

***Transmittal***

***TR-423***

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On April 17, 2008 the Board of Governors of the Federal Reserve System and the Securities and Exchange Commission jointly issued a final rule adopting technical amendments to Regulation R. Regulation R implements certain of the exceptions for banks from the definition of the term “broker”.

# Rules and Regulations

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## FEDERAL RESERVE SYSTEM

### 12 CFR Part 218

[Regulation R; Docket No. R-1274]

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 247

[Release No. 34-56501A; File No. S7-22-06]

RIN 3235-AJ74

### Definitions of Terms and Exemptions Relating to the “Broker” Exceptions for Banks

**AGENCIES:** Board of Governors of the Federal Reserve System (“Board”) and Securities and Exchange Commission (“SEC” or “Commission”) (collectively, the Agencies).

**ACTION:** Final rule; technical amendments.

**SUMMARY:** The Board and the Commission jointly are adopting technical amendments to Regulation R, which the Agencies jointly adopted in September 2007. Regulation R implements certain of the exceptions for banks from the definition of the term “broker” in section 3(a)(4) of the Securities Exchange Act of 1934 (“Exchange Act”), as amended by the Gramm-Leach-Bliley Act (“GLBA”). The technical amendments correct cross-references and other typographical errors in the regulation.

**DATES:** *Effective Date:* The technical amendments are effective April 17, 2008.

*Compliance Date:* As provided in 12 CFR 218.781 and 17 CFR 247.100 of Regulation R, banks are exempt from complying with Regulation R and the “broker” exceptions in section 3(a)(4)(B) of the Exchange Act until the first day of their first fiscal year that commences after September 30, 2008.

### FOR FURTHER INFORMATION CONTACT:

*Board:* Andrea Tokheim, Counsel, (202) 452-2300, or Brian Knestout, Attorney, (202) 452-2249, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263-4869.

*SEC:* Linda Stamp Sundberg, Senior Special Counsel, at (202) 551-5550, Office of the Chief Counsel, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

### SUPPLEMENTARY INFORMATION:

#### A. Overview of Technical Amendment

In September 2007, the Board and the SEC jointly adopted a single set of final rules called Regulation R that implement certain of the exceptions for banks from the definition of the term “broker” in section 3(a)(4) of the Exchange Act, as amended by the GLBA.<sup>1</sup> Regulation R defines terms used in these statutory exceptions and includes certain related exemptions. The Board and the SEC are jointly adopting these technical amendments to correct certain cross-references and typographical errors in the final rules.

In particular, paragraph (b) of Rule 701 is revised to add a colon at the end of the paragraph.<sup>2</sup> Paragraphs (a)(6) and (a)(7) of Rule 721 are redesignated as paragraphs (a)(5) and (a)(6) because there was no numbered paragraph (a)(5). Paragraph (c)(2) of Rule 721 is revised to correctly cross-reference paragraph (h)(2), rather than paragraph (g)(2). Paragraph (e)(3) of Rule 723 is revised to correctly refer to “this paragraph (e)”, rather than “this paragraph (d)”. For consistency, paragraphs (a)(1)(A) and (a)(1)(B) of Rule 741 are redesignated as paragraphs (a)(1)(i) and (a)(1)(ii). Finally, paragraph (b)(1)(i) of Rule 775 is revised to add a dash to the citation of 15 U.S.C. 80a-5(a)(1).

<sup>1</sup> See 72 FR 56514, Oct. 3, 2007, which added parts 12 CFR 218 and 17 CFR 247 to the Code of Federal Regulations.

<sup>2</sup> The final rules adopted by the Board and the SEC within their respective titles of the Code of Federal Regulations (12 CFR part 218 for the Board and 17 CFR part 247 for the SEC) are identically numbered from § \_\_.100 to § \_\_.781. For ease of reference, the single set of final rules adopted by each Agency are referred to in this release as Rule \_\_, excluding title and part designations. A similar format was used to refer to the single set of rules issued by the Agencies.

#### B. Administrative Procedure Act

The Agencies find, in accordance with sections 553(b) and (d) of the Administrative Procedure Act,<sup>3</sup> that good cause exists to make these amendments effective upon publication in the **Federal Register** without providing prior notice and an opportunity for comment. Specifically, the Agencies find that notice and comment and a delayed effective date are unnecessary because the amendments make only technical changes to Regulation R and there is no substantive change on which the public could provide meaningful comment.<sup>4</sup>

#### C. Paperwork Reduction Act

Finally, the technical amendments do not contain any new or additional collections of information as defined by the Paperwork Reduction Act of 1995, as amended.<sup>5</sup>

#### List of Subjects

12 CFR Part 218

Banks, Brokers, Securities.

17 CFR Part 247

Banks, Brokers, Securities.

#### Federal Reserve System

#### Authority and Issuance

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 218 as set forth below:

#### PART 218—REGULATION R—EXCEPTIONS FOR BANKS FROM THE DEFINITION OF BROKER IN THE SECURITIES EXCHANGE ACT OF 1934 (REGULATION R)

■ 1. The Authority citation for part 218 continues to read as follows:

**Authority:** 15 U.S.C. 78c(a)(4)(F).

<sup>3</sup> 5 U.S.C. 553(b)(3)(A) and (d)(3).

<sup>4</sup> For similar reasons, the amendments do not require analysis under the Regulatory Flexibility Act or analysis of major rule status under the Small Business Regulatory Enforcement Fairness Act. See 5 U.S.C. 601(2) (for purposes of Regulatory Flexibility Act analyses, the term “rule” means any rule for which the agency publishes a general notice of proposed rulemaking); 5 U.S.C. 804(3)(C) (for purposes of Congressional review of agency rulemaking, the term “rule” does not include any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties).

<sup>5</sup> 44 U.S.C. 3501.

Securities and Exchange Commission Authority and Issuance

For the reasons set forth in the preamble, the Commission amends 17 CFR part 247 as set forth below:

PART 247—REGULATION R—EXEMPTIONS AND DEFINITIONS RELATED TO THE EXCEPTIONS FOR BANKS FROM THE DEFINITION OF BROKER

2. The authority citation for part 247 continues to read as follows:

Authority: 15 U.S.C. 78c, 78o, 78q, 78w, and 78mm.

Common Rules

The common rules adopted by the Board as Part 218 of Title 12, Chapter II of the Code of Federal Regulations and by the Commission as Part 247 of Title 17, Chapter II of the Code of Federal Regulations are amended as follows:

3. Paragraph (b) of common rule § .701 is revised to read as follows:

§ .701 Exemption from the definition of "broker" for certain institutional referrals.

\* \* \* \* \*

(b) Required disclosures. The disclosures provided to the high net worth customer or institutional customer pursuant to paragraphs (a)(2)(i) or (a)(3)(i) of this section shall clearly and conspicuously disclose:

\* \* \* \* \*

4. In common rule § .721, paragraphs (a)(6) and (a)(7) are redesignated as paragraphs (a)(5) and (a)(6), respectively, and paragraph (c)(2) is revised to read as follows:

§ .721 Defined terms relating to the trust and fiduciary activities exception from the definition of "broker."

\* \* \* \* \*

(c) \* \* \*

(2) Advertisement. For purposes of this section, the term advertisement has the same meaning as in § .760(h)(2).

5. Paragraph (e)(3) of common rule § .723 is revised to read as follows:

§ .723 Exemptions for special accounts, transferred accounts, foreign branches and a de minimis number of accounts.

\* \* \* \* \*

(e) \* \* \*

(3) The bank did not rely on this paragraph (e) with respect to such account during the immediately preceding year.

§ .741 [Amended]

6. In common rule § .741, paragraphs (a)(1)(A) and (a)(1)(B) are

redesignated as paragraphs (a)(1)(i) and (a)(1)(ii), respectively.

7. In common rule § .775, paragraph (b)(1)(i) is revised to read as follows:

§ .775 Exemption from the definition of "broker" for banks effecting certain excepted or exempted transactions in investment company securities.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) Any security issued by an open-end company, as defined by section 5(a)(1) of the Investment Company Act (15 U.S.C. 80a-5(a)(1)), that is registered under that Act; and

\* \* \* \* \*

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, April 11, 2008.

Robert deV. Frierson, Deputy Secretary of the Board.

Dated: April 11, 2008.

Florence Harmon, By the Securities and Exchange Commission, Deputy Secretary.

[FR Doc. E8-8270 Filed 4-16-08; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2008-0334; Airspace Docket No. 08-ASO-11]

Removal of Class E Airspace; Hawesville, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes the Class E5 Airspace at Hancock Airfield Airport, Hawesville, KY, as there is no longer a Standard Instrument Approach Procedure (SIAP) for Hancock Airfield Airport requiring Class E5 airspace.

DATES: Effective 0901 UTC, July 31, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5610.

SUPPLEMENTARY INFORMATION:

History

The Hancock Airfield Airport has closed and a new airport, Lewisport-Hancock County, has been built in the area. As a result, the associated Standard Instrument Approach Procedures (SIAPs) were withdrawn and cancelled removing the Class E5 airspace requirement at Hancock Airfield. New SIAPs are being developed for the new Lewisport/Hancock County Airport, however, the procedures and associated airspace are not scheduled for publication until September of 2009. This rule will become effective on the date specified in the DATES section. Since this action eliminates the impact of controlled airspace on users of the National Airspace System in the vicinity of the Hancock County Airport, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9R, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E designation listed in this document will be removed from publication subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) removes Class E5 airspace at Hancock Airfield Airport, Hawesville, KY.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is noncontroversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator.