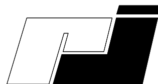

February 7, 2005

Via Email
Rule–Comments@SEC.gov

Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 Fifth Street NW, Stop 6-9
Washington, DC 20549

Re: Proposed Rule 202(a)(11)-1 under the Investment Advisers Act of 1940 (File No. S7-25-99)

Dear Mr. Katz:

Raymond James & Associates, Inc. and Raymond James Financial Services, Inc. ("Raymond James")[1] are pleased to submit this comment on the reproposed Rule 202(a)(11)-1 under the Investment Advisers Act of 1940 (the "Advisers Act") and other interpretive matters addressed in the Commission's release entitled *Certain Broker-Dealers Deemed Not To Be Investment Advisers*, Securities Exchange Act Release No. 50980 (Jan. 6, 2005); Advisers Act Release No. 2340 (Jan. 6, 2005) (the "Reproposal"). Raymond James applauds the Commission's efforts to consider all of the areas this proposal could impact, and more importantly, recognizing that the marketplace differs significantly today from when Congress enacted the Advisers Act. Raymond James supports and joins in recommending that the Commission adopt the recommendations set forth by the Securities Industry Association ("SIA") in its letter submitted in response to the Reproposal.

Overview of Comments

As the Commission recognized, there is currently a tremendous overlap in the services provided by both broker-dealers and investment advisers, and thus, the fee structure should not be the focus for when regulation should apply. Rather, the determining factor, as pointed out by the SIA, should be the relationship with the client and the services contemplated.

[1] Raymond James Financial, Inc. is a Florida-based diversified holding company providing financial services to individuals, corporations and municipalities through its subsidiary companies. Its three wholly owned broker/dealers, Raymond James & Associates, Raymond James Financial Services and Raymond James Ltd. have more than 5,100 financial advisers serving 1.3 million accounts in 2,200 locations throughout the United States, Canada and overseas.

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We believe the Commission, in any attempt to clearly define what constitutes financial planning services will only place itself in the same conundrum that currently exists as to what is "solely incidental." As the Commission points out, many of the functions regularly required to be performed by a broker-dealer also constitute services involving financial planning. Thus there is not a bright line that can be drawn as the one proposed by the Commission with regard to the treatment of discretionary versus non-discretionary accounts.

Therefore, we believe that when broker-dealers offer advisory services including all aspects of financial planning as part of their traditional package of brokerage services that broker-dealers ought not to be subject to the Advisers Act. Only when there is a payment of a separate fee and/or the use of a separate agreement should the services provided by the broker-dealer be deemed not to be "solely incidental" to brokerage services and thus fall under the auspices of the Advisers Act.

Specific Comments on Aspects of the Reproposal

First, we do not believe broker-dealers contributed to any purported confusion by the general public when they refer to their representatives as "financial advisers" or other similar titles. The fact is that registered representatives are financial advisers as they provide clients with advice regarding their financial well-being. Further, we believe any effort to dictate titles results in the Commission micro-managing the process. More importantly, it is the relationship with the client that needs to be the focus and more fully disclosed as the Commission recommends, not what agents may call themselves.

As the SIA points out, the utilization of discretionary advice as a bright line determinator is not as distinguishable as one might be lead to believe. There are scenarios wherein discretion given to a broker-dealer under limited circumstances should not be deemed to be investment advisory activity. A case in point is when is a client is going to be unavailable for any number of reasons for a brief period of time. Should the Commission decide to adopt discretionary authorization as a determining factor as to whether a registered representative needs to be regulated under the Advisers Act, we would strongly encourage an exemption where the discretion is for a period of 30 days or less to address these temporary situations.

We are also pleased to see the Commission has an opportunity to address the issue of principal trading in advisory accounts. It is our understanding that a proposal to address this issue has been circulating the Commission for over two years. It is quite clear that in certain scenarios, clients are being harmed, not protected, by the limitations on principal trades not being executed on behalf of advisory clients. Given today's significantly improved markets and the increase in transparency, in both equity and fixed income markets, we would encourage the Commission to eliminate this prohibition as it is no longer consistent with the needs of clients in obtaining best execution. There, we recommend that this particular prohibition be eliminated as part of the Commission's interpretive release.

With regard to the competitive implications of these rules, we believe you should not be guided by those considerations. Regardless of the Commission's determinations, both investment advisers and broker-dealers will continue to operate and compete in the marketplace. In today's market, investment advisers regularly recommend securities for their clients to purchase as part of their active management of their clients' accounts. Should they then be subject to the same standards as broker-dealers requiring their representatives to pass the Series 7 exam? Based upon the comments to date, it is clear they are requesting that the additional requirements only flow in one direction.

In closing, we believe that modifying the rule in accordance with the recommendations contained in this letter, and by the SIA, would prove to be in the best interest of the investing public. Raymond James appreciates the opportunity to provide you with these comments on the proposed rule and the reproposal.

Should you have any questions, please do not hesitate to contact me at 727-567-5180.

Sincerely yours,

PAUL L. MATECKI
SENIOR VICE PRESIDENT
GENERAL COUNSEL

PLM:dh