

Play-to-Play Laws May Hinder Governor DeSantis' Presidential Fundraising

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After recently signing legislation allowing state officeholders to run for president without resigning from office, Florida Gov. Ron DeSantis has officially entered the 2024 presidential race. As a sitting governor, DeSantis is a covered official under federal pay-to-play laws, including Securities and Exchange Commission (SEC) Rule 206(4)-5, Municipal Securities Rulemaking Board (MSRB) Rule G-37 and Commodity Futures Trading Commission (CFTC) Rule 23.451.

Although DeSantis is seeking federal office, individuals and entities who engage in business activities covered by these rules will be subject to contribution limits significantly lower than the \$3,300 per election limit that individuals may contribute to federal candidates under federal election laws. Consequently, federal pay-to-play rules will likely present a fundraising challenge for DeSantis' presidential campaign, and necessitate compliance measures for the donors covered under these rules. A single excessive contribution to DeSantis' campaign by a covered employee could jeopardize a company's ability to transact certain business with the state of Florida.

For example, SEC Rule 206(4)-5 prohibits investment advisers from providing investment advisory services for compensation to a state or local government entity if the adviser, or a covered associate of the adviser, has made a political contribution to certain state or local government officials during the prior two years. Covered associates include general partners, managing members, executive officers of an investment adviser, employees who solicit a government entity for the investment adviser and any persons who supervise such employees. The rule prohibits contributions to candidates for, and incumbents holding, any elective office that has the authority to directly or indirectly influence the hiring of an investment adviser or to appoint a person with such authority.

Similarly, MSRB Rule G-37 prohibits brokers and dealers from engaging in municipal securities business with a municipal entity if the broker, dealer or a covered associate has made a political contribution to an official with authority over dealer selection. Covered associates include municipal finance representatives, municipal solicitors, municipal finance principals, supervisors of any municipal finance principal and members of a dealer's executive or management committee.

Also, CFTC Rule 23.451 restricts political contributions from swap dealers or their covered associates to officials responsible for hiring swap dealers to service state or local governments and entities. The same categories of associates covered under SEC Rule 206(4)-5 are covered for purposes of the CFTC rule. Take note that PACs controlled by persons or entities covered under any of these pay-to-play rules are also covered.

As governor of Florida, DeSantis sits on the Board of Trustees of the State Board of Administration (SBA). The SBA oversees Florida's Investment Advisory Council, Chief Investment Officer and Director of Bond Finance, as well as other individuals and committees that govern the state's pension systems. Due to his authority to influence the selection of investment advisers, municipal bond dealers and swap dealers, DeSantis is a covered official for purposes of the aforementioned federal pay-to-play rules. Individuals covered by these rules are prohibited from contributing to DeSantis' campaign in excess of the "de minimis" contribution limits under each rule. The SEC and CFTC rules permit a de minimis contribution of up to \$350 per election to covered officials for whom the

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contributor is entitled to vote and \$150 per election to covered officials for whom they are not. The MSRB rule allows for a de minimis contribution of up to \$250 per election only for covered individuals who are entitled to vote for the candidate.

Contributions in excess of the pay-to-play laws' limits result in a two-year ban on the applicable business in the state of Florida. Obtaining a refund of an excessive contribution does not absolve a violation, though federal regulators have the discretion to issue a waiver in the event of an excessive contribution. The waiver process can be long, however, and there is no guarantee a waiver will ultimately be granted.

While limiting contributions to a presidential candidate may seem unusual, these issues frequently arise when state or local officeholders seek federal office. In 2016, covered associates were subject to the same restrictions on contributions to the Trump-Pence ticket before Mike Pence resigned as governor of Indiana. Former Gov. Chris Christie's 2016 presidential campaign faced the same fundraising obstacles. Please note that federal pay-to-play rules also restrict contributions to certain state or local officeholders running for U.S. House or Senate.

Additionally, state and local pay-to-play rules may also restrict political contributions from entities conducting business with specific state and local agencies, as well as those entities' employees. With respect to DeSantis, Florida's pay-to-play laws regulating persons who conduct business with the Florida Housing Finance Corporation (FHFC) and Division of Bond Finance appear to only limit contributions to **candidates** for governor. However, we have been informally advised that the FHFC is currently reviewing the issue.

Investment advisers and others contracting for government services should review political contributions compliance procedures to mitigate the risk of violations of SEC Rule 206(4)-5, MSRB Rule G-37 or any of the numerous state and local pay-to-play laws.

The Akin political law team will continue to monitor developments to keep clients informed on this and other key issues. We are available to develop and implement compliance programs, conduct due diligence and pre-clear contributions for businesses covered by federal, state and local pay-to-play rules.

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