From: "maureen o'boyle" <mobdesigns@yahoo.com> on 09/30/2003 05:00:26 PM
Subject: Anti-Tying Restrictions

It is time the board re-examine the exceptions to tying allowed to banks under this rule.

COMMENT- tying traditional bank products to availability of credit can be just as harmful to the market and also create anti compete effects in the market of banking services, particularly when seller (bank) has sufficient economic power. <u>After mergers of major banks, many have economic power in offering credit and can exert that power when seeking business for other non-related traditional banking services. This is disruptive to corporate operations and anti competitive as the banks with power in terms of offering credit would not have to provide competitive prices or improved quality on the tied services.</u> Corporate banking operations are now more computerized, larger in scale and complex in this decade, and changing a service to another bank to obtain credit can be costly in terms of systems development, training, employee, vendor and customer relations. This is not merely a matter of opening a new bank account any longer. Payroll, credit card processing, account receivable payment processing, accounts payable payment processing, expense payables, travel reimbursement, purchasing have all electronic ties to banks and a complex network of corporate systems from order entry to final shipment and billing. Many mid size companies do not have the resources to make these changes efficiently without hiring additional staff and consultants. As these are typically products that directly effect the inflow and outflow of cash, it is critical that they be disrupted as little as possible.

Just as banks should review and update their policies and procedures to ensure that these policies and procedures reflect changes in nature, scope or complexity of bank's activities(sections VII (A), so should the regulation, and accepted exceptions be reviewed and updated to reflect changes in nature, scope and complexity of the market and activities.

COMMENT Bank could provide sub standard or overpriced traditional products that would also serve to lead the customer no option but to select non – trad. Banking products.

Mixed product arrangements should also be prohibited under section 106 as long as coercion exists for a customer to purchase any bank product not directly related to credit. Banks due to their size, and even some banks dominant in a particular regions, can have economic power over a company seeking credit. If credit is the main source of funding for a company, and because of the banks credit policy or position in the market, is one of a few banks offering credit to the company, or is currently on the existing credit facility of a company, threatening to discontinue the source of funds or significantly raise the cost of those funds unless the company purchase even traditional services, can cause several disruptions to the market.

1. Company is not free to choose the best and most efficient provider of those services.
2. Companies with smaller operations have less opportunity to make purchases of those services as they do not require a large variety of banking services, and may not be able to obtain credit.
3. Companies in item 2. Above may be forced to pay a higher price for credit thereby giving them a disadvantage in the marketplace to compete with other companies who are provided more or less expensive credit.

Other banks that provide better and more efficient traditional banking services, and may specialize in these services, are not able to compete freely based on the price or quality of these products if they are not a lead credit bank

This practice will lead to elimination of smaller or medium size banks that do not offer the wide range of services of the larger banks. Medium to smaller banks will not have the means of competing with the credit terms of a larger bank that offer a larger variety of services from which a customer may choose. A customer then has a greater opportunity select sufficient non- traditional banking services to obtain the credit at a larger bank, and also to obtain the credit at better terms

Guidance should provide for outside regulators review of policies, procedures and transactions for violation of anti-tying statute. We should not rely on banks to self-police in this area. Since customers will be reluctant to report and complain to the banks or regulators for fear of reprisal and it is in the banks self interest not to discover or report violations, this is a weak control.
