

March 26, 2007

Electronic Submission

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

Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Definitions of Terms and Exemptions Relating to the “Broker” Exceptions for Banks; File No. S7-22-06; Docket No. R-1274; 71 Federal Register 77522, December 26, 2006

Dear Ms. Morris and Ms. Johnson:

Mellon Bank, N.A. (“Mellon”) is the lead national bank subsidiary of Mellon Financial Corporation (“MFC”), a financial services company headquartered in Pittsburgh, Pennsylvania. MFC’s subsidiaries offer traditional banking services for individuals and corporations and collectively are one of the world’s leading providers of asset management, trust, and custody services. They have approximately \$ 5.5 trillion in assets under management, administration or custody, including \$995 billion in assets under management. MFC is a bank holding company and is the direct or indirect sole shareholder of four full service national banks (Mellon Bank, N.A., Mellon Trust of New England, National Association, Mellon United National Bank, and Mellon 1st Business Bank, National Association), two limited purpose national banks (Mellon Private Trust Company, National Association and Mellon Trust of Delaware, National Association) and six trust companies chartered by the states of Illinois, New York, California and Washington (Mellon Trust Company of Illinois, Dreyfus Trust Company, Mellon Securities Trust Company, Mellon Trust of New York LLC, Mellon Trust of California, and Mellon Trust of Washington, respectively).

Mellon appreciates the opportunity to provide comments on the joint rules proposed to be adopted (the “Proposed Rules”) by the Securities and Exchange Commission and the Federal Reserve Board (collectively the “Agencies”) under the Securities Exchange Act of 1934 (“Exchange Act”) contained in a new Regulation R. The Proposed Rules interpret the terms of the exclusions for banks from the definition of broker in Section 3(a)(4) of the Exchange Act as amended by the Gramm-Leach-Bliley Act (the “GLBA”) and provide additional exemptions to banks from the Exchange Act’s broker-dealer registration requirements. We also appreciate the substantial efforts of the Agencies and their staff in preparing the Proposed Rules. This letter will address concerns we have with the Proposed Rules.

In addition to the following comments on the Proposed Rules, we have contributed to and support the letter filed by the American Bankers Association.

Trust and Fiduciary Service Activities

The trust and fiduciary exception in GLBA broadly authorizes a bank, without the need to register as a broker-dealer, to effect securities transactions in a trustee capacity, or in a fiduciary capacity in its trust department or other department that is regularly examined by bank examiners for compliance with fiduciary principles and standards, so long as the bank does not publicly solicit brokerage business (other than by advertising that it effects transactions in securities in conjunction with advertising its other trust activities) and the bank directs all trades of publicly traded domestic securities to a registered broker-dealer. In addition, the bank's compensation for effecting transactions in securities must consist chiefly of (i) an administration or annual fee (payable on a monthly, quarterly or other basis), (ii) a percentage of assets under management, (iii) a flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for its trust and fiduciary customers, or (iv) any combination of such fees. Proposed Rule 721 provides a definition of "relationship compensation" which includes the foregoing compensation, and clarifies that "administration fees" include fees paid for personal services, tax preparation, or real estate settlement, and "asset under management fees" include various fees paid by investment companies. While the clarifications contained in Proposed Rule 721 are very helpful, we have the following requests.

In the institutional trust area, the bank oftentimes serves as "directed trustee" in which case an investment manager hired by the Settlor of the trust, or the Settlor itself, arranges the trust's securities transactions with a registered broker, and is responsible for negotiating the terms of the transaction. As directed trustee, the bank is responsible for clearing and settling the investment transactions executed by the broker-dealer and maintaining custody of the securities, but does not place the trade. These services are an important component of the services provided by banks acting as directed trustee. We are requesting confirmation that the compensation received for clearing and settling such trades should be characterized as an administration fee and treated as relationship compensation.

In addition, to the extent that securities lending activities are to be provided pursuant to the Trust and Fiduciary Services exception, the definition of relationship compensation should include fees earned in connection with such securities lending activities. In securities lending, banks split with their trust and fiduciary clients income earned on the collateral posted by the borrower. We believe that the portion of the income or compensation earned on the collateral associated with securities lending transactions could properly be classified as an asset under management fee and included in relationship compensation.

Securities Exchange Commission
Board of Governors of the Federal Reserve System
March 26, 2007
Page 3

We also believe that performance-based fees should be considered relationship compensation. These fees are based on the return of assets under management during a given period and are not affected by the number of transactions.

Finally, we request that banking organizations have the option of calculating their relationship to total compensation ratios either on a bank-wide basis, as permitted under Proposed Rule 722, or on a bank holding company basis.

SECURITIES LENDING EXEMPTION

Proposed Rule 772 provides an exemption for securities lending when the bank is not also performing custodial services for the customer. We would strongly encourage the Agencies to affirm explicitly in the final rule's preamble that the requirements under the exemption for securities lending activities conducted as agent do not apply to the securities lending management activities of custodians. While we believe that footnote 115 of the release makes this clear, we would suggest that this statement be contained in a preamble to Proposed Rule 772.

Mellon appreciates the opportunity to comment upon these Proposed Rules. If we can be of any further assistance, please do not hesitate to call me at 412-234-5222 or William R. Nee, Senior Counsel, at 412-234-1087.

Yours sincerely,

Carl Krasik
General Counsel
Mellon Financial Corporation

cc: Robert P. Kelly Mellon Financial Corporation
Steven G. Elliott Mellon Financial Corporation
Sarah A. Miller ABA Securities Association