HSBC

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VIA ELECTRONIC SUBMISSION

March 26, 2007

Jennifer J. Johnson
Secretary Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20051

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Definition of Terms and Exemptions Relating to the "Broker" Exceptions for Banks (Regulation R); Federal Reserve Docket No. R-1274
SEC Release No. 34-54946 File No S7-22-06: 17 C.F.R. Parts 240 and 247; 71 Fed. Reg. 77522 (December 26, 2007)

Dear Ms. Johnson and Ms. Morris:

On behalf of HSBC Bank USA, National Association ("HSBC Bank"), these comments are submitted on proposed Regulation R (the "Proposed Rules"), jointly issued by the Securities and Exchange Commission (the "Commission") and the Board of Governors of the Federal Reserve System (collectively, the "Agencies") to implement certain exceptions for banks from the definition of the term "broker" under Section 3(a)(4) of the Securities Exchange Act of 1934, as amended by the Gramm-Leach-Bliley Act ("GLBA").

We appreciate the joint efforts of the Agencies, which have resulted in a helpful simplification of, and significant improvement over, the previous brokerage 'push-out' proposals. The Proposed Rules should greatly enhance the ability of the banks to continue offering their traditional activities, as contemplated by GLBA. While pleased with the progress made in developing workable bank 'broker' rules, we would suggest a few technical adjustments to and clarification of the Proposed Rules. These are addressed at greater length in the comment letters of the American Bankers Association and its affiliate, the ABA Securities Association (collectively "ABASA") and The Clearing House ("TCH"). We refer you to them and wish to highlight or expand on a number of comments made in their letters.

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1. Independence of Exemptions:

It is our understanding that the exemptions available under the Proposed Rules and GLBA are not mutually exclusive. That is, banks are able to rely on one or more of the exemptions under the Proposed Rules and the GLBA with respect to the same activity. Under this overall framework, conditions and/or restrictions that apply within the context of one exemption, such as the conditions or restriction within the Custody/Safekeeping exemption, would not apply if another exemption, e.g., the exemption for transactions related to "exempt securities," would otherwise also apply. [1]

We believe that this overall framework applies equally within the context of the "Chiefly Compensated" calculation under the Trust/Fiduciary exemption. In particular, compensation attributable to non-Trust/Fiduciary exempted accounts should either be counted as relationship compensation for the purpose of the 'Chiefly Compensated' calculation under the Trust/Fiduciary exemption; or, alternatively, excluded from the 'Chiefly Compensated' calculation. For example, compensation attributable to the sale or purchase of an exempted security or to a Regulation S transaction effected for a Trust/Fiduciary account should be treated either as relationship compensation for the purpose of the 'Chiefly Compensated' calculation, or excluded from that calculation, at the bank's option.

We request the Agencies to confirm that, to the extent that a component of a trust or fiduciary activity benefits from an exemption under the Proposed Rules or the GLBA other than the Trust/Fiduciary exemption, the compensation related to such exempted component can be counted as relationship compensation; or, in the alternative, that any such otherwise exempted component should be excluded from the 'chiefly compensated' calculation.

2. Networking Exemption:

We would like to thank the Agencies for establishing a separate regime of non-nominal payments for referrals by non-licensed bank employees of high net worth and institutional customers to brokers or dealers. However, the specific financial thresholds set by the Proposed Rules to qualify for this separate regime are notably high and do not correspond to a number of existing definitions of financially sophisticated investors under US securities laws. To address this inconsistency, we urge the Agencies to adopt definitions of high-net worth and institutional customers that are the same as or more closely aligned with the definition of 'accredited investors' under the Securities Act 1933. Congress has already recognized that, due to their financial sophistication and ability to fend for

[1] We are mindful of the exception to this framework in proposed rule 760, which provides that a bank may rely on the order-taking exemption for an account only if the bank does not also act in a trustee or fiduciary capacity for the account.

themselves, persons who meet the 'accredited investor' test do not need the protections of registration under the federal securities laws. In our view, it follows that 'accredited investors' should also be deemed able to evaluate the relationship between the bank and its employees and its broker-dealer partners, and any resulting securities transaction with the broker-dealer, particularly after receiving appropriate information. We believe that using the 'accredited investor' standard will create greater uniformity in the regulation of transactions involving financially sophisticated persons and obviate the need to distinguish between referrals for investment banking services or for other securities transactions, as currently contemplated under the Proposed Rules. Therefore, HSBC Bank would urge the Agencies to adjust the definition of "High Net Worth" and "Institutional" investors to correspond to existing definitions.

We support the comments of both ABASA and TCH on the Networking Exemption and, in particular, their comments on the need to (1) extend the permitted referral payment provisions to prospective customers; (2) to revise the time mandated for customer disclosure and customer qualification; and (3) to allow the bank and the broker-dealer to allocate between themselves the tasks of determining customer qualification and bank employee qualification.

We also support the ABASA and TCH comments on the bonus plan provisions of the Proposed Rules, particularly with respect to the proposed provisions that allow a bank, for bonus purposes, to take into account, inter alia, any measure of the overall profitability of a bank or of a bank's affiliates or operating units, or of an affiliated broker-dealer or of a broker-dealer's affiliates. We endorse the requests to use 'financial performance' rather than the proposed concept of 'profitability' in the Proposed Rule, and to add the ability to take into account the profitability (or financial performance) of operating units of a broker-dealer.

3. Sweep Exemption and Money Market Fund Exemption:

The Sweep Exemption and the Money Market Exemption require, as an alternative to the placement of customer monies into money market funds that are no-load (as defined in the Proposed Rules), that a bank provide the customer with a copy of the fund prospectus by the time the customer has authorized the transaction. This is a valuable, practical alternative and we support its inclusion in the Proposed Rules. However, we would request that, in recognition of potential time gaps between a customer's authorization and the transaction, banks be permitted to provide the prospectus at or before the time the transaction is effected.

4. Regulation S Exemption and Related Provision of Proposed Dealer Rules:

We fully support the new proposed Regulation S exemption, and the companion proposal by the Commission relating to the definition of the term "dealer" under Section 3(a)(5) of the Securities Exchange Act of 1934. We refer you to the discussion of these provisions in the comment letter by the Institute of International Bankers ("IIB") in particular, the IIB's request that compensation paid in connection with Regulation S exempted transactions effected for trust and fiduciary accounts are either excluded from the 'Chiefly Compensated' calculation required for the Trust/Fiduciary exemption; or counted as relationship compensation (see Section 1, above).

We also support the technical clarification requested by the IIB that the Regulation S exemption does not expire once a Regulation S security has become 'seasoned", contrary to the language in the preamble to the proposed amendment to the dealer rules, which might be read as implying otherwise.

5. Carrying Broker Limitation:

The Proposed Rules contain a prohibition against banks acting as carrying broker. We fear that this prohibition will have an unnecessary and adverse impact of the ability of banks to undertake traditional banking activities and so we strongly support, and urge the Agencies to consider, the comments of ABASA and TCH on the issue. Banks need to be able to provide their customers, or prospective customers, with the ability to choose certain traditional banking activities such as custody and lending, in connection with and notwithstanding their affiliation to a broker or dealer. Thus we recommend that this prohibition be removed or amended to make it practical and consistent with GLBA.

6. Dual Employees and NASD Rule 3040:

The Proposed Rules contemplate and permit the use of dual employees who would exercise permitted functions in the bank and in the broker dealer and thus be able to service the various needs of a customer.

Such employees would be registered with the National Association of Securities Dealers, Inc. ("NASD") and consequently subject, under the current regulatory framework, to NASD Rule 3040 with respect to their activities in the bank.

Rule 3040, which targets the activities of NASD registered representatives conducted away from their broker functions, would require the bank's activity to be indirectly supervised by the NASD, through the affiliated broker dealer. In addition to imposing the burdens of additional compliance policies, such as the need for a system of seeking the broker's approval of transactions, it would negate the exemption for the activity. The bank activities of such dual employees

are already subject to a comprehensive framework of supervision and regulations by bank regulators, and application of Rule 3040 in this context would impose an overlapping set of burdensome requirements on the banks, as well as their affiliated broker dealers, inconsistent with the framework of functional regulation established in GLBA.

A clarification that Rule 3040 does not apply to these dual employees, or an amendment of the Rule, very near the time that Regulation R is finalized, is indispensable for banks to be able to properly meet the prospective effective date for compliance with Regulation R. Choices regarding the use of dual employees need to be made well in advance of the effective compliance date, and the application of Rule 3040 will impact these business decisions.

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On behalf of HSBC Bank, I would like to thank the Agencies for their joint dedication and efforts in their crafting of a framework of workable rules which should, with the suggestions highlighted here and addressed in the ABASA and TCH letters, enable banks to continue to provide traditional services consistent with GLBA.

Sincerely yours,