

March 21, 1995

Mr. James D. McLaughlin
Director, Agency Relations
Trust and Securities American Bankers Association
1120 Connecticut Avenue, N.W.

Mr. Kenneth A. Guenther
Executive Vice President
Independent Bankers Association of America
One Thomas Circle, N.W., Suite 950
Washington, D.C. 20005-5802

Dear Mr. McLaughlin and Mr. Guenther:

On January 31, 1995, the Board of Directors ("Board") of the Federal Deposit Insurance Corporation ("FDIC") approved an amendment to Part 344 of the FDIC's rules and regulations, entitled "Recordkeeping and Confirmation Requirements for Securities Transactions," providing the Board with express authority to waive all or any portion of Part 344 for good cause. By letter of July 27, 1994, the American Bankers Association ("ABA") and the Independent Bankers Association of America ("IBAA") jointly requested that the FDIC amend Part 344 to delete the requirement in section 344.4 that the amount of a bank's remuneration be disclosed with respect to mutual fund transactions effected for customers. The issues raised in the ABA/IBAA letter were addressed by the Board at its March 21, 1995, meeting. The Board believes that such an amendment is best explored on an interagency basis and intends to proceed on that basis. In the interim, however, the Board determined that there is good cause to temporarily waive, in certain circumstances, the requirement in section 344.4 that the amount of the bank's remuneration be disclosed. Although your letter was limited to mutual fund transactions, because the Board believes that the same issues exist with respect to all securities transactions, the waiver will apply to all types of securities.

According to the ABA/IBAA letter, insured nonmember banks presently are subject to a competitive disparity vis-a-vis national banks and securities brokers because they are required to disclose the amount of the bank's remuneration in connection with customer securities transactions either on the confirmation or in a separate document. Many insured nonmember banks that contract with registered broker-dealers to lease space on the bank's premises receive a portion of the commissions which varies depending upon the volume of sales over a given period. The result is that some banks are not able to determine and disclose the amount of their remuneration within the time frames provided for under the regulation. Although the other federal bank regulatory agencies have regulations virtually identical to Part 344, those agencies do not presently require that the amount of remuneration be disclosed. The Board understands that the Comptroller of the Currency has waived the fee disclosure requirement in instances where disclosure of remuneration by a national bank might place the bank at a competitive disadvantage with non-bank brokers that are not required by the Securities and Exchange Commission ("SEC") to make similar disclosures. That SEC position was set forth in a 1979 no-action letter which dropped the requirement that broker-dealers disclose the commission on the confirmation in the case of mutual fund transactions. Although your letter did not so indicate, the Board further understands that the SEC is reviewing whether to rescind or modify that no-action letter. In addition to these circumstances, the Board is aware that Congress currently is reviewing bank involvement in securities activities, both under the Glass Steagall Act and in general.

In view of the above and the fact that the FDIC intends to actively explore uniform agency treatment with regard to the disclosure issue, the Board has determined that there is good cause at this time to grant a limited waiver of the requirement contained in section 344.4 that a bank disclose the amount of remuneration received. The waiver will extend to any insured state nonmember bank which receives on a regular basis, transaction-based compensation with respect to securities transactions effected for customers. The waiver is subject to the further proviso that (1) no additional fees are added by the bank

other than those described in the prospectus; (2) the sale is made by a registered broker-dealer subject to rules and supervision of the National Association of Securities Dealers ("NASD") and the SEC; and (3) the sale is conducted in a fashion which meets the requirements of the NASD and SEC.

The waiver does not relieve banks of the obligation to disclose the source of their remuneration. Nor does the waiver apply in the case of (1) services provided in a fiduciary capacity, or (2) services for which a flat fee has been paid which includes securities brokerage.

The waiver is effective immediately and will remain in effect unless and until rescinded by the Board. By direction of the Board of Directors.

Sincerely,

Robert E. Feldman
Acting Executive Secretary

Inactive