



Securities Industry Association

120 Broadway - 35 Fl. • New York, NY 10271-0080 • (212) 608-1500, Fax (212) 968-0703 • [www.sia.com](http://www.sia.com), [info@sia.com](mailto:info@sia.com)

January 10, 2006

Ms. Nancy M. Morris  
Secretary  
United States Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: Rule 202(a)(11)-1 (S7-25-99)

Dear Ms. Morris:

The Securities Industry Association<sup>1</sup> submits this petition for rulemaking pursuant to Rule 192 of the Rules of Practice of the Securities and Exchange Commission (“the Commission”). We request that the Commission extend until March 31, 2006 the compliance date for Rule 202(a)(11)-1(b)(2) (“Rule”) of the Investment Advisers Act of 1940, which establishes that a broker-dealer holding itself out as providing financial planning services or delivering a financial plan to a customer is not engaging in services that are solely incidental to brokerage.

At the outset, we want to reiterate our appreciation for the extension of time previously granted by the Commission in September to allow broker-dealers to comply with the discretionary brokerage aspect of Rule 202(a)(11)-1.<sup>2</sup> Our member firms assiduously have been working to achieve compliance with the rule and accordingly have been reviewing and classifying accounts as “discretionary” within the meaning of the rule, discussing investment options for each account with clients, and documenting accounts as appropriate. We expect that by the January 31, 2006 extended compliance date, firms will be in a position to comply with this portion of the new rule.

---

<sup>1</sup> 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](http://www.sia.com).

<sup>2</sup> Securities Exchange Act Release No. 52407 (Sept. 12, 2005).

As you know, the Commission's action in September also extended the compliance date for the financial planning portion of Rule 202(a)(11)-1 until January 31, 2006.<sup>3</sup> Since then, the firms have been making needed changes to prepare for compliance with that aspect of the rule as well. But, as we all recognize, the preparations to comply with the financial planning aspects of the rule necessarily could not proceed as definitively as could the discretionary brokerage piece, because of the need for interpretive guidance. We greatly appreciate the interpretive guidance issued by the staff on December 16, 2005.<sup>4</sup> This guidance will assist the firms' efforts to appropriately implement and comply with the Rule.

Notwithstanding this, because the interpretive guidance was released so close in time to the January 31, 2006 extended compliance date, we believe that a brief additional extension of time is necessary to enable firms to comply with the Rule on its compliance date. As an initial matter, an extension will allow firms to prepare, modify and implement appropriate disclosures as contemplated by the interpretive guidance. The staff's guidance is particularly helpful with respect to this aspect of preparing for implementation of the Rule, and even those firms that initiated efforts to consider and modify their client contracts and other disclosures prior to the issuance of the guidance will benefit significantly from a brief extension so that they may more specifically craft their disclosures to provide the level of disclosure to investors contemplated by the interpretive guidance.<sup>5</sup> As we have noted previously, once such changes to contracts and other documents are initiated, it takes a significant amount of time to code, test, review, and release them on firm agreements, reports, and analyses.<sup>6</sup> In addition, the new interpretive guidance will enhance the ability of firms to educate and train their registered representatives and investment advisory representatives about how to comply with the Rule. Additional time is necessary to achieve this important objective as well.

---

<sup>3</sup> *Id.*

<sup>4</sup> Letter from Bob Plaze, Associate Director, U.S. Securities and Exchange Commission, Division of Investment Management, to Ira Hammerman, Senior Vice President and General Counsel, Securities Industry Association (December 16, 2005).

<sup>5</sup> The timing of compliance with this Rule is complicated by the fact that the interpretive guidance was released during the month of December, when firms need to "blackout" their systems to changes and new developments due to tax reporting and other year-end processing requirements. This technology freeze usually carries over to early or mid January, and only then can firms begin to schedule and initiate systems enhancements of the kind mentioned above. *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).

<sup>6</sup> *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 (August 25, 2005).

Ms. Nancy M. Morris

January 10, 2006

Page 3

Again, we are very appreciative of the interpretive guidance issued by the Staff on the financial planning portion of the Rule. We believe that it is in the best interest of investors for firms to be in a position to comply with the Rule on the compliance date but that the current compliance date of January 31, 2006 may make it difficult for a significant portion of firms to achieve full compliance. Thus, the SIA requests an extension of the compliance date for the Rule until March 31, 2006. The SIA appreciates the Commission's consideration of our request. If you have any further questions, please contact the undersigned at 202-216-2000.

Sincerely,

Ira D. Hammerman  
Senior Vice President and General Counsel

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  
Robert E. Plaze, Associate Director, Division of Investment Management  
Robert L.D. Colby, Acting Director, Division of Market Regulation