



Consumer Federation of America

Fund Democracy
The Mutual Fund Shareholder's Advocate

July 19, 2006

Sandy Wright
Contracting Officer
Securities and Exchange Commission
6432 General Green Way
MS 0-20
Alexandria, VA 22312

Re: Request for Information on SEC Adviser/Broker Study

Dear Ms. Wright:

We are pleased to comment, on behalf of Fund Democracy and the Consumer Federation of America, on the Securities and Exchange Commission's ("SEC" or "Commission") request for comments on its Request for Information ("RFI") regarding a study of the brokerage and investment advisory industries. We strongly support the Commission's decision to seek an independent viewpoint regarding how best to regulate advisory and brokerage services.

We are concerned, however, that the RFI does not provide for an independent evaluation of the regulatory implications of the contractor's factual findings. Although the last paragraph on page 2 states that the data collected will be "evaluated" by the contractor, it appears that this evaluation does not cover the regulatory implications of the data. Rather, the contractor's "findings are intended to be used by the Commission as factual background for evaluating the current legal and regulatory environment for the provision of financial products, accounts, programs and services . . ." RFI at 2.

Much of the debate surrounding the regulation of brokers and advisers has centered not on the factual context in which they provide services, but on the appropriate approach to regulating such services. For example, an SEC-sponsored study already has found, as cited in the RFI, that investors are confused about the relationship between services offered by brokers and advisers and the regulatory requirements that apply in each context.¹ These findings are

¹ Results of Investor Focus Group Interviews about Proposed Brokerage Account Disclosures (Mar. 10, 2005).

consistent with other studies.² Further information collection should comprise a significant component of the study, but the component for which we believe that an independent viewpoint is especially important is the regulatory evaluation.

In addition, the contractor's "evaluation" is to be conducted "in consultation with the Staff," which does not appear to be consistent with a truly independent regulatory evaluation. We believe that the RFI should clarify that the role of the SEC staff should be limited to ensuring that the contractor addresses the questions presented. The staff should not participate in any way in the contractor's analysis.

Certain parts of the RFI appear to reflect the essence of the foregoing comments. For example, paragraph 1.1 acknowledges that a study was needed "to compare the levels of protection afforded individual customers of financial service providers under the Exchange Act and the Advisers Act so that the Commission could be better informed in considering how to address any investor protection concerns arising from material differences between the two regulatory regimes." It is not clear, however, that the RFI, as currently drafted, will yield any comparison of "levels of protection" or "address any investor protection concerns." Paragraph 1.2.2 states that the study is intended to help the Commission better understand, *inter alia*, "the legal obligations attached to each type of account," yet the RFI does not appear to require the contractor to evaluate these legal obligations or their application.

We strongly recommend that the Commission revise the RFI in two respects. First, the RFI should provide that the consultant will (1) analyze the information it collects in terms of the relative regulatory protection provided to brokerage and advisory clients, and (2) make recommendations regarding the appropriate regulatory structure for brokerage and advisory services. The latter task also could take the form of proposing different regulatory options, rather than a recommendation for a particular approach. Second, the RFI should clarify that the analysis will be solely that of the contractor,³ and that the Commission and staff will be involved only to the extent necessary to ensure compliance with the contractual requirements. Accordingly, neither the Commission nor the staff should make any comments on the substance of the study, except as necessary to ensure contractual compliance, until after it has been publicly released.

² See, e.g., TD Waterhouse 2004 U.S. Investor Perception Study; *Regulation of Stockbrokers and Financial Advisors*, Zero Alpha Group & Consumer Federation of America (Oct. 24, 2004).

³ We also agree with the Financial Planning Association's admonition against considering consultants who rely on the brokerage industry for a substantial part of their revenues to be independent.

We applaud the Commission's decision to proceed with the study and to retain an independent contractor, and we look forward to working with the contractor selected to develop a rational, pro-investor policy for the regulation of financial professionals. Thank you for your attention to our concerns. Please feel free to contact us if you or other SEC staff would like to discuss these issues further.

Respectfully submitted,

Mercer Bullard
Founder and President
Fund Democracy, Inc.

Barbara Roper
Director of Investor Protection
Consumer Federation of America

cc: Chairman Christopher Cox
Commissioner Paul Atkins
Commissioner Roel Campos
Commissioner Kathleen Casey
Commissioner Annette Nazareth