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

RE: Regulation B, File No. S7-26-04 (69 Federal Register 39682; June 30, 2004)

Dear Mr. Katz:

This letter is in response to the SEC's invitation to comment on Regulation B, the proposed broker "push out" rules. Our bank has $ 1,500,000,000 + in assets, with $ 825,000,000 + in trust assets.

We strongly oppose 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 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, the proposal is not in the interest of consumers. It will result in fewer clients having knowledge of the availability of resources necessary to assist them with college planning or retirement, and force some customers to have two accounts – one with a bank and one with a broker. We do not believe this is what Congress intended when it passed the Gramm-Leach-Bliley Act in 1999.

First, we are most concerned that the proposal will force our bank out of the custody business, as the vast majority of our clients do not satisfy the qualified investor definition. Further, we will not be able to offer new custody clients the ability to place orders through the bank. Rollovers from 401(k) accounts, and IRA accounts, which do not fall under the qualified investor definition, are a very important part of our business strategy.

There is clear demand for bank custody services. We are able to take custody of all types of investment products including real estate and restricted securities, while brokers cannot. If a client custody account includes investments that broker-dealers are unable to hold, what other alternative is available to our customer? Must the customer deal with two account opening processes, doubling the time and paperwork merely to find institutions able hold a mix of assets?

Second, there is a significant problem with 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 do not believe our bank can satisfy the 9-to-1 ratio of relationship to sales compensation, especially since the employee benefit plan exemption is not at all workable.[1]

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 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 the institution will still have to invest in technology and systems to track transaction compensation.

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 operation 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 with in the bank. A general review of how the trust operation earns its revenue in a given year should be more than satisfactory to determine that our bank is not engaging in brokerage business.

Third, we find the sweep exception very 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.

This also raises the issue of application of a consistent regulatory standard. If 12(b) (1) fees in excess of 25 basis points are not appropriate for banks to accept, why is it ok for broker-dealers to receive them?

Finally, the SEC should refrain from regulating bank compensation programs. All companies, across all industries set performance goals for their employees – banks are no different. It makes good business sense to do so, yet the proposal would prevent banks from implementing these types of programs unless their employees are licensed, registered representatives. Why can't the bank set yearly performance goals for its employees in terms of sales of products offered by the bank and its affiliate? It is most anti-competitive for banks to be precluded from doing so, but broker-dealers are not.

We also strenuously object to the notion that base hourly wages, $ 15 dollars in 1999 or $ 25 dollars is an appropriate referral fee for non-retail referrals.

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[1] Our bank follows the DOL guidance outlined in the AETNA letter, not the Frost letter as described in the SEC's employee benefit plan exemption.

In a time when consumer debt has risen, banks should be encouraged to train and manage associates, to educate consumers about the need for saving and investing for college and retirement. By unnecessarily regulating bonus plans and creating such uncertainty around how brokerage might be deemed to directly or indirectly taint a bonus plan, regulations will thwart our ability to serve our customers needs. The SEC can best protect the individual consumer by regulating the registered individuals and brokerage companies to whom the bank directs the customer.

The only positive aspect to the proposal is the lengthy time banks are given to comply. When the final rule is adopted, hopefully with the changes we have suggested, the SEC will retain a minimum compliance period, of one year.

Sincerely,

James E. Morr
Executive Vice President
Senior Trust Officer and General Counsel