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BY ELECTRONIC MAIL

February 7, 2005

Jonathan G. Katz, Secretary  
Securities and Exchange Commission  
450 Fifth Street NW  
Washington DC 20549-0609

**RE: S7-25-99**

Dear Mr. Katz:

The National Association of Personal Financial Advisors (NAPFA), the premier organization of Fee-Only financial advisors, appreciates the difficulty of reconciling current law with today's practices for the delivery of investment advice and the sale of financial products and services. It seems clear to us, however, that the re-proposed rule (*Certain Brokers Deemed Not To Be Investment Advisers*) still does not enhance the interests of consumers and therefore should be withdrawn. NAPFA believes that with more and more responsibility being shifted to the general public to save and manage their retirement savings, now is not the time to blur the distinction between advice and product sales.

Regardless of legislative and regulatory history, consumers today believe that when they pay a fee for service they have entered into a special relationship in which their adviser is bound to act in their best interests. Consumers have indicated by their preference for this service model that this fiduciary duty is their expectation. Consumers' reasonable expectation of this level of personalization and care should afford them the protections offered under the Investment Advisers Act of 1940 ("Advisers Act").

It is obvious from recent broker-dealer advertisements that the *appearance* of providing personal advice has become an important device in the marketing of brokerage products and services. Eliminating the "solely incidental" test in the re-proposed rule allows these firms to thumb their noses at any attempt to have these programs covered under the Advisers Act. Consumers are being misled.



Advancing the Practice of  
Fee-Only Financial Planning

We do not believe that *any* amount of disclosure be sufficient to enable the general public to ascertain whether they are receiving advice or brokerage services. Even sophisticated investors believe that as *clients* of a brokerage firm they are receiving advisory services above and beyond the delivery of investment products.

Although it is difficult to speculate about what the delivery of financial advice and services may look like in the future, it is easy to see that the shrinking of the defined benefit plan and the increased popularity of 401(k) plans with employers has already demonstrated how ill-prepared participants are to make investment decisions that will have substantial impacts on their financial futures. Consumer protection is the purpose of regulation and it must be at the core of any rulemaking. We would welcome an opportunity to participate in an open forum to address the regulatory needs of today's marketplace with an eye toward the needs of the future.

NAPFA echoes many of the detailed objections raised by the Certified Financial Planning Board of Standards and the Financial Planning Association, and requests that the Commission withdraw this rule. We support restoring the application of the Advisers Act to broker-dealers who provide investment advice. The Act provides consumers with the information necessary to make good decisions about whom to select for investment advice, and the protections that come from having an adviser with a fiduciary duty to serve them.

Further, we ask that the Commission, in the interest of consumer protection, crack down on the abusive advertising and solicitation practices that have built up around reliance on the proposed and re-proposed rule.

Sincerely,

A handwritten signature in cursive script that reads "Ellen Turf".

Ellen Turf  
CEO