August 9, 2007

Via E-mail

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551
Attention: Docket No. R-1274

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090
Attention: File No. S7-22-06

Re: Release No. 34-54946 (File No. S7-22-06): Proposed Regulation R

Ladies and Gentlemen:

The American Bankers Association ("ABA") and its affiliate, the ABA Securities Association ("ABASA"), and The Clearing House Association L.L.C. ("The Clearing House") are writing jointly to provide a written response to an inquiry we have received from the staff of the Board of Governors of the Federal Reserve System (the "Board") regarding Proposed Regulation R, which was proposed for comment by the Securities and Exchange Commission (the "Commission", together with the Board, the "Agencies") and the Board under the Securities Exchange Act of 1934 (the "Exchange Act").[1] Regulation R would implement the bank exceptions to the definition of broker

[1] Release No. 34-54946, 71 Fed. Reg. 77,522 (Dec. 26, 2006).

contained in Section 3(a)(4) of the Exchange Act, as amended by the Gramm-Leach-Bliley Act (the "GLBA").

The Board staff's inquiry relates to matters raised in the initial and July 16th comment letters on proposed Regulation R filed by the ABA and ABASA and The Clearing House.[2] Specifically, in our initial letters, we had each requested that revenues from trust and fiduciary accounts maintained at foreign branches of U.S. banks be excluded from the bank-wide "chiefly compensated" test. Subsequently, we were asked how much of the business of foreign branches consists of activity that (but for the trust activities exemption) would require the bank to register as a broker under the Exchange Act (as opposed to trust and fiduciary activities of foreign branches that do not have a sufficient nexus to the United States to require the bank to register under the Exchange Act).

In our joint letter of July 16, 2007, we responded that banks believe that the number of trust and fiduciary customers serviced by foreign branches of U.S. banks who are U.S. residents or citizens is minimal. We also stated that our members believe that tracking revenue from foreign branch accounts for purposes of the chiefly compensated test would be both burdensome and costly and could not be justified from a cost-benefit perspective and reiterated our request for the Agencies to exempt foreign branch operations from the chiefly compensated test.

We have been subsequently questioned by Board staff regarding the feasibility of the Agencies requiring banks, as a condition to an exemption from having to perform the bank-wide chiefly compensated test for fiduciary accounts held at foreign branches of U.S. banks, to demonstrate that some percentage of their foreign branch fiduciary clients are customers that the foreign branch serves without triggering the broker registration requirements of the Exchange Act. Board staff have further asked what would be a good proxy or measure for so demonstrating that would not be too burdensome on banks to perform and yet would be reasonable from the Agencies' perspective.

We elicited one response from a large bank with significant international fiduciary operations, which stated that it would not be too burdensome if the Agencies employed a test that conditioned the applicability of the bank-wide chiefly compensated test on the bank's foreign branch(es) having less than a certain percentage of its

---

[2] Letter from Sarah A. Miller, Director and Chief Regulatory Counsel, Center for Securities, Trust and Investments, American Bankers Association and General Counsel, ABA Securities Association, to Jennifer J. Johnson and Nancy M. Morris (March 26, 2007); Letter from Jeffrey P. Neubert, President and CEO, The Clearing House Association L.L.C. to Jennifer J. Johnson and Nancy M. Morris (March 30, 2007); Joint Letter from Sarah A. Miller, ABA and ABASA, and Norman Nelson, General Counsel, The Clearing House Association L.L.C. (July 16, 2007).

customers who are persons whose principal or primary address for purposes of delivering account statements is in the United States. The bank's response was based on its understanding that sampling of the trust and fiduciary accounts of the foreign branch(es) and the account holders' primary addresses would be permissible under the exemption. For example, the bank might sample 100 accounts and, if more than some specified percentage of those accounts, have a non-U.S. principal or primary address, then the bank would satisfy the safe harbor condition. In this connection, we note that we are using this example for illustrative purposes only and not to suggest what is a statistically correct sample population. We also note that it is not impossible to posit a situation where a non-U.S. person could have account statements sent to a physical or electronic U.S. address of a close relative for safekeeping or for some other purpose. The Agencies should recognize this possibility.

In closing, we wish to reiterate that the number of trust and fiduciary customers served by foreign branches of U.S. banks who are U.S. residents or citizens is very minimal for a number of reasons, not the least of which is the fact that there are only a handful of our members who offer any trust and fiduciary services off-shore, either through foreign branches of U.S. banks or from foreign bank or trust company affiliates. When they do offer these services through their foreign branches, rarely do they seek to do business with U.S. residents or citizens. This is because:

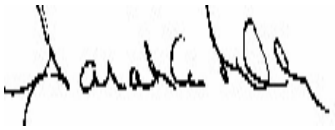
- Personal trust: In the vast majority of cases (one bank has estimated it to be 99 percent of the time), it does not make legal or business sense for a U.S. resident or citizen seeking personal trust services to select a trustee that is not operating from the United States. Trusts are generally established for estate planning, tax management and investment management purposes. Foreign personnel generally will not have the requisite knowledge or understanding of applicable U.S. state and federal tax laws and regulations, as well as federal, state and common law of trusts to appropriately manage these trusts.
- Corporate trust: U.S. corporations generally issue debt securities in accordance with the requirements of the Trust Indenture Act of 1939. That Act requires that a bank be appointed as an indenture trustee to protect the interests of bondholders. In order to be so qualified, the Act requires that at least one of the trustees must be U.S. domiciled or subject to U.S. law. There is generally no business rationale for a US bank to staff its foreign branches with individuals familiar with the intricacies of the Trust Indenture Act and other similar legal requirements in order to serve as a qualified indenture trustee for a U.S. bond offering.

- ERISA Plan Accounts: Because ERISA tax rules curtail the ability of foreign banks to serve as trustees to U.S. pension plans, foreign branches of U.S. banks do serve as sub-trustee or sub-custodian for foreign securities held in ERISA plan accounts. However, this business is quite minimal when compared to the bulk of the business of foreign branch(es). One bank has estimated that approximately one percent of the employee benefit accounts it services in its foreign branch involves ERISA plan accounts.
- Managed accounts: Most U.S. investors do not seek an investment manager that is based outside of the U.S. Generally, if these investors want exposure to foreign markets, they will most likely utilize their U.S. based asset manager, who will then associate with a foreign sub-adviser and/or sub-custodian for the client's non-U.S. assets. Those banks that do have U.S. clients in their foreign branches have told us that the number is very small and these clients are the very ultra high net worth customers that are not of the class that needs the protections afforded by the broker registration provisions of the Exchange Act.

Given the minimal amount of business conducted in foreign branches of U.S. banks that could possibly trigger application of Exchange Act broker registration provisions, we continue to believe that it is appropriate from a cost-burden perspective for the Agencies to exempt foreign branches from the trust and fiduciary exception's chiefly compensated calculation.

We hope this letter is responsive to the inquiry. Please contact either of us should you wish to discuss these matters further.

Sincerely,



Norman R. Nelson
General Counsel
The Clearing House Association L.L.C.

Sarah A. Miller
Director & Chief Regulatory Counsel
Center for Securities, Trust
and Investments
American Bankers Association and
General Counsel
ABA Securities Association