info/edgar.shtml. You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. You can also inspect the document at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

By the Commission.

Dated: December 17, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–30041 Filed 12–22–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–3984; File No. S7–23–07]

RIN 3235–AL56

Temporary Rule Regarding Principal Trades With Certain Advisory Clients

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is amending rule 206(3)–3T under the Investment Advisers Act of 1940, a temporary rule that establishes an alternative means for investment advisers that are registered with the Commission as broker-dealers to meet the requirements of section 206(3) of the Investment Advisers Act when they act in a principal capacity in transactions with certain of their advisory clients. The amendment extends the date on which rule 206(3)–3T will sunset from December 31, 2014 to December 31, 2016.

DATES: The amendments in this document are effective December 30, 2014 and the expiration date for 17 CFR 275.206(3)–3T is extended to December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Melissa S. Gainor, Senior Counsel, Sarah A. Buescher, Branch Chief, or Daniel S. Kahl, Assistant Director, at (202) 551–6787 or *IArules@sec.gov,* Investment Adviser Regulation Office, Division of Investment Management, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting an amendment to temporary rule 206(3)–3T [17 CFR 275.206(3)–3T] under the Investment Advisers Act of 1940 [15 U.S.C. 80b] that extends the date on which the rule will sunset from December 31, 2014 to December 31, 2016.

I. Background

On September 24, 2007, we adopted, on an interim final basis, rule 206(3)–3T, a temporary rule under the Investment Advisers Act of 1940 (the ''Advisers Act'') that provides an alternative means for investment advisers that are registered with us as broker-dealers to meet the requirements of section 206(3) of the Advisers Act when they act in a principal capacity in transactions with certain of their advisory clients.[1] The purpose of the rule was to permit broker-dealers to sell to their non-discretionary advisory clients, following the decision in *Financial Planning Association* v. *SEC,*[2] certain securities held in the proprietary accounts of their firms that might not be available on an agency basis, or might be available on an agency basis only on less attractive terms, while protecting clients from conflicts of interest as a result of such transactions.[3] In December 2009, we adopted rule 206(3)–3T as a final rule in the same form in which it was adopted on an interim final basis in 2007, except that we extended the rule's sunset date by one year to December 31, 2010.[4] We deferred final action on rule 206(3)–3T in December 2009 because we needed additional time to understand how, and in what situations, the rule was being used.[5] In both December 2010 and December 2012, we further extended the rule's sunset date, in each case for an additional two-year period.[6] We deferred final action on rule 206(3)–3T in 2010 in order to complete a study required by section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'').[7] In 2012, we deferred final action on rule 206(3)–3T to further consider the findings, conclusions, and recommendations of the 913 Study and the comments we had received from interested parties.[8] In connection with each extension, we noted that our consideration of the regulatory requirements applicable to broker-dealers and investment advisers was ongoing and that an extension would allow the Commission to consider more broadly the regulatory requirements applicable to broker-dealers and investment advisers, including whether rule 206(3)–3T should be substantively modified, supplanted, or permitted to sunset.[9]

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[1] Rule 206(3)–3T [17 CFR 275.206(3)–3T]. All references to rule 206(3)–3T and the various sections thereof in this release are to 17 CFR 275.206(3)–3T and its corresponding sections. *See also Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 2653 (Sep. 24, 2007) [72 FR 55022 (Sep. 28, 2007)] (''2007 Principal Trade Rule Release'').

[2] 482 F.3d 481 (D.C. Cir. 2007) (vacating rule 202(a)(11)–1 under the Advisers Act).

[3] *See* 2007 Principal Trade Rule Release, Sections I and VI.C.

[4] *See Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 2965 (Dec. 23, 2009) [74 FR 69009 (Dec. 30, 2009)] (''2009 Extension Release''); *Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 2965A (Dec. 31, 2009) [75 FR 742 (Jan. 6, 2010)] (making a technical correction to the 2009 Extension Release).

[5] *See* 2009 Extension Release, Section II.c.

[6] *See Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 3118 (Dec. 1, 2010) [75 FR 75650 (Dec. 6, 2010)] (proposing a two-year extension of rule 206(3)–3T's sunset provision) (''2010 Extension Proposing Release''); *Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 3128 (Dec. 28, 2010) [75 FR 82236 (Dec. 30, 2010)] (extending rule 206(3)–3T's sunset provision from December 31, 2010 to December 31, 2012) (''2010 Extension Release''); *Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 3483 (Oct. 9, 2012) [77 FR 62185 (Oct. 12, 2012)] (proposing a two-year extension of rule 206(3)–3T's sunset provision); *Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 3522 (Dec. 20, 2012) [77 FR 76854 (Dec. 31, 2012)] (extending rule 206(3)–3T's sunset provision from December 31, 2012 to December 31, 2014) (''2012 Extension Release'').

[7] Public Law 111–203, 124 Stat. 1376 (2010). Under section 913 of the Dodd-Frank Act, we were required to conduct a study and provide a report to Congress concerning the obligations of broker-dealers and investment advisers, including standards of care applicable to those intermediaries and their associated persons. Section 913 also authorizes us to promulgate rules concerning the legal or regulatory standards of care for broker-dealers, investment advisers, and persons associated with these intermediaries for providing personalized investment advice about securities to retail customers, taking into account the findings, conclusions, and recommendations of the study.

The study mandated by section 913 of the Dodd-Frank Act was prepared by the staff and delivered to Congress on January 21, 2011. *See Study on Investment Advisers and Broker-Dealers* (''913 Study'') (Jan. 21, 2011), available at *http://www.sec.gov/news/studies/2011/913studyfinal.pdf.* For a discussion regarding principal trading, *see* section IV.C.1.(b) of the 913 Study. *See also* Commissioners Kathleen L. Casey and Troy A. Paredes, *Statement by SEC Commissioners: Statement Regarding Study on Investment Advisers and Broker-Dealers* (Jan. 21, 2011), available at *http://www.sec.gov/news/speech/2011/spch012211klctap.htm* (opposing the release of the 913 Study to Congress and stating that more rigorous analysis is required before the Commission engages in any follow-on rulemaking).

[8] *See* 2012 Extension Release, Section II.

[9] *See id.;* 2010 Extension Release, Section II.

We have continued to consider the regulatory requirements applicable to broker-dealers and investment advisers. In 2013, we issued a request for data and other information, including quantitative data and economic analysis, relating to the benefits and costs that could result from alternative approaches regarding the standards of conduct and other obligations of broker-dealers and investment advisers.[10] The staff has received over 200 comment letters in response to the Request, several of which discussed rule 206(3)–3T, and Commissioners and the staff have held numerous meetings with interested parties.[11]

On August 12, 2014, we proposed to extend the date on which rule 206(3)–3T will sunset for a limited amount of time, from December 31, 2014 to December 31, 2016.[12] We received nine comment letters addressing our proposal.[13] Seven of these commenters generally supported extending rule 206(3)–3T for at least two years,[14] while two commenters opposed a two-year extension.[15] The comments we received on our proposal are discussed below. After considering each of the comments, we are extending the rule's sunset date by two years to December 31, 2016, as proposed.

II. Discussion

We are amending rule 206(3)–3T only to extend the rule's sunset date by two additional years.[16] We are not adopting any substantive amendments to the rule at this time. Absent further action by the Commission, the rule would sunset on December 31, 2014. We are adopting this extension because, as we discussed in the Proposing Release, we continue to believe that the issues raised by principal trading, including the restrictions in section 206(3) of the Advisers Act and our experiences with, and observations regarding, the operation of rule 206(3)–3T, should be considered as part of our broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers in connection with the Dodd-Frank Act.[17]

Section 913 of the Dodd-Frank Act authorizes us to promulgate rules concerning, among other things, the legal or regulatory standards of conduct for broker-dealers, investment advisers, and persons associated with these intermediaries when providing personalized investment advice about securities to retail customers. Since the completion of the 913 Study in 2011, we have been considering the findings, conclusions, and recommendations of the study and the comments we have received from interested parties.[18] The Commission and its staff have continued to evaluate options regarding regulatory requirements applicable to broker-dealers and investment advisers, taking into account the 913 Study's recommendations, the views of investors and other interested market participants, potential economic and market impacts, and the information we received in response to the Request. Staff has also been conducting examinations of dual registrants and is assessing the impact to investors of the different supervisory structures and legal standards of conduct that govern the provision of brokerage and investment advisory services, which may help inform our considerations.[19] Our consideration of the regulatory requirements applicable to broker-dealers and investment advisers is ongoing. We will not complete our consideration of these issues before December 31, 2014, the current sunset date for rule 206(3)–3T.

If we permit rule 206(3)–3T to sunset on December 31, 2014, after that date investment advisers registered with us as broker-dealers that currently rely on rule 206(3)–3T would be required to comply with section 206(3)'s transaction-by-transaction written disclosure and consent requirements without the benefit of the alternative means of complying with these requirements provided by rule 206(3)–3T if they want to engage in principal trades with non-discretionary advisory account clients. This could limit the access of non-discretionary advisory clients of advisory firms that are registered with us as broker-dealers to certain securities.[20] In addition, firms may be required to make substantial changes to their disclosure documents, client agreements, procedures, and systems.

As noted above, seven commenters generally supported our proposal to extend rule 206(3)–3T, and two commenters opposed the two-year extension. Commenters who supported the extension cited the disruption to investors that would occur if the rule expired at this time, asserting that investors would lose access to the securities currently offered through principal trades, receive less favorable pricing on such securities, or be forced to open brokerage accounts if they wished to maintain access to certain

[10] *Duties of Brokers, Dealers, and Investment Advisers,* Investment Advisers Act Release No. 3558 (Mar. 1, 2013) [78 FR 14848 (Mar. 7, 2013)] (the ''Request'').

[11] *See Comments on Study Regarding Obligations of Brokers, Dealers, and Investment Advisers,* File No. 4–606, available at *http://sec.gov/comments/4-606/4-606.shtml. See e.g.,* Comment Letter of North American Securities Administrators Association, Inc. (Jul. 5, 2013) (''[T]he Commission should consider SEC Rule 206(3)–3T as part of future fiduciary standard rulemaking.'').

[12] *See Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 3893 (Aug. 12, 2014), [79 FR 48709 (Aug. 18, 2014)] (''Proposing Release'').

[13] *See* Comment Letter of Chris Barnard (Aug. 22, 2014) (''Barnard Letter''); Comment Letter of Better Markets, Inc. (Sept. 17, 2014) (''Better Markets Letter''); Comment Letter of Consumer Federation of America (Sept. 17, 2014) (''Consumer Federation Letter''); Comment Letter of Financial Services Institute (Sept. 17, 2014) (''FSI Letter''); Comment Letter of Financial Services Roundtable (Sept. 16, 2014) (''FSR Letter''); Comment Letter of Jeffrey W. Lynn (Aug. 24, 2014) (''Lynn Letter''); Comment Letter of Thomas Michael Manis (Aug. 21, 2014) (''Manis Letter''); Comment Letter of Securities Industry and Financial Markets Association (''SIFMA'') (Sept. 17, 2014) (''SIFMA 2014 Letter''); Comment Letter of Wells Fargo Advisors, LLC (Sept. 17, 2014) (''Wells Fargo Letter''). We received one comment letter that did not directly address the issues in the proposal. *See* Comment Letter of J. Wayne-Lynn (Sept. 3, 2014). We also received one comment letter discussing Title IX of the Dodd-Frank Act (including section 913), but not specifically addressing the extension of the rule or principal trading. *See* Comment Letter of Norman B. Arnoff, Esq. and Paul A. Immerman, Esq. (Oct. 26, 2014).

[14] *See* Barnard Letter; FSI Letter; FSR Letter; Lynn Letter; Manis Letter; SIFMA 2014 Letter; Wells Fargo Letter.

[15] *See* Better Markets Letter; Consumer Federation Letter.

[16] The rule includes a reference to an ''investment grade debt security,'' which is defined as ''a non-convertible debt security that, at the time of sale, is rated in one of the four highest rating categories of at least two nationally recognized statistical rating organizations (as defined in section 3(a)(62) of the Exchange Act).'' Rule 206(3)–3T(a)(2) and (c). Section 939A of the Dodd-Frank Act requires that we ''review any regulation issued by [us] that requires the use of an assessment of the credit-worthiness of a security or money market instrument; and any references to or requirements in such regulations regarding credit ratings.'' Once we have completed that review, the statute provides that we modify any regulations identified in our review to ''remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness'' as we determine appropriate. We believe that the credit rating requirement in the temporary rule would be better addressed after the Commission completes its review of the regulatory standards of conduct that apply to broker-dealers and investment advisers. *See generally Report on Review of Reliance on Credit Ratings* (July 21, 2011), available at *http://www.sec.gov/news/studies/2011/939astudy.pdf* (staff study reviewing the use of credit ratings in Commission regulations).

[17] *See* Proposing Release, Section II.

[18] Section 913(f) of the Dodd-Frank Act requires us to consider the 913 Study in any rulemaking authorized by that section of the Dodd-Frank Act. *See also Comments on Study Regarding Obligations of Brokers, Dealers, and Investment Advisers,* File No. 4–606, available at *http://sec.gov/comments/4-606/4-606.shtml.*

[19] *See* National Exam Program, Office of Compliance Inspections and Examinations, *Examination Priorities for 2014* (Jan. 9, 2014), available at *http://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2014.pdf.*

[20] For a discussion of the costs and benefits underlying rule 206(3)–3T, *see* 2007 Principal Trade Rule Release, Section VI.C.

securities only available on a principal basis.[21] Two commenters also stated that the expiration of rule 206(3)–3T would reduce execution quality for non-discretionary advisory account clients who would no longer have access to a firm's principal accounts.[22] Some commenters further explained that, if the rule were allowed to expire, firms relying on the rule would be required to make considerable changes to their operations, client relationships, systems, policies and procedures at substantial expense, without substantial benefits to investors.[23]

Commenters supporting the extension agreed that extending the rule while the Commission conducted its review of the obligations of broker-dealers and investment advisers would be the least disruptive option.[24] However, several of these commenters questioned whether a two-year extension provided the Commission with sufficient time to complete its review and to engage in any subsequent Commission action.[25] These commenters recommended that the Commission adopt rule 206(3)–3T on a permanent basis or, at a minimum, that the Commission extend the rule for five years.[26] Some commenters suggested that adopting the rule on a permanent basis or adopting a longer extension of the rule would also have the benefit of reducing uncertainty for investors and dual-registrant firms.[27]

Three commenters specifically addressed Commission consideration of requests for exemptive orders as an alternative means of compliance with section 206(3). These commenters strongly supported extending the rule instead of Commission consideration of requests for exemptive orders.[28] Two commenters expressed concern about the potential inefficiency and uncertainty created by the need to submit individual requests for exemptive relief, and suggested that the Commission consider a request for class exemptive relief if the rule were allowed to sunset.[29] One commenter urged the Commission to adopt a streamlined process for exemptive requests that closely tracks the procedures of the rule if the rule sunsets.[30]

Two commenters opposed extending the rule, arguing that the Commission should not premise an extension of the rule on the need to consider principal trading as part of the broader consideration of the obligations of broker-dealers and investment advisers when the Commission has not yet commenced any formal rulemaking under section 913 of the Dodd-Frank Act.[31] These commenters questioned whether the temporary rule provides adequate investor protection against abusive trading practices.[32] In this regard, the commenters asserted that oral disclosure and consent may not promote informed investor decisions in light of the limitations of such disclosures.[33] In addition, the commenters argued that there is no evidence that principal trades being conducted in accordance with the rule are being conducted in investors' best interests.[34] One commenter also questioned whether the Commission had considered evidence that had emerged since the rule was first adopted in connection with the proposed extension.[35]

On balance, and after careful consideration of these comments, we conclude that extending the rule for two years is the most appropriate course of action at this time. First, with respect to investors, we agree with those commenters that supported extending the rule that permitting the rule to sunset before we complete our consideration of the regulatory requirements applicable to broker-dealers and investment advisers could produce substantial disruption for investors with advisory accounts serviced by firms relying on the rule.[36] These investors might lose access to securities available through principal transactions and be forced to convert their accounts in the interim, only to face the possibility of future change—and the costs and uncertainty such additional change may entail.[37] We believe that rule 206(3)–3T benefits investors because it provides them with greater access to a wider range of securities and includes provisions designed to protect non-discretionary advisory clients.[38]

We do not agree with commenters who suggest that the rule places undue reliance on disclosure and consent, particularly oral disclosure and consent, as a means of investor protection.[39] Section 206(3) does not prohibit advisers from engaging in principal transactions, but rather prescribes a means by which an adviser must disclose and obtain the consent of its clients to the conflicts of interest

[21] *See e.g.,* FSR Letter (asserting that ''investors would be harmed'' if the rule were allowed to expire because investors would have limited access to certain securities); SIFMA 2014 Letter (noting that the rule benefits investors by ''allowing firms to offer investors a greater variety of securities from firm inventories, execute trades in such securities more quickly, and offer customers better prices on such securities''); Wells Fargo Letter (arguing that the expiration of rule 206(3)–3T would ''limit investor choice, negatively impact pricing and force clients to incur additional expenses to access the wider range of securities available through principal trading'').

[22] *See* FSR Letter; Wells Fargo Letter.

[23] *See* FSI Letter; FSR Letter; SIFMA 2014 Letter; Wells Fargo Letter.

[24] *See* Barnard Letter; FSI Letter; FSR Letter; SIFMA 2014 Letter; Wells Fargo Letter.

[25] *See* FSR Letter; SIFMA 2014 Letter; Wells Fargo Letter.

[26] *See* FSR Letter; SIFMA 2014 Letter; Wells Fargo Letter. *See also* FSI Letter (recommending that the Commission adopt rule 206(3)–3T on a permanent basis as part of a harmonization of the regulatory requirements applicable to broker-dealers and investment advisers); Lynn Letter (questioning the temporary nature of the rule).

[27] *See* FSR Letter; SIFMA 2014 Letter.

[28] *See* FSR Letter; SIFMA 2014 Letter; Wells Fargo Letter.

[29] *See* FSR Letter; SIFMA 2014 Letter.

[30] *See* Wells Fargo Letter.

[31] *See* Better Markets Letter; Consumer Federation Letter.

[32] *See* Better Markets Letter (discussing conflicts associated with principal trading and stating that ''it is likely that investors are often unaware of instances where principal trades with their brokers have caused harm, and these abuses go undetected''); Consumer Federation Letter (stating that today's market realities present ''more, and more complex, opportunities for principal trading abuses'' than dumping alone and suggesting that the Commission should update its understanding of these risks).

[33] *See* Better Markets Letter (''A client certainly will have an easier time deciding whether or not to participate in the principal transaction if it receives the details of the proposed trade in writing, rather than having heard them once orally.''); Consumer Federation Letter (arguing that the temporary rule ''reflects an over-reliance on disclosure and fails to incorporate adequate measures to prevent principal trading abuses'').

[34] *See id.*

[35] *See* Consumer Federation Letter.

[36] *See* FSI Letter; FSR Letter; SIFMA 2014 Letter; Wells Fargo Letter.

[37] As previously discussed in prior releases, firms have explained that they may refrain from engaging in principal trading with their advisory clients in the absence of the rule given the practical difficulties of complying with section 206(3), and thus may not offer principal trades through advisory accounts. *See, e.g.,* 2007 Principal Trade Rule Release, Section I.B; 2009 Extension Release, Section I; 2010 Extension Release, Section II. *See also* SIFMA 2014 Letter.

[38] Several commenters agreed that an extension of the rule would continue to benefit investors. *See* SIFMA 2014 Letter (''If the Rule were allowed to expire, most firms continue to report that they would in most cases be unable to comply with Section 206(3) of the Advisers Act . . . Thus, firms would be required to eliminate or greatly reduce their offering of principal trades through advisory accounts, to the detriment of investors.''); Wells Fargo Letter (''If [rule 206(3)–3T] 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.''). *But see* Better Markets Letter (contending that the Commission does not have the authority to promulgate the rule, in part, because it cannot make the necessary findings under section 206A). We disagree with this commenter. For the reasons stated in this release we continue to believe that the rule extension 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 Advisers Act.

[39] *See* Better Markets Letter; Consumer Federation Letter.

involved.[40] In light of these serious conflicts of interest and a substantial risk that the proprietary interests of the adviser will prevail over those of its clients, rule 206(3)–3T provides advisers an alternative means to comply with the requirements of that section that is consistent with the purposes, and our prior interpretations of, section 206(3). The rule continues to provide the protection of transaction-by-transaction disclosure and consent, either orally or in writing, subject to several additional conditions designed to protect investors.[41] For example, the rule requires an adviser to provide written, prospective disclosure regarding the conflicts arising from principal trades and to obtain written, revocable consent from the client prospectively authorizing the adviser to enter into principal transactions. An adviser is also required under rule 206(3)–3T to send a confirmation statement to the client for each principal trade, disclosing the capacity in which the adviser has acted and indicating that the client consented to the transaction. The written confirmation statement serves as a reminder to clients of each transaction that the adviser effects on a principal basis and that conflicts of interest are inherent in such transactions.[42] In addition, the rule requires an adviser to deliver to the client an annual report itemizing principal transactions to ensure that clients receive a periodic record of principal trading activity in their accounts and to afford them the opportunity to assess the frequency with which their adviser engages in such trades.[43]

Moreover, we note that the rule is limited to principal trades with non-discretionary advisory account clients.[44] As previously stated, we are of the view that the risk of relaxing the procedural requirements of section 206(3) of the Advisers Act when a client has ceded substantial, if not complete, control over the account raises significant risks that the client will not be, or is not in a position to be, sufficiently involved in the management of the account to protect himself or herself from overreaching by the adviser.[45]

We believe that the requirements of rule 206(3)–3T, coupled with regulatory oversight, will adequately protect non-discretionary advisory clients for an additional limited period of time while we consider more broadly the regulatory requirements applicable to broker-dealers and investment advisers.[46] Since its adoption and throughout the period of the extension, the staff has examined and will continue to examine firms that engage in principal transactions and will take appropriate action to help ensure that firms are complying with section 206(3) or rule 206(3)–3T (as applicable), including possible enforcement action.[47] Several recent cases demonstrate our commitment to enforcing firms' compliance with these requirements when they engage in principal transactions with clients.[48] As noted above, staff has also been conducting examinations of dual registrants and is assessing the impact to investors of the different supervisory structures and legal standards of conduct that govern the provision of brokerage and investment advisory services, which may help inform our considerations.[49]

We have also obtained information regarding principal trading through other means. For example, as noted in the Proposing Release, examination staff also requested and received materials from a sample of dual registrants in 2014 to observe the use of the rule by these firms.[50] This examination showed that a number of the firms that were contacted by staff relied on the rule and that those firms had adopted written policies and procedures under rule 206(4)–7 that are designed to comply with the requirements of the temporary rule.[51] Based on the review, it appeared to the staff that the firms relying on the rule had processes in place for the purpose of effecting principal transactions in compliance with the requirements of the temporary rule.

We continue to believe, on balance, that the disruption of allowing the rule to expire is unwarranted as the Commission is engaging in a comprehensive review process that may ultimately produce different regulatory requirements.[52] This disruption will be avoided if the rule remains available while the staff and Commission continue to review and consider the regulatory requirements applicable to broker-dealers and investment advisers.

For the reasons discussed above, we believe that the rule's sunset date

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[40] In particular, section 206(3) requires an adviser acting as principal for its own account to disclose to an advisory client in writing before the completion of the transaction the capacity in which the adviser is acting and obtain the consent of the client to such transaction.

[41] *See* 2007 Principal Trade Rule Release, Section II.B. (expressing the belief that trade-by-trade disclosure and consent ''continues to be important to alert clients to the potential for conflicted advice they may be receiving on individual transactions'').

[42] *See* 2007 Principal Trade Rule Release, Section II.B.

[43] *See id.*

[44] Specifically, rule 206(3)–3T applies to principal trades with respect to accounts over which the client has not granted investment discretion, ''except investment discretion granted by the advisory client on a temporary or limited basis.'' Rule 206(3)–3T(a)(1).

[45] *See* 2007 Principal Trade Rule Release, Section II.B.

[46] In addition, rule 206(3)–3T(b) provides that the rule does not relieve an investment adviser from acting in the best interests of its clients, or from any obligation that may be imposed by sections 206(1) or (2) of the Advisers Act or any other applicable provisions of the federal securities laws. Further, the rule requires that advisers seeking to rely on the rule also be registered with the Commission as broker-dealers and that each account for which the investment adviser relies on this rule be a brokerage account subject to the Exchange Act, and the rules thereunder, and the rules of the self-regulatory organization(s) of which the broker-dealer is a member. Rule 206(3)–3T(a)(7).

[47] In the 2010 Extension Proposing Release, we discussed certain compliance issues identified by the Office of Compliance Inspections and Examinations. *See* 2010 Extension Proposing Release, Section II. One matter identified in the staff's review resulted in a settlement of an enforcement proceeding and other matters continue to be reviewed by the staff. *See In the Matter of Feltl & Company, Inc.,* Investment Advisers Act Release No. 3325 (Nov. 28, 2011) (settled order finding, among other things, violations of section 206(3) of the Advisers Act for certain principal transactions and section 206(4) of the Advisers Act and rule 206(4)–7 thereunder for failure to adopt written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules).

[48] *See In the Matter of Barclays Capital Inc.,* Investment Advisers Act Release No. 3929 (Sept. 23, 2014) (settled order finding, among other things, violations of section 206(3) of the Advisers Act for engaging in transactions with advisory clients on a principal basis without providing prior written disclosure to, or obtaining consent from, the clients); *In the Matter of Strategic Capital Group LLC and N. Gary Price,* Investment Advisers Act Release No. 3924 (Sept. 18, 2014) (settled order finding, among other things, violations of section 206(3) of the Advisers Act for engaging in transactions with advisory clients on a principal basis through an affiliated broker-dealer, without providing prior written disclosure to, or obtaining consent from, the clients); *In the Matter of Dominick & Dominick LLC and Robert X. Reilly,* Investment Advisers Act Release No. 3881 (July 28, 2014) (settled order finding, among other things, violations of section 206(3) of the Advisers Act for engaging in transactions with advisory clients on a principal basis without obtaining client consent before completing the transactions); *In the Matter of Paradigm Capital Management, Inc. and Candace King Weir,* Investment Advisers Act Release No. 3857 (June 16, 2014) (settled order finding, among other things, violations of section 206(3) of the Advisers Act for engaging in principal transactions with a hedge fund client through an affiliated broker-dealer without providing effective disclosure to, or obtaining consent from, the fund).

[49] *See supra* note 19 and accompanying text.

[50] Staff identified a representative sample set of dual registrants based on Form ADV data, including firm disclosures on Form ADV Part 2A, and requested materials from the firms that included compliance policies and procedures, sample disclosures, and data regarding the firm's principal transactions with advisory accounts.

[51] 17 CFR 275.206(4)–7. *See also* 2007 Principal Trade Rule Release (noting that an adviser relying on rule 206(3)–3T as an alternative means of complying with section 206(3) must have adopted and implemented written policies and procedures reasonably designed to comply with the requirements of the rule).

[52] *See* FSI Letter; FSR Letter; SIFMA 2014 Letter; Wells Fargo Letter.

should be extended for a limited period of time.[53] That period of time must be long enough to permit us to consider any rulemaking prompted by our broader review of regulatory requirements applicable to investment advisers and broker-dealers. The Commission and its staff have continued to focus on evaluating options regarding regulatory requirements applicable to broker-dealers and investment advisers. That review is ongoing. We continue to believe that two years provides us sufficient time to act regarding our broader review, while also providing an appropriate balance that addresses commenters' concerns regarding non-discretionary advisory clients' continued access to certain securities and any new investor protection concerns that we may identify through our examination program or otherwise.

III. Certain Administrative Law Matters

The amendment to rule 206(3)–3T is effective on December 30, 2014. The Administrative Procedure Act generally requires that an agency publish a final rule in the **Federal Register** not less than 30 days before its effective date.[54] However, this requirement does not apply if the rule is a substantive rule which grants or recognizes an exemption or relieves a restriction, or if the rule is interpretive.[55] Rule 206(3)–3T is a rule that recognizes an exemption and relieves a restriction and in part has interpretive aspects.

IV. Paperwork Reduction Act

Rule 206(3)–3T contains ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[56] The Office of Management and Budget (''OMB'') last approved the collection of information with an expiration date of July 31, 2017. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The title for the collection of information is: ''Temporary rule for principal trades with certain advisory clients, rule 206(3)–3T'' and the OMB control number for the collection of information is 3235–0630. The Proposing Release solicited comments on our PRA estimates, but we did not receive comment on them.[57]

The amendment to the rule we are adopting today—to extend rule 206(3)–3T's sunset date for two years—does not affect the current annual aggregate estimated hour burden of 139,358 hours.[58] Therefore, we are not revising the Paperwork Reduction Act burden and cost estimates submitted to OMB as a result of this amendment.

V. Economic Analysis

A. Introduction

The Commission is sensitive to the economic effects, including the benefits and costs and the effects on efficiency, competition, and capital formation, that will result from extending rule 206(3)–3T's sunset date for two years.[59] The economic effects considered in adopting this extension are discussed below.

Rule 206(3)–3T provides an alternative means for investment advisers that are registered with the Commission as broker-dealers to meet the requirements of section 206(3) of the Advisers Act when they act in a principal capacity in transactions with their non-discretionary advisory clients. Other than extending the rule's sunset date for two additional years, we are not modifying the rule from its current form. We are extending rule 206(3)–3T in its current form to avoid disruption to firms and clients that rely on the rule while the Commission continues its ongoing consideration of the regulatory requirements applicable to broker-dealers and investment advisers and the recommendations from the 913 Study. In particular, extending the current rule will permit firms to continue to offer, and clients to have access to, certain securities on a principal basis without being required to restructure their operations and client relationships, adjust to a new set of rules, or abandon the operational systems established to comply with the current rule—potentially only to have to do so again when the rule expires or is modified, and once more if the Commission adopts a new approach to principal trading in connection with the broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers. We previously considered and discussed the economic effects of rule 206(3)–3T in its current form in the 2007 Principal Trade Rule Release, the 2009 Extension Release, the 2010 Extension Release, and the 2012 Extension Release.[60]

At the outset, the Commission notes that, where possible, it has sought to quantify the costs, benefits, and effects on efficiency, competition, and capital formation expected to result from extending rule 206(3)–3T and its reasonable alternatives. In many cases, however, the Commission is unable to quantify the economic effects because it lacks the information necessary to provide a reasonable estimate.[61] The staff has also not found other quantitative data, including through examinations and comment letters, which impacts the discussion of economic effects in previous releases. We will continue to assess the rule's operation and impacts along with intervening developments during the period of the extension.

The temporary rule currently in effect serves as the economic baseline against which the costs and benefits, as well as the impact on efficiency, competition, and capital formation, of the amendment are discussed. The amendment, which will extend rule 206(3)–3T's sunset date by an additional two years, will affect investment advisers that are registered with the Commission as broker-dealers and engage in, or may consider engaging in, principal transactions with non-discretionary advisory clients, as well as the non-discretionary advisory clients of these firms that engage in, or may consider engaging in, principal transactions.

Based on IARD data as of October 1, 2014, there are 96 dual registrants that may be relying on the rule; however, evidence suggests that the number of firms actually relying on the rule may be smaller.[62] One commenter questioned

[53] *See* Proposing Release, Section II.

[54] 5 U.S.C. 553(d).

[55] *Id.*

[56] 44 U.S.C. 3501 *et seq.*

[57] *See* Proposing Release, Section IV.

[58] *See Proposed Collection; Comment Request,* 78 FR 72932 (Dec. 4, 2013); *Submission for OMB Review; Comment Request,* 79 FR 7481 (Feb. 7, 2014).

[59] 15 U.S.C. 80b–2(c). Section 202(c) of the Advisers Act mandates that the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

[60] *See* 2007 Principal Trade Rule Release, Sections VI–VII; 2009 Extension Release, Sections V–VI; 2010 Extension Release, Sections V–VI; 2012 Extension Release, Sections V–VI.

[61] In previous releases, the Commission has requested comment on the economic effects of rule 206(3)–3T, the economic effects of extending the rule, and the economic effects of alternatives. The Commission has not received comments providing quantitative data regarding the economic effects of extensions of rule 206(3)–3T or to alternatives of the rule.

[62] Based on IARD data as of October 1, 2014, there are 291 SEC-registered advisers that are also registered as broker-dealers that have non-discretionary accounts who could potentially rely on the rule; however, only 96 of these dual registrants indicate they currently engage in principal transactions on Form ADV. The actual number of advisers that engage in principal transactions in reliance on the temporary rule is likely smaller. The staff's recent outreach to observe the use of the rule by firms found that some of the dual registrants in the sample, which was derived based on Form ADV data, did not rely on the rule.

whether the Commission could justify extending rule 206(3)–3T when it did not have specific data regarding dual registrant firms' reliance on the rule.[63] This commenter further suggested that without this and other data, the Commission could not confidently assert that the extension of the rule would have the economic effects set forth in the Proposing Release.[64] We know from current and past comment letters, as well as our examination findings, that both large and small advisers have relied and continue to rely upon the rule since its implementation in 2007.[65] Additionally, one comment letter to the Request provided survey results from a small sample of dual-registrant firms, showing that the firms engaged in a significant dollar amount of principal transactions in reliance on the rule in 2012.[66] We believe that this background information provides evidence indicating a reliance on the rule by certain dual-registrant firms. Because the economic effects of extending the rule and its reasonable alternatives will depend on the extent to which eligible firms rely on the rule to engage in principal transactions with non-discretionary advisory clients, however, we recognize that the economic effects could vary significantly among firms and their clients.

B. Analysis of the Extension and Alternatives

As noted above, the temporary rule currently in effect serves as the economic baseline against which the costs and benefits, as well as the impact on efficiency, competition, and capital formation, of the amendment are discussed. Because the extension of the sunset date in the temporary rule that we are adopting today maintains the status quo, we do not expect additional costs or benefits to result from the extension. For the same reason, we also do not expect the extension to have additional effects on efficiency, competition, or capital formation. Extending the current rule will provide the Commission with additional time to consider principal trading as part of the broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers.

Reasonable alternatives to extending the current rule that we considered include allowing the rule to expire, adopting the rule on a permanent basis, and extending the rule for a period other than two years. If the rule is allowed to expire, then an adviser that is registered as a broker-dealer would no longer have a lower cost and more efficient alternative to the requirements under section 206(3) of the Advisers Act like that provided by the temporary rule,[67] and consequently non-discretionary advisory account clients could lose access to the principal accounts of firms that rely on the rule. As noted in the 2012 Extension Release, greater access to a wider range of securities may allow non-discretionary advisory clients to more efficiently allocate capital and, in the long term, the more efficient allocation of capital may lead to an increase in capital formation.[68] If the rule expires, the loss of access by non-discretionary advisory clients to a wider range of securities would reduce the ability of these investors to efficiently allocate capital. A decrease in the ability of investors to efficiently allocate capital could reduce any resulting long-term gains to capital formation. Allowing the rule to expire also would reduce the ability of investors to choose between brokerage accounts and advisory accounts if the investor wishes to maintain access to securities held in firm principal accounts, and may force non-discretionary advisory account clients to bear the costs associated with transferring to brokerage accounts (or lose access to a firm's principal accounts). Firms may also bear the potentially substantial costs associated with restructuring their operations and client relationships or seeking exemptive relief from the provisions of section 206(3) of the Advisers Act.

If the rule is allowed to expire, and firms engage in principal transactions with advisory account clients pursuant to the requirements of section 206(3) of the Advisers Act, investors may be able to more fully evaluate the conflicts of the principal transactions at the time of trades. Two commenters who opposed the extension of rule 206(3)–3T questioned whether preserving investor access to securities sold on a principal basis is ultimately beneficial for investors given the presence of conflicts of interest and the potential for abuse including high trading costs.[69] We believe that the requirements of rule 206(3)–3T, coupled with regulatory oversight, will adequately protect non-discretionary advisory clients for the additional limited period of the extension. As noted above, section 206(3) does not prohibit advisers from engaging in principal transactions, but rather prescribes a means by which an adviser must disclose and obtain the consent of its clients to the conflicts of interest involved. Rule 206(3)–3T, which provides advisers an alternative means to comply with the requirements of that section, continues to provide the protection of transaction-by-transaction disclosure and consent, either orally or in writing, subject to several conditions, including: (i) Written, prospective disclosure regarding the conflicts arising from principal trades; (ii) written, revocable consent from the client prospectively authorizing the adviser to enter into principal transactions; (iii) a written confirmation statement sent to the client for each principal trade, disclosing the capacity in which the adviser has acted and indicating that the client consented to the transaction; and (iv) an annual report itemizing principal transactions. We also continue to believe that non-discretionary advisory client access to a wider range of securities is beneficial. Many clients wish to access securities held in the

[63] *See* Consumer Federation Letter.

[64] *See id.*

[65] *See* SIFMA 2014 Letter (stating that a significant number of SIFMA member firms continue to rely on rule 206(3)–3T); Wells Fargo Letter (noting that the firm managed approximately 275,000 non-discretionary advisory accounts in which hundreds of principal trades are made on a monthly basis for the benefit of investors). Past comment letters have also stated that dual registrant firms rely on the rule. For example, SIFMA's 2012 comment letter included survey results from seven dual-registrant firms that, in the aggregate, manage over $325 billion of assets in over 1.1 million non-discretionary advisory accounts. The firms indicated that 459,507 non-discretionary advisory accounts (with aggregate assets of over $125 billion) were eligible to engage in principal trading in reliance on the rule. These firms also indicated that, during 2010–2012, the firms engaged in principal trades in reliance on rule 206(3)–3T with respect to 106,682 accounts and executed an average of 12,009 principal trades per month in reliance on the rule. Comment Letter of SIFMA (Nov. 13, 2012).

[66] *See* Comment Letter of SIFMA (Jul. 5, 2013). Ten firms responded to SIFMA's survey and reported that they relied on the temporary rule for $8 billion in principal transactions across 163,000 retail non-discretionary advisory accounts. In comparison, the ten firms engaged in $36 billion in principal transaction with 498,000 retail advisory accounts under section 206(3) of the Advisers Act and $809 billion in principal transactions with 2,480,000 retail brokerage accounts.

[67] Section 206(3) of the Advisers Act requires an investment adviser to provide written conflict-of-interest disclosure describing its role as principal when transacting securities from its own account and obtain client consent prior to transaction completion. Rule 206(3)–3T provides a dual registrant firm the option of providing transaction-by-transaction disclosures verbally instead of in writing when engaging in principal transactions with non-discretionary advisory clients as long as the firm satisfies additional requirements before and after the transactions. Additional requirements of the temporary rule include the provision of a written prospective disclosure to clients describing the conflicts arising from principal transactions, acquisition of written revocable client consent prospectively authorizing such transactions, the provision of transaction-by-transaction confirmations, and the provision of annual reports itemizing the clients' principal transactions thereafter.

[68] 2012 Extension Release, Section V.B.

[69] *See* Better Markets Letter; Consumer Federation Letter.

inventory of a diversified broker-dealer and clients may wish to access these securities through their non-discretionary advisory accounts.[70]

We previously received a comment suggesting that rule 206(3)–3T may impede capital formation because it would lead to ''more numerous and more severe violations . . . of the trust placed by individual investors in their trusted investment adviser.'' [71] While we understand the view that numerous and severe violations of trust could impede capital formation, the staff has not identified instances where an adviser has used the temporary rule to ''dump'' unmarketable securities or securities that the adviser believes may decline in value into an advisory account, a harm that section 206(3) and the conditions and limitations of rule 206(3)–3T are designed to redress.[72] In addition, non-discretionary advisory account clients benefit from the protections of sales practice rules under the Securities Exchange Act of 1934 (the ''Exchange Act'') and of relevant self-regulatory organizations, and the fiduciary duty and other obligations imposed by the Advisers Act.

We also previously received comments opposing the limitation of the temporary rule to investment advisers that are registered with us as broker-dealers, as well as to accounts that are subject to both the Advisers Act and Exchange Act as providing a competitive advantage to investment advisers that are registered with us as broker-dealers.[73] Commenters on the Proposing Release did not address this specific issue and we have no reason to believe that broker-dealers (or affiliated but separate investment advisers and broker-dealers) are put at a competitive disadvantage to advisers that are themselves also registered as broker-dealers.[74] We intend to continue to evaluate the effects of the rule on efficiency, competition, and capital formation in connection with our broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers.

If the Commission allowed the rule to expire, firms would no longer incur the costs associated with rule 206(3)–3T, including the operational costs associated with complying with the rule.[75] In the 2007 Principal Trade Rule Release, we presented estimates of the costs of each of the rule's disclosure elements, including: prospective disclosure and consent; transaction-by-transaction disclosure and consent; transaction-by-transaction confirmations; and the annual report of principal transactions. We also provided estimates for the following related costs of compliance with rule 206(3)–3T: (i) The initial distribution of prospective disclosure and collection of consents; (ii) systems programming costs to ensure that trade confirmations contain all of the information required by the rule; and (iii) systems programming costs to aggregate already-collected information to generate compliant principal transactions reports. We do not believe the extension we are adopting today affects the cost estimates associated with the rule.[76] Furthermore, we believe that an eligible adviser that begins to rely on rule 206(3)–3T today would bear the same types of upfront and ongoing costs discussed in the 2007 Principal Trade Rule Release.[77]

If the rule is adopted on a permanent basis, then there may be additional economic effects. We recognize that a temporary rule, by nature, creates uncertainty, which in turn, may result in a reduced ability of firms to coordinate and plan future business activities.[78] The uncertainty with respect to rule 206(3)–3T would be reduced if the rule was adopted on a permanent basis or if the rule was allowed to expire. Nonetheless, we believe that it would not be appropriate to adopt the rule on a permanent basis (with any necessary substantive amendments) while consideration of the regulatory requirements applicable to broker-dealers and investment advisers is ongoing.

Another alternative we considered was to extend the rule for a period other than two years. For example, extending the rule for greater than two years would provide the Commission with additional time to evaluate the impact of any potential rulemaking or other process that may emerge from the broader consideration of fiduciary obligations and other regulatory requirements applicable to broker-dealers and investment advisers. Should our consideration of the fiduciary obligations and other regulatory requirements applicable to broker-dealers and investment advisers extend beyond the sunset date of the temporary rule, such a longer period may be appropriate. Several commenters specifically stated that the rule should be extended for at least five years to provide the Commission with sufficient time to complete its review of the obligations of broker-dealers and investment advisers and to engage in any subsequent Commission action.[79] On balance, however, we continue to believe that the two-year extension of rule 206(3)–3T appropriately addresses the concerns of firms and clients relying on the rule while the Commission continues its ongoing consideration of the standards applicable to investment advisers and broker-dealers.

VI. Final Regulatory Flexibility Act Analysis

The Commission has prepared the following Final Regulatory Flexibility Analysis (''FRFA'') regarding the amendment to rule 206(3)–3T in accordance with 5 U.S.C. 604. We prepared and included an Initial Regulatory Flexibility Analysis (''IRFA'') in the Proposing Release.[80]

A. Need for the Rule Amendment

We are adopting an amendment to extend rule 206(3)–3T's sunset date for two years because we believe that it would not be appropriate to require firms relying on the rule to restructure their operations and client relationships before we complete our broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers. The objective of the amendment to rule 206(3)–3T is to continue to provide an alternative method for investment advisers that are dually registered as broker-dealers to comply with section 206(3) of the Advisers Act when acting in a principal capacity with certain of their advisory clients. Absent further

[70] *See* 2007 Principal Trade Rule Release, Section I.B.

[71] *See* Comment Letter of National Association of Personal Financial Advisors (Dec. 20, 2010).

[72] *See* 2010 Extension Proposing Release, Section II (noting that the staff did not identify instances of ''dumping'' in connection with OCIE's examinations regarding compliance with the temporary rule).

[73] *See* Comment Letter of the Financial Planning Association (Nov. 30, 2007); Comment Letter of the American Bar Association, section of Business Law's Committee on Federal Regulation of Securities (Apr. 18, 2008). *See also* 2009 Extension Release, Section VI.

[74] *See* 2009 Extension Release, Section VI; 2010 Extension Release, Section VI; 2012 Extension Release, Section V.

[75] *See supra* note 60.

[76] In the 2007 Principal Trade Rule Release, we estimated the total overall costs, including estimated costs for all eligible advisers and eligible accounts, relating to compliance with rule 206(3)–3T to be $37,205,569. *See* 2007 Principal Trade Rule Release, Section VI.D.

[77] *See id.*

[78] *See* FSR Letter; SIFMA 2014 Letter; Wells Fargo Letter. We also received several comments in connection with prior extensions of the rule urging us to make the rule permanent to avoid such uncertainty. *See e.g.,* Comment Letter of Winslow, Evans & Crocker (Dec. 8, 2010); Comment Letter of Bank of America (Dec. 20, 2010).

[79] *See* FSR Letter; SIFMA 2014 Letter; Wells Fargo Letter.

[80] *See* Proposing Release, Section VI.

action by the Commission, the rule will sunset on December 31, 2014.

We are amending rule 206(3)–3T pursuant to sections 206A and 211(a) of the Advisers Act [15 U.S.C. 80b–6a and 15 U.S.C. 80b–11(a)].

B. Significant Issues Raised by Public Comments

We did not receive any comment letters related to our IRFA.

C. Small Entities Subject to the Rule

Rule 206(3)–3T is an alternative method of complying with Advisers Act section 206(3) and is available to all investment advisers that: (i) Are registered as broker-dealers under the Exchange Act; and (ii) effect trades with clients directly or indirectly through a broker-dealer controlling, controlled by or under common control with the investment adviser, including small entities. Under Advisers Act rule 0–7, for purposes of the Regulatory Flexibility Act an investment adviser generally is a small entity if it: (i) Has assets under management of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year.[81]

As noted in the Proposing Release, we estimated that as of June 1, 2014, 464 SEC-registered investment advisers were small entities.[82] As discussed in the 2007 Principal Trade Rule Release, we opted not to make the relief provided by rule 206(3)–3T available to all investment advisers, and instead have restricted it to investment advisers that also are registered as broker-dealers under the Exchange Act.[83] We therefore estimated for purposes of the IRFA that 12 of these small entities (those that are both investment advisers and registered broker-dealers) could rely on rule 206(3)–3T.[84] We did not receive any comments on these estimates.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The provisions of rule 206(3)–3T impose certain reporting or recordkeeping requirements and our amendment will extend the imposition of these requirements for an additional two years. The two-year extension will not alter these requirements.

Rule 206(3)–3T is designed to provide an alternative means of compliance with the requirements of section 206(3) of the Advisers Act. Investment advisers taking advantage of the rule with respect to non-discretionary advisory accounts are required to make certain disclosures to clients on a prospective, transaction-by-transaction and annual basis.

Specifically, rule 206(3)–3T permits an adviser, with respect to a non-discretionary advisory account, to comply with section 206(3) of the Advisers Act by, among other things: (i) Making certain written disclosures; (ii) obtaining written, revocable consent from the client prospectively authorizing the adviser to enter into principal trades; (iii) making oral or written disclosure and obtaining the client's consent orally or in writing prior to the execution of each principal transaction; (iv) sending to the client a confirmation statement for each principal trade that discloses the capacity in which the adviser has acted and indicating that the client consented to the transaction; and (v) delivering to the client an annual report itemizing the principal transactions. Advisers are already required to communicate the content of many of the disclosures pursuant to their fiduciary obligations to clients. Other disclosures are already required by rules applicable to broker-dealers.

Our amendment will only extend the rule's sunset date for two years in its current form. Advisers currently relying on the rule already should be making the disclosures described above.

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small entities.[85] Alternatives in this category would include: (i) Establishing different compliance or reporting standards or timetables that take into account the resources available to small entities; (ii) clarifying, consolidating, or simplifying compliance requirements under the rule for small entities; (iii) using performance rather than design standards; and (iv) exempting small entities from coverage of the rule, or any part of the rule.

We believe that special compliance or reporting requirements or timetables for small entities, or an exemption from coverage for small entities, may create the risk that the investors who are advised by and effect securities transactions through such small entities would not receive adequate disclosure. Moreover, different disclosure requirements could create investor confusion if it creates the impression that small investment advisers have different conflicts of interest with their advisory clients in connection with principal trading than larger investment advisers. We believe, therefore, that it is important for the disclosure protections required by the rule to be provided to advisory clients by all advisers, not just those that are not considered small entities. Further consolidation or simplification of the proposals for investment advisers that are small entities would be inconsistent with our goal of fostering investor protection.

We have endeavored through rule 206(3)–3T to minimize the regulatory burden on all investment advisers eligible to rely on the rule, including small entities, while meeting our regulatory objectives. It was our goal to ensure that eligible small entities may benefit from our approach to the rule to the same degree as other eligible advisers. The condition that advisers seeking to rely on the rule must also be registered with us as broker-dealers and that each account with respect to which an adviser seeks to rely on the rule must be a brokerage account subject to the Exchange Act, and the rules thereunder, and the rules of the self-regulatory organization(s) of which the broker dealer is a member, reflect what we believe is an important element of our balancing between easing regulatory burdens (by affording advisers an alternative means of compliance with section 206(3) of the Act) and meeting our investor protection objectives.[86] Finally, we do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection in the present context.

VII. Statutory Authority

The Commission is amending rule 206(3)–3T pursuant to sections 206A

[81] *See* 17 CFR 275.0–7.

[82] IARD data as of June 1, 2014. As of October 1, 2014, based on IARD data, we estimate that 480 SEC-registered investment advisers were small entities.

[83] *See* 2007 Principal Trade Rule Release, Section VIII.B.

[84] IARD data as of June 1, 2014. As of October 1, 2014, based on IARD data, we estimate that 7 of these small entities could rely on rule 206(3)–3T.

[85] *See* 5 U.S.C. 603(c).

[86] *See* 2007 Principal Trade Rule Release, Section II.B.7 (noting commenters that objected to this condition as disadvantaging small broker-dealers (or affiliated but separate investment advisers and broker-dealers)).

and 211(a) of the Advisers Act [15 U.S.C. 80b–6a and 80b–11(a)].

List of Subjects in 17 CFR Part 275

Investment advisers, Reporting and recordkeeping requirements.

Text of Rule Amendment

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 1. The authority citation for Part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(11)(H), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

§ 275.206(3)–3T [Amended]

■ 2. In § 275.206(3)–3T, amend paragraph (d) by removing the words ''December 31, 2014'' and adding in their place ''December 31, 2016.''

By the Commission.

Dated: December 17, 2014.

Brent J. Fields,

Secretary.

[FR Doc. 2014–29975 Filed 12–22–14; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 316

[Docket No. FDA–2011–N–0583]

Policy on Orphan-Drug Exclusivity; Clarification

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification; clarification on policy.

SUMMARY: The Food and Drug Administration (FDA) is publishing this document to clarify its policy regarding certain aspects of orphan-drug exclusivity. This document is being published because of a recent court decision interpreting provisions of the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Orphan Drug Act.

DATES: Effective December 23, 2014.

FOR FURTHER INFORMATION CONTACT: Gayatri R. Rao, Office of Orphan Products Development, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5271, Silver Spring, MD 20993, 301–796–8660.

SUPPLEMENTARY INFORMATION:

I. Background

After a designated orphan drug is approved, section 527 of the FD&C Act (21 U.S.C. 360cc) generally prohibits the Food and Drug Administration (FDA or the Agency) from approving another such drug for the same disease for 7 years. Regulations interpreting this provision were proposed in 1991 (January 29, 1991, 56 FR 3338) and made final in 1992 (December 29, 1992, 57 FR 62076). In 2011, FDA issued a proposed rule (October 19, 2011, 76 FR 64868) to amend these regulations to clarify certain regulatory language and propose areas of minor improvement regarding orphan-drug designation and orphan-drug exclusivity; these were finalized in 2013 (June 12, 2013, 78 FR 35117). These regulations are codified under part 316 (21 CFR part 316).

FDA has interpreted section 527 of the FD&C Act and its regulations such that the Agency will not recognize orphan-drug exclusivity for a drug when it has previously approved the same drug for the same use or indication in a rare disease or condition. §§ 316.3(b)(12); 316.31(a). A drug will not be considered the same as a previously approved drug if, at the time of approval, the sponsor has provided evidence that its drug is ''clinically superior'' to the previously approved drug, that is, the drug is more effective, safer, or makes a major contribution to patient care. § 316.3(b)(3). Accordingly, the sponsor of an orphan-designated drug that is the same as a previously approved drug, as defined in § 316.3(b)(14), is required to demonstrate that its drug is clinically superior to the previously approved drug in order for its drug to be eligible for orphan-drug exclusivity upon approval.

The Agency's interpretation of section 527 of the FD&C Act has been the subject of legal action in *Depomed* v. *HHS et al.*, Civil Action No. 12–1592 (KBJ) (D.D.C. September 5, 2014). Depomed has not demonstrated that GRALISE (gabapentin) is clinically superior to a previously approved drug, Pfizer's NEURONTIN (gabapentin). Accordingly, under the relevant regulations, GRALISE is the same drug as NEURONTIN, because it contains the same active moiety (gabapentin), was approved for the same use (post-herpetic neuralgia), and was not demonstrated to be clinically superior to NEURONTIN. Nevertheless, the *Depomed* court held that FDA must recognize orphan-drug exclusivity for GRALISE for the treatment of post-herpetic neuralgia. Following the *Depomed* decision, under the court's order, FDA recognized orphan-drug exclusivity for GRALISE for the treatment of post-herpetic neuralgia.

II. Orphan-Drug Exclusivity

In consideration of any uncertainty created by the court's decision in *Depomed,* the Agency is issuing this statement. It is the Agency's position that, given the limited terms of the court's decision to GRALISE, FDA intends to continue to apply its existing regulations in part 316 to orphan-drug exclusivity matters. FDA interprets section 527 of the FD&C Act and its regulations (both the older regulations that still apply to original requests for designation made on or before August 12, 2013, as well as the current regulations) to require the sponsor of a designated drug that is the ''same'' as a previously approved drug to demonstrate that its drug is ''clinically superior'' to that drug upon approval in order for the subsequently approved drug to be eligible for orphan-drug exclusivity.

Dated: December 17, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–29920 Filed 12–22–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 151

[K00103 14/15 A3A10; 134D0102DR–DS5A300000–DR.5A311.IA000115]

RIN 1076–AF23

Land Acquisitions in the State of Alaska

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: This rule deletes a provision in the Department of the Interior's land-into-trust regulations that excludes from the scope of the regulations, with one exception, land acquisitions in trust in the State of Alaska.

DATES: This rule is effective January 22, 2015.

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action, (202) 273–4680; *elizabeth.appel@bia.gov.*