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February 22, 2005

VIA OVERNIGHT 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. 34-50980; IA-2340; File No. S7-25-99

Dear Mr. Katz:

T. Rowe Price Associates, Inc. (**"Price Associates"**) appreciates the opportunity to submit its proposed comments on the above-referenced release and the reproposed 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 $235.2 billion as of December 31, 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 reproposed the above-referenced rule and has decided to consider further comments and issue a possible interpretive position on certain issues under the rule proposal.

Price Associates has submitted two comment letters in response to the Commission's request for comments when the rule was first proposed in 1999 and then when the comment period was re-opened in 2004. We recognize the need for an Advisers Act exclusion for broker-dealers who offer their customers full service brokerage and non-discretionary advice for an asset-based fee. As explained in our prior comment letters, we urged the Commission to rethink how the proposed rule would ensure that the advice delivered by the broker-dealer is "non-discretionary" and "solely incidental" to the services provided. We also were concerned that these broker advice services would be marketed in a fashion that is inconsistent with this notion. In addition, we urged the Commission to consider how the rule would apply to broker-dealers offering managed wrap account services through other registered investment advisers which have proliferated since the original rule proposal in 1999. In terms of the reproposal of the rule, we offer the following additional comments.

First, we strongly believe that disclosure by broker-dealers of the differences between an investment adviser and broker-dealer relationship is a necessary and critical component to reliance on the broker-dealer exclusion from registration under the Advisers Act. We also believe that registered representatives of broker-dealers who hold themselves out as "financial advisers" or "financial consultants" should not be permitted to rely upon the exclusion as these titles, among others, are inconsistent with the notion that advice is "solely incidental" to the services they are providing. We recognize that broker-dealers making securities recommendations must ensure that such advice is suitable under applicable regulatory requirements; however, when such brokers market themselves as offering "investment advice" and "financial planning" services, they should be required to register as advisory representatives with a registered investment adviser under the Advisers Act, as such services have historically required registration. Therefore, the Commission's interpretive statement on the rule, or the final rule itself, should prohibit registered representatives of broker-dealers relying upon the rule from referring to themselves in this fashion with retail customers. The SEC's Division of Market Regulation and the SROs could monitor compliance with this aspect of the rule during their routine inspections of registered broker-dealers.

We applaud the Commission's well-researched and thorough review of the history of both Congress' intent and the regulatory actions taken by the Commission over the years under Section 202(a)(11)(C) of the Advisers Act. We agree that the focus of the proposed rule is properly placed on the package of services provided and not the form or nature of the compensation charged by the broker-dealer. Clearly, the advent of fee-based brokerage accounts could not have been anticipated by Congress when it considered the broker-dealer exclusion 60 years ago, and the Commission is justified in encouraging broker-dealers to offer these types of arrangements. In fact, T. Rowe Price was founded by Thomas Rowe Price in 1937 on the very same principles which have led to fee-based brokerage accounts. Rather than charge a commission, as was then the practice in the securities business, Mr. Price charged a fee based on the assets under management. If the client prospered, so did T. Rowe Price.

The issue is how to distinguish these fee-based brokerage accounts from the services provided by investment advisers. We agree that investment discretion is a hallmark of an investment adviser's services, and that an account that receives discretionary advisory services is by definition not "solely incidental" to a broker-dealer's business. The Commission should give explicit guidance in an interpretive statement as to the definition of a "discretionary account." For example, the fact that a customer from time to time may direct the broker with respect to specific securities transactions should not otherwise disqualify an account from being a discretionary account if the broker exercises discretion over the account most of the time. Similarly, if the customer implements the broker's recommendations substantially all of the time, such an account should also be

deemed discretionary in nature even if the broker contacts the client and seeks the client's "consent" before executing securities transactions. We would not be opposed to limited exceptions for the broker's exercise of reasonable discretion in situations where the client is unavailable (i.e., during a client's vacation) or in emergencies.

We support the Commission's proposal to require brokers who rely on the exclusion from Advisers Act registration to disclose the nature of the broker-dealer relationship and the effect of that relationship on the customer's rights and the firm's duties. In this regard, we also agree with the Commission's statements that broker-dealers who hold themselves out as offering financial planning services cannot be considered to be giving advice which is solely incidental to brokerage. We have seen advertisements and sales literature from broker-dealers replete with references to "financial planning alternatives" and promissory statements about the scope of the advisory services being provided by their representatives. Further, we have noticed that these advertisements for the most part do not clearly identify the sponsor as being a broker-dealer or investment adviser. Advertisements that place significant emphasis upon the advisory services provided is indicia of whether such services are "solely incidental" to the brokerage relationship. Instead of offering a contact person to customers of the broker-dealer for purposes of discussing the differences between brokers and advisers, we suggest that the Commission require broker-dealers relying on the exception to include prominent disclosure of such differences on their websites, and refer to the website address in their advertisements for the excluded services. Such disclosures should include references to the fact that broker-dealers do not have fiduciary duties to their customers, are not subject to a requirement for a code of ethics governing personal securities transactions, and may have securities positions adverse to and/or transact as principal with their customers. We think disclosure is more practical than putting the onus on customers to call a 1-800 number in order to address any questions they have about the nature of the services provided and the role the broker is serving.

We agree with the Commission's statements with respect to broker-sponsored wrap programs. We believe 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 final rule that broker-dealers offering wrap accounts with these core functions are subject to Advisers Act registration, and their associated persons offering such programs to customers would be deemed investment adviser representatives.

We appreciate the opportunity to submit 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

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