

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 12

[Docket No. 95-30]

RIN 1557-AB42

#### Recordkeeping and Confirmation Requirements for Securities Transactions

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is proposing to revise its rules that prescribe recordkeeping and confirmation requirements for securities transactions. This proposal is another part of the OCC's Regulation Review Program to update and streamline OCC regulations and reduce unnecessary regulatory costs and other burdens. The proposal reorganizes the OCC's regulation by placing related subjects together, clarifying areas where the rules are unclear or confusing, incorporating significant OCC interpretations, and updating various provisions to address market developments and regulatory changes by other regulators that affect requirements for recordkeeping and confirmation of securities transactions by national banks.

**DATES:** Comments must be received by February 20, 1996.

**ADDRESSES:** Comments should be directed to: Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. Attention: Docket No. 95-30. In addition, comments may be sent by fax to 202-874-5274 or by electronic mail to REG.COMMENTS@OCC.TREAS.GOV. Comments will be available for public inspection and photocopying at the same location.

**FOR FURTHER INFORMATION CONTACT:** Suzette H. Greco, Senior Attorney,

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#### SUPPLEMENTARY INFORMATION:

##### Background

##### *OCC Regulation Review Program*

The OCC is proposing revisions to 12 CFR part 12 as part of its Regulation Review Program. Pursuant to this Program, the OCC is reviewing all its rules. Rules that are not necessary to protect against unacceptable risks, that do not support equitable access to banking services for all consumers, or that are not needed to accomplish other statutory responsibilities of the OCC will be revised or eliminated.

Where risks are meaningful and regulation is appropriate, the OCC will examine its rules to determine if they achieve their purpose most efficiently. In this regard, the OCC recognizes that one source of regulatory cost is the failure of regulations to provide clear guidance because they are difficult to follow and understand. Therefore, an important component of the Regulation Review Program is to revise regulations, where appropriate, to improve clarity and better communicate the standards that the rules are intended to convey.

Revisions to 12 CFR part 12 present particular challenges in several regards because the part implements requirements from different statutory sources, addresses transactions of a specialized and often technical nature, and currently is out of date in certain respects.

##### *Recordkeeping and Confirmation Requirements for Securities Transactions*

The OCC adopted part 12 on July 24, 1979 (44 FR 43252), to establish requirements applicable to national banks effecting securities transactions for customers, including recordkeeping and confirmation requirements. The OCC amended part 12 on December 31, 1979 (44 FR 77137) to include additional suggestions recommended by commenters, and the part became effective on January 1, 1980. The OCC

has not significantly changed part 12 since then.<sup>1</sup>

Since that time, there have been significant changes in securities regulation and market practices. For example, Congress enacted the Government Securities Act of 1986, 15 U.S.C. 78o-5, requiring the registration of government securities brokers and dealers, including financial institutions, and regulating transactions in government securities. Recently, the Securities and Exchange Commission (SEC) adopted amendments to its confirmation rule requiring additional disclosures and restructuring the rule. See Securities Exchange Act of 1934 Rule 10b-10, 17 CFR 240.10b-10 (SEC Rule 10b-10).

Under SEC Rule 10b-10, the SEC requires a broker/dealer to send a customer notification of a securities transaction at or before the completion of the transaction. The SEC defines "completion of the transaction" generally to be the time of payment or partial payment and/or delivery of the security. See 17 CFR 240.10b-10(d)(2). The SEC also has shortened the standard settlement period for broker/dealer trades from five to three days (T+3 Settlement) effective on June 7, 1995. See Securities Exchange Act Release No. 33023, 58 FR 52891 (Oct. 13, 1993). In addition, for trades in government securities, next day settlement is industry practice. Currently, part 12 generally requires a national bank to send a customer notification of a securities transaction within five business days from the date of the transaction.

##### Proposal

The proposal modernizes the rules in part 12 and reduces unnecessary regulatory burdens, where possible. In

<sup>1</sup> In 1979, the Board of Governors of the Federal Reserve System (FRB) and the Federal Deposit Insurance Corporation (FDIC) adopted regulations similar to part 12. See 12 CFR 208.8(k), 44 FR 43258 (July 24, 1979) (FRB regulation); 12 CFR part 344, 44 FR 43261 (July 24, 1979) (FDIC regulation). Since that time, neither of these agencies has significantly changed these regulations, although recently the FDIC adopted a regulation concerning authority to waive certain requirements of part 344, similar to the authority in § 12.7(d) of part 12. See 60 FR 7111 (Feb. 7, 1995). Consequently, the current regulations for all three Federal banking agencies are very similar. The OCC and the other Federal banking agencies have been meeting and discussing changes to the FRB's and the FDIC's rules substantively similar to those proposed today by the OCC.

order to make part 12 more accessible and easier to use, the proposal also restructures many sections and updates others by incorporating significant OCC interpretive positions and reflecting regulatory changes by other agencies. The following discussion identifies and explains proposed changes. A Derivation Table identifying the proposed changes and keying them to the current rule appears at the end of this preamble.

The OCC requests comments on all aspects of the proposal, as well as specific comments on changes in the rule.

#### *Authority, Purpose, and Scope (§ 12.1)*

The proposal revises the scope section (§ 12.1) to clarify the securities transactions to which part 12 applies and identify the types of transactions that are subject to other regulatory schemes. Paragraph (c)(1) provides the rules of general applicability and paragraph (c)(2) sets forth exemptions. Generally, any national bank effecting a securities transaction for a customer is subject to the requirements of part 12, unless the transaction specifically is exempted.

For example, the part 12 requirements apply to transactions in mutual funds as well as other securities. While investment companies, commonly referred to as mutual funds, must register with the SEC under the Investment Company Act of 1940 (Investment Company Act), 15 U.S.C. 80a-1 *et seq.*, and are subject to numerous legal requirements,<sup>2</sup> the requirements of part 12 govern national banks effecting trades for customers in mutual fund shares. Some requirements of the Investment Company Act and its regulations also may apply to national banks providing services to an investment company or acting as the investment company's investment adviser. See *e.g.*, 15 U.S.C. 80a-17; 15 U.S.C. 80a-30; 17 CFR 270.17j-1; 17 CFR 270.31a-1.

The OCC recognizes that national banks may enter into various arrangements with registered broker/dealers that permit the broker/dealers to operate on the bank's premises. Part 12 generally does not apply to securities

<sup>2</sup>The Investment Company Act and its implementing regulations contain various provisions relating to the formation and operation of an investment company, including provisions on the distribution and pricing of shares, fiduciary duties of directors, transactions with affiliates, permissible capital structures, disclosure and reporting requirements, and other requirements. See 15 U.S.C. 80a-1 *et seq.*; 17 CFR part 270. Investment companies also may need to register their shares under the Securities Act of 1933. See 15 U.S.C. 77a *et seq.*

transactions effected by these broker/dealers for their customers. As registered broker/dealers, they already are subject to the SEC's recordkeeping and confirmation rules. If, however, the bank is using this broker/dealer to clear securities transactions effected by the bank for the bank's own customers, then the requirements of part 12 would apply to the bank.

#### Government Securities Transactions

National banks conducting government securities transactions for their customers also are within the scope of part 12. Government securities are defined in section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)), and include but are not limited to United States Treasury securities and securities issued or guaranteed by Federal government agencies and government-sponsored enterprises.

The Department of the Treasury, under its authority pursuant to the Government Securities Act of 1986 (GSA), 15 U.S.C. 780-5, has issued regulations in 17 CFR parts 400 through 405, 449, and 450, applicable to many government securities transactions by national banks (GSA regulations). The GSA regulations define the terms "government securities broker" and "government securities dealer" to include financial institutions. See 17 CFR 400.3 (k) and (l). Part 404 of the GSA regulations provides specific recordkeeping requirements for government securities brokers and dealers that are financial institutions. See 17 CFR 404.4.

National banks, because they are subject to part 12 recordkeeping requirements, are not required to follow the recordkeeping requirements of the GSA regulations at 17 CFR 404.2 and 404.3. See 17 CFR 404.4(a). National banks, however, must follow other recordkeeping requirements under the GSA regulations. See 17 CFR 404.4(a)(3), (b), and 450.4(c), (d), and (f). Part 12 *confirmation* requirements apply to all government securities transactions by national banks.

Consistent with the GSA regulations, proposed § 12.1(c)(2)(ii) exempts a national bank that conducts fewer than 500 government securities *brokerage* transactions per year from complying with the recordkeeping requirements under proposed (and current) § 12.3. See 17 CFR 401.3(a)(2)(i) and 404.4(a). This exemption does not apply to government securities *dealer* transactions by national banks, however. Staff at the Bureau of the Public Debt, which is the organization within the Department of the Treasury

that is responsible for administering 17 CFR 404.4(a), has advised us that they are considering amending this regulation to clarify any ambiguity resulting from the interplay of the regulation and current § 12.7(a) (proposed § 12.1(c)(2)(i)), with respect to recordkeeping requirements for financial institutions that conduct government securities dealer transactions.

#### Municipal Securities Transactions

The proposed "scope" section (§ 12.1(c)(1)) also clarifies that a national bank's transactions in municipal securities that are *not* subject to the Municipal Securities Rulemaking Board's (MSRB) rules, *are* subject to part 12. The MSRB adopts rules with respect to transactions in "municipal securities" effected by brokers, dealers, and "municipal securities dealers." See 15 U.S.C. 780-4; Rules of the MSRB, MSRB Manual (CCH) ¶ 3501 *et seq.* Municipal securities are defined in section 3(a)(29) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(29)) (Exchange Act), and include but are not limited to debt obligations of a state of the United States or a political subdivision, such as a county, city, town, village, or municipal authority, and revenue bonds. As defined in the Exchange Act, a "municipal securities dealer" includes a bank, as well as a "separately identifiable department or division of a bank," that is engaged in the business of buying and selling municipal securities for its own account through a broker or otherwise. See 15 U.S.C. 78c(a)(30). Under the SEC's regulatory scheme, however, a bank need not register as a "municipal securities broker." See 15 U.S.C. 78c(a)(4) and (31).

Thus, under proposed § 12.1(c)(2)(iii), transactions in municipal securities conducted by a national bank registered with the SEC as a "municipal securities dealer" are exempt from part 12. However, municipal securities brokerage transactions by a national bank not registered as a municipal securities dealer are subject to part 12 requirements.

#### Other Transactions and Exemptions

The "scope" section further provides that both 12 CFR parts 9 and 12 apply to a national bank's securities transactions effected as a fiduciary, including transactions effected for a collective investment fund (§ 12.1(c)(1)). Finally, the proposed "scope" section, in the exemptions paragraph (§ 12.1(c)(2)), includes the current rule's exception from certain requirements of part 12 for banks with an average of

fewer than 200 securities transactions per year for customers, over the prior three calendar year period, not including transactions in government securities. The exemptions paragraph also restates the current rule's exemption from part 12 requirements for activities of a foreign branch of a national bank.

#### Safe and Sound Operations

Under proposed § 12.1(c)(3), the proposal clarifies that notwithstanding the exemptions from part 12, the OCC expects a national bank conducting securities transactions for its customers to maintain effective systems of records and controls to ensure safe and sound operations. Since national banks already are obligated to conduct their operations in a safe and sound manner, this addition does not impose any new requirements; rather, it emphasizes the importance of effective systems with respect to all securities transactions.

#### Definitions (§ 12.2)

The proposal clarifies and modernizes § 12.2, the definitions section, by adding several definitions and modifying several others. The proposal defines "crossing of buy and sell orders," a term used in proposed § 12.7(a)(3) (current § 12.6(c)). It also adds a new definition of "completion of the transaction," a term used in proposed § 12.4 (a) and (b). The proposed definition is based on that used in SEC Rule 10b-10, the SEC's rule for confirmation of transactions by broker/dealers. See 17 CFR 240.10b-10(d)(2), citing Securities Exchange Act of 1934 Rule 15c1-1, 17 CFR 240.15c1-1(b). The proposal clarifies the definition of "customer" (§ 12.2(e)) by removing the term "dealer bank" and inserting that a "bank acting as a broker or dealer" is not a customer.

For purposes of § 12.4(b) (8) and (9), the proposal adds a definition of "debt security" consistent with the SEC's definition under Rule 10b-10, 17 CFR 240.10b-10. The proposal also adds a definition of "asset-backed security," which is the same as that in the SEC's Rule 10b-10, 17 CFR 240.10b-10.

The proposal also adds definitions of "government security" and "municipal security" which are intended to have the same meaning as those terms have under the Securities Exchange Act of 1934. See 15 U.S.C. 78c(a)(42) and (a)(29). In addition, the proposed definition of "security" more closely tracks the definition of security in the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(10), with an exception for certain instruments, such as foreign currency and various bank instruments. However, the proposal makes clear that

the OCC may determine whether an instrument is a security for purposes of part 12.

#### Recordkeeping (§ 12.3)

The proposed recordkeeping provision in § 12.3 is similar to current § 12.3. A bank effecting securities transactions for customers must maintain, for at least three years, chronological records of original entry containing an itemized daily record of all purchases and sales of securities, account records for customers, and the written notifications to customers required by proposed (and current) § 12.4. The proposal also clarifies that a bank must maintain a copy of any alternative form of written notification that it uses pursuant to proposed § 12.5.

The proposal retains the current provision permitting a bank to maintain the required records in any manner, if the records clearly and accurately reflect the information required and provide an adequate basis for auditing the information (§ 12.3(b)).

The OCC seeks comments as to whether and in what manner banks rely upon this provision (proposed § 12.3(b)) and whether it serves a useful purpose.

#### Form and Time of Customer Notification (§ 12.4); Alternative Forms and Times of Customer Notification (§ 12.5)

The proposal reorganizes current §§ 12.4 and 12.5. Under the proposed sections, a bank has several alternatives from which it may choose to provide the required written notification to a customer for whom the bank has effected a securities transaction.

As under current part 12, a bank may elect to provide notification through: (1) A copy of a broker/dealer confirmation and statement regarding the source and amount of remuneration that the customer or any other source is to provide the bank (§ 12.4(a)); (2) a written notification that includes information such as the date of execution of the transaction, the price and number of shares or units purchased or sold, the capacity in which the bank is acting (as agent, principal, or otherwise), and the amount of remuneration received by the bank and by any broker/dealer in connection with the transaction (§ 12.4(b)); or (3) an alternative form of notification permitted for a specific type of customer transaction or account, for example, a transaction where the bank exercises investment discretion in an agency capacity or effects a transaction for a periodic plan (§ 12.5(a) through (d)). The proposal moves current § 12.5(a) regarding notification for a transaction

where the bank does not exercise investment discretion to § 12.4(c).

The proposal provides that if a bank opts to fulfill its customer notification requirement through compliance with either of these first two means (§ 12.4(a) and (b)), the bank must give or send the notification at or before the completion of the transaction. Proposed § 12.2(c) defines the term "completion of the transaction," which generally means the payment of funds and delivery of securities, i.e. the settlement of the securities transaction. Sending the notification at or before completion of the transaction is consistent with the SEC's confirmation rule, SEC Rule 10b-10. See 17 CFR 240.10b-10(a). The SEC similarly defines "completion of the transaction." See 17 CFR 240.10b-10(d)(2).

Currently, § 12.5 requires a national bank that effects a securities transaction to send written notification to its customer within five business days from the date of the transaction or within five business days from receipt by the bank of a broker/dealer's confirmation (unless the bank uses a notification permitted for a specific type of customer transaction or account). When the OCC first adopted part 12, this five day period was consistent with the generally recognized industry practice of having the settlement of a securities transaction on the fifth business day after the trade day, (T+5). On October 13, 1993, however, the SEC published a securities settlement rule, effective June 7, 1995, requiring the payment of funds and delivery of most securities by the third business day after the date of the contract (T+3). See Securities and Exchange Act of 1934 Rule 15c6-1, 17 CFR 240.15c6-1, 58 FR 52891. Thus, the current § 12.5 five day period is inconsistent with the new T+3 settlement cycle. Since settlement will occur within three days, the OCC, by adopting the "at or before completion of the transaction" timeframe, reflects current securities industry practice. Consistent with the SEC, the OCC also is adopting a T+3 securities settlement rule as discussed subsequently under § 12.9.

The OCC welcomes comments on whether providing written notification "at or before completion of the transaction" is an appropriate requirement for a national bank in proposed § 12.4(a) and (b).

The OCC also specifically requests comments on the need for additional time by banks opting to provide notification by using a copy of the broker/dealer's confirmation, as is currently permitted in § 12.5 (five business days from receipt).

Proposed § 12.4(c) retains the current § 12.5(a) option for the bank and the customer to agree in writing to a different time and form of notification for a securities transaction where the national bank does not exercise investment discretion. This paragraph, captioned "notification by agreement," also provides that the arrangement must specify the customer's right to receive the written notification as provided in § 12.4(a) or (b) at no additional cost.

The form of the notification required under proposed § 12.4(a) is similar to current § 12.4(a). Both require the bank to provide a copy of the broker/dealer confirmation and a statement regarding remuneration that the customer or any other source is to provide the bank. Alternatively, the bank may choose to provide its customer a written notification as described in proposed § 12.4(b) (current § 12.4(b)). The proposed § 12.4(b) form of notification requires the bank to notify the customer about the amount of any remuneration the customer or any other source is to provide the bank, and any remuneration from the customer to any broker/dealer in connection with the transaction. As with current § 12.4(b), the notification under proposed § 12.4(b) also must include other information regarding the securities involved in the transaction, the capacity in which the bank is acting (as agent, principal, or otherwise), and the use of any broker/dealer. By providing the notification, the bank gives its customers an opportunity to verify the terms of their transactions and evaluate the accuracy of the bank's execution.

Under proposed § 12.4(b)(6), the bank may choose not to disclose the source and amount of any *other* remuneration to the bank, if the written notification contains the following two statements: first, whether the bank has received or will receive any other remuneration; and, second, that the bank will furnish the source and amount of the other remuneration upon the customer's written request. A bank may not use this option if, in the case of a purchase, the bank is participating in a distribution of the security, or in the case of a sale, the bank is participating in a tender offer. This proposed option is new and reflects the option concerning disclosure of other remuneration contained in SEC Rule 10b-10, 17 CFR 240.10b-10(a)(2)(i)(D).

The OCC seeks specific comments on inclusion of this proposed modification concerning the disclosure of other remuneration.

The SEC, on November 17, 1994, published a final rule adopting amendments to SEC Rule 10b-10

requiring the disclosure of additional information on the broker/dealer confirmation. See Securities Exchange Act Release No. 34962, 59 FR 59612. Among other items, SEC Rule 10b-10 now requires disclosure concerning a debt security that has not been rated by a nationally recognized statistical rating organization and the fluctuation of yield with respect to certain asset-backed securities. See 17 CFR 240.10b-10(a)(7) and (8). The SEC also expanded the range of debt securities where yield need not be disclosed to include any asset-backed security subject to continuous prepayment. See 17 CFR 240.10b-10(a)(5) and (6). The OCC recognizes that this type of information may be important to bank customers evaluating the merits of investing in various debt securities.

Consistent with SEC Rule 10b-10, the proposal adds § 12.4(b)(8), (9), (10), and (11), requiring disclosure of yield information on debt securities. The proposal also adds § 12.4(b)(12) requiring disclosure that a debt security that has not been rated by a nationally recognized statistical rating organization. While the proposal incorporates these additional disclosures, the OCC is interested in commenters' views on the applicability of these disclosures to national banks' securities activities. The OCC may revise its proposal.

The OCC seeks comments on whether banks engage in transactions in unrated securities and the need for requiring disclosure of information in the written notification to customers regarding unrated securities and yield information on debt securities, similar to the SEC requirements under SEC Rule 10b-10.

The OCC also seeks comments on whether it should require the disclosure of any other information describing the security in the written notification to customers.

SEC Rule 10b-10(c) also contains a provision requiring broker/dealers to furnish to customers requested information within five business days of the receipt of the request, or within 15 business days if the broker/dealer effected the transaction more than 30 days before the receipt of the request. See 17 CFR 240.10b-10(c). Part 12 currently does not contain a similar provision.

The OCC requests comments on whether it should include a provision similar to SEC Rule 10b-10(c) stating the required period of time for a bank to furnish information pursuant to a customer's request.

In addition to § 12.4, the proposal also authorizes alternative forms and times of notification under § 12.5(a) through

(d) for certain specific types of transactions. These are: (1) Transactions in which the bank exercises investment discretion in other than an agency capacity (except for collective investment funds); (2) transactions in which the bank exercises investment discretion in an agency capacity; (3) transactions for a collective investment fund; and (4) transactions for a periodic plan.

Proposed § 12.5 includes captions generally characterizing the transactions covered under each paragraph. For example, § 12.5(a), captioned "trust transactions," concerns transactions for an account in which the bank exercises investment discretion other than in an agency capacity, e.g. a bank providing traditional trust services as directed by a will or a trust. Under § 12.5(b), captioned "agency transactions," the bank exercises investment discretion in an agency capacity and may provide fiduciary services; however, the bank is not named as trustee, e.g. the bank acting as a managing agent. The captions are intended to provide practical assistance and are not precise terms.

In a change from current § 12.5, the availability of the first two alternative forms of notification (§ 12.5(a) and (b)) depends on the capacity in which the bank effects the securities transaction for its customer, and not on the form of the account. Thus, this change clarifies that the transaction triggers the part 12 requirements and dictates the permissible form and time of notification.

The OCC invites comments about any effects of the proposed change regarding alternative forms of notification based upon types of transactions instead of accounts. The OCC also specifically requests comments on the continuing need for the different forms of alternative notification provided in proposed § 12.5.

Consequently, under the proposal, if a bank effects a securities transaction for a fiduciary account where the customer has the right to direct the transaction and does so, the forms of notification available for use by the bank are the same as for transactions where the bank does not exercise investment discretion (except for periodic plans), in other words, § 12.4(a), (b), or (c). Hence, as an alternative to § 12.4(a) or (b), the bank could provide the notification under § 12.4(c). However, the bank could not provide notification in the same manner as for a fiduciary account transaction that the customer did not direct, as in § 12.5(a). Therefore, the bank does not have the option of providing notification as in § 12.5(a) only upon the

request of the person having the power to terminate the account, or, if there is no such person, upon the request of any person holding a vested beneficial interest in the account.

The OCC seeks specific comments regarding whether this result clarifies the existing part 12 requirements and is the appropriate form of notification for securities transactions in a fiduciary account where the customer directs the transaction.

With respect to transactions for a periodic plan (§ 12.5(d)), the proposal changes the time for notification. Currently part 12 requires a national bank to furnish a written statement "as promptly as possible" after each transaction for a periodic plan (§ 12.5(e)). Instead, proposed § 12.5(d) requires the bank to furnish the written statement not less than once every three months. This change is consistent with similar provisions under the securities laws. Otherwise, the notification requirements for periodic plan transactions remain the same.

The OCC request comments on the proposed change in notification to not less than once every three months for periodic plan transactions under § 12.5(d) rather than notification as promptly as possible after each transaction.

#### *Fees (§ 12.6)*

The proposal places the provisions regarding fees (§§ 12.4 and 12.5) into § 12.6. It does not change the substance of these provisions.

#### *Securities trading policies and procedures (§ 12.7)*

The proposal retains the current requirement that a bank establish written policies and procedures for trading practices, but places new emphasis on following these written policies and procedures. The proposal also relocates these provisions from § 12.6 to § 12.7.

With respect to proposed § 12.7(a)(4), the proposal clarifies that bank officers and employees must provide a report to the bank containing specific information on certain trades, and the bank must establish written policies and procedures requiring these reports. While current § 12.6(d) states that the report must "identify" the securities purchased and sold, proposed § 12.7(b) clarifies the information necessary for banks to identify the securities, including the title and number of shares, the principal amount of each security involved, and the price at which the transaction was effected.

The OCC seeks comments as to whether enumeration of the information

required in these reports will assist banks, and officers and employees, in complying with this requirement.

The proposal also revises one of the exceptions to the reporting requirements for securities transactions for the benefit of certain bank officers or employees to make clear that the reporting exception applies only if the transactions involve an aggregate amount of purchases and sales per officer or employee of \$10,000 or less during a calendar quarter.

The proposal also clarifies that a national bank acting as an investment adviser to an investment company is subject to section 17 of the Investment Company Act, 15 U.S.C. 80a-17, and, in particular, the requirements of Rule 17j-1 of the Investment Company Act, 17 CFR 270.17j-1 (SEC Rule 17j-1). Generally, SEC Rule 17j-1 requires that an investment adviser to a registered investment company adopt a written code of ethics, and that certain defined "access persons" of the investment adviser, including directors, officers, and certain employees, report personal securities transactions to the investment adviser. See 17 CFR 270.17j-1(e)(1).

The requirement under proposed § 12.7(a)(4) concerning the reporting by bank officers and employees of securities transactions in which they have a beneficial interest is in addition to the applicable requirements under the Investment Company Act and SEC Rule 17j-1. Banks should recognize that the part 12 requirements, in some respects, are broader than those under the Investment Company Act because they apply to investment advisory activities by national banks whether the bank provides the advice to an investment company or to another type of customer.

The OCC welcomes any comments on this proposed addition to the regulation.

#### *Waivers (§ 12.8)*

The proposal makes no substantive changes in the waiver provision currently in § 12.7(d). It relocates the provision to § 12.8. As is the current practice, the proposal makes clear that the procedure for requesting a waiver is to submit a request in writing. The proposal also clarifies that the OCC may grant a waiver from the requirements of part 12 to any national bank, or any class of national banks, with regard to specific transactions or specific classes of transactions.

#### *Settlement of Securities Transactions (§ 12.9)*

The proposal adds § 12.9 to establish a securities settlement timeframe for national banks effecting or entering into contracts for the purchase or sale of

securities for customers. The OCC intends this rule to parallel the SEC's adoption of the "T+3" securities settlement timeframe. In October 1993, the SEC adopted for the first time a securities settlement rule, effective June 7, 1995, requiring the payment of funds and delivery of most securities by the third business day after the date of the contract (T+3). See Securities Exchange Act of 1934 Rule 15c6-1, 17 CFR 240.15c6-1 (SEC Rule 15c6-1); 58 FR 52891 (Oct. 13, 1993); 60 FR 26604 (May 17, 1995) (amendments to the rule). SEC Rule 15c6-1 is a separate securities settlement requirement and is not part of the SEC's confirmation rule, SEC Rule 10b-10, 17 CFR 240.10b-10. The OCC believes that most national banks effecting customer securities transactions use a clearing broker that would be subject to the SEC's T+3 rule and national banks' securities transactions thereby routinely would settle within three days. However, some national banks may clear and settle their securities trades directly. For this reason, the OCC proposes to revise part 12 to include a separate T+3 settlement requirement that tracks the language of the SEC's securities settlement rule. See 17 CFR 240.15c6-1.

As with SEC Rule 15c6-1, the OCC's rule does not apply to an exempted security as defined in 15 U.S.C. 78c(a)(12), government security, municipal security, commercial paper, bankers' acceptance, or commercial bill. Proposed § 12.9 also contains an identical override provision to SEC Rule 15c6-1 permitting national banks to agree that settlement will take place in more than three business days when the agreement is express and reached at the time of the transaction. Nonetheless, the OCC, similar to the intent expressed by the SEC, intends the override provision to apply to unusual transactions and not merely to permit national banks to specify before execution of specific trades that a group of trades will settle in a timeframe other than T+3. See Securities Exchange Act Release No. 33023, 58 FR 52891, 52901 (Oct. 13, 1993).

While proposed § 12.9 conforms to the language of the SEC's T+3 settlement rule, the OCC notes there are alternatives to adopting the language of the SEC's rule. For example, one possibility is not having a separate OCC settlement rule and, instead, using three days as the timeframe for sending the confirmation under part 12 rather than following the SEC's "completion of the transaction" timeframe. Another possibility is cross-referencing the language of SEC Rule 15c6-1 instead of

incorporating the actual language of the rule.

The OCC seeks comments on the need for and the effect of proposed § 12.9 adopting the T+3 securities settlement requirement for national banks.

The OCC also specifically invites comments on the feasibility and appropriateness of alternative approaches to implement the T+3 securities settlement cycle.

*Interpretations (§§ 12.101 and 12.102)*

The proposal adds two interpretative rulings at the end of part 12. The first interpretation (§ 12.101) relates to the disclosure of remuneration for mutual fund transactions. The interpretation reflects the view taken by the OCC in various letters granting a waiver from compliance with part 12 remuneration disclosure requirements. In particular, the OCC has allowed a bank to fulfill its disclosure requirement of the source and amount of remuneration required by current § 12.4(a)(2) and (b) (proposed § 12.4(a)(2) and (b)) for mutual fund transactions by providing this information to the customer in a current prospectus, at or before completion of the securities transaction. The OCC's view is predicated on the SEC's position as provided in a no-action letter dated March 19, 1979, and permits national banks to use the same option for disclosure of remuneration as is permitted for nonbank broker/dealers with respect to transactions in mutual funds. See Letter to the Investment Company Institute, [1979 Transfer Binder] Fed. Sec. L. Rep. (CCH) 82041 (Mar. 19, 1979). The OCC would reconsider its position upon any change in the SEC's practice.

The second interpretive ruling (§ 12.102) discusses the use of electronic communications to satisfy part 12's customer notification requirements. In appropriate situations, the OCC will allow a national bank to satisfy the "written" notification requirement under §§ 12.4 and 12.5 through electronic communications. Where a customer has a facsimile machine, a national bank may fulfill its notification delivery requirement by sending the notification by facsimile transmission. Similarly, a bank may satisfy the notification delivery requirement by other electronic communications when: (1) The parties agree to use electronic instead of hard-copy notifications; (2) the parties have the ability to print or download the notification; (3) the recipient affirms or rejects the trade through electronic notification; (4) the system cannot automatically delete the electronic notification; and (5) both parties have the capacity to receive

electronic messages. The SEC has taken a comparable approach to the use of electronic means to deliver a confirmation under SEC Rule 10b-10, 17 CFR 240.10b-10. See e.g., Letter regarding Thompson Financial Services, Inc. (Oct. 8, 1993). The OCC would consider the permissibility of other situations using electronic notifications on a case-by-case basis.

DERIVATION TABLE

[Only substantive modifications, additions and changes are indicated.]

Revised provision	Original provision	Comments
§ 12.1(a) .....	§ 12.1(a)	
§ 12.1(b) .....	§ 12.1(a)	
§ 12.1(c)(1) .....		Added.
§ 12.1(c)(2)(i) .....	§ 12.7(a)	
§ 12.1(c)(2)(ii) .....		Added.
§ 12.1(c)(2)(iii) .....	§ 12.7(b)	Modified.
§ 12.1(c)(2)(iv) .....	§ 12.7(c)	
§ 12.1(c)(3) .....		Added.
§ 12.1(d) .....	§ 12.1(b)	
§ 12.2(a) .....		Added.
§ 12.2(b) .....	§ 12.2(a)	
§ 12.2(c) .....		Added.
§ 12.2(d) .....		Added.
§ 12.2(e) .....	§ 12.2(b)	Modified.
§ 12.2(f) .....		Added.
§ 12.2(g) .....		Added.
§ 12.2(h) .....	§ 12.2(c)	
§ 12.2(i) .....		Added.
§ 12.2(j) .....	§ 12.2(d)	
§ 12.2(k) .....	§ 12.2(e)	Modified.
§ 12.3 .....	§ 12.3	
§ 12.4 .....	§§ 12.4, 12.5	Modified.
§ 12.5 .....	§§ 12.4, 12.5	Modified.
§ 12.6 .....	§§ 12.4, 12.5	
§ 12.7(a) .....	§ 12.6(a), (b), (c), and (d)	
§ 12.7(b) .....	§ 12.6(d)	Modified.
§ 12.7(c) .....	§ 12.6(d)	Modified.
§ 12.7(d) .....		Added.
§ 12.8 .....	§ 12.7(d)	
§ 12.9 .....		Added.
§ 12.101 .....		Added.
§ 12.102 .....		Added.

Regulatory Flexibility Act

It is hereby certified that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This proposal will have minimal economic impact on national banks, regardless of size, since it makes no material changes to existing regulatory requirements.

Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4, March 22, 1995, 109 Stat. 48 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. Because the OCC has determined that the proposed rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of more than \$100 million in any one year, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. Nevertheless, as discussed in the preamble, the rule has the effect of reducing unnecessary regulatory costs and other burdens, where possible.

Paperwork Reduction Act of 1995

The OCC invites comments on:  
 (1) Whether the proposed collection of information contained in this notice of proposed rulemaking is necessary for the proper performance of the agency's functions, including whether the information has practical utility;  
 (2) The accuracy of the agency's estimate of the burden of the proposed information collection;  
 (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and  
 (4) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Respondents/recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number. The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project 1557-0142, Washington DC 20503, with copies to the Legislative and Regulatory Activities Division (1557-0142), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

The collection of information requirements in this proposed rule are found in §§ 12.3 through 12.8. This information is required by the OCC to establish an audit trail. That audit trail is used by the OCC in its regulatory examinations as a tool to evaluate a bank's compliance with banking and securities laws and regulations, such as the anti-fraud provisions of the Federal securities laws. Further, the records provide a basis for adequate disclosure to customers who effect securities transactions through national banks. Other records provide a basis for the OCC to waive some or all of the recordkeeping and confirmation requirements of 12 CFR part 12. The recordkeepers are national banks.

Estimated total annual recordkeeping burden: 56,019 hours.

The estimated annual burden per recordkeeper varies from 2 hours to more than 700 hours, depending on individual circumstances, with an estimated average of 53.3 hours.

Estimated number of recordkeepers: 1,047.

#### List of Subjects in 12 CFR Part 12

National banks, Reporting and recordkeeping requirements, Securities. Authority and Issuance

For the reasons set out in the preamble, part 12 of chapter I of title 12 of the Code of Federal Regulations is proposed to be revised to read as follows:

### PART 12—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

#### Sec.

- 12.1 Authority, purpose, scope, and OMB control number.
- 12.2 Definitions.
- 12.3 Recordkeeping.
- 12.4 Form and time of customer notification.
- 12.5 Alternative forms and times of customer notification.
- 12.6 Fees.
- 12.7 Securities trading policies and procedures.
- 12.8 Waivers.
- 12.9 Settlement of securities transactions.

#### Interpretations

- 12.101 National bank disclosure of remuneration for mutual fund transactions.
- 12.102 National bank use of electronic communications as customer notifications.

Authority: 12 U.S.C. 24, 92a, and 93a.

#### § 12.1 Authority, purpose, scope, and OMB control number.

(a) *Authority*. This part is issued pursuant to 12 U.S.C. 24, 12 U.S.C. 92a, and 12 U.S.C. 93a.

(b) *Purpose*. This part establishes rules, policies, and procedures applicable to recordkeeping and confirmation requirements for certain securities transactions effected by national banks for customers.

(c) *Scope*—(1) *General*. Any security transaction effected for a customer by a national bank is subject to this part unless exempted by paragraph (c)(2) of this section. A national bank effecting transactions in government securities is subject to the confirmation, recordkeeping, and policies and procedures requirements of this part. This part also applies to municipal securities transactions by a national bank that is not registered as a "municipal securities dealer" with the Securities and Exchange Commission. See 15 U.S.C. 78c(a)(30) and 78o-4. This part, as well as 12 CFR part 9, applies to a national bank's securities transactions effected as a fiduciary.

(2) *Exemptions*—(i) *Small number of transactions*. The requirements of §§ 12.3(a)(2) through (4) and 12.7(a)(1) through (3) do not apply to a national bank having an average of fewer than 200 securities transactions per year for customers over the prior three calendar year period. The calculation of this average does not include transactions in government securities.

(ii) *Government securities*. The recordkeeping requirements of § 12.3 do not apply to national banks effecting fewer than 500 government securities brokerage transactions per year. This exemption does not apply to government securities dealer transactions by national banks.

(iii) *Municipal securities*. This part does not apply to transactions in municipal securities conducted by a national bank registered with the Securities and Exchange Commission as a "municipal securities dealer" as defined in title 15 U.S.C. 78c(a)(30). See 15 U.S.C. 78o-4.

(iv) *Foreign branches*. This part does not apply to securities transactions conducted by a foreign branch of a national bank.

(3) *Safe and Sound Operations*. Notwithstanding paragraph (c)(2) of this section, every national bank conducting securities transactions for customers shall maintain effective systems of records and controls regarding their customer securities transactions to ensure safe and sound operations. The systems maintained must clearly and accurately reflect appropriate

information and provide an adequate basis for an audit.

(d) *OMB control number*. The collection of information requirements in this part were approved by the Office and Management and Budget under OMB control number 1557-0142.

#### § 12.2 Definitions.

(a) *Asset-backed security* means a security that is primarily serviced by the cashflows of a discrete pool of receivables or other financial assets, either fixed or revolving that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the security holders.

(b) *Collective investment fund* means any funds held by a national bank as fiduciary and invested collectively in a "collective investment" as described in 12 CFR 9.18(a).

(c) *Completion of the transaction* means:

(1) In the case of a customer who purchases a security through or from a national bank, except as provided in paragraph (c)(2) of this section, the time when the customer pays the bank any part of the purchase price, or, if payment is made by a bookkeeping entry, the time when the bank makes the bookkeeping entry for any part of the purchase price;

(2) In the case of a customer who purchases a security through or from a national bank and who makes payment for the security prior to the time when payment is requested or notification is given that payment is due, the time when the bank delivers the security to or into the account of the customer;

(3) In the case of a customer who sells a security through or to a national bank except as provided in paragraph (c)(4) of this section, if the security is not in the custody of the bank at the time of sale, the time when the security is delivered to the bank, and if the security is in the custody of the bank at the time of sale, the time when the bank transfers the security from the account of the customer;

(4) In the case of a customer who sells a security through or to a national bank and who delivers the security to the bank prior to the time when delivery is requested or notification is given that delivery is due, the time when the bank makes payment to or into the account of the customer.

(d) *Crossing of buy and sell orders* means a security transaction in which the same bank acts as agent for both the buyer and the seller.

(e) *Customer* means any person or account, including any agency, trust,

estate, guardianship, committee, or other fiduciary account for which a national bank makes or participates in making the purchase or sale of securities, but does not include a broker, dealer, bank acting as a broker or dealer, or issuer of the securities that are the subject of the transaction.

(f) *Debt security* as used in § 12.4(b)(8) and (9) only, means any security, such as a bond, debenture, note, or any other similar instrument which evidences a liability of the issuer (including any security of this type that is convertible into stock or a similar security) and fractional or participation interests in one or more of any of the foregoing; provided, however, that securities issued by an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 *et seq.*, shall not be included in this definition.

(g) *Government security* means:

(1) A security which is a direct obligation of, or obligation guaranteed as to principal and interest by, the United States;

(2) A security which is issued or guaranteed by a corporation in which the United States has a direct or indirect interest and which is designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors;

(3) A security issued or guaranteed as to principal and interest by any corporation whose securities are designated, by statute specifically naming the corporation, to constitute exempt securities within the meaning of the laws administered by the Securities and Exchange Commission; or

(4) Any put, call, straddle, option, or privilege on a security as described in paragraph (g) (1), (2), or (3) of this section, other than a put, call, straddle, option, or privilege:

(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.

(h) *Investment discretion* means that, with respect to an account, a bank directly or indirectly:

(1) Is authorized to determine what securities or other property shall be purchased or sold by or for the account; or

(2) Makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for these investment decisions.

(i) *Municipal security* means:

(1) A security which is a direct obligation of, or an obligation guaranteed as to principal or interest by, a State or any political subdivision, or any agency or instrumentality of a State or any political subdivision;

(2) A security which is a direct obligation of, or an obligation guaranteed as to principal or interest by, any municipal corporate instrumentality of one or more States; or

(3) A security which is an industrial development bond (as defined in section 103(c)(2) of the Internal Revenue Code of 1954 (26 U.S.C. 103(c)(2) (1970)) (Code)) the interest on which is excludable from gross income under section 103(a)(1) of the Code (26 U.S.C. 103(a)(1)) if, by reason of the application of paragraph (4) or (6) of section 103(c) of the Code (26 U.S.C. 103(c)) (determined as if paragraphs (4)(A), (5), and (7) were not included in section 103(c) (26 U.S.C. 103(c)), paragraph (1) of section 103(c) (26 U.S.C. 103(c)) does not apply to the security.

(j) *Periodic plan* (including dividend reinvestment plans, automatic investment plans and employee stock purchase plans) means a written authorization for a national bank to act as agent to purchase or sell for a customer a specific security or securities, in a specific amount (calculated in security units or dollars) or to the extent of dividends and funds available, at specific time intervals, and setting forth the commission or charges to be paid by the customer or the manner of calculating them.

(k) *Security*: (1) Means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, for a security, any put, call, straddle, option, or privilege on any security, or group or index of securities (including any interest therein or based on the value thereof), or, in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing;

(2) Does not mean currency; any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof, the maturity of which is likewise limited; a deposit or share account in a Federal or State chartered depository institution; a loan

participation; units of a collective investment fund; interests in a variable amount note as defined in 12 CFR 9.18(c)(2)(ii); U.S. Savings Bonds; or any other instrument the OCC determines does not constitute a security for purposes of this part.

### § 12.3 Recordkeeping.

(a) *General rule*. A national bank effecting securities transactions for customers shall maintain the following records for at least three years:

(1) *Chronological records*. A chronological record of each original entry containing an itemized daily record of each purchase and sale of securities, including:

(i) Account or customer name for which each transaction was effected;

(ii) Description of the securities;

(iii) Unit and aggregate purchase or sale price (if any);

(iv) Trade date; and

(v) Name or other designation of the broker/dealer or other person from whom the securities were purchased or to whom the securities were sold;

(2) *Account records*. Account records for each customer, reflecting:

(i) Purchases and sales of securities;

(ii) Receipts and deliveries of securities;

(iii) Receipts and disbursements of cash with respect to transactions in securities for each account; and

(iv) Other debits and credits pertaining to transactions in securities;

(3) *Memorandum order*. A separate memorandum (order ticket) of each order to purchase or sell securities (whether executed or cancelled), including:

(i) Account or customer name for which the transaction was effected;

(ii) Type of order (market order, limit order, or subject to special instructions);

(iii) Time the trader or other bank employee responsible for effecting the transaction received the order;

(iv) Time the trader placed the order with the broker/dealer, or if there was no broker/dealer, time the order was executed or cancelled;

(v) Price at which the order was executed; and

(vi) Name of the broker/dealer utilized;

(4) *Record of broker/dealers*. A record of all broker/dealers selected by the bank to effect securities transactions and the amount of commissions paid or allocated to each broker during the calendar year; and

(5) *Notifications*. A copy of the written notification required by §§ 12.4 and 12.5.

(b) *Manner of maintenance*. The records required by this section must



clearly and accurately reflect the information required and provide an adequate basis for the audit of the information.

**§ 12.4 Form and time of customer notification.**

A national bank effecting a securities transaction for its customer shall give or send to the customer a notification. This section and § 12.5 describe the form and time of permissible types of notifications. A bank may elect to provide notification through a copy of a broker/dealer confirmation and statement regarding remuneration as provided in § 12.4(a), written notification as provided in § 12.4(b), notification by agreement as provided in § 12.4(c), or an alternative form of notification applicable to a specific type of transaction as provided in § 12.5.

(a) *Confirmation of a broker/dealer.* A national bank effecting a securities transaction for a customer shall give or send to its customer at or before the completion of the transaction a written notification that includes:

(1) A copy of the confirmation of a broker/dealer relating to the securities transaction; and  
 (2) If the customer or any other source will provide remuneration to the bank in connection with the transaction, and a written agreement between the bank and the customer does not determine the remuneration, a statement of the source and amount of any remuneration that the customer or any other source is to provide the bank.

(b) *Written notification.* A national bank effecting a securities transaction for its customer that does not provide notification pursuant to paragraph (a) of this section, shall give or send to its customer at or before the completion of the transaction a written notification that includes:

(1) Name of the bank;  
 (2) Name of the customer;  
 (3) Capacity in which the bank acts (as agent for the customer, as agent for both the customer and some other person, as principal for its own account, or in any other capacity);

(4) Date of execution, a statement that the bank will furnish the time of execution within a reasonable time upon written request of the customer, and the identity, price, and number of shares or units (or principal amount in the case of debt securities) of the security purchased or sold by the customer;

(5) Amount of any remuneration that the customer has provided or is to provide any broker/dealer, directly or indirectly, in connection with the transaction;

(6) Amount of any remuneration that the bank has received or will receive from the customer, and the source and amount of any other remuneration that the bank has received or will receive in connection with the transaction;

(i) A bank need not provide the information in paragraph (b)(6) of this section if:

(A) The bank and its customer have determined remuneration pursuant to a written agreement; or

(B) In the case of government securities and municipal securities, the bank received the remuneration in other than an agency transaction;

(ii) Unless the bank follows paragraph (b)(6) of this section, the written notification must state whether the bank has received or will receive any other remuneration and that the bank will furnish the source and amount of the other remuneration upon written request of the customer. A bank may not follow this paragraph (b)(6)(ii), if, in the case of a purchase, the bank was participating in a distribution, or, in the case of a sale, the bank was participating in a tender offer;

(7) Name of the broker/dealer utilized; or where there is no broker/dealer, the name of the person from whom the security was purchased or to whom the security was sold, or a statement that the bank will furnish this information upon written request from the customer. The bank shall furnish this information within a reasonable time after receipt of a written request;

(8) In the case of any transaction in a debt security subject to redemption before maturity, a statement to the effect that the debt security may be redeemed in whole or in part before maturity, that the redemption could affect the yield represented and the fact that additional information is available upon request;

(9) In the case of a transaction in a debt security effected exclusively on the basis of a dollar price:

(i) The dollar price at which the transaction was effected, and

(ii) The yield to maturity calculated from the dollar price: Provided, however, that this paragraph (b)(9)(ii) shall not apply to a transaction in a debt security that either:

(A) Has a maturity date that may be extended by the issuer thereof, with a variable interest payable thereon; or

(B) Is an asset-backed security, that represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment;

(10) In the case of a transaction in a debt security effected on the basis of yield:

(i) The yield at which the transaction was effected, including the percentage amount and its characterization (e.g. current yield, yield to maturity, or yield to call) and if effected at yield to call, the type of call, the call date and call price; and

(ii) The dollar price calculated from the yield at which the transaction was effected; and

(iii) If effected on a basis other than yield to maturity and the yield to maturity is lower than the represented yield, the yield to maturity as well as the represented yield; Provided, however, that this paragraph (b)(10)(iii) shall not apply to a transaction in a debt security that either:

(A) Has a maturity date that may be extended by the issuer thereof, with a variable interest rate payable thereon; or

(B) Is an asset-backed security, that represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment;

(11) In the case of a transaction in a debt security that is an asset-backed security, which represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment, a statement indicating that the actual yield of the asset-backed security may vary according to the rate at which the underlying receivables or other financial assets are prepaid and a statement of the fact that information concerning the factors that affect yield (including at a minimum estimated yield, weighted average life, and the prepayment assumptions underlying yield) will be furnished upon written request of the customer; and

(12) In the case of a transaction in a debt security, other than a government security, that the security is unrated by a nationally recognized statistical rating organization, if that is the case.

(c) *Notification by agreement.* Unless the bank follows paragraphs (a) or (b) of this section, a national bank effecting a securities transaction for an account in which the bank does not exercise investment discretion (except for periodic plans) shall give or send the notification at the time and in the form agreed to in writing by the bank and customer, provided that the agreement makes clear the customer's right to receive the written notification pursuant to paragraphs (a) or (b) of this section at no additional cost to the customer.

**§ 12.5 Alternative forms and times of customer notification.**

(a) *Trust transactions.* Unless the bank follows § 12.4(a) or (b), a national bank effecting a securities transaction

for an account in which the bank exercises investment discretion other than in an agency capacity (except for collective investment funds) shall give or send the notification within a reasonable time if a person having the power to terminate the account, or, if there is no such person, any person holding a vested beneficial interest in the account, requests written notification pursuant to § 12.4(a) or (b). Otherwise, notification is not required.

(b) *Agency transactions.* (1) Unless the bank follows § 12.4(a) or (b), a national bank effecting a securities transaction for an account in which the bank exercises investment discretion in an agency capacity shall give or send, not less than once every three months, an itemized statement to each customer that specifies the funds and securities in the custody or possession of the bank at the end of the period and all debits, credits and transactions in the customer's account during the period; and

(2) If requested by the customer, the bank shall give or send written notification to the customer pursuant to § 12.4(a) or (b) within a reasonable time.

(c) *Collective investment fund transactions.* Unless the bank follows § 12.4(a) or (b), a national bank effecting a securities transaction for a collective investment fund shall follow 12 CFR 9.18(b)(5).

(d) *Periodic plan transactions.* (1) Unless the bank follows § 12.4(a) or (b), a national bank effecting a securities transaction for a periodic plan shall give or send to its customer not less than once every three months a written statement showing:

(i) The customer's funds and securities in the custody or possession of the bank;

(ii) All service charges and commissions paid by the customer in connection with the transaction; and

(iii) All other debits and credits of the customer's account involved in the transaction.

(2) Upon written request of the customer, the bank shall give or send the information described in § 12.4(a) or (b), except that the bank need not provide to the customer any information relating to remuneration paid in connection with the transaction when the remuneration is paid by a source other than the customer.

#### § 12.6 Fees.

(a) *Permissible fees.* A national bank may charge a reasonable fee for providing notification pursuant to § 12.5(a), (b), and (d).

(b) *Impermissible fees.* A national bank may not charge a fee for providing

notification pursuant to § 12.4(a), (b), and (c), and § 12.5(c).

#### § 12.7 Securities trading policies and procedures.

(a) *Policies and procedures; reports of securities trading.* A national bank effecting securities transactions for customers shall maintain and adhere to policies and procedures that:

(1) Assign responsibility for supervision of all officers or employees who:

(i) Transmit orders to or place orders with broker/dealers; or

(ii) Execute transactions in securities for customers;

(2) Provide for the fair and equitable allocation of securities and prices to accounts when the bank receives orders for the same security at approximately the same time and places the orders for execution either individually or in combination;

(3) Provide for the crossing of buy and sell orders on a fair and equitable basis to the parties to the transaction, where applicable, and where permissible under local law; and

(4) Require bank officers and employees to report to the bank, within ten days after the end of the calendar quarter, all transactions in securities made by them or on their behalf, either at the bank or elsewhere, in which they have a beneficial interest, if the officers and employees:

(i) Make investment recommendations or decisions for the accounts of customers;

(ii) Participate in the determination of the recommendations or decisions; or

(iii) In connection with their duties, obtain information concerning which securities are purchased, sold, or recommended for purchase or sale.

(b) *Report required.* A bank officer or employee shall file a report, as referenced in paragraph (a)(4) of this section, that contains the following information:

(1) The date of the transaction, the title and number of shares, and the principal amount of each security involved;

(2) The nature of the transaction (i.e., purchase, sale, or other type of acquisition or disposition);

(3) The price at which the transaction was effected; and

(4) The name of the broker, dealer, or bank with or through whom the transaction was effected.

(c) *Report not required.* Paragraph (b) of this section does not require a bank officer or employee to report transactions for the benefit of the officer or employee if:

(1) The officer or employee has no direct or indirect influence or control over the transaction;

(2) The transaction is in mutual fund shares;

(3) The transaction is in government securities; or

(4) The transactions involve an aggregate amount of purchases and sales per officer or employee of \$10,000 or less during the calendar quarter.

(d) *Additional reporting requirement.* A national bank that acts as an investment adviser to an investment company is subject to the requirements of Securities and Exchange Commission (SEC) Rule 17j-1 (17 CFR 270.17j-1) of the Investment Company Act of 1940. SEC Rule 17j-1 requires certain personal securities transactions by "access persons" of the investment adviser, including directors, officers, and certain employees, to be reported to the Securities and Exchange Commission. The reporting requirement under paragraph (a)(4) of this section is in addition to any applicable requirements under SEC Rule 17j-1.

#### § 12.8 Waivers.

A national bank may file a written request with the OCC for waiver of one or more of the requirements set forth in §§ 12.2 through 12.7, either in whole or in part. The OCC may grant a waiver from the requirements of this part to any national bank, or any class of national banks, with regard to specific transactions or specific classes of transactions.

#### § 12.9 Settlement of securities transactions.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, a national bank shall not effect or enter into a contract for the purchase or sale of a security (other than an exempted security as defined in 15 U.S.C. 78c(a)(12), government security, municipal security, commercial paper, bankers' acceptances, or commercial bills) that provides for payment of funds and delivery of securities later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(b) Paragraphs (a) and (c) of this section shall not apply to contracts:

(1) For the purchase or sale of limited partnership interests that are not listed on an exchange or for which quotations are not disseminated through an automated quotation system of a registered securities association;

(2) For the purchase or sale of securities that the Securities and Exchange Commission (SEC) may from

time to time, taking into account then existing market practices, exempt by order from the requirements of paragraph (a) of SEC Rule 15c6-1, 17 CFR 240.15c6-1, either unconditionally or on specified terms and conditions, if the SEC determines that an exemption is consistent with the public interest and the protection of investors.

(c) Paragraph (a) of this section shall not apply to contracts for the sale for cash of securities that are priced after 4:30 p.m. Eastern time on the date the securities are priced and that are sold by an issuer to an underwriter pursuant to a firm commitment underwritten offering registered under the Securities Act of 1933, 15 U.S.C. 77a *et seq.*, or sold to an initial purchaser by a national bank participating in the offering provided that a national bank shall not effect or enter into a contract for the purchase or sale of the securities that provides for payment of funds and delivery of securities later than the fourth business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(d) For purposes of paragraphs (a) and (c) of this section, the parties to a contract shall be deemed to have expressly agreed to an alternate date for payment of funds and delivery of securities at the time of the transaction for a contract for the sale for cash of securities pursuant to a firm commitment offering if the managing underwriter and the issuer have agreed to the date for all securities sold pursuant to the offering and the parties to the contract have not expressly agreed to another date for payment of funds and delivery of securities at the time of the transaction.

#### Interpretations

#### **§ 12.101 National bank disclosure of remuneration for mutual fund transactions.**

A national bank may fulfill its obligation to disclose information on the source and amount of remuneration, required by § 12.4(a)(2) and (b), for mutual fund transactions by providing this information to the customer in a current prospectus, at or before completion of the securities transaction. The OCC's view is consistent with the position of the Securities and Exchange Commission (SEC) as provided in a no-action letter dated March 19, 1979, which permits confirmations for mutual funds merely to refer to the sales load disclosed in the prospectus. See Letter to the Investment Company Institute, (1979 Transfer Binder) Fed. Sec. L. Rep. (CCH) 82041 (Mar. 19, 1979). The OCC

would reconsider its position upon any change in the SEC's practice.

#### **§ 12.102 National bank use of electronic communications as customer notifications.**

(a) In appropriate situations, a national bank may satisfy the "written" notification requirement under §§ 12.4 and 12.5 through electronic communications. Where a customer has a facsimile machine, a national bank may fulfill its notification delivery requirement by sending the notification by facsimile transmission. Similarly, a bank may satisfy the notification delivery requirement by other electronic communications when:

- (1) The parties agree to use electronic instead of hard-copy notifications;
- (2) The parties have the ability to print or download the notification;
- (3) The recipient affirms or rejects the trade through electronic notification;
- (4) The system cannot automatically delete the electronic notification; and
- (5) Both parties have the capacity to receive electronic messages.

(b) The OCC would consider the permissibility of other situations using electronic notifications on a case-by-case basis.

Dated: December 7, 1995.  
Eugene A. Ludwig,  
*Comptroller of the Currency.*  
[FR Doc. 95-30970 Filed 12-21-95; 8:45 am]  
BILLING CODE 4810-33-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 95-NM-142-AD]

#### **Airworthiness Directives; Beech (Raytheon) Model BAe 125-800A and Hawker 800 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Beech (Raytheon) Model BAe 125-800A and Hawker 800 series airplanes. This proposal would require a detailed visual inspection of the fuel feed hose assemblies of the auxiliary power unit (APU) to detect overheating, degradation, proper routing, and adequate clearance; and the correction of any discrepancies found. This proposal is prompted by reports of heat damage to the fuel feed hose assembly of the APU due to contact between the

hose assembly and hot surfaces. The actions specified by the proposed AD are intended to prevent such heat damage, which could lead to a possible fire/smoke hazard when failure of the hose assembly occurs and subsequent fuel mist or spray is emitted into the rear equipment bay.

**DATES:** Comments must be received by January 30, 1996.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-142-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Manger Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201-0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Tim Backman, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2797; fax (206) 227-1149.

#### **SUPPLEMENTARY INFORMATION:**

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.