

CERTIFIED FINANCIAL PLANNER  
BOARD OF STANDARDS, INC.

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September 22, 2004

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

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

Dear Mr. Katz:

I am writing to provide comment on the Securities and Exchange Commission's (the Commission) proposed rule regarding the application of the Investment Advisers Act of 1940 (Advisers Act) to broker-dealers which offer brokerage services for an asset-based fee instead of traditional commissions. CFP Board<sup>1</sup> appreciates this opportunity to provide comment it hopes is helpful to the Commission in deliberating this proposed rule.

CFP Board commends the Commission for its efforts to ensure that American investors continue to prosper and its simultaneous promotion of the financial services industry's health. As financial services, products and delivery methods change, the Commission has been diligent in adapting to current business practices. CFP Board believes the Commission's proposed rule is in the spirit of creating a regulatory environment that continues to allow investors to reach their financial goals while resting on the assurance of continued consumer protection.

However, CFP Board does have reservations about certain aspects of the proposed rule. Since the Commission first proposed this rule, CFP Board has written both individually and with other organizations to the Commission indicating the organizational concerns. CFP Board still has the same concerns indicated earlier. Instead of restating those concerns, CFP Board would like to simply highlight the broad areas those concerns encompass.

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<sup>1</sup> Founded in 1985, Certified Financial Planner Board of Standards, Inc. (CFP Board) is a nonprofit standards-setting organization that fosters professional standards in personal financial planning so that the public values, has access to and benefits from competent and ethical financial planning. CFP Board currently authorizes nearly 45,000 individuals to use its marks in the United States, and 16 international affiliates certify additional thousands of qualified persons in other countries. CFP Board also serves as an educational resource to federal and state lawmakers and regulators on personal financial planning issues.

One area is the definition of “solely incidental.” An investment adviser may offer advice without discretion and under the proposed rule, a broker-dealer seeking an exemption may do so as well as long as that advice is incidental to their services as a broker-dealer. As a result, the only difference between the two under the proposed rule is the concept that the advice is “solely incidental,” and the proposed rule provides no clarification on how the Commission will define incidental advice. If a client is compensating a broker-dealer within the asset-based fee structure, the Commission has an imperative duty to ensure that any advice is truly incidental. This can only be achieved if the Commission makes clear determinations for broker-dealers as to the services they may offer and the practices they must follow to be considered offering incidental advice. Additional clarification from the Commission on what is “solely incidental” will give much needed direction to broker-dealers and investment advisers and strengthen consumer protection.

CFP Board also believes it is crucial that the disclosure requirements in the proposed rule adequately inform the consumer of the nature of the accounts (i.e. that they are brokerage and not advisory accounts). However, a simple disclosure statement may not be enough to protect consumers. The Commission and other securities organizations have in recent years begun increasing investor education because of their concern over Americans deficient understanding of complex financial issues. With this lack of understanding on the part of investors, simple disclosure of the nature of the accounts will likely not suffice in helping investors understand what services they are receiving from investment advisers and/or broker-dealers. The Commission may find it needs to implement consumer education in this specific area as well as require more comprehensive and specific disclosure requirements.

CFP Board hopes the information it provided is useful to you in your deliberations on this proposed rule. If you should have any questions regarding CFP Board or the CFP® certification, please contact me at 703-414-5814.

Sincerely,

Michael Herndon  
Director, Public & Government Affairs