SCOTT P. BROWN
MASSACHUSETTS

359 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-4543
(202) 228-2646 FAX

2400 JFK FEDERAL BUILDING
BOSTON, MA 02203
(617) 565-3170
(617) 723-7325 FAX

United States Senate

WASHINGTON, DC 20510

COMMITTEES:
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
ARMED SERVICES
VETERANS' AFFAIRS
SMALL BUSINESS

June 28, 2011

The Honorable Secretary Timothy Geithner
The Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretary ~~Geithner~~, Tim

I know that you and your staff are hard at work on an inter-agency basis to develop the new specific rules and regulations that will govern bank-affiliated asset management. As you develop these rules, I feel it is crucial to draw your attention to section (d)(1)(G)(ii) of the Dodd Frank act. This section of the bill is an area where members of both parties worked very hard to reach a compromise. My clear understanding of that compromise was that under the new rules, bank-affiliated investment funds would be able to continue to solicit investments from new qualified investors, provided that they abide by the SEC's longstanding rules governing these offerings.

As you know, banking entities are already subject to the SEC's requirement that they have a "substantive pre-existing relationship" ("SPR") with customers in order to satisfy the conditions for a private placement. It only makes sense for that standard to be apply to (d)(1)(G)(ii) as well. The FSOC study on this section of the bill has endorsed such an approach as one of the two possible standards. A SPR generally requires: awareness of financial experience and sophistication (an actual substantive relationship of a business nature), and a reasonable belief that the client is capable of evaluating the merits and risks of a proposed investment. Some of the examples of SPRs include existing clients of the banking entity, clients that previously invested in a hedge fund or private equity fund sponsored by the banking entity, potential investors who were previously solicited for other products, and potential qualified investors who are referred by another division of the banking entity, or an affiliate of the banking entity.

Unfortunately, the FSOC Study also proposed a possible alternative interpretation from other banking regulations that typically applies only to identity theft, privacy regulations and consumer provisions. These rules would restrict offerings to a much narrower definition of "customer" -- an individual or entity with an actual bank account or similar relationship with a bank. The application of this narrow definition - never intended for use in this context - would in my view likely lead to a wind-down of the bank affiliated asset management model, which would completely undermine the intention of the compromise that led to this section of the new law.

SCOTT P. BROWN
MASSACHUSETTS

359 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-4543
(202) 228-2646 FAX

2400 JFK FEDERAL BUILDING
BOSTON, MA 02203
(617) 565-3170
(617) 723-7325 FAX

United States Senate

WASHINGTON, DC 20510

COMMITTEES:
HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS
ARMED SERVICES
VETERANS' AFFAIRS
SMALL BUSINESS

If new qualified investors are not permitted to invest in bank affiliated asset management vehicles, those dollars will instead end up in the hands of less-regulated players in the asset management business, starving the bank-affiliated model of investment capital. Such an interpretation would also increase the investment risk profiles for municipalities and their pension plan participants since they would have a narrower universe of managers to choose from and would be relegated to the pool of less-regulated independent funds.

Thank you in advance for your careful consideration.

Sincerely,

Scott P. Brown
United States Senate

CC:
The Honorable Ben Bernanke, Chairman, The Board of Governors, Federal Reserve System
Ms. Sheila C. Bair, Chairman, Board of Directors, Federal Deposit Insurance Corporation
Mr. Edward J. DeMarco, Director (Acting), Office of the Director, Federal Housing Finance Agency
Mr. Gary Gensler, Chairman, The Commission, Commodity Futures Trading Commission
Mr. William S. Haraf, Commissioner, Department of Financial Institutions, Business, Transportation and Housing
Mr. John M. Huff, Insurance Director, Department of Insurance, Financial Institutions and Professional Registration, State of Missouri
Mr. David S. Massey, Securities Director, Department of the Secretary of State, State of North Carolina
Ms. Deborah Matz, Chairman, The Board, National Credit Union Administration
Mr. Michael T. McRaith, Director, Federal Insurance Office, Under Secretary for Domestic Finance, United States Department of the Treasury
Ms. Mary L. Schapiro, Chairman, Offices of the Commissioners, United States Securities and Exchange Commission
Mr. John G. Walsh, Comptroller of the Currency (Acting), United States Department of the Treasury
Mr. S. Roy Woodall, Member (Intention to Nominate), Financial Stability Oversight Council, Office of the Secretary, United States Department of the Treasury