FDIC

Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990

Financial Institution Letter
FIL-89-2008
September 10, 2008

SECURITIES ACTIVITIES OF BANKS

Exceptions and Exemptions for Banks from the Definition of "Broker"

Summary: The FDIC is reminding banks that on the first day of an institution's fiscal year beginning after September 30, 2008, the institution must comply with the requirements of Regulation R, "Definitions of Terms and Exemptions Relating to the 'Broker' Exceptions for Banks," and the Gramm-Leach-Bliley Act of 1999 (GLBA). For more information about Regulation R, see FIL-92-2007, dated October 25, 2007, at http://www.fdic.gov/news/news/financial/2007/fil07092.html.

Distribution:
FDIC-Supervised Banks (Commercial and Savings)

Suggested Routing:
Chief Executive Officer
Chief Trust Officer
Chief Compliance Officer

Related Topics:
Interagency Statement on Retail Sales of Nondeposit Investment Products

Section 3(a)(4) of the Exchange Act

Contacts:
Victoria M. Pawelski, Compliance Policy Analyst, at VPawelski@FDIC.gov or 202-898-3571; or Anthony J. DiMilo, Trust Examination Specialist, at ADiMilo@FDIC.gov or 202-898-7496

Note:
FDIC financial institution letters (FILs) may be accessed from the FDIC's Web site at www.fdic.gov/news/news/financial/2008/index.html.

To receive FILs electronically, please visit http://www.fdic.gov/about/subscriptions/fil.html.

Paper copies of FDIC financial institution letters may be obtained from the FDIC's Public Information Center (1-877-275-3342 or 703-562-2200).

Highlights:

- Regulation R (Definitions of Terms and Exemptions Relating To The "Broker" Exceptions For Banks) implements exceptions from the definition of "broker" as outlined in GLBA as well as certain other exemptions for banks that effect securities transactions on behalf of customers.

- Banks should identify the type and scope of securities transactions (including referrals) they conduct for customers and ensure that such activities qualify for one or more of the GLBA exceptions or the Regulation R exemptions, as appropriate. Once identified, banks should review securities activities to ensure they comply with applicable limitations regarding types and amounts of fees and revenues that an institution can receive; advertising related to securities activities; compensation arrangements for securities transactions, including referral fees; and the manner in which securities transactions must be executed.

- Banks that effect a small number of securities transactions per year for customers may qualify for the GLBA "de minimis" exception, which permits a bank to effect a combined total of up to 500 securities transactions per year, in either a riskless principal transaction or in an agency capacity.

- For trust officers or other interested parties, a discussion of the GLBA/Regulation R exceptions and exemptions appears in item F of Section 10 of the FDIC Trust Examination Manual (Section 10 of the FDIC Trust Examination Manual).