Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549–1090

November 9, 2026

Re: Political Contributions by Certain Investment Advisers (File Number S7-2026-31)

Dear Secretary Countryman:

The undersigned 29 investors, labor unions, and public interest organizations write to urge the Securities and Exchange Commission (SEC) to withdraw its proposal to rescind Rule 206(4)-5, the political contribution rule under the Investment Advisers Act of 1940 (the "Advisers Act"). The political contribution rule, which the SEC promulgated in 2010 after outrageous pay-to-play scandals involving various private equity fund managers became public, is a powerful prophylactic against such unlawful practices that harm pension plans and the workers and retirees who depend upon them for their retirement security. These scandals illustrate why the SEC's bright line Rule 206(4)-5 is a necessary complement to other Advisers Act provisions and securities fraud prohibitions. In the notice of proposed rulemaking, the SEC does not explain why the agency now rejects the factual findings on which it based the rule, does not properly analyze the costs pensions could incur should the rule be rescinded, and it now raises First Amendment concerns that the SEC already addressed in the original Rule 206(4)-5 rulemaking.

The political contribution rule is a powerful prophylactic against pay-to-play schemes

The SEC finalized the Rule 206(4)-5 political contribution rule in 2010 following high-profile pay-to-play scandals. In its adopting release, it referenced actions it brought involving investment advisers seeking the business of pensions in two states.[1] It also referenced criminal cases brought in four additional states, as well as news reports of other schemes.[2]

In just 2009, there were major scandals involving two of the largest and most influential private equity firms: Apollo Global Management ("Apollo") and The Carlyle Group ("Carlyle"). CalPERS, the largest public pension in the country, discovered that one of its former board members helped Apollo secure approximately $3 billion in investments to its funds after accepting more than $40 million in payments from the firm.[3] The board member gave the CalPERS CEO gifts worth at least

[1] Securities and Exchange Commission. "Political Contributions by Certain Investment Advisers." Final rule. July 14, 2010.
[2] *Id.*
[3] Levintova, Hannah. "The SEC Wants to Scrap a Key Anti-Corruption Rule Targeting Private Equity." Mother Jones. September 24, 2026.

$250,000.[4] This was not a victimless crime: these investments were amongst the pension fund's worst performing, down between 50 and 60 percent that year.[5] Around the same time, Carlyle agreed to pay $20 million in a settlement because it had paid more than $13 million to a New York State Comptroller staffer to secure approximately $730 million in investments from the state's pensions.[6]

The SEC reasonably determined its existing tools were insufficient to properly protect investors from pay-to-play schemes and therefore promulgated a rule modeled after one adopted by the Municipal Securities Rulemaking Board (MSRB) in 1994 that they concluded significantly curbed pay-to-play practices in the municipal securities market.[7] The agency found that pay-to-play arrangements are covert in nature and difficult to prove case-by-case, which is why it chose a prophylactic rule over mere reliance on anti-fraud enforcement. While pay-to-play practices have not completely disappeared since the SEC finalized the political contribution rule, the price tag associated with anything that could come close — no business from the relevant government client for two years — serves as a powerful disincentive, making pensions less likely to fall victim to pay-to-play practices in the first place.

An agency that reverses course must give a reasoned explanation for disregarding the facts and circumstances that underlay its prior policy.

The political contribution rule is a necessary complement to other Advisers Act provisions and securities fraud prohibitions

The SEC points to the fact that pay-to-play practices were already unlawful before it promulgated the political contribution rule as part of its justification for its rescission. The SEC notes that it brought several cases related to pay-to-play schemes under the Advisers Act before the political contribution rule was in effect. To substantiate this claim, it lists nine citations.[8] Eight of these citations all involve the same former state treasurer. The other citation is about a scheme involving another state's pension system. Both were egregious cases that involved parallel criminal prosecutions and caused great harm to pensions. This is hardly evidence that the SEC's tools outside the political contribution rule will be sufficient to prevent pay-to-play schemes in the future.

Additionally, the proposed rescission comes at a time when the SEC's capacity to robustly enforce securities laws is under strain. The SEC's Division of Enforcement cases fell over 20 percent and its

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[4] *Id.*

[5] Sims, Noel. "Making pensions corrupt again." September 17, 2026.

[6] Levintova, Hannah. "The SEC Wants to Scrap a Key Anti-Corruption Rule Targeting Private Equity." Mother Jones. September 24, 2026.

[7] Securities and Exchange Commission. "Political Contributions by Certain Investment Advisers." Final rule. July 14, 2010.

[8] Securities and Exchange Commission. "Political Contributions by Certain Investment Advisers." Proposed rule; rescission. September 3, 2026 at 11 n. 15.

staff fell 18 percent in fiscal year 2025.[9] Specifically, there has been a steep decline in SEC enforcement cases related to public finance abuses in the past decade: from 97 in 2016 to 7 in 2025 (as of the end of September).[10] The SEC's Division of Examination has also lost 14 percent of its staff under the second Trump administration.[11]

Unfortunately, those harmed by pay-to-play schemes cannot fill in the SEC's enforcement void. The Supreme Court held the Advisers Act has an implied private right of action for harmed parties like pension funds, but only to void the contract, not for monetary damages.[12] Courts have also found there is no private right of action under section 17(a) of the Securities Act,[13] another provision the SEC has brought pay-to-play claims under. That leaves private litigants, in terms of federal legal tools, only with claims under section 10(b) of the Securities Exchange Act and Rule 10b-5, which have high scienter requirements and pleading standards.

Critically, some of the Advisers Act provisions the SEC points to in an attempt to justify the rescission are not applicable to all investment advisers. Rule 206(4)-7, the "compliance rule," requires investment advisers to "[a]dopt and implement written policies and procedures reasonably designed to prevent violation" of the Advisers Act, review these policies and procedures at least annually, and designate someone to administer them. Rule 204A-1, the "code of ethics rule," requires investment advisers to adopt standards of business conduct that reflect fiduciary obligations and compliance with securities laws. Both of these rules only apply to investment advisers registered or required to be registered under section 203 of the Advisers Act. Unlike the political contribution rule, they do not apply to exempt reporting advisers or foreign private advisers. Exempt reporting advisers are advisers that can only provide advice to private funds, and private fund advisers were behind the scandals that triggered the political contribution rule in the first place.

The SEC did not properly analyze the costs of rescinding the rule to pensions

While the SEC acknowledges that rescission of the political contribution rule could increase the risk of pay-to-play schemes and that such schemes come with significant costs,[14] it does not closely examine or analyze these costs,[15] nor does it take them into account when weighing the costs versus benefits of the proposed rescission. This lack of quantification and limited analysis of the risks and harms to pensions stands in stark contrast to the thorough quantification and analysis of the costs

[9] Prentice, Chris and Kanishka Singh. "US SEC enforcement activity drops dramatically as agency 'resets.'" Reuters. April 7, 2026.
[10] Hamlin, Jessica. "When LPs act badly." PitchBook. April 13, 2026.
[11] Clements, Michael E. "Securities and Exchange Commission: Recent Workforce Reductions and Other Personnel Management Changes." Government Accountability Office. March 27, 2026.
[12] *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. 11 (1979).
[13] *See Maldonado v. Dominguez*, 137 F.3d 1, 7 (1st Cir. 1998).
[14] Securities and Exchange Commission. "Political Contributions by Certain Investment Advisers." Final rule. July 14, 2010.
[15] Securities and Exchange Commission. "Political Contributions by Certain Investment Advisers." Proposed rule; rescission. September 3, 2026 at 68.

and benefits to investment advisers. For example, the SEC could have included an analysis of the costs to pensions of the pay-to-play schemes it has prosecuted, as well as the costs of other schemes that were criminally prosecuted, as a way to quantify the potential impacts of the higher risk of pay-to-play schemes.

Additionally, while the SEC acknowledges that exempt reporting advisers and foreign private advisers might be less deterred from pay-to-play practices due to the fact that they are not subject to the compliance or code of ethics rules,[16] it does not quantify how many known cases of pay-to-play practices have involved private fund advisers. Notably, many of the scandals referenced by the SEC in its 2010 adopting release involved private fund advisers.

The SEC also fails to examine and incorporate into its analysis lessons learned from the implementation of rules that mirror the political contribution rule applied to other regulated entities: the MSRB Political Contribution Rule, which regulates brokers, dealers, municipal securities dealers, and municipal advisors; the Exchange Act rule 15Fh-6, which regulates security-based swap dealers; and Financial Industry Regulatory Authority (FINRA) Rule 2030, which regulates broker-dealers. Although the SEC discusses these rules, it does not meaningfully engage with them in its cost benefit analysis.

First Amendment concerns were addressed in the original rulemaking

The SEC carefully considered First Amendment concerns in its original rulemaking and addressed them accordingly. It noted:

> Although political contributions involve both speech and associational rights protected by the First Amendment, a "limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage in free communication."[17] Limitations on contributions are

[16] Securities and Exchange Commission. "Political Contributions by Certain Investment Advisers." Proposed rule; rescission. September 3, 2026 at 67-68.
[17] *Buckley v. Valeo,* 424 U.S. 1, 20 (1976). *See also SpeechNow.org, et al. v. FEC,* 599 F.3d 686 (D.C. Cir. 2010); *McConnell v. FEC,* 540 U.S. 93, 135-36 (2003).

permissible if justified by a sufficiently important government interest that is closely drawn to avoid unnecessary abridgment of protected rights.[18] [19]

The SEC went on to describe how it shaped the rule around "a sufficiently important government interest" — prevention of fraud — and tailored it to be "closely drawn to avoid unnecessary abridgement of protected rights," in part by using *Blount* v. *SEC*,[20] a decision of the U.S. Court of Appeals for the D.C. Circuit that upheld the similarly designed MSRB rule G-37, as a guide.[21] The law has not moved in the direction the proposal suggests. After *Citizens United*[22] and *McCutcheon*,[23] the D.C. Circuit, sitting en banc, unanimously upheld the federal ban on contributions by government contractors.[24] And in 2019, the same court rejected a First Amendment challenge to FINRA Rule 2030, which is modeled on Rule 206(4)-5, and relied on *Blount* in doing so.[25]

Now, the SEC points to blanket prohibitions by some investment advisers on political contributions at the state and local levels as a reason to reconsider First Amendment implications. But only 12.41 percent of investment advisers that responded to the cited survey have such blanket prohibitions, demonstrating that they are in fact not required by the political contribution rule and are simply an option certain investment advisers have exercised.[26]

Even if the SEC had valid First Amendment concerns not addressed by its 2010 release, it did not meaningfully consider addressing them by amending the political contribution rule to make it more narrowly tailored to the important government interest of preventing fraud that harms pensions. The SEC largely covered its consideration of amending the rule — which could have come in many forms — in just two paragraphs without discussing its potential to address its First Amendment concerns.[27] If the SEC is concerned about cases in which small contributions triggered the two-year

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[18] *Buckley,* 424 U.S. at 25. *See also FEC v. Wisconsin Right to Life, Inc.,* 551 U.S. 449 (2007); *Republican Nat'l Comm. v. FEC,* No. 08-1953, 2010 U.S. Dist. LEXIS 29163 (D.D.C. Mar. 26, 2010) (three judge panel). This standard is lower than the strict scrutiny standard employed in reviewing such forms of expression as independent expenditures. Under the higher level of scrutiny, a restriction must be narrowly tailored to serve a compelling governmental interest. *Blount,* 61 F.3d at 943. *See also Citizens United v. FEC,* 130 S. Ct. 876 (2010) (distinguishing restrictions on "independent expenditures" from restrictions on "direct contributions" and leaving restrictions on direct contributions untouched while striking down a restriction on independent expenditures as unconstitutional). We note that in *Blount,* 61 F.3d at 949, the court upheld MSRB rule G-37 even assuming that strict scrutiny applied. For the reasons stated by the court in that decision, we believe that Rule 206(4)-5 would be upheld under a strict scrutiny standard as well as under the standard the Supreme Court has applied to contribution restrictions.

[19] Securities and Exchange Commission. "Political Contributions by Certain Investment Advisers." Final rule. July 14, 2010.

[20] 61 F.3d 938, 945 (D.C. Cir. 1995), *cert. denied,* 517 U.S. 1119 (1996).

[21] Securities and Exchange Commission. "Political Contributions by Certain Investment Advisers." Final rule. July 14, 2010.

[22] *Citizens United v. FEC*, 558 U.S. 310 (2010).

[23] *McCutcheon v. FEC*, 572 U.S. 185 (2014).

[24] *Wagner v. FEC*, 793 F.3d 1 (D.C. Cir. 2015) (en banc).

[25] *N.Y. Republican State Comm. v. SEC*, 927 F.3d 499 (D.C. Cir. 2019).

[26] Securities and Exchange Commission. "Political Contributions by Certain Investment Advisers." Proposed rule; rescission. September 3, 2026 at 6 n. 2.

[27] *Id.* at 77-78.

time-out, then it can raise the de minimis thresholds, narrow the definition of covered associate, or broaden the exemptive process. Each would be a targeted amendment that would preserve the rule's core protections.

The SEC did not adequately consider alternatives to a full repeal of Rule 206(4)-5

The notice of proposed rulemaking only briefly discusses reasonable alternatives to a full repeal of Rule 206(4)-5 and does not adequately consider alternatives that could have addressed the SEC's purported reasons for repealing Rule 206(4)-5 in its entirety. Instead, the SEC dismisses such alternatives by concluding that "the costs of this alternative would be greater than those of the proposed rescission."[28] This economic analysis of reasonable alternatives is fundamentally flawed because the notice of proposed rulemaking makes no effort to quantify the substantial benefits that Rule 206(4)-5 has provided to public pension plans in the form of reduced investment management fees and improved investment manager performance resulting from the arms-length selection of investment advisors via a process that is untainted by pay-to-play political contributions.

For example, the notice of proposed rulemaking states that "[t]he monetary losses associated with the two-year ban on receiving compensation for providing investment advisory services to a government client seem excessive, particularly given that the ban can be triggered by contributions of as little as $150."[29] We note that the SEC does not provide any economic estimates of these purported investment advisor monetary losses, nor does it consider the economic benefits to pension plans of having a bright line pay-to-play prohibition in place. The notice of proposed rulemaking also takes issue with the fact that the $150 de minimis exception has not been updated for inflation. Assuming for the sake of argument that these are legitimate concerns that the SEC is seeking to remedy, the SEC could amend Rule 206(4)-5 by shortening the length of the ban or increasing the permitted dollar amount of de minimis political contributions.

The notice of proposed rulemaking also argues that under Rule 206(4)-5 "[a]dvisers may be prevented from hiring or promoting qualified individuals" and that "[p]ublic pension plans may be unable to hire the most qualified or cost-effective advisers."[30] Besides making vague references to unnamed "market participants," the SEC does not provide any specific examples or evidence that Rule 206(4)-5 has in fact resulted in such unintended consequences. Nevertheless, if the SEC believes that Rule 206(4)-5 is too restrictive, then it could seek to modify its prohibitions to address such situations. For example, the SEC could lengthen the 60-day window for recovering political contributions or streamline its Rule 206(4)-5 exemptive process to address investment adviser concerns that the exemptive process is too costly and time-consuming.

[28] *Id.* at 77.
[29] *Id.* at 100.
[30] *Id.* at 101.

Finally, we are also concerned that the SEC has proposed this rescission at a time when the agency lacks the political balance mandated by the Securities Exchange Act of 1934 and has not met the statutory requirement that appointments to the SEC alternate by party.[31] We urge the SEC to withdraw the proposal in its entirety.

Thank you for the opportunity to comment on this proposal. For further discussion, please contact Patrick Woodall at pwoodall@ourfinancialsecurity.org.

Sincerely,

American Economic Liberties Project
American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
Americans for Financial Reform Education Fund
BCTGM International Union
Better Markets
Center for Economic and Policy Research
Chevedden Corporate Governance
Demand Progress Education Fund
Green America
Harrington Investments
Institute for Policy Studies, Global Economy Project
Interfaith Center on Corporate Responsibility
Miller/Howard Investments, Inc.
Missionary Oblates of Mary Immaculate
National Education Association (NEA)
Natural Investments PBLLC
New York Communities for Change (NYCC)
Open Markets Institute
Oxfam America
Private Equity Stakeholder Project
Public Citizen
Public Integrity Project
Racial Justice Investing Coalition
Service Employees International Union (SEIU)
SOC Investment Group
The Academy of Financial Education
Transparency International U.S.
United Food and Commercial Workers International Union

[31] 15 U.S.C. 78d(a) (providing that no more than three commissioners shall be members of the same political party and that "in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable").