

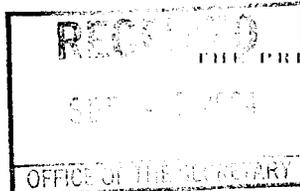
# THE PRIVATE BANK

THE BANK OF BLOOMFIELD HILLS  
248 644 2301

THE BANK OF GROSSE POINTE  
313 385 9351

THE BANK OF ROCHESTER  
248 652 9500

THE PRIVATE BANK MORTGAGE COMPANY  
248 644 2301



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August 27, 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 in response to the SEC's invitation to comment on Regulation B, the proposed broker "push out" rules. Our bank has \$280 million in assets, with \$180 million in trust assets.

We strongly oppose the proposal. In our view the proposal, as currently written, is unworkable and unduly disruptive to our business. Moreover, several aspects of the proposal are anti-competitive in that they create new rules and regulations **for banks only** putting them at a significant disadvantage against other non-bank, financial services firms.

In addition, the proposal is not in the interest of consumers. It will result in fewer clients having knowledge of the availability of resources necessary to assist them with college planning or retirement, and force some customers to have two accounts; one with a bank and one with a broker. We do not believe this is what Congress intended when it passed the Gramm-Leach-Bliley Act in 1999.

There is clear demand for bank custody services. We 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, what other alternative is available to our customers? Must the customer deal with two account opening processes, doubling the time and paperwork merely to find institutions able to hold a mix of assets?

Further, there is a significant problem with the proposal's "chiefly compensated" test required under the trust and fiduciary exception. In our view, the account-by-account test is far too costly to implement. The proposed test is overly complex and burdensome, particularly given the exemption for some, but not all, personal and charitable trust accounts. The penalties and exposure of having our bank

deemed to be an unregistered broker-dealer are so great, and the procedural rules so complex, that the institution will still have to invest in technology and systems to track transaction compensation. We suggest that it would be far better for the SEC to examine "chiefly compensated" by looking at sales compensation, as compared to total trust department compensation, provided that sales compensation is less than 50 percent of total compensation.

Alternatively, relationship compensation could be compared to total trust operation compensation. Again, so long as relationship compensation is more than 50 percent of total compensation of the bank's trust and fiduciary, operations would be in compliance and able to remain within the bank. A general review of how the trust operation earns its revenue in a given year should be more than satisfactory to determine that our bank is not engaging in brokerage business.

We also find the sweep exception very troubling. Our bank sweeps asset and deposit accounts into money market mutual funds, for which we receive income greater than 25 basis points. ***This is fully disclosed to our clients.*** Under the proposal, we would no longer be able to offer most of our customers the ability to have their deposit account assets swept into these funds, taking away a popular product that consumers demand. This would put our institution at a disadvantage against broker-dealers offering a cash management account; which from the consumer's perspective looks identical to a checking account because broker dealers can receive fees from mutual funds in excess of 25 basis points. This is outrageous!

This also raises the issue of the application of a consistent regulatory standard. If 12(b)(1) fees in excess of 25 basis points are not appropriate for banks to accept, why would it be for broker-dealers to receive them?

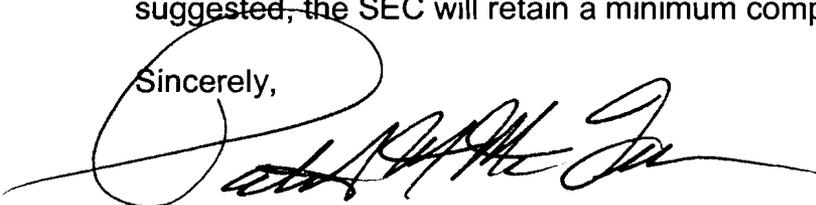
Finally, the SEC should refrain from regulating bank compensation programs. All companies across all industries set performance goals for their employees; banks are no different. It makes good business sense to do so, yet the proposal would prevent banks from implementing these types of programs unless their employees are licensed, registered representatives. Why can't the bank set yearly performance goals for its employees in terms of sales of products offered by the bank and its affiliate? It is most anti-competitive for banks to be precluded from doing so, but broker-dealers are not.

We also strenuously 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 associates to educate consumers about the need for saving and

investing for college and retirement. 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.

The only positive aspect to the proposal is the lengthy time banks are given to comply. When the final rule is adopted, hopefully with the changes we have suggested, the SEC will retain a minimum compliance period of one year.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick M. McQueen", written over a large, light-colored circular scribble or stamp.

Patrick M. McQueen  
President and Chief Executive Officer

cc: Michigan Bankers Association