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**CONSUMER/INDUSTRY GROUPS URGE SEC TO DELINEATE
BETWEEN BROKERAGE AND ADVISORY ACTIVITIES**

The Consumer Federation of America, Fund Democracy, the Investment Counsel Association of America, Financial Planning Association, Certified Financial Planner Board of Standards, and the National Association of Personal Financial Advisors, delivered a joint letter to SEC Chairman William Donaldson today urging the SEC to take action on a rule proposed by the SEC in 1999.

“SEC inaction on this important regulation has allowed brokers to transform themselves into investment advisers, or at least market themselves as if they have, without triggering the regulatory protections appropriate to that role,” said Barbara Roper, Director of Investor Protection for the Consumer Federation of America. “The SEC must act promptly to ensure that consumers are not misled or confused.”

“Investment advisers have a strict fiduciary duty that requires them to eliminate or disclose all conflicts of interests,” said David Tittsworth, Executive Director of the Investment Counsel Association of America. “We think that brokers who act like an investment adviser should be held to the same laws and standards that investment advisers are held to.”

Investment advisers are broadly defined as persons who, for compensation, are in the business of providing investment advice regarding securities. Under current law, a broker can avoid being regulated as an investment adviser if the broker provides investment advisory services that are “solely incidental” to its brokerage business and if the broker does not receive “special compensation” for those services.

The SEC’s proposal was issued as brokers increasingly began to provide and market investment advisory services. The SEC’s proposal essentially eliminates the “special compensation” prong of the current definition and instead focuses on whether the broker provides discretionary investment advice. In fact, the proposal states that, until the SEC takes final action on the proposed rule, the SEC will not take disciplinary action against a broker if the broker does not have investment discretion over the account.

“The no-action aspect of the SEC’s proposed rule flies in the face of reasonable public policy and appropriate rulemaking procedures,” said Mercer Bullard, President and Founder of Fund Democracy. “By doing so, the SEC abdicated both its responsibility to police the brokerage industry as well as to craft a final rule in an area that is crying out for clarification.”

“It is a well-recognized fact that brokers are migrating into the investment advisory services,” said Duane Thompson, Director of Government Relations for the Financial Planning Association. “We believe it is high time for the SEC to take definitive steps to protect investors by closing the giant legal loophole this proposal has created for brokers who sell financial plans.”

“The groups that signed this letter approach this issue from different perspectives,” said Michael Herndon, Director of Public and Government Affairs for the CFP Board of Standards. “But it is clear that a wide spectrum of interests support the view that the proposed rule has flaws and the SEC needs to take prompt action to address these issues.”

“The SEC’s proposed rule has been pending for more than three and one-half years,” said Susan John, Government Affairs Liaison for the National Association of Personal Financial Advisors. “It is time for the SEC to step up to the plate and issue a final rule to ensure that consumers will not be misled by brokers who act as investment advisers.”

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