

SCHWARTZ & BALLEN LLP
1990 M STREET, N.W. • SUITE 500
WASHINGTON, DC 20036-3465
WWW.SCHWARTZANDBALLEN.COM

TELEPHONE
(202) 776-0700

FACSIMILE
(202) 776-0720

MEMORANDUM

September 20, 2007

To Our Clients and Friends

Re: SEC Adopts Regulation R, Exceptions for Banks from the Definition of Broker

The Securities and Exchange Commission (the “Commission”) has adopted a final rule to implement the “push-out” provisions of the Gramm-Leach-Bliley Act (“GLB Act”), which narrowed the exemption from the definition of “broker” for banks under the Securities Exchange Act of 1934 (the “Exchange Act”). The Federal Reserve Board is expected to take similar action at its meeting on Monday, September 24th. The rule is effective the first day of a bank’s fiscal year commencing after September 30, 2008.

BACKGROUND

Prior to enactment of the GLB Act, banks generally were exempt from the definition of the term “broker” under the Exchange Act. Congress narrowed the exception when it enacted the GLB Act and permitted banking organizations to affiliate with securities firms. However, Congress preserved eleven specific exceptions for banks. The Commission’s final rule elaborates on the statutory exceptions and establishes the conditions under which banks may continue to provide securities services to customers without being regarded as brokers under the Exchange Act.

EXCEPTIONS

The following presents a brief summary of several exceptions:

Networking

The networking exception permits banks to pay employees “nominal” incentive compensation for referring bank customers to brokers. The Commission revised the definition of “incentive compensation” to accommodate bank bonus programs while also clarifying the types of bonus plans that do not constitute incentive compensation. The final rule allows banks to pay more than nominal fees for referrals of certain institutional customers and high net worth customers to a broker. An “institutional

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customer” is an entity that has at least (i) \$10 million in investments; or (ii) \$20 million in revenues; or (iii) \$15 million in revenues if the bank employee refers the customer to the broker-dealer for investment banking services. A “high net worth customer” is natural person who has at least \$5 million in net worth.

Trust and Fiduciary Activities

A bank may effect securities transactions in a trustee or fiduciary capacity if it is “chiefly compensated” on the basis of specifically enumerated types of fees. The rule establishes a test to determine how a bank is chiefly compensated and permits a bank to choose either an account-by-account or bank-wide approach.

Sweep Accounts and Transactions in Money Market Funds

A bank may sweep deposits into no-load money market funds. The rule provides banks with a conditional exemption for transactions in money market funds that are not no-load as well as for transactions that are not sweeps.

Safekeeping and Custody

Banks can take orders for securities transactions from employee benefit plan accounts and individual retirement accounts for which the bank acts as a custodian, as well as from other safekeeping and custody accounts on an accommodation basis. A bank employee may not receive compensation from the bank, the executing broker or dealer or any other person that is based on whether a securities transaction is executed for the account, or on the quantity, price or identity of the securities purchased or sold by the account. The rule also permits a bank to rely on these provisions when it acts as a directed trustee without investment discretion and extends the exemptions to subcustodians.

Transactions in Investment Company Securities

Banks are permitted to effect certain transactions in mutual funds and in certain variable insurance products that are registered and funded by a separate account through the National Securities Clearing Corporation, directly with a transfer agent, or directly with an insurance company or a separate account that is excluded from the definition of transfer agent if the security is not traded on a national securities exchange or through the facilities of a national securities association or an interdealer quotation system.

Transactions in Company Securities

Banks are permitted to effect a transaction in the securities of a company directly with a transfer agent acting for the company as long as no commission is charged, the transaction is conducted solely for the benefit of an employee benefit plan, the security is

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obtained directly from the company or an employee benefit plan of the company, and the security is transferred only to the company or an employee benefit plan of the company.

A copy of the Commission's release is posted on our website at http://www.schwartzandballen.com/whats_new.html. A copy of the final rule will be posted Monday on our website after the Federal Reserve has acted.

If you have any questions, please call Gilbert Schwartz, Robert Ballen, Tom Fox or Heidi Wicker at (202) 776-0700.