June 7, 2007

Via E-mail
Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551
Attention: Docket No. R-1274

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090
Attention: File No. S7-22-06

Re: Release No. 34-54946 (File No. S7-22-06): Proposed Regulation R

Ladies and Gentlemen:

The American Bankers Association (the "ABA") and its affiliate, the ABA Securities Association (the "ABASA"), and The Clearing House Association L.L.C. ("The Clearing House") are writing jointly in response to the comment letter submitted by Thomas M. Selman, Executive Vice President, National Association of Securities Dealers (the "NASD"), to the Board of Governors of the Federal Reserve System (the "Board") and the Securities and Exchange Commission (the "Commission", together with the Board, the "Agencies") on April 19, 2007 (the "NASD Letter") regarding the Agencies' Proposed Regulation R. We strongly disagree with the views expressed by the NASD staff with regard to the proposed treatment of fees paid pursuant to Rule 12b-1 of the Investment Company Act of 1940 (the "Investment Company Act") under the "chiefly compensated" test contained in the bank trust and fiduciary activities exception from the definition of "broker" under the Securities Exchange Act of 1934 (the "Exchange Act").[1]

[1] Release No. 34-54946, 71 Fed. Reg. 77,522 (Dec. 26, 2006).

As we stated in our prior comment letters on Proposed Regulation R,[2] we believe that the Agencies' determination to treat fees paid by an investment company pursuant to a plan adopted under authority of the Commission's Rule 12b-1 as relationship compensation for purposes of the chiefly compensated test is consistent with both the language of the Gramm-Leach-Bliley Act (the "GLBA") and with the intent of Congress in adopting the GLBA. Accordingly, we do not believe that there should be any restrictions on Regulation R's characterization of Rule 12b-1 fees as relationship compensation.

Moreover, we believe, as explained in our prior comment letters on Regulation R, that the treatment of Rule 12b-1 fees as relationship compensation is critical to the fair and workable implementation of the chiefly compensated test under the trust and fiduciary exception. Indeed we believe that any revision to the way in which Rule 12b-1 fees are treated for purposes of the calculation of relationship compensation would call into serious question whether the 70 percent ratio is a workable standard for the bank-wide exemption and, if the Agencies decide to consider any such revision, we believe very strongly that a further opportunity for banks to comment on the implications of such revision is both necessary and appropriate.

In the release accompanying Regulation R, the Agencies expressed the view that Rule 12b-1 fees qualify as relationship compensation because "they are paid on an assets under management basis, rather than on a transactional basis."[3] The NASD Letter criticizes this conclusion on the basis that it supposedly "overlooks" language in the statute that relationship compensation must be "consistent with fiduciary principles and standards." Citing its own rule as authority,[4] the NASD Letter then argues that that portion of Rule 12b-1 fees that are paid for what it characterizes as "distribution" must be treated as "asset based sales charges" and, accordingly, that the statutory requirement that relationship compensation be "consistent with fiduciary principles and standards" is not met.

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[2] Letter from Sarah A. Miller, Director and Chief Regulatory Counsel, Center for Securities, Trust and Investments, American Bankers Association to Jennifer J. Johnson and Nancy M. Morris (March 26, 2007); Letter from Jeffrey P. Neubert, President and CEO, The Clearing House Association L.L.C. to Jennifer J. Johnson and Nancy M. Morris (March 30, 2007).

[3] 71 Fed. Reg. 77,552, 77,529.

[4] See p. 2 of the NASD Letter (shareholder service fees exceeding 0.25% of average net assets per annum are deemed "asset-based sales charges" under NASD Rule 2830(d)).

Of course banks that conduct trust and fiduciary activities and in connection therewith accept Rule 12b-1 fees must do so in compliance with applicable fiduciary principles, including with respect to the compensation that they accept. The fiduciary principles and standards to which banks are subject, however, are set under applicable state (and in some cases, federal) law, and are not derived from the Exchange Act or the rules of the NASD.

Further, we strongly disagree with the NASD's assertion that its characterization of Rule 12b-1 fees in excess of 0.25% of average net assets per annum as "asset-based sales charges" means that such fees should not be deemed to be relationship compensation. We see no reason why definitions created by the NASD in the context of a different regulatory scheme are being cited to justify requiring banks to treat the different portions of Rule 12b-1 fees differently under the chiefly compensated test. Indeed we fail to see what relevance the NASD's characterization of certain fees as "asset based sales charges" has to the calculation of the chiefly compensated test.

We also strongly disagree with the implication in the NASD Letter that certain banks support the NASD's proposition that Rule 12b-1 fees should be treated as relationship compensation only to the extent that they may be paid for shareholder servicing under the NASD's rules.[5] Deutsche Bank AG and PNC Financial Services Group, Inc. have authorized us to state that they did not intend for their comments on Proposed Regulation B[6] and the Commission's Interim Final Rules,[7] respectively, to be interpreted in the manner suggested by the NASD Letter. Both banks made their comments in the context of arguing that Rule 12b-1 fees should not be treated as transactional compensation.

The NASD Letter expressed concern that the characterization of all Rule 12b-1 fees as relationship compensation could confuse the treatment of Rule 12b-1 fees under the Investment Company Act. Although we do not believe that the characterization of all Rule 12b-1 fees as relationship compensation for purposes of meeting the chiefly compensated test would confuse the treatment of Rule 12b-1 fees for purposes of investment company regulation or the NASD's rules, we would have no objection if the Agencies should decide to use a term different from "relationship compensation" to address the NASD's concern.

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5 See p. 4 and footnote 12 of the NASD Letter.

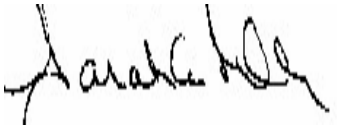
6 Release No. 34-49879, 69 Fed. Reg. 39,682 (June 30, 2004).

7 Release No. 34-44291, 66 Fed. Reg. 27,760 (May 18, 2001).

The NASD staff also commented that the proposed characterization of all Rule 12b-1 fees as relationship compensation would result in disparate treatment between banks and registered investment advisers. We do not agree with the NASD that disparate treatment would result, but even assuming that disparate treatment would result, we believe that any difference in treatment would be consistent with the intent of Congress that banks providing fiduciary services be subject to rules and regulations different from those applicable to registered investment advisers. The mere fact that a particular rule applies to one financial service provider in one context is not a justification for applying it to other financial service providers in a different context. Indeed Congress' decision to exempt banks from the definition of "investment adviser" in the Investment Advisers Act of 1940 confirms that Congress intended that banks and registered investment advisers be subject to different regulatory regimes.

We respectfully request that the Agencies consider the issues set forth above. Please contact either of us should you wish to discuss these matters.

Sincerely,



Norman R. Nelson
General Counsel
The Clearing House Association L.L.C.

Sarah A. Miller
Director & Chief Regulatory Counsel
Center for Securities, Trust
and Investments
American Bankers Association and
General Counsel
ABA Securities Association