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Via www.rule-comments@sec.gov

Ms. Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File No. S7-22-06

Dear Ms. Morris:

The following comments on proposed Regulation R (“Reg R”) are submitted on behalf of the Association of Colorado Trust Companies (“Association”). Members of the Association are chartered under the Colorado Trust Company Act and include both deposit and non-deposit taking trust entities. Deposit taking trust companies are often characterized as banks and their deposits are insured by the Federal Deposit Insurance Corporation (“FDIC”). Colorado trust companies classified as non-deposit entities do not have the authority to accept deposits and are not subject to regulation by any federal banking authority, but are supervised and examined by the Colorado Division of Banking.

Under Section 3(a)(6) of the Securities Exchange Act of 1934, all the members of the Association seem to satisfy the definition of “bank.”¹

The insured members of the Association are engaged primarily in providing custodial services to employee benefit plan accounts, IRA accounts and other self-directed custodial accounts. These members provide services to many thousands of such accounts. The non-

¹ (6) The term “bank” means (A) a banking institution organized under the laws of the United States or a Federal savings association, as defined in section 2(5) of the Home Owners’ Loan Act, (B) a member bank of the Federal Reserve System, (C) any other banking institution or savings association, as defined in section 2(4) of the Home Owners’ Loan Act, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising a fiduciary power similar to those permitted to national banks under the authority of the Comptroller of the Currency pursuant to the first section of Public Law 87-722 (12 U.S.C. 92a), and which is supervised and examined by State or Federal authority having supervision over banks or savings associations, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

deposit taking trust companies act as both a custodian for self-directed retirement accounts and as a fiduciary for discretionary accounts.

Proposed Reg R has addressed some of the Association's concerns under the earlier proposed regulation. Remaining concerns include the following:

Start-Up Costs

Reg R recognizes that banks will incur some start-up costs in complying with the regulation. While the estimated start-up costs—30 hours professional services costing an average of \$270 an hour—may apply to many financial institutions, they are substantially less than the costs some of the members of the Association will incur. To come into compliance with the trust and fiduciary section, one member believes it will face significant program challenges. Its accounts are housed in different systems, thereby requiring separate and distinct programming efforts. In addition, Rule 12b-1 compensation is currently not attributed to accounts for which this member serves as trustee and custodian. Additional programming will be required to attribute the fees to each type of account before an accurate calculation of relationship compensation can be accomplished. It is estimated that this programming will require three to four 40-hour weeks at a cost of \$43,000 to \$53,000.

In addition, it has been estimated that the ongoing costs of complying with Reg R will be \$60,000 to \$95,000 a year (\$25,000 to \$50,000 in systems software maintenance, \$5,000 in costs associated with auditing the system and rule compliance, and \$30,000 to \$40,000 in manpower associated with running, analyzing and maintaining the output from relevant programs to ensure ongoing compliance with Reg R).

To the extent possible, Reg R should be modified to reduce the cost burden.

Accommodation Transactions

The Safekeeping and Custody Exemption permits banks, subject to certain conditions, to accept orders for security transactions from employee benefit plan accounts, IRA accounts and similar accounts for which a bank acts as a custodian. In addition, this exemption permits banks, again subject to certain conditions, to accept orders for securities transactions on an "accommodation basis" from other types of custodial accounts ("Accommodation Transactions"). Reg R provides no clear definition of "accommodation" and contemplates that the financial institution regulators will develop guidance in describing the policy, procedures and systems that financial institutions should have in place "to help ensure that the bank accepts security orders for other custodial accounts only as an accommodation to the customer." Members of the Association believe that, in determining whether a securities transaction is effected on an "accommodation basis," should be determined by one criteria: whether the

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transaction was conducted exclusively at the request of the account holder or on an unsolicited basis. This would also provide financial institutions with a direct, simple way of monitoring compliance with Reg R.

Recordkeeping Requirements

Uncertainty now exists with respect to the recordkeeping requirements. Proposed Reg R, or some version thereof, is likely to become effective prior to the adoption of any recordkeeping rules. Because proposed Reg R invites substantial recordkeeping requirements, care should be taken by the SEC and the Banking Agencies not to negate the benefits of Reg R by mandating costly and burdensome recordkeeping rules. As stated in the introduction and background to Reg R, “the proposed rules are designed to accommodate the business practices of banks and protect investors.” Burdensome recordkeeping requirements will not “accommodate the business practices of banks.” The proposed regulation should include a provision or statement cautioning those responsible for promulgating the recordkeeping rules not to make them so detailed or onerous that Reg R fails to “accommodate the business practice of banks.”

Sincerely,

John W. Low

JWL/cml

cc: Board of Governors of the Federal Reserve System (Attn: Docket No. R-1274)
(via www.regs.comments@federalreserve.gov)