

the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N-SAR.

18. No Fund will participate in the credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its SAI all material facts about its intended participation.

19. Each Fund will satisfy the fund governance standards set forth in rule 0-1(a)(7) under the Act by the compliance date for the rule.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 05-18311 Filed 9-14-05; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-27061; 811-3934]

Tuxis Corporation; Notice of Application

September 9, 2005.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for deregistration under section 8(f) of the Investment Company Act of 1940 (the "Act").

Summary of Application: Tuxis Corporation requests an order declaring that it has ceased to be an investment company.

Applicant: Tuxis Corporation.

Filing Dates: The application was filed on May 3, 2004 and amended on September 8, 2005.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 4, 2005 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-9303.

Applicant, c/o Stephanie A. Djinis, Law Offices of Stephanie A. Djinis, 1749 Old Meadow Road, Suite 310, McLean, VA 22102.

FOR FURTHER INFORMATION CONTACT: Jaee F. Hahn, Senior Counsel, at (202) 551-6870, or Todd F. Kuehl, Branch Chief, at (202) 551-6821 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street NE., Washington, DC 20549-0102 (telephone (202) 551-5850).

Applicant's Representations

1. Applicant was incorporated under the laws of the State of Maryland as Bull & Bear Tax-Free Income Fund, a series of Bull & Bear Municipal Securities, Inc., an open-end management investment company registered under the Act on December 8, 1983. On November 8, 1996, applicant registered under the Act as a closed-end management investment company. Applicant changed its name to Tuxis Corporation in 1998. In October 2001, applicant's stockholders approved a proposal to change the nature of applicant's business so as to cease to be an investment company and become an operating company. Shareholders approved the termination of the investment management agreement between applicant and its investment adviser, and applicant's board of directors terminated its management contract with the outside investment adviser effective November 30, 2001, and authorized applicant's officers to manage applicant's business affairs.

2. Applicant's management commenced a business review, development and acquisition program with respect to the real estate and real estate services industries upon approval of the proposal, and formed five wholly-owned subsidiaries: Tuxis Real Estate I LLC ("TRE-I"), Tuxis Operations LLC ("TOP"), Tuxis Real Estate II LLC ("TRE-II"), Tuxis Real Estate Brokerage LLC ("TEB"), and Winmark Properties I LLC ("Winmark I"). Applicant states that none of these subsidiaries are investment companies as defined in section 3(a) of the Act. The business of TRE-I, TRE-II, and Winmark I consists of holding title to real estate. TOP operates and manages TRE-I's, TRE-II's and Winmark I's properties. TEB is expected to act as agent in the purchase, sale and lease of real estate. Applicant states that it intends to renovate the properties held by TRE-I, TRE-II and

Winmark I and then engage in an active leasing program, operating the sites for multiple tenants in retail and other businesses. In addition, applicant states that it intends to further expand its real estate property holdings.

3. Applicant states that its wholly-owned subsidiaries represent approximately 35.3% of applicant's total assets on an unconsolidated basis. Applicant further states that its holding of money market fund shares represent approximately 64.2% of applicant's total assets on an unconsolidated basis.

4. For the last four fiscal quarters ended March 31, 2005 combined, applicant has had net losses from its real estate operations but has derived income from its holdings of Government securities and money market fund shares. During that same time period, applicant received interest and dividends of \$95,915 from its holdings of Government securities and money market fund shares and \$20,750 from its real estate operations. Applicant states that it expects its revenues from its real estate operations to increase and its revenues from money market fund shares to decrease as its current real estate holdings are developed and leased and as it makes additional real estate acquisitions, thereby reducing its money market fund holdings. Further, applicant states that management is actively reviewing a number of other real estate acquisition candidates and anticipates additional transactions.

Applicant's Legal Analysis

1. Section 8(f) of the Act provides that whenever the Commission, upon application or its own motion, finds that a registered investment company has ceased to be an investment company, the Commission shall so declare by order and upon the taking effect of such order, the registration of such company shall cease to be in effect.

2. Section 3(a)(1)(A) of the Act defines an investment company as any issuer which "is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities." Section 3(a)(1)(C) of the Act defines an investment company as any issuer which "is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis." Section 3(a)(2) of the Act defines investment securities as "all securities except (A) Government securities, (B)

securities issued by employees' securities companies, and (C) securities issued by majority-owned subsidiaries of the owner which (i) are not investment companies, and (ii) are not relying on the exception from the definition of investment company in paragraph (1) or (7) of subsection (c)." Applicant states that it is no longer an investment company as defined in section 3(a)(1)(A) or section 3(a)(1)(C). Applicant states that it is primarily engaged in the business of developing its subsidiaries' real estate businesses, and also actively engaged in conducting a business review, development, and acquisition program for additional real estate business opportunities. Applicant further states that its holdings of money market fund shares are awaiting deployment in its real estate and services industries business strategy. Applicant states it is thus qualified for an order of the Commission pursuant to section 8(f) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. E5-5026 Filed 9-14-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

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

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

September 9, 2005.

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 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

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).

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>.

Commission also proposed a one-year delay in the Regulation's effective date.⁶

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.

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.

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

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.

⁹ 15 U.S.C. 78mm.

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)].