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BY ELECTRONIC MAIL

January 25, 2006

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Petition by the Securities Industry Association for Additional Delay in the Compliance Date of Rule 202(a)(11)-1 (File No. S725-99)

Dear Ms. Morris:

On behalf of the Financial Planning Association ("FPA®")[1], I am writing in opposition to the petition filed by the Securities Industry Association ("SIA") to delay implementation of Rule 202(a)(11) ("Rule")[2].

As a preliminary matter, we note that this is the second petition filed by the SIA to delay the compliance date of the Rule. In response to SIA's earlier request for an extension of compliance deadline from October 31, 2005 to April 1, 2006, the Securities and Exchange Commission ("SEC" or the "Commission") extended the deadline to January 31, 2006[3]. SIA's current petition, filed on January 10th (but not publicly available until January 18th), requests that the Commission extend the compliance date from January 31st to March 31st.

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[1] The Financial Planning Association is the largest organization in the United States representing financial planners and affiliated firms, with approximately 28,500 individual members. Most are affiliated with registered investment adviser firms registered with the Securities and Exchange Commission ("SEC" or "Commission"), state securities administrators, or both. Approximately half are registered representatives affiliated with NASD member firms. FPA is incorporated in Washington, DC, where it maintains its advocacy office, and has its headquarters in Denver, CO.

[2] Letter from Ira D. Hammerman, General Counsel, Securities Industry Association, to Nancy M Morris (January 10, 2006).

[3] Securities Exchange Act Release No. 52407 (September 12, 2005).

In its request, the SIA stated that it "expects" that its member firms "will be in a position to comply" with the portion of the Rule that requires certain accounts to be classified as discretionary by the January 31st deadline. However, SIA contends that more time is needed to comply with the financial planning portion of the Rule proffering as its rationale the interpretive guidance issued by SEC staff on December 16, 2005[4]. According to SIA, the additional time is needed to enable firms "to specifically craft their disclosures to provide the level of disclosure to investors contemplated by the interpretive guidance."

We note that the interpretive guidance issued by SEC staff was requested by SIA and that the guidance – which FPA believes was profoundly flawed -- had the effect of further expanding the broker-dealer exemption thereby easing the compliance burdens for SIA's member firms[5]. It strikes us as inappropriate that SIA, having obtained this interpretive guidance, should now seek to use it as a bootstrap in obtaining yet another extension of the compliance deadline.

We note further that it is critical that the Commission devote sufficient resources to enforce the Rule and to educate investors about it. The Commission's own consumer focus groups document the enormous confusion among consumers regarding the nature of the services provided by brokers and advisers, the titles that brokers may adopt and brokers' legal duties to their clients[6].

We also take this opportunity to urge the Commission to embark on the study contemplated upon adoption of the Rule on April 12, 2005. At that time, former Chairman William Donaldson directed SEC staff to prepare a report on options and recommendations for a study that would, among other things, compare the "levels of protection afforded retail customers of financial service providers under the Securities Exchange Act and the Investment Advisers Act, and to recommend ways to address

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[4] Letter from Bob Plaze, Associate Director, U.S. Securities and Exchange Commission, Division of Investment Management, to Ira Hammerman, Senior Vice President and General Counsel, Securities Industry Association (December 16, 2005).

[5] The December 16, 2005 staff guidance narrowly interprets the "solely incidental" restriction so that a brokerage firm is able to offer financial services identical to those offered by investment advisers without being subject to the Investment Advisers Act of 1940 so long as those services are not bundled together and labeled as a financial plan. Moreover, the guidance allows brokerage firms to advertise financial planning services without violating the solely incidental restriction so long as the services actually provided are not part of a financial plan.

[6] "Results of Investor Focus Group Interviews About Brokerage Account Disclosure," Report to the Securities and Exchange Commission, March 10, 2005.

any investor protection concerns arising from material differences between the two regulatory regimes[7]."

SIA has failed to provide a compelling rationale for delaying implementation of the additional protections that investors will be afforded under this Rule. For these reasons, FPA respectfully requests that the Commission deny SIA's petition.

Sincerely,

Neil A. Simon, Esq.
Director of Government Relations

Cc: Hon. Christopher Cox
Hon. Cynthia A. Glassman
Hon. Paul S. Atkins
Hon. Roel C. Campos
Hon. Annette L. Nazareth
Ms. Susan F. Wyderko
Mr. Robert E. Plaze

[7] *Certain Broker-Dealer Deemed Not To Be Investment Advisers*, Release Nos. 34-42099; IA-1485; File No. s7-25-99 (April 12, 2005) at 68.