Mark R. Thresher
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October 12, 2004

Via E-Mail
Mr. Jonathan G. Katz, Secretary
United States Securities and Exchange Commission
450 Fifth Street, NW
Washington, D.C. 20549-0609

RE: File No. S7-20-04
Proposed Rule: Certain Thrift Institutions Deemed Not to Be
Investment Advisers (Release Nos. 34-49639 & IA-2232)

Dear Mr. Katz:

On behalf of Nationwide Financial Services Inc, ("Nationwide")[1], this letter is in follow-up to our submission filed with the Securities and Exchange Commission (the "Commission") on July 9, 2004 commenting on proposed rule 202(a)(11)-2 under the Investment Advisers Act of 1940 (the "Advisers Act") and proposed rule 12g-6 under the Securities Exchange Act of 1934 (the "Exchange Act"). Nationwide urges the Commission to act as quickly as possible to finalize these exemptive rules.

Nationwide has worked with the Staff of the Commission and members of the industry for a number of years to obtain relief for federal thrifts who wish to sponsor collective trust funds for pension plans. Some relief was specifically granted to federal thrifts under the Gramm-Leach-Bliley Act of 1999 (the "GLBA") as reflected in amendments to the Securities Act of 1933 and the Investment Company Act of 1940. However, the legislative relief for thrifts was not carried through to the Advisers Act and Exchange Act in connection with advisory or securities transaction activity incidental to the sponsorship or offering of a collective trust fund. The proposed rule would grant this relief and effectuate the legislative attempt to exempt thrifts when sponsoring, advising and offering collective trust funds to pension plans.

[1] Nationwide Financial Services, Inc. (member New York Stock Exchange) is the holding company for Nationwide Life Insurance Company and other companies that comprise the domestic trust, life insurance and retirement savings operations of the Nationwide group of companies, including Nationwide Trust Company, FSB, a wholly owned subsidiary.

The proposed rules makes sense because they recognize the fiduciary activity of the thrift which already is subject to state and federal banking regulation and examination as well as state fiduciary laws. As many commentators agree, the Office of Thrift Supervision in the United States Department of the Treasury is well suited to the task of supervising thrift fiduciary activities within its Congressionally ordained role to maintain the safety and soundness of federal savings banks. *See* Section 4(l),(n) & (d) under the Home Owners' Loan Act of 1933. Additional federal regulation of fiduciary activity adds to customer cost without any appreciable benefit given the higher legal standard of care required with respect to fiduciary accounts.

And as noted in our original letter, Nationwide believes that, consistent with this fiduciary rationale, a federal thrift should be exempt from registration in its capacity as a trustee or custodian of an ERISA plan or other plans within the traditional pension exemptions. *See* Section 3(a)(2) under the Securities Act of 1933 and Section 3(c)(11) under the Investment Company Act of 1940. *See also Massachusetts Mutual Life Insurance Company No-Action Letter* (publicly available August 10, 1998--including within the scope of the pension exemptions Section 457 deferred compensation plans participating in collective trust funds and insurance company contracts and separate accounts subject to the specified requirements).

Moreover, the approach ensures that a key concern of the Commission, namely, investor protection, is addressed through ongoing Commission regulation and oversight with respect to nonfiduciary securities activities such as money management accounts (at least until any further Congressional clarification is made). Such an approach is at least consistent with functional regulation as enshrined in the GLBA.

The exemption would be immediately useful to Nationwide. It is Nationwide's experience that more and more employer plan sponsors want the convenience and value of the trust department that is handling plan administration to have collective trust fund options available for their employees. Nationwide believes that the clear purpose of the GLBA was to modernize financial services regulation in the United States by eliminating historic artificial barriers to the economical delivery of financial services by avoiding or removing duplicative or no longer warranted prohibitive or ineffective regulation of financial activities.

Nationwide understands that the proposal does not recognize "full parity" between banks as defined in the securities laws and thrifts. However, under the proposed rule, the Commission in honoring its Congressional mandate to protect the investing public and to modernize financial services regulation in the nation is recognizing that fiduciary activity long subject to the jurisdiction of banking authorities should remain with the OTS with respect to federal savings banks and not with the Commission as well. The proposed exemptive rule is based upon GLBA's redefinition of "bank" to include thrifts as it pertains to single, collective and common trust funds within the traditional pension exemptions. *See* GLBA Section 223 (amending Section 2(a)(5) under the Investment Company Act of 1940). The proposal reasonably recognizes that a broader application of a redefinition of "bank" to include federal thrifts would require Congressional action.

The proposal would be a practical solution and provide meaningful and immediate relief to Nationwide. Nationwide realizes that the proposal would require the federal savings bank to differentiate between fiduciary and nonfiduciary investment accounts. Nationwide does not believe that an electronic tagging of accounts to distinguish them is impractical or cost prohibitive.

Nationwide strongly supports a regulatory regime that protects investors while at the same time adds value to financial services customers. Nationwide again applauds the Commission in its efforts. Subject to a clarification in the final adopting release that would confirm as an exempt fiduciary activity, thrift trust, custodial or administrative activities with respect to an ERISA plan and the advisory component thereto, Nationwide would support the rules as proposed and urges the Commission to adopt final rules as soon as possible.

We thank the Commission for its consideration of our views.

Respectfully yours,

Nationwide Financial Services, Inc.

Mark R. Thresher
President and Chief Operating Officer

cc: Mary Eileen Kennedy—Chairman of the Board—Nationwide Trust Company, FSB