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The International Association of Small Broker-Dealers and Advisers,www.iasbda.com submits the following comments on the above referenced proposal.

ELIMINATING BD DISCRETIONARY ACCOUNTS TOGETHER WITH REMOVING WRITTEN APPROVAL FOR IA PRINCIPLE TRADES REQUIRES A MORE THOROUGH SMALL FIRM IMPACT ANALYSIS.

We believe there is a small firm issue that is not adequately addressed by the release.The Commission is changing two longstanding policies in a way that may significantly impact small firms.For years the SEC held the line on requiring written approval for each principal trade in an advised account.Now as a result of the FPA case, certain affected firms have convinced the SEC that prior approval was not necessary when you have both a bd/ia non - discretionary account, with bd discretionary accounts no longer possible. But a small bd who has successfully offered a bd discretionary account for commissions is disadvantaged,because it does not also have a registered IA,even though the activity occurs in both instances in the the bd.The small bd has to form an IA for that benefit. Individuals who have been pleased with a bd discretionary account are now forced to move to an RIA environment and pay a fee in addition to commissions.Yet that same small bd can offer a bd limited discretionary account and sell to it as principal as long as it provides best execution.Surely the investing public will be challenged in distinguishing these types of discretion.The limited discretion bd account appears indistinguishable from the non discretionary advised account except for the nature of the fees and we believe the release should positively affirm this fact or affirmatively and practically explain how to distinguish the two accounts to customers,especially those customers who like their bd discretionary accounts.The Commission can certainly change its definition of incidental to brokerage-but surely it has to consider its impact on current bd discretionary accounts and investors who like them .Chairman Cox has recently addressed the need for consistency and clarity in SEC positions:

"Another thing that won't change under my chairmanship is the Commission's recent rulemakings. The confirmation of a new Chairman ought not to be a signal to re-open and contest every prior Commission enactment. That's why the Commission is continuing to defend in court its rules concerning mutual

fund director independence. While I didn't participate in this rulemaking, which preceded my Chairmanship, I will always defend the agency's regulatory prerogatives so long as I am Chairman.The same is true of the Commission's rule requiring the registration of hedge fund advisors. This rule, too, antedates my Chairmanship. It's scheduled to go into effect in February 2006 — and it will. It is my conviction that ***consistency and clarity in rulemaking*** *and enforcement are essential." Speech by SEC Chairman Cox:Remarks Before the Securities Industry Association Boca Raton, Florida ,November 11, 2005.*

CLARIFY FIXED FEES AND LIMITED DISCRETION

We believe the release should make clear that any bd may offer a yearly fee arrangement including for a limited discretionary account as long as it does not associate the fee with advice as opposed to commissions.We think the current language would discourage a small bd from considering such business. The key here is advertising separate advice not necessarily charging a yearly fee.A limited discretionary bd account hopes that the commissions generated will be sufficient compensation for the extra effort and liability involved.The release should be clear that is acceptable.

We think specific examples might help to better explain what we believe the release allows.We believe a brokerage firm could offer the following service to its clients:

- *A yearly commission fee of $500*
- *BD will exercise limited discretion as to time and price for a list of stocks which its firm currently recommends and which it recommends in the future including principal trades*
- *A bd customer might also give discretion to buy all the firm's technology recommendations at a price 20% below the current price for one year but if and only if the NASDAQ drops 5%.. Or buy all the recommendations each time that a certain number of indicators predict a bull market.*

Stated another way: Smith has an account worth $125,000 and for 40 years has given Jones discretion. Smith pays commissions of $500 per year and is quite satisfied with Jones' personal attention. Smith is now told that if he wants someone to continue to manage his account he must find an RIA and pay a yearly fee plus commissions. Smith must also confirm every trade if he wants to obtain principle trades from the RIA.Or can Smith simply agree with Jones that Jones can keep investing using the same same special parameters?

These arrangements would seem to meet the release's requirements yet they are very similar to a non-discretionary advised account which requires an affiliated IA.It would be helpful therefore if the staff could clarify that arrangements like these meet its interpretation.

EXPLAIN THE IMPACT ON SMALL FIRMS OF ELIMINATING BROKER-DEALER DISCRETIONARY ACCOUNTS

Footnote 15 acknowledges a change in position that eliminates the bd discretionary account as it has been in existence since the founding of the SEC ,while footnote 13 states that limited discretion is allowed for among other things time,price and special parameters.This distinction is going to present challenges for small bd's who cannot retain a lawyer for every account to analyze whether the the account meets one of the seven exceptions.Two staff interpretive letters indicate the complexity of interpreting the boundaries of this limited discretion. SEC staff interpretive letters:November 17,2005 and September 29,2005.We believe this complex distinction ought to be addressed more fully in the text and in the executive summary rather than in two separate footnotes We especially believe it should be addressed in the IRFA which only contains a summary conclusion that there is no impact on small firms.Finally we believe that the release should ask for comments on whether small entities are affected by the inability to offer discretionary accounts, and whether the principal trade exception for big firms discriminates against them? The net effect of removing the requirement for written approval for principle trades and eliminating discretionary accounts is to benefit large firms without any discussion of this selective benefit.Furthermore we believe the reasoning used in the reproposing release and repeated here does not consider the impact of eliminating discretionary accounts on small bd's and small investors.Investors can understand that they are paying commissions not advisory fees for a discretionary account.In fact a small investor may not be able to pay an advisory fee but would appreciate a discretionary account alternative. If needed, the special disclosure language could be improved to insure that an investor understands that he can choose to go to an IA instead of a BD,so he can pay both fees and commissions.

We also believe that the staff's dismissal of the Morgan Lewis comment letter needs more support than provided here or previously.We also think its logical to assume that Congress knew discretionary accounts were and are commission based while advisory accounts are fee based. See S.Rep.No.76-1775,76th Cong.,3rd Sess.22(1940).The industry and SRO'S have assumed this for a long time and indeed the staff allowed it for a long time.There was therefore no need for it in the legislative history dealing with special compensation.The reasoning

here seems to be that the the FPA case reversed only certain aspects of the rule,while blessing the elimination of bd discretionary accounts. Furthermore the release concludes that discretionary accounts based on commissions really are advised accounts based on special compensation without producing any evidence of abuse of such accounts. In this regard there are very few suitability cases involving discretionary accounts and little in the record of the prevalence of such accounts or their total value.The Investor Focus Group Report dated March 10,2005 contains no discussion of bd discretionary accounts and whether the investors interviewed recognized them.

We therefore do not believe the FPA case requires the elimination of discretionary accounts and that it is not necessary for investor protection. But if it is, a much better explanation is demanded if consistency and clarity are important.Finally we believe it would be useful to postpone the elimination of discretionary accounts until the RAND study is complete so that the record will have evidence of the use and/or abuse of bd discretionary accounts. Alternatively, current bd discretionary accounts might be grandfathered thereby allowing satisfied customers to maintain what they like and are familiar with.

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