Airway Segment		Changeover Points	
From	To	Distance	From
§ 95.8005 Jet Routes Changeover Points J537 Is Amended To Delete Changeover Point			
Mullan Pass, ID VOR/DME	Calgary, CA VORTAC	95	Mullan Pass

[FR Doc. 2010–32233 Filed 12–29–10; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–3128; File No. S7–23–07]

RIN 3235–AJ96

Principal Trades with Certain Advisory Clients

AGENCY: Securities and Exchange Commission.

ACTION: Temporary final rule.

SUMMARY: The Securities and Exchange Commission is amending rule 206(3)–3T under the Investment Advisers Act of 1940, a temporary rule that establishes an alternative means for investment advisers who are registered with the Commission as broker-dealers to meet the requirements of section 206(3) of the Investment Advisers Act when they act in a principal capacity in transactions with certain of their advisory clients. The amendment extends the date on which rule 206(3)–3T will sunset from December 31, 2010 to December 31, 2012.

DATES: The amendments in this document are effective December 30, 2010, and the expiration date for 17 CFR 275.206(3)–3T is extended to December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Brian M. Johnson, Attorney-Adviser, Devin F. Sullivan, Senior Counsel, Matthew N. Goldin, Branch Chief, or Sarah A. Bessin, Assistant Director, at (202) 551–6787 or *IArules@sec.gov,* Office of Investment Adviser Regulation, Division of Investment Management, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5041.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting an amendment to temporary rule 206(3)–3T [17 CFR 275.206(3)–3T] under the Investment Advisers Act of 1940 [15 U.S.C. 80b] that extends the date on which the rule will sunset from December 31, 2010 to December 31, 2012.

I. Background

On September 24, 2007, we adopted, on an interim final basis, rule 206(3)–3T, a temporary rule under the Investment Advisers Act of 1940 (the "Advisers Act") that provides an alternative means for investment advisers who are also registered as broker-dealers to meet the requirements of section 206(3) of the Advisers Act when they act in a principal capacity in transactions with certain of their advisory clients.[1] In December 2009, we extended the rule's sunset period by one year to December 31, 2010.[2]

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").[3] Under section 913 of the Dodd-Frank Act, we are required to conduct a study, and provide a report to Congress, concerning the obligations of broker-dealers and investment advisers, including the standards of care applicable to those intermediaries and their associated persons.[4] We intend to deliver the report concerning this study, as required by the Dodd-Frank Act, no later than January 21, 2011.[5]

Section 913 of the Dodd-Frank Act also authorizes us to promulgate rules concerning, among other things, the legal or regulatory standards of care for broker-dealers, investment advisers, and persons associated with these intermediaries for providing personalized investment advice about securities to retail customers. In enacting any rules pursuant to this authority, we are required to consider the findings, conclusions, and recommendations of the mandated study. The study and our consideration of the need for further rulemaking pursuant to this authority are part of our broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers in connection with the Dodd-Frank Act.[6]

In light of these legislative developments, we proposed on December 1, 2010 to extend the date on which rule 206(3)–3T will sunset for a limited amount of time, from December 31, 2010 to December 31, 2012.[7] We received 10 comment letters addressing our proposal prior to the expiration of the comment period.[8] Six of these commenters generally supported

[1] Rule 206(3)–3T [17 CFR 275.206(3)–3T]. All references to rule 206(3)–3T and the various sections thereof in this release are to 17 CFR 275.206(3)–3T and its corresponding sections. *See also Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 2653 (Sep. 24, 2007) [72 FR 55022 (Sep. 28, 2007)] ("2007 Principal Trade Rule Release").

[2] *See Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 2965 (Dec. 23, 2009) [74 FR 69009 (Dec. 30, 2009)] ("2009 Extension Release") and *Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 2965A (Dec. 31, 2009) [75 FR 742 (Jan. 6, 2010)] (making a technical correction to the 2009 Extension Release).

[3] Pub. L. 111–203, 124 Stat. 1376 (2010).

[4] See generally section 913 of the Dodd-Frank Act and *Study Regarding Obligations of Brokers, Dealers, and Investment Advisers,* Investment Advisers Act Release No. 3058 (July 27, 2010) [75 FR 44996 (July 30, 2010)].

[5] See section 913(d)(1) of the Dodd-Frank Act (requiring us to submit the study to Congress no later than six months after the date of enactment of the Dodd-Frank Act).

[6] The study mandated by section 913 of the Dodd-Frank Act is one of several studies and other actions relevant to the regulation of broker-dealers and investment advisers mandated by that Act. *See, e.g.,* section 914 of the Dodd-Frank Act (requiring the Commission to review and analyze the need for enhanced examination and enforcement resources for investment advisers); section 919 of the Dodd-Frank Act (authorizing the Commission to issue rules designating documents or information that shall be provided by a broker or dealer to a retail investor before the purchase of an investment product or service by the retail investor).

[7] *See Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 3118 (Dec. 1, 2010), [75 FR 75650 (Dec. 6, 2010)] ("Proposing Release").

[8] *See* Comment Letter of the Consumer Federation of America (Dec. 20, 2010) ("CFA Letter"); Comment Letter of Bank of America Corporation (Dec. 20, 2010) ("Bank of America Letter"); Comment Letter of Fiduciary360 (Dec. 20, 2010) ("Fiduciary360 Letter"); Comment Letter of Tamar Frankel, Professor of Law, Boston University School of Law (Dec. 14, 2010) ("Frankel Letter"); Comment Letter of the National Association of Personal Financial Advisors (Dec. 20, 2010) ("NAPFA Letter"); Comment Letter of Pickard and Djinis LLP (Dec. 10, 2010) ("Pickard and Djinis Letter"); Comment Letter of Public Investors Arbitration Bar Association (Dec. 20, 2010) ("PIABA Letter"); Comment Letter of Ron A. Rhoades, JD, CFP (Dec. 20, 2010) ("Rhoades Letter"); Comment Letter of the Securities Industry and Financial Markets Association (Dec. 20, 2010) ("SIFMA Letter"); Comment Letter of Winslow, Evans & Crocker (Dec. 8, 2009) ("Winslow, Evans & Crocker Letter"). The comment letters are available at *http://www.sec.gov/comments/s7-23-07/s72307.shtml.*

extending rule 206(3)–3T,[9] and two commenters opposed an extension.[10] Two other commenters did not address the extension directly.[11] The comments we received on our proposal are discussed below. After considering each of the comments, we are extending the rule's sunset period by two years to December 31, 2012, as proposed.

II. Discussion

We are amending rule 206(3)–3T only to extend the rule's expiration date by two years. Absent further action by the Commission, the rule will expire on December 31, 2012. We are adopting this extension because, as we discussed in the Proposing Release, we believe that firms' compliance with the substantive provisions of rule 206(3)–3T provides sufficient protection to advisory clients to warrant the rule's continued operation for the additional two years while we conduct the study mandated by section 913 of the Dodd-Frank Act and consider more broadly the regulatory requirements applicable to broker-dealers and investment advisers.[12] As part of our broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers, we intend to carefully consider principal trading by advisers, including whether rule 206(3)–3T should be substantively modified, supplanted, or permitted to expire.

If we permit rule 206(3)–3T to expire on December 31, 2010, after that date investment advisers also registered as broker-dealers who currently rely on rule 206(3)–3T would be required to comply with section 206(3)'s transaction-by-transaction written disclosure and consent requirements without the benefit of the alternative means of complying with these requirements currently provided by rule 206(3)–3T. This could limit the access of non-discretionary advisory clients of advisory firms that are also registered as broker-dealers to certain securities. In addition, certain of these firms have informed us that, if rule 206(3)–3T were to expire on December 31, 2010, it would be disruptive to their clients, and the firms would be required to make substantial changes to their disclosure documents, client agreements, procedures, and systems.

We expect to revisit the relief provided in rule 206(3)–3T soon after the completion of our study in January 2011. Although we anticipate that will occur prior to the amended expiration date for the temporary rule, we want to ensure that we have sufficient time to engage in any potential rulemaking or other process that may emerge from either the study or any broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers prior to the rule's expiration.

As discussed above, six commenters generally supported our proposal to amend rule 206(3)–3T to extend it,[13] and two commenters opposed it.[14] Commenters who supported the extension cited the disruption to investors that would occur if the rule expired at this time, asserting that investors would be forced to change their accounts and would lose access to a wider range of securities.[15] Commenters who supported the extension of the rule also asserted that allowing the rule to sunset would prove disruptive to advisory firms that are registered as broker dealers: they explained that expiration of the rule would act as an operational barrier to their ability to engage in principal trades with their customers.[16] These and other commenters further explained that, if the rule were allowed to expire, firms relying on the rule would be required to make considerable changes to their disclosure documents, client agreements, procedures, and technical systems at substantial expense.[17] These commenters agreed that extending the rule while the Commission conducted its review of the obligations of broker-dealers and investment advisers, as mandated by the Dodd-Frank Act, would be the least disruptive option.

Conversely, two commenters questioned whether the rule benefits clients and asserted that the Commission should not further extend the rule in light of what they view as risks posed by the compliance issues that the staff identified.[18] One commenter, while opposing the extension, encouraged the Commission to take additional measures to protect clients from the conflicts of interest raised by principal trading if we chose to extend the rule.[19] Another commenter challenged the proposition that firms and investors would face disruptions if the rule sunsets, asserting that few firms and investors rely on the rule.[20]

On balance, and after careful consideration of these comments, we conclude that the benefits from extending this rule outweigh the potential costs of an extension. First, we believe that permitting the rule to sunset just before we commence a comprehensive review of the obligations of broker-dealers and investment advisers could produce substantial disruption for investors with accounts serviced by firms relying on the rule. These investors might lose access to securities available through principal transactions and be forced to convert their accounts in the interim, only to face the possibility of future change — and the costs and uncertainty such additional change may entail.[21] This disruption will be avoided if we maintain the *status quo* while we engage in our broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers.[22] We continue to believe that the rule benefits investors because it provides investors with access to a wider range of securities and protects investors who hold billions of dollars in advisory accounts.

In reaching this conclusion, we have paid particular attention to our staff's observations about firms' compliance with the rule. We emphasize that we share the commenters' concerns about the compliance issues that the staff identified, the critical aspects of which we summarized in the Proposing Release.[23] Having carefully considered

[9] *See* Bank of America Letter; CFA Letter; PIABA Letter; Pickard and Djinis Letter; SIFMA Letter; Winslow, Evans & Crocker Letter. We note that PIABA supported a one-year extension.

[10] *See* Fiduciary360 Letter; NAPFA Letter.

[11] *See* Frankel Letter; Rhoades Letter.

[12] *See* Proposing Release, Section II.

[13] *See* Bank of America Letter; CFA Letter; PIABA Letter; Pickard and Djinis Letter; SIFMA Letter; Winslow, Evans & Crocker Letter.

[14] *See* Fiduciary360 Letter; NAPFA Letter.

[15] *See* Bank of America Letter; CFA Letter; SIFMA Letter.

[16] *See* Bank of America Letter; SIFMA Letter.

[17] *See* Bank of America Letter; SIFMA Letter; Winslow, Evans & Crocker Letter.

[18] *See* Fiduciary360 Letter; NAPFA Letter. We also note that one commenter who supported the extension, CFA, also expressed concern about these compliance issues. *See* CFA Letter.

[19] *See* NAPFA Letter. We also note that CFA, while supporting the extension, stated that the Commission should address "weaknesses identified in the current approach and [back] that rule with tough enforcement focused on the larger issue of the appropriateness of recommendations." CFA Letter.

[20] *See* Fiduciary360 Letter.

[21] As discussed in the 2007 Principal Trading Release and again in the 2009 Extension Release, firms have explained that they may refrain from engaging in principal trading with their advisory clients in the absence of the rule given the practical difficulties of complying with Section 206(3), and thus may not offer principal trading through advisory accounts. *See* 2007 Principal Trading Release, Section I.B; 2009 Release, Section I.

[22] *See* CFA Letter ("Although CFA has been critical of the temporary rule and has in the past urged the Commission to act expeditiously to replace it, we believe that, at this point, revision of the rule is best achieved in conjunction with the Commission's broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers.").

[23] Although some of the commenters suggested that the discussion of the staff's observations in the Proposing Release was not robust enough, we

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the staff's observations, we conclude that the requirements of rule 206(3)–3T, coupled with regulatory oversight informed by those observations, will adequately protect advisory clients during the extension. Throughout the period of the extension, the staff will examine firms with higher risk characteristics, including firms that engage in principal transactions in reliance on rule 206(3)–3T,[24] and continue to take appropriate action to help ensure that firms are complying with the rule's conditions, including referring firms to the Division of Enforcement for possible enforcement action if warranted. One commenter asserted that the burdens placed on firms by rule 206(3)–3T are too stringent.[25] As this commenter noted, the staff did not identify instances of "dumping," a harm that section 206(3) is designed to redress, and we believe that the conditions and limitations in the rule serve as appropriate safeguards during the pendency of the extension.

We note that one commenter asserted that even if principal trading relief may have been appropriate when we originally adopted rule 206(3)–3T in 2007, it no longer is.[26] In particular, the commenter contended that the valuation of certain securities—such as municipal bonds—has become much more difficult, such that "a much greater amount of due diligence is required of the investment adviser who engages in advising clients on purchases of individual municipal bonds." But extension of the rule does not have any bearing on an adviser's due diligence obligations. The standard of care to which advisers are subject and the duties they owe clients are in no way diminished by their reliance on rule 206(3)–3T.[27]

Second, we further conclude that the extension of the rule's sunset date is warranted to avoid the disruption to firms relying on the rule that will occur if the rule expires. The letters submitted by three commenters demonstrated that some firms in fact do rely on the rule, and that those firms will be faced with uncertainty and disruption of operations should the rule expire just as the Commission is about to begin a comprehensive review process that may ultimately produce a different regulatory standard.[28] One commenter that represents securities firms described that large and small firms have relied upon the rule, and provided data showing that a substantial number of accounts and volume of trades would be affected by a change in the rule.[29]

We received four comment letters specifically addressing the duration of our proposed extension of rule 206(3)–3T.[30] Three expressed support for extending the rule for an additional two years, but argued that the rule should be made permanent.[31] One of these commenters cited uncertainty and its attendant costs as a reason to make the rule permanent.[32] Other commenters supported a shorter extension of the rule. For example, one commenter supported a one-year extension.[33] This commenter stated that a one-year extension of the rule strikes the proper balance between the concerns of investor protection and the burden of potential revised regulations applying to investment advisers and broker-dealers.[34] Two commenters generally opposed the extension and supported allowing the rule to expire: One commenter stated alternatively that the Commission should adopt a one-year extension with the imposition of other measures to ensure firms' compliance with the rule and with their fiduciary obligations generally, and the other indicated that it would support an extension of six months if the Commission provided "further explanation and supporting evidence."[35]

As we noted in the Proposing Release, we believe that the rule should be extended only for a limited amount of time.[36] That period of time, however, must be long enough to permit the Commission to engage in any rulemaking prompted by our study under section 913 of the Dodd-Frank Act and our broader review of regulatory requirements applicable to investment advisers and broker-dealers. Having considered the comments regarding the duration of the extension, and taking into account the importance of the issues that this process will address, the Commission believes on balance that a two-year extension is necessary to give the Commission adequate time to complete any such rulemaking. Because that process cannot begin until the completion of the study required by the Dodd-Frank Act, adopting a six-month or one-year extension, as certain commenters recommended, most likely would not provide sufficient time for such rulemaking, and thus could result in greater uncertainty (along with its attendant costs) for investors and firms that rely on the rule. We believe that certainty in this area is important, and we will complete any relevant rulemaking as soon as is feasible consistent with administrative procedure.

A number of commenters also raised issues that were beyond the scope of our proposal to extend rule 206(3)–3T, including the broader legal and policy questions related to the meaning, scope, and application of a fiduciary standard and the appropriate considerations related to principal trading.[37] These comments pertain to our broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers, and we will consider these comments in conducting this broader review.

III. Certain Administrative Law Matters

The amendment to rule 206(3)–3T is effective on December 30, 2010. The Administrative Procedure Act generally requires that an agency publish a final rule in the **Federal Register** not less than 30 days before its effective date.[38] However, this requirement does not apply if the rule is a substantive rule which grants or recognizes an exemption or relieves a restriction, or if the rule is interpretive.[39] Rule 206(3)–3T is a rule that recognizes an

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believe the summary contained in the release outlined the critical aspects of the issues observed by the staff with respect to compliance with the rule. *See* NAPFA Letter; Fiduciary360 Letter; CFA Letter.

[24] One commenter suggested that the Commission's Office of Compliance Inspections and Examinations should conduct additional examinations to determine if firms are complying with rule 206(3)–3T, among other requirements. *See* NAPFA Letter.

[25] *See* Pickard and Djinis Letter.

[26] *See* NAPFA Letter.

[27] *See* rule 206(3)–3T(b) ("This section shall not be construed as relieving in any way an investment adviser from acting in the best interests of an advisory client, including fulfilling the duty with respect to the best price and execution for the particular transaction for the advisory client; nor shall it relieve such person or persons from any obligation that may be imposed by section 206(1) or (2) of the Advisers Act or by other applicable provisions of the federal securities laws.").

[28] *See* Bank of America Letter; SIFMA Letter; Winslow, Evans & Crocker Letter.

[29] *See* SIFMA Letter.

[30] *See* Bank of America Letter; Fiduciary360 Letter; Winslow, Evans & Crocker Letter; PIABA Letter.

[31] *See* Bank of America Letter; Winslow, Evans & Crocker Letter; Pickard and Djinis Letter.

[32] *See* Winslow, Evans & Crocker Letter.

[33] *See* PIABA Letter.

[34] *See id.*

[35] *See* NAPFA Letter; Fiduciary360 Letter.

[36] *See* Proposing Release, Section II. The statements in the Proposing Release should not be read as limiting the scope of the alternatives we will consider in conducting the study mandated by section 913 of the Dodd-Frank Act and considering more broadly the regulatory requirements applicable to broker-dealers and investment advisers.

[37] *See* CFA Letter; Fiduciary360 Letter; Frankel Letter; NAPFA Letter; Pickard and Djinis Letter; Rhoades Letter; SIFMA Letter.

[38] 5 U.S.C. 553(d).

[39] *Id.*

exemption and relieves a restriction and in part has interpretive aspects.

IV. Paperwork Reduction Act

Rule 206(3)–3T contains "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.[40] The Office of Management and Budget ("OMB") approved the burden estimates presented in the 2007 Principal Trade Rule Release,[41] first on an emergency basis and subsequently on a regular basis. OMB approved the collection of information with an expiration date of March 31, 2011. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The title for the collection of information is: "Temporary rule for principal trades with certain advisory clients, rule 206(3)–3T" and the OMB control number for the collection of information is 3235–0630. The 2007 Principal Trade Rule Release and the Proposing Release solicited comments on our PRA estimates, but we did not receive comment on them.[42]

The amendment to the rule we are adopting today—to extend rule 206(3)–3T for two years—does not affect the burden estimates contained in the 2007 Principal Trade Rule Release. Therefore, as was the case when we extended rule 206(3)–3T in December 2009, we are not revising our Paperwork Reduction Act burden and cost estimates submitted to OMB as a result of this amendment. We will submit burden and cost estimates as part of our routine renewal of OMB's approval of the rule's collection of information.

V. Cost-Benefit Analysis

Other than extending rule 206(3)–3T's sunset period for two years, we are not otherwise modifying the rule from the form in which we initially adopted it on an interim final basis in September 2007 or as final in December 2009. We discussed the benefits provided by rule 206(3)–3T in both the 2007 Principal Trade Rule Release and the 2009 Extension Release.

In summary, as explained in the 2007 Principal Trade Rule Release, the 2009 Extension Release, and the Proposing Release,[43] we believe the principal benefit of rule 206(3)–3T is that it maintains investor choice and protects the interests of investors who formerly held an estimated $300 billion in fee-based brokerage accounts. A resulting second benefit of the rule is that non-discretionary advisory clients of advisory firms that are also registered as broker-dealers have easier access to a wider range of securities which, in turn, should continue to lead to increased liquidity in the markets for these securities and promote capital formation in these areas. A third benefit of the rule is that it provides the protections of the sales practice rules of the Securities Exchange Act of 1934 ("Exchange Act")[44] and the relevant self-regulatory organizations because an adviser relying on the rule must also be a registered broker-dealer. Another benefit of rule 206(3)–3T is that it provides a lower cost alternative for an adviser to engage in principal transactions.

One commenter disputed a number of the benefits of rule 206(3)–3T we have described above. The commenter did not provide any specific data, analysis, or other information in support of its comment.[45] No commenter provided any substantive or specific evidence to contradict the Commission's previous conclusion that the rule benefits investors, and the Commission continues to believe that the rule provides those benefits.[46]

In addition to the general benefits described above, there also are benefits to extending the rule for an additional two years. By extending the rule for two years, non-discretionary advisory clients who have had access to certain securities because of their advisers' reliance on the rule to trade on a principal basis will continue to have access to those securities without disruption. If we chose not to extend the rule in its current form, firms currently relying on the rule would be required to restructure their operations and client relationships on or before the rule's current expiration date—potentially only to have to do so again shortly thereafter (first when the rule expires or is modified, and again if we adopt a new approach after the study mandated by the Dodd-Frank Act, discussed above, is complete). Firms relying on the rule will continue to be able to offer clients and prospective clients access to certain securities on a principal basis as well and will not need during this two-year period to incur the cost of adjusting to a new set of rules or abandoning the systems established to comply with the current rule. In other words, extension will avoid disruption to clients and firms during the period while we complete the study mandated by section 913 of the Dodd-Frank Act and our broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers.

We also discussed the costs associated with rule 206(3)–3T in the 2007 Principal Trade Rule Release, the 2009 Extension Release, and the Proposing Release.[47] In the 2007 Principal Trade Rule Release, we presented estimates of the costs of each of the rule's disclosure elements, including: Prospective disclosure and consent; transaction-by-transaction disclosure and consent; transaction-by-transaction confirmations; and the annual report of principal transactions. We also provided estimates for the following related costs of compliance with rule 206(3)–3T: (i) The initial distribution of prospective disclosure and collection of consents; (ii) systems programming costs to ensure that trade confirmations contain all of the information required by the rule; and (iii) systems programming costs to aggregate already-collected information to generate compliant principal transactions reports. We did not receive comments directly addressing with supporting data the cost-benefit analysis we presented in the 2007 Principal Trade Rule Release.[48] We do not believe that a two-year extension of rule 206(3)–3T would materially affect those costs.[49]

We recognize that, as a result of our amendment, firms relying on the rule will incur the costs associated with complying with the rule for two additional years. We also recognize that a temporary rule, by nature, creates uncertainty, which in turn, may generate costs and inefficiency.[50]

[40] 44 U.S.C. 3501 *et seq.*

[41] *See* 2007 Principal Trade Rule Release, Section V.B&C.

[42] *See* 2009 Extension Release, Section IV; Proposing Release, Section IV.

[43] *See* 2007 Principal Trade Rule Release, Section VI.C; 2009 Extension Release, Section V; Proposing Release, Section V.

[44] 15 U.S.C. 78 *et seq.*

[45] *See* NAPFA Letter (questioning the benefits of the rule in: (1) Providing protections of the sales practice rules of the Exchange Act and the relevant self-regulatory organizations; (2) allowing non-discretionary advisory clients of advisory firms that are also registered as broker-dealers to have easier access to a wider range of securities which, in turn, should continue to lead to increased liquidity in the markets for these securities and promote capital formation in these areas; and (3) maintaining investor choice).

[46] *See* 2007 Principal Trade Rule Release, Section VI.C; 2009 Extension Release, Section V; Proposing Release, Section V.

[47] *See* 2007 Principal Trade Rule Release, Section VI.D; 2009 Extension Release, Section V; Proposing Release, Section V.

[48] In the 2007 Principal Trade Rule Release, we estimated the total overall costs, including estimated costs for all eligible advisers and eligible accounts, relating to compliance with rule 206(3)–3T to be $37,205,569. *See* 2007 Principal Trade Rule Release, Section VI.D.

[49] *See* Proposing Release, Section V.

[50] *See* Winslow, Evans & Crocker Letter ("We do, however, feel that extending the temporary rule is in the best interest of investors but think that doing

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However, we believe that a temporary extension of the rule is the most appropriate action that we can take at this time while we conduct the study mandated by section 913 of the Dodd-Frank Act and consider more broadly the regulatory requirements applicable to broker-dealers and investment advisers.[51]

VI. Promotion of Efficiency, Competition, and Capital Formation

Section 202(c) of the Advisers Act mandates that the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[52]

We explained in the 2007 Principal Trade Rule Release, the 2009 Extension Release, and the Proposing Release, the manner in which rule 206(3)–3T, in general, would promote these aims.[53] We continue to believe that this analysis generally applies today.

As noted in the 2009 Extension Release and Proposing Release, we received comments on the 2007 Principal Trade Rule Release from commenters who opposed the limitation of the temporary rule to investment advisers that are also registered as broker-dealers, as well as to accounts that are subject to both the Advisers Act and Exchange Act as providing a competitive advantage to investment advisers that are also registered broker-dealers.[54] Based on our experience with the rule to date, just as we noted in the 2009 Extension Release and Proposing Release, we have no reason to believe that broker-dealers (or affiliated but separate investment advisers and broker-dealers) are put at a competitive disadvantage to advisers that are themselves also registered as broker-dealers;[55] however we intend to continue to evaluate these effects in connection with our broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers.

We received one comment letter arguing that rule 206(3)–3T would impede capital formation because it would lead to "more numerous and more severe violations * * * of the trust placed by individual investors in their trusted investment adviser."[56] While we share the view that numerous and severe violations of trust could theoretically impede capital formation, we have not seen any evidence that rule 206(3)–3T has caused this result. We also reiterate that, in addition to conducting a broader review, we will continue to consider any potential violations of the rule and take appropriate action as necessary.

VII. Final Regulatory Flexibility Analysis

The Commission has prepared the following Final Regulatory Flexibility Analysis ("FRFA") regarding the amendment to rule 206(3)–3T in accordance with 5 U.S.C. 604. We prepared and included an Initial Regulatory Flexibility Analysis ("IRFA") in the Proposing Release.[57]

A. Need for the Rule Amendment

We are adopting an amendment to rule 206(3)–3T to extend the rule for two years in its current form because we believe that it would be premature to require firms relying on the rule to restructure their operations and client relationships before we complete our study and our broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers. The objective of the amendment to rule 206(3)–3T, as discussed above, is to permit firms currently relying on rule 206(3)–3T to limit the need to modify their operations and relationships on multiple occasions, both before and potentially after we complete our study and any related rulemaking.

We are amending rule 206(3)–3T pursuant to sections 206A and 211(a) of the Advisers Act [15 U.S.C. 80b–6a and 15 U.S.C. 80b–11(a)].

B. Significant Issues Raised by Public Comments

We received one comment letter related to our IRFA.[58] The commenter stated that extending the rule temporarily, rather than permanently, would create uncertainty, thereby causing certain inefficiencies, particularly with regard to smaller firms.[59] We recognize that a temporary rule, by nature, creates uncertainty, which in turn may generate costs and inefficiency, especially for smaller firms. However, as discussed above, we believe that a temporary extension of the rule is the most appropriate approach at this time while we conduct the study mandated by section 913 of the Dodd-Frank Act and consider more broadly the regulatory requirements applicable to broker-dealers and investment advisers.[60]

C. Small Entities Subject to the Rule

Rule 206(3)–3T is an alternative method of complying with Advisers Act section 206(3) and is available to all investment advisers that: (i) Are registered as broker-dealers under the Exchange Act; and (ii) effect trades with clients directly or indirectly through a broker-dealer controlling, controlled by or under common control with the investment adviser, including small entities. Under Advisers Act rule 0–7, for purposes of the Regulatory Flexibility Act an investment adviser generally is a small entity if it: (i) Has assets under management having a total value of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had $5 million or more on the last day of its most recent fiscal year.[61]

As noted in the Proposing Release, we estimate that as of November 1, 2010, 680 SEC-registered investment advisers were small entities.[62] As discussed in the 2007 Principal Trade Rule Release, we opted not to make the relief provided by rule 206(3)–3T available to all investment advisers, and instead have restricted it to investment advisers that also are registered as broker-dealers under the Exchange Act.[63] We therefore estimate for purposes of this FRFA that 38 of these small entities (those that are

so on a temporary basis is short sighted and leads to certain inefficiencies, particularly to smaller firms * * * We believe the Commission should adopt the rule on a permanent basis thus eliminating uncertainty with respect to compliance in this area."). *See also* Bank of America Letter (urging the Commission to consider a permanent rule that would allow firms to continue acting in a principal capacity in transactions with certain of their clients).

[51] *See* CFA Letter ("If, as we hope, more extensive revisions to the principal trading requirements are just around the corner, it would be unduly disruptive to abandon the existing system now absent evidence of significant harm to investors.").

[52] 15 U.S.C. 80b–2(c).

[53] *See* 2007 Principal Trade Rule Release, Section VII; 2009 Extension Release, Section VI; Proposing Release, Section VI.

[54] *See* 2009 Extension Release, Section VI; Proposing Release, Section VI; Comment Letter of the Financial Planning Association (Nov. 30, 2007).

[55] *See* 2009 Extension Release, Section VI; Proposing Release, Section VI.

[56] *See* NAPFA Letter.

[57] *See* Proposing Release, Section VII.

[58] *See* Winslow, Evans & Crocker Letter.

[59] *See id.*

[60] *See* CFA Letter ("If, as we hope, more extensive revisions to the principal trading requirements are just around the corner, it would be unduly disruptive to abandon the existing system now absent evidence of significant harm to investors.").

[61] *See* 17 CFR 275.0–7.

[62] IARD data as of November 1, 2010.

[63] *See* 2007 Principal Trade Rule Release, Section VIII.B.

both investment advisers and broker-dealers) could rely on rule 206(3)–3T.[64] We did not receive any comments on these estimates.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The provisions of rule 206(3)–3T impose certain reporting or recordkeeping requirements, and our amendment will extend the imposition of these requirements for an additional two years. The two-year extension will not alter these requirements.

Rule 206(3)–3T is designed to provide an alternative means of compliance with the requirements of section 206(3) of the Advisers Act. Investment advisers taking advantage of the rule with respect to non-discretionary advisory accounts are required to make certain disclosures to clients on a prospective, transaction-by-transaction and annual basis.

Specifically, rule 206(3)–3T permits an adviser, with respect to a non-discretionary advisory account, to comply with section 206(3) of the Advisers Act by, among other things: (i) Making certain written disclosures; (ii) obtaining written, revocable consent from the client prospectively authorizing the adviser to enter into principal trades; (iii) making oral or written disclosure and obtaining the client's consent orally or in writing prior to the execution of each principal transaction; (iv) sending to the client confirmation statements for each principal trade that disclose the capacity in which the adviser has acted and indicating that the client consented to the transaction; and (v) delivering to the client an annual report itemizing the principal transactions. Advisers are already required to communicate the content of many of the disclosures pursuant to their fiduciary obligations to clients. Other disclosures are already required by rules applicable to broker-dealers.

Our amendment will only extend the rule for two years in its current form. Advisers currently relying on the rule already should be making the disclosures described above.

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small entities.[65] Alternatives in this category would include: (i) Establishing different compliance or reporting standards or timetables that take into account the resources available to small entities; (ii) clarifying, consolidating, or simplifying compliance requirements under the rule for small entities; (iii) using performance rather than design standards; and (iv) exempting small entities from coverage of the rule, or any part of the rule.

We believe that special compliance or reporting requirements or timetables for small entities, or an exemption from coverage for small entities, may create the risk that the investors who are advised by and effect securities transactions through such small entities would not receive adequate disclosure. Moreover, different disclosure requirements could create investor confusion if it creates the impression that small investment advisers have different conflicts of interest with their advisory clients in connection with principal trading than larger investment advisers. We believe, therefore, that it is important for the disclosure protections required by the rule to be provided to advisory clients by all advisers, not just those that are not considered small entities. Further consolidation or simplification of the rule for investment advisers that are small entities would be inconsistent with the Commission's goals of fostering investor protection.

We have endeavored through rule 206(3)–3T to minimize the regulatory burden on all investment advisers eligible to rely on the rule, including small entities, while meeting our regulatory objectives. It was our goal to ensure that eligible small entities may benefit from the Commission's approach to the new rule to the same degree as other eligible advisers. The condition that advisers seeking to rely on the rule must also be registered as broker-dealers and that each account with respect to which an adviser seeks to rely on the rule must be a brokerage account subject to the Exchange Act, and the rules thereunder, and the rules of the self-regulatory organization(s) of which it is a member, reflect what we believe is an important element of our balancing between easing regulatory burdens (by affording advisers an alternative means of compliance with section 206(3) of the Act) and meeting our investor protection objectives.[66] Finally, we do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection in the present context.

[64] IARD data as of November 1, 2010.

[65] See 5 U.S.C. 603(c).

[66] *See* 2007 Principal Trade Rule Release, Section II.B.7 (noting commenters that objected to this condition as disadvantaging small broker-dealers (or affiliated but separate investment advisers and broker-dealers)).

VIII. Statutory Authority

The Commission is amending rule 206(3)–3T pursuant to sections 206A and 211(a) of the Advisers Act.

List of Subjects in 17 CFR Part 275

Investment advisers, Reporting and recordkeeping requirements.

Text of Rule Amendment

■ For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 1. The authority citation for part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

§ 275.206(3)–3T [Amended]

■ 2. In § 275.206(3)–3T, amend paragraph (d) by removing the words "December 31, 2010" and adding in their place "December 31, 2012".

Dated: December 28, 2010.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–33077 Filed 12–28–10; 4:15 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Part 141

[USCBP–2008–0062; CBP Dec. 10–33]

RIN 1515–AD61 (Formerly 1505–AB96)

Technical Correction: Completion of Entry and Entry Summary—Declaration of Value

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Customs and Border Protection (CBP) periodically reviews its regulations to ensure that they are current, correct, and consistent. As a result of this review process, CBP has determined that a correction to part 141 of title 19 of the CBP Regulations (19 CFR part 141) is necessary to reflect that the underlying statutory authority for § 141.61(g) has expired and that this regulation is no longer necessary.