DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 746

[Docket No. 980522136–8136–01]

RIN 0694–AB69

Exports to the Federal Republic of Yugoslavia (Serbia and Montenegro); Imposition of Foreign Policy Controls; Correction

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule; correction.

SUMMARY: On July 14, 1998, (63 FR 37767) the Bureau of Export Administration published a final rule implementing Executive Order 12918 of May 26, 1994 and the United Nations Security Council Resolution 1160 of March 31, 1998, which directs member countries to ban the supply of arms and arms-related items to the Federal Republic of Yugoslavia (Serbia and Montenegro). Specifically, the July 14 rule amended the Export Administration Regulations by specifying that exports to the Federal Republic of Yugoslavia (Serbia and Montenegro) of arms-related items will be denied. In addition, the July 14 rule imposed a new license requirement and a policy of denial for certain additional items to the Federal Republic of Yugoslavia (Serbia and Montenegro), including bulletproof vests, water cannon, and certain explosives equipment.

This document corrects an inadvertent error in codification related to controls on the Federal Republic of Yugoslavia (Serbia and Montenegro).

EFFECTIVE DATE: This correction is effective July 14, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Regulatory Policy Division, Bureau of Export Administration, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION: In final rule of July 14, 1998 (63 FR 37767), FR Doc. 98–18417, make the following corrections to part 746:

PART 746—[CORRECTED]

§ 746.9 [Corrected]

1. On page 37769, in the first column, under § 746.9, correct the first line of paragraph (a) to read ''(a) *License requirements.* (1) *Scope.* Under''.

Dated: July 15, 1998.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 98–19502 Filed 7–22–98; 8:45 am]

BILLING CODE 3510–33–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 276

[Release No. IA–1732]

Interpretation of Section 206(3) of the Investment Advisers Act of 1940

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: The Securities and Exchange Commission (''Commission'') is publishing two interpretive positions under Section 206(3) of the Investment Advisers Act of 1940. Section 206(3) prohibits any investment adviser from engaging in or effecting a transaction on behalf of a client while acting either as principal for its own account, or as broker for a person other than the client, without disclosing in writing to the client, before the completion of the transaction, the adviser's role in the transaction and obtaining the client's consent. The first interpretive position identifies the points at which an adviser may obtain its client's consent to a principal or agency transaction. The second interpretive position identifies certain transactions for which an adviser would not be acting as broker within the meaning of Section 206(3).

DATES: Release No. IA–1732 is added to the list in Part 276 as of July 17, 1998. The first interpretive position in Release No. IA–1732 is effective on September 21, 1998. The second interpretive position in Release No. IA–1732 is effective on July 23, 1998.

FOR FURTHER INFORMATION CONTACT: Douglas Scheidt, Associate Director and Chief Counsel, Karrie McMillan, Assistant Chief Counsel, or Eileen Smiley, Senior Counsel, 202/942–0660, Mail Stop 5–6, Division of Investment Management, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 206(3) of the Investment Advisers Act of 1940 [1] makes it unlawful for any investment adviser, directly or indirectly ''acting as principal for his own account, knowingly to sell any security to or purchase any security from a client, or acting as broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction.'' [2] Section 206(3) thus imposes a prior consent requirement on any adviser that acts as principal in a transaction with a client, or that acts as broker (that is, an agent) in connection with a transaction for, or on behalf of, a client.[3]

In a principal transaction, an adviser, acting for its own account, buys a security from, or sells a security to, the account of a client. In an agency transaction, an adviser arranges a transaction between different advisory clients or between a brokerage customer and an advisory client. Advisory clients can benefit from both types of transactions, depending on the circumstances, by obtaining a more favorable transaction price for the securities being purchased or sold than otherwise available. Principal and agency transactions, however, also may pose the potential for conflicts between the interests of the adviser and those of the client.

The wording and legislative history of Section 206(3) indicate that Congress recognized that both principal and agency transactions create the potential for advisers to engage in self-dealing.[4] Principal transactions, in particular, may lead to abuses such as price manipulation or the placing of

[1] 15 U.S.C. 80b–1, *et seq.* (the ''Advisers Act'').

[2] Section 206(3) expressly excludes any transaction between a broker or dealer and its customer if the broker or dealer is not also acting as an investment adviser in relation to the transaction. 15 U.S.C. 80b–6(3).

[3] We and our staff have applied Section 206(3) to apply not only to principal and agency transactions engaged in or effected by any adviser, but also to certain situations in which an adviser causes a client to enter into a principal or agency transaction that is effected by a broker-dealer that controls, is controlled by, or is under common control with, the adviser. Staff no-action letter, Hartzmark & Co. (available Nov. 11, 1973) (applying Section 206(3) when an adviser effects transactions through its broker-dealer parent). *See also* Advisers Act Release No. 589 (June 1, 1977) [42 FR 29300] (''Release No. 589'') (when adopting Rule 206(3)-2 under the Advisers Act, the non-exclusive safe harbor available for certain agency transactions, we expanded the rule to cover transactions effected through such affiliated broker-dealers).

[4] *See* Investment Trusts and Investment Companies: Hearings on S. 3580 Before the Subcomm. of the Comm. on Banking and Currency, 76th Cong., 3d Sess. 320 (1940) (statement of David Schenker, Chief Counsel, Securities and Exchange Commission Investment Trust Study) (hereafter ''Senate Hearings'') (''I think it is the Commission's recommendation that all self-dealing between the investment counselor and the client should be stopped.'').