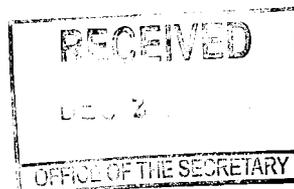


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MEMORANDUM

To: Public File # S7-26-04  
From: Commissioner Campos  
Date: December 14, 2004  
RE: Meeting regarding Regulation B



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A meeting was held on Tuesday, December 7, 2004 to discuss proposed Regulation B in Release No. 34-49879, pursuant to the Securities Exchange Act of 1934 ("Exchange Act"). This proposal addresses the functional exceptions for banks from the definitions of "broker" that were added to the Exchange Act by the Gramm-Leach-Bliley Act. Present were Sally Miller, John Dugan, Vicky Ayers, Lee Rassnick, Michael, Ronald Mayer, Melody Bohlmann, Bruce Moland, Norman Nelson, and Donald Toumey of the American Bankers Association and the Clearing House. From the Commission were Commissioner Roel C. Campos and Heather Traeger, his counsel.

Attached is a term sheet proposed by the ABA and other attendees.

## REGULATION B PRINCIPLES

### Trust and Fiduciary

- “Chiefly compensated” test should be measured on a broadly defined line-of-business or department-wide basis rather than on an account-by-account basis
- Method of calculation must be revised so that banks will not be forced to build expensive new reporting systems. There should be only two categories of fees: Banks should either calculate the ratio of “relationship compensation” to “total compensation,” or conversely the ratio of “sales compensation” to “total compensation”
- Ceiling on “sales compensation” must be substantially greater than proposed level of 11%, and even higher to extent that Rule 12b-1 fees are treated -- inappropriately -- as “sales compensation,” and broad exemption is not provided for employee benefit plans

### Safekeeping and Custody

- As provided under the statute, banks must be permitted to take orders for securities transactions from employee benefit and IRA custodial customers
- In addition, as is customary with current bank custodial activities, banks must be permitted to (a) take orders for securities transactions from all other custodial customers and (b) charge securities movement fees that do not differ based on whether the order was taken by the bank directly from the customer (including through his/her adviser), or from the customer’s broker
  - Reasonable limits on ability to solicit custodial order-taking are acceptable

### Referral Fees

- Bank bonus plans must not be affected by prohibition on paying referral fees to unregistered bank employees unless bonus is clearly a conduit for paying impermissible referral fees
  - E.g., if bonus is contingent on number of factors, and only one factor relates to securities activities, bonus plan should not be deemed an impermissible conduit
- Rule must not affect payments made by broker-dealers to banks (as opposed to payments made to individual bank employees)
- “Nominal referral fees,” which are permissible, should not be further defined by regulation, given standards used by bank examiners and given that circumstances change over time
  - Banks should be allowed to pay higher referral fees to unregistered bank employees for the referral of certain corporate, institutional, governmental and not-for-profit customers

### Sweep Accounts

- Definition of “no load” must not be so restrictive as to interfere with banks’ long-standing practices for sweeping deposits into money market funds

### Dual Employees

- The problems with dual employee relationships (between banks and broker-dealers) caused by NASD Rule 3040 need to be resolved through coordination with the bank regulators