LAZARD

LAZARD FRÈRES & CO. LLC
30 ROCKEFELLER PLAZA
NEW YORK, NY 10020
PHONE 212-632-6000
FAX 212-632-6060
www.lazard.com

September 30, 2003

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

Re: Proposed Interpretation of Section 106 Anti-Tying Restrictions — Docket No. OP-1158

Dear Ms. Johnson:

Lazard Frères & Co. LLC appreciates the opportunity to comment on the proposed interpretation (the "Proposed Interpretation") by the Board of Governors of the Federal Reserve System (the "Federal Reserve") of the anti-tying restrictions set forth in Section 106 of the Bank Holding Company Act Amendments of 1970 ("Section 106"). Founded in 1848, Lazard is the largest privately owned investment bank in the world with over 2,500 employees located in major financial centers throughout the world.

The Proposed Interpretation appears to represent the most significant change to Section 106 since its enactment over 33 years ago, potentially impacting a critical regulatory safeguard at a time when the integrity of the financial services industry is under intense scrutiny. Profound change such as this should only be effected through a process that is beyond reproach.

I. Section 106 Should Be Amended by the Legislature

In 1999, Congress enacted the Gramm-Leach-Bliley Act, which swept away many of the regulatory safeguards that had been in effect for decades. Congress did so in clear reliance on the fact that certain key protections would remain in place. Prominent among these protections was Section 106 as it was understood at the time of enactment of the Gramm-Leach-Bliley Act. In fact, the Federal Reserve notes in the Proposed Interpretation that one of its motivations in issuing the Proposed Interpretation was "the increasing importance of section 106

in the wake of the Gramm-Leach-Bliley Act". Because of Congress' reliance on Section 106 in enacting the Gramm-Leach-Bliley Act, it would seem more appropriate for Congress to determine whether Section 106 should be amended.

In this regard, the Proposed Interpretation is far more than an administrative interpretation of existing law. Instead, as discussed below, it represents a policy decision with far-reaching consequences for many constituencies — not only affecting bank holding companies but also their competitors and customers. A policy decision of this scope affecting such a wide range of constituents can only be done equitably through the legislative process.

Moreover, the process undertaken by the Federal Reserve does not give Congress an adequate opportunity to assert its role. Since the enactment of Section 106, the Federal Reserve has declined to provide comprehensive guidance as to the scope of Section 106. Then, last month, without prior notice, the Federal Reserve issued a lengthy and complex proposal with far-reaching implications at the end of summer and is allowing little more than a month for public comment. By contrast, in proposing Regulation W, the Federal Reserve provided ample advance warning that it would be issuing the proposed regulation and then set a public comment period of over 100 days. The timing seems hurried in light of the announcement by the U.S. General Accounting Office this past spring that it would be issuing a comprehensive study of the tying practices of large banks at the request of Congressman John Dingell by October 6, 2003. In addition, earlier this year, Senator Richard Shelby, chairman of the Senate Banking Committee, announced his intention to hold hearings on Section 106. While the banking industry's need for clarity with respect to Section 106 is understandable, as it has already waited 33 years for definitive guidance, it is not unreasonable for the banking industry to wait an additional few months for the process to be completed in an appropriate manner.

II. The Addition of "Coercion" as an Element to a Section 106 Violation

In its Proposed Interpretation, the Federal Reserve sets forth "coercion" as an essential element to a Section 106 violation. See Proposed Interpretation at 12. However, the word "coercion" is wholly absent from the text of Section 106 itself, which speaks only to whether the tying at issue was a "condition or requirement" to the providing of the desired product. 12 U.S.C. § 1972(1). The Federal Reserve has, in effect, created a requirement that to violate Section 106, a tying arrangement must be "coercive". As discussed in greater detail below, this alteration of anti-tying law by the Federal Reserve is not supported by the legislative history of Section 106, overturns more than a decade's worth of established federal appellate case law and, when viewed in conjunction with other Federal Reserve guidance, potentially undermines the Federal Reserve's ability to enforce Section 106.

A. The Legislative History Does Not Support a "Coercion" Element to Section 106

The Senate Report accompanying the Bank Holding Company Act Amendments of 1970 (the "1970 Amendments") sets forth the purpose of Section 106's anti-tying restrictions: "to provide specific statutory assurance that the use of the economic power of a bank will not lead to a *lessening of competition* or *unfair competitive practices*. Thus, the provision is intended to affirm in statutory language the principles of *fair competition*. The committee does not intend, however, that this provision interfere with the conduct of appropriate traditional banking practices." S. Rep. No. 1084, 91st. Cong., 2d. Sess., *reprinted in* 1970 U.S.C.C.A.N. 5519, 5535 (emphasis added).

In other words, Congress found it inherently unfair for banks to leverage their economic power by creating conditional transactions that tied the availability of credit to other products outside traditional banking practices. Congress' concern was that banks, which had previously been prohibited from offering non-banking services at all, not be allowed to leverage their exclusive right to offer banking services to compete unfairly with others in providing non-banking services, such as insurance and investment banking. The potential competitive unfairness arises from the banks' ability to provide banking services on more favorable terms in exchange for a customer purchasing non-banking services, an economic benefit that non-banks are unable to offer. Thus, the Federal Reserve's introduction of a "coercion" requirement could be determined to be misplaced. Congress believed that a finding that the tying at issue was a "condition or requirement" to the providing of the desired product was sufficient in and of itself to demonstrate an unfair competitive practice of the type that Section 106 was designed to prevent, without the need of an additional finding of "coercion".

The view that Congress did not intend for "coercion" to be an element of a Section 106 violation is further supported by the Conference Report accompanying the 1970 Amendments, which stated that "[t]ie-ins may result from actual coercion by a seller *or* from a customer's realization that he stands a better chance of securing a scarce and important commodity (such as a credit) by 'volunteering' to accept other products or services rather than seeking them in the competitive market place. In either case, competition may be adversely affected, as customers no longer may purchase a product or service on its own economic merit. Reciprocity, which involves the induced provision of products and services by the customer rather than his acceptance of other products and services, may also come about in these involuntary *or* 'voluntary' manners." Conf. Rep. No. 1747, 91st Cong., 2d Sess., *reprinted in* 1970 U.S.C.C.A.N. 5561, 5569 (emphasis added). The use of quotation marks around "volunteering" and "voluntary" reflects Congress's recognition that actions purporting to be voluntary may instead be recognition that a condition or requirement is being imposed.

By dismissing the full weight of legislative history in a footnote, see Proposed Interpretation at 15 n.36, the Federal Reserve proposes a unilateral and dramatic shift from the

original intent of the 1970 Amendments and, in so doing, may be determined to be stepping beyond its delegated powers, which are to permit such exceptions to anti-tying restrictions that are not contrary to the purposes of the statute. See 12 U.S.C. § 1972(1).

B. Adding "Coercion" as an Element to a Section 106 Violation Overturns Established Federal Case Law

Relying on the legislative history described above, the Fifth Circuit has held, and the Ninth Circuit has concurred, that coercion is not an element of a Section 106 violation. See S&N Equipment Co. v. Casa Grande Cotton Finance Co., 97 F.3d 337, 346 n.18 (9th Cir. 1996); Dibidale of Louisiana v. Am. Bank & Trust Co., 916 F.2d 300, 305-07 (5th Cir. 1990), *amended on other grounds on denial of rehearing and reinstated*, 941 F.2d 308 (5th Cir. 1991).

By proposing "coercion" as an element of prohibited tying arrangements under Section 106, the Federal Reserve proposes unilaterally to overturn more than a decade's worth of federal appellate case law. This change of direction is surprising, as it rests exclusively on federal cases interpreting general antitrust statutes, not Section 106. See Proposed Interpretation at 11-12. However, as the Federal Reserve itself states, "Congress determined to subject tying arrangements by a bank to a *stricter* standard." Proposed Interpretation at 9 (emphasis added); see also Dibidale at 305 ("the anti-tying provisions were intended to regulate conditional transactions in the extension of credit by banks *more stringently* than had the Supreme Court under the general antitrust statutes" (emphasis added)). One clear way that Section 106 tying arrangements are held to a "stricter" standard is by not requiring a finding of "coercion".

By way of example, the Sherman Act's requirement of proof of force or coercion is consistent with the Sherman Act's "market power" component. See Eastman Kodak Co. v. Image Technical Services, Inc., 504 U.S. 451, 464 (1992) ("[a] necessary feature of an illegal tying arrangement [is] appreciable economic power in the tying market. Market power is the power 'to force a purchaser to do something that he would not do in a competitive market.'"). In contrast, Congress intentionally omitted from Section 106 any requirement of a showing of "market power"; instead, Congress assumed that "the power to coerce is inherent in the banking relationship itself" because of the need for credit, the transaction costs associated with severing and establishing a banking connection and the loss of confidential financial data that can result from a banking change. Dibidale at 306.

In other words, Congress did not see a need to include a separate "coercion" requirement into Section 106 and, instead, molded Section 106 around the presumption that the mere existence of a banking relationship presumes that coercive forces are at work. By proposing to take the step of inserting the element of "coercion" into Section 106, the Federal Reserve would fail to implement the stricter standard required by Section 106, as compared with

general antitrust statutes, and could be viewed as exceeding its delegated authority by overturning the long-established federal case law precedent of the Fifth and Ninth Circuits.

C. The Standard of Proof Required by a "Coercion" Element Potentially Undermines the Federal Reserve's Enforcement of Section 106

The Federal Reserve states that a finding of "coercion" will depend upon "the specific facts and circumstances surrounding the bank-customer relationship". Proposed Interpretation at 15. However, the Federal Reserve blurs what actions might be deemed "coercive" under the facts and circumstances by observing in its Proposed Interpretation that while "coercive" tying is prohibited by Section 106, "aggressive" cross-marketing and cross-selling may be tolerated. See Proposed Interpretation at 13. Curiously, the Federal Reserve provides no guidance as to the difference. As a direct consequence of this ambiguity, banks may defend seemingly prohibited behavior as simply "aggressive" but not "coercive" behavior.

Dibidale is instructive in this regard. In Dibidale, a developer approached a bank for a loan. The bank made repeated attempts to encourage the developer to hire the bank's selected contractor as project manager, although the bank never expressly stated that hiring the contractor was a condition of the loan. Instead, the bank applied steady pressure until the developer ultimately chose the bank's contractor. The day after the developer made this decision, the bank issued its loan commitment letter. Despite the pressure applied by the bank, the bank documents required the developer to certify that it had chosen the contractor from among "numerous possible general contractors" and that it "was not coerced or forced" by the bank to choose the contractor. What the developer did not know was that through reorganization the contractor's accounts receivable had been assigned to an affiliate of the bank.

If "coercion" were an element of a Section 106 violation, lenders like the one in Dibidale would routinely insert exculpatory clauses into their loan agreements that would require the borrower to attest to its "voluntary" choice to enter into a loan conditioned on what otherwise might be perceived as a prohibited tying arrangement. If such lenders also avoided creating a record of demanding acceptance of a tied product or service, they could later argue that no explicit "coercion" took place and that any implicit "coercion" was simply "aggressive" cross-marketing, acknowledged as "part of the nature of ordinary business dealings" by the Federal Reserve itself. Proposed Interpretation at 13.

As a direct result, the introduction of a "coercion" element would raise the standard of proof for a Section 106 violation so high as to largely eliminate enforcement. Under the guidance set forth by the Proposed Interpretation, Federal Reserve examiners will find themselves hard-pressed to gather sufficient "specific facts and circumstances" to distinguish "coercive" cases from merely "aggressive" ones, particularly where the examination centers on wary banks that have avoided the roadmap of evidence listed by the Federal Reserve as relevant

or useful in making a coercion determination. See Proposed Interpretation at 15-16. In other words, the Federal Reserve's guidance is tantamount to changing Section 106's "condition or requirement" test to an "express condition or requirement" test, which is the type of change that may be beyond the Federal Reserve's delegated authority to make and that, in any event, would severely undermine Congress' attempt to curb the abuse of tying arrangements by banks.

III. Is There a Basis for Creating a Mixed-Product Arrangements Exception to Section 106?

The weakness of the arguments for the insertion of a "coercion" element into Section 106 fundamentally undermines the rationale for a Federal Reserve-created exception from Section 106 for mixed-product arrangements. See Proposed Interpretation at 12 n.30 ("arrangements that allow the customer the option to satisfy a condition imposed by the bank through the purchase of traditional bank products or other products do not *force* a customer to purchase a non-traditional product in violation of Section 106 if the customer has a meaningful choice of satisfying the condition through the purchase of traditional bank products" (emphasis added)). If there were no "coercion" element to a Section 106 violation, then the existence of an option to purchase traditional products would be largely irrelevant to the analysis as to whether the purchase of non-traditional products was a "condition or requirement" to the client obtaining its desired product. The mere existence of a tying arrangement whereby the purchase of a non-traditional product served as a "condition or requirement" — even if the client were presented with other choices — would be sufficient on its own to support a finding that a bank violated Section 106.

However, even assuming that a "coercion" element exists, a defense of a mixed-product arrangements exception suffers from the additional infirmities of being ambiguous in its implementation, opening the door to significant abuse of Section 106, and undermining the Federal Reserve's ability to enforce Section 106.

A. The "Meaningful Option" Test is Ambiguous

The Federal Reserve notes that the purpose of its Proposed Interpretation is to "assist banks and their customers in understanding the scope of the anti-tying restrictions of the statute." Proposed Interpretation at 1. However, the proposed guidance on mixed-product arrangements appears to obscure, rather than clarify, the boundaries of anti-tying restrictions.

The Federal Reserve states that a bank client may choose non-traditional products as part of a tying arrangement, so long as it had a "meaningful option" to choose traditional products. By way of example, the Federal Reserve observes that offering cash management services would be a "meaningful option even though Company had a long-standing cash management arrangement with another financial institution so long as Company may legally

transfer its cash management business to Bank." Proposed Interpretation at 20 n.51. However, the Federal Reserve's proposed guidance raises more questions than it answers. Does it mean, that in order to determine whether a "meaningful option" has been presented to a client, a bank must not only offer a range of traditional products, but also inquire (and make assessments) as to (a) whether the client needs those products, (b) whether those products are already provided to the client by another provider, and (c) if so, whether the client has the legal right to switch providers? Is this an objective test or is the bank permitted to rely on representations made by the client (who may be seeking certain products or a substantial discount from the bank)? In short, the Proposed Interpretation creates such ambiguity that it would be difficult for a bank *ex ante*, and virtually impossible for the Federal Reserve examiners after the fact, to discern whether a "meaningful option" has been provided to a client. See Proposed Interpretation at 29 ("the assessment of a customer's ability to satisfy the condition associated with a mixed-product arrangement solely through the purchase of traditional banking products [should be] made *prior* to, and reasonably *current* with, the time the arrangement is offered to the customer" (emphasis added)).

More importantly, the Federal Reserve fails to address the possible *qualitative* differences between traditional and non-traditional products offered by a bank. It would seem that the wary bank would be wise to offer enough traditional products to meet the technical definition of giving the client a "meaningful option" but make the pitch for non-traditional products much more attractive. After all, the Federal Reserve's focus is on a "meaningful" option, not options between traditional and non-traditional products of equal attractiveness. Given that the Federal Reserve has sent a signal that "aggressive" cross-marketing and cross-selling activities may be tolerated, banks that might not otherwise do so may try to use the inherent ambiguity in the Federal Reserve's description of "meaningful option" to push the envelope on what it means to give a client a "meaningful option" in order to leverage their way into markets for non-traditional products. This temptation will likely be greatest where a potential client approaches a bank for financing in connection with a potential acquisition. Although the bank may present the client with a "menu" of traditional and non-traditional products, it will be painfully obvious to the client in this era of "pay to play" that it must retain the bank's affiliate as its advisor in connection with the merger in order to maximize the client's chances for obtaining credit. The Federal Reserve must impose special safeguards to protect the client and ensure fair competition in this scenario.

B. The Creation of a Mixed-Product Arrangements Exception May Present Opportunities for Abuse of Section 106

The proposed guidance surrounding mixed-product arrangements appears to be ripe for abuse as traditional products (i.e., loan, discount, deposit and trust services) may represent lower margins for banks than the high-end, non-traditional products marketed by many banks or their affiliates (e.g., bond and equity offerings, mergers and acquisitions advice,

insurance products). In cases where the disparity on margins is great, the following situation may develop: Bank has a high hurdle rate for a client that has only a credit facility with Bank. Bank knows client is considering a large equity offering. Bank tells client that it needs to generate significantly more fees for Bank and its affiliates or Bank will not roll over the much-needed and soon-to-be-expiring credit facility that client views as essential to stabilize its pre-offering capital structure. Bank's affiliate offers to underwrite the equity offering. Bank offers client a range of low-margin traditional products to meet the hurdle rate. However, since these products yield low margins, client would have to transfer much of its traditional banking needs to Bank, even though Bank may charge more than client's current providers for these products or provide inferior service, which is much less attractive than simply giving Bank's affiliate an equity offering that alone would be sufficient to meet Bank's hurdle rate for the year. As this example illustrates, a bank can leverage its lending business to enter into non-traditional businesses while at the same time offering its client a "meaningful option" to choose traditional products. Although this scenario gives rise to the type of unfair competition against which the 1970 Amendments were designed to protect, it would appear to be entirely permissible under the Proposed Interpretation.

C. The Ambiguities Surrounding the Mixed-Product Arrangements Exception Potentially Undermines the Enforcement of Section 106

The proposed guidance regarding mixed-product arrangements raises enforceability issues. Given the gray area regarding whether a bank has provided its client with a "meaningful option" to choose traditional products, the Federal Reserve may be hard-pressed to piece together enough "specific facts and circumstances" to prove that prohibited tying arrangements have been orchestrated by a wary bank, which may offer enough traditional products to technically meet the requirements of the Proposed Interpretation but is aggressively pushing the client to choose non-traditional products. Moreover, the Federal Reserve has explicitly stated that "a less detailed and granular review likely would be required for a bank to establish a good faith belief that a large, complex company has a meaningful option of satisfying a condition solely through the purchase of traditional bank products than a smaller company with less complex business operations." Proposed Interpretation at 29. Such guidance appears to run counter to the very purpose of Section 106 — i.e., to guard against the unfair competitive effects of bank tying arrangements. Since the dollar amounts involved in transactions (and the potential for tying abuse) correlates with the size of the company involved, the unfair competitive effects of tying arrangements are magnified with larger companies and therefore it is with respect to larger companies that the need for proper enforcement of Section 106 is at its highest, not (as the Proposed Interpretation suggests) its lowest.

IV. Derivative Products Should Be Treated as Separate, Non-Traditional Products

The Federal Reserve has asked for comment on how interest rate swaps, foreign exchange swaps and other derivative products that often are connected with lending transactions should be treated under Section 106. See Proposed Interpretation at 11. Such derivative products should be treated as non-traditional products because they do not fit the definition of "traditional products" (i.e., loans, discounts, deposits or trust services). See 12 U.S.C. § 1972(1). This view is supported by the Federal Reserve itself, which has repeatedly labeled derivative products as "non-traditional" banking activities. See, e.g., Action of Board of Governors of the Federal Reserve System, Risk-Focused Supervision of Large Complex Banking Organizations (June 23, 1999) at 2; see also Remarks by Alan Greenspan before the Garn Institute of Finance, University of Utah Salt Lake City, Utah, "The New Risk Management Tools in Banking" (Nov. 30, 1994).

In addition, as a general matter, a loan should not be lumped together with related hedges and therefore viewed as one product. As the Federal Reserve notes, "two products are separate and distinct for purposes of Section 106 only if there is sufficient consumer demand for each of the products individually that it would be efficient for a firm to provide the two products separately." Proposed Interpretation at 10 n.23. Interest rate and foreign exchange swaps are products that on their own generate sufficient consumer demand as to be sold as separate products. A wide variety of financial institutions stand ready to hedge a client's interest rate or foreign exchange risk, whether that risk is generated from a lending transaction or some other source, such as foreign income. That is not to say that there cannot be financing situations where the loan and the swap product required to hedge it are so unique that only the bank providing the financing would be willing to provide the hedge. In those specific cases, viewing the loan and related derivative as one product may be justified, so long as the unique loan and hedge were introduced by the bank for financing and not tying purposes. However, the run-of-the-mill hedging requirements of most lending transactions give rise to a separate class of products. Given the original intent of the 1970 Amendments, to the extent that tying the lending product and the derivative product would lead to unfair competition, it should be prohibited by Section 106.

V. The Proposed Interpretation Places an Impossible Burden on Federal Reserve Examiners

On August 27, 2003, only two days after the issuance of the Proposed Interpretation, the Federal Reserve announced a Cease and Desist Order against WestLB AG relating to alleged violations of Section 106 by WestLB AG over two years ago. This order marked the first time that the Federal Reserve had announced a formal enforcement action against a banking organization relating to violations of Section 106 in the 33 years since they

were enacted. The enforcement action was taken against WestLB AG only after complaints regarding that institution's compliance with Section 106 — including a copy of a commitment letter issued by West LB AG — were forwarded to the Federal Reserve by Congressman John Dingell in September 2002.

The complexities added by the Proposed Interpretation will only make Section 106 more difficult to enforce and violations more difficult to detect by further blurring the line between permissible and impermissible conduct. Under the Proposed Interpretation, establishing whether a violation has occurred requires a detailed examination of the facts and circumstances underlying each transaction. The Proposed Interpretation states that, in addition to the terms of each transaction:

> Other information that may be useful in determining whether a condition or requirement exists and, if so, whether the bank coerced the customer into accepting the condition or requirement include any correspondence and conversations between the bank and the customer concerning the transaction; the marketing or other materials presented to the customer by the bank or an affiliate; the bank's course of dealings with the customer and other similarly situated customers; the banking organization's policies and procedures; the customer's course of dealings with the bank and other financial institutions; the financial resources and level of sophistication of the customer; and whether the customer was represented by legal counsel or other advisors.

It will be virtually impossible for the Federal Reserve to monitor whether tying violations have occurred or for a private litigant to prove a violation. In implementing the guidance set forth by the Proposed Interpretation, Federal Reserve examiners would be able to analyze only a handful of transactions at most during the course of a bank examination for compliance with Section 106. Even with respect to those transactions, it will not be possible to gather much of the information suggested above, such as conversations between the bank and the customer, and the customer's course of dealings with other financial institutions.

VI. An Inappropriate Time for Further Deregulation of the Financial Services Industry

The scandals that have marred the financial services industry in recent years need not be repeated. Only recently has the Federal Reserve entered into formal written agreements with two major financial institutions regarding their relationship with Enron. The implications of these events are clear — the multiplicity of conflicting interests that large financial services organizations have in any given transaction have grown through deregulation to a point where they are almost impossible to manage. Because of these scandals, the financial services industry as a whole must rededicate itself to regaining the trust of its customers and the public. That trust

would be undermined, rather than bolstered, if, for example, the Federal Reserve makes it easier for banks to place themselves in the conflicted position of providing insurance or investment banking advice while also extending credit. The need for companies to choose an investment banking firm based solely on the quality of the advice that it renders (rather than the credit that it has extended), and the independence of that advice (rather than advice that may be influenced by an advisor's role as creditor), exists even more so today than it did 33 years ago when Section 106 was enacted. At the same time, the banking system can hardly afford the burden that can be placed on it by banks extending credit in their pursuit of high-margin, non-traditional banking revenues.

Furthermore, since the enactment of Section 106, the banking industry has experienced tremendous consolidation. As a result, the commercial lending market is increasingly dominated by a handful of global commercial banks. As this market has become more and more concentrated, the ability of these banks to pressure customers into purchasing other products or services in order to obtain credit has grown commensurately.

To put it plainly, this is the wrong time for further deregulation.*

VII. There Must Be a Full and Fair Process

As has been discussed, the Proposed Interpretation appears to represent fundamental changes to Section 106, and at a particularly inauspicious time. In the event that the Federal Reserve determines to move forward with the consideration of the Proposed Interpretation and not through the legislative process, it must do so with a full and fair process. Just as the Federal Reserve recently codified its interpretations of Section 23A of the Federal Reserve Act in the form of a regulation, the Proposed Interpretation should also be issued as a regulation. A regulation would provide more detailed and definitive guidance in a complicated regulatory area. As the Federal Reserve noted in proposing Regulation W in lieu of continuing to issue interpretive guidance, "the adoption of a comprehensive regulation would simplify the interpretation and application of sections 23A and 23B, ensure that the statute is consistently interpreted and applied, and minimize burden to the extent consistent with the statute's goals".

* We would add that although the Proposed Interpretation broadens the ability of banks to provide mixed-product arrangements (e.g., tying mergers and acquisitions advice to the providing of credit), such banks do not disclose publicly their aggregate fees in connection with such mixed-product arrangements, rendering their actions all the less transparent. This lack of disclosure stands in sharp contrast to, and under relevant circumstances may contravene, the SEC's requirement that fees received by advisors be explicitly disclosed in proxy materials distributed in connection with a merger involving a publicly traded company.

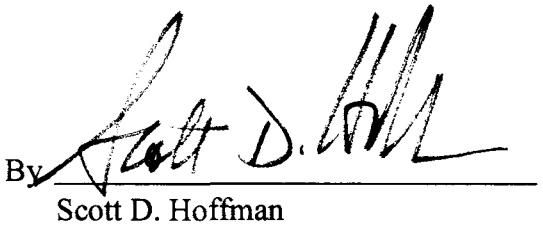
At the very least, the comment period should be extended. As noted above, in proposing Regulation W, the Federal Reserve set a public comment period of over 100 days. Given the different constituencies affected by the changes to Section 106 of the magnitude set forth in the Proposed Interpretation, the Federal Reserve should also hold public hearings. Public hearings would allow the Federal Reserve to engage in detailed discussions with representatives of all affected constituencies that cannot be done simply by inviting written comments. Public hearings are a fundamental component of the legislative process because legislators recognize that important public policy decisions must be preceded by a dialogue with affected constituents. The Federal Reserve's consideration of the Proposed Interpretation should be no different. In 1987, the Federal Reserve held a public hearing to consider the implications of permitting bank holding companies to venture into securities underwriting. Changes affecting a fundamental regulatory safeguard should be no different.

* * * * * * *

Thank you for the opportunity to share our views on the Proposed Interpretation.

Very truly yours,

LAZARD FRERES & CO. LLC

By 

Scott D. Hoffman
Managing Director and General Counsel