

Paragraph 1 above). This calculation and resultant payment (or bill) will be made (or due) within ninety (90) days after the twelfth month following the implementation date.

For the calendar year subsequent to the implementation year, and continuing thereafter, the calculation of the Participant's annual payment or loss will be performed and the payment made or bill delivered by March 31 of the following year. Estimated quarterly payments or billings shall be made to each eligible Participant within 45 days following the end of each calendar quarter in which the Participant is eligible to receive revenue, provided that the total of such estimated payments or billings shall be reconciled at the end of each calendar year and, if necessary, adjusted by March 31st of the following year. Interest shall not accrue in quarterly payments and in adjusted payments made on March 31st of the following year. Such interest shall accrue monthly during the period in which revenue was earned and not yet paid and will be based on the 90-day Treasury bill rate in effect at the end of the quarter in which the payment is made. Interest shall not accrue during the period of up to 45 days between the end of each calendar quarter and the date on which an estimated quarterly payment or billing is made.

In conjunction with calculating estimated quarterly and reconciled annual payments under this Exhibit 1, the Processor shall submit to the Participants an itemized statement setting forth the basis upon which net operating income was calculated, including an itemized statement of the Processor costs set forth in Paragraph 3 of this Exhibit. Such Processor costs shall be reconciled annually based solely on the Processor's audited annual financial information. By majority vote of the Operating Committee, the Processor shall engage an independent auditor to audit the Processor's costs or other calculation(s), the cost of which audit shall be shared equally by all Participants. The Processor agrees to cooperate fully in providing the information necessary to complete such audit.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51328/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

March 8, 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The Gramm-Leach-Bliley Act ("GLBA") repealed the blanket exception of banks from the definitions of "broker" and "dealer" under the Securities Exchange Act of 1934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")<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 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."<sup>2</sup> 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. They also included a temporary exemption that gave banks time to come into full compliance with the more narrowly-tailored exceptions from broker-dealer registration.<sup>3</sup> 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 March 31, 2005.<sup>4</sup>

In June 2004, the Commission proposed Regulation B, which would revise and replace the Interim Rules.<sup>5</sup> The comment period for Regulation B

expired on September 1, 2004,<sup>6</sup> and the Commission has received over 120 comments on the proposal, including comments from the banking industry, banking regulators, and members of Congress.

#### 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 March 31, 2005.<sup>7</sup>

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, 2005, 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,<sup>8</sup> 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, 2005.

By the Commission.

**Margaret H. McFarland,**  
*Deputy Secretary.*

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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).

<sup>3</sup> 17 CFR 240.15a-7.

<sup>4</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); and Exchange Act Release No. 50618 (Nov. 1, 2004) (extending the exemption from the definition of "broker" until March 31, 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."

<sup>5</sup> Exchange Act Release No. 49879 (June 17, 2004), 69 FR 39682 (June 30, 2004).

<sup>6</sup> 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).

<sup>7</sup> 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.

<sup>8</sup> 15 U.S.C. 78mm.