

COMPLIANCE DATE FOR PLACEMENT AGENT PROHIBITION IN PAY-TO-PLAY RULE DELAYED AGAIN

June 12, 2012

To Our Clients and Friends:

On June 8, 2012, the Securities and Exchange Commission (the “SEC”) delayed the compliance date for the provision of Rule 206(4)-5 under the Investment Advisers Act of 1940 (the “Pay-to-Play Rule”) relating to the use of placement agents and solicitors. The compliance date will not occur before April 2013.

The SEC adopted the Pay-to-Play Rule in order to eliminate the perceived role that political contributions play in the selection of investment advisers and private funds by state and local government clients (“Government Clients”).¹ The Pay-to-Play Rule is perhaps best known for its “Two-Year Timeout” provision, which prohibits an investment adviser from receiving compensation from a Government Client for two years if the adviser or certain of its employees make a political contribution to specified elected officials or candidates for office. The Two-Year Timeout provision has been in effect since March 14, 2011.

The Pay-to-Play Rule also contains a “Solicitor Restriction” that limits the ability of an adviser and its Covered Associates to compensate a third party (such as a placement agent) to solicit advisory business or an investment from a Government Client unless the third party is (i) registered with the SEC as an investment adviser, broker-dealer or municipal advisor and (ii) subject to equivalent “pay-to-play” restrictions. (The registration requirement for “municipal advisors” was created by Dodd-Frank Wall Street Reform and Consumer Protection Act; the SEC has not yet adopted final rules implementing this provision.)

The Solicitor Restriction compliance date had been delayed until June 13, 2012 in order to provide FINRA and the Municipal Securities Rulemaking Board (the “MSRB”) sufficient time to adopt “pay-to-play” restrictions for broker-dealers and municipal advisors. Neither of these organizations has yet done so; the MSRB has indicated that it will not do so until the SEC issues its final municipal advisor registration rule.

¹ *Client Update: SEC Adopts New Pay-to-Play Rule (July 12, 2010)*, available at <http://www.debevoise.com/news/updates/publications/detail.aspx?id=8200106a-2f07-49b1-a3e6-99f1b0470e06>.

In light of these delays, the SEC has extended the compliance date for the Solicitor Restriction until nine months after the compliance date of its final municipal advisor registration rule, which the SEC expects to issue in the second half of 2012. Thus, the compliance date for the Solicitor Restriction will not occur until after April 2013.

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Please call us if you have any questions.

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