

1826

February 23, 2005

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

*Re: File No. S7-25-99: Certain Broker-Dealers Deemed Not To Be Investment Advisers*

Dear Mr. Katz:

Securities America, Inc. ("SAI") appreciates the Commission's efforts to more clearly define the types of activities that fall within the scope, and outside the scope, of the Investment Advisers Act of 1940. Based on the large number of comments already received by the Commission, this is an area that is of interest to a large number of broker-dealers, investment advisors, and dual registrants.

Many of the comment letters correctly point out that the line between an investment advisor and a broker-dealer seems to be harder and harder to find. And the central questions that seem to be asked are, "What is meant by providing investment advice?" and "When is rendering investment advice incidental to the work of a Registered Representative?" These are legitimate questions in light of the current regulatory framework. Unfortunately, they are impossible to answer with certainty notwithstanding the Commission's guidance on the subject. Thus, perhaps they are the wrong questions for the Commission's leaders to consider. SAI respectfully submits that the better question is: What type of regulatory landscape would best protect the interests of the investor that seeks advice on personal investing?

The setting in today's securities industry is much different than it was in the 1930s and 1940s when the general framework of securities law and regulation was codified. The retail market for securities-related products and services, in particular, has evolved considerably. This has been especially true in the past 20 years. For example, in 1999, the percentage of U.S. households that owned stocks either directly or through mutual funds or retirement accounts had increased to 48% from 19% in 1983.<sup>1</sup>

As securities have become more accessible to the masses, the need for objective advice has become more important. Without doubt both broker-dealers and investment advisors are competing to meet investor demand for advice. In many cases, the end product to the client is identical. But the regulations that apply to broker-dealers and investment advisors are different. It's time for this to change.

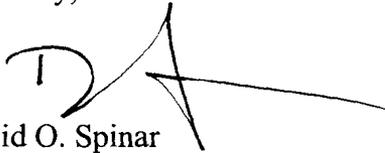
<sup>1</sup> [http://www.businessweek.com/magazine/content/01\\_35/b3746620.htm](http://www.businessweek.com/magazine/content/01_35/b3746620.htm)

SAI believes all firms and representatives that provide investment advice should be subject to the same regulatory framework. For those broker-dealers who provide advice, it seems inappropriate to call it "incidental." You need look no further than the various television, radio or print ads to find that advice is the service in trade. Simply put, advice is the primary product that the public looks to our industry to provide.

Rather than devoting additional resources on band-aide solutions like the one proposed, SAI respectfully recommends that the Commission work with Congress to develop new legislation that is more relevant to today's financial services industry. The legislation should focus on three primary functions: 1) advice, 2) execution services, and 3) institutional asset management. Legislation regarding advice would be crafted to meet the investing public's need for high standards of ethics, education and disclosure. Regulation of execution services would establish the standards for those firms that solely provide execution and for which the consumer has no expectation of services beyond execution. The final leg, institutional asset management, would set the standards that more accurately reflect the sophistication and investment acumen of institutions as opposed to individual investors.

Thank you for the opportunity to offer these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Spinar", with a long horizontal line extending to the right.

David O. Spinar  
Chief Compliance Officer