August 20, 2004

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549-0609

Re: Release No. 34-49879 (File No. S7-26-04): Proposed Regulation B

Ladies and Gentlemen:

The following are our comments to the Securities and Exchange Commissions proposed Regulation B. I would like to take this opportunity to first thank the staff, especially Ms. Linda Stamp-Sundburg, of the SEC for being so responsive to my questions and providing information regarding the proposed rule. This was very helpful, especially to a small institution such as ours with limited resources and will hopefully make our comments more meaningful to the Commission.

As a way of background, our institution is a small bank with less than $100 million of assets located in the State of Wyoming. However, currently the trust department of the bank has almost $200 million in assets and serves as trustee or paying agent on almost $500 million of exempt bond issues for political sub-divisions throughout the State of Wyoming, including for the State itself. Also, the department serves as a qualified intermediary within the State for 1031tax-deferred exchange transactions.

Given the size of our banking institution, we appreciate the small bank exception as proposed by the SEC and as amended to apply to all banks under $500 million in size. We feel that this amended size limitation should cover most small banks and the exceptions should give most small banks the opportunity to carry on their existing business practices. However there are a couple of areas within this exception that deserve comment on which comments were requested by the SEC.

Our first comment is in regards to custody business by small banks. The SEC requested comments on how small banks solicit custody business. Our institution does not actively solicit custody business in itself. The custody business for individuals becomes a product of developing managed personal trusts. All of our individual custody accounts come from individuals who have either named or plan on naming our institution as successor trustee to their grantor trust. These individuals began transferring their securities to the bank to hold as custodian so that the assets are being grouped together in order that the assets are readily available in event the bank has to begin acting immediately as successor trustee to the grantor.

There is an evolution process in the account relationship changing from a custody account to a fully managed trusteeship. At first, the customer wants a non-managed custody relationship in order that they can retain control over the investments within their account. It is at this time that the bank finds itself as an order taker from the customer and executes the directed order. At this point in the relationship, no investment advice is given by the bank since the customer doesn't really want it, nor is the bank being compensated in any way to give it.

The next step in the evolution process is the customer begins seeking advice as to the investments in the account. At this point, the relationship converts to a managed agency relationship whereby the bank begins the process of managing the account based upon an allocation strategy developed between the customer and the bank. We find at this time that customer's still want the ability from time to time to direct trades within the account. Our institution does not use individual securities, except for government bonds, in the managed accounts and only uses no load funds or outside managed portfolios.

The final stage in this process is that the bank takes over as a full trustee and manages the account accordingly. However, even at this stage, grantor's still direct some of the purchases or sales of investments. Most grantor trusts allow the grantor to retain this power. Thus, a bank can find itself in a quasi-custodial role even when it is acting as a full trustee on an account. This can especially be the case when we are dealing with a large IRA rollover.

As described above the custodial relationship and consequently the securities transactions within these types of accounts are more of a product of the individual developing their estate plan; than is something that is necessarily actively marketed by us. However, this entire process is a method whereby the individual can become familiar with the future trustee that will be managing their entire estate. It is also our experience, especially with the new generation of investors, that these individuals are very sophisticated investors (even though they do not necessarily meet the SEC's definition of a sophisticated investor) and they want the ability to direct a trade through their custodial account as a means of maintaining control over their investments.

Therefore, as we see this type of evolution of the bank trustee role becoming more common; we would ask that the Commission reconsider the transaction exception contained in the Exchange Act Section 3(a)(4)(B)(xi) to at least 1000 transactions and the sales compensation limit in Reg B for small banks changed to $250,000.

We are especially concerned, in our situation, if any income generated under the proposed Rule 776 is applied to the small bank sales compensation limit. As described above, our institution serves as an indenture trustee and paying agent for a large number of tax-exempt bond issues as well as a qualified intermediary for tax-deferred exchange transactions. Within these accounts, we use a large amount of 12b-1 funds for project funds and funds awaiting disbursement. We believe that we are currently following the requirements of proposed Rule 776, since the rate of the 12b-1 fee is being disclosed to the client in a separate document or writing acknowledged by the client along with the client's acknowledgement of a receipt of a prospectus for the fund.

We also feel that any 12b-1 sales compensation generated under the proposed Rule 776 should not be discounted against the small bank sales compensation limit and that a small bank should be entitled to take advantage of both exemptions concurrently. In reviewing the proposed Reg B and from discussions with the SEC staff; it is not clear whether both exemptions would be available to a small bank. Also, if the Rule 776 exemption is not independently available, we do not see were the exemption granted by the Rule would have any value. However, if both exemptions are available to a small bank, than we would feel more comfortable with the proposed sales compensation limit under the small bank exception with a possible faze in period from a $250,000 limit as small banks readjust their fee arrangements on custody accounts.

The proposed Rule 776, as we understand it, should began leveling the playing field between small institutions, such as ourselves, and larger institutions that compete for the same indenture trustee business. As a matter of history, we were forced into using 12b-1 fees on this type of business about ten years ago in order to compete with larger institutions. The political sub-divisions that we had been working with and their financial advisors were accustom to using 12b-1 fees to pay for these types of trust services. However, our regulators were requiring that we disclose the rate of the12b-1 fee in a written document acknowledged by the client. We found that the regulators of larger competing institutions were not requiring the same type of disclosure and this put us at a competitive disadvantage.

Furthermore, we believe that the requirements of Rule 776 are fairly compatible with our current state law requirements. Wyoming Statute 4-10-802 (f) requires that when a trustee is making an investment in an investment company or investment trust from which the trustee is receiving service fees; that the trustee disclose the rate or method by which compensation is determined by delivery of a prospectus or other communication. Most state's that have adopted the Uniform Trust Code should have similar provisions.

While, we are currently only using money market funds that would not be classified as "no-load" funds for our indenture trustee and tax-deferred exchange accounts; we could foresee that other types of investments may be required to be used in the future. For example, we have been requested by clients to use "guaranteed investment contracts" within certain of our indenture trustee accounts, whereby the contract pays fees to the trustee or placement agent. Thus, we feel that the Commission should look at expanding the Rule 776 exception to other investments that pays fees to trustees.

Furthermore, we believe that the rule could be expanded to other types of investors. We are somewhat confused on which investor's the rule currently applies to when they do not meet the "qualified investors" test. However, as discussed above; we believe that the requirements of the Rule and our current state law requirements gives all investors protection. We can testify that within our State both the Banking Commissioner and State Legislature were quite concerned with investor protection when the provisions of

W.S. 4-10-802 (f) were being drafted and considered. We can also testify to the fact that our state regulators and the FDIC regulators have been real diligent in reviewing our documentation of compliance.

In conclusion, we believe that the “small bank exception” of the proposed Regulation B will work for most small bank operations. Again, we would like the Commission to clarify whether one can use both the “small bank exception” and the Rule 776 exception. If the Commission does not allow both exceptions to be used together; than we would ask that the Commission consider raising the small bank sales compensation to $250,000 at least for a faze in period of five years in order that those accounts that would otherwise qualify for the Rule 776 exception could be adjusted as to their fee arrangements. Also, if both exceptions could not be used concurrently, it would make the Rule 776 exception worthless to most institutions. Furthermore, we believe that the Commission could expand the Exchange Act Section 3(a)(4)(B)(xi) exemption to 1000 transactions per year and this would cover most small banks limited trades in a year for all of their custody and quasi-custody business that is currently being done to facilitate their trust business. Finally, we believe that Rule 776 could be expanded without losing investor protection. If we understand correctly all of the requirements of Rule 776 and to whom it applies; we believe that the disclosure requirements will possibly level our competitive playing field, since we are currently required to disclose similar information under our state law.

Again, we want to thank the SEC staff for assisting us with our questions and we appreciate the Commission’s consideration of our comments.

Respectfully yours,

Michael E. Bohl
Senior Vice President
Wyoming Bank & Trust