

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 34-53406; IA-2492]

Notice of Broker-Dealer/Investment Adviser Study

On March 3, 2006, Chairman Christopher Cox announced that a study will be commenced to compare the levels of protection afforded retail customers of financial service providers under the Securities Exchange Act and the Investment Advisers Act and to address any investor protection concerns arising from material differences between the two regulatory regimes.

This study is part of the Commission's "commit[ment] to pursuing the most effective solutions to . . . vital issues"<sup>1</sup> raised in the course of the promulgation in April 2005 of Rule 202(a)(11)-1 (the "IA/BD rule"). Certain Broker-Dealers Deemed Not To Be Investment Advisers, Investment Advisers Act Release No. 2376 (Apr. 12, 2005), 70 FR 20424 (Apr. 19, 2005). The IA/BD rule provides an exception from the Investment Advisers Act for broker-dealers receiving compensation other than commissions -- such as fees that are fixed dollar amounts -- for full-service brokerage programs that include advice about securities. Under the rule, when a broker-dealer charges an asset-based or fixed fee, it is excepted from the Advisers Act so long as its advice is solely incidental to brokerage and it makes certain disclosures. The rule also provides guidance about the sort of advice that will not be considered solely incidental to brokerage -- such as when a broker-dealer exercises investment discretion over an account.

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<sup>1</sup> Certain Broker-Dealers Deemed Not To Be Investment Advisers, Investment Advisers Act Release No. 2376 (Apr. 12, 2005), 70 FR 20424, 20442 (Apr. 19, 2005).

The IA/BD rule was the subject of a large number of comments, but, as the Commission noted in the release adopting the rule, many of the concerns voiced by commenters went “well beyond the scope of the rulemaking”<sup>2</sup> and implicated matters that might “more appropriately fall under broker-dealer regulation.”<sup>3</sup> Accordingly, the staff was directed to report on recommendations for a study to look into these issues.<sup>4</sup> After considering the staff’s recommendations and consulting with the other Commissioners, Chairman Cox determined that a study will be conducted to address the issues specified in the IA/BD release.

Nancy M. Morris  
Secretary

Date: March 3, 2006

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<sup>2</sup> Id. at 20442.

<sup>3</sup> Id. at 20424.

<sup>4</sup> Id. at 20442.