

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54544 / File No. S7-12-01]

Order Extending Temporary Exemption of Banks, Savings Associations, and Savings Banks From the Definition of "Broker" Under Section 3(a)(4) of the Securities Exchange Act of 1934

September 29, 2006.

I. Background

The Gramm-Leach-Bliley Act ("GLBA") repealed the blanket exception of banks from the definitions of "broker" and "dealer" under the Securities Exchange Act of 1934 ("Exchange Act")¹ and replaced it with functional exceptions incorporated in amended definitions of "broker" and "dealer." Under the GLBA, banks that engage in securities activities either must conduct those activities through a registered broker-dealer or ensure that their securities activities fit within the terms of a functional exception to the amended definitions of "broker" and "dealer."

The GLBA provided that the amended definitions of "broker" and "dealer" were to become effective May 12, 2001. On May 11, 2001, the Securities and Exchange Commission ("Commission") issued interim final rules ("Interim Rules") to define certain terms used in, and grant additional exemptions from, the amended definitions of "broker" and "dealer."² Among other things, the Interim Rules extended the exceptions and exemptions granted to banks under the GLBA and Interim Rules to savings associations and savings banks. These Rules also included a temporary exemption that gave banks time to come into full compliance with the more narrowly-tailored exceptions from broker-dealer registration.³ To further accommodate the banking industry's continuing compliance concerns, the Commission delayed the effective date of the bank "broker" and "dealer" rules through a series of orders that, among other things, ultimately extended the temporary exemption from the definition of "broker" to September 30, 2006.⁴

¹ As defined in Exchange Act Sections 3(a)(4) and 3(a)(5) [15 U.S.C. 78c(a)(4) and 78c(a)(5)].

² See Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, Exchange Act Release No. 44291 (May 11, 2001), 66 FR 27760 (May 18, 2001).

³ 17 CFR 240.15a-7.

⁴ See Exchange Act Release No. 44570 (July 18, 2001); Exchange Act Release No. 45897 (May 8, 2002); Exchange Act Release No. 46751 (Oct. 30,

In previous extension orders, the Commission acknowledged "that banks may need as much as a year to develop compliance systems to adapt to the GLBA in light of amended Rules. The Commission does not expect banks to develop compliance systems for the provisions of the GLBA discussed in the Rules until the Commission has amended the Rules."⁵ Consistent with those statements, when the Commission proposed Regulation B in June 2004, to replace the Interim Rules, the Commission also proposed a one-year delay in the Regulation's effective date.⁶

Although the comment period for Regulation B expired on September 1, 2004,⁷ the Commission has continued to receive comments. To date, the Commission has received over 120 comments on the proposal, including comments from the banking industry, banking regulators, and members of Congress. The Commission has reviewed these comments and has had further discussions with several commenters, including the federal banking regulators.

II. Extension of Temporary Exemption From Definition of "Broker"

The Commission is carefully considering comments to determine what final action should be taken with regard to the Regulation B proposal. The Commission anticipates that this review process will not be completed before the exemption from the Interim Rules relating to the definition of "broker" expires on September 30, 2006.⁸

2002); Exchange Act Release No. 47649 (April 8, 2003); Exchange Act Release No. 50618 (Nov. 1, 2004); Exchange Act Release No. 51328 (March 8, 2005); and Exchange Act Release No. 52405 (Sept. 9, 2005) (extending the exemption from the definition of "broker" until September 30, 2006). During this time, the Commission also extended the temporary exemption from the definition of "dealer" to September 30, 2003. See Exchange Act Release No. 47366 (Feb. 13, 2003). On February 13, 2003, the Commission adopted amendments to certain parts of the Interim Rules that define terms used in the dealer exceptions, as well as certain dealer exemptions ("Dealer Release"), see Exchange Act Release No. 47364 (Feb. 13, 2003), 68 FR 8686 (Feb. 24, 2003). Therefore, this order is limited to an extension of the temporary exemption from the definition of "broker."

⁵ See, e.g., Order Extending Temporary Exemption of Banks, Savings Associations, and Savings Banks from the Definitions of "Broker" and "Dealer" under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934; Notice of Intent to Amend Rules, Exchange Act Release No. 45897 (May 8, 2002), <http://www.sec.gov/rules/other/34-45897.htm>.

⁶ Exchange Act Release No. 49879 (June 17, 2004), 69 FR 39682 (June 30, 2004).

⁷ See Exchange Act Release No. 50056 (July 22, 2004) 69 FR 44988 (July 28, 2004) (extending comment period on Regulation B until September 1, 2004).

⁸ In the Interim Rules, the Commission adopted Exchange Act Rule 15a-7, 17 CFR 240.15a-7,

Therefore, the Commission finds that extending the temporary exemption for banks, savings associations, and savings banks from the definition of "broker" is necessary and appropriate in the public interest, and is consistent with the protection of investors. The Commission believes that extending the exemption from the definition of "broker" until January 15, 2007, will prevent banks and other financial institutions from unnecessarily incurring costs to comply with the statutory scheme based on the current Interim Rules and will give the Commission time to consider fully comments received on Regulation B and take any final action on the proposal as necessary, including consideration of any modification necessary to the proposed compliance date.

III. Conclusion

Accordingly, pursuant to Section 36 of the Exchange Act,⁹

It is hereby ordered that banks, savings associations, and savings banks are exempt from the definition of the term "broker" under the Exchange Act until January 15, 2007.

By the Commission.

Nancy M. Morris,
Secretary.

[FR Doc. E6-16443 Filed 10-4-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54539; File No. SR-NSX-2006-06]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Order Approving Proposed Rule Change To Allow the Primary Market Print Protection Rule To Be Applied on an Optional Basis

September 28, 2006.

On April 12, 2006, the National Stock Exchange, Inc. ("NSX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NSX Rule 11.9(u), which pertains to the preferencing of public agency limit orders that a dealer represents as agent, to eliminate the

which, as proposed to be amended, would provide banks and other financial institutions until January 1, 2006, to begin complying with the GLBA. In proposing Regulation B, the Commission proposed Rule 781 as a re-designation of Rule 15a-7. See 17 CFR 242.781.

⁹ 15 U.S.C. 78mm.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

specific requirement that a Designated Dealer execute eligible limit orders if certain conditions occur in the primary market (referred to as the "primary market print protection" or the "limit order protection" provision). Pursuant to the proposal, dealers and members would still be permitted, but not required, to guarantee the execution of a limit order as principal upon the occurrence of a transaction in another market. The Commission published the proposed rule change for comment in the **Federal Register** on June 27, 2006.³ The Commission received no comments on the proposed rule change.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.⁴ In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁵ which requires among other things, that the rules of the Exchange are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the Exchange voluntarily enacted its rule-based execution guarantees in 1996,⁶ when the guarantees were used, among other things, as a competitive tool to attract order flow to the Exchange. The Commission notes that it has approved a substantially similar proposal of another national securities exchange.⁷ In that context, the Commission discussed how the environment had changed since the adoption of voluntary rule-based execution guarantees and "that consequently, the guarantees may no longer serve to foster competition between the markets."⁸ The Commission notes that the deletion of the rule-based mandate regarding limit order protection does not in any way affect the Exchange's rules relating to trading ahead prohibitions or best execution obligations, or any other

dealer obligations within NSX's rules. In addition, the Commission notes that, under the proposed rule change, dealers and members would still be permitted, but not required, to provide such guarantees if they wished to do so.⁹

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-NSX-2006-06) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Nancy M. Morris,
Secretary.

[FR Doc. E6-16460 Filed 10-4-06; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10625]

Virginia Disaster # VA-00008

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Virginia (FEMA-1661-DR), dated 09/22/2006.

Incident: Severe Storms and Flooding, Including Severe Storms and Flooding Associated with Tropical Depression Ernesto.

Incident Period: 08/29/2006 Through 09/07/2006.

Effective Date: 09/22/2006.

Physical Loan Application Deadline Date: 11/21/2006.

ADDRESSES: Submit Completed Loan Applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/22/2006, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

⁹ In addition, the Commission notes that it recently approved File No. SR-NSX-2006-08 which, among other things, adopted a new NSX Rule 11.9 as part of a new trading system for the Exchange, which is not yet operational. See Securities Exchange Act Release No. 54391 (August 31, 2006), 71 FR 52836 (September 7, 2006).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Accomack, Caroline, Charles City, Dinwiddie, Essex, Gloucester, Isle of Wight, James City, King William, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Poquoson (City), Richmond, Richmond (City), Surry, Sussex, Westmoreland, York.

The Interest Rates are:

| | Percent |
|--|---------|
| Other (Including Non-Profit Organizations) With Credit Available Elsewhere | 5.000 |
| Businesses And Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 10625.

(Catalog of Federal Domestic Assistance Number 59008)

Allan I. Hoberman,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E6-16413 Filed 10-4-06; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court of the District of New Jersey, dated September 6, 2006, the United States Small Business Administration hereby revokes the license of Bishop Capital, L.P., a New Jersey limited partnership, to function as a small business investment company under the Small Business Investment Company License No. 02/02-0503 issued to Bishop Capital, L.P. on August 27, 1987 and said license is hereby declared null and void as of September 28, 2006.

Small Business Administration.

Dated: September 28, 2006.

Jaime Guzman-Fournier,

Associate Administrator for Investment.

[FR Doc. E6-16498 Filed 10-4-06; 8:45 am]

BILLING CODE 8025-01-P

³ See Securities Exchange Act Release No. 54018 (June 20, 2006), 71 FR 36576.

⁴ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(5).

⁶ See Securities Exchange Act Release No. 37046 (March 29, 1996), 61 FR 15322 (April 5, 1996) (File No. SR-CSE-95-03).

⁷ See Securities Exchange Act Release No. 52652 (October 21, 2005), 70 FR 62151 (October 28, 2005) (order approving File No. SR-CHX-2004-17).

⁸ *Id.* at 62152.