



December 1, 2025

Via Electronic Mail

The Honorable Paul S. Atkins, Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: **Request for regulatory relief for principal transactions by
investment advisers under Advisers Act Section 206(3)**

Dear Chairman Atkins:

On behalf of our member firms, the Securities Industry and Financial Markets Association (“SIFMA”)¹ hereby requests regulatory relief from the current interpretation of the Securities and Exchange Commission (“SEC”) staff that Section 206(3) of the Investment Advisers Act of 1940 (“Advisers Act”) requires transaction-by-transaction, prior written notice and consent for principal transactions by investment advisers.

Executive Summary

The SEC staff’s current interpretation of Section 206(3) is ripe for update and modernization given that:

- Principal transactions benefit advisory clients;
- The staff’s interpretation imposes a significant burden without discernible benefit;
- Requiring transaction-by-transaction, prior written disclosure and consent is unnecessary to manage the prospective conflict of interest for principal transactions;

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate on legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed-income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information visit, <http://www.sifma.org>.

- Principal transactions by broker-dealers do *not* require transaction-by-transaction, prior written disclosure and consent, and the principal trading rules for brokers and advisers should be harmonized for the benefit of customers and clients; and
- The evolution of market structure, the regulatory duties of affiliated broker-dealers in principal transactions, and associated regulatory oversight, further mitigate the potential conflicts that Section 206(3) was designed to address.

The SEC staff already has the requisite regulatory authority to interpret and apply Section 206(3) in a less restrictive manner for the benefit of advisory clients. The SEC staff should promptly exercise that authority to provide principal trading relief from Section 206(3) that includes the following non-exclusive elements:

- Eliminate the requirement for transaction-by-transaction written disclosure and consent for both discretionary and non-discretionary clients;
- Allow prior written consent for principal transactions upon/after full written disclosure of the potential conflicts associated with principal transactions and a conspicuous statement that the client’s consent may be revoked at any time; and
- Require that the client receive a written confirmation disclosing the principal transaction in accordance with Exchange Act Rule 10b-10 and applicable SEC no-action/exemptive relief thereunder (including permitting delivery of confirmations on a periodic basis to clients participating in a managed account program), and conspicuously stating that the client’s consent may be revoked at any time.

* * *

I. Background.

Section 206(3) of the Advisers Act states in pertinent part:

It shall be unlawful for any investment adviser ... (3) acting as principal for his own account, knowingly to sell any security to or purchase any security from a client ... without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction.²

The limited legislative history of Section 206(3) indicates that lawmakers were concerned in particular about unscrupulous advisers dumping unwanted securities on clients, potentially at unfavorable prices. In 1940, given the lack of depth, liquidity and transparency in the securities markets – and without the benefit of today’s robust regulatory requirements for broker-dealers, it was more likely that such abuses could occur and remain undetected. Keeping advisers at arms-

² 15 U.S.C. §80b-6 (Prohibited transactions by investment advisers), <https://www.law.cornell.edu/uscode/text/15/80b-6>.

length from principal transactions with their clients was, at the time, considered the best protection against self-serving conduct. As a result, the SEC staff has historically interpreted Section 206(3) to require an adviser entering into a principal trade with a client to satisfy the foregoing written disclosure and consent requirements on a *transaction-by-transaction* basis (and *not* via prior blanket disclosure and consent).³

II. The SEC should provide principal trading relief for the benefit of advisory clients.

1. Principal transactions benefit advisory clients.

Principal trading benefits investors in numerous respects, including without limitation the following:

- Provides crucial support for individual investors who maintain systematic investment strategies (such as dividend reinvestment), or who seek rebalancing across their portfolio, both investor-beneficial programs which often require fractional share transactions to execute. Such transactions may pose operational challenges for some firms given that generally, fractional shares cannot be traded on a pure agency basis because they are not traded on the open market or exchanges.
- Provides individual investors with access to a wider variety of securities and investment strategies, including from firm inventories (e.g., fixed income securities, preferred shares, eligible syndicate securities, etc.).
- Provides individual investors with access to new issue retail notes which contain beneficial features specific to individual investors (e.g., estate planning survivor's option) and market-linked retail notes with risk management features designed to protect against unforeseen market conditions, plus, such new issue notes can be sold to fee-based advisory accounts net of the sales concession if offered pursuant to a fixed price offering as provided by FINRA Rule 5141.
- Can provide increased liquidity and better execution for clients, particularly in markets where securities trade infrequently and/or there are limited pools of liquidity for firms to access on an agency basis.
- Provides investors with faster execution of trades in such securities.

Notwithstanding the long history of principal trading regulation, regulatory and market developments and evolving individual investor investment preferences and demographics suggest that now is an appropriate time to revisit whether the staff's current interpretation and application of Section 206(3) are still necessary or appropriate.

³ SEC Interpretation of Section 206(3) of the Advisers Act, Advisers Act Rel. No. 1732, 63 FR 39505 at 39507 (July 23, 1998), <https://www.sec.gov/rule-release/ia-1732> (“[A]n adviser may comply with Section 206(3) either by obtaining client consent prior to execution of a principal or agency transaction, or after execution but prior to settlement of the transaction.”).

- As the SEC itself has observed, fractional share trading “has grown dramatically since [late 2019]” and “[e]vidence suggests that this growth is in great part due to the rise in direct individual investor participation.”⁴ Because individual investors increasingly invest in this manner, regulators should prioritize addressing potential barriers to investors doing so in advisory accounts on par with brokerage accounts.⁵
- For many firms, a substantial segment of their clients are currently at or near retirement age. This large client group is not unexpected given the aging demographics of the population generally. These clients require support around income strategies, which would be facilitated and made more efficient by minimizing the impact of the current principal trading restriction for advisory accounts. Notably, many of these clients engage in buy-and-hold strategies and principal trading would provide for additional liquidity.

2. The staff’s transaction-by-transaction, prior written disclosure and consent requirement imposes a significant burden without discernible benefit.

Transaction-by-transaction, prior disclosure and consent (whether written or verbal) is burdensome and impractical. The combination of rapid electronic trading systems, the sheer volume of transactions, and the limited availability of many of the securities traded in principal markets means that in many cases an adviser is unable to provide written disclosure and obtain consent in sufficient time to obtain such securities at the best price and execution or, in some cases, at all – in each case, to the detriment of the client.⁶ Moreover, this requirement puts advisers at a competitive disadvantage to brokers.⁷

With respect to clients who have granted full discretion to their adviser, the requirement for transaction-by-transaction consent is generally the opposite of what the client intended in granting such discretion. Thus, the requirement often mars the client experience by causing confusion and/or frustration among discretionary clients.

With respect to non-discretionary clients, “discussions between investment advisers and non-discretionary clients about a trade or strategy may occur before a particular transaction is

⁴ SEC Order Competition Rule Proposal, Release No. 34-96495, 88 FR 128, 218, fn 607 (Jan. 3, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-01-03/pdf/2022-27617.pdf>.

⁵ See, e.g., SEC No Action Letter to J.P. Morgan Securities LLC, IM Ref. No. 20164111157 (April 14, 2016), [https://www.sec.gov/divisions/investment/noaction/2016/jpmorgan-041416-206\(3\).htm](https://www.sec.gov/divisions/investment/noaction/2016/jpmorgan-041416-206(3).htm) (granting relief from Section 206(3) for purchases of fractional shares of exchange-traded equity securities from certain advisory client accounts).

⁶ Temporary Rule Regarding Principal Trades with Certain Advisory Clients, Release No. IA-2653; File No S7-23-07 (Sep. 24, 2007) at p. 8, <https://www.sec.gov/files/rules/final/2007/ia-2653.pdf> (“Temporary Rule Adopting Release”).

⁷ See *infra* Section II.4.

effected, but at the time that discussion occurs, the [adviser] may not know whether the transaction will be effected on an agency or a principal basis.”⁸

The principal trading restrictions may also complicate numerous client-beneficial applications, including fractional share trading (which is on the rise), dividend reinvestment programs, rebalancing across securities, dollar-cost averaging, and fixed income trades.

For these types of transactions and others, the principal trading restrictions may impose an unnecessary delay or impediment to trading that undermines best execution for the client and/or impedes the client’s access to new issues. In either case, the *client* bears the cost/burden of the staff’s interpreted restrictions, without any corresponding additional investor protection benefit in light of the adviser’s fiduciary obligations, as described below.

3. Requiring transaction-by-transaction, prior written disclosure and consent is unnecessary to manage the prospective conflict of interest for principal transactions.

Following the implementation of Reg BI in 2020, in 2022, the SEC staff issued uniform guidance for broker-dealers and investment advisers to address conflicts of interest.⁹ The Staff Bulletin recognized that “both [Reg BI] for broker-dealers and the fiduciary standard for investment advisers ... are drawn from key fiduciary principles that include an obligation to act in a retail investor’s best interest and not to place their own interests ahead of the investor’s interest.”¹⁰ An investment adviser’s fiduciary duty to eliminate, mitigate or disclose conflicts, as set forth in the Staff Bulletin, is sufficient for an adviser to manage potential conflicts of interests associated with principal transactions. Transaction-by-transaction, prior written disclosure and consent is neither necessary, nor required by the statute, to meet this fiduciary obligation.

As discussed above, Section 206(3) was intended to protect clients from principal transactions favoring the adviser at the expense of the client, particularly to prevent advisers from “dumping” unwanted securities on clients. An adviser’s fiduciary duty to his or her client, however, already prohibits an advisor from doing so – without the additional burdens imposed by the staff’s interpretation of Section 206(3). Specifically, under the duty of care, an adviser must act in the best interest of the client, and also must seek best execution; and under the duty of loyalty, the adviser must place the client’s interest above their own and eliminate, mitigate or disclose conflicts of interest. Accordingly, the component elements of the fiduciary duty already protect the client from the potential conflict that an adviser may enter into transactions that are not in the client’s best interest and/or that may favor the adviser.

⁸ Temporary Rule Adopting Release (quoting SIFMA comment letter to SEC re: File No. S7-23-07, Temporary Rule Regarding Principal Trades with Certain Advisory Clients (Jun. 27, 2007) at p. 21, <https://www.sec.gov/comments/s7-23-07/s72307-8.pdf>).

⁹ Staff Bulletin: Standards of Conduct for Broker-Dealer and Investment Advisers Conflicts of Interest (Aug. 3, 2022), <https://www.sec.gov/about/divisions-offices/division-trading-markets/broker-dealers/staff-bulletin-standards-conduct-broker-dealers-investment-advisers-conflicts-interest>.

¹⁰ *Id.*

Moreover, as the SEC staff has repeatedly stated, “Section 206(3) should be read together with Sections 206(1) and (2).”¹¹ In this respect, the staff’s Section 206(3) restrictions are neither necessary to protect investors nor to effectuate an adviser’s fiduciary duty to act in the best interests of the client, including the duty to provide best execution and to disclose facts necessary to alert the client to the adviser’s potential conflicts of interest in a principal transaction under 206(1) and (2).

Finally, the staff’s Section 206(3) restrictions long pre-date the modernization of trade reporting in the equity and fixed income markets. Currently, among the SEC, FINRA, and MSRB, numerous trade reporting facilities provide regulators with full access to near real-time trade/trade data in order to monitor for any potential issues. Modern trade reporting and monitoring tools further minimize the risk that 206(3) was intended to address and provide further good reason to revisit the staff’s Section 206(3) restrictions with a view toward modernizing them as well.

4. Principal transactions by broker-dealers do not require transaction-by-transaction, prior written disclosure and consent. The principal trading rules for brokers and advisers should be harmonized for the benefit of customers and clients, respectively.

For broker-dealers, principal transactions are governed by Section 11(d)(2) of the Securities Exchange Act of 1934 (the “Exchange Act”), which states in pertinent part that a broker-dealer is required to:

.... Disclose[] to such customer in writing at or before the completion of the transaction whether he is acting as a dealer for his own account, as a broker for such customer, or as a broker for some other person.¹²

The statutory language of the broker-dealer principal trading provision differs from the investment adviser provision in only two respects: (i) written disclosure must be made “*at or before*” the completion of the transaction (versus “*before*” for advisers); and (ii) client consent (written or verbal) is *not* required (versus it is required for advisers). Broker-dealers satisfy this disclosure obligation by sending a written trade confirmation to the customer upon completion of the transaction (or on a periodic basis for clients in managed account programs if consistent with SEC no-action/exemptive relief) that includes details about the transaction, including the capacity in which the firm acted.¹³

Notably, from 2007 to 2016, broker-dealers that previously offered fee-based brokerage accounts could also operate under the Temporary Rule governing principal transactions.¹⁴

¹¹ See, e.g., Temporary Rule Adopting Release at pp. 15, 29-30.

¹² 15 U.S.C. § 78k(d)(2) (Trading by members of exchanges, brokers, and dealers), <https://www.law.cornell.edu/uscode/text/15/78k>.

¹³ Exchange Act Rule 10b-10, 17 CFR 240.10b-10.

¹⁴ See Appendix A, discussing the background and operation of Advisers Act Temporary Rule 206(3)-3T regarding principal trades with certain advisory clients (the “Temporary Rule”).

Following the sunset of the Temporary Rule in 2016, in 2020, the SEC implemented Reg BI to establish a heightened, best interest conduct standard for broker-dealers – a standard more uniform and consistent with an investment adviser’s fiduciary duty under the Advisers Act. Notably, although the SEC could have imposed on broker-dealers under Reg BI the same restrictions on principal trading by investment advisers, the SEC chose not to do so.

It is reasonable to surmise that the SEC’s decision not to impose a transaction-by-transaction, prior written notice and consent requirement in connection with broker-dealers’ principal trading activity under Reg BI was based upon a determination that doing so was unnecessary to ensure investor protection and/or to appropriately manage this potential conflict of interest. Indeed, neither the loosening of the principal trading restrictions in the Temporary Rule,¹⁵ nor the absence of a Section 206(3)-type restriction in Reg BI, have been alleged or reported to negatively impact a firm’s duty to manage conflicts or act in a retail investor’s best interest.

The divergent principal transaction rules for broker-dealers and investment advisers likely cause confusion and in some cases frustration among investors. In the interest of uniformity and efficiency, the SEC should harmonize the principal trading rules for advisers with the principal trading rules for broker-dealers. Investors deserve the benefit of a consistent principal trade experience across both brokerage and advisory accounts.

5. The evolution of market structure, the regulatory duties of affiliated broker-dealers in principal transactions, and associated regulatory oversight, further mitigate the potential conflicts that Section 206(3) was designed to address.

In principal transactions executed by an affiliated or dual-registrant broker-dealer, the obligation to obtain best execution and ensure fair pricing is governed by a robust framework of regulatory safeguards. Under FINRA Rule 5310, broker-dealers must use reasonable diligence to ensure customer orders are executed at the most favorable price possible under current market conditions. FINRA Rule 2121 further reinforces this duty by requiring that markups, markdowns, and commissions be fair and reasonable, considering all relevant circumstances. Broker-dealers are also subject to extensive trade reporting requirements, which enhance market transparency and facilitate compliance with best execution and fair pricing obligations and regulatory oversight. Importantly, the SEC and FINRA actively monitor and enforce broker-dealer compliance with these and other rules designed to protect investors and promote competition and fair markets (which are in addition to the duties imposed upon the investment adviser) through routine examinations, targeted sweeps, and enforcement actions.

The evolution of market structure has significantly enhanced these protections. The rise of electronic trading platforms and the development of two-sided, competitive markets have

¹⁵ The Temporary Rule represented a nine-plus year experiment in eliminating the requirement for transaction-by-transaction, prior *written* disclosure and consent. During that lengthy period, not a single instance of a shortcoming in investor protection, or other negative consequence, was reported as a result of the operation of the Temporary Rule.

narrowed bid-ask spreads and improved price discovery. These innovations have transformed the landscape since the enactment of Section 206(3), providing investors with greater access to liquidity and more competitive pricing, and, taken together with the regulatory obligations of broker-dealers and investment advisers and associated regulatory oversight, serve to mitigate conflicts of interest inherent in principal transactions that Section 206(3) was originally designed to address.

III. The SEC staff has authority to interpret and apply Section 206(3) in a less restrictive manner for the benefit of advisory clients.

The SEC has the requisite regulatory authority to provide principal trading relief now – whether through exemptive relief or by formal rulemaking. Such relief would meet each of the three requirements under Section 206A of the Advisers Act: (1) necessary or appropriate in the public interest, (2) consistent with the protection of investors, and (3) fairly intended by the policy and provisions of the Advisers Act.¹⁶

As noted above, in 1940, principal trading restrictions were intended to protect investors due to the lack of transparency in the markets, difficulties in determining execution quality and the lack of robust auditing and surveillance standards. Since 1940, the markets and technology have evolved significantly. Today's markets for most securities are more transparent and deeper and more liquid than ever before, making the historical reasons for restricting principal transactions largely obsolete.

In modern financial markets, the staff's interpreted principal transaction restrictions are neither necessary nor appropriate in the public interest. As discussed above, the current Section 206(3) restrictions could result in investors paying higher prices or denied worthwhile investment opportunities. Moreover, given the rapid pace and high volume of today's market transactions, trade-by-trade written disclosure and consent is simply not practicable and often operates as a *de facto* prohibition on such transactions. Given the extensive protections already provided by the federal securities laws, including an adviser's fiduciary duty, and changes in the financial markets that provide additional protections, providing principal trading relief would be consistent with the protection of investors and the policy and provisions of the Advisers Act.

Moreover, in connection with the adoption of Rule 206(3)-2 (Agency cross transactions for advisory clients),¹⁷ the SEC has already determined that Section 206(3)'s written disclosure and consent requirements are *not* necessarily required to be satisfied on a transaction-by-transaction basis but rather, there are a range of non-exclusive methods to comply with Section 206(3).¹⁸ Specifically, with respect to agency cross transactions, Rule 206(3)-2 requires the advisory client:

¹⁶ 15 U.S.C. 80b-6a.

¹⁷ 17 CFR § 275.206(3)-2, [https://www.law.cornell.edu/cfr/text/17/275.206\(3\)-2](https://www.law.cornell.edu/cfr/text/17/275.206(3)-2).

¹⁸ See Method for Compliance with Section 206(3) of Advisers Act with Respect to Certain Transactions, IA Release No. 557 (Dec. 2, 1976), 41 FR 53808, https://archives.federalregister.gov/issue_slice/1976/12/9/53807-53810.pdf#page=2.

- 1) To execute a written consent prospectively authorizing agency cross transactions after full written disclosure regarding the potential conflicts of interest;
- 2) To receive a written confirmation “*at or before*” the completion of the transaction;¹⁹
- 3) To receive an annual written statement of all such transactions; and
- 4) To receive with each written disclosure and confirmation, a conspicuous statement that the client’s written consent may be revoked at any time.

The rule also explicitly states that it shall not in any way relieve an adviser from acting in the client’s best interests, including the duty to obtain the best price and execution for the client, and the requirement to meet the disclosure obligations imposed by Sections 206(1) and (2) of the Advisers Act.

For all the foregoing reasons, the SEC has the necessary regulatory flexibility to provide principal trading relief from Section 206(3), whether through exemptive relief or by formal rulemaking.

IV. Recommended Relief.

Principal trading relief from Section 206(3) should include the following non-exclusive elements:

- Eliminate the requirement for transaction-by-transaction written disclosure and consent for both discretionary and non-discretionary clients;
- Allow prior written consent for principal transactions upon/after full written disclosure of the potential conflicts associated with principal transactions and a conspicuous statement that the client’s consent may be revoked at any time; and
- Require that the client receive a written confirmation disclosing the principal transaction in accordance with Exchange Act Rule 10b-10 and applicable SEC no-action/exemptive relief thereunder (including permitting delivery of confirmations on a periodic basis to clients participating in a managed account program),²⁰ and conspicuously stating that the client’s consent may be revoked at any time.

¹⁹ This information provides the client a basis to determine whether to continue or revoke his or her written consent.

²⁰ Many advisory clients prefer to receive monthly or quarterly transaction reports. See UBS Financial Services Inc. (May 24, 2007); Wachovia Securities, LLC (Apr. 30, 2007); FSC Securities Corporation (Jan. 30, 2007); Wachovia Securities, LLC (Aug. 15, 2006); William Blair & Company LLC (June 10, 2005); Morgan Keegan & Co., Inc. (Apr. 21, 2005); Goldman, Sachs & Co. (Aug. 14, 2003); Money Management Institute, Securities Industry Association (Aug 23, 1999).

* * *

We appreciate your consideration of our request and our recommendations to implement our request. We would be pleased to discuss this matter with you in further detail. If you have any questions or would like to further discuss, please contact the undersigned at 202-962-7300 or kcarroll@sifma.org.

Sincerely,

A handwritten signature in black ink that reads "Kevin M. Carroll". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kevin M. Carroll
Deputy General Counsel
SIFMA

Attached: Appendix A – Advisers Act Temporary Rule 206(3)-3T

cc: The Honorable Mark T. Uyeda, Commissioner
Andrew Vollmer, Counselor to Commissioner Uyeda
David Marcinkus, Counsel to Commissioner Uyeda
Brian T. Daly, Director, Division of Investment Management

APPENDIX A – Advisers Act Temporary Rule 206(3)-3T

1. Background –The Emergence of Fee-Based Brokerage Accounts

In the late 1980s and early 1990s, brokerage firms first started to introduce new types of full-service accounts – known as fee-based brokerage accounts – that emphasized the importance of the investment advice they provided, and that changed their compensation structure to a fee-based model, just like investment advisers.²¹

A few years later, in May 1994, then SEC Chair Arthur Levitt formed a broad-based committee led by Dan Tully, then Chair and CEO of Merrill Lynch, to recommend best practices for managing conflicts of interest in the brokerage industry. The following year, in April 1995, the committee issued its final report – the Tully Report, which identified as a best practice that brokers should be compensated using asset-based fees (just like investment advisers), instead of commissions.²² The thinking was that commissions created an incentive for brokers to trade too frequently to generate income (also known as “churning”), and that in certain cases the best advice a broker can give a client is to hold tight. The Tully Report viewed fee-based brokerage as a means to better align the interests of brokers and their clients.²³

The Tully Report and Chair Levitt himself encouraged fee-based brokerage accounts to proliferate. As they did, concerns arose among brokers and regulators that this form of compensation could be viewed as “special compensation,” thereby invoking the Advisers Act. So, in 1999, the SEC stepped-in and proposed Rule 202(a)(11)-1 which would exempt brokers offering fee-based accounts from being deemed investment advisers if they satisfied certain conditions.²⁴

The proposed rule was very controversial. Independent investment advisers, represented by the Financial Planning Association (“FPA”), did not like the heightened and more direct competition from brokers that the proposed rule would allow. Regardless, the SEC adopted the rule in April 2005.²⁵ But shortly thereafter, the FPA sued the SEC to invalidate the rule. And, in 2007, the D.C. Circuit court did just that, ruling that the SEC had exceeded its authority when it adopted the rule (the “Former Rule”).²⁶

²¹ See Michael Koffler, *Six Degrees of Separation: Principles to Guide the Regulation of Broker-Dealers and Investment Advisers* 41 SRLR 766 (2009).

²² ¶ 85,614 Report of the Committee on Compensation Practices, Fed. Sec. L. Rep. P 85614 (C.C.H.) (1995).

²³ Notably, while an asset-based fee may reduce the likelihood of churning, it also increases the chance that a broker will ignore a customer’s account – aptly called “reverse churning” – because the broker will get paid regardless of whether a transaction occurs. See Thomas P. Lemke & Gerald T. Lins, *Regulation of Investment Advisers* §2:116 (2010) (“wrap fees may give rise to ‘reverse churning’ (i.e., a lack of trades in an account that otherwise would have been made had the client been paying separate commissions for them).”).

²⁴ SEC Proposed Rule, Certain Broker-Dealers Deemed Not to be Investment Advisers, 17 C.F.R. §§ 275, 279 (1999), <https://www.sec.gov/rules/proposed/34-42099.htm>.

²⁵ Release No. IA-2376 (Apr. 12, 2005).

²⁶ *Financial Planning Assn v. SEC*, 482 F.3d 481 (D.C. Cir., Mar. 30, 2007).

2. Advisers Act Temporary Rule 206(3)-3T

The FPA decision effectively meant that those broker-dealers that offered fee-based brokerage accounts now needed to comply with the Advisers Act, including the Advisers Act's restrictions on principal trading. At the time, however, a number of broker-dealers had already built business models around the exemption provided in the Former Rule. In response, in September 2007, the SEC adopted Temporary Rule 206(3)-3T to alleviate concerns of potential harm to customers who depended on "access to principal transactions with their brokerage firms and the protections associated with a fee-based ... compensation structure."²⁷

The Temporary Rule permitted advisers who were also registered as broker-dealers and who offered non-discretionary advisory accounts to engage in principal transactions with their advisory customers without requiring transaction-by-transaction, written disclosure and consent. The Temporary Rule was subsequently extended by the SEC on four separate occasions and remained in effect for a nine-year, three-month period from September 2007 to December 2016.²⁸ SIFMA strongly supported the initial adoption of the Temporary Rule and every subsequent extension.²⁹ Although SIFMA advocated for the permanent extension of the Temporary Rule, and reported that our members would have utilized such a permanent rule, the SEC did not recommend extension of the Temporary Rule beyond its sunset in December 2016.

Instead, the SEC allowed the Temporary Rule to expire but going forward, also expressed a willingness to allow firms to seek individual exemptive relief for ongoing principal trading activity.

²⁷ Temporary Rule Regarding Principal Trades with Certain Advisory Clients, Release No. IA-2653; File No S7-23-07 (Sep. 24, 2007) at p. 6, <https://www.sec.gov/files/rules/final/2007/ia-2653.pdf>.

²⁸ SIFMA comment letter to SEC re: File No. S7-23-07, Temporary Rule Regarding Principal Trades with Certain Advisory Clients (Aug. 8, 2016), <https://www.sifma.org/resources/submissions/letters/sifma-submits-comments-to-sec-on-the-temporary-rule-regarding-principal-trades-with-certain-advisory-clients/>.

²⁹ *Id.*