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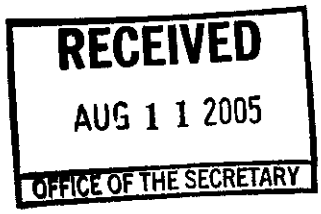
Consumer Federation of America
Fund Democracy
Consumer Action
Consumers Union



August 11, 2005

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

4-507

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

Dear Secretary Katz:

We are writing on behalf of Consumer Federation of America (CFA),[1] Fund Democracy,[2] Consumer Action,[3] and Consumers Union[4] to express our strong opposition to the petitions by the Securities Industry Association (SIA)[5] and American Council of Life Insurers (ACLI)[6] to delay compliance with the financial planning and discretionary brokerage portions of the recently adopted rules regarding the broker-dealer exemption from the Investment Advisers Act.[7]

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[1] The Consumer Federation of America (CFA) is a nonprofit association of 300 consumer groups, representing more than 50 million Americans. It was established in 1968 to advance the consumer interest through research, education, and advocacy.

[2] Fund Democracy is a nonprofit membership organization that acts as an advocate and information resource for mutual fund shareholders.

[3] Founded in 1971, Consumer Action works on a wide range of consumer issues through its national network of 6,500 community based organizations.

[4] Consumers Union, publisher of *Consumer Reports* magazine, is an independent nonprofit testing, educational and information organization serving only the consumer.

[5] Letter from Ira D. Hammerman, Securities Industry Association, to Jonathan G. Katz, Securities and Exchange Commission, July 28, 2005.

[6] Letter from Carl B. Wilkerson, American Council of Life Insurers, to Jonathan G. Katz, Securities and Exchange Commission, July 27, 2005.

[7] See *Certain Broker-Dealers Deemed Not To Be Investment Advisers*, Release Nos. IA 2376; 34-51523; File No. S7-25-99 (April 12, 2005).

If granted, these petitions would further delay the long-overdue application of appropriate investor protections to advisory services offered by brokers. In fact, CFA and others have been making the case to the Commission, Congress, and the states since the late 1980s that financial planning is an advisory service that should be regulated as such, regardless of the nature of the firm offering the service. Our organizations have similarly argued, at least since this rulemaking was first undertaken more than five years ago, that all discretionary accounts should be treated as advisory accounts. While we are extremely gratified that the Commission has adopted these views in its final rule, we can't help but note that it has been a very long time coming.

In the meantime, investors have been deprived of disclosures that might have alerted them to conflicts of interest at the heart of many brokers' sales practices. The recent mutual fund sales abuse scandals offer ample evidence of the harm that can befall investors when brokers are allowed to offer advisory services under a salesperson's standard of conduct. Those investors unfortunate enough to find themselves in a dispute with a broker have been dismayed to discover, when the dispute went to arbitration or to court, that the broker adamantly denied being bound by an adviser's fiduciary duty, despite having marketed themselves to the customer based on their advisory services. The final rule adopted by the Commission in April offers meaningful progress toward ensuring that brokers who offer personalized advisory services – whether through discretionary accounts or as part of financial planning services – will finally have to accept the fiduciary duty and disclosure obligations that accompany that role.

While we oppose both petitions in their entirety, the SIA's request to delay that portion of the rule that relates to discretionary accounts is particularly egregious. It has long been clear that the Commission was likely to include such a provision in the final rule. Furthermore, the term discretion is well defined and clearly understood within the industry. The SIA now argues, however, that determining whether accounts are subject to the rule will be a "labor-intensive and time-consuming process" because of the need to identify those not subject to the rule because discretion is merely "temporary or limited." That provision was added to the final rule at the request of the SIA, which never indicated when it advocated the amendment that its adoption would necessarily delay implementation. In fact, we believe the SIA has grossly exaggerated the time and effort needed to make what appears to be a fairly straightforward determination and comply with the law.

Admittedly, the provision requiring brokers who offer financial planning services to treat those accounts as advisory accounts emerged later in the rulemaking process. However, the general direction the Commission was likely to take in this area has been clear since the rule was re-proposed last December. Furthermore, the rule itself is quite explicit in spelling out the nature of conduct that would subject such services to regulation under the Advisers Act. We have no doubt the Commission stands ready to provide added guidance should questions arise during implementation. While we agree that brokers and insurance agents will be required to undertake a significant effort to come into compliance with the rule in the allotted time, we believe the substantial added protections investors will receive and the long delay in providing those protections justify that effort.

Neither the SIA nor the ACLI has offered adequate justification to support their eleventh-hour request for further delay. These groups had more than adequate opportunity during the

lengthy period in which this rule was under consideration to argue for an extended implementation period. To our knowledge, they failed to make that case until now – several months after the final rule was adopted.

Given the SIA's adamant and long-standing opposition to these provisions – and to regulation of financial planning services as advisory services in particular – the timing of this petition seems at best highly questionable. Perhaps the SIA hopes that changes in leadership at the Commission will offer them a new opportunity to water down the rule's protections. Its suggestion that "an extension would be consistent with the need for study, and would provide the Commission time to determine the most prudent course in response thereto" lends credence to such a suspicion. After all, the study ordered by the Commission was not intended to revisit provisions of the rule, but to examine whether additional protections are needed in this area. There is nothing in the nature of such a forward-looking study that would justify further delay of the already adopted provisions regarding discretionary accounts and financial planning services.

For all these reasons, we urge the Commission to act quickly to deny these petitions. We appreciate your attention to our concerns. Please feel free to contact us if we can be of additional assistance.

Respectfully submitted,

Barbara Roper
Director of Investor Protection
Consumer Federation of America

Mercer Bullard
Founder and President
Fund Democracy

Kenneth McEldowney
Executive Director
Consumer Action

Sally Greenberg
Senior Counsel
Consumers Union

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