

Securities Industry Association

American Bankers Association

August 9, 2000

VIA Facsimile and U.S. Mail

Mr. Gary Goldsholle
Assistant Director
Office of General Counsel
NASD Regulation, Inc.
1735 K Street, NW
Washington, DC 20006

Re: **NASD Registration Requirements**

Dear Gary:

We are writing on behalf of the Bank Retail Broker/Dealer Regulatory Committee of the Securities Industry Association ("SIA") and the NASD Ad Hoc Committee of the American Bankers Association ("ABA"). We want to raise certain issues with respect to the NASD's registration requirements that arise from the functional regulation provisions (Title II) of the Gramm-Leach-Bliley Act ("GLB"). We believe interim or temporary relief, as discussed below, is necessary and appropriate to facilitate an efficient transition for bank employees engaged in securities-related businesses that are required to be conducted in registered broker dealers as of May 12, 2001, under GLB.

Request for Consideration

Specifically, we are asking the NASD to consider:

- 1) A tolling of the two-year grace period for registration with a broker-dealer for bank employees who will be moved into affiliated broker-dealers. We request that period be tolled from the time of the enactment of GLB to the implementation date of May 12, 2001, on the condition that the individual has been involved in a securities related function while an employee of the bank.

This tolling would, of course, be a one-time event which would allow a smooth transition while not penalizing individuals whose firms are using the full statutory transition time to designate appropriate broker-dealers and to move functions to those broker-dealers. It would, on the other hand, eliminate the uncertainty and the administrative burdens for NASD member firms, as well as the burdens to the NASD associated with considering a large number of individual waiver requests. We would note that Alan Sorcher has previously discussed this issue in general terms with you and that Sarah Miller has previously discussed this issue with Mr. Frank McAuliffe, who suggested that an industry-wide request for relief from the two-year grace period might be appropriate.

- 2) A confirmation that affiliated broker-dealers may begin sponsoring the registration of previously unlicensed individuals, in anticipation of their functions moving into the broker-dealer, but before their functions are actually part of the member business. Firms naturally wish to avoid the problem of "parking" licenses for individuals who are conducting their business currently on behalf of banks. At the same time, it is in the interests of individuals, banks, broker-dealers and the regulators to provide an adequate transition period, during which time licenses may be obtained for employees currently conducting a securities-related business in the bank. In addition, a sufficient transition period is necessary for business plans to be finalized in accordance with the requirements of GLB. This will enable firms to, among other things, avoid concentrating all registration activity in the few months immediately prior to May 12, 2001.

Discussion

As you know, under GLB, banks lose their general exemption from the broker-dealer registration requirements under the Securities Exchange Act of 1934. Instead, GLB establishes a series of exceptions for banks and their employees who engage in certain traditional bank activities involving securities transactions. The legislation provides an exception for eleven types of activities, such as trust activities, safekeeping and custody services and traditional banking transactions. These provisions take effect on May 12, 2001. On and after that date, banks that engage in brokerage activities not covered by GLB exceptions will be required to register with the SEC as broker-dealers.

Our member firms and their affiliated banks have been evaluating the impact of GLB's revision of permissible bank securities activities on their businesses. For each institution, this means carefully assessing all of the securities-related services and products it provides in light of the new eleven

categories of permissible activities. This process is made especially difficult because no regulations have yet been issued implementing the new statutory scheme.

Because GLB narrows the scope of permissible bank securities activities, and to avoid any chance of triggering broker-dealer registration, many banks will be shifting various securities activities out of the bank and into their affiliated broker-dealers. Departments, functions and employees will likely be moved. Business plans will have to be developed to effectuate such moves. For banks affiliated with more than one broker-dealer the transitions are even more complex. What is clear is that for a variety of reasons, including the complexity of these moves, most firms will be using the bulk of the transition period -- from November 12, 1999, to May 12, 2001 -- to make the necessary changes. Without the requested relief, however, firms may actually have an even more complex and trying task: they will need to precisely coordinate an activity's move into an affiliated broker-dealer with the licensing of the related professionals (who cannot, during this transition period, obtain or retain their licenses as bank employees). The relief requested by this letter would clearly enable firms to better manage the transition.

The GLB-mandated transition results in two issues regarding NASD registration for those bank employees who will be transferred to affiliated broker-dealers. The issues regarding NASD registration and the relief we seek are as follows:

First, there are many bank employees who perform securities-related activities -- having previously qualified for NASD registration while employed at registered broker-dealers -- who will be shifted into an affiliated broker-dealer. However, the two-year grace period on requalifying under NASD Rule 1031(c) will lapse for many of these individuals before they are moved back into a broker-dealer. For many others, the period has already lapsed. In order to continue the functions they were performing in the bank, these individuals will now be faced with requalifying under NASD rules. We think fairness dictates that these individuals not be required to requalify when, were it not for the provisions of GLB, these individuals would be able to continue their functions within the bank. Most significantly, these bank employees have been engaged in a securities-related business for which a license will now be required. Accordingly, we request that the two-year period under NASD Rule 1031(c) be extended for all individuals transferred into an affiliated broker-dealer whose two-year period lapsed between November 12, 1999 (the effective date of GLB) and May 12, 2001 (the effective date of the functional regulation provisions).

Second, there are bank employees -- not having previously qualified for NASD registration -- performing securities-related activities within the bank who will be required to be moved into the affiliated broker-dealer on May 12, 2001. In many cases, this will involve large numbers of employees being required to be registered. It is neither logistically or economically feasible for our member firms to register simultaneously all affected employees. In order to ease this transition, we request that firms be permitted to sponsor bank employees before May 12, 2001 in anticipation of their transition into the broker-dealer. This will enable firms to provide uninterrupted coverage of the securities businesses soon to be transferred to the NASD member firm by the professionals currently in charge. We request that the NASD not consider these temporary arrangements to be a parking of a license.

Conclusion

The changes brought by GLB are historic and have significant practical effect on the industry. The relief we are requesting is necessary and appropriate in light of the complexity of the GLB-mandated transition. In essence, we are asking for a "one time fix" to allow the industry to adjust to the new statutory scheme using the full transition period allowed by law, but without penalizing the individuals whose jobs are most affected.

We would like to meet with you to further discuss these issues. If you would like additional information or to arrange a meeting, please contact either Alan E. Sorcher of the SIA at (202) 296-9410 or Sarah Miller of the ABA at (202) 663-5325.

Sincerely,

Alan E. Sorcher
Assistant Vice President and
Assistant General Counsel

Sarah Miller
General Counsel-ABASA
Director, Center for
Securities, Trust and
Investments-ABA

cc: Mr. Alden Adkins
Mr. Frank McAuliffe

