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Pay-to-Play: SEC Extends Compliance Deadline for Provisions of Advisers Act Rule 206(4)-5 Limiting Payments to Third-Parties

The U.S. Securities and Exchange Commission (SEC) on June 8, 2012 extended for an undefined period the compliance deadline for portions of rule 206(4)-5 (Rule) under the Investment Advisers Act of 1940 (Advisers Act) that would limit an adviser's ability to pay compensation, directly or indirectly, to third parties (including, for this purpose, affiliated companies of the adviser and their employees) for soliciting business from public retirement systems and other state and local government entities. *See* Advisers Act Release No. 3418 (June 8, 2012) (PDF). The limitations, once in place, will prohibit an adviser from paying compensation to finders, solicitors, or placement agents that are not registered with the SEC as either investment advisers, broker-dealers or municipal advisors.

The third-party compensation limitations under the Rule now will take effect nine months after the compliance date for final rules to be adopted by the SEC relating to the definition and registration of "municipal advisors" under Section 15B of the Securities Exchange Act of 1934 (Exchange Act). However, it is uncertain when the SEC will adopt these rules. The SEC also is waiting to approve new pay-to-play rules expected to be submitted by the Financial Industry Regulatory Authority (FINRA) and Municipal Securities Rulemaking Board (MSRB) that will govern the conduct of registered broker-dealers and municipal advisors, respectively, who solicit public retirement plans. These new rules will establish limits on political contributions for broker-dealers and municipal advisors and are likely to be controversial.

Advisers should continue to monitor developments at the SEC. They also should be cautious when entering into agreements with finders or consultants who are not registered with the SEC as either investment advisers, broker-dealers or municipal advisors — if the agreements include compensation related to investments by public retirement plans. Finally, advisers must be aware of limitations under state or local law, as well as retirement plan policies, that can affect these arrangements.

For More Information

If you have questions regarding the information in this update, please contact one of the lawyers listed or any Dechert lawyer with whom you regularly work. Visit us at www.dechert.com/financial_services.

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