BRENNAN CENTER FOR JUSTICE

November 9, 2026

The Honorable Paul S. Atkins
Chairman
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Political Contributions by Certain Investment Advisers (Release No. IA-6994; File No. S7-2026-31)

Dear Chairman Atkins and Commissioners:

The Brennan Center for Justice at New York University School of Law[1] respectfully submits this comment opposing the Securities and Exchange Commission's proposal to rescind 17 C.F.R. § 275.206(4)-5, commonly known as the SEC's "pay-to-play" rule.[2] The rule seeks to prevent political contributions from improperly influencing decisions about who manages public pension funds.[3]

Public concern about government corruption is at record levels. Earlier this year, a Brennan Center survey found that 92 percent of registered voters considered corruption in politics and government a big problem, including more than nine in ten voters in every major U.S. region — findings echoed in subsequent national polls.[4] Of particular

[1] The Brennan Center is a nonpartisan public policy and law institute that focuses on fundamental issues of democracy and justice. For more than 30 years, the Brennan Center has studied and developed legal and policy solutions to address the role of money in the political process. The views expressed in this comment do not reflect the views, if any, of New York University School of Law.
[2] Political Contributions by Certain Investment Advisers, Investment Advisers Act Release No. 6994, September 3, 2026 ("2026 Pay-to-Play Rulemaking"), https://www.sec.gov/files/rules/proposed/2026/ia-6994.pdf (also published at 91 Fed. Reg. 57,698 (September 10, 2026)).
[3] Although this comment focuses on public pension funds, the pay-to-play rule also covers investment advisers serving other state and local government accounts and programs, including state general funds, government-sponsored college savings plans, and certain other retirement arrangements. 17 C.F.R. § 275.206(4)-5(f)(5)(ii)–(iii), (f)(8).
[4] Alex Brunet and Marina Pino, "Poll: Voters Want Solutions for Government Corruption," Brennan Center for Justice, June 2, 2026, https://www.brennancenter.org/our-work/analysis-opinion/poll-voters-want-solutions-government-corruption; Marina Pino and Alex Brunet, "Voter Anger at Corruption Shapes 2026 Midterms," Brennan Center for Justice, October 28, 2026, https://www.brennancenter.org/our-work/analysis-opinion/voter-anger-corruption-shapes-2026-midterms; Dana Blanton, "Fox News Poll: Cost-of-Living Concerns Weigh on GOP in Midterms," Fox News, October 14, 2026,

relevance here, overwhelming majorities of voters consider campaign donors receiving government contracts to be a form of corruption and support limits on political contributions by major government contractors.[5] Exit polling from last week's midterms confirms that corruption was a top voter concern, with one national survey finding that 90 percent of voters considered government corruption a crucial or major factor in their congressional vote.[6]

At a time when Americans are deeply concerned about pay-to-play corruption and its impact on their lives, federal regulators should be looking to strengthen safeguards, not dilute them. Discarding a rule that protects the retirement security of millions of Americans by deterring political favoritism in who manages pension funds is the last thing the Commission should be doing. We urge you to reject the proposal to rescind the pay-to-play rule. Any shortcomings in the existing rule should be addressed through targeted modifications, not by entirely scrapping this important safeguard.

I. The SEC's Pay-to-Play Rule Protects Public Employees and Retirees Against Political Favoritism

The Commission adopted the pay-to-play rule in 2010 to prevent individuals and firms serving as investment advisers from securing government business through political influence rather than the merits of their services. The rule bars advisers from receiving compensation for managing public pension funds or providing other investment advice to a government entity for two years after making certain political contributions to officials who can influence the entity's choice of investment manager.[7] The rule further prohibits advisers from soliciting or coordinating contributions to relevant officials or payments to political parties in jurisdictions where they provide or seek government business.[8] They

https://www.foxnews.com/politics/fox-news-poll-cost-living-concerns-weigh-gop-midterms; Kevin Breuninger, "Corruption Is Voters' Top Issue Ahead of Midterm Election, CNBC Survey Shows," CNBC, October 23, 2026, https://www.cnbc.com/2026/10/23/corruption-midterm-election-cnbc-poll-trump.html; Benedict Vigers, "Record-High 89% in U.S. Say Government Corruption Widespread," Gallup, September 2, 2026, https://news.gallup.com/poll/713933/record-high-say-government-corruption-widespread.aspx.

[5] Brennan Center for Justice, *Corruption Survey,* June 2026, https://www.brennancenter.org/media/15709/download/corruption-survey-toplines-2026-06-01-final.pdf (finding that 92 percent of registered voters considered an elected official who awarded a government contract to a company owned by a campaign donor likely corrupt, while 82 percent supported limits on political contributions from companies holding government contracts worth more than $1 million).

[6] NBC News, "2026 Election Exit Polls," https://www.nbcnews.com/politics/2026-elections/exit-polls (last updated November 4, 2026).

[7] 17 C.F.R. § 275.206(4)-5(a)(1), (f)(6).

[8] *Id.* § 275.206(4)-5(a)(2)(ii).

also cannot pay outside parties to solicit government business for them in most circumstances.[9] The rule reaches advising firms themselves and their "covered associates," including their general partners, managing members, executive officers (or individuals performing similar functions); employees who solicit government business and their supervisors; and political action committees controlled by the adviser or those individuals.[10] Nor is the rule limited to advisers hired directly to manage government investments; it also applies to advisers managing those investments through pooled vehicles, including private equity and hedge funds.[11]

The rule also contains a number of exceptions designed to limit the burden it poses on the political activities of covered associates. Most notably, individual covered associates are permitted to contribute up to $350 in the aggregate to any one official, per election, if entitled to vote for that official, or $150 if not entitled to vote for that official, without triggering the two-year compensation restriction.[12]

The pay-to-play rule's safeguards protect decisions affecting the retirement security of millions of public servants. State and local pension systems serve more than 37 million participants, including millions of teachers, police officers, firefighters, and other public employees and retirees.[13] When political influence drives the selection of investment advisers, pension funds may hire less qualified managers or pay higher fees for inferior services, imposing costs that can ultimately fall on beneficiaries and taxpayers, as the Commission acknowledges.[14] Moreover, unlike ordinary investors, most public pension beneficiaries cannot simply choose another plan or investment manager if

[9] *Id.* § 275.206(4)-5(a)(2)(i), (f)(9).
[10] *Id.* § 275.206(4)-5(f)(2).
[11] *Id.* § 275.206(4)-5(c), (f)(3).
[12] *Id.* § 275.206(4)-5(b)(1). Another exception is that contributions made more than six months before an individual becomes a covered associate do not trigger the restriction unless the individual subsequently solicits clients on behalf of the adviser, in which case the two-year lookback applies. *Id.* § 275.206(4)-5(a)(1), (b)(2). The rule also provides limited relief for certain contributions of no more than $350 that would otherwise trigger the restriction — for example, a contribution exceeding $150 to an official for whom the covered associate is not entitled to vote — provided the adviser discovers the contribution within four months and the contributor obtains its return within 60 days of discovery, subject to restrictions on how often an adviser may invoke the exception. *See id.* § 275.206(4)-5(b)(3). Finally, the Commission may grant conditional or unconditional exemptions from the two-year compensation restriction upon application. *Id.* § 275.206(4)-5(e).
[13] U.S. Census Bureau, "Census Bureau Releases 2025 Annual Survey of Public Pensions," May 14, 2026, https://www.census.gov/newsroom/press-releases/2026/2025-aspp.html. The participant count also includes inactive employees eligible for future benefits.
[14] Political Contributions by Certain Investment Advisers, Investment Advisers Act Release No. 3043, July 1, 2010 ("2010 Pay-to-Play Rulemaking"), 6, 18, https://www.sec.gov/files/rules/final/2010/ia-3043.pdf (also published at 75 Fed. Reg. 41,018 (July 14, 2010)); 2026 Pay-to-Play Rulemaking, 10.

they suspect favoritism.[15] Nor do elections necessarily offer meaningful recourse: some beneficiaries cannot vote for the officials involved, while others may have little influence over the outcome.[16]

The risks are not hypothetical. In 2009, the SEC charged a senior New York pension official and a political adviser with steering lucrative investment contracts to firms willing to make payments to politically connected intermediaries.[17] According to the Commission, one investment firm received $375 million in pension fund business after arranging approximately $320,000 in sham placement-agent fees, while firms unwilling to make such payments were denied business.[18] This case was among the scandals the Commission cited when adopting the pay-to-play rule.[19]

II. The Commission Has Not Adequately Explained Why Existing Laws and Regulatory Requirements Can Replace the Pay-to-Play Rule's Preventive Protections

In place of the pay-to-play rule, the Commission proposes that the broad antifraud provisions of the Investment Advisers Act ("IAA"), investment advisers' general fiduciary duties, and firms' compliance programs and codes of ethics will be adequate safeguards to address pay-to-play practices.[20] Yet these protections existed when the Commission adopted the pay-to-play rule in 2010, and the SEC concluded that additional

[15] 2010 Pay-to-Play Rulemaking, 35.
[16] *Id.*
[17] Securities and Exchange Commission, "SEC Charges Former N.Y. State Official and Top Political Advisor for Defrauding New York's Retirement Fund in Multi-Million Dollar Kickback Scheme," March 19, 2009, https://www.sec.gov/newsroom/press-releases/2009-62-sec-charges-former-ny-state-official-top-political-advisor-defrauding-new-yorks-retirement-fund; Securities and Exchange Commission, "SEC Charges Former State Political Party Leader and Hedge Fund Manager in Kickback Scheme Involving N.Y. Pension Fund," April 15, 2009, https://www.sec.gov/newsroom/press-releases/2009-83-sec-charges-former-state-political-party-leader-hedge-fund-manager-kickback-scheme-involving-ny.
[18] Securities and Exchange Commission, "SEC Charges Investment Management Firm and Principal in Kickback Scheme Involving N.Y. Pension Fund," April 30, 2009, https://www.sec.gov/newsroom/press-releases/2009-97-sec-charges-investment-management-firm-principal-kickback-scheme-involving-ny-pension-fund.
[19] 2010 Pay-to-Play Rulemaking, 8–10, nn.16–25.
[20] 2026 Pay-to-Play Rulemaking, 7. The proposal would also eliminate the pay-to-play-specific recordkeeping requirements of 17 C.F.R. § 275.204-2(a)(18), which require registered advisers to maintain records identifying covered associates, government clients, political contributions and payments, and regulated persons paid to solicit government business. Other provisions would continue to require records of written agreements, codes of ethics, and compliance policies and reviews. 17 C.F.R. § 275.204-2(a)(10), (12), (17); 2026 Pay-to-Play Rulemaking, 45–46. But those records would not necessarily capture the same pay-to-play information. The Commission should consider retaining the pay-to-play-specific recordkeeping requirements to assist antifraud enforcement.

preventive restrictions were still necessary.[21] The Commission has not adequately explained why protections it previously found insufficient are now enough.

The IAA's broad antifraud provisions prohibit fraudulent conduct by investment advisers.[22] Advisers' fiduciary duties require them to act in their clients' best interests and address material conflicts of interest.[23] When adopting the rule, the Commission recognized that pay-to-play arrangements could violate antifraud prohibitions and advisers' fiduciary duties.[24] Nevertheless, it concluded that additional safeguards were necessary because political contributions can appear legitimate even when intended to influence government investment decisions, making improper conduct difficult to uncover and prove.[25] The pay-to-play rule, in contrast, establishes preventive guardrails that do not require proving that a particular contribution was part of a corrupt arrangement.[26]

Nor do compliance programs and codes of ethics provide an adequate substitute for the rule's preventive protections. Some investment advisers covered by the pay-to-play rule are required to maintain compliance programs and codes of ethics, while others — including certain advisers to venture capital and other private funds, as well as foreign private advisers — are not.[27] If the rule is rescinded, exempt reporting advisers and foreign private advisers could seek government investment business without being subject to the SEC's compliance-program and code-of-ethics requirements.[28] But even where firm-level compliance programs and codes of ethics are in place, they are insufficient safeguards on their own. When adopting the pay-to-play rule, the Commission expressly rejected relying on such measures, recognizing that senior

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[21] 2010 Pay-to-Play Rulemaking, 18–19, 36–37.
[22] 15 U.S.C. § 80b-6(1)–(2), (4).
[23] Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Investment Advisers Act Release No. 5248, June 5, 2019, 8, https://www.sec.gov/files/rules/interp/2019/ia-5248.pdf (also published at 84 Fed. Reg. 33,669 (July 12, 2019)).
[24] 2010 Pay-to-Play Rulemaking, 21; 2026 Pay-to-Play Rulemaking, 25–26.
[25] 2010 Pay-to-Play Rulemaking, 7, 18; *see also New York Republican State Committee v. Securities and Exchange Commission*, 927 F.3d 499, 509–10 (D.C. Cir. 2019) (discussing the difficulty of detecting actual pay-to-play corruption); *Blount v. Securities and Exchange Commission*, 61 F.3d 938, 945 (D.C. Cir. 1995) (same).
[26] *See* 17 C.F.R. § 275.206(4)-5(a)(1)–(2).
[27] 2026 Pay-to-Play Rulemaking, 31; 17 C.F.R. §§ 275.204A-1, 275.206(4)-7; 15 U.S.C. § 80b-3(b)(3), (l), (m).
[28] 2026 Pay-to-Play Rulemaking, 31–32, 67–68. Although these advisers would remain subject to the Advisers Act's antifraud provisions and fiduciary duties, those protections do not overcome the difficulty of proving that political contributions were intended to influence government investment decisions — a difficulty that led the Commission to adopt the pay-to-play rule in the first place, as discussed above. See *supra* note 25.

executives with the greatest incentives to secure government business might themselves be responsible for enforcing their firms' compliance policies.[29] It also explained that violations of internal policies would not, by themselves, necessarily establish violations of federal securities laws.[30]

The Commission also points to its whistleblower program and increased public availability of information about pension investments and advisory fees as developments that may help detect pay-to-play practices and limit the consequences of rescission.[31] But even insiders familiar with political contributions and advisory contract awards, much less members of the public relying on disclosed information, may be unable to determine whether political influence drove an adviser's selection. Indeed, the Commission recognized in 2010 that disclosure of a contribution is unlikely to reveal its true purpose.[32] And by the time a pay-to-play arrangement comes to light, the investment adviser may already have been selected and pension assets exposed to harm — the very risk the pay-to-play rule seeks to prevent.

The Commission also suggests that rescission may have limited consequences because it has brought no comparable pay-to-play antifraud enforcement actions since advisers first had to comply with the rule.[33] But the Commission acknowledges that the rule itself may have deterred misconduct.[34] The absence of comparable cases could instead reflect the effectiveness of the very safeguards the Commission now proposes to eliminate, rather than establish that they are unnecessary.

Finally, the Commission points to state and local anticorruption laws that would remain in place following rescission.[35] But these laws vary considerably in scope and would not provide a uniform substitute. The Commission itself acknowledges that some jurisdictions lack comparable restrictions on political contributions by investment advisers seeking government business.[36] Even apart from that concern, some public pension systems have expressly incorporated the pay-to-play rule into their own safeguards.[37] Rescission could therefore undermine existing compliance frameworks that

[29] 2010 Pay-to-Play Rulemaking, 36.
[30] *Id.*
[31] 2026 Pay-to-Play Rulemaking, 33, n.79, 66–67.
[32] 2010 Pay-to-Play Rulemaking, 35.
[33] 2026 Pay-to-Play Rulemaking, 65.
[34] *Id.* at 66.
[35] *Id.* at 8, 22–23 & nn.48–50.
[36] *Id.* at 54.
[37] *E.g.*, Pennsylvania State Employees' Retirement System, *SEC "Pay-to-Play" Rule Compliance and Reporting Policy* 1 (amended September 26, 2023), https://sers.pa.gov/pdf/Board_Materials/GovernanceManual/06-SERS%20SEC%20Pay-to-

rely on the federal rule, even where other applicable restrictions would remain in place. At best, state and local requirements would provide an uneven patchwork of safeguards.

III. The Commission Need Not Choose Between Retaining the Rule Unchanged and Eliminating It Altogether

The Commission raises concerns about compliance burdens, restrictions on lawful political participation, and disproportionate consequences for minor or inadvertent violations, while expressly requesting comment on targeted modifications as an alternative to rescission.[38] The Commission nonetheless concludes that these costs and unintended consequences warrant rescission.[39] But the Commission need not choose between retaining the pay-to-play rule exactly as written and eliminating it altogether. Instead, it should consider whether targeted modifications could address particular burdens without abandoning the rule's preventive framework.

For example, the Commission could consider a measured adjustment to the rule's existing de minimis contribution thresholds. Currently, the two-year compensation restriction does not apply to contributions by individual covered associates of up to $350 per election to officials for whom they are entitled to vote, or $150 per election to officials for whom they are not entitled to vote.[40] These thresholds have not increased since the rule was adopted in 2010.[41] The Commission could consider adjusting them to account for inflation while evaluating whether higher limits would create additional opportunities for improper influence.

The Commission could also clarify the definitions of "official" and "covered associate"[42] to avoid sweeping in officials or employees whose connection to adviser selection is too attenuated to present a meaningful pay-to-play risk, while preserving coverage of people who can influence those decisions indirectly. Such clarification could

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Play%20Compliance%20Policy.pdf; Pennsylvania Public School Employees' Retirement Board, *"Pay-to-Play" Rule Compliance and Reporting Policy* 4 (December 20, 2024), https://www.pa.gov/content/dam/copapwp-pagov/en/psers/documents/board3/governance-manual/psers%20paytoplay%20policy.pdf; State of Michigan Investment Board, *Investment Policy Statement* 9 (§ V.F), https://www.michigan.gov/treasury/-/media/Project/Websites/treasury/Investments/Investment_Policy_Statement.pdf?hash=A3F060F6E2166B6EA1DA14BEE0D64A70&rev=7b5566c1bcf14ac7b47b5ddfd989c67a.

[38] 2026 Pay-to-Play Rulemaking, 6–7, 42–43.

[39] *Id.* at 6–7.

[40] 17 C.F.R. § 275.206(4)-5(b)(1).

[41] 2026 Pay-to-Play Rulemaking, 20.

[42] 17 C.F.R. § 275.206(4)-5(f)(2), (6).

reduce unnecessary compliance burdens and restrictions on political participation while maintaining safeguards against improper influence over investment decisions.

Finally, the Commission could consider whether to refine or expand the rule's existing mechanisms for addressing inadvertent violations. The pay-to-play rule permits limited relief for certain promptly returned contributions, subject to limits on contribution amounts, deadlines for discovering that contributions were made and obtaining refunds, and restrictions on how often an adviser may invoke the exception.[43] Adjustments to these requirements could help address disproportionate consequences without eliminating the underlying prohibition.

Such adjustments could help address the Commission's stated concerns while preserving an important safeguard against political favoritism in the management of public pension funds.

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The pay-to-play rule protects decisions affecting the retirement security of millions of public servants. The Commission has not adequately explained why existing legal prohibitions, firm-level compliance requirements, and the other safeguards it identifies can replace the protections it previously deemed necessary, nor why more targeted changes could not achieve many of the Commission's objectives.

The Brennan Center therefore urges the Commission to reject wholesale rescission of the pay-to-play rule. Should the Commission hold a hearing in this proceeding, we would welcome the opportunity to testify.

Respectfully submitted,

/s/

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Daniel I. Weiner
Harry Isaiah Black
Penelope Mack

[43] 17 C.F.R. § 275.206(4)-5(b)(3).