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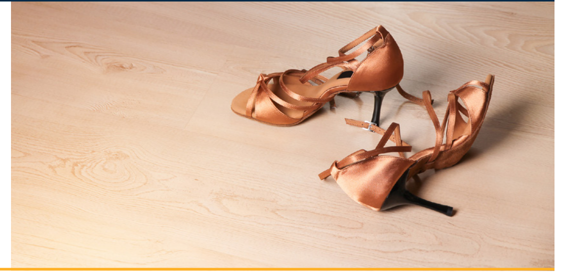
Pay-to-Play Update: Walz-ing into Political Contributions



Last Tuesday, Vice President Kamala Harris named Minnesota Gov. Tim Walz as her running mate, setting up the presumptive presidential ticket for the Democratic Party. But money managers, beware: Because Walz is currently Minnesota's governor, contributions to the Harris-Walz ticket and certain related organizations implicate the so-called Pay-to-Play Rule under the Investment Advisers Act of 1940.

Specifically, Rule 206(4)-5 imposes prohibitions, significant penalties and recordkeeping requirements for certain contributions to state and local officials based on the rule's general and technical provisions. Even though the Harris-Walz campaign is for federal office, the rule is relevant because Walz remains directly or indirectly involved in selecting advisers to manage certain state assets, whether he has the sole authority to select advisers, is a member of a governing board that selects advisers, or appoints some or all of the board members who make the selections.

Regardless of intent to influence that selection, an adviser's covered associate's contribution or even certain supportive conduct like fundraising can trigger the rule's requirements and prohibitions. Given the nuances and major ramifications, an investment advisory firm may wish to remind personnel of its Rule 206(4)-5 policy and focus carefully on any related questions about making political contributions or engaging in fundraising.

Additionally, to the extent that a covered associate may have inadvertently made a contribution to the Harris campaign following the announcement of Walz as her running mate that falls outside the available exceptions set forth in the rule (including a $350 de minimis exception), it is worth noting that in extremely narrow circumstances, exemptive relief may be available to avoid a two-year "time-out" from receiving any compensation from advisory services provided to the state of Minnesota or its various government entities. The U.S. Securities and Exchange Commission (SEC) will grant exemptive orders only when, according to the SEC, the imposition of the rule's time-out provision is unnecessary to achieve the rule's intended purpose. Advisers applying for an order must do so through an application process that exposes the firm and the covered associate to public scrutiny.

For further details on pay-to-play rules for investment advisers, refer to our previous publication.

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