

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Part 275**

**[RELEASE NO. IA-4512; File No. S7-17-16]**

**Political Contributions by Certain Investment Advisers: Ban on Third-Party Solicitation; Notice of Order with respect to MSRB Rule G-37**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of intent to issue order.

**SUMMARY:** The Securities and Exchange Commission (“Commission” or “SEC”) intends to issue an order pursuant to section 206 of the Investment Advisers Act of 1940 (the “Advisers Act”) and rule 206(4)-5 thereunder (the “SEC Pay to Play Rule”) finding that the Municipal Securities Rulemaking Board (“MSRB”) rule G-37 (the “MSRB Pay to Play Rule”) imposes substantially equivalent or more stringent restrictions on municipal advisors than the SEC Pay to Play Rule imposes on investment advisers and is consistent with the objectives of the SEC Pay to Play Rule.

**DATES:** Hearing requests should be received by the Commission by 5:30 p.m. on September 19, 2016.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549-1090.

**FOR FURTHER INFORMATION CONTACT:** Sirimal R. Mukerjee, Senior Counsel, Melissa Rovers Harke, Senior Special Counsel, or Sara Cortes, Assistant Director, at (202) 551-6787 or [IArules@sec.gov](mailto:IArules@sec.gov), Investment Adviser Regulation Office, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-8549.

**SUPPLEMENTARY INFORMATION:**

## Hearing or Notification of Hearing

An order will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary. Hearing requests should be received by the Commission by 5:30 p.m. on September 19, 2016. Pursuant to rule 0-5 under the Advisers Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

The Commission intends to issue an order under the Advisers Act.<sup>1</sup>

### I. Background

The Commission adopted the SEC Pay to Play Rule [17 CFR 275.206(4)-5] under the Advisers Act [15 U.S.C. 80b] to prohibit an investment adviser from providing advisory services for compensation to a government client for two years after the adviser or certain of its executives or employees ("covered associates") make a contribution to certain elected officials or candidates.<sup>2</sup> Rule 206(4)-5 also prohibits an adviser and its covered associates from providing or agreeing to provide, directly or indirectly, payment to any third-party for a solicitation of advisory business from any government entity on behalf of such adviser, unless such third-party is a "regulated person" ("third-party solicitor ban").<sup>3</sup> Rule 206(4)-5 defines a "regulated person"

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<sup>1</sup> 15 U.S.C. 80b. Unless otherwise noted, all references to statutory sections are to the Advisers Act, and all references to rules under the Advisers Act, including rule 206(4)-5, are to Title 17, Part 275 of the Code of Federal Regulations [17 CFR part 275].

<sup>2</sup> *Political Contributions by Certain Investment Advisers*, Investment Advisers Act Rel. No. 3043 (July 1, 2010) [75 FR 41018 (July 14, 2010)] ("SEC Pay to Play Rule Release").

<sup>3</sup> *See id.* at section II.B.2.(b). *See also* 17 CFR 275.206(4)-5(a)(2)(i)(A).

as an SEC-registered investment adviser,<sup>4</sup> a registered broker or dealer subject to pay to play restrictions adopted by a registered national securities association that prohibit members from engaging in distribution or solicitation activities if certain political contributions have been made,<sup>5</sup> or a registered municipal advisor subject to pay to play restrictions adopted by the MSRB that prohibit members from engaging in distribution or solicitation activities if certain political contributions have been made.<sup>6</sup> In addition, in order for a broker-dealer or municipal advisor to be a regulated person under rule 206(4)-5, the Commission must find, by order, that these pay to play rules: (i) impose substantially equivalent or more stringent restrictions on broker-dealers or municipal advisors than the SEC Pay to Play Rule imposes on investment advisers; and (ii) are consistent with the objectives of the SEC Pay to Play Rule.<sup>7</sup>

Rule 206(4)-5 became effective on September 13, 2010 and the compliance date for the third-party solicitor ban was set to September 13, 2011.<sup>8</sup> When the Commission added municipal advisors to the definition of regulated person, the Commission also extended the third-party solicitor ban's compliance date to June 13, 2012.<sup>9</sup> In the absence of a final municipal advisor registration rule, the Commission extended the third-party solicitor ban's compliance

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<sup>4</sup> See 17 CFR 275.206(4)-5(f)(9)(i).

<sup>5</sup> See 17 CFR 275.206(4)-5(f)(9)(ii).

<sup>6</sup> See 17 CFR 275.206(4)-5(f)(9)(iii). On June 22, 2011, the Commission amended the SEC Pay to Play Rule to add municipal advisors to the definition of "regulated persons." See *Rules Implementing Amendments to the Investment Advisers Act of 1940*, Investment Advisers Act Rel. No. 3221 (June 22, 2011) [76 FR 42950 (July 19, 2011)] ("Municipal Advisor Addition Release"). The Commission adopted final rules with respect to the registration of municipal advisors on September 20, 2013. See *Registration of Municipal Advisors*, Exchange Act Rel. No. 70462 (Sept. 20, 2013) [78 FR 67468 (Nov. 12, 2013)] ("Municipal Advisor Registration Release").

<sup>7</sup> See 17 CFR 275.206(4)-5(f)(9).

<sup>8</sup> See SEC Pay to Play Rule Release, *supra* footnote 2, at section III.

<sup>9</sup> See Municipal Advisor Addition Release, *supra* footnote 6, at section II.D.1.

date from June 13, 2012 to nine months after the compliance date of the final rule,<sup>10</sup> which was July 31, 2015.<sup>11</sup> On June 25, 2015, the Commission issued notice of the July 31, 2015 compliance date.<sup>12</sup>

On December 16, 2015, the MSRB filed with the Commission proposed amendments to the MSRB Pay to Play Rule to extend its application to municipal advisors, which the Commission published for notice and comment on December 23, 2015 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”) and rule 19b-4 thereunder.<sup>13</sup> On February 17, 2016, the MSRB published a regulatory notice announcing that the proposed amendments to the MSRB Pay to Play Rule were deemed approved by the Commission under section 19(b)(2)(D) of the Exchange Act on February 13, 2016 and the effective date of the rule is August 17, 2016.<sup>14</sup> Prior to its amendment, the MSRB Pay to Play Rule only applied to brokers, dealers and municipal securities dealers.

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<sup>10</sup> See *Political Contributions by Certain Investment Advisers: Ban on Third-Party Solicitation; Extension of Compliance Date*, Investment Advisers Act Rel. No. 3418 (June 8, 2012) [77 FR 35263 (June 13, 2012)].

<sup>11</sup> The final date on which a municipal advisor must file a complete application for registration was October 31, 2014. See *Municipal Advisor Registration Release*, *supra* footnote 6, at section V.

<sup>12</sup> See *Political Contributions by Certain Investment Advisers: Ban on Third-Party Solicitation; Notice of Compliance Date*, Investment Advisers Act Rel. No. 4129 (June 25, 2015) [80 FR 37538 (July 2, 2015)]. On June 25, 2015, the Division of Investment Management published an FAQ that provides that the Division would not recommend enforcement action to the Commission against any investment adviser or its covered associates for the payment to any third person to solicit a government entity for investment advisory services until the later of (i) the effective date of a pay to play rule adopted by the Financial Industry Regulatory Authority or (ii) the effective date of a pay to play rule adopted by the MSRB. See <http://www.sec.gov/divisions/investment/pay-to-play-faq.htm#1.4>.

<sup>13</sup> See *Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Consisting of Proposed Amendments to Rule G-37, on Political Contributions and Prohibitions on Municipal Securities Business, Rule G-8, on Books and Records, Rule G-9, on Preservation of Records, and Forms G-37 and G-37x*, Exchange Act Rel. No. 76763 (Dec. 24, 2015) [80 FR 81710 (Dec. 30, 2015)] (the “MSRB Pay to Play Release”).

<sup>14</sup> On August 4, 2016, the MSRB published a regulatory notice announcing that it filed with the Commission an amendment to the MSRB Pay to Play Rule, effective on August 17, 2016, to clarify that contributions by persons who become associated with a dealer and become municipal finance professionals of the dealer, if made prior to August 17, 2016, are subject to the two-year look-back and may subject a dealer to a prohibition on municipal securities business. This amendment does not change the rule’s application to

## II. Discussion of Order

Pursuant to section 206 of the Advisers Act and rule 206(4)-5(f)(9)(iii)(B) thereunder, the Commission is providing notice<sup>15</sup> that the Commission intends to issue an order finding that the MSRB Pay to Play Rule (i) imposes substantially equivalent or more stringent restrictions on municipal advisors than the SEC Pay to Play Rule imposes on investment advisers and (ii) is consistent with the objectives of the SEC Pay to Play Rule. The MSRB Pay to Play Rule imposes substantially similar requirements for municipal advisors as the SEC Pay to Play Rule imposes on investment advisers. For example, the MSRB Pay to Play Rule will:

- Prohibit a municipal advisor from engaging in municipal advisory business with a municipal entity for two years, subject to exceptions, following the making of a contribution to certain officials of the municipal entity by the municipal advisor, a municipal advisor professional of the municipal advisor, or a political action committee controlled by the municipal advisor or a municipal advisor professional of the municipal advisor;<sup>16</sup>
- Prohibit municipal advisors and municipal advisor professionals from soliciting contributions, or coordinating contributions, to certain officials of a municipal entity

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municipal advisors. *See MSRB Files Amendment to Rule G-37 to Clarify its Application to Contributions before August 17, 2016*, Regulatory Notice 2016-18, dated August 4, 2016, available at <http://msrb.org/~media/Files/Regulatory-Notices/Announcements/2016-18.ashx?n=1>. A dealer may become subject to a ban on municipal securities business for a period of two years from the making of a contribution, even if the contribution is made by a person who, although not a municipal finance professional of the dealer at the time of the contribution, becomes a municipal financial professional of the dealer within two years of making the contribution (frequently referred to as the “two-year look-back”). *See Proposed Rule Change to Clarify an Existing Requirement in Rule G-37 Regarding the Two-Year Look-Back*, SR-MSRB-2016-10 (Aug. 4, 2016), available at <http://msrb.org/~media/Files/SEC-Filings/2016/MSRB-2016-10.ashx>.

<sup>15</sup> See section 211(c) of the Advisers Act (requiring the Commission to provide appropriate notice and opportunity for hearing for orders issued under the Advisers Act).

<sup>16</sup> MSRB Pay to Play Release, *supra* footnote 13, at 81712.

with which the municipal advisor is engaging, or seeking to engage, in municipal advisory business;<sup>17</sup>

- Prohibit municipal advisors and certain municipal advisor professionals from soliciting payments, or coordinating payments, to political parties of states and localities with which the municipal advisor is engaging in, or seeking to engage in, municipal advisory business;<sup>18</sup>
- Prohibit municipal advisors and municipal advisor professionals from committing indirect violations of the MSRB Pay to Play Rule;<sup>19</sup>
- Extend applicable interpretive guidance under the existing MSRB pay to play rule to municipal advisors;<sup>20</sup> and
- Include a new defined term (“municipal advisor third-party solicitor”) for municipal advisors that undertake a solicitation of a municipal entity on behalf of a third-party dealer, municipal advisor or investment adviser. Certain aspects of the rule will apply to this distinct type of municipal advisor.

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

The Commission believes that the rule imposes substantially equivalent or more stringent restrictions on municipal advisors than rule 206(4)-5 imposes on investment advisers and would be consistent with the objectives of rule 206(4)-5.

By the Commission.

Dated: August 25, 2016.

Brent J. Fields,  
Secretary