



P. O. Box 2300
Tulsa, Oklahoma 74102-2300

June 7, 2012

VIA FEDERAL eRULEMAKING PORTAL

<http://www.regulations.gov>

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-0690

Re: File Number S7-08-07/Amendments to Financial Responsibility Rules for Broker-Dealers

Dear Ms. Murphy:

BOK Financial Corporation (BOKF¹) appreciates the opportunity to comment on the proposed rules from the Securities and Exchange Commission (the "SEC") governing the financial responsibilities of broker-dealers. While we may echo comments of other parties, because of the breadth of the harm that may result from the implementation of these rules we want to join them in expressing our concerns regarding the proposed rules.

Background

In *Release No. 34-55431/File No. S7-08-07 (March 9, 2007)* (the "Proposal"), the SEC proposed far-reaching changes to the financial requirements for registered broker-dealers with respect to net capital, customer reserve calculation and deposit, as well as changes to the related books and records and notification requirements. While the original Proposal was not finalized, in *Release No. 34-66910/File No. S7-08-07 (May 3, 2012)*, the SEC opened the comment period for an additional thirty days (from the date of publication in the Federal Register, which was May 9, 2012). It is important to note that the original Proposal was not changed in the five years since its origination, even though by all accounts the financial services industry has changed significantly. In reviewing the 2007 proposal through the lens of today, key justifications for certain changes proposed appear to be based on 2007 circumstances, rather than reflective of current conditions. We focus in this letter on two such changes – the limitation on cash deposits for special reserve accounts and the exclusion of mutual funds "affiliated" with the broker-dealer from the revised definition of qualified securities to serve as acceptable investments for reserve funds. Each is insufficiently justified and therefore improper to adopt given the negative effects that could result.

Affiliated and Nonaffiliated Bank Restrictions

The Proposal indicates that cash deposits of broker-dealers within customer reserve accounts held by banks "are fungible with other deposits carried by the bank," and that therefore, "there is a risk the cash could be lost or inaccessible for a period if the bank experiences financial difficulties." Further, "[the] risk may be heightened when the deposit is held at an affiliated bank in that the broker-dealer may not exercise due diligence with the same degree of impartiality when assessing the financial soundness of an affiliate bank as it would with a non-affiliate bank." With respect to cash deposits at nonaffiliated banks, required as a result of the aforementioned

¹ BOKF is a \$24 billion regional financial services company based in Tulsa, Oklahoma. The company's stock is publicly traded on NASDAQ under the symbol: BOKF. Our assets are centered in a full-service bank, BOKF, NA, with additional assets within a subsidiary broker-dealer, BOSC, Inc. ("BOSC"). BOSC is a registered broker/dealer, registered investment adviser, member FINRA/SIPC, and among other business activities serves as underwriter to various municipal securities issues.

affiliate limitation, the SEC provides additional restrictions that “would prevent a broker-dealer from maintaining a reserve deposit in the form of cash at a single unaffiliated bank that exceeds a percentage of the broker-dealer’s or the bank’s net capital.”²

Since the original Proposal was submitted for comment, the financial industry has seen a remarkable consolidation of the banking and securities arenas, manifested relevantly here in the merger of a) broker-dealers with other broker-dealers (or the failure of same, in the case of Lehman Brothers) and b) previously-independent broker-dealer firms with commercial banks. As the number of broker dealers affiliated with banks has increased, the number of those broker-dealers maintaining deposits in affiliated banks has similarly increased. As a result, should the SEC’s proposed prohibition become effective, many more broker-dealers than previously considered would be impacted, as would their affiliate banks. In addition to being limited with respect to the due diligence that may be performed at nonaffiliates as opposed to that which may be performed on affiliated banks, broker-dealers would be required to pull deposits from one institution and fragment that amount among several; this would result not only in a credit risk to the broker-dealer, but also in an increase in the operational risk that both banking and securities agencies have raised as an increasing concern³. We observe that no specific examples of bank failures impacting affiliate broker-dealers have been provided, which leads us to question whether there is any realistic benefit to offset increased risk that broker dealers would be required to take on as a result of the Proposal.

“Affiliated” Mutual Fund Restrictions

With respect to customer reserves and mutual funds, we acknowledge and appreciate the SECs clarification of the heretofore ambiguous treatment of money market mutual funds as “qualified securities,” in which customer reserve funds may be invested. However, the exclusion of mutual funds “affiliated with the broker-dealer” introduces a new ambiguity.

The release offers the reason for excluding affiliated mutual funds as “[t]he broker-dealer may experience financial difficulty caused by liquidity problems at the holding company level that are adversely impacting an affiliated money market fund as well as in terms of the fund’s ability to promptly redeem shares.”⁴

The release fails to define what an “affiliated” mutual fund is, or how a mutual fund may in fact be “affiliated” with a broker-dealer to the extent that such broker-dealer may effectively prevent a fund from timely redemptions as suggested by the example provided. As a result of prior action by the SEC, mutual funds have for years been required to maintain boards of directors independent from their service providers, which typically include broker-dealers serving as the distributors to the funds.

Given that mandated independence, and the function (and limitations on same) performed by distributors and other service providers to money market funds, it would not follow that the Proposal is intending to include in this prohibition funds for which broker-dealers or their affiliates provide services to the funds. If the example given is to be a guide as to when affiliation is triggered, then the existence of a service provider relationship should be specifically excluded. Certainly, a financial weakness of the holding company parent of a broker-dealer, registered investment adviser, or other service provider should not impact the ability of the **fund** to

² Exchange Act Release No. 55431 (March 9, 2007), 72 FR 12864 (March 19, 2007).

³ See e.g. Mary Schapiro’s testimony on the President’s FY 2012 Budget Request for the SEC, supporting the budget by explaining that, among other goals, the budget “would permit...the development of a more robust operational risk management program.” *Testimony on the President’s FY 2012 Budget Request for the SEC Before the United States Senate Subcommittee on Financial Services and General Government, Committee on Appropriations* (May 4, 2011). See also e.g. comments by Thomas Curry, Comptroller of the Currency: “Given the complexity of today’s banking markets and the sophistication of technology that underpins it, it is no surprise that the [Office of the Comptroller of the Currency] deems operational risk to be high and increasing...Indeed, it is currently at the top of the list of safety and soundness issues for the institutions we supervise,” *Remarks by Thomas J. Curry, Comptroller of the Currency, Before the Exchequer Club, May 16, 2012* (p.3).

⁴ *Id.* at 12865.

liquidate or redeem **the fund's own holdings**. To ensure that such a wide net is not mistakenly cast, we respectfully request confirmation that a fund is not considered an "affiliate" of a broker-dealer solely by virtue of one or more service relationships between the broker-dealer and its affiliates.

Again, BOKF appreciates the opportunity to comment on this issue. Thank you for your time and attention.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Vincent', with a long horizontal flourish extending to the right.

Tom Vincent
Senior Vice President
Manager, Corporate Governance and
Wealth Management Compliance
BOKF, NA
One Williams Center, 9NE
Tulsa, OK 74114
tvincent@bokf.com