



Office of Thrift Supervision

Department of the Treasury *Managing Director, Examinations, Supervision, and Consumer Protection*

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November 9, 2006

MEMORANDUM FOR CHIEF EXECUTIVE OFFICERS

FROM:

Scott M. Albinson

SUBJECT:

Securities Related Activities of Savings Associations

The “Financial Services Regulatory Relief Act of 2006” (FSRRA) was enacted into law on October 13, 2006 (Pub. L. No. 109-351) and became effective on that date. FSRRA contains several significant provisions for savings associations that engage in securities related activities.

Registering as an Investment Adviser

Section 401(b) of FSRRA amends the definition of “bank” in the Investment Advisers Act of 1940 (IAA) to include savings associations (15 U.S.C. § 80b-2(a)). The amendment affects:

- Federal savings associations that have been granted fiduciary powers and offer investment advice for a fee or have investment discretion over customer assets and
- State chartered savings associations whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC).

As a result of the change in the definition of bank, previously affected federal and state savings associations are no longer required to register as an investment adviser with the Securities and Exchange Commission (SEC) under Section 203A(b) of the IAA (15 U.S.C. § 80b-3a(b)). Savings associations that are currently registered may file SEC Form ADV-W - Notice of Withdrawal from Registration as an Investment Adviser. The form may be found at: <http://www.sec.gov/about/forms/formadv-w.pdf>.

Further, Section 203A(b) of the IAA (15 U.S.C. § 80b-3b(1)(B)) provides that a state law that requires registration, licensing, or qualification as an investment adviser or supervised person of an investment adviser does not apply to a person or entity that is excepted from the definition of investment adviser under the IAA.

Savings associations must register or remain registered as an investment adviser if they act or serve as an investment adviser to a registered investment company (e.g., mutual fund). If the investment advisory services or actions are performed through a separately identifiable department or division of the savings association, the department or division, and not the savings association itself, shall be considered the investment adviser and must register with the SEC (15 U.S.C. § 80b-2(a)(11)(A)).

Proposed SEC Regulation B

Prior to the enactment of the Gramm-Leach-Bliley Act (GLB) in 1999, the Securities Exchange Act of 1934 ('34 Act) contained a broad exception for banks from the definitions of "broker" and "dealer" so that banks were not required to register with the SEC as broker-dealers. GLB replaced the broad exceptions with exceptions that apply only to certain types of securities transactions. The FSRRA provides that federal savings associations and state chartered savings associations whose deposits are insured by the FDIC are considered banks for purposes of the '34 Act and therefore subject to the GLB exceptions.

The SEC and the Board of Governors of the Federal Reserve System (FRB) are drafting SEC Regulation B to implement the exceptions for banks from the definition of "broker", including defining terms used in the '34 Act and determining the scope of statutory exceptions, in consultation with the banking agencies. Savings associations that effect securities transactions are encouraged to review and comment on the content and provisions of Regulation B when it is proposed.

If you have any questions, please contact:

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