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September 15, 2004

VIA E-MAIL TO RULE-COMMENTS@SEC.GOV

Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

Re: Comments on File No. S7-25-99, SEC Broker-Dealer Rule Exemption

Dear Sir:

As an attorney who has represented investors in securities arbitration for many years, I oppose the SEC's proposed rule exempting broker-dealers from the Investment Advisers Act.

The proposed rule distinguishes between broker-dealers who provide advisory services incidental to their business as brokers or dealers while receiving fixed-dollar or percentage compensation, from investment advisers who provide advisory services to their clients for a fee. Under the proposal, these broker-dealers providing traditional brokerage services will not be treated as investment advisers under the Investment Advisers Act and, therefore, may not be fiduciaries under the investment adviser law and will not have to make the disclosures required of investment advisers.

The rule was first proposed several years ago. It ignores the changing business of broker-dealers in recent years. While historically broker-dealers provided services focusing on executing the purchase and sale of securities, most major firms no longer emphasize these limited brokerage services. Instead, they market themselves as providing a full range of advisory services. Broker-dealers are marketing themselves as investment advisers while claiming their business consists of providing traditional "brokerage services" to the public.

An example of the efforts by brokerage firms to cast their advisory services as “brokerage services” is represented by Merrill Lynch’s statements in its brochure, *Merrill Lynch & You*, dated February 2001. The brochure describes Merrill Lynch as providing “a brokerage service that provides someone to help you decide what you need to do and when to do it.”

The brochure goes on to state that these brokerage services will help investors to:

- Identify your goals.
- Access retirement, trust and mortgage specialists.
- Identify specific investment strategies customized to your needs.
- Tailor asset allocation to your risk tolerance.
- Gain philanthropic advice.

In addition, the so-called “brokerage services” include preparation of a financial plan identical to that which would be prepared by an investment adviser. The Merrill brochure states as follows:

One of the most important services your Financial Consultant performs is to work with you to create a personal financial plan This provides a comprehensive overview of your total financial picture.

The brochure states that the “personal financial plan” will be used to address specific planning needs.

Merrill Lynch describes all of the foregoing services as “brokerage services.”

As made clear by Merrill Lynch, the brokerage industry’s transformation in recent years represents more than simply adopting a non-commission fee structure. It is providing investment advisory services, and new fee arrangements are nothing less than investment advisory agreements.

Allowing the brokerage industry to exempt itself from the Investment Advisers Act appears to be an effort to exercise political power to relieve itself from fundamental obligations to the investing public. Once again, the investing

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public will be the loser, while the brokerage industry will dodge basic responsibilities attendant to its business.

I urge you to reject the proposed amendment.

Very truly yours,

Laurence S. Schultz

LSS/ch