SEC Enforcement Case Summary
Pay-to-Play Enforcement

On August 19, 2024, the SEC charged Obra Capital Management, LLC for violating the SEC's Pay-to-Play Rule 206(4)-5 under the Investment Advisers Act. The SEC found that the firm violated the rule by continuing to provide investment advisory services for compensation from a government entity following a campaign contribution made by an associate to an elected official with influence over selecting investment advisers for the government entity. The firm consented to a $95,000 penalty.

Specifically, the SEC alleged that an individual made a campaign contribution in December 2019 to an incumbent for elected office in the State of Michigan, which office had influence over hiring investment advisers for a state public pension fund in Michigan. In 2017, two years prior to such contribution, and before the individual was an employee of Obra Capital, the Michigan Department of Treasury, on behalf of the Michigan Public Employees' Retirement Fund, committed to invest, and subsequently invested, approximately $100 million in a private fund advised by Obra Capital.

On July 1, 2020, Obra Capital hired the individual into a position in which the individual was a covered associate and shortly thereafter began soliciting investment advisory services from government entities for Obra Capital by attending and participating in meetings and presentations with government entities who were invested or solicited to invest in funds advised by Obra Capital. The SEC order noted that the individual sought and obtained the return of the contribution after being hired by Obra Capital. Moreover, the SEC acknowledged that as of the date of the contribution in 2019, the Michigan Public Employees' Retirement Fund had already invested in the Fund and was not able to increase or withdraw its investment from the Fund.

Nevertheless, the SEC alleged that the individual's contribution triggered the "look back" provision of Rule 206(4)-5, due to the fact that Obra Capital continued to provide investment advisory services for compensation to the fund, and therefore, to the Michigan Public Employees' Retirement Fund, after the individual became a covered associate and before the two-year prohibition on receiving compensation for the provision of investment advisory services expired.

This case is a clear example of the SEC bringing an enforcement action based on a technical violation of the Pay-to-Play Rule without any indication that the contribution in question did or could have unduly influenced the decision of a government entity investor to invest in the fund. Nevertheless, it serves as a reminder regarding the importance of monitoring for political contributions that may trigger a "time out" under the rule. This is particularly important during a critical election season in which Governor Walz, a covered official in the state of Minnesota, is a candidate for a very high profile office.

See Summary – https://www.sec.gov/enforcement-litigation/administrative-proceedings/ia-6662-s