Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990

Financial Institution Letter
FIL-8-2007
January 30, 2007

EXCEPTIONS FOR BANKS FROM THE DEFINITION OF BROKER – PROPOSED REGULATION R

Request for Comment by the SEC and Federal Reserve

Summary: The FDIC is notifying FDIC-supervised banks of the attached joint proposed rulemaking by the Securities and Exchange Commission (SEC) and the Board of Governors of the Federal Reserve System that would implement the statutory exceptions from the definition of "broker" contained in the Gramm-Leach-Bliley Act (GLBA). The proposed regulation was drafted in consultation with the FDIC, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, and is designed to protect investors in a manner that does not unduly disrupt current bank business practices. Comments are due to the SEC or the Federal Reserve by March 26, 2007.

Distribution:
FDIC-Supervised Banks (Commercial and Savings)

Suggested Routing:
Chief Executive Officer
Chief Trust Officer
Compliance Officer

Attachment:
Proposed joint rulemaking

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Highlights:

The proposed rule would provide conditional exceptions from the SEC's definition of "broker" for banks that engage in certain securities activities, including the following:

- **Third-Party Networking Arrangements** – A bank could pay nonregistered bank employees a nominal one-time cash payment for referring bank customers to a broker-dealer who has a contractual networking arrangement with the bank. A bank could also pay an employee a contingent referral fee of more than a nominal amount for referrals of institutional or high net worth customers, subject to certain conditions.

- **Trust and Fiduciary Activities** – A bank could effect securities transactions in a trustee or fiduciary capacity, if such transactions are conducted in the bank's trust department and the bank is ''chiefly compensated'' for such transactions on the basis of "relationship compensation" as defined in the proposed rule. The "chiefly compensated" test could be done on an account-by-account basis or on a bank-wide basis.

- **Safekeeping and Custody** – A bank could accept orders for securities transactions from custodial account customers; however, the proposed rule imposes various restrictions on the types of fees received, the provision of investment advice, employee compensation, and advertising.

- **Sweep Activities** – A bank could sweep deposit funds into no-load money market funds as defined in the proposed rule. Deposits could also be swept into money market funds that do not qualify as no-load, as long as the bank provided a service or product that would not require the bank to register as a broker, and provided customers with certain disclosures.