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Key Steps for Fund Managers to Avoid Scrutiny Under the SEC's Pay-to-Play Rule: Proskauer Rose

The SEC's recent settlement involving a "pay-to-play" rule violation by a private equity firm is a timely reminder for fund managers, especially with the November elections approaching.

As a refresher, Rule 206(4)-5 of the Investment Advisers Act – known as the "pay to play" rule – prohibits investment advisers from receiving compensation for providing advisory services to state and municipal entities for two years after the adviser or one of its "covered associates" makes certain political contribution to candidates for public office. Note that the SEC Enforcement Division staff periodically reviews public campaign contribution reports (which are publicly available online) to identify donations by individuals associated with investment advisers.

In the recent SEC settlement, an employee and covered associate of an SEC-registered investment adviser contributed $4,000 to the political campaign of a state government official, whose position had the ability to influence the selection of investment advisers for the state board of investment. The state had a pre-existing investment in private equity funds managed by the firm. This contribution triggered the pay-to-play rule restrictions and as a result, the entity was fined as part of a cease and desist order.

Continue reading.

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May 29 2024