

Regulatory Flexibility Act provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

Pursuant to section 605(b), the Board certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The rule reduces regulatory burden on large and small insured depository institutions by granting an exemption from the Federal transactions with affiliates regime for insured depository institutions that engage in securities financing transactions with affiliates.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the final rule under authority delegated to the Board by the Office of Management and Budget. The rule contains no collections of information pursuant to the Paperwork Reduction Act.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Board to use "plain language" in all proposed and final rules. In light of this requirement, the Board has sought to present the final rule in a simple and straightforward manner. The Board invited comment on whether the Board could take additional steps to make the rule easier to understand. The Board received no comments on this subject.

List of Subjects in 12 CFR Part 223

Banks, Banking, Federal Reserve System.

Authority and Issuance

■ For the reasons set forth in the preamble, Chapter II of Title 12 of the Code of Federal Regulations is amended as follows:

PART 223—TRANSACTIONS BETWEEN MEMBER BANKS AND THEIR AFFILIATES (REGULATION W)

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 12 U.S.C. 371c and 371c-1.

■ 2. In § 223.42, revise paragraph (n) to read as follows:

§ 223.42 What covered transactions are exempt from the quantitative limits, collateral requirements, and low-quality asset prohibition?

* * * * *

(n) *Securities financing transactions.*

(1) From September 15, 2008, until October 30, 2009 (unless further extended by the Board), securities financing transactions with an affiliate, if:

(i) The security or other asset financed by the member bank in the transaction is of a type that the affiliate financed in the U.S. tri-party repurchase agreement market at any time during the week of September 8–12, 2008;

(ii) The transaction is marked to market daily and subject to daily margin-maintenance requirements, and the member bank is at least as over-collateralized in the transaction as the affiliate's clearing bank was over-collateralized in comparable transactions with the affiliate in the U.S. tri-party repurchase agreement market on September 12, 2008;

(iii) The aggregate risk profile of the securities financing transactions under this exemption is no greater than the aggregate risk profile of the securities financing transactions of the affiliate in the U.S. tri-party repurchase agreement market on September 12, 2008;

(iv) The member bank's top-tier holding company guarantees the obligations of the affiliate under the securities financing transactions (or provides other security to the bank that is acceptable to the Board); and

(v) The member bank has not been specifically informed by the Board, after consultation with the member bank's appropriate Federal banking agency, that the member bank may not use this exemption.

(2) For purposes of this exemption:

(i) *Securities financing transaction* means:

(A) A purchase by a member bank from an affiliate of a security or other asset, subject to an agreement by the affiliate to repurchase the asset from the member bank;

(B) A borrowing of a security by a member bank from an affiliate on a collateralized basis; or

(C) A secured extension of credit by a member bank to an affiliate.

(ii) *U.S. tri-party repurchase agreement market* means the U.S. market for securities financing transactions in which the counterparties use custodial arrangements provided by JPMorgan Chase Bank or Bank of New York or another financial institution approved by the Board.

* * * * *

By order of the Board of Governors of the Federal Reserve System, January 30, 2009.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E9-2337 Filed 2-5-09; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

12 CFR Part 223

[Regulation W; Docket No. R-1331]

Transactions Between Member Banks and Their Affiliates: Exemption for Certain Purchases of Asset-Backed Commercial Paper by a Member Bank From an Affiliate

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: To reduce liquidity and other strains being experienced by money market mutual funds, the Board of Governors of the Federal Reserve System (Board) adopted on September 19, 2008, the Asset-Backed Commercial Paper Money Market Mutual Fund Lending Facility (AMLF), that enables depository institutions and bank holding companies to borrow from the Federal Reserve Bank of Boston on a non-recourse basis if they use the proceeds of the loan to purchase certain types of asset-backed commercial paper (ABCP) from money market mutual funds. To facilitate use of the AMLF by member banks, the Board also has adopted regulatory exemptions for member banks from certain provisions of sections 23A and 23B of the Federal Reserve Act and the Board's Regulation W. The exemptions increase the capacity of a member bank to purchase ABCP from affiliated money market mutual funds in connection with the AMLF.

DATES: Effective January 30, 2009.

FOR FURTHER INFORMATION CONTACT: Mark E. Van Der Weide, Assistant General Counsel, (202) 452-2263, or Andrea R. Tokheim, Counsel, (202) 452-2300, Legal Division; or Norah M. Barger, Deputy Director, (202) 452-2402, Division of Banking Supervision and Regulation. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), (202) 263-4869.

SUPPLEMENTARY INFORMATION:

In light of the ongoing dislocations in the financial markets, and the impact of such dislocations on the functioning of the ABCP markets and on the operations of money market mutual funds, the Board adopted the AMLF on September

19, 2008. Under the facility, depository institutions and bank holding companies (banking organizations) are able to borrow from the Federal Reserve Bank of Boston on a non-recourse basis on condition that the organizations use the proceeds of the Federal Reserve credit to purchase, at amortized cost, certain highly rated U.S. dollar-denominated ABCP from money market mutual funds. The ABCP purchased must be used to secure the borrowing from the Reserve Bank. The purpose of the AMLF is to assist money market mutual funds to obtain liquidity by enabling them to sell some of their high-credit-quality secured assets at amortized cost. The AMLF, which was initially scheduled to expire on January 31, 2009, has been extended to April 30, 2009.¹

To facilitate usage of the AMLF, on September 19, 2008, the Board adopted on an interim basis, and requested public comment on, exemptions from sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c, 371c-1) and the Board's Regulation W (12 CFR part 223).² The exemptions were designed to increase the capacity of a member bank to purchase ABCP from an affiliated money market mutual fund in connection with the AMLF. Under the final rule, a member bank may use the exemptions only if the bank has not been specifically informed by the Board, after consultation with the bank's appropriate Federal banking agency, that the bank may not use these exemptions. If the Board believes, after such consultation, that use of the exemptions would not be appropriate for the member bank, the Board may withdraw the exemptions for the bank or may impose supplemental conditions on the bank's use of the exemptions.

After considering the comments, the Board has adopted a final rule that is largely identical to the interim final rule but includes minor changes to reflect the extended duration of the AMLF. The interim final rule provided that the exemptions applied only to purchases of ABCP from an affiliated SEC-registered open-end investment company that holds itself out as a money market mutual fund under SEC Rule 2a-7 (17 CFR 270.2a-7) between September 19, 2008, and January 30, 2009. This timeframe coincided with the dates of the AMLF. In the final rule, the date range for eligible ABCP purchases has been eliminated, but the rule continues

to provide that the exemptions are available only for purchases of ABCP where the ABCP is used to secure borrowing from the AMLF. As a result, the exemptions effectively will no longer be available once the AMLF expires.

The Board has determined that these exemptions are in the public interest and consistent with the purposes of sections 23A and 23B. The substantial protections provided to intermediaries by the Federal Reserve in connection with the AMLF largely mitigate the safety-and-soundness concerns that sections 23A and 23B were designed to address. Because Federal Reserve extensions of credit to a member bank under the AMLF are on a non-recourse basis, the bank should bear no risk of loss from purchases of ABCP under the facility. Therefore, the Board believes that it is appropriate to exempt a member bank that serves as an intermediary in the AMLF from the requirements of sections 23A and 23B and Regulation W.

Administrative Procedure Act

Pursuant to sections 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)), the Board finds that there is good cause for making the rule effective immediately on January 30, 2009. The Board has adopted the rule in light of, and to help address, the continuing unusual and exigent circumstances in the financial markets. The rule will provide immediate relief to depository institutions that elect to participate in the ABCP Lending Facility.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires an agency that is issuing a final rule to prepare and make available a regulatory flexibility analysis that describes the impact of the final rule on small entities. 5 U.S.C. 603(a). The Regulatory Flexibility Act provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

Pursuant to section 605(b), the Board certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The rule reduces regulatory burden on large and small insured depository institutions by granting exemptions from the Federal transactions with affiliates regime for insured depository institutions that purchase ABCP from affiliated money market mutual funds pursuant to the AMLF.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the final rule under authority delegated to the Board by the Office of Management and Budget. The rule contains no collections of information pursuant to the Paperwork Reduction Act.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Board to use "plain language" in all proposed and final rules. In light of this requirement, the Board has sought to present the final rule in a simple and straightforward manner. The Board invited comment on whether it could take additional steps to make the rule easier to understand. The Board received no comments on this subject.

List of Subjects in 12 CFR Part 223

Banks, Banking, Federal Reserve System.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board amends Chapter II of Title 12 of the Code of Federal Regulations as follows:

PART 223—TRANSACTIONS BETWEEN MEMBER BANKS AND THEIR AFFILIATES (REGULATION W)

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 12 U.S.C. 371c and 371c-1.

■ 2. In § 223.42, revise paragraph (o) to read as follows:

§ 223.42 What covered transactions are exempt from the quantitative limits, collateral requirements, and low-quality asset prohibition?

* * * * *

(o) *Purchases of certain asset-backed commercial paper.* Purchases of asset-backed commercial paper from an affiliated SEC-registered open-end investment company that holds itself out as a money market mutual fund under SEC Rule 2a-7 (17 CFR 270.2a-7), if the member bank:

(1) Purchases the asset-backed commercial paper on or after September 19, 2008;

(2) Pledges the asset-backed commercial paper to a Federal Reserve Bank to secure financing from the asset-backed commercial paper lending facility (AMLF) established by the Board on September 19, 2008; and

(3) Has not been specifically informed by the Board, after consultation with the member bank's appropriate Federal

¹ Board of Governors of the Federal Reserve System (2008). "Federal Reserve announces the extension of three liquidity facilities through April 30, 2009," press release, December 2, 2008.

² 73 FR 55708.

banking agency, that the member bank may not use this exemption.

■ 3. Revise § 223.56 to read as follows:

§ 223.56 What transactions are exempt from the market-terms requirement of section 23B?

The following transactions are exempt from the market-terms requirement of § 223.51.

(a) *Purchases of certain asset-backed commercial paper.* Purchases of asset-backed commercial paper from an affiliated SEC-registered open-end investment company that holds itself out as a money market mutual fund under SEC Rule 2a-7 (17 CFR 270.2a-7), if the member bank:

(1) Purchases the asset-backed commercial paper on or after September 19, 2008;

(2) Pledges the asset-backed commercial paper to a Federal Reserve Bank to secure financing from the asset-backed commercial paper lending facility (AMLF) established by the Board on September 19, 2008; and

(3) Has not been specifically informed by the Board, after consultation with the member bank's appropriate Federal banking agency, that the member bank may not use this exemption.

(b) [Reserved].

By order of the Board of Governors of the Federal Reserve System, January 30, 2009.

Jennifer J. Johnson,
Secretary of the Board.

[FR Doc. E9-2338 Filed 2-5-09; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD-2007-HA-0048]

RIN 0720-AB19

TRICARE; Hospital Outpatient Prospective Payment System (OPPS): Delay of Effective Date and Additional Opportunity for Public Comment

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Final rule; delay of effective date and opportunity for public comment.

SUMMARY: On December 10, 2008, DoD published a final rule implementing the TRICARE Hospital Outpatient Prospective Payment System (OPPS), with an effective date of February 9, 2009 (73 FR 74945). Since that date, DoD has determined that in order for administrative claims processing

procedures to be fully in place to implement effectively the new OPPS payments, TRICARE's OPPS will begin to apply to health care services provided on or after May 1, 2009. In the meantime, a memorandum of January 20, 2009, from the Assistant to the President and Chief of Staff, entitled "Regulatory Review," published in the **Federal Register** on January 26, 2009, calls for agencies to consider delaying effective dates of rules not yet effective and inviting new public comment. In view of both of these developments, the Department is delaying the effective date of TRICARE's OPPS until May 1, 2009, and is inviting additional public comment on the final rule. Any timely public comments received will be considered and any changes to the final rule will be published in the **Federal Register**.

DATES: The effective date of the OPPS final rule published December 10, 2008 (73 FR 74945) is delayed until May 1, 2009. Comments must be received on or before March 9, 2009.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by either of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: David E. Bennett or Martha M. Maxey, TRICARE Management Activity, Medical Benefits and Reimbursement Branch, telephone (303) 676-3494 or (303) 676-3627.

Dated: February 3, 2009.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

[FR Doc. E9-2562 Filed 2-5-09; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2008-1263]

Drawbridge Operation Regulation; Bayou Lacarde, Mile 7.5, at Houma, Lafourche Parish, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the SR 661 Vertical Lift Bridge across Bayou Lacarde, mile 7.5, at Houma, Lafourche Parish, Louisiana. The deviation is necessary to replace all the wire ropes used to lift the movable span of the bridge. This deviation allows the bridge to remain closed during daytime hours and requires an advance notice for openings during the nighttime.

DATES: This deviation is effective from 9 a.m. on January 31, 2009 through 5 p.m. on February 14, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2008-1263 and are available online at www.regulations.gov. They are also available for inspection or copying at two locations: the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, Room 1313, 500 Poydras Street, New Orleans, Louisiana 70130-3310 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Bart Marcules, Bridge Administration Branch, telephone (504) 671-2128.

SUPPLEMENTARY INFORMATION: Louisiana Department of Transportation and Development has requested a temporary deviation from the operating schedule of the State Route 661 Vertical Lift Bridge across Bayou Lacarde, mile 7.5, at Houma, Lafourche Parish, Louisiana. The vertical clearance in the closed position is 3 feet, thus most vessels will not be able to pass underneath this bridge in the closed-to-navigation position. There may be times, during the closure period, when the draw will not