

October 27, 2000

Mr. Alan E. Sorcher
Assistant Vice President and
Assistant General Counsel
Securities Industry Association
1401 Eye Street NW, 10th Floor
Washington, DC 20005-2225

Ms. Sarah Miller
General Counsel
ABA Securities Association
Director, Center for Securities, Trust and Investments-ABA
1120 Connecticut Avenue, NW
Washington, DC 20036

Dear Mr. Sorcher and Ms. Miller:

This responds to your letter dated August 9, 2000, in which you suggest two proposals to facilitate an orderly and efficient transition of employees from a bank into an affiliated broker/dealer to comply with the Gramm-Leach-Bliley Act of 1999 ("GLBA"). As you point out in your letter, under Title II of GLBA, which becomes effective on May 12, 2001, banks lose their general exclusion from the definition of "broker" and "dealer" under the Securities Exchange Act of 1934. Although Title II of GLBA provides a series of exceptions for banks and their employees who engage in certain enumerated bank securities activities, many of the securities activities currently performed by banks could potentially be required to be performed by (or "pushed-out" into) registered broker/dealer affiliates. If so, many bank employees currently conducting securities activities within a bank will be required to become associated persons of a registered broker/dealer. To facilitate the

transfer and registration of the anticipated large numbers of bank employees that will be required to register under GLBA, you have presented two proposals.

First, you have asked that NASD Regulation toll, during the GLBA phase-in period (as described herein), the two-year grace period during which an individual is not required to retake a qualification examination.¹ Under your proposal, certain individuals for whom the two-year grace period would expire between November 12, 1999 (the date GLBA was enacted) and May 12, 2001 (the date Title II of GLBA takes effect) (this period is referred to as the “phase-in period”) would be permitted to register without having to retake a qualification examination. You state that tolling the two-year grace period for these individuals will assist in a fair and orderly transition of such persons from a bank into a broker/dealer. In your view, tolling the grace period avoids penalizing individuals whose employer-banks are using the full statutory phase-in period to identify and/or establish the appropriate broker/dealer into which their securities activities will be moved.

You propose that the tolling would apply only with respect to those qualification examinations that an individual has passed and with respect to those activities for which an individual was engaged while with the bank. For example, if Ms. Smith was a registered representative (Series 7) and principal (Series 24) with a registered broker/dealer on September 15, 1998, but subsequently joined a bank in the capacity of a registered representative only, then the tolling would only apply for the Series 7, and not the Series 24 examination. In addition,

¹ Rule 1031(c) provides that “[a]ny person whose registration has been revoked pursuant to Rule 8310 or whose most recent registration as a representative or principal has been terminated for a period of two (2) or more years immediately preceding the date of receipt by the Association of a new application shall be required to pass a Qualification Examination for Representatives appropriate to the category of registration as specified in Rule 1032.” This two-year window is referred to as the “grace period.”

under your proposal, bank personnel that passed a qualification examination but for whom the two-year grace period expired before November 12, 1999, would not be affected by the tolling proposal and would have to retake a qualification examination or seek an examination waiver on an individual basis pursuant to Rule 1070(e).²

In view of the unique circumstances presented by GLBA's repeal of the general exclusion for banks from broker/dealer registration, the staff has agreed, pursuant to its authority under Rule 1070(e), to toll the two-year grace period during the phase-in period for those bank employees moving into an affiliated broker/dealer whose registrations would otherwise have expired. The tolling applies only with respect to those qualification examinations that the individual has passed and with respect to those activities for which the individual was engaged while employed by the bank. Member firms seeking an examination

² Rule 1070(e) provides that:

Pursuant to the Rule 9600 Series, the Association may, in exceptional cases and where good cause is shown, waive the applicable Qualification Examination and accept other standards as evidence of an applicant's qualifications for registration. Advanced age, physical infirmity or experience in fields ancillary to the investment banking or securities business will not individually of themselves constitute sufficient grounds to waive a Qualification Examination.

waiver for such persons should make an application under the procedures set forth in Rule 9610 to the following persons:

Marie Clapp	Gary L. Goldsholle
Waiver Analyst	Associate General Counsel
Testing and Continuing Education	Office of General Counsel
NASD Regulation, Inc.	NASD Regulation, Inc.
9509 Key West Avenue	1735 K Street, NW
Rockville, MD 20850	Washington, DC
20006	

The application should include the name of each individual, his or her CRD number, the registration category or categories for which an examination waiver is being sought, and evidence to demonstrate that such individual has, while at the bank, engaged in the type of securities business relating to the registration category or categories for which he or she is seeking an examination waiver. NASD Regulation's Testing Department has primary responsibility for determining the sufficiency of the examination waiver request, including whether the applicant has demonstrated that an individual has engaged in the necessary activity while at a bank. Please note that the staff's decision to toll the grace period during the GLBA phase-in period does not provide any relief for persons for registration in a registration category for which the grace period expired before November 12, 1999. As noted earlier, such persons may, of course, seek an examination waiver separately in accordance with Rule 1070(e).

Second, you have sought to allow bank-affiliated member firms to sponsor and complete registration for unregistered bank employees in anticipation of moving such employees into a registered broker/dealer. You state that allowing early registration will facilitate an orderly registration process within the bank, including the scheduling of the necessary training and examinations, and will avoid a flood of registrations on or around the date that the GLBA push-out provisions take effect. You are

concerned that if banks were not permitted to register employees in advance of moving such employees into a registered broker/dealer, the transition mandated by GLBA would materially disrupt business operations.

The staff believes that Rule 1031 provides the necessary flexibility. NASD Rule 1031 allows a member to register an individual if there is an intent to employ such person in the member's investment banking or securities business. The staff believes that during the GLBA phase-in period, it is appropriate to allow a member to sponsor an individual for registration if the member (or an affiliate of the member) intends to employ the individual in its investment banking or securities business. We recognize that in these circumstances there may be a substantial period between the time a member sponsors an individual for registration and the time when such individual actually engages in a securities business with the member (or an affiliate). However, so long as there is an intent to employ the individual at the time the application is made and during the application process, we believe that the conditions of Rule 1031 are satisfied.

You should be aware that under NASD Regulation By-Laws, all individuals who apply for registration are deemed to be persons associated with a member, and as such, subject to NASD rules and jurisdiction. From your letter, we understand that early registration is being sought solely to manage the large numbers of individuals that are required to register with a broker/dealer under GLBA. To accommodate this unique situation, the staff believes that so long as bank employees continue to be supervised by the bank and do not engage in any securities activity for or on behalf of the member firm of which they are an associated person, a member will not be required to separately supervise such associated persons under Rules 3010, 3030, 3040, and 3050. Members should be aware that beginning the earlier of May 12, 2001, or as soon as any bank employee engages in any securities activity for or on behalf of the member, such

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member will be required to supervise the associated person in accordance with all NASD rules, including the Rules 3010, 3030, 3040, and 3050.

The positions stated in this letter are in effect until May 12, 2001. Because your letter pertains to issues affecting banks and broker/dealers during the GLBA phase-in period only, we do not believe that it is necessary or appropriate to extend any of the exemptions or interpretations granted in this letter beyond that date. Please be aware that all persons seeking to avail themselves of the tolling of the two-year grace period must submit their application for registration to the NASD on or before May 12, 2001. All applications received after that date will be subject to the normal two-year grace period, although applicants, of course, are always able to seek an examination waiver in accordance with Rule 1070(e).

I hope this letter is responsive to your inquiry. Please note that the opinions expressed herein are staff opinions only and have not been reviewed or endorsed by the Board of Directors of NASD Regulation, Inc. This letter responds only to the issues you have raised based on the facts as you have described them in your letter, and does not

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necessarily address any other rule or interpretation of the NASD or all the possible regulatory and legal issues involved.

Sincerely,

Gary L. Goldsholle
Associate General Counsel

cc: Alden S. Adkins, Senior Vice President and General Counsel
R. Clark Hooper, Executive Vice President, Office of Disclosure
and Investor Protection

Frank McAuliffe, Vice President, Testing and Continuing
Education

Richard Pullano, Associate Director and Counsel, CRD/Public
Disclosure Department

Daniel M. Sibears, Senior Vice President, Member Regulation