

PUBLICATION

Bank Securities Activities: Is SEC Registration Required?

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Prior to the passage of the Gramm-Leach-Bliley Act (GLBA), banks were allowed to conduct certain types of securities activities, subject to banking law restrictions and the regulatory oversight of the bank's primary regulator. Federal securities laws expressly exempted banks from the definition of a "broker" or "dealer," and therefore banks were not required to register with the SEC as broker/dealers.

GLBA removed many of the legal barriers that restricted bank securities activities. However, the trade-off for this new authority is that banks engaged in securities activities are required to register with the SEC as broker/dealers, subject to certain exceptions listed in GLBA. Congress mandated that the SEC adopt regulations defining the scope of the exceptions listed in GLBA. It has taken the SEC 7 years to adopt final rules, but finally the SEC has issued Regulation R to define the scope of the statutory exceptions.

The SEC has maintained the blanket exemption from the definition of "broker" for banks for a certain period of time to give banks an opportunity to become accustomed to the new regulation. Banks that do not qualify for one of the exceptions described in the Securities Exchange Act and Regulation R have until the first day of their first fiscal year commencing after September 30, 2008 to either register as a broker/dealer with the SEC or cease conducting the securities activities which would otherwise require registration.

The exceptions from registration fall into the following categories:

- Certain third-party brokerage arrangements;
- Traditional trust and fiduciary activities;
- Bank permissible securities activities (such as government securities);
- Certain stock purchase plans;
- Sweep accounts and transactions in money market funds;
- Affiliate transactions;
- Private securities offerings;
- Safekeeping and custody activities;
- Identified banking products; and
- A *de minimis* number of other securities transactions.

Under these broad categories, Regulation R contains very specific requirements a bank must meet in order to be eligible for exemption from registration. If your bank conducts any type of securities activities, even activities which traditionally have been considered part of banking, you and your advisers should carefully review Regulation R to ensure your bank qualifies for an exception from registration.