct; rather, as noted below, the Commission adopted it as a prophylactic measure.

By 2010, states and localities had started adopting their own restrictions, public pension officials urged a federal baseline, and the Commission, noting the difficulty of proving a quid pro quo, viewed a prophylactic ban as a practical response.[6] The Commission described pay-to-play as rarely explicit and largely hidden from public view, and framed the Rule as a response to a collective-action problem in which advisers could be locked out of business if they did not contribute.[7]

The Commission also concluded that codes of ethics, compliance procedures, voluntary actions, and disclosure alone would not deter pay-to-play, and it intended the two-year time out as a cooling-off period.[8] The Commission now explains that the 2010 Commission "apparently did not anticipate the unintended consequences of the political contribution rule," and that its experience administering the Rule has caused it to reconsider those views.[9]

B. Current Conditions Answer Those Concerns

Each of those premises has since changed. Indeed, the detection environment is stronger: the SEC Whistleblower Program provides a channel for reporting suspected misconduct, public contribution databases make campaign activity searchable,[10] and Publicplansdata.org provides

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[4] *See,* e.g., *SEC v. Henry Morris, et al*., Litigation Release No. 20963 (Mar. 19, 2009) (alleging that, under undisclosed quid pro quo arrangements, investment advisers paid sham "placement agent" fees to public officials overseeing state pension funds to induce those officials to invest pension assets in the advisers' funds*); SEC v. Paul J. Silvester, et al*., Litigation Release No. 16759 (Oct. 10, 2000) (alleging that a former Connecticut State Treasurer steered hundreds of millions of dollars in state pension fund investments to firms in exchange for lucrative fees those firms paid to his friends and political associates*). See also* Political Contributions by Certain Investment Advisers, Investment Advisers Act Release No. 2910 (Aug. 3, 2009), 74 Fed. Reg. 39840, 39842-47 (the "2009 Proposing Release") (describing cases brought by criminal authorities in New York, New Mexico, Illinois, Ohio, Connecticut, and Florida, charging defendants with the same or similar conduct).

[5] Proposing Release at 57714 n.141.

[6] *See* 2009 Proposing Release at 39843 n.43 (noting that states, localities, and public pension funds had begun to "prohibit or regulate these practices in recent years"); *id*. n.44 (citing letters from public pension officials "expressing support for a Commission rule"); SEC Chair Mary L. Schapiro, Statement at SEC Open Meeting (June 30, 2010), *available at* https://www.sec.gov/newsroom/speeches-statements/spch063010mls-statement-sec-open-meeting (suggesting that the difficulty of proving "a direct quid-pro-quo" made "prophylactic rules" necessary).

[7] *See* 2010 Adopting Release at 41019, 41022.

[8] *See id.* at 41026-28, 41040.

[9] Proposing Release at 57705.

[10] *See, e.g.,* Fed. Election Comm'n, Individual Contributions, https://www.fec.gov/data/receipts/individual-contributions/ (searchable database of contributions to federal candidates and committees); FollowTheMoney.org, https://www.followthemoney.org (contributions to state candidates, parties, and ballot measure committees in all 50 states since 2000).

public pension data dating back to 2001.[11] By the Commission's own account, existing state pension disclosures may already make it "easier for beneficiaries, journalists, and oversight bodies to identify anomalous investment patterns that may reflect improper influence."[12] Academic research likewise shows that public pension trustees are sensitive to disclosure and media attention, which shape how they select and compensate investment managers.[13] Moreover, campaign spending has grown significantly since the Supreme Court's 2010 decision in *Citizens United*, which, as the Commission observes, likely reduces the marginal value of any individual contribution.[14]

The concern about voluntary controls has also changed. When the Rule was adopted, many private fund advisers relied on the so-called "private adviser exemption" to avoid having to register with the Commission.[15] Congress repealed that exemption soon after the Rule's adoption, bringing a substantial portion of those advisers within the Commission's registration and examination framework.[16] Advisers Act Rules 206(4)-7 (the "Compliance Rule") and 204A-1 (the "Code of Ethics Rule") now impose mandatory, examinable obligations on such registered advisers, and limited partnership agreements, side letters, and plan agreements commonly include contribution and pay-to-play covenants that supplement the federal framework. Moreover, as the Commission acknowledges, all these years of experience since the Rule's adoption have also given advisers tracking, training, and attestation systems that did not exist in the same form in 2010.[17]

AIC recognizes that public corruption remains a serious concern, but rescinding the Rule would not legalize bribery, fraud, or concealment. To the contrary, it would remove a prescriptive rule that is no longer needed in light of the safeguards described throughout this letter.

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[11] *See* Public Plans Data, https://publicplansdata.org (publishing public pension plan data dating back to 2001, including on returns, asset allocation, and investment fees).

[12] Proposing Release at 57714; *see also* Cal. Gov't Code § 7514.7; Tex. Gov't Code Ann. §§ 801, 802; S.C. Code Ann. § 9-16-90.

[13] *See* Alexander Dyck, Paulo Manoel & Adair Morse, *Outraged by Compensation: Implications for Public Pension Performance*, 35 Rev. Fin. Stud. 2928 (2022) (suggesting that public pension trustees, who "have career concerns sensitive to information emerging in the public domain," respond to the threat of "negative media attention" by altering how they hire and pay investment managers).

[14] *See* Proposing Release at 57714 (noting that campaign spending is "significantly higher today than it was in 2010" and that, as a result, "the value of each marginal dollar is likely smaller"); *see also* By the Numbers: 15 Years of Citizens United, OpenSecrets (Jan. 2025), https://www.opensecrets.org/news/2025/01/by-the-numbers-15-years-of-citizens-united/ (stating that outside spending in federal elections grew from $574 million in the 2008 cycle to nearly $4.5 billion in 2024); Ian Vandewalker, *Odd-Year Elections Break Spending Record*s, Brennan Ctr. for Just. (Dec. 1, 2025), https://www.brennancenter.org/our-work/analysis-opinion/odd-year-elections-break-spending-records (reporting record 2025 state and local election spending).

[15] *See* Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 3221, 76 Fed. Reg. 42950, 42951 (July 19, 2011) ("Implementing Release") (noting that many private fund advisers relied on the exemption under Section 203(b)(3) of the Advisers Act "in order to avoid registration").

[16] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 403, 124 Stat. 1376 (2010) (repealing the private adviser exemption); Implementing Release at 42966 n.222 (noting that "many private fund advisers that were previously unregistered will now be required to register under the Advisers Act").

[17] *See* Proposing Release at 57703, 57711.

III. The Rule's Operational Burdens and Unintended Incentives

A. Blanket Contribution Bans Reflect the Rule's Unworkability

The Rule has produced blanket contribution bans because firms generally find it difficult to administer the Rule's requirements with confidence given the Rule's fact-intensive definitions and broad look-back provisions, particularly in light of the severity of its penalties. Rather than assess each contribution to determine whether a recipient is an official, whether the contributor is a covered associate, and whether a two-year compensation ban would follow, and then monitor whether subsequent changes could cause an initially permissible contribution to later trigger that ban, many firms prohibit all political contributions. A 2024 industry survey found that approximately 12% of investment advisers do so, and, in our experience, many other advisers have adopted highly restrictive policies or otherwise spent significant additional resources on compliance build-outs meant to address the Rule's requirements. Such blanket contribution bans exceed what the Rule requires, but they reflect the Rule's complexity and penalty structure. Even an adviser that prohibits all contributions by current employees can be handicapped by a contribution made before an employee joins the firm.[18]

The Rule's definition of "official" compounds the uncertainty. It reaches any person who is "directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity," as well as anyone with authority to appoint such a person.[19] Applying that language requires research into oversight structures, appointment authority, and the duties of state and local employees, and the "indirectly" concept can capture multiple links between an elected official and an adviser-selection decision that public information may not reveal. The definition also reaches state and local officeholders who run for federal office, including unsuccessful candidates, so firms must analyze the office held at the time of the contribution, not simply the office sought.[20]

The Rule's definition of "covered associate" raises similar issues. It covers general partners, managing members, executive officers (including any vice president in charge of a principal business unit), employees soliciting government entities, such an employee's direct or indirect supervisors, and any political action committees controlled by the adviser or its covered associates. Since the term "employee" is not defined in the Advisers Act, "covered associate" could inappropriately be read to capture consultants and independent contractors performing similar functions. Because covered-associate status is highly fact-specific, many firms pre-clear contributions by all employees, and the Rule can penalize contributions by personnel who have no role in, or reason to engage in, pay-to-play conduct. Indeed, the Commission recognizes that the definition "may have been applied more broadly than intended."[21]

In addition, the Rule's indirect contribution provision – which prohibits doing indirectly what cannot be done directly – is difficult to administer in practice. As a result, many advisers restrict political contributions by spouses and dependent children of covered associates, as well as

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[18] *See* SEC Chairman Paul S. Atkins, Statement on Proposal to Rescind "Pay-to-Play" Rule (Sept. 3, 2026) ("Atkins Statement"), *available at* https://www.sec.gov/newsroom/speeches-statements/atkins-statement-proposal-rescind-pay-play-rule-090326.

[19] Rule 206(4)-5(f)(6) under the Advisers Act.

[20] *See* 2010 Adopting Release at 41030 n.150 (noting that "if a State or municipal official were, for example, a candidate for the U.S. Senate, House of Representatives, or presidency, an adviser's contributions to that official would be covered by the rule").

[21] Proposing Release at 57702.

contributions to political committees, political organizations, and other nonprofit organizations that may in turn contribute to state and local officials or candidates.

The scale of the penalty magnifies that uncertainty. Because a state or local official may have appointment authority over a pension-board member, a small contribution to that official given for purely personal reasons can trigger a two-year compensation ban on an existing public-pension mandate, jeopardizing substantial fees even when the contributor had no role in government solicitation and the official could not have influenced the mandate.[22]

B. De Facto Strict Liability and Disproportionate Penalties

The Rule operates as a *de facto* strict-liability regime. Under Rule 206(4)-5(a)(1), an adviser may not receive compensation for advisory services to a government entity for two years after the adviser or a covered associate makes a covered contribution. The ban does not depend on the contributor's intent, whether a *quid pro quo* was sought or obtained,[23] or whether the contribution could have influenced the award of a mandate. A contribution of more than $150 can therefore cause an adviser to forfeit millions of dollars in fees, a result the Commission itself describes as "excessive."[24] Apart from seeking an exemptive order, an adviser's only means of curing a triggering contribution is a narrow exception for returned contributions, which (1) applies only to contributions of $350 or less, (2) requires that the contribution be discovered within four months and returned within 60 days, (3) may be used only two or three times per calendar year, depending on the adviser's size, and only once per covered associate, and (4) depends on a third-party recipient returning funds that may already have been spent.

The Commission's enforcement record illustrates the Rule's severity and how it operates in practice. In four enforcement actions in 2022, advisers paid penalties from $45,000 to $95,000 for contributions of no more than $1,000.[25] The relevant government entities had already invested in the advisers' funds, some contributors sought returns, some candidates lost their elections, and none of the cases showed an intent to influence an advisory mandate.[26] Three of the four actions involved closed-end funds from which investors generally could not withdraw. In those cases, the Rule's compensation ban effectively penalized advisers for continuing to receive fees on existing locked-up investments rather than for soliciting new business.

The Rule does not assess whether the official receiving a contribution realistically could influence the decision to hire an adviser, or whether the contribution was intended to, or could

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[22] *See id.* at 57701-02 (noting that the Rule's "indirect" element may capture "contributions to officials who may have no practical involvement in or knowledge of specific investment contracts" and that the resulting losses "seem excessive").

[23] *See Obra Capital Management, LLC*, Investment Advisers Act Release No. 6662, at 4 (Aug. 19, 2024) (stating that the Rule "does not require a showing of quid pro quo or actual intent to influence an elected official or candidate").

[24] *See* Proposing Release at 57701.

[25] *See* SEC Press Release, SEC Charges Four Investment Advisers for Pay-to-Play Violations Involving Campaign Contributions (Sept. 15, 2022); *Asset Management Group of Bank of Hawaii,* Rel. No. IA-6127, 5-6 (Sept. 15, 2022); *Canaan Management, LLC*, Rel. No. IA-6126, 4-5 (Sept. 15, 2022); *Highland Capital Partners, LLC,* Rel. No. IA-6128, 4-5 (Sept. 15, 2022); *StarVest Management, Inc.,* Rel. No. IA-6129, 4-5 (Sept. 15, 2022).

[26] Two 2024 enforcement actions followed the same pattern. *See Wayzata Investment Partners LLC*, Rel. No. IA-6590 (Apr. 15, 2024) (fining an adviser $60,000 after a covered associate contributed $4,000 to a gubernatorial candidate who sat on the State Board of Investment, which had previously invested approximately $300 million in the adviser's fund)*; Obra Capital Management, LLC*, Rel. No. IA-6662 (Aug. 19, 2024) (imposing a $95,000 penalty after an employee made a $7,150 contribution before joining the adviser, even though the employee obtained a full return and the government entity had already invested in the adviser's fund).

reasonably be expected to, influence the official. The Rule is therefore indifferent to evidence of actual pay-to-play schemes and discourages contributions that are unrelated to obtaining government advisory business.[27]

Indeed, in practice, public pension investment decisions are rarely made by a single official. Adviser selection is typically a layered process involving investment staff, consultants, investment committees, and multi-member boards, each with its own approval authority.[28] Our understanding is that only a limited number of states vest investment authority in a sole trustee.[29] Within that structure, a modest contribution to any one official is unlikely to determine which adviser is hired by a public pension.

Moreover, the exemptive process under Rule 206(4)-5(e) does not meaningfully moderate these effects. The Commission acknowledges that the process "may be costly and time-consuming to pursue" and estimates cumulative total external costs of approximately $379,542 to prepare and submit exemptive applications.[30] The Commission also reports receiving only about two applications per year.[31] Applications also require public disclosure of the contributor's identity and apparent intent, and take time to resolve while the compensation ban remains in effect. When the Rule was adopted, the exemptive process was expected to play an important role in moderating the Rule's impact.[32] Indeed, at that time, then-Commissioner Paredes recognized that, while the Rule "intentionally casts a wide net" and can capture inadvertent contributions that an adviser does not condone and quickly remedies, an expeditious and meaningful exemptive process would benefit the adviser as well as its government client.[33] Fifteen years of experience show that the exemptive process has not served that role.

C. Distortion of Labor Markets and Hiring Practices

The Rule's *ex post facto* look-back provision also distorts the labor market for investment advisory personnel. Rule 206(4)-5(b)(2) reaches contributions that an individual makes before

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[27] *See* Commissioner Hester M. Peirce, Laudable Ends, Poorly Pursued, Statement Regarding Recent Pay-to-Play Rule Settlements (Sept. 15, 2022) ("Peirce Statement 2022"), *available at* https://www.sec.gov/newsroom/speeches-statements/peirce-statement-pay-play-rule-settlements-091522 (calling the Rule "an exceedingly blunt instrument" that "does not concern itself with whether the official would or could have prevented the adviser from playing without first paying").

[28] *See, e.g.*, Gov't Fin. Officers Ass'n, Best Practice, *Selecting Third-Party Investment Professionals for Pension Fund Assets* (updated Jan. 2025), *available at* https://www.gfoa.org/materials/selecting-third-party-investment-professionals-for (recommending that a pension investment consultant and/or review committee conduct manager searches); Cal. Pub. Emps.' Ret. Sys., Board of Administration, Investment Committee Delegation Resolution (adopted Apr. 14, 2026), *available at* https://www.calpers.ca.gov/documents/delegation-resolution-investment/download (noting that the CalPERS Investment Committee is composed of its entire Board and delegating to the Committee oversight of the "selection process and performance of investment" managers).

[29] *See* N.C. Inv. Auth., Governance, Operations, and Investment Program Review (Aug. 27, 2025), https://www.ncinvest.gov/ncia/2025-statutory-review-governance-operations (noting that the sole fiduciary model "is no longer a common practice" among pension funds); Nat'l Ass'n of State Ret. Adm'rs, Governance, https://www.nasra.org/governance (noting that "[t]he median public retirement system board size is nine").

[30] Proposing Release at 57702, 57722.

[31] *Id.* at 57721. When reviewing such applications, Rule 206(4)-5(e) requires the Commission to consider: the public interest, the adviser's policies and procedures, the adviser's knowledge and remedial steps, the contributor's status, the timing and amount of the contribution, the nature of the election, and the contributor's apparent intent or motive.

[32] *See* SEC Commissioner Troy A. Paredes, Statement at SEC Open Meeting (June 30, 2010), *available at* https://www.sec.gov/newsroom/speeches-statements/spch063010tap-statement-sec-open-meeting.

[33] *Id.*

becoming a covered associate, including while working for another firm, in a noncovered role, or even in a different industry altogether.[34] As a result, a contribution that raised no issue when made can later trigger the two-year compensation ban simply because the contributor is hired or promoted. In one 2022 settlement, for example, a $1,000 contribution made while the contributor was not yet a covered associate became a violation of the Rule when she was promoted two months later.[35] Advisers therefore must review the prior political contributions of applicants and employees before hiring or promoting them into covered-associate roles (an intrusive inquiry that bears little relationship to pay-to-play risk) and may pass over qualified candidates based on lawful political activity. As the Commission rightly observes, advisers "have been prevented from hiring or promoting qualified managers because of past contributions" that "pose little if any risk" of pay-to-play.[36]

The Rule also affects who may seek these roles in the first place. Professionals who value their ability to participate in state and local elections by making political contributions may decline covered-associate positions or avoid advisers that serve government clients, narrowing the talent pool available for public mandates.[37]

D. Effective Compliance Adds Disproportionate Costs, Particularly for Low-Risk Advisers

The Rule's requirements also generate extensive compliance functions. Advisers must review contributions at hiring, promotion, and transfer; continue monitoring the consequences of contributions even after an individual leaves the firm or ceases to be a covered associate;[38] and identify every government entity investor across covered investment pools and track contributions to such investor's officials.[39] Additionally, Rule 204-2(a)(18) under the Advisers Act requires advisers to keep records concerning covered associates, government entity clients, contributions, and regulated persons the adviser pays to solicit government entities.[40] A 2024 industry survey indicated that approximately 40% of advisers conduct periodic pay-to-play training, 31% require periodic contribution reporting, 31% vet new hires, and 27% pre-clear contributions above $150.[41] As the Commission recognizes, because the Rule's objective criteria "apply to an adviser regardless of its pay-to-play risk profile," even low-risk advisers must maintain this compliance machinery.[42]

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[34] The Rule also looks forward because the two-year prohibition continues after the covered associate leaves the firm or ceases to qualify as such. *See* 2010 Adopting Release at 41033 n.206.

[35] *Asset Management Group of Bank of Hawaii*, Rel. No. IA-6127, 5-6 (Sept. 15, 2022).

[36] Proposing Release at 57702.

[37] *See id.* at 57717 (recognizing that some prospective applicants "may currently choose not to work for an investment adviser because they value their ability to make political contributions and do not wish to have that ability restricted by their employer").

[38] *See* Rule 206(4)-5(a)(1) (prohibiting compensation for two years after a covered associate's contribution); 2010 Adopting Release at 41033 n.206 (noting that "a covered associate's employer at the time of the contribution would be subject to [the Rule's] prohibition for the entire two-year period," regardless of whether the person ceases to qualify as a covered associate or leaves the firm, and suggesting that this "look forward" function is aimed at preventing advisers from channeling contributions through departing employees).

[39] *See* Rule 206(4)-5(c), (f)(3) (treating an adviser to a covered investment pool as advising each government entity that invests in it).

[40] *See also* Rule 206(4)-5(a)(2) (governing payments to "regulated persons" to solicit government entities).

[41] 2024 Compliance Testing Survey at 43, 45.

[42] Proposing Release at 57725.

The *de minimis* thresholds compound the problem. They have never been adjusted for inflation, and while the federal contribution limit for individuals to federal candidates is now $3,500 per election, the Rule uses $150 and $350 thresholds that the Commission recognizes are "low enough as to be unlikely to meaningfully influence the adviser selection process, while still triggering the prohibitions of the rule."[43]

IV. Existing Federal Obligations and Requirements From Government Entities Closer to the Relevant Investor Population Provide Adequate Protection

A. Advisers' Fiduciary Duty and Federal Antifraud Obligations Remain

Significant and adequate protections against pay-to-play arrangements would remain if the Rule is rescinded. Investment advisers owe their clients a fiduciary duty that independently requires them to act in their clients' best interest, and pay-to-play practices may be inconsistent with that duty and may constitute fraud under the Federal securities laws.[44] Sections 206(1), 206(2), and 206(4) of the Advisers Act prohibit fraudulent, deceptive, or manipulative conduct toward clients and prospective clients, and Section 203(e)(6) reaches advisers that fail reasonably to supervise personnel who commit violations. An adviser that exchanges political support for public business, conceals that exchange, or helps an official steer assets for an improper reason may violate these provisions, as well as Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Section 17(a) of the Securities Act of 1933.[45]

As described in Section II.A, the Commission brought various pay-to-play enforcement actions under these antifraud provisions before the Rule was adopted. Those actions show that the Commission could pursue an adviser, official, or intermediary when payments or contributions formed part of a scheme to obtain or retain advisory business, without an automatic compensation ban for every contribution.[46]

Existing rules also impose adequate deterrence. The Compliance Rule requires registered advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act, to review them at least annually, and to designate a chief compliance officer. Likewise, the Code of Ethics Rule requires a standard of business conduct reflecting advisers' fiduciary obligations, and Rule 206(4)-8 under the Advisers Act prohibits fraudulent, deceptive, or manipulative conduct toward investors in pooled investment vehicles, which could reach an adviser that conceals a contribution that induced a public plan to invest in the relevant pooled investment vehicle.[47]

After rescission, these obligations would continue to require advisers to address pay-to-play risk through compliance programs tailored to their businesses.[48] AIC agrees with the

[43] *Id.* at 57724; Federal Election Commission, *Contribution Limits for 2025–2026 Federal Elections* (Aug. 31, 2026), https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/contribution-limits/.

[44] *See* Proposing Release at 57700.

[45] Section 10(b) and Section 17(a) would apply to a pay-to-play scheme involving fraud "in connection with the purchase or sale" of a security, or fraud in "the offer or sale" of a security, respectively.

[46] Former Commissioner Peirce noted as much when she observed that the Commission "did not need the Rule to bring pay-to-play cases." Peirce Statement 2022.

[47] *See* Rule 206(4)-7(a)-(c); *see also* Proposing Release at 57706-07.

[48] Exempt reporting advisers ("ERAs") and foreign private advisers, which are not subject to the Compliance Rule or the Code of Ethics Rule, would remain subject to the antifraud provisions of the Advisers Act and, where they

Commission that a principles-based approach that allows an adviser to adapt its policies and procedures to "the specific pay-to-play risks faced by the adviser" strikes a far more appropriate balance.[49] Under that approach, an adviser can identify the governmental relationships and personnel that present genuine risk, apply pre-clearance and monitoring where warranted, control the use of third-party solicitors and placement agents, test implementation, and take remedial action when a policy is violated.[50] Rule 204-2(a)(10) under the Advisers Act would also continue to require advisers to retain their written agreements with those solicitors and placement agents. Advisers have operated compliance programs pursuant to Advisers Act requirements predating the Rule, which already have imposed appropriately tailored compliance obligations that seek to align written policies with actual practices.[51]

Moreover, federal criminal law independently addresses quid pro quo corruption. Section 201(b)(1) of Title 18 prohibits corruptly giving anything of value to a public official with intent to influence an official act, and Section 666 reaches corrupt payments intended to influence agents of state and local governments that receive more than $10,000 in federal program benefits in a year, a threshold most such governments meet. Similarly, the federal mail and wire fraud statutes, including honest-services fraud, and the Hobbs Act reach quid pro quo and concealment schemes.[52] These statutes, together with state criminal laws, ensure that harmful pay-to-play arrangements will continue to carry serious consequences after the Rule is rescinded.[53]

AIC notes, however, that realizing the benefits of the principles-based approach envisioned by the Commission will require clarity that the Proposing Release's guidance on post-rescission policies and procedures is illustrative and does not prescribe mandatory controls. Specifically, the Proposing Release identifies several factors "to consider" when designing and implementing policies and procedures tailored to an adviser's pay-to-play risk, but describes some of those factors as ones that an adviser's policies "would need to" address.[54] AIC therefore requests that the Commission:

- state expressly in any adopting release that the factors described in the Proposing Release or the adopting release are illustrative and not required;
- confirm that low-risk advisers need not adopt pay-to-play-specific policies;

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advise pooled investment vehicles, Rule 206(4)-8, which AIC believes are appropriate means to address any pay-to-play risks such advisers present.

[49] *See* Proposing Release at 57706.

[50] *See id.* at 57706-07 (describing factors an adviser may consider in tailoring its policies and procedures to prevent pay-to-play practices if the Rule is rescinded, including risk identification, pre-clearance, monitoring, third-party solicitor controls, and remedial measures).

[51] *See* Compliance Programs of Investment Companies and Investment Advisers, Investment Advisers Act Release No. 2204 (Dec. 17, 2003), 68 Fed. Reg. 74714, 74715 (Dec. 24, 2003) (explaining that the rule "is designed to permit the Commission to address the failure of an adviser to have in place adequate compliance controls, before that failure has a chance to harm clients or investors"). We note that at least one of the pre-2010 pay-to-play enforcement actions brought by the Commission also predated its adoption of the Compliance Rule. *See Silvester*, *supra* note 4.

[52] *See* 18 U.S.C. §§ 1341, 1343 (mail and wire fraud), 1346 (honest-services fraud), 1951 (Hobbs Act); *Skilling v. United State*s, 561 U.S. 358, 404-09 (2010) (honest-services fraud reaches bribery and kickback schemes); *McCormick v. United States*, 500 U.S. 257, 273 (1991) (campaign contributions can support Hobbs Act extortion where made in exchange for an explicit promise or undertaking by the official).

[53] *See* 18 U.S.C. §§ 201(b)(1), 666(a)(2), (b); *see also* Proposing Release at 57703 n.51.

[54] Proposing Release at 57706-07.

- confirm that examination staff will not treat the absence of pre-clearance, look-back provisions, or monitoring as a deficiency where the adviser has reasonably assessed its risk and determined that such measures are not necessary;
- provide non-exclusive examples of programs it would consider sufficient under the fiduciary duty framework;[55] and
- refrain from adopting any replacement rule or new Form ADV disclosure requirement.

The Commission itself estimates that some advisers, after assessing their pay-to-play risk, may maintain their existing Rule 206(4)-5 compliance programs following rescission.[56] Absent clearer guidance on the points noted above, however, we believe that many more advisers may retain those or very similar programs rather than risk an examination finding, which could significantly limit the expected benefits of the rescission.

B. State and Local Governments Have Established Their Own Pay-to-Play Standards

In addition to the uniform federal standard established by advisers' fiduciary duty and federal antifraud and criminal law, the government entities that employ the officials and oversee the public plans at issue have been independently establishing their own pay-to-play rules and standards. For example, New Jersey bars its pension funds from engaging investment managers that made covered contributions within the prior two years, Illinois bars contributions by firms holding or bidding on state contracts, New York City imposes certain contribution limits on persons doing business with the city, and New York State and New York City bar their pension funds from investing with managers that use placement agents.[57] New Jersey, Rhode Island, South Carolina, and Philadelphia also require disclosure of, or restrict, contributions by state or city contractors.[58] These regimes are calibrated to each jurisdiction's officials, governance structures, and procurement processes—the features that determine whether a contribution presents a genuine risk of influencing an investment decision. Depending on the jurisdiction, such rules and standards may also reach principals, employees, affiliates, spouses, and controlled political action committees, and violations can result in fines, contract cancellation, loss of compensation or investment eligibility, disgorgement, and civil or criminal liability.

Contractual and institutional safeguards add another layer. Limited partnership agreements, side letters, investment-management agreements, and requests for proposals often incorporate Rule 206(4)-5 or impose comparable contribution, disclosure, and placement-agent

[55] Examples of procedures the Commission could consider sufficient include: (a) a written policy, referenced in the adviser's code of ethics, prohibiting contributions or payments made to obtain or retain government advisory business; (b) pre-clearance limited to personnel who actually solicit government entities and their direct supervisors (i.e., no firm-wide pre-clearance); (c) pre-clearance only for contributions to officials of government entities that are current clients or investors, or are being actively solicited; (d) pre-clearance only for contributions above a de minimis amount, with personnel who contribute above that amount subject to certain activity limitations; (e) policies that allow for after-the-fact reporting and review of political contributions; and (f) policies that comply with applicable state and local pay-to-play laws.

[56] *See* Proposing Release at 57706, 57713-14 (noting that some advisers may remove requirements to comply with the Rule, while retaining substantially similar obligations as a matter of practice).

[57] *See* N.J. Admin. Code § 17:16-4.3 (New Jersey); 30 ILCS 500/50-37 (Illinois); NYC Local Law No. 34 (2007) (New York City contribution limits); N.Y. Ret. & Soc. Sec. Law § 424-A; New York City Pension Funds Enact Placement Agent Ban, Press Release (June 9, 2014) (placement agents).

[58] *See* N.J. Stat. Ann. § 19:44A-20.27; R.I. Gen. Laws § 17-27-2; S.C. Code Ann. § 8-13-1342; Phila., Pa., Code § 17-1402.

restrictions, and some of those obligations may continue after rescission unless the parties amend them. Public pension plans also maintain their own contribution, vendor-screening, and placement-agent policies independent of federal regulation.[59] Advisers serving state and local government clients therefore will need to continue implementing contribution monitoring, certification, and recordkeeping after the Rule is rescinded.

The Commission asks whether these state and local requirements "diminish the need for rule 206(4)-5."[60] We believe they do. The Rule was adopted in part because states and localities were only beginning to act, and that premise no longer holds. As the Commission recognizes, these laws exist independently of the Rule and "would not be limited or otherwise impacted by its rescission."[61] Improper influence over state and local officials is most effectively addressed by the governments that employ those officials.

V. The Rule's Uncertain Benefits Do Not Justify Its Costs

Even setting aside these burdens, the record does not show that the Rule has achieved its purpose. The Commission noted that, while it brought various antifraud enforcement actions relating to alleged pay-to-play practices between 2000 and 2009, and no similar fraud-based actions have been brought since the Rule's compliance date, it remains "unclear to what extent such decline in enforcement actions also reflects a decline in pay-to-play practices overall."[62] The Commission instead recognized that pre-Rule enforcement under the Advisers Act's antifraud provisions may itself have "operated to deter pay-to-play practices," and identified other likely explanations for the decline in enforcement actions, including higher campaign spending, increased public scrutiny, and improved data dissemination.[63]

Against these uncertain benefits, the costs are concrete and substantial. The Commission estimates that rescission would save advisers approximately $416 million in annual compliance costs, or approximately $3,750 per smaller firm, $161,500 per medium firm, and $323,000 per larger firm, against a one-time transition cost across firms of approximately $51 million.[64]

The Rule may also harm the beneficiaries it was designed to protect by reducing competition for government advisory mandates and preventing pension plans from engaging the most qualified advisers.[65] Smaller advisers, in particular, may avoid competing for government mandates because compliance costs and the risk of a minor infraction outweigh the potential returns, while larger advisers incur heightened costs to ensure compliance across a larger covered associate pool. State and local government retirement funds reportedly held approximately $9.6 trillion in assets as of the second quarter of 2025, and more than 37 million

[59] *See, e.*g., N.Y. State Common Ret. Fund*, Policy Regarding Use of Placement Agents by Investment Manage*rs (rev. Mar. 19, 2025)(barring investments with managers that use placement agents); Cal. Code Regs. tit. 5, §§ 24010-24013 (limiting contributions by parties engaged or seeking to engage in CalSTRS investment relationships to CalSTRS board members, officers, and employees and certain state officials and candidates, and providing for two-year disqualification of violators); Tex. TRS*, Investment Policy Statemen*t (Adopted May 1, 2026) (requiring disclosure of placement agents and political contributions).

[60] Proposing Release at 57708, Request for Comment 11.

[61] *Id.* at 57699.

[62] *Id.* at 57714.

[63] *Id.* at 57714-15.

[64] *Id.* at 57712-13.

[65] *See id.* at 57702, 57713 (noting that the Rule may have "disincentivized investment advisers from seeking [government] contracts").

people participated in state and local pension plans in 2025.[66] Even modest improvements in net-of-fee returns from increased competition could generate substantial benefits for those participants. The Rule can also cost a public pension plan an adviser it has chosen to retain. As the Commission recognizes, contributions by an adviser's covered associates that do not raise material pay-to-play risk can cause a plan to lose an existing adviser with "institutional knowledge" of its investment strategy, leaving the plan to bear the cost and disruption of replacing a manager it had no reason to replace.[67]

VI. Conclusion

AIC reiterates its support for the Commission's proposed rescission of Rule 206(4)-5. Based on more than fifteen years of implementation experience, AIC believes the premises on which the Rule was adopted no longer hold and the Rule has not been shown to provide an incremental deterrent effect in light of other existing federal, state, and local laws meant to curb pay-to-play activities. Furthermore, the Rule is operationally complex, imposes strict and disproportionate penalties on conduct that may have no relationship to corruption, and has distorted hiring and competition for public mandates. State and local pay-to-play regimes adopted by the governments closest to the affected investors, together with advisers' fiduciary duty, the Advisers Act's antifraud provisions, the Compliance and Code of Ethics Rules, and criminal law, would continue to deter quid pro quo conduct without a one-size-fits-all ban. For these reasons, AIC respectfully urges the Commission to adopt the proposal and rescind the Rule in its entirety, as well as to confirm that its guidance on post-rescission policies and procedures is illustrative rather than mandatory.

AIC thanks the Commission for the opportunity to comment on this important proposal.

Respectfully submitted,

/s/ Shelby Telle

Shelby Telle
General Counsel
American Investment Council

[66] *See* Financial Accounts of the United States – Z.1, Bd. of Governors of the Fed. Res. Sys., L.120 Table, https://www.federalreserve.gov/releases/z1/20250911/html/l120.htm (last updated Sept. 11, 2025) (listing assets held in state and local government employee retirement funds); Census Bureau Releases 2025 Annual Survey of Public Pensions (May 14, 2026), *available at* https://www.census.gov/newsroom/press-releases/2026/2025-aspp.html (noting that "[m]ore than 37 million people (including inactive employees not currently contributing to pensions but eligible for future benefits) participated in state and local pension plans in 2025").

[67] *See* Proposing Release at 57702.