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Changing Landscape for Bank Securities Activities:

SEC Issues Proposed Regulation B (Broker "Push-Out" Rules)

In 1999, the Gramm-Leach-Bliley Act ("GLB Act") eliminated the blanket exemption that banks (and the U.S. branches and agencies of foreign banks) had enjoyed from the definitions of "broker" and "dealer" under the Securities Exchange Act of 1934 ("Exchange Act") and other federal securities laws.[1] The GLB Act effectively required banks to "push out" most of their securities brokerage and dealing activities to broker-dealers registered with the Securities and Exchange Commission ("SEC") by a compliance deadline of May 12, 2001.

The GLB Act exempted certain traditional banking activities from the general push-out requirements; specifically, the Act allowed banks to engage in eleven "excepted" brokerage activities and four "excepted" dealing activities without having to register as broker-dealers with the SEC. The scope of many of these push-out exceptions was unclear and, on May 11, 2001, the SEC adopted rules on an interim yet final basis as an attempt to provide clarity to and guidance regarding the parameters of these exemptions.[2] The SEC's interim final rules were not well received – they sparked intense opposition from not only the banking industry but also federal banking regulators, which charged that the SEC had misread the GLB Act and overstepped its statutory authority under that Act. In response, the SEC issued a series of orders delaying the date for compliance with the GLB Act's push-out exceptions and decided to modify its approach to the push-out requirements.

On November 5, 2002, the SEC issued proposed amendments generally applicable to the less complex – and, therefore, less controversial – bank/dealer interim rules.[3] On February 14, 2003, the SEC adopted final rules that allow banks to engage in certain activities without having to

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

2 *See* Exch. Act Rel. No. 44,291 (May 11, 2001), 66 Fed. Reg. 27,760 (May 18, 2001). For a discussion of the interim final rules, *see* Securities Law Developments: SEC Issues Interpretive Rules on the GLB "Push-Out" Requirements for Banks avail. at http://www.wilmer.com/files/tbl_s29Publications/FileUpload5665/2594/Securities%2006-20-01.pdf

3 Exch. Act Rel. No. 46,745 (Oct. 31, 2002), 67 Fed. Reg. 67,495 (Nov. 5, 2002).

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register as securities dealers under the Exchange Act.[4] At that time, the SEC also extended the compliance date for the GLB Act's broker push-out exceptions until November 12, 2004, and announced its intention to propose new rules for these provisions as well.[5]

In an open meeting on June 2, 2004, the SEC approved publication of proposed Regulation B in a release subsequently posted on the SEC's website on June 17, 2004.[6] Proposed Regulation B would supplement, redesignate and supplant the interim final rules with respect to bank/broker activities. The chart at the end of the newsletter briefly summarizes the changes to the interim final rules, and the remainder of this newsletter highlights the key provisions of proposed Regulation B. Comments on proposed Regulation B are requested by the SEC on or before August 2, 2004. It now appears that the SEC hopes to resolve the uncertainty surrounding the broker push-out exceptions before the end of the calendar year.[7]

1. Networking Exception

Following a long line of no-action letters from the SEC staff,[8] Exchange Act Section 3(a)(4)(B)(i) provides an exception from the definition of "broker" for banks that enter into third-party brokerage, or "networking," arrangements.[9] Under this exception, a bank is not considered to be a broker if it enters into a contractual or other written arrangement with a registered broker-dealer through which the broker-dealer offers brokerage services on or off bank premises. Bank employees (other than those associated with a broker-dealer and qualified under the rules of a self-regulatory organization) are limited in their activities. Although such unlicensed employees may make referrals of bank customers to a broker-dealer, banks may only compensate these employees for the referrals with payments of "a nominal one-time cash fee or a fixed dollar amount" that are "not contingent on whether the referral results in a transaction" with the broker-dealer.

A. Scope of Referral Activities

In response to comments that the SEC was viewing the term "referral" under this exception more narrowly than required by the GLB Act or existing banking guidance,[10] Regulation B would also eliminate the "first securities-related" contact limitation from the definition of referral

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4 *See* Exch. Act Rel. No. 47,364 (Feb. 14, 2003). For a discussion of the revised final "dealer" rules, *see* Securities Law Developments: NEW CONTOURS OF BANK SECURITIES ACTIVITIES:

Dealer "Push-Out" Rules and Underwriting by Foreign Banks avail. at www.wilmer.com/files/tbl_s29Publications/FileUpload5665/2724/Financial%2002-26-03.pdf.

5 *See* Exch. Act Rel. No. 47,649 (Apr. 8, 2003).

6 *See* Exch. Act Rel. No. 49,879 (June 17, 2004) ("Proposing Release") avail. at www.sec.gov/rules/proposed/34-49879.htm.

7 *See*, *e.g.*, Cynthia A. Glassman, *The SEC's Role as Functional Regulator of Bank Securities Activities*, avail. at www.sec.gov/news/speech//spch061804cag.htm. In this speech, Commissioner Glassman suggests that SEC would like a recommendation from the staff for action, presumably adopting a final regulation, by the beginning of November. Commissioner Glassman also addresses the broader policy considerations that led to the proposal of Regulation B.

8 The first of these letters was issued in response to a request from Chubb Securities Corp. *See* Letter re: Chubb Securities Corp. (Nov. 24, 1993).

9 15 U.S.C. § 78c(a)(4)(B)(i).

10 *See* Interagency Statement of the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency ("OCC") and Office of Thrift Supervision on Retail Sales of Nondeposit Investment Products (Feb. 15, 1994).

currently contained in interim final rule 3b-17(h). Rule 710(c) would define a "referral" as the action taken by a bank employee to direct a customer of the bank to a registered broker or dealer for the purchase or sale of securities for the customer's account. It is also worth noting the SEC's statement in the Proposing Release that unregistered bank employees may not screen potential brokerage customers as part of their referral activities.[11]

B. Nominal Compensation

Interim final rule 3b-17(g)(1) defined "nominal one-time cash fee of a fixed dollar amount" as either (1) a payment that is no greater than one hour of the gross cash wages of the bank employee, or (2) a payment in the form of points in a program covering a range of banking (non-securities) products and services, so long as the points awarded for securities referrals are not greater than the points awarded for non-securities banking products. While commenters were not happy with what they perceived as an overly narrow interpretation of the GLB Act, the SEC does not believe that the statute provides much latitude and proposed only minor clarifications in Regulation B. In particular, Rule 710(b) of Regulation B would define "nominal one-time cash fee of a fixed dollar amount" to mean that a referral payment must have a value that does not exceed the greater of: (1) the employee's base hourly rate of pay; (2) a flat $25; or (3) $15 in calendar-year 1999 dollars as adjusted upward for inflation.

C. Not Contingent

To provide guidance on those contingencies on which incentive compensation may not be based, the SEC proposes to define the term "contingent on whether the referral results in a transaction" in Rule 710(a) of Regulation B. This phrase would mean, with two exceptions, payment contingent on any factor related to whether a referral results in a transaction, including whether it is likely to result in a transaction, whether it results in a particular type of transaction, or whether it results in multiple transactions. The term would, however, permit referral fees to be contingent on whether (1) a customer contacts or keeps an appointment with a broker-dealer as a result of a referral, or (2) a bank customer has assets meeting any minimum requirement that the registered broker-dealer, or the bank, may have established generally for referrals for securities brokerage accounts.

2. Trust and Fiduciary Activities

Exchange Act Section 3(a)(4)(B)(ii) excepts from the definition of broker banks effecting securities transactions in (1) a trustee capacity, or (2) a fiduciary capacity in its trust department or other department that is regularly examined by bank examiners for compliance with fiduciary principles and standards.[12] In either capacity, the bank must also be "chiefly compensated" on the basis of: (1) an administrative or annual fee payable on a monthly, quarterly or other basis; (2) a percentage of assets under management; (3) a flat or capped per order processing fee that does not exceed the cost of executing securities transactions for trustee or fiduciary customers; or (4) any combination of these fees.

A. Trustee Capacity

The SEC has decided to withdraw the definition of "trustee capacity" from the interim final rules. Regulation B will not specifically identify the types of trustee capacities in which banks may act in reliance on the trust and fiduciary activities exception.

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[11] *See* Proposing Release at n. 75. Indeed, this statement appears to undercut an existing no-action position in Letter re: Colonial Equities Corp. (Sept. 2, 1988), which raises the larger question of how these proposed provisions should be read to interact with existing SEC staff guidance in general.

[12] 15 U.S.C. § 78c(a)(4)(B)(ii).

B. Fiduciary Capacity

The term "fiduciary capacity" is defined in Exchange Act Section 3(a)(4)(D) to mean acting (1) as a trustee, executor, administrator, registrar, transfer agent, guardian, assignee, or receiver; (2) as an investment adviser, provided that the bank receives a fee for its investment advice; (3) in any capacity in which the bank possesses investment discretion on behalf of another; or (4) in any other similar capacity.[13] The SEC does not propose to identify additional capacities as similar to those specified in the statute because the SEC believes that such capacities, for example, the capacity of IRA custodian, do not involve fiduciary duties similar to those exercised by banks acting in true fiduciary capacities.

Rule 724(d) would revise the SEC's definition of the phrase "acting as an investment adviser if the bank receives a fee for the investment advice" by eliminating the implication that a bank must communicate continuously and regularly with customers. The amended definition would provide that a bank must have an ongoing responsibility to review, select, or recommend specific securities for its customers, and that a bank claiming this exception must have a duty of loyalty to its customers that includes an affirmative duty to fully and fairly disclose all material facts and conflicts of interest.

As noted above, the push-out exception requires a bank to effect transactions in fiduciary capacity in a trust department or other department that is "regularly examined by bank examiners for compliance with fiduciary principles and standards." To ease burdens on banks, the SEC proposes to recast the examination requirement to more closely track how such activities are currently examined. The SEC would interpret this requirement to now mean that "all aspects" of effecting securities transactions in compliance with the trust and fiduciary activities exception must be regularly examined by bank examiners for compliance with fiduciary principles and standards.

C. Chiefly Compensated

Perhaps the most controversial aspect of the 2001 rulemaking effort was the SEC's take on the term "chiefly compensated," which was not defined in the GLB Act. The interim rules provided a detailed interpretation of the term and required banks to demonstrate that income received from "relationship compensation" (such as an annual fee or a percentage of assets under management) outweigh that from "sales compensation"(such as commissions). Moreover, banks were required to calculate this annually and on an <u>account-by-account</u> basis. In Regulation B, the SEC has partially backed off from this requirement. Although retaining the overall framework of comparing relationship compensation to sales compensation, the SEC has loosened it by (1) creating an elective alternative to the account-by-account analysis for banks that wish to compare on a line-of-business basis, and (2) by providing safe harbors and cure periods to ease the administrative burdens of these comparisons.

Under Rule 721(a), rather than calculate account-by-account, a bank may aggregate all sales and relationship compensation earned by a particular "line of business," which is defined as an identifiable division, department, or unit of the bank, with similar types of accounts, for which the bank acts in a similar fiduciary capacity.[14] A bank's line of business will qualify for the trust/fiduciary exception if its compensation as a whole meets or exceeds a 9-to-1 ratio of relationship to sales compensation — in other words, if sales compensation does not exceed approximately 11 percent of sales plus relationship

[13] 15 U.S.C. § 78c(a)(4)(D). This definition is substantially identical to the definition of "fiduciary capacity" contained in the regulations of the OCC at 12 C.F.R. § 9.2(e).

[14] Banks may also measure compensation at the bank level, asking whether the bank's entire compensation stemming from trust/fiduciary accounts meets the 9-to-1 ratio.

compensation — and if the bank again follows certain other requirements (*e.g.*, if, at opening, each fiduciary/trust account was evaluated to ensure that the bank was likely to receive more relationship than sales compensation).

Under Rule 721(b), if a bank using the line-of-business approach falls short of the required 9-to-1 compensation ratio in any given year, it may continue to rely on the proposed line-of-business alternative for the following year if it meets three requirements. First, it must meet the other requirements of the trust and fiduciary activities exception. Second, the bank's ratio of relationship to sales compensation must be at least 7-to-1. Third, the bank may not have relied on this safe harbor during any of the five preceding years.

If a bank chooses to evaluate compensation *account-by-account* (or defaults to this when it cannot meet the line-of-business test criteria), Regulation B will require it to ensure that, for each account, sales compensation is less than relationship compensation. After a bank has met this initial condition, however, it will be eligible for an exemption from the "chiefly compensated" test in the subsequent year if certain conditions are met in new Rule 722(a). Chief among these conditions is the requirement that the bank maintain procedures reasonably designed to ensure that, before opening a trust/fiduciary account, it is likely to receive more relationship than sales compensation from the account, and, after opening a trust/fiduciary account, if it negotiates with the accountholder or beneficiary to increase its sales compensation, it still will take steps to ensure that relationship compensation from the account will be greater than the sales compensation.

In addition, Rule 722(b) provides two useful safe harbors for banks using the account-by-account approach. First, if a particular account does not meet the test for "chiefly compensated," a bank will still be exempt from registration overall if (1) the lesser of 500 accounts, or 1 percent of its total trust/fiduciary accounts, do not meet the test, and the bank can document why these accounts are out of compliance and link this reason to its fiduciary duty, or (2) less than 10 percent of the bank's trust/fiduciary accounts do not qualify for the exemption and the bank has not used this safe harbor for the previous five years.

To prevent disruptions to existing relationships, certain "grandfathered" accounts would be exempt from the chiefly compensated test altogether. In particular, living, testamentary, or charitable trust accounts opened or established before the date that is 30 days after the date of publication of the Regulation B proposal in the Federal Register,[15] would be excluded from the "chiefly compensated" test requirement under Rule 720 if the bank does not individually negotiate with the accountholder or beneficiary of the account to increase the proportion of "sales compensation" as compared to "relationship compensation" after this grandfathering date. Somewhat similarly, Rule 723 would provide an exemption from the "chiefly compensated" calculation for banks that effect transactions as an indenture trustee in no-load money market funds.

In addition, the SEC proposes several technical changes to the definitions of sales and relationship compensation in Rule 724 to simplify and clarify the application of such terms. First, the definition of "relationship compensation" would be expanded to include fees generated by all types of assets, not simply securities as would have been required under the interim final rules. Second, the SEC proposes to add a formula to the definition of "sales compensation" allowing banks to estimate the amount an individual account pays annually in Rule 12b-1 fees that are paid on an entity basis – *i.e.,* based on the amount of assets in an omnibus account. Third, the SEC proposes to amend the definition of "sales compensation" to allow a bank

15 As of the date of this newsletter, the Proposing Release has not yet been published in the Federal Register.

to estimate the amount that it receives annually that is attributable to an individual account, but that is not paid directly from the account.

3. Sweep Accounts Exception

The sweep accounts exception in Exchange Act Section 3(a)(4)(B)(v) permits a bank to participate, as part of a program, in mixed product arrangements in which the bank offers a no-load money market fund "sweep" service linked to deposit accounts.[16] Under Regulation B, the SEC would retain the definition of "no-load" substantially as in interim final rule 3b-17(f) – *i.e.*, with total charges against net assets to provide for sales-related expenses and service fees, including 12b-1 fees of not more than 25 basis points. Rule 740(c) of Regulation B would slightly adjust this definition to recognize that some investment companies offer both load and no-load shares. In other words, Regulation B's definition of "no-load" would refer to loads applicable to a class or series of investment company securities, rather than to the securities of an investment company in general.

Although not proposed in the regulation, the SEC notes in the Proposing Release that the term "program" in the sweep accounts exception will be interpreted to refer to arrangements for the automatic transfer of funds on a regular basis. The SEC does not believe that the exception permits other than regular, automatic sweeps. The SEC seeks comment on this interpretation and whether it should be codified in the regulation.

4. Affiliate Transactions Exception

Exchange Act Section 3(a)(4)(B)(vi) excepts from the definition of broker a bank that "effects transactions for the account of any affiliate of the bank."[17] Rule 750 of Regulation B would clarify the SEC's interpretation of this exception by defining this phrase. Under the proposed rule, an affiliate of the bank must be acting as a principal or as a trustee or fiduciary purchasing or selling securities for investment purposes. Moreover, the affiliate may not act as a riskless principal for another person, as a registered broker-dealer, or be engaged in merchant banking. Finally, the bank would be required to obtain the securities to complete the subject transaction from a registered broker-dealer, or from a person acting in that capacity who is not required to register pursuant to another push-out exception (or exemption from the definition of broker).

5. Safekeeping and Custodial Activities

Exchange Act Section 3(a)(4)(B)(viii) excepts from the definition of broker a bank that holds custody of customer funds and securities as part of its "customary banking" activities.[18] It explicitly permits banks that hold securities for their customers to: (1) exercise warrants and other rights on behalf of customers; (2) facilitate the transfer of funds or securities in clearance and settlement of customer transactions; (3) effect securities lending or borrowing transactions when the securities are in the custody of the bank; (4) invest pledged collateral for customers; and (5) facilitate the pledging or transfer of securities that involve the sale of those securities.

The SEC has long held the view that customary banking activities do *not* include accepting orders from customers to purchase or sell securities, and it strictly limited order-taking activities under the interim final rules. Despite protests by many commenters, Regulation B carries forward most of these restrictions. Under proposed Rule 760, however, banks may accept customer orders from two categories of customers: (1) grandfathered customers who have a custodial account with the bank on or before the date that is 30 days after the

[16] 15 U.S.C. § 78c(a)(4)(B)(v).

[17] 15 U.S.C. § 78c(a)(4)(B)(vi).

[18] 15 U.S.C. § 78c(a)(4)(B)(viii).

date of publication of the Regulation B proposal in the Federal Register, and (2) "qualified investors" (as defined in Exchange Act Section 3(a)(54)). For both types of excepted customers, the bank may not receive compensation that directly or indirectly varies based on whether the bank accepts an order to purchase or sell a security, except for a 12b-1 fee or personal service fee paid by a registered investment company.[19] In addition, banks may not be compensated for accepting securities orders through revenue sharing arrangements because of the conflicts that these payments create. The bank will, of course, still be free to levy charges unrelated to the securities transaction, such as securities movement fees, annual fees, asset based fees, and processing fees.

Regulation B also draws a sharp line between the push-out exceptions for trust/fiduciary accounts and custodial accounts. Under Rule 762(a), a custodial account is one "established by a written agreement between the bank and the customer, which, at a minimum, provides for the terms that will govern the fees payable, rights, and obligations of the bank regarding the safekeeping of securities, settling of trades, investing cash balances as directed, collecting of income, processing of corporate actions, pricing securities positions, and providing of recordkeeping and reporting services." Under proposed Rule 760(a)(4), bank activities with respect to a trust/fiduciary account must be viewed in light of the trust/fiduciary push-out exception, whereas activities with respect to a non-trust/fiduciary, custodial account should be examined in light of the push-out exception for custody and safekeeping activities. Also, Regulation B makes clear that the custodial exception is not available for banks to effect transactions in securities for an employee benefit plan account; Regulation B provides a separate exemption for such activities, discussed below in section 7.

In at least one important respect, Regulation B tightens a requirement applicable to custodial activities from the interim final rules. Rule 760(a)(3) would remove the current provision that permits banks to solicit investors through investment company advertising and other sales material. On the other hand, Regulation B would eliminate some of the current restrictions on employees' custodial activities by deleting interim final rules 3a4-5(a)(2)(i) and (iii)(B), allowing banks to use dually licensed employees to effect securities transactions, eliminating the requirement that employees primarily perform duties for the bank other than effecting transactions in securities, and allowing employees to receive incentive compensation for the amount of securities-related assets gathered or the size or value of a customer's securities account.

In addition, the current small bank exemption under interim final rule 3a4-4 would be replaced by Rule 761 of Regulation B. Under this proposed rule, a small bank may, unlike a larger bank, receive transaction-based compensation for effecting transactions in *any* type of security (not just shares of investment companies) held in a custodial account.[20] "Small bank" is defined in Rule 762(h) to be a bank that (1) has less than $500 million in assets, (2) is not a part of a bank holding company with more than $1 billion in assets, and (3) is not affiliated with a broker-dealer (though it may have a networking arrangement with a broker-dealer). Furthermore, the small bank must receive less than $100,000 in sales compensation annually, but it can advertise its ability to effect securities transactions as part of its custodial activities.

Last, an important issue addressed in the Proposing Release is the degree to which custodial banks can assume certain clearing and settlement or other back-office functions of a broker-dealer without themselves becoming a broker-dealer.

[19] If a bank accepts orders to effect transactions in a class or series of securities of a registered investment company for which the bank receives 12b-1 fees or personal service fees, Rule 760(a)(8) would require the bank essentially to accept orders from customers for *all* classes and securities of such investment company (if such securities can reasonably be obtained by the bank for purchase or sale by bank customers).

[20] In addition, small banks may offer proprietary mutual funds without being required also to offer nonproprietary mutual funds.

Exchange Act Section 3(a)(4)(B)(viii)(II) notes that the custody and safekeeping push-out exception is not generally available to banks that act as "carrying brokers." The Proposing Release suggests that banks that take on significant responsibilities for a broker-dealer risk becoming a carrying broker, particularly when a bank takes on clearing or related functions in conjunction with an affiliate broker-dealer. The SEC requests comments on whether it should adopt a rule to clarify the distinction between a bank acting as a carrying broker and a bank acting as a custodian.

6. Exemption for Transactions for Certain Investors in Money Market Funds

Proposed Rule 776 of Regulation B would create a new general exemption, not tied to any of the push-out exceptions, under which banks could effect transactions in money market securities for a customer if: (1) the customer has obtained other non-securities products from the bank and the customer is a "qualified investor" or a person who directs the purchase of securities from any cash flows that relate to an asset-backed security that has a minimum original asset amount of $25,000,000; (2) the bank effects the transactions in a trustee or fiduciary capacity; or (3) the bank effects the transactions as an escrow agent, collateral agent, depository agent, or paying agent capacity. Also, the money market fund must either be no-load or the bank must not characterize or refer to it as no-load and must provide a disclosure statement and prospectus to any customer that is not a qualified investor not later than the time that the customer authorizes the bank to effect the transactions.

7. Exemption for Transactions in Securities in Certain Employee Benefit Plans

Proposed Rule 770 of Regulation B would create a new exemption from the definition of broker for bank trustees and non-fiduciary administrators that effect transactions in securities of open-end investment companies for participants in employee benefit plans. This rule would require such a bank to disclose clearly and conspicuously to the plan sponsor or its designated fiduciary, if any, all fees and expenses assessed for services provided to the plan and all compensation received or to be received from a fund complex.

8. Exemption for Transactions in Securities Issued Under Regulation S

Proposed Rule 771 of Regulation B would provide banks with a conditional exemption to effect transactions pursuant to Regulation S with non-U.S. persons. This exemption would not permit banks to effect transactions involving U.S. persons, other than U.S. registered broker-dealers. This exemption would permit banks to effect transactions involving offshore, non-U.S. persons on an agency or riskless principal basis. This exemption does not impose compensation limitations on the bank.

9. Exemption Transactions in Investment Company Securities

Under interim final rule 3a4-6, the SEC crafted an exemption permitting banks to continue to execute transactions in shares of open-end investment companies through NSCC's Mutual Fund Services (including Fund/SERV) on the theory that these services simplify and automate the process for buying and redeeming investment company securities without raising investor protection concerns. Rule 775 of Regulation B would expand this exemption to permit banks to process purchases and redemptions of shares of open-end investment companies directly with transfer agents that act as agents for these investment companies, provided that the transfer agents do not accept compensation paid for the distribution of the securities, including any compensation paid pursuant to any revenue-sharing arrangement or pursuant to Rule 12b-1. The proposed exemption would only be available for securities that are distributed by registered broker-dealers or otherwise sold for sales loads that do not exceed the NASD limits for broker-distributed funds. The exemption would be limited to transactions in securities of funds that are not traded on a national securities exchange, through the facilities of a national securities association, or through an interdealer quotation system.

10. Exemptions for Thrifts

Interim final rule 15a-9, which exempts savings associations and savings banks (together "thrifts") from the definitions of broker and dealer under the same terms as banks under the push-out exceptions, would be redesignated as Rule 773 of Regulation B. The regulation also would extend to thrifts the proposed money market exemption in Rule 776, the proposed exemptions in Rules 720-723 relating to the trust and fiduciary activities exception, the proposed small bank custody exemption in Rule 761, the proposed expanded exemption for the way in which banks effect transactions in investment company securities in Rule 775, and the current exemption for securities lending transactions in interim final rule 15a-11, which would be redesignated as Rule 772 of Regulation B. Thrifts would not, however, receive the benefit of the proposed general custody exemption in Rule 760, the proposed new ERISA exemption in Rule 770, or the proposed Regulation S exemption in Rule 771, because the SEC was unable to determine whether thrifts directly engage in the types of securities activities covered by these proposed exemptions.

11. Exemptions for Credit Unions

When engaging in activities governed by the networking and sweep account exceptions, federal or state-chartered credit unions not operated for the purpose of evading the Exchange Act would be exempt from the definition of broker and dealer the same as if they were banks under the exemptive provisions of Rule 774 of Regulation B. This exemption should be viewed as a moderate success for credit unions, which, unlike thrifts, were not exempted under the interim final rules. Additionally, all credit unions, including federally and privately insured credit unions, would be exempted from the definition of dealer when engaging in activities excepted by the investment transaction push-out exception to the definition of dealer under Exchange Act Section 3(a)(5)(ii).

12. Transition Periods

Interim final rule 15a-7 would be replaced by Rule 781 of Regulation B, and this new rule would extend the transition period to one year after any amended rules are adopted. In addition, Rule 780 of Regulation B would replace interim final rule 15a-8 by extending the exemption from rescission liability under Exchange Act Section 29 to contracts entered into by banks acting in a broker capacity until 18 months after the delayed effective date of the broker rules.

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If you would like a copy of proposed Regulation B or require further assistance, please contact:

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INTERIM FINAL RULE	BRIEF DESCRIPTION	PROPOSED CHANGE
Exchange Act Rule 3a4-2	Exemption from the definition of "broker" for a bank calculating compensation for effecting transactions in fiduciary accounts	Replaced by Rules 720, 721 and 722 of Regulation B
Exchange Act Rule 3a4-3	Exemption from the definition of "broker" for a bank effecting transactions as an indenture trustee in a no-load money market fund	Replaced by Rule 723 of Regulation B
Exchange Act Rule 3a4-4	Exemption from the definition of "broker" for a small bank effecting transactions in investment company securities in a tax-deferred custody account	Replaced by Rule 761 of Regulation B
Exchange Act Rule 3a4-5	Exemption from the definition of "broker" for a bank effecting transactions in securities in a custody account	Replaced by Rule 760 of Regulation B
Exchange Act Rule 3a4-6	Exemption from the definition of "broker" for a bank that executes transactions in investment company securities through NSCC Mutual Funds Services	Replaced by Rule 775 of Regulation B
Exchange Act Rule 3b-17(a)	Definition of "chiefly compensated" under trust and fiduciary activities push-out exception	Replaced by Rule 724(a) of Regulation B
Exchange Act Rule 3b-17(b)	Definition of "flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions" under trust and fiduciary activities push-out exception	Replaced by Rule 724(b) of Regulation B
Exchange Act Rule 3b-17(c)	Definition of "indenture trustee" under trust and fiduciary activities push-out exception	Moved to Rule 724(c) of Regulation B
Exchange Act Rule 3b-17(d)	Definition of "investment adviser if the bank receives a fee for its investment advice" under trust and fiduciary activities push-out exception	Replaced by Rule 724(d) of Regulation B
Exchange Act Rule 3b-17(e)	Definition of "money market fund"	Moved to Rule 740(b) of Regulation B
Exchange Act Rule 3b-17(f)	Definition of "no-load"	Moved to Rule 740(c) of Regulation B

INTERIM FINAL RULE	BRIEF DESCRIPTION	PROPOSED CHANGE
Exchange Act Rule 3b-17(g)	Definition of “nominal one-time cash fee of a fixed dollar amount” under the networking activities push-out exception	Replaced by Rule 710(b) of Regulation B
Exchange Act Rule 3b-17(h)	Definition of “referral” under the networking activities push-out exception	Replaced by Rule 710(c) of Regulation B
Exchange Act Rule 3b-17(i)	Definition of “relationship compensation” under the trust and fiduciary activities push-out exception	Moved to Rule 724(h) of Regulation B
Exchange Act Rule 3b-17(j)	Definition of “sales compensation” under the trust and fiduciary activities push-out exception	Replaced by Rule 724(i) of Regulation B
Exchange Act Rule 15a-7	Exemption from the definitions of “broker” or “dealer” for banks for a limited period of time	Replaced by Rule 781 of Regulation B
Exchange Act Rule 15a-8	Exemption of banks from liability under Section 29 of the Exchange Act	Replaced by Rule 780 of Regulation B
Exchange Act Rule 15a-9	Exemption for savings associations and savings banks under same terms as banks	Replaced by Rule 773 of Regulation B See also Rule 774 creating a new exemption for credit unions
Exchange Act Rule 15a-10	Exemption of certain broker-dealers with respect to security futures products	Moved to Exchange Act Rule 15a-7
Exchange Act Rule 15a-11	Exemption from the definitions of “broker” and “dealer” for banks engaging in securities lending transactions	Moved to Rule 772 of Regulation B