



**Banknorth**

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March 26, 2007

Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington DC 20551

Re: Regulation R, Docket No. R-1274

Dear Ms. Johnson:

On behalf of TD Banknorth, N.A. ("TD Banknorth"), I am writing to comment upon the Board's and Security and Exchange Commission's jointly proposed Regulation R (the "Proposed Rule"), which would be codified at 12 CFR pt. 218 and 17 CFR pts. 240 and 247. Although TD Banknorth is generally satisfied with the Proposed Rule, and believes that it is a very substantial improvement over Regulation B as previously proposed by the Securities and Exchange Commission, TD Banknorth does have concerns regarding the Proposed Rule's limitations upon incentive compensation payable in connection with referrals to third-party brokers under the Proposed Rule's networking exception.

As discussed below, TD Banknorth believes that the definition of "incentive compensation" at Section \_\_\_\_\_.700(b)(1) of the Proposed Rule is excessively broad, because the exclusions to that definition for bonus or similar compensation plans are too narrow. To resolve this concern, those exclusions should be expanded by deleting or substantially limiting the requirement, at Section \_\_\_\_\_.700(b)(1)(ii)(B), that referrals by employees must not be "a factor or variable in determining [an] employee's compensation under the plan."

The definition of "incentive compensation" is too broad because it effectively includes all bonus and similar plans that consider employee referrals to brokers as a factor in determining compensation, even if such referrals are only a minor factor and the plan also considers many other more significant factors unrelated to broker referrals. The Proposed Rule generally defines incentive compensation as any "compensation that is intended to encourage a bank employee to refer potential customers to a broker or dealer or give a bank employee an interest in the success of a securities transaction at a broker or dealer"; however, the definition expressly excludes

*compensation paid by a bank under a bonus or similar plan that is:*

*(i) Paid on a discretionary basis; and*

*(ii) Based on multiple factors or variables and:*

**(A) Those factors or variables include significant factors or variables that are not related to securities transactions at the broker or dealer;**

**(B) A referral made by the employee is not a factor or variable in determining the employee's compensation under the plan; and**

*(C) The employee's compensation under the plan is not determined by reference to referrals made by any other person.*

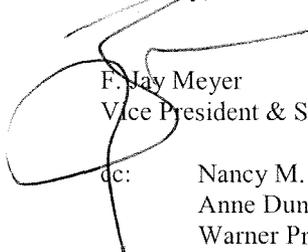
Section \_\_.700(b)(1) (emphasis added). Thus, this exclusion to the definition is inapplicable if an employee's referrals to a third-party broker play any role in determining the employee's compensation under the bank's bonus plan, even if such referrals are only one minor factor among many other more significant factors unrelated to such referrals. Note that this limitation upon bonus and similar plans is also somewhat redundant, in light of the immediately preceding requirement that the plans must include "significant factors or variables that are not related to securities transactions at the broker."

Like many banks, TD Banknorth offers its employees discretionary bonus compensation under a plan that considers a variety of factors; among those factors are customer referrals to various lines of business within the bank, and also for referrals to a third-party broker that has entered into a networking arrangement with the bank. Although referrals to that third-party broker are a factor that is considered under the plan, such referrals are only one factor among many that are considered in determining employees' bonus compensation. The plan includes significant factors or variables that are not related to securities transactions at the third-party broker, and does not require that a referral to the third-party broker must result in a transaction in order for that referral to qualify as a factor in determining bonus compensation. Accordingly, the plan does not create any inappropriate incentive for employees to "pre-sell securities to bank customers," nor should it give rise to inappropriate "sales practices concerns regarding unregistered bank employees." Proposed Rule, 71 Fed. Reg. 77522, 77524 (December 26, 2006).

To resolve TD Banknorth's concern, we believe that the existing Section \_\_.700(b)(1)(ii)(B) should be deleted, and Section \_\_.700(b)(1)(ii)(C) renumbered as Section \_\_.700(b)(1)(ii)(B). This would delete the requirement that employee referrals to a third-party broker not play any role in determining bonus compensation, while leaving in place the requirement that the bonus plan include other significant factors unrelated to such referrals. In the alternative, the existing Section \_\_.700(b)(1)(ii)(B) could be revised by inserting "primary" or "major" before the phrase "factor or variable", thereby allowing brokerage referrals to serve as a factor, but not a primary or major one, in determining bonus compensation.

Thank you for your consideration of our concerns.

Sincerely,



F. Jay Meyer  
Vice President & Senior Attorney

cc: Nancy M. Morris, Secretary, Securities and Exchange Commission  
Anne Dunne  
Warner Price  
Kevin Maas, Esq.