U.S. Chamber of Commerce

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

Re: Proposed Rescission of Rule 206(4)-5 Under the Investment Advisers Act of 1940 (File No. S7-2026-31)

Dear Ms. Countryman:

The U.S. Chamber of Commerce ("Chamber") respectfully submits these comments in response to the Securities and Exchange Commission's ("Commission") September 3, 2026, proposal to rescind Rule 206(4)-5 under the Investment Advisers Act of 1940 (the "Proposal"). The Chamber is the world's largest business federation, representing the interests of businesses and organizations of every size, sector, and region.

The Chamber has long engaged with the Commission on the regulation of investment advisers and the integrity of public pension fund governance. We write in support of rescission. The Chamber has never disputed that preventing pay-to-play corruption in all its forms is a valid concern for any industry, including in the management of public assets. But more than fifteen years of experience has demonstrated that Rule 206(4)-5 (the "Rule") is an antiquated, overly prescriptive and disproportionate instrument for addressing that concern, one that imposes substantial costs on advisers, their employees, and the government clients the Rule was designed to protect, without commensurate benefit, while touching on First Amendment protected speech.

I. Background

Rule 206(4)-5 was adopted by the Commission on June 30, 2010, following a series of well-documented pay-to-play scandals involving public pension funds, which for the most part did not involve political contributions.[1] The Rule imposes an automatic two-year compensation ban on investment advisers if the adviser or one of its covered associates make political contributions to officials in a position to

[1] *Political Contributions by Certain Investment Advisers*, Investment Advisers Act Release No. IA-3043 (July 1, 2010).

influence the selection of an adviser. It restricts the use of third-party placement agents, prohibits the solicitation or coordination of contributions, and imposes related recordkeeping requirements. The Rule applies to registered investment advisers, exempt reporting advisers, and foreign private advisers, and extends to advisory relationships with covered investment pools in which government entities invest.

On September 3, 2026, the Commission proposed to rescind the Rule in its entirety, including the related recordkeeping requirements under Rule 204-2.[2] The Commission identified the Rule's overbreadth, its effective strict-liability standard, and its chilling effect on protected political speech as principal grounds for rescission.

II. The Case for Rescission

A. The Rule Exceeds Its Statutory Mandate

The Commission adopted Rule 206(4)-5 under Section 206(4) of the Investment Advisers Act, which authorizes rules "reasonably designed to prevent" fraudulent, deceptive, or manipulative acts and practices.[3] That standard is a meaningful constraint under the Administrative Procedure Act. It does not authorize prophylactic rules of unlimited scope; it authorizes rules with a reasonable connection to the prevention of a specific harm.

Rule 206(4)-5 lacks that connection. A two-year compensation ban triggered by a modest contribution to a candidate who never won office and never held any position to influence adviser selection is not reasonably designed to prevent fraud. It is a strict-liability penalty applied without regard to intent, causation, or actual harm. More importantly, the Rule does not even consider whether the contribution was connected to obtaining business or simply reflects the covered employee's personal political views; a two-year ban is imposed either way. The Rule thus goes beyond a reasonable effort to prevent pay-to-play and is an overarching regulation of political contributions, which is outside the purview of the authority granted by the Act. The Commission is right to conclude that the Rule, as currently constructed, cannot be squared with the authority the statute provides.

The Commission should also note that Section 206(4)-7 already requires advisers to maintain compliance programs reasonably designed to prevent violations of the Investment Advisers Act, which includes fraudulent activity like pay-to-play

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[2] *Political Contributions by Certain Investment Advisers*, Investment Advisers Act Release No. IA-6994 (Sept. 3, 2026), File No. S7-2026-31.
[3] 15 U.S.C. § 80b-6(4).

corruption. The existence of that general compliance framework further undermines the necessity of the specific strict-liability regime Rule 206(4)-5 imposes.

Following *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), courts reviewing agency action are no longer required to defer to an agency's interpretation of its own statutory authority. Against that backdrop and the fact that the pay-to-play scandals that the Rule was meant to address largely did not involve political contributions, the Chamber believes the Commission is well-served by building a clear and reasoned administrative record to support this action.

B. First Amendment Concerns

The Rule's practical operation has suppressed political participation well beyond what it technically requires. Due to the Rule's complexity and high stakes, many firms have felt forced to impose blanket prohibitions on employee political contributions across the board. As Chairman Atkins observed in his statement on the Proposal, people should not have to choose between their political speech rights and employment in a particular industry.[4]

The Chamber acknowledges that some courts have upheld pay-to-play rules in the securities context under the First Amendment. But those decisions predate the Supreme Court's more recent campaign finance jurisprudence, and the First Amendment concerns the Rule and potentially similar rules raise are real and growing. Such rules are not “closely drawn” to combat quid pro quo corruption or its appearance as the First Amendment requires. They provide additional reasons for the Commission to act.

C. Vagueness and Fair Notice

The Rule's definitions of "official" and "covered associate" do not give regulated parties reliable notice of who is covered. The definition of "official" turns on whether an individual can influence the outcome of adviser selection, directly or indirectly. That is a highly fact-specific determination that advisers cannot make with confidence at the time a contribution occurs, particularly where an official's authority to “indirectly” influence the award of an investment is enough to trigger coverage. A rule that cannot be applied with reasonable certainty at the time of the regulated conduct raises fair notice concerns that the Commission should not leave unaddressed.

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[4] Statement of Chairman Paul S. Atkins, *Proposal to Rescind Pay-to-Play Rule* (Sept. 3, 2026).

III. The Rule in Practice

A. Disproportionate Consequences for Minor Conduct

The Rule's most significant practical defect is the absence of any proportionality between the triggering conduct and the consequence. A contribution that is small, inadvertent, and entirely unconnected to any government client relationship can trigger a two-year compensation ban that costs an adviser far more than the contribution was worth to anyone.

The Commission's own exemptive relief record documents this problem. Since the Rule's adoption, the Commission has granted nearly twenty discretionary waivers.[5] In several of those cases, the financial losses that would have resulted from the two-year ban were hundreds of times the amount of the triggering contribution. In at least one case, the contribution was made to an unsuccessful candidate who never held office and was therefore never in a position to influence adviser selection. The Rule applied in full regardless. They also involve contributions that were made by employees solely for personal reasons.

B. Compliance Burdens and Hiring Constraints

Maintaining compliance with the Rule requires ongoing, real-time monitoring of the political contribution activity of a substantial portion of an adviser's workforce. In practice, many advisers apply preclearance requirements to all employees rather than only covered associates, because the determination of who qualifies as a covered associate is itself fact-specific and can change as roles evolve. Trying to apply a de minimis limit across the board is exceptionally difficult. The result is a compliance infrastructure that is broader and more costly than the Rule technically requires.

The Rule's look-back provisions also create real constraints on hiring and promotion. Firms may decline to hire or advance otherwise qualified candidates because of prior political activity that predates any relationship with the firm and bears no connection to any government client relationship the firm actually has.

C. Harm to Government Clients and Economic Development

When a contribution triggers the two-year ban, the affected government entity may be forced to forgo or terminate a relationship with an adviser it selected on the merits. The Rule thus restricts government clients from retaining the adviser of their

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[5] *See* Skadden, Arps, Slate, Meagher & Flom LLP, *The SEC Pay-to-Play Rule for Investment Advisers as It Turns 12* (Mar. 2023).

choice, not because of any deficiency in the adviser's qualifications or performance, but because of a political contribution that may have had no connection to the advisory relationship. This cost ultimately falls on pension beneficiaries and on the broader economy the Rule was never designed to burden.

IV. Policies and Procedures Regarding Political Contributions

As noted, advisers are already required under Rule 206(4)-7 to maintain policies and procedures that address pay-to-play practices holistically. The Commission therefore should not prescribe policies and procedures that single out political contributions. Political contributions do not raise unique pay-to-play concerns. They are also the most transparent form of giving because they are publicly disclosed, and they are a form of speech protected by the First Amendment.

V. The Broader Regulatory Landscape

Rescission of Rule 206(4)-5 will provide meaningful relief, but the Chamber wants to be candid with the Commission about what it will and will not accomplish. Investment advisers, as well as other markets professionals, will remain subject to the Investment Advisers Act's anti-fraud provisions and their related rules, which is a sufficient and reasonable approach to preventing pay-to-play. There will also be a substantial body of other overlapping law at the federal, state, and local levels, as well as contractual pay-to-play provisions in fund documents and side letters. There is no shortage of laws in this space that protect the integrity of public assets.

The Commission's Proposal requests comment on how the rescission would affect other pay-to-play rules across the securities and derivatives regulatory framework.[6] The Chamber strongly supports a broader review of these requirements, including potential rescission of other similarly situated federal and state rules. In particular, we encourage the Commission to engage with the North American Securities Association (NASAA) and encourage state regulators and legislatures to review their respective pay-to-play requirements in light of the proposed rescission. Given that investment advisers routinely operate across state lines, harmonization of definitions, thresholds, and cure mechanisms would reduce compliance costs and produce more consistent outcomes without sacrificing the underlying policy

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[6] Proposing Release, *supra* note 2. *See also* Statement of Commissioner Hester M. Peirce, *First Amendment Sense and Sensibilities: Statement on Proposed Rescission of Pay-to-Play Rule* (Sept. 3, 2026).

objectives. The Commission is well-positioned to facilitate this coordination, and we encourage it to do so.

VI. Conclusion

The Chamber supports rescission of Rule 206(4)-5. Pay-to-play corruption in the management of public assets is a genuine concern, but the Rule's implementation has produced compliance burdens, legal infirmities, and consequences that are disproportionate to the risks it was designed to address. The Commission's own exemptive record tells that story clearly. Rescission is the right outcome, and the Chamber urges the Commission to finalize the Proposal and then work to minimize the burden from other similarly situated federal pay-to-play rules.

If you have any questions regarding these comments, please contact Alex Swindle at aswindle@uschamber.com.

Respectfully submitted,



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