//

KeyBank
127 Public Square
Cleveland, OH 44114-1306

June 28, 2004

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: File No. S7-20-04
Thrift Institutions Deemed Not To Be Investment Advisers

Dear Mr. Katz:

KeyBank National Association ("KeyBank") appreciates the opportunity to comment on the Securities and Exchange Commission's ("Commission") proposed rule exempting thrift institutions from regulation under the Investment Advisers Act of 1940 ("Advisers Act"). KeyBank is the principal banking subsidiary of KeyCorp, one of the largest bank-based financial institutions in the United States with assets of approximately $84 billion. KeyBank and other KeyCorp subsidiaries provide retail and commercial banking, consumer finance, investment management and investment banking products and services to individuals and companies throughout the United States.

The proposed rule notes that, unlike banks, thrift institutions are not exempt from registration under the Advisers Act even though thrifts today provide many of the same products and services as banks. We agree with the Commission's conclusion that thrifts should also be exempt. However, the proposed rule, and the gloss put on it by the Commission's release, goes far beyond what would be needed to accomplish the Commission's goal. The rule should be substantially simplified to include only a cross-reference to an existing statutory definition of "thrift institution," and a statement that, for purposes of the Advisers Act, a thrift institution will be considered a "bank" as defined in Section 202(a)(2) of the Advisers Act.

The proposed rule goes far beyond that and, by doing so, gives the appearance of a back door attempt to narrow the scope of the bank exemption. The rule limits the thrift exemption to "fiduciary purpose" accounts and identifies those relationships which might qualify for an exemption under the Advisers Act. The bank exemption clearly has no such limitations and we see no reason why the parallel exemption for thrifts should be limited.

Moreover, the proposed definition of "fiduciary purpose" is contrary to long established fiduciary practice and state fiduciary law. Trust and estate attorneys and probate judges throughout the United States would find it incredible that the Commission believes a revocable trust account may not have a fiduciary purpose. Likewise, managing agency accounts

and the other accounts the rule lists as potentially not having a fiduciary purpose are clearly considered fiduciary relationships under the statutes and rules governing banks and thrifts.

Both the Office of Thrift Supervision ("OTS") and the Office of the Comptroller of the Currency ("OCC") have comprehensive rules and regulations governing fiduciary activities. There is no need for an additional, duplicative layer of regulation. Instead of attempting to define "fiduciary purpose," to the extent any definition is needed, the SEC should defer to those agencies that Congress has entrusted to regulate thrifts and banks. The SEC should rely on the OTS and OCC to determine whether an account relationship has a fiduciary purpose.

Thank you for the opportunity to comment on the Commission's proposed rule. Please contact our counsel, William J. Blake, or me if you have any questions.

Very truly yours,

Robert G. Jones
Executive Vice President

cc: William J. Blake, Esq.
Carol Klimas
Susan Locke