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**James R. Bell III**  
Executive Vice President

**VIA OVERNIGHT MAIL**

September 29, 2003

Ms. Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, D.C. 20551

**RE: Proposed Interpretation and Supervisory Guidance with Request for Public Comment; Anti-Tying Restrictions of Section 106 of the Bank Holding Company Act Amendments of 1970; Docket No. OP-1158**

BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
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OFFICE OF THE SECRETARY

Dear Ms. Johnson:

National City Corporation, a financial holding company with its principal office in Cleveland, Ohio ("National City"), provides the following comments in response to the proposed interpretation of the anti-tying restrictions of Section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. §§1972 *et seq.*) (the "Tying Rules") and related supervisory guidance (collectively, the "Section 106 Release") issued on August 25, 2003 by the Board of Governors of the Federal Reserve System (the "Board").

General Overview

National City applauds the effort of the Board to clarify the Tying Rules and to broaden the list of products and services that are considered "traditional bank products" for purposes of the exception to prohibited tying arrangements.

We also support the Board's views on voluntary ties, permissible cross-selling, and relationship banking.

However, we believe that it is overburdensome and unnecessary to require a bank to analyze and document each customer transaction to evidence a bank's good faith belief that a customer who is offered a mixed-product arrangement will be able to satisfy the condition associated with the arrangement through the purchase of traditional bank products. In particular, we believe that it is unnecessary and impractical for the Board to require a detailed analysis of each customer's financial needs and capabilities in order for a bank to establish this good faith belief.

### Traditional Bank Products

While National City supports the Board's views on what constitutes a "traditional bank product," we believe that the Board's Section 106 Release is only a start and that it should go further.

For example, the Section 106 Release states that a "traditional bank product" includes "credit derivatives where the bank or affiliate is the seller of credit protection." While we agree with the Board's characterization of credit derivatives as a "traditional bank product," we see no reason why interest-rate derivatives, including swaps, caps, and floors, should not be considered "traditional bank products" as well. There are many similarities, for example, between a fixed-rate loan (a traditional bank product) and a floating-to-fixed interest rate swap. The net cash flows are the same, the risks are the same, and the economics are the same. Among other kinds of swaps that fall within the category of interest-rate derivatives are cross-currency swaps which involve a notional principal with the customer paying a floating or fixed interest rate in one currency and receiving a floating or fixed interest rate in another currency.

Credit derivatives manage credit risk while interest-rate derivatives manage interest-rate risk. Both are provided in connection with an extension of credit. Both involve the bank serving as one counterparty to the transaction and the customer serving as the other counterparty, and both require the bank to take the counterparty's credit risk, much like an extension of credit. Credit derivatives are relatively recent products, while interest-rate derivatives have been offered by banks for more than twenty (20) years. Further, it is our understanding that credit derivatives are currently offered primarily by the large money-center banks, while interest-rate derivatives are offered by a much broader spectrum of banks. Expanding the kind of derivatives that will qualify as "traditional bank products" to include both credit derivatives and interest-rate derivatives would be consistent with the purposes of the "traditional bank product" exception and would be much more meaningful to the banking industry.

We also believe that foreign exchange services and foreign exchange swaps should be included as "traditional bank products." The typical foreign exchange service involves a customer exchanging one currency for another currency on the same day. Foreign exchange swaps involve the sale of a currency and a simultaneous repurchase of that currency at a later date. Both foreign exchange services and foreign exchange swaps involve credit risk to the bank. Both foreign exchange services and foreign exchange swaps have been offered by banks for many years. In addition, there are many other non-bank financial service providers that offer foreign exchange services and foreign exchange swaps, thus eliminating any likelihood that banks could use their economic power to engage in anticompetitive practices.

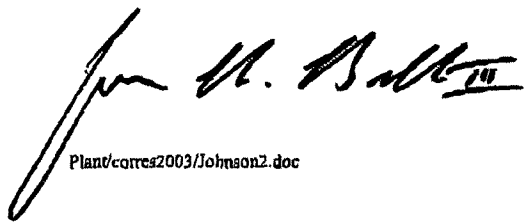
With respect to the "trust service" component of the "traditional bank product" exception, we fully support the Board's conclusion that a product that meets the "trust service" standard qualifies for this exception even if the bank or affiliate providing the product does not have, or does not provide the product through, a trust department. In its list of "traditional bank products," the Board includes "discretionary asset management services provided as a fiduciary." We believe that the Board should make clear that this exception also applies to investment advisory services, including, but not limited to, such services provided by a bank-affiliated investment advisor registered under the Investment Advisors Act of 1940. There is no apparent difference between "discretionary asset

management services" and "investment advisory services" as both kinds of services involve a provider exercising discretionary authority over an account to determine what assets to purchase or sell on behalf of the account. Further, investment advisory services have been customarily performed by bank trust departments for many years.

Conclusion

Thank you for the opportunity to provide these comments. If the Board staff has any questions or needs additional information regarding these comments, please contact Thomas A. Plant at 216-222-8015 or Stephen L. Smith at 317-267-7697 in National City's Law Division.

Very truly yours,



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