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December 8, 2004

The Honorable Alan Greenspan
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Dear Chairman Greenspan:

I have followed with interest the recent policy discussions regarding the Federal Reserve Board's interpretation of the anti-tying restrictions in Section 106 of the Bank Holding Company Act Amendments of 1970. I appreciate the time you have spent before the Senate Banking Committee and your response to questions pertaining to Section 106 that were submitted to you following our July 20, 2004 hearing.

On November 7, 2003, the Antitrust Division of the Department of Justice submitted a comment letter to the Board stating that "prohibitions on tying within Section 106 are much broader than those found in federal antitrust laws" and prohibit some pro-competitive practices, such as multi-product discounting. The Department of Justice clearly points out in its comments that the restrictions embedded in Section 106 "[disadvantage] banks as competitors in markets in which banks and non-banks compete, thus lessening competition and harming consumers."

The anti-tying provisions of the Bank Holding Company Act Amendments of 1970 were enacted at a time when bank holding companies were relatively new and their ability to compete in financial markets was strictly limited by the Glass-Steagall Act. The provisions were intended to address a general concern of Congress that banks had economic power over their customers, particularly in the credit granting markets, and should not be allowed to use that power to compel customers to purchase products and services that customers would otherwise not want. Today, however, the market for both traditional and non-traditional financial products is broad and includes banks, securities firms, insurance companies, and a host of specialized financial service providers. Additionally, it is my understanding that non-banks currently have the ability to bundle financial services to their customers, creating a distinct advantage over bank competitors which are restricted from bundling many services.

It is reasonable to believe that an overly broad interpretation of Section 106, which is intended to curb anti-competitive practices, could have the *opposite* effect and hinder pro-competitive behavior. Furthermore, it would seem that tying by banks can only occur if banks can coerce their customers and that certain customers, such as syndicated loan borrowers operating in the largest capital market in the world, are sophisticated customers that cannot be coerced. Therefore, I support the Department of Justice's recommendation and believe that the Federal Reserve Board should exercise its statutory authority to create an exemption from the coverage of Section 106 for such customers that cannot be coerced.

Again, thank you for your time before the Committee, your continued service to the Board, and your attention to this important matter.

Sincerely,

John E. Sununu
United States Senator