# There's Got to Be a Better Way: Statement of Dissent Regarding Wayzata Investment Partners LLC

Commissioner Hester M. Peirce

April 15, 2024

Today the Commission instituted and settled an administrative proceeding under the investment adviser pay-to-play rule.[1] The facts here are similar to those of other pay-to-play cases: In April 2022, a covered associate of an investment adviser made a campaign contribution to a candidate for elected office. The office the candidate sought had influence over selecting investment advisers for a state investment board. The Commission's order, however, does not allege any link between the donation and the investments. In fact, the state investment board had invested in closed-end funds advised by Respondent several years prior to the contribution. Respondent's violation stems not from any attempt to obtain additional investments from the state investment board, but from the fact that it continued to provide advisory services for compensation in connection with the board's longstanding closed-end fund investments. This case is yet another illustration of the overbreadth of the pay-to-play rule and another reminder of the way the rule hampers legitimate political participation. Accordingly, I did not support the case.

I have dissented from past pay-to-play cases,[2] but write again to underscore the serious consequences of the rule on the political process. If a person covered by the rule — and that includes, among others, general partners, managing members, executive officers, employees who solicit a government entity for the investment adviser, and their supervisors[3] — makes a donation of more than $350,[4] the investment adviser cannot provide investment advice for compensation for two years after the donation. The rule allows for exemptions,[5] but the Commission has rarely granted them. To avoid questions from Commission examiners, the easiest course is not

to contribute to political campaigns. So, the cost of working for an investment adviser is that you have to give up your right to contribute to certain political campaigns.

A further repercussion of the rule that was recently brought to my attention is that an investment adviser who chooses to run for office cannot collect campaign donations from acquaintances and supporters in the industry. Not being able to solicit for campaign contributions people with whom you have worked for years is a serious disadvantage to political candidates coming from the investment advisory industry. This consequence of our pay-to-play rule is yet another reason to worry that it impedes political participation.

The concerns about public corruption underlying the rule are worthy of attention. Politicians should not select advisers to manage public funds based on who has made the highest campaign contributions. But there has to be a better way to get at public corruption. Other government bodies exist to pursue such misconduct, and we are able to bring cases when there has been actual adviser misconduct involving payments to public officials.[6] Pursuing instances in which public officials, for personal or political benefit, have entrusted public money to advisers is vital. By contrast, a rule that penalizes people already subject to fiduciary obligations who donate money without any intent to do anything other than express their political preferences does not improve the political process.

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[1] *Wayzata Investment Partners, LLC*, Rel. No. IA-6590, (April --, 2024), available at https://www.sec.gov/files/litigation/admin/2024/ia-6590.pdf.

[2] Laudable Ends, Poorly Pursued: Statement Regarding Recent Pay-to-Play Rule Settlements (Sept. 15, 2022, available at https://www.sec.gov/news/statement/peirce-statement-pay-play-rule-settlements-091522.

[3] Covered associates are defined to include:

(i) any general partner, managing member or executive officer, or other individual with a similar status or function;

(ii) any employee who solicits a government entity for the investment adviser and any person who supervises, directly or indirectly, such employee; and

(iii) any political action committee controlled by the investment adviser or by any of its covered associates.

*See* Advisers Act Rule 206(4)-5(f)(2), 17 C.F.R. § 275.206(4)-5(f)(2).

[4] Under the *de minimis* exception, the two-year time out is *not* triggered if a covered associate's aggregate contributions to a particular candidate in a given election do not exceed $350 to an elected official or candidate for whom the covered associate is entitled to vote and $150 to an elected official or candidate for whom the covered associate is not entitled to vote. Advisers Act Rule 206(4)-5(b)(1), 17 C.F.R. § 275.206(4)-5(b)(1).

[5] *See* Advisers Act Rule 206(4)-5(e), 17 C.F.R. § 275.206(4)-(5)(e).

[6] Before the Commission adopted the pay-to-play rule, it brought such cases. *See, e.g., SEC v. Henry Morris, et al.*, Litigation Release No. 20963 (Mar. 19, 2009) (alleging investment advisers paid sham "placement fees," portions of which were funneled to public officials, as a means of obtaining public pension fund investments in the funds those advisers managed) (available at https://www.sec.gov/litigation/litreleases/2009/lr20963.htm); *SEC v. Paul J. Silvester, et al.*, Litigation Release No. 16759 (Oct. 10, 2000) (alleging a former Treasurer for the state of Connecticut participated in a scheme in which he awarded investments of hundreds of millions of dollars of state pension fund money in exchange for lucrative fees paid by the private equity firms to friends and political associates) (available at https://www.sec.gov/litigation/litreleases/lr16759.htm).

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