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March 25, 2005

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

RE: Release Nos. 34-50980; IA-2340; File No. S7-25-99 ("Re-proposed Rule" regarding the treatment of certain broker-dealers deemed not to be investment advisers)

Dear Mr. Katz:

The International Association of Qualified Financial Planners ("IAQFP") applauds efforts by the Securities & Exchange Commission to construct, define, or re-define regulations under the Investment Advisors Act of 1940 Act, not only in how this regulation applies to independent broker-dealers, "advisers" and others who the public deals with on a regular basis, but also for its concerns and efforts towards improving investor disclosures and protections.

The comments offered here are the result of the personal experiences of the signatory to this letter, further magnified by out diverse constituency, who had functioned as: a Registered Representative and Investment Adviser Representative affiliated with insurance broker-dealers and independent broker-dealers, and as Co-Founder of IAQFP. We mention such experience only to say that we are well familiar with the '34 and '40 Acts, with the desires and motivations of B/D management to minimize expenses, maximize profit and to avoid complications, fines and perceived business risks, and also with the concerns of professionals who desire to be able to compete fairly, and in a compliant manner, in best serving the public.

While we recognize the extent of the matters currently under consideration by the Commission, we must take this opportunity to go on record as saying that pervasive problems persist (some of which we acknowledge are outside of the Commission's authority) which cause confusion for the investing public in determining "who's who" when it comes to providers of financial services and investment advice. No single entity exists, nor are any requirements present for such persons to disclose their credentials, qualifications and experience, or lack thereof, when advertising or otherwise "holding out" as professionals in these areas.

A major source of this problem stems from statutory exemptions for certain persons (i.e. bank employees, attorneys, teachers, etc.), who, even though being subject to anti-fraud laws & fair dealing practices, present an unresolved problem that dangerously conflicts with the notion of accurate and full disclosures. Not only does this provide an opportunity for many forms of anti-consumer behavior, and continued confusion over who's who, but it also perpetuates an un-level playing field for those professionals who are subject to SEC regulations vs. those who are not.

An example of where these sorts of misunderstandings occur at the regulatory level is found in the SEC underlying presumption that the mere application to be either an Investment Adviser Representative ("IAR"), or in particular an Investment Adviser ("IA") or Registered Investment Adviser ("RIA"), must mean that the applicant obviously possesses the appropriate knowledge and experience to render

investment advice, even sophisticated investment advice, or otherwise they would not bother applying for such "adviser" status. The clear problem with such an assumption is that the facts may or may not support such assumptions. When one considers that an "RIA" or "IA" usually does not have to be NASD Series 7 or 6 licensed (State variations), and are not held to any substantial educational standards about investment knowledge or the giving of "investment advice" (save the non-uniform requirement to pass a Series 65 exam that largely only deals with information about the '40 Act), there is no wonder that the public is vulnerable to being confused into making baseless assumptions about the abilities of such parties. Many examples exist in the marketplace over which the SEC has authority, and others where they have no such authority; hence, the dilemma inherent in the cries by many for a more "level playing field, improved disclosures and greater public protections".

We believe that before addressing many of the questions raised by the Commission one first has to arrive at a clearer understanding of the differences between various "advice-givers", and the types of advice they provide (Financial Planners, Investment Advisers, and broker-dealers). Once this is accomplished, answers to questions like the following become self-evident:

> The Commission seeks comment under what conditions broker-dealers can use the "incidental advice" exception under the '40 Act when holding out as providing "other financial advisory services".

About IAQFP as a Commentator on the Type of Advice by Qualified Financial Planners

IAQFP is a 501(c)(6) professional business league organization having the following primary objectives; 1) simplifying the financial services designations "alphabet soup"; 2) advancing knowledge about Financial Planning; 3) improving the Financial Planning profession and skills of its professionals: 4) respecting such professionals with an equal vote; 5) fostering practices centered on better informing and protecting the public (see: http://www.iaqfp.org/qfp_designation.html). We believe that such a mission makes our contributions here of potentially significant value to the Commission.

Importantly, IAQFP[1] is a coalition that covers the nations widest spectrum of Financial Planners representing credential bearers from 4 different issuing entities, and a total of 5 credentials (ChFC, PFS, CFP®, MSFS & MS, the latter two with a concentrated study in Financial Planning). IAQFP extends such recognition to many more Financial Planners than the CFP Board, or the FPA, who endorse, support and promote only the CFP® designation and its bearers.

IAQFP has no affiliation with the FPA or CFP Board (the other two major entities of Financial Planners), and our mission differs, as do our views and positions on many issues; therefore, while we congratulate the Commission for listening to all opinions, we have serious concerns over how the input of the CFP Board or the FPA may be interpreted as being the position of the entire, or even a majority, of the Financial Planning community. Specifically, we do not find their opinions are free of self-serving financial interests, nor that their primary purpose is as "protectors of the public interest".[2]

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[1] IAQFP has authorized over 100,000 Qualified Financial Planners ("QFP"), and provides a free public verification and locating resource, backed by the professions highest Code of Ethics & Professional Conduct, and couples that with a Disciplinary and Complaint Process, all to aid in protecting the public interest.

[2] IAQFP has documented years of what have been described by some as CFP Board deception based controversies similar to their years of undisclosed actions towards securing governmental appointment as the SRO (or PRO) of Financial Planning (their letter to you of February 6, 2005 notwithstanding). This latest controversy resulted in an IAQFP community wide Vote Call (11/04) with the following results: over 82% voted against the need of an SRO or PRO for Financial Planning (finding that most, if not all Financial Planners, are already regulated by Law, insurance or accounting licensing boards, the NASD & SEC, etc.); and that if an SRO were to be appointed or selected anyway, over 91% voted against that entity being either the CFP Board, the FPA, or an entity directly or indirectly connected to either. IAQFP also does not condone the FPA July 20, 2004 lawsuit against the SEC, especially not in an environment where all parties have an interest to avoid remedy by litigation which open exchanges like this render largely unnecessary. While we accept some of the points in their filings, we feel they miss critical issues, and do so under the guise of lacking any self-interest (e.g. not disclosing their interests in collecting costly annual membership dues; raising PAC money; supporting only the CFP® designation; and their restricting of equivalently credentialed Financial Planners from also being listed in their Planner Search registry).

The Real Debate – "Who's Who" and Distinguishing Types of Advice & Advice-Givers

The FPA letter to the Commission of February 7, 2005 concludes that their communication "served to rekindle the public debate regarding what kind of disclosure and fiduciary standards should govern persons who provide comprehensive Financial Planning". Unfortunately, their input does nothing to distinguish the unique differences between a "properly educated and credentialed Financial Planner", either in the unique type of "advice" they have learned to provide, or in the activities in which they generally engage.

We believe the actual debate is about the public need to know "who's who", and the only way this can be addressed is to clean up the "alphabet soup" of confusing descriptive terms and designations used by such parties to describe themselves and their activities, accompanied by appropriate disclosures. Therefore, we believe the Commission should take an approach that does not simply overhaul present rules, but that provides new rulings that clarify which descriptive terms can and can no longer be used by those over whom it holds statutory authority.

IAQFP endorses and promotes uniform standards for Financial Planners that it believes the Commission and others should recognize, which can help in clarifying distinctions between those who are properly trained, and those who are not. Once universally accepted, the public will have an objective standard against which qualifications of Financial Planners can be measured. Consumers would be better served if industry and regulators reached a timely consensus on this matter.

Financial Planner Activities Better Defined as A Unique & Broad "Advice-Giver"

There is a critical need for the Commission, along with others in the field of finance, to gain a more informed understanding of what a Financial Planner is, and to recognize the distinct differences between a "properly educated and credentialed Financial Planner", and other types of "advice-givers", particularly the "Investment Adviser" ("IA" or "RIA").

IAQFP is concerned that the Commission has previously dangerously lumped Financial Planning, which is a separate and distinct area within the field of finance (as herein discussed), with those who are "registered representatives, registered investment advisers ("RIA"), financial consultants, advisors, investment advisers", etc. IAQFP finds that such mixing of terms further confuses people, and believes that the Commission should recognize clear distinctions between the activities, including training (knowledge) of persons, and the way they "hold out" to the public, based upon clearly defined and declared terms and qualifications, such as those promulgated by IAQFP.

A "properly educated and credentialed Financial Planner" is one who has studied and acquired broad general knowledge of the areas of: risk management, investments, taxation, retirement, employee benefits, and estate matters. In addition, the field of Financial Planning, over the past 35 years, has grown to also include knowledge about mortgage financing, income and debt considerations, as well as human behavior surrounding these considerations.

For a Financial Planner, financial activities and services are generally not about product selling, nor necessarily even about providing "investment advice", but are instead about imparting integrated knowledge to assist persons with their overall financial needs. Such advice may or may not encompass either incidental or non-incidental investment advice (depending on the training of the Planner and case specific demands), but regardless, is unique in at least the following manner; namely, the Financial Planner can be objectively shown to have the ability to provide advice regarding the effect of one financial consideration on each of the other financial considerations that a person makes. The advice may be comprehensive (many areas) or modular (a specific area), nonetheless, in each case it utilizes integration of all of the areas of knowledge cited here; hence, it's uniquely broad.

A Financial Planner is qualified to give broad, integrative advice, which in scope is both different from, and a more comprehensive type of advice than that of a RR[3], IAR, "IA" "RIA", B/D and others in the field of finance, whose main focus tends to center on advice about investment products and general investing. This is consistent with current law that reads that a Financial Planner (a unique class of "adviser") "may be subject to registration as an Investment Adviser", and further explains under what conditions a B/D, sports agent or representative, pension consultant, attorney, bankers, teachers and others are exempt. The SEC, and the rules and laws it enforces should recognize this when it comes to appropriately credentialed Financial Planners providing investment advice, as many States already have when exempting the following credential holders from also having to acquire a Series 7, 65 and/or 66 - CFP®, ChFC®, CPA/PFS.

A QFP Is A "Properly Educated & Credentialed Financial Planner"

The Qualified Financial Planner ("QFP") designation is intended to identify a "properly educated & credentialed Financial Planner". The QFP Designation serves as the single, universal, unifying designation of Financial Planning, and readily identifies anyone "holding out" as a "Financial Planner" as one who has met equivalent standards of education, exam, ethics, and experience, and who most typically has earned any of the five (5) following equivalent designations of Financial Planning [subject to addition based upon a fact determination by IAQFP]: ChFC®, PFS, CFP®, MSFS, MS (the latter two with a concentrated study in Financial Planning subject matter).

QFP are also required by IAQFP to maintain uninterrupted minimum continuing professional education credit hours (15 hours annually, or 30 biannually), across a broad spectrum of Financial Planning subject matter, so as to evidence proof of ongoing and up-to-date proficiency in the methodology and discipline of Financial Planning. QFP are generally deemed fiduciaries and non-exempt "advisers", but may be otherwise treated based upon whether or not they provide other than incidental investment advice (e.g. if they use a Business Model that advertises they provide investment advice as either a primary or incidental part of their practice). A QFP, in the hierarchy of financial "advisers", who is also securities licensed (and who may also hold insurance, accounting or law licenses), stands apart from an RR, IA, or RIA. Through the QFP designation, IAQFP has developed a way for the Commission, and the public, to identify and locate Financial Planners, and has facilitated such verification to the public, free of charge, through its "QFP Verification Registry"[4] located at: www.iaqfp.org/qfp_registry.html.

IAQFP Suggested Prohibited "Holding Out" Terms (Clearing Up the Descriptive Terms & Designations "Alphabet Soup")

The Commission should find that if a broker-dealer, or others over who it holds statutory authority, use any language that implies that their services are so broad as to create the impression that they are Financial Planners or that they are providing Financial Planning services or that they are "financial advisors" providing "financial advisory services", that such advice cannot be considered "solely incidental" to brokerage. Combining the word financial, with adviser, or advisory services is also a bit too close to Financial Planner, or Financial Planning services, so as to cause laypersons to once again confuse them as one in the same; therefore, B/D's, and others over who the SEC has jurisdiction, should be prevented from using such terms unless they are also a properly credentialed Financial Planner, and should instead be restricted to use of the terms "Investment Adviser" (IA or "RIA"), or Investment Adviser Representative (see list below).

As previously stated, the Commission, in its Rulemaking, must guard against allowing broker-dealers and others who hold out as investment advisers, and who seek an exception to the Advisers Act, to imply that their services are so broad as to create the impression that they too are a "Financial Planner" or that they provide "Financial Planning services" or even "financial advisory

[3] A proper identification of a Registered Representative ("RR"), based on actual activities, along with restrictions on how a RR holds himself out to the public, exempts the RR from the fiduciary standard. Congress intended this result. The form of compensation, or even the type of investment program itself, does nothing to alter this exemption, or its merits.

[4] It should be noted that all QFP are granted a free listing in the Registry, and are subject to removal upon violation of any of the following additional public and professional safeguards: the IAQFP Code of Ethics & Professional Conduct, Disciplinary & Complaint Process, and QFP Designation Usage Requirements & Advertising Guidelines (as periodically amended).

services"; therefore, we suggest use of any of the following terms (and any others reasonably related) be deemed inconsistent with the "incidental advice" exception:

Financial:	Planner (unless a QFP); Adviser; Consultant; Specialist; Expert; Manager; Counselor
Investment:	Planner; Adviser (unless an IA or IAR); Consultant; Specialist; Expert; Manager; Counselor
Registered:	Planner; Adviser (unless an "RIA"); Consultant; Specialist; Expert; Manager; Counselor
Retirement:	Planner; Adviser; Consultant; Specialist; Expert; Manager; Counselor
Wealth:	Planner; Adviser; Consultant; Specialist; Expert; Manager; Counselor
Security:	Planner; Adviser; Consultant; Specialist; Expert; Manager; Counselor
Asset:	Planner; Adviser; Consultant; Specialist; Expert; Manager; Counselor
Money:	Planner; Adviser; Consultant; Specialist; Expert; Manager; Counselor

(Note: spelling versions that use "er" or "or" in Adviser are deemed identical)

Interpreting Financial Planning as Not Solely Incidental to the Brokerage Business

We do not share the view expressed by some commentators that the Commission is "looking more at protecting brokers from regulatory standards, like fiduciary responsibilities, than it is in protecting individual investors." IAQFP supports the Commission's present interpretation that "if a broker-dealer holds out as a "Financial Planner", or as providing Financial Planning services, it cannot be considered to be giving advice that is solely incidental to brokerage." We also agree with the Commission that the interpretation of "solely incidental to" should not be so overly broad as to diminish its primary mission to protect investors; however, we think that there are a number of descriptive terms, in addition to "Financial Planner" and "Financial Planning services", which are currently being used that confuse and mislead the public into believing that a person provides investment advice or services that they either do not, or that they have no qualifications to perform (see list of such terms later on in this letter).

The Line Between Financial Planning Services that Are "Solely Incidental To Brokerage", and Those that Are Not?

The Commission also asked a question of how should the line be drawn between Financial Planning services that are incidental to brokerage and those that are not? We believe that the Commission should limit such services to advice that is directly related to performing the client investment suitability analysis. Use of any language that implies that a broker-dealer, or its RR or IAR's do otherwise, should not be considered as giving advice that is "solely incidental" to brokerage.

Disclosure Requirements For Fee-Based Brokerage Accounts Is Wholly Inadequate

The disclosure requirements in the re-proposed Rule requiring that the account statement disclose that the account is a brokerage account and not an advisory account does not sufficiently address concerns of investor confusion, nor will the disclosures presented therein, make sense to investors if broker-dealers, or others, continue to refer to their Representatives using any of the above listed holding-out terms.

IAQFP suggests that if a broker-dealer's advisory activities go beyond questions of determining mere suitability, they should be deemed to have exceeded the standard of "solely incidental to." This interpretation should apply as well to packages of services offered by broker-dealers that include advisory services. When B/Ds lure customers with advisory services that extend beyond those required in the provision of brokerage business, they should not be exempted from the '40 Act. At a minimum, the disclosure language[5] in the re-proposed Rule, should be combined with other consumer protection measures such as those proposed herein by IAQFP.

[5] In practical terms, consumers are overloaded with information and the type of fine print that exists in ADV and other "caveat emptor" types of legal and so-called "protective" disclosures. It has been found that such disclosures may not, in fact, protect the unsophisticated for who they are intended. Therefore, we do not find it effective for the Commission to overweight this in any final Rule; however, to the extent that you do, we suggest use of layman language.

Summarized IAQFP Recommendations to the Commission

- Limit the interpretation of "solely incidental to brokerage" to advice that is directly related to the client investment suitability analysis.
- Prohibit broker-dealers who "hold out" as Financial Planners or as providing Financial Planning services or using such terms as financial advisory services, or any other term or title implying same, from enjoying any exception.
- Implement better descriptive terms to identify "who's who" such that broker-dealers are not permitted an exception if they suggest or imply that their services or package of services are anything more than brokerage.

The Commission, while under-funded and over-burdened, faces the daunting task of sorting out information from formidable foes, with growing PACs, that have their own self-interests at stake, and who together are intent on being at the decision table.

The CFP Board, in recent years only, has finally admitted to actions they have long taken to be either the Self Regulatory Organization ("SRO"), or Professional Regulatory Organization ("PRO"), of Financial Planning. Material, inherent and incurable conflicts of interest exist within the CFP Board (and the FPA) that make them an undesirable candidate for such a position, conflicts that, significantly, are non-existent in IAQFP. The worst of these conflicts stems from the CFP Board & Financial Planning Associations ("FPA") staunch refusal to embrace the full spectrum of persons who have earned the right to call themselves "Financial Planners", despite such persons having earned other equivalent designations of Financial Planning, and of also being duly recognized by IAQFP as Qualified Financial Planners ("QFP").

While we acknowledge the CFP Board & FPA for the work they have done in advancing the Financial Planning profession, we cannot overlook fundamental and important differences that distinguish IAQFP[6] from them. Therefore, great care must be taken when evaluating their input and actions.

Alternatively, IAQFP believes it is a valuable resource to meaningfully assist the Commission with reasonably unbiased, credible information, regarding Financial Planners and Financial Planning in particular about which the Commission may regularly have questions.

We thank the Commission for the opportunity to contribute to this discussion, and welcome being of further assistance.

Sincerely,

Paul M. League, QFP, CFP®
Co-Founder, Chairperson & President (2003-2005)

[6] IAQFP does not sell a designation, nor charge re-certification fees on the QFP Designation. The CFP Board sells an education & testing program, a designation, and a costly biannual "re-certification" of that designation, that far exceed any estimates of reasonableness for such administrative processing functions, and that amount to thousands of dollars per individual. IAQFP lists, for free, all QFP in its QFP Verification Registry of Qualified Financial Planners, regardless of whether or not they are Members, and makes that Verification Registry also free and continuously fully accessible to the public via the Internet. The FPA only lists, in its online "Planner Search", those CFP® who are also dues paying FPA Members (non-member CFP® are barred) – fees currently set at $250 annually, which is more than the annual equivalent designation re-certification fees charged by the CFP Board (currently equal to $187.50 annually). The FPA excludes all other non-CFP® designees that have achieved other equivalent designations of Financial Planning.