

September 1, 2004

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

Re: Regulation B, File No. S7-26-04 (69 Federal Register 39682; June 30, 2004)

Dear Mr. Katz:

This letter is submitted on behalf of Sky Financial Group, Inc., and its subsidiary, Sky Trust, N.A. Sky Financial Group, Inc. is a \$14.5 billion bank holding company headquartered in Bowling Green, Ohio. Its wholly owned subsidiary Sky Trust, N.A., headquartered in Pepper Pike, Ohio, is a limited purpose national bank that manages approximately \$4 billion of client assets through traditional trust department products and vehicles. This letter is in response to the SEC's invitation to comment on Regulation B, the proposed broker "push-out" rules (The Rule).

While The Rule represents a substantial improvement over the 2001 interim final Rule, we continue to feel that it remains unworkable and unduly disruptive to our business. In certain respects it will force Sky Trust out of various business lines. Moreover, several aspects of The Rule are anti-competitive in that they create new rules for banks only, putting them at a severe disadvantage against other, non-bank financial service firms. Certainly this was NOT the Congressional intent behind the Graham-Leach-Bliley Act ("GLBA"). Congress clearly indicated that the exceptions for bank activities contained in Section 3(a)(4) should be interpreted to allow banks to continue to perform, without SEC oversight, all of the traditional banking functions performed prior to the passage of the GLBA. The Rule as proposed will not accomplish this Congressional mandate. On the contrary, it will alter traditional trust and fiduciary business practices at best and may even succeed in eliminating banks as providers of such services.

Below are comments on some of the areas that we feel are unworkable. Please be advised, however, that this is by no means intended to address all the deficiencies we see or feel need to be given additional attention prior to The Rule being adopted.

- **Custody Exemption.** We are most concerned that The Rule will force Sky Trust out of the custody business, clearly a traditional trust and fiduciary business

practice. Although The Rule will allow order taking in grandfathered accounts and accounts of accredited investors, the majority of our customers do not meet that definition so the business will simply disappear through attrition. There is clear demand for bank custody services and little, if any, historical basis or cause for concern that customers need protection from devious practices. Banks are able to take custody of all types of investment products including real estate and restricted securities, while brokers cannot. If a client custody account includes investments that broker-dealers are unable to hold, the only alternative our customers will have is to open TWO custody accounts. Clearly this was not intended by Congress. Our final comment on the custody exemption involves the definition of “account for which the bank acts as custodian” in Section 242.762(a) of The Rule. This creates unnecessary traps and is totally unnecessary in light of well settled banking law and practice. Must each and every right and duty be spelled-out in the agreement? This should simply be deleted.

- **Chiefly Compensated Test.**
 - First, it is our position that the distinction which The Rule appears to draw between servicing fees paid by a mutual fund under a shareholder servicing plan or as subtransfer agent fees on the one hand and servicing fees paid under a 12b-1 plan or paid directly by the adviser on the other hand, has no basis in reality. How a mutual fund chooses to pay fees in not something that a bank can control and should not be a determining factor in the analysis. The test should be based on the fees being paid for services rendered and all such fees should be treated as either “relationship” or “unrelated” compensation for purposes of the chiefly-compensated test.
 - The proposed test is overly complex and burdensome, particularly given the exemption for some, but not all, personal and charitable trust accounts. Without going into the details of the complexities, the penalties and exposure of having Sky Trust deemed to be an unregistered broker-dealer are so great, and the procedural rules are so complex, that we would still anticipate having to invest substantial time, monies and resources in technology and systems to track transaction compensation.
- **Sweep Exception.** The Rule would prohibit Sky Trust from sweeping accounts into money market mutual funds for which Sky Trust receives income greater than 25 basis points. There would appear to be no reason for this prohibition as long as the fee arrangement is fully disclosed to clients especially in light of the fact that broker-dealers are subject to no such limitations in their cash management accounts.

- **Regulation of Bank Compensation Programs.**
 - We strongly feel that the SEC should refrain from regulating bank compensation programs. The Rule would prevent banks from implementing performance based compensation programs, unless the employees are licensed, registered representatives. This keeps banks from following accepted business management practices and, again, puts banks at a disadvantage to broker-dealers.
 - We object to the notion that either base hourly wages, \$15 in 1999 dollars or \$25 dollars is an appropriate referral fee for non-retail referrals.
 - In a time when consumer debt has risen, banks should be encouraged to train and manage employees to educate consumers. By unnecessarily regulating bonus plans and creating such uncertainty around how brokerage might be deemed to directly or indirectly taint a bonus plan, regulations will thwart our ability to serve our customers needs. The SEC can best protect the individual consumer by regulating the registered individuals and brokerage companies to whom the bank directs the customer.

- **Considerations.**
 - Chiefly Compensated Test: We suggest that the SEC examine “chiefly compensated” by looking at sales compensation, as compared to total trust company compensation, provided that sales compensation is less than 50% of total compensation. So long as relationship compensation is more than 50% of total compensation the bank would be in compliance. A general review of how the trust company earns its revenue in a given year should be more than satisfactory to determine that a bank is not engaging in the brokerage business.
 - Grandfather Dates: The current grandfather date of July 31 for certain account structures, compensation arrangements and activities should be changed to the end of a calendar year. If The Rule is not finalized before November 2004, the grandfather date should be no sooner than December 2005.

Thank you for providing the opportunity to comment on The Rule. If you have any questions or require clarification on any point raised I hope you will contact me at 216.206-1963.

Sincerely,

Edward J. Tognetti
Senior Vice President &
Chief Fiduciary Officer