November 9, 2026

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

VIA ONLINE PORTAL

Re: File No. S7–2026–31: Political Contributions by Certain Investment Advisers

Dear Ms. Countryman:

The Committee on Capital Markets Regulation ("Committee")* offers these comments to the Securities and Exchange Commission ("SEC") on its proposed rule, *Political Contributions by Certain Investment Advisers* (the "Proposal").[1]

Founded in 2006, the Committee is dedicated to enhancing the competitiveness of U.S. capital markets and ensuring the stability of the U.S. financial system. Our membership includes forty-six leaders drawn from the finance, investment, business, law, accounting, and academic communities. The Committee is chaired jointly by R. Glenn Hubbard (Emeritus Dean, Columbia Business School) and John L. Thornton (Former Chairman, The Brookings Institution) and is led by Hal S. Scott (Emeritus Nomura Professor of International Financial Systems at Harvard Law School and President of the Program on International Financial Systems). The Committee is an independent and nonpartisan 501(c)(3) research organization, financed by contributions from individuals, foundations, and corporations.

The Proposal would rescind a 2010 rule that restricts the political contributions of investment advisers and their employees (the "political contribution rule").[2] The rule is intended to prevent political contributions from influencing the selection of investment advisers for public pension funds and other government assets (known as "pay-to-play" practices).[3] Pay-to-play practices are harmful because they cause or seek to cause government officials to select investment advisers based on political contributions rather than the quality and cost of their services, thus potentially resulting in higher fees and lower investment returns for public funds and their beneficiaries.[4] However, the political contribution rule goes beyond prohibiting pay-to-play practices, generally prohibiting any political contributions by investment advisers and their senior employees

* Professor B. Friedman is not associated with this letter.

[1] SECURITIES AND EXCHANGE COMMISSION, *Political Contributions by Certain Investment Advisers*, 91 FED. REG. 57,698 (Sept. 10, 2026), https://www.federalregister.gov/documents/2026/09/10/2026-18424/political-contributions-by-certain-investment-advisers [hereinafter the "Proposal"].

[2] 17 C.F.R. § 275.206(4)-5.

[3] SECURITIES AND EXCHANGE COMMISSION, *Political Contributions by Certain Investment Advisers*, 75 FED. REG. 41,018, 41,019 (Jul. 14, 2010), https://www.govinfo.gov/content/pkg/FR-2010-07-14/pdf/2010-16559.pdf.

[4] Commissioner Mark T. Uyeda, *Statement on Proposed Rescission of Rule 206(4)-5 under the Investment Advisers Act*, SECURITIES AND EXCHANGE COMMISSION (Sept. 3, 2026), https://www.sec.gov/newsroom/speeches-statements/uyeda-statement-pay-play-090326.

regardless of whether the contribution influences or is intended to influence the selection of an investment adviser by a government official.

More specifically, the rule prohibits investment advisers from receiving any compensation for advisory services from a government authority for two years after a contribution to an official of that authority by either the investment adviser or one of its "covered associates."[5] "Covered associates" include general partners and executive officers as well as any employee who solicits a government authority for the adviser and such employee's direct and indirect supervisors.[6] The rule also covers contributions over the prior two years made by persons who become covered associates.[7] If an adviser receives compensation during the prohibited two-year period, it can face disgorgement of the fees, interest, a civil monetary penalty, and other SEC sanctions.[8]

Our letter assesses the rationale and legal basis for the political contribution rule and finds that four principal factors support the rule's rescission. First, there remains insufficient evidence to demonstrate that a blanket restriction on political contributions is necessary to prevent pay-to-play practices. Second, a strong legal and regulatory framework adequately prohibits pay-to-play practices without the political contribution rule. Third, the rule has imposed significant burdens and market distortions that negatively affect investment advisers as well as their employees and clients and that are unwarranted in view of the rule's unsubstantiated benefits. Fourth, the rule potentially conflicts with the First Amendment by compelling investment advisers to severely restrict political contributions by their employees regardless of any corrupt intent. We therefore recommend that the SEC finalize the Proposal to rescind the political contribution rule.

I. The core rationale for the political contribution rule remains unsubstantiated.

The SEC adopted the political contribution rule based on its belief that because pay-to-play arrangements are difficult to detect and prove, a nearly blanket restriction on political contributions was necessary to prevent them even if it prohibited many legitimate contributions.[9] However, this claim remains unsubstantiated, which undermines the core rationale for the rule and supports the SEC's current proposal to rescind the rule. In particular, when it adopted the political contribution rule in 2010, the SEC presented no empirical evidence that undetected pay-to-play behavior was sufficiently widespread to warrant a prohibition on legitimate contributions or that the existing framework against pay-to-play practices was less effective at addressing misconduct than

[5] Proposal at 57,700.
[6] *Id*. at 57,700, n. 17.
[7] *Id*. at 57,700-701.
[8] *See*, *e.g.*, SECURITIES AND EXCHANGE COMMISSION, *Release No. 3859, Administrative Proceeding In the Matter of TL Ventures Inc.* (Jun. 20, 2014), https://www.sec.gov/files/litigation/admin/2014/ia-3859.pdf.
[9] Proposal at 57,709.

comparable legal frameworks are at addressing other forms of wrongdoing.[10] Furthermore, as the Proposal notes, fifteen years of enforcement of the political contribution rule have not provided evidence to show that a broad restriction on legitimate political contributions is necessary to prevent pay-to-play practices.[11]

II. Other existing protections adequately protect against pay-to-play practices.

The securities laws and other legal and regulatory frameworks prohibit pay-to-play practices, and rescinding the political contribution rule would preserve all of these protections. At the federal level, the Investment Advisers Act of 1940 (the "Advisers Act") imposes fiduciary duties on all investment advisers and prohibits fraudulent, deceptive, and manipulative acts.[12] The SEC has long maintained that pay-to-play practices violate these provisions.[13] Pay-to-play practices are also prohibited under federal laws criminalizing bribery, which apply when a state official receives compensation to influence state business.[14] At the state and local level, various laws covering the public procurement process, bribery, campaign finance, placement agents, and required campaign disclosure also prohibit pay-to-play practices.[15]

Registered investment advisers are also subject to additional rules that further safeguard against pay-to-play practices. In particular, the "compliance rule" requires advisers to implement written policies and procedures reasonably designed to prevent violations of the Advisers Act, including pay-to-play practices that violate the existing anti-fraud provisions of the Advisers Act.[16] In addition, the "codes of ethics rule" requires advisers to enforce a written code of ethics, which must require compliance with federal securities laws and include a standard of business conduct that reflects the adviser's fiduciary obligations, both of which require the adviser to refrain from pay-to-play practices.[17]

Following the rescission of the political contribution rule, federal and state authorities can continue to employ these frameworks to investigate and sanction pay-to-play practices through enforcement actions, criminal prosecutions, financial recoveries, and loss of government-contract eligibility.

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[10] *See* SECURITIES AND EXCHANGE COMMISSION, *supra* note 3, at 41,022-27. In fact, the SEC brought only fifteen enforcement actions against investment advisers for pay-to-play practices in the decade preceding the rule's adoption. Proposal at 57,714, n.141. The SEC presented no evidence that the small number of actions reflected inadequate enforcement or widespread undetected pay-to-play practices. The infrequency of these actions, relative to the over 20,000 investment advisers potentially subject to such actions at the time of the rule's adoption, therefore suggests that pay-to-play practices are in fact rare. *See* OFFICE OF INVESTOR EDUCATION AND ADVOCACY, SECURITIES AND EXCHANGE COMMISSION, *Study and Recommendations on Improved Investor Access to Registration Information About Investment Advisers and Broker-Dealers* at 27 (Jan. 2011), https://www.sec.gov/news/studies/2011/919bstudy.pdf.

[11] *See* Proposal at 57,714-15.

[12] 15 U.S.C. § 80b–6; *see also Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. 11, 17 (1979).

[13] *See*, *e.g.*, Proposal at 57,700, n.15; 57,703, n.57.

[14] 18 U.S.C. § 666.

[15] *See*, *e.g.*, Robert K. Kelner et al., *SEC Proposes to Repeal Longstanding Pay-to-Play Restrictions on Investment Advisers*, COVINGTON (Sept. 4, 2026), https://www.cov.com/en/news-and-insights/insights/2026/09/sec-proposes-to-repeal-longstanding-pay-to-play-restrictions-on-investment-advisers; *see also* Proposal at 57,703, nn. 48-50; 57,711, nn. 112-115.

[16] 17 C.F.R. § 275.206(4)-7.

[17] 17 C.F.R. § 275.204A-1.

III. The political contribution rule has imposed unwarranted burdens and market distortions.

The political contribution rule has resulted in costly burdens and market distortions that are unwarranted in view of the rule's unsubstantiated benefits.

First, investment advisers must establish extensive policies and procedures to prevent technical violations of the rule, including training, screening, monitoring, certification, preclearance, and recordkeeping.[18] Advisers looking to hire or promote a candidate into a "covered associate" position must also perform due diligence on that individual's past political contributions.[19] The SEC estimates that the total annual compliance cost savings for investment advisers from the political contribution rule's rescission would be $416 million.[20]

Second, the rule has distorted the investment adviser employment market. Because past contributions by new covered associates can trigger the compensation prohibition, some investment adviser codes of ethics and hiring communications specifically provide that hiring decisions will be impacted if the candidate has made contributions which would implicate the rule.[21] Moreover, because many advisers extend their contribution policies to all (or most) employees, this could affect hiring decisions over a large portion of an investment adviser's functions.[22] Passing up qualified candidates whose past contributions pose no appreciable pay-to-play risk may ultimately decrease the quality of the services provided to government clients.[23]

Third, employee political contributions triggering a ban on compensation from state or local government entities have prevented investment advisers from competing for those clients.[24] Decreased competition may increase costs to government pension plans or require such plans to select less qualified advisers, which may ultimately harm the beneficiaries of these plans.[25]

Fourth, SEC enforcement settlements and exemptive orders under the political contribution rule show that enforcement is focused on technical violations involving small donations with no

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[18] *See*, *e.g.*, Sheena Paul et al., *Update: Harris/Walz Ticket Raises Advisers Act Pay-to-Play Rule Considerations (Plus 8 Important Pay-to-Play Reminders)* at 5, DEBEVOISE & PLIMPTON (Aug. 6, 2024), https://www.debevoise.com/-/media/files/insights/publications/2024/08/update-harriswalz-ticket-raises-advisers-act.pdf.

[19] Proposal at 57,701.

[20] *Id*. at 57,715, Table 1.

[21] *See*, *e.g.*, PERSHING SQUARE CAPITAL MANAGEMENT, L.P., *Code of Ethics* (Apr. 2023), https://www.sec.gov/Archives/edgar/data/2002660/000114036126008532/ny20064799x1_ex-r2.htm ("The Firm generally will not hire a new Supervised Person or promote an existing Supervised Person if … such person has made a prohibited contribution…"); PRINCIPAL, *Personal U.S. Political Contribution Pre-Hire Look Back*, https://www.principal.com/personal-political-contribution-pre-hire-look-back (last visited Oct. 26, 2026) ("…it will impact [a] potential job offer if a contribution is made that is not permissible…").

[22] Proposal at 57,705.

[23] *Id*. at 57,713.

[24] *See*, *e.g.*, Ki Hong and Tyler Rosen, *The SEC Pay-to-Play Rule for Investment Advisers as It Turns 12*, SKADDEN (Mar. 1, 2023), https://www.skadden.com/-/media/files/publications/2023/03/the_sec_pay_to_play_rule_for_investment_advisers_as_it_turns_12_.pdf ("Although not public, these silent bans reduce the investment options available to affected government entities, as investment advisers stand down from marketing investment opportunities and services for which they cannot be paid."); *see also* Proposal at 57,713; 57,717.

[25] *See* Proposal at 57,713; 57,717.

showing of pay-to-play intent.[26] None of these actions involved a showing of actual intent to influence a public pension fund's selection of an investment adviser or involved dollar amounts that could reasonably be expected to influence the selection of an adviser. For example, a $1,000 contribution to the Harris-Walz campaign (a campaign that raised over one billion dollars) by the managing partner of an investment adviser triggered the rule despite the absence of any demonstrated pay-to-play intent or effect.[27] The rule's enforcement record thus suggests that the rule produces burdensome enforcement actions that are not in fact addressing the wrongdoing the rule is intended to prevent.

IV. The political contribution rule raises significant First Amendment concerns.

The Supreme Court has held that political contributions are a form of political speech that benefits from First Amendment protection.[28] The Court has also held that the First Amendment permits government restrictions on political contributions only for the purpose of preventing corruption or the appearance of corruption,[29] and only if the restriction is "closely drawn" to avoid disproportionately burdening First Amendment rights.[30] As multiple legal practitioners, scholars, and SEC Commissioners have observed, there are significant questions about whether the political contribution rule meets this standard.[31]

The severity of the rule's restrictions appears to conflict with governing Supreme Court precedent on when political contribution restrictions comply with the First Amendment. In *Randall v. Sorrell* (2006), the Supreme Court found that a cap of $400 on political contributions by individuals in Vermont's state elections was invalid under the First Amendment, because the cap was

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[26] *See*, *e.g.*, FRIED FRANK, *SEC Proposes to Rescind the Investment Adviser Pay-to-Play Rule (Rule 206(4)-5): An Overview and Key Implications* (Sept. 16, 2026), https://www.friedfrank.com/news-and-insights/sec-proposes-to-rescind-the-investment-adviser-pay-to-play-rule-13170; Commissioner Hester M. Peirce, *There's Got to Be a Better Way: Statement of Dissent Regarding Wayzata Investment Partners LLC*, SECURITIES AND EXCHANGE COMMISSION (Apr. 15, 2024), https://www.sec.gov/newsroom/speeches-statements/peirce-statement-wayzata-041524; Commissioner Hester M. Peirce, *Laudable Ends, Poorly Pursued: Statement Regarding Recent Pay-to-Play Rule Settlements*, SECURITIES AND EXCHANGE COMMISSION (Sept. 15, 2022), https://www.sec.gov/newsroom/speeches-statements/peirce-statement-pay-play-rule-settlements-091522; Benjamin Neaderland and Thomas K. Bredar, *Recent Exemptions From Rule 206(4)-5 Demonstrate the Importance of Strong Compliance Policies and Quick Corrective Action*, WILMERHALE (Mar. 16, 2023), https://www.wilmerhale.com/en/insights/client-alerts/20230316-recent-exemptions-from-rule-20645-demonstrate-the-importance-of-strong-compliance-policies-and-quick-corrective-action.

[27] TRUE VENTURE MANAGEMENT, *Restatement of Application for an Order Pursuant to Section 206A of the Investment Advisers Act of 1940* (Aug. 8, 2025), https://www.streetinsider.com/SEC%2BFilings/Form%2B40-APPA%2BTrue%2BVenture%2BManagement,/25175515.html; Nandita Bose, *Harris Campaign, Groups Raise $1 Billion Since She Became the Presidential Candidate, Source Says*, REUTERS (Oct. 9, 2024), https://www.reuters.com/world/us/harris-campaign-groups-raise-1-bln-since-she-became-presidential-candidate-2024-10-09/.

[28] *McCutcheon v. FEC*, 572 U.S. 185 (2014).

[29] *FEC v. Ted Cruz for Senate*, 596 U.S. 289, 305 (2022); *McCutcheon v. Federal Election Comm'n,* 572 U.S. 185, 191 (2014).

[30] *See*, *e.g.*, *Randall v. Sorrell*, 548 U.S. 230, 236 (2006) (plurality opinion); *Buckley v. Valeo*, 424 U.S. 1, 25 (1976).

[31] *See, e.g.,* Daniel Shuchman and Bradley A. Smith, *Free Jamie Dimon (and His Employees)*, WALL STREET JOURNAL (Oct. 24, 2025), https://www.wsj.com/opinion/free-jamie-dimon-and-his-employees-6c0d61a7?mod=article_inline; Commissioner Hester M. Peirce, *First Amendment Sense and Sensibilities: Statement on Proposed Rescission of Pay-to-Play Rule*, SECURITIES AND EXCHANGE COMMISSION (Sept. 3, 2026), https://www.sec.gov/newsroom/speeches-statements/peirce-statement-pay-play-090326; Commissioner Uyeda, *supra* note 4.

"disproportionately severe" relative to the statute's corruption prevention goal.[32] The political contribution rule imposes a cap that is more severe than the cap at issue in *Randall* and does not link its cap any more closely to its corruption prevention objective. Specifically, the rule imposes a two-year compensation ban for contributions only marginally above de minimis thresholds, without requiring any showing of corrupt intent.[33] For example, an employee contribution of $151 to an unsuccessful candidate for state office, even if that contribution is returned to the contributor, could trigger the loss of millions of dollars of advisory fees, despite posing zero pay-to-play risk.[34] Furthermore, the severity of the rule's restrictions is even greater in practice. In particular, many investment advisers have restricted political contributions by all employees regardless of amount or whether they are covered associates, such as administrative or IT professionals who have no role in soliciting clients.[35] Such policies restrict political participation by employees whose responsibilities have no connection to the selection of investment advisers for public funds and amplify the inconsistency of the rule with the precedent set in *Randall*.

The SEC claimed that the political contribution rule was valid because the rule only applies to investment advisers and their employees and is therefore closely drawn.[36] However, Supreme Court precedent supports the view that the government cannot condition an individual's First Amendment rights on the individual's chosen profession.[37] It is therefore doubtful that an individual's involvement in the investment advisory industry is a valid basis to impose a political contribution limit.

Conclusion

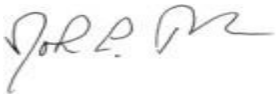
The political contribution rule is unnecessary to the goal of preventing the use of political contributions to influence the selection of investment advisers for public funds. The rule also imposes significant burdens on investment advisers as well as their employees and clients. Furthermore, the rule raises significant First Amendment concerns due to its imposition of extensive restrictions and severe sanctions for political contributions regardless of the existence or appearance of corrupt intent. The Committee therefore recommends the SEC adopt the Proposal to rescind the political contribution rule.

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[32] 548 U.S. 230, 237-38.
[33] 17 C.F.R. § 275.206(4)-5; SECURITIES AND EXCHANGE COMMISSION, *supra* note 8 ("Rule 206(4)-5 does not require a showing of quid pro quo or actual intent to influence an elected official or candidate").
[34] *See*, *e.g.*, Shuchman and Smith, *supra* note 31; Neaderland and Bredar, *supra* note 26.
[35] *See*, *e.g.*, DEER PARK ROAD MANAGEMENT COMPANY, LP, *Code of Ethics* (Jan. 2018), https://www.sec.gov/Archives/edgar/data/1314414/000158064218003203/ex99p577.htm ("In order to ensure compliance and avoid any violations, Covered Associates will mean all Employees"); *see also* Proposal at 57,705.
[36] SECURITIES AND EXCHANGE COMMISSION, *supra* note 3 at 41,023 ("[W]e have closely drawn rule 206(4)-5 to accomplish its goal of preventing quid pro quo arrangements while avoiding unnecessary burdens on the protected speech and associational rights of investment advisers and their covered employees").
[37] *See*, *e.g.*, *Elrod v. Burns*, 427 U.S. 347, 357-61 (1976) (plurality opinion).

Thank you very much for your consideration of the Committee's position. Should you have any questions or concerns, please do not hesitate to contact the Committee's President, Professor Hal S. Scott (hscott@capmktsreg.org) or its Executive Director, John Gulliver (jgulliver@capmktsreg.org) at your convenience.

Respectfully submitted,



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