



NEWS

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FPA Files Legal Challenge to SEC Regulation Exempting Brokers

Washington, DC (*July 22, 2004*) – The Financial Planning Association (FPA®) filed a petition on July 20, 2004 in the U.S. Court of Appeals here challenging a proposed rule by the Securities and Exchange Commission (SEC) that expands the exemption for broker-dealers otherwise subject to the fiduciary and disclosure standards of the Investment Advisers Act of 1940.

“This lawsuit is about restoring the integrity of the Investment Advisers Act and its protections to investors by eliminating a loophole for broker-dealers and allowing them to operate as advisers with virtually no disclosure of conflicts,” said Elizabeth Jetton, CFP®, president of FPA. “For nearly five years the SEC has permitted brokerage firms to comply with a rule that was never adopted. We believe that at a minimum, the SEC should comply with the rules under which federal regulations are adopted and to act promptly by withdrawing a poorly conceived regulation.”

The SEC on Nov. 4, 1999, proposed a rule exempting fee-based brokerage programs from the fiduciary and disclosure standards of the Advisers Act, requiring only minimal disclosure that the account was a “brokerage account.” Unique among SEC rule proposals, this one was never adopted, yet permitted brokers to be able to operate under the new exemption until the final rule was adopted. Consumer and adviser groups have been lobbying the SEC to withdraw or clarify what it meant under the vague requirement of the rule that investment advice be “solely incidental” to brokerage services.

“Clearly, consumers, financial planners, and compliance professionals still do not know what the SEC meant under the rule proposal,” said Ms. Jetton. “However, instead of attempting to define a difficult legal concept, we believe the public would be better served by requiring brokers to operate under the higher standards of investor protection afforded by the Advisers Act.”

FPA will argue in court that the SEC violated the intent of the federal Administrative Procedures Act by not completing its rulemaking process in timely fashion, and for misinterpreting its authority under the Advisers Act in crafting a new exemption, Jetton said.

For more information or to contact a local member of the Financial Planning Association of the Philadelphia Tri-State Area (FPA – PTSA) please contact Christina Dakkak of Perception, Inc. at 301-963-7555 or christina.dakkak@perceptiononline.com.

The Financial Planning Association of the Philadelphia Tri-State Area (FPA – PTSA) is the membership organization for the financial planning community in the Philadelphia Metro Area and surrounding portions of Pennsylvania including Delaware and southern New Jersey. Its members are dedicated to supporting the financial planning process in order to help people achieve their financial goals.

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