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March 26, 2007

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

File No. S7-22-06 The Networking Exception

To Whom It May Concern:

I am a law professor at the University of Cincinnati College of Law, where I am director of its Corporate Law Center. I have written extensively about investors' rights and represented small investors in their disputes with brokers. The Pace Investor Rights Project (PIRP)¹ previously filed comments² on proposed Regulation B that broadened the number of exemptions available to banks, savings banks, and savings associations that effect transactions in securities.³ In those comments we expressed our concern with the impact the third-party brokerage exception in Exchange Act Section 3(a)(4)(B)(i) (the "Networking Exception") may have on small investors and unsophisticated bank customers. Specifically, because the proposed rule permits referral fees that are more than nominal, bank employees may have an incentive to engage in behavior that is beyond the scope of the referral services authorized by Congress.

The Securities and Exchange Commission (the "SEC") and the Board of Governors of the Federal Reserve System (the "Board") did not adopt that proposal. Instead, in response to the Financial Services Regulatory Relief Act of 2006, the SEC and the Board published for comment revised proposed regulations (the "2006 Regulations").⁴ We see nothing in the 2006 Regulations or commentary in the accompanying release that is responsive to our concerns. Indeed, the 2006 Regulations increase the amount of the "nominal fee"⁵ that can be paid in the interests of "flexibility."⁶ The comment letter filed today by PIRP provides detailed analysis of how the

¹ At the time I was PIRP's director of research.

² See Letter dated Sept. 1, 2004 from Pace Investor Rights Project to Jonathan Katz, *available at* <http://www.sec.gov/rules/proposed/s72604/bblack0900104.pdf>.

³ Regulation B, 69 Fed. Reg. 39682, 1 (proposed June 30, 2004) (to be codified at 17 C.F.R. pts. 240 and 242).

⁴ Rel. 34-54946, 71 Fed. Reg. 77522 (Dec. 26, 2006).

⁵ Proposed Exchange Act Rule 700(c).

⁶ 71 Fed. Reg. at 77524.



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three alternative definitions of “nominal” in the proposed rule creates inappropriate incentives for retail bank employees to refer bank customers to affiliated broker-dealers.⁷

There is reason for our continued concern that the payment of these fees increases the danger that bank employees may steer bank customers to unsuitable securities transactions. Since the filing of PIRP’s 2004 comments, NASD fined a member firm for its failure to supervise adequately its employees who were marketing unsuitable investment products to elderly customers of its bank affiliate. It specifically found that unsupervised bank employees were making telephone calls to bank customers during “call nights.”⁸ We also note that another commenter on the 2006 Regulations has raised the same concern.⁹

While GLBA imposes some limitations on the activities of bank employees, the current regulatory structure does little to prevent bank employees from using sales tactics to entice customers. I believe this bank salesmanship poses serious risks for small investors. I urge you again to consider amending the proposed definition of “nominal one-time cash fee of a fixed dollar amount” to reduce the incentives for retail bank employees to engage in conduct that is beyond the scope of the “nominal” fee contemplated by Congress.

Thank you for the opportunity to make these comments. Please do not hesitate to contact me if I can provide additional information.

Sincerely,

Barbara Black

⁷ See Letter dated March 26, 2007 from Pace Investor Rights Project to Nancy M. Morris.

⁸ *NASD Fines Citizen Bank Affiliate, CCO Investment Services Corp., \$850,000 for Supervisory, Recordkeeping, Telemarketing, Other Violations* (Oct. 16, 2006).

⁹ John R. Boyd, CFP, Certified Financial Planner Practitioner, Worcester, Mass. (Jan. 2, 2007).