

BROWN
BROTHERS
HARRIMAN

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

August 13, 2004

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Re: Regulation B -- Proposed Rule; File Number S7-26-04

Dear Mr. Katz:

The Securities and Exchange Commission ("Commission") has issued proposed Regulation B¹ to implement the amendments made by section 201 of the Gramm-Leach-Bliley Act² ("GLBA") to the definition of "broker" in section 3(a)(4) of the Securities Exchange Act of 1934 ("Exchange Act"). As discussed in the preamble to the proposed rule, the GLBA eliminated the blanket exception for banks from the definition of "broker" and replaced it with a narrower set of exceptions that apply to banks only under carefully defined circumstances. The proposed rule purports to address all of the new bank-related exceptions established by the GLBA, which the preamble describes as "narrower transaction-based bank exceptions,"³ by referring to "eleven specific exceptions" that are codified at clauses (i) through (xi) of sections 3(a)(4)(B) of the Exchange Act.⁴ After briefly describing and citing each of these eleven exceptions,⁵ the preamble makes this blanket statement: "A bank that effects transactions

¹ Regulation B, 69 Fed. Reg. 39682 (2004) (to be codified at 17 C.F.R. pts. 240 and 242) (proposed June 30, 2004).

² Pub. L. No. 106-102, 113 Stat. 1338 (1999).

³ 69 Fed. Reg. at 39684 (col.2).

⁴ 69 Fed. Reg. at 39684 (col.3)

⁵ 69 Fed. Reg. at 39684 (col.3) and 39685 (col.1).

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outside the scope of *these exceptions* [-- meaning the eleven described exceptions --] *is required to register as a broker in accordance with Section 15(a) of the Exchange Act.*⁶

There is a fundamental problem with the proposed rule and the description set forth above: neither recognizes that the definition of “broker” in section 3(a)(4), as amended by the GLBA, expressly includes one additional bank-related exception that is neither “transaction-based” nor included in the eleven exceptions set forth in section 3(a)(4)(B). Specifically, new section 3(a)(4)(E) of the Exchange Act exempts from the definition of “broker” any bank that (1) was subject to section 15(e) of the Exchange Act on the day before the date of enactment of the Gramm-Leach-Bliley Act; and (2) continues to be subject to “such restrictions and requirements as the Commission considers appropriate.” Accordingly, a bank that satisfied this additional exception in section 3(a)(4)(E), and engaged in transactions not covered by the eleven specific transaction-based exceptions in section 3(a)(4)(B), would *not*, contrary to the statement made in the preamble, “be required to register as a broker in accordance with Section 15(a) of the Exchange Act.”

Since Brown Brothers Harriman & Co. is a bank that satisfies the requirements of the exception in section 3(a)(4)(E) of the Exchange Act, we are keenly interested in any statements by the Commission that might suggest, even by implication, that such exception might not be effective. Indeed, given the clear and express language of section section

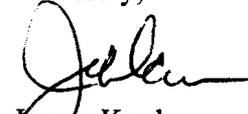
⁶ 69 Fed. Reg. at 39685 (col.1) (emphasis added).

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3(a)(4)(E), we assume that the failure to recognize its effectiveness in the proposed rule was simply inadvertent.

Accordingly, to correct the mistaken implication created by the proposed rule, we request that the final rule and its preamble expressly recognize the effectiveness of section 3(a)(4)(E) as an exception to the definition of "broker" for a bank that satisfies the requirements of that provision.

Sincerely,



James Kaplan
General Counsel
Brown Brothers Harriman & Co.