

SECURITIES AND EXCHANGE COMMISSION

Investment Advisers Act Release No. 5068; 803-00244

Apollo Management, L.P.

November 28, 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).

Applicant: Apollo Management, L.P. (the “Applicant” or “Adviser”).

Summary of Application: Applicant requests 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 Applicant 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 Applicant to an official of the government entities.

Filing Dates: The application was filed on January 19, 2018, and an amended and restated application was filed on August 23, 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 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 December 26, 2018, 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 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: Apollo Management, L.P., 9 W 57th Street, New York, NY 10019.

FOR FURTHER INFORMATION CONTACT: Nick Cordell, Senior Counsel, or Aaron Gilbride, 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 registered with the Commission as an investment adviser pursuant to the Act. . Applicant acts as adviser to private funds 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 Stephanie Drescher (the "Contributor"). The Contributor is the Global Head of Business Development & Investor Relationship Management. The Contributor supervises the team that does most of the day-to-day solicitation of government entities and other prospective investors, and personally participates in some solicitations. Applicant submits that, because the Contributor supervises and participates in the solicitation of government entities, she is, and at all relevant times was, a covered associate pursuant to rule 206(4)-5(f)(2)(i).

3. Two investors in funds advised by the Adviser, Client A and Client B, are Ohio state pension funds. The Clients are government entities as defined in Rule 206(4)-5(f)(5)(i).

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 Applicant submits 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 online on April 22, 2016 (“the Contribution Date”) for the amount of \$1,000 to the Official’s campaign for President of the United States. Applicant submits that the Contribution was not motivated by any desire to influence the award of investment advisory business and that the Contributor had no intention to seek, and no action was taken either by the Contributor or the Applicant to obtain, any direct or indirect influence from the Official or any other person. Applicant represents that the Contribution was motivated by the Contributor’s belief that the Official was the candidate in the in the Republican field most in line with her views. Applicant further represents that the Contributor did not attend any campaign events for the Official and did not have any contact with the Official or the Official’s campaign staff, and that she contributed to the presidential campaign of Hillary Clinton that same month. The Contributor did not solicit or coordinate any other contributions for the Official. Applicant also represents that, at the time of the Contribution, the Contributor was focused on the presidential election and forgot to pre-clear the contribution as required by the Adviser’s policies and procedures. The Contributor was the only employee of the Adviser with knowledge of the Contribution prior to its discovery by the Adviser.

6. The Applicant discovered the Contribution in December 2016 during a search of the public record for political contributions. While the Applicant's compliance department noted the lack of pre-clearance as a violation of the Adviser's policy, it did not identify that the Contribution triggered a ban on compensation under rule 206(4)-5(a)(1). Media coverage of another investment adviser's application for an exemptive order related to a contribution to the Official prompted the Applicant to review its records in October 2017, at which point the Applicant identified the Contribution as triggering a ban on compensation under rule 206(4)-5(a)(1). The Contributor requested a refund of the full \$1,000 and received a refund on November 9, 2017. Applicant represents 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.

7. The Applicant's Political Contributions Policy (the "Policy") was adopted and implemented before the proposal of rule 206(4)-5 and was further amended before the rule's implementation date. The Applicant submits that at the time of the Contribution, the Policy required, and continues to require, that all employees pre-clear all contributions (including contributions made by family members that the employee financially supports) to any person (including any election committee for any person) who was, at the time of the contribution, an incumbent, candidate, or successful candidate for federal, state, or local office. There is no *de minimis* exception from the pre-clearance requirement. Under the existing Policy, the Adviser requires employees to certify annually to their compliance with the Policy and sends quarterly reminders about the Policy and its pre-clearance requirement. In light of changes made to the Policy after the discovery of the Contribution, future quarterly compliance alerts will highlight in

the reminders that federal contributions are covered. In addition, the Adviser periodically conducts searches of public websites for contributions made by employees.

Applicant's 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. Applicant requests 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. 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 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 Contribution, 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 Clients'

interests are best served by allowing the Adviser and their Clients to continue their relationship uninterrupted. Applicant states that causing the Adviser to forgo the impacted compensation attributable to the two- year period would result in a financial loss of approximately \$9 million or 9,000 times the amount of the Contribution. Applicant suggests 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. Applicant represents that the Policy was adopted and published well before the Contribution Date. Applicant further represents 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 the Policy requires internet testing.

8. Applicant asserts that at no time did any employee or covered associate of the Adviser or any of its affiliates, other than the Contributor know of the Contribution until after it had happened.

9. Applicant asserts that after learning of the Contribution, the Adviser caused the Contributor to obtain a full refund of the Contribution. Applicant submits that in response to the contribution, the Adviser implemented enhancements to the Policy that include: (a) requiring covered associates to certify their compliance with the Policy and report any contributions made; (b) enhancing training for employees and compliance staff; and (c) developing a written checklist-style procedures document for preclearing and reviewing contributions to prevent any future issues.

10. Applicant states that the Contributor is and has, at all relevant times, been a covered associate of the Adviser.

11. Applicant asserts that the bulk of Client A's investments predate the Contribution and that the Contributor had no direct contact with Client B. Applicant further asserts that the investment transactions with the Clients were done on an arm's length basis and the Contributor and the Applicant took no action to obtain any direct or indirect influence from the Official.

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, 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