

SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 275

RELEASE NO. IA-3403; File No. S7-36-10

TECHNICAL AMENDMENT TO RULE 206(4)-5: POLITICAL CONTRIBUTIONS BY CERTAIN INVESTMENT ADVISERS

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendment.

SUMMARY: The Securities and Exchange Commission (“Commission”) is making a technical amendment to the definition of “covered associate” in rule 206(4)-5 under the Investment Advisers Act of 1940 (“Advisers Act”) to correct an inadvertent error in the rule as published in the Federal Register on July 19, 2011.

EFFECTIVE DATE: [insert date of publication in the Federal Register]

FOR FURTHER INFORMATION CONTACT: Vanessa M. Meeks, Attorney-Adviser, or Melissa A. Rovers, Branch Chief, 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 20549-8549.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission adopted rule 206(4)-5 in July 2010 to prohibit an investment adviser from providing advisory services for compensation to a government client for two years after the

adviser or certain of its executives or employees (“covered associates”) make a contribution to certain elected officials or candidates.¹ In November 2010, the Commission proposed new rules and rule amendments under the Advisers Act to implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act.² In that release, the Commission also proposed several amendments to rule 206(4)-5, including a minor change to the rule’s definition of a “covered associate” to replace the word “individual” with the word “person.”³ The proposed change would have specified that a legal entity, not just a natural person, that is a general partner or managing member of an investment adviser would meet the definition of “covered associate.”⁴

In June 2011, the Commission adopted many of the new rules and rule amendments set forth in the Implementing Proposing Release, including amendments to rule 206(4)-5.⁵ The Commission specified in the “Discussion” section of the Implementing Adopting Release that it was not adopting the proposed amendment to the definition of “covered associate,” i.e., that the definition would continue to use the word “individual.”⁶ However, the text of rule 206(4)-5(f)(2)(i) published in the “Text of Rule and Form Amendments” section of the Implementing

¹ *Political Contributions by Certain Investment Advisers*, Investment Advisers Act Release No. 3043 (July 1, 2010) [75 FR 41018 (July 14, 2010)].

² *Rules Implementing Amendments to the Investment Advisers Act of 1940*, Investment Advisers Act Release No. 3110 (Nov. 19, 2010) [75 FR 77052 (Dec. 10, 2010)] (“Implementing Proposing Release”).

³ *See id.* at section II.D.1.

⁴ *Id.*

⁵ *See Rules Implementing Amendments to the Investment Advisers Act of 1940*, Investment Advisers Act Release No. 3221 (June 22, 2011) [76 FR 42950 (July 19, 2011)] (“Implementing Adopting Release”).

⁶ *Id.* at n.340 (“We are not, however, adopting an amendment we proposed to specify that a legal entity, not just a natural person, that is a general partner or managing member of an investment adviser would meet the definition of “covered associate” in the rule. Upon reflection, it would broaden the application of the rule more than we intended.”).

Adopting Release, and subsequently in the Federal Register, incorrectly reflected the replacement of the word “individual” with the word “person,” as though that proposed change had been adopted. To correct this mistake, the Commission is making a technical amendment to rule 206(4)-5(f)(2)(i) to replace the word “person” with the word “individual.”

II. Certain Findings

Under the Administrative Procedure Act (“APA”), notice of proposed rulemaking is not required when an agency, for good cause, finds “that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”⁷ The Commission is making a technical amendment to rule 206(4)-5 to reflect the Commission’s stated intent in the Implementing Adopting Release. The Commission finds that because the amendment is technical and is being made solely to correct a mistake, publishing the amendment for comment is unnecessary.⁸

The APA also requires publication of a rule at least 30 days before its effective date unless the agency finds otherwise for good cause.⁹ For the same reasons described above with respect to notice and opportunity for comment, the Commission finds that there is good cause for this technical amendment to take effect on [insert date of publication in the Federal Register].

⁷ 5 U.S.C. 553(b).

⁸ For similar reasons, the amendment does not require analysis under the Regulatory Flexibility Act (“RFA”) or analysis of major rule status under the Small Business Regulatory Enforcement Fairness Act. *See* 5 U.S.C. 601(2) (for purposes of RFA analysis, the term “rule” means any rule for which the agency publishes a general notice of proposed rulemaking); and 5 U.S.C. 804(3)(C) (for purposes of Congressional review of agency rulemaking, the term “rule” does not include any rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties).

⁹ *See* 5 U.S.C. 553(d)(3).

The amendment the Commission is adopting does not make substantive or material modifications to any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.¹⁰

The Commission is sensitive to the costs and benefits of its rules. The rule amendment the Commission is adopting today is technical and is being made solely to correct a mistake and therefore will have minimal, if any, economic effect.

III. Statutory Text and Text of Amendment

We are adopting this technical amendment to rule 206(4)-5 under the authority set forth in sections 206(4) and 211(a) of the Advisers Act.¹¹

List of Subjects in 17 CFR Part 275

Reporting and recordkeeping requirements; Securities.

TEXT OF AMENDMENT

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

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

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

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

¹⁰ 44 U.S.C. 3501, 3507.

¹¹ 15 U.S.C. 80b-6(4) and 80b-11(a).

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2. Section 275.206(4)-5 is amended by revising paragraph (f)(2)(i) to read as follows:

§ 275.206(4)-5 Political contributions by certain investment advisers.

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(f) * * *

(2) * * *

- (i) Any general partner, managing member or executive officer, or other individual with a similar status or function;

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Elizabeth M. Murphy
Secretary

Dated: May 8, 2012