

900 Nineteenth St. NW, Ste. 400

Washington, DC 20006

TEL: (202) 857-3100

FAX: (202) 296-8716

E-MAIL: info@acbankers.org

http://www.acbankers.org

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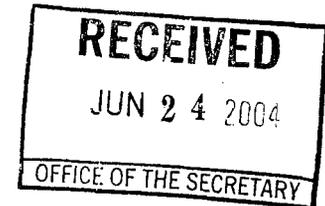
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Diane M. Casey
President & Chief Executive Officer

July 31, 2001

Mr. Paul F. Roye
Director, Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington D.C. 20549



Re: Request for Rulemaking
Savings Association Exemption Under the Investment Advisers Act

Dear Mr. Roye:

America's Community Bankers ("ACB")¹ respectfully requests that the Securities and Exchange Commission ("SEC") promulgate a regulation through the notice and comment process required by the Administrative Procedures Act² that would exempt savings associations from the requirements of the Investment Advisers Act of 1940³ to the same extent as are banks. We believe that savings associations that generally have the same operations and the same regulations and supervision as banks should receive the same regulatory treatment.

In a recent rulemaking, the SEC acknowledged that savings associations and savings banks are governed by a similar regulatory structure and therefore they deserve to operate under the same terms and conditions as banks.⁴ On May 18, 2001, an interim final rule was published in the *Federal Register* implementing the functional exceptions for banks from the definitions of "broker" and "dealer" that were added to the Securities Exchange Act of 1934 by the Gramm-Leach-Bliley Act.⁵ As part of that interim final rule, the SEC adopted Rule 15a-9 which provides that savings associations and savings banks are exempt from the definitions of broker and dealer on the same terms and conditions that banks are exempted.

In the preamble to the interim final rule, the SEC notes that because "the more general exemption for banks has been replaced and the differences between savings associations and banks have been narrowed; it seems reasonable to afford savings associations and savings banks the same type of exemptions. Moreover, insured savings associations are subject to similar regulatory structure and examination standards as banks. We find that extending the exemption

¹ ACB represents the nation's community banks of all charter types and sizes. ACB members pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities.

² 5 USC § 553.

³ 15 USC § 80a.

⁴ 66 Fed. Reg. 27760 (May 18, 2001).

⁵ P.L. 106-102.

for banks to savings associations and savings banks is necessary or appropriate in the public interest and is consistent with the protection of investors.”⁶

Further, the preamble makes the point that without extending these exemptions, there may be uncertainty for savings associations about whether registration is required if they wish to engage in the listed activities. “The exemption will allow savings associations and savings banks that are governed by a similar regulatory structure to operate under the same terms and conditions as banks.”

We strongly urge the SEC to extend these same persuasive arguments to the question of whether savings associations should be exempt to the same extent that are banks from the requirements of the Investment Advisers Act.

Exemption from the Investment Advisers Act

We note that the notice of rulemaking such as the one we are requesting has been published as part of the unified regulatory agenda of the SEC’s Division of Investment Management.⁷ We request that a proposal be issued expeditiously so that savings associations can provide comment and a final rule can be issued. Savings associations engaged in the same business and subject to the same regulation and supervision as banks should be able to do that business on the same terms and conditions. They should be able to use the same exemptions of the Investment Advisers Act as similarly situated competitors do.

The exemption we are requesting is important to traditional savings associations that are increasingly offering trust services but also to the newer entrants, many of which have established trust only operations. All of these institutions have the authority to provide a variety of traditional trust services to their customers and like banks, many offer a full array of trust services. These may include discretionary management of trust assets, including securities and other assets. As part of this business line, savings associations may advise others as to the advisability of investing in securities and will be “investment advisers” as the term is defined in Section 202(a)(11) of the Investment Advisers Act. This definition provides an exemption for a “bank” as defined in Section 202(a)(2).

Investment Advisers Act

When the Investment Advisers Act was enacted, commercial banks were exempt from the requirements. Savings associations were not because they were not authorized to engage in trust activities. Over the years, however, savings associations and banks have evolved to the extent that there is little difference in the permitted activities and the level of supervision of these activities.

In section 202(a)(11) of the Investment Advisers Act, an investment adviser is defined in part as, “Investment adviser means a person who for compensation, engages in the business of advising

⁶ 66 Fed. Reg. 27788 (May 18, 2001).

⁷ 66 Fed. Reg. 26626 (May 14, 2001).

others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation as a part of a regular business, issues or promulgates analyses or reports concerning securities; but does not include a (A) bank....”

Section 202(a)(2) provides that the definition of bank means “...(A) a banking institution organized under the laws of the United States, (B) a member of the Federal Reserve System, (C) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Office of the Comptroller of the Currency, and which is supervised and examined by state or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B) or (C) of this paragraph.”

For several reasons, ACB believes that savings associations with trust activities meet the requirements of the definition of “bank” and should therefore be treated in the same manner. Savings associations historically have provided primarily home mortgage finance and consumer credit to their customers and communities. The industry has evolved over the past decade to be full service providers in today’s financial services market place. While savings associations were granted trust powers in 1980, it is only in the past few years that trust has been one of the array of services offered by a number of savings associations. When Congress amended the Home Owners’ Loan Act to allow savings associations to engage in trust activities on the same basis as is permitted for national banks. The Senate report accompanying the statutory change explained that the amendment gives savings associations the ability to offer trust services on the same basis as national banks.⁸

At the same time, the regulation and supervision of savings associations and banks have become substantially similar. Since 1989, for example, the capital requirements for savings associations and banks have been the same with some minor exceptions.⁹ In 1991, the enactment of Federal Deposit Insurance Corporation Improvement Act of 1991 required the federal banking regulators, including the Office of Thrift Supervision (“OTS”), the primary regulator of savings associations, jointly to develop regulatory and supervisory requirements mandated by prompt corrective action.¹⁰

When the OTS revised its regulations regarding fiduciary activities it specifically referred to the rules and regulations of the Office of Comptroller of the Currency (“OCC”), the federal bank regulator that charters and supervises national banks. The OTS has developed its regulations and its examination procedures to mirror the regulations and examination procedures of the OCC for national banks. Further, in an effort to ensure that the growing number of savings associations engaged in the trust business are supervised appropriately, the OTS has begun to issues a series

⁸ S. Rep. No. 96-368, at 13 (1979), reprinted in 1980 U.S.C.C.A.N. 236, 248.

⁹ 12 USC 1464(t).

¹⁰ 12 USC 18310.

of bulletins that contain supervisory guidance on the conduct of trust activities. The examination procedures developed by the OTS are substantially similar to those used by the OCC.

Legislative Option

In addition to pursuing an administrative solution to this issue, ACB has developed a legislative proposal that would amend the definition of "bank" to clarify that savings associations are included in the definition of "bank." The legislative proposal would amend the definition of "bank" to include all insured depository institutions as defined in the Federal Deposit Insurance Act. We continue to work with Members of Congress and their staffs to find an appropriate legislative vehicle for this amendment.

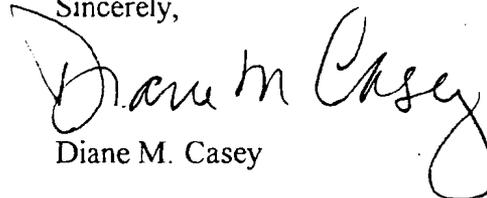
Savings Banks

In the interim final rule issued by the SEC to implement the broker dealer exception, the exemption was granted to savings associations, institutions that are supervised by the OTS, and also to savings banks, institutions that are state-chartered but whose primary federal regulator is the FDIC. ACB requests that as part of any proposal that the SEC clarify that any exemption proposed for savings association also be granted to savings banks.

Conclusion

ACB strongly urges the SEC to issue a proposal that will extend the exemption from the requirements of the Investment Advisers Act for banks to savings associations and savings banks. We look forward to working with the SEC staff on developing a regulation that will enable savings associations to continue to serve their communities and customers by providing a full array of services, including trust services. We are aware that the OTS is also working with the SEC to develop this proposal and we welcome the opportunity to work with them as well on this very important matter. Thank you for considering this request. Please contact Charlotte Bahin at (202) 857-3121 or cbahin@acbankers.org if you have any questions or need additional information.

Sincerely,



Diane M. Casey