

SECURITIES AND EXCHANGE COMMISSION

Investment Advisers Act Release No. 5213 / File No. 803-00245

Generation Investment Management US LLP and Generation Investment Management LLP

March 26, 2019

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) under the Act.

Applicants: Generation Investment Management US LLP (“Generation US”) and Generation Investment Management LLP (“Generation UK”) (collectively, “Generation,” “Applicants” or “Advisers”).

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

Filing Dates: The application was filed on March 1, 2018, and amended and restated applications were filed on August 31, 2018, and January 28, 2019.

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 Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 22, 2019,

and should be accompanied by proof of service on Applicants, 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: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549-1090. Applicants: Generation Investment Management US LLP, 555 Mission Street, Suite 3400, San Francisco, CA 94105 and Generation Investment Management LLP, 20 Air Street, 7th Floor, London, UK W1B 5AN.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 551-6811 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.

Applicants' Representations:

1. Generation US is a financial services firm registered with the Commission as an investment adviser under the Act. Generation UK, the 99.9 percent owner of Generation US, is an exempt reporting adviser under rule 204-4(a) under the Act. The Applicants provide 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 Colin le Duc (the "Contributor"). The Contributor is a founding partner of Generation UK, who also serves on the Management Committee of

Generation UK, Generation’s governing body. On October 4, 2017, Generation announced that the Contributor had been appointed Co-President of Generation US’s new office in San Francisco, its U.S. headquarters, with joint Management Committee responsibility for the office. On June 30, 2018, the Contributor assumed sole responsibility for the office after the other Co-President retired. In his current capacity as President of Generation US’s office (and in his former capacity as Co-President of the office), the Contributor is responsible for reporting on United States operations to the Management Committee and for the culture of the office. As a member of the Management Committee of Generation UK and the President (and previously Co-President) of Generation US’s office, the Contributor is, and was at the time of the Contribution, an executive officer of the Advisers. Applicants submit that, because the Contributor is, and at the time of the Contribution was, an executive officer of Generation UK and Generation US under rule 206(4)-5(f)(4), he is, and at all relevant times was, a covered associate.

3. The California State Teachers Retirement System (the “Client”), one of Generation US’s clients, is a government entity in the State of California. Generation UK acts as a sub-adviser to Generation US with respect to the Client’s investments. The Client is a “government entity” as defined in rule 206(4)-5(f)(i).

4. The recipient of the Contribution was “Newsom for California—Governor 2018,” the campaign committee for the California gubernatorial campaign of Gavin Newsom (the “Official”), who, at the time of the Contribution, was the Lieutenant Governor of the State of California. The Client is a state pension fund with a twelve-member board; one board member is the Director of Finance, who is appointed by the Governor of California, and five other board members are directly appointed by the Governor of California. Because he was seeking the office of Governor at the time of the Contribution, the Official was an “official” of the Client

within the meaning of rule 206(4)-5(f)(6)(ii). The Contribution that triggered rule 206(4)-5's prohibition on compensation under rule 206(4)-5(a)(1) was made on June 7, 2017, for the amount of \$5,000. Applicants submit that the Contribution was not motivated by any desire to influence the award of investment advisory business. The Contribution was made, after the Contributor's next-door neighbor sent him, on June 3, 2017, a text message inviting him to a fundraising event for the Official's gubernatorial campaign. His decision to make the Contribution was spontaneous and motivated by his neighbor's request and because the Contributor and his neighbor's children attended the same school. Applicants represent that the Contributor did not have any intention to seek, and no action was taken by the Contributor or the Applicants to obtain, any direct or indirect influence from the Official or any other person.

5. Generation US has been doing business with the Client since 2007. The investments were all made in 2007 and 2008, before the date of the Contribution and before the Official took office. The Client has not materially added to its assets under management by the Advisers, initiated new mandates, or opened new accounts since 2008, although the Client in February 2018 announced that a different Generation investment fund that is also not managed by the Contributor was eligible to receive a commitment from the Client. Neither the Contributor nor anyone whom he supervises was in any way involved in soliciting the Client with respect to its current business or with respect to the Client's February 2018 announcement that a different Generation investment fund was eligible to receive a commitment.

6. The Applicants learned of the Contribution on December 1, 2017, after the Contributor disclosed it in an interview with a regulatory compliance firm engaged by the Applicants to complete its annual "mock audit." Upon discovery of the Contribution, the Contributor, through counsel, requested a refund of the full \$5,000 the next business day, and

received the refund on December 8, 2017. The Applicants established an escrow account on February 27, 2018 into which they have been depositing an amount equal to the compensation received with respect to the Client's investments since the Contribution Date. Applicants submit that all management fees and incentive fees earned with respect to the Client's investments since the Contribution Date have been placed in escrow and will continue to be placed in escrow pending the outcome of the application.

7. The Applicants' pay-to-play Policy (the "Policy") was adopted and implemented in 2011. The Policy requires that all contributions by the Advisers' managing members, executive officer and other "covered associates," as well as all employees, partners, spouses and family members of "covered associates," to any person (including any election committee for the person) who was at the time of the contribution an incumbent, candidate or successful candidate for an elective office of a government entity are prohibited. There is no *de minimis* exemption from the contribution prohibition. Under the Policy, the Advisers circulated multiple compliance alerts reminding employees of the Policy and the strict prohibition on political contributions. After the discovery of the Contribution, the Advisers updated the Policy, which formerly required partners and employees to certify annually to their compliance with the Policy, to certify compliance with the Policy quarterly. In addition, the Advisers retain a compliance vendor to conduct periodic audits and testing of compliance with a variety of restrictions, including those covered in the Policy.

Applicants' 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. The Client 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; (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. Applicants request an order pursuant to Section 206A and rule 206(4)-5(e), exempting them from the two-year prohibition on compensation imposed by rule 206(4)-5(a)(1) with respect to investment advisory services provided to the Client within the two-year period following the Contribution.

5. Applicants submit 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. Applicants further submit that the other factors set forth in rule 206(4)-5(e) similarly weigh in favor of granting an exemption to the Applicants 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 Advisers or the Contributor intended to, or actually did, interfere with the Client's merit-based process for the selection or retention of investment advisers, the Client's interests are best served by allowing the Advisers and their Client to continue their relationship uninterrupted. Applicants state that causing the Advisers to serve without compensation for a two-year period could result in a financial loss potentially hundreds or thousands of times the amount of the Contribution. Applicants suggest 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. Applicants represent that the Policy was adopted and implemented well before the Contribution was made. Applicants further represent that, the Policy is fully compliant with the requirements of rule 206(4)-5 and has been more rigorous than rule 206(4)-5's requirements as the Advisers retain an outside compliance firm to conduct internet testing and review compliance with the Policy as part of the firm's periodic audit process and requires covered associates to certify their compliance with the Policy quarterly.

8. Applicants assert that aside from the Contributor, no employees or covered associates of the Advisers, or any executive or employee of the Advisers' affiliates knew of the Contribution.

9. Applicants assert that after learning of the Contribution, the Advisers caused the Contributor to obtain immediately a full refund of the Contribution. Applicants have, since the discovery of the Contribution updated the Policy to mandate annual live or video-conference training on the Policy, increased the frequency of the internal compliance certifications from annually to quarterly, and increased the frequency of quarterly campaign finance database testing and reviews from annually to quarterly.

10. Applicants state that after learning of the Contribution, it confirmed that although the Contributor's job would not ordinarily cause him to interact with the Client, the Advisers instructed him not to solicit or otherwise communicate with the Client for two years following the date of the Contribution.

11. Applicants state that the Client's investments with the Advisers substantially pre-date the Contribution. They were made on an arms' length basis, and neither the Contributor nor

the Advisers took any action to obtain any direct or indirect influence from the Official. Furthermore, no investments were made in the period between the date of the Contribution and the day it was refunded. Applicants also submit that the apparent intent in making the Contribution was not to influence the selection or retention of the Advisers. Applicants represent that the Contributor and the Official have a relationship that arises out of the fact that their children were classmates in the same primary school. Applicants finally state that it was because of that relationship, and the fact that the Contribution was solicited by the Contributor's next-door neighbor, and not because of any desire to influence the award of investment advisory business that the Contributor made the Contribution to the Official's campaign.

12. Applicants submit that neither the Advisers nor the Contributor sought to interfere with the Client's 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. Applicants further submit that there was no violation of the Advisers' fiduciary duty to deal fairly or disclose material conflicts given the absence of any intent or action by the Advisers or the Contributor to influence the selection process. Applicants contend 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.

Applicants' Conditions

The Applicants agree 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 Advisers with any “government entity” client or prospective client for which the Official is an “official,” each as defined in rule 206(4)-5(f) until June 7, 2019.

2. The Contributor will receive a written notification of this condition and will provide a quarterly certification of compliance until June 7, 2019. 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 Advisers, and be available for inspection by the staff of the Commission.

3. The Advisers 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 Advisers, 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,
Deputy Secretary.