Bay Trust
An Affiliate of Bay Banks of Virginia, Inc.
A Financial Services Company

P.O. Box 1958, One North Main Street
Kilmarnock, VA 22482

September 1, 2004

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

Re: SEC Proposed Regulation B (Bank Broker-Dealer Rule under Gramm-Leach-Bliley Act)
File Number S7-26-04

Dear Mr. Katz,

Please be advised that the writer hereunder is the president of a trust company subsidiary of a small community bank holding company. As we understand it, our trust company will presumably qualify under the proposed "small bank custody exemption", allowing us to continue offering our trust, agency and custody services. As a separate company, Bay Trust's company assets are far below $500 million; however, if for some reason (such as reducing various regulatory burdens and costs) we were to be merged back into our affiliated bank, we could well be a part of a bank with assets exceeding $500 million in the not too distant future. Bay Trust operates in a small Virginia county of approximately 10,000 people and competes for asset management with three brokerage firms, one other bank with a trust department and at least three banks offering brokerage services (including our affiliated bank).

For calendar years 2001 through 2003, personal and IRA custody account fees have averaged more than 25% of our total recurring fees. That fee income is a vital part of our business. Custodial accounts have been a part of most trust departments' operations as long as this writer can recall (going back to his beginning in the trust business in 1971). The customers who use such services are not bribed, cajoled or otherwise forced to use these services. They apparently perceive the usefulness and safety of an account where their securities are held without being subject to borrowing for short sales or other transactions for the benefit of the holder, where they receive statements providing complete asset and transaction details, including cost basis of securities and fees charged, as well as end of year tax information and the benefit of lower security trading costs, as a result of the trust company's negotiated fees with

brokers. We have no proprietary mutual funds, do not offer 12 b-1 mutual funds and do not encourage the purchase of any asset by a custody account client.

It would seem that the primary matter to address in regard to any new law or regulation, should be whether or not it benefits our country and its people, as a whole.

First it should be remembered that there has been a very good reason for exempting bank trust departments from regulation by the SEC. As fiduciaries, trust departments, trust companies and individual trustees have always been held to a higher standard in dealing with their clients (grantors, testators, principals, beneficiaries and, in the employee benefits area, participants) than have other providers of asset custody and management. A fiduciary's job is to care for the assets of the trust or agency account it administers as well as, or better than, it would its own property. If there is a conflict of interest, it must be resolved in the best interest of the client, not the trustee. A broker's job, however, is to maximize commissions and often involves selling the product their company is pushing whether it is the best for their client or not. There are fundamental differences in the services provided, the type of regulations and oversight needed and the manner in which in which they need to be reviewed and enforced for trustees, versus brokers and broker-dealers.

It may very well be, given the changes in financial institutions, (broker-dealers and insurance companies in the banking business and vice-versa) that we need to look at a different manner of regulating all of those institutions. However, as is sometimes the case with regulations, it seems that you have gone after some fleas on the elephant, with an elephant gun.

It is presumably known by the SEC, that purchases and sales of securities for trust department or trust company accounts are made through registered broker-dealers and, to the best of our knowledge are all done through a broker-dealer not affiliated with the banks or trust companies. We presume also that you would have no reason to include SEC regulation of a trustee's purchase or sale of mutual funds directly from an independent mutual fund company, which could also be effected by an individual, without the need for any licensed broker-dealer.

After all the above is said, it may be, given the current situation where some banks are using their proprietary mutual funds in their trust departments, that fiduciary principles may sometimes be overlooked. In that case, it would seem that changes might be needed. However, the changes necessary to protect the client could be better accomplished by forbidding the use of proprietary funds by a trust department or affiliated trust company, rather than the mass of proposed regulations.

Sincerely,

Robert C. Berry, Jr.
President & CEO