

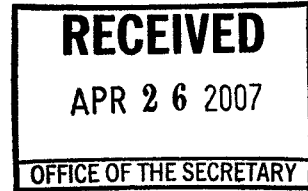


WEST COAST TRUST

April 2, 2007

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Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551



Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

RE: Proposed Regulation R; FRB Docket No. R-1274; SEC File No. S7-22-06

Dear Ms. Johnson and Ms. Morris:

West Coast Trust Company, Inc. ("WCT") appreciates the opportunity to comment on the Board of Governors of the Federal Reserve System's ("FRB") and the Securities and Exchange Commission's ("SEC") Proposed Regulation R.¹

WCT² appreciates the FRB's and the SEC's hard work in providing financial institutions with guidance on the application of various broker exceptions contained in Title II of the Gramm-Leach-Bliley Act ("GLBA"). WCT also thanks the FRB and SEC staffs for devoting significant amounts of time and other resources to working with trade associations in order to promote a dialogue between the agencies and the financial services industry.

I. Summary of WCT's Position

As a threshold matter, WCT generally supports the agencies' joint proposal to implement the bank exceptions from the definition of "broker" found in Section 3(a)(4)(B) of the Securities Exchange Act of 1934 ("Exchange Act"). WCT is concerned, however, that in the agencies' proposed application of Exchange Act Section 3(a)(4)(B)(i) (the "Networking Exception"), the ability of banks to compensate their unregistered employees is more limited than that permitted in prior FRB statements³ and SEC staff

¹ See Securities Exchange Act Release No. 54946 (December 18, 2006) (Proposing Regulation R).

² WCT is a wholly owned trust company subsidiary of West Coast Bancorp an affiliate of West Coast Bank.

³ The framework for banking practices under networking arrangements is proscribed primarily by the Interagency Statement on Retail Sales of Nondeposit Investment Products. See Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and Office of Thrift Supervision, *Interagency Statement on Retail Sales of Nondeposit Investment Products* (February 15, 1994) ("Interagency Statement").

no-action letters,⁴ as well as in self-regulatory organization rules,⁵ and is more limited than that contemplated by GLBA. WCT also believes that the proposed prohibition of non-cash referral fees is unlikely to result in additional investor protections and may have unintended, undesirable results.

II. Application of Networking Exception to Bank Bonus Programs

WCT is concerned that in attempting to define "incentive compensation" for purposes of the Exchange Act, the agencies may have unduly restricted the ability of banks to determine discretionary employee bonuses in a manner that goes beyond limitations contemplated by GLBA. The Networking Exception in GLBA prohibits "incentive compensation" to unregistered bank employees "for any brokerage transaction" unless such employees are duly registered associated persons of a broker-dealer.⁶ Proposed Regulation R would generally define "incentive compensation" as compensation that is intended to encourage a bank employee to refer potential customers to a broker-dealer or give a bank employee an interest in the success of a securities transaction at a broker-dealer.⁷ Under the proposal, in determining employee bonuses, a bank may take into account the profits of the bank (including the holding company), a bank affiliate or operating unit, or the profits of a broker-dealer, provided that broker-dealer profits is one of many factors or variables considered, including significant factors or variables unrelated to the profitability of the broker-dealer.⁸

WCT does not believe GLBA was intended to limit a bank's ability to determine *bona fide* bonuses under the narrow set of conditions proposed. We instead believe that a bank should be able to take into account the revenue the bank earns from all activities, including at the branch or division level in determining discretionary bonuses, including where a component of such revenue is attributable to broker-dealer securities transactions (*i.e.*, not necessarily broker-dealer profits).⁹ We believe further, that banks

⁴ See *e.g.*, *Chubb Securities Corp.* (November 24, 1993) ("*Chubb*"). The letters provided thrifts and credit unions with a means to compete with commercial banks in making securities brokerage services available to their customers. *Id.*

⁵ See *e.g.*, NASD Rule 2350, which governs broker-dealer activities on the premises of a financial institution. The SEC approved Rule 2350 in Securities Exchange Act Release No. 34294 (November 4, 1997).

⁶ See Exchange Act Section 3(a)(4)(B)(i)(VI).

⁷ See Securities Exchange Act Release No. 54946 (December 18, 2006) at Section II.A.3.

⁸ See *Id.*

⁹ In this regard we also request that the agencies clarify that under the current proposal the ability to take into account the profits of a bank operating unit in determining employee bonuses would also permit banks to take into account the revenues received from a broker-dealer in connection with transactions for customers associated with a specific bank branch or other operating unit. Under the proposal, incentive compensation does not include compensation paid by a bank under a bonus or similar plan that is: (i) Paid on a discretionary basis; and (ii) Based on multiple factors or variables and: (A) Those factors or variables include significant factors or variables that are not related to securities transactions at the broker or dealer; (B) A referral made by an employee is not a factor or variable in determining the employee's compensation under the plan; and (C) The employee's compensation is not determined by reference to referrals made by any other person. The proposed rule states further that it should not be construed to prevent a bank from compensating an officer, director or employee on the basis of any measure of the overall profitability of (i) the bank, either on a stand-alone or consolidated basis; (ii) any of the bank's affiliates (other than a broker-dealer) or operating units; or (iii) a broker-dealer if, such profitability is only one of multiple factors used to

should be able to consider assets gathered by the bank and the broker-dealer with which it networks, including at the branch or division level, in determining discretionary bonuses, as long as the bank provides equal weighting to assets custodied by the bank as it does to assets custodied by the broker-dealer (either directly or through its clearing broker). We therefore request that the agencies revise Regulation R to expressly permit banks to determine discretionary bonuses for unregistered bank employees based in part on either revenues earned by the bank that are attributable to the branch or division in which that employee works or assets gathered by the bank that are attributable to the branch or division where the employee works. Under the revenue test, revenues received from a broker-dealer would be one of multiple factors or variables used to determine the bonus amount, including significant factors or variables unrelated to the broker-dealer's securities activities. Under the assets gathered test, the bank would be required to give the same weight to assets held at the broker-dealer as it does to assets held at the bank. Neither of these tests should cause a bank employee to determine where to refer customers based on the expectation that he or she is likely to receive a different level of compensation based on that decision.

WCT also requests that the agencies clarify that nominal one-time cash fees of a fixed dollar amount may be paid to unlicensed supervisory bank employees in connection with referrals by other bank employees whom they supervise, directly or indirectly. The current proposal appears to contemplate the payment of referral fees solely to non-supervisory employees making referrals, but WCT is not aware of any such limitation in the statutory language of GLBA, nor of any patterns of abusive behavior on the part of supervisory bank employees.

III. Proposed Prohibition of Non-Cash Referral Fees

WCT disagrees with the agencies' decision to prohibit the payment of non-cash referral fees to unregistered bank employees. We believe instead that non-cash referral fees should be expressly permitted, provided they are nominal in amount and meet the requirements for a one-time payment of a fixed dollar amount. The SEC previously was comfortable with permitting non-cash referral fees, provided the other statutory conditions for referral fees were met.¹⁰ We therefore suggest that the agencies amend proposed Regulation R to permit banks to pay their unregistered employees referral fees in a form other than cash.

In the event that the agencies determine to prohibit non-cash referral fees upon adoption of Regulation R, WCT requests that the agencies clarify that banks and broker-dealers may continue to provide unregistered bank employees with non-cash compensation in the form of meals and entertainment, provided such compensation is not provided in reference to referrals made by bank employees and is limited in value in some way (e.g., under \$200 per calendar year). WCT is concerned that without this clarification, the current proposal may be read to prohibit the provision of non-cash compensation to

determine the compensation of the bank employee; and significant other factors not related to the profitability of the broker-dealer are used in determining the employee's bonus. *See* Securities Exchange Act Release No. 54946 (December 18, 2006).

¹⁰ *See e.g.*, Securities Exchange Act Release No. 49879 (June 17, 2004) (proposing Regulation B).

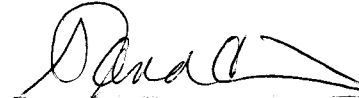
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unregistered bank employees, even where such compensation is not intended to reward the employees for securities referrals.

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WCT appreciates the FRB's and SEC's consideration of its comments on Proposed Regulation R.

Sincerely,

A handwritten signature in black ink, appearing to read "Sandra Mico", with a long horizontal flourish extending to the right.

Sandra Mico
President
West Coast Trust Company, Inc.