The Huntington National Bank
Legal Department
Huntington Center
41 South High Street
Columbus, Ohio 43287

September 30, 2003

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, NW
Washington, D.C. 20551

Attention: Docket No. OP—1158

Re: Proposed Interpretation and Supervisory Guidance—Anti-tying Restrictions
68 *Fed. Reg.* 52024 (Aug. 29, 2003)

Dear Ms. Johnson:

This letter is submitted on behalf of The Huntington National Bank, a national banking association, and its parent company, Huntington Bancshares Incorporated, a financial holding company (both entities referred to as "Huntington")[1] in response to the above referenced Proposed Interpretation and Supervisory Guidance (the "Interpretation") published by the Board of Governors of the Federal Reserve System (the "Board") with respect to the anti-tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970. We appreciate this opportunity to comment on the Interpretation.

Given that the Board's anti-tying interpretations and exceptions are generally contained in individual letters in response to inquiries and requests, and that there are no set of comprehensive regulations issued under section 106, we believe it is helpful for the Board to issue this Interpretation, and we commend the Board for doing so. We have the following specific comments:

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[1] The Huntington National Bank ("Huntington Bank") is the principal subsidiary of Huntington Bancshares Incorporated, which is a $28 billion regional bank holding company headquartered in Columbus, Ohio. Along with its affiliated companies, Huntington Bank has more than 137 years of serving the financial needs of its customers, and provides innovative retail and commercial financial products and services through more than 300 regional banking offices in Indiana, Kentucky, Michigan, Ohio and West Virginia. Huntington Bank, along with its affiliated companies, also offers retail and commercial financial services online at www.huntington.com; through its technologically advanced, 24-hour telephone bank; and through its network of nearly 900 ATMs. Selected financial service activities are also conducted in other states including: dealer sales offices in Florida, Georgia, Tennessee, Pennsylvania and Arizona; private financial group offices in Florida; and mortgage banking offices in Florida, Maryland and New Jersey. International banking services are made available through the headquarters office in Columbus and additional offices located in the Cayman Islands and Hong Kong.

1. With respect to the issue of whether or not an arrangement involves two or more separate products, it would be helpful if the Board would clarify in the Interpretation that just because separate fees are charged for different aspects of a product, or just because separate aspects of a product are separately marketed, does not mean there are separate products. For example, banks typically offer multiple means of access to a checking account in addition to checks or in-person withdrawals: ATM cards, debit/check cards, telephone bill pay/transfer products, Internet bill pay/transfer products, etc. If a bank separately prices for different means of access, that should not transform those means of access into separate products. Nor should the fact that a bank advertises separately for a means of access transform it into a separate product. The product is the checking account, not the means of access.

2. The exclusion of national bank CEBA leases in footnote 44 from the category of "traditional bank product" is unnecessarily restrictive, particularly in connection with motor vehicle leases. The only significant difference for national banks between CEBA leases under 12 U.S.C. 24(Tenth) and leases that are "the functional equivalent of loans" under 12 U.S.C. 24(Seventh), is that the latter are required to have certain residual value guarantees from third parties and the former are not.[2] Generally, this distinction has no impact on the documentation or structure of the lease between the bank and the lessee. Whether a closed-end vehicle lease, for example, is classified by the bank as a CEBA lease or as "24(7)" lease is an accounting and regulatory matter for the bank, and is completely irrelevant to the lessee and the lessee would have no reason to know of, or care about, the classification. Of two identical leases, the first one would be eligible as a traditional bank product to count toward a waiver of a checking account fee, for example, if the bank classified it as a "24(7)" lease, but the second one would be ineligible if the bank classified it as a CEBA lease. Since the anti-tying restriction is essentially a marketing restriction, drawing a distinction between types of leases that has nothing to do with the marketing or terms of the product will make the distinction unintelligible to customers and bank product personnel who market the products. We note that the Board's own leasing authority in Regulation Y[3] was amended in 1997 to remove residual value guarantees with respect to personal property leases[4] with no aggregate dollar limit on the volume of such leases as there are for national bank CEBA leases.[5] Since the Board itself now clearly recognizes higher residual value leasing as closely related to banking, and the distinction between leases that are "the functional equivalent of loans" and CEBA leases has to do with national bank authority to make leases, and has nothing to do with the terms and features of the lease itself between the bank and the customer, we recommend that the Board allow all leases to be treated as loans for purposes of the traditional bank product exemption.

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[2] 12 C.F.R. 23.21. Most motor vehicle leases are higher residual value leases in that they have residual values which require some form of third party guarantee of some portion of the residual value in order to be made under the authority of 12 C.F.R. 24(Seventh).

[3] 12 C.F.R. 225.28(b)(3).

[4] 62 *Fed. Reg.* 9290, at 9305-6 (Feb. 28, 1997).

[5] Pursuant to 12 U.S.C. 24(Tenth), the aggregate book value of the leased property may not exceed 10% of the bank's consolidated assets. See 12 C.F.R. 23.10.

3. It would be helpful if the Board would clarify the relationship between the traditional bank product exception to the tying prohibitions on the one hand, and the exclusive dealing prohibition on the other. For example, we have had customers tell us that they are unable to move a deposit relationship to our bank because the customer's lending bank required the customer to have *all* of its deposit relationships with the lender. Clearly, the traditional bank product exception allows a bank to condition a loan on the borrower maintaining some level of deposits with the bank or its affiliate. However, the traditional bank product exception is absent from the exclusive dealing prohibition in section 106(b)(1)(E),[6] and a requirement that a borrower maintain *all* of its deposits with the lending bank would appear to violate the exclusive dealing prohibition because it would be another way of saying the customer is prohibited from having deposit accounts with a competitor. If the traditional bank product exception allows a bank to specify an amount of deposits the customer is required to maintain at the bank,[7] but the exclusive dealing provision prohibits that amount from being *all*, providing guidance to bank personnel would be assisted by clarification of this point in the Interpretation.

If you have any questions concerning these comments, or if we may otherwise be of assistance in connection with this matter, please do not hesitate to contact me at 614-480-5760 or dan.morton@huntington.com.

Thank you for consideration of these comments.

Sincerely,

Daniel W. Morton
Senior Vice President & Senior Counsel

[6] The only exception in that provision is "other than a condition or requirement that such bank shall reasonably impose in a credit transaction to assure the soundness of the credit." Additionally, 12 C.F.R. 225.7, while extending the traditional bank product exception to transactions involving affiliates of the bank under §106(b)(1)(B) & (D), does not extent that exception to exclusive dealing arrangements under §106(b)(1)(E).

[7] Which it does. See the Interpretation, 68 *Fed. Reg.*, at 52030, col. 3.