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March 26, 2007

VIA ELECTRONIC MAIL

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

Re: Definitions of Terms and Exemptions Relating to the "Broker" Exceptions for Banks Under Section 3(a)(4) of the Securities Exchange Act of 1934 ("Exchange Act"), as amended by the Gramm-Leach-Bliley Act ("GLBA")

[Release No. 34-54946; File No. S7-22-06]

Dear Mr. Katz:

Fiserv Trust Company ("Fiserv Trust") appreciates this opportunity to comment on the proposed rules, jointly issued by the Securities and Exchange Commission ("SEC") and the Board of Governors of the Federal Reserve System ("Board"), which would implement certain of the exceptions for banks from the definition of the term "broker" under Section e(a)(4) of the Exchange Act, as amended by the GLBA (the "Proposed Rules").

Fiserv Trust is an FDIC-insured trust company, organized pursuant to the banking laws of the state of Colorado. Fiserv Trust is one of the nation's largest independent, depository trust companies that provides services including asset custody, trust and back office support to a wide variety of investment professionals and investors. We have been in business since 1957, and as of January 1, 2007, our clients have entrusted us with over $46 billion in assets in 294,000 accounts.

We appreciate the efforts of the SEC and the Board to craft the Proposed Rules that, in our opinion, are more reflective of Congress's intent to preserve certain customary banking activity in adopting the GLBA. However, we believe that the term "accommodation basis" under the Safekeeping and Custody Exemption could benefit from greater clarity in the final rules; it is too important of a term to be clarified in bank regulatory guidance. We also believe that the SEC and

the Board have significantly underestimated both the start-up and on-going compliance costs associated with compliance with the rules in their proposed form. Below, we have provided greater detail on these two points.

I. "Accommodation Basis" under the Safekeeping and Custody Exemption should be Defined in the Final Rules as Accepting Unsolicited Securities Orders for Processing

Proposed Section 3(a)(4)(B)(viii) of the Exchange Act would provide banks with an exception from the "broker" definition for certain bank custody and safekeeping activities ("Safekeeping and Custody Exception"). The Proposed Rules would permit banks, subject to certain conditions, to accept orders for securities transactions from employee benefit plan accounts and individual retirement and similar accounts for which the bank acts as a custodian. In addition, the exemption would permit banks, subject to certain conditions, to accept orders for securities transactions on an "accommodation basis" from other types of custodial accounts ("Accommodation Transactions"). The Proposed Rules provide no clear definition of "accommodation." In commentary, however, the SEC and the Board state that bank examiners will develop guidance to describe the types of policies procedures and systems that banks should have in place "to help ensure that the bank accepts securities orders for other custodial accounts only as an accommodation to the customer."

Permitting this important component of the Safekeeping and Custody exception to be defined in "guidance" by bank regulators, as indicated in the Proposed Rules, could lead to inconsistencies, confusion, and delay in financial institutions' ability to comply with the exception. Therefore, the SEC and the Board should provide greater clarity as to the definition of "accommodation basis" in the final rules and/or commentary to the final rules.

We think that the term "accommodation basis" should be defined in the final rules as accepting a customer securities order and facilitating execution exclusively at the request of the account holder or on an unsolicited basis. In the safekeeping and custody exemption in Regulation B, proposed in 2004, the SEC recognized the unsolicited nature of a securities transaction as a major factor in determining whether a transaction was effected on an accommodation basis. Clarifying the concept of accommodation basis in this manner would be consistent with the other exceptions in the to the Accommodation Transactions component of the Safekeeping and Custody exception, namely that banks are prohibited from: i) providing investment advice or research concerning securities, ii) making recommendations to the account, or iii) otherwise soliciting securities transactions from the account. Moreover, such clarification in the final rules would provide all financial institutions – not just those subject and/or privy to bank regulatory guidance – greater ability to monitor and confirm that they are meeting the terms of the exception.

II. The SEC and the Board Have Significantly Underestimated the Cost Associated with Complying with the Proposed Rules

Start-up Costs

The SEC and the Board anticipate that banks would incur start-up costs associated with complying with the Proposed Rules – primarily costs associated with bringing systems into compliance. The SEC and the Board estimate that it would take an average of 30 hours of professional services at an average of $240/hour for a total of $7200 per bank to accomplish required programming to comply with the Proposed Rules. Although we believe that the SEC and the Board have fairly estimated the average hourly rate of professional services that would be required to comply with the Proposed Rules, they have substantially underestimated the amount of time and, therefore, the total estimated start-up costs that would be associated with compliance. We believe that the most significant cost would be for systems programming to come into compliance with the Trust and Fiduciary Exception. Not unlike other financial institutions subject to the Proposed Rules, we would face some significant programming challenges: 1) our accounts are housed on different systems, which would require separate and distinct programming efforts; and 2) Rule 12b-1 compensation we may receive is not currently attributed to accounts for which we serve as trustee and accounts for which we act as custodian, which would require additional programming to properly attribute the fees to each type of account before an accurate calculation of relationship compensation could be accomplished. We anticipate that the programming necessary to permit us to accurately and timely calculate our relationship compensation under the Trust and Fiduciary Exception could be accomplished in three or four 40-hour weeks (180-240 total hours) by 1.5 full time persons, which translates into total cost of between $43,000 and $55,000. Therefore, we believe that the SEC and the Board have underestimated start-up costs associated with compliance with the proposed rules by at least $35,800-$47,800.

Ongoing Compliance Costs

The SEC and the Board ask for comment on any anticipated ongoing costs associated with complying with the proposed rules. Based on our analysis, the Proposed Rules would impose from at least $60,000-$95,000 in ongoing compliance costs per year. Specifically, we estimate that it would cost $25,000-$50,000 per year in systems and software maintenance; $5000 per year in costs associated with auditing the system and our compliance with the Proposed Rules; and $30,000-$40,000 per year in manpower associated with running, analyzing, and maintaining the output from the relevant program(s) to ensure ongoing compliance.

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Thank you for the opportunity to comment on this important proposal. Please contact me directly at 303-294-5872 if you have any questions regarding our comments.

Sincerely,

Joanne Radmore Ratkai

Joanne Radmore Ratkai
Vice President &
General Counsel
Fiserv Trust Company