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October 6, 2009

Via Electronic Mail: rule-comments@sec.gov

Elizabeth Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File Number S7-18-09; Political Contributions by Certain Investment Advisers

Dear Ms. Murphy:

We appreciate this opportunity to comment on the Securities and Exchange Commission's laudable efforts to protect investors by addressing "pay to play" practices in the investment advisory industry.[1] The need for this action is evidenced by the Commission's recent enforcement action in New York, charging state officials and a private party with a fraudulent scheme to extract kickbacks in connection with the management of pension funds, as well as similar cases brought by state authorities in Connecticut, New Mexico, Illinois, Ohio, and Florida.[2] These efforts will go a long way to curb or eliminate corruption in the award of investment management business for public funds.

We also urge the Commission to consider some of the ways in which this proposal could be improved. As a firm with deep and broad expertise in campaign finance laws, state pay to play laws, and Municipal Securities Rulemaking Board ("MSRB") Rule G-37, we at Caplin & Drysdale[3] are in a position, based on first-hand experience, to offer constructive

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[1] Political Contributions by Certain Investment Advisers, SEC Release No. IA-2910 (August 3, 2009), 74 FR 39840 (August 7, 2009) (hereafter, "Release").

[2] Release at 12-13.

[3] Caplin & Drysdale's Political Activity Law Group is a bipartisan practice, representing major corporate, tax-exempt and political clients. The group advises clients on regulated political activities, lobbying, and government ethics laws. As a firm that counsels many investment advisers on compliance with "pay to play" laws, we represent clients with an interest in the outcome of this rulemaking, but these comments are filed on our own behalf, and not on behalf of any client or clients. The firm also maintains leading practices in the fields of international tax, tax

criticism on some potential, unintended complications that may arise if the proposal is passed in its current form. We are, therefore, pleased to suggest some ways in which these unintended consequences could be avoided.

Our comments are divided into two sections. First, we will address the ways in which this rule could intersect with federal and state campaign finance laws and what issues this may present. Second, we will comment on ways to effectively implement the rule, building on our experience helping investment advisers comply with similar state and local pay to play rules.

I. Campaign Finance Laws

The Commission's proposal would prohibit covered investment advisers from receiving compensation for two years for managing the funds of a government entity if the adviser or any of its covered associates made a political contribution to an official of the government entity (hereinafter, the "compensation ban").[4] The proposal would also make it unlawful for an investment adviser or any of its covered associates to coordinate or solicit contributions to such an official of a government entity where the adviser is providing or seeking to provide services, and to coordinate or solicit payments to a political party of a state or locality where such a government entity is located (hereinafter, the "solicitation ban").[5]

Political contributions have been regulated by Congress for more than one hundred years and by the Federal Election Commission ("FEC") for more than thirty years. During that period, states and localities have developed their own complex regulatory systems, and the rules at the federal, state and local levels governing political contributions and political entities have become increasingly sophisticated. Terms have developed a common meaning and understanding among people involved in regulating campaign finance, and many rules have been carefully crafted around these terms of art to impact certain people and organizations differently than others. With this in mind, we would like to highlight a few of the areas in which there may be some confusion over how the proposal would apply to certain activities and how the proposal could be reconciled with existing rules governing political activity.

Political Activity by Covered Associates

The rule as it is currently drafted imposes business restrictions or penalties whenever covered associates make or solicit political contributions to or for officials of a government entity where the adviser is providing or seeking to provide services. However, it is unclear if the compensation ban or the solicitation ban would be triggered by a number of activities that are common for individuals who are politically active.

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controversy and fraud, tax-exempt organizations, creditors' rights and bankruptcy litigation, and white collar defense.

[4] Proposed Rule § 275.206(4)-5(a)(1).

[5] Proposed Rule § 275.206(4)-5(a)(2)(ii).

First, would the compensation or solicitation ban be triggered if a covered associate were to volunteer for another's campaign? What if he or she served as the campaign's treasurer? It is common for people from all walks of life, including the financial services industry, to provide their time and expertise to help their preferred candidate win office. In many cases, professionals serve as policy consultants to help candidates understand the way their industries work and how various policies could improve or hurt their industries. It is also common for candidates to have treasurers who work in finance or accounting and serve a particularly important role in maintaining the integrity of the campaign's fundraising. Many other business executives and other professionals choose to volunteer by making get-out-the-vote calls, distributing pamphlets door-to-door, to helping set-up and publicize events.

The Federal Election Campaign Act and most state laws exempt volunteer services from the regulations limiting contributions to candidates.[6] However, the Commission's proposal defines "contribution" as "anything of value made for [t]he purpose of influencing any election . . ."[7] with no exception for volunteer services. The public would be harmed if candidates could not draw from the investment advisory industry to assist in understanding public policy issues. Moreover, investment advisory professionals would lose an important way in which they express their political views were they not allowed to volunteer time for candidates they support. The breadth of this restriction on perhaps the most literal form of personal political expression also raises serious constitutional concerns. For these reasons, we urge the Commission to exempt volunteer services from the definition of "contribution."

Likewise, would the compensation ban or solicitation ban be triggered if a covered associate personally runs as a candidate for office for a government entity to which the covered associate's firm provides or seeks to provide services? For example, if the president of an investment advisor were to run for Treasurer in Massachusetts, would his or her own expenditures over $250 for the race trigger the compensation ban for the firm? Would the firm's president have violated the solicitation ban when he or she raises funds for the election? We believe the public would be harmed if individuals who work in the investment advisory industry are discouraged from running for office for fear they will cost their employer or future employer business opportunities.

Consequently, we urge the Commission to include an exception to the compensation ban and the solicitation ban for covered associates who run for office, and we note that MSRB includes such an exception in its Rule G-37 guidance.[8] The Commission's concern about lifting the ban completely is justifiable, since advisers could then try to elect employees so those employees can steer business to their former firm once elected. To address this concern, however, we suggest that the Commission should leave the compensation ban and solicitation ban in place for the adviser and all covered associates other than the covered associate running for office, as the MSRB has done. The public harm would be severe if an entire industry of

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[6] See, e.g., 11 C.F.R. §§ 100.88-100.89.
[7] Proposed Rule § 275.206(4)-5(f)(1).
[8] MSRB Rule G-37 Qs & As, Section II.10, at http://www.msrb.org/msrb1/rules/QAG-372003.htm.

professionals felt discouraged from running for state or local office due to fear of losing their jobs or costing their firms business.

Political Action Committees

The proposal defines "covered associates" to include "[a]ny political action committee controlled by the investment adviser or by any [general partner, managing member, executive officer, or employee who solicits a government entity for the adviser]."[9] The proposal does not define "political action committee" or "control," so the distinction between entities that would or would not be covered by this rule is not clear.

The Commission's use of "political action committee," in particular, could lead to significant uncertainty in determining which organizations that the Commission meant to cover with the new rule. Federal election law defines a political committee as any group that receives or spends more than $1,000 during a calendar year for the purpose of influencing any election for federal office.[10] This includes candidate committees, "leadership PACs" which officeholders commonly establish to donate to other candidates and issues, as well as a wide variety of other groups that spend more than $1,000 to engage in express advocacy in elections. Most state laws have a similar definition of political committee, though the threshold amount of money that must be spent before the group is required to register as a political committee varies widely. Some states, such as New Jersey, treat committees differently based on whether the committees will be in existence for a long period of time. Other states, such as Utah, treat committees differently based on whether they primarily intend to influence issues or candidates. Florida state law also recognizes a particular kind of committee formed to engage in electioneering communications. Not all of these groups are called "political committees" under state law or are required to register as such.

The Commission also might intend to include other types of organizations that are not called "political action committees." For example, in recent years, entities commonly referred to as "527 organizations" have become popular. All political action committees are technically 527 organizations, since they are tax exempt under Section 527 of the Internal Revenue Code. But the groups generally referred to as "527s" are organizations whose primary purpose is to influence elections, but who do not have a major purpose of influencing *federal* elections, or which otherwise take the position that their activities do not trigger federal or state PAC status.

Since the Commission has not provided a definition of "political action committee" in its proposed rule, it is unclear which of the examples supplied above the Commission intends to cover. This ambiguity likely will cause confusion among professionals in the industry who legitimately want to participate in the political process, but who do not want to trigger a compensation ban for their employers. We suggest the Commission adopt a definition of

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[9] Proposed Rule § 275.206(4)-5(f)(2).
[10] 11 C.F.R. §§ 100.5, 100.51-100.52, 100.110-100.111.

political action committee that will make it possible for advisers to determine whether the organizations their employees wish to start or be involved with will be covered by the rule. For example, the Commission could define political action committee as any organization required to register as a political committee under federal, state, or local law. This would allow an adviser to search public records when determining whether an employee's participation in an organization would trigger the rule.

It is also unclear what it means for a covered associate or an investment adviser to "control" a political action committee. Would a large donation to a newly formed political action committee, or a new "527" as described above, mean that the donor exercises control over that new entity? How large would the donation need to be in relation to the rest of the committee's funds? What if the donation was the result of a solicitation that focused entirely on a presidential election, or another election for an office which holds no influence over the award of investment management business? Would service on the Board or as the treasurer of a political action committee mean an individual exercises "control" over it?

Moreover, many investment advisers are organized as limited partnerships. Under federal law only a corporation or a union may establish and support a connected political action committee. Executives who own or run partnerships and other non-incorporated business entities commonly form "nonconnected" committees that are similarly related to the business entity, often even adopting the business entity's name in the name of the nonconnected PAC. In such instances, will the Commission look to the composition of the Board of the nonconnected PAC to determine control? The individual who decides the nonconnected committee's expenditures?

We suggest the Commission establish specific criteria it will consider in determining whether a political action committee is controlled by the adviser or its covered associates. The MSRB has addressed this issue in its guidance. The MSRB explained that, for certain dealers that cannot themselves establish political action committees, "it will depend on whether the dealer or anyone from the dealer department has the ability to direct or cause the direction of the management or the policies of the PAC."[11] The FEC also recently addressed the issue of when a political committee is "controlled" by a lobbyist, and issued regulations stating that a committee is "controlled" by a lobbyist if a lobbyist "directs the governance or operations of the political committee . . . ."[12] We suggest the Commission adopt a similar definition to address the types of questions noted above that are sure to arise.

Coordinate and Solicit

The proposal prohibits covered advisers and covered associates from "coordinating" or "soliciting" any contribution to an official of a government entity to which the investment

[11] MSRB Rule G-37 Qs & As, Section IV.24, at http://www.msrb.org/msrb1/rules/QAG-372003.htm.
[12] 11 C.F.R. § 104.22(a)(4).

adviser provides or seeks to provide services, or "coordinating" any payment to a political party of a state or locality where the adviser provides or seeks to provide services to a government entity. The proposal does not include a definition of "coordinate" or "solicit."

Perhaps surprisingly, the meaning of "solicit" is likely to generate confusion unless its meaning is confined to those instances in which the covered associate specifically asks someone else to make a contribution. The FEC promulgated a definition of "solicit" in the similar context of the "soft money" solicitation ban in the Bipartisan Campaign Reform Act of 2002. In those rules, "solicit" is defined as to "ask, request, or recommend, explicitly or implicitly, that another person make a contribution . . . or otherwise provide anything of value."[13] This definition, and the examples provided of types of communications that constitute solicitations[14], makes clear that general expressions of political or ideological support do not constitute solicitations unless accompanied by some objective ask or request for contributions. We suggest that the Commission adopt a similar definition, and provide similar examples of statements which will and which will not be considered solicitations, so covered associates may freely express their political opinions without fearing their advocacy will be construed by the Commission as a solicitation.

It is also unclear what the Commission means by "coordinate." In federal election law, "coordinate" and "coordination" are terms of art that refer to the act of making expenditures in concert with a candidate. The FEC defines "coordinated" as "made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or a political party committee."[15] Several pages of the Federal Register are devoted to a three-part test the FEC employs in determining whether certain expenditures are "coordinated,"[16] and there is a long history of advisory opinions, administrative enforcement actions and court cases giving further guidance on what "coordinated" means. Many states have similar prohibitions on "coordination" with a candidate and/or political party.

Accordingly, it is particularly unclear whether or not the proposed rule would prohibit "coordination" of contributions and payments, in the way in which the term is used in federal and state campaign finance law. Specifically, is the intent of the rule that advisers and covered associates cannot make expenditures that are coordinated with a candidate or political party? Federal law does include regulations on contributions that are "bundled" for candidates or party committees. "Bundled" contributions are those that are (i) forwarded by a contributor or (ii) credited to a particular solicitor, through records, designation, or other means of recognition.[17] From the context of the proposal, in which "coordinated" contributions and payments are banned along with solicited contributions and payments, it is unclear what the

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[13] 11 C.F.R. § 300.2(m).
[14] 11 C.F.R. § 300.2(m)(2).
[15] 11 C.F.R. § 109.20.
[16] 11 C.F.R. §§ 109.21-109.23.
[17] 11 C.F.R. § 104.22(a)(6); Fed. Reg. Vol. 74, No. 32, 7292 (February 17, 2009).

Commission intends to prohibit. Does the term "coordinate" refer to "bundled" contributions as defined by the FEC?, Does it mean "coordinated" activities as that term is explained above? Or is it meant to capture a unique set of activities unrelated to "coordinated" communications or "bundled" contributions in the sense those terms are already reasonably well understood in campaign finance law? We suggest the Commission provide a definition of "coordinate" so advisers and covered associates will know what activity is proscribed by the rule.

Indexing the *De Minimis* Exception for Inflation

The proposal includes a *de minimis* exception for "contributions made by a covered associate, if a natural person, to officials for whom the covered associate was entitled to vote at the time of the contributions and which in the aggregate do not exceed $250 to any one official, per election."[18] The Commission has requested comments on whether the *de minimis* exception should be indexed for inflation. We strongly encourage the Commission to index the $250 exception for inflation.

Like federal election laws, many state laws that limit the amount that an individual can contribute to candidates index these contribution limits for inflation.[19] When the Bipartisan Campaign Reform Act of 2002 was first adopted, the contribution limit for individuals was $2,000 per election per candidate. That contribution limit is now $2,400. As federal contribution limits increase every election cycle, along with similar state and local contribution limits, the $250 *de minimis* exception will become increasingly less relevant. We understand that the Commission set the exception at $250 so that individuals can express their First Amendment preference for candidates for whom they can vote, while also not being so high that a contribution could influence the selection of an investment adviser. Yet if the exception is not indexed to inflation, it will become increasingly likely for small, unremarkable contributions to impose the serious, meaningful compensation ban proposed in this rule; even while those small contributions become only less likely to influence the selection of an investment adviser in comparison to the increasing size of contributions candidates can receive under indexed federal, state, or local contribution limits.

Indirect Prohibition

The proposal also makes it unlawful "to do anything indirectly which, if done directly, would result in a violation . . . ."[20] This provision is similar to the MSRB's provision on indirect violations in Rule G-37. The MSRB's own history of Q&A's and interpretative rulings and letters well illustrates that this provision is wrought with ambiguity and will be difficult for advisers to ensure compliance. Our experience in advising clients has borne out the potential hardships involved in identifying a limiting principle for the scope of the

[18] Proposed Rule § 275.206(4)-5(b)(1).
[19] See, e.g., 11 C.F.R. §§ 110.1(b)(1)(i) and (ii).
[20] Proposed Rule § 275.206(4)-5(d).

"indirect" provision in G-37. Without further guidance as to what factors will be assessed in determining whether there is an indirect violation of the rule, we are concerned that this provision will further chill political speech, and even harm charitable giving, well beyond what is necessary to curb corruption in the award of government investment advisory business.

Perhaps most importantly, the proposed rule is ambiguous in how it would apply to "leadership PACs," which at the federal level are political committees "directly or indirectly established, financed, maintained or controlled by [a] candidate [for federal office] or [an] individual [holding federal office] but which is not an authorized committee of the candidate or individual and is not affiliated with an authorized committee . . . ."[21] Basically, a leadership PAC is a political committee that is established to advance the goals of a particular candidate or officeholder, primarily by making political contributions to other candidates. The candidate or officeholder does not receive funds from a leadership PAC for his or her own election(s). Often a candidate severs ties with a leadership PAC once his or her candidacy is announced, because continuing to work with the leadership PAC could result in illegal in-kind contributions from the leadership PAC to the principal candidate committee.

Would contributions to a candidate's leadership PAC always trigger the indirect prohibition, or are there any circumstances in which it would not? For example, would this result be the same if a candidate has severed ties with his or her leadership PAC? Moreover, to what extent would the indirect prohibition cover contributions to charities, issue advocacy organizations, 527s, and political parties for which candidates solicit funds? Likewise, would contributions to joint fundraising committees necessarily trigger the indirect prohibition, or are there any circumstances in which it would not?

Particularly in light of the iterative and incremental nature of the range of guidance the MSRB has issued on the indirect prohibition in Rule G-37, municipal finance professional are still largely unclear on the extent to which they can contribute to these types of entities without triggering the rule's prohibitions. We anticipate that investment advisers and their covered associates will be similarly confused, and we are concerned that the result will be decreased participation in the political process and decreased charitable giving.

II. Implementation of the Proposal

Based on our extensive experience advising large and small investment advisers on developing compliance programs to address state laws that regulate political contributions by government contractors and/or investment advisers (i.e., state pay to play laws) we also want to comment on three particular areas that could make implementation unnecessarily difficult for advisers. First, we will comment on compliance with the look-back provision, based on the nature of public financial disclosure databases. Second, we will comment on the difficulty of

[21] 11 C.F.R. § 100.5(e)(6).

determining who is an "official" of a government entity. Third, we will comment how much transition time advisers will need to build up compliance programs.

"Look-Back" Provision

The compensation ban is triggered by a contribution to an official of a government entity "made by the investment adviser or any covered associate of the investment adviser (including a person who becomes a covered associate within two years after the contribution is made)[.]"[22] This means that the compensation ban could be triggered if an investment adviser hires someone who made a contribution while at another job, or promotes someone who made a contribution while not yet a covered associate. Essentially, advisers will be required to "look-back" two years before hiring or promoting any covered associates.

This provision places the onus on advisers to ensure that no one they hire or promote has made a contribution that would trigger the compensation ban. Advisers can avoid an inadvertent compensation ban in the following two ways: 1) asking potential covered associates about their political contributions, and 2) researching their contributions in public databases. However, even for employers that diligently research a given recruit's contribution history through both approaches, it will always remain impossible for an adviser to determine with certainty whether a contribution triggering the ban has been made. Federal disclosure is only required of contributions over $200, and most states have similar reporting and itemization thresholds. Moreover, there is a lag between when a contribution is made and when it is available for public search (for federal reports this lag can be as long as seven months). And if a campaign does not accurately report a donor's name (e.g., by misspelling it or by neglecting to report all contributions to the extent required), the state of the public record could give an adviser false security that a contribution has not been made.

Thus, the look-back provision creates a compliance standard that is impossible to meet as the rule is currently drafted. Instead, we suggest the Commission permit advisers to rely on a certification obtained in good faith from potential hires and employees being promoted that certifies to their political giving for the previous two years. The commission could require this certification to be coupled with proof that public disclosure databases have been searched. For example, in connection with the FEC's bundling rules, candidate committees are required to consult the House, Senate, and FEC websites to determine if a person is a lobbyist or a PAC is controlled by a lobbyists. The FEC allows candidates to demonstrate that the appropriate online databases were consulted by keeping a computer print-out or screen capture of search results.[23] We suggest the Commission include a similar safe harbor in connection with the look-back provision.

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[22] Proposed Rule § 275.206(4)-5(a)(1).
[23] 11 C.F.R. § 104.22(b)(2)(ii).

Officials of a Government Entity

The proposal prohibits covered investment advisers from receiving compensation for advisory services provided to a government entity if a contribution has been made to an "official" of that government entity.[24] An "official" is defined as a candidate, incumbent, or successful candidate for elective office, if the office "(i) [i]s directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity; or (ii) [h]as authority to appoint 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."[25]

We strongly suggest that the Commission revise the proposal to permit advisers to rely on a certification from candidates with respect to whether or not their office would be covered by the rule. The rule as proposed leaves the burden of determining who is a covered official on investment advisers, even though like any other donor investment advisers are not well-positioned to best understand the scope and authority of the office(s) held or sought by a given candidate. The proposed rule is clear that advisers would have to look at the scope of authority of the office of a particular official, and not the influence actually exercised, to determine whether the office has influence over the selection of an investment adviser. But several states and localities have laws drafted with similar language, and our experience in those jurisdictions has been that it is often difficult to determine with certainty who could be a covered official. Almost of all of our clients must seek the help of outside counsel to make this determination, which can become quite costly.

It often takes several hours, or more, to research and analyze whether a particular office is covered. Because an investment adviser does not know where the next business opportunity may come from, it is rarely sufficient to simply look at the funds it already manages. It typically requires extensive research to identify every retirement fund and every other government investment vehicle in the state or locality, and then the governance of those funds must be researched to determine which office held or sought by a given candidate may be able to influence the selection of an investment adviser.

In many cases, a board of trustees influences the selection of investment advisers, so we must research the method by which those board members are elected or appointed. This often requires calling the retirement systems or other government entities and asking questions of a variety of government employees in an attempt to understand the structure of a given fund's governance. Consequently, this imposes a burden not only on investment advisers and their counsel, but on state and local agencies and public investment fund management as they respond to questions and help different advisers reinvent the wheel every time a new contribution is proposed.

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[24] Proposed Rule § 275.206(4)-5(a)(1).
[25] Proposed Rule § 275.206(4)-5(f)(6).

Investment advisers will not be able to simply maintain one "50 state survey" of government funds, because such a survey would be both prohibitively expensive to produce and would need to be constantly updated and checked for accuracy, given how frequently states add or change government programs and investment vehicles. Advisers also will not be able to address compliance issues by simply banning all employee political contributions, as this would conflict with state labor laws. Thus, advisers will have to implement and maintain a system where employees advise as to what contributions they want to make, and the firm will inform employees as to whether that would harm the firm's business opportunities in that state. This will require performing a new, exhaustive inquiry nearly every time an employee wants to make a political contribution – and the Commission's proposal would not preempt the need to still research the state pay to play requirements in addition to the research required by this proposal.

We suggest that the Commission should permit advisers to rely in good faith on a candidate's certification of the range, if any, of public investment vehicles over which his or her office directly or indirectly influences the selection of investment advisers or appoints individuals who do. Without this safe harbor, we anticipate the compliance burden on advisers will be extraordinary, particularly given how disproportionate the penalty for violation can be. This safe harbor would better align the burden of researching the scope of a given office with the individuals best positioned to understand that scope (i.e., the holder of or candidate for that office). This change would also save the industry money, it would allow smaller, start-up, and out-of-state investment advisers to compete with larger, established firms on a more level playing field, and it would help ensure that firms do not trigger the compensation ban due to inadvertent mistakes.

The goal of the compensation ban is to help eliminate corruption in the award of business to manage government funds, and we agree that this goal is commendable and worthwhile. Allowing advisers to rely on a certification would not harm this goal, but rather would help achieve that goal by increasing the information available to advisers seeking to comply with the rule. Moreover, it would shift the burden of determining who is a "covered" official onto the person in the least costly position to do it—the person who knows the office and the state or locality.

Effective Date

An effective date for the rule has not yet been proposed, and the Commission has asked for comments on how much time firms will need to comply. . Given our experience helping many advisers establish programs to comply with state pay to play laws, we believe it will take at least four months to transition to the new rules. Firms that have only informal state compliance programs in place will need to study their firm's organizational structure and personnel strengths, assess existing systems to handle new compliance, select in-house staff to master and manage the new rule, adopt a written policy, educate and train their employees and senior executives, and seek guidance from outside counsel where necessary. Many firms

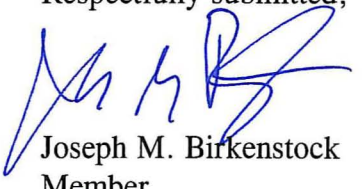
already have formal compliance programs for state pay to play laws, and for them the transition process will be relatively less difficult. Nevertheless, even they will still need time to implement a process to research potential hires or promotions and to implement record-keeping systems to comply with the changes to the record-keeping requirements.

In addition, we urge the Commission not to implement a rule that will require retroactive record-keeping. As drafted, the rule would require advisers to report 1) the names of covered associates, 2) the government entities the firm advises or seeks to advise, 3) all government entities they have advised in the last five years, and 4) all contributions and payments to officials of a government entity and political parties in the last five years. It is unclear from the proposal how far back in time the records must be kept with respect to the first two items. We hope the Commission will provide clarification on this point as well. In any case, we ask the Commission not to impose an effective date that would require firms to recreate information on five years of past political contributions and government entities advised, and however many years of covered associates and government entities the firm sought to advise. This would be in some cases administratively impossible, particularly if employees have moved on from the firm and cannot be contacted.

III. Conclusion

We laud the Commission's efforts to eliminate corruption in the award of public investment advisory business, and we agree that this rule will go a long way to changing unfair practices that harm investors and those who play by the rules. Still, we believe there is room for improvement, and we hope the Commission will consider our suggestions, which we believe will help accomplish the Commission's intended objectives while imposing less burden on the industry. We welcome the opportunity to discuss our recommendations with any of the Commissioners or the Commission's staff. If we can be of further assistance, please contact any of us at (202) 862-5000.

Respectfully submitted,



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