

Securities and Exchange Commission

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amount of such excess must be included as a liability); and

(3) Indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the residence must be included as a liability; or

(B) Is a qualified purchaser as defined in section 2(a)(51)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(51)(A)) at the time the contract is entered into; or

* * * * *

(e) *Inflation adjustments.* Pursuant to section 205(e) of the Act, the dollar amounts specified in paragraphs (d)(1)(i) and (d)(1)(ii)(A) of this section shall be adjusted by order of the Commission, on or about May 1, 2016 and issued approximately every five years thereafter. The adjusted dollar amounts established in such orders shall be computed by:

(1) Dividing the year-end value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), as published by the United States Department of Commerce, for the calendar year preceding the calendar year in which the order is being issued, by the year-end value of such index (or successor) for the calendar year 1997;

(2) For the dollar amount in paragraph (d)(1)(i) of this section, multiplying \$750,000 times the quotient obtained in paragraph (e)(1) of this section and rounding the product to the nearest multiple of \$100,000; and

(3) For the dollar amount in paragraph (d)(1)(ii)(A) of this section, multiplying \$1,500,000 times the quotient obtained in paragraph (e)(1) of this section and rounding the product to the nearest multiple of \$100,000.

§ 275.206(3)-1 Exemption of investment advisers registered as broker-dealers in connection with the provision of certain investment advisory services.

(a) An investment adviser which is a broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934 shall be exempt from section 206(3) in connection with any transaction in relation to which such broker or dealer is acting as an investment adviser solely (1) by means of publicly distributed written materials or publicly made oral statements; (2) by means of written materials or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts; (3) through the issuance of statistical information containing no expressions of opinion as to

the investment merits of a particular security; or (4) any combination of the foregoing services: *Provided, however,* That such materials and oral statements include a statement that if the purchaser of the advisory communication uses the services of the adviser in connection with a sale or purchase of a security which is a subject of such communication, the adviser may act as principal for its own account or as agent for another person.

(b) For the purpose of this Rule, publicly distributed written materials are those which are distributed to 35 or more persons who pay for such materials, and publicly made oral statements are those made simultaneously to 35 or more persons who pay for access to such statements.

NOTE: The requirement that the investment adviser disclose that it may act as principal or agent for another person in the sale or purchase of a security that is the subject of investment advice does not relieve the 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 subparagraphs (1) or (2) of section 206 or the other provisions of the federal securities laws.

[40 FR 38159, Aug. 27, 1975]

§ 275.206(3)-3T Temporary rule for principal trades with certain advisory clients.

(a) An investment adviser shall be deemed in compliance with the provisions of section 206(3) of the Advisers Act (15 U.S.C. 80b-6(3)) when the adviser directly or indirectly, acting as principal for its own account, sells to or purchases from an advisory client any security if:

(1) The investment adviser exercises no "investment discretion" (as such term is defined in section 3(a)(35) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78c(a)(35))), except investment discretion granted by the advisory client on a temporary or limited basis, with respect to the client's account;

(2) Neither the investment adviser nor any person controlling, controlled by, or under common control with the investment adviser is the issuer of, or, at the time of the sale, an underwriter (as defined in section 202(a)(20) of the

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Advisers Act (15 U.S.C. 80b-2(a)(20))) of, the security; *except that* the investment adviser or a person controlling, controlled by, or under common control with the investment adviser may be an underwriter of an investment grade debt security (as defined in paragraph (c) of this section);

(3) The advisory client has executed a written, revocable consent prospectively authorizing the investment adviser directly or indirectly to act as principal for its own account in selling any security to or purchasing any security from the advisory client, so long as such written consent is obtained after written disclosure to the advisory client explaining:

(i) The circumstances under which the investment adviser directly or indirectly may engage in principal transactions;

(ii) The nature and significance of conflicts with its client's interests as a result of the transactions; and

(iii) How the investment adviser addresses those conflicts;

(4) The investment adviser, prior to the execution of each principal transaction:

(i) Informs the advisory client, orally or in writing, of the capacity in which it may act with respect to such transaction; and

(ii) Obtains consent from the advisory client, orally or in writing, to act as principal for its own account with respect to such transaction;

(5) The investment adviser sends a written confirmation at or before completion of each such transaction that includes, in addition to the information required by 17 CFR 240.10b-10, a conspicuous, plain English statement informing the advisory client that the investment adviser:

(i) Disclosed to the client prior to the execution of the transaction that the adviser may be acting in a principal capacity in connection with the transaction and the client authorized the transaction; and

(ii) Sold the security to, or bought the security from, the client for its own account;

(6) The investment adviser sends to the client, no less frequently than annually, written disclosure containing a list of all transactions that were exe-

cuted in the client's account in reliance upon this section, and the date and price of such transactions;

(7) The investment adviser is a broker-dealer registered under section 15 of the Exchange Act (15 U.S.C. 78o) and each account for which the investment adviser relies on this section is a brokerage account subject to the Exchange Act, and the rules thereunder, and the rules of the self-regulatory organization(s) of which it is a member; and

(8) Each written disclosure required by this section includes a conspicuous, plain English statement that the client may revoke the written consent referred to in paragraph (a)(3) of this section without penalty at any time by written notice to the investment adviser.

(b) This section shall not be construed as relieving in any way an investment adviser from acting in the best interests of an advisory client, including fulfilling the duty with respect to the best price and execution for the particular transaction for the advisory client; nor shall it relieve such person or persons from any obligation that may be imposed by sections 206(1) or (2) of the Advisers Act or by other applicable provisions of the federal securities laws.

(c) For purposes of paragraph (a)(2) of this section, an *investment grade debt security* means 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 (15 U.S.C. 78c(a)(62))).

(d) This section will expire and no longer be effective on December 31, 2012.

[72 FR 55042, Sept. 28, 2007, as amended at 74 FR 69015, Dec. 30, 2009]

EFFECTIVE DATE NOTE: At 72 FR 55042, Sept. 28, 2007, § 275.206(3)-3T was added effective Sept. 30, 2007 through Dec. 31, 2009. At 75 FR 742, Jan. 6, 2010 the effective date was extended until Dec. 31, 2010. At 75 FR 82241, Dec. 30, 2010, the effective date was extended until December 31, 2012.