November 9, 2026

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Political Contributions by Certain Investment Advisers, File No. S7–2026–31, 91 Fed. Reg. 57698 (Sept. 10, 2026)

Dear Ms. Countryman:

Better Markets[1] appreciates the opportunity to comment on the above-referenced proposal.[2] The proposal seeks to rescind a rule that the Commission adopted in 2010 to address so-called "pay-to-play" schemes. That rule does so by prohibiting investment advisers from providing investment advisory services for compensation to a government client for two years after the adviser or an associate of the adviser makes a contribution to certain elected officials or candidates for office.[3] So the rule that the Commission now seeks to rescind prevents investment advisers from using political contributions to ensure their selection as advisers to public pension funds. Because there is no reason why the Commission should want to encourage these schemes, the Commission should withdraw the proposal that would facilitate bribery of public officials.

I. The fact that pay-to-play schemes may violate other provisions of the securities laws provides no basis for rescinding a prophylactic rule preventing those practices.

The Commission says that the pay-to-play rule is unnecessary because "investment advisers engaging in pay-to-play practices violate the U.S. securities laws, including the antifraud provisions of the Advisers Act."[4] Although this is true, it does not mean that the pay-to-play rule is unnecessary. That is because, as the Commission said when it adopted the pay-to-play rule in 2010, pay-to-play practices "are rarely explicit and often hard to prove."[5]

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1 Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

2 91 Fed. Reg. 57,698 (Sept. 10, 2026).

3 *Id.* at 57,698.

4 91 Fed. Reg. at 57,703; *see also id.* at 57,705-57,706 ("As indicated above, we are of the view that the existing Advisers Act framework, including prohibitions on fraud and fiduciary duty requirements . . ., is likely sufficient to avoid many of the issues discussed above regarding the political contribution rule").

5 *Political Contributions by Certain Investment Advisers*, 75 Fed. Reg. 41,018, 41,022 (July 14, 2010).

> [P]articipants do not typically let it be publicly known that contributions or payments are made or accepted for the purpose of influencing the selection of an adviser. As one court noted, "[w]hile the risk of corruption is obvious and substantial, actors in this field are presumably shrewd enough to structure their relations rather indirectly." . . . As a result, the full extent of pay to play practice remains hidden and is often hard to prove.

The Commission also recognized that public pension plans "are particularly vulnerable to pay to play practices" because they are typically managed either by elected officials or trustees appointed by elected officials, and these elected officials or appointed trustees are "also often involved, directly or indirectly, in selecting advisers to manage" the fund's assets.

This means the Commission needs to prevent investment advisers from making contributions that could improperly influence how public pension funds select advisers; it cannot simply try to prove that investment advisers used political contributions to obtain a public pension fund's business in violation of the securities law's antifraud provisions. Pay to play involves the granting of government advisory business in exchange for political contributions, and "it may be difficult to prove that an adviser (or one of its executives or employees) made political contributions for the purpose of obtaining the government business."[6] Because political donations "are made ostensibly to support a candidate," the "burden on a regulator or prosecutor of proving a different intent presents substantial challenges absent unusual evidence."[7]

So existing securities law provisions, the Commission found in 2010, were not "adequate to address this type of conduct."[8] The Commission determined that antifraud and other securities law provisions would not prevent pay-to-play schemes. Because pay to play "is an area in which intent is often very difficult to prove,"[9] the Commission needed other tools to address pay to play. The "stealth in which these practices occur" argued for a prophylactic rule rather than reliance on proving misconduct after the fact.[10] The Commission does not now explain why this prophylactic rule is no longer necessary to prevent pernicious pay-to-play practices.

Indeed, if the preexisting provisions of the federal securities laws were sufficient to prevent pay-to-play schemes, there would have been no need for the Commission to adopt the pay-to-play rule in 2010. Yet the Commission noted in 2010 that "allegations of pay to play activity involving State and municipal pension plans . . . continue to be reported."[11] So the Commission adopted the rule "in response to concrete events."[12] Concerns about pay to play also

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6 *Id.* at 41,022.

7 *Id*. at 41,027.

8 *Id.*

9 *Id.*

10 *Id.* at 41,022-41,023.

11 *Id.* at 41,020.

12 Ivet A. Bell, *The Constitutionality of the SEC Pay to Play Rule: Why 206(4)-5 Survives the Deregulatory Trend in Campaign Finance*, 49 Colum. J.L. & Soc. Probs. 1, 37 (2015).

animated the comment letters submitted in response to the initial rule proposal.[13] The evidence shows that the SEC's passage of the rule "helped cut down on the practice significantly."[14]

As a result, the Commission's belief that "existing laws and regulations" other than the pay-to-play rule "provide a sufficient framework" to address pay-to-play practices endangers investors.[15] The rescission of the rule is likely to usher in a return of the practices that existed prior to the rule's adoption. This will harm investors and the public in the following ways:

- Elected officials who allow political contributions to influence the selection of advisers and use their position to reward contributors 'violate the public trust.'

- Investment advisers that seek to influence government officials' selection of advisers by making or soliciting political contributions to those officials 'compromise their fiduciary duties to the pension plans they advise and defraud prospective clients.'

- Pay-to-play practices harm pension plans that may receive inferior advisory services and pay higher fees, and ultimately the millions of retirees that rely on the plan or the taxpayers of the State and municipal governments that must honor those obligations.

The SEC adopted the pay to play rule because political contributions to officials responsible for selecting investment advisers to manage public pension funds "distort the process by which advisers are selected."[16] The Commission noted that a similar rule had "significantly curbed pay to play practices in the municipal securities market."[17] The "fiduciary relationship advisers have with public pension plans," the Commission said, argued for a similarly "strong prophylactic rule" for investment advisers.[18] The rule was intended to, and does, combat pay to play practices so that advisers "are chosen based on the merits rather than on their contributions to political officials."[19] There is no reason for the Commission to rescind a rule with this specific purpose.

At the least, the Commission must explain why the reasons it felt existing rules and regulations were insufficient to combat pay-to-play practices in 2010 no longer apply. The fact that the industry would rather not comply with the rule, and that for some reason this Commission wants to make it easier and not harder for investment advisers to engage in pay-to-play practices, is no justification for rescinding a rule that prevents corruption and protects investors. It is inexplicable that the Commission would facilitate pay-to-play schemes.

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13 *Id.*

14 https://thehill.com/opinion/finance/471561-securities-rule-curbs-pay-to-play-schemes-for-public-pensions/.

15 91 Fed. Reg. at 57,703.

16 75 Fed. Reg. at 41,019.

17 *Id.* at 41,058.

18 *Id.*

19 *Id.* at 41,053.

II. The fact that the pay-to-play rule has consequences is no reason to rescind it.

The Commission also suggests that it needs to rescind the rule due to the "unintended consequences" of investment advisers being unable to provide advisory services to public pension funds for compensation after making political contributions to the government officials responsible for selecting investment advisers to help manage those funds.[20] These unintended consequences apparently include the "monetary losses associated with the two-year ban on receiving compensation for providing investment advisory services to a government client" after making a political contribution to an official who selects the advisor for the fund.[21] It is unclear how this could be an unintended consequence of the rule, since this was precisely the intent of the rule. The Commission now says that this seems "excessive."[22] But, in 2010, the Commission noted that the "incentives to engage in pay to play may be significant, precisely because of the long-term nature of many advisory relationships from which the adviser could benefit for several years."[23] And, as a result, the Commission said that the "consequences of engaging in pay to play need to be commensurate with these incentives for the prophylactic rule to have a meaningful deterrent effect." The fact that the rule may be a powerful deterrent to engaging in pay-to-play schemes is hardly an unintended consequence or a reason to rescind the rule now.

The Commission also says that, because the ban applies if the adviser hires someone who made a contribution to a covered elected official or candidate for office in the last two years, the ban may prevent advisers from hiring or promoting qualified individuals.[24] But the Commission adopted this part of the rule "to prevent advisers from circumventing the rule by influencing the selection process by hiring persons who have made political contributions." [25] The Commission also needed to "protect against individuals marketing to prospective investment adviser employers their connections to, or influence over, government entities those advisers might be seeking as clients."[26] These are valid concerns that this Commission ignores. The Commission should not prioritize the hiring decisions of investment advisers over ensuring that investment advisers do not distort the process through which public pension funds select their advisers.

The Commission also ignores the fact that the rule does not prevent investment advisers from hiring anyone. It simply means that if an investment adviser hires someone who made a contribution to a covered elected official within the last two years, the investment adviser may not be able to provide advisory services to a specific government client for compensation for a two-year period. This is a small price to pay to prevent government corruption.

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20 91 Fed. Reg. at 57,699.

21 *Id.* at 57,701.

22 *Id.*

23 75 Fed. Reg. at 41,028.

24 91 Fed. Reg. at 57,701.

25 75 Fed. Reg. at 41,033.

26 *Id.* at 41,034.

The Commission says further that the ban may prevent a public pension fund from hiring a qualified adviser if that adviser made contributions to an official that triggers the ban with respect to that fund, or may result in a public pension fund losing the services of an existing adviser if that adviser hires someone whose contributions trigger the ban.[27] But in adopting the rule, the Commission said that the consequences of the ban were "necessary to accomplish [the] goal of addressing pay to play and are justified by the benefits" of the rule,[28] which include eliminating "pay to play relationships that interfere with the legitimate process by which advisers are chosen based on the merits rather than on their contributions to political officials.[29] The Commission also said that it did not believe increasing the pool of advisers available to public pension funds by exposing them to advisers who sought to obtain their business "by means of engaging in practices such as pay to pay" was "an interest we need to protect."[30] In the proposal, the Commission does not explain why the interest in having public pension funds be able to choose advisers whose political contributions may distort the selection process is an interest that justifies rescinding the rule. Under the rule, public pension funds are free to select all qualified advisers who have not made, or hired an individual who has made, a political contribution that could have the effect of causing the fund to hire the adviser for reasons other than the merits.

The Commission also does not explain why it is more concerned with allowing public pension funds to select advisers who may have made political contributions in an effort to distort the selection process than it is with public pension funds choosing less qualified advisers based on political contributions. In adopting the rule, the Commission said that one of the main risks of pay-to-play practices was that public pension funds could end up with less qualified advisors.

> Investment advisers that seek to influence the award of advisory contracts by public pension plans, by making political contributions to, or soliciting them for, those officials who are in a position to influence the awards, compromise their fiduciary obligations to the public pension plans they advise and defraud prospective clients. In making such contributions, the adviser hopes to benefit from officials who 'award the contracts on the basis of benefit to their campaign chests rather than to the governmental entity' or by retaining a contract that might otherwise not be renewed. If pay to play is a factor in the selection or retention process, the public pension plan can be harmed in several ways. The most qualified adviser may not be selected or retained, potentially leading to inferior management or performance.[31]

This would seem to be a greater concern than limiting the pool of advisers that a public pension fund may select by preventing advisers who have made political contributions to the selecting officials from receiving compensation for providing advisory services to the government entity.

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27 91 Fed. Reg. at 57,702.

28 75 Fed. Reg. at 41,058.

29 *Id.* at 41,053.

30 *Id.* at 41,059.

31 *Id.* at 41,022.

Another reason to rescind the rule, according to the Commission, is that it is "burdensome" and "complex."[32] The Commission does not really explain what is so burdensome or complex about complying with a rule that simply prevents an advisor from receiving compensation from a public pension fund if it has made a political contribution to an elected official with the power to select or not select the adviser to receive a lucrative contract to advise the fund. Regardless, the fact that a rule may be burdensome or complex hardly seems like a reason to rescind the rule whose purpose and effect is to prevent government corruption.

The Commission also objects to the fact that a contribution of as little as $150 may trigger the ban.[33] When the Commission adopted the rule, it said it would consider increasing the threshold for triggering the ban in the future if inflation rendered it necessary.[34] Yet this Commission does not explain why it would eliminate the ban entirely rather than simply increase the threshold for triggering the ban, if there was evidence such an increase was necessary.[35]

Finally, the Commission says that an unintended consequence is that the rule has led some advisers to institute policies that prevent their employees from making political contributions to State or local officials.[36] Although investment advisers are certainly free to choose how to comply with the rule, and may determine that their preferred method of complying with the rule is to institute such policies, that is not an unintended consequence that justifies rescinding the rule. In adopting the rule, the Commission said specifically that there were "practical, cost-effective means to comply with the rule without an adviser imposing a blanket ban on political contributions by its covered associates."[37] The Commission's real issue appears to be that, in its view, blanket bans "may unintentionally result in a greater restriction on political speech by advisers than is necessary to serve the objectives of the rule."[38] The problem for the Commission is that the rule does not require advisers to ban contributions by employees, and courts have held that pay-to-play restrictions do not violate the First Amendment.

III. The pay-to-play rule does not violate the First Amendment.

The Commission invokes concerns about the rule's impact on the First Amendment rights of investment advisers and their employees throughout the proposal. It says that rescinding the rule "will allow advisers and their personnel greater freedom to make political contributions and

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32 91 Fed. Reg. at 57,701.

33 *Id*.

34 75 Fed. Reg. at 41,035.

35 The Commission mentions that an alternative approach was to raise the threshold for triggering the ban, 91 Fed. Reg. at 57,718. but it does not explain why if the objection to the ban is that it may be triggered by a small contribution, the solution is to raise the threshold rather than rescinding the rule entirely.

36 91 Fed. Reg. at 57,699.

37 71 Fed. Reg. at 41,052.

38 91 Fed. Reg. at 57,702.

to exercise their constitutional right to political speech."[39] Rescinding the rule, it says, will reopen "avenues for political speech and fulfillment of First Amendment rights."[40] In his statement accompanying the proposal, Chair Atkins went even further, saying the Commission wants to rescind the rule because it "has effectively resulted in the suppression of political speech."[41] The problem for the Commission and Chair Atkins is that courts have found pay-to-play restrictions constitutional and do not impermissibly infringe on First Amendment rights.

In a challenge to a substantively similar FINRA rule that the SEC approved, the D.C. Circuit held that the Commission had acted within its authority to combat distortion of financial markets in restricting campaign contributions that posed a risk of corruption.[42] Because the rule was closely drawn to serve a sufficiently important government interest—preventing corruption and its appearance—it did not violate the First Amendment.[43] So the rule was justified by the need to prevent corruption in the process of selecting investment advisers for public pension funds by government officials with the power to award lucrative advisory contracts.

Chair Atkins is therefore wrong to say that because the rule suppresses political speech, the Commission should rescind it. The rule does not suppress political speech in violation of the First Amendment. Instead, it suppresses corruption—a goal the Commission should support.

Indeed, the Commission's preoccupation with the rule's perceived limitations on the political speech of investment advisers and their employees is strange. The purpose of the rule is to limit campaign contributions that function not as speech but as more of a bribe.

> The appearance of pay to play in government contracting prompts contributions that are not a genuine exercise of the contributors' First Amendment rights. Where a contractor believes a contribution is indispensable to acquiring a contract, . . . the contribution is not prompted by a candidate's political or economic views. Rather, the contribution is reduced to an access fee, comparable to buying a business opportunity. The contribution is arguably not properly characterized as "speech" protected under the First Amendment, since paying a fee can hardly be equivalent to exercising a democratic right to expression and association. The fee payment is essentially part of a quid pro quo . . . .[44]

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39 *Id*. at 57,705.

40 *Id.*

41 https://www.sec.gov/newsroom/speeches-statements/atkins-statement-proposal-rescind-pay-play-rule-090326.

42 Ki P. Hong and Kenneth A. Gross, *D.C. Circuit Upholds Federal Pay-to-Play Rule*, Skadden (June 24, 2019), https://www.skadden.com/-/media/files/publications/2019/06/dc_circuit_upholds_federal_pay_to_play_rule.pdf.

43 Zachary G. Parks, *In Major Blow to Its Opponents, SEC Pay-to-Play Rule Survives D.C. Circuit Challenge*, Covington (June 19, 2019), https://www.insidepoliticallaw.com/2019/06/19/in-major-blow-to-its-opponents-sec-pay-to-play-rule-survives-d-c-circuit-challenge/.

44 Bell, 49 Colum. J.L. & Soc. Probs. at 38.

Because the "threat of quid pro quo is so strong in the investment adviser government contracting context," courts have not hesitated to find that, under the First Amendment, the government has "valid interests in preventing quid pro quo corruption and the appearance of quid pro quo corruption" that justify pay-to-play restrictions and do not improperly limit speech.[45]

As a result, there is no reason for the Commission to solicit comment on whether "the political contribution rule raise[s] significant questions under the First Amendment."[46] A federal appellate court has already said the rule passes First Amendment scrutiny. The Commission should not imply to the public that there is a First Amendment issue with the rule when there is not. Nor should it arrogate for itself the role of balancing the right to engage in political speech with the need to prevent government corruption for purposes of the First Amendment. It is bad enough that the Commission does not bother to mention in the proposal that the D.C. Circuit has upheld pay-to-play restrictions under the First Amendment; the Commission should respect a federal appellate court's view that the government interest in preventing corruption is sufficiently important that it justifies pay-to-play restrictions that prevent quid pro quo arrangements.

Conclusion

We hope these comments are helpful as the Commission considers this matter.

Sincerely,

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45 *Id.*

46 91 Fed. Reg. at 57,707.