

May 23, 2007

The Honorable Christopher Cox
Chairman
US Securities and Exchange Commission
100 F Street, NW
Washington, DC 20459

Re: Clarification of “Investment Adviser” and “Broker-Dealer” under Federal Securities Law

Dear Chairman Cox:

We are writing to encourage the SEC to seek prompt legislative clarification to address the underlying issues raised in the SEC’s April 2005 Release 34-51523, *Certain Broker-Dealers Deemed Not to be Investment Advisers*, and subsequent court ruling in *Financial Planning Association v. SEC*. Specifically, we are concerned that many investors are significantly disadvantaged by the court’s effective change in rule interpretation, notwithstanding the 120-grace period. Waiting for further studies and requiring that both brokers and investors adapt a \$300 billion dollar industry segment in the meantime is inefficient.

We understand that the roles, range of services, and respective standards of care offered by broker-dealers and registered investment advisers have been a source of confusion for investors. We have already undertaken, and continue to explore, ways to clarify these areas so that investors have the information and understanding with which to make informed decisions. One example of this effort resulted in the Coalition on Investor Education’s brochure for retail investors (www.cfainstitute.org/aboutus/investors/pdf/cuttingthoroughtheconfusion.pdf). However, investor confusion about the level of service and the duties owed by various “financial advisers” is a very separate and distinct issue from the type of fees charged. In this case, the court’s focus on fee structure results in elimination of options that the Commission has supported and many investors have embraced.

We understand the court’s reasoning in questioning the SEC’s own interpretation of certain language contained in the Investment Advisers Act of 1940 (the “Act”). While we respect the court’s deterrence to the legislative intent of Congress in creating the Act, we question whether investor interests are well-served by overruling an SEC interpretation that was serving industry and investors well, based on Congressional intent of over 65 years ago. This is especially true given the vast changes in the investment industry since then. Changes in the sophistication of investors, industry practices, available investor resources, and a range of additional regulations implemented since adoption of the Act, argue for both flexible interpretation now and broader updating going forward.

Meanwhile, the recent court ruling has the effect of taking a standard industry product (fee-based brokerage accounts) that was allowed to proliferate and which has created no significant investor protection or compliance concerns and directing it must now be dismantled. In essence, the court’s interpretation of original legislative intent may have the inverse effect of restricting legitimate investor choices, rather than protecting them.

CFA Institute is a long-standing advocate of investor protections. In keeping with our commitment to investor interests, we also believe that investors are entitled to a full range of options in investing and managing their portfolios. Today, most investors have access to a wide range of educational tools and information about respective services and duties owed by brokers vs. registered advisers. Limiting fee structures for broker-dealer services artificially restricts options for both investors and industry and should not be confused with investor protection.

To that end, we encourage the Commission to continue with its plans for a full review and study of the possible regulatory updates in the asset management area. Such updates will allow the industry to move forward, in keeping with the needs of today's investor. At the same time, we encourage prompt Congressional attention to reinstate the SEC's interpretive support for flexible pricing of brokerage services.

We would be happy to meet with you or your staff to discuss this further or to provide additional information. Please do not hesitate to contact me at kurt.schacht@cfainstitute.org or 212.756.7728.

Sincerely,



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