

**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 [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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, 20<sup>th</sup> 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

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<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 Regulation (12 CFR part 218 for the Board and 17 CFR part 247 for the SEC) are identically numbered from § \_\_\_\_.100 to § \_\_\_\_.781. For ease

(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).

**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>

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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.

<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).

### 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).

#### **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:

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

**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.**

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(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:

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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.”**

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(c) \*\*\*

(1) \*\*\*

(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.**

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(e) \*\*\*

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

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.**

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(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

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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

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