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

Re: File No. S7-26-04
Proposed SEC Regulation B Changes

Dear Secretary Katz:

I appreciate being given this opportunity to comment on the Commission's proposed changes to Regulation B. As background for my comments, I have been a consultant to the trust and banking industry for over 28 years. During that time, I have completed over 1,000 consulting assignments for approximately 450 financial institutions in 38 states. Some of my consulting assignments have been under contract with broker-dealers. Additionally, I have been a keynote speaker, and presenter at many national and regional trust-banking conferences and I have sat on the board of three independent trust companies. As part of my consulting role, I have assisted in the development of various custodial services and the creation of marketing and incentive compensation programs to sell these services. Thus, I believe I am uniquely qualified to comment on certain aspects of the proposed changes in the exempt status of trust organizations from broker-dealer registration.

"Modern" custodial and safekeeping services have been offered by bank trust departments for more than 70 years. Such services are utilized by individuals, retirement plans, corporations, foundations, governmental units and others. Custody accounts have become a staple product for medium to large size trust organizations. Less than 20% of this business is found in banking organizations with assets less than $500 million or a holding company of no more than $1 billion. Thus, the small bank exemption becomes almost meaningless. This exemption should be doubled to accommodate the realities of the trust banking business.

More important than the defining limits of the small bank exemption are the reasons most clients create custodial accounts with a trust organization. Those reasons establish a significant counterbalance to the Commissions' apparent perception of the need for (and desired scope of) functional regulation as a tool for enhanced investor protection. The owners of custodial (or safekeeping) accounts, whether natural persons or corporations, seek out bank trust departments and independent trust companies to act as agent for these accounts simply because they don't want to deal with a broker. The reasons for avoiding brokers are varied:

- A basic lack of trust of brokers;
- An expectation of unwanted marketing pressure;
- A fear of securities lending practices - perceived as high risk (many of which are a required condition of broker-dealer custody);
- An existing personal relationship with an individual in trust or the bank itself.

It has been obvious to me over my years of consulting that the vast majority of trust department custody and safekeeping business would never have been sold by a broker-dealer. Thus, trust organizations perform a needed and valuable service that does not take business away from broker-dealers. Further, since all trades initiated through the trust custody account are executed and settled by a licensed broker–dealer, requiring the trust organization to register as a broker-dealer seems to lack purpose and justification. Whether the trade is initiated by the trust organization upon direction of their client or is executed by the client directly with the broker-dealer and settled by the trust custody account, as agent, should be seen as an irrelevant difference.

The commentary on the proposed changes to Regulation B suggests that greater protection is offered to an investor through registration as a broker-dealer. The validity of that assertion seems questionable. All trust organizations that offer custody and safekeeping services as a line of business undergo a minimum of two and often three regulatory examinations (from different regulators) each year. In addition, internal and external auditors annually review various aspects of trust administrative practices, internal controls and the operational soundness of these trust organizations. It is difficult to image what SEC oversight could add to this process that offers any added investor protection.

Finally, the proposed rules seek to apply a compensation litmus test as a condition of requiring a Securities license. For some reason, the Commission (and perhaps the framers of Gramm-Leach-Bliley) seems to have the perception that trust and banking staffs are peddling securities trading like debit cards or free checking. This is not my experience. Custody and safekeeping accounts are sold as a needed and valuable service that produces a stream of fee based income to the bank or trust company. Appropriate incentive compensation plans simply reflect the value of that sale to the organization. Likewise, internal referrals of any type of new business are an essential ingredient in the growth and profitability of any trust business. To position a referral program as something inherently evil, as is done by the proposed changes, seems to border on paranoia.

Very few of my consulting clients have expressed concern with the basic concept of SEC oversight under Gramm-Leach-Bliley. They, and I, ask only that such oversight be measured, reasonable and not disrupt established trust practices. Thank you for your time in reviewing and considering these comments.

Sincerely,

RHF Inc

Robert H. Franke
President and CEO