

The Honorable Phil Gramm  
United States Senate  
370 Russell Senate Office Building  
Washington, DC 20510-4302

Re: Proposed Broker Exemption

Dear Senator Gramm:

I am writing to express my opposition to the SEC's proposal to exempt brokers who provide investment advice from regulation as investment advisers.

The SEC rule would effectively repeal the broker exemption created by Congress over sixty years ago. That exemption applies only when a broker provides advice that is "incidental" to his brokerage services. In contrast, the SEC rule would exempt programs offered by brokers in which providing advice is the primary service.

These programs, such as Merrill Lynch's Unlimited Advantage, are marketed on the basis of the advisory services they provide. Under the new rule, however, they will not be subject to adviser regulation contained in the Investment Advisers Act.

The effect of the new rule will be an unprecedented diminution of investor protection. Rather than identifying specific aspects of adviser regulation that may be unduly burdensome to brokers, the rule renders *all adviser rules* inapplicable to brokers providing investment advice. At a minimum, the rule's excessive scope is wholly unwarranted.

Broker-advisers will be able to recommend stocks to clients and then sell the stocks to clients out of their own inventories without obtaining client consent, as the law requires for all other advisers. Broker-advisers will not be required to provide clients with information about their services, fees and conflicts of interest that all other advisers are required to provide. Broker-advisers will be able to advertise their advisory services without being subject to restrictions on advertisements that apply to all other advisers.

The rule will create an uneven playing field, with one set of advisers held to a high standard of fiduciary conduct, and another set held only to the minimal standards that apply to brokers. The rule will undermine the public's confidence in financial services professionals and make investors less inclined to trust their savings to our capital markets.

I understand that the Finance Committee is reviewing the nomination of Mr. Harvey Pitt as Chairman of the SEC. I hope that you will raise these important issues with Mr. Pitt in the course of your deliberations.

Thank you for your consideration of my views.

Sincerely,