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Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, N.W.
Washington, DC 20006-1506

Re: Proposed Consolidated FINRA Rules Governing Supervision and Supervisory Controls

Dear Ms. Asquith:

We are writing to offer our comments on the proposed rule that would re-write certain provisions of the existing supervision and supervisory control rules in a manner that would permit firms flexibility in tailoring such control procedures and address outside activities of associated persons, including those of so-called “dual employees”.

Our comments are on behalf of Comerica Securities, Inc., Detroit, Michigan, a registered broker-dealer and investment adviser wholly-owned by Comerica Bank, and on behalf of Comerica Bank, as well as Comerica Bank & Trust, N.A. Comerica Bank is a full service state member bank, based in Dallas, Texas, that operates more than 400 offices in the states of Michigan, California, Texas, Florida, and Arizona and holds more than \$66.9 billion in assets. Comerica Bank & Trust, N.A. is located in Ann Arbor, Michigan and is a national bank affiliate of Comerica Bank’s that offers controlled disbursement account deposit services and trust services. Some employees of both Comerica Bank and Comerica Bank & Trust, N.A. hold securities licenses and are also employees of Comerica Securities, Inc. Accordingly, Comerica Securities, Inc., Comerica Bank, and Comerica Bank & Trust, N.A. are directly affected by the proposed rule.

Ms. Marcia E. Asquith

Generally, we support the proposal to the extent that it would afford broker-dealers greater flexibility in prescribing supervisory procedures. However, that part of the proposal dealing with dual employees appears both (a) to go beyond the legal authority of FINRA by purporting to regulate activities of banks that do not constitute “broker” activities because they are exempt under Title II of the Gramm-Leach-Bliley Act and (b) to interfere with and intrude upon, traditional bank activities.

We wholeheartedly respect and strongly support FINRA’s expectation that a firm should establish an effective system, procedures, and controls to supervise its broker business and the broker activities of associated persons. However, the proposed rule requires supervision of each type of business in which a firm engages, “regardless of whether registration as a broker-dealer is required for that activity”. This may be an issue of fundamental philosophical approach as we do not understand the basis of FINRA’s concern about non-broker activities. Conceivably non-broker activities of a brokerage firm could affect its solvency, and we would concede that such non-broker activities of a brokerage firm may be of proper concern to FINRA. However, the more attenuated the link to the brokerage firm, the less clear is the basis for FINRA’s concern. Thus, the basis of the interest of FINRA in the non-broker activities of an associated person (e.g. a registered representative who moonlights as a business college instructor) is less apparent (e.g. of what interest to FINRA is the individual’s teaching activities?). When the attenuation is stretched even further, and the associated person happens also to work for an affiliated bank, the basis of FINRA’s interest in the banking activities of the bank becomes even less clear. If we somehow misread the proposal too broadly, and it is not intended to reach the banking activities of the bank, we would urge that this be clarified in the final rule.

We respect that you have undertaken considerable effort to propose special treatment for bank-related “securities activities” of dual employees. The problem may be one of definition though. The scope of the special exception is “to the extent that such securities activities fall within any of the statutory or regulatory exemptions from registration as a broker ...”. By statutory definitions of the term “broker”, such activities of a bank do not constitute broker activities. The legislative history is that the basis of the decision to exempt such activities from the definition of the term “broker” was to prevent interference with the performance of traditional banking activities.

The proposed rule would subject such traditional banking activities to the supervision of brokerage personnel even though such activities do not constitute broker-dealer activities, unless the brokerage firm approved the performance of such activities by the dual employees and receives written assurance that (a) the bank will have a comprehensive view of the dual employees’ (exempt and non-exempt) securities activities (which may or may not be practical), (b) the bank has policies and procedures to comply with securities antifraud laws, and (c) the bank will notify the member firm of violations by dual employees. While we, of course, support enforcement of antifraud laws, the point here is that the proposal subjects statutorily

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exempt bank activities (that are also exempt by SEC regulation) to regulation as if the activities were not exempt. The basis of FINRA's authority, which we understand flows through the SEC, to adopt regulations regulating conduct that both Congress and the SEC have exempted from broker regulation is not apparent.

In that the purpose of the statutory exemption and regulatory exemption is to avoid interference with a bank's performance of its traditional activities, FINRA should take care not to interfere with such performance. Instead what is proposed would either (a) subject the performance of traditional bank activities by bank employees (who happen to be dual employees of a broker) to supervision by a broker or (b) subject the bank to duties to (1) have a comprehensive review of all securities activities of dual employees, (2) adopt policies and procedures, and (3) promptly notify a member firm. While perhaps adoption of policies and procedures and notification may not be that burdensome, it appears that getting a comprehensive view may be quite difficult from a practical perspective, and, in any event, imposing any of these requirements on a bank, by definition, interferes with the bank's free performance of traditional bank activities and free exercise of its banking powers.

For the foregoing reasons, we urge the Commission not to adopt that aspect of the proposal that would regulate traditional non-broker activities of banks.

While we believe that FINRA has no authority to regulate bank securities activities, or the activities of dual employees acting within the scope of their bank duties and responsibilities, we believe that, if FINRA enacts a version of proposed Rule 3110, the rule should be clarified to limit the bank's responsibility to provide written assurance to the member firm that the bank will have a comprehensive view of the dual employee's securities activities. We assume that this language was intended to govern a bank's oversight of securities activities performed within the bank in the employee's capacity as a bank employee.

Therefore, we request that proposed Rule 3110(b) (3) (ii) a. be amended to read, "a. have a comprehensive view of the dual employee's securities activities **performed within the bank in the employee's capacity as a bank employee.**" (Emphasis supplied.) We believe such language would provide clarification and more closely comply with Congress' intent in the enactment of GLBA.

Thank you for this opportunity to express our views.

Best wishes,

s/ Julius L. Loeser

Julius L. Loeser