

SECURITIES AND EXCHANGE COMMISSION

Release No. 34-52405/ File No. S7-12-01

September 9, 2005

Order Extending Temporary Exemption of Banks, Savings Associations, and Savings Banks from the Definition of “Broker” under Section 3(a)(4) of the Securities Exchange Act of 1934

I. Background

The Gramm-Leach-Bliley Act (“GLBA”) repealed the blanket exception of banks from the definitions of “broker” and “dealer” under the Securities Exchange Act of 1934 (“Exchange Act”)¹ and replaced it with functional exceptions incorporated in amended definitions of “broker” and “dealer.” Under the GLBA, banks that engage in securities activities either must conduct those activities through a registered broker-dealer or ensure that their securities activities fit within the terms of a functional exception to the amended definitions of “broker” and “dealer.”

The GLBA provided that the amended definitions of “broker” and “dealer” were to become effective May 12, 2001. On May 11, 2001, the Securities and Exchange Commission (“Commission”) issued interim final rules (“Interim Rules”) to define certain terms used in, and grant additional exemptions from, the amended definitions of “broker” and “dealer.”² Among other things, the Interim Rules extended the exceptions and exemptions granted to banks under the GLBA and Interim Rules to savings associations and savings banks. These Rules also included a temporary exemption that

¹ As defined in Exchange Act Sections 3(a)(4) and 3(a)(5) [15 U.S.C. 78c(a)(4) and 78c(a)(5)].

² See Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, Exchange Act Release No. 44291 (May 11, 2001), 66 FR 27760 (May 18, 2001).

gave banks time to come into full compliance with the more narrowly-tailored exceptions from broker-dealer registration.³ To further accommodate the banking industry's continuing compliance concerns, the Commission delayed the effective date of the bank "broker" and "dealer" rules through a series of orders that, among other things, ultimately extended the temporary exemption from the definition of "broker" to September 30, 2005.⁴

In previous extension orders, the Commission acknowledged "that banks may need as much as a year to develop compliance systems to adapt to the GLBA in light of amended Rules. The Commission does not expect banks to develop compliance systems for the provisions of the GLBA discussed in the Rules until the Commission has amended the Rules."⁵ Consistent with those statements, when the Commission proposed Regulation B in June 2004, to replace the Interim Rules, the Commission also proposed a one-year delay in the Regulation's effective date.⁶

³ 17 CFR 240.15a-7.

⁴ See Exchange Act Release No. 44570 (July 18, 2001); Exchange Act Release No. 45897 (May 8, 2002); Exchange Act Release No. 46751 (Oct. 30, 2002); Exchange Act Release No. 47649 (April 8, 2003); Exchange Act Release No. 50618 (Nov. 1, 2004); and Exchange Act Release No. 51328 (March 8, 2005) (extending the exemption from the definition of "broker" until September 30, 2005). During this time, the Commission also extended the temporary exemption from the definition of "dealer" to September 30, 2003. See Exchange Act Release No. 47366 (Feb. 13, 2003). On February 13, 2003, the Commission adopted amendments to certain parts of the Interim Rules that define terms used in the dealer exceptions, as well as certain dealer exemptions ("Dealer Release"), see Exchange Act Release No. 47364 (Feb. 13, 2003), 68 FR 8686 (Feb. 24, 2003). Therefore, this order is limited to an extension of the temporary exemption from the definition of "broker."

⁵ See, e.g., Order Extending Temporary Exemption of Banks, Savings Associations, and Savings Banks from the Definitions of "Broker" and "Dealer" under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934; Notice of Intent to Amend Rules, Release No. 34-45897 (May 8, 2002), <http://www.sec.gov/rules/other/34-45897.htm>.

⁶ Exchange Act Release No. 49879 (June 17, 2004), 69 FR 39682 (June 30, 2004).

Although the comment period for Regulation B expired on September 1, 2004,⁷ the Commission has continued to receive comments. To date, the Commission has received over 120 comments on the proposal, including comments from the banking industry, banking regulators, and members of Congress. The Commission has reviewed these comments and has had further discussions with several commenters.

II. Extension of Temporary Exemption from Definition of “Broker”

The Commission is carefully considering comments to determine what final action should be taken with regard to the Regulation B proposal. The Commission anticipates that this review process will not be completed before the exemption from the Interim Rules relating to the definition of “broker” expires on September 30, 2005.⁸

Therefore, the Commission finds that extending the temporary exemption for banks, savings associations, and savings banks from the definition of “broker” is necessary and appropriate in the public interest, and is consistent with the protection of investors. The Commission believes that extending the exemption from the definition of “broker” until September 30, 2006, will prevent banks and other financial institutions from unnecessarily incurring costs to comply with the statutory scheme based on the current Interim Rules and will give the Commission time to consider fully comments received on Regulation B and take any final action on the proposal as necessary, including consideration of any modification necessary to the proposed compliance date.

⁷ See Exchange Act Release No. 50056 (July 22, 2004) 69 FR 44988 (July 28, 2004) (extending comment period on Regulation B until September 1, 2004).

⁸ In the Interim Rules, the Commission adopted Exchange Act Rule 15a-7, 17 CFR 240.15a-7, which, as proposed to be amended, would provide banks and other financial institutions until January 1, 2006, to begin complying with the GLBA. In proposing Regulation B, the Commission proposed Rule 781 as a re-designation of Rule 15a-7. See 17 CFR 242.781.

III. Conclusion

Accordingly, pursuant to Section 36 of the Exchange Act,⁹

IT IS HEREBY ORDERED that banks, savings associations, and savings banks are exempt from the definition of the term “broker” under the Exchange Act until September 30, 2006.

By the Commission.

Jonathan G. Katz
Secretary

⁹ 15 U.S.C. 78mm.