

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54948; File No. S7-12-01]

Order Extending Temporary Exemption of Banks From the Definition of "Broker" Under Section 3(a)(4) of the Securities Exchange Act of 1934

December 18, 2006.

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The Gramm-Leach-Bliley Act ("GLBA") repealed the blanket exception of banks from the definitions of "broker" and "dealer" under the Securities Exchange Act of 1934 ("Exchange Act")¹ and replaced it with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 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,² the Securities and Exchange Commission ("Commission") extended, most recently until January 15, 2007, a temporary exemption that gave banks time to come into full compliance with the more narrowly-tailored exceptions from broker-dealer registration under the GLBA.³

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) (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.

³ See Exchange Act Release No. 44570 (July 18, 2001); Exchange Act Release No. 45897 (May 8,

On October 13, 2006, President Bush signed into law the "Financial Services Regulatory Relief Act of 2006 ("Regulatory Relief Act")." 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. It also requires that within 180 days of passage of the Regulatory Relief Act, the Commission and the Board jointly issue proposed rules.⁵

Consistent with the Regulatory Relief Act, the Commission today proposes implementing rules jointly with the Board.⁶ As a result, the Commission is also granting banks⁷ an exemption from compliance with the definition of broker until July 2, 2007, to permit the Commission and the Board time to receive comments, evaluate the comments on the implementing rules,

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); and 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, 2006); 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."

⁴ Pub. L. 109-351, 120 Stat. 1966 (2006).

⁵ 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).

⁶ Exchange Act Release No. 54946 (Dec. 18, 2006).

⁷ 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.

and to take final action on the implementing rules.

II. Extension of Temporary Exemption From Definition of "Broker"

In connection with the proposal of the implementing rules pursuant to the Regulatory Relief Act, the Commission finds that extending the temporary exemption for banks from the definition of "broker" is necessary and appropriate in the public interest, and is consistent with the protection of investors. In connection with this extension, the Commission notes that the implementing rules are being proposed with a request for comment and that the Commission and the Board will need time to give careful consideration to the comments and determine what changes, if any, should be made to the implementing rules. Recognizing that banks will need substantial time to come into compliance with final rules adopted by the Commission and the Board, we believe that extending the exemption from the definition of "broker" for banks until July 2, 2007, will prevent banks from unnecessarily incurring costs to comply before final implementing rules are jointly adopted. Further, the extension will give the Commission and the Board time to consider fully comments received on the implementing rules and take any final action on the proposal as necessary.

III. Conclusion

Accordingly, pursuant to Section 36 of the Exchange Act,⁸

It is hereby ordered that banks are exempt from the definition of the term "broker" under the Exchange Act until July 2, 2007.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

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⁸ 15 U.S.C. 78mm.