August 27, 2004

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

Re: Regulation B, File No. S7-26-04

Dear Mr. Katz:

This letter is in response to the SEC's invitation to comment on Regulation B, the proposed broker "push out" rules. Bankers Trust Company, NA is a locally owned nationally chartered bank in Des Moines, Iowa. Our bank has $1.6 Billion in assets, with $3.5 Billion in trust assets.

We strongly oppose several major provisions in the proposal. In our view, the proposal, as currently written, is unworkable, and unduly disruptive to our business - in some instances it will force our institution out of certain important business lines. Moreover, several aspects of the proposal are anti-competitive in that they create new rules and regulations ***for banks only***–putting them at a significant disadvantage against other non-bank, financial services firms. In addition, major portions of the proposal are not in the best interest of consumers. As discussed more fully below, we do not believe this is what Congress intended when it passed the Gramm-Leach-Bliley Act (GLBA)in 1999.

Safekeeping and Custody Exemption: We are very concerned that the proposal's prohibition of order taking could effectively force Bankers Trust out of the custody business. We do not believe this prohibition is consistent with the plain language of GLBA or Congressional intent. By enacting the various exceptions to push out, Congress signaled its intent that banks be permitted to engage in certain securities activities traditionally engaged in by banks. Purchasing and selling securities pursuant to the instructions of our custody customers is one of the longest standing of such traditional bank activities. To force separation of the order taking function from the rest of the custodial services required by our customers will effectively cripple our ability to provide efficient and cost effective services for this very important business line, placing us at a significant competitive disadvantage. While we appreciate the Commission's inclusion of an exemption (for "qualified investors"), the vast majority of our clients do not satisfy the qualified investor definition, rendering the exemption useless. Ultimately, however, this exemption should not be necessary as we believe the Rule's prohibition of order taking is inconsistent with the clear intent of Congress in enacting the safekeeping and custody exemption from push out.

The real loser under the proposed Rule is the customer. There is clearly a need and demand for traditional bank custody services. What bank custodians do is distinctly

different than anything offered by broker-dealers. Banks are able to take custody of all types of investment products including closely held securities, restricted securities, promissory notes, real estate interests, etc. while brokers either cannot or will not. Our custody customers come to us instead of a broker-dealer precisely because of these differences. The proposed Rule will require many customers to separate their assets into multiple accounts, one with the bank and another at a broker-dealer. The result will be an increase in effort, time, confusion, and cost. It makes no sense to deny our customers access to traditional bank custody services when that is precisely the service that best fits their needs.

Finally, there is no additional consumer/investor protection afforded by the Rule. Traditional bank custody services simply do not present an environment where sales practice abuses or customer confusion could be reasonably expected. All trading is initiated and directed by the customer. Investment advice is not provided (or requested). The regulatory scheme of the bank regulatory agencies and other applicable law (e.g. ERISA) strictly govern the conduct of bank custodians. Since all trades are ultimately executed through a registered broker-dealer, compliance with federal best execution requirements is already subject to supervision by the federal securities regulators.

Trust and Fiduciary Exemption: We are also strongly opposed to several aspects of the proposal's "chiefly compensated" test required under the trust and fiduciary exception. In our view, the account-by-account test is far too costly for a bank of our size to undertake. Moreover, we are very concerned that our bank can satisfy the 9-to-1 ratio of relationship to sales compensation on an ongoing basis, especially since the employee benefit plan exemption as currently proposed is simply not workable. This issue will be discussed separately, below.

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 exemption which might permit us to fall within the 9-to-1 ratio, the penalties and exposure of having our bank deemed to be an unregistered broker-dealer are so great, and the procedural rules so complex, that we will still have to invest in technology and systems to track transaction compensation. We conservatively estimate that implementation of the necessary processing capability to accurately track compliance with the proposed test will cost a minimum of $150,000. This is simply the "up front" cost and does not include the ongoing costs of compliance.

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 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 within the bank. Such a general (and practical) review of how the trust operation earns it revenue in a given year should be more than satisfactory to determine that our bank is not engaging in the brokerage business.

Employee Benefit Exemption: We applaud the Commission for recognizing the need for an exemption from broker-dealer registration for banks that provide services to employee benefit plans. Unfortunately, the exemption as currently structured will not be effective because it is not consistent with current industry practice.

The Rule's employee benefit exception is based upon the Department of Labor's 1997 "Frost" advisory opinion. The Frost letter provides that dollar for dollar offsets or credits of mutual fund revenue sharing (as contemplated in the Rule) are required when a bank exercises *discretionary* authority or control over the selection of investment funds available to plan participants. In the "Aetna" advisory opinion, the DOL subsequently clarified its position by differentiating the requirements for a *directed* trustee that does not exercise such discretion. In these cases, dollar for dollar offsets are not required. Most banks have structured their employee benefit services to fall under the Aetna letter. While our bank has both discretionary and directed relationships, we are moving rapidly in the direction of directed trust services under the Aetna scenario. This movement is being dictated by the demands of our retirement plan customers.

The DOL letters provide a comprehensive scheme for compliance with the fiduciary requirements of ERISA, including pricing and revenue sharing disclosures. Rather than creating the confusion, cost, and uncertainty inherent in establishing a separate (and different) scheme for the push out rule, we believe the best solution is to amend the exemption to provide that a bank will be exempt from registration if it meets ERISA fiduciary requirements as established by Department of Labor from time to time. To leave the exemption as is will make it largely ineffective.

In addition, the requirement for "fully disclosed" self-directed accounts is misplaced. While many "packaged" fund company, TPA and insurance programs utilized by smaller banks do provide a so-called "brokerage window" through individual participant accounts at a broker-dealer, many banks (including Bankers Trust for some of our retirement plan customers) provide this service "in house." In our case we utilize a separate participant account on our trust accounting system for self-directed activity. Purchases and sales are initiated by the participant and executed by registered broker-dealers as a part of our normal trust operations processing.

Sweep Exemption: We also find the sweep exception troubling. Our bank sweeps asset and deposit accounts into money market mutual funds, for which we receive income greater than 25 basis points. ***This is fully disclosed to our clients.*** Under the proposal, we would no longer be able to offer most of our customers the ability to have their deposit account assets swept into these funds, taking away a popular product that consumers demand. This would put our institution at a disadvantage against broker-dealers offering a cash management account - which from the consumer's perspective looks identical to a checking account–because broker dealers can receive fees from mutual funds in excess of 25 basis points. We question why 12(b)(1) fees in excess of 25 basis points are appropriate for brokers, but not for banks. This does not seem to constitute the level playing field contemplated by GLBA.

Networking Exemption: We are quite concerned that the SEC is using the Rule to regulate bank compensation programs. All companies, across all industries set performance goals for their employees and use meaningful incentive compensation to reward achievement of those goals - banks are no different. It makes good business sense to do so, yet the proposal could prevent banks from implementing these types of programs unless their employees are licensed, registered representatives. We are particularly concerned that the Rule may impact the bank's ability to pay incentive compensation to Trust and Commercial employees who are licensed "dual employees" of a third party marketing firm based upon performance targets relating to trust and commercial banking products and services. Is it not anti-competitive to preclude a bank from employing a meaningful performance compensation program for its employees in terms of sales of products offered by the bank and its chosen third party marketing firm when broker-dealers are not? We believe the SEC can best protect the individual consumer by regulating the registered individuals and brokerage companies to whom the bank directs the customer.

We appreciate the rational approach the Commission has taken with respect to implementation of the regulation. When the final rule is adopted, hopefully with the modifications we have suggested, we encourage the SEC to retain the proposed compliance period.

Sincerely,

Charles H. Leibold
Vice President & Director of Wealth Management Services