

SECURITIES AND EXCHANGE COMMISSION

Investment Advisers Act Release No. 4912; 803-00240

BlackRock Advisors, LLC, et al.

May 11, 2018

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

ACTION: Notice.

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

Applicants: BlackRock Advisors, LLC, BlackRock Financial Management, Inc. and BlackRock Fund Advisors (Collectively the “Applicants” or “Advisers”).

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

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

Filing Dates: The application was filed on May 26, 2017, and amended and restated applications were filed on November 21, 2017 and March 28, 2018.

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 Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 5, 2018, and

should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the 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. Applicants: BlackRock Advisors, LLC and BlackRock Financial Management, Inc., 55 East 52nd Street, New York, NY 10055 and BlackRock Fund Advisors, 400 Howard Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Rachel Loko, Senior Counsel, or Holly Hunter-Ceci, Assistant Chief Counsel, 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.

Applicants' Representations:

1. Applicants are registered with the Commission as investment advisers pursuant to the Act. BlackRock, Inc. ("BlackRock") is the parent company of the Advisers. Applicants act as advisers to registered investment companies and investment companies exempt from registration under the Investment Company Act of 1940.

2. The individual who made the campaign contribution that triggered the two-year compensation ban (the "Contribution") is Mark Wiedman (the "Contributor"). The Contributor is a Senior Managing Director at BlackRock, the head of BlackRock's ETF and Index

Investments business, and a member of BlackRock's Global Executive Committee. BlackRock's ETF business focuses on selling interests in RICs directly to investors, including certain government entities, which is not covered business under rule 206(4)-5. However, Applicants submit that, as a member of BlackRock's Global Executive Committee, the Contributor is, and at the time of the Contribution was, an executive officer of the Advisers under rule 206(4)-5(f)(4), and thus by definition is and at all relevant times was a covered associate pursuant to rule 206(4)-5(f)(2)(i).

3. Certain Ohio government entities have selected mutual funds ("RICs") advised by BlackRock Advisors, LLC and BlackRock Fund Advisors to be options in their participant-directed plans and one Ohio government pension plan has invested in an unregistered fund managed by BlackRock Financial Management, Inc. Such government entities, are "government entities" as defined under Rule 206(4)-5(f)(5) and, throughout the application, are referred to individually as a "Client" and collectively as the "Clients."

4. The recipient of the Contribution was John Kasich (the "Official"), the Governor of Ohio, in his campaign for President of the United States. The investment decisions of each Client are overseen by a board of trustees or directors (the "Board" or the "Boards"), to which the Governor appoints certain members. The Applicants submit that due to the power of appointment, the Governor is an "official" of each Client under rule 206(4)-5.

5. The Contribution that triggered rule 206(4)-5's prohibition on compensation under rule 206(4)-5(a)(1) was made on January 15, 2016 ("the Contribution Date") for the amount of \$2,700 to the Official's campaign for President of the United States via credit card to attend a lunch hosted by the campaign at the invitation of a business acquaintance who was an independent director of a BlackRock fund and who shared the Contributor's personal political

views. Applicants submit that the Contribution was not motivated by any desire to influence the award of investment advisory business. Applicants represent that in addition to being entitled to vote in the presidential election, the Contributor was interested in the GOP presidential primary. Aside from a brief introduction while Governor Kasich welcomed a group of attendees at lunch, the Contributor has never met the Official or dealt with the Official or his staff in any capacity. Moreover, the Contribution is consistent with other contributions made by the Contributor over the years. Applicants state that the Contributor made the Contribution without pre-clearance from BlackRock's Legal department. Applicants also represent that at the time he attended the campaign lunch where he made the Contribution, the Contributor was focused on the Official in his capacity as a candidate for President of the United States, and the potential that a contribution to such a federal candidate would be covered under rule 206(4)-5 simply did not occur to him in that frame of mind. The Contributor never told any prospective or existing investor (including the Clients) about the Contribution, and did not discuss the Contribution with BlackRock, the Advisers or any of their covered associates.

6. The initial selection process pursuant to which each Client decided to invest in a fund advised by an Adviser or to select a RIC advised by an Adviser as an investment option in a participant-directed plan, as applicable, had been completed before the contribution was made. Applicants state that the Contributor had no intention to seek, and no action was taken by the Contributor or the Applicants, to obtain any direct or indirect influence from the Official or any other person with respect to those investments. The Contributor did not participate in any capacity in soliciting those investments or any other investment advisory business covered under rule 206(4)-5 from any government entity.

7. The Contribution was discovered on October 6, 2016 by Blackrock's Compliance department in the course of internal compliance testing. Specifically, Blackrock discovered the Contribution after a routine search on the Federal Election Commission's website. The Contributor requested a refund of the full \$2,700 on November 11, 2016 and received a refund on November 23, 2016. Applicants represent that all compensation earned that is attributable to the Clients' investments since the Contribution Date has been placed in escrow pending the outcome of this Application.

8. BlackRock's political contribution policies and procedures (the "Policy") which apply to BlackRock as well as its subsidiaries, including the Advisers, were adopted and implemented in order to coincide with the effective date of rule 206(4)-5, well before the Contribution was made. The Applicants submit that at the time of the Contribution, the Policy required, and continues to require, that all employees pre-clear all political contributions made in the United States. There is no *de minimis* exception from the pre-clearance requirement. Under the existing Policy, BlackRock requires employees to certify annually to their compliance with the Policy, sends reminders about the Policy and its pre-clearance requirement twice every year, and requires all employees to complete an annual computer-based training module that addresses the Policy and its pre-clearance requirement. In addition, BlackRock periodically conducts searches of public websites for contributions made by employees.

#### Applicants' Legal Analysis

1. Rule 206(4)-5(a)(1) under the 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 a 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 Official is an “official” as defined in rule 206(4)-5(f)(6).

2. Section 206A of the Act authorizes the Commission to “conditionally or unconditionally exempt any person or transaction . . . from any provision or provisions of [the 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 Act].”

3. Rule 206(4)-5(e) provides that the Commission may conditionally or unconditionally grant an exemption to 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 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. Applicants request an order pursuant to section 206A and rule 206(4)-5(e), exempting them 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. Applicants submit 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 Act. Applicants further submit that the other factors set forth in rule 206(4)-5(e) similarly weigh in favor of granting an exemption to the Applicants to avoid consequences disproportionate to the violation.

6. Applicants contend that given the nature of the Contribution, and the lack of any evidence that the Advisers 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 Clients' interests are best served by allowing the Advisers and their Clients to continue their relationship uninterrupted. Applicants state that causing the Advisers to forgo the impacted compensation attributable to the two- year period would result in a financial loss of approximately \$37 million or 13,700 times the amount of the Contribution. Applicants suggest that the policy underlying rule 206(4)-5 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. Applicants represent that the Policy was adopted and published well before the Contribution was made. Applicants further represent that, the Policy has conformed to the requirements of rule 206(4)-5 and has been more rigorous than rule 206(4)-5's requirements as BlackRock has monitored compliance with the Policy by searching for an individual employee's past political contributions on the Federal Election Commission's database whenever an individual makes a request to BlackRock to pre-clear a contribution to a federal candidate. Applicants submit that BlackRock is in the process of enhancing this monitoring protocol.

8. Applicants assert that at no time did any employee or covered associate of BlackRock, the Advisers or any of their affiliates, other than the Contributor have any knowledge that the Contribution had been made before its discovery by the Compliance department in October 2016.

9. Applicants assert that after learning of the Contribution and confirming the Contributor's covered status, BlackRock caused the Contributor to promptly obtain a full refund of the Contribution. Applicants submit that in response to the contribution, BlackRock has begun the process of implementing enhancements to the Policy that will include (a) sending its employees, including employees of its affiliates a third annual reminder to pre-clear all political contributions in the United States, including those to federal candidates (b) revising its annual computer-based training module to highlight the need to pre-clear all political contributions in the United States, including those to federal candidates, and (c) enhancing its protocol to monitor compliance with the Policy's pre-clearance requirements by searching the FEC's and certain states' campaign finance databases for contributions made by a sampling of covered associates on a quarterly basis. Finally, BlackRock's Compliance department will remind the Contributor of the Policy's pre-clearance requirement on at least a quarterly basis. .



10. Applicants state that the Contributor is and has, at all relevant times, been a covered associate of the Advisers. Applicants note that the Contributor has never solicited investment advisory business covered under rule 206(4)-5 from government entities and has had no direct contact or involvement with any of the Clients or the members of their Boards regarding any business matters.

11. Applicants assert that the Clients' initial investments with the Advisers substantially predate the Contribution. They were done on an arm's length basis and the Contributor and the Applicants took no action to obtain any direct or indirect influence from the Official.

12. Applicants submit that neither the Advisers 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. Applicants further submit that there was no violation of the Advisers' fiduciary duty to deal fairly or disclose material conflicts given the absence of any intent or action by the Advisers or the Contributor to influence the selection process. Applicants contend that in the case of the Contribution, the imposition of the two-year prohibition on compensation does not achieve rule 206(4)-5's purposes and would result in consequences disproportionate to the mistake that was made.

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

Eduardo A. Aleman  
Assistant Secretary