

# SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55991 / File No. S7-12-01]

June 29, 2007

## Order Extending Temporary Exemption of 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The Gramm-Leach-Bliley Act (“GLBA”) repealed the blanket exception of banks from the definitions of “broker” and “dealer” under the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> 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 definition of “broker.”

The GLBA provided that the amended definitions of “broker” and “dealer” were to become effective May 12, 2001. Starting on May 11, 2001, in connection with various rulemaking proposals,<sup>2</sup> the Securities and Exchange Commission (“Commission”) extended, most recently until July 2, 2007, a temporary exemption that gave banks time

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

<sup>2</sup> 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) (the “Interim Rules”). See also Exchange Act Release No. 49879 (June 17, 2004), 69 FR 39682 (June 30, 2004) (“Regulation B”). 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.

to come into full compliance with the more narrowly-tailored exceptions from broker-dealer registration under the GLBA.<sup>3</sup>

On October 13, 2006, President Bush signed into law the Financial Services Regulatory Relief Act of 2006 (“Regulatory Relief Act”).<sup>4</sup> Among other things, the Regulatory Relief Act requires the Commission and the Board of Governors of the Federal Reserve (“Board”) jointly to adopt final rules implementing the bank broker exceptions in Section 3(a)(4) of the Exchange Act.<sup>5</sup> It also requires the Commission and the Board jointly to issue proposed rules within 180 days of passage of the Regulatory Relief Act.<sup>6</sup>

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<sup>3</sup> 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); Exchange Act Release No. 51328 (March 8, 2005); Exchange Act Release No. 52405 (Sept. 9, 2005); Exchange Act Release No. 54544 (September 29, 2006), 71 FR 58891 (October 5, 2006) (extending the exemption from the definition of “broker” until January 15, 2007); and Exchange Act Release No. 34-54948 (Dec. 18, 2006), 71 FR 247 (Dec. 18, 2006)(extending the exemption from the definition of “broker” until July 2, 2007); 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.”

<sup>4</sup> Pub. L. No. 109-351, 120 Stat. 1966 (2006).

<sup>5</sup> The Regulatory Relief Act also directs the Commission and the Board to consult with and seek the concurrence of the other Federal banking agencies on the content of the rulemaking. Section 101(c) of the Exchange Act defines the term “Federal banking agencies” as “the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation.” In another provision of the Regulatory Relief Act, Congress extended the bank exceptions and exemptions to thrifts by amending the definition of “bank” in Exchange Act Section 3(a)(6).

<sup>6</sup> Under the Regulatory Relief Act, a final single set of rules or regulations jointly adopted in accordance with that Act shall supersede any other proposed or final rule issued by the Commission on or after the date of enactment of Section 201 of the GLBA with regard to the definition of “broker” under Exchange Act Section 3(a)(4).

Consistent with the Regulatory Relief Act, on December 18, 2006, the Commission and the Board jointly proposed implementing rules, which were designated as Regulation R.<sup>7</sup> At that time, the Commission also granted banks<sup>8</sup> an exemption from compliance with the definition of broker until July 2, 2007 in order to permit the Commission and the Board time to receive and evaluate comments and to take final action on the implementing rules.

To date, the Commission and the Board have received over 70 comments on proposed Regulation R. The Commission and the Board are carefully considering the comments, in consultation with the other Federal banking agencies, and expect to take final action on proposed Regulation R shortly.

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

In light of the need to carefully consider, together with the Board and the other Federal banking agencies, the comments on proposed Regulation R, the Commission finds that extending the temporary exemption for banks from the definition of “broker” until September 28, 2007 is necessary and appropriate in the public interest, and is consistent with the protection of investors. The extension of this temporary exemption will prevent banks from incurring interim business disruption, as well as interim implementation and compliance costs before the Commission and the Board jointly adopt final implementing rules. It will also provide the Commission and the Board time fully to

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<sup>7</sup> See Exchange Act Release No. 54946 (Dec. 18, 2006), 71 FR 77522 (Dec. 26, 2006).

<sup>8</sup> Section 401 of the Regulatory Relief Act also amended the definition of “bank” in Section 3(a)(6) of the Exchange Act to include any Federal savings association or other savings association the deposits of which are insured by the FDIC. Accordingly, as used in this order, the term “bank” includes any savings association that qualifies as a “bank” under Section 3(a)(6) of the Exchange Act, as amended.

consider the comments, consult with and seek the concurrence of the other Federal banking regulators, and take final action on the proposal.

### **III. Conclusion**

Accordingly, pursuant to Section 36 of the Exchange Act,<sup>9</sup>

IT IS HEREBY ORDERED that banks are exempt from the definition of the term “broker” under the Exchange Act until September 28, 2007.

By the Commission.

Florence E. Harmon  
Deputy Secretary

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<sup>9</sup> 15 U.S.C. 78mm.