

**MEMO# 24974**

February 18, 2011

# **Legal Memo Regarding State Laws Governing Employers' Ability To Limit Or Prohibit Employees' Political Contributions Under The SEC's Pay-To-Play Rule**

[24974]

February 18, 2011

TO: BANK, TRUST AND RECORDKEEPER ADVISORY COMMITTEE No. 12-11  
BROKER/DEALER ADVISORY COMMITTEE No. 10-11  
COMPLIANCE MEMBERS No. 17-11  
OPERATIONS MEMBERS No. 6-11  
SEC RULES MEMBERS No. 35-11  
SMALL FUNDS MEMBERS No. 21-11  
TRANSFER AGENT ADVISORY COMMITTEE No. 15-11 RE: LEGAL MEMO REGARDING STATE LAWS GOVERNING EMPLOYERS' ABILITY TO LIMIT OR PROHIBIT EMPLOYEES' POLITICAL CONTRIBUTIONS UNDER THE SEC'S PAY-TO-PLAY RULE

To assist our members in complying with the SEC's new pay-to-play rule requirements [\[1\]](#), we have commissioned private counsel to survey the laws of six states (California, Colorado, Connecticut, Massachusetts, New York, and Texas) [\[2\]](#) to determine if there are any provisions in the laws of these states that would limit or prohibit an employer's ability to restrict or ban employees' political contributions. [\[3\]](#) The memorandum we commissioned is attached.

Based on the information contained in the attached memorandum, members may want to keep the following in mind as they develop their policies and procedures under the SEC's rules:

- The limits employers impose on employees' political contributions should be appropriately tailored to accommodate requirements under Federal law without running afoul of state law protections afforded to employees;

- Employers should be aware of the need to protect the confidentiality of information provided by their employees regarding their political contributions in order to protect the privacy interests of employees under state law;
- Any adverse action taken by an employer against an employee for conduct relating to political contributions should relate to a violation of the employer's reporting or other compliance policies and procedures that have been adopted to implement the SEC's rules; and
- As discussed in more detail in the attachment, there are state laws (e.g., CAL. LAB. CODE § 1102; Massachusetts G.L.c. 56, § 33) that may, in fact, limit an employer's ability to impose a ban on political contributions.

We hope you find this information helpful as you continue your efforts to implement the SEC's new regulatory requirements.

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#### [Attachment](#)

#### **endnotes**

[1] See SEC Rule 206(4)-5, Political Contributions by certain investment advisers, as well as the related recordkeeping requirements in SEC Rule 204-2(18). Both rules were adopted under the Investment Advisers Act of 1940.

[2] We limited our survey to these six states because they represent the states in which most employees of investment advisers to mutual funds may be located.

[3] We understand that, some members have considered banning political contributions as a means to avoid running afoul of the rules' prohibitions, hence the relevance of this survey to members.

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