



8011-01p

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA-4605 / 803-00229]

Brown Advisory LLC; Notice of Application

January 10, 2017

Agency: Securities and Exchange Commission (“Commission”).

Action: Notice of application for an exemptive order under Section 206A of the Investment Advisers Act of 1940 (the “Advisers Act”) and Rule 206(4)-5(e).

Applicant: Brown Advisory LLC (“Applicant” or “Adviser”).

Relevant Advisers Act Sections: Exemption requested under section 206A of the Advisers Act and rule 206(4)-5(e) from rule 206(4)-5(a)(1) under the Advisers Act.

Summary of Application: Applicant requests that the Commission issue an order under section 206A of the Advisers Act and rule 206(4)-5(e) exempting it from rule 206(4)-5(a)(1) under the Advisers Act to permit Applicant to receive compensation from certain government entities for investment advisory services provided to the government entities within the two-year period following a contribution by a covered associate of the Applicant to an official of the government entities.

Filing Dates: The application was filed on July 18, 2016, and an amended and restated application was filed on November 22, 2016.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 6, 2017, and

should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Advisers Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

Addresses: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549-1090. Applicant: Brown Advisory LLC, 901 South Bond Street, Suite 400, Baltimore, MD 21231.

For Further Information Contact: Vanessa M. Meeks, Senior Counsel, or Parisa Haghshenas, Branch Chief, at (202) 551- 6825 (Division of Investment Management, Chief Counsel's Office).

Supplementary Information: The following is a summary of the application. The complete application may be obtained via the Commission's website at <http://www.sec.gov/rules/iareleases.shtml> or by calling (202) 551-8090.

Applicant's Representations:

1. Applicant is a Maryland limited liability company registered with the Commission as an investment adviser under the Advisers Act. Applicant provides discretionary investment advisory services to individuals and institutions.

2. The individual who made the campaign contribution that triggered the two-year compensation ban (the "Contribution") is Douglas Godine (the "Contributor"). The Contributor is the head of business development for the Adviser's private client team and has been with the Adviser for five years. The Contributor's role focuses on oversight of business development for the private client and Outsourced Chief Investment Officer ("OCIO") teams. Applicant submits that, because the Contributor, in his OCIO role, oversees business development activities related

to clients that may include entities covered by Rule 206(4)-5(f)(5), he is a covered associate as defined by Rule 206(4)-5(f)(2)(ii).

3. Seven of the Adviser's clients are agencies, authorities, or instrumentalities of the State of Maryland (the "Clients"). The Clients are government entities as defined in Rule 206(4)-5(f)(5)(i).

4. The recipient of the Contribution was Larry Hogan (the "Candidate"), who, at the time of the Contribution was the governor-elect of Maryland, and at the time of this Application is Maryland's Governor. The Maryland Governor is the chief executive of the state and can influence investment decisions, including the hiring of an investment adviser, for the state and for other entities that are overseen by boards composed of individuals appointed by the Maryland Governor ("Gubernatorial Appointees"). Due to his office and the power of appointment, the Maryland Governor is an "official" of the Clients as defined in Rule 206(4)-5(f)(6)(ii). None of the Gubernatorial Appointees serving at the time of the Contribution were appointed by the Candidate, who had not yet taken office.

5. The Contribution that triggered rule 206(4)-5's prohibition on compensation under rule 206(4)-5(a)(1) was recorded on January 12, 2015, for the amount of \$1,000 made out to "Larry Hogan for Governor." Applicant submits that the contribution was made by the Contributor for purely personal reasons, separate and apart from the Contributor's role with the Adviser. The Contribution was made at the request of a family friend with whom the Contributor has been friends for about a decade. The Contributor and his friend are active together in their local sports community, and they have been active participants together in their children's sports teams. In the past, the Contributor has provided support for other causes at the request of the friend, including monetary support. The friend invited the Contributor to a dinner

at a restaurant in Annapolis for members of the local community. Applicant submits that the Contributor was unaware the event was a fundraiser for the Candidate until he attended the event, and that the Contributor had no prior contact, affiliation with, or intention to contribute to the Candidate. Applicant represents that the Contributor did not seek out or initiate contact with the Candidate and that he was briefly introduced to the Candidate at the event, but at no time was there any mention of the Adviser or the Clients.

6. The Clients' decisions to invest with the Adviser occurred long before the Candidate commenced his campaign for office in January 2014, before the Candidate was elected in November 2014, and before the Contribution was made in January 2015. The earliest of the Clients made a commitment to invest with the Adviser in 2004, and the most recent Client did so in 2012. Applicant represents that none of the Clients have materially increased the amounts of assets managed by the Adviser, initiated new investment mandates, or opened new accounts with the Adviser since the Contribution was made. The Contributor has had no interaction with the Clients, with any representative of the Clients, or with the Clients' boards.

7. The Adviser became aware of the Contribution when it conducted a check of campaign contribution disclosures on June 8, 2016. Within one week, the Contributor requested the return of the full Contribution from the Candidate. This request was granted and a check refunding the full Contribution was received on July 15, 2016. After identifying the Contribution, the Adviser took steps beginning on June 8, 2016 to establish an escrow account, and the Adviser has deposited an amount equal to the sum of all fees paid to the Adviser and its affiliates, directly or indirectly, with respect to the Clients since the date of the Contribution, January 12, 2015. Additional fees or other compensation accruing in favor of the Adviser and its

affiliates will continue to be deposited into the escrow account or will not be collected from the Clients until it is determined whether exemptive relief will be granted to the Adviser.

8. The Applicant's Political Contributions Policy (the "Policy") was adopted and published in January 2011, before Rule 206(4)-5's compliance date and long before the Contribution was made. All contributions by employees to federal, state, and local office incumbents and candidates are subject to pre-clearance, not post-contribution reporting, under the Policy. There is no *de minimis* exception from pre-clearance for small contributions. Both before and after the Rule's compliance date, the Adviser has conducted a series of compliance training sessions that addressed the Policy, including reiterating the need to pre-clear all political contributions, together with an annual policy compliance attestation by all employees. The Adviser also circulates periodic reminders of the Policy to employees. The compliance testing conducted by the Adviser includes periodic searches of campaign contribution databases for the names of employees, such as the search that identified the Contribution.

Applicant's Legal Analysis

1. Rule 206(4)-5(a)(1) under the Advisers Act prohibits a registered investment adviser from providing investment advisory services for compensation to a government entity within two years after a contribution to an official of the government entity is made by the investment adviser or any covered associate of the investment adviser. Each of the Clients is a "government entity," as defined in rule 206(4)-5(f)(5), the Contributor is a "covered associate" as defined in rule 206(4)-5(f)(2), and the Candidate is an "official" as defined in rule 206(4)-5(f)(6).

2. Section 206A of the Advisers Act grants the Commission the authority to "conditionally or unconditionally exempt any person or transaction . . . from any provision or

provisions of [the Advisers Act] or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or 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].”

3. Rule 206(4)-5(e) provides that the Commission may exempt an investment adviser from the prohibition under Rule 206(4)-5(a)(1) upon consideration of the factors listed below, among others:

(1) Whether the exemption is necessary or 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;

(2) Whether the investment adviser: (i) before the contribution resulting in the prohibition was made, adopted and implemented policies and procedures reasonably designed to prevent violations of the rule; and (ii) prior to or at the time the contribution which resulted in such prohibition was made, had no actual knowledge of the contribution; and (iii) after learning of the contribution: (A) has taken all available steps to cause the contributor involved in making the contribution which resulted in such prohibition to obtain a return of the contribution; and (B) has taken such other remedial or preventive measures as may be appropriate under the circumstances;

(3) Whether, at the time of the contribution, the contributor was a covered associate or otherwise an employee of the investment adviser, or was seeking such employment;

(4) The timing and amount of the contribution which resulted in the prohibition;

(5) The nature of the election (e.g., federal, state or local); and

(6) The contributor's apparent intent or motive in making the contribution which resulted in the prohibition, as evidenced by the facts and circumstances surrounding such contribution.

4. Applicant requests an order pursuant to section 206A and rule 206(4)-5(e), exempting it from the two-year prohibition on compensation imposed by rule 206(4)-5(a)(1) with respect to investment advisory services provided to the Clients within the two-year period following the Contribution.

5. Applicant submits that the exemption 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. Applicant further submits that the other factors set forth in rule 206(4)-5(e) similarly weigh in favor of granting an exemption to the Applicant to avoid consequences disproportionate to the violation.

6. Applicant contends that given the nature of the Rule violation, and the lack of any evidence that the Adviser or the Contributor intended to, or actually did, interfere with any client's merit-based process for the selection or retention of advisory services, the interests of the Clients are best served by allowing the Adviser and its Clients to continue their relationship uninterrupted. Applicant states that causing the Adviser to serve without compensation for a two- year period could result in a financial loss that is more than 1,949 times the amount of the Contribution that exceeded the *de minimis* threshold. Applicant suggests that the policy underlying the Rule is served by ensuring that no improper influence is exercised over investment decisions by governmental entities as a result of campaign contributions and not by withholding compensation as a result of unintentional violations.

7. Applicant represents the Policy was adopted and published in January 2011, before the Rule's compliance date and long before the Contribution was made. Applicant further

represents that, at all times, the Policy has conformed to the requirements of the Rule and has been even broader than what was contemplated by the Rule. Both before and after the Rule's compliance date, the Adviser has conducted a series of compliance training sessions that addressed the Policy, including reiterating the need to pre-clear all political contributions, together with an annual policy compliance attestation by all employees. The compliance testing conducted by the Adviser includes periodic searches of campaign contribution databases for the names of employees, such as the search that identified the Contribution.

8. Applicant asserts that at no time did any employee of the Adviser other than the Contributor have any knowledge that the Contribution had been made before its discovery by the Adviser in June 2016.

9. Applicant asserts that after learning of the Contribution, the Adviser and the Contributor promptly took steps to obtain a return of the Contribution and to implement additional measures to prevent future error, including providing supplemental training to all employees on the Policy to ensure that other employees fully understand the Policy and do not make the same mistake as the Contributor.

10. Applicant states that after learning of the Contribution, it confirmed that the Contributor had no contact with any representative of the Clients and will have no contact with any representative of the Clients for the duration of the two-year period beginning January 12, 2015.

11. Applicant asserts that the Clients' decisions to invest with the Adviser occurred long before the Candidate commenced his campaign for office in January 2014, before the Candidate was elected in November 2014, and before the Contribution was made in January 2015. Applicant states that, at the time of the Contribution, the Candidate had not exercised or

even obtained the appointment power reserved to his State office. The Contributor is a longtime Maryland resident and voter, and Applicant states that the Contributor's violation of the Policy and the Rule resulted from the Contributor's failure to appreciate the regulatory significance of the Contribution, which was intended as a friendly gesture toward a social acquaintance.

12. Applicant submits that neither the Adviser nor the Contributor sought to interfere with the Clients' merit-based selection process for advisory services, nor did they seek to negotiate higher fees or greater ancillary benefits than would be achieved in arms' length transactions. Applicant further submits that there was no violation of the Adviser's fiduciary duty to deal fairly or disclose material conflicts given the absence of any intent or action by the Adviser or the Contributor to influence the selection process. Applicant contends that in the case of the Contribution, imposition of the two-year prohibition on compensation does not achieve the Rule's purposes and would result in consequences disproportionate to the mistake that was made.

Applicant's Conditions

The Applicant agrees that any order of the Commission granting the requested relief will be subject to the following conditions:

1. The Contributor will be prohibited from discussing the business of the Applicant with any "government entity" client for which the Official is an "official," each as defined in Rule 206(4)-5(f), until January 12, 2017.

2. The Contributor will receive a written notification of the conditions and will provide a quarterly certificate of compliance until January 12, 2017. Copies of the certifications will be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in an appropriate office of the Applicant, and be available for inspection by the staff of the Commission.

3. The Applicant will conduct testing reasonably designed to prevent violations of the conditions of the Order and maintain records regarding such testing, which will be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in an appropriate office of the Applicant, and be available for inspection by the staff of the Commission.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman
Assistant Secretary

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