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March 26, 2007

Electronic Submission

Nancy C. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

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

Re: Definitions of Terms and Exemptions Relating to the "Broker" Exceptions for Banks; File No. S7-22-06; Docket No. R-1274; 71 Federal Register 77522, December 26, 2006;

Re: Exemptions for Banks Under Section 3(a)(5) of the Securities Exchange Act of 1934 and Related Rules; File No. S7-23-06; 71 Federal Register 77550, December 26, 2006.

Dear Ms. Morris and Ms. Johnson:

This letter is written in response to the request of the Securities and Exchange Commission ("the Commission") and the Board of Governors of the Federal Reserve System ("the Board") for comments on the proposed Regulation R exceptions for banks from the definition of "broker" under 3(a)(4) of the Securities Exchange Act of 1934 ("the Exchange Act"), as amended by the Gramm-Leach-Bliley Act ("GLB").

Wells Fargo & Company ("Wells Fargo") is a diversified financial services company which includes a full range of trust and fiduciary services, including personal, institutional, retirement, and corporate trust businesses which will be significantly

affected by the proposal. Wells Fargo offers financial services in all 50 states, as well as retail and institutional securities and brokerage businesses.

Wells Fargo is a member of the American Bankers Association ("ABA"). We have consulted with the ABA and reviewed the ABA comment letter and concur with the positions set out in that letter.

In addition, we wish to highlight certain issues of particular significance to Wells Fargo:

1. Networking Arrangements:

A. Definitions of "Institutional Customers" and "High Net Worth Customers":

We agree with the comments made by the ABA regarding the definitions of high net worth and institutional customers. We specifically encourage the Commission and the Board to adopt a definition of high net worth customer that conforms to the definition of accredited investor ultimately adopted by the Commission under its proposal concerning investors in certain private investment vehicles. We note that the Commission's current rules permit a natural person having a net worth of $1 million to invest in private equity funds. The Commission has recently proposed that individuals must have a net worth of at least $2.5 million dollars in assets to invest in hedge funds. This proposal has been widely criticized through the comment process as being overly restrictive. To adopt an even more restrictive standard under proposed Regulation R would create an obvious inconsistency without any rationale. If anything, the potential risks addressed through the high net worth test in proposed Regulation R are significantly lower than those present with investments in private equity or hedge funds, due to banking regulations, state laws, and fiduciary principles. Thus, the rule should be able to achieve its customer protection objectives with a lower threshold.

The proposed test for institutional investors is also too high, if not altogether unnecessary. Most institutional investors, whether a for-profit business, a public body, or a non-profit entity, have either internal or external advisors to assist in their investment activities. For this reason, there would appear to be no need to require a high net worth or asset requirement for institutional investors. To the extent the Commission and Board determine that some criteria are necessary, we agree with the ABA comment letter that a measure based on sales would be more appropriate.

Finally, we suggest that the Commission and Board separately address the unique situation posed by municipalities as a subset of institutional investors. Municipalities have specific processes established by law for electing or selecting the individual or group to make investment decisions. There is also typically a set framework that governs municipal investments, which involves individuals who are selected for their ability to

make investment decisions. As they deem necessary, municipalities often retain financial advisors specifically to provide an additional layer of independent advice and to protect the municipalities' interests. The framework established by applicable law is what the municipality has determined is necessary and adequate to protect its interests, and should presumptively be considered adequate. There is no need for Regulation R to overlay additional protections beyond those adopted by duly authorized municipal representatives.

B. Bonus Plans:

Wells Fargo shares the understanding that the proposed rule will not interfere with traditional bank bonus plans, as described in the ABA's comment letter. Given the importance of the issue, Wells Fargo would expect that were the Commission and the Board's understanding to differ materially from that set forth in the ABA's letter, those differences would be clarified and financial institutions would be given an opportunity to submit comments thereon.

2. Treatment of Escrow Accounts:

We seek acknowledgement that escrow accounts, which are a traditional offering of bank trust departments, are included in the proposal. We ask for confirmation that escrow accounts over which a bank has investment discretion and which are not subject to direction from an escrow client are included in the definition of trust or fiduciary account. In addition, we recommend clarification that an account in which a bank is acting as an escrow agent and does not exercise investment discretion (i.e., the bank acts in a custodial role at the direction of another party), be treated as an exempt account under the custodial exception.

3. Trust & Fiduciary Activities Exception:

Definition of Relationship Compensation:

Under the proposed rule, "relationship compensation" can include a flat or capped per order processing fee, paid by a customer or beneficiary, that is equal to not more than the cost incurred by the bank in connection with executing securities transactions for trust or fiduciary accounts. We request reconsideration of the requirement that these fees be limited to the bank's costs. Banks typically charge a transaction fee based on a set fee schedule, and the fee is not necessarily tied to an actual cost of performing the transaction. As with other types of fiduciary compensation, it would not be unusual for a bank to include a reasonable profit margin for the services it performs in conjunction with executing a securities transaction. Fees are established based on a reasonableness

standard, taking into consideration competitive industry fee standards, and are a very small portion of the overall revenues received on fiduciary accounts. In addition, there is no administratively feasible way to account for transaction charges based on cost as a line item for purposes of the chiefly compensated test. Accordingly, we recommend that the "at cost" criterion be eliminated, or at least be redefined as any reasonable charge consistent with the actual transaction services being performed, keeping the entire category within the relationship compensation definition. We believe this position to be consistent with the ABA recommendation that securities settlement fees be characterized as administrative fees.

In addition, we support and reinforce the recommendation made by the ABA in its letter relative to the broadened definition of revenues paid by registered investment companies. The proposal states that asset under management fees include fees paid by investment companies. We agree with the ABA that the payments are not always made to the bank by the investment company directly, and may be paid through an affiliate or agent of the investment company (*e.g.*, the distributor, investment advisor or transfer agent). The language in the proposal should be clarified to include payments made by these other entities, thereby reflecting current banking practices.

4. Safekeeping and Custody Exception:

Employee Compensation Restriction:

We are concerned that there is a possible unintended restriction relative to employee compensation in connection with employee benefit plans under this provision. It is important that the rule be clarified to provide that any stated restrictions are not intended to disallow the payment of compensation to employees for the sale of new custody accounts that include mutual fund positions for which the bank may receive revenue from the mutual fund company. It is a common practice to pay employees compensation based on potential annualized revenues that could be received from the establishment of a custodial account. In many cases a client may direct the investment of an account into a money market or other mutual fund investment for which the bank will receive revenue from the mutual fund company (or its affiliates or agents). These potential mutual fund revenues may be included in the annualized revenue calculation used to determine employee compensation.

Concern arises because the proposal states that no bank employee may receive compensation (including a fee paid pursuant to a 12b-1 plan) from the bank, the executing broker or dealer, or any person, that is based on (1) whether a securities transaction is executed for the account, or (2) the quantity, price or identity of the securities purchased or sold by the account. In order for any mutual fund revenues to be paid to the bank, a securities transaction must take place and the quantity and identity of

the fund must be known, thus raising concerns under the aforementioned restriction. However, it is assumed the rule was not intended to restrict the payment of employee compensation based on the annualized revenue to the bank.

The proposed rule goes on to state that there is no prohibition against a bank employee's receipt of compensation that is based on a customer establishing a custodial account with the bank or that is based on the total amount of assets in a custodial account at account opening or at any other time. We request that any confusion be removed by clarification of the rule to permit a bank employee to receive compensation based on potential mutual fund revenues received by the bank.

Wells Fargo appreciates that the Commission and the Board have issued this much improved proposal and we are pleased to have the opportunity to comment. We urge full consideration of the comments made herein and by the ABA in its comment letter and we will be happy to discuss the issues in more detail. Please contact the undersigned to discuss any concerns addressed or questions raised by this letter.

Sincerely,

David W. Lauer