

SEC Files with D.C. Circuit to Seek Four-Month Stay of Implementation of Fee-Based Brokerage Ruling

May 15, 2007

On May 14, 2007, the SEC announced that it filed a motion with the D.C. Circuit to stay, for 120 days, its ruling vacating Rule 202(a)(11)-1. Absent the stay, the court's mandate would have issued in the next seven days and, in any event, by May 21, 2007. Even if the court does not grant the SEC's request, the order will remain stayed until the court acts on the SEC's motion.

In seeking the stay, the SEC indicated that its intention is to provide brokerage firms time to respond to a court decision affecting an estimated one million fee-based brokerage accounts. The SEC also indicated that it will consider whether further rulemaking or interpretations would be necessary on the application of the Investment Advisers Act of 1940 to fee-based brokerage accounts in light of the court's decision in *Financial Planning Association v. SEC*.

Although the deadline has passed for the SEC to seek a rehearing, the SEC still has an additional 45 days to seek review of the D.C. Circuit's decision in the U.S. Supreme Court. The SEC's press release suggested, however, that the SEC does not intend to do so.

Regardless of whether the stay is granted, broker-dealers offering fee-based brokerage accounts should evaluate their programs and account structures in light of the D.C. Circuit decision. Morgan, Lewis & Bockius has a team of professionals to advise firms on the implications of the decision.

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