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August 25, 2005

Via Overnight Mail

Mr. Robert Plaze
Associate Director
Division of Investment Management
U.S. Securities and Exchange Commission
100 F Street N.E.
Mail Stop 0506
Washington, DC 20549

Re: Cash Management/Investment Advisers Act Rule 202(a)(11)-1

Dear Mr. Plaze:

On behalf of our client, UBS Financial Services Inc. ("UBSFS"),[1] we request that the staff of the Securities and Exchange Commission confirm that the investment discretion granted by a customer to UBSFS for the cash management program described below constitutes "temporary or limited" discretion within the meaning of rule 202(a)(11)-1(d) of the Investment Advisers Act of 1940 (the "Advisers Act"), and that the customer accounts in the program may continue to be treated by UBSFS as brokerage accounts and not advisory accounts.

A. UBSFS's Cash Management Business

UBSFS has developed a significant cash management business, conducted by registered representatives who open accounts on behalf of institutional investors. UBSFS customers typically seek to have their corporate cash invested in a manner that is designed to maximize returns, subject to the primary objective of preserving capital and maintaining liquidity sufficient to allow the customer to readily access necessary operating funds.

Generally, the cash management accounts with UBSFS are opened and monitored by senior managers of the customer's business who have important and time-consuming responsibilities with respect to the customer's finance or treasury functions. Some such customers, rather than subjecting themselves to frequent ongoing telephone calls and discussions concerning moment-to-moment details about the investment of their cash balances, choose to grant to UBSFS limited discretionary authority over the accounts. In particular, the discretion granted to UBSFS is limited by written guidelines from the customer's board of directors or authorized senior management setting forth restrictions and requirements concerning the trading and handling of the account, and by the customer's subsequent directions and instructions (if any) concerning the account. UBSFS currently exercises this limited discretion over approximately 250 cash management accounts and has provided such cash management services to its customers for over ten years, during which time UBSFS has presented and marketed the business as a "cash management" business.

[1] UBSFS is a registered securities broker-dealer and a member of various securities exchanges and self-regulatory organizations.

As explained in greater detail below, UBSFS requests that the staff confirm that discretion granted by customers to UBSFS under the following conditions constitutes "temporary or limited" discretion within the meaning of rule 202(a)(11)-1(d) of the Advisers Act (the "Rule"), and that UBSFS may continue to treat accounts for which such discretion has been granted as brokerage accounts and not advisory accounts:

1. UBSFS will exercise such discretion for institutional accounts (as defined by NASD Rule 3110(c)(4)) only;
2. UBSFS will obtain from each customer a written grant of discretion limited to compliance with written guidelines set and provided by the customer, and will exercise discretion in accordance with such written guidelines and any subsequent instructions from the customer;
3. UBSFS will disclose to each such customer that UBSFS may act as principal in transactions effected for the customer's account;
4. UBSFS will exercise discretion only for such customers that require, pursuant to the customer's written guidelines, that the weighted average maturity of the customer's account not exceed eighteen months;[2]
5. UBSFS will limit discretionary trading in each such customer's account to fixed-income and similar instruments, such as U.S. Treasury securities, municipal securities, debt obligations issued by U.S. federal agencies or U.S. government sponsored enterprises, interests in money market funds, investment grade corporate debt, commercial paper, variable rate demand obligations, auction rate certificates, auction preferred stock, repurchase and reverse repurchase transactions and certificates of deposit;
6. with respect to fixed income instruments and auction preferred shares, UBSFS will exercise discretion only for such customers that limit the grant of discretion, according to the customer's written guidelines, to such instruments: (a) bearing credit ratings of A1/P1 or higher for short-term investments and A2/A or higher for longer-term investments; and (b) with maturities of three years or less;[3]
7. UBSFS will treat the accounts of such customers as discretionary brokerage accounts under applicable self-regulatory organization rules; and
8. UBSFS will not treat such customers as advisory clients under the Advisers Act and will clearly inform such customers that the account is a brokerage account.

B. Discussion

1. The Rule and the Exception for Cash Management

Broker-dealers providing investment advice that is "solely incidental" to their brokerage business and for which they do not charge any "special compensation" are exempt from the Advisers Act. Advisers Act § 202(a)(11)(C). Under the Rule, however, exercising discretion will no longer be considered "solely incidental to" a broker-dealer's business. Rule 202(a)(11)-1(b)(3). Therefore,

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[2] Weighted average maturity (*i.e.*, WAM) is a mean measurement of maturity of portfolio investments weighted by each investment; the greater the portion of the portfolio invested in short-term instruments the lower the WAM.

[3] Unless the customer advises UBSFS otherwise, if a customer allows investment in any securities that have a periodic reset feature (*i.e.*, securities, such as auction rate securities, with longer-term final maturities, or no stated maturities, whose yields or dividend rates re-set periodically), UBSFS will use the next auction or reset date, and not final maturity, for determining compliance with any customer restriction as to maximum maturity or WAM (which will be disclosed to the customer in the customer agreement or otherwise).

broker-dealers exercising investment discretion over customer accounts will have to register as investment advisers and treat such customers as advisory clients.

The Rule defines "investment discretion" as having the same meaning as in section 3(a)(35) of the Securities Exchange Act of 1934, as amended, "except that it does not include investment discretion granted by a customer on a temporary or limited basis."[4] Rule 202(a)(11)-1(d). The Rule's adopting release provides illustrations of this temporary or limited discretion, one of which states that discretion "[a]s to cash management, such as to exchange a position in a money market fund for another money market fund or cash equivalent," constitutes limited or temporary discretion within the temporary or limited discretion exception (referred to herein as the "Cash Management Illustration"). Adopting Release, 70 Fed. Reg. 20424, 20441 (April 19, 2005) (the "Release").

2. UBSFS Cash Management Falls within the Cash Management Illustration

Because the Release explicitly states that discretion granted as to cash management is within the temporary or limited discretion exception and not subject to the Rule, UBSFS's cash management business should be within such exception and should not be subject to the Advisers Act. Although the Cash Management Illustration applies to discretion granted "[a]s to cash management, *such as to exchange a position in a money market fund for another money market fund or cash equivalent*" (emphasis added), we read the term "such as" simply to indicate an example of trading activity that would be deemed to constitute cash management, and not to limit or restrict the Cash Management Illustration to *only* money market instruments or cash equivalents.

Sophisticated cash management programs can include a combination of cash equivalent and non-cash equivalent instruments, in a portfolio structured to the customer's credit, maturity and weighted average maturity instructions.[5] Indeed, UBSFS's 250 or so discretionary cash management customers frequently invest a portion of their corporate cash in non-cash equivalent instruments and have done so for years.[6] Because cash management commonly includes investment in instruments other than money market funds and cash equivalents, we do not believe that the Cash Management Illustration is restricted only to cash management through the use of such instruments. Consequently, it is our view that UBSFS's cash management business fits within the scope of the Cash Management Illustration.

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[4] Under section 3(a)(35), a person exercises "investment discretion" with respect to an account if such person (A) is authorized to determine what securities or other property shall be purchased or sold, (B) makes decisions as to what securities or other property shall be purchased or sold even through some other person may have responsibility for such decisions, or (C) otherwise exercises such influence with respect to purchases and sales for the account as the Commission, by rule, deems to constitute the exercise of investment discretion.

[5] *See, e.g.*, Richard Bort, *Corporate Cash Management Handbook* §§ E5.01 & E5.03 (2005) (indicating that corporations sometimes invest a portion of their corporate cash in high quality fixed-income securities with maturities from one to ten years); Ivy McLemore, *World-Class Cash Management*, Controller Magazine (August 1996) ("Instead of relying on money-market mutual funds [for investment of idle cash], controllers are focusing on instruments with a longer duration or weighted-average maturity as a way of capturing yield-curve gains without exposing their portfolios to overall price risk."). *See also* June 28, 2005 letter from the Association of Financial Professionals to the Financial Accounting Standards Board (attached hereto as **Exhibit A** at p. 2) (stating that "auction rate securities represent an established, accepted and integral corporate cash management tool ...").

[6] The portion of cash management portfolios invested in non-cash equivalents has generally increased due to the 2005 accounting re-classification of auction rate securities from cash equivalents to non-cash equivalents.

3. The Cash Management Illustration is Directly Responsive to UBSFS's Concerns About the Impact of the Rule on Discretionary Cash Management

It is also our view that the Cash Management Illustration is directly responsive to certain concerns raised by UBSFS prior to adoption of the Rule. During the comment period, UBSFS expressed concerns regarding the impact the Rule would have on cash management business in particular, and on the types of trading done for cash management purposes generally. For example, in its comment letter to the Commission (attached hereto as **Exhibit B**), UBSFS suggested that the (proposed) Rule would have an unnecessary negative affect on investors seeking discretionary cash management services, stating:

> We ask the Commission to consider, by way of example, the impact on the cash management business at broker-dealers if discretionary accounts for institutional investors are made subject to the Advisers Act. Looking forward, a corporation that might have chosen to grant discretion to a broker dealer in order to, among other things, gain access to fixed income products (and auction preferred shares) that are offered on a principal basis will effectively no longer have this choice. They would be denied this choice even though: (a) they are recognized as sophisticated, and are not confused as to the broker–dealer's role; (b) they would receive disclosures on principal trading; (c) they would establish limits on discretion through written investment policies; (d) they would receive reporting consistent with a broker-dealer's obligations under the federal securities laws; (e) the broker-dealer would need to have in place the controls applicable to discretionary accounts that are required by the federal securities laws; and (f) the institutional investor should have in place its own controls to monitor broker dealer performance against the grant of discretion. We respectfully submit that the Commission does not need to write this Rule so broadly as to sweep in activity of this type in order to address the concern that discretionary accounts for retail investors should be subject to the Advisors Act.

UBSFS also maintained in its comment letter that the Advisers Act requirement of trade-by-trade consent for principal trades should be inapplicable to cash management activities:

> If the Commission should nonetheless determine to proceed, then we respectfully request that the Commission should take action to limit application of the prohibition on principal trades under Section 206 of the Advisers Act to transactions only with those advisory clients that are in need of its protections. This could be done by crafting an exemption from the requirement to obtain prior client consent for each principal trade, for institutional investor clients and/or certain security types, *for example auction rate preferred securities, variable rate demand notes, auction rate certificates or other instruments typically used by sophisticated institutions to manage their cash*. (Emphasis added.)[7]

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[7] UBSFS's comment letter also noted that the need to permit efficient principal trading was "particularly important in the fixed income markets where many securities trade on a principal basis." Common situations can include "original issuance, for example the auctions for, or the re-marketing of auction rate securities" and "secondary market trading where the absence of general liquidity in certain markets makes principal trading essential." Ex. B at p. 2 (footnote omitted). Indeed, principal trading is the dominant form of trading for certain key instruments traded by users of corporate cash management services. Making principal trading inefficient (at a practical level, impossible) for such customers by having the Advisers Act apply will cause them to participate less in these markets, to their detriment and to the detriment of other market participants who benefit from the liquidity such customers provide. *See id.*

Indeed, because the Commission cited UBSFS's comment letter as persuasive with respect to the need for an exception to the Rule (Release at p. 20441), it appears that in creating the temporary or limited discretion exception, the Commission sought to address the concerns raised by UBSFS (and others) as to the proposed Rule's impact on cash management activities.[8] Moreover, the Commission stated that the exception is meant to apply to grants of limited discretion by institutions seeking the benefits of principal trading in fixed income instruments:

> Several commenters focused specifically on principal trading restrictions, urging that such restrictions would be particularly inconsistent with current practices of certain fixed income institutional investors, who grant broker-dealers discretion in view of the firm's ability to effect trades on a principal basis.[9] *However, we believe the exceptions we discuss above* [*e.g.*, the Cash Management Illustration] *for limited discretion will accommodate these investors, if they wish to grant their broker-dealers limited types of discretion focused on obtaining the benefits of efficient execution or access to types of securities not widely available in the market*, as opposed to the kind of supervisory or managerial discretionary authority we have concluded is properly subject to the Advisers Act.[10]

70 Fed. Reg. at 20447 (emphasis added).

In short, the Rule's history confirms that the Cash Management Illustration exempts from the Rule cash management services as described above and in the UBSFS comment letter, and as conducted by UBSFS for more than a decade.

If you have any questions, please do not hesitate to contact me at (312) 902-5241.

Sincerely,

Arthur W. Hahn

Arthur W. Hahn

[8] *See, e.g.*, Comment Letter of Securities Industry Association at p. 17 (Feb. 7, 2005); Comment Letter of Morgan, Lewis & Bockius LLP at p. 4 (Feb. 7, 2005)

[9] Citing UBSFS's comment letter, among others.

[10] Because the UBSFS comment letter expressly addressed the impact the Rule would have on the cash management business of broker-dealers that exercise discretion for customers seeking access to fixed income products offered on a principal basis, it appears that the Cash Management Illustration must be one of the exceptions relied upon by the Commission in concluding that the Rule would not negatively impact existing practices of institutional investors that grant broker-dealers discretion due to their ability to effect fixed income trades as principal.

EXHIBIT A

June 28, 2005

Mr. Lawrence W. Smith
Director, Technical Application and Implementation Activities
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116

Re: Accounting for Auction Rate Securities

Dear Mr. Smith:

The Association for Financial Professionals (AFP) appreciates the opportunity to comment on the recent change in accounting for auction rate securities (ARS). The membership of AFP represents approximately 14,000 finance and treasury professionals employed by over 5,000 corporations and other organizations. Our membership includes a significant number of corporate treasurers who oversee the management of cash and short and long-term investments.

AFP and its members represent the primary users of ARS as a safe and effective corporate cash management tool. AFP is concerned about the recent change driven primarily by the "Big-4" accounting firms to unilaterally and immediately change the historical method of accounting for ARS. This action changed the treatment of ARS from qualifying as a cash equivalent to, in most cases, a short-term investment. This major change in the treatment of ARS was also implemented without any notice or public comment.

The problem began in February, 2005 when PricewaterhouseCoopers (PwC) issued an advisory indicating that auction rate securities which have been commonly accounted for as a cash equivalent by both corporations and external auditors no longer qualified for this treatment and should now be considered a short-term investment[1]. The advisory concluded that "*Most auction rate securities have maturities that span many years, and such securities will not qualify as cash equivalents.*" In addition, the advisory suggested that the risk of auction failure contributed to their conclusion.

The Impact on Corporate Treasury

Without prior notification, companies were required to modify current financial statements (balance sheet and cash flow statement) and to restate prior financial statements under threat by the external auditor. Most often, notice was not received by the company until February or later, after the auditor had begun the year-end work for calendar year 2004. As a result, plans for managing cash had to be hastily modified. Debt covenants with cash and cash equivalent compliance requirements had to be reviewed to assure that there were no loan covenant

[1] PricewaterhouseCoopers, Capital Markets Accounting Developments Advisory 2005-04, dated March 4, 2005.

violations. If there were covenant violations triggered by this change, they needed to be remedied by amendments to loan agreements or risk a technical default and the possible withdrawal of financing.

Consequences of the ARS Change

The immediate and unilateral change by the "Big 4" firms in the accounting for ARS introduced instability into the market and is inconsistent with the concept of supporting a stable and transparent financial reporting environment. The change made it appear to the public that companies had done something improper, creating suspicion within the capital markets.

Our members now struggle with a lack of clarity and consistency on how to properly report auction rate securities. ARS had been used and treated as a cash management tool and not as short-term investments since the mid 1980's. ARS investment transactions are recorded par-in and par-out to retain consistency with traditional cash management accounting. Under these new requirements for short-term investments, they must now be reported as investment purchases and investment proceeds in the cash flow statement, resulting in a distortion of company cash management and investment activities.

The decision by PwC creates difficulty in financial comparability since some auditors are continuing to allow ARS to be classified as a cash equivalent if the amount is not material. Most auditors have now classified ARS as short-term investments, yet some auditors have required a long-term classification because the PwC argument was based on the fact that the underlying security is long-term. Finally, other audit firms have taken the PwC definition of "long-term" in its ARS opinion to the extreme requiring the reclassification of variable-rate demand notes as well, leading to additional questions about the classification and treatment of money market funds. This variability of treatment leads to a lack of transparency across companies' financial statements, a condition that would have been avoided with notice, debate, and public comment.

AFP Recommendations

The Association for Financial Professionals takes the position that:

- Auction rate securities represent an established, accepted and integral corporate cash management tool and should be accounted for as such.

- In most cases auction rate securities should qualify as a cash equivalent according to the definitions provided by Financial Accounting Standards 95(FAS 95). The Dutch auction infrastructure and the established market developed by the leading auction agents have a proven history of being both liquid and subject to an insignificant level of risk.

AFP specifically recommends that:

- Auction Rate Securities should not be precluded from being a cash equivalent provided they are:
    1. Short-term and highly liquid to the company,
    2. Readily convertible to known amounts of cash, and
    3. Present an insignificant risk of change in value due to changes in interest rate.

- In the event that changes in circumstances affect the above qualifications, Auction Rate Securities should then be reclassified as short-term investments unless facts and circumstances support a classification to a long-term investment. Changes in circumstances would include situations when:

1. There is greater than a remote chance that the short-term investments fails to be highly liquid and convertible into cash, or
2. The risk is not insignificant and there exists a greater than remote probability that there will be a change in value due to changes in interest rate, or
3. Other facts and circumstances, such as change in managements' cash management planning, justify a change.

Rational For Recommendations

Auction rate securities exist within a risk adjusted infrastructure which pre-sets interest and presents an insignificant level of risk. In the established market, the setting of interest rates for the specific period of time and the participation of major investment banks as auction agents[2] enhances and redefines the risk and liquidity of the ARS system beyond the narrow limits of determining classification solely on the underlying long-term security.

Auction rate securities have proven to be highly liquid investments and there is no substantial evidence that the risk of an auction failure is other than a remote possibility. Most of the failures on record occurred early in the history of ARS when the credit quality of the underlying securities did not always lead to a favorable auction. Now, the underlying securities are generally AA or AAA securities, providing a high level of quality in the auction system. In addition, some ARS also include additional levels of guarantees through measures such as bank letters of credit which secure the credit quality.

ARS has a two-tiered level of "maturity" based on (a) the purchaser's expected maturity (7-day, 28-day, 35-day), or (b) the issuer's stated maturity. Historically, corporations and audit firms considered ARS in light of the first, understanding that the risks inherent in ARS were sufficiently remote to ignore the latter unless situation(s) developed to warrant reclassification.

The inclusion of ARS transactions in the statement of cash flows further muddies the clarity of the statement. Corporations must place ARS transactions in the cash flow statement in the "Cash Flows from Investing" section. The "Investing" section details cash flow for capital expenditures or other non-operational investments[3]. The cash used by Corporate Treasury Departments to purchase ARS and other cash equivalents constitute operational cash not needed immediately, but which the firm anticipates needing in the near future. Including the net purchases and net sales of ARS (and other historical cash equivalents) suggests investing activities beyond cash management objectives, since it accounts for operational cash activities in a non-operational manner. This, then, materially misleads investors as to the nature of the funds flow by redefining the activities the firm(s) undertake with operational cash flow.

Addressing the PwC Advisory

AFP believes that the arguments and rationale leading to the conclusions made by PwC are faulty or incomplete.

- The advisory did not consider the mitigating effects of the auction rate security infrastructure when the risks and maturity length of the securities were discussed. The argument focused primarily on one component of auction rate securities, the length of

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[2] The Bank of New York, Deutsche Bank North American, Wachovia Bank NA, Wells Fargo Bank NA and Wilmington Trust Company. Source from the Bond Market Association.

[3] See Ross, Westerfield, and Jaffe's. "Corporate Finance" 40-41, 1996; and Federal guidelines given online at http://www.onlinewbc.gov/docs/finance/cashflow.html

maturity for the original underlying security. It did not consider the ARS system environment or that ARS carry a reduced rate of return and an adjusted yield to reflect the reduced risk of the ARS structure.

- The advisory did not consider that there are varying types of ARS with different levels of risk. The advisory assigned a blanket disqualification of all auction rate securities without defining or establishing the attributes which differentiate an investment that qualifies as a cash equivalent and one that does not.

- The advisory did not quantify an acceptable degree of auction failure rate or define the degree of risk which is or is not acceptable for a cash equivalent. The advisory simply stated that since it was *possible* for an auction to fail, ARS do not qualify as cash equivalents. However, current money market funds have provisions which state that they expressly do not guarantee par value liquidation, yet they qualify as a cash equivalent. In addition, money market funds have no final maturity at all.

- The PwC advisory did not look at the full picture related to ARS. It did not consider that the credit quality of ARS is generally comparable to the credit quality of cash held in traditional financial institutions. Further, the advisory did not recognize that the risk of an auction failure is remote and that there is an insignificant risk of changes in investment value.

FAS 95 Concerns

AFP does not suggest that Financial Accounting Standards (FAS) 95 is in need of fundamental revision. However, FAS 95 does utilize examples which may need updating to assist practitioners to better understand what a cash equivalent would generally look like. FAS 95 was adopted in 1987 when it was assumed that traditional financial institutions were the only acceptable vehicle to hold cash and cash equivalents. As our market-based economy continually evolves with new and more complex investment products available to corporate treasurers, examples or illustrations of one time period do not always fit properly at a later time.

In light of the concerns raised by the PwC Advisory of ARS, we urge FASB to consider issuing additional clarification of FAS 95 to make the standard more responsive to today's markets.

Lack of Due Process in the Current Decision by PwC

AFP is not only concerned with the substance of the PwC Advisory on ARS, but also with the policy question on how accounting standards and interpretations will be set in the future. Essentially, PwC changed the accounting treatment of ARS without any due process and without any opportunity for feedback on the possible impact of the change. Further, the change was made immediately and retroactively. And, while PwC will argue that it did not set a new standard, but only changed an interpretation, the impact of this change was as significant to AFP members as any new accounting standard.

The process surrounding the change in accounting treatment for ARS was in direct contrast to the procedures followed by FASB in adopting new or amended rules. Generally, FASB issues an exposure draft with a comment period to allow interested parties to comment on the effectiveness and impact of the proposal. In addition, the comment period and future effective date allows companies time to plan for accounting changes.

As FASB pursues convergence with the International Accounting Standards Board (IASB) to establish principles-based (objectives-based) standards, the power of the "Big 4" accounting firms becomes even more troubling. While broad based objective standards at the global level contribute to the establishment of a consistent framework, it also creates gaps in the application of the standards as they apply to myriad economic and transactional situations. We are extremely concerned that a large private sector (non-regulatory) body with inherent conflicts of interest, such as an audit firm, can make unilateral accounting interpretations. This type of system risks creating a tainted process.

Summary

The change in how auction rate securities are accounted for has had a tremendous impact upon our membership and we do not believe that it was correct to make this change. AFP believes that auction rate securities, provided they are not subject to liquidity risks or other circumstances, should qualify as cash equivalents. We do not see where the case has been made that ARS are or have been a liquidity risk issue. Finally, we are concerned about the lack of due process. Accounting changes should not come from a private sector audit company, where public comment and feedback are not possible.

In light of the concerns expressed in this letter, AFP would like the opportunity to meet informally with the appropriate staff of FASB. Please contact John R. Rieger, Director of Accounting and Financial Reporting for any additional information or questions (301) 961-8885 jrieger@afponline.org.

Sincerely,

James Kaitz

James A. Kaitz
President and CEO

EXHIBIT B

UBS Financial Services Inc.
1200 Harbor Blvd
5th Floor
Weehawken, NJ 07086

James D. Price
EVP, Director of Investment and Marketing Solutions
Member of the Group Managing Board, UBS AG
201-352-1055
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February 7, 2005

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC. 20549-0609

Re: File Number S7-25-99
Release Nos. 34-50980; IA-2340

Dear Mr. Katz:

We appreciate the opportunity to comment on the proposal by the Securities and Exchange Commission ("Commission" or "SEC") to adopt Rule 202(a)(11)-1 (the "Proposed Rule") under the Investment Advisers Act of 1940 ("Advisers Act"), in the form published for comment in Release No. 34-50980 on January 6, 2005 ("Release").

UBS Financial Services Inc. ("UBSFS" or "we") is one of the leading securities firms in the United States. We are registered with the SEC as both a broker-dealer and as an investment adviser, and are a member of all principal U.S. securities and commodities exchanges and the National Association of Securities Dealers, Inc. ("NASD"). We serve the investment and capital needs of individual, corporate and institutional investors. The primary focus of our business historically has been providing high quality, comprehensive brokerage services to investors, through our registered representatives or "Financial Advisors." In recent years, in response to investor demand, we have begun offering separate, fee-based investment advisory services to investors, as a registered investment adviser.

Given our broad securities and advisory practice, the Commission's Proposed Rule affects various parts of UBSFS. We therefore write this letter to support important aspects of the Proposed Rule, but also to identify certain aspects of the Proposed Rule that are not necessary to address legitimate investor protection concerns and could instead have a negative impact on investors and certain capital markets.

Our Views on the Proposed Rule

We strongly support the position that a registered broker-dealer can offer its customers brokerage services on an asset-based fee basis without becoming subject to the terms and conditions of the Advisers Act. We therefore endorse the Commission's objective of clarifying the scope of the broker-dealer exclusion from the definition of the term "investment adviser" in Section 202(a)(11)(C) of the Advisers Act (sometimes referred to herein as the "Broker-Dealer Exclusion"), and believe two provisions of the Proposed Rule will be helpful, for the reasons set forth at the end of this letter.

However, we are concerned that in pursuing a worthy objective and recognizing the benefits to clients of expanded product options, the Commission is proposing certain measures which, if adopted, would foreclose or limit the benefits and choices afforded to investors through discretionary brokerage accounts and financial planning services. We respectfully submit some alternatives for the Commission's consideration.

1. Financial Planning

As indicated above, we are registered both as a broker-dealer and an investment adviser. When we act as a full-service broker-dealer, we do not simply take customers' orders and execute securities transactions for them. Most of our customers seek out advice about how to invest their brokerage account assets, and, to the best of our ability, we endeavor to provide sound advice on this and related aspects of their financial needs. We take our obligation "to know our customers" and our suitability obligations seriously. Therefore, we encourage our Financial Advisors to assist our customers to identify their overall financial needs and goals and to create investment strategies that are reasonably designed to pursue those goals, and then to execute against that plan. We periodically have the client assess the extent to which the plan is implemented, and determine whether the plan remains sensible or requires modification. This ongoing advice and assistance to our brokerage customers is an integral part of our full brokerage service, along with transaction executions, custody, record keeping, tax reporting, providing account statements and account performance reviews, and we do not charge separate or additional fees for it.

Our fee-based investment advisory services, which include financial planning, are separate and distinct from our brokerage services and we charge separate advisory fees for them. We are careful to make sure that our investment advisory clients also understand the capacity in which we will act for them, and make this plain in our account agreements and through the written and other information we provide to them explaining our services. We offer these fee-based services in compliance with the Advisers Act and other relevant rules and regulations.

The Commission has asked whether broker-dealers should be permitted to continue to provide financial planning services as part of their overall brokerage services to customers and, to the extent a financial plan includes investment advice, to treat that advice as incidental to the firm's brokerage services. We believe it important that broker-dealers be encouraged, not discouraged, from using financial planning to better serve their brokerage customers. Accordingly, where no separate, additional fee is charged for a financial plan and the broker-dealer in offering the

service does not represent itself or "hold out" as an investment adviser, the provision of such services should not subject the broker-dealer to regulation under the Advisers Act.

We view financial planning as a tool that can help us better serve our brokerage customers; it is an analysis that is part of the suitability determination and we believe that it is in our customers' best interests to use it. As we pointed out above, at UBSFS we encourage our Financial Advisors to assist our brokerage customers to identify their overall financial needs and goals and to implement investment strategies that are reasonably designed to meet those goals. We do so, because we strongly believe that this is in the best interests of our customers and because we recognize that financial planning can play an important part in our ability to determine investment strategies that are appropriate, and to identify specific investments that are suitable, for each customer, in light of the individual's goals, needs and financial circumstances. For this reason, we offer basic financial planning reports to our customers as part of our brokerage services, for no separate or additional charge. We also offer more sophisticated or specialized financial planning as an investment advisory service, for which we charge a separate fee.

Financial planning focuses on an investor's total financial situation and general goals. These goals can be general investment, retirement, education funding, and estate planning, among others. Thus, although most financial plans contain some elements of investment advice, planning analysis and recommendations cover a variety of other topics that do not involve general or specific investment advice at all and for which investment adviser regulation is neither appropriate nor required.

The level of analysis and scope of financial planning services can and does differ, depending on the needs of the particular investor and whether a fee is charged. We have basic reports that can be made available to any brokerage customer, free of charge. More complex and in-depth reports are available for a separate fee, and we treat these fee-based financial planning programs as investment advisory services and the investors who elect to use these services as investment advisory clients of our firm.

Our fee-based financial planning services vary in scope and complexity, according to the needs of the particular client. We can analyze an issue related to retirement funding, or conduct an in-depth review. Our services may include analyzing the client's net worth; stock option strategies; asset allocation strategies; insurance (including group and individual policies); retirement planning; disability planning; survivor planning; and estate planning (including estimating gross estate, estate tax issues, analyzing the impact of establishing a foundation or trust and forecasting assets available to surviving heirs). We also may assist our client with data gathering, reviewing complex financial documents, coordination with other service providers and the presentation of written reports.

We are careful to clearly delineate our role as an investment adviser and to specify the duration of our engagement in our contracts with clients, our marketing materials and the disclosure brochures that we provide each client. Our fee-based financial planning services commence when we and our client have signed a written agreement and end when we deliver the plan to the client. We do not require the client to implement any part of the plan through UBS-FS or any of our affiliates. The client, at his or her option, may choose not to implement the plan at all or may

implement it through another financial institution.

In offering our fee-based financial planning services, we believe we are holding ourselves out as offering investment advice, for separate, additional compensation, and we therefore treat our fee-based financial planning services as investment advisory services. We provide these fee-based services as a registered investment adviser, and comply with all laws and rules that apply to us when we act in that capacity.

We consider the more limited, basic financial planning service that we offer our brokerage customers for no fee to be incidental to our brokerage services. We view this service as an important and integral part of the services that we, as a registered broker-dealer, make available to our customers, and a valuable tool that can help guide our Financial Advisors in making recommendations that are in each customer's best interests.

We urge the Commission to take the same view. Broker-dealers should be encouraged, not discouraged, to make financial planning tools available to their customers and registered representatives. Brokerage firms are far less likely to do this if offering financial planning services for no separate, additional fee will subject them to Advisers Act regulation. This would be an unfortunate result and one that is not in the best interests of investors.

2. Enhanced Disclosure to Investors is Appropriate

We support the SEC's proposal to require a broker-dealer to provide clear and prominent disclosure making plain to investors when an account is a brokerage account and is not an investment advisory account, in situations where the broker-dealer's compensation is fee or asset-based rather than commissions or other transaction-based compensation.

This proposal is consistent with our firm's current policy and practices and we have no objections to strengthening the disclosure provided to investors to avoid the possibility of any confusion. If specific new disclosures are required, however, we urge the Commission to make clear in the rule or in the adopting release that a broker-dealer need not amend all existing customer contracts and account documents to incorporate the required new disclosure but instead may satisfy its disclosure obligations to then current customers by sending each customer a letter or other written notice setting forth any additional information that may be needed. Accounts established after the effective date of the rule would include the new disclosure required by the rule.

We also support the proposal to require that this disclosure include a brief explanation of the differences between the customer's rights and the broker-dealer's obligations in respect to a brokerage account as compared to an investment advisory account. We agree that requiring a long or detailed written explanation of the differences is unlikely to be an effective way to communicate the desired information to most investors. We therefore support the proposal that investors be provided a telephone number to call to discuss these differences and ask any questions they may have.

We suggest, however, that the rule permit the "person to call" to be identified by his or her title or department, rather by name. This would allow a firm to avoid the unnecessary expense of having to reprint forms, sales materials and advertising, whenever there is a personnel change, and also could be more useful to a customer who may want to ask questions some time after they open an account and likely will look to their existing account documents for the number to call.

3. The Commission Should Codify Certain of its Prior Interpretations of Section 202(a)(11)

We also support the Commission's proposal to codify its prior interpretations that—

- a broker-dealer registered with the Commission is an investment adviser solely with respect to those accounts for which it provides investment advisory services or receives investment advisory compensation (Proposed Rule 202(a)(11)-1(c)); and

- a broker-dealer will not be deemed to have received "special compensation," within the meaning of Section 202(a)11) of the Advisers Act solely because the broker-dealer charges different commissions, mark-ups or mark-downs or similar fees for its brokerage services to different customers (Proposed Rule 202(a)(11)-1(a)(2)).

We agree that charging discounted or varying rates of commissions or fee- or asset-based compensation in lieu of transaction-based compensation for brokerage services should not be deemed to change traditional brokerage services into investment advisory services. We believe that the availability of fee-based brokerage, discounted commissions and, for "do it yourself" investors, electronic trading options, has benefited investors, by providing a greater range of brokerage services from which to choose and offering lower-cost options for obtaining all or some of those services. In addition, while fee-based brokerage programs are certainly not right for every customer, we agree with the conclusions of the Tully Report[1] that fee-based brokerage arrangements can better align the interests of broker-dealers and their customers and eliminate the temptation for a registered representative to focus on generating transaction-related compensation instead of focusing on what is in the best interests of the investor.

It makes no sense to take the position that a broker-dealer is receiving "special compensation" for the investment advice component of traditional, full brokerage services simply because a firm offers different levels of brokerage service at different prices. Instead, the Commission's focus should be on (a) whether a broker-dealer is in fact charging additional or extra compensation for specific advisory services that are above and beyond what the broker-dealer offers to other brokerage customers and (b) whether the broker-dealer is marketing the service as an investment advisory service.

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[1] Report of the Committee on Compensation Practices (April 10, 1995) ("Tully Report").

4. "Holding Out"

The Commission expressly requested comment on the question whether broker-dealer marketing materials emphasizing the advice component of brokerage services, particularly where the broker-dealer is also offering fee-based brokerage arrangements, has contributed to investor confusion about whether the offered services are investment advisory services, or simply brokerage services that include the integral component of advice traditionally provided by full service broker-dealers. The Commission also raised the question whether broker-dealers should be permitted to continue to refer to their registered representatives as "financial consultants" or "financial advisors" (which is the title used by registered representatives of UBSFS).

Implicit in these questions is the assumption that investors are confused. We do not agree that this is the case. As noted above, we take great care to be sure that our brokerage customers and investment advisory clients are not confused or misled as to the nature of the different services we offer and the accounts they maintain with us. To the extent that there is any validity to these concerns, we believe that the most appropriate and cost-effective way to resolve them is through disclosure, along the lines proposed by the Commission.

With respect to the use of titles like "financial advisor" by registered representatives of a broker-dealer, the fact is that this term accurately describes what many registered representatives do: give financial advice to their brokerage customers as part and parcel of their brokerage services. This has long been the case in the brokerage industry as a whole and at UBSFS in particular. We hope this continues to be what we and our registered representatives do for our customers. Sound financial advice is what investors want and need to guide them in our complex financial markets.

We note that our representatives do not use the title "investment adviser," despite the fact that many of them are qualified and licensed as investment adviser representatives.

Registered investment advisers should not have sole rights to use words like "financial" or "advisor" to describe the work they do, just as members of financial planner trade associations should not have sole rights to use to terms like "financial planning" to describe their services. These are generic terms that describe what many persons in the financial services industry actually do, including banks, trust companies, broker-dealers, insurance companies and insurance agents, real estate professionals, accountants, commodity professionals, financial planners, investment advisers, pension consultants and tax and trusts and estate lawyers, to name a few.

The title "financial advisor" cannot reasonably be said to be "holding out" as an investment adviser or otherwise misleading when used by the registered representative of a broker-dealer. Use of such titles is subject to New York Stock Exchange review and approval and, as noted above, is an apt description of what our registered representatives do when providing brokerage services to our customers.

Moreover, the Commission should carefully consider the potential consequences of restricting the use of generic titles in the financial services industry. As the Commission is well aware, there are no standards or qualifications as to education, training or experience that a person must

meet to become a registered investment adviser or to "hold out" as a financial planner. And registration as an investment adviser or calling one's self a financial planner, carries with it no qualitative or quantitative requirements as to the quality, nature or scope of services that an investment adviser or financial planner will provide or is capable of providing. If the Commission seeks to limit the use of such titles, it will be forced to consider the need to set substantive standards for the persons entitled to use them. We do not think that this is an area of regulation where the Commission should venture absent clear, documented necessity.

5. Discretionary Brokerage Accounts

A. Discretionary Brokerage Accounts For Institutional Investors Should Not Be Subject to the Advisers Act.

The Commission proposes to subject all discretionary brokerage accounts to the Advisers Act. We recommend that the Commission exempt from its proposed rule specified sophisticated investors, in particular institutional accounts (as defined in NASD Rule 3110(c(4)). Such a carve out is consistent with other securities rules and regulations which recognize the sophistication and investment experience of these investors, is necessary for broker dealers to continue to provide services demanded by these investors, and will help avoid potential negative effects in certain fixed income capital markets.

The NASD definition of an institutional account in Rule 3110(c)(4) is incorporated into the NASD's discretionary account Rule 2510 and includes: (a) banks, savings and loan associations, insurance companies, and registered investment companies; (b) registered investment advisors (registered under either the Advisers Act or applicable state law); and (c) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million. We believe that customers of this type are sufficiently sophisticated and knowledgeable enough to provide reasonable, knowing consent to a broker-dealer over a brokerage account, and do not need any incremental protection that might exist in the Advisers Act. [2]

The securities laws are replete with important examples of regulatory regimes that contain clear distinctions between the protections that are sensible for retail investors and the lesser protections that are sensible for institutional investors. For example, Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"), provides a safe harbor from Securities Act registration requirements for re-sales of certain restricted securities to qualified institutional investors. In proposing Rule 144A, the Commission recognized that certain protections otherwise afforded to investors under the securities laws may not be necessary for sophisticated institutional investors.[3] Similarly, in adopting Rule 15a-6, which among other things, permits unregistered foreign broker-dealers to engage in transactions with QIBs, the Commission stated that it "continues to believe that institutions with this level of assets are more likely to have the

[2] NYSE Rule 408.11 provides a similar definition.

3 "The key to the analysis of proposed Rule 144A is that certain institutions can fend for themselves and that, therefore, offers and sales to such institutions do not involve a public offering." Securities Act Release No. 6806 (Oct. 25, 1988).

skills and experience to assess independently the integrity and competence of the foreign broker-dealers providing this access. Moreover, these larger institutions have greater ability to demand information demonstrating the financial position of the foreign broker-dealer."[4]

The self-regulatory organizations have taken a similar approach. For example, the NASD's Suitability Rule (2310(b)) creates specific information gathering requirements that broker-dealers must satisfy before executing a transaction recommended to most "non-institutional" customers. The NASD, however, adopted a different standard for institutions (NASD IM-2310-3). In approving these different standards, the Commission stated that the "NASD acknowledges, as does the Commission, that the relationship between a broker-dealer and an institutional customer generally may be different in important respects from the relationship a broker-dealer has with a non-institutional investor".[5] Similarly, NASD Rule 2211 provides separate standards for the review of institutional sales material. The Commission approved this Rule, and stated that it "believes that the proposed treatment of 'Institutional Sales Material,'. . . adequately balances the needs of members to contact sophisticated institutional investors without being subjected to pre-use approval and filing requirements, while still providing protection to ensure that inappropriate materials do not reach retail customers without first being reviewed for content by the NASD."[6] Finally, the MSRB has stated that "there is considerable merit in differentiating between customers with differing degrees of sophistication", and has created a class of sophisticated institutional investors ("Sophisticated Municipal Market Professionals") who, for example, were permitted to seek access to electronic trading platforms that are not available to retail investors due to customer protection concerns.[7]

The area of discretionary brokerage should not be an exception to the general treatment of institutional investors under the securities laws. Institutional investors are sufficiently sophisticated to create tailored, individualized discretionary grants to a broker dealer, specifying the permissible investment types, including credit quality, issuer and sector concentration, final maturity and duration. They can assess and monitor the broker dealer's performance relative to the grant of discretion. They can easily move to another firm—broker dealer or investment advisor—if they are unsatisfied with performance or service. They often use sophisticated counsel to negotiate on their behalf to make sure that their rights are protected. [8]

The protection for institutional investors contained in the Proposal is not only unnecessary, it comes at a significant cost to those investors. Most importantly, if discretionary brokerage accounts become subject to the Advisers Act, the significant limitations placed on the execution

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[4] Securities Exchange Act Release No. 27017 (July 11, 1989), 54 Fed. Reg. 30013, 30027 (July 18, 1989).

[5] Securities Exchange Act Release No. 37588 (August 20, 1996), 61 Fed. Reg. 44100, 44111 (August 27, 1996).

[6] Securities Exchange Act Release No. 47820 (May 9, 2003), 68 Fed. Reg. 27116, 27124 (May 19, 2003).

[7] Interpretive Notice Filed Concerning the Application of Board Rules to Transactions with Sophisticated Municipal Market Professionals, January 25, 2002, available at http://www.msrb.org/msrb1/archive/SMMPNoticeJan02.htm

[8] While we believe that it is unnecessary to apply the Advisers Act to discretionary brokerage accounts for institutional investors, we also firmly hold that a broker-dealer should have the controls required by the existing, applicable federal securities laws, and that it should disclose the potential conflicts inherent in principal trading.

of principal trades will cause significant harm to institutional investors and could negatively affect certain fixed income markets.[9] Institutional clients come to a broker-dealer in part because of the broker–dealer's ability to execute trades on a principal basis, without imposing on the client the time and logistical requirements associated with the need to pre-approve each trade. This is particularly important in the fixed income markets where many securities trade on a principal basis. This can include situations involving original issuance, for example the auctions for, or the re-marketing of, auction rate securities. [10] It can also include secondary market trading where the absence of general liquidity in certain markets makes principal trading essential. There is no valid reason to limit a broker-dealer's ability to provide such institutional customers with the product and liquidity they desire when necessary and appropriate, merely because the customer has granted the broker-dealer discretion.

As a corollary, there is also no valid reason to deny the marketplace (issuers, holders and broker-dealers alike) from access to the liquidity provided by these institutional investors by making principal trading difficult, inefficient and therefore less likely to occur. The Commission rightfully asks whether the Proposed Rule will affect the capital markets. We believe that it could and that institutional customers are less likely to participate in certain markets, for example, auction markets, if they must reallocate resources from other corporate functions to the review and pre-approval of principal trading opportunities. We respectfully submit that since the Advisers Act protections are not necessary for these clients, the Commission can avoid this unintended, negative impact on certain fixed income markets.

In sum, sophisticated institutional investors neither require nor demand the incremental additional protections of the Advisers Act. To the contrary, these investors can and do make the informed decision to delegate discretion often pursuant to a defined investment policy statement. They do so to obtain securities offered on a principal basis and to pay traditional brokerage charges. They are capable of monitoring, and are expected to monitor, the broker dealer's performance for conformance with the grant of discretion. We respectfully suggest that for this class of clients, the protections of the Advisers Act are unnecessary, are inconsistent with the general framework for handling such investors under the securities laws, would harm institutional clients by denying them an investment platform which they find desirable, and could negatively affect certain fixed income markets. [11]

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9 Section 206(3) prohibits an adviser from "acting as principal for his own account, knowingly to sell any security to or purchase any security from a client . . . without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction."

10 For example, in a Dutch Auction, the issuer is typically a municipality or closed end bond fund. The customers, however, purchase the auction securities on a principal basis, from the broker-dealer acting as underwriter or remarketing agent.

11 We ask the Commission to consider, by way of example, the impact on the corporate cash management business at broker dealers if discretionary accounts for institutional investors are made subject to the Advisers Act. Looking forward, a corporation that might have chosen to grant discretion to a broker dealer in order to, among other things, gain access to fixed income products (and auction preferred shares) that are offered on a principal basis will effectively no longer have this choice. They would be denied this choice even though: (a) they are recognized as sophisticated, and are not confused as to the broker–dealer's role; (b) they would receive disclosures on principal trading; (c) they would establish limits on discretion through written investment policies; (d) they would receive reporting consistent with a broker-dealer's obligations under the federal securities laws; (e) the broker-dealer would

B. The Commission Should Permit Blanket Consent for Certain Principal Trades and Types of Securities if it Applies the Advisers Act to Discretionary Brokerage Accounts for Institutional Investors.

We believe strongly, for the reasons articulated above, that the Commission should not include discretionary brokerage accounts for institutional clients in the coverage of the Advisers Act. If the Commission should nonetheless determine to proceed, then we respectfully request that the Commission should take action to limit application of the prohibition on principal trades under Section 206 of the Advisers Act to transactions only with those advisory clients that are in need of its protections. This could be done by crafting an exemption from the requirement to obtain prior client consent for each principal trade, for institutional investor clients and/or certain security types, for example auction rate preferred securities, variable rate demand notes, auction rate certificates or other instruments typically used by sophisticated institutions to manage their cash.

We have already discussed the importance to institutional clients of access to products on a principal basis. We want to underscore here the practical difficulty and burden of requiring institutional clients to pre-approve every trade. Many of these institutional customers either do not have the time to provide trade-by-trade consent, do not wish to be contacted each time an investment opportunity arises, and/or may not be able or available to receive information and constantly communicate with their broker-dealer. This is particularly true for securities offered within specified time frames, such as auction securities, and while this pre-trade approval process occurs, suitable opportunities in the marketplace can disappear. Not surprisingly, this is one of the core reasons that such clients grant broker-dealers discretion in the first place.

We support appropriate disclosure to the client, and the need for the consent to be in writing. We would support the Commission if it required specific disclosure at the time of contract, and additional disclosure on a confirmation. We also note that the restrictions and requirements that currently apply to discretionary accounts under broker-dealer regulations would continue to apply even with the blanket consent,[12] plus any additional protections that the Commission incorporates into this area by having the Advisors Act apply. Given the investor involved, the instruments involved, and the regulatory regime that already governs the conduct, there is no reason to prevent institutional customers and their broker-dealer from agreeing on a blanket basis, on whatever terms and conditions are agreed to by the parties, that principal transactions are permissible for the account.

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need to have in place the controls applicable to discretionary accounts that are required by the federal securities laws; and (f) the institutional investor should have in place its own controls to monitor broker dealer performance against the grant of discretion. We respectfully submit that the Commission does not need to write this Rule so broadly as to sweep in activity of this type in order to address the concern that discretionary accounts for retail investors should be subject to the Advisors Act.

[12] *See, e.g.*, NASD Rule 2520 (Discretionary Accounts; NYSE Rule 408 (Discretionary Power in Customers' Accounts).

6. The Definition of "Investment Discretion" Is Overbroad

We disagree with the proposal to incorporate the broad definition of "investment discretion" found in Section 3(a)(35) of the Exchange Act to, in effect, define what constitutes "investment advice" that must be regulated under the Advisers Act and draw a "bright line" between brokerage services and investment advice

The Section 3(a)(35) definition of "investment discretion" was developed for a special purpose and is not useful in drawing a line between legitimate brokerage services and investment advisory services. It was added to the Exchange Act in 1975, along with Section 13(f), for the purpose of gathering information about the portfolio holdings and transactions of institutional investment managers that exercise discretion over accounts holding publicly-traded U.S. equity securities. But when taken out of this context and used to define what is "not solely incidental to brokerage services," this very broad definition results in overly narrowing the list of services that are "solely incidental to brokerage services." The proposed definition picks up virtually any exercise of discretion by a broker-dealer, no matter how limited in scope or duration (such as account rebalancing to conform to pre-selected asset allocation targets, discretion to trade granted temporarily while a customer is on vacation or out of the country on business, limited discretion as to the time when or the price at which to execute a customer's order and certain bulk exchanges of money market mutual funds pursuant to negative consent letters.)

We respectfully submit that any rule that the Commission adopts in this area should not turn solely on one factor, such as investment discretion. Instead, it should be based on an analysis of all relevant facts, including the receipt of special, additional compensation from the client for providing investment advice, the nature and extent of the service provided, and how the service is "held out" or represented to investors by the broker-dealer. It also should be consistent with the broker-dealer exclusion in Advisers Act Section 202(a)(11) and reflect both elements of the statutory test for determining eligibility for the exclusion, i.e., (1) that the service be "solely incidental" to brokerage services and (2) that the broker-dealer's compensation for the service be what the broker-dealer charges or earns when effecting transactions for other – but not all -- customers on an agency or principal basis.

One way to accomplish this would be to replace the language in paragraph (b) of the Proposed Rule in its entirety with the following:

> A broker-dealer provides investment advice that is not solely incidental to the conduct of its business as a broker or dealer, when (a) pursuant to contract with a customer, the broker-dealer has and continuously and regularly exercises sole authority to decide what securities shall be purchased or sold for an account of the customer, other than on a temporary or limited basis, and (b) the broker-dealer receives additional, fee-based compensation for exercising such authority, that is, compensation based on the amount of assets held in the account. [13]

[13] We note that this particular definition, if adopted, is another way to create the carve out for institutional investors identified above, although the scope of this section is broader than just institutional investors.

7. Costs and Benefits of the Proposed Rule

For the reasons given above, we support many aspects of the Proposed Rule, but do not believe that the public interest will be served by subjecting all discretionary brokerage accounts and all financial planning services to the jurisdiction of the Advisers Act. To the contrary, in these areas, we believe that the public interest will not be served by an additional layer of regulation, by limiting access to fixed income capital markets products, or by granting one segment of the industry—financial planners—their desired exclusive right to provide financial planning services and call themselves financial planners. We urge the Commission to make sure the final Rule is not anticompetitive, beyond the scope of its jurisdiction, or otherwise imposes unnecessary but real costs on broker-dealers—a possibility if the Proposed Rule is adopted in its entirety.

Very truly yours,

James D. Price
Executive Vice President

cc: The Honorable William H. Donaldson
The Honorable Paul S. Atkins
The Honorable Roel C. Campos
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