

May 15, 2000

Mr. Jonathan G. Katz
Secretary
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street N.W.
Washington, D.C. 20549

Re: SEC Investment Adviser Roundtable (File No. 4-433)

Dear Mr. Katz:

The Securities Industry Association (“SIA”)¹ appreciates the opportunity to make this submission in connection with the Division of Investment Management’s Investment Adviser Roundtable on May 23, 2000. The Roundtable is just one more reflection of the Division’s continuing effort to seek out the views of all segments of the financial services industry in conjunction with the development of rules and regulations which will best address the needs of investors and providers of investment advisory services in the coming years. In particular, we applaud the obvious care and thoughtfulness which the Division staff employed in developing the Roundtable agenda.

SIA has previously submitted comment letters reflecting our members views on a number of matters which are on the Roundtable agenda, including Pay to Play and Broker-Dealers Deemed Not to be Investment Advisers. Additionally, SIA will be filing a comment letter in the next few weeks on the proposed revisions to Form ADV and the new electronic filing system and database (IARD). Also, SIA has published Best Practices for Soft Dollar and Other Commission Arrangements which we believe provide effective guidelines for addressing some of the concerns set forth by the SEC examination staff in its soft dollar report issued in September, 1998, and in February, 1998 SIA filed an exemption application with the Commission to exempt certain principal transactions from the trade by trade prior consent provisions of Section 206(3). All of these documents are available (except the yet

¹ The Securities Industry Association brings together the shared interests of more than 740 securities firms to accomplish common goals. SIA member-firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. The U.S. securities industry manages the accounts of more than 50-million investors directly and tens of millions of investors indirectly through corporate, thrift, and pension plans. The industry generates more than \$300 billion of revenues yearly in the U.S. economy and employs more than 600,000 individuals.

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to be filed Form ADV comment letter) on SIA's website (www.sia.com) and we invite panelists and other interested parties to familiarize themselves with the documents prior to the Roundtable.

Given the extensive amount of material reflecting SIA views which is already available, it is not our intent to reiterate our positions in detail in this submission. Instead, with respect to certain agenda topics we have set forth below certain points we believe should be addressed to help assure that the panel discussion will be constructive and focused. We offer the following:

Broker-Dealers Deemed Not to be Investment Advisers

- There have been suggestions from some quarters that excluding many fee-based programs from the definition of investment advisory activities would create a regulatory vacuum. That is patently untrue as such activities remain fully subject to the provisions of the Securities Exchange Act of 1934, as well as the full range of rules and regulations from the multiple SRO governing broker-dealer activities. Broker-Dealers continue to be highly regulated entities and are subject to frequent examination. We therefore believe that this premise is specious and would be an unproductive use of the limited time available to address other important issues before the panel.
- Despite the fact that neither SIA or the SEC is wholly satisfied with the "pure" logic underlying the treatment of fee-based vs. commission-based discretionary accounts, we are not convinced that a better alternative exists. After all, broker-dealers have traditionally allowed clients to open commission-based discretionary accounts as an accommodation and they appear to have created few problems. However, we do believe that there is another approach worthy of discussion. Specifically, we note that the occasional situations in which a customer has granted discretion to his registered representative do not involve either the expectation or provision of the types of ancillary services normally associated with investment advisory activities, nor are such arrangements either marketed or otherwise "held out" as such. Thus, rather than using the form of compensation as the criteria, an alternative approach might be based on whether the exercise of discretion is isolated, or in conjunction with a formalized service offered to a broad range of customers. We have reached no firm conclusions on the subject, and while we encourage exploration of this approach, it should not delay adoption of a final rule.

Pay to Play

- The concern that the current proposal will capture inadvertent violations, and thus unfairly penalize advisers and burden the Commission with exemption requests, can be substantially ameliorated by narrowing the definition of covered contributions. One alternative might be to limit covered contributions to those made by “employees” who are “principally” engaged in the offering of investment advisory services to governmental entities. The panel should explore this, and other possible alternative definitions of covered contributions, which might resolve this concern.
- The contributions made by an employee during a prior employment should not disqualify a subsequent employer from providing advisory services to the subject governmental entity unless there is reason to believe the contribution was made in contemplation of the change in employment. We believe it is unreasonable to assume that contributions made as much as a year or more prior to a change in employment were made in contemplation of a change. A more reasonable timeframe would be somewhere between 30 and 90 days. The panel should consider what reduced timeframe would be appropriate.

Principal Trading

- SIA has recently had occasion to review the potential transactional cost savings if agency cross-trades were permitted for ERISA accounts. Many of the cost saving components involved in cross-trading are also present with regard to principal trades. With regard to ERISA accounts the cost-savings were projected at approximately \$2 billion per annum, assuming only 1% of account transactions were done as cross-trades. We believe the non-ERISA account universe is equally large and that a significantly higher percentage of account transactional activity would be done on a principal basis if trade-by-trade prior consent were eliminated. Thus the economic benefit to advisory accounts would be at least several billion dollars. Additional information regarding cost-savings components can be provided on request.
- As Division Director Paul Royce has accurately observed with respect to principal transactions, “the rapid pace of today’s market transactions often render the consent provisions a de facto prohibition on such transactions.” Given the substantial economic benefits to advisory clients of principal transactions, we do not believe proscription is an appropriate standard, and urge that broad based relief, including both fixed income securities and equities, be given, subject to affirmative written “blanket” consent and recordkeeping requirements. No regulatory framework can ever guarantee the complete

absence of abusive conduct. In this case, such a possibility should not deter the Commission from granting relief that will substantially benefit the investing public. Such conduct can be effectively redressed under the existing anti-fraud provisions of the Advisers Act.

Form ADV Proposal

We are still in the initial stages of reviewing this lengthy and complex proposal. Early reactions from some of our members have focused primarily on issues such as:

- ADV amendments – The suggested amendments and/or “sticker” process may be cost prohibitive and not increase meaningful disclosure to clients. Alternatives may include making amendments available on-line and possibly including an index of amendments in an annual offer of Form ADV to clients. This recommendation also holds true for the delivery of Part 2B, the supplement brochure. We would like to see these and possibly other alternatives discussed at the Roundtable.
- Disciplinary Information – We are concerned with the SEC’s approach that disciplinary disclosures be provided in a separate document. The cost of providing a separate brochure may be grossly expensive. Additionally, the logistics of ensuring that the separate brochure is delivered may well be unmanageable. We are also concerned with the recommendation that copies of all consent/settlement orders be provided separately to all clients and prospective clients for one year following the date of the order. Such orders would already be described in the documents provided to clients, therefore actually providing clients with copies of orders would be costly for the investment adviser without materially adding to the information already available to the client.

These bullet points are only a summary of a few of the SIA’s concerns with the ADV proposal. While our concerns will be addressed in much more detail in our comment letter, we are hopeful that some of these issues will also be addressed during the Roundtable with a view toward finding effective ways to enhance client disclosure without creating significant cost and administrative burdens on providers of advisory services, which may ultimately lead to a need to increase fees associated with such services.

We trust the above is helpful. Several representatives from SIA and its members will be attending the Roundtable, and we look forward to a stimulating discussion of the enormously important issues that will be addressed. If you have any questions please contact Michael Udoff at (212) 618-0509 or me at (202) 296-9410.

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Sincerely,

Stuart J. Kaswell
Senior Vice President and General Counsel

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