T. Rowe Price Associates, Inc.

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410-345-2000

September 22, 2004

VIA ELECTRONIC DELIVERY

Mr. Jonathan G. Katz
Secretary
U.S. Securities & Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549

Re: Certain Broker-Dealers Deemed Not to Be Investment Advisers; Release Nos. 34-50213; IA-2278; File No. S7-25-99

Dear Mr. Katz:

T. Rowe Price Associates, Inc. ("Price Associates") appreciates the opportunity to resubmit its proposed comments on the above-referenced release and the proposed rule under the Investment Advisers Act of 1940 that will exempt certain broker-dealers from registration as investment advisers. Price Associates, and certain of its affiliates ("Price Advisers"), are registered investment advisers under the Investment Advisers Act, with assets under management of approximately $206.8 billion as of June 30, 2004 from more than eight million individual and institutional accounts. As a provider of brokerage services to retail customers through a division of our wholly-owned registered broker-dealer, T. Rowe Price Investment Services, Inc., and as an offeror of retail and managed account advisory services through the Price Advisers, we are pleased that the Commission has re-opened the comment period and has decided to take formal action on the rule proposal.

Price Associates submitted a comment letter in response to the Commission's request for comments when the rule was first proposed in 1999. Attached is a copy of that comment letter dated January 14, 2000. Our position has not changed. While we recognize the need for an Advisers Act exclusion for broker-dealers who offer their customers full service brokerage and advice for an asset-based fee, we still believe there are serious flaws in the way the rule has been crafted. We urge the Commission to rethink how to ensure that the advice delivered by the broker-dealer is "non-discretionary" and "solely incidental" to the services provided. We continue to be concerned that these broker advice services will be marketed in a fashion that is inconsistent with this notion. In addition, the Commission should consider how the rule would apply to broker-dealers offering managed wrap account services through other registered investment advisers which have proliferated since the rule proposal in 1999. We would assume that brokers offering these programs (even if they are non-discretionary) would not be able to rely on the exclusion from Advisers Act registration since these programs are structured to offer portfolio

management, selection of portfolio managers and asset allocation services, all of which are hallmarks of investment advisers and not "solely incidental" to the brokerage services provided. The Commission should reiterate in any action it takes on the proposed rule that broker-dealers offering wrap accounts with these core functions are subject to Advisers Act registration.

We appreciate the opportunity to resubmit our comments on the proposed rule. Please feel free to contact either of the undersigned if you have any questions or need additional information.

Sincerely,

Henry H. Hopkins
Chief Legal Counsel

Darrell N. Braman
Associate Legal Counsel

Attachment

Dnb/sec.bdexemption

January 14, 2000

VIA OVERNIGHT DELIVERY

Mr. Jonathan G. Katz
Secretary
U.S. Securities & Exchange Commission
450 Fifth Street, N.W.
Stop 6-9
Washington, DC 20549

Re: Certain Broker-Dealers Deemed Not to Be Investment Advisers; Release Nos. 34-42009; IA-1845; File No. S7-25-99

Dear Mr. Katz:

T. Rowe Price Associates, Inc. ("Price Associates") appreciates the opportunity to comment on the above-referenced release and the proposed new rule under the Investment Advisers Act of 1940 that will exempt certain broker-dealers from registration as investment advisers. Price Associates, and certain of its affiliates, are registered investment advisers under the Investment Advisers Act, with assets under management of approximately $157.4 billion as of September 30, 1999 from more than seven million individual and institutional accounts. As a provider of brokerage services to retail customers through a division of our wholly-owned registered broker-dealer, T. Rowe Price Investment Services, Inc., and as an offeror of retail advisory services, we have a vested interest in the rule proposal.

Price Associates agrees with many of the comments raised by the Investment Company Institute and the Investment Counsel Association of America in their respective comment letters. We also have the following general observations and some technical comments on the rule proposal.

We have observed first-hand the blurring of the lines between services which have been traditionally offered by broker-dealers and those which are available through investment advisers. The advances in technology and the nature and needs of the modern investor have caused a sea change in the ways in which financial services are provided and securities are sold in the United States. Broker-dealers and investment advisers now compete directly in a number of areas, offering similar financial services, and using a variety of new distribution methods, including mutual fund supermarkets, wrap fee arrangements, asset-fee based management services, and internet trading and

non-discretionary advisory services. Increasingly, investors are seeking low-cost, objective advice from their financial service providers due to the complexity and breadth of financial products available on the market today. Because of these developments, financial services that are subject to regulation under the Securities Exchange Act of 1934 often closely resemble financial services which have been historically regulated under the Investment Advisers Act of 1940.

With this general observation in mind, we recognize the need for the Advisers Act exclusion for broker-dealers who offer their customers full service brokerage, including advice, for an asset-based fee instead of traditional transaction-based compensation. We are concerned, however, that this may be a short-term solution, one that will become obsolete as the services offered by broker-dealers and investment advisers continue to merge. In the long run, we believe that the proposed rule is at odds with the Commission's goal of functional regulation, as broker dealers and investment advisers offering the same core services – namely, investment advisory services – will be regulated under two different statutes which offer different protections for investors. We question how the proposed exclusion will be interpreted in practice and are concerned that this may be a case in which the exception overtakes the rule. Therefore, while we recognize that a rule may be necessary due to the evolution of compensation practices in the brokerage industry, we have serious concerns regarding certain aspects of the proposed rule.

We believe that the proposed rule is flawed in an important sense. Historically, broker-dealers have always offered advice as part of their services and, so long as they charged transaction-based compensation, there was no issue as to whether they were receiving special compensation for the advice. Whether the advice was "solely incidental" to the brokerage services was not really relevant so long as the broker charged commissions. Now, by removing the nature of compensation from the analysis, the test will be whether the advice is non-discretionary in nature and "solely incidental" to the brokerage services provided. The proposing release offers no guidance as to the meaning of the term "solely incidental" or how it would be applied to the types of advisory services which are offered today by broker-dealers. The Commission has asked whether it should preclude broker-dealers from marketing themselves as providing some amount of advisory services. We think, at a minimum, that an advisory service which is promoted in advertising and sales literature of the broker-dealer, and given equal or greater prominence than the brokerage services provided, cannot by definition be "solely incidental." In order to fall within the exclusion, the advisory services should be a collateral feature to, or a minor component of, the brokerage services provided. We strongly urge the Commission to clarify this if it adopts the proposed rule. Otherwise, the industry will interpret what "solely incidental" means, and the Commission will find that,

low-and-behold, most broker-dealers will claim their advisory services are "solely incidental" now matter how they are marketed and presented to investors.

A second, related issue is the concept of discretionary authority under the proposed rule. We believe all broker-dealers providing discretionary management services, whether fee-based or commission-based, should by definition be precluded from relying upon the rule. A broker-dealer that exercises discretionary investment authority over an account is providing a service that is not incidental to the execution services for the account. It is interesting to point out that discretionary investment management services were not always the principal way in which investment advisers delivered their advice. Back in the 1970's and early 1980's, most of Price Associates' separately-managed client accounts were considered "non-discretionary" because the client could reject the recommendations of the counselor, and make their own investment decisions. Thus, while discretionary management may be a hallmark of investment advisers today, the Commission should not expect this trend to continue. In fact, Price Associates has witnessed a recent trend towards non-discretionary investment services by investment advisers, particularly in the 401(k) market, and we currently offer two retail advisory services which can be classified as "non-discretionary." In this connection, the Commission should clarify that "non-discretionary" accounts of broker-dealers which follow the investment recommendations of the broker-dealer in virtually every case should not be eligible for the exclusion. In this case, the broker-dealer would be "exercising such influence with respect to the purchase and sale of securities or other property for the account" that it should be deemed to have "investment discretion" under Section 3(a)(35) of the Securities Exchange Act of 1934.

Finally, we request clarification of a minor point in the proposing release. The Commission points out in the proposing release that a discount broker, which previously did not offer investment advice, could introduce a full-service brokerage program without being subject to the Advisers Act. We would like the Commission to also clarify that a discount broker, which offers a non-discretionary, fee-based advisory service, could also rely on the exclusion so long as it was solely incidental to the services provided. A discount broker which offers advice for an asset-based fee, without charging commissions, could be deemed to receive "special compensation" in the same manner as a full-service broker. We see no reason why a discount broker should not be entitled to rely on the exclusion. Otherwise, traditional full-service brokerages will enjoy a competitive advantage over discount brokers who would likely offer the same services at lower cost.

We appreciate the opportunity to comment on the proposed rule. Please feel free to contact either of the undersigned if you have any questions or need additional information.

Sincerely,

Henry H. Hopkins
Chief Legal Counsel
Managing Director

Darrell N. Braman
Associate Legal Counsel
Vice President

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