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September 1, 2004

Jonathan G. Katz, Secretary **VIA DHL**
Securities and Exchange Commission
450 5th Street N.W.
Washington, DC 20549

Re: Proposed Regulation B Under Section 3(a)(4) of the Securities Exchange Act of 1934, as Amended, Release 34-49879; File No. S7-26-04

Dear Mr. Katz:

This is in response to the request of the Securities and Exchange Commission (the "Commission") for comments on proposed Regulation B relating to the exemption for banks, savings associations and savings banks under Section 3(a)(4) of the Securities Exchange Act of 1934.

Wells Fargo & Company ("Wells Fargo") is a diversified financial services company that has banking operations in 23 states, as well as retail and institutional securities and brokerage businesses. Wells Fargo also has significant trust, fiduciary and custody businesses that will be impacted by proposed Regulation B.

We have actively participated in a number of meetings with the staff of the Commission since the interim final rules were issued in May, 2001 and offered suggestions of ways to make the rules more flexible and workable; simplify compliance measurement; reduce compliance burdens and limit the need to develop costly new monitoring systems. We greatly appreciate the time and efforts of the staff in this process. Although, there have been some improvements, proposed Regulation B is far more complex, burdensome, inflexible and restrictive than we believe the statute requires or is necessary for investor protection. Activities in the bank, especially trust, fiduciary and custody activities are subject to functional regulation by bank regulators as well as state laws. The Gramm-Leach-Bliley Act (the "Act") delicately balanced competing regimes through functional regulation and by explicitly exempting certain traditional bank activities from broker–dealer regulation. Indeed, Section 204 of the Act instructed the federal banking agencies to establish recordkeeping requirements for banks relying on the exemptions. In our view, proposed Regulation B is out of balance. We urge the Commission to revise Regulation B in order to restore balance; to remove limitations and restrictions on the explicit statutory exemptions and to reduce the complexity and burden of compliance.

Our specific comments will be focused on the uncertainty raised by the proposal regarding bank bonus plans; the limitations and restrictions that proposed Regulation B would place on referral fees under the "networking" exception; problems that we see with the chiefly compensated test under the bank trust and fiduciary exemption and the prohibition of order taking for most customers, a traditional bank activity, under the custody exemption. We have also participated in the comment letters of The Clearing House, the American Bankers Association and ABA Securities Association and Financial Services Roundtable and support the comments and recommendations in those letters.

Bonus Plans

We are very concerned about the uncertainty raised by the commentary in the Release regarding bank bonus and related compensation plans that in any way include securities activities. While the commentary makes clear that a plan that is based on the overall profitability of the bank is permissible, it is far from clear how other broad based plans that use other measurements would be viewed. We understand the concerns about plans that could be used to circumvent the referral fee limitations under the networking exception, however, we do not believe that it was the intent of Congress to bring broad based bank or holding company bonus or similar plans that use measures other than the overall bank profitability under the jurisdiction of a functional securities regulator. These plans are under the jurisdiction of the banking regulators and should not be impacted by the networking exemption or Regulation B. We urge the Commission to remove this uncertainty and to expressly limit the scope of the networking exemption to referral fees paid to unregistered bank employees.

Networking Exemption

Networking arrangements between banks and broker dealers benefit customers by providing opportunities for diversification of a customer's financial portfolio from a menu of financial products that neither the broker nor the bank alone could offer. These arrangements permit the bank and its affiliated brokers to offer a more complete range of financial products and services and thus better serve the financial needs of customers. Networking arrangements facilitate the specialization and expertise envisioned by functional regulation. However, the very narrow limitations imposed on referral fees make them unattractive to bankers, especially commercial bankers.

Proposed Regulation B defines the term “nominal” very narrowly as an amount that does not exceed the greater of (a) the employee’s base hourly pay, (b) $25.00 or (c) $15.00 adjusted for inflation after 1999. These limitations would apply to all types of referral arrangements, including those relating to institutional customers, even sophisticated Accredited Investors as defined in Regulation D under the Securities Act of 1933 or Qualified Investors as defined in the Act. In our view, the limitations proposed would be appropriate, at most, for retail referrals from tellers. Indeed, the banking regulators’ 1994 Interagency Statement by definition related to the “retail” sale of nondeposit investment products and services and did not address products and services sold to institutional customers. We do not believe that nominal should be defined in the same manner for all types of customers.

The business model that Regulation B will lead many banks to adopt is that of dual employees of the bank and broker dealer, that is, bank employees who are also registered representatives of a broker dealer. While these arrangements would allow the licensed bank employee to receive referral fees that are more than nominal, they raise a myriad of issues including expanded supervision and compliance monitoring, education, controls and recordkeeping. Indeed, if NASD Rule 3040 is applied to bank activities of dual employees, especially bank fiduciary employees, there isn’t a practical way for the broker dealer to comply. We believe that banks need flexibility to choose the model or combinations of models that allow them to best serve their customers. In our view, networking business models will evolve over time and should not be limited in the narrow ways that will inevitably result from the proposed regulation.

There are a number of ways to address the above concerns. One approach would be to permit higher referral fees for sophisticated and institutional customers, such as Accredited Investors and Qualified Investors. This would make referral fees more attractive to bankers. Raising the permissible fees for certain referrals would make them more attractive to bankers but would not, in our view, create a “salesman’s stake”. The other limitations in the rule address the salesman’s stake issue. We favor more flexibility and larger amount limitations, particularly for referrals of non-retail customers.

We also strongly support and urge the Commission to consider and adopt the proposal of The Clearing House made to the Division of Market Regulation by letter dated April 16, 2004 for an exemption that would allow banks to pay higher than “nominal” referral fees for certain institutional customers.

The proposed rule requires that referral fees in point systems (payments other than in cash) be paid in units of value that have a “readily identifiable cash equivalent”. This is not consistent with most point system plans. Many plans have threshold requirements of numbers of sales of banking products or referrals of securities products in order to even qualify for eligibility. As such, we cannot ascertain the value of a unit or a point at the time of any one referral nor directly attribute an ascertainable cash equivalent to that referral, even at the end of an eligibility period. A better approach in this regard would be to permit an employee to receive up a small percentage of his or her total compensation during a period from points accumulated for brokerage referrals. In this regard, a cap would be placed on the amount of all securities referral fees payments, yet the banker could still be encouraged to refer securities brokerage business while cross selling banking and other products, not subject to referral fee limits.

With these changes, we would have more flexibility to experiment with various types of models and combinations of models, including dual employee models, where appropriate from a business perspective, while permitting networking referral arrangements that encourage the banker to consider the customer's need for diversified financial services and products without raising concerns of a salesman's stake. In short, the proposed regulation is far more restrictive and intrusive than it needs to be to achieve the Commission's policy goals of investor protection. Referrals are by definition made to registered representatives of a broker dealer firm that is fully subject to the Commission's jurisdiction and investor protection rules including suitability; as well as monitoring, supervision and other compliance requirements. The net result of the proposed regulation will be a structure in which the best interests of customers of a diversified financial services firm may not be fully served because of the unnecessarily restrictive conditions that are placed on simple referrals of securities brokerage business by bank employees.

Chiefly Compensated Requirement in the Trust and Fiduciary Exemption

Proposed Regulation B is clearly an improvement over the "Interim Final Rules" promulgated in June, 2001 in the treatment of the chiefly compensated requirement under the trust and fiduciary exemption by including the line of business alternative to account by account measurement.

We are in the process of determining what collection and monitoring systems and other changes would be required in order to use the line of business or bank-wide safe harbor approach. This is a challenge because we do not currently collect, and have no reason to collect, relationship, sales and other compensation information as defined under the proposed rules, and we use different systems within what might qualify as a line of business. We do not have good cost estimates at this time. Moreover, the proposed definition of line business includes a requirement of "similar type of accounts". This term is not defined, thus leading to uncertainty as to what was meant or intended; an uncertainty that further complicates our planning process, and our ability to predict system requirements and costs. What we consider to be lines of business today may include several types of accounts. In addition, we have similar types of accounts in different identifiable business units, some of which use different systems.

We recommend that the similar type of account and similar type of fiduciary capacity requirements be eliminated. This would allow us to measure compliance through identifiable units or departments operated on an ongoing basis without having to address the challenges of different systems.

The one to nine ratio of sales to relationship compensation proposed will itself be a challenge for us. For the reasons stated above, we do not have a precise measurement at this time. This proposed limit is far narrower than required by the statute. We reiterate the recommendation we made in our comment letter of July 13, 2001 and urge the Commission to increase the per centage of sales compensation under the line of business or department test to at least 25%. This measure would greatly ease the compliance burden and provide certainty.

Eliminating the other compensation deduction from total compensation when measuring the ratio is also recommended. In our view this change would greatly simplify compliance and eliminate the need to develop systems to identify, quantify and deduct “other compensation” in order to determine relationship compensation. We do not believe that this change would have a significant impact on the ratio or per centage of sales compensation but would greatly ease the burden of compliance and greatly reduce the cost of developing systems to collect the information that will be required to monitor for compliance.

Indenture Trustee Exemption

We recommend that the Indenture Trustee Exemption be expanded to include investments in short term bond funds. We have used these investments and would like to be able to continue to do so under this exemption.

The Indenture Trustee business may also be considered a line of business for purposes of the line of business test. The commentary to the proposed rule suggests that exemptions such as the Indenture Trustee exemption would not be available if we choose to use the line of business test. This could have the effect of nullifying the exemption and require an account by account analysis. We further recommend that all exemptions, including the Indenture Trustee exemption and Employee Benefit exemption be available when using the lines of business or department wide test.

Custody Order Taking

Unsolicited order taking in a custody capacity is a traditional bank activity. Proposed Regulation B would grandfather existing accounts and limit new customers to Qualified Investors as defined in the Act. We do not believe that Congress intended to limit or restrict traditional bank custody activities by imposing conditions on order taking. Many of our custody customers are not Qualified Investors. Under the proposed rule, these customers would not qualify for order taking in custody accounts established after the cut-off date. We strongly urge the Commission to reconsider this position and remove the proposed Qualified Investor requirement for order taking in custody relationships. In our view, the prohibition on advertising addresses concerns over closet brokerage. “Qualified Investor” was defined in the Act for purposes unrelated to unsolicited custody order taking. Eliminating the Qualified Investor condition would prevent a radical change in our custody business. Even if the condition were changed to

Accredited Investor as defined in Regulation D under the Securities Act of 1933, there would still be a negative impact on our custody business although many additional custody customers would benefit from an Accredited Investor standard.

We appreciate the opportunity to comment on this proposal and urge the Commission to make the changes recommended in this letter and the letters of the financial industry trade associations including The Clearing House, American Bankers Association and ABA Securities Association and Financial Services Roundtable in adopting a final rule.

Sincerely,

Bruce Moland
Vice President and
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GLB/RegB/Comment Letter