



FINANCIAL  
SERVICES  
ROUNDTABLE

September 16, 2014

**Submitted electronically to  
rule-comments@sec.gov**

Kevin M. O'Neil  
Deputy Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

***Re: Temporary Rule Regarding Principal Trades with Certain Advisory Clients  
Release No. IA-3893; File No. S7-23-07***

Dear Mr. O'Neil:

The Financial Services Roundtable<sup>1</sup> (“FSR”) appreciates the opportunity to comment on the proposal by the Securities and Exchange Commission (the “Commission”) to amend Rule 206(3)-3T (“Rule 206(3)-3T” or the “rule”) under the Investment Advisers Act of 1940, as amended (the “Adviser’s Act”) to extend the date on which the rule sunsets by two years from December 31, 2014 to December 31, 2016.<sup>2</sup> FSR applauds the Commission for recognizing the need for an exemption to permit principal trading by investment advisers that are also registered with the Commission as broker-dealers.

While we understand that principal trading by dually-registered investment advisers will be part of the Commission’s broader review of the standard of conduct of broker-dealers and investment advisers, FSR urges the Commission to adopt the exemption on a permanent basis

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<sup>1</sup> *As advocates for a strong financial future*<sup>TM</sup>, the Financial Services Roundtable represents the largest integrated financial services companies providing banking, insurance, payment and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America’s economic engine, accounting directly for \$ 92.7 trillion in managed assets, \$1.2 trillion in revenue, and 2.3 million jobs. Learn more at [FSRoundtable.org](http://FSRoundtable.org).

<sup>2</sup> *See Temporary Rule Regarding Principal Trades with Certain Advisory Clients*, Release No. IA-3893 (Aug. 12, 2014), available at <https://www.sec.gov/rules/proposed/2014/ia-3893.pdf> (the “Proposing Release”).

rather than continuing to create uncertainty by renewing the exemption on only a temporary basis. If, however, the Commission determines that continuing to extend the sunset date for the rule, rather than adopting it on a permanent basis, is (i) necessary or appropriate in the public interest; (ii) consistent with the protection of investors; and (iii) consistent with the purposes fairly intended by the policy and provisions of the Advisers Act, FSR respectfully asks that the sunset date be extended for five years, to December 31, 2019.

### ***Responses to Specific Questions***

#### ***1. Should we allow the rule to sunset?***

As noted above FSR supports making the rule permanent. Allowing the rule to sunset would harm investors as well as investment advisers, as discussed more fully below.

#### ***2. If so, what costs would advisers that currently rely on the rule incur? What would be the impact on their clients?***

If the rule were permitted to sunset, investment advisers would incur significant costs in connection with revising their policies, procedures, disclosures, systems, and controls to comply with Section 203 of the Advisers Act. For example, system changes would be required to block prohibited principal transactions, disclosures would need to be amended to reflect new trading practices, compliance policies and supervisory procedures would need to be amended and implemented to reflect modified compliance obligations, and reviews would need to be undertaken to determine whether particular securities could continue to be made available to investors on a cost-effective basis. Moreover, absent such relief, FSR believes that investors would be harmed because it would limit their access to certain securities, increase their execution costs, and reduce the quality of their executions.

#### ***3. If we allow the rule to sunset, should we consider exemptive requests from investment advisers that are registered with us as broker-dealers for exemptive orders providing an alternative means of compliance with section 206(3)?***

Should the Commission allow Rule 206(3)-3T to sunset, exemptions would absolutely be necessary to permit investment advisers that are registered with the Commission as broker-dealers to continue to effect principal transactions. In such case, our members note that a class exemption would be superior to individual exemptions in order to provide a uniform approach and timely relief. Given that the rule, in effect, provides a class exemption, FSR's members do not believe that any benefit would be obtained by discarding the rule in favor of one or more exemptive orders.

**4. Are there any developments since the last extension that would make an extension not appropriate?**

In the Proposing Release, the Commission did not identify any developments that would make an extension of the rule inappropriate, and FSR is not aware of any such developments.

**5. If we extend the rule’s sunset date, is two years an appropriate period of time to extend the sunset date? Or should we extend the rule’s sunset date for a different period of time? If so, for how long?**

FSR recommends that the Commission adopt the rule on a permanent basis. Rule 206(3)-3T was originally adopted in 2007 by the Commission on an interim final basis, in response to the court’s decision in *Financial Planning Association v. SEC* (the “*FPA Decision*”) to vacate Adviser Act Rule 202(a)(11)-1.<sup>3</sup> Generally, Rule 202(a)(11)-1 provided that fee-based brokerage accounts were not subject to the Advisers Act because they were not adviser accounts.

When Rule 202(a)(11)-1 was vacated, broker-dealers offering fee-based brokerage accounts and not already registered as investment advisers, needed to assess whether to continue offering clients fee-based brokerage accounts and to register as investment advisers. In addition, broker-dealers needed time to address the myriad compliance issues associated with Section 206(3) of the Advisers Act. Accordingly, the Commission adopted the rule on an interim temporary basis in order to avoid disruption and confusion among investors seeking to effect transactions in certain securities that are only available from a broker-dealer acting in a principal capacity.<sup>4</sup> Further, the Commission determined to adopt the rule on a temporary basis so that it could “observe how firms comply with their obligations, and whether, when they conduct principal trades with their clients, they put their clients’ interests first.”<sup>5</sup>

FSR believes that a permanent rule is less likely to create disruption and confusion than a temporary rule that continually needs to be extended. Accordingly, we respectfully request that the Commission adopt Rule 206(3)-3T as a permanent rule without any sunset provision. Should the Commission determine to retain the temporary character of the rule, FSR asks that the Commission provide greater certainty to investors and other market participants by permitting it to sunset in five, rather than two, years. FSR further believes that this additional time period is appropriate in light of the amount of time that would be required if the Commission were to adopt and implement a rulemaking pursuant to Section 913 of the Dodd-Frank Wall Street

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<sup>3</sup> See *Temporary Rule Regarding Principal Trades with Certain Advisory Clients*, Release No. IA-2653 (Sep. 24, 2007) (HEREINAFTER “Original 206(3)-3T Adopting Release”). See also *Financial Planning Association v. SEC* 482 F.3d 481 (D.C. Cir. 2007).

<sup>4</sup> See Original 206(3)-3T Adopting Release, *supra* note 4.

<sup>5</sup> *Id.*

Reform and Consumer Protection Act,<sup>6</sup> and to reduce uncertainty about the continued availability of the principal trading exemption.

***6. Is it appropriate to extend Rule 206(3)-3T's sunset date for a limited period of time in its current form while we complete our broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers?***

FSR believes that the rule should be extended in its current form. As the Commission noted in the Proposing Release, since the adoption of Rule 206(3)-3T, the Commission staff has examined investment advisers that effect principal transactions for compliance with Advisers Act Section 206(3) and Rule 206(3)-3T. The Commission did not identify in the Proposing Release any problematic practices as a result of these examinations, or otherwise, that would warrant modifying the current form of the rule. Further, the staff's review showed that investment advisers relying on the rule have processes in place to ensure compliance with the rule when effecting principal transactions.

Moreover, in light of the Commission's express concerns about compliance costs that would be associated with any modification of Rule 206(3)-3T, particularly in its current construct as a temporary rule, FSR does not believe that any changes to the rule are warranted prior to the broader consideration of regulatory requirements applicable to broker-dealers and investment advisers.

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<sup>6</sup> Public Law 111-203, 124 Stat. 1376, 1824 (2010).

Kevin M. O'Neil, Deputy Secretary  
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FSR appreciates the opportunity to submit comments on the Commission's proposal to amend Rule 206(3)-3T to extend the date on which the rule sunsets. If it would be helpful to discuss FSR's specific comments or general views on this issue, please contact

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Sincerely yours,



Richard Foster  
Vice President and Senior Counsel for Regulatory  
and Legal Affairs  
Financial Services Roundtable

*With a copy to:*

**Securities and Exchange Commission**

The Honorable Mary Jo White, Chair  
The Honorable Luis A. Aguilar, Commissioner  
The Honorable Daniel M. Gallagher, Commissioner  
The Honorable Kara M. Stein, Commissioner  
The Honorable Michael S. Piwowar, Commissioner

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