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Sept. 16, 2019 | Philadelphia, PA

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Conquering Current Compliance Challenges

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Conquering Current Compliance Challenges

Recorded: August 14, 2019

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Private Equity Enforcement Lessons Learned: Compliance Guidance for the PE Business Model

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The SEC Examinations Priorities Handbook (2019 Edition)

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The Adviser's Guide to SEC Advertising and Marketing Rules

Includes: 23 Best Practices, 5 Peer-tested tools and 15 No Action Letters

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Subscriber-suggested story: Proceed with caution if your firm plans a political fundraiser

Published on: 7/5/2019 Content area: Investment Adviser

Comments?

Early debates among Democratic Presidential candidates attest to the vigorous election season that awaits – a perfect time to ponder the reach of the SEC's [pay-to-play rule](#).

A subscriber reports her advisory firm's leader and his wife are contemplating holding a fundraiser in their home for a political candidate. The CCO asks if such an event could run afoul of the PTP rule.

The short answer: yes.

'Payment' broadly defined

Violating the PTP rule could bring a two-year time out from receiving compensation for advising a public pension plan. The PTP rule's definition of a "payment" to help a candidate who could influence which adviser gets to manage a public pension plan is broad, encompassing "any gift, subscription, loan, advance, or deposit of money or anything of value."

That last phrase could catch the fundraiser.

But there are more factors to consider, reminds **Jeremiah Williams**, a partner with **Ropes & Gray** in Washington, D.C. First, does the candidate have an office or seek one that can influence who manages a public pension plan, he asks. If not, there can be no PTP violation.

Also, the advisory employee would have to be a "covered associate" as defined by the rule. This would include the adviser's "general partner, managing member or executive officer."

If these conditions are met, a fundraiser for such a candidate is "probably something you should avoid doing," recommends Williams.

Richard Heller, a partner with **Thompson Hine** in New York, agrees. A fundraiser would be "a contribution in kind" under the PTP rule, he says. "It's reasonable to assume that [the SEC] would take a conservative view" that a fundraiser would violate the rule, he adds.

Defining the lines

The preamble to the PTP rule offers additional guidance. It states that a fundraiser with "expenses incurred by the adviser for hosting the event would be a contribution by the adviser, thereby triggering the two-year ban on the adviser receiving compensation for providing advisory services to the government entity over which that official has influence."

The expenses could include "the cost of the facility, the cost of refreshments, any expenses paid for administrative staff, and the payment or reimbursement of any of the government official's expenses for the event."

The rule's de minimis exceptions of contributions of \$150/\$350 wouldn't apply if the expenses related to a fundraiser were paid by the adviser. They would apply if paid by a person. However, expenses tied to a fundraiser would easily exceed the \$150/\$350 thresholds, maintains Williams.

"An adviser that consents to the use of its name on fundraising literature for a candidate would be soliciting contributions for that candidate," the SEC's preamble reads. The same is true should the adviser sponsor a meeting that "involves fundraising."

At the end of the day, the SEC stated the determination of whether an event would trigger the rule "will depend on the facts and circumstances, thus we have not attempted to draw a bright line."

Permissible political expressions

The rule's preamble makes clear the PTP rule wouldn't prohibit volunteering for a campaign or "making direct expenditures for the expression of their views, giving speeches, soliciting votes, writing books, or appearing at

fundraising events."

Giving to a political party wouldn't trigger the rule either, unless the contribution was done in a way to circumvent the PTP restrictions, e.g., by earmarking the funds for a certain candidate.

"Well written" P&Ps would require a pre-clearance of any plans such as the staging of a fundraiser, says Williams. Then the CCO would ask questions to understand if such an event could fall under the PTP rule, he adds.

The adviser's CCO notes the firm doesn't even manage public pension business. But she knows the rule contains a two-year look back, meaning gaining such a contract up to two years from now could cause an action today to violate the PTP rule.

vaeenma/Fundraiser/Getty Images Plus

The information contained herein was current as of the publication date.

Indexed by: Compliance Best Practices | Pay-to-Play |

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