Governor Inslee's Presidential Campaign Triggers New Risks for Investment Advisers

March 6, 2019

Washington Governor Jay Inslee announced late last week that he is running for President, making him the first sitting governor in the 2020 presidential field. ***Inslee's entrance into the presidential race while simultaneously holding his gubernatorial office represents a new risk for investment advisers subject to the Securities & Exchange Commission's "Pay-to-Play" Rule.***

The SEC's "Pay-to-Play" Rule prohibits an investment adviser from earning compensation from a government entity (e.g., a public pension fund) for two years after the adviser or one of its "covered associates" makes a contribution to a state- or local-level "official" of that government entity. Because Governor Inslee has the power to appoint a number of investment board members, he is an "official" of nearly every public pension fund in Washington State. This means that, under the SEC Rule, if a "covered" employee of an investment adviser makes a political contribution to Inslee, the investment adviser will be walled-off from receiving any compensation from Washington State pension funds for two years thereafter, which could ultimately be a substantial sum.

Why does Inslee's entrance into the presidential race create a new risk for investment advisers? Because most federal-level candidates fall outside the scope of the Rule—sitting U.S. Senators, incumbent U.S. Representatives, and other federal candidates who do not hold any other public office are not "officials" for SEC "pay-to-play" purposes. As a result, many who work for investment advisers are accustomed to giving contributions to federal-level candidates. And they may mistakenly believe they are able to give to Inslee as they would another presidential candidate. The potential problem for investment advisers here is that Inslee is *both* a federal candidate *and* a sitting governor, which means he is still an "official" under the Rule and a contribution to his presidential campaign will trigger a two-year compensation ban from Washington State pensions just as much as a contribution to his gubernatorial candidacy would.

This same scenario—a sitting governor running for president—has previously resulted in several large settlements with the SEC for investment advisers whose employees gave contributions to the 2016 presidential campaign of then-Ohio Governor John Kasich without realizing that such contributions would trigger a compensation ban under the SEC Rule.

All investment advisers who provide services (or would like to provide services) to Washington State pension funds would do well to remind all "covered associates" that contributions to Governor Inslee's presidential campaign will trigger negative business consequences under the SEC Rule. Please contact a member of Caplin & Drysdale's Political Law Group if you have questions concerning this alert or for more information.

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