Via Electronic Submission

November 9, 2026

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

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

Dear Ms. Countryman:

MFA[1] 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 under Rule 204-2 (the "**Proposal**").[2] MFA strongly supports the Proposal because more than fifteen years of implementation experience demonstrate that Rule 206(4)-5 (the "**Rule**" or "**Rule 206(4)-5**") is no longer appropriately calibrated to the risks it addresses. The Rule can impose a severe and unnecessary compensation consequence, where the investment adviser cannot receive compensation but as a fiduciary, may have to continue providing investment advisory services, all without a showing of corrupt intent, actual influence, causation, benefit to the adviser, or harm to a government investor.[3] Rescission would preserve substantial protections against actual and apparent corruption.

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1 Managed Funds Association ("**MFA**"), based in Washington, D.C., New York City, Brussels, and London, represents the global alternative asset management industry. MFA's mission is to advance the ability of alternative asset managers to raise capital, invest it, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180 fund manager members, including traditional hedge funds, private credit funds, and hybrid funds, that employ a diverse set of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors diversify their investments, manage risk, and generate attractive returns throughout the economic cycle.

2 SEC, *Political Contributions by Certain Investment Advisers*, Investment Advisers Act Release No. 6994, 91 Fed. Reg. 57,698 (Sept. 10, 2026) (proposing to rescind Rule 206(4)-5 and the related recordkeeping requirements under Rule 204-2), *available at* https://www.govinfo.gov/content/pkg/FR-2026-09-10/pdf/2026-18424.pdf.

3 *See* 17 C.F.R. § 275.206(4)-5(a)(1) (2026) (prohibiting a covered investment adviser from providing advisory services for compensation to a government entity for two years after the adviser or a covered associate makes a contribution to an official of that government entity), *available at* https://www.ecfr.gov/current/title-17/chapter-II/part-275/section-275.206%284%29-5; *see also* Proposal, *supra* note 2, at 57,698, 57,700–01 (describing the two-year compensation prohibition and the Proposal's basis for rescission).

MFA shares the Commission's longstanding commitment to protecting government investors and the public from actual or apparent corruption in the award of investment-management business. Political contributions should never purchase access, influence an investment decision, or compromise the stewardship of public assets. The question presented by the Proposal is not whether those risks matter. They plainly do. The question is whether Rule 206(4)-5 remains an appropriately calibrated federal response after more than fifteen years of experience and considering the other legal, fiduciary, procurement, contractual, and compliance protections that continue to apply. The Rule's costs are borne not only by advisers and their personnel but also are inevitably passed on to private fund investors. Government investors may lose access to an adviser or professional they otherwise would select, face disruption in an existing relationship, or encounter compliance-driven limitations unrelated to the merits of an investment mandate.

MFA agrees with the Commission's preliminary assessment that Rule 206(4)-5 is no longer necessary. Since 2010, the legal framework governing political contributions, public contracting, ethics, procurement, conflicts, and fiduciary conduct includes multiple overlapping sources of protection.[4] State and local authorities and public plans have adopted protections directed to their own plans and beneficiaries, while experience under the federal Rule has exposed a persistent mismatch between its anti-corruption rationale and its practical operation.

Rescission would not leave political contributions unregulated. Advisers would remain subject to the Advisers Act's antifraud provisions, fiduciary obligations, compliance-program and code-of-ethics requirements, criminal and campaign-finance laws, state and local political contribution and procurement regimes, public-official ethics rules, public-plan contractual protections, and investor oversight. The Proposal would remove an overbroad, bright-line federal prophylactic restriction while preserving the rules most directly addressed to fraud, corruption, conflicts, and public contracting. For these reasons, and as discussed below, MFA urges the Commission to adopt the Proposal as proposed.

Executive Summary

Rule 206(4)-5 is no longer appropriately calibrated to the corruption risk it was designed to address. MFA's principal reasons for supporting rescission are interrelated and discussed in greater detail below:

(i) **Rule 206(4)-5 should be rescinded; amendment would not address the Rule's shortcomings.** The Rule's automatic compensation consequence can apply without corrupt intent, actual influence, causation, adviser benefit, or investor harm. The Commission's implementation experience also shows that the Rule has produced substantial unintended consequences extending beyond circumstances presenting a

[4] *See, e.g.*, Cal. Gov't Code § 84308 (West 2026); N.J. Stat. Ann. §§ 19:44A-20.13 to -20.25 (West 2026); Conn. Gen. Stat. § 9-612(f) (2026); 30 Ill. Comp. Stat. 500/50-37 (2026); SEC, Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Investment Advisers Act Rel. No. 5248, 84 Fed. Reg. 33,669 (July 12, 2019) ("**Standard of Conduct Interpretation**"), *available at* https://www.sec.gov/files/rules/interp/2019/ia-5248.pdf.

meaningful pay-to-play or corruption risk. Other federal financial services political contribution rules suffer from similar defects and likewise should be repealed.

(ii) **Rescission would preserve the legal protections most directly addressed to corruption and conflicts.** Advisers would remain subject to the Advisers Act's antifraud, fiduciary, compliance, and code-of-ethics requirements, as well as applicable criminal, campaign-finance, state and local, procurement, ethics, contractual, and public-plan protections.

(iii) **The Rule burdens lawful political participation and distorts employment decisions.** Its severity encourages firms to restrict contributions more broadly than the Rule requires, while its lookback provisions can cause lawful pre-employment activity to affect hiring, promotion, assignments, employee mobility, and a government investor's access to preferred personnel.

(iv) **The Rule's compliance burdens are disproportionate to any incremental regulatory benefit.** The two-year compensation prohibition, de facto strict-liability operation, complex covered-official and covered-associate determinations, overinclusive controls, monitoring obligations, and federal-election scenarios require substantial resources even where a contribution has no demonstrated connection to the award of government business.

(v) **Rescission would produce better-calibrated controls, not an absence of controls.** Advisers with government exposure would remain accountable under legal, fiduciary, contractual, procurement, investor, and reputational requirements and would retain strong incentives to maintain controls tailored to their clients, jurisdictions, personnel, and actual risks.

(vi) **Rule-specific recordkeeping requirements should be rescinded along with the Rule.** Records maintained solely to administer Rule 206(4)-5 would no longer serve their original purpose after rescission, while advisers would remain subject to all other applicable recordkeeping obligations.

I. Rule 206(4)-5 should be rescinded; amendment would not address the Rule's shortcomings

MFA supports the Proposal, which reflects a disciplined retrospective review. A rule's original rationale cannot end the inquiry into whether the rule continues to be appropriate. The Commission should also consider how the rule has operated, whether intervening legal and market developments have altered the need for it, and whether any incremental benefit remains commensurate with its burdens.

The Commission's analysis recognizes several realities that have become increasingly apparent over the past fifteen-plus years. The Rule has proven operationally difficult to administer. Compliance with the Rule requires advisers to make complex determinations regarding covered associates, covered officials, indirect influence, lookback periods,

political committees, and the relationship between governmental offices and public investment decisions.[5] These determinations are often highly fact-specific and can change as governmental structures evolve or political candidates seek different offices. As the Commission correctly observes, the resulting compliance burden has been substantial.

The Proposal appropriately gives substantial weight to the Commission's implementation experience.[6] The Rule is unusual in that its consequences do not turn on corrupt intent, actual influence, causation, benefit to the adviser, or harm to the government investor.[7] A lawful contribution can therefore produce the same severe compensation consequence for the adviser whether it reflects a corrupt bargain, an inadvertent mistake, or civic participation wholly unrelated to government business.

Experience likewise demonstrates that the Rule has generated unintended consequences extending well beyond conduct bearing a demonstrated connection to pay-to-play activity. These consequences include restrictions on lawful political participation, effects on hiring and promotion decisions, impediments to employee mobility, uncertainty regarding federal election campaigns involving state officials,[8] and extensive compliance expenditures that bear little relationship to an identifiable pay-to-play or corruption risk. The Proposal appropriately gives regulatory weight to these unintended consequences.

Complete rescission is preferable to serial adjustment. Higher contribution thresholds, shorter lookbacks, narrower definitions, or broader exemptions could mitigate discrete hardships, but each would preserve the Rule's foundational premise: an automatic compensation consequence triggered without a finding of corrupt intent, actual influence, causation, or investor harm. The problem is not merely where the Rule draws its lines. It is the automatic compensation consequence that follows from crossing the Rule's limits and the overinclusive controls firms predictably adopt to avoid a potential violation. Accordingly, MFA concurs with the Commission's preliminary determination that complete rescission represents the most appropriate and effective regulatory response. MFA also recommends that the

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5 *See* 17 C.F.R. § 275.206(4)-5(a)(1), (b)(2), (f)(2), (f)(4), (f)(6), (f)(10) (2026) (establishing the two-year prohibition, the exception for certain new covered associates, and the definitions of "covered associate," "executive officer," "official," and "solicit"), *available at* https://www.ecfr.gov/current/title-17/chapter-II/part-275/section-275.206%284%29-5; Proposal, *supra* note 2, at 57,703–08 (describing the Rule's coverage provisions and associated implementation challenges).

6 *See* Proposal, *supra* note 2, at 57,704–08 (discussing operational difficulties, burdens, overinclusive compliance practices, employment consequences, restrictions on political participation, and conduct presenting an attenuated or immaterial pay-to-play risk).

7 *See* 17 C.F.R. § 275.206(4)-5(a)(1) (2026) (triggering the compensation prohibition based on a covered contribution without separately requiring proof of intent, influence, causation, adviser benefit, or investor harm), *available at* https://www.ecfr.gov/current/title-17/chapter-II/part-275/section-275.206%284%29-5; Proposal, *supra* note 2, at 57,704–08 (discussing concerns that the Rule operates in practice as a de facto strict-liability regime and can capture contributions presenting an attenuated or immaterial pay-to-play risk).

8 Recent federal election cycles have highlighted interpretive questions regarding the application of Rule 206(4)-5 to contributions made to federal campaigns involving candidates who continue to hold state or local offices with authority relevant to public investment decisions. *See discussion infra* Section IV.F.

Commission, consistent with broader regulator harmonization goals, encourage similar rescission of the political contributions rules adopted by the Commodity Futures Trading Commission, Financial Industry Regulatory Authority, and the Municipal Securities Rulemaking Board.[9] Each also suffers from the same flaws as Rule 206(4)-5.

II. The legal protections most directly addressed to corruption and conflicts would be preserved if the Proposal is adopted

The Commission proposes, and MFA agrees, that Rule 206(4)-5 is no longer necessary because multiple overlapping legal, regulatory, contractual, and fiduciary protections address the underlying corruption and conflict risks through different and, in many circumstances, more directly targeted mechanisms. Some commenters may contend that eliminating Rule 206(4)-5 reduces protections against corruption in the government-investment process. That argument substantially understates both the breadth and maturity of the regulatory framework that exists outside the Rule.

When the Commission adopted Rule 206(4)-5 in 2010,[10] it sought to address concerns that political contributions could improperly influence the selection of investment advisers by government entities. Pay-to-play arrangements in the selection of investment advisers by state and local government entities are inconsistent with an adviser's fiduciary obligations. The question is whether Rule 206(4)-5 remains necessary considering the substantially developed framework of anti-corruption laws, fiduciary obligations, procurement controls, campaign-finance restrictions, compliance requirements, and government-investor protections. MFA agrees with the Commission that it does not.

A. Advisers remain subject to robust federal antifraud and fiduciary requirements

Rescission of Rule 206(4)-5 would not alter an investment adviser's obligations under the Advisers Act. The Advisers Act's antifraud provisions would remain fully applicable to an investment adviser's fraudulent, deceptive, or manipulative conduct within the respective scope of each section of Advisers Act Section 206. Rescission would not alter

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9 *See* CFTC Regulation 23.451, 17 C.F.R. § 23.451 (2026) (restricting swap dealers from offering to enter into or entering into swaps with a governmental Special Entity for two years following certain political contributions by the swap dealer or its covered associates), *available at* https://www.ecfr.gov/current/title-17/section-23.451; FINRA Rule 2030 (Engaging in Distribution and Solicitation Activities with Government Entities) (prohibiting covered FINRA members from engaging in certain distribution or solicitation activities for compensation with a government entity on behalf of an investment adviser for two years following certain political contributions by the member or its covered associates), *available at* https://www.finra.org/rules-guidance/rulebooks/finra-rules/2030; MSRB Rule G-37 (Political Contributions and Prohibitions on Municipal Securities Business and Municipal Advisory Business) (restricting municipal securities dealers and municipal advisors from engaging in certain municipal securities or municipal advisory business following certain political contributions to officials of municipal entities), *available at* https://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-37.

10 SEC, Political Contributions by Certain Investment Advisers, Investment Advisers Act Rel. No. 3043, 75 Fed. Reg. 41,018, 41,053–54 (July 14, 2010) (adopting Rule 206(4)-5) ("**2010 Adopting Release**"), *available at* https://www.govinfo.gov/content/pkg/FR-2010-07-14/pdf/2010-16559.pdf.

the application of Sections 206(1) and 206(2) to fraudulent or deceptive conduct within their scope.[11] Conduct involving bribery, kickbacks, material misrepresentations, or undisclosed conflicts also may implicate the Advisers Act, other federal criminal laws, and applicable state law, depending on the facts and the elements of the relevant provision.

Likewise, rescission would not diminish an adviser's fiduciary obligations. Advisers would continue to owe duties of care and loyalty to their clients and would remain obligated to eliminate conflicts or provide full and fair disclosure of conflicts such that a client can provide informed consent, consistent with the Commission's fiduciary-duty interpretation.[12] Government entities and public pension systems would therefore continue to benefit from the protections arising from an adviser's fiduciary obligations, even though rescission would eliminate the Rule's separate prophylactic restrictions.

Unlike Rule 206(4)-5, which uses the contribution as a proxy, the Advisers Act antifraud provisions address deception, disloyalty, undisclosed conflicts, and abuse of the advisory relationship itself. They focus federal securities-law enforcement on misconduct rather than on political activity standing alone. The SEC has brought enforcement actions relating to political pay-to-play issues long before the Rule was adopted.[13]

B. Advisers remain subject to comprehensive compliance and ethics requirements

Registered investment advisers will remain subject to Rule 206(4)-7 and Rule 204A-1 regardless of whether Rule 206(4)-5 remains in effect.[14] Advisers must continue maintaining policies and procedures reasonably designed to

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11 Investment Advisers Act of 1940 §§ 206(1)–(2), 15 U.S.C. §§ 80b-6(1)–(2), *available at* https://www.law.cornell.edu/uscode/text/15/80b-6.

12 *See* Standard of Conduct Interpretation, *supra* note 4, at 33,671–77.

13 *See, e.g., SEC v. Henry Morris*, Litigation Release No. 20963 (Mar. 19, 2009) (alleging a fraudulent scheme in which investment managers seeking investments from the New York State Common Retirement Fund paid sham placement or finder fees, including payments allegedly resulting from quid pro quo arrangements), *available at* https://www.sec.gov/litigation/litreleases/2009/lr20963.htm; *SEC v. Paul J. Silvester*, Litigation Release No. 16759 (Oct. 10, 2000) (alleging a scheme in which the former Connecticut State Treasurer awarded state pension-fund investments in exchange for fees paid by private-equity firms to friends and political associates), *available at* https://www.sec.gov/litigation/litreleases/lr16759.htm; *see also* Hester M. Peirce, Comm'r, SEC, *Laudable Ends, Poorly Pursued: Statement Regarding Recent Pay-to-Play Rule Settlements* (Sept. 15, 2022) ("We did not need the Rule to bring pay-to-play cases. Before we adopted the Rule, the Commission brought such cases."), *available at* https://www.sec.gov/newsroom/speeches-statements/peirce-statement-pay-play-rule-settlements-091522.

14 17 C.F.R. §§ 275.206(4)-7, 275.204A-1 (2026), *available at* https://www.ecfr.gov/current/title-17/chapter-II/part-275; *see also* SEC, Compliance Programs of Investment Companies and Investment Advisers, Investment Advisers Act Release No. 2204, 68 Fed. Reg. 74,714, 74,716–18 (Dec. 24, 2003), *available at* https://www.sec.gov/files/rules/final/ia-2204.pdf; SEC, Investment Adviser Codes of Ethics, Investment Advisers Act Release No. 2256, 69 Fed. Reg. 41,696, 41,697–702 (July 9, 2004), *available at* https://www.sec.gov/files/rules/final/ia-2256.pdf. *See also* Proposal, *supra* note 2, at 57,711–17 (explaining that registered advisers would remain subject to the compliance and code-of-ethics rules following rescission and could tailor their policies and procedures to their particular pay-to-play risks).

prevent violations of the federal securities laws, conducting annual compliance reviews, and administering compliance programs appropriate to their businesses and risks. Advisers must also continue maintaining codes of ethics designed to promote adherence to fiduciary principles and standards of professional conduct. Where an adviser's government-business activities present material risks under the Advisers Act or other applicable requirements, these rules provide a framework through which the adviser can address those risks in a manner tailored to its business.

These requirements are particularly important because they are inherently risk-based and adaptable. Unlike Rule 206(4)-5, which imposes a uniform prohibition across a highly diverse industry, Rule 206(4)-7 requires advisers to tailor their compliance programs to the nature of their clients, activities, personnel, and legal obligations.

An adviser that actively solicits public pension mandates may reasonably determine that extensive political-contribution controls remain appropriate. By contrast, an adviser with limited or no governmental business may determine that a different approach is appropriate. Principles-based compliance requirements allow for that distinction,[15] while Rule 206(4)-5 generally does not.

C. Federal campaign-finance and criminal laws continue to address corruption risks

The federal legal system contains extensive mechanisms for regulating political contributions and addressing public corruption. Federal campaign-finance laws continue to impose limits, disclosure requirements, reporting obligations, and coordination restrictions applicable to political activity.[16] Federal criminal laws separately prohibit bribery, honest-services fraud, mail fraud, wire fraud, extortion, and conspiracy where the applicable statutory elements are satisfied.[17]

Rescission therefore would not render political contributions unregulated, nor would it legalize agreements to exchange contributions for official action. Such conduct remains unlawful under multiple independent legal frameworks. The Proposal should not be understood as reflecting a judgment that corruption concerns have disappeared or no longer require attention. Rather, the Proposal recognizes that extensive legal mechanisms already exist to address corruption directly and that Rule 206(4)-5 provides limited incremental benefits relative to the burdens it imposes.

D. State and local governments have developed extensive political contribution, ethics, and procurement frameworks

State and local laws provide an additional layer of protection through political-contribution, public-ethics, procurement, lobbying, and government-contracting requirements. Many states and municipalities maintain their

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15 *See* Proposal, *supra* note 2, at 57,711–17 (explaining that, following rescission, registered advisers would retain obligations under the compliance and code-of-ethics rules and could tailor their policies and procedures to the nature of their businesses and particular pay-to-play risks).

16 *See, e.g.*, 52 U.S.C. §§ 30104, 30116, *available at* https://www.law.cornell.edu/uscode/text/52/subtitle-III/chapter-301; 11 C.F.R. pts. 102–110 (2026), *available at* https://www.ecfr.gov/current/title-11/chapter-I.

17 *See, e.g.*, 18 U.S.C. §§ 201, 371, 666, 1341, 1343, 1346, 1951, *available at* https://www.law.cornell.edu/uscode/text/18.

own political contribution restrictions. These laws frequently regulate political contributions made by government contractors, investment advisers, placement agents, lobbyists, and others seeking government business. In addition, state and local governments often maintain ethics restrictions, disclosure requirements, recusal obligations, procurement controls, and contractor certifications designed specifically to address perceived risks within their own governmental structures.[18]

State and local governments possess direct authority over their own campaign-finance, ethics, procurement, recusal, disclosure, and contracting regimes and can tailor those protections to their governmental structures. Rescission would not preempt, displace, or weaken those requirements, nor would it prevent a jurisdiction or plan from implementing additional restrictions. MFA does not contend that state and local regimes are uniform or that every jurisdiction has adopted adviser-specific restrictions. The relevant point is that rescission would leave those independent protections fully operative and would not prevent any jurisdiction or public plan from adopting stronger or new requirements as it deems appropriate.

Rule 206(4)-5 does not replace these requirements, nor would its rescission alter them. Advisers must already comply with them. Accordingly, rescission would not create a regulatory vacuum. Advisers would continue operating within an extensive network of state and local restrictions tailored to the jurisdictions in which they conduct business.

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[18] *See, e.g.*, N.J. Stat. Ann. §§ 19:44A-20.13 to -20.25 (West 2026) (establishing restrictions and related requirements concerning certain political contributions by business entities seeking or holding government contracts), *available at* https://nj.gov/state/dos-statutes-elections-19-40-49.shtml#ele_19_44a_20_13; Conn. Gen. Stat. § 9-612(f) (2026) (imposing contribution and solicitation restrictions applicable to certain investment-services firms, state contractors, prospective state contractors, and associated principals and solicitors), *available at* https://www.cga.ct.gov/current/pub/chap_155.htm#sec_9-612; 30 Ill. Comp. Stat. 500/50-37 (2026) (prohibiting specified political contributions by certain business entities with state contracts or pending bids and their affiliated entities and persons), *available at* https://www.ilga.gov/documents/legislation/ilcs/documents/003005000K50-37.htm; Cal. Gov't Code § 84308 (West 2026) (imposing contribution, disclosure, and disqualification requirements in connection with specified proceedings involving licenses, permits, contracts, and other entitlements for use), *available at* https://www.fppc.ca.gov/learn/pay-to-play-limits-and-prohibitions/; Md. Code Regs. 21.07.01.20 (2026) (requiring certain government contractors to disclose specified political contributions), *available at* https://regs.maryland.gov/us/md/exec/comar/21.07.01.20; *see also* Office of the N.Y.C. Comptroller, *New York City Pension Funds Enact Placement Agent Ban* (June 9, 2014) (announcing that all five New York City pension funds had prohibited the use of placement agents across all investment classes), *available at* https://comptroller.nyc.gov/newsroom/new-york-city-pension-funds-enact-placement-agent-ban/; Proposal, *supra* note 2 (explaining that state and local measures vary materially and may restrict contributions, require disclosure by government contractors, limit government contracting, or prohibit placement agents); Diane E. Ambler, Cary J. Meer & Ruth E. Delaney, K&L Gates LLP, Questions and Answers on State and Local Variations on the SEC Pay-to-Play Rule 1–4 (Mar. 2017) (surveying state and local requirements concerning political contributions, lobbying, placement agents, gifts, disclosures, and government investment business), *available at* https://www.klgates.com/thought-leadership/Questions--Answers-on-State-and-Local-Variations-on-SEC-Pay-to-Play-Rule.

E. Public plans possess independent governance, procurement, and contractual protections

The public pension and government-investor marketplace also has evolved considerably since adoption of Rule 206(4)-5. Public pension systems often employ dedicated investment staffs and consultants,[19] formal procurement and due-diligence processes, board oversight, conflict disclosures, ethics certifications, and contractual representations. The form and prevalence of these safeguards vary among plans, and MFA does not suggest that they eliminate every corruption risk or exist in every state. They do, however, form an important part of the cumulative framework for investment advisers that we encourage the Commission to consider in assessing the Rule's incremental value.

These developments further reduce the need for a uniform federal political-contribution rule for investment advisers. Government investors increasingly possess substantial governance, procurement, contractual, and oversight tools to oversee investment-manager selection and to address perceived conflicts or political-contribution concerns.

F. Government plan fund investors may impose contractual restrictions independent of Rule 206(4)-5

Government entities also retain the ability to address political-contribution concerns through contractual arrangements with the private fund and its investment manager. Public plans may require political-contribution representations, disclosure obligations, reporting requirements, certifications, side-letter commitments, procurement representations, placement-agent disclosures, or other contractual provisions that reflect the preferences and risk assessments of the particular governmental investor.

These contractual mechanisms offer an important advantage over Rule 206(4)-5: they can be tailored. Rather than imposing a uniform federal prohibition, contractual provisions can reflect the specific legal, regulatory, governance, and political environment applicable to the governmental entity in question. For all of these reasons, MFA agrees that Rule 206(4)-5 is no longer necessary to address political contribution concerns.

III. The Rule burdens lawful political participation and distorts employment decisions

The Commission has also stated that Rule 206(4)-5 has imposed significant and largely unintended burdens on lawful political participation.[20] Although the Rule was not designed to suppress political activity, experience demonstrates that its practical operation has frequently produced precisely that result.

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19 U.S. Gov't Accountability Off., GAO-10-754, *State and Local Government Pension Plans: Governance Practices and Long-Term Investment Strategies Have Evolved Gradually as Plans Take On Increased Investment Risk* (Aug. 2010) (finding that boards of trustees, external consultants, and investment managers participate in guiding state and local plan investments), *available at* https://www.gao.gov/products/gao-10-754; *see also* Nat'l Ass'n of State Ret. Adm'rs, *Public Retirement System Governance* (July 2024), *available at* https://www.nasra.org/content.asp?admin=Y&contentid=244.

20 *See* Proposal, *supra* note 2, at 57,704–08 (discussing compliance practices that may restrict political contributions, the Rule's effects on hiring and promotion, the operation of the lookback provisions, and the potential effect on public pension plans' access to advisers and personnel).

A. The Rule burdens lawful political participation

One of the most important observations in the Proposal is that advisers often respond to the Rule by adopting controls that extend well beyond the Rule's explicit requirements. Given the potentially significant consequences associated with an inadvertent contribution, advisers often conclude that broad restrictions on political activity represent the most narrowly tailored compliance approach. As a result, employees may be discouraged from making lawful political contributions, even contributions that pose no realistic corruption risk, not because the Rule expressly prohibits such activity but because the potential consequences of getting the analysis wrong are substantial.

The result is a chilling effect on lawful political participation.[21] That effect is not limited to any particular political party, ideology, or candidate. It affects employees across the political spectrum and may discourage engagement in the democratic process generally. It is appropriate for the Commission to reconsider whether Rule 206(4)-5 remains necessary, effective, and proportionate given the fifteen-plus years of implementation experience. The Commission may reasonably conclude that a legally permissible prophylactic rule no longer represents sound regulatory policy.

Ironically, the Rule's chilling effect can fall disproportionately on candidates who are not well-funded in the first place. Before approving a contribution, an investment adviser may seek a written representation from the campaign that the funds will not support an "official" of a government entity within the meaning of Rule 206(4)-5, but a local campaign or even a nascent federal one may lack the legal, compliance, and administrative resources needed to analyze the Rule and provide that assurance. If the campaign cannot provide the requested assurance, the adviser may have no practical basis to approve the contribution, even where the adviser's review has not identified a connection between the office sought and the selection of an investment adviser.

The campaign-finance landscape also has become materially more complex as joint fundraising committees ("**JFCs**") have grown in number and significance. JFCs receive contributions on behalf of multiple participating committees and allocate the proceeds under a written formula, subject to adjustments where a participant cannot accept its initially allocated share.[22] Even where the solicitation discloses an allocation formula, a covered associate and

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21 *See id.* at 57,698 (describing adviser compliance practices that may have the effect of restricting political contributions by advisers and their employees).

22 Fed. Election Comm'n, *Joint Fundraising with Other Candidates and Political Committees* (explaining that joint-fundraising participants must enter into a written agreement establishing an allocation formula and that the joint fundraising representative collects contributions, allocates proceeds among participants, maintains records, and reports the joint fundraising activity), https://www.fec.gov/help-candidates-and-committees/joint-fundraising-candidates-political-committees/; Fed. Election Comm'n, *Allocating Gross Joint Fundraising Proceeds* (explaining that proceeds allocated under the agreed formula may be reallocated when a participating committee cannot accept its prescribed share without exceeding the contributor's applicable limit), https://www.fec.gov/help-candidates-and-committees/making-disbursements/allocating-gross-joint-fundraising-proceeds/; *see also* OpenSecrets, *Joint Fundraising Committees* (reporting 1,027 registered and 929 active joint fundraising committees during the 2024 election cycle, compared with 383 registered and 334 active committees during the 2010 election cycle), https://www.opensecrets.org/joint-fundraising-committees-jfcs (last visited Oct. 2, 2026).

the investment adviser may be unable to determine with confidence at preclearance whether the initial allocation will remain unchanged or whether a portion of the contribution may ultimately be reallocated to a participating committee associated with a covered official. Although an adviser may seek written representations concerning the JFC's participants and anticipated allocations, those representations cannot eliminate the possibility of error, reallocation, or subsequent developments affecting the Rule 206(4)-5 analysis. The resulting uncertainty again encourages the adviser to decline lawful political activity rather than assume the risk that some portion of the contribution may be attributed to a covered official.

The ability of investment adviser employees to participate lawfully in the political process remains a paramount interest. A rule that predictably discourages such participation should remain in place only if its benefits justify its costs. We concur that Rule 206(4)-5 no longer meets that standard.

B. The Rule distorts employment decisions without advancing its anti-corruption purpose

The Rule's burdens on lawful political participation extend directly into employment decisions. Its lookback and attribution provisions can affect hiring, promotion, assignments, and employee mobility even when a contribution bears no plausible relationship to an effort to obtain government business. These consequences weigh strongly in favor of rescission.[23]

1. The lookback provisions can transform lawful pre-employment conduct into a regulatory disability

The Rule's lookback provisions can convert lawful pre-employment activity into a regulatory disability borne by a future employer.[24] A contribution made before an individual joins an adviser, assumes a solicitation role, or even contemplates work in investment management may later restrict the adviser's compensation from a government entity.

Where the contribution predates employment discussions, it cannot plausibly have been intended to obtain government business for the individual's future employer. Nevertheless, the contribution may cause the adviser to forgo the hire, modify the individual's responsibilities, delay a promotion, seek a return of the contribution, or accept the Rule's compensation consequence.

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23 *See* Proposal, *supra* note 2, at 57,702 (identifying employment-related consequences, employee mobility concerns, and hiring distortions associated with Rule 206(4)-5).

24 *See* 17 C.F.R. § 275.206(4)-5(a)(1), (b)(2) (2026) (applying the prohibition to a person who becomes a covered associate within two years after a contribution, subject to a six-month exception for certain new covered associates who do not solicit clients), *available at* https://www.ecfr.gov/current/title-17/chapter-II/part-275/section-275.206%284%29-5; Proposal, *supra* note 2, at 57,703–07 (describing the two-year and six-month lookback periods and their potential effects on hiring, promotion, and reassignment decisions).

The Commission appropriately recognizes that this feature of the Rule may discourage advisers from hiring qualified personnel whose prior political activities create compliance uncertainty. The result is a distortion of normal labor-market decisions that is difficult to justify based on any meaningful anti-corruption objective.

2. The Rule affects hiring and promotion decisions unrelated to political contribution concerns

The practical impact of the Rule extends beyond candidate screening. Advisers may determine that certain employees cannot be assigned to governmental accounts, promotions should be delayed, responsibilities should be restructured, or otherwise qualified personnel should be excluded from business-development functions because of contribution histories presenting potential Rule 206(4)-5 concerns. Advisers also may feel compelled to weigh lawful political activity when making employment decisions even though the activity itself presents no demonstrated connection to the award of government business.

The consequences extend beyond advisers. Government entities and public pension systems may be denied access to investment professionals whom they would otherwise prefer to engage. The Rule may therefore restrict the availability of talent to governmental plan investors and their beneficiaries in addition to burdening advisers themselves.

The Commission appropriately identified these consequences as significant unintended effects of the Rule. MFA agrees that employment decisions generally should be driven by qualifications, expertise, experience, judgment, and client needs rather than lawful political contributions unrelated to obtaining government business.

3. The Rule impedes employee mobility and career development

Employee mobility is an important feature of competitive and efficient capital markets. Professionals frequently move among advisers, transition into client-facing roles, assume new supervisory responsibilities, or relocate across jurisdictions. Rule 206(4)-5 complicates these transitions because historical political activity can affect future employment opportunities, personnel assignments, promotions, and geographic or functional mobility.

Taken together, these burdens demonstrate that the Rule reaches lawful political and employment activity far beyond circumstances bearing a meaningful connection to the corruption risk the Rule was designed to address. The Commission therefore reasonably concluded that the Rule's burdens are disproportionate to its benefits.

IV. The Rule's compliance burdens are disproportionate to any incremental regulatory benefit

MFA also agrees that Rule 206(4)-5 imposes compliance burdens disproportionate to any incremental benefit it may provide beyond existing protections. The Rule is difficult to administer, resource-intensive, and capable of triggering serious consequences for inadvertent or highly attenuated violations that involve no demonstrated improper influence.

A. The two-year time-out drives overinclusive compliance

The Rule's two-year compensation prohibition creates asymmetric compliance incentives. An erroneous approval or classification can impose a substantial economic consequence on the adviser, while an overinclusive restriction ordinarily creates no regulatory consequence for the firm. Advisers therefore have strong incentives to

identify a broader covered population, apply lower internal contribution thresholds, and restrict activity that the Rule may not ultimately reach.

The compensation consequence applies without a showing that the contribution influenced a governmental decision, that the contributor intended to influence the decision, that the adviser obtained or retained business because of the contribution, or that a government investor suffered harm.

Although the Rule is prophylactic, its automatic consequence makes precision in every underlying classification essential. After more than fifteen years of experience, the attenuation between the triggering contribution and any demonstrated corruption risk makes the Rule difficult to reconcile with proportionate, risk-based regulation.

B. Investment adviser covered-associate status requires continuous and often overinclusive classification

The definition of "covered associate" combines formal categories with functional judgments concerning solicitation, supervision, executive responsibility, and political action committees controlled by the adviser or by covered personnel.[25] Within a large organization, titles and organizational charts may not resolve those questions. An employee's status can change because of a promotion, reassignment, supervisory change, or participation in activity that may constitute solicitation, including certain government-investor presentations.

Maintaining the covered-associate population is an ongoing data-governance exercise. Legal and compliance personnel must obtain current information from human resources, business teams, and supervisors; identify changes in employee functions and reporting lines; apply the relevant lookback period; and update preclearance, monitoring, and recordkeeping systems. Matrix reporting, temporary assignments, and cross-functional client teams can further complicate the analysis. In addition, covered associates may move to other positions or responsibilities within a firm, often very suddenly. These moves must be monitored and tracked and applied against the covered associate definition.

Because omitting an employee can result in a severe compensation consequence for the investment adviser, firms have a strong incentive to monitor a broader population than the Rule ultimately may require. Employees may be subjected to political-contribution restrictions because their duties could be construed to involve solicitation or supervision, not because their contributions present a meaningful political contribution risk. The Commission has acknowledged that the definition can be difficult to interpret and may have been applied more broadly than intended, subjecting employees whose contributions are unlikely to relate to pay-to-play practices to restrictive policies.[26] Some firms for example have chosen to treat *all* advisory personnel as covered associates. Commissioner Uyeda likewise

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25 *See* 17 C.F.R. § 275.206(4)-5(f)(2), (f)(4), (f)(10) (2026) (defining "covered associate" to include specified senior personnel, employees who solicit government entities and their direct or indirect supervisors, and political action committees controlled by the adviser or specified covered associates, and separately defining "executive officer" and "solicit"), *available at* https://www.ecfr.gov/current/title-17/chapter-II/part-275/section-275.206%284%29-5.

26 *See* Proposal, *supra* note 2, at 57,704–08; SEC, Rescission of Political Contribution Rule for Investment Advisers: Fact Sheet 1–2 (Sept. 3, 2026) (stating that the covered-associate definition can be difficult to interpret and may have been applied more broadly than intended), *available at* https://www.sec.gov/files/ia-6994-fact-sheet.pdf.

observed that the Rule's complexity and broad definitions have produced burdens disproportionate to any demonstrated benefit.[27]

This overinclusion is a foreseeable response to an uncertain covered associate definition combined with an automatic and substantial compensation consequence. It reflects the Rule's compliance incentives, not a determination that every monitored employee presents a meaningful corruption risk.

C. Covered-official and government-entity determinations require jurisdiction-specific analysis

Before approving a contribution, an adviser may need to determine whether the recipient is an official of a government entity, whether the officeholder can influence the selection of an investment adviser or appoint a person who can do so, and whether the adviser provides or seeks covered advisory services to the relevant government entity.[28] That external analysis must then be matched against the covered-associate population discussed above. The analysis may also require the adviser to determine whether a contribution to a political party, political action committee, inaugural committee, or other organization is attributable to a covered official or presents an anti-circumvention concern.[29]

Those questions cannot be answered from federal law alone. Firms also must consider state statutes, municipal ordinances, executive orders, pension-system charters, board-composition rules, appointment authorities, delegations of power, and procurement procedures. Governmental structures also vary materially across jurisdictions. Authority over public assets may reside with a single elected official, a multi-member board, an independent retirement system, or officials who appoint some or all of the relevant decision makers. A legally significant connection therefore may be indirect, divided among several bodies, or altered by a change in office, delegation, or governmental organization.

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27 *See* SEC, *Statement on Proposed Rescission of Rule 206(4)-5 Under the Investment Advisers Act*, Commissioner Mark T. Uyeda (Sept. 3, 2026) (stating that the Rule's complexity and broad definitions have produced compliance burdens disproportionate to demonstrated benefit), *available at* https://www.sec.gov/newsroom/speeches-statements/uyeda-statement-pay-play-090326; SEC, Rescission of Political Contribution Rule for Investment Advisers: Fact Sheet 1-2 (Sept. 3, 2026) (stating that the "covered associate" definition can be difficult to interpret and may have been applied more broadly than intended), *available at* https://www.sec.gov/files/ia-6994-fact-sheet.pdf.

28 *See* 17 C.F.R. § 275.206(4)-5(f)(5)–(6) (2026) (defining "government entity" and defining "official" by reference to whether the office is directly or indirectly responsible for, can influence, or has authority to appoint a person responsible for or capable of influencing the hiring of an investment adviser by a government entity), *available at* https://www.ecfr.gov/current/title-17/chapter-II/part-275/section-275.206%284%29-5; Proposal, *supra* note 2, at 57,706–08 (discussing the difficulty of determining whether a person is an "official" under the Rule, including the need to analyze governmental oversight structures, appointment authority, and official duties).

29 *See* 17 C.F.R. § 275.206(4)-5(a)(2)(ii), (d), (f)(1)–(2), (f)(7) (2026) (prohibiting certain coordination and solicitation of contributions or political-party payments, prohibiting indirect conduct that would violate the Rule if done directly, defining "contribution" to include payments for certain transition or inaugural expenses, and including certain controlled political action committees within the covered-associate definition), *available at* https://www.ecfr.gov/current/title-17/chapter-II/part-275/section-275.206%284%29-5.

The resulting inquiry is fact-intensive and dynamic. Advisers must evaluate not only the office sought by a candidate but also the legal powers associated with that office and the candidate's current governmental position. They may need to revisit prior conclusions when candidates seek different offices, governments reorganize investment authority, board membership changes, or officials acquire or relinquish appointment powers. A contribution that appears unrelated to advisory business at the time it is made may later require renewed analysis because a candidate's status or governmental responsibilities have changed.

This complexity is important because the Rule attaches a significant compensation consequence to an incorrect coverage determination without requiring proof that the contribution influenced the award of business. The burden is therefore not limited to identifying contributions. It also includes obtaining current information about governmental structures, interpreting unfamiliar bodies of state and local law, documenting judgments, and applying those judgments consistently across jurisdictions and business lines. These demands increase compliance costs and the risk of inconsistent outcomes and incentivize advisers to adopt restrictions broader than the Rule itself requires.

D. Monitoring infrastructure and preclearance consume substantial resources

Large advisers cannot administer the Rule through employee certifications alone. Firms may maintain or subscribe to contribution databases supporting contribution preclearance, employee attestations, candidate and officeholder research, restricted lists, government-entity mapping, contribution monitoring, and recordkeeping requirements.[30] Those tools must be reconciled with human-resources data, reporting lines, solicitation activity, government-client information, government investors in covered investment pools, and changes in employee responsibilities.[31]

Commercial databases do not eliminate legal analysis. Candidate names, committee names, office titles, contribution records, and governmental structures may be inconsistent across sources or change during an election cycle. Compliance personnel still must resolve potential matches, distinguish similarly named contributors, determine whether a committee is associated with a covered official, analyze the authority attached to an office, and document the firm's conclusion.

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30 *See* 17 C.F.R. § 275.204-2(a)(18), (e)(1) (2026) (prescribing recordkeeping and retention requirements related to an adviser's compliance with Rule 206(4)-5), *available at* https://www.ecfr.gov/current/title-17/chapter-II/part-275/section-275.204-2; 2010 Adopting Release, *supra* note 10, at 41,053–54.

31 *See* 17 C.F.R. § 275.204-2(a)(18), (e)(1) (2026) (requiring specified records relating to covered associates, government entities, contributions and payments, and certain solicitors, and prescribing the applicable retention period), *available at* https://www.ecfr.gov/current/title-17/chapter-II/part-275/section-275.204-2; Political Contributions by Certain Investment Advisers, Investment Advisers Act Release No. 3043, 75 Fed. Reg. 41,018, 41,053–54 (July 14, 2010) (adopting the Rule-specific recordkeeping provisions), *available at* https://www.govinfo.gov/content/pkg/FR-2010-07-14/pdf/2010-16559.pdf.

The associated costs extend beyond subscription fees to include escalation, training, testing, and personnel time across compliance, legal, human resources, technology, and the business. These costs are incurred even when monitoring identifies no contribution connected to an effort to obtain government business.

Preclearance also magnifies the Rule's asymmetric incentives. A firm may need to respond before it can resolve candidate status, official authority, employee coverage, and relevant government relationships with confidence. Approving a contribution later determined to be covered can create a significant consequence; denying or limiting the contribution ordinarily creates no regulatory consequence for the adviser. The predictable risk-based response is the conservative one.

Even robust controls cannot eliminate every error in these classification and monitoring judgments. In many circumstances, the compliance question is not whether the adviser or employee acted improperly, but whether the firm correctly identified every legally consequential fact. The resulting exposure encourages controls calibrated to avoid any possible foot fault rather than to isolate conduct presenting an actual pay-to-play concern.[32]

E. An adviser's ability to "cure" an improper contribution is often unrealistic

The Rule's limited remedial provisions do not meaningfully mitigate these consequences. The returned-contribution exception applies only in narrowly prescribed circumstances, including dollar, timing, and frequency limitations, and requires the contributor to obtain the recipient's return of the contribution. An adviser therefore may be unable to rely on the exception despite prompt and diligent efforts if the recipient is uncooperative or the funds have been spent.[33] Nor does the possibility of seeking an exemptive order provide a practical or dependable alternative. Relief is discretionary and fact-specific, and the Commission acknowledges that the application process may be costly and time-consuming.[34] These limited mechanisms do not adequately temper an automatic two-year compensation prohibition that may apply without corrupt intent, improper influence, or any demonstrated connection to the award of government business.

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32 *See* Rule 206(4)-5, 17 C.F.R. § 275.206(4)-5(a)(1), *available at* https://www.ecfr.gov/current/title-17/chapter-II/part-275/section-275.206%284%29-5; *see also* Proposal, *supra* note 2, at 57,704-08 (discussing market-participant concerns that the Rule operates in practice as a de facto strict-liability regime).

33 *See* 17 C.F.R. § 275.206(4)-5(b)(3) (2026) (providing a limited exception for certain returned contributions, subject to contribution-amount, discovery-period, return-period, annual-frequency, and repeat-contributor limitations), https://www.ecfr.gov/current/title-17/chapter-II/part-275/section-275.206%284%29-5; Proposal, *supra* note 2, at 57,704, 57,708 (explaining that the exception generally requires discovery within four months and return within 60 calendar days after discovery and recognizing that the recipient may be uncooperative or the funds may have been spent).

34 *See* 17 C.F.R. § 275.206(4)-5(e) (2026) (authorizing the Commission, upon application, to conditionally or unconditionally exempt an adviser from the two-year compensation prohibition and identifying factors the Commission will consider), *available at* https://www.ecfr.gov/current/title-17/chapter-II/part-275/section-275.206%284%29-5; Proposal, *supra* note 2, at 57,704, 57,708 (describing the exemptive process as potentially costly and time-consuming).

F. Federal election scenarios highlight the Rule's overbreadth

Recent election cycles have also demonstrated the extent to which Rule 206(4)-5 can reach activity far removed from the traditional conception of political contribution concerns. The Rule's application can be counterintuitive when a sitting governor, treasurer, mayor, or other state or local official seeks federal office. A contribution motivated entirely by federal issues may still require analysis under Rule 206(4)-5 because of authority attached to the candidate's existing state or local office. This issue is nonpartisan and recurs across election cycles. Similar issues can arise whenever governors, state treasurers, mayors, or other state and local officials seek federal office.[35] Contributions motivated by views concerning national policies, federal candidates, or presidential elections potentially trigger Rule 206(4)-5 because of a candidate's state or local governmental role.[36]

That outcome highlights how far the Rule can extend beyond situations involving any realistic effort to influence government-investment decisions. It also demonstrates the practical difficulty of administering the Rule and reinforces the Commission's preliminary judgment that the Rule has become unnecessarily broad.

V. Rescission would produce better-calibrated controls, not an absence of controls

Rescission would not be tantamount to eliminating investment adviser political-contribution controls. Advisers with government clients or investors would continue to face legal, contractual, fiduciary, investor, and reputational incentives to maintain controls tailored to their actual risks. The relevant choice is between an automatic federal prohibition and a fiduciary and regulatory framework where advisers remain accountable for controls calibrated to their government exposure, personnel, jurisdictions, contracts, and actual risks.

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35 *See* Wiley Rein LLP, *Pence Brings Pay-to-Play into Presidential Race* (Sept. 2016) (explaining that, when Republican presidential nominee Donald Trump selected then-Indiana Governor Mike Pence as his running mate, Governor Pence was an "official" covered by Rule 206(4)-5 and a non-de minimis contribution to the Trump-Pence ticket could subject an investment adviser to the Rule's two-year compensation prohibition with respect to certain Indiana agencies), *available at* https://www.wiley.law/newsletter-Pence_Brings_Pay-to-Play_Into_Presidential_Race; Lawrence H. Norton & Ronald M. Jacobs, *A Tale of Two Vice Presidents: Pay-to-Play and the Running Mates*, Political Law Briefing (July 25, 2016) (explaining that contributions to the Trump-Pence campaign implicated Rule 206(4)-5 for advisers seeking to do business with the Indiana Public Retirement System or other Indiana entities for which the governor appointed the relevant board or decision makers), *available at* https://www.politicallawbriefing.com/2016/07/a-tale-of-two-vice-presidents-pay-to-play-and-the-running-mates/; *see also* Ind. Code § 5-10.5-3-2(a) (2016) (providing that the Indiana Public Retirement System's nine trustees were appointed by the governor), *available at* https://law.justia.com/codes/indiana/2016/title-5/article-10.5/chapter-3/.

36 *See* WilmerHale, *The 2026 Election Season Is a Minefield of Pay-to-Play Risks for Investment Advisers* (May 19, 2026) (explaining that the 2026 election cycle includes dozens of current federal, state, and local officeholders running for different offices and warning that contributions to federal campaigns of current state or local officials may trigger Rule 206(4)-5 pay-to-play concerns), *available at* https://www.wilmerhale.com/en/insights/client-alerts/20260519-the-2026-election-season-is-a-minefield-of-pay-to-play-risks-for-investment-advisers.

A. Advisers will continue to face significant incentives to maintain appropriate political-contribution controls

Rescission would not prescribe a single replacement compliance program, and MFA does not suggest that every adviser should retain every control designed specifically for Rule 206(4)-5. Advisers with government clients, public-plan investors, or meaningful public-sector solicitation activity nevertheless would continue to face state and local law, procurement requirements, contractual certifications, fiduciary and antifraud obligations, client expectations, and reputational risk. Depending on the adviser's exposure, appropriate controls may include targeted preclearance, jurisdiction-specific restricted lists, contribution certifications, diligence for personnel involved in government solicitation, contractual reporting processes, training, and escalation procedures.

Indeed, advisers operating in jurisdictions with significant public-sector business may maintain controls extending beyond Rule 206(4)-5 because they must comply with overlapping state, local, contractual, and procurement requirements. Those obligations will remain regardless of whether the federal Rule is rescinded.

B. A principles-based framework produces more appropriately calibrated compliance controls

Rescission would allow advisers to allocate compliance resources more efficiently and to focus those resources on genuine risks rather than technical Rule-specific requirements. Different advisers face different risk profiles. For example:

- An adviser that actively competes for public pension mandates in multiple jurisdictions may reasonably conclude that extensive contribution-monitoring procedures remain appropriate.
- An adviser with limited governmental business may conclude that a more targeted approach is warranted.
- An adviser whose exposure is concentrated in jurisdictions with robust state-level political contribution restrictions may design controls reflecting those localized requirements.

A principles-based framework allows these distinctions. Rule 206(4)-5 largely does not. The flexibility inherent in a risk-based approach promotes more effective compliance because controls can be calibrated to actual exposure rather than imposed uniformly across highly diverse business models.

C. Government investors can continue to require controls they deem appropriate

Government-law, procurement, contractual, and reputational requirements provide continuing incentives and, where applicable, obligations for investment advisers to maintain appropriate controls. Public plans and governmental entities may require advisers to make certifications concerning political contributions, ethics obligations, placement-agent activity, conflicts of interest, disclosure matters, and compliance controls. Public investors also retain leverage in negotiating contractual requirements and may impose standards exceeding those required by federal law.

Rescission would not diminish the ability of governmental entities to require such protections. Rather, it allows governmental investors and advisers to negotiate requirements that reflect the specific circumstances of the relationship.

D. The Proposal advances a more appropriate regulatory philosophy

More broadly, the Proposal places responsibility where a principles-based compliance regime ordinarily places it: on advisers to identify material risks, design reasonable controls, test those controls, and document the judgments supporting them.

The Commission has increasingly emphasized principles-based compliance obligations that require advisers to identify risks, assess those risks, and implement controls reasonably designed to address them. Rule 206(4)-5 stands somewhat apart from that approach. Rather than permitting firms to calibrate compliance to actual risks, it imposes a rigid and disproportionately severe framework regardless of whether meaningful corruption concerns exist.

The Proposal appropriately restores greater responsibility to advisers while preserving extensive legal, contractual, fiduciary, and regulatory safeguards. For these reasons, MFA believes rescission will result in better-targeted and more effective compliance programs rather than diminished protections.

VI. Rule-specific recordkeeping requirements should be rescinded along with the Rule

MFA also supports the Commission's proposal to rescind the portions of Rule 204-2 that exist solely to facilitate compliance with Rule 206(4)-5.[37] Once the substantive Rule is rescinded, the corresponding recordkeeping provisions no longer serve their original purpose. Retaining Rule-specific recordkeeping obligations after eliminating the underlying substantive prohibition would impose costs and create residual compliance risk without producing meaningful regulatory or investor benefits.

Importantly, rescission of these provisions would not eliminate recordkeeping obligations generally. Investment advisers would remain subject to all applicable recordkeeping requirements imposed by the Advisers Act, state and local obligations, procurement-related record-retention obligations, and recordkeeping requirements associated with their own compliance programs. Rescission thus would eliminate records required solely because of Rule 206(4)-5 while preserving all other legally required recordkeeping.

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[37] *See* Proposal, *supra* note 2, at 57,720–22 (proposing to remove the provisions of Rule 204-2 requiring advisers to make and retain records in connection with Rule 206(4)-5), *available at* https://www.sec.gov/files/rules/proposed/2026/ia-6994.pdf; 17 C.F.R. § 275.204-2(a)(18), (e)(1) (2026), *available at* https://www.ecfr.gov/current/title-17/chapter-II/part-275/section-275.204-2.

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Conclusion

MFA shares the Commission's commitment to preventing actual and apparent corruption in the selection of investment advisers and protecting the integrity of government investment decisions. The question presented by the Proposal is whether Rule 206(4)-5 remains a necessary and proportionate part of that framework after more than fifteen years of experience. That experience shows that the Rule can impose severe consequences without a demonstrated connection between a contribution and the award of advisory business. It can also burden lawful political participation, distort employment decisions, and require complex legal and factual determinations across different governmental structures. At the same time, rescission would preserve the Advisers Act's antifraud, fiduciary, compliance, and ethics requirements, as well as applicable criminal, campaign-finance, state and local, procurement, contractual, and public-plan protections.

MFA respectfully urges the Commission to adopt the proposed rule rescissions. We appreciate the opportunity to provide these views and would welcome the opportunity to discuss them further with the Commission and its Staff. Please contact Jeff Himstreet (jhimstreet@mfaalts.org) or the undersigned (jhan@mfaalts.org) with any questions.

Respectfully submitted,

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