A. Title I—Repeal of Portions of the Glass-Steagall Act

1. Title I allows banks to have affiliations with securities firms.

   a. Section 101 of the Gramm-Leach-Bliley Act repeals sections 20 and 32 of the Glass-Steagall Act:
i. Bank-affiliated broker-dealers may engage in underwriting any type of security in any amount;

ii. Banks may share directors, officers, and employees with entities previously defined as “securities affiliates,” such as investment bankers and investment companies.

b. However, the Gramm-Leach-Bliley Act did not repeal sections 16 and 21 of the Glass-Steagall Act, 12 U.S.C. §§24 and 378, which will continue to prevent a bank qua bank from underwriting securities.

i. Section 16 expressly prohibits a national bank from purchasing any equity security for its own account. Notwithstanding this explicit prohibition, during Summer 2000 it was disclosed that the Office of the Comptroller of the Currency had allowed several large banks to purchase equity securities as a method of offsetting hedging and equity derivative swap positions.


c. Title II of the Gramm-Leach-Bliley Act removes the previous exclusion for a bank from the definitions of “broker” and “dealer” in the 1934 Act, the 1940 Act, and the Advisers Act, causing retail securities brokerage and underwriting activities to be subject to the regulatory provisions of the 1934 Act, the 1940 Act, and the Advisers Act for all practical purposes.

2. The effective date for Title I was 120 days after enactment of the Gramm-Leach-Bliley Act, or March 11, 2000. 17 C.F.R. §§240.15a-7; 240.15a-8; 240.15a-9.
B. Title II—Bank Securities Activities

1. In May 2001, the SEC adopted interim final rules defining terms in and specific exemptions for banks, savings associations, and savings banks under sections 3(a)(4) and 3(a)(5) of the 1934 Act, 15 U.S.C. §§78c(a)(4) and 78c(a)(5). Securities Exchange Act Release No. 44291 (May 11, 2001), 2001 SEC LEXIS 925 (May 11, 2001) (“Release No. 44291”). In this portion of the outline, I will indicate which interpretive questions have been resolved, at least on an interim basis, by the rules adopted and positions taken by the SEC in Release No. 44291; all references to “Rule” without any other identification will be to a rule adopted in Release No. 44291. To summarize, Rule 3b-17 and Rule 3b-18 (17 C.F.R. §§240.3b-17&18) contain definitions for purposes of interpreting terms used in sections 3(a)(4) and 3(a)(5) of the 1934 Act; Rules 3a4-2, 3a4-3, 3a4-4, 3a4-5, 3a4-6, and 3a5-1 (17 C.F.R. 3a4-2,3,4,5,6, & 5-1) provide exemptions for specific circumstances; and Rules 15a-7, 15a-8, and 15a-9 (17 C.F.R. §§240.15a-7,8,9) provide exemptions for periods of time and for savings associations and savings banks. All of the Rules were effective as of May 12, 2001; comments on the interim final rules were due in July 2001.


d. In January 2001, Robert L.D. Colby, Deputy Director of the Division of Market Regulation, gave an important speech before the ABA Trust, Asset
Management, and Marketing Conference (a copy of which can be found on the SEC’s Website) that contained the first public remarks about Title II made by anyone on the SEC staff. It is still worth reading for the valuable insight it provides into how the SEC staff thinks about Title II.

2. Sections 201 and 202 redefine the terms “broker” and “dealer” in sections 3(a)(4) and 3(a)(5) of the 1934 Act, 15 U.S.C. §§78c(a)(4),(5), to include any person engaged in the business of effecting transactions in securities for the account of others, or of buying and selling securities for the person’s own account through a broker or otherwise. Thus, a bank is no longer excluded from those definitions.


b. In June 2002, the SEC published a notice of an application by the Evangelical Christian Credit Union requesting that it be issued an exemption allowing it to sweep account balances into a money market fund with a Rule 12b-1 Plan fee of 25 basis points and an account level “sweep” fee of 100 basis points. “SEC to Solicit Comments on Application By Credit Union for Broker-Dealer Exemption,” 78 Banking Rep. (BNA) 1056 (June 17, 2002).

c. The National Association of Federal Credit Unions and the Credit Union National Association submitted comment letters supporting the application and urged the SEC to allow credit unions to offer sweep accounts without registering as broker-dealers. John Resoti, “Banks and Credit Unions Square Off Over Sweeps,” American Banker, August 12, 2002, at 1. The application is opposed by the three major banking trade associations