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Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609
Via email to: rule-comments@sec.gov.

Re: Regulation B, File No. S7-26-04 (69 Federal Register 39682; June 30, 2004)

Dear Mr. Katz:

This letter is filed on behalf of the Pennsylvania Bankers Association in response to the SEC's request for comments on Regulation B, the proposed broker "push out" rules.

PBA is the statewide trade association representing the commercial and savings banks, savings associations, bank and trust companies and trust companies and their various affiliates in the Commonwealth of Pennsylvania. PBA has approximately 200 members.

The PBA strongly opposes the proposal. In our view, the proposal, as currently drafted, is unworkable and unduly disruptive to our members' operations. Some of our members are concerned that they will have to withdraw certain business lines from their customers as a result of its implementation. We also object to the fact that several provisions single out the banking industry placing it at a significant competitive disadvantage *vs.* other non-bank, financial services firms.

In addition, the proposal is not in the best interest of consumers. It will result in fewer clients having knowledge of the availability of resources necessary to assist them with college planning or retirement, and force some customers to have two accounts – one with a bank and one with a broker. We do not believe this is what Congress intended when it passed the Gramm-Leach-Bliley Act in 1999.

Our member banks in the custody business are very concerned about the continued viability of that line of business should the vast majority of their clients not satisfy the qualified investor definition. Further, they will not be able to offer new custody clients the ability to place orders through the bank. Rollovers from 401(k) accounts, and IRA accounts, which do not fall under the qualified investor definition, are a very important part of their business strategies.

There is clear demand for bank custody services. They are permitted to take custody of all types of investment products including real estate and restricted securities, while brokers cannot. If a client custody account includes investments that broker-dealers are unable to hold, what other alternative is available to our members' customers? Must the customer deal with two account opening processes, doubling the time and paperwork merely to find institutions able hold a mix of assets?

Second, there is a significant problem with the proposal's "chiefly compensated" test required under the trust and fiduciary exception. In our members' view, the account-by-account test is far too costly for most banks to utilize. Moreover, many may not be able to satisfy the 9-to-1 ratio of relationship to sales compensation, especially since the employee benefit plan exemption is not at all workable.

The proposed test is overly complex and burdensome, particularly given the exemption for some, but not all, personal and charitable trust accounts. Even with corrections to the employee benefit plan which might permit our members to fall within the 9-to-1 ratio, the penalties and exposure of being deemed to be an unregistered broker-dealer are so great, and the procedural rules so complex, that they would still have to invest in technology and systems to track transaction compensation.

We suggest that it would be far better for the SEC to examine "chiefly compensated" by looking at sales compensation, as compared to total trust department compensation, provided that sales compensation is less than 50 percent of total compensation. Alternatively, relationship compensation could be compared to total trust operation compensation. Again, so long as relationship compensation is more than 50 percent of total compensation the bank's trust and fiduciary operations would be in compliance, and able to remain with in the bank. A general review of how the trust operation earns it revenue in a given year should be more than satisfactory to determine that our members are not engaging in brokerage business.

Third, we find the sweep exception to be very problematic. Some of our members sweep asset and deposit accounts into money market mutual funds, for which they receive income greater than 25 basis points on a <u>fully-disclosed</u> basis. Under the proposal, they would no longer be able to offer most of their customers the ability to have their deposit account assets swept into these funds, taking away a popular product that consumers demand. This would put them at a disadvantage against broker-dealers offering a cash management account - which from the consumer's perspective is identical to a checking account – because broker dealers can receive fees from mutual funds in excess of 25 basis points.

This also raises the issue of application of a consistent regulatory standard. If 12(b)(1) fees in excess of 25 basis points are not appropriate for banks to accept, why is it permissible for broker-dealers to receive them?

Finally, the SEC should refrain from regulating bank compensation programs. All companies, across all industries set performance goals for their employees - banks are no different. It makes good business sense to do so, yet the proposal would prevent banks from implementing these types of programs unless their employees are licensed, registered representatives. A financial institution should be able to set annual performance goals for its employees in terms of sales of products offered by the bank and its affiliate. It is most anti-competitive for banks to be precluded from doing so, while broker-dealers are not.

We also strenuously object to the notion that either base hourly wages, $15 in 1999 dollars or $25 dollars is an appropriate referral fee for non-retail referrals.

In a time when consumer debt has risen, banks should be encouraged to train and manage associates to educate consumers about the need for saving and investing for college and retirement. By unnecessarily regulating bonus plans and creating such uncertainty around how brokerage might be deemed to directly or indirectly taint a bonus plan, regulations will thwart our members ability to serve their customers needs. The SEC can best protect the individual consumer by regulating the registered individuals and brokerage companies to whom the bank directs the customer.

One positive aspect to the proposal is the length of time banks would be given to comply. When the final rule is adopted, the SEC is strongly urged to retain a minimum compliance period of one year.

Sincerely,

Louise A. Rynd
General Counsel