

**MEMO# 25298**

June 23, 2011

## **SEC Adopts Amendments to Pay to Play Rule**

[25298]

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TO: 529 PLAN ADVISORY COMMITTEE No. 4-11  
BROKER/DEALER ADVISORY COMMITTEE No. 39-11  
COMPLIANCE MEMBERS No. 28-11  
INVESTMENT ADVISER MEMBERS No. 15-11  
SEC RULES MEMBERS No. 76-11  
SMALL FUNDS MEMBERS No. 45-11  
TRANSFER AGENT ADVISORY COMMITTEE No. 50-11 RE: SEC ADOPTS AMENDMENTS TO PAY TO PLAY RULE

The Commission recently adopted several amendments to the pay to play rule, Rule 206(4)-5, amending the scope of the rule and the categories of registered entities exempt from the rule's ban on third-party solicitation. [\[1\]](#) First, to address the repeal of the "private adviser" exemption under the Dodd-Frank Act, the amendments modify the scope of the rule so that it applies to exempt reporting advisers and foreign private advisers. The Commission did not, however, adopt the clarification it had proposed to the term "covered associate." The clarification would have provided that the definition of "covered associate" included a legal entity, not just a natural person, that is a general partner or managing member of an adviser.

Second, the amendments add municipal advisors to the categories of third parties that advisers may compensate for soliciting government entities, but do not, as proposed, require the recipient of the compensation to be a regulated municipal advisor. Specifically, the amended rule permits advisers to compensate "regulated persons," including registered investment advisers, broker-dealers or municipal advisors, if they are subject to pay to play restrictions at least as stringent as Rule 206(4)-5. The amendments also extend the compliance date for the ban on third-party solicitation to June 13, 2012 to allow advisers to react to the expanded categories of "regulated persons" and to provide the Municipal Securities Rulemaking Board ("MSRB") and the Financial Industry Regulatory Authority time to adopt pay to play rules if they choose to do so. [\[2\]](#)

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**endnotes**

[1] See SEC Release IA-3221, Rules Implementing Amendments to the Investment Advisors Act of 1940, June 22, 2011, available at <http://www.sec.gov/rules/final/2011/ia-3221.pdf>.

[2] The MSRB has already proposed a pay to play rule for municipal advisors. See MSRB, Request for Comment on Pay to Play Rule for Municipal Advisors, MSRB Notice 2011-04 (January 14, 2011).

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