MorrisonCohen LLP

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Client Alert

COMPLIANCE DATE FOR BAN ON THIRD-PARTY SOLICITATION EXTENDED

July 15, 2015 – The SEC's Division of Investment Management has again delayed implementing a portion of the "pay to play" rule under the Investment Advisers Act of 1940 applicable to registered investment advisers and exempt reporting advisers. The delay is now open-ended.

Under the pay to play rule, adopted to prevent the tying of political contributions to retaining investment advisory services, neither a registered investment adviser nor an exempt reporting adviser may compensate any outside person for soliciting a government entity to become, for example, a limited partner of a managed investment fund, unless the solicitor was itself a person legally prohibited from making political contributions. The rule anticipated that the Financial Industry Regulatory Authority and the Municipal Securities Rulemaking Board would adopt stringent pay to play rules comparable to the one promulgated by the SEC for investment advisors, thus permitting fund managers to compensate brokers and municipal advisors to solicit investors. Neither regulatory body, however, has yet adopted the needed regulations.

In a statement released on June 25, the SEC stated that it will not recommend enforcement action against an investment adviser or its covered associates under rule 206(4)-5(a)(2)(i) (the pay to play rule) for paying third parties who solicit a government entity for investment advisory services, until 90 days after FINRA and MSRB adopt their own conforming rules.

The delay in enforcing the pay to play rule does not, however, affect the possible exposure an investment adviser may face under the Securities Exchange Act of 1934 in retaining an unregistered broker dealer to act as its placement agent, which is an area of enforcement on which the SEC has repeatedly said it intends to focus its efforts.

If you have any further questions, please contact your Morrison Cohen attorney.

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