

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 240

Release No. 34-69979

RIN 3235-AL35

RESCISSION OF SUPERVISED INVESTMENT BANK HOLDING COMPANY RULES

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the “Commission”) is rescinding rules under the Securities Exchange Act of 1934 (the “Exchange Act”) that established the Commission’s program for supervising investment bank holding companies. The Commission is taking this action pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”), which eliminated the applicable section effective July 21, 2011. The Commission also is rescinding certain exemptive provisions in its broker-dealer risk assessment rules and delegation of authority rules that pertain to the supervised investment bank holding company program rules that are being rescinded.

EFFECTIVE DATE: July 18, 2013.

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SUPPLEMENTARY INFORMATION: The Commission is rescinding Exchange Act Rules 17i-1 through 17i-8 and making conforming amendments to Exchange Act Rules 17h-1T and 17h-2T and Rule 30-3 of the Commission’s Rules of Organization and Program Management.

I. DISCUSSION

Section 17(i) of the Exchange Act, promulgated under section 231 of the Gramm-Leach-Bliley Act of 1999,¹ authorized the Commission to create a regulatory framework pursuant to which a holding company of a broker-dealer could elect to be supervised by the Commission as a supervised investment bank holding company (“SIBHC”).² On June 8, 2004, the Commission adopted Exchange Act Rules 17i-1 through 17i-8 to implement the framework for Commission supervision of SIBHCs under section 17(i).³

At the time the Commission adopted rules under Exchange Act section 17(i), the Commission amended its risk assessment rules – Exchange Act Rules 17h-1T and 17h-2T – to exempt a broker-dealer that is affiliated with an SIBHC from those rules in part because the SIBHC rules – in particular, Rules 17i-5 and 17i-6 – required that the “SIBHC must make and retain documents substantially similar to those the broker-dealer is required to make and maintain pursuant to Rule 17h-1T” and the “SIBHC would be required to make reports that are substantially similar to those the broker-dealer is required to make pursuant to 17h-2T.”⁴ The

¹ Pub. L. 106-102, 113 Stat. 1338 (1999).

² 15 U.S.C. 78(q)(i).

³ Supervised Investment Bank Holding Companies, Exchange Act Release No. 49831 (Jun. 8, 2004), 69 FR 34472 (Jun. 21, 2004) (adopting Exchange Act Rules 17i-1 through 17i-8 to implement Exchange Act section 17(i)). See also Supervised Investment Bank Holding Companies, Exchange Act Release No. 48694 (Oct. 24, 2003), 68 FR 62910 (Nov. 6, 2003) (proposing rules to implement Exchange Act section 17(i)).

⁴ See Supervised Investment Bank Holding Companies, 69 FR at 34480. See also 17 CFR 240.17h-1T(d)(5) and 17h-2T(b)(5). The risk assessment rules, together with Form 17-H, establish a risk assessment recordkeeping and reporting program. Rule 17h-1T, a recordkeeping rule, requires a broker-dealer to maintain information and other records concerning certain affiliated entities of the broker-dealer. Rule

Commission also adopted amendments to Rule 30-3 of its Rules of Organization and Program Management to delegate authority to the Director of the Division of Market Regulation (now the Division of Trading and Markets) to act on certain requests of SIBHCs.⁵

On July 21, 2010, President Obama signed the Dodd-Frank Act into law.⁶ Section 617 of Title VI to the Dodd-Frank Act amended the Exchange Act by eliminating section 17(i).⁷ The effective date of section 617 is the “transfer date,”⁸ which generally is defined in section 311 of the Dodd-Frank Act to mean one year after the date of enactment of the Dodd-Frank Act.⁹ As a result, section 17(i) was removed from the Exchange Act effective July 21, 2011.¹⁰

Because of the effectiveness of section 617 of the Dodd-Frank Act, the Commission is rescinding Exchange Act Rules 17i-1 through 17i-8. The Commission also is amending Exchange Act Rules 17h-1T and 17h-2T to rescind subparagraphs (d)(5) and (b)(5) respectively,

17h-2T, a reporting rule, requires a broker-dealer to file information regarding its material affiliates on Form 17-H with the Commission.

⁵ See 17 CFR 200.30-3(a)(77) through (79).

⁶ Pub. L. No. 111-203, 124 Stat. 1376 (2010).

⁷ Pub. L. No. 111-203 § 617(a)(1). The Dodd-Frank Act also added section 618, which permits a company that owns at least one registered securities broker or dealer (a “nonbank securities company”) and that is required by a foreign regulator or provision of foreign law to be subject to comprehensive consolidated supervision, to register with the Board of Governors of the Federal Reserve System (the “Federal Reserve”) as a securities holding company and become subject to supervision and regulation by the Federal Reserve. Pub. L. No. 111-203 § 618. On May 29, 2012, the Federal Reserve adopted a final rule to implement section 618 of the Dodd-Frank Act, which permits securities holding companies to elect to become supervised securities holding companies by registering with the Federal Reserve. See Supervised Securities Holding Company Registration, 77 FR 32881 (Jun. 4, 2012).

⁸ Pub. L. No. 111-203 § 617(b).

⁹ Pub. L. No. 111-203 § 311(a).

¹⁰ Section 311(b) specifies that the transfer date could be extended to a date no later than 18 months after the date of enactment of the Dodd-Frank Act if the Secretary of the Treasury, after consultation with specified regulators, informed Congress of the extension and published notice of such extension in the Federal Register within 270 days after the enactment of the Dodd-Frank Act. The transfer date was not extended; therefore, the transfer date was July 21, 2011. See, e.g., 76 FR 39246 (Jul. 6, 2011) (identifying July 21, 2011 as the “transfer date” in the context of the Office of Thrift Supervision becoming part of the Office of the Comptroller of the Currency).

which contain the conforming exemptions for broker-dealers affiliated with SIBHCs,¹¹ and Rule 30-3 subparagraphs (a)(77) through (79) of the Commission’s Rules of Organization and Program Management, to remove the delegations of authority that permit the Division Director to act on requests of SIBHCs made pursuant to the SIBHC rules the Commission is rescinding.¹²

The impact of the rescission of the conforming exemptions in the risk assessment rules is that any broker-dealer qualifying for, and relying upon, those exemptions will now have to comply with the risk assessment rules. However, no broker-dealers are affiliated with an SIBHC because, as a result of the elimination of Exchange Act section 17(i) under section 617 of the Dodd-Frank Act, the Commission’s SIBHC program is no longer effective, and, accordingly, no broker-dealers can rely on the provisions in the risk assessment rules that exempt a broker-dealer affiliated with an SIBHC from those rules.

II. PROCEDURAL AND OTHER MATTERS

The Administrative Procedure Act (“APA”) generally requires an agency to publish notice of a proposed rulemaking in the Federal Register.¹³ This requirement does not apply, however, if the agency “for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”¹⁴ Further, it does not apply to interpretative rules, general statements of policy, and rules of agency organization, procedures or practice.¹⁵ The APA also generally requires that an agency publish a rule in the Federal Register

¹¹ In connection with the Commission’s rescission of the exemptions in Rules 17h-1T and 17h-2T for broker-dealers that are affiliated with an SIBHC, the Commission is: (1) removing paragraph (d)(5) of Rule 17h-1T and redesignating paragraph (d)(6) as paragraph (d)(5); and (2) removing paragraph (b)(5) of Rule 17h-2T and redesignating paragraph (b)(6) as paragraph (b)(5).

¹² The Commission is amending Rule 30-3 of the Commission’s Rules of Organization and Program Management by removing and reserving paragraphs (a)(77), (a)(78), and (a)(79).

¹³ See 5 U.S.C. 553(b).

¹⁴ Id.

¹⁵ Id.

30 days before the rule becomes effective.¹⁶ This requirement, however, does not apply if the agency finds good cause for making the rule effective sooner.¹⁷

The Commission finds good cause to have these rule rescissions and rule amendments take effect when they are published in the Federal Register, and that notice and solicitation of comment before the effective date is unnecessary.¹⁸ In particular, as of July 21, 2011, Rules 17i-1 through 17i-8 no longer have any legal effect. Consequently, their continued inclusion in the Code of Federal Regulations might lead to public confusion. Further, as discussed above, as a result of the elimination of Exchange Act section 17(i) under section 617 of the Dodd-Frank Act, no broker-dealers are affiliated with an SIBHC and, therefore, no broker-dealers can rely on the provisions in the risk assessment rules that exempt a broker-dealer affiliated with an SIBHC from those rules. Moreover, because the Dodd-Frank Act eliminated section 17(i), no firms affiliated with a broker-dealer can elect to be supervised by the Commission as an SIBHC. Because no broker-dealers currently, or will in the future, rely on the exemptions in the risk assessment rules available to broker-dealers affiliated with an SIBHC, the Commission finds that notice and solicitation of comment is unnecessary with respect to the rescission of these exemptions. The Commission also finds that notice and solicitation of comment is unnecessary with respect the delegation of authority rules that the Commission is rescinding in this release because the rescinded aspects of those rules pertain to rules under the SIBHC program that no

¹⁶ See 5 U.S.C. 553(d).

¹⁷ Id.

¹⁸ This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rule amendments to become effective notwithstanding the requirements of 5 U.S.C.801 (if a Federal agency finds that notice and public comment are “impracticable, unnecessary, or contrary to the public interest,” a rule “shall take effect at such time as the Federal agency promulgating the rule determines”). Because the Commission is not publishing the rule amendments in a notice of proposed rulemaking, no analysis is required under the Regulatory Flexibility Act. See 5 U.S.C. 601(2) (for purposes of Regulatory Flexibility Analysis, the term “rule” means any rule for which the agency publishes a general notice of proposed rulemaking).

longer have legal effect and will no longer exist. Further, the Commission notes that notice and comment is not required with regard to the delegations of authority because they relate solely to Commission organization, procedure, or practice.¹⁹

Section 23(a)(2) of the Exchange Act requires the Commission to consider the competitive effects of rulemaking under the Exchange Act.²⁰ Further, section 3(f) of the Exchange Act requires the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.²¹ Rescinding the rules related to the SIBHC program will not create any competitive advantages or disadvantages, or affect efficiency, competition, and capital formation because the Commission is merely rescinding rules that no longer have any legal effect.

III. PAPERWORK REDUCTION ACT

Certain provisions of Rules 17i-1 through 17i-8 contained “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).²² Consequently, the Commission submitted these collections of information to the Office of Management and Budget (“OMB”) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11.

The titles for the collections of information are: (i) Rule 17i-2 Notice of Intention to be Supervised by the Commission as a Supervised Investment Bank Holding Company; (ii) Rule

¹⁹ See 5 U.S.C. 553(b).

²⁰ 15 U.S.C. 78w(a)(2).

²¹ 15 U.S.C. 78c(f).

²² 44 U.S.C. 3501 et seq.

17i-3 Withdrawal from Supervision as a Supervised Investment Bank Holding Company; (iii) Rule 17i-4 Internal Risk Management Control Systems Requirements for Supervised Investment Bank Holding Companies; (iv) Rule 17i-5 Record Creation, Maintenance, and Access Requirements for Supervised Investment Bank Holding Companies; (v) Rule 17i-6 Reporting Requirements for Supervised Investment Bank Holding Companies; and (vi) Rule 17i-8 Notification Requirements for Supervised Investment Bank Holding Companies. OMB approved these collections of information and assigned them OMB Control Nos. 3235-0592, 3235-0593, 3235-0594, 3235-0590, 3235-0588, and 3235-0591, respectively.

As noted above, the rules promulgated under section 17(i) established a framework pursuant to which an investment bank holding company could elect to become supervised by the Commission as an SIBHC, as well as recordkeeping and reporting requirements for SIBHCs. Because the Commission is rescinding this regulatory framework, the Commission has discontinued the OMB collections of information associated with it.

As discussed above, to eliminate duplicative recordkeeping and reporting requirements, broker-dealers affiliated with an SIBHC were exempt from Rules 17h-1T and 17h-2T. Any broker-dealer previously relying on the SIBHC exemptions in Rules 17h-1T and 17h-2T (and thus required to comply with Rules 17i-1 through 17i-8) has, since July 21, 2011, been required to comply with Rules 17h-1T and 17h-2T. One broker-dealer that elected to use the SIBHC rules now is required to comply with Rules 17h-1T and 17h-2T. The Commission has accounted for this increased burden in connection with the recent notice seeking comment on the existing collection of information provided for in Rules 17h-1T and 17h-2T.²³

²³ See Proposed Collection; Comment Request, 77 FR 31408 (May 25, 2012).

IV. STATUTORY AUTHORITY AND TEXT OF AMENDMENTS

The Commission is removing regulations pursuant to authority provided by section 23(a) of the Exchange Act.

List of Subjects

17 CFR Part 200

Administrative practice and procedure; Authority delegations (Government agencies)

17 CFR Part 240

Brokers; Reporting and recordkeeping requirements; Securities

Text of Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200 – ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A – Organization and Program Management

1. The authority citation for Part 200, Subpart A, continues to read, in part, as follows:

Authority: 15 U.S.C. 77o, 77s, 77sss, 78d, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 80a-37, 80b-11, and 7202, unless otherwise noted.

2. Section 200.30-3 is amended by removing and reserving paragraphs (a)(77), (a)(78), and (a)(79).

PART 240 – GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1,

78o, 78o-4, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 et seq.; and 18 U.S.C. 1350, 12 U.S.C. 5221(e)(3), and sec. 939A, Pub. L. 111-203, 124 Stat. 1376, (2010), unless otherwise noted.

4. Section 240.17h-1T is amended by:
 - a. Removing paragraph (d)(5); and
 - b. Redesignating paragraph (d)(6) as paragraph (d)(5).
5. Section 240.17h-2T is amended by:
 - a. Removing paragraph (b)(5); and
 - b. Redesignating paragraph (b)(6) as paragraph (b)(5).
6. Sections 240.17i-1 through 240.17i-8 are removed, including the heading, “Supervised Investment Bank Holding Company Rules,” and the Preliminary Note preceding those sections.

By the Commission.

Elizabeth M. Murphy
Secretary

July 12, 2013