

(c) An airplane may be flown to a base for the performance of the work required by this AD per FAR's 21.197 and 21.199.

(d) The C-1, C-2, and C-3 cargo compartment drain heaters may be reactivated in accordance with modifications or instructions approved by the Chief, Aircraft Engineering Division, FAA Western Region. The approved data must reference this AD, and the FAA approval date.

This amendment becomes effective February 19, 1975.

(Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423) and of sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in Los Angeles, California on February 4, 1975.

LYNN L. HINK,
Acting Director,
FAA Western Region.

[FR Doc.75-4037 Filed 2-12-75;8:45 am]

[Airworthiness Docket No. 75-SW-6; Amdt. 39-2091]

PART 39—AIRWORTHINESS DIRECTIVES Mooney Models M20C, M20E and M20F Airplanes

There has been one case of a failure of the ITT P/N LA11C2110 Landing gear actuator wherein the threaded stud end of the actuator separated from the tube assembly which is attached to the ball drive and resulted in collapse of the landing gear during takeoff.

Since this condition is likely to develop in other airplanes of the same type design, an airworthiness directive is being issued to require replacement of the ITT P/N LA11C2110 actuator on Models M20C, M20E, and M20F airplanes having this part installed.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator, 31 FR 13697, § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

Mooney. Applies to Models M20C, M20E, and M20F airplanes equipped with the ITT landing gear actuator P/N LA11C2110, with Serial Numbers as follows:

Model M20C: 20-0037, 0038, 0039, 0040, 0041, 0042, 0043, 0044, 0045, and 0046;

Model M20E: 21-0050, 0051, 0052, 0053, 0054, 0055, 0056, 0057, 0058, 0059, and 0060;

Model M20F: 22-0065, 0066, 0067, 0068, 0069, 0070, 0071, 0072, 0073, 0074, 0075, 0076, 0077, and 0078.

Compliance is required prior to further flight except that airplanes may be flown to a facility for actuator replacement after fixing the landing gear in the extended position in accordance with instructions included in Mooney Aircraft Corporation Service Bulletin M20-191, dated January 28, 1975, or later FAA approved revision, or an FAA approved equivalent procedure.

To prevent further failures of the ITT P/N LA11C2110 actuator it should be replaced with a Mooney P/N 950227-501 actuator in accordance with Mooney Aircraft Corporation Serv-

ice Bulletin M20-191, dated January 28, 1975, or later FAA approved revision, or by an equivalent procedure approved by the Chief, Engineering and Manufacturing Branch, Southwest Region, Federal Aviation Administration, Fort Worth, Texas.

This amendment becomes effective on February 20, 1975.

(Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423) and of sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in Fort Worth, Texas on February 5, 1975.

HENRY L. NEWMAN,
Director, Southwest Region.

[FR Doc.75-4038 Filed 2-12-75;8:45 am]

[Airspace Docket No. 74-RM-20]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Transition Area

On December 16, 1974, a notice of proposed rulemaking was published in the FEDERAL REGISTER, 39 FR 43556, stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate a transition area at Steamboat Springs, Colorado.

Interested persons were given an opportunity to submit written comments, suggestions or objections regarding the proposed amendment.

An objection was received based on the contention that the establishment of the transition area would be for the benefit of Rocky Mountain Airways only and this action would restrict the operations of other aircraft to/from the Steamboat Springs and Echo Valley Airports when weather conditions are below the established VFR minimums for operation in controlled airspace. The objector advised there would be no objection to the establishment of the proposed controlled airspace if instrument procedures were established in order that all users could use the airspace in weather conditions below VFR minimums.

The agency plans to install a VOR and a remote communications outlet in the Steamboat Springs/Hayden, Colorado area in the spring of 1976 for the purpose of providing public instrument procedures to serve the Steamboat Springs and Hayden Airports.

It is agency policy to designate controlled airspace to accommodate special instrument procedures when within the public interest. Inasmuch as Rocky Mountain Airways is an air taxi commercial operator carrying passengers for hire on a scheduled basis, it is deemed within the public interest to establish controlled airspace to protect their procedures; therefore, the proposed amendment is hereby adopted without change.

Effective date. This amendment shall be effective 0901 G.m.t., April 17, 1975.

(Sec. 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)), and

of sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in Aurora, Colorado on February 12, 1975.

M. M. MARTIN,
Director, Rocky Mountain Region.

In § 71.181 (39 FR 440) designate a transition area for Steamboat Springs, Colorado to read:

STEAMBOAT SPRINGS, COLO.

That airspace extending upward from 700 feet above the surface within 5 miles east and 7.5 miles west of the 153° and 333° bearings from the Rocky Mountain Airways NDB (latitude 40°28'13" N., longitude 106°49'46" W.) extending from 6.5 miles northwest of the NDB to 12.5 miles southeast of the NDB; that airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at latitude 40°04'30" N., longitude 106°30'00" W.; to latitude 40°05'40" N., longitude 107°00'00" W.; to latitude 40°35'00" N., longitude 107°00'00" W.; to latitude 40°35'00" N., longitude 106°30'00" W.; to point of beginning.

That airspace extending upward from 13,300' MSL within an area bounded by a line beginning at latitude 40°04'15" N., longitude 106°30'00" W.; to latitude 40°25'00" N., longitude 106°30'00" W.; to latitude 40°08'00" N.; longitude 105°52'00" W.; thence along the north edge of V220 to the point of beginning.

[FR Doc.75-4040 Filed 2-12-75;8:45 a.m.]

[Docket No. 14303; Amdt. No. 955]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Recent Changes and Additions

This amendment to Part 97 of the Federal Aviation Regulations incorporates by reference therein changes and additions to the Standard Instrument Approach Procedures (SIAPs) that were recently adopted by the Administrator to promote safety at the airports concerned.

The complete SIAPs for the changes and additions covered by this amendment are described in FAA Forms 3139, 8260-3, 8260-4, or 8260-5 and made a part of the public rulemaking dockets of the FAA in accordance with the procedures set forth in Amendment No. 97-696 (35 FR 5609).

SIAPs are available for examination at the Rules Docket and at the National Flight Data Center, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591. Copies of SIAPs adopted in a particular region are also available for examination at the headquarters of that region. Individual copies of SIAPs may be purchased from the FAA Public Document Inspection Facility, HQ-405, 800 Independence Avenue SW., Washington, D.C. 20591, or from the applicable FAA regional office in accordance with the fee schedule prescribed in 49 CFR 7.85. This fee is payable in advance and may be paid by check, draft or postal money order payable to the Treasurer of the United States. A weekly transmittal of all SIAP changes and additions may be obtained by subscription at an annual rate of \$150 per annum from the Superintendent of Documents,

U.S. Government Printing Office, Washington, D.C. 20402. Additional copies mailed to the same address may be ordered for \$30 each.

Since a situation exists that requires immediate adoption of this amendment, I find that further notice and public procedure hereon is impracticable and good cause exists for making it effective in less than 30 days.

In consideration of the foregoing, Part 97 of the Federal Aviation Regulations is amended as follows, effective on the dates specified:

1. Section 97.23 is amended by originating, amending, or canceling the following VOR-VOR/DME SIAPs, *effective March 27, 1975*:

Carthage, Tex.—Panola County Arpt., VOR/DME-A, Orig.
Charlotte, N.C.—Douglas Municipal Arpt., VOR Rwy 5, Amdt. 6.
Charlotte, N.C.—Douglas Municipal Arpt., VOR Rwy 18, Amdt. 8.
Charlotte, N.C.—Douglas Municipal Arpt., VOR Rwy 23, Amdt. 5.
Charlotte, N.C.—Douglas Municipal Arpt., VOR Rwy 38, Amdt. 6.
Clarksville, Tenn.—Outlaw Field, VOR Rwy 34, Amdt. 7.
Ponce, P.R.—Mercedita Arpt., VOR Rwy 29, Amdt. 5.
Rock Hill, S.C.—Rock Hill Municipal Arpt., VOR-A, Amdt. 3.
St. Louis, Mo.—Lambert-St. Louis Int'l. Arpt., VOR Rwy 12L, Amdt. 5.
St. Louis, Mo.—Lambert-St. Louis Int'l. Arpt., VOR Rwy 12R, Amdt. 14.
Santa Ynez, Calif.—Santa Ynez Arpt., VOR-A, Amdt. 2.
Santa Ynez, Calif.—Santa Ynez Arpt., VOR-B, Orig.

*** *effective January 31, 1975*:

Columbus, Neb.—Columbus Municipal Arpt., VOR Rwy 14, Amdt. 7.
Columbus, Neb.—Columbus Municipal Arpt., VOR Rwy 32, Amdt. 7.
Savannah, Ga.—Savannah Municipal Arpt., VOR Rwy 27, Amdt. 10.

2. Section 97.25 is amended by originating, amending, or canceling the following SDF-LOC-LDA SIAPs, *effective March 27, 1975*:

Greensboro, N.C.—Greensboro-High Point-Winston Salem Regional Arpt., LOC (BC) Rwy 5, Amdt. 1.
Los Angeles, Calif.—Los Angeles Int'l. Arpt., LOC Rwy 6L, Orig.
Los Angeles, Calif.—Los Angeles Int'l. Arpt., LOC (BC) Rwy 6L, Amdt. 6, cancelled.

3. Section 97.27 is amended by originating, amending, or canceling the following NDB/ADP SIAPs, *effective March 27, 1975*:

Charlotte, N.C.—Douglas Municipal Arpt., NDB Rwy 5, Amdt. 23.
Clarksville, Tenn.—Outlaw Field, NDB Rwy 16, Orig.
Louisville, Ky.—Standiford Field, NDB Rwy 29, Amdt. 9.
San Diego, Calif.—San Diego Int'l. Arpt./Lindbergh Field, NDB-B, Amdt. 1.
San Diego, Calif.—San Diego Int'l. Arpt./Lindbergh Field, NDB Rwy 9, Amdt. 14.
Sikeston, Mo.—Sikeston Memorial Municipal Arpt., NDB Rwy 20, Amdt. 3.
Wilmington, Vt.—Mt. Snow Arpt., NDB-A, Amdt. 1.
Winston-Salem, N.C.—Smith Reynolds Arpt., NDB Rwy 33, Amdt. 15.

*** *effective February 27, 1975*:

Augusta, Ga.—Bush Field, NDB Rwy 17, Amdt. 9.

*** *effective January 31, 1975*:

Easton, Md.—Easton Municipal Arpt., NDB Rwy 22, Amdt. 2.

4. Section 97.29 is amended by originating, amending, or canceling the following ILS SIAPs, *effective March 27, 1975*:

Charlotte, N.C.—Douglas Municipal Arpt., ILS Rwy 5, Amdt. 26.
Louisville, Ky.—Standiford Field, ILS Rwy 29, Amdt. 10.
San Diego, Calif.—San Diego Int'l. Arpt./Lindbergh Field, ILS Rwy 9, Amdt. 6.
Winston-Salem, N.C.—Smith Reynolds Arpt., ILS Rwy 33, Amdt. 15.

*** *effective February 3, 1975*:

Greensboro, N.C.—Greensboro-High Point-Winston-Salem Regional Arpt., ILS Rwy 23, Amdt. 1.

5. Section 97.31 is amended by originating, amending, or canceling the following RADAR SIAPs, *effective March 27, 1975*:

Chapel Hill, N.C.—Horace Williams Arpt., RADAR-1, Amdt. 1.
Charlotte, N.C.—Douglas Municipal Arpt., RADAR-1, Amdt. 11.

6. Section 97.33 is amended by originating, amending, or canceling the following RNAV SIAPs, *effective March 27, 1975*:

Danville, Va.—Danville Municipal Arpt., RNAV Rwy 20, Orig.

Correction. In Docket No. 14300, Amendment No. 954 to Part 97 of the Federal Aviation Regulations, published in the FEDERAL REGISTER dated February 7, 1975, under § 97.25 effective March 20, 1975—Change effective date of Moline, Ill.—Quad-City Arpt., LOC (BC) Rwy 27, Amdt. 16 to March 27, 1975.

(Secs. 307, 313, 601, 1110, Federal Aviation Act of 1948; 49 U.S.C. 1438, 1354, 1421, 1510, Sec. 6(c) Department of Transportation Act, 49 U.S.C. 1655(c) and 5 U.S.C. 552(a) (1)).

Issued in Washington, D.C., on February 6, 1975.

JAMES M. VINES,

Chief,

Aircraft Programs Division.

NOTE.—Incorporation by reference provisions in §§ 97.10 and 97.20 (35 FR 5610) approved by the Director of the Federal Register on May 12, 1969.

[FR Doc. 75-4041 Filed 2-12-75; 8:45 am]

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. ER-899; Special Economic Reg.]

PART 288—EXEMPTION OF AIR CARRIERS FOR MILITARY TRANSPORTATION

Average Commercial and Military Fuel Prices

Correction

In FR Doc. 75-3467, appearing on page 5758 in the issue for Friday, February 7, 1975 make the following changes:

In the chart on the top of page 5759, column (10) the eighth, ninth, and tenth "Adjusted average price (cents)" reading 44.75, 49.40, and 31.96, should read 44.76, 49.45, and 31.90.

SUBCHAPTER F—POLICY STATEMENTS

[Regulation PS-63, Amdt. 42]

PART 399—STATEMENTS OF GENERAL POLICY

Codification of Standards and Policies Adopted in the Domestic Passenger-Fare Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. February 7, 1975.

The Domestic Passenger-Fare Investigation (DPFI), Docket 21866, in which the Board investigated the fares charged for transportation within the 48 states and the District of Columbia, has recently been completed.¹ Section 399.2 of the Board's policy statements (14 CFR 399.2), *inter alia*, presently excludes from Part 399 those policies which are fully expressed in Board opinions in order to obviate the need for a lengthy compendium of policies which have already been published. However, the Board finds it's appropriate to amend Part 399 to include therein the basic standards and policies which we adopted in the various hearing phases of the DPFI.² One of the primary aims of that investigation was to develop standards and policies to guide the Board in the future, and the policies we are codifying herein are of fundamental importance in evaluating domestic fares, one of the Board's chief regulatory functions. In addition, codification of these interrelated policies, which now appear in numerous separate opinions issued in the various phases of the DPFI, should result in a more convenient reference for interested members of the public. For these reasons, we believe that an exception to § 399.2 is warranted, and we are hereby amending § 399.2 so as to permit this exception.

Among the standards and policies developed in the DPFI is the concept that the fare level should be based on current cost levels adjusted to reflect long-run ratemaking standards (particularly the load-factor and seating-configuration standards). This approach to determining the fare level renders the Board's prior policy of basing rate levels on cyclical needs outmoded, and, accordingly, we will take this opportunity to delete the present § 399.31 which embodies that policy. In addition, various provisions of

¹ See Orders 74-12-108 and 74-12-109. See, also, Order 74-3-82, Opinion, pp. 1-2 for citations to the Board's opinions in the other phases of that investigation.

² It may be noted that three phases of the investigation, those dealing with flight equipment depreciation, treatment of leased aircraft, and treatment of deferred income taxes, were conducted as rulemaking proceedings and the policies adopted therein are shown in §§ 399.42, 399.43 and 399.44, respectively, of our Statements of General Policy.

§ 399.33, entitled "Domestic Coach Policy," have long since been obsolete as coach service has grown to become the basic class of service offered by the domestic trunkline carriers, and, accordingly, we will also delete the section from the Policy Statements.¹

The amendments adopted herein, by their terms, reflect the Board's policies as to domestic passenger fares for markets within the 48 states and the District of Columbia, which, as noted previously, constituted the geographical scope of the investigation in Docket 21866. Nonetheless, this restriction in our policy statements is not intended to imply that the standards and policies developed in the DPFI have no relevance to the Board's other ratemaking activities. The precise extent to which the various policies and standards are applicable to other rates and other ratemaking entities, however, must necessarily be decided on a case-by-case basis.

Each of the standards and policies codified herein was adopted only after notice and full public hearing. Moreover, since these amendments constitute statements of general policy, separate notice and public procedure on the codification of these policies in our Statements of General Policy are unnecessary, and the amendments may be made effective immediately. Accordingly, in light of the foregoing, the Board hereby amends Part 399 of the Statements of General Policy (14 CFR Part 399), effective February 7, 1975, as follows:

1. Amend the Table of Contents by changing the titles of §§ 399.31 and 399.33, the amended table to read in pertinent part as follows:

399.31	Domestic passenger-fare level policies.
399.33	Domestic passenger-fare structure policies.

2. Amend § 399.2 to read as follows:

§ 399.2 Exclusions.

The following types of policies are generally not included in this part:

- (a) * * *

3. Amend § 399.31 by replacing the existing section with a new section to read as follows:

¹ For example, § 399.33 contemplated that coach fares could be charged for services conducted with first-class equipment at off-peak hours. However, as coach service replaced first-class service as the basic class of service, the carriers have long since offered night coach service at a discount from day coach fares. Nonetheless, it may be noted that the basic concept therein of what constitutes an "off-peak" service has continued to be of use to the Board in passing upon night coach fare proposals, and revocation of this policy statement does not imply any change in the Board's present policy with respect to night coach service. In this connection, we further note that night coach services are the subject of a pending investigation in Docket 26510.

§ 399.31 Domestic passenger-fare level policies.

It is the policy of the Board that the basic test of the reasonableness of the overall level of passenger fares for scheduled services by trunk and local service carriers in markets within the 48 contiguous states and the District of Columbia is that it produce revenues sufficient to meet the costs, including a fair return on investment, of the operations of the domestic trunkline industry as a whole (as long as the bulk of the carriers fall within a reasonable range of the standard rate of return and industry data are not distorted by the results of unrepresentative carriers). The revenues, costs, and investment used to determine the reasonableness of the fare level shall reflect the following policies and standards:

(a) A long-term passenger load-factor standard of 55.0 percent should be used for the trunklines;

(b) The seating-configuration standards to be employed are as follows:

(1) Coach Service

(i) for narrow-bodied aircraft, six seats abreast in aircraft capable of accommodating such a configuration and five seats abreast in jet aircraft not capable of accommodating six seats abreast with a maximum average and nominal seat pitch of 36 inches. Up to a 20 percent deviation from the nominal pitch will be recognized for safety or structural reasons; and

(ii) for wide-bodied aircraft, ten (B-747) and nine (DC-10 and L-1011) seats abreast with a pitch as described in clause (b) (1) (i), above;

(2) First-Class Service—(i) for narrow-bodied aircraft, no less than four seats abreast with a maximum average and nominal pitch of 40 inches. Up to a 10 percent deviation from the nominal pitch will be recognized for safety or structural reasons; and

(ii) for wide-bodied aircraft, no less than six seats abreast (where body shape permits) with pitch as prescribed in clause (b) (2) (i), above;

(c) Pending completion of the investigations in Dockets 22859, 22387, and 23080, the costs of cargo carried on combination aircraft are assumed to equal the revenues derived therefrom;

(d) The fair and reasonable rates of return on investment for the trunkline and local service carriers are 12.00 percent and 12.35 percent, respectively; and

(e) The fare level will be computed on a hypothetical full normal-fare basis, i.e., as if discount fares not based on cost savings are not a part of the fare structure.

4. Amend § 399.32 by adding a new sentence, the amended section to read as follows:

§ 399.32 Rate policy applicable to subsidized carriers.

It is the policy of the Board to permit subsidized carriers maximum freedom to experiment, in interstate and overseas air transportation, with commercial rate changes for the purpose of maximizing

revenues and thereby minimizing subsidy requirements, provided the resulting rates are not otherwise unreasonable. In furtherance of this policy, the local service carriers, in markets within the 48 contiguous states and the District of Columbia, may file tariffs proposing coach, standard, or jet custom fares which range from 100 to 130 percent of the applicable trunk coach formula fare.

5. Amend § 399.33 by replacing the existing section with a new section to read as follows:

§ 399.33 Domestic passenger-fare structure policies.

With regard to the structure of passenger fares for scheduled services by trunk and local service carriers in markets within the 48 states and the District of Columbia, it is the policy of the Board that:

(a) The trunk coach fares¹ for trips of any given distance should be reasonably related to the trunkline average costs of operations at that distance, with the ultimate goal of basing coach fares on such costs so that the coach-fare structure will fully reflect the decline in unit costs which occurs as distance increases;

(b) Any carrier operating at six-abreast in markets competitive with narrow-bodied five-abreast aircraft capable of accommodating six seats abreast, or wide-bodied 9/8-abreast aircraft, upon a showing of an adverse competitive impact, may lower its fares to a level necessary to meet such competition, and the operator of the less dense configuration will be permitted to match the lower fares only on a showing of special or unusual circumstances;

(c) Any carrier who installs 10/9 seating in wide-bodied aircraft may do so at a lower fare which is reasonably related to cost savings, and which may be matched by an operator of five-abreast aircraft capable of accommodating six seats abreast or a 9/8-abreast carrier only upon a showing of special or unusual circumstances;

(d) any carrier who operates a coach lounge may continue to do so at the normal coach fare: *Provided, however, That:* (1) Upon a showing of adverse competitive impact, a carrier which operates coach service in a nonlounge configuration may establish a lower fare at the level necessary to meet the competition of such a carrier, and which may not be matched by a lounge operator except upon a showing of special or unusual circumstances; and (2) any such carrier who converts from a lounge to a nonlounge service may do so at a lower fare which is reasonably related to the cost savings where it appears that the risk of adverse competitive impact would otherwise inhibit such conversion, and such lower fare may be matched by a lounge operator only upon a showing of special or unusual circumstances;

¹ The Board's policy with regard to the coach, regional or jet custom fares of the local service carriers appears in § 399.32 of this Part.

(e) The ratio of first-class fares to coach fares should bear a reasonable relationship to the ratio of fully allocated first-class costs to coach costs and, effective April 1, 1977, the differential between first-class and coach fares should reflect the fully allocated cost differentials;

(f) With respect to discount fares not based on cost savings;²

(1) carriers should be free to utilize discount fares within their managerial discretion, subject to the conditions that such fares are not unjustly discriminatory and meet the profit-impact test (i.e., that they generate sufficient traffic to more than offset the diversion of full fare traffic and the added noncapacity costs associated with the generated traffic, less any savings in cost attributable to the nature of the service provided to the discount traffic); and

(2) Promotional-fare tariffs should contain expiration dates not to exceed 18 months from the effective date; and

(g) There should be joint fares in all markets over all routings at a level not to exceed the sum of the local fares minus one tax-rounded coach terminal charge for each interline connection, and all joint fares should be divided according to the relative costs of the mileage flown by each carrier participating in the interline movement.

(Secs. 204, 403, 404 and 1002 of the Federal Aviation Act of 1958, as amended; 72 Stat. 743, 758, 760 and 788, as amended; 49 U.S.C. 1324, 1373, 1374 and 1482; and 5 U.S.C. 553.)

Effective: February 7, 1975.

Adopted: February 7, 1975.

By the Civil Aeronautics Board.

(SEAL) EDWIN Z. HOLLAND,
Secretary.

[FR Doc. 75-4103 Filed 2-12-75; 8:45 am]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-11220, File No. S-526]

PART 240—GENERAL RULES AND REGU- LATIONS, SECURITIES EXCHANGE ACT OF 1934

Exempting Specified Residential Real Prop- erty Investment Contracts from Credit Regulation and Certain Disclosure and Suitability Requirements for Broker- Dealers

The Securities and Exchange Commission announced on January 31, 1975, the adoption of Rule 3a12-5 (17 CFR 240.3a12-5) under the Securities Exchange Act of 1934 (the "Act") which will exempt certain investment contract securities involving the direct ownership of specified residential real property offered by broker-dealers from sections 7(c) (15 U.S.C. 78k(c)) and 11(d) (1) (15 U.S.C. 78k(d)(1)) of the Act, sub-

ject to certain conditions. The Commission also announced the adoption of amendments to Rule 15c2-5 (17 CFR 240.15c2-5) under the Act which have the effect of liberalizing certain disclosure and suitability requirements for broker-dealers in connection with the offer or sale of a security involving an extension or arrangement of credit not subject to Regulation T (12 CFR 220). Rule 3a12-5 and the amendments to Rule 15c2-5 are being adopted pursuant to sections 3(a) (12) (15 U.S.C. 78k(a) (12)), 7(c), 11(d) (1), 15(c), (15 U.S.C. 78k(c)), and 23(a) (15 U.S.C. 78w(a)) of the Act. The effective date for Rule 3a12-5 and the amendments to Rule 15c2-5 is March 3, 1975.

On June 7, 1974, in Securities Exchange Act Release No. 10845, and in the FEDERAL REGISTER for June 20, 1974, at 39 FR 22162, the Commission published its proposal to adopt Rule 3a12-5. It has considered the comments and views of all interested persons concerning this proposal and now adopts Rule 3a12-5, and amends Rule 15c2-5, in the form set forth below.

Background. The rationale behind the adoption of section 7 of the Act was to limit the amount of credit which might be devoted to speculation in the securities markets,³ to maintain the availability of credit for financing local commerce and industry,⁴ to prevent undue market volatility by exerting a positive, stabilizing effect on the market,⁵ and to protect investors from purchasing on too thin a margin.⁶

Section 11(d) (1) was enacted by Congress to prevent "one of the greatest potential evils attributable to the combination of the broker and dealer functions in the same person"—the extension of credit on new issues by underwriter-brokers.⁷ This potential conflict of interest so troubled Congress that it was "deemed advisable to include a statutory prohibition" even prior to the completion of a Commission study on the advisability and feasibility of segregating the functions of the broker and dealer.⁸

In response to requests from interested parties, the Commission reviewed the impact of sections 7(c) and 11(d) (1) on the sale of certain investment contracts involving residential real property, such

as investment contracts involving the sale of a condominium,⁹ in light of the statutory purposes of those sections. Upon completion of its review, the Commission published for comment proposed Rule 3a12-5 under the Act. After reviewing the comments received from interested parties, it is the view of the Commission that the unique characteristics of investment contract securities involving the direct ownership of specified residential real property (particularly in light of the traditional modes of financing such real property and the lack of the secondary trading market therefor) make the existence of the concerns addressed by sections 7(c) and 11(d) (1) of the Act unlikely. The Commission has determined, therefore, to adopt an exemption from the provisions of sections 7(c) and 11(d) (1) of the Act for the arranging of credit by broker-dealers offering such securities, subject to certain conditions.

Based upon its experience and the letters of comment received in response to Securities Exchange Act Release No. 10845, the Commission has made certain changes in Rule 3a12-5 as adopted. Additionally, amendments to Rule 15c2-5 (which is applicable to brokers and dealers offering, inter alia, investment contract securities on which they, directly or indirectly, arrange for the extension of credit not subject to Regulation T) are being adopted today.

Policy Questions. The Commission specifically requested comment on two policy questions in the context of the offering of residential real property investment contract securities:

(1) Does the lack of a secondary trading market for such investment contracts outweigh the prohibition which Congress established for the extension or arranging of credit by broker-dealers for "purpose loans" against other than "approved collateral"?

(2) Would permitting the extension or arranging of credit by broker-dealers for such investment contracts tend to encourage investment in such securities rather than other types of securities and therefore be less likely to ensure a rational allocation of capital?

After carefully reviewing the comments received with respect to these two questions, the Commission has concluded that the lack of a secondary trading market is a significant factor in support of the proposed exemption and that permitting extensions of credit pursuant to the terms of the exemption is, in the public interest and for the protection of investors.

Direct Interest. Some commentators questioned whether the conveyance of less than a fee simple interest in real property to the purchaser constituted a direct interest in real property within the coverage of the rule. Specific reference was made to long-term leasehold interests and interests in trusts which are offered to purchasers in lieu of a fee

¹ H.R. Rep. No. 1383, 73d Cong., 2d Sess. 8 (1934).

² *Id.*

³ S. Rep. No. 792, 73d Cong., 2d Sess. 8 (1934).

⁴ *Id.* at 3; S. Rep. No. 1455, 73d Cong., 2d Sess. 11 (1934).

⁵ H.R. Rep. No. 1383, 73d Cong., 2d Sess. 22 (1934).

⁶ S. Rep. No. 792, 73d Cong., 2d Sess. 12 (1934).

⁷ Pursuant to Section 11(e) of the Securities Exchange Act (15 U.S.C. 78k(e)), the Commission conducted a study of the abuses connected with, among other things, the combination of underwriter-broker and participating broker-dealer functions but did not recommend the segregation of such functions. Securities and Exchange Commission, *Study of the Feasibility and Advisability of the Complete Segregation of the Functions of Dealer and Brokers*, 43-45, 109 (1936).

⁹ See Securities Act Release No. 5347 (Jan. 4, 1973); 38 FR 1735.

² The Board's policy as to the treatment of such discount fares for fare level purposes appears in § 399.31 of this Part.