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November 13, 2012

Elizabeth M. Murphy, Secretary
U.S. Securities and Exchange Commission
100 F. Street N.E.
Washington D.C. 20549

rule-comments@sec.gov

Re: File No. S7-23-07
Temporary Rule Regarding Principal Trades with Certain Advisory Clients

Dear Ms. Murphy:

Wells Fargo Advisors ("WFA") appreciates this opportunity to comment briefly on a proposed 2-year extension of temporary rule 206(3)-3T under the Investment Advisers Act of 1940 ("Advisers Act"). Albeit a temporary rule, WFA is fully supportive of continuing this rule concerning principal trading as the Securities and Exchange Commission ("SEC" or "Commission") continues to prepare rules that will dramatically change the regulatory landscape for brokers and investment advisers. We file this brief comment letter to highlight certain issues the SEC should review as it considers extending the rule.

WFA consists of brokerage operations that administer almost $1.2 trillion in client assets. It accomplishes this task through 15,170 full-service financial advisors in 1,100 branch offices in all 50 states and 3,216 licensed financial specialists in 6,610 retail bank branches in 39 states.[1] WFA at the most recent count has 232,437 non-discretionary advisory accounts in which hundreds of principal trades are made monthly to the benefit of these advisory clients.

[1] WFA is a non-bank affiliate of Wells Fargo & Company ("Wells Fargo"), a diversified financial services company providing banking, insurance, investments, mortgage, and consumer and commercial finance across the United States of America and internationally. Wells Fargo has $1.3 trillion in assets and more than 265,000 team members across 80+ businesses. Wells Fargo's brokerage affiliates also include First Clearing LLC, which provides clearing services to 92 correspondent clients and WFA. For the ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

BACKGROUND

The SEC adopted rule 206(3)-3T on an interim basis in 2007 to permit an alternative means for investment advisers that are registered as broker-dealers to meet requirements of the Advisers Act when acting in a principal capacity with their non-discretionary advisory clients. The rule had the benefit in part of allowing these clients access to securities at prices that were usually more favorable to the client than if the securities were purchased on an agency basis. As implemented, the rule would simultaneously protect the clients from conflicts of interest that could occur as the result of selling out of a firm's inventory for clients while also providing better prices. These clients mainly came from brokerage firms that had transitioned the clients from fee-based brokerage accounts into Advisers Act fee-based accounts. The temporary rule allows a firm to comply with the conflicts of interest rules of the Advisers Act without cumbersome and cost prohibitive transaction-by-transaction written disclosure and consent requirements.

Rule 206(3)-3T is scheduled to sunset on December 31, 2012, and the SEC proposes extending that date until December 31, 2014. WFA fully supports this extension as it benefits clients directly, it eliminates costly disruptions to firms' systems, policies and procedures and it allows the SEC time to finish consideration of pending rules that could have a direct impact on the conflicts of interest addressed by the temporary rule. We answer the specific questions posed by the SEC in its rule proposal to provide additional support for extending the temporary rule.

QUESTIONS POSED BY THE SEC

- *Should we allow the rule to sunset?*

No, the rule should not sunset on December 31, 2012. Rule 206(3)-3T has worked exceptionally well since it was first proposed to allow non-discretionary advisory clients access to securities at prices more favorable than would be the case in an agency trade. If the SEC sunsets the rule this year, firms would have to incur tremendous costs to come up with new systems that would comply with Advisers Act conflict rules. Clients would lose the benefits of cheaper prices. At a time when clients are often inundated with required regulatory disclosures, the "sunsetting" of this rule would also impose on investors a wave of burdensome notices and communications.

• If we allow the rule to sunset, should we consider requests from investment advisers that are registered with us as broker-dealers for exemptive orders providing an alternative means of compliance with section 206(3)?

WFA strongly supports having the SEC pass an extension of Rule 206(3)-3T. Failing that, we would urge that the SEC establish a relatively streamlined exemptive order process for investment advisers that are registered as broker-dealers. While there could be numerous alternative means for compliance with section 206(3), we would suggest that the swiftest approvals be reserved for exemptive order requests that track closely the procedures of rule 206(3)-3T.

• If we extend the rule's sunset date, is two years an appropriate period of time to extend the sunset date? Or should we extend the rule's sunset date for a different period of time? If so, for how long?

A two-year extension would certainly be an appropriate amount of time for an extension if there was a harmonized duty of care in place for brokers and investment advisers. Since no such prospects seem to be on the horizon, WFA believes a five-year extension would be more appropriate. The five years would be a clear recognition that the rule making process today is often fraught with countless delays and unpredictability, and it would be inefficient to bring the issue of an extension up again so soon. Failing to grant a five-year extension, the Commission should consider a three-year extension and couple that with a "trigger" of an automatic extension of an additional two years if fiduciary duty rules have not become effective during that original three-year period.

• Is it appropriate to extend rule 206(3)-3T's sunset date for a limited period of time in its current form while we complete our broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers

As noted above, extending the rule 206(3)-3T while the SEC completes consideration of the regulatory requirements applicable to broker-dealers and investment advisers is almost a necessity. The phrase "limited period," however, causes concerns because it is conceivable that the extension would need to remain in place until any rule changes are passed and fully implemented. To do any less would create an extremely costly and difficult scenario where firms would see the temporary rule terminated, firms forced then to comply with the current disclosure rules only to later adjust to a new disclosure rule created as the SEC harmonizes rules applicable to broker-dealers and investment advisers. We repeat that an extension of five years is preferable.

• Should we consider changing the requirements for adviser disclosures to have registered advisers provide more information to us and their clients about whether they are relying on the rule? For example, should we amend Part 1A of Form ADV to require advisers to disclose whether they rely on rule 206(3)-3T for certain principal transactions? Should we amend Part 2A of Form ADV to require advisers who rely on rule 206(3)-3T to provide a description to clients of the policies and procedures they have adopted to ensure compliance with the rule?

Experience to date with rule 206(3)-3T does not signal a need for the SEC to change the requirements for disclosure. In its form as a temporary rule, the current level of disclosure seems adequate for informing clients of the use of the rule for certain principal transactions. Particularly since the temporary rule already requires written consent to allow principal trades in the account. As the Commission continues its review of policies for broker-dealers and investment advisers, its efforts may be more efficient if it does not add more provisions to a temporary rule.

• Why do advisers eligible to rely on the temporary rule not rely on it?

It is unclear why some advisers eligible to use rule 206(3)-3T do not rely on it, but at least a couple of possibilities come to mind. One could speculate that for some such advisers, proper use of the rule is confusing and the redundant annual disclosure requirements burdensome. Currently, the rule would permit a notice that a firm might sell to a client from its inventory, and a notice is placed on trade confirmation. In addition, the firm must annually summarize all such trades in the previous year. Such a redundant disclosure imposes more administrative costs on firms and creates more client confusion with a higher volume of disclosures. Additionally, while not as costly as compliance with the trade-by-trade requirements, there are real costs to comply with this temporary rule that might be prohibitive if there is not sufficient anticipated business volume to warrant the investment. It may be that greater SEC communications and elimination of the annual summary may help address these perceived impediments. Roundtables, seminars, road shows, webinars all could form a means of Commission outreach to the eligible advisers so that their understanding of the rule could be enhanced.

Conclusion

WFA appreciates that the SEC recognizes that 206(3)-3T has been effective since its adoption, and it urges the Commission to extend the temporary rule. We believe the temporary rule will benefit clients during the interim period as the SEC considers broader rules in the broker-dealer and adviser rules.

If you have any questions regarding this comment letter, please do not hesitate to contact me.

Sincerely,

Ronald C. Long
Director of Regulatory Affairs