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June 21, 2007

Via Electronic Delivery

Scott G. Alvarez, Esq.
General Counsel
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20051

Re: Regulation R

Dear Scott:

We want to again thank you for the opportunity to meet with you and Mr. Fallon to discuss proposed Regulation R, which implements certain exceptions for banks from the definition of the term "broker" under Section 3(a)(4) of the Securities Exchange Act of 1934 (the "Exchange Act"), as amended by the Gramm-Leach-Bliley Act.[1] This letter responds to several questions raised during our meeting.

RELATIONSHIP COMPENSATION

At our meeting, Consumer Bankers Association ("CBA") representatives discussed the alternate test that permits a bank to calculate compensation it receives from all of its trust and fiduciary accounts on a bank-wide basis. A bank would be exempt under the proposed regulation if the bank's aggregate relationship-total compensation percentage is at least 70 percent. The compensation percentage is the relationship compensation attributable to the bank's trust and fiduciary business during the year divided by the total compensation attributable to the bank's trust and fiduciary business during the year. We indicated that requiring the bank's aggregate relationship-total compensation percentage to be at least 70 percent may be too high. We stated that if a "greater than 50 percent" test is established as the appropriate level for the "chiefly compensated" when a bank uses the account-by-account test, the "greater than 50

[1] 71 *Fed. Reg.* 77522 (December 26, 2006).

percent" should be the test when using the bank-wide test. You asked that we review this issue with our members to determine whether the 70 percent level provides sufficient room for banks to conduct trust and fiduciary activities.

Our members report that the 70 percent level should be sufficient for their current level of operations. This assumes that the scope of the proposed fees that are included in the calculation of the 70 percent level remain unchanged. In this regard, we note that in its comment letter on Regulation R, NASD stated its view that not all fees paid pursuant to Rule 12b-1 of the Investment Company Act of 1940 should be included within the scope of relationship compensation.[2] NASD recommended that only those Rule 12b-1 fees that are used for shareholding servicing should be included. CBA believes that any erosion in the scope of the fees that are included within the scope of relationship compensation will reduce the likelihood that the 70 percent level will be adequate. Accordingly, CBA opposes the elimination of any of the fees that are currently included in the calculation of the aggregate relationship-total compensation percentage.

NON-CASH PAYMENTS

We also discussed our view that in connection with networking arrangements, banks be permitted to pay employees a "nominal one-time cash fee" in the form of non-cash payments, so long as the value of the non-cash payment was readily ascertainable. We have confirmed with our members that many institutions find that non-cash payments are an important method for providing incentives to employees. Accordingly, CBA reaffirms its position that banks should be permitted to provide incentive compensation to employees through the use of non-cash payments such as points. Moreover, institutions should also be permitted to integrate incentive programs in the form of non-cash payments into other incentive programs that offer rewards for activities unrelated to securities.

EFFECTIVE DATE

At our meeting, we also underscored the need to extend the effective date of Regulation R. As proposed, the regulation requires banks to come into compliance on the first day of their first fiscal year commencing after June 30, 2008. We have confirmed with our members that given the complexity of the regulation, the proposed effective date will not provide sufficient time to develop and implement required changes. In this regard, the *Federal Register* preamble states that the Board, Federal Deposit Insurance Corporation, Comptroller of the Currency and Office of Thrift Supervision will propose recordkeeping to enable banks to demonstrate compliance with the statutory exceptions and Regulation R.[3] Until recordkeeping requirements are determined, banks cannot possibly fully implement the significant operational changes that will be necessary to ensure compliance. CBA members indicate that a more realistic estimate is that it will take at least two years for banks to come into compliance. Accordingly, CBA believes

[2] Letter of April 19, 2007 from Thomas M. Selman, Executive Vice President, Investment Companies/Corporate Financing, NASD.
[3] 71 *Fed. Reg.* at 77524.

that the effective date should be a bank's first fiscal year commencing after June 30, 2009.

SWEEP ACCOUNTS AND MONEY MARKET FUNDS

In our comment, CBA requested that a no load mutual fund be defined as a fund that does not charge a sales load or deferred sales load, and not include reference to 0.25 percent sales-related expenses. You asked whether this change is necessary in light of the proposed exemption if a bank provides a customer with a prospectus for a money market fund no later than at the time the customer authorizes the transaction. Our members advise that because customers may authorize transactions electronically and via telephone, as well as by other means, it may be difficult to provide a prospectus to the customer at the time the transaction is authorized. However, we believe that the proposed exemption would serve our members' needs if the regulation states that a bank must provide a prospectus no later than at the time the securities are purchased rather than when the customer authorizes the transaction.

CARRYING BROKER

In further discussions with our members, an issue has been raised regarding the fact that the safekeeping and custody exception does not apply if, in connection with such activities, the bank acts as a carrying broker, as that term is used in section 15(c)(3) of the Exchange Act.[4] CBA is concerned that the term "carrying broker" is not defined in proposed Regulation R. As a result, the definition of carrying broker will not be determined jointly by the Board and the Commission. In order to carry out the intent of Congress when it enacted the Regulatory Relief Act of 2006 that the Board and the Commission jointly adopt a single set of rules to implement the bank broker exceptions of the Exchange Act,[5] CBA believes it is necessary for the Board and the Commission to determine jointly the definition of "carrying broker" for purposes of the safekeeping and custody exception.

* * *

CBA appreciates the opportunity to meet with the Board staff and provide you with this additional information. Should you have any further questions, please do not hesitate to contact me at (703) 276-1750.

Sincerely,

Joe Belew

Joe Belew
President

cc Kieran J. Fallon

[4] 15 U.S.C. 78c(a)(4)(B)(viii)(II).
[5] Section 101(a), Pub. L. 109-351, 120 Stat. 1968.