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September 30, 2003

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

Re: Federal Reserve System Docket No. OP-1158

Dear Ms. Johnson:

Morgan Stanley and Goldman Sachs welcome the opportunity to offer comments to the Board of Governors of the Federal Reserve System on the proposal of the Board to adopt an interpretation of the anti-tying restrictions of Section 106 of the Bank Holding Company Act Amendments of 1970 and related supervisory guidance. We are directing our comments only with respect to the provisions of the proposal that apply to commercial credit.

We recognize the important policy objectives identified by the Board in seeking to clarify and delineate its views on Section 106. We applaud the Board's initiative in proactively differentiating bundling of services, which validly enhances the value proposition for customers and banks, from illegal tying arrangements. The Board's proposal underscores the Board's vigilance in enforcing the anti-tying statute and is an acknowledgement that the statute's purpose is to prevent banks from offering credit products in a coercive manner in order to gain a competitive advantage in markets for other products or services. We hope that the Board's proposal will encourage the loan marketplace and its players to embrace two critical policies: loan price transparency and informed choice for the customer.

Price Transparency

As a general matter, we are hopeful that the proposal will lead to enhanced price transparency in the loan market. Even with Congress' passage of the Gramm-Leach-Bliley Act in 1999 and such Act's implicit support of bundling benefits that would stem from the removal of the barriers of affiliation among financial providers, Congress did not repeal or weaken Section 106. While our concerns remain over the practice of tying, we firmly believe in the benefits of bundling when done in a manner consistent with proper pricing and transparency. By having loan price transparency, a customer has an

ability to choose the best product or mix of products. It provides a more efficient and rational secondary loan market which enhances liquidity for loans and the customer company's credit in general, and provides a clearer picture to regulators of the mechanics of pricing in the loan market.

Informed Choice - Mixed Product Arrangements

More specifically, we note that the Board's proposal only addresses the Section 106 anti-tying statute and has not addressed pricing as it relates to Section 23B of the Federal Reserve Act, which in our view is a significant provision relevant to current bank practices and safety and soundness. The Board's proposal implicitly acknowledges that bank credit is being mispriced because it contemplates (correctly, in our judgment) that banks will need to supplement the return in that credit extension with ancillary services if they are to achieve a satisfactory overall return on capital. If the ancillary services being rendered were in fact traditional banking services provided by the bank syndicate as a whole, no Section 23B issue would arise because the banks (not the securities affiliates) would realize, in aggregate, a satisfactory return. In practice, however, traditional bank products often do not provide an adequate return to the banks; investment banking products are essential to generating a satisfactory return. As such, the banking entities are extending credit without adequate compensation while the securities affiliates of bank holding companies realize the profits from investment banking activities.

We agree with the Board that it is important that the customer have a "meaningful option to satisfy the bank's condition solely through the purchase of traditional bank products." We believe that the analysis of whether there is meaningful choice needs to be assessed collectively for the commercial banks participating in the lending group rather than for each individual bank. While an individual bank may be able to obtain its hurdle rate by giving the customer a choice of bank or non-bank services, given the modest profit potential of traditional bank products relative to the required bank hurdle rates, in most cases it is unlikely that the hurdle rates of all the banks participating in the loan could be satisfied without offering investment banking services in exchange for credit extension.

We believe that the Board's objective should be to enhance commercial loan price accuracy. In this regard, a bank should be required to provide the customer, as one of its options of meeting the bank's internal hurdle rate, the price of the commercial loan, as if it were the only option available to meet the bank's internal hurdle rate. By so doing, a customer can then fairly compare the various other options, including traditional and non-traditional bank products. This will give the customer a meaningful choice among products and will help ensure compliance with the spirit of Section 23B.

We would be pleased to discuss any of the comments in this letter with the Board or its staff. We are encouraged that the Board will continue to be proactive in its pursuit of enhanced transparency in the loan market place. If we can be of further assistance to the

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Board or its staff in this regard, please do not hesitate to contact Laura DeForest at (212) 762-7639 of Morgan Stanley, or Frances R. Bermanzohn at (212) 902-2609 of Goldman Sachs.

Sincerely yours,

Laura DeForest

Morgan Stanley

Frances R. Bermanzohn

Goldman Sachs