



July 28, 2004

17

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

Re: File Number S7-26-04  
Securities Exchange Act Rules 710-781  
Regulation B: Proposed Rule

Dear Mr. Katz:

This letter is in response to the SEC's invitation to comment on the captioned Proposed Rule. High Point Bank and Trust Company is a state-chartered community bank with approximately \$650 million of assets. Our Trust Department is of a similar size.

The proposed Regulation B does represent an improvement over previous proposals. Specifically, the Trust and Fiduciary Exception (Rules 720-724) will exempt trusts where the bank is "chiefly compensated" based on management fees; this is important to allow trust departments to function in their traditional advisory and investment management roles.

There has apparently been considerable commentary regarding the "fiduciary" exemption. It is both appropriate and necessary to recognize that a fiduciary obligation is implicit when a bank acts as an investment advisor for a fee. There is no singular source of this duty in terms of how the client relationship is established. Specifically, we feel strongly that investment advisory and management relationships established under investment management agency agreements should be viewed as fiduciary accounts where the bank acts as an investment adviser for a fee. Our bank maintains many of these agency relationships; they are not "trading" accounts and we place security orders through third-party broker-dealers. There is no inherent "brokerage" relationship between the bank and the client in these accounts.

The Proposed Rules regarding safekeeping and custody activities are troubling. While there has been a focus on defining custody accounts and "carrying brokers," the Proposed Rules appear to disregard the fundamental function that bank trust departments perform in custodial relationships. These are, by definition, form, and function, directed (i.e., non-discretionary) accounts. Trading is not executed by the custodian; it is directed to broker-dealers. If an objective of Regulation B is to protect investors while not unnecessarily intruding into bank functions, an investor is afforded no more "protection"

TRUST DEPARTMENT

300 N. Main Street, P.O. Box 2278, High Point, NC 27261 336-881-3300 Fax 336-889-3396

July 28, 2004  
Jonathan G. Katz, Secretary  
Page 2

by placing a trade with a broker-dealer; a custodian is simply a conduit and provides an administrative service for the investor.

Except for the grandfather provision, under the Proposed Rules it appears that bank trust departments would no longer be able to provide custody services for individuals or non-profit entities. In a community bank environment, this is a serious disregard of a service that has been historically valued by our customers. The "qualified investor" exemption has virtually no application in our market. Moreover, despite being a small community bank, we are not covered by the small bank exemption rule either.

Under the Proposed Regulation B, we have serious concerns about the status of investment agency accounts and custody relationships. We do not wish to compete with brokers or become a broker-dealer. We simply want to continue to provide our customers with traditional services that they value. As a community bank, it is a distinct competitive disadvantage if we cannot do so and it is a disservice to our customers and community.

As the final Regulations are developed, we would appreciate your attention to these concerns. Thank you for your time and interest.

Sincerely,



Timothy N. Smyth  
Senior Vice President

cc: Sarah Miller  
Director of the ABA Center  
For Securities, Trust and Investments