

SEC Issues “Pay-to-Play” Penalty to Investment Adviser

June 26, 2014

Private equity firm TL Ventures Inc. agreed last week to settle Securities and Exchange Commission (“SEC”) [charges](#) that it violated “pay-to-play” rules, in what the agency said was the first pay-to-play case against an investment adviser. TL Ventures, as part of the settlement, will disgorge over \$250,000 in earned fees and pay a civil penalty of \$35,000.

The SEC finalized its pay-to-play rules for investment advisers in 2010. Under those rules, if an investment adviser or its “covered associate” makes a contribution to any “official” of a government entity, the adviser may not receive compensation from that government entity for two years thereafter. A candidate or officeholder is an “official” if, at the time of the contribution, he or she is an incumbent, candidate, or successful candidate for an elective office that: (1) is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser; or (2) has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser.

[According to the SEC order](#), a TL Ventures associate in 2011 gave \$2,500 to a candidate for mayor of Philadelphia (an “official” for Philadelphia’s pension plan) and \$2,000 to Pennsylvania’s governor (an “official” for Pennsylvania’s state retirement system) to support their respective political campaigns. TL Ventures was said to have violated SEC rules by continuing to receive compensation from Philadelphia’s pension plan and from Pennsylvania’s state retirement system within two years after the associate’s campaign contributions. The SEC also found that TL Ventures and an affiliated adviser, Penn Mezzanine Partners Management, improperly acted as unregistered investment advisers.

This matter demonstrates the strict-liability nature of the SEC’s pay-to-play rules for investment advisers, in instances when a contribution is made directly to an “official.” There is little reason to believe the associate’s campaign contributions made in 2011 had any connection to TL Ventures winning advisory business. TL Ventures, according to the SEC, raised its last venture capital fund in 2008, a full three years before the contributions. The firm’s investment vehicles involving Philadelphia and Pennsylvania pensions were in “wind down mode.” And TL Ventures’ relationship with Philadelphia and Pennsylvania pre-dated the contributions by more than 10 years. The SEC pursued TL Ventures nonetheless.

This action against TL Ventures may represent the beginning of an increased enforcement effort by the SEC. The Director of the SEC’s Enforcement Division stated last week in the agency’s press release: “We will use all available enforcement tools to ensure that public pension funds are protected from any potential corrupting influences.”

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A T T O R N E Y S

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