



## **VIA ELECTRONIC SUBMISSION**

March 23, 2007

Nancy M. Morris  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Docket No. R-1274

Dear Secretary Morris:

Nationwide is pleased to comment upon proposed Regulation R. Nationwide is one of the largest insurance and financial services companies in the world with more than \$157 billion in statutory assets. Nationwide is a unitary savings and loan holding company by virtue of its ownership of Nationwide Bank.

Nationwide supports the joint rulemaking effort of both the Commission and the Federal Reserve Board pursuant to the Gramm-Leach-Bliley Act of 1999 and the Financial Services Regulatory Relief Act of 2006.

Nationwide believes that the current version of the rule is an improvement over the previous version with respect to the practical administration of the exceptions such as the fiduciary exception.

Nationwide wishes to note one specific item that would be helpful if it were addressed in the final rule. Under Section 3(a)(4)(C) of the Securities Exchange Act of 1934, banks relying upon the trust and fiduciary activities exception and effecting a transaction in the United States of a publicly traded security must: 1.) direct the trade to a registered broker-dealer for execution; 2.) effect the trade through a cross trade or substantially similar trade either within the bank or between the bank and an affiliated fiduciary that is not in contravention of fiduciary principles established under applicable federal or state law; or 3.) effect the trade in some other manner that the Commission permits. The proposed rule would exempt a bank from this condition to the extent the bank effects transactions in securities issued by an open-end company that is neither traded on a national securities

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exchange nor through facilities of a national securities association or an interdealer quotation system. Specifically, the exemption would permit a bank to effect such transactions through the National Securities Clearing Corporation's ("NSCC's") Mutual Fund Services ("Fund/Serv") or directly with a transfer agent acting for the open-end company. The securities would need to be distributed by a registered broker-dealer, or, in the alternative, the sales charge for the transaction would have to be no more than the amount a registered broker-dealer could charge pursuant to the rules of a registered securities association adopted pursuant to Section 22(b)(1) of the Investment Company Act of 1940. However, proposed Rule 775 does not exempt a bank from the condition if the bank uses NSCC to effect trades in other investment funds regularly traded on the NSCC platform like a bank's collective investment funds.

In November 2000, NSCC expanded the types of products eligible for processing through NSCC's Mutual Fund services to include "Investment Funds". *See* Exchange Act Release 34-43606; File No. SR-NSCC-00-05 (November 21, 2000). Rule 1 under NSCC's Rules defined an "Investment Fund" as a "fund or investment entity subject to regulation under applicable federal and state banking and/or insurance laws." Thus this definition would include stable value funds, guaranteed investment contracts which are regulated as group annuities and collective bank investment trusts. Rule 1 now references a "Fund/Serv Eligible Fund" which means a fund or other pooled investment entity including those subject to federal and state banking and/or insurance laws. Because stable value funds, guaranteed investment contracts and collective bank investment trusts are typically the kinds of assets with which a bank must deal (in addition to mutual funds), the bank should be exempt from the condition that the fund be traded by a registered broker-dealer as long as the fund is traded on the NSCC platform. Such an approach is consistent with the rationale for the exemption of open-end companies. Stable value funds, guaranteed investment contracts and collective trust funds offered by banks are not traded on a national securities exchange nor through the facilities of a national securities association or an interdealer quotation system. This approach would facilitate ease of administration of employee benefit plans and avoid unnecessary duplicative regulatory burden.

Accordingly, Nationwide respectfully requests that proposed Rule 775 be modified to cover within the exemption from the registered broker-dealer execution requirement a

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bank effecting *any* transactions effected through NSCC (not just those involving securities issued by open-end companies) or directly through a transfer agent acting for an open-end company.

Very truly yours,

NATIONWIDE FINANCIAL SERVICES, INC.

A handwritten signature in black ink, appearing to read "Mark R. Thresher". The signature is written in a cursive style with a long horizontal stroke at the end.

Mark R. Thresher  
President and Chief Operating Officer

cc: Anne L. Arvia, President & Chief Executive Officer-- Nationwide Bank  
Daniel Gifford—Vice President & Chief Trust Officer—Nationwide Bank