

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 275 and 279

[Release Nos. 34–50213; IA–2278; File No. S7–25–99]

RIN 3235–AH78

#### Certain Broker-Dealers Deemed Not To Be Investment Advisers

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** The Securities and Exchange Commission is reopening the period for public comment on a rule proposal under the Investment Advisers Act of 1940 that would address the application of the Advisers Act to brokers offering certain full service brokerage services (including advice) for an asset-based fee instead of traditional commissions, mark-ups, and mark-downs, and that would address electronic trading for reduced brokerage commissions.

**DATES:** Comments should be received on or before September 22, 2004.

**ADDRESSES:** Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/proposed.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. S7–25–99 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

#### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609.

All submissions should refer to File No. S7–25–99. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post comments on the Commission's Internet Web site (<http://www.sec.gov>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Tuleya, Attorney-Adviser, or Nancy M. Morris, Attorney-Fellow, (202) 942–0719, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission (“SEC” or “Commission”) is reopening the period for public comment on proposed rule 202(a)(11)–1 [17 CFR 275.202(a)(11)–1] and a proposed amendment to the instructions for Schedule I of Form ADV [17 CFR 279.1], both under the Investment Advisers Act of 1940. These amendments were proposed on November 4, 1999,<sup>1</sup> and the comment period initially closed on January 14, 2000. While the Commission received substantial commentary on the proposal during that period,<sup>2</sup> a substantial number of comments have been received by the Commission since that date. For example, in the sixty days between June 1 and August 1, 2004, we received more than 45 comment letters. One of these commenters, The Financial Planning Association,<sup>3</sup> raised some new issues in its comment letter, and has also filed a petition for judicial review of the proposal.<sup>4</sup> In view of the significant continuing public interest in the proposal and in order to provide all persons who are interested in this matter a current opportunity to comment, we believe that it is appropriate to reopen the comment period before we take action on the proposal.

We invite additional comment on the proposal, the issues raised in the proposing release, and on any other matters that may have an effect on the proposal. Do current fee-based programs more closely align the interests of investors with those of brokerage firms and their registered representatives than do traditional commission-based services? If the Commission determines not to adopt this rule as proposed, what would be the practical impact on

<sup>1</sup> Certain Broker-Dealers Deemed Not To Be Investment Advisers, Investment Advisers Act Release No. 1845 (Nov. 4, 1999) [64 FR 61226 (Nov. 10, 1999)].

<sup>2</sup> Many of the comments received on the proposal are posted on the Commission's Web site at (<http://www.sec.gov>). All comments received are available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

<sup>3</sup> Letter from Duane R. Thompson, Group Director, Advocacy, The Financial Planning Association to Jonathan G. Katz, Secretary, SEC (June 21, 2004), File No. S7–25–99.

<sup>4</sup> *Financial Planning Association v. SEC*, No. 04–1242 (DC Cir.) (case docketed on July 20, 2004).

broker-dealers? Should we require broker-dealers who would seek to rely on the rule nevertheless to register if they market fee-based accounts based on the quality of investment advice provided? For example, should brokers be precluded from using certain terms like “investment advice” and “financial planning” in advertising these services, or is prominent disclosure that an account is a brokerage account sufficient to alert an investor to the nature of the account?

In light of the time that has elapsed since we proposed the rule, we desire to proceed as expeditiously as we reasonably can to complete this proceeding. Accordingly, we will extend the comment period until September 22, 2004, and we currently intend to reach a final decision on the proposal by December 31, 2004.

Dated: August 18, 2004.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–19258 Filed 8–18–04; 2:16 pm]

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 772

[FHWA Docket No. FHWA–2004–18309]

RIN 2125–AF03

#### Procedures for Abatement of Highway Traffic Noise and Construction Noise

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** This document proposes to amend the FHWA regulation that specifies the traffic noise prediction method to be used in highway traffic noise analyses. This proposed revision would require the use of the FHWA Traffic Noise Model (FHWA TNM) or any other model determined by the FHWA to be consistent with the methodology of the FHWA TNM. The FHWA also proposes to update the specific reference to acceptable highway traffic noise prediction methodology and remove references to a noise measurement report and vehicle noise emission levels that no longer need to be included in the regulation. Finally, the FHWA proposes to make four ministerial corrections to the section on Federal participation.

**DATES:** Comments must be received by October 19, 2004.