



Bank Securities Activities Under the Gramm-Leach-Bliley Act

FIL-79-2004
July 6, 2004

TO: CHIEF EXECUTIVE OFFICER (also of interest to Compliance Officer)

SUBJECT: Proposed Rule on the Securities Activities of Banks: Securities and Exchange Commission Regulation B

Summary: *The Securities and Exchange Commission (SEC) is soliciting comment on a proposed rule to implement provisions of the Gramm-Leach-Bliley Act of 1999 that delineate the securities activities in which banks may engage without registering as a broker under the Securities Exchange Act of 1934. Comments to the SEC are due by August 2, 2004.*

The Federal Deposit Insurance Corporation (FDIC) is notifying FDIC-supervised banks of a proposed rulemaking by the Securities and Exchange Commission (SEC) on the securities activities of banks. The proposed rule – Securities and Exchange Commission Regulation B – would implement provisions of the Gramm-Leach-Bliley Act of 1999 (GLBA) that delineate the securities activities in which banks may engage without registering as a broker under the Securities Exchange Act of 1934. Comments to the SEC are due by August 2, 2004.

Prior to GLBA, banks were excluded from the definition of “broker” contained in the Securities Exchange Act of 1934 (Exchange Act). As a result, banks that engaged in securities sales activities were exempt from the array of rules applicable to brokers, including the requirement that brokers register with the SEC. With the enactment of GLBA, banks were excluded from the definition of “broker” only to the extent that their securities sales activities fell within one or more of the 11 statutory functional exceptions. (The term “statutory exception,” as used in this document, refers to those categories of bank exceptions from the definition of “broker” in section 3(a)(4) of the Securities Exchange Act of 1934, as amended by Title II of the Gramm-Leach-Bliley Act of 1999. The term “exemption,” as used in this document, refers to specific exemptive orders issued by the SEC in its proposed Regulation B.)

On June 2, 2004, the SEC voted to publish for comment a proposed Regulation B. Among other things, Regulation B defines terms relevant to the GLBA functional exceptions and provides certain new exemptions to the definition of “broker.” When finalized, the rule will impact primarily: (1) banks that handle securities transactions either as a custodian or as a fiduciary; (2) banks that have fiduciary accounts, such as trust accounts, that invest in mutual funds that pay the bank fees in conjunction with a plan authorized under the SEC’s Rule 12b-1; (3) banks that offer securities through networking arrangements with registered broker-dealers; and (4) banks that enter into sweep account programs using money market funds. Banks that plan to engage in securities transactions and related activities and do not qualify for the statutory exceptions or exemptions proposed by the SEC (see attached) will be required to either register with the SEC as a broker or “push out” these activities to registered affiliates or third-party brokerage firms.

At the June 2 meeting, the SEC Commissioners stressed that their goal was to balance investor protection against unduly burdening banks or requiring banks to entirely alter their business model. To that end, they emphasized their interest in receiving comments from banks and other firms in the financial services industry, particularly if those comments quantify the potential

burdens of the proposed rule or suggest simpler, but equally effective, approaches. The Commissioners noted their particular interest in receiving comments from small banks and other banks that may have difficulty complying with the proposed “chiefly compensated” standard under the trust and fiduciary exception.

The proposed rule provides four primary exceptions from the broker definition, plus several targeted exemptions. Attached is a general discussion that broadly summarizes certain key exemptions in the SEC’s proposed rule. For more information, contact the following FDIC staff members: Lisa Arquette, for the Trust and Fiduciary exception and the Safekeeping and Custody exception, at (202) 898-8633; April Breslaw, for the Networking and Sweep Account exceptions, at (202) 898-6609; and Michael Phillips, for legal questions related to the proposed rule, at (202) 898-3581.

The proposed rule was published in the *Federal Register* on June 17, 2004, and may be found at <http://www.sec.gov/rules/proposed/34-49879.pdf> - PDF 1540k ([PDF Help](#)).

Information about how to submit comments to the SEC may be found in the proposed rule and at: <http://www.sec.gov/rules/submitcomments.htm>. Comments are due to the SEC by August 2, 2004.

For your reference, FDIC Financial Institution Letters may be accessed from the FDIC’s website at www.fdic.gov/news/news/financial/2004/index.html.

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[Attachment](#)

Distribution: FDIC-Supervised Banks (Commercial and Savings)

NOTE: Paper copies of FDIC financial institution letters may be obtained through the FDIC’s Public Information Center, 801 17th Street, NW, Room 100, Washington, DC 20434 (1-877-275-3342 or (703) 562-2200).