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The Gramm-Leach-Bliley Act (“GLBA”) repealed the blanket exception of banks from the definitions of “broker” and “dealer” under the Securities Exchange Act of 1934 (“Exchange Act”)\(^1\) and replaced it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 July 2, 2007, a temporary exemption that gave banks time

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

to come into full compliance with the more narrowly-tailored exceptions from broker-dealer registration under the GLBA.  

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 the Commission and 
the Board jointly to issue proposed rules within 180 days of passage of the Regulatory 
Relief Act.

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5 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).

6 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.\(^7\) At that time, the Commission also granted banks\(^8\) 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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\(^8\) 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,

IT IS HEREBY ORDERED that banks are exempt from the definition of the term

By the Commission.

Florence E. Harmon
Deputy Secretary

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