VIA E-MAIL to regs.comments@federalreserve.gov

September 30, 2003

Board of Governors of the Federal Reserve System
20th Street and Constitution Ave. NW
Washington, DC 20551

Attention: Ms. Jennifer J. Johnson, Secretary

Re: Proposed Interpretation of Anti-Tying Restrictions of Section 106 of the Bank Holding Company Act Amendments of 1970
Docket No. OP-1158

Dear Ms. Johnson:

Compass Bancshares, Inc. ("Compass") appreciates the opportunity to comment on the proposed interpretation issued by the Board of Governors of the Federal Reserve System ("Board") concerning the Anti-Tying Restrictions of Section 106 of the Bank Holding Company Act Amendments of 1970 ("section 106").

Compass is among the top 40 bank holding companies in the United States with over $24Billion in assets and operates approximately 358 full-service banking offices in Alabama, Arizona, Colorado, Florida, New Mexico and Texas.

The Board's goal is to provide guidance on the scope and purposes, and promote greater understanding, of section 106. Compass supports the Board's efforts to provide banks and other lenders with meaningful information to help them better understand section 106. Compass supports the objectives of the proposed interpretation and offers the following comments on issues with which we have concerns or for which we have suggestions for improvement.

Section 106 Should Not Prohibit Relationship Banking Rewards

The Board in its proposed guidance states that section 106 only applies to tying arrangements that are imposed by a bank. However the Board goes on to state that a bank insurance affiliate can not mention to a customer of that affiliate that the customer could obtain financing at a reduced interest rate from the bank by virtue of being or becoming a customer of the bank affiliate. The Board states the reason for this is that the bank is varying the price of the loan based on the customer obtaining another product from a bank affiliate. However, this assumes that the desired product of the customer is the loan and not the insurance product. Oftentimes, insurance customers have no intention of borrowing funds when they apply for property or casualty insurance or seek advice from an

insurer on employee benefit plans. The Board states that a violation of section 106 can only occur when a customer is required to obtain an additional product from a bank in order to obtain the customer's desired product. In the above example the customer's desired product is insurance. Section 106 should not prohibit situations where a bank has offered a discount on loan pricing as a reward for a customer's relationship with the bank's insurance affiliate. Banks often reward customers or make pricing decisions based upon a customer's overall business relationship with the banking organization. A violation of section 106 should require that a bank condition the purchase of the desired product upon the purchase of a secondary product.

Derivatives Associated with Lending Transactions Should be Exempt from Section 106

The Board has requested comment on how certain derivatives that are often connected with lending transactions should be treated under section 106. Specifically the Board has requested comment on interest rate swaps and foreign exchange swaps. These two types of derivative instruments can be of great benefit to borrowers. Indeed the Board's proposed guidance of section 106 states that banks may "condition the availability of floating-rate credit on a requirement that the prospective borrower hedge its floating-rate exposure by purchasing a fixed-to-floating interest swap, and limiting the permitted swap counterparties to those with a certain minimum credit rating."[1] Thus it is not a violation of section 106 for a bank to require, as a condition to making credit available to a borrower, that a borrower enter into an interest rate swap with a third party. Compass recommends that the Board extend the exemptions under section 106 to permit lenders to condition an extension of credit upon the borrower's entering into an interest rate swap with the lender or its affiliate as well as third parties. The Board could accomplish this by either including interest rate swaps and foreign exchange swaps in the list of traditional banking products or by creating a new exemption for products that are reasonably tied to an extension of credit to ensure or enhance the soundness of the credit.

Interest rate swaps are most commonly used by borrowers to hedge or reduce the risk involved in fluctuations in market interest rates. Many borrowers also use these types of derivative instruments to obtain fixed rate financing when only variable interest rate financing is available to them.

Oftentimes, a lender will not be willing to make a loan available to a particular borrower on a fixed rate basis due to the perceived credit risk of the borrower. However the lender will be willing to extend a variable rate loan to the borrower and then enter into an interest rate swap with the borrower. The advantages of using the same lender for both the loan and the swap include all of the following:

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[1] 68 FR 52032 August 29, 2003.

- the lender has done a thorough credit analysis in making its loan decision and has become familiar with the credit risk and the recovery risk of the borrower. The borrower is not required to make a separate credit application to a third party swap provider, saving the borrower time and additional expenses.

- the borrower is not required to post collateral to two separate creditors.

- the lender is better able to match the suitability of the loan and the hedge because it knows the exact interest rate and interest rate reset dates under the loan agreement.

- the lender is typically able to provide the borrower with the best pricing on either the loan or the swap because it is receiving a benefit from both contracts in its overall relationship with the borrower.

- the lender does not have to adjust its loan pricing to compensate for any potential credit risk associated with a third party swap provider.

- risk of coercive pricing is minimal given the intense competition in the swap markets. The swap market has become much more efficient and borrowers are much more sophisticated and have greater access to competitor pricing. The swap curve is published in the Wall Street Journal so there is great transparency to the swap market.

- the swap can be written to terminate on the early payoff of the loan. With a third party swap provider the borrower may have an obligation under the swap even after the loan has been terminated.

- If a payment is due to the borrower under the swap it will be able to offset the payment it may be required to make under the loan.

We respectfully submit these comments with the hope that they are helpful to the Board's proposed interpretation of section 106. We would be happy to meet with representatives of the Board to discuss our comments.

Respectfully submitted,

/s/ Jerry W. Powell

Jerry W. Powell
General Counsel / Secretary
Compass Bancshares, Inc.