

**MEMO# 24746**

November 30, 2010

## **SEC Proposes Changes to Form ADV and Amendments to "Pay to Play" Rule as Part of Broader Investment Advisers Act Rulemaking**

[24746]

November 30, 2010

TO: CHIEF COMPLIANCE OFFICER COMMITTEE No. 9-10  
INVESTMENT ADVISERS COMMITTEE No. 2-10  
SEC RULES COMMITTEE No. 60-10  
SMALL FUNDS COMMITTEE No. 24-10 RE: SEC PROPOSES CHANGES TO FORM ADV AND AMENDMENTS TO "PAY TO PLAY" RULE AS PART OF BROADER INVESTMENT ADVISERS ACT RULEMAKING

On November 19th, the Securities and Exchange Commission proposed new rules and rule amendments under the Investment Advisers Act of 1940 to implement certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act. [\[1\]](#) Most of the proposal is designed to give effect to provisions of Title IV of the Dodd-Frank Act that, among other things, increase the statutory threshold for registration by investment advisers with the Commission, require advisers to hedge funds and other private funds to register with the Commission, and require reporting by certain investment advisers that are exempt from registration. A few parts of the proposal, however, would go beyond the requirements of the Dodd-Frank Act and amend Form ADV and the recently adopted "pay to play" rule. These proposed amendments, which are summarized below, would directly impact advisers to registered investment companies.

Comments on the proposal are due 45 days after it is published in the Federal Register. The proposal is likely to be published in the next few days, which will make the deadline for comments approximately January 15th.

We will have a conference call at 1:00 p.m. (Eastern) on Friday, December 10th to discuss the proposal and possible ICI comments. If you plan to participate, please respond to Gwen

Kelly by email ([gwen.kelly@ici.org](mailto:gwen.kelly@ici.org)). If you are unable to participate on the call but have comments on the proposal, please provide them to Bob Grohowski ([rcg@ici.org](mailto:rcg@ici.org); (202) 371-5430), Tamara Salmon ([tamara@ici.org](mailto:tamara@ici.org); (202) 326-5825) or Heather Traeger ([htraeger@ici.org](mailto:htraeger@ici.org); (202) 326-5920).

## Amendments to Form ADV

The Commission proposes to require each adviser, including advisers to registered investment companies, to provide the following additional information on Form ADV about its operations:

- New information on private funds it advises, including information on the basic organizational, operational and investment characteristics of the fund, the amount of assets held by the fund, the nature of the investors in the fund, and the fund's service providers;
- Expanded information about its advisory business (including data about the types of clients it has, its employees, and its advisory activities);
- Additional information about its non-advisory activities and its financial industry affiliations;
- More information about its use of affiliated brokers, soft dollar arrangements, and compensation for client referrals;
- An indication of whether it had "total assets" over \$1 billion on its balance sheet for its most recent fiscal year end; [\[2\]](#)
- Contact information for its Chief Compliance Officer;
- More information about its custodial practices, including the total number of persons that act as qualified custodians for its clients; and
- More information with respect to the reporting of disciplinary events.

## Amendments to the "Pay to Play" Rule

Rule 206(4)-5, adopted last July, generally prohibits registered and certain unregistered advisers from engaging directly or indirectly in "pay to play" practices identified in the rule. [\[3\]](#)

The Commission proposes three amendments to Rule 206(4)-5:

- An amendment to the scope of the rule that would make it apply to exempt reporting advisers and foreign private advisers;
- An amendment that would permit an adviser to pay any "regulated municipal advisor" [\[4\]](#) to solicit government entities on its behalf, in lieu of the current provision of the rule that prohibits advisers from paying persons (e.g., "solicitors" or "placement agents") to solicit government entities unless such persons are "regulated persons"

(i.e., registered investment advisers or broker-dealers subject to rules of a registered national securities association, such as FINRA, that restricts its members from engaging in pay to play activities); [5] and

- A “minor amendment” to the rule’s definition of a “covered associate” of an investment adviser to clarify that a legal entity, not just a natural person, that is a general partner or managing member of an investment adviser would meet the definition.

Robert C. Grohowski  
Senior Counsel  
Securities Regulation - Investment Companies

#### **endnotes**

[1] Rules Implementing Amendments to the Investment Advisers Act of 1940, Release No. IA-3110 (Nov. 19, 2010), available at <http://www.sec.gov/rules/proposed/2010/ia-3110.pdf>.

[2] This disclosure is intended to enable the Commission to identify advisers that will be subject to the forthcoming guidance or rulemaking on incentive-based compensation mandated by Section 956 of the Dodd-Frank Act.

[3] Political Contributions by Certain Investment Advisers, Investment Advisers Act Release No. 3043 (July 1, 2010), 75 FR 41018 (July 14, 2010).

[4] The Commission notes that a registered investment adviser that undertakes “a solicitation of a municipal entity” would be a municipal advisor subject to MSRB and SEC rules.

[5] The Commission is not proposing to change the compliance date of rule 206(4)-5’s limitation on payments to third-party solicitors, which is September 13, 2011. The Release notes that MSRB staff has informed SEC staff that the MSRB’s pay to play rules would likely be in effect by that date.