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September 17, 2014

Via e-mail to rule-comments@sec.gov

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

RE: Request for Comment - Temporary Rule Regarding Principal Trades with Certain Advisory Clients, File No. S7-23-07 (Amendment to Rule 206(3)-3T of the Investment Advisers Act of 1940)

Dear Ms. Murphy:

Wells Fargo Advisors, LLC, (“WFA” or the “Firm”) appreciates the opportunity to comment on the proposal issued by the Securities and Exchange Commission (“SEC” or “Commission”) to amend Rule 206(3)-3T (the “Temporary Rule Regarding Principal Trades with Certain Advisory Clients” or the “Temporary Rule”) of the Investment Advisers Act of 1940 (“Advisers Act”) by extending the Temporary Rule’s sunset to December 31, 2016.¹

WFA supports making the Temporary Rule permanent in its current form or, at a minimum, extending its sunset date by at least five years. WFA applauds the Commission for acknowledging any potential modification of the Temporary Rule would be best considered as part of a broader review of the standard of conduct for brokers, dealers and investment advisers.

¹ Securities and Exchange Commission Requests Comment for Temporary Rule Regarding Principal Trades with Certain Advisory Clients, 17 CFR Part 275, Release No. IA-3893, File No. S7-23-07 (August 2014) (the “Proposal”).

WFA is a dually registered broker-dealer and investment advisor that administers approximately \$1.4 trillion in client assets. It employs approximately 15,189 full-service financial advisors in branch offices in all 50 states and 3,472 licensed financial specialists in 6,610 retail bank branches in 39 states.² WFA is a non-bank affiliate of Wells Fargo & Company (“Wells Fargo”), whose broker-dealer and asset management affiliates comprise one of the largest retail wealth management, brokerage and retirement providers in the United States. Currently, WFA has approximately 275,000 non-discretionary advisory accounts in which hundreds of principal trades are made monthly to the benefit of those advisory clients.

The Temporary Rule, which has been extended three times³, affords investment advisers who are registered as broker-dealers an alternative means to meet the requirements of the Advisers Act when acting in a principal capacity in transactions with their non-discretionary advisory clients. The Temporary Rule is scheduled to sunset on December 31, 2014, and the SEC proposes extending that date until December 31, 2016.

WFA fully supports the proposed extension as it benefits eligible clients and eliminates costly and potentially complicated disruptions to those clients’ experience, and firms’ systems, policies and procedures. For essentially the same reasons articulated in our November 13, 2012, comment letter⁴, WFA supports making the Temporary Rule permanent, or extending its sunset date by at least five years.

To allow the Temporary Rule to sunset would, in our view, adversely affect non-discretionary advisory clients who wish to access the Firm’s principal inventory. Specifically, the expiration of the Temporary Rule would, among other things, limit client choices, negatively impact pricing and force clients to incur additional expenses to access the wider range of securities available through principal trading. Moreover, making the Temporary Rule permanent would provide the SEC sufficient time to issue pending rulemaking, such as a uniform fiduciary standard, which could dramatically change the regulatory landscape for brokers, dealers and investment advisers, as well as directly impact the conflicts of interests addressed by the Temporary Rule.

WFA is unaware of, and the SEC did not identify any, developments that would make an extension of the Temporary Rule improper. If the SEC decides to sunset the Temporary Rule on

² Wells Fargo & Company is a diversified financial services company providing banking, insurance, investments, mortgage and consumer and commercial finance across the United States of America and internationally. Wells Fargo has 275,000 team members across more than 80 businesses. Wells Fargo’s brokerage affiliates also include Wells Fargo Advisors Financial Network, LLC (“WFAFN”) and First Clearing, LLC, (“FCC”), which provides clearing services to 77 correspondent clients, WFA and WFAFN. For the ease of discussion, this letter will use WFA to refer to all brokerage operations.

³ The Temporary Rule was originally due to sunset on December 31, 2009. However, it was extended by one year to December 31, 2010. Thereafter, in December 2010 and again in December 2012, the Temporary Rule was extended for two additional years. *See* Proposal at 3-4.

⁴ *See* Correspondence from Ronald C. Long to Elizabeth M. Murphy, dated November 13, 2012, regarding File No. S7-23-07, Temporary Rule Regarding Principal Trades with Certain Advisory Clients, <http://www.sec.gov/comments/s7-23-07/s72307-41.pdf>

December 31, 2014, WFA requests the Commission provide firms with at least six months to notify impacted clients and implement necessary changes.

I. The Rule Directly Benefits Clients by Providing Investor Choice and Availability of Better Prices.

The Temporary Rule provides non-discretionary advisory clients access to securities at prices more favorable than generally would be available in an agency trade. An overwhelming majority of WFA's non-discretionary advisory clients who elect to engage in principal transactions rely upon the Temporary Rule to access securities that may not be available in the open market or are available on an agency basis at higher prices than on a principal basis.

If the Temporary Rule sunsets on December 31, 2014, our clients who rely upon it will likely have access to a more limited universe of principal securities likely at higher prices. Expiration of the Temporary Rule would also reduce execution quality of certain investor orders by preventing non-discretionary advisory clients from obtaining access to the Firm's principal accounts. Consequently, those investors who wish to continue to engage in principal trading would incur incremental transaction costs because they would be forced to open and trade through separate brokerage accounts.

II. The Sunset of the Rule Would Harm Investors.

The sunset of the Temporary Rule would impose on investors a wave of burdensome notices and communications in an era where investors are already inundated with disclosures. WFA currently has approximately 275,000 non-discretionary advisory accounts that can place principal trades in reliance upon the Temporary Rule. If the Temporary Rule sunsets, all of those clients would have to be notified and disclosures would need to be amended to reflect new trading practices.

In addition, WFA would incur significant costs to restructure its operations and client relationships to comply with the Advisers Act conflict rules. WFA currently has processes in place tailored to facilitate principal transactions in compliance with the requirements of the Temporary Rule. If it expires, WFA would need to conduct reviews to determine whether particular securities could continue to be made available to impacted clients; revise and implement compliance policies and procedures to reflect modified compliance responsibilities; and, employ controls to block the prohibited trades.

The Staff has been examining investment advisers for compliance with the Temporary Rule since its adoption in 2007. The Staff did not identify problematic practices in its Proposal, and also noted investment advisers relying on the Temporary Rule have processes in place to comply with its requirements. Consequently, changes to trading practices appear particularly unwarranted in light of the Commission's current review of the appropriate standards of conduct, lack of identified client benefit and significant costs associated with any change.

Given the proximity of the Temporary Rule's expiration to the comment period, if the Proposal is denied, WFA requests the SEC provide sufficient time for the industry to take the necessary steps to address the Temporary Rule's sunset. Firms typically have end of year code freezes to comply with year-end statements and reporting requirements. At a minimum, WFA requests an implementation date six months from the date of the Temporary Rule's expiration.

III. The Rule Should be Permanent in its Current Form.

WFA also believes it would be inefficient to sunset the Temporary Rule before the SEC decides next steps on the possible harmonization of the duty of care applicable to brokers, dealers and investment advisers.⁵ The Temporary Rule is predicated on broker-dealers and investment advisers owing different duties of care to their clients. WFA agrees with the Commission that "the issues raised by principal trading, including the restrictions in section 206(3) of the Advisers Act and...the operation of [R]ule 206(3)-3T, should be considered as part of" the broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers.⁶ The consideration of these issues could likely yield new rules concerning principal trading. If the Temporary Rule sunsets before the implementation of new regulations governing the standards of care, firms would be forced to expend substantial resources to address the change, only to later find that changes are required to adjust to a new regulatory regime.

Since the rulemaking process could be lengthy and unpredictable, a permanent grant of the Temporary Rule will ensure sufficient time for the Commission to issue final rulemaking regarding the duty of care. If the Commission decides not to make the Temporary Rule permanent, WFA urges the Commission to extend the Temporary Rule for a minimum of five years, recognizing a final rule and an appropriate implementation period is likely to exceed the two years contemplated in the Proposal.

If the SEC does not extend the Temporary Rule, WFA strongly urges the SEC to establish a streamlined exemptive order process for investment advisers that are registered as broker-dealers. WFA believes the SEC should reserve the swiftest approvals for exemptive order requests that closely track the procedures of the Temporary Rule.

⁵ See Recommendation by the Securities and Exchange Commission's Investor Advisory Committee for Broker-Dealer Fiduciary Duty, File No. 265-28, Approved November 22, 2013. <http://www.sec.gov/spotlight/investor-advisory-committee-2012/fiduciary-duty-recommendation-2013.pdf>. See also Correspondence from Robert J. McCarthy to Elizabeth M. Murphy, dated February 12, 2014, regarding File No. 265-28, Recommendations of the Investor Advisory Committee for Broker-Dealer Fiduciary Duty, <http://www.sec.gov/comments/265-28/26528-69.pdf>; Correspondence from Robert J. McCarthy to Elizabeth M. Murphy, dated July 5, 2013, regarding File No. 4-606; Release No. 34-69013; IA-3558; Duties and Investment Advisers; <http://www.sec.gov/comments/4-606/4606-3127.pdf>; Correspondence from David M. Carroll to Elizabeth M. Murphy, dated August 30, 2010, regarding File No. 4-606 Study Regarding Obligations of Brokers, Dealers, and Investment Advisers; <http://www.sec.gov/comments/4-606/4606-2592.pdf>.

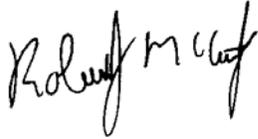
⁶ Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act required the Commission to conduct a study and report to Congress regarding the obligations of broker-dealers and investment advisers, including standards of care applicable to those intermediaries and their associated persons. The Act also authorizes the Commission to promulgate rules concerning the legal or regulatory standards of care for brokers, dealers, investment advisers and associated persons for providing personalized investment advice. Proposal at fn 8; and 6.

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Conclusion

WFA appreciates the opportunity to respond to the SEC's Proposal and appreciates that the SEC recognizes the Temporary Rule has been effective since its adoption. WFA urges the SEC to make Rule 206(3)-3T permanent in its current form. If you would like to further discuss this issue, please contact the undersigned at [REDACTED] or [REDACTED].

Sincerely,



Robert J. McCarthy
Director of Regulatory Policy