CONSUMER
BANKERS
ASSOCIATION

1000 Wilson Blvd., Suite 2500
Arlington, VA 22209
September 10, 2004

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

RE: File Number S7-26-04-Proposed Regulation B

Dear Mr. Katz:

The Consumer Bankers Association (CBA) appreciates this opportunity to comment on the Commission's proposed Regulation B implementing the bank exemptions from broker regulation under the Securities Exchange Act of 1934, as amended by the Gramm-Leach-Bliley Act. The Consumer Bankers Association is the recognized voice on retail banking issues in the nation's capital. Member institutions are the leaders in consumer financial services, including investment sales and products, auto finance, home equity lending, card products, education loans, small business services, community development, deposits and delivery.

Our comments are limited to the provision in Regulation B implementing the exemption for banks with respect to third party brokerage arrangements (the so-called "Networking Exemption"). This exemption is important for the CBA's members that have contractual arrangements with affiliated and unaffiliated registered broker-dealers involving the sale of securities to retail bank customers. Our members have offered securities brokerage services to their customers for many years through such arrangements.

The CBA is concerned that Regulation B will unduly interfere with bank bonus plans that take into consideration employee customer service activities involving referrals of customers to registered broker-dealers. Bank bonus plans typically are designed to improve customer service by motivating bank employees to interact with customers, ascertain customer needs, and ensure that customers are referred to the unit of the bank or its affiliates that can best meet the customer's needs. Bonus plans vary from one institution to the next and may reflect profitability goals based on bank-wide, branch, or departmental objectives. Bonus plans may be structured differently for different personnel categories and different categories of customers.

Regulation B appears to prohibit all bonus plans that include any incentive for referring business to a securities broker-dealer and will require many banks to restructure their bonus programs. We urge the Commission not to limit the flexibility of banks to structure their bonus plans in accordance with each bank's internal organizational structure, business development priorities, customer service objectives, and other factors that are unique to each bank.

We also urge the Commission to give banks flexibility in determining what referral fees are "nominal" in accordance with the statutory Networking Exemption. Under the Networking Exemption, a bank is allowed to pay unlicensed employees a "nominal one-time cash fee of a fixed dollar amount." Regulation B defines this phrase to mean:

- An employee's base hourly rate of pay;
- Twenty-five dollars; or
- A dollar amount that does not exceed the whole dollar amount nearest to fifteen dollars in 1999 dollars adjusted by the cumulative annual percentage change in the Consumer Price Index All Consumers-(CPI-U) published by the Department of Labor that was reported on June 1 of the preceding year.

The Regulation B definition does not allow a bank to distinguish between referrals of retail customers and referrals of wealthy individuals or institutional customers. In the latter case, an employee may spend many hours analyzing the customer's needs and developing an appropriate program of services for the customer, which may include insurance, loans, or other components in addition to securities brokerage. We urge the Commission to exempt from the referral fee restriction referrals of customers that meet the definition of an accredited investor. The sophistication level of these customers is such that the limitation on referral fees serves no reasonable regulatory purpose and will create an unnecessary compliance burden.

We support the provision in Regulation B under which a bank may condition the payment of a referral fee on whether a customer contacts or keeps an appointment with a broker-dealer and whether the customer has assets meeting established minimums. We urge the Commission to also allow the payment of a referral fee based on the customer meeting a certain minimum tax bracket.

As it deliberates on Regulation B, we urge the Commission to take into consideration the absence of any major abuses or problems involving bank networking arrangements with registered broker-dealers. It is not in the interest of any bank for its employees to be making inappropriate referrals of customers for securities brokerage services. Bank referral fee and bonus programs are designed to reward employees for taking a proactive approach to customer service and banks should not be denied flexibility to structure their programs for this purpose when securities brokerage services are an option for the customer.

The CBA appreciated this opportunity to comment on Regulation B. If you have any questions, please feel to contact Melanie Fein at (202) 974-1000 or mfein@goodwinprocter.com, or me at (703) 276-3873, or msullivan@cbanet.org.

Sincerely,

Marcia E. Sullivan

Marcia Sullivan
Vice President,
Director of Government Relations