

## [Securities Regulation Daily Wrap Up, INVESTMENT ADVISERS—FINRA adopts pay-to-play rules, \(Aug. 26, 2016\)](#)

Securities Regulation Daily Wrap Up

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By [Jay Fishman, J.D.](#)

The Financial Industry Regulatory Authority (FINRA) has adopted two rules—2030 and 4580—modeled after the SEC's Advisers Act Rule 206(4)-5 on pay-to-play practices by investment advisers. Rule 2030 enables FINRA's member firms to continue to engage, for compensation, in distribution and solicitation activities with government entities on behalf of investment advisers while subjecting the member firms to certain safeguards to discourage them from engaging in pay-to-play practices. Rule 4580 authorizes examination of a member firm's books and records to ensure the firm's compliance with Rule 2030 ([Release No. 34-789683](#), August 25, 2016).

**FINRA's pay-to-play proposal.** In December 2015, the SEC sought comments on the two FINRA [proposed](#) rules, publishing them in the *Federal Register* on December 30, 2015. FINRA received 10 comment letters from nine different commenters in response to the publication.

**Rule 2030.** Rule 2030 is divided into six parts numbered (a) to (f). Rule 2030 basically prohibits a covered member from engaging, for compensation, in distribution or solicitation activities with a government entity on behalf of an investment adviser that provides (or is seeking to provide) investment advisory services to the government entity within two years after a covered member or a covered associate makes a contribution to an official of the government entity. The prohibition likewise applies to a person who becomes a covered associate within two years after the contribution is made.

The two-year time-out period is intended to discourage covered members from participating in pay-to-play practices by requiring a cooling-off period during which the effects of a political contribution on the selection process can be expected to dissipate. Rule 2030 goes into detail on "covered members and associates," "investment advisers," "distribution and solicitation activities," "official of a government entity," "contributions," "indirect contributions and solicitations" and "covered investment pools," along with setting forth the exceptions to the prohibition.

**Rule 4580.** Rule 4580 requires covered members that engage in distribution or solicitation activities with a government entity on behalf of any investment adviser that provides (or is seeking to provide) investment advisory services to the government entity to maintain books and records that would allow FINRA to examine them for compliance with pay-to-play Rule 2030.

**SEC order.** Separately, the SEC said that it intends to issue an order under the Advisers Act finding that FINRA's pay-to-play rule: (1) imposes substantially equivalent or more stringent restrictions on brokers-dealers than the SEC's pay-to-play rule imposes on investment advisers; and (2) is consistent with the objectives of the SEC rule. The SEC pay-to-play rule, Advisers Act Rule 206(4)-5, prohibits an adviser from providing payment to any third-party for soliciting advisory business from any government entity unless the third-party is a "regulated person," a category which includes registered broker-dealers subject to pay-to-play rules of a national securities association that are at least as stringent as those of Rule 206(4)-5. The SEC's [forthcoming order](#) will thus allow FINRA member firms to continue to engage in distribution or solicitation activities with government entities on behalf of investment advisers for compensation.

The release is [No. 34-78683](#).

RegulatoryActivity: BrokerDealers FINRANews InvestmentAdvisers