

proposed FAA order. To adhere to the requirements of FAA Order 2150.3, Compliance/Enforcement Bulletin 92-2, Advisory Circular 00-58 and 121-37, and to assure that the intent of the VDRP remains robust and without reservation, the production approval holder must step up and be accountable to ensure that immediate and long term corrective action plans developed to mitigate the circumstances of an escape are sound, effective, and implemented as pledged. The "regulated entity" does not have control of information sources outside the chain of the disclosure proper. By the same token, the "regulated entity" making the disclosure actually becomes the expert and information funnel for all factual matters associated with the disclosure. In sum, we consider that provisions for release of information without the counsel of the regulated entity would undermine the intent of the VDRP. It could allow information to be made public that could have negative connotation for, and actually hamper, ongoing investigations and airworthiness evaluations associated with the disclosure.

b. *The FAA response.* The FAA does not concur. There are at least two situations in which the FAA cannot assure independently obtained information relating to a voluntary disclosure will not be released. One such situation occurs when a regulatory violation, initially identified in a VDRP submission, is not accepted by the FAA, or if accepted, is later excluded by the FAA, because of the regulated entity's failure to comply with the requirements of the VDRP. In such situations the FAA will conduct an independent investigation of the event, and if warranted, the resulting enforcement record based on the information independently obtained by the FAA is subject to disclosure under FOIA. No change in that policy is deemed necessary or appropriate. Another circumstance under which independently obtained information relating to an event reported under the VDRP may not be fully protected by the FAA occurs when an outside party has observed and reported a regulatory violation to the FAA. In such situations, the FAA must be permitted to assure the reporting party that the FAA has responded to their report(s) and that action has been taken to prevent recurrence of the violation. Such action is necessary to maintain public confidence. The comment expresses concern about the release of information from another source beyond the control, and outside of the chain of command, of the regulated entity. Clearly the FAA also has no control over the submission to the FAA of information related to the voluntary disclosure by a source outside the control or chain of command of the regulated entity. The FAA does not believe that such independently obtained information would ordinarily qualify for protection from public release under this order and part 193. However, in order to accommodate a hypothetical situation in which protection from release is warranted, paragraph 6e of this order now states: "The FAA may disclose independently obtained information relating to any event disclosed in a VDRP report, unless the FAA determines that in the case of an accepted VDRP submission, release of such independently obtained

information would be inconsistent with the provisions of this order, or would otherwise be prohibited by public law or regulation."

4. Depending upon how the proposed right of disclosure is interpreted and put into practice, the following proposed provision could have a negative impact on encouraging voluntary disclosure: "The FAA also may disclose any information about a disclosure initially submitted under the VDRP that is not accepted, or accepted, but later excluded because of the regulated entity's failure to comply with the criteria of the VDRP."

a. *Comment.* [The company] recommends that this sentence be removed from the Proposed Order because, depending upon how the proposed right of disclosure is interpreted and put into practice, it could potentially have a negative impact upon sound FAA policy encouraging voluntary disclosure of information by certificate holders. For example, the local FAA office has approved [the company's] procedure for submittal of voluntary disclosures meeting the intent of AC 00-58. [The company] has various data systems to track information drawn from different databases. Such information drawn from multiple sources could be included in a voluntary disclosure. In that circumstance, the information and the format in which the information is provided meets the intent of the VDRP, but would not necessarily strictly comply with every technical requirement of AC 00-58, where the VDRP criteria is contained. As noted above, the local FAA office has approved a [company] procedure for submittal of voluntary disclosures that meets the intent of AC 00-58. However, if this sentence remains in the Proposed Order, then the FAA could decide to disclose information submitted in connection with a voluntary disclosure because of a technical deviation from the criteria in AC 00-58. If this occurs, certificate holders could potentially be disincentivized [*sic*] from providing the FAA with information because of the possibility of disclosure absent discussion and consensus. [The company] believes a better practice would be to permit local FAA offices to maintain flexibility to work with certificate holders relating to the format in which information voluntarily disclosed is received.

b. *The FAA Response.* The FAA does not concur. Nothing in this order changes the discretionary authority of a local FAA office to accept or reject a voluntary disclosure. Information contained in an accepted voluntary disclosure will be protected in accordance with the provisions of this order and 14 CFR part 193, regardless of its format. The FAA acknowledges industry concerns regarding sensitive information. This FAA order will establish explicit protections concerning disclosure of such information when it is provided in conjunction with an accepted VDRP submission.

Issued in Washington, DC, on August 17, 2006.

James J. Ballough,
Director, Flight Standards Service.

[FR Doc. E6-15257 Filed 9-14-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

17 CFR Parts 400, 401 402, 403, 404 and 405

[Docket No. BPD GSRS 06-01]

RIN 1505-AB70

Government Securities Act Regulations: Applicability to Over-the-Counter Derivatives Dealers

AGENCY: Office of the Under Secretary for Domestic Finance, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury ("Treasury" or "We") is issuing this final rule to amend the regulations issued under the Government Securities Act of 1986 ("GSA"), as amended. This technical amendment makes no substantive changes, but adds language to state explicitly that we deem over-the-counter ("OTC") derivatives dealers that are also government securities dealers to be in compliance with the GSA regulations if they comply with the applicable Securities and Exchange Commission ("SEC") OTC derivatives dealer rules and other SEC rules applicable to them.

DATES: *Effective Date:* September 15, 2006.

ADDRESSES: You may download this final rule from the Bureau of the Public Debt's Web site at <http://www.treasurydirect.gov> or from the Electronic Code of Federal Regulations (e-CFR) Web site at <http://www.gpoaccess.gov/ecfr>. It is also available for public inspection and copying at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To visit the library, call (202) 622-0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Lori Santamorenna (Executive Director) or Chuck Andreatta (Associate Director), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 504-3632 or e-mail us at govsecreg@bpd.treas.gov.

SUPPLEMENTARY INFORMATION:

Background

In 1998, the SEC adopted various rules and rule amendments (the "OTCDD Rules"¹) under the Securities Exchange Act of 1934 ("the Exchange Act") that define and regulate "OTC derivatives dealers (OTCDDs)," a

¹ The OTCDD Rules are commonly referred to as the "Broker-Dealer Lite" rules.

category of registered broker-dealers that engage in certain over-the-counter derivatives activities, but not the full range of securities activities traditionally associated with full-purpose broker-dealers.² The OTCDD Rules created a flexible regulatory framework under which U.S. securities firms could establish separately capitalized OTCDDs within the United States that will engage in dealer activities in both securities and non-securities OTC-derivative instruments and be able to “compete more effectively with banks and foreign dealers in global OTC derivatives markets, while also maintaining standards necessary to ensure investor protection.”³

Certain securities derivatives transactions in which an OTCDD may engage include options on particular government securities. Such unlisted options constitute “government securities” for purposes of Section 15C of the Exchange Act.⁴ If OTCDDs act as “dealers” in OTC derivative instruments that are “government securities,” they are also subject to regulation as “government securities dealers” under Section 15C of the Exchange Act and the GSA regulations.⁵

The GSA required the Secretary of the Treasury to adopt rules with respect to transactions in government securities effected by government securities brokers and dealers in the areas of financial responsibility, protection of investor securities and funds, recordkeeping, reporting and audit. The regulatory framework established by the GSA required the Secretary in promulgating these rules to “consider the sufficiency and appropriateness of then existing law and rules applicable” to government securities brokers and dealers.⁶ In issuing the final GSA rules in 1987, Treasury considered already existing regulation with a view toward preventing overly burdensome and

duplicative regulation.⁷ Treasury’s GSA rules therefore generally provide that compliance by registered brokers and dealers with certain applicable SEC rules constitutes compliance with the GSA rules.

Moreover, Treasury has concluded and wishes to affirm that the SEC rules issued in 1998 for registered brokers and dealers that are OTCDDs are sufficient and appropriate for government securities brokers and dealers. Thus, for OTCDDs that write options on government securities, compliance with SEC rules constitutes compliance with the GSA rules. This is the result under the current GSA rules. However, in response to recent questions we have received, and recognizing that the current GSA rules require the reader to refer to other, separate SEC rules, we are amending the GSA rules to be more transparent and explicitly cover OTCDDs. These amendments make no substantive change, but merely add specific references to OTCDDs as a category of registered broker or dealer so that it will be clearer that OTCDDs are treated the same way as other registered brokers and dealers under the GSA rules. These changes appear in one general provision and four specific provisions of the GSA rules addressing financial responsibility, customer protection, recordkeeping, and reporting, respectively.

We have consulted with the staff of the SEC in developing this amendment.

Special Analysis

Because this rule makes no substantive change to the existing rules, and imposes no additional requirements on OTCDDs that are government securities brokers or dealers, we find under 5 U.S.C. 553(b)(B) and (d)(3) that there is good cause that notice and public procedures are unnecessary, and that the rule can be issued in direct final form and made effective immediately. The final rule is not a “significant regulatory action” for the purposes of Executive Order 12866.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

List of Subjects

17 CFR Part 400

Administrative practice and procedure, Banks, Banking, Brokers, Government securities, Reporting and recordkeeping requirements.

17 CFR Part 401

Banks, Banking, Brokers, Government securities.

17 CFR Part 402

Brokers, Government securities.

17 CFR Part 403

Banks, Banking, Brokers, Government securities.

17 CFR Part 404

Banks, Banking, Brokers, Government securities, Reporting and recordkeeping requirements.

17 CFR Part 405

Brokers, Government securities, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Department of the Treasury amends 17 CFR parts 400, 401, 402, 403, 404, and 405 as follows:

PART 400—RULES OF GENERAL APPLICATION

■ 1. The authority citation for part 400 continues to read as follows:

Authority: 15 U.S.C. 78o–5.

■ 2. Section 400.1 is amended by revising paragraph (a) to read as follows:

§ 400.1 Scope of regulations.

(a) Title I of the Government Securities Act of 1986 (Pub. L. 99–571, 100 Stat. 3208) amends the Securities Exchange Act of 1934 (48 Stat. 881–905; 15 U.S.C. chapter 2B) (“Act”) by adding section 15C, authorizing the Secretary of the Treasury to promulgate regulations concerning the financial responsibility, protection of customer securities and balances, recordkeeping and reporting of brokers and dealers in government securities. Those regulations constitute subchapter A of this chapter. Unless otherwise explicitly provided, all regulations in this subchapter apply to all government securities brokers or dealers, including registered brokers or dealers and financial institutions. Registered brokers or dealers include OTC derivatives dealers.

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§ 400.2 [Amended]

■ 3. Amend § 400.2 as follows:

■ A. In paragraph (c)(3)(vi), remove the reference “Room 553, 999 E Street NW.,” and add in its place “9th Floor, 799 9th Street NW.,”.

■ B. In paragraph (c)(7)(i), remove the reference “Room 5030,” and add in its place “Room 1318,”.

■ 4. Section 400.3 is amended by removing the alphabetical paragraph

² Exchange Act Release No. 40594 (October 23, 1998), 63 FR 59362 (November 3, 1998).

³ Id. at 59364.

⁴ For purposes of section 78o–5, a “government security” includes an option on a government security other than an option (i) that is traded on one or more national securities exchanges; or (ii) for which quotations are disseminated through an automated quotation system operated by a registered securities association. 15 U.S.C. 78c(42)(D).

⁵ 63 FR 59362. Under 15 U.S.C. 78o–5(a)(1)(B)(1), a broker or dealer effecting, inducing, or attempting to induce the purchase or sale of a government security must file with the appropriate regulatory agency written notice that it is a government securities broker or dealer. Thus, an OTC derivatives dealer that engages in government securities transactions must also file notice of such activities with the SEC on Form BD.

⁶ 15 U.S.C. 78o–5(b)(5)(C).

⁷ 52 FR 27910 (July 24, 1987).

designations and adding a new definition in alphabetical order for "OTC derivatives dealer" to read as follows:

§ 400.3 Definitions.

* * * * *

OTC derivatives dealer has the same meaning set out in 17 CFR 240.3b-12.

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PART 401—EXEMPTIONS

■ 5. The authority citation for part 401 continues to read as follows:

Authority: Sec. 101, Pub. L. 99-571, 100 Stat. 3209 (15 U.S.C. 78o-5(a)(4)).

§ 401.3 [Amended]

■ 6. In paragraphs (a)(2)(ii)(B) and (a)(2)(ii)(C), remove the reference "\$ 400.3(c)" and add in its place "\$ 400.3".

§ 401.9 [Amended]

■ 7. Amend § 401.9 as follows:

■ A. In paragraph (b), remove the reference "\$ 400.3(m)" and add in its place "\$ 400.3".

■ B. In paragraph (i), remove the reference "\$ 400.3 (k) and (l)" and add in its place "\$ 400.3".

■ C. In paragraph (n), remove the reference "\$ 400.3(o)" and add in its place "\$ 400.3".

■ D. In paragraph (o), remove the reference "\$ 400.3(j)" and add in its place "\$ 400.3".

■ E. In paragraph (p), remove the reference "\$ 400.3(b)" and add in its place "\$ 400.3".

PART 402—FINANCIAL RESPONSIBILITY

■ 8. The authority citation for part 402 continues to read as follows:

Authority: 15 U.S.C. 78o-5(b)(1)(A), (b)(4).

■ 9. Section 402.1 is amended by revising paragraph (b) to read as follows:

§ 402.1 Application of part to registered brokers and dealers and financial institutions; special rules for futures commission merchants and government securities interdealer brokers; effective date.

* * * * *

(b) *Registered brokers or dealers.* This part does not apply to a registered broker or dealer (including an OTC derivatives dealer) that is subject to § 240.15c3-1 of this title (SEC Rule 15c3-1).

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§ 402.2a [Amended]

■ 10. In paragraph (c), under the heading for Schedule B, in paragraph (1)

under the "Columns 3 and 4" paragraph, remove the reference "17 CFR 400.3(m)" and add in its place "17 CFR 400.3".

PART 403—PROTECTION OF CUSTOMER SECURITIES AND BALANCES

■ 11. The authority citation for part 403 continues to read as follows:

Authority: Sec. 101, Pub. L. 99-571, 100 Stat. 3209; sec. 4(b), Pub. L. 101-432, 104 Stat. 963; sec. 102, sec. 106, Pub. L. 103-202, 107 Stat. 2344 (15 U.S.C. 78o-5(a)(5), (b)(1)(A), (b)(4)).

■ 12. Section 403.1 is revised to read as follows:

§ 403.1 Application of part to registered brokers and dealers.

With respect to their activities in government securities, compliance by registered brokers or dealers with § 240.8c-1 of this title (SEC Rule 8c-1), as modified by § 403.2 (a), (b) and (c), with § 240.15c2-1 of this title (SEC Rule 15c2-1), with § 240.15c3-2 of this title (SEC Rule 15c3-2), as modified by § 403.3, and with § 240.15c3-3 of this title (SEC Rule 15c3-3), as modified by § 403.4 (a) through (d), (f)(2) through (3), (g) through (j), and (m), including provisions in those rules relating to OTC derivatives dealers, constitutes compliance with this part.

PART 404—RECORDKEEPING AND PRESERVATION OF RECORDS

■ 13. The authority citation for part 404 continues to read as follows:

Authority: 15 U.S.C. 78o-5 (b)(1)(B), (b)(1)(C), (b)(2), (b)(4).

■ 14. Section 404.1 is revised to read as follows:

§ 404.1 Application of part to registered brokers and dealers.

Compliance by a registered broker or dealer with § 240.17a-3 of this title (pertaining to records to be made), § 240.17a-4 of this title (pertaining to preservation of records), § 240.17a-13 of this title (pertaining to quarterly securities counts) and § 240.17a-7 of this title (pertaining to records of non-resident brokers or dealers), including provisions in those rules relating to OTC derivatives dealers, constitutes compliance with this part.

§ 404.4 [Amended]

■ 15. In paragraph (a)(3)(i)(B), remove the reference "\$ 400.3(c)" and add in its place "\$ 400.3".

PART 405—REPORTS AND AUDITS

■ 16. The authority citation for part 405 continues to read as follows:

Authority: 15 U.S.C. 78o-5 (b)(1)(B), (b)(1)(C), (b)(2), (b)(4).

■ 17. Section 405.1 is amended by revising paragraph (a) to read as follows:

§ 405.1 Application of part to registered brokers and dealers and to financial institutions; transition rule.

(a) Compliance by registered brokers or dealers with §§ 240.17a-5, 240.17a-8, and 240.17a-11 of this title (Commission Rules 17a-5, 17a-8 and 17a-11), including provisions of those rules relating to OTC derivatives dealers, constitutes compliance with this part.

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Dated: September 8, 2006.

Randal K. Quarles,

Under Secretary, Domestic Finance.

[FR Doc. E6-15231 Filed 9-14-06; 8:45 am]

BILLING CODE 4810-39-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 1998C-0790] (formerly 98C-0790)

Listing of Color Additives Exempt From Certification; Mica-Based Pearlescent Pigments; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of July 5, 2006, for the final rule that appeared in the **Federal Register** of June 2, 2006 (71 FR 31927). The final rule amended the color additive regulations to provide for the safe use of titanium dioxide coated mica-based pearlescent pigments as color additives in the following foods: Cereals, confections and frostings, gelatin desserts, hard and soft candies (including lozenges), nutritional supplement tablets and gelatin capsules, and chewing gum.

DATES: Effective date confirmed: July 5, 2006.

FOR FURTHER INFORMATION CONTACT: Paul C. DeLeo, Center for Food Safety and Applied Nutrition (HFS-265), Food and