

SECURITIES AND EXCHANGE COMMISSION

Investment Advisers Act Release No. 5607 / File No. 803-00253

D.B. Fitzpatrick & Co., Inc.

October 6, 2020

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.

Applicant: D.B. Fitzpatrick & Co., Inc. (“Applicant”).

Summary of Application: Applicant filed an application for an order under Section 206A of the Act and rule 206(4)-5(e) under the Act exempting it from rule 206(4)-5(a)(1) under the Act to permit Applicant to receive compensation from a government entity for investment advisory services provided to the government entity within the two-year period following contributions by a covered associate of the Applicant to an official of the government entity. The Commission issued a notice of application on April 9, 2020¹ (“Notice”). The Commission did not receive a hearing request and issued an order on May 5, 2020² (“Order”) granting the requested exemption. Due to a clerical error, the Notice was not published in the Federal Register and, therefore, the Commission is now publishing this notice in the Federal Register. The Commission is also stating, as provided below, a related position with respect to this matter.

Filing Dates: The application was filed on January 22, 2020, and amended on March 23, 2020 (“Application”).

¹ Investment Advisers Act Release No. 5475 (Apr. 9, 2020) (notice).

² Investment Advisers Act Release No. 5946 (May 5, 2020) (order).

Hearing or Notification of Hearing: Interested persons may request a hearing by e-mailing the Commission's Secretary at Secretarys-Office@sec.gov and serving Applicant with a copy of the request by e-mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 21, 2020, and should be accompanied by proof of service on the 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 e-mailing the Commission's Secretary.

ADDRESSES: The Commission: Secretarys-Office@sec.gov. Applicant: D.B. Fitzpatrick & Co., Inc. at dbfitzpatrick@dbfitzpatrick.com.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 551-6811 or Kaitlin C. Bottock, Branch Chief, 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.

Publication of Notice in the Federal Register:

1. Applicant filed the Application to request an order pursuant to Section 206A of the Act and rule 206(4)-5(e) thereunder exempting Applicant from rule 206(4)-5(a)(1) under the Act to permit the Applicant to receive compensation from a government entity within the two-year period following contributions by a covered associate of the Applicant to an official of the government entity. The Commission published the Application on its public website shortly thereafter.

2. Based on the representations provided by the Applicant in the Application, the Commission issued the Notice on April 9, 2020, and published it on the Commission's public website on the same day. The Commission did not receive a hearing request. On May 5, 2020, the Commission issued the Order and published it on the Commission's public website on the same day. The Commission understands that the Applicant is relying on the Order.

3. Because of a clerical error, the Notice was not published in the Federal Register. The Commission is thus publishing this notice in the Federal Register.

Commission Position

The Commission takes the position that it would not provide a basis for a Commission enforcement action under Section 206(4) of the Act and rule 206(4)-5(e) under the Act against the Applicant if, in reliance on the Order and subject to its conditions, the Applicant receives compensation from the government entity identified in the Application within the two-year period following the contributions addressed in the application. This position will apply with respect to payments received, or released from escrow, from May 5, 2020 until the notice period for hearing requests has expired. Applicant has represented that since May 5, 2020, it has complied with the conditions of the Order.

By the Commission.

J. Matthew DeLesDernier
Assistant Secretary