SUPPORTING STATEMENT
for the Paperwork Information Collection
"Regulation R-Rule 701"

1. Necessity of Information Collection

a. Background

The Gramm-Leach-Bliley Act of 1999 ("GLBA") amended several federal statutes governing the activities and supervision of banks, bank holding companies, and their affiliates.[1] Among other things, it lowered barriers between the banking and securities industries erected by the Banking Act of 1933 ("Glass-Steagall Act").[2] It also altered the way in which the supervisory responsibilities over the banking, securities, and insurance industries are allocated among financial regulators. Among other things, the GLBA repealed most of the separation of investment and commercial banking imposed by the Glass-Steagall Act. The GLBA also revised the provisions of the Securities Exchange Act that had completely excluded banks from broker-dealer registration requirements.

In enacting the GLBA, Congress adopted functional regulation for bank securities activities, with certain exceptions from Commission oversight for specified securities activities. With respect to the definition of "broker," the Exchange Act, as amended by the GLBA, provides eleven specific exceptions for banks.[3] Each of these exceptions permits a bank to act as an agent with respect to specified securities products or in transactions that meet specific statutory conditions.

In particular, section 3(a)(4)(B) of the Exchange Act provides conditional exceptions from the definition of broker for banks that engage in certain securities activities in connection with third-party brokerage arrangements;[4] trust and fiduciary activities;[5] permissible securities transactions;[6] certain stock purchase plans;[7] sweep accounts;[8] affiliate transactions;[9] private

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

2 Pub. L. No. 73-66, ch. 89, 48 Stat. 162 (1933) (as codified in various sections of 12 U.S.C.).

3 15 U.S.C. 78c(a)(4).

4 Exchange Act section 3(a)(4)(B)(i). This exception permits banks to enter into third-party brokerage, or "networking" arrangements with brokers under specific conditions.

5 Exchange Act section 3(a)(4)(B)(ii). This exception permits banks to effect transactions as trustees or fiduciaries for securities customers under specific conditions.

6 Exchange Act section 3(a)(4)(B)(iii). This exception permits banks to buy and sell commercial paper, bankers' acceptances, commercial bills, exempted securities, certain Canadian government obligations, and Brady bonds.

7 Exchange Act section 3(a)(4)(B)(iv). This exception permits banks, as part of their transfer agency activities, to effect transactions for certain issuer plans.

securities offerings;[10] safekeeping and custody activities;[11] identified banking products;[12] municipal securities;[13] and a de minimis number of other securities transactions.[14]

On October 13, 2006, President Bush signed into law the "Financial Services Regulatory Relief Act of 2006 ("Regulatory Relief Act")."[15] Among other things, the Regulatory Relief Act required that the Securities and Exchange Commission (the "Commission" or "SEC") and the Board of Governors of the Federal Reserve System (the "Board," and collectively with the Commission, the "Agencies") jointly adopt a single set of rules to implement the bank broker exceptions in section 3(a)(4) of the Exchange Act.[16] It also required that not later than 180 days after the date of enactment of the Regulatory Relief Act, the SEC and the Board jointly issue a single set of proposed rules to implement these exceptions.

On October 3, 2007, the Agencies adopted rules designed to define and clarify a number of the statutory exceptions from the definition of "broker" under Exchange Act section 3(a)(4). In addition, the rules granted new conditional exemptions from the "broker" definition to banks. The adopted rules were Rules 701, 734 and 741.

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8 Exchange Act section 3(a)(4)(B)(v). This exception permits banks to sweep funds into no-load money market funds.

9 Exchange Act section 3(a)(4)(B)(vi). This exception permits banks to effect transactions for affiliates, other than broker-dealers.

10 Exchange Act section 3(a)(4)(B)(vii). This exception permits certain banks to effect transactions in certain privately placed securities, under certain conditions.

11 Exchange Act section 3(a)(4)(B)(viii). This exception permits banks to engage in certain enumerated safekeeping or custody activities, including stock lending as custodian.

12 Exchange Act section 3(a)(4)(B)(ix). This exception permits banks to buy and sell certain "identified banking products," as defined in section 206 of the GLBA.

13 Exchange Act section 3(a)(4)(B)(x). This exception permits banks to effect transactions in municipal securities.

14 Exchange Act section 3(a)(4)(B)(xi). This exception permits banks to effect up to 500 transactions in securities in any calendar year in addition to transactions referred to in the other exceptions.

15 Pub. L. No. 109-351, 120 Stat. 1966 (2006).

16 See Exchange Act section 3(a)(4)(F), as added by section 101 of the Regulatory Relief Act. The Regulatory Relief Act also requires that the Board and SEC consult with, and seek the concurrence of, the OCC, FDIC and OTS prior to jointly adopting final rules. The Board and the SEC also have consulted extensively with the OCC, FDIC and OTS in developing these joint rules.

b. Collections of Information

The first collection of information is found in Exchange Act Rule 701, which provides a conditional exemption from the definition of "broker" under Exchange Act section 3(a)(4). Rule 701 require banks that wish to utilize the exemption to make certain disclosures to high net worth or institutional customers when a bank employee receives a referral fee for making a referral to a broker or dealer. This rule also requires a broker or dealer (as part of a written agreement between the bank and the broker or dealer) to notify the bank if the broker or dealer makes certain determinations regarding the financial status of the customer, a bank employee's statutory disqualification status, and compliance with suitability or sophistication standards. In addition, the bank is required to provide its broker or dealer partner with the name of the bank employee receiving the referral fee and certain other identifying information.[17]

The second collection of information is contained in Exchange Act Rule 723. This rule requires a bank that desires to exclude a trust or fiduciary account in determining its compliance with the chiefly compensated test (pursuant to a de minimus exclusion)[18] to maintain records demonstrating that the securities transactions conducted by or on behalf of the account were undertaken by the bank in the exercise of its trust or fiduciary responsibilities with respect to the account.

The third collection of information is found in Exchange Act Rule 741 which provides a conditional exemption from the definition of the term "broker" under section 3(a)(4) of the Exchange Act for effecting transactions on behalf of a customer in securities issued by a money market fund. This rule requires a bank relying on the exemption to provide customers with a prospectus for money market fund securities purchased that are not no-load, not later than at the time the customer authorizes the bank to effect the transaction.

Banks are required to retain the records in compliance with any existing or future recordkeeping requirements established by the Banking Agencies.

The Agencies issued the rules pursuant to statutory authority granted in section 101 of the Regulatory Relief Act. In addition, the Commission issued the rules pursuant to statutory authority granted in the Exchange Act and, in particular, sections 3(b), 15, 23(a), and 36 thereof.[19]

c. Necessity of the Collections of Information

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17 See Exchange Act Rule 701(a)(2)(iii).

18 See Exchange Act Rule 723(d)(2), which requires that the total number of accounts excluded by the bank, under the exclusion from the chiefly compensated test in Rule 721(a)(1), do not exceed the lesser of 1 percent of the total number of trust or fiduciary accounts held by the bank (if the number so obtained is less than 1, the amount would be rounded up to 1) or 500.

19 15 U.S.C. 78c(b), 78o, 78w(a), and 78mm.

The collections of information contained in Rules 701, 723, and 741 are integral to the implementation of the Agencies' rules. These rules generally make the guidance and exemptions provided in those rules more useful to the industry while preserving the investor protection principles of the GLBA.

2. Purposes and Uses of the Information Collections

The purpose of the collection of information in Exchange Act Rule 701(a)(2)(i) and (b) is to provide a customer of a bank relying on the exemption with information to assist the customer in identifying and assessing any conflict of interest on the part of the bank employee making a referral to a broker or dealer. The collection of information in Exchange Act Rule 701(a)(2)(iii) and (a)(3)(iii) is designed to help a bank determine whether it is acting in compliance with the exemption. Without this collection of information, bank customers may have insufficient information to determine if a referral made by bank employee is in the customer's best interest. In addition, a bank may have difficulty determining whether it is acting in compliance with the exemption.

The collection of information in Exchange Act Rule 723 is designed to help ensure that a bank relying on the de minimis exclusion would be able to demonstrate that it was acting in a trust or fiduciary capacity with respect to an account excluded from the chiefly compensated test in Rule 721(a)(1). Without this collection of information, banks relying on the de minimus exclusion from the chiefly compensated test would not be required to have documentary evidence of their compliance with the requirements of the rule, which could frustrate regulators' efforts to assess compliance with the rule.

The purpose of the collection of information in Exchange Act Rule 741 is to help ensure that a customer of a bank relying on the exemption would have sufficient information upon which to make an informed investment decision, in particular, regarding the fees the customer would pay with respect to the securities. Without this collection of information, bank customers would not be provided with important information they need to make an informed investment decision.

The Agencies intend for the rules to provide legal certainty to the industry with respect to the GLBA requirements. The Agencies also seek to make the restrictions imposed by the GLBA more accommodating of securities activities carried out by banks consistent with investor protection principles.

3. Consideration Given to Information Technology

Improved information technology would not reduce the burden because each respondent would still be required to provide the same disclosures.

4. Duplication

Not applicable; there is no duplication of information.

5. Effects on Small Entities

The requirements of the rules are not unduly burdensome on smaller banks or broker-dealers. No other small entities are affected by the rules.

6. Consequences of Not Conducting Collection

Less frequent collection of information under Rules 701, 723 and 741 would undermine the purpose of the rules.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

Not applicable; the information is collected in a manner consistent with 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

The required Federal Register notice with a 60-day comment period soliciting comments on this collection of information was published. No public comments were received.

9. Payment or Gift

Not applicable.

10. Confidentiality

Not applicable.

11. Sensitive Questions

Not applicable; no questions of a sensitive nature are asked.

12. Burden of Information Collection

The Agencies determined that the information collections and burden estimates relating to Rules 701, 723 and 741 will be associated with the Board for banks and with the Commission for brokers or dealers. Rule 701 is the only rule that will impose information collection on brokers or dealers; as such this section only discussed the information collection and burden estimates relating to Rule 701.

The Agencies estimate that broker-dealers would, on average, notify 1,000 banks approximately two times annually about a determination regarding a customer's high net worth or institutional status or suitability or sophistication standing as well as a bank employee's statutory disqualification status. Based on these estimates, the Agencies anticipate that Exchange Act Rule 701 would result in brokers or dealers making approximately 2,000 notices to banks per

year. The Agencies further estimate (based on the level of difficulty and complexity of the applicable activities) that a broker or dealer would spend approximately 15 minutes per notice to a bank. Thus, the estimated total annual third party disclosure burden for the requirements in Exchange Act Rule 701 is 500[20] hours for brokers or dealers.

13. Costs to Respondents

Not applicable; (a) it is not anticipated that respondents will have to incur any capital or start up cost to comply with the rules; (b) it is not anticipated that the respondents will have to incur any additional operational or maintenance cost (other than provided for in item no. 12) to comply with the rules.

14. Costs to Federal Government

Not applicable.

15. Changes in Burden

Not applicable.

16. Information Collections Planned for Statistical Purposes

Not applicable; there is no intention to publish the information for any purpose.

17. Approval to Omit OMB Expiration Date

The Commission is not seeking approval to omit the OMB expiration date.

18. Exceptions to Certification

Not applicable.

B. Collection of Information Employing Statistical Methods

The collections of information do not employ statistical methods, nor would the implementation of such methods reduce burden or improve accuracy of results.

[20] (2000 notices x 15 minutes) = 30,000 minutes/60 minutes = 500 hours.