



Dec. 9, 2005

Subject: Final implementation deadline of Broker-Dealer Rule

Dear Fellow FPA Members:

FPA's Board of Directors feels it is important to communicate with our members whenever significant issues are at stake. This is particularly true in light of our members' continued strong support for FPA's longstanding position against the Securities and Exchange Commission's (SEC) Broker-Dealer Rule, including our active legal challenge against the SEC. Final implementation of the Rule is scheduled for Jan. 31, 2006. With enactment less than two months away, here's an update regarding FPA's ongoing efforts.

Starting January 31, assuming the SEC does not agree to another deadline extension request from the brokerage industry, implementation of the Broker-Dealer Rule will require all brokerage firms to transfer brokerage accounts to a sub-adviser or affiliated investment adviser in instances where the broker previously maintained discretion, was party to an advisory agreement, claimed to be a financial planner or offered financial planning services, or delivered a financial plan to a customer.

Background

In mid-April, the SEC approved an exemption for brokerage firms from the Investment Advisers Act of 1940 that largely permits them to provide financial planning services to the public using different marketing terms — and without the fiduciary and disclosure protections of the Advisers Act. FPA countered this action by filing a legal challenge in the U.S. Court of Appeals for the District of Columbia Circuit on April 28. We have asked the court to vacate the Rule and thereby restore regulation of financial planning activities under the Advisers Act.

We are still awaiting a schedule of written and oral briefings from the court before proceeding. Meanwhile, several consumer and regulatory groups have filed written notices with the court of their intention to submit amicus, or "friend of the court" briefs supporting FPA's position. These organizations include the Consumer Federation of America, Fund Democracy, Public Investors Arbitration Bar Association, and the North American Securities Administrators Association. FPA greatly appreciates their support. No organizations will be filing supporting briefs on behalf of the SEC. In addition, support from our membership and vast agreement from the consumer and trade media have provided strength to our position. Of the nearly 2,500 comment letters filed with the SEC regarding the Rule proposal, most were from FPA members, and 99 percent opposed the Rule.

FPA's position on the Rule has not changed since the Rule was first proposed in 1999. Our view is that the Rule is so flawed that it can't be fixed unless the SEC establishes clear boundaries on financial planning and clearly communicates these limits to the brokerage industry. The Rule in its adopting release fails to describe the differences between the services provided by brokers and financial planners, leaving considerable confusion among consumers. We remain troubled that under the current Rule, many brokerage firms continue to aggressively market financial planning

services under misleading marketing terms or that they could attempt to avoid the intent of the Rule by offering no-cost financial plans or disclaiming that their retirement, estate or education planning services are part of the financial planning process.

Notwithstanding our concerns, we continue to talk with the SEC commissioners and other key industry leaders, seeking a way to address our shared goal to expand the delivery of financial planning through large financial services firms without compromising our values established under CFP Board's *Code of Ethics and Professional Responsibility*. We have provided the SEC with draft guidelines that would clarify what can be marketed as financial planning and help the public differentiate between fiduciary and sales regulation when similar services are marketed.

FPA carefully monitors industry trends and finds some effects of the rulemaking encouraging and others that unfortunately might result in continued consumer confusion and setbacks to the development of a profession. We are encouraged that some brokerage firms have stated that they will register their sales reps as investment advisers when offering financial planning services. FPA continues to work with many larger financial institutions on ways to deliver advisory services that comply with CFP Board's strict *Code of Ethics*. We applaud these firms for stepping up to the challenge. This was not an easy choice for FPA members to make decades ago when the SEC determined that financial planners needed to be registered as investment advisers. We salute those who step up and make that same decision today.

On the other hand, we are very concerned that some brokerage firms might respond to the Rule by forcing their registered representatives to drop their hard-earned CFP certification from their letterhead, business cards and other marketing communications. Apparently, some firms feel that the representatives would be deemed to be holding out as financial planners, triggering the need for adviser registration and imposing the incumbent fiduciary responsibilities such as placing the clients' interests first and providing full disclosure. We believe this short-sighted view would harm consumers by reducing the pool of qualified advisers and, moreover, harm their firms' bottom line. We believe a better choice would be for firms to register the certificants who actually do planning and to restrict marks use only by representatives who use the marks merely for marketing purposes.

Our Board of Directors is carefully monitoring the situation. If the Rule successfully clears up confusion between brokerage and financial planning services, we will evaluate the need for continued litigation. Meanwhile, we continue to strongly support one credential, the CFP marks, and one profession for the delivery of competent, ethical financial planning.

On behalf of FPA, I thank you for your continued support of our efforts and the financial planning profession. FPA is committed to full and open discussion of financial planning issues, and we encourage you to direct feedback or questions to FPA@FPAnet.org. We wish you the best for a happy and prosperous holiday season.

Sincerely,

James A. Barnash, CFP®