

SECURITIES AND EXCHANGE COMMISSION

Investment Advisers Act Release No. 4797; File No. 803-00238

Stephens Inc.

October 18, 2017

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Notice.

Notice of application for an exemptive order under Section 206A of the Investment Advisers Act of 1940 (the “Act”) and Rule 206(4)-5(e).

Applicant: Stephens Inc. (“Applicant” or “Adviser”).

Relevant Sections of the Act: Exemption requested under section 206A of the Act and rule 206(4)-5(e) from rule 206(4)-5(a)(1) under the Act.

Summary of Application: Applicant requests that the Commission issue an order under section 206A of the Act and rule 206(4)-5(e) exempting it from rule 206(4)-5(a)(1) under the Act to permit Applicant to receive compensation from certain government entities for investment advisory services provided to the government entities within the two-year period following a contribution by a covered associate of the Applicant to an official of the government entities.

Filing Dates: The application was filed on December 20, 2016, and an amended and restated application was filed on June 21, 2017.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 13, 2017,

and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549-1090. Applicant: Stephens Inc., 111 Center Street, Little Rock, AR 72201.

FOR FURTHER INFORMATION CONTACT: Rachel Loko, Senior Counsel, or Holly Hunter-Ceci, Assistant Chief Counsel, at (202) 551- 6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website at <http://www.sec.gov/rules/iareleases.shtml> or by calling (202) 551-8090.

Applicant's Representations:

1. Applicant is a financial services firm established in Little Rock, Arkansas and registered with the Commission as an investment adviser under the Act. Applicant provides discretionary investment advisory services to a wide variety of investors.

2. The individual who made the campaign contribution that triggered the two-year compensation ban (the "Contribution") is J. Bradford Eichler (the "Contributor"). The Contributor is an Executive Vice President of the Applicant and is the head of Investment Banking for the firm. The Contributor's role focuses on oversight of the Adviser's corporate finance division. Applicant submits that, because the Contributor is and at the time of the

contribution was, an executive officer of the Adviser, he is, and at all relevant times was, a covered associate.

3. Three of the Adviser's clients are government entities of the City of Little Rock (the "Clients"). Client A and Client B are city pension funds and Client C is a fund maintained by the city for certain expenses. The Clients are government entities as defined in Rule 206(4)-5(f)(5)(i).

4. The recipient of the Contribution was Capi Peck (the "Official"), who, at the time of the Contribution, was seeking the office of director on the Little Rock Board of Directors. The Board of Directors appoints a board member of Client A, appoints a city official with authority to hire an investment manager for Client B and has ultimate investment authority over Client C. Due to her position as a director, the Official is an "official" of the Clients as defined in Rule 206(4)-5(f)(6)(ii). As of the date of the application, the Official has not participated in the appointment of anyone with authority on Client A or Client B's decision to select an investment adviser, nor has she participated in a decision affecting Client C's investment with the Adviser.

5. The Contribution that triggered rule 206(4)-5's prohibition on compensation under rule 206(4)-5(a)(1) was made online on October 17, 2016 for the amount of \$1,000. Applicant submits that the Contribution was not motivated by any desire to influence the award of investment advisory business. Applicant represents that the Contributor does live in Little Rock and has a longstanding friendship with the Official. The Contributor has known the Official for approximately 30 years and known her ex-husband and business partner for approximately 35 years. The Contributor and the official's ex-husband also have a shared interest in competitive swimming. The Contributor lived with them for a long time during college, worked at their

restaurant and has maintained close relationships. His decision to make the Contribution was spontaneous and motivated by his longstanding friendship with the Official. Applicant submits that although the Contributor and the Official are friends, they have not discussed the Adviser's advisory business or the potential investments by the Clients. The Contributor did not seek or coordinate any other contribution for the Official. Applicant represents that the Contributor did not have any intention to seek, and no action was taken by the Contributor or the Applicant to obtain, any direct or indirect influence from the Official or any other person.

6. The Adviser has been doing business with Little Rock, its home city, since its founding in 1933. The investments were all made before the date of the Contribution and before the Official took office. The Clients current accounts were initiated between 2006 and 2014. Applicant represents that none of the Clients have materially increased the amounts of assets managed by the Adviser, initiated new investment mandates, or opened new accounts with the Adviser since the Contribution was made. Neither the Contributor nor anyone whom he supervises was in any way involved in soliciting the Clients with respect to any business.

7. The Adviser became aware of the Contribution on November 16, 2016 when the Contributor remembered that, pursuant to the Adviser's pay-to-play policy (the "Policy"), he was required to obtain pre-approval for his political contributions and, at his initiative, contacted the Adviser's general counsel to inform him about the Contribution. The Contributor requested a refund of the full \$1,000 that day and received the refund on November 18, 2016. The Adviser established an escrow account on December 5, 2016 into which it has been depositing an amount equal to the compensation received with respect to the Clients' investments since the date of the Contribution, October 17, 2016. Applicant submits that all management fees earned with respect

to Clients' investments since the date of the Contribution have been placed in escrow and will continue to be placed in escrow pending the outcome of this application.

8. The Policy was adopted on March 3, 2011. The Applicant submits that all contributions by the Adviser's managing members, executive officers and other "covered associates," as well as those who could in the future become covered associates, to any person who was at the time of the contribution an incumbent, candidate or successful candidate for an elective office of a government entity must be precleared. There is no *de minimis* exception from the pre-clearance requirement. Under the existing Policy, the Adviser circulated reminders of the need to preclear. Employees subject to the Policy must certify quarterly their contributions. In addition, annual employee audit questionnaires ask about the employee's political contributions, the Adviser does internet searches for contributions and verifies the results of the quarterly certifications with its preclearance records.

Applicant's Legal Analysis

1. Rule 206(4)-5(a)(1) under the Act prohibits a registered investment adviser from providing investment advisory services for compensation to a government entity within two years after a contribution to an official of a government entity is made by the investment adviser or any covered associate of the investment adviser. Each of the Clients is a "government entity," as defined in rule 206(4)-5(f)(5), the Contributor is a "covered associate" as defined in rule 206(4)-5(f)(2), and the Official is an "official" as defined in rule 206(4)-5(f)(6).

2. Section 206A of the Act authorizes the Commission to "conditionally or unconditionally exempt any person or transaction . . . from any provision or provisions of [the Act] or of any rule or regulation thereunder, if and to the extent that such exemption is necessary

or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Act].”

3. Rule 206(4)-5(e) provides that the Commission may conditionally or unconditionally grant an exemption to an investment adviser from the prohibition under rule 206(4)-5(a)(1) upon consideration of the factors listed below, among others:

(1) Whether the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act;

(2) Whether the investment adviser: (i) before the contribution resulting in the prohibition was made, adopted and implemented policies and procedures reasonably designed to prevent violations of the rule; and (ii) prior to or at the time the contribution which resulted in such prohibition was made, had no actual knowledge of the contribution; and (iii) after learning of the contribution: (A) has taken all available steps to cause the contributor involved in making the contribution which resulted in such prohibition to obtain a return of the contribution; and (B) has taken such other remedial or preventive measures as may be appropriate under the circumstances;

(3) Whether, at the time of the contribution, the contributor was a covered associate or otherwise an employee of the investment adviser, or was seeking such employment;

(4) The timing and amount of the contribution which resulted in the prohibition;

(5) The nature of the election (e.g., federal, state or local); and

(6) The contributor’s apparent intent or motive in making the contribution which resulted in the prohibition, as evidenced by the facts and circumstances surrounding such contribution.

4. Applicant requests an order pursuant to section 206A and rule 206(4)-5(e), exempting it from the two-year prohibition on compensation imposed by rule 206(4)-5(a)(1) with respect to investment advisory services provided to the Clients within the two-year period following the Contribution.

5. Applicant submits that the exemption is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant further submits that the other factors set forth in rule 206(4)-5(e) similarly weigh in favor of granting an exemption to the Applicant to avoid consequences disproportionate to the violation.

6. Applicant contends that given the nature of the Contribution, and the lack of any evidence that the Adviser or the Contributor intended to, or actually did, interfere with any client's merit-based process for the selection or retention of advisory services, the Clients' interests are best served by allowing the Adviser and its Clients to continue their relationship uninterrupted. Applicant states that causing the Adviser to serve without compensation for a two-year period could result in a financial loss of approximately \$1 million or 1000 times the amount of the Contribution. Applicant suggests that the policy underlying rule 206(4)-5 is served by ensuring that no improper influence is exercised over investment decisions by governmental entities as a result of campaign contributions and not by withholding compensation as a result of unintentional violations.

7. Applicant represents that the Policy was adopted and published in March 2011, well before the Contribution was made. Applicant further represents that, at all times, the Policy has conformed to the requirements of rule 206(4)-5 and has been more rigorous than rule 206(4)-

5's requirements as the Adviser does internet testing as part of its annual audit process and requires covered associates to certify their compliance with the Policy and disclose all contributions quarterly.

8. Applicant asserts that at no time did any employee or covered associate of the Adviser other than the Contributor have any knowledge that the Contribution had been made before its discovery by the Adviser in November 2016 when the Contributor self-reported the Contribution to the Adviser.

9. Applicant asserts that after learning of the Contribution, the Adviser caused the Contributor to immediately obtain a full refund of the Contribution. Applicant submits that the Adviser reviewed its Policy and concluded that it was adequate for preventing impermissible contributions.

10. Applicant states that after learning of the Contribution, it confirmed that the although the Contributor's job would not ordinarily cause him to interact with the Clients, after learning of the Contribution, the Adviser, out of an abundance of caution, instructed him not to solicit or otherwise communicate with the Clients for two years following the date of the Contribution.

11. Applicant asserts that the Clients' decisions to invest with the Adviser occurred long before the Contribution was made, in October 2016. Furthermore, no investments were made in the month-long period between the date of the Contribution and the day it was refunded. Applicant states that, at the time of the Contribution and at the time of the investments by the Clients, the Official has not had any role in the Clients' investment decisions. Applicant also submits that the apparent intent in making the Contribution was not to influence the selection or

retention of the Adviser. Applicant represents that the Contributor and the Official have a long standing friendship as the Contributor worked at the Official's restaurant and lived with the Official and her ex-husband when he was in college. Applicant finally states that it was because of that relationship, and not any desire to influence the award of investment advisory business that the Contributor made the Contribution to the Official's campaign.

12. Applicant submits that neither the Adviser nor the Contributor sought to interfere with the Clients' merit-based selection process for advisory services, nor did they seek to negotiate higher fees or greater ancillary benefits than would be achieved in arms' length transactions. Applicant further submits that there was no violation of the Adviser's fiduciary duty to deal fairly or disclose material conflicts given the absence of any intent or action by the Adviser or the Contributor to influence the selection process. Applicant contends that in the case of the Contribution, the imposition of the two-year prohibition on compensation does not achieve rule 206(4)-5's purposes and would result in consequences disproportionate to the mistake that was made.

Applicant's Conditions

The Applicant agrees that any order of the Commission granting the requested relief will be subject to the following conditions:

1. The Contributor will be prohibited from discussing the business of the Adviser with any "government entity" client for which the Official is an "official," each as defined in Rule 206(4)-5(f), until October 18, 2018.

2. The Contributor will receive a written notification of this condition and will provide a quarterly certificate of compliance until October 18, 2018. Copies of the certifications

will be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in an appropriate office of the Adviser, and be available for inspection by the staff of the Commission.

3. The Adviser will conduct testing reasonably designed to prevent violations of the conditions of the Order and maintain records regarding such testing, which will be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in an appropriate office of the Adviser, and be available for inspection by the staff of the Commission.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman
Assistant Secretary