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Division of Corporation Finance
Division of Investment Management
Division of Market Regulation
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Ladies and Gentlemen

On June 1, 2007 we submitted a request for no action letter on behalf of the Missouri Bankers Association (the "MBA"), a not-for-profit association of commercial banks and savings and loan associations representing approximately 380 federal and state separately chartered commercial banks, savings and loan associations and out of state banks with one or more branches located in Missouri. The MBA is the principal advocate for the banking industry in Missouri and has developed a proposed program for an educational savings plan (the "Program") under enabling legislation in Missouri and Section 529 of the Internal Revenue Code of 1986, as amended ("Section 529"). After our submission of that June 1, 2007 letter, we had subsequent discussions with the staff of the Division of Corporation Finance, Division of Investment Management and Division of Market Regulation. We are submitting this revised request in response to those discussions.

On behalf of the MBA, we hereby request the Division of Corporation Finance to issue a no-action letter with respect to the offer and sale by participating banks in the State of Missouri of the depository instruments described herein without registration under the Securities Act of 1933, as amended (the "1933 Act") and the Securities Exchange Act of 1934, as amended (the "1934 Act"). In addition, we seek the concurrence of the Division of Market Regulation that it will not recommend any enforcement action if the participating banks and their employees administer the plan described herein without registering as broker-dealers pursuant to Section 15(a) of the 1934 Act. Finally, we request that the Division of Investment Management concur that it will not recommend enforcement action under the Investment Company Act of 1940 (the "1940 Act") if the program proceeds as described in this letter. We understand that any proposed material deviation from the description contained

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herein will require our return to the staff with the substance of those changes to ensure that the staff will continue to take these no action positions.

As more fully described below, we seek these positions from the Staff based on our views that –

- (1) Under Section 2(a)(1) of the 1933 Act, neither the depository instruments being offered under the Program nor a participant's participation interest in the Program are "securities" requiring registration under the 1933 Act or the 1934 Act or, alternatively, that they are exempt from registration under the 1933 Act and the 1934 Act pursuant to Section 3(a)(2) and Section 3(a)(29), respectively;
- (2) Under the 1940 Act, the Program is not an issuer of a security within the meaning of Sections 2(a)(22) and 2(a)(36) and thus is not an investment company as defined in Section 3(a) of the 1940 Act; and
- (3) None of the Administrator, the Trust, the Participating Banks (each defined below) nor their employees is required to register with the Commission as a broker or dealer in participating in or administering the Program because they are not in the business of effecting transactions in securities.

Background

Missouri Legislation and the Program

In 2004, the Missouri legislature adopted legislation (the "Missouri Law") to facilitate a "qualified tuition program" under Section 529 – the Missouri Higher Education Deposit Program. The Program, as designed by the MBA, is intended to meet the requirements of this facilitating legislation and Section 529. The Missouri Law authorizes the state entity designated by statute to oversee all Missouri Section 529 Plans, the Missouri Higher Education Savings Program ("MOST") Board, to appoint an administrator ("Administrator") to operate the Program on behalf of the State. The Administrator will arrange for the creation of a trust (the "Trust") pursuant to a contract with the MOST Board. The Trust will be a commercial trust, drafted to meet the requirements of Section 529 and the Missouri Law, will originate through a commercial bank and will have as its trustee a bank or trust company that is qualified to conduct trust business in Missouri. The Trust is not a conventional private trust or a pension trust. In accordance with Section 529 and state law, the State of Missouri, through the MOST Board, will exercise ongoing oversight to "establish and maintain" this Missouri 529 Deposit Program.

Participants' Deposits. A Participant in the Program ("Participant") may make a deposit through the Program in a bank which has its headquarters or a branch located in Missouri and is participating in the Program ("Participating Bank"). The funds deposited into the Program by a Participant would be invested in the Participating Bank's fully FDIC-insured certificates of deposit or other fully FDIC-insured deposit accounts at the Participating Bank as selected by the Participant. The Participant will

designate a beneficiary ("Beneficiary") for whose benefit the Participant is depositing funds to be used for the Beneficiary's educational purposes. All deposits made in the Program will be titled and otherwise subject to contractual requirements of the Missouri Law in a manner designed to reflect the state's interest, as well as the interest of the Participant and the Beneficiary. The deposit accounts are expected to be titled in a manner similar to: "Participating Bank as agent for the Trustee of the Missouri Deposit Program Trust on behalf of Participant and Beneficiary". The exact designation will be determined based on the deposit system capabilities of the Participating Banks and will reflect the ability of the Participant to effectively control his account, subject to the requirements of the Missouri Law and Section 529 in order to take advantage of the favorable tax consequences of these accounts.

Participating Banks. In order to participate in the Program, Participating Banks will be approved by and enter into an agreement with the Administrator. The Administrator will establish certain requirements for a bank to be approved as a Participating Bank, but the requirements are expected to be minimal in order to maximize the ability of banks located in Missouri to participate. A Participating Bank must be willing and able to enter into the agreement, operate in accordance with the terms of the agreement, train employees with respect to the Program and have the capability of communicating information to the Administrator or its designee relating to deposits made into the Bank's deposit accounts which are part of the Program. The agreement will require Participating Banks to provide required disclosures to Participants, as discussed below. The agreement will not require Participating Banks to set rates paid on deposit accounts at any stated level or to meet specific earnings requirements, though it is possible the Administrator may determine that a bank will not be accepted as a Participating Bank if it is operating under a regulatory cease and desist order or other public enforcement action. Deposits made into the Program will be insured by the Federal Deposit Insurance Corporation (the "FDIC") on a pass-through basis, so that each Participant with a separate Beneficiary under the Program is separately insured.

A Participant will receive required disclosures about the Program at the Participating Bank in the form of a uniform disclosure document generated especially for the Program. The document will disclose the nature of the Program, restrictions required by Section 529, the essentials of the banking product being purchased by the Participant and other information deemed necessary and appropriate to fully describe the banking product-based Program. The uniform disclosure document (as well as any advertising for the Program) will include a conspicuous statement substantially similar to the following: "This 529 tuition bank deposit is a tax advantaged program; failure to follow IRS rules for this program may result in current taxable income and penalties." The Participating Bank will provide its own Federal Reserve Regulation DD and other bank deposit-related disclosures to the Participant with respect to the Participating Bank's deposit accounts.

The 529 deposits would remain in the Participating Bank; information on those deposits would be electronically transferred to the Administrator. The Trust will have the power to enforce compliance by the Participating Banks with the Program, all of which requirements will be spelled out in the agreement between the Participating Bank and the Administrator as discussed above.

If a Participating Bank fails to comply with the requirements of the Program as set out in the agreement, the Trust could require the deposits held in that Participating Bank be moved to a similar deposit in another Participating Bank. Such circumstances would include, for example, failure to deliver the uniform disclosure documents, failure to treat the 529 deposits as an asset of the Trust and significant regulatory problems of a Participating Bank. The Trust would notify the Participant of the need to move the Participant's deposit to another Participating Bank because of problems with the Participating Bank in its role as a participant in the Program. The Trust would serve more in the role of custodian than in the role of an investment manager which controls the investments. Generally, the Trust would not unilaterally move the deposit to another Bank. We anticipate that a Participant forced to move funds out of a Participating Bank through no fault of his own under these circumstances would not be required to pay fees or penalties. On the other hand, failure of a Participant to follow the requirements of the Program or early withdrawals by a Participant would not only subject the Participant to penalties under Section 529, but would subject the Participant to the usual early withdrawal fees of a Participating Bank – just as such actions by the bank's other customers would be met with such fees.

Account Activities. The Participant may roll over a 529 deposit by cashing in the deposit at the Participating Bank and transferring the funds from such deposit to another Participating Bank, or to another Section 529 program, but no more than once a year. The Participant may terminate his or her plan and cash in the deposit. In such transactions, the Participating Bank, Administrator and the aggregating authority (which will be Upromise or its successor) will cooperate to provide the appropriate tax information.

We expect no other differences between deposit accounts offered by Participating Banks to 529 customers and the general public. Each Participating Bank will have discretion in setting terms to be offered with respect to its certificates of deposit and other deposit accounts. The Participating Banks may elect to charge Participants a fee to open and maintain the Program deposit accounts so that the Participating Bank can recover administrative fees. All of these fees will be disclosed to prospective Participants. We are advised that some banks may wish to include 529 account customers in promotions that reward customers for new and/or additional relationships with the bank (e.g., holders of checking, savings and bank card accounts are sometimes eligible for free safe deposit boxes, free notary services and/or reduced loan rates, etc.). Again, these reward programs are a routine part of the business of banking and would treat 529 Program deposits like other deposits in the bank.

Oversight and Administration. The Administrator, along with the Missouri State Auditor, has additional responsibilities to insure that the Participating Banks comply with the disclosure requirements and pay out funds to the Participants as required by Section 529. The MBA has contracted to assist the Administrator to implement these objectives.

The MOST Board will have ongoing oversight of the entire Program and may request information from any party or entity as otherwise required in a Section 529 program.

Compliance with Section 529

Section 529 of the Internal Revenue Code of 1986, as amended (the "Code"), provides for the exemption from federal income tax of "qualified tuition programs."

Section 529(b) of the Code sets forth the requirements to be a "qualified tuition program." *See generally* Prop. Treas. Reg. section 1.529-2 and IRS Notice 2001-81, 2001-2 CB 617.

First, pursuant to section 529(b)(1) of the Code, the program must be established and maintained by a state or agency thereof under which a person may make contributions to an account which is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account. *See generally* Prop. Treas. Reg. section 1.529-2(b). The Missouri law provides that the Program will be administered and maintained by the MOST Board, a qualifying state agency, and will satisfy the establishment and maintenance requirements of the Code and the Proposed Treasury Regulation.

Second, section 529(b)(2) of the Code requires that contributions may only be made in cash. See also Prop. Treas. Reg. section 1.529-2(d). The Program will accept only cash contributions.

Third, section 529(b)(3) of the Code requires that a program provide a separate accounting for each designated beneficiary. Proposed Treasury Regulation section 1.529-2(f) provides guidelines for satisfying this requirement. The Program will comply with these guidelines in maintaining separate accounting for each designated beneficiary.

Fourth, section 529(b)(4) of the Code requires a program to specifically provide that any contributor to, or beneficiary under, the program may not directly or indirectly direct the investment of any contributions to the program (or any earnings thereon). Additional guidance is found in Proposed Treasury Regulation section 1.529-2(g) and Notice 2001-55, 2001-2 CB 299. The Program does not permit any direction of the investment or earnings thereon as required by section 529(b)(4) of the Code. Bank deposits are permitted and the Internal Revenue Service has issued at least one private letter ruling approving the use of certificates of deposit as a qualifying investment vehicle. See PLR 200030030 (a copy of which is attached to this revised submission). In addition, pursuant to a special rule set forth in IRS Notice 2001-55, a program may permit investments in an account to be changed annually and upon a change in the designated beneficiary of the account.

Fifth, section 529(b)(5) of the Code requires that a program not allow any interest in the program or any portion thereof to be used as security for a loan. *See generally* Prop. Treas. Reg. 1.529-2(h). The Program will satisfy this requirement.

Sixth, section 529(b)(6) of the Code requires that a program provide adequate safeguards to prevent contributions on behalf of a designated beneficiary in excess of those necessary to provide for the qualified higher education expenses of the beneficiary. *See generally* Prop. Treas. Reg. section 1.529-2(i).

