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March 26, 2007

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ELECTRONIC SUBMISSION

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Jennifer J. Johnson
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Washington, D.C. 20551

Re: Definitions of Terms and Exemptions Relating to the "Broker" Exceptions for Banks; File No. S7-22-06; Docket No. R-1274; 71 Federal Register 77522, December 26, 2006

Exemptions for Banks Under Section 3(a)(5) of the Securities Exchange Act of 1934 and Related Rules; File No. S7-23-06; 71 Federal Register 77550, December 26, 2006

Ms. Morris and Ms. Johnson:

This letter is submitted for your consideration on behalf of the Missouri Bankers Association, an association of commercial banks and savings associations representing over 1,800 banking locations and over 30,000 bank employees in the state of Missouri (the "MBA"). In connection with the joint rulemaking required by the recently-enacted Financial Services Regulatory Relief Act of 2006, the MBA urges your consideration of the issues described herein, which affect the business of many of the members of the MBA and potentially, bankers throughout the United States.

The MBA was founded in 1891. It is the principal advocate for the banking industry in Missouri and is dedicated to providing products and services that bring benefits to its members. The MBA is committed to bringing together and serving the best interests of its members by fostering economic developing in Missouri, advocating on behalf of its constituents on issues of public importance, and providing education to

its members and the consuming public. The MBA, through its subsidiaries, provides various products and services, including administering an ERISA self-insured health plan for approximately 3,000 bank employees plus their dependents. The MBA has also contracted with a Missouri financial institution to provide services in connection with the Missouri Higher Education Deposit Program, (the "Program"), discussed in more detail below.

In 2004, Missouri adopted legislation providing for the Program, an educational savings plan under section 529 of the Internal Revenue Code. The Missouri law (R.S. MO Sections 166.500-166.529), authorizes the Missouri Higher Education Savings Program Board (the "MOST Board"), an instrumentality of the state of Missouri, to appoint an administrator (the "Administrator") to operate the Program on behalf of the State. The State of Missouri's interests will be implemented by a newly created trust (the "Trust"), using a bank or trust company as Trustee, that meets the requirements of Section 529 of the Internal Revenue Code and governs the relationship with respect to Section 529 deposits for the contracting banks. The Administrator will operate the Program and, in coordination with the Trustee of the Trust, provide the authority to implement the Program. A participant in the Program (a "Participant") would be able to make deposits through the Program in a bank which has its headquarters or a branch located in Missouri and which has been approved by and entered into a contract with the Administrator to offer the Program (a "Contracting Bank"). Each Participant will designate a beneficiary (a "Beneficiary") for whose benefit the Participant is depositing funds to be used for the Beneficiary's educational purposes. The funds deposited into the Program would be placed only in certificates of deposit or other savings deposits. The deposits would be insured by the FDIC on a pass-through basis, so that each Beneficiary under the Program would be separately insured.

Each Contracting Bank will provide information about the Program and about the effect of Internal Revenue Code section 529 to Potential Participants. Each Participant will enter into an agreement to participate in the Program and will make deposits at a Contracting Bank. The Contracting Bank will contractually commit to providing each Participant with written disclosures concerning the nature of the Program, restrictions under Section 529 and other necessary information. The Contracting Bank would provide its own Regulation DD and other deposit-related disclosures to the Participant.

The Program is intended to create a "Qualified Tuition Program" under Internal Revenue Code section 529, and to provide an alternative but not exclusive method for investing funds for the benefit of current and future students and their "qualified higher education expenses." The Program will also provide a product that Missouri banks, including community banks, can provide to their customers both as a mechanism to generate deposits for banks and as a service to customers.

The MBA and the banking industry worked to develop the concept of the Program and the Missouri legislation which authorized the Program as adopted in 2004. As the financial services industry has expanded to include commercial entities which are not depository institutions, non-banks have made a myriad of additional products available to customers, including products which compete directly with banks through the availability of "checks" and debit cards to access invested funds. Banks have,

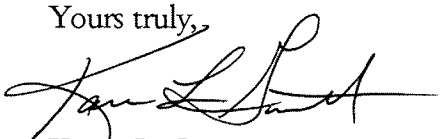
consequently, steadily lost market share. As an example, recent statistics developed by the Investment Company Institute indicate that as of November 30, 2006, $10.28 trillion was invested in all types of mutual funds in the United States, see http://www.icifactbook.org/stats/trends_11-06.html. In contrast, according to the FDIC's Statistics on Banking as of September 30, 2006, approximately $8.0 trillion is currently deposited in FDIC-insured financial institutions. In 1996, mutual fund investment passed deposits in FDIC insured financial institutions in dollar volume.

While the Program will provide a new product to Missouri banks and their customers, many of the MBA's members will be unable or unwilling to participate in the Program if Contracting Banks were deemed, by accepting deposits as described above, to be engaged in the sale of a security. These banks, faced with unfamiliar potential regulation as a "broker" or "dealer" are unlikely to be willing to risk the possibility of additional regulation when the product offered through the Program is nothing more than a safe, standard FDIC insured banking product, provided in the context of a 529 Program. We believe that there is compelling legal and policy precedent to support the position that the Program would not involve the sale of a security, but, instead, that the Contracting Banks would be effecting transactions in "identified banking products," as defined in Section 206 of the Gramm-Leach-Bliley Act. As defined in the Gramm-Leach Bliley Act, "identified banking products" include "a deposit account, savings account, certificate of deposit, or other deposit instrument issued by a bank."

We understand that the SEC and the FRB have not included in proposed Regulation R any provision which attempts to address the extent of the "identified banking products" exemption. Accordingly, at this time, the MBA is not requesting a rule-making or determination addressing the question of whether Contracting Banks would be effecting transactions in "identified banking products". Instead, in order to maximize the participation of potential Contracting Banks in the Program in a manner which will make this savings opportunity available to the most Participants, the MBA requests that the FRB and the SEC broaden the final rule to clarify that Contracting Banks would not be "brokers" or "dealers" under the Securities Exchange Act of 1934 because they effected transactions in the Program. Specifically, the MBA requests the FRB and the SEC to consider the proposed regulatory language include on Attachment A hereto.

We appreciate this opportunity to comment on the Proposed Rule.

Yours truly,



Karen L. Garrett

KLG:cd

Cc. Wade Nash, General Counsel, Missouri Bankers Association

Attachment A

A financial institution (as defined in 15 U.S.C. 78c(a)(46)) is exempt from the definition of the term "broker" under section 3(a)(4) of the Act or "dealer" under section 3(a)(5) of the Act to the extent that the financial institution engages in the business of effecting transactions in a 'qualified tuition program'; provided, however, that cash provided by a contributor to such a qualified tuition program shall be invested only in the financial institution's deposit accounts, savings accounts, certificates of deposit or other deposit instruments. The term "qualified tuition program" has the same meaning as set forth in Section 529(b) of the Internal Revenue Code (26 U.S.C. 529(b)).