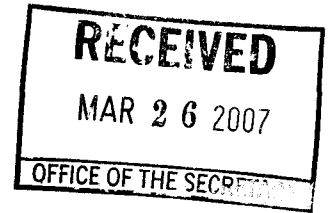




1401 H Street, NW, Washington, DC 20005-2148, USA  
202/326-5800 www.ici.org



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March 23, 2007

Nancy M. Morris, Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: File No. S7-22-06, Regulation R

Dear Ms. Morris:

The Investment Company Institute<sup>1</sup> recommends a minor revision to the compensation definition in proposed Rule 721 to conform it to current business practices. Proposed Rule 721 is one part of the Securities and Exchange Commission's proposed Regulation R, which would implement the functional regulation provisions of the Gramm-Leach-Bliley Act.<sup>2</sup>

Proposed Rule 721 in Regulation R would implement the provisions of Section 3(a)(4)(B)(ii) of the Securities Exchange Act that permit a bank, under certain conditions, to effect securities transactions in a trustee or fiduciary capacity without being registered under the Act as a broker. The statutory exception and proposed implementing rule are intended to ensure that banks do not operate securities brokers in their trust departments, while recognizing the traditional securities role that banks have performed for their trust and fiduciary customers.

One of the conditions for relying upon the statutory exception is that the bank be "chiefly compensated" for its trust and fiduciary transactions on the basis of an administration or annual fee, a percentage of assets under management, a flat or capped per-order processing fee that does not exceed the bank's cost in executing the transaction, or any combination of these fees. Proposed Rule 721 defines the types of fees a bank may receive under the Act's "chiefly compensated" test as "relationship

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<sup>1</sup> The Investment Company Institute is the national association of the U.S. investment company industry. More information about the Institute is available at the end of this letter.

<sup>2</sup> See *Definitions of Terms and Exemptions Relating to the "Broker" Exceptions for Banks*, SEC Release No. 34-54946 (Dec. 18, 2006), 71 Fed. Regis. 77550 (Dec. 26, 2006).

Nancy M. Morris, Secretary

March 23, 2007

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compensation," which is limited to a fee "paid by an investment company" for personal service, the maintenance of shareholder accounts, or other services listed in the rule.

The fees paid to a bank for personal service, maintenance of shareholder accounts, or the other permitted services listed in the proposed rule are usually paid by a fund's administrator, transfer agent, primary distributor, or investment adviser, rather than the fund itself. To reflect this long-standing business practice, the Institute recommends that proposed Rule 721(a)(4)(i) be revised, in relevant part, to read: ". . . or a fee paid by an investment company or by its administrator, transfer agent, primary distributor, or investment adviser, for personal service, the maintenance of shareholder accounts or any service described in paragraph (a)(4)(iii)(C) of this section." This technical revision to the rule would neither expand the amount of compensation the bank could receive nor the services for which it may receive compensation under the statutory exception.

The Institute appreciates the Commission's consideration of our recommendation. If you have any questions about it, please do not hesitate to contact Tamara Salmon of the Institute at (202) 326-5825.

Sincerely,



Tamara K. Salmon

Senior Associate Counsel

cc: Catherine McGuire, Chief Counsel  
SEC Division of Market Regulation

### **About the Investment Company Institute**

The Investment Company Institute's membership includes 8,839 open-end investment companies (mutual funds), 658 closed-end investment companies, 363 exchange-traded funds, and 4 sponsors of unit investment trusts. Mutual fund members of the ICI have total assets of approximately \$10.445 trillion (representing 98 percent of all assets of US mutual funds); these funds serve approximately 93.9 million shareholders in more than 53.8 million households.