

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 746

[Docket No. 980522136-8136-01]

RIN 0694-AB69

Exports to the Federal Republic of Yugoslavia (Serbia and Montenegro); Imposition of Foreign Policy Controls; Correction

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule; correction.

SUMMARY: On July 14, 1998, (63 FR 37767) the Bureau of Export Administration published a final rule implementing Executive Order 12918 of May 26, 1994 and the United Nations Security Council Resolution 1160 of March 31, 1998, which directs member countries to ban the supply of arms and arms-related items to the Federal Republic of Yugoslavia (Serbia and Montenegro). Specifically, the July 14 rule amended the Export Administration Regulations by specifying that exports to the Federal Republic of Yugoslavia (Serbia and Montenegro) of arms-related items will be denied. In addition, the July 14 rule imposed a new license requirement and a policy of denial for certain additional items to the Federal Republic of Yugoslavia (Serbia and Montenegro), including bulletproof vests, water cannon, and certain explosives equipment.

This document corrects an inadvertent error in codification related to controls on the Federal Republic of Yugoslavia (Serbia and Montenegro).

EFFECTIVE DATE: This correction is effective July 14, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Regulatory Policy Division, Bureau of Export Administration, Telephone: (202) 482-2440.

SUPPLEMENTARY INFORMATION: In final rule of July 14, 1998 (63 FR 37767), FR Doc. 98-18417, make the following corrections to part 746:

PART 746—[CORRECTED]**§ 746.9 [Corrected]**

1. On page 37769, in the first column, under § 746.9, correct the first line of paragraph (a) to read “(a) *License requirements.* (1) *Scope.* Under”.

Dated: July 15, 1998.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 98-19502 Filed 7-22-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 276

[Release No. IA-1732]

Interpretation of Section 206(3) of the Investment Advisers Act of 1940

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: The Securities and Exchange Commission (“Commission”) is publishing two interpretive positions under Section 206(3) of the Investment Advisers Act of 1940. Section 206(3) prohibits any investment adviser from engaging in or effecting a transaction on behalf of a client while acting either as principal for its own account, or as broker for a person other than the client, without disclosing in writing to the client, before the completion of the transaction, the adviser’s role in the transaction and obtaining the client’s consent. The first interpretive position identifies the points at which an adviser may obtain its client’s consent to a principal or agency transaction. The second interpretive position identifies certain transactions for which an adviser would not be acting as broker within the meaning of Section 206(3).

DATES: Release No. IA-1732 is added to the list in Part 276 as of July 17, 1998. The first interpretive position in Release No. IA-1732 is effective on September 21, 1998. The second interpretive position in Release No. IA-1732 is effective on July 23, 1998.

FOR FURTHER INFORMATION CONTACT: Douglas Scheidt, Associate Director and Chief Counsel, Karrie McMillan, Assistant Chief Counsel, or Eileen Smiley, Senior Counsel, 202/942-0660, Mail Stop 5-6, Division of Investment Management, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:**I. Introduction**

Section 206(3) of the Investment Advisers Act of 1940¹ makes it unlawful for any investment adviser, directly or indirectly “acting as principal for his own account, knowingly to sell any security to or

purchase any security from a client, or acting as broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such 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 Section 206(3) thus imposes a prior consent requirement on any adviser that acts as principal in a transaction with a client, or that acts as broker (that is, an agent) in connection with a transaction for, or on behalf of, a client.³

In a principal transaction, an adviser, acting for its own account, buys a security from, or sells a security to, the account of a client. In an agency transaction, an adviser arranges a transaction between different advisory clients or between a brokerage customer and an advisory client. Advisory clients can benefit from both types of transactions, depending on the circumstances, by obtaining a more favorable transaction price for the securities being purchased or sold than otherwise available. Principal and agency transactions, however, also may pose the potential for conflicts between the interests of the adviser and those of the client.

The wording and legislative history of Section 206(3) indicate that Congress recognized that both principal and agency transactions create the potential for advisers to engage in self-dealing.⁴ Principal transactions, in particular, may lead to abuses such as price manipulation or the placing of

² Section 206(3) expressly excludes any transaction between a broker or dealer and its customer if the broker or dealer is not also acting as an investment adviser in relation to the transaction. 15 U.S.C. 80b-6(3).

³ We and our staff have applied Section 206(3) to apply not only to principal and agency transactions engaged in or effected by any adviser, but also to certain situations in which an adviser causes a client to enter into a principal or agency transaction that is effected by a broker-dealer that controls, is controlled by, or is under common control with, the adviser. Staff no-action letter, Hartzmark & Co. (available Nov. 11, 1973) (applying Section 206(3) when an adviser effects transactions through its broker-dealer parent). See also Advisers Act Release No. 589 (June 1, 1977) [42 FR 29300] (“Release No. 589”) (when adopting Rule 206(3)-2 under the Advisers Act, the non-exclusive safe harbor available for certain agency transactions, we expanded the rule to cover transactions effected through such affiliated broker-dealers).

⁴ See Investment Trusts and Investment Companies: Hearings on S. 3580 Before the Subcomm. of the Comm. on Banking and Currency, 76th Cong., 3d Sess. 320 (1940) (statement of David Schenker, Chief Counsel, Securities and Exchange Commission Investment Trust Study) (hereafter “Senate Hearings”) (“I think it is the Commission’s recommendation that all self-dealing between the investment counselor and the client should be stopped.”).

¹ 15 U.S.C. 80b-1, *et seq.* (the “Advisers Act”).

unwanted securities into client accounts.⁵ When an adviser engages in an agency transaction on behalf of a client, it is primarily the incentive to earn additional compensation that creates the adviser's conflict of interest.⁶ In adopting Section 206(3), Congress recognized the potential for these abuses, but did not prohibit advisers entirely from engaging in all principal and agency transactions with clients. Rather, Congress chose to address these particular conflicts of interest by imposing a disclosure and client consent requirement in Section 206(3) of the Advisers Act.

Certain of our settled enforcement actions⁷ have raised questions regarding our interpretation of specific aspects of Section 206(3). We are concerned that unless we clarify these issues, advisers will unnecessarily avoid engaging in principal and agency transactions that may serve their clients' best interests. Thus, we are taking this opportunity to clarify that: (1) an adviser may obtain client consent for purposes of Section 206(3) to a principal or agency transaction after execution, but prior to settlement, of the transaction; and (2) an adviser is not "acting as broker" within the meaning of the Section if the adviser receives no compensation (other than its advisory fee) for effecting a particular agency transaction between advisory clients.

II. An Adviser Must Obtain the Informed Consent of Its Client to a Section 206(3) Transaction Before Settlement of the Transaction

Section 206(3) prohibits any adviser from engaging in or effecting a principal or agency transaction with a client without disclosing in writing to the client, "before the completion of such transaction," the capacity in which the adviser is acting and obtaining the client's consent. The Advisers Act, however, does not define when a transaction is "completed" for purposes of section 206(3).

⁵ See Senate Hearings at p. 322 ("[I]f a fellow feels he has a sour issue and finds a client to whom he can sell it, then that is not right * * *"). (Statement of David Schenker).

⁶ Rule 206(3)-2 [17 CFR 275.206(3)-2] under the Advisers Act reflects the significance of an adviser's receipt of compensation in agency transactions effected by the adviser. The rule requires that the prospective client consent form and all subsequent trade confirmations indicate that the adviser will receive compensation in connection with any agency transaction. See Release No. 589.

⁷ See *In the Matter of Piper Capital Management, Inc.*, Advisers Act Release No. 1435 (Aug. 11, 1994) ("Piper Capital"). See also *In the Matter of Dimitri Balatos*, Advisers Act Release No. 1324 (Aug. 18, 1992) ("Balatos"); *In the Matter of Micael L. Smirlock*, Advisers Act Release No. 1393 (Nov. 29, 1993) ("Smirlock").

In *Piper Capital*,⁸ we found that an adviser violated Section 206(3) in two ways: in some instances, the adviser failed to provide the necessary disclosure to clients; in other instances, the adviser failed to obtain client consent before the completion of principal transactions. Footnote 1 in the *Piper Capital* Order states that "the phrase 'completion of such transaction' under Section 206(3) of the Advisers Act * * * mean[s] prior to the execution of the transaction."

A. Practical Concerns

The footnote in the *Piper Capital* Order has raised concern among investment advisers who assert that it effectively requires investment advisers to obtain client consent prior to executing a principal or agency transaction, a point in time earlier than investment advisers previously had interpreted Section 206(3) to require. Advisers argue that obtaining client consent prior to execution of a transaction raises practical compliance difficulties for investment advisers. Finally, advisers assert that the *Piper Capital* position has raised confusion among investment advisers regarding their disclosure obligations with respect to principal and agency transactions with clients.⁹ It is our understanding that advisers find it difficult to satisfy their disclosure obligations under Section 206(3) prior to the execution of a transaction because of the practical difficulties of contacting some clients within a relatively short time, during which the market can move.

Representatives of the investment advisory industry have expressed concern to us and our staff that the

⁸ See *Piper Capital*, *id.*

⁹ In 1945, our General Counsel took the position that, under Sections 206(1), (2) and (3) of the Advisers Act, an investment adviser must disclose to an advisory client any adverse interest that the adviser might have, "together with any other information in his possession which the client should possess" to facilitate an informed decision by the client whether to consent to a principal transaction. See Advisers Act Release No. 40 (Jan. 5, 1945) [11 FR 10997] ("Release No. 40"). In the view of our General Counsel at the time, that information included, at a minimum: (1) the capacity in which the adviser proposed to act; (2) the cost of the security to the adviser if sold to a client; (3) the price at which securities could be resold if purchased from a client; and (4) the best price at which the transaction could be effected, if more advantageous to the client than the actual transaction price ("best price"). In a subsequent release adopting a rule creating a limited exemption from Section 206(3) for certain broker-dealers, we took the position that whether the specific items identified in Release No. 40 must be disclosed depends upon their materiality to a particular transaction, and the extent to which the client is relying on the adviser concerning that transaction. See Advisers Act Release No. 470 (Aug. 20, 1975) [40 FR 38158] (adopting Rule 206(3)-1) [17 CFR 275.206(3)-1] ("Release No. 470").

practical difficulties caused by the *Piper Capital* position have discouraged advisers from engaging at all in principal transactions with clients, contrary to the intent of Congress in enacting Section 206(3).¹⁰ Industry representatives thus have sought clarification of our interpretation of the phrase "before the completion of such transaction" so that they can reconcile the timing of disclosure and consent with the types of disclosure that they must provide to clients when soliciting consent to a principal or agency transaction.

B. The Disclosure and Consent Required Under Section 206(3) of the Advisers Act

We are taking this opportunity to clarify our view as to aspects of the disclosure obligation of an adviser seeking to engage in a principal or agency transaction with an advisory client. In response to the practical concerns discussed above, we also are clarifying when an adviser may obtain client consent to a principal or agency transaction as required by Section 206(3).

1. The Adviser Must Disclose Potential Conflicts of Interest To Ensure That a Client's Consent Is Informed

Section 206(3) expressly requires that a client be given written disclosure of the capacity in which the adviser is acting, and that the adviser obtain its client's consent to a Section 206(3) transaction. The protection provided to advisory clients by the consent requirement of Section 206(3) would be weakened, however, without sufficient disclosure of the potential conflicts of interest and the terms of a transaction. In our view, to ensure that a client's consent to a Section 206(3) transaction is informed, Section 206(3) should be read together with Sections 206(1) and (2)¹¹ to require the adviser to disclose

¹⁰ Although Section 206(3) applies to both principal and agency transactions, the investment advisory industry has raised questions about the operation of the Section primarily in the context of principal transactions. We believe that this result may reflect the operation of an existing rule under the Advisers Act. Advisers seeking to engage in agency transactions typically rely on Rule 206(3)-2 [17 CFR 275.206(3)-2] under the Advisers Act, which provides a non-exclusive safe harbor for certain agency transactions. Our interpretive position in Part II of this release applies to both principal transactions and to those agency transactions for which an adviser does not rely on Rule 206(3)-2 [17 CFR 275.206(3)-2].

¹¹ Sections 206(1) and 206(2) of the Advisers Act also impose on advisers an affirmative duty of good faith with respect to their clients and a duty of full and fair disclosure of all facts that are material to the advisory relationship with their clients. See Release No. 470, *supra*, n. 9 (whether Sections 206(1) and (2) require disclosure of specific facts

facts necessary to alert the client to the adviser's potential conflicts of interest in a principal or agency transaction.¹²

2. The Timing of Consent

Section 206(3) requires that an adviser disclose to its client in writing before the "completion" of a Section 206(3) transaction the capacity in which it is acting and obtain the client's consent to the transaction. We believe that, for purposes of Section 206(3), a securities transaction is completed upon settlement, not upon execution. This interpretation is consistent with the express terms of Section 206(3) and the legislative intent underlying the Section. Implicit in the phrase "before the completion of such transaction" is the recognition that a securities transaction involves various stages before it is "complete." The phrase "completion of such transaction" on its face would appear to be the point at which all aspects of a securities transaction have come to an end. That ending point of a transaction is when the actual exchange of securities and payment occurs, which is known as "settlement."¹³ The date of execution (i.e., the trade date) marks an earlier point of a securities transaction at which the parties have agreed to its terms and are contractually obligated to settle the transaction.¹⁴ Interpreting the

about a transaction depends on the "materiality of such facts in each situation and upon the degree of the client's trust and confidence in and reliance on the adviser with respect to the transaction." See also Note to Rule 206(3)-1 [17 CFR 275.206(3)-1] (the exemption from Section 206(3) for certain broker-dealers does not relieve an investment adviser of "any disclosure obligation which, depending upon the nature of the relationship between the investment adviser and the client, may be imposed by subparagraph (1) or (2) of Section 206 * * *").

¹² In three separate releases, we or our staff have identified certain categories of relevant information that advisers may be required to disclose when they execute principal or agency transactions with advisory clients. See Release Nos. 40 and 470, *supra* n. 9. See also Advisers Act Release No. 557 (Dec. 2, 1976) [41 FR 53808] ("Release No. 557") (in proposing rule 206(3)-2, the non-exclusive safe harbor for certain agency transactions, we identified certain categories of information that generally should be disclosed by an adviser when executing a principal transaction with a client). This release supplements the three prior releases by identifying the information specified in those releases that advisers may not be able to provide to a client prior to the execution of a Section 206(3) transaction. This release discusses comparable information that may be disclosed instead when an adviser seeks to obtain client consent prior to the execution of a Section 206(3) transaction.

¹³ See, e.g., 6 L. Loss & J. Seligman, *Securities Regulation* Ch. 7, p. 29d9 (3d ed. 1990).

¹⁴ The interpretive positions expressed in this release apply only to an adviser's disclosure obligations under Section 206(3) of the Advisers Act. Other provisions of the federal securities laws, including the antifraud provisions of the Securities Exchange Act of 1934 ("Exchange Act"), require

phrase "completion of such transaction" to mean at the time of settlement of the transaction is consistent with Congress' intent in enacting Section 206(3) by facilitating disclosure by advisers of material information about a transaction and informed consent by advisory clients. Thus, in our view, an 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.

a. Obtaining pre-execution consent. Because of market movements, an adviser may not be able to provide its client with a final execution price, or best price or final commission charges as contemplated by Release Nos. 40, 470 and 557 when soliciting pre-execution consent to an agency or a principal transaction. In these circumstances, however, an adviser should provide comparable information that is sufficient to identify and explain the potential conflicts of interest arising from the capacity in which the adviser is acting, that is as principal or agent, when engaging in or effecting a Section 206(3) transaction. For instance, prior to obtaining pre-execution consent, an adviser could transmit to the client the current quoted price for a proposed transaction, and, if applicable, current best price information¹⁵ and proposed commission charges. Under these circumstances, because the client has been informed about the potential conflicts of interest, and can refuse to consent to a proposed transaction before it is executed, the adviser has satisfied its disclosure obligation under Section 206(3).

b. Obtaining post-execution, pre-settlement consent. In our view, in order

that material information about certain transactions be communicated to investors prior to execution of the transaction. See, e.g., Exchange Act Release No. 33743 (Mar. 9, 1994) [59 FR 12767, 12772 n. 49] (in proposing amendments to Rule 10b-10 under the Exchange Act, which governs the duty of brokers to send confirmations of trades to clients, we stated that "[t]he fact that a broker-dealer has met the requirements of Rule 10b-10 should begin the analysis, not end it. The confirmation is delivered after the contract is created. Thus, irrespective of the content of the confirmation, specific terms of the transaction that may affect the customer's investment decision should be disclosed at the time of a purchase or sale of a security." See also *Radiation Dynamics, Inc. v. Goldmuntz*, 464 F.2d 876, 891 (2d Cir. 1972) (court held that, for purposes of insider trading liability under Rule 10b-5 under the Exchange Act, the time of a "purchase or sale" of securities is determined by reference to when the parties are obligated to perform the terms of the transaction, not when final performance occurs.).

¹⁵ Consistent with its obligations under Section 206(3), an adviser, in lieu of disclosing best price information, could undertake to its client to match or better the best price in the market at the time that the adviser receives the client's consent.

for a post-execution, pre-settlement consent mechanism to comply with Section 206(3), it must serve the purposes underlying Section 206(3). We believe that a post-execution, pre-settlement consent mechanism would satisfy the requirements of Section 206(3) if it provides both sufficient information for a client to make an informed decision, and the opportunity for the client to consent to a Section 206(3) transaction.

(i) Sufficiency of Information

When soliciting a client's post-execution, pre-settlement consent to a Section 206(3) transaction, an adviser should be able to provide the client with sufficient information regarding the transaction, including information regarding pricing, best price and final commission charges, to enable the client to make an informed decision to consent to the transaction. In our view, if after execution but before settlement of a Section 206(3) transaction, an adviser also provides a client with information that is sufficient to inform the client of the conflicts of interest faced by the adviser in engaging in the transaction, then the adviser will have provided the information necessary for the client to make an informed decision for purposes of Section 206(3).¹⁶

(ii) Client's Ability to Withhold Consent

One of the concerns cited by Congress when enacting Section 206(3) was the practice of advisers placing unwanted securities in client accounts.¹⁷ An adviser that executes a transaction before obtaining its client's consent must ensure that its client understands that the client is under no obligation to consent to the transaction. In our view, post-execution, pre-settlement consent generally would be effective in addressing the concerns underlying Section 206(3), so long as the adviser has not structured the procedures for obtaining consent in such a manner that the client has no choice but to consent.¹⁸

¹⁶ As stated above, in three earlier releases, we or our staff have identified certain categories of relevant information that advisers may be required to disclose to identify these potential conflicts of interest when executing principal or agency transactions with advisory clients. See n.9 and n.12, *supra*.

¹⁷ See n.5 and accompanying text, *supra*.

¹⁸ We understand that, prior to *Piper Capital*, some advisers seeking to comply with Section 206(3) generally disclosed to their clients, before effecting or engaging in any principal or agency transactions, that the adviser would be engaging in the transactions with its clients in the course of providing advisory services to the clients. Prior to the settlement of a specific Section 206(3) transaction, these advisers would provide their

Continued

III. An Investment Adviser is not "Acting as Broker" With Respect to a Particular Agency Transaction Between Advisory Clients if the Adviser Receives No Compensation for Effecting the Transaction

As stated above, Section 206(3) applies when an adviser, "acting as broker for a person other than * * * [a] client," causes the client to buy or sell a security from that other person. The Advisers Act, however, does not define when an investment adviser is "acting as broker" with respect to a particular agency transaction.

Industry representatives have raised questions with our staff about our interpretation of when an adviser is acting as broker for purposes of Section 206(3). In one settled enforcement action, we found that a portfolio manager caused an investment adviser to violate Section 206(3) by failing to obtain client consent to an agency transaction between advisory clients,¹⁹ even though the adviser received no compensation (other than its advisory fee) for effecting the transaction.²⁰ In *Smirlock*,²¹ a subsequent settled enforcement action involving similar circumstances, we made no finding that

clients with the prices at which transactions were executed and, if applicable, best price information. Some of these advisers appear to have interpreted Section 206(3) as not requiring an adviser to bear any loss in the value of securities involved in a principal or agency transaction between the time of execution and the time of client consent. These advisers followed the practice of conditioning a client's refusal to provide post-execution, pre-settlement consent on the client's incurring any loss in the value of the securities between the time of execution and the client's refusal to consent to the transaction. Although we agree that Section 206(3) by its terms does not require that an adviser engaging in or effecting a principal or agency transaction with a client bear any loss in value of the securities, we seriously question whether a consent mechanism that conditions a client's refusal to provide post-execution, pre-settlement consent on the client's incurring any loss in the value of the securities is consistent with our interpretation of Section 206(3). In such a case, it appears to us that the consent procedure could, in effect, undermine the client's right to choose whether or not to consent to a Section 206(3) transaction.

¹⁹ By the phrase "agency transaction between advisory clients," we mean an agency transaction arranged by an investment adviser whereby one advisory client sells a security to a different advisory client of the investment adviser.

²⁰ See *Balatsos*, *supra* n.7 (the portfolio manager arranged an agency transaction between two advisory clients to "reallocate" newly issued securities prior to settlement after realizing that the selling client had previously instructed him to liquidate all of the holdings in its account before the later-than-anticipated settlement date of the securities).

²¹ See *Smirlock*, *supra* n.7 (the portfolio manager directed an unaffiliated broker-dealer to effect agency transactions between advisory clients).

the portfolio manager caused the investment adviser to violate 206(3).

We have concluded that if an investment adviser receives no compensation (other than its advisory fee), directly or indirectly, for effecting a particular agency transaction between advisory clients, the adviser would not be "acting as broker" within the meaning of Section 206(3).²² As we note above, it is primarily the incentive to earn additional compensation that creates the adviser's conflict of interest when effecting an agency transaction between advisory clients. This release confirms the interpretive position underlying the *Smirlock* Order.

IV. Conclusion

For the reasons discussed above, we are clarifying, only for purposes of Section 206(3) of the Advisers Act, that: (1) the phrase "before the completion of such transaction" means prior to settlement of the transaction; and (2) an investment adviser is not "acting as broker" if the adviser receives no compensation (other than its advisory fee) for effecting a particular agency transaction between advisory clients.²³

V. Effective Date

The Administrative Procedure Act ("APA") establishes procedures for agency rulemaking. Section 551 of the APA defines a "rule" to include an "agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy * * *"²⁴ The Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA") requires that all final agency rules, as defined by Section 551 of the APA, be submitted to Congress for review and requires generally that the effective date of a major rule be delayed sixty days pending Congressional review. A major rule may become effective at the end of

²² Sections 206(1) and (2) of the Advisers Act impose a fiduciary duty on advisers with respect to their clients and a duty of full and fair disclosure of all material facts. See n.11, *supra*. Thus, even though an adviser may not be "acting as broker" within the meaning of Section 206(3), Sections 206(1) or (2) may require the adviser to disclose information about agency transactions that are not subject to Section 206(3).

²³ To the extent that the positions expressed in this release are inconsistent with earlier positions, such as those announced in *Piper Capital* and *Balatsos*, those earlier positions are superseded. For example, in a staff no-action letter, Salomon Brothers Asset Management, Inc. (available Oct. 10, 1990) ("Salomon Brothers"), our staff took the position that Section 206(3) applied to agency transactions in certain tax-exempt securities effected by an adviser even though the adviser would receive no compensation for effecting the transactions. This release also supersedes that position taken by the staff in Salomon Brothers.

²⁴ 5 U.S.C. 551(4).

the sixty-day review period, unless Congress passes a joint resolution disapproving the rule.²⁵ Because this release is an agency statement designed to interpret the law, and because it does not fall within one of three exceptions to the definition of a rule for purposes of SBREFA, we have concluded that it is a rule for purposes of SBREFA.²⁶

The first interpretive position in this release regarding the points at which an adviser may obtain client consent to a Section 206(3) transaction will become effective September 21, 1998. The Office of the Management and Budget ("OMB") has determined that this first interpretive position is a "major" rule under Chapter 8 of the APA,²⁷ which was added by SBREFA. The second interpretive position in this release regarding transactions for which an investment adviser would not be "acting as broker" within the meaning of Section 206(3) will become effective July 23, 1998. OMB has determined that this second interpretive position is a "minor" rule under SBREFA.

List of Subjects in 17 CFR Part 276

Securities.

Amendments to the Code of Federal Regulations

For the reasons set forth above, the Commission is amending Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 276—INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT ADVISERS ACT OF 1940 AND THE GENERAL RULES AND REGULATIONS THEREUNDER

Part 276 is amended by adding Release No. IA-1732 and the release date of July 17, 1998, to the list of interpretative releases.

By the Commission.

Dated: July 17, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98-19565 Filed 7-22-98; 8:45 am]

BILLING CODE 8010-01-P

²⁵ Pub. L. No. 104-121, Title II, 100 Stat. 857 (1996). Under SBREFA, a rule is "major" if it is likely to result in (1) an annual effect on the economy of \$100 million or more, (2) a major increase in costs or prices for consumers or individual industries, or (3) significant adverse effects on competition, investment, or innovation. 5 U.S.C. 804(2).

²⁶ 5 U.S.C. 804(3)(A)–(C) (exceptions to the definition of a "rule" for purposes of SBREFA).

²⁷ 5 U.S.C. 801