

July 7, 2004

Jonathan G. Katz, Secretary  
Securities and Exchange Commission  
450 Fifth Street, NW  
Washington DC 20549-0609

RE: File Number S7-20-04: Certain Thrift Institutions Deemed Not To Be Investment Advisors

Dear Mr. Katz:

The Indiana Bankers Association (“IBA”) is pleased to have this opportunity to comment on the proposed rule under the Investment Company Act of 1940 (“Investment Company Act”) addressing the application of the Investment Company Act to certain thrift institutions and a new rule under the Securities and Exchange Act of 1934 (“Exchange Act”) addressing thrift institutions’ collective trust funds and other fiduciary trust activities. We understand the intention of the proposed changes are to except a thrift institution from being deemed an investment advisor under the Investment Company Act if its investment advisory services are provided solely in its capacity as a trustee, executor, administrator or guardian for customer accounts created and maintained for a fiduciary purpose or to its collective trust funds and to exempt thrift institutions’ collective trust funds from the registration and reporting requirements of the Exchange Act.

The IBA is a state trade association with members ranging from the smallest to the largest in size and of all bank and thrift charter types operating in Indiana. The proposed rules would have a direct impact on the procedures of our thrift institution members. The following are concerns raised by the proposal.

**Extent of Exemptions** – To apply the exemptions proposed by the Commission uniformly across all types of business of thrift institutions’ trust services when they act in a fiduciary capacity, the exemptions to both the Investment Company Act and the Exchange Act should also apply to escrow agency, custodial and administrative accounts. In these types of accounts, the thrift institution is also acting in a fiduciary capacity for a fiduciary purpose and has only a defined or very limited investment authority as was the basis for the commissions other exemptions. This would enable all similar types of fiduciary relationships to be treated the same and would avoid the operational costs of treating similarly situated accounts differently.

**Thrift Institutions as Agents** – It is a common practice for thrift institutions to act as agent for an executor or administrator. This relationship is also fiduciary in nature and includes very limited investment authority. The majority of the thrift institutions’ responsibility in this capacity is to gather assets of the estate, make valuations, prepare tax returns, etc., rather than providing investment advice. Exempting this type of relationship from the Acts would further allow equal treatment of similar types of fiduciary relationships.

**Competitive Advantage** – The Commission proposed rule reflects an understanding of the nature of the thrift institutions’ investment advisory services. Thrift institutions compete with banks and others for trust clients. They are subjected to the same type of stringent regulatory examinations as banks and are held to the same high standards in their trust activities (and other activities) as banks. Therefore, the additional review of the Commission is not needed to protect the public. The public view thrift institutions and banks as similar entities and do not acknowledge differences in the fiduciary trust services each provides. The proposed rules continue to leave thrift institutions at a distinct competitive disadvantage to banks. Historically, thrift institutions have had to comply with complex registration requirements from which banks were exempt. This proposal would only partially minimize this inequity and would add the extra burden of requiring thrift institutions to treat specific parts of their fiduciary business differently. This results in a very tedious, time consuming and costly operational impact. The competitive environment between banks and thrift institutions would be leveled if depository and lending thrifts would be included in the same exemption currently afforded to commercial banks. Other types of investment advisory firms are not subject to the same regulatory examinations as banks and thrift institutions; therefore, it would not be prudent to allow them to conduct business without the guidance and review provided by the Commission.

**Additional Areas of Benefit** – Currently registration is required to be done in the name of the thrift institution. Inherent in this are the additional burdens of the reporting requirements for directors and executive officers of the thrift institution that do not have investment management functions and the reporting requirement for changes in directors. The proposed rule would be more beneficial if the trust department of the thrift institution could be registered rather than the entire institution.

We respectfully suggest that the rule be amended accordingly. Thank you for considering our comments on these important rules.

Sincerely,

James Cousins