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## Post-Election Issues (Inaugurations, Transitions and Special Elections)

Now that the 2014 mid-term elections are over, we must contend with special legal issues that arise from contributions to federal, state, or local inaugural or transition committees, paying for inaugural events and transition-related activities, and recounts and special elections.

### Inaugural Committee Contributions and Inaugural Events

Contributions to the inaugural committee of a covered state or local official trigger the automatic ban on business under federal pay-to-play Rules G-37 and 206(4)-5 and CFTC Rule 23.451. See below for more detail on these federal pay-to-play rules.

Many state campaign finance laws do not expressly address the permissibility and implications of contributing to an inaugural committee (e.g., Colorado, Florida, and Wisconsin). In such states, permissibility may turn on the nature of the organization that is being used as the inaugural committee (the candidate's campaign or PAC may be a problem, whereas a 501(c)(3) charity may not be), and in some cases obtaining informal advice from the elections agency may be advisable. On the other hand, states like Kansas and Ohio explicitly address the permissibility of contributing to inaugural committees in their campaign finance laws (e.g., in Kansas, contributions to inaugural committees are limited to \$2,000 from any person; in Ohio, contributions to transition funds (which may be used to pay for inaugural celebrations) for the joint offices of governor and lieutenant governor are limited to \$10,000 per donor, and for other statewide offices are limited to \$2,500 per donor). Given that the rules vary regarding the permissibility of giving to inaugural committees under state and local campaign finance and pay-to-play laws, preclearance of such contributions is critical.

Inaugural Events: Numerous inauguration-related events are expected prior to inaugurations of elected officials. These may include inaugural balls as well as breakfasts and luncheons celebrating inaugurations or related to viewing an inauguration and an inaugural parade. Tickets or admission to other inaugural events are generally considered items of value and are subject to applicable gift law to the extent they are provided to public officials. Purchase of such tickets may also qualify as a contribution to an inaugural committee subject to applicable laws described above.

Must Comply With Gift Rules: To the extent such events involve government officials or employees, a company must ensure compliance with applicable gift and entertainment laws. Given that federal, state and local gift laws vary, if a federal, state, or local officer or employee is invited, preclearance is critical.

Cost of Event May Be Reportable on LD-203 Lobby Report: Payments for inaugural events may be reportable on Form LD-203 under certain circumstances where a covered federal official is involved in the event or with the organization holding the event.

Member Swearing-In and Inauguration Day Receptions: House Ethics Committee guidance expressly states that lobbying firms and other private entities are prohibited from paying the costs of a Congress Member's swearing-in or Inauguration Day reception. Private entities should

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also avoid paying for such events held by Senators. State and local laws vary regarding the permissibility of such payments.

### **Transition Committee Contributions and Transition-Related Activities**

Contributions: Transition expenses for a covered state or local official trigger the automatic ban on business under federal pay-to-play Rules G-37 and 206(4)-5 and CFTC Rule 23.451. See below for more detail on these federal pay-to-play rules. They may also be subject to state or local pay-to-play, ethics and election laws. Given that such state and local laws vary, preclearance of such contributions is critical.

Lobbying: If a corporate executive's transition-related activities include communications with covered officials and the communications are for the purpose of influencing covered decisions under the applicable lobby law, then there may be registration and/or reporting implications under state or local lobby law.

Corporate Executives Serving on Transition Teams: To the extent a corporate executive serves on a state or local transition team (such as for a governor-elect), he or she may, depending on the jurisdiction, be treated as a public official and subject to that state's or locality's conflict of interest law. Moreover, use of corporate resources, volunteering during working hours, or the executive personally paying for expenses related to his or her volunteer activity may result in an in-kind contribution to the committee.

### **Contributions to Federal Recount Committees**

Corporate contributions to federal recount committees are prohibited. For PACs and individuals, a separate per-election limit applies (*i.e.*, \$2,600 for individuals, \$5,000 for federal PACs) to an individual candidate's recount committee. Separate limits apply to a national party committee's recount committee. The contributions are reportable by the recount committee. Contributions to state or local recount committees are subject to state or local law and possibly federal or state pay-to-play rules.

### **Contributions for Federal Special and Runoff Elections**

Corporate contributions for federal special and runoff elections, such as the run-off that will occur for a U.S. Senate seat in Louisiana, are prohibited. Such elections are treated as separate elections for limit purposes and a separate per-election limit applies (\$2,600 for individuals, \$5,000 for federal PACs). The contributions are reportable by the recipient committee. Contributions to state or local special and runoff election committees are subject to state or local law and, of course, pay-to-play rules.

### **Pay-to-Play Rules and Post-Election Contributions**

There are currently three federal pay-to-play rules (MSRB Rule G-37 for broker-dealers that underwrite municipal securities, SEC Rule 206(4)-5 for investment advisers, and CFTC 23.451 for swap dealers). All three rules cover making or soliciting state or local transition expenses or inaugural donations. Moreover, depending on the jurisdiction, certain state or local pay-to-play rules may also cover such contributions.

Please contact us with any questions.