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U.S. House of Representatives  
 Committee on Energy and Commerce  
 Room 2125, Rayburn House Office Building  
 Washington, DC 20515-6115

April 21, 1993

ALAN J. ROTH, STAFF DIRECTOR AND CHIEF COUNSEL  
 DENNIS B. FITZGIBBONS, DEPUTY STAFF DIRECTOR

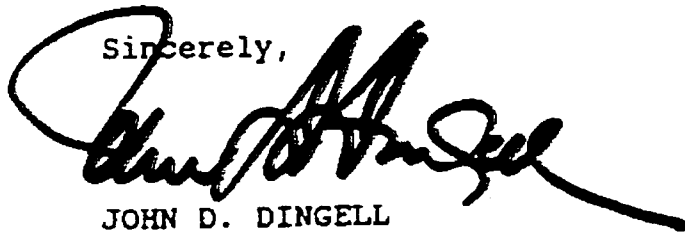
The Honorable Richard C. Breedren  
 Chairman  
 Securities and Exchange Commission  
 450 Fifth Street, N.W.  
 Washington, D.C. 20549

Dear Chairman Breedren:

Pursuant to Rules X and XI of the U.S. House of Representatives, and our continuing oversight of securities and exchanges, we are requesting that you look into the alleged violations disclosed in the enclosed correspondence with respect to bank sales practices regarding mutual funds. We are providing you with a redacted copy of the complaint letter in order appropriately to protect the rights of the complainant.

Thank you for your cooperation and attention to this request. Your response by the close of business on Friday, May 28, 1993 would be appreciated.

Sincerely,



JOHN D. DINGELL  
 CHAIRMAN

cc: The Honorable Carlos J. Moorhead  
 The Honorable Edward J. Markey  
 The Honorable Jack Fields

05-4192  
 53 APR 22 1993

Brokerage Services, Inc.  
2400 East Atlantic Blvd.  
Pompano Beach, FL 33062  
(305) 786-7222

LOOKING FOR A,

C. D. - MONEY MARKET - ALTERNATIVE ?



1. FIRST UNION INSURED TAX FREE FUND YIELD: 5%
  - FEDERALLY TAX FREE INCOME & PRESERVATION OF CAPITAL
  - INVESTMENT GRADE MUNICIPAL BONDS
  - MONTHLY INCOME
  
2. FIRST UNION U.S. GOVERNMENT FUND YIELD: 7%
  - HIGH LEVEL OF CURRENT INCOME CONSISTENT WITH STABILITY OF PRINCIPAL
  - DIVIDENDS DECLARED DAILY AND PAID MONTHLY
  
3. FIRST UNION FIXED INCOME FUND YIELD: 8%
  - HIGH LEVEL OF CURRENT INCOME WITH GROWTH AS A SECONDARY OBJECTIVE
  - INVESTMENT GRADE DEBT SECURITIES
    - a. CORPORATE BONDS
    - b. GOVERNMENT BONDS
  - DIVIDENDS DECLARED DAILY AND PAID MONTHLY
  
4. FIRST UNION VALUE FUND YIELD: 12%
  - LONG TERM CAPITAL GROWTH WITH CURRENT INCOME AS A SECONDARY OBJECTIVE
  - FOUR STAR ABOVE AVERAGE RATING BY MORNINGSTAR
  - TOP QUALITY BLUE CHIP STOCKS
  
5. FRANKLIN UTILITY FUND YIELD: 14%
  - CURRENT INCOME AND CAPITAL APPRECIATION
  - COMMON, PREFERRED, BONDS OF PUBLIC UTILITY ISSUERS
  - DIVIDENDS DECLARED AND PAID QUARTERLY ON 15th.
  
6. FRANKLIN FLORIDA TAX-FREE INCOME FUND YIELD: 8.42%
  - HIGH LEVEL OF INCOME EXEMPT FROM FEDERAL AND FLORIDA STATE INTANGIBLE TAX
  - FLORIDA MUNICIPAL BONDS (INVESTMENT GRADE ONLY)
  - DIVIDENDS PAID MONTHLY LAST WEEK OF MONTH

FOR MORE INFORMATION CALL ME NOW.

PAT MULROONEY  
VICE PRESIDENT  
TRUST AND INVESTMENT COUNSELOR

1-800-347-3827

(INVESTMENT RETURN AND PRINCIPAL VALUE OF THESE FUNDS WILL FLUCTUATE SO THAT WHEN SHARES ARE REDEEMED, THEY MAY BE WORTH MORE OR LESS THAN THEIR ORIGINAL COST. PERFORMANCE DATA QUOTED REPRESENTS YIELDS SINCE FUNDS INCEPTION. PAST PERFORMANCE MAY NOT BE INDICATIVE OF FUTURE RESULTS.)

April 3, 1993

The securities industry has been moving steadily, in the 20 years I've been registered, towards very strict regulation of firms and their representatives by the SEC, NYSE, NASD and the various state regulatory bodies. Those of us who play by the rules don't have a problem with this trend-we know that these governing bodies exist for the protection of our clients. In fact, we perceive it as necessary to weed out those who should not be associated with our business. The three representatives in this office, including me, have over 54 years of experience without the slightest blemish on our records. Those who have nothing to worry about welcome the SEC and other regulators who continually supervise investment firms.

Today one of our office clients came to us with a "sheet" given to her by someone at the First Union Bank on Atlantic Blvd. in Pompano Beach. I've enclosed a copy of the "sheet". You and most investors might not realize that this sheet, touting various mutual funds, contains various representations that are strictly prohibited and downright misleading. There is no way this sheet would clear the compliance department of any quality investment firm, much less the SEC. Any registered representative who produced and distributed such a letter would justifiably be "hung out to dry". No prospectus was even included- a definite no-no.

Another client came by the office later and said that she had just been by the First Union branch next door to us and she saw these "sheets" all around their branch. I personally have experienced situations at that branch where literature (which should have been accompanied by a prospectus) was handed to me by a bank employee who was not even registered to deal in securities.

**Who is protecting the investing public in these bank branches? Nobody, as far as I can tell. It's just a matter of time before you start hearing some horror stories coming out of these situations. Just wait until some sharp attorney (no offense little brother) picks up on what's going on out there. Those guys will have a field day! Blatant offenses and deep pockets- a good securities attorney's dream.**

**Anyone who sells securities to the public is supposed to have a Series 7 registration. I know representatives at First Union who are Series 7 licensed. Yet the majority of the literature given out at these branches (and I can assure you that First Union is not alone in these violations) is done so by bank employees who have not the slightest idea of what rules are to be followed much less the merits of the respective investments. What really amazes me is that the person who authorized this mutual fund sheet is apparently Series 7 licensed. This person knows better! Could it be that these people think that they can do pretty much as they please? Can they?**

**you know how I feel about people who don't play by the rules. Those of us out here who are trying to play by the rules are getting real frustrated by the abuses we see being perpetrated on our clients. Would you please see to it that this mutual fund sheet and this letter get to someone who cares and has what it takes to do something about it?**

MEMORANDUM

February 24, 1993

TO: LP Attorneys

FROM: Belinda Blaine *7/83*

REVIEWED

BY: Robert Colby

RE: Reinvestment of Proceeds of Certificates of Deposit in  
Securities Products

Attached is our response to Chairman Dingell's letter of  
January 4, 1993, regarding the sale of securities on bank  
premises.

cc: Wilson Butler  
Thomas Harman  
Richard Jackson

MEMORANDUM

February 11, 1993

TO: Chairman Breeden

FROM: William H. Heyman, Director  
Division of Market Regulation

RE: Reinvestment of Proceeds of Certificates of Deposit in  
Securities Products

This memorandum responds to a letter, dated January 4, 1993, from Chairman Dingell of the House Committee on Energy and Commerce, inquiring whether the Commission has taken or intends to take any action to ensure that individuals who seek to reinvest the proceeds of maturing certificates of deposit ("CDs") in bonds, bond funds, and other uninsured investments, receive adequate disclosure.

I. Background

With the decline in interest rates in recent years, bank customers have been withdrawing funds from low-yield CDs at a significant rate. In an effort to retain these customers, banks nationwide have increased their efforts to promote alternatives, including stock and bond mutual funds and other uninsured investments. Recent reports estimate that banks sold 10% of the \$300 billion in mutual funds sold last year. <sup>1/</sup> In addition, broker-dealers acting independently of banks have actively solicited customers to reinvest the proceeds of CDs in securities.

The increase in the reinvestment of CD proceeds in securities products raises the concern that investors may be confused regarding the nature of their investment or may not always receive the information necessary to make an informed investment decision. Your letter refers to press reports indicating that salespeople may fail to disclose the risks associated with bond funds and similar investments, in part because they are not properly supervised and may not themselves fully comprehend those risks. Special concerns arise when securities are sold in a traditional banking context. <sup>2/</sup> Customers that buy uninsured products on the

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<sup>1/</sup> Sales of bond funds alone totalled \$11.8 billion in July of 1992. See, e.g., "Questions on Bank Sales of Funds," The New York Times (Dec. 31, 1992), at D1; "Popular Bond Funds Carry Interest Risks," Investor's Business Daily, Inc. (Sept. 3, 1992), at 1; Paul Starobin, Bypassing Congress, 23 Nat'l J. 3008 (1991).

<sup>2/</sup> See, e.g., Concerning S. 543 and S. 713: Hearings Before the Senate Committee on Banking, Housing and Urban Affairs, 102nd (continued...)

premises of a bank from the bank itself, a securities affiliate of the bank, or a broker-dealer leasing space from the bank, may be unaware that the products are not federally insured or protected as traditional bank deposits.

## II. Current Disclosure Requirements

### A. General Broker-Dealer Obligations

The Securities Exchange Act of 1934 ("Exchange Act") expressly excludes banks from the definition of "broker" and "dealer." <sup>3/</sup> As a result, the securities activities of commercial banks and their personnel are not subject to direct Commission oversight.

Broker-dealers that sell securities to investors, including bank customers, on the other hand, are subject to the provisions of the federal securities laws applicable to broker-dealers, as well as the oversight of the Commission and the self-regulatory organizations ("SROs"); and the salespeople of these firms are subject to SRO qualification and testing requirements. The federal securities laws provide a measure of protection to customers choosing to reinvest the proceeds of a maturing CD in an uninsured product through a broker-dealer. For example, under the judicially endorsed "shingle" theory, by virtue of "hanging out its shingle" as a securities professional, a broker-dealer makes an implied representation to its customers that it will deal with them fairly and in accordance with the standards of the profession. A broker-dealer that breaches this representation violates the antifraud provisions of the federal securities laws, namely, Section 17(a) of the Securities Act of 1933, Sections 10(b) and 15(c)(1) of the

2/ (...continued)

Cong., 1st Sess. D538 (1991) (statement of the Hon. Richard C. Breeden, Chairman, SEC).

3/ Sections 3(a)(4) and 3(a)(5) of the Exchange Act. The term "bank" is generally defined in Section 3(a)(6) of the Act as: (1) a banking institution organized under the laws of the United States; (2) a member bank of the Federal Reserve System; and (3) any other banking institution doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising a fiduciary power similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by a State or Federal authority having supervision over banks.

Exchange Act, and Rules 10b-5 and 15c1-2 promulgated thereunder. 4/

As part of its obligation of fair dealing, a broker-dealer also is required to have a reasonable basis for believing that its securities recommendations are suitable for the customer in light of the customer's financial situation and investment objectives, and to disclose known or easily ascertainable material facts bearing upon the broker-dealer's recommendation. This suitability requirement is incorporated in the rules of the SROs, as well as the antifraud provisions of the federal securities laws. 5/ Thus, a broker-dealer that recommends that a customer invest the proceeds of a CD in bonds or bond mutual funds without informing the customer that the bond or bond fund is not insured and that the invested capital is sensitive to interest rate fluctuations (or that fails to disclose other material terms), violates its duty of fair dealing under the antifraud provisions of the federal securities laws. 6/

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4/ See, e.g., Charles Hughes & Co. v. SEC, 139 F.2d 434 (2d Cir. 1943); Hanly v. SEC, 415 F.2d 589 (2d Cir. 1969); Harold Grill, 41 SEC 321 (1963).

5/ National Association of Securities Dealers, Inc. ("NASD") Rules of Fair Practice, Art. III, §2, NASD Manual (CCH) ¶2152, and New York Stock Exchange ("NYSE") Rule 405, Diligence as to Accounts, N.Y. Stock Exch. Guide (CCH) ¶2405 (the "Know Your Customer Rule"). See also Municipal Securities Rulemaking Board ("MSRB") Rule G-19, MSRB Manual (CCH) ¶3591, and NYSE Rule 472, N.Y. Stock Exch. Guide (CCH) ¶2472.40(1) ("When recommending the purchase, sale or switch of specific securities, supporting information must be provided or offered.")

Courts have enforced the suitability doctrine with respect to transactions in both debt and equity securities through the application of Rule 10b-5 and other antifraud provisions of the securities laws. See, e.g., Clark v. John Lamula Investors, Inc., 583 F.2d 594 (2d Cir. 1978) (recommended purchase of a convertible debenture was unsuitable for the needs of a widowed, retired customer, where the broker-dealer failed, among other things, to disclose the risks of the investment).

6/ Other applicable disclosure rules include Rule 10b-10(a)(5) under the Exchange Act, 17 CFR 240.10b-10(a)(5), which requires broker-dealers to disclose certain yield information for transactions in debt securities in the confirmation of the transaction.

(continued...)



When CD proceeds are reinvested in mutual funds, the federal securities laws require that a prospectus containing certain information about the fund be provided to the customer. For instance, investors in an open-end management investment company must be provided with a prospectus meeting the requirements of Part I of Form N-1A. 7/ Item 4 of this form requires that the prospectus describe the principal risk factors associated with investing in the fund, including factors peculiar to the fund and those generally attendant to investment companies with similar policies and objectives. 8/ The Commission has taken the position that a broker-dealer's disclosure responsibilities under its obligation of fair dealing are not diminished because such a statutory prospectus or an offering circular has been delivered, because that information furnishes a background against which the salesperson's representations may be tested. 9/

6/ (...continued)

In addition, registered broker-dealers that are investment advisers have a fiduciary relationship with their clients and are subject to the antifraud provisions of the Investment Advisers Act of 1940 ("Advisers Act"). The Commission has brought several cases under these provisions against advisers making unsuitable recommendations. See, e.g., Section 206 of the Advisers Act; Westmark Financial Services, Investment Advisers Act Release No. 1117 (May 16, 1985).

7/ The prospectus must include a statement, on the cover page, that additional information about the fund has been filed with the Commission (the Statement of Additional Information, Part 2 of Form N-1A) and is available upon request and without charge.

8/ In addition, Commission rules governing money market mutual funds require prominent disclosure on the cover page of the prospectus and in sales literature that a money market fund is not guaranteed or insured by the U.S. government and that there is no assurance that the fund will be able to maintain a stable net asset value. See 17 CFR 230, 239, 270, and 274.

Further, the Commission's staff does not permit mutual funds that invest in U.S. government securities to use terms in their names or advertising that imply that the securities issued by the funds are guaranteed or insured by the U.S. government. See Letter from William R. McLucas, Director, Division of Enforcement, and Gene A. Gohlke, Acting Director, Division of Investment Management, to Registrants, October 25, 1990.

9/ Ross Securities, Inc., 41 SEC 509, 510 (1963).

Financial Institution do not participate in the sale of securities to customers. Specifically, broker-dealers and Financial Institutions that enter into networking arrangements are required to represent that:

- Registered employees of the broker-dealer will inform each customer at the time he or she opens an account that all purchases and sales made through the account are not guaranteed by the Financial Institution or insured by the Federal Deposit Insurance Corporation or any other state or federal deposit guarantee fund relating to Financial Institutions.
- The securities of a participating Financial Institution or its affiliates may not be sold on any part of the premises of the institution that is generally accessible to the public. Further, customers of that institution will not be solicited by the broker-dealer in connection with the sale of securities of the institution or its affiliates, regardless of the location of the solicitation.
- Securities transactions will be effected only by employees of the broker-dealer that are registered and qualified under the rules of the NASD. In accordance with its obligations under the federal securities laws, the broker-dealer will control, supervise, and be responsible for all securities activities of its employees.
- Employees of the Financial Institution that are not registered representatives of the broker-dealer only may perform clerical and ministerial functions. Unregistered employees therefore are prohibited from recommending any security, giving any form of advice, describing investment vehicles such as mutual funds, discussing the merits of any security with a customer, or handling any questions that might require familiarity with the securities industry or the exercise of judgment regarding securities matters.
- The broker-dealer will provide conduct manuals to its employees and the unregistered employees of the Financial Institution describing, among other things, the operation of the program and the restrictions on the activities of unregistered employees. The broker-dealer will conduct reviews to ensure that its registered employees, as well as the Financial Institution and its employees observe the requirements of these manuals.

To ensure compliance with the terms of these no-action letters, during the last fiscal year the staff conducted

examinations of several Financial Institution networking arrangements, focussing on the broker-dealer's branch office review procedures, supervision of registered and unregistered employees, advertising, and sales practices. These examinations revealed substantial compliance with the provisions of the Exchange Act and the terms of the individual no-action letters.

### III. Recommendations

As discussed above, commercial banks are not subject to the broker-dealer provisions of the Exchange Act or to corresponding Commission and SRO oversight. The staff therefore can not substantiate recent reports that bank tellers and other unqualified bank personnel are being allowed or encouraged to sell bond investments to bank customers.

The staff believes that bank sales of securities should be conducted in a separate entity subject to the oversight of the Commission. The Commission has long supported this principle of functional regulation on the grounds that it will promote efficiency, effectiveness, and consistency among organizations providing similar products or services. <sup>13/</sup> To this end, the staff continues to believe that the bank exclusion from the Exchange Act definitions of "broker" and "dealer" should be removed.

With respect to broker-dealer sales to bank customers, the staff believes that the NASD's November 1991 Notice to Members <sup>14/</sup> represents a significant first step toward addressing the concern that investors are not being fully apprised of the differences between bond investments and CDs. The NASD also recently has addressed concerns relating to the retail sales of collateralized mortgage obligations ("CMOs"), which are a common investment alternative for CD proceeds. In this regard, in October of last year the Commission approved a NASD rule change to require members to obtain NASD approval of advertisements concerning CMOs issued by a corporation or agency of the U.S. government prior to use. <sup>15/</sup> The staff intends to continue working with the NASD, as well as the

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<sup>13/</sup> See, e.g., Concerning Financial Services Modernization and H.R. 192: Hearings Before the Subcommittee on Financial Institutions Supervision, Regulation and Insurance of the House Committee on Banking, Finance and Urban Affairs, 102nd Cong., 1st Sess. D209 (1991) (statement of the Hon. Richard C. Breeden, Chairman, SEC).

<sup>14/</sup> NASD Notice to Members 91-74 (Nov. 1991).

<sup>15/</sup> Securities Exchange Act Release No. 31369 (Oct. 28, 1992), 57 FR 49732. See also NASD Rules of Fair Practice, Art. III, §35, NASD Manual (CCH) §2195; NASD Government Securities Rules, §8, NASD Manual (CCH) §2428.

NYSE and industry trade organizations, 16/ to address issues relating to retail sales of CMOs.

In order to prevent investor confusion regarding the reinvestment of CD proceeds in securities, the staff believes that it would be useful to further emphasize to broker-dealers and their sales personnel their responsibility to clearly inform their customers about the differences between insured CDs and securities products, including the risks to principal from price and interest rate fluctuations, and in the case of mortgage-backed securities, prepayment risks. The staff intends to work with the SROs to ensure that broker-dealers and their personnel are fully aware of and in compliance with this disclosure obligation through educational and oversight means. To supplement these efforts, the staff will develop and distribute educational materials discussing particular areas of concern to investors. The staff also will continue to review the sales practices and supervisory procedures of broker-dealers in the course of conducting broker-dealer examinations.

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16/ The Public Securities Association, for instance, has prepared educational materials on CMOs that can be purchased by firms for use in educating retail investors. Similarly, the Investment Company Institute has developed a variety of public information programs for mutual funds, including bond funds.

**MEMORANDUM**

**TO: Wilson A. Butler, Director  
Office of Filings, Information and Consumer Services**

**FROM: Richard C. Breeden  
Chairman**

**RE: Reinvestment of Proceeds of Certificates of Deposit  
("CDs") in Securities**

As you may be aware, recent press reports suggest that investors choosing to reinvest the proceeds of CDs in securities products, such as bonds, bond mutual funds, and collateralized mortgage obligations ("CMOs"), may not be receiving the information they need to make an informed investment decision. For example, many investors may not be aware of the risks of investing in securities products, or the fact that, unlike CDs, these products are not federally insured.

Congressman Dingell, Chairman of the House Committee on Energy and Commerce, recently inquired whether the Commission plans to take any action to address this problem. In response, the Division of Market Regulation suggested that the Commission staff prepare and distribute educational materials to investors that will assist them in making an informed decision about whether to reinvest the proceeds of their maturing CDs in securities. <sup>1/</sup>

Accordingly, I would like the Office of Consumer Affairs to work with the Division of Market Regulation to prepare educational materials for investors apprising them of the differences between CDs and securities. At a minimum, these materials should discuss: (1) the risks associated with investing in bonds, bond funds, and CMOs, including the fact that invested capital is sensitive to price and interest rate fluctuations (and in the case of mortgage-backed securities, to prepayment risks); and (2) the fact that securities products are not guaranteed by a financial institution or insured by the U.S. government. Please coordinate your efforts with the Office of Chief Counsel (Belinda Blaine or Katherine Horan at 504-2418).

Thank you for your assistance in this matter.

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<sup>1/</sup> A copy of Chairman Dingell's letter, dated January 4, 1993, and our response is attached for your information.

JAMES E. EASTMAN NEW YORK  
 JERRY E. HANCOCK CALIFORNIA  
 PAUL H. QUINN ARIZONA  
 JAMES J. WADSWORTH MASSACHUSETTS  
 JAMES H. WASHINGTON WASHINGTON  
 CAROL E. COLLINS ILLINOIS  
 JAMES HANSEN CALIFORNIA  
 W. B. RYAN ILLINOIS  
 DON WYLLIE ARIZONA  
 RALPH W. HALL TEXAS  
 GUY E. HARTT OHIO  
 BILL SCHROEDER NEW MEXICO  
 W. BARRY BANKS MISSOURI  
 GUY E. HARTT MINNESOTA  
 JOHN BRYAN TEXAS  
 BOB BOUCHER VIRGINIA  
 JIM COOPER TENNESSEE  
 JERRY L. BRUCE KENTUCKY  
 JIM ROWLAND GEORGIA  
 THOMAS J. BARTON NEW YORK  
 COLLEEN TOWNE NEW YORK  
 C. THOMAS MILLER MARYLAND  
 GERRY E. STODOLSKY MASSACHUSETTS  
 PETER H. COSTANTINI PENNSYLVANIA  
 RICHARD H. LEHMAN CALIFORNIA  
 CLAUDE HARRIS ALABAMA

NORMAN LINT NEW YORK  
 CARLOS J. MOOREHEAD CALIFORNIA  
 MATTHEW J. BHALOO NEW JERSEY  
 WALLACE DANNEBERGER CALIFORNIA  
 DON RYTER PENNSYLVANIA  
 THOMAS J. BILLY JR. VIRGINIA  
 JACK FIELDS TEXAS  
 MICHAEL C. ORLEY OHIO  
 MICHAEL SHIMMERS FLORIDA  
 DAN SCHAEFER COLORADO  
 JOE BARTON TEXAS  
 SONNY CALLAHAN ALABAMA  
 ALIX BRINKMAN NORTH CAROLINA  
 J. DENNIS MASTERTY KENTUCKY  
 CLYDE C. HOLLOWAY LOUISIANA  
 FRED LUTON MICHIGAN

**U.S. House of Representatives**  
**Committee on Energy and Commerce**  
 Room 2125, Rayburn House Office Building  
 Washington, DC 20515-6115

January 4, 1993 OFFICE OF CHIEF COUNSEL

JAN 1 1993

DIVISION OF MANAGERIAL SERVICES

RECEIVED  
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 JAN 07 1993

Legislative Affairs  
Office of the Chief Counsel

The Honorable Richard C. Breeden  
 Chairman  
 Securities and Exchange Commission  
 450 Fifth Street, N.W.  
 Washington, D.C. 20549

Dear Chairman Breeden:

Pursuant to Rules X and XI of the Rules of the U.S. House of Representatives, and our continuing oversight of securities and exchanges, I am writing to request that you advise the Committee what, if any, action the Commission has taken or intends to take to ensure that individuals, who seek to reinvest the proceeds of maturing certificates of deposit ("CDs") in bonds, bond funds, or other non-insured investments, receive adequate disclosures.

Recent press reports suggest that some sellers of bond investments may not provide persons who seek to reinvest proceeds from CDs in higher-yield instruments with adequate disclosures.<sup>1</sup> These concerns appear to be most serious when bond investments are sold by banks or their affiliates, since it has been reported that the bank personnel involved in such sales activities may not themselves fully comprehend the risks associated with bonds and bond funds. Moreover, it is clear that the sale of bond investments on bank premises -- whether by the bank, by a securities affiliate of the bank, or by an outside vendor leasing space from the bank under a "kiosk" arrangement -- creates the greatest risk that purchasers of bonds or bond funds will erroneously conclude

<sup>1</sup> See, e.g., "Questions on Bank Sales of Funds," The New York Times (Dec. 31, 1992), at D1; "Consumer Backlash Feared if Bank Funds Suffer Losses," American Banker (Nov. 25, 1992) at 1; "Comptroller to Scrutinize Brokerage Products," American Banker (Nov. 19, 1992) at 1; "Regulators Warn of More Scrutiny on Mutual Funds and Annuities Activity," 18 Banking Report (BNA) 681 (Nov. 16, 1992); "Uninsured Investments Offered by 70% of Midsize Banks," Banking Week (Nov. 2, 1992); "Popular Bond Funds Carry Interest Risks," Investor's Business Daily (Sept. 3, 1992) at 1.

that the investments are insured. In addition, it is not clear what level of supervision is imposed on employees of securities affiliates of banks that offer or sell securities on bank premises.

Self-regulatory organizations and banking regulators have acknowledged these concerns and have taken preliminary steps to address the issue. In particular, the NASD issued a Notice to Members in November 1991 which reminded brokers that they have an obligation to disclose to customers that bond investments are sensitive to interest rate fluctuations and carry a greater degree of risk to capital than CDs. More recently, it has been reported that the OCC is training examiners to scrutinize the retail brokerage activities of national banks and that a senior OCC official has warned that banks that fail to make adequate disclosures to customers will face increased scrutiny.<sup>2</sup>

While the Committee views these steps as positive, we are concerned that they may not prove sufficient to protect investors who should receive full disclosure of the risks associated with bonds, bond funds, and other non-insured investments before they decide how to invest proceeds of maturing CDs. We, therefore, request the Commission's views on this subject. Your response should address, but need not be limited to, the following points:

1. What disclosures do current Commission rules and regulations require regarding the risks associated with an investment in a bond or bond fund as compared to an insured CD?
2. What further steps, if any, does the Commission believe are warranted to reiterate the advice set forth in the NASD's November 1991 Notice to Customers to banks, securities affiliates of banks, and other brokers of bond investments?
3. To the Commission's knowledge, are bank tellers and other bank personnel on bank premises encouraged or allowed to sell bond investments to bank customers?

In light of the need to ensure that investors receive adequate disclosures before they reinvest the proceeds of maturing CDs in bond investments, please respond to the Committee by the

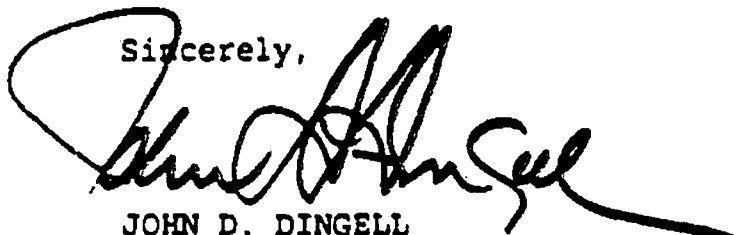
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<sup>2</sup> See "Comptroller to Scrutinize Brokerage Products," American Banker (Nov. 19, 1992) at 1.

The Honorable Richard C. Breedon  
Page 3

close of business on Friday, January 29, 1993. Thank you for  
your cooperation and attention to this request.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Dingell". The signature is fluid and cursive, with a large initial "J" and "D".

JOHN D. DINGELL  
CHAIRMAN

Enclosures

cc: The Honorable Carlos J. Moorhead  
The Honorable Edward J. Markey