# SEC Fines 10 Investment Advisers for Pay-to-Play Violations

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The Securities and Exchange Commission announced last week its broadest and most significant action to enforce its investment adviser pay-to-play rule, Rule 206(4)-5, by fining 10 investment advisory firms. The fines come less than a week after the SEC promised increased attention to rules governing public pension funds, suggesting that additional resources are being dedicated to pay-to-play enforcement. ***Investment advisers are encouraged to review their policies to avoid potential penalties.***

The fines—ranging from $35,000 to $100,000—were levied against the firms for continuing to receive compensation for advisory services provided to public pension plans (or to investment vehicles in which public pension plans invest) during the two years after disqualifying political contributions were made by firm personnel subject to the rule (individuals referred to as "covered associates"). The SEC found that the covered associates "made campaign contributions to elected officials or political candidates with the potential to wield influence over those pension funds."

In almost all instances, the violative contributions were made several years after any public pension investment decisions had been made, and the orders contain no direct evidence or findings that the contributions actually influenced public pension investment decisions.

Two of the firms—Pershing Square Capital Management and Lime Rock Management—unsuccessfully sought exemptive orders from the SEC in 2016 for the contributions at issue, suggesting a narrowing of the availability of exemptive orders. It is unclear whether the SEC would have pursued action against those firms had they not sought exemptions. It also is unclear whether any of the firms were required to disgorge fees for investment advisory services impermissibly received during the Rule's two-year compensation timeout. In 2014, the SEC specifically required TL Ventures to disgorge nearly $260,000 in addition to paying a $35,000 fine.

The following fines were announced:

- Adams Capital Management: $45,000 fine for two $500 contributions made in 2014 by a covered associate to campaigns for Pennsylvania Governor and Pennsylvania Treasurer, positions with the ability to influence the selection of advisers to the Pennsylvania State Employees' Retirement System ("SERS"). SERS made a $30 million investment in an Adams Capital Management advised fund in 2000, more than a decade preceding the contributions at issue.

- Aisling Capital: $70,456 fine for $1,000 and $500 contributions in 2011 and 2012 to campaigns for Manhattan Borough President. The Manhattan Borough President sits on the board of the New York City Employees' Retirement System ("NYCERS"), which invested $7 million in an Aisling Capital advised fund in 2005.

- Alta Communications: $35,000 fine for a $500 contribution in 2014 to the Massachusetts Treasurer, who sits on and can appoint one member of the board of Massachusetts Pension Reserves Investment Management Board ("PRIM"). PRIM invested $50 million in an Alta Communications advised fund in 2003.

- Commonwealth Venture Management Corporation: $75,000 fine for three $500 contributions in 2013 and 2014 to a candidate for Governor of Massachusetts and for co-hosting a fundraising event for the candidate. The Massachusetts Governor sits on and can appoint two members of the board of PRIM, which invested $50 million in a Commonwealth Venture Management advised fund in 1998.

- Cypress Advisors: $35,000 fine for a $400 contribution in 2013 to a campaign for New York City Mayor. The New York City Mayor appoints at least one member of the boards of the major New York City public pension plans—the Teachers Retirement System of the City of New York, New York City Police Pension Fund, New York City Fire Pension Fund, and the New York City Employees' Retirement System. These public pension plans invested $175 million in a Cypress Advisors advised fund in 1999.

- FFL Partners: $75,000 fine for a $10,000 contribution in 2012 to a candidate for Wisconsin Governor, who appoints several members of the board of trustees of the investment board managing the Wisconsin public pension plan, Core Retirement Investment Trust. The plan had invested $50 million in a FFL Partners advised fund beginning in 2008.

- Lime Rock Management: $75,000 fine for a $1,000 contribution in 2015 by a managing director to the presidential campaign of Ohio Governor John Kasich. The Governor of Ohio appoints one member of the board of the State Teachers' Retirement System of Ohio ("STRS"), which had invested $148 million in Lime Rock Management advised funds between 2004 and 2008. In August 2016, Lime Rock Management applied for an exemptive order from the two-year compensation ban.

- NGN Capital: $100,000 fine for three contributions totaling $1,425 in 2013 to a New York City mayoral candidate, and one contribution of $500 to another New York City mayoral campaign in 2013. The New York City Mayor appoints at least one member of the boards of the major New York City public pension plans—the Teachers Retirement System of the City of New York, New York City Police Pension Fund, New York City Fire Pension Fund and New York City Employees' Retirement System. These public pension plans had invested $50 million in an NGN Capital advised fund in 2008.

- Pershing Square Capital Management: $75,000 fine for a $500 contribution in 2013 by an investment analyst to the Juliette Kayyem for Governor of Massachusetts campaign. The

Massachusetts Governor sits on and can appoint two members of the board of PRIM, which had invested $192 million in a Pershing Square advised fund between 2011 and 2012. In September 2016, Pershing Square applied for an exemptive order from the two-year compensation ban, arguing that the contributor at issue was not a "covered associate" subject to the rule due to the limited nature of his solicitations, although the contributor was referred to as a covered associate in some internal documents. The SEC's order imposing the fine did not address these arguments, but suggest that even a very limited amount of solicitation activity can cause a person to trigger "covered associate" status.

- The Banc Funds Company: $75,000 fine for a $1,000 contribution in 2013 to a candidate for Governor of Illinois. The Governor of Illinois appoints six members of the board of the Illinois Teachers Retirement System ("TRS"), which had invested $95 million in Banc Funds Company advised funds between 2004 and 2005.

For more information on SEC pay-to-play rules for investment advisers, please contact the following attorneys in Caplin & Drysdale's Political Law Group.


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