

Securities and Exchange Commission

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of the Investment Advisers Act of 1940 that has total assets under management in excess of \$100 million.

(5) The term *registered broker or dealer* shall mean a person that is registered with the Commission under sections 15(b), 15B(a)(2), or 15C(a)(2) of the Act.

(6) The term *United States* shall mean the United States of America, including the States and any territories and other areas subject to its jurisdiction.

(7) The term *U.S. institutional investor* shall mean a person that is:

(i) An investment company registered with the Commission under section 8 of the Investment Company Act of 1940; or

(ii) A bank, savings and loan association, insurance company, business development company, small business investment company, or employee benefit plan defined in Rule 501(a)(1) of Regulation D under the Securities Act of 1933 (17 CFR 230.501(a)(1)); a private business development company defined in Rule 501(a)(2) (17 CFR 230.501(a)(2)); an organization described in section 501(c)(3) of the Internal Revenue Code, as defined in Rule 501(a)(3) (17 CFR 230.501(a)(3)); or a trust defined in Rule 501(a)(7) (17 CFR 230.501(a)(7)).

(c) The Commission, by order after notice and opportunity for hearing, may withdraw the exemption provided in paragraph (a)(3) of this section with respect to the subsequent activities of a foreign broker or dealer or class of foreign brokers or dealers conducted from a foreign country, if the Commission finds that the laws or regulations of that foreign country have prohibited the foreign broker or dealer, or one of a class of foreign brokers or dealers, from providing, in response to a request from the Commission, information or documents within its possession, custody, or control, testimony of foreign associated persons, or assistance in taking the evidence of other persons, wherever located, related to activities exempted by paragraph (a)(3) of this section.

[54 FR 30031, July 18, 1989]

§ 240.15a-7 Exemption from the definitions of “broker” or “dealer” for banks for limited period of time.

(a) A bank is exempt from the definitions of the term “broker” under Sec-

tion 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) and the term “dealer” under Section 3(a)(5) of the Act (15 U.S.C. 78c(a)(5)) until October 1, 2001; and

(b) A bank is exempt from the definition of the term “broker” under Section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) until January 1, 2002, for activities that meet the conditions of an exception or exemption for banks from the definition of the term “broker” except for those conditions of Section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) and the rules thereunder relating to compensation of the bank or its employees.

[66 FR 27799, May 18, 2001]

§ 240.15a-8 Exemption for banks from Section 29 liability.

(a) No contract entered into before January 1, 2003 shall be void or considered voidable by reason of section 29 of the Act (15 U.S.C. 78cc) because any bank that is a party to the contract violated the registration requirements of section 15(a) of the Act (15 U.S.C. 78o(a)) or any applicable provision of the Act (15 U.S.C. 78a *et seq.*) and the rules and regulations thereunder based solely on the bank’s status as a broker or dealer when the contract was created.

(b) No contract entered into before March 31, 2005, shall be void or considered voidable by reason of section 29 of the Act (15 U.S.C. 78cc) because any bank that is a party to the contract violated the registration requirements of section 15(a) of the Act (15 U.S.C. 78o(a)) or any applicable provision of the Act (15 U.S.C. 78a *et seq.*) and the rules and regulations thereunder based solely on the bank’s status as a dealer when the contract was created.

[68 FR 8701, Feb. 24, 2003]

§ 240.15a-9 Exemption from the definitions of “broker” and “dealer” for savings associations and savings banks.

Any savings association or savings bank that has deposits insured by the Federal Deposit Insurance Corporation under the FDIA (12 U.S.C. 1811 *et seq.*), and is not operated for the purpose of evading the provisions of the Act (15 U.S.C. 78a *et seq.*), is exempt from the definitions of the terms “broker” and

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“dealer” under Sections 3(a)(4) and 3(a)(5) of the Act (15 U.S.C. 78c(a)(4) and 15 U.S.C. 78c(a)(5)), based solely on the savings association’s or savings bank’s status as a broker or dealer on the same terms and under the same conditions that banks are excepted or exempted, provided that if a savings association or savings bank acts as a municipal securities dealer, it shall be considered a bank municipal securities dealer for purposes of the Act (15 U.S.C. 78a *et seq.*) and the rules thereunder, including the rules of the Municipal Securities Rulemaking Board.

[66 FR 27799, May 18, 2001]

§ 240.15a-10 Exemption of certain brokers or dealers with respect to security futures products.

(a) A broker or dealer that is registered by notice with the Commission pursuant to section 15(b)(11)(A) of the Act (15 U.S.C. 78o(b)(11)(A)) and that is not a member of either a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 78o-3(a)) will be exempt from the registration requirement of section 15(a)(1) of the Act (15 U.S.C. 78o(a)(1)) solely to act as a broker or a dealer in security futures products.

(b) A broker or dealer that is registered by notice with the Commission pursuant to section 15(b)(11)(A) of the Act (15 U.S.C. 78o(b)(11)(A)) and that is a member of either a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 78o-3(a)) will be exempt from the registration requirement of section 15(a)(1) of the Act (15 U.S.C. 78o(a)(1)) solely to act as a broker or a dealer in security futures products, if:

(1) The rules of any such exchange or association of which the broker or dealer is a member provides specifically for a broker or dealer that is registered by notice with the Commission pursuant to section 15(b)(11)(A) of the Act (15 U.S.C. 78o(b)(11)(A)) to become a member of such exchange or association; and

(2) The broker or dealer complies with section 11(a)-(c) of the Act (15 U.S.C. 78k(a)-(c)) with respect to any transactions in security futures products on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) of which it is a member, notwithstanding section 15(b)(11)(B)(ii) of the Act (15 U.S.C. 78o(b)(11)(B)(ii)).

[66 FR 45146, Aug 27, 2001]

§ 240.15a-11 Exemption from the definitions of “broker” and “dealer” for banks engaging in securities lending transactions.

(a) A bank is exempt from the definitions of the terms “broker” and “dealer” under sections 3(a)(4) and 3(a)(5) of the Act (15 U.S.C. 78c(a)(4) and (a)(5)), to the extent that, as a conduit lender, or as an agent, it engages in or effects securities lending transactions, and any securities lending services in connection with such transactions, with or on behalf of a person the bank reasonably believes to be:

(1) A qualified investor as defined in section 3(a)(54)(A) of the Act (15 U.S.C. 78c(a)(54)(A)); or

(2) Any employee benefit plan that owns and invests on a discretionary basis, not less than \$25,000,000 in investments.

(b) *Securities lending transaction* means a transaction in which the owner of a security lends the security temporarily to another party pursuant to a written securities lending agreement under which the lender retains the economic interests of an owner of such securities, and has the right to terminate the transaction and to recall the loaned securities on terms agreed by the parties.

(c) *Securities lending services* means:

(1) Selecting and negotiating with a borrower and executing, or directing the execution of the loan with the borrower;

(2) Receiving, delivering, or directing the receipt or delivery of loaned securities;

(3) Receiving, delivering, or directing the receipt or delivery of collateral;

(4) Providing mark-to-market, corporate action, recordkeeping or other