Bank of America Corporation
Legal Department
NC1-002-29-01
101 South Tryon Street
Charlotte, NC 28255

Tel 704-388-6724
Fax 704-387-0108

VIA E-MAIL

February 22, 2005

Mr. Scott G. Alvarez
General Counsel
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Dear Scott:

At the December 1, 2004 meeting with Bank of America, Citigroup, Deutsche Bank, JPMorgan Chase, and UBS, Board staff asked whether the borrowing needs of certain customers within the proposed "large customer" safe-harbor exemption might be so large that only a few banks could effectively perform the role of lead arranger for such customer's credit facilities, thereby providing such a lead arranger with the opportunity to coerce such a customer. Representatives of the bank group, all of whom were lawyers, stated at the meeting that they did not believe this was a realistic concern.

Following the meeting, the Bank of America legal team discussed this question with our senior bankers at Bank of America. They unambiguously believe that such customers cannot be coerced by any lead arranger into accepting unwanted products and services. In this regard, we have attached a bullet-point summary of the views of our senior bankers regarding this question.

Please contact the undersigned should you have any questions or require additional information regarding these matters.

Sincerely,

John H. Huffstutler
Associate General Counsel

Attachment

cc: Kieran J. Fallon
Mark E. Van Der Weide
Andrew S. Baer
Robin Prager
Ron Borzekowski
Kenneth P. Brevoort
Joyce Hansen
Ivan Hurwitz

Jennifer J. Johnson
Secretary of the Board
Re: Docket No. OP-1158

Customer with very
large borrowing need

#862209

THE PROPOSED "LARGE CUSTOMER" SAFE-HARBOR EXEMPTION

Customers within the proposed safe-harbor exemption that have very large borrowing needs cannot be coerced by any lead arranger bank into accepting unwanted products and services

At the December 1 meeting with Bank of America, Citigroup, Deutsche Bank, JPMorgan Chase, and UBS, Board staff asked whether the borrowing needs of certain customers that are within the proposed "large customer" safe-harbor exemption and that have broad access to the capital markets might be so large that only a few banks could effectively perform the role of lead arranger for such a customer's credit facilities, thereby providing such a lead arranger bank with the opportunity to coerce such a customer. Bank of America does not believe that this is a realistic concern.

- Such customers with very large borrowing needs will often rotate the lead arranger position from deal to deal, which indicates that no single lead arranger can coerce such a customer.

- There is so much lending capacity in the syndicated loan market that such a customer with very large borrowing needs would have no trouble replacing such capacity if a particular lead arranger pulled out of a deal.

- It is the view of senior bankers of Bank of America that such a customer's borrowing needs could never be so large as to give any potential lead arranger the ability to coerce the customer. There is so much competition even among the smaller number of banks that can effectively perform the lead arranger role for the very largest loan syndications that no such bank would be able to coerce such customer.

- In the unlikely event that a lead arranger in a very large loan syndicate threatened late in the loan syndication process to drop out of the deal if such a customer did not accept an unwanted product or service from the bank or its affiliate, such behavior, while it might cause inconvenience to the customer and other lenders and might delay the syndication process, would be very unlikely to succeed in its objective and would not prevent the deal from being completed as more than one lender would be ready and able to step into the shoes of the threatening lead arranger.

- Such behavior would also be unlikely to succeed in its objective because such a customer, in addition to being able to replace the recalcitrant lead arranger, could very likely execute the transaction in alternative capital markets, for example, in the bond market.

- Such behavior by a lead arranger bank would very likely cause serious damage to the reputation of the bank in the eyes of such a customer as well as of other lenders, who would be quick to point to such behavior in their dealings with this and other customers as they sought to win the lead arranger mandate in other transactions. One banker at Bank of America has stated that "a bank would be toast if it tried this." Thus, it would not be in the overall economic or business interest of a potential lead arranger to behave in this manner.

- In the words of a banker at Bank of America: “In the largest deals, there is always some player in the deal that could step in at the 11th hour or some player outside the deal that would love to have your spot.”

- For a credit facility of $10 billion or more, there are at least five lenders that could effectively lead arrange such a deal. At least two lead arrangers would be in such a transaction and the remaining potential lead arrangers, in the words of one Bank of America banker, “would be around to replace us so the deal would get done with or without us.”

- It has been reported recently in *The New York Times* that the $4 billion syndicated loan transaction to finance the Kmart-Sears merger is significantly oversubscribed and that JPMorgan Chase, Citigroup and Bank of America are the lead arrangers for the transaction.

- It is relevant that loan syndications for investment grade borrowers were oversubscribed by 40% in the third quarter or 2004.

- In conclusion, there is so much competition in the loan syndication market that no such customer that has very large borrowing needs could be coerced by any bank into accepting unwanted products and services.