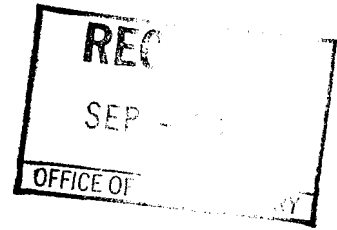


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August 31, 2004

## Via Federal Express

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

Re: Proposed Regulation B, File No. S7-26-04

Dear Mr. Katz:

Numerous commenters have observed that proposed Regulation B exceeds the intent of Congress in amending the Gramm-Leach-Bliley Act. We concur with these commenters and urge the Commission to adopt a regulation that does not create a regulatory web that penalizes consumers by increasing costs and making many security transactions unnecessarily cumbersome.

Our comments focus only on one part of the proposed regulation, the Safekeeping and Custodial Activities Exception. Throughout the discussion of the Exception, the words "effect" and "accept" are used, but these terms are not defined. Care should be taken not to permit these terms to be interpreted so broadly as to construe every contact a custodian has with a securities transaction as effecting a securities transaction or accepting an order to purchase or sell securities.

Frequently, the owner of a self-directed IRA or other custodial account will call the custodian, stating that he or she desires to buy a security for, or sell a security out of, the owner's custodial account. The custodian first determines, in the case of a purchase, that sufficient funds are available for the transaction, or if the request is to sell, that the designated security is in the account.

Next, the custodian calls a broker and conferences in the owner with the broker. The representative of the custodian may or may not remain on the line while the owner places a securities order. The order is confirmed by the broker to either the owner or the custodian, after

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the trade has been executed. The Commission needs to confirm that a custodian facilitating a securities transaction in the manner described above is not effecting or accepting a securities order from the owner of a custodial account.

Frequently, the owner of a custodial account utilizes the services of a registered investment advisor who has the authority to purchase or sell securities on behalf of the owner. The financial advisor calls the custodian and directs the custodian to purchase or sell certain securities through a broker designated by the advisor. The custodian, in carrying out these instructions, is simply performing an administrative service and is not effecting or accepting orders to purchase or sell securities. Sometimes the financial advisor will place an order directly with the broker, with instructions to notify the custodian of the transaction and send the confirmation to the custodian. It is not uncommon for the custodian to place a net omnibus trade with an affiliated broker-dealer. The broker-dealer executes the trade and confirm with the custodian the execution price. The custodian then allocates the trade to the beneficial owners based upon the investment advisor's instructions and confirms the trade with the investment advisor. Whether the initial contact is made with the custodian or with the broker, the end result is the same. The Commission needs to confirm that in these situations the custodian is simply performing an administrative service and is not accepting or effecting orders to purchase or sell securities.

This interpretation would be consistent with the protection of investors in line with existing interpretations. Custodians in this context perform merely administrative tasks and the actual placement and acceptance of the orders are handled by other parties. In the case of an individually directed IRA, the order is accepted by a brokerage firm and placed by the customer. In the example of an IRA managed by a money manager, the order is placed by a regulated entity (a registered investment advisor) and the order is accepted by a registered broker dealer. In both cases, the custodian performs only administrative or ministerial functions. In addition, the Commission has available to it the books and records of all the regulated entities so that it can properly examine acceptance and placement for compliance with the securities laws. Requiring a custodian to register as a broker dealer in this context provides no investor protection but does impose a significant regulatory burden.

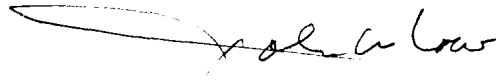
The grandfather exception – an account that was opened before July 30, 2004 – has both affirmative and negative implications. In the short term, it probably will prove to be quite beneficial to existing custodians, but it is clearly anti-competitive. It will make it difficult, if not practically impossible, for new custodians to secure pre-July 30<sup>th</sup> accounts from existing custodians. An existing account owner would be foolish to sacrifice the convenience of dealing directly with the owner's custodian in effecting a securities transaction rather than having to pursue what may be a cumbersome and more expensive course of action.

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The grandfather exception also demonstrates that there is no compelling need to change the existing custodial procedures since the Commission proposes to let hundreds of thousands pre-July 30<sup>th</sup> custodial account owners continue to purchase and sell securities through their custodians, as they have done for decades.

Sincerely,



John W. Low

JWL:ael