



Securities Industry Association

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December 20, 2002

Mr. Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Proposed Rule on Implementation of Standards of Professional Conduct for
Attorneys (Release Nos. 33-8150; 34-46868; IC 25829; File No. S7-45-02)

Dear Mr. Katz:

The Federal Regulation Committee ("the Committee") and the Compliance and Legal Division ("the Division") of the Securities Industry Association ("SIA") wish to join in the comments submitted jointly on December 18 by SIA and The Bond Market Association ("SIA-TBMA letter) on the Securities and Exchange Commission's Proposed Rule Implementing Standards of Professional Conduct for Attorneys ("Proposed Rule"), referenced above.

As noted in the SIA-TBMA letter, the securities industry, including the Committee and the Division, strongly support the SEC's efforts to improve corporate reporting, in order to address the accounting and financial disclosure scandals that, unfortunately, have overtaken several well-known public companies. We understand the Commission's concern that some individuals who advised and counseled these companies may have failed to fulfill their professional responsibilities. We also fully agree with Congress' policy decision that issuers' attorneys should not use their legal skills to facilitate wrongdoing.

We believe, however, that the Commission should reconsider aspects of the Proposed Rule. In particular, as described in the SIA-TBMA letter, we urge the Commission to decide—and to state clearly—that the Rule applies to regulated entities only to the extent that they are public *issuers*. Broker-dealers, which already are among the most heavily-regulated of businesses, should be subject to regulations designed to enhance disclosure by public companies only to the extent that they themselves are (or

are subsidiaries of) public companies. The Rule should also only apply to attorneys who are acting in the context of an attorney-client relationship with the issuer, or providing legal services to the issuer, rather than to individuals who happen to have law degrees but who are not filling a lawyer's role. We also have great concern with the so-called "reporting out" provision, which would place attorneys subject to the different standards of different jurisdictions in untenable positions, and which would impinge on the attorney-client relationship in ways that could be detrimental to the Commission's processes and to the disclosures afforded investors.

Because of the complex and difficult issues described in the SIA-TBMA letter and other comment letters on the proposed rules (notably, the "reporting out" provision and the application of the Proposed Rule to foreign attorneys), we urge the Commission, for the time being, to adopt only such rules as the Act specifically requires. Affected parties, and the Commission and its staff, cannot fully consider the impact that the Proposed Rule will have on the marketplace during the abbreviated notice and comment period. The Commission should defer consideration of those aspects of the Proposed Rule that go beyond the statutory mandate until they can be afforded more thorough review. In addition, we suggest that the Commission phase-in whatever rules it adopts in accordance with the statutory mandate, so that companies and others affected would have an opportunity to educate their officers, directors and employees and to develop appropriate compliance procedures.

We hope that the Commission finds the observations and suggestions in the SIA-TBMA letter helpful in formulating rules that:

- Recognize the important distinction between securities firms as *issuers* and as *regulated entities* and apply the Rule only to securities firms as *issuers*.
- Clarify that "material" violations refers to the body of case law and SEC guidance on what is material to investors in a public company.
- Establish an appropriate triggering point for reporting obligations.
- Draw appropriate distinctions between attorneys that are truly "appearing and practicing . . . in the representation of an issuer" and those who act in other capacities and are not providing legal services or representing the issuer.
- Recognize the important public policy implications of infringing on the relationship between attorneys and their clients, especially in the context of enforcement investigations and litigation.

We appreciate the opportunity to comment on the Proposed Rule. If you have any questions about our views or would like additional information, please contact the undersigned, or George Kramer of the SIA staff at (202) 296-9410.

Respectfully submitted,

Robert C. Dinerstein /s/ G. Kramer

Mike Stone /s/ G. Kramer

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c: The Honorable Harvey L. Pitt
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