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By Electronic and U.S. Mail Delivery

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave., N.W.
Washington, D.C. 20551

RE: Comments on Proposed Interpretation and Supervisory Guidance on Anti-Tying Restrictions-- Docket No. OP-1158

Ladies and Gentleman:

FleetBoston Financial Corporation, a diversified financial holding company headquartered in Boston, Massachusetts ("Fleet") is pleased to have this opportunity to comment on the above-referenced proposed Interpretation and Supervisory Guidance ("Guidance") on section 106 of the Bank Holding Company Amendments of 1970 offered for comment by the Board of Governors of The Federal Reserve System ("Board").

About Us

Fleet is the seventh largest bank holding company in the United States, with total assets exceeding $190 billion. Fleet offers a comprehensive array of financial products and services to 20 million customers in more than 20 countries and territories. Among the company's key lines of the business are: retail and commercial banking; capital markets, investment banking and commercial finance; trust and investment services, including nationwide brokerage; and private equity investing.

Fleet's primary banking subsidiary, Fleet National Bank (the "Bank") is a national banking association with branches throughout the Northeast and Middle Atlantic states. The Bank's businesses are national in scope and include consumer, small business and commercial banking, international banking, corporate banking, principal investing, credit card services, commercial real estate lending, commercial leasing and mortgage lending. Some of these businesses are conducted by the Bank through wholly-owned operating subsidiaries.

Overview of Our Comments

The proposed Guidance represents a comprehensive treatment of these statutory provisions. It will bring welcome clarity and certainty to a complex subject.

Fleet endeavors to comply with the letter and the spirit of all laws that apply to its operations. The anti-tying restrictions are particularly burdensome in the current environment. Our strategic plan for success, like most banks, relies heavily on the ability to cross-sell products and services to our banking customers. Our non-bank competitors have a tremendous advantage in this regard as they are not subject to these statutory restrictions. These statutory restrictions, we note, are based upon an out-dated premise that banks control credit in the capital markets.

Fleet supports and fully endorses the comment letters filed on this proposal by the ABA Securities Association, the Financial Services Roundtable, and the New York Clearing House. This letter is intended to direct your attention to certain matters of particular concern to us.

Internal Controls to Ensure Compliance Require Clarification.

The Guidance requires bank to have policies, procedures and systems in place that are reasonably designed to ensure that the bank complies with the anti-tying prohibitions of section 106. The Guidance provides welcome detail on those expectations with regard to training, testing and documenting compliance with the statute.

The Guidance goes on to discuss internal control and record keeping requirements for banks offering "mixed-product arrangements outside of a regulatory safe harbor". It is in regard to this section that we request that the Board provide needed clarification.

The Guidance states that a bank's policies, procedures and documentation should reflect how the bank will and does "establish a good faith belief that a customer offered a mixed-product arrangement" would be able to satisfy the condition solely through traditional bank products. The language implies that the bank must document that good faith belief for each customer. This is burdensome given that banks have extensive controls on the process to ensure compliance. Moreover this loan-by-loan determination undermines and fails to recognize the substantial compliance efforts that banks currently extend to through existing policies, procedure, and controls on this significant statutory restriction.

In the commercial lending context, documenting such a belief on a loan-by-loan basis would be unduly burdensome. In the consumer product context however, such a customer-by-customer documentation requirement would be even more impracticable, and very likely impossible.

We hope and expect that this implied requirement was not intended. As observed later in the Guidance, bank products to individuals are standardized. The Guidance should clarify that such consumer product offerings need to be designed to sustain such a good faith belief that each and

every consumer will have a meaningful choice and that belief must be appropriately documented for each product, not each customer.

Interest Rate Swaps Should Be Exempted

The Guidance requests comment on how interest rate swaps should be treated. We suggest that they be exempted from the anti-tying restrictions either as a "traditional bank product" or through the FRB's exemption or interpretive authority.

To include interest rate swaps in the definition of "traditional bank products" in the Guidance, we believe would be entirely appropriate and wholly consistent with the statutory intent. As drafted in 1970, the statute intended to provide an exemption for banks to tie a product or service to a "loan" – a product then easily described as a combination of the principal repayment obligation plus interest due. Since then the lending markets have evolved greatly. From a risk perspective loans are now unbundled into components of principal repayment and interest payments but they remain the economic equivalent of the original "loan" product exempted by the statute. Interest rate swaps are a component of loans and provide both lenders and borrowers the opportunity to manage more effectively the risk inherent in their relationship. As such, interest rate should be treated appropriately as a traditional bank product.

As an alternative to defining swaps as a "traditional bank product", the Board could accomplish the same result by amending the Guidance to allow an interest rate swap to be tied to a loan in the circumstances where doing so lowers the Bank's overall credit risk profile on a particular borrower. The Board could accomplish this result through its broad exemption authority.

Banks commonly condition loan approvals on the borrower purchasing a rate swap to address interest rate risk associated with a particular loan. The circumstances of these loan offers that are tied to executing interest rate swaps were acknowledged by the Guidance as entirely appropriate. The Guidance also allows that the bank may lawfully limit the borrower's field of potential interest rate swap counter parties to those that meet a minimum credit rating. The Guidance recognizes that lowering the credit risk exposure of the borrower to the swap counter party the bank improves its credit risk to the borrower on the loan. But the Guidance does not go far enough to ensure that a bank can minimize the credit risk associated with lending.

The Guidance should allow a particular loan offer to be expressly conditioned on the borrower executing a swap with the bank itself. This condition reduces the *execution risk* on the swap -- which is itself so integral to the credit decision. When the swap is done with the lending bank, the bank is fully aware of the borrower's performance on the swap. If the borrower ceases swap payments, the bank, as the counter party, will know immediately and can take appropriate action and remedy the situation including, when appropriate, foreclosing on collateral pledged. Conversely, even if a borrower executes a swap with a AAA-rated counter party, there is always a risk that *the borrower* may cease performance. Without documenting a cumbersome notification of default requirement, the AAA-rated counter party is under no obligation to inform

the bank of the borrower's default under the swap. The lending bank remains exposed to additional credit risk. If a swap could be tied to a particular loan, the bank would be able to reduce its overall risk exposure on such loans.

Alternatively, we would urge the Board to consider an interpretive approach that would deem an interest rate swap and a loan to be bundled together as "one product" where the swap is tied to the loan for legitimate credit and operational risk mitigation purposes. We believe this would be a reasonable interpretive position on the statutory meaning, consistent with statutory intent.

Closing Comments

Overall the proposed Guidance represents a welcome source of significant clarity and interpretive guidance on a complex statutory restriction. However, we urge the Board to incorporate the comments expressed in this letter before adopting the Guidance in final form.

We appreciate the opportunity to provide these comments. 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.

Yours Truly,

William W. Templeton

cc: Tim MacDonald (FRB)

Jack Hall (OCC)

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