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October 9, 2007

Via email to rule-comments@sec.gov.

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File Number S7-18-07

Ladies and Gentlemen:

In connection with the proposed revisions of limited offering exemptions under Regulation D, we are submitting the following comments on behalf of several U.S. banks and trust companies that act as discretionary fiduciaries on behalf of their clients. These comments are being submitted in reference to the request listed under heading 4, entitled "Adding Categories of Entities to List of Accredited and Large Accredited Investors."

Introduction

U.S. banks and trust companies (collectively, "banks and trust companies") that have trust powers may commingle the assets of pension, profit sharing and similar plans into collective investment funds (also sometimes called "collective trust funds") for the more efficient administration and management of such assets. Such banks and trust companies also may act as trustees of trusts, executors and administrators of estates, and guardians of minors and other persons (collectively, the "trusts") for other institutions and natural persons. To aid the administration of such trusts, the banks and trust companies may commingle some or all of such assets into common trust funds. In this case, the bank or trust company makes the decision to invest any assets of the trust into the common trust fund, not the grantor or beneficiaries of such trust.

For both a collective investment fund and common trust fund, the bank or trust company has ultimate discretion over the investment of the assets of the collective investment fund or common trust fund.[1] None of the participants in such funds has any discretionary authority with respect to the management of the assets of the collective trust fund or common trust fund.

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[1] In some circumstances, another bank or trust company may act as co-trustee of the collective investment fund or common trust fund, and in some circumstances, the trustee may retain an investment adviser or manager to assist the trustee in connection with the investment and reinvestment of the assets of the collective investment fund or common trust fund.

As discretionary fiduciaries with respect to collective trust funds and common trust funds, our bank and trust company clients seek to make the best investments possible, which may include investing in Rule 144A securities. However, as described below, such banks and trust companies have been frustrated in their ability to acquire Rule 144A securities for certain of their collective investment funds and common trust funds.

Collective Trust Funds

Under Rule 144A(a)(1)(i)(F), a collective trust fund will qualify as a "qualified institutional buyer" if in the aggregate the collective trust fund owns and invests on a discretionary basis at least $100 million in securities of issuers that are not affiliated with the collective trust fund. However, Rule 144A(a)(1)(i)(F) provides that a collective trust fund will not be a qualified institutional buyer if it includes H.R. 10 plans ("Keogh plans") as participants.[2] Therefore, a collective trust fund with Keogh plans as participants cannot purchase Rule 144A securities, even though such purchases would benefit the entire trust fund and may be desirable investments from a fiduciary perspective.

We note that including certain Keogh plans as participants in collective trust funds does not alter the status of such collective trust funds under the Investment Company Act of 1940, as amended (the "1940 Act"), and that Rule 180 promulgated under the Securities Act of 1933, as amended (the "1933 Act"), permits a bank or trust company to offer and sell securities of a collective trust fund that includes as participants so-called "sophisticated Keoghs," without the need to register the offer and sale under Section 5 of the 1933 Act, in reliance on Section 3(a)(2) of the 1933 Act. As a result, our clients currently may include sophisticated Keogh plans in their collective trust funds, but doing so makes the collective trust fund unable to invest in Rule 144A securities. As a result, our clients are requesting that Rule 144A(a)(1)(i)(F) be amended to eliminate the exclusion of Keogh plans in its entirety or that, at a minimum, Rule 180 "sophisticated Keoghs" be deemed eligible participants in collective trust funds under Rule 144A(a)(1)(i)(F). The failure to make such a change would lead to an inconsistent treatment of sophisticated Keoghs under the 1933 Act and needlessly preclude a collective investment fund that otherwise would qualify as a "qualified institutional buyer" under Rule 144A from so qualifying.

We also note that Rule 144A(a)(1)(i)(E) permits any employee benefit plan within the meaning of title I of the Employee Retirement Income Security Act of 1974 to qualify as a "qualified institutional buyer" as long as it owns and invests on a discretionary basis at least $100 million of qualifying securities. This particular subsection of Rule 144A does not preclude Keogh plans with common law employee participants (whether or not they would qualify under Rule 180)

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[2] IRAs are also not permitted under Rule 144A(a)(1)(i)(F), but for securities law and tax reasons, none of our bank and trust company clients admits IRAs to its collective trust funds. We believe that this is the case for all or virtually all collective trust funds established by banks and trust companies.

from being qualified institutional buyers in their own right, outside of the context of a collective trust fund. We submit that permitting Keogh plans to invest directly in Rule 144A securities, but not indirectly through a collective trust fund, does not advance any public policy and does not take into account the fact that in a collective trust fund, a bank or trust company, and not individual participants, has ultimate investment discretion.

In response to your request for comments as to whether it is "appropriate to consider all institutions that would come under Rule 501(a)(3) and that meet the $100 million investment size threshold under Rule 144A as having sufficient experience with the resale market for restricted securities," we respectfully submit that banks and trust companies that act as trustee of collective investment funds have "sufficient experience" with the resale market for restricted securities to so qualify. Moreover, as is generally recognized by the federal securities laws,[3] the trust departments of banks and trust companies are supervised and examined on an ongoing basis by federal and/or state bank regulators and are required to exercise their trust powers in accordance with applicable law in a safe and sound manner consistent with fiduciary principles.

As noted above, the participants in a collective investment funds do not make the decision to invest the fund's assets, including investments in 144A securities. The banks and trust companies make that decision, and they are certainly no less qualified than a registered investment adviser to a corporation or partnership, which is not prohibited from admitting any type of Keogh plan as an equity investor.[4] Also, as you know, banks and trust companies are themselves eligible for qualification as a "qualified institutional buyer" pursuant to Rule 144A(a)(1)(vi). We see no reason why the trust funds that such banks manage as fiduciaries should not so qualify as well (provided they have sufficient qualifying assets), without regard to the identity of the underlying grantors and beneficiaries.[5]

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[3] For example, qualifying banks and trust companies may issue securities under Section 3(a)(2) of the 1933 Act without registration under Section 5 of the 1933 Act; qualifying banks and trust companies are exempt from the registration requirements of the Investment Advisers Act of 1940, as amended; and bank maintained funds enjoy special exemptions from the registration requirements of the 1940 Act. Qualifying banks and trust companies generally include national banks and state banks, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks.

[4] In fact, Rule 144A permits a corporation or partnership with sufficient qualifying assets to purchase Rule 144A securities without the assistance of a professional money manager, such as an investment adviser, bank, trust company, or insurance company. We submit that a collective trust fund with an institutional trustee should be treated no less favorably.

[5] Significantly, Rule 501(a) includes as an "accredited investor" any bank as defined in Section 3(a)(2) of the 1933 Act (which definition includes a substantial number of banks and trust companies that maintain collective funds), whether acting in its individual or fiduciary capacity. We submit that the treatment of banks under Rule 501 as sophisticated fiduciaries that make decisions on behalf of their clients is appropriate in the context of Rule 144A as well.

Common Trust Funds

Common trust funds are not included in the list of potential "qualified institutional buyers." Apparently, this decision was made in the early 1990s on the assumption that the principal participants in common trust funds were trusts with grantors that were natural persons. *See* 1933 Act Release No. 33-6942 (July 16, 1992). However, trusts with institutional grantors also are admitted to common trust funds. Moreover, regardless of the identity of the grantors, the treatment of common trust funds is in marked contrast with the treatment of registered investment companies, which can qualify as "qualified institutional buyers" under Rule 144A – and this despite the fact that for some registered investment companies substantially all of the investors are natural persons who have not had to satisfy any investment standards whatsoever. Given that the investment process of a common trust fund is very similar to that of a registered investment company or a bank maintained collective trust fund (i.e. investment decisions are made by professional fiduciaries), we believe common trust funds should be treated no less favorably than those other funds under Rule 144A.

We respectfully suggest, for the reasons discussed above with respect to collective investment funds, that a common trust fund which otherwise satisfies the requirements of Rule 144A be treated as a "qualified institutional buyer."[6] If that is not deemed appropriate, then in the alternative we suggest that common trust funds be so treated as long as the grantors of their underlying trusts (or decision makers on their behalf) are either institutions or natural persons that meet the "large accredited investor" standard under revised Regulation D. In this regard, we emphasize again that the banks and trust companies acting as trustee for common trust funds are the ones making the investment decision to purchase the Rule 144A securities, not the participants in those funds.

Conclusion

The approach suggested above will level the playing field between banks and trust companies, on the one hand, and other institutional investors and money managers, on the other hand, as it pertains to the application of Rule 144A. At the same time, it will assist the banks and trust companies in satisfying their fiduciary duties and will benefit the underlying beneficiaries of the trust funds, without undermining the purpose of Rule 144A.

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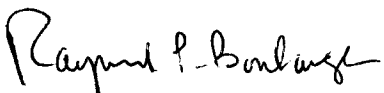
[6] From a policy and drafting perspective, we believe that the definition of "qualified institutional buyer" in Rule 144A should be revised to include all institutional investors with sufficient qualifying assets, rather than through an enumerated list that inevitably fails to include various categories of otherwise eligible institutional investors.

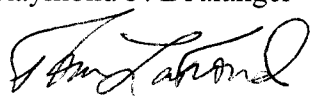
If you have any questions regarding the submission of this comment letter, please do not hesitate to contact Thomas J. LaFond (617-570-1990; tlafond@goodwinprocter.com) or Raymond P. Boulanger (617-570-1160; rboulanger@goodwinprocter.com).

In addition to this e-mail, we are also providing you with a signed pdf version.

Sincerely,



Raymond P. Boulanger



Thomas J. LaFond