November 6, 2026

Via Electronic Submission

Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Rescission of Investment Adviser Pay-to-Play Rule, Release No. IA-6994; File No. S7-2026-31

Dear Secretary Countryman:

The American Securities Association[1] ("ASA") appreciates the opportunity to comment on the Securities and Exchange Commission's ("Commission" or "SEC") proposal to rescind Rule 206(4)-5 under the Investment Advisers Act of 1940 ("Advisers Act") and the related recordkeeping requirements of Rule 204-2(a)(18) (the "Proposal").

I. Overview.

ASA supports the Proposal to rescind Rule 206(4)-5. While the intent of the rule has merit, Rule 206(4)-5 has punished inadvertent and immaterial political contributions as severely as actual corruption, and it has burdened core political speech protected by the First Amendment. ASA agrees with the Commission that pay-to-play risk is properly addressed through the Advisers Act's anti-fraud provisions, an adviser's fiduciary duty, and a principles-based compliance program tailored to the adviser's actual risk. As the Proposal notes, numerous other Federal, state, and local requirements also exist as a guard against public corruption.

ASA's comments are as follows. First, ASA supports the Commission's rejection of the Rule's de facto strict liability standard in favor of a standard that turns on intent and actual quid pro quo conduct. Second, ASA supports the principles-based compliance framework under the Advisers Act described in the Proposal. Third, the Commission must avoid creating regulatory arbitrage. If the Commission rescinds Rule 206(4)-5, then it must simultaneously rescind and modernize FINRA Rules 2030 and 4580, and Exchange Act Rule 15Fh-6 to even the playing field for broker-dealers and other regulated intermediaries. With respect to MSRB Rule G-37, we

[1] ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. ASA's mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. ASA has a geographically diverse membership base that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.

recommend the Commission encourage a separate MSRB review and modernization of the rule. While G-37 shares some of the same issues, including an inflation-eroded de minimis threshold and a two-year prohibition that does not require proof of corrupt intent, those problems justify modernization of G-37, but do not necessarily justify abandoning entirely. Fourth, ASA believes that federal criminal law, which independently prohibits the bribery of public officials in exchange for government business, will limit any enforcement gap that rescission might otherwise create.

II. ASA Supports Rescission of Rule 206(4)-5 and the End of Strict Liability.

Rule 206(4)-5 prohibits an adviser from receiving compensation for advisory services to a government entity for two years after the adviser or a covered associate makes a contribution of a certain amount to an official of that entity. The prohibition is automatically triggered. It does not depend on whether the contribution influenced anyone, whether the contributor intended to influence anyone, or whether the adviser obtained any business as a result. The Commission considers intent only after the fact, through the exemptive relief process under Rule 206(4)-5(e), which is expensive, slow, and uncertain.

The Proposal correctly identifies the consequences of this design. The de minimis thresholds of $350 and $150 have not been adjusted for inflation since 2010. This means a contribution that could not plausibly influence the selection of an adviser can cost that adviser two years of compensation. The covered associate lookback also penalizes firms for contributions an employee made before joining the firm, which impedes hiring and promotion of qualified individuals. The returned-contribution exception depends on the recipient campaign returning the money within 60 days. This matter is outside the adviser's control. To manage this exposure, many firms have barred their employees from making any candidate or official contribution to any state or local politician. The result is that a rule adopted to prevent fraud now operates primarily to suppress lawful political participation.

That suppression raises serious constitutional concerns. The Supreme Court has held that political contributions are protected by the First Amendment,[2] and that the only governmental interest sufficient to restrict them is preventing quid pro quo corruption or its appearance.[3] A rule that imposes a two-year ban on a $200 contribution without any showing of a quid pro quo is not tailored to that interest. The D.C. Circuit dismissed the principal challenge to the Rule as time-barred and the court never decided the merits of the issue.[4] The Commission is right to resolve this question now rather than allow a rule of dubious validity to continue to hangover the industry.

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[2] U.S. Const. amend. I. The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech"
[3] *McCutcheon v. FEC*, 572 U.S. 185, 192 (2014) (plurality opinion); *Buckley v. Valeo*, 424 U.S. 1, 26–27 (1976).
[4] *N.Y. Republican State Comm. v. SEC*, 799 F.3d 1126 (D.C. Cir. 2015).

Therefore, ASA supports rescission of Rule 206(4)-5 in its entirety, together with the conforming amendment to Rule 204-2(a)(18). ASA does not believe the partial alternatives identified in the Proposal, such as raising the de minimis threshold to $3,500 or shortening the time-out period are an adequate substitute for rescission. While those changes would reduce the frequency of unjust outcomes, they would preserve the strict liability structure that produces them.

If the Commission nonetheless declines to rescind Rule 206(4)-5 in its entirety, ASA urges the Commission, at a minimum, to (1) raise the de minimis thresholds substantially and index them to inflation going forward; (2) shorten the two-year time-out period; (3) eliminate or shorten the lookback for contributions made before an individual became a covered associate; and (4) expand the returned-contribution exception so that its availability does not depend on action by the recipient campaign. Any such amendments should apply equally to FINRA Rule 2030, MSRB Rule G-37, and Rule 15Fh-6.

III. ASA Supports the Commission's Return to an Intent-Based Standard.

The Proposal describes pay-to-play as conduct where political contributions influence the selection of an adviser, or where an adviser seeks to influence an official's award of advisory business by making or soliciting contributions. The Proposal also states that payments to officials as a quid pro quo for advisory business violate Section 206 of the Advisers Act. ASA agrees.

The wrong in pay-to-play is the corrupt exchange, not the contribution. A standard that turns on whether that exchange occurred, or was intended, targets the actual harm to public pension plans and their beneficiaries. Focusing on the exchange also allows regulators to direct enforcement resources toward actual misconduct rather than technical violations involving contributions that present no realistic risk of influencing a hiring decision.

This approach also aligns the Commission's regime with the constitutional line established by the Supreme Court. Under an intent-based standard, an employee who gives $500 to a gubernatorial candidate out of personal conviction faces no regulatory consequence. By contrast, an adviser that gives money to a pension trustee in exchange for a mandate faces an enforcement action and criminal prosecution. And that is the correct result.

ASA asks the Commission to make this standard explicit in the adopting release. The clarification matters because Section 206(1) requires scienter, while Sections 206(2) and 206(4) can be satisfied by negligence.[5] If the Commission retains the ability to bring pay-to-play cases under negligence-based provisions, then the adopting release should state that a political contribution, standing alone, does ***not*** establish a violation.

[5] *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992).

The adopting release should also state that the Commission will bring pay-to-play enforcement actions *only* where there is evidence that a contribution was made to obtain or retain advisory business, or that the adviser failed to disclose a material conflict arising from such a contribution. Without that statement, advisers will reasonably fear that the strict liability standard has simply been relocated from rule text into enforcement discretion, and the chilling effect the Proposal seeks to end will remain.

The same clarity is needed for supervisory liability. The Proposal notes that the Commission may charge an adviser and its supervisors under Section 203(e)(6) for failure to reasonably supervise personnel who engage in pay-to-play. ASA asks the Commission to confirm that an adviser that has adopted and reasonably implemented risk-based pay-to-play procedures under Rule 206(4)-7 is entitled to the statutory defense in Section 203(e)(6)(A) and (B).

IV. ASA Supports the Principles-Based Compliance Framework.

ASA supports the Proposal's approach to compliance. Under Rule 206(4)-7, an adviser must adopt and implement policies and procedures reasonably designed to prevent violations of the Advisers Act, including fraudulent pay-to-play practices. Under Rule 204A-1, an adviser's code of ethics must set standards of conduct reflecting its fiduciary obligations. These existing rules already require advisers to identify and manage pay-to-play risk. A separate rule imposing the same mechanical restrictions on every adviser, regardless of whether it has any government clients, is unnecessary.

The Proposal identifies the elements a sound supervisory program should consider. These include identifying the adviser's existing and prospective government relationships, assessment of risk based on the roles of personnel (with heightened attention to solicitation and senior decision-making personnel), preclearance and reporting where the risk warrants it, contribution windows and thresholds, controls on third-party solicitors, periodic monitoring, and remedial steps, including return of contributions and employee discipline.

ASA agrees these elements are appropriate, and that each adviser should decide which of them to use based on its business model. A firm with no public pension clients and no plans to seek them should not be expected to maintain the same program as a firm whose business depends on government mandates.

Accordingly, ASA opposes the alternative of pairing rescission with a new rule mandating pay-to-play policies with prescribed features. That alternative would replace one prescriptive rule with another and invite the examination staff to treat the prescribed features as a checklist. For this reason, ASA asks the Commission to state in the adopting release that the examples in the Proposal are illustrative, and that the absence of any particular element, such as preclearance, is not itself a deficiency where the adviser's risk assessment supports its omission.

Finally, ASA asks the Commission to provide a reasonable transition period. Advisers that have relied for years on preclearance systems and contribution bans built for Rule 206(4)-5 will need time to conduct risk assessments, revise their procedures, and communicate those changes to employees. ASA also asks the Commission to make clear, upon the effective date of rescission, that no adviser will remain subject to an ongoing two-year compensation ban arising from a contribution made *prior to* that date.

V. The Commission Must Prevent Regulatory Arbitrage by Rescinding or Conforming Parallel Pay-to-Play Rules.

A. No Regulatory Arbitrage. This is ASA's most important concern. If the Commission rescinds Rule 206(4)-5 without simultaneously addressing the parallel rules that were built upon it, then the Commission will create a regulatory arbitrage that penalizes registered, supervised intermediaries and rewards unregistered ones. The Proposal asks whether rescission would affect FINRA Rule 2030, MSRB Rule G-37, and Exchange Act Rule 15Fh-6, and what the impact would be on dually registered advisers and broker-dealers. ASA's answer is that the impact would be severe unless the Commission and the SROs act on all of them together.

B. FINRA Rules 2030 and 4580. FINRA Rule 2030 prohibits a member firm from engaging in distribution or solicitation activities for compensation with a government entity on behalf of an investment adviser for two years after the firm or a covered associate makes a contribution to an official of that entity. FINRA Rule 4580 imposes corresponding recordkeeping requirements. These rules exist because of Rule 206(4)-5. Rule 206(4)-5(a)(2)(i) prohibits an adviser from paying a third party to solicit government business unless that party is a "regulated person," a term that includes a FINRA member subject to a pay-to-play rule the Commission finds at least as stringent as Rule 206(4)-5. FINRA adopted Rule 2030 so that its members could continue to serve as placement agents. If Rule 206(4)-5 is rescinded, then the foundation for Rule 2030 is gone.

The consequences of leaving Rule 2030 in place would be perverse. After rescission, an adviser could solicit a public pension plan through its own employees, or through an unregistered finder, with no pay-to-play rule applying to either. A registered broker-dealer performing the same function, under FINRA supervision and examination, would remain subject to a strict liability two-year ban. Rule 2030 would push government business away from the most heavily regulated intermediaries and toward the least regulated ones. That outcome is contrary to investor protection. For dually registered firms, the problem is worse: the same individual could be free to contribute in his capacity as an adviser representative and barred from doing so in his capacity as a registered representative. No compliance program can sensibly administer that distinction.

C. Exchange Act Rule 15Fh-6. Rule 15Fh-6 is the Commission's own rule, and it applies a strict liability pay-to-play prohibition to security-based swap dealers. Every reason the Proposal gives for rescinding Rule 206(4)-5 applies equally to Rule 15Fh-6.

D. MSRB Rule G-37. Rule G-37 served as the model for Rule 206(4)-5 and applies to dealers and municipal advisors in the municipal securities market. The Commission's findings in this Proposal regarding inflation-eroded thresholds, strict liability, and burdens on political speech apply to Rule G-37 as well. Rule G-37's $250 de minimis threshold, which applies only to contributions to officials for whom the contributor is entitled to vote, has not been adjusted since the Commission approved the rule in 1994. The arbitrage described above also applies to municipal advisors that are dually registered as investment advisers or broker-dealers. A municipal advisor that solicits a public pension plan on behalf of an investment adviser would remain subject to a two-year ban under Rule G-37, while the adviser's own employees soliciting the same plan would face no comparable restriction. Likewise, the same individual at a dually registered firm could be free to contribute in one capacity and barred from doing so in another.

ASA would welcome a proposal from the MSRB to modernize and refine G-37 because that rule is distinctly focused on the uniqueness of various municipal market relationships.

ASA therefore requests that the Commission:

1. Rescind Rule 15Fh-6 in the same release that rescinds Rule 206(4)-5, or in a concurrent rulemaking with the same effective date.
2. Direct FINRA to file, under Section 19(b) of the Exchange Act, a proposed rule change rescinding Rules 2030 and 4580, and approve that filing so that it takes effect no later than the rescission of Rule 206(4)-5.
3. Request that the MSRB file, under Section 19(b) of the Exchange Act, a proposed rule change modernizing Rule G-37, including by raising its de minimis threshold and indexing it to inflation, and approve that filing so that it takes effect no later than the rescission of Rule 206(4)-5.
4. Coordinate with the Commodity Futures Trading Commission regarding CFTC Rule 23.451 so that swap dealers are treated consistently with security-based swap dealers.
5. Set the effective date of rescission of Rule 206(4)-5 to coincide with the effective date of the FINRA rule changes, so that there is no period in which broker-dealers remain subject to directly corresponding restrictions that no longer apply to advisers.

VI. Federal Criminal Law Independently Prohibits Quid Pro Quo Pay-to-Play.

The Proposal rightly notes that the anti-fraud provisions of Section 206 remain available to the Commission after rescission. The Commission should also include in the adopting release that

the conduct Rule 206(4)-5 was designed to prevent is also a federal crime. As a result, rescission of a prophylactic rule does not legalize bribery.

A. Honest Services Fraud. The mail and wire fraud statutes, 18 U.S.C. §§ 1341 and 1343, as defined by 18 U.S.C. § 1346, prohibit schemes to deprive the public of the intangible right of honest services. In *Skilling v. United States*, 561 U.S. 358, 408–09 (2010), the Supreme Court held that Section 1346 reaches bribery and kickback schemes. A payment to a state or local official, including a pension trustee or an elected official who appoints trustees, in exchange for directing a public plan's assets to an adviser is a paradigmatic honest services bribery scheme. Wire fraud carries a maximum sentence of 20 years' imprisonment.

B. Federal Program Bribery. 18 U.S.C. § 666 prohibits corruptly giving anything of value to an agent of a state or local government, or of an agency of such a government, that receives more than $10,000 in federal funds in a one-year period, with intent to influence or reward that agent in connection with a transaction of $5,000 or more. The Supreme Court has confirmed that Section 666 reaches bribes, meaning payments made or agreed to before the official act. *Snyder v. United States*, 603 U.S. 1 (2024).

C. Hobbs Act Extortion. 18 U.S.C. § 1951 prohibits extortion under color of official right. Where the payment is a campaign contribution, the government must prove that it was made in return for an explicit promise or undertaking by the official. *McCormick v. United States*, 500 U.S. 257, 273 (1991).

D. Willful Violations of the Advisers Act. Section 217 of the Advisers Act, 15 U.S.C. § 80b-17, makes a willful violation of Section 206 a criminal offense.

E. Public Corruption is Already Illegal. These statutes share a common feature: each targets a corrupt exchange, and none treats a political contribution as unlawful merely because it was made. Federal criminal law, and the Supreme Court's First Amendment cases, draw the line at quid pro quo. The Proposal draws the line in the same place. That consistency is a strength of the Proposal, and it supports the conclusion that rescission of Rule 206(4)-5 removes an overbroad prophylactic rule while leaving substantial tools to address actual pay-to-play corruption. In addition, state bribery statutes, state and local pay-to-play and placement agent laws, and contractual restrictions imposed by public pension plans remain in force. ASA recognizes that these laws impose demanding standards of proof and will not reach every contribution the Rule currently captures. That residual risk is better addressed through advisers' risk-based compliance programs and the Advisers Act's anti-fraud provisions than through a strict liability prohibition.

VII. Conclusion.

ASA supports the Commission's Proposal to rescind Rule 206(4)-5. The Rule's strict liability design has punished immaterial contributions, chilled protected political speech, and denied public pension plans access to qualified advisers, while the conduct it was meant to prevent remains prohibited by the Advisers Act's anti-fraud provisions and by federal criminal law.

ASA urges the Commission to state clearly in the adopting release that enforcement will turn on intent and actual quid pro quo conduct, and to preserve the flexibility of the principles-based compliance framework. Above all, ASA urges the Commission to rescind or modernize Rule 15Fh-6, and to direct FINRA and the MSRB to do the same with FINRA Rules 2030 and 4580 and MSRB Rule G-37 on the same timeline, so that broker-dealers and other regulated intermediaries are not left subject to a strict liability regime the Commission has found to be unjustified. If the Commission does not rescind Rule 206(4)-5 in its entirety, ASA urges it to adopt the targeted amendments described in Section II and to apply them uniformly across the parallel rules.

Thank you for the opportunity to comment. Please contact me with any questions.

Sincerely,

Christopher A. Iacovella

Christopher A. Iacovella
President & CEO
American Securities Association