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Comptroller of the Currency
Administrator of National Banks

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Statement of Ellen Broadman
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Before The
Subcommittee On Capital Markets, Insurance
And Government Sponsored Enterprises
And The
Subcommittee On Financial Institutions And Consumer Credit
Committee On Financial Services
U.S. House Of Representatives
August 2, 2001

Chairman Baker, Chairman Bachus, Ranking Members Kanjorski and Waters, and Members of the Subcommittees:

Thank you for this opportunity to discuss the Securities and Exchange Commission's Interim Final Rules. We appreciate the Subcommittees' efforts to review the significant issues raised by the Commission's Rules.

To begin, I would like to commend the Commission for its recent actions on the Rules. The Commission's recent decision to extend the time for banks to comply with the rules was a constructive first step. We also welcome and view as essential its commitment to further extend the compliance date once final rules are adopted so banks have sufficient time to comply with the rules.

We are especially pleased that the Commission anticipates amending the Rules. The Banking Agencies are currently working together to develop for the Commission suggested approaches for amending the Rules. We look forward to working with the Commission in developing Rules that are workable for banks and implement the Act and congressional intent. We appreciate the Subcommittees' support for such a collaborative approach.

The OCC and the other Banking Agencies provided the Commission with comprehensive and detailed comments on the Rules because of the significant issues that the Rules raised. We are concerned that the Rules created unworkable requirements that would force banks to discontinue traditional banking activities that Congress intended to preserve under the GLB Act. We are concerned that the Rules would significantly disrupt longstanding relationships between banks and their customers, restrict customer services, and increase customers' costs. This result is unnecessary and inconsistent with the intent expressed by Congress in enacting these provisions.

One particularly troubling area is how the Rules would implement the trust and fiduciary exemption. Congress adopted this exemption to permit banks to continue offering traditional trust and fiduciary services. To qualify for this exemption, the Rules require banks to conduct account-by-account reviews and establish that each individual trust or fiduciary account meets very complex compensation requirements. This approach and other provisions in the Rule are so burdensome for banks and so impractical that they will effectively force banks -- of all sizes -- to discontinue significant aspects of their traditional trust and fiduciary business.

Another area of concern is the treatment of custody and safekeeping activities. These activities, like trust and fiduciary activities, are part of the core business of banking. Congress created a custody and safekeeping exemption to allow banks to continue providing the full range of customary custody and safekeeping services. Bank custodians have a long-standing history of accommodating customers by accepting and transferring orders for securities to a registered broker-dealer. Even so, the Rules do not include customary custodial order-taking services within the exemption. Instead, the Rules create an exemption that permits bank custodians to take orders if they do not charge *any fees* for this service. If the Rules cause banks to discontinue offering this service, customers no longer will have the convenience and choice of placing orders through their selected bank custodian. This is contrary to the language and intent of the exemption.

Other areas of concern are set forth in detail in our comment letter; these concerns are also important and should be addressed by the Commission in revising its Rules.

Our comment letter also expressed concerns with the process employed in adopting the Rules. Final Rules were issued prior to a notice and public comment period. This placed banks in an untenable position. Without knowing how the Rules would be changed, banks were required to take immediate steps to comply with the Rules by the effective date. Our letter urged the Commission to review public comments before establishing final rules, and then grant banks a sufficient time period to bring their operations into compliance. We appreciate the Commission's response, in which it pledged to address these problems.

The Commission has made a positive step by extending the dates for compliance, and acknowledging that the Rules must be amended after careful consideration of public comments. We stand ready to provide assistance to the Commission in this process.

Again, we appreciate the attention the Subcommittees have given to the significant issues raised by the Commission's Rules and we appreciate this opportunity to express our views.

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