



Securities Industry Association

1425 K Street, NW • Washington, DC 20005-3500 • (202) 216-2000 • Fax (202) 216-2119

info@sia.com • www.sia.com

July 26, 2005

4-507



Mr. Jonathan G. Katz
Secretary
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-9303

Re: Petition for Rulemaking; Request for Extension of Certain Compliance Dates for Rule 202(a)(11)-1 (S7-25-99)

Dear Mr. Katz:

Pursuant to Rule 192 of the Securities and Exchange Commission's Rules of Fair Practice, the Securities Industry Association¹ petitions the Commission to extend certain compliance dates for Rule 202(a)(11)-1 ("Rule") from October 24, 2005 until April 1, 2006.² The SIA requests this extension so that it may seek, and the Commission or its Staff may provide, further guidance regarding the application of the financial planning portion of the Rule (paragraph (b)(2)). In addition, an extension would allow time for the industry to implement changes that will be necessary to comply with the financial planning and discretionary brokerage (paragraph (b)(3)) portions of the Rule.³

Paragraph (b)(2) of the Rule defines when a broker-dealer provides advice that is not solely incidental to the conduct of its business as a broker or dealer because it is "in connection with

¹ The Securities Industry Association brings together the shared interests of more than 550 securities firms to accomplish common goals. SIA's primary mission is to build and maintain public trust and confidence in the securities markets. SIA members (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs nearly 800,000 individuals, and its personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2004, the industry generated an estimated \$227.5 billion in domestic revenue and \$305 billion in global revenues. (More information about SIA is available at: www.sia.com.)

² 17 C.F.R. 275.202(a)(11)-1, Investment Advisers Act Release No. 2376 (Apr. 12, 2005), 70 F.R. 20424, 20441-42 (Apr. 19, 2005) ("Adopting Release").

³ With respect to the other paragraphs of Rule 202(a)(11)-1, the SIA does not believe an extension of the compliance date is necessary.

providing financial planning services.”⁴ The SIA intends to seek guidance from the Commission or its Staff on this portion of the Rule because it has been the source of significant industry confusion.⁵ Guidance could help to avoid inadvertent violations of the Rule and assure that compliance with the Rule does not entail costly,⁶ quite disruptive, and potentially counterproductive actions.

Once guidance is received from the Commission or its Staff, broker-dealers will need time to implement changes required to comply with paragraph (b)(2). An extension is necessary to enable firms to make the required and considered judgments about those activities that are subject to the Investment Advisers Act, and will provide sufficient time for firms to develop and disseminate meaningful disclosures about brokerage and advisory relationships. As the Adopting Release acknowledged, the Rule potentially requires broker-dealers to develop new disclosures, redraft contractual language, and create a process for producing, delivering, and processing these new documents.⁷ Typically, it takes at least eight weeks for a broker-dealer to introduce and disseminate even minor changes in the language of a contract or disclosure statement. In addition, to the extent that computer models or programs will need to be adjusted to allow firms to comply with the Rule, it will take significant time for the changes to be specified, coded, tested, and produced. It is simply not possible for most firms to complete these activities by October 24, 2005.⁸

Paragraph (b)(3) of the Rule requires firms to treat accounts as investment advisory if the representative exercises investment discretion on more than a “temporary and limited” basis.⁹ Firms need additional time to comply with this portion of the Rule. Initially, broker-dealers need to review all accounts in which discretion is exercised in order to identify those not subject to the Rule’s requirements because discretion is merely “temporary or limited.”¹⁰ This review of

⁴ See Rule 202(a)(11)-1(b)(2).

⁵ The SIA proposes to discuss such interpretive guidance with the Commission Staff separate from this request.

⁶ Potential costs may vary significantly from the costs estimated in the Adopting Release. See 70 F.R. at 20446-47.

⁷ See, e.g., Adopting Release, 70 F.R. at 20445.

⁸ Even if the Commission granted an extension through the end of 2005, it would not be possible for most firms to complete these activities and be in compliance by such date. Because of year-end reporting requirements, firms generally “blackout” their systems to changes or new development from late-November through the end of the year.

⁹ See Rule 202(a)(11)-1(b)(3); see also Rule 202(a)(11)-1(d).

¹⁰ See Rule 202(a)(11)-1(d).

Mr. Jonathan G. Katz
July 26, 2005
Page 3

individual accounts will be a labor-intensive and time-consuming process. Once the initial review is complete, broker-dealers must notify clients whose accounts are “discretionary” under the Rule. Those clients will need time to determine whether they want to maintain non-discretionary brokerage accounts or discretionary investment advisory accounts. Once a client determines the type of account relationship he wishes to have with a firm, broker-dealers will need time to convert certain accounts into advisory accounts by redrafting contracts, creating a process for delivering, negotiating, and obtaining client signatures on these documents, and recoding the accounts once the documents are returned to the firm. Finally, firms will need to ensure that investment advisory accounts and the representatives offering them comply with all of the requirements under the Advisers Act. An April 1, 2006 compliance date will allow firms more time to take the required actions.

Finally, we note that the Commission indicated that the rulemaking for Rule 202(a)(11)-1 raised several important issues. For this reason, the Commission directed the Staff to report to the Commission within 90 days on ways to address these issues, including a study of investor protection concerns.¹¹ The SIA believes that an extension would be consistent with the need for a study, and would provide the Commission time to determine the most prudent course in response thereto.

The SIA appreciates the Commission’s consideration of our request and urges the Commission to adopt an extension as quickly as possible. If you have any questions, or would like to discuss these matters in greater detail, please contact the undersigned at 202-216-2000.

Sincerely,



Ira D. Hammerman
Senior Vice President and General Counsel

cc: The Honorable Cynthia A. Glassman, Acting Chairman
The Honorable Paul S. Atkins, Commissioner
The Honorable Roel C. Campos, Commissioner
The Honorable Harvey J. Goldschmid, Commissioner
Giovanni Prezioso, General Counsel
Meyer Eisenberg, Acting Director, Division of Investment Management
Robert E. Plaze, Associate Director, Division of Investment Management
Annette Nazareth, Director, Division of Market Regulation
Robert L.D. Colby, Deputy Director, Division of Market Regulation

¹¹ See Adopting Release, 70 F.R. at 20442.