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**Office of Thrift Supervision**  
Department of the Treasury

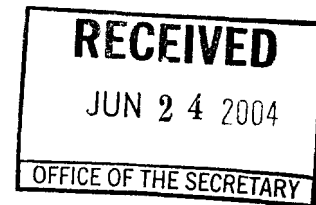
*Managing Director, Office of Supervision*

1700 G Street, N.W., Washington, DC 20552 • (202) 906-7984

**S7-20-04**

March 20, 2001

Annette L. Nazareth, Director  
Division of Market Regulation  
Paul F. Roye, Director  
Division of Investment Management  
U.S. Securities and Exchange Commission  
450 Fifth St., NW  
Washington, DC 20549



Dear Ms. Nazareth and Mr. Roye:

As we have discussed over the last year, OTS believes that thrifts should have the same registration exemptions as banks under the Investment Advisers Act of 1940 (IAA) and the Securities Exchange Act of 1934 (1934 Act). Thrifts make a unique and valuable contribution to the financial health of the nation by focusing their activities primarily on residential, community, small business, and consumer lending under the Home Owners' Loan Act (HOLA). In the context of providing investment adviser and broker-dealer activities, however, there is no longer a logical basis to treat thrifts and banks differently. OTS urges the SEC to reconsider its earlier opinions and agree now to treat thrifts the same as banks for purposes of these two statutes.

Trust customers receive many of the investment advisory and broker-dealer services that thrifts and banks provide, either directly or indirectly. In 1980, Congress gave thrifts the authority to offer trust services closely based on the authority it gave to national banks in 1962.<sup>1</sup> The Senate report for the Depository Institutions Deregulation and Monetary Control Act of 1980 explained that the HOLA amendment gives thrifts "the ability to offer trust services on the same basis as national banks."<sup>2</sup>

In the Gramm-Leach-Bliley (GLB) Act, effective this May, Congress has removed the banks' blanket exemption from broker-dealer registration requirements under the 1934 Act and replaced it with a list of activities a bank may engage in directly without registering. These

<sup>1</sup> See section 5(n) of HOLA (12 U.S.C. § 1464(n)) for thrifts and 12 U.S.C. § 92a for banks.

<sup>2</sup> S. Rep. No. 96-368, at 13 (1979), reprinted in 1980 U.S.C.C.A.N. 236, 248.

exempt activities are just as appropriate for thrifts and include trust and custodial activities, entering into third party brokerage arrangements, offering sweep accounts where the balance is swept directly into a money market mutual fund (instead of through a broker-dealer), and effecting transactions in municipal securities. Since 1993, the SEC has already permitted thrifts to enter into third party brokerage arrangements without having to register as a broker under the 1934 Act if they comply with the conditions in the Chubb no-action letter. The conditions the GLB Act imposes on banks that enter into third party brokerage arrangements are quite similar—but not identical—to those in the Chubb letter.

OTS believes there is no substantive reason to treat thrifts and banks differently under the IAA or the 1934 Act. The arguments in favor of parity include the following:

- Thrifts and banks provide investment adviser, trust and custody, and third party brokerage services in the same manner, but are subject to different requirements under the SEC's interpretation of the securities laws. Because thrifts are subject to different rules and, to perform some of these activities, must register with the SEC, they are placed at a competitive disadvantage to banks due to the additional costs. (For this reason, some thrifts have recently converted to a bank or state trust company charter to obtain the benefit of the registration exemption, particularly for IAA activities. This allows them to escape SEC regulation with a one-time conversion cost.) It is sound public policy to treat the bank and thrift charters the same where similarly situated. This promotes a level playing field in the marketplace.
- OTS examinations of these activities are already conducted in the same manner as those of the other banking agencies. OTS is formalizing these policies with new regulations and guidance. This assures that under OTS's regulations and examinations thrift customers will have protections equivalent to those the other banking agencies provide for bank customers.
- Firms that provide investment advisory or broker-dealer services by contract with thrifts and banks should be relieved of the regulatory burden of having to follow different rules, depending on whether a thrift or a bank is involved. Currently, thrifts must operate under the Chubb letter and banks will rely on different standards set by the GLB Act. The additional compliance costs are borne by thrifts and banks and, ultimately, by their customers.
- Wherever possible, the banking agencies have proceeded on a uniform basis to set standards designed to protect consumers where their regulated financial institutions are engaged in exactly the same activities, in the same manner. If thrifts and banks

Annette L. Nazareth  
Paul F. Roye  
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are subject to different rules by the SEC, the banking agencies will not be able to establish a uniform regulatory scheme and a level playing field.

One area of particular importance to thrifts concerns the IAA that exempts banks—but not thrifts—from IAA registration requirements (except to the extent banks advise registered investment companies). Last summer, during the mark-up hearing for S. 2107, the “Competitive Market Supervision Act,” Senator Bayh considered offering an amendment to the IAA to extend the bank registration exemption to thrifts. Based on representations that the SEC planned to resolve this anomaly administratively, he did not offer the amendment. While the SEC has announced its intent to give thrifts only a limited IAA registration exemption, it has not indicated a schedule or taken action.

We will call you soon to arrange a meeting to discuss expediting the solution to this problem. The pending SEC fee reduction legislation could be a vehicle for establishing parity. While legislation is one option, the SEC could establish parity by interpreting the definition of “bank” to include thrifts or by using its exemptive authority to achieve the same result. In any case, I hope we can enlist your support for parity.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Scott M. Albinson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Scott M. Albinson