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Securities Industry Association

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August 25, 2005

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OFFICE OF THE SECRETARY

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

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

Dear Mr. Katz:

The Securities Industry Association[1] would like to supplement its petition, previously submitted to the Commission,[2] to extend certain compliance dates for the financial planning and discretionary brokerage portions of Rule 202(a)(11)-1 ("Rule") of the Investment Advisers Act of 1940 ("Advisers Act") from October 24, 2005 until April 1, 2006. We understand that some organizations have questioned the brokerage industry's need for an extension,[3] but we cannot stress enough that an extension is necessary to allow firms to appropriately implement and comply with these aspects of the new Rule (paragraphs (b)(2) and (b)(3)). Our member firms have been and continue to take steps to comply with the new disclosure requirements applicable to fee-based brokerage accounts, which went into effect on July 22nd of this year, and we are not requesting any extension with respect to that aspect of the Rule.

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[1] The Securities Industry Association ("SIA"), established in 1972 through the merger of the Association of Stock Exchange Firms and the Investment Banker's Association, brings together the shared interests of nearly 600 securities firms to accomplish common goals. SIA member firms (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. More information about the SIA is available on its home page: www.sia.com.

[2] *See* Letter from Ira Hammerman, Senior Vice President and General Counsel, Securities Industry Association, to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission (July 28, 2005).

[3] *See* Letter from Barbara Roper, Director of Investor Protection, Consumer Federation of America, et al., to Jonathan Katz, Secretary, U.S. Securities and Exchange Commission (Aug. 11, 2005) ("CFA Letter"); Letter from David G. Tittsworth, Executive Director, Investment Adviser Association, to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission (Aug. 4, 2005) ("IAA Letter").

Financial Planning

With respect to the financial planning portion of the Rule, we previously noted that an extension is necessary to enable firms to make judgments about those activities, products and services that are, and that are not, subject to the Advisers Act, and to provide sufficient time for firms to develop and disseminate meaningful disclosures about brokerage and advisory relationships.

To underscore the need for an extension,[4] we note that most of our large member firms have scores of investment materials and reports that registered representatives use to service client accounts. In many, if not most instances, these materials and reports are made available to representatives in dispersed branches of a firm on an automated basis. Firms must review each of the materials and reports to determine whether the related service is brokerage or investment advisory, and must draft disclosures based on the nature of the service.

Once new disclosures have been drafted, it will take time for firms to: (i) implement the modifications through technology changes and processing, particularly for those materials that are offered on an automated basis; (ii) communicate the changes throughout the firm, particularly to the sales force; and (iii) physically disseminate the new documentation throughout the distribution system.[5] Further, marketing and internal training materials also will require review and revision.

Discretionary Brokerage

We also requested an extension for the discretionary brokerage portion of the Rule to allow broker-dealers time to review each account currently identified as "discretionary," to discuss with each client the investment options available for each account, and to implement the client's direction as to the type of account relationship that the client wants. Those industry

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[4] We note that of those industry organizations that opposed our request, the IAA Letter did not raise an objection to the financial planning portion of the extension request and the CFA Letter acknowledged that compliance with the financial planning provisions will involve a "significant effort."

[5] The technology changes in particular require significant lead-time. As we noted in our letter of July 28, 2005, even if the Commission granted an extension through the end of 2005, it would not be possible for most firms to comply by such date because of the time required to code changes to existing reports and analyses. Where new contracts or disclosures need to be drafted, there is lead time needed to build a process to appropriately disseminate these documents through the systems. In addition, there is a technology systems "freeze" period that virtually all large firms impose at the end of the year for mandatory reporting purposes. For example, one of our member firms has noted that given the "freeze" period and release cycle for technology programs, after disclosures have been drafted and finalized, it typically takes a minimum of three months to simply code, test, review, and release the reports and analyses.

organizations opposed to our request for an extension have challenged our assertion that determining whether a broker-dealer exercises investment discretion is difficult and time-consuming.[6] In so doing, we believe that they misunderstand the issue. Application of the Rule to potentially thousands of customer accounts will be a very time-consuming process. The standard-form documents signed by many broker-dealer customers to allow a representative to use discretion in their accounts typically do not distinguish between full or limited discretion. Thus, with the exception of a few specialized services where the amount of discretion is readily identifiable, firms will have to evaluate the vast majority of their accounts on a case-by-case basis to determine whether the amount of discretion exercised qualifies the account as "discretionary" within the meaning of the Advisers Act.

Once a firm has determined that an account is discretionary, the firm must discuss with the client whether the client wants to maintain a discretionary advisory account or a non-discretionary brokerage account. For clients that determine to maintain discretionary accounts subject to the Advisers Act, firms will need to create and finalize investment advisory agreements, ADV filings and related advisory program client disclosures, internal policies and procedures, and most importantly, internal systems infrastructure and trade processing that are necessary to ensure that these accounts comply with the requirements of the Advisers Act. An extension also is necessary for firms that have clients who decide to maintain a brokerage account because the firms will need time to consult with these clients as to alternative (non-discretionary) brokerage services and obtain appropriate documentation for any new service that these clients choose. For accounts that involve temporary or limited discretion, firms also may need to develop a system to document that the account does not qualify as "discretionary" under the Advisers Act.

Finally, although virtually all SIA members are registered investment advisers, some brokerage firms that historically have offered discretionary brokerage accounts are not currently registered as investment advisers. These firms now must register and ensure that they comply with the Advisers Act. Developing a new compliance system and altering their practices to adhere to a new regulatory regime will require substantial time.

The SIA appreciates the Commission's continued consideration of our extension request. If you have any further questions, please contact the undersigned at 202-216-2000.

Sincerely,

Ira D. Hammerman

Ira D. Hammerman
Senior Vice President and General Counsel

cc: The Honorable Christopher Cox, Chairman

[6] *See* IAA Letter; CFA Letter.

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 E. Plaze, Associate Director, Division of Investment Management
Nancy Morris, Attorney-Fellow, Division of Investment Management
Robert L.D. Colby, Director, Division of Market Regulation