

# INSTITUTE OF INTERNATIONAL BANKERS

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December 13, 2004

Scott G. Alvarez, Esq.  
General Counsel  
Board of Governors of the Federal Reserve System  
20th St. and Constitution Ave., NW  
Washington, DC 20551

Dear Mr. Alvarez:

We are writing to express the Institute of International Bankers' strong support for the November 2004 submission by Bank of America Corporation, Citigroup, Inc., Deutsche Bank AG, J.P. Morgan Chase & Co., and UBS AG to the Board of Governors of the Federal Reserve System (the "Board") Supporting a Proposed "Large Customer" Safe-Harbor Exemption from the Coverage of Section 106 of the Bank Holding Company Amendments of 1970 ("Section 106") and a Proposed Coercion Interpretation of Section 106 (the "Bank Group Submission").

As indicated in our comment letter dated October 3, 2003 concerning the Board's proposed interpretation of Section 106 and related supervisory guidance (the "2003 Board Proposal"), the Institute strongly supports the Board's issuance of interpretive guidance in this area. Section 106 presents significant compliance challenges for the U.S. banking operations of international banks.

As we also indicated in our comment letter, the Institute strongly supports the creation of a wholesale exemption from Section 106, and in this regard we support the safe-harbor exemption for large customers described in the Bank Group Submission. Such an exemption would be especially important for international banks insofar as it would significantly address the limitations of the Board's proposed interpretation of mixed-product arrangements as reflected in the 2003 Board Proposal. The 2003 Board Proposal would have required that a bank make a good faith judgment that its customer would have a "meaningful option" to satisfy the bank's hurdle rate through the purchase or pricing of one or more traditional bank products. Because international banks operating in the United States generally do not offer the same range of traditional bank products as large domestic banks, the Institute expressed concerns in its comment letter regarding the 2003 Board Proposal that the Board's proposed treatment of

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mixed-product arrangements would put international banks at a competitive disadvantage vis-à-vis their major domestic competitors. As the Institute suggested in its comment letter, a wholesale exemption like the one proposed in the Bank Group Submission would mitigate the risk that the Board's treatment of mixed-product arrangements could put international banks at a competitive disadvantage.

The Institute also supports suggestions that the Board recognize and take into account market power in its interpretation of Section 106, as we indicated in our comment letter regarding the 2003 Board Proposal. While there may exist certain inconsistencies in the legislative history and judicial interpretations of Section 106 regarding the role of market power in defining a violation of Section 106, the Institute continues to believe that there is an overwhelming policy justification for limiting Section 106 to arrangements in which a bank leverages its market power to force or coerce a customer to obtain an additional product or service. In the Institute's view, this policy rationale is nowhere clearer than in the U.S. wholesale markets in which international banks compete.

In sum, the Institute strongly supports the creation of a safe-harbor exemption for transactions with large customers as proposed in the Bank Group Submission and the adoption of the coercion interpretation proposed in the Bank Group Submission. Both measures would significantly alleviate the compliance burden that Section 106 imposes on international banks' U.S. operations and would reduce the anti-competitive effects that Section 106 (as historically interpreted) has in the wholesale banking markets, as recognized by the Antitrust Division of the Department of Justice. Specifically for international banks, the measures proposed in the Bank Group Submission would help address the competitive equality concerns raised in the Institute's comment letter regarding the 2003 Board Proposal.

Please contact the Institute if we can provide additional information or assistance.

Sincerely,



Lawrence R. Uhlick  
Executive Director and  
General Counsel