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Financial Security. For Life.

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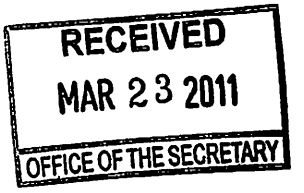

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Subject: Proposed FAQs regarding Rule 206(4)-5 and Life Insurance Industry Trade Association Political Action Committees—Supplemental Comments to File Number S7-36-10, Amendments to the Investment Advisers Act of 1940

Dear Ms. Murphy:

On behalf of our member companies, the American Council of Life Insurers ("ACLI") submits proposed FAQs regarding Rule 206(4)-5 (the "Pay-to-Pay Rule") which the Securities and Exchange Commission ("SEC" or "the Commission) issued for comment on November 19, 2010 (File Number S7-36-10). The SEC has requested that interested parties submit proposed frequently asked questions ("FAQs") to clarity the applicability of the Pay-to-Play Rule. ACLI responded on January 24, 2011, to the SEC request with a number of proposed FAQs. In a subsequent conversation with SEC staff, staff indicated that submission of additional proposed FAQs would be appropriate with respect to the Pay-to-Play Rule and life insurance industry trade association political actions committees ("PACs").[1]

ACLI represents over 300 member companies that are leading providers of financial and retirement security products covering individual and group markets. They provide life, disability income, and long-term care insurance; annuities; retirement plan products and services; and reinsurance. ACLI members account for over 90% of the premiums and assets of the life insurance and annuities industry in the United States. Products issued by ACLI members include employer-sponsored group policies and contracts.

ACLI member companies generally are subject to product, operational, market conduct, and solvency regulation by the States. The vast majority of products sold by ACLI members in the group employee benefits market are subject to the requirements of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Variable products offered by ACLI members are subject to the requirements of the Securities and Exchange Commission ("SEC" or the "Commission"). Broker-dealers affiliated with life insurers are regulated under the Exchange Act, and investment advisers are regulated

[1] ACLI on February 22, 2011, also submitted comments in response to a request for public comment on an MSRB proposed rule, *Registration of Municipal Advisors* (File Number S7-45-10). ACLI opposes the proposed rule, in part, because it appears to inappropriately include investment advisers, broker-dealers, and others within the definition of "municipal advisers" and may thus have implications for the scope of the Pay-to-Play Rule. While comments herein refer to "investment advisers," they should be regarded as equally applicable to any broader expansion of the Pay-to-Play Rule to include "municipal advisers" as defined in the proposed MSRB rule.

under the Investment Advisers Act of 1940 (the "Advisers Act"). ACLI PACs are subject to regulation variously by the Federal Election Commission and the States and annual independent audits. As required by Federal and State laws, certain financial records of the PACs may be subject to public inspection.

Background

Under the Pay-to-Play Rule, political contributions by investment advisers, as well as certain other persons, to government officials with specified municipal funds authority trigger a two-year 'time-out' on compensation from the government entity to which investment advisory services are provided. These other persons, whom the rule identifies as "covered associates," are defined in the release (in parts pertinent to this letter) as: "...(iii) any political action committee controlled by the investment adviser or by any of its covered associates." The release further states:

> A covered associate includes a political action committee *controlled* by the investment adviser or by any of its covered associates. Under the rule, we would regard an adviser or its covered associate to have "control" over a political action committee *if the adviser or its covered associate has the ability to direct or cause the direction of the governance or operations of the PAC.* (emphasis added)

In its release, the Commission states that the Pay-to-Play Rule was modeled on rules established by the Municipal Securities Rulemaking Board ("MSRB") in 1994 (*i.e.,* MSRB Rule G-37, as amended) and regarded by the SEC as having significantly prohibited municipal securities dealers from participating in pay-to-play practices. Subsequent to adopting the Pay-to-Play Rule, the Commission approved a proposed rule change of the MSRB that provides guidance for broker-dealers of municipal securities on "i) when an affiliated PAC might be viewed as controlled by the dealer for purposes of Rule G-37; and ii) ensure that the industry is cognizant of prior MSRB guidance concerning indirect contributions under the rule."[2] Given the Commission's stated reliance on MSRB rules in developing the Pay-to-Play Rule for investment advisers and its approval of MSRB interpretive guidance regarding affiliated PACs contemporaneous with the SEC's ongoing consideration of amendments to the Pay-to-Play Rule (as well as other MSRB proposals), ACLI submits the following proposed FAQs to confirm that, consistent with the Pay-to-Play Rule and pertinent MSRB guidance, contributions to an industry trade association PAC by its non-investment adviser member companies that may be affiliated with investment advisers do not directly or indirectly trigger the requirements of the Pay-to-Play Rule.[3]

FAQs

FAQ1: Is an industry trade association industry PAC considered to be under the control of an investment adviser if:

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[2] MSRB Notice 2010-45 (October 21, 2010), "MSRB Receives SEC Approval of Interpretive Guidance on Dealer-Affiliated PACs under Rule G-37"

[3] In prior comments to the Commission on pending proposed rules, ACLI has provided numerous examples of why the MSRB template overall is a poor fit for life insurance companies with affiliated broker-dealers and investment advisers, and we have urged the Commission to substantially revise the proposed rules, or provide explanatory FAQs, in order to achieve more meaningful compliance for life insurers. ACLI incorporates those concerns herein and refers to the MSRB in this letter with respect to life insurance industry trade association PACs for the purpose of ensuring through clarifying FAQs the uninterrupted participation in legitimate political activities by life insurers, even if under current rules of the MSRB.

(i) PAC solicitations and contributors are restricted under PAC by-laws, adopted by an association Board of Directors with a broad-based representation of non-investment adviser companies, to a group of over 300 non-investment adviser companies, their employees, and families as well as those employees and their families of the trade association;

(ii) with the sole exception of association employees identified in the by-laws who alone have discretion to instruct the PAC to send or forward political contributions to candidates and government officials, the PAC does not permit the restricted group of PAC contributors to create a PAC on behalf of the trade association or permit them to direct or cause the direction of the management or policies of the PAC other than in a wholly advisory capacity, and

(iii) to the extent that any funding from the restricted group of PAC contributors may in some way include certain funding from investment advisers affiliated with the non-investment adviser companies, the funding from such sources is not substantially greater than (and is, in fact, minimal to) typical funding levels of others in the restricted group of PAC contributors who likewise do not undertake a direct or indirect role in leading the creation of the PAC or in directing or causing the direction of the management or policies of the PAC?

A1: No. The arrangement described above is not a PAC controlled by an investment adviser as it rebuts the presumptions for direct control as set for in MSRB interpretive guidance. In this regard, the circumstances are more analogous to the determination example in the MSRB's 2010 guidance as to whether a PAC of a bank dealer is a dealer-controlled PAC: that is, it would depend in part upon whether the bank dealer or anyone from the bank dealer department has the ability to manage or cause the direction or the policies of the PAC. In the arrangement described above, however, even the member company contributors to the PAC are not permitted to direct or cause the direction of the management or policies of the PAC other than in a wholly advisory capacity. Nonetheless, the association PAC should be mindful of the potential for structuring its governance or operations in a way that could be indicative of control such that an adviser could do indirectly what it could not do directly.

FAQ2: As the PAC described in FAQ1 is not considered to be an investment adviser-controlled PAC, would a contribution by a life insurance company that is a member of the trade association and that may be affiliated with investment advisers be considered an indirect contribution that would trigger the Pay-to-Play Rule?

A2: No. Under the arrangement described in FAQ1, PAC contributions by a company that is a member of the trade association and that may be affiliated with investment advisers would not be considered an indirect contribution that triggers the Pay-to-Play Rule. As noted above, the arrangement is not a PAC controlled by an investment adviser as it rebuts the presumptions for indirect control as set forth in MSRB interpretive guidance to date, and member company contributors themselves are not permitted to direct or cause the direction of the management or policies of the PAC other than in a wholly advisory capacity, thus lacking even the "single vote" indicia referred to in MSRB guidance. Moreover, given the restricted group to whom PAC solicitations may be made and from whom contributions may be received, any funding that may be provided to the PAC by a life insurance company from an investment adviser, as compared to the substantially greater sums provided by the broad-based group of member company contributors themselves, would appear to be minimal, infrequent, and without inappropriate impact on the governance or operations of the PAC.

The association PAC, however, should be mindful of the potential for structuring its governance or operations in a way that could be indicative of control such that an adviser could do indirectly what it could not do directly. We note that a non-investment adviser associated PAC, as illustrated for municipal securities broker-dealers in MSRB guidance, may solicit funds for the purpose of a limited number of officials that may trigger the Pay-to-Play Rule. However, as noted in the MSRB guidance (as it might apply to an investment adviser), it is incumbent upon an investment adviser to develop a strong compliance program that includes supervisory oversight and information barriers to ensure that such indirect contributions do not take place and that the investment adviser make inquiries of a non-investment adviser associated PAC to ensure that any contributions will not indirectly trigger the Pay-to-Play Rule.

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ACLI appreciates the opportunity to submit supplemental proposed FAQs regarding the Pay-to-Play Rules. We would be happy to discuss our concerns, expressed herein and in prior correspondence, in greater detail at an in-person meeting. As always, please let me know if you have any questions or need additional information.

Sincerely,

cc: Melissa A. Roverts
Matthew N. Goldin
Keith E. Carpenter