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April 8, 2003

Office of the Comptroller of the Currency
250 E Street, SW
Public Information Room
Mailstop 1-5
Washington, DC 20219

RE: Docket No. 03-02. Proposed Rulemaking, 12 CFR 7.4000, Visitorial Powers

Dear Comptroller:

The North American Securities Administrators Association (NASAA)¹ appreciates the opportunity to comment on the proposal by the Office of the Comptroller of the Currency (OCC) to amend 12 CFR 7.4000 concerning OCC's exclusive visitorial powers. NASAA concurs with OCC's conclusion in Section 7.400(b)(1)(vi) that the Gramm-Leach-Bliley Act (GLBA) created an exception to the OCC's exclusive visitorial powers with respect to functional regulation of specific activities, including regulation of broker-dealers. It is NASAA's position that Section 7.400(b)(1)(vi) affirms the authority of state securities regulators to license, investigate and conduct on-site examinations of broker-dealer affiliates of national banks. It also is NASAA's view that Section 7.400(b)(2) does not limit state securities regulators from obtaining and enforcing subpoenas issued to national banks or their affiliates in the course of a lawful investigation undertaken pursuant to state securities laws.

The GLBA permits banks to engage in certain securities activities that were previously prohibited by the Glass-Steagall Act. GLBA amended the Securities and Exchange Act of 1934 to eliminate the blanket exclusion of banks from the definitions of "broker" and "dealer." In GLBA, Congress affirmed that states have an important role in the effective functional regulation of broker-dealers and, in Section 104(f) preserved state authority in this area.² This authority relates to state securities regulators' ability to license, investigate and enforce rules relating to the conduct of all broker-dealers including those which might be affiliates of a national bank.

¹ The oldest international organization devoted to investor protection, the North American Securities Administrators Association, Inc., was organized in 1919. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico and Puerto Rico. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

² 104(f) Limitation – Subsections (c) and (d) shall not be construed to affect – (1) the jurisdiction of the securities commission or any agency or office performing like functions of any State, under the laws of such State-(B) to require the registration of securities or the licensure or registration of brokers, dealers or investment advisers.

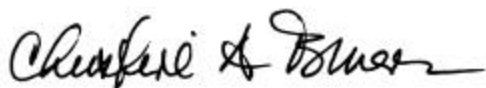
Functional regulation essentially means that the government agency with expertise in regulating particular activities does so regardless of the form of the business entity conducting those activities. This is in recognition of the principle that investors should receive the same protections whether they purchase securities from a bank or a registered broker-dealer. State securities regulators play a vital role in protecting investors and, in furtherance of this role, state securities regulators conduct on-site examinations as well as investigations of entities that offer and sell securities. At times, such investigations may necessitate a request for information, such as a subpoena for documents, from a national bank. A state securities examination might also involve a broker-dealer that is located in a national bank. While these regulatory activities involve national banks, they have traditionally been conducted by state securities regulators and were preserved in the GLBA.

The proposed OCC rule, Section 7.4000(b)(2) provides an exception for courts of justice to issue orders or writs compelling the production of information or witnesses. This section further states, "This exception does not authorize state or other governmental entities to inspect, regulate, or supervise the activities of national banks, or to compel production of information or adherence to restrictions or requirements concerning the content of those activities or the manner in which, or standards whereby, those activities are conducted." NASAA is concerned that this provision may be misinterpreted by national banks that they need not cooperate with state securities regulators' inspections and investigations involving securities activities.

To give effect to the express purposes of Congress in enacting GLBA, it is NASAA's view that the GLBA exceptions to the OCC's exclusive visitorial powers include the ability of state securities regulators to conduct compliance inspections of broker-dealer registrants and investigations involving the offer and sale of securities. NASAA recommends clarification of proposed Rule 7.4000(b)(2) to conform with Section 7.4000(b)(1)(vi), specifically, to recognize a state securities regulators ability to issue and enforce administrative subpoenas related to an investigation of fraud, deceit or unlawful conduct by a national bank or an affiliate in connection with securities or securities transactions.

NASAA appreciates the opportunity to comment on this proposed rulemaking. We look forward to a dialogue on this issue to fully articulate our views.

Sincerely,



Christine A. Bruenn
NASAA President
Maine Securities Administrator