

APPENDIX 45 NAC 5

FDIC Regulation Part 344

O.C.C. 12 CFR 12.6 Part 12 F

RB Regulation "H" Subpart C

This content is from the eCFR and is authoritative but unofficial.

Title 12 - Banks and Banking

Chapter III - Federal Deposit Insurance Corporation

Subchapter B - Regulations and Statements of General Policy

Part 344 Recordkeeping and Confirmation Requirements for Securities Transactions

- § 344.1 Purpose and scope.
- § 344.2 Exceptions.
- § 344.3 Definitions.
- § 344.4 Recordkeeping.
- § 344.5 Content and time of notification.
- § 344.6 Notification by agreement; alternative forms and times of notification.
- § 344.7 Settlement of securities transactions.
- § 344.8 Securities trading policies and procedures.
- § 344.9 Personal securities trading reporting by officers and employees of FDIC-supervised institutions.
- § 344.10 Waivers.

PART 344 - RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

Authority: 12 U.S.C. 1817, 1818, 1819, and 5412.

Source: 78 FR 76723, Dec. 19, 2013, unless otherwise noted.

§ 344.1 Purpose and scope.

- (a) **Purpose.** The purpose of this part is to ensure that purchasers of securities in transactions effected by FDIC-supervised institutions are provided adequate information regarding transactions. This part is also designed to ensure that FDIC-supervised institutions subject to this part maintain adequate records and controls with respect to the securities transactions they effect.
- (b) **Scope; general.** Any security transaction effected for a customer by an FDIC-supervised institution is subject to this part unless excepted by § 344.2. An FDIC-supervised institution effecting transactions in government securities is subject to the notification, recordkeeping, and policies and procedures requirements of this part. This part also applies to municipal securities transactions by an FDIC-supervised institution 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.

§ 344.2 Exceptions.

- (a) An FDIC-supervised institution effecting securities transactions for customers is not subject to all or part of this part 344 to the extent that they qualify for one or more of the following exceptions:
 - (1) **Small number of transactions.** The requirements of §§ 344.4(a)(2) through (4) and 344.8(a)(1) through (3) do not apply to an FDIC-supervised institution effecting an average of fewer than 500 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.
 - (2) **Government securities.** The recordkeeping requirements of § 344.4 do not apply to FDIC-supervised institutions effecting fewer than 500 government securities brokerage transactions per year. This exemption does not apply to government securities dealer transactions by FDIC-supervised institutions.
 - (3) **Municipal securities.** This part does not apply to transactions in municipal securities effected by an FDIC-supervised institution 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.
 - (4) **Foreign branches.** Activities of foreign branches of FDIC-supervised institutions shall not be subject to the requirements of this part.
 - (5) **Transactions effected by registered broker/dealers.**
 - (i) This part does not apply to securities transactions effected for an FDIC-supervised institution's customer by a registered broker/dealer if:
 - (A) The broker/dealer is fully disclosed to the customer; and
 - (B) The customer has a direct contractual agreement with the broker/dealer.
 - (ii) This exemption extends to arrangements with broker/dealers which involve FDIC-supervised institution employees when acting as employees of, and subject to the supervision of, the registered broker/dealer when soliciting, recommending, or effecting securities transactions.
- (b) **Safe and sound operations.** Notwithstanding this section, every FDIC-supervised institution effecting securities transactions for customers shall maintain, directly or indirectly, effective systems of records and controls regarding their customer securities transactions to ensure safe and sound operations. The records and systems maintained must clearly and accurately reflect the information required under this part and provide an adequate basis for an audit.

§ 344.3 Definitions.

- (a) **Asset-backed security** means a security that is serviced primarily by the cash flows 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) **Cash management sweep account** means a prearranged, automatic transfer of funds above a certain dollar level from a deposit account to purchase a security or securities, or any prearranged, automatic redemption or sale of a security or securities when a deposit account drops below a certain level with the proceeds being transferred into a deposit account.
- (c) **Collective investment fund** means funds held by an FDIC-supervised institution as fiduciary and, consistent with local law, invested collectively:

- (1) In a common trust fund maintained by such FDIC-supervised institution exclusively for the collective investment and reinvestment of monies contributed thereto by the FDIC-supervised institution in its capacity as trustee, executor, administrator, guardian, or custodian under the Uniform Gifts to Minors Act; or
 - (2) In a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or similar trusts which are exempt from Federal income taxation under the Internal Revenue Code (26 U.S.C.).
- (d) **Completion of the transaction** means:
- (1) For purchase transactions, the time when the customer pays the FDIC-supervised institution any part of the purchase price (or the time when the FDIC-supervised institution makes the book-entry for any part of the purchase price, if applicable), however, if the customer pays for the security prior to the time payment is requested or becomes due, then the transaction shall be completed when the FDIC-supervised institution transfers the security into the account of the customer; and
 - (2) For sale transactions, the time when the FDIC-supervised institution transfers the security out of the account of the customer or, if the security is not in its custody, then the time when the security is delivered to it, however, if the customer delivers the security to the FDIC-supervised institution prior to the time delivery is requested or becomes due then the transaction shall be completed when the FDIC-supervised institution makes payment into the account of the customer.
- (e) **Crossing of buy and sell orders** means a security transaction in which the same FDIC-supervised institution acts as agent for both the buyer and the seller.
- (f) **Customer** means any person or account, including any agency, trust, estate, guardianship, or other fiduciary account for which an FDIC-supervised institution effects or participates in effecting the purchase or sale of securities, but does not include a broker, dealer, insured depository institution acting as a broker or a dealer, issuer of the securities that are the subject of the transaction or a person or account having a direct, contractual agreement with a fully disclosed broker/dealer.
- (g) **Debt security** means any security, such as a bond, debenture, note, or any other similar instrument that 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.
- (h) **FDIC-supervised institution** means any insured depository institution for which the Federal Deposit Insurance Corporation is the appropriate Federal banking agency pursuant to section 3(q) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(q).
- (i) **Government security** means:
- (1) A security that is a direct obligation of, or obligation guaranteed as to principal and interest by, the United States;
 - (2) A security that 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 described in paragraph (i)(1), (2), or (3) of this section other than a put, call, straddle, option, or privilege that is traded on one or more national securities exchanges, or for which quotations are disseminated through an automated quotation system operated by a registered securities association.
- (j) **Investment discretion** means that, with respect to an account, an FDIC-supervised institution 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.
- (k) **Municipal security** means 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, or any municipal corporate instrumentality of one or more States or any security which is an industrial development bond (as defined in 26 U.S.C. 103(c)(2)) the interest on which is excludable from gross income under 26 U.S.C. 103(a)(1) if, by reason of the application of paragraph (4) or (6) of 26 U.S.C. 103(c) (determined as if paragraphs (4)(A), (5) and (7) were not included in 26 U.S.C. 103(c), paragraph (1) of 26 U.S.C. 103(c) does not apply to such security. See 15. U.S.C. 78c(a)(29).
- (l) **Periodic plan** means any written authorization for an FDIC-supervised institution 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. Periodic plans include dividend reinvestment plans, automatic investment plans, and employee stock purchase plans.
- (m) **Security** 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, and 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. The term security does not include:
- (1) A deposit or share account in a federally or state insured depository institution;
 - (2) A loan participation;
 - (3) A letter of credit or other form of insured depository institution indebtedness incurred in the ordinary course of business;
 - (4) Currency;
 - (5) Any note, draft, bill of exchange, or bankers 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;
 - (6) Units of a collective investment fund;
 - (7) Interests in a variable amount (master) note of a borrower of prime credit; or

- (8) U.S. Savings Bonds.

§ 344.4 Recordkeeping.

- (a) **General rule.** An FDIC-supervised institution effecting securities transactions for customers shall maintain the following records for at least three years:
- (1) **Chronological records.** An itemized daily record of each purchase and sale of securities maintained in chronological order, and 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;
 - (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; and
 - (iv) Other debits and credits pertaining to transactions in securities;
 - (3) **A separate memorandum (order ticket)** of each order to purchase or sell securities (whether executed or canceled), which shall include:
 - (i) The accounts for which the transaction was effected;
 - (ii) Whether the transaction was a market order, limit order, or subject to special instructions;
 - (iii) The time the order was received by the trader or other FDIC-supervised institution employee responsible for effecting the transaction;
 - (iv) The time the order was placed with the broker/dealer, or if there was no broker/dealer, time the order was executed or canceled;
 - (v) The price at which the order was executed; and
 - (vi) The broker/dealer utilized;
 - (4) **Record of broker/dealers.** A record of all broker/dealers selected by the FDIC-supervised institution 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 §§ 344.5 and 344.6.
- (b) **Manner of maintenance.** Records may be maintained in whatever manner, form or format an FDIC-supervised institution deems appropriate, provided however, 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. Records may be maintained in hard copy, automated or electronic form provided the records

are easily retrievable, readily available for inspection, and capable of being reproduced in a hard copy. An FDIC-supervised institution may contract with third party service providers, including broker/dealers, to maintain records required under this part.

§ 344.5 Content and time of notification.

Every FDIC-supervised institution effecting a securities transaction for a customer shall give or send, by mail, facsimile or other means of electronic transmission, to the customer at or before completion of the transaction one of the types of written notification identified below:

(a) **Broker/dealer's confirmations.**

- (1) A copy of the confirmation of a broker/dealer relating to the securities transaction. An FDIC-supervised institution may either have the broker/dealer send the confirmation directly to the FDIC-supervised institution's customer or send a copy of the broker/dealer's confirmation to the customer upon receipt of the confirmation by the FDIC-supervised institution. If an FDIC-supervised institution chooses to send a copy of the broker/dealer's confirmation, it must be sent within one business day from the institution's receipt of the broker/dealer's confirmation; and
- (2) If the FDIC-supervised institution is to receive remuneration from the customer or any other source in connection with the transaction, a statement of the source and amount of any remuneration to be received if such would be required under paragraph (b)(6) of this section; or

(b) **Written notification.** A written notification disclosing:

- (1) Name of the FDIC-supervised institution;
- (2) Name of the customer;
- (3) Whether the FDIC-supervised institution is acting as agent for such customer, as agent for both such customer and some other person, as principal for its own account, or in any other capacity;
- (4) The date and time of execution, or the fact that the time of execution will be furnished 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) The amount of any remuneration received or to be received, directly or indirectly, by any broker/dealer from such customer in connection with the transaction;
- (6)
 - (i) The amount of any remuneration received or to be received by the FDIC-supervised institution from the customer, and the source and amount of any other remuneration received or to be received by the FDIC-supervised institution in connection with the transaction, unless:
 - (A) Remuneration is determined pursuant to a prior written agreement between the FDIC-supervised institution and the customer; or
 - (B) In the case of government securities and municipal securities, the FDIC-supervised institution received the remuneration in other than an agency transaction; or
 - (C) In the case of open end investment company securities, the FDIC-supervised institution has provided the customer with a current prospectus which discloses all current fees, loads and expenses at or before completion of the transaction;

- (ii) If the FDIC-supervised institution elects not to disclose the source and amount of remuneration it has received or will receive from a party other than the customer pursuant to paragraph (b)(6)(i)(A), (B), or (C) of this section, the written notification must disclose whether the FDIC-supervised institution has received or will receive remuneration from a party other than the customer, and that the FDIC-supervised institution will furnish within a reasonable time the source and amount of this remuneration upon written request of the customer. This election is not available, however, if, with respect to a purchase, the FDIC-supervised institution was participating in a distribution of that security; or, with respect to a sale, the FDIC-supervised institution was participating in a tender offer for that security;
- (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 FDIC-supervised institution will furnish this information within a reasonable time upon written request;
- (8) In the case of a 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 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 shall not apply to a transaction in a debt security that either has a maturity date that may be extended by the issuer thereof, with a variable interest payable thereon, or 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;
 - (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) shall not apply to a transaction in a debt security that either has a maturity date that may be extended by the issuer with a variable interest rate payable thereon, or 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.

§ 344.6 Notification by agreement; alternative forms and times of notification.

An FDIC-supervised institution may elect to use the following alternative notification procedures if the transaction is effected for:

- (a) **Notification by agreement.** Accounts (except periodic plans) where the FDIC-supervised institution does not exercise investment discretion and the FDIC-supervised institution and the customer agree in writing to a different arrangement as to the time and content of the written notification; provided however, that such agreement makes clear the customer's right to receive the written notification pursuant to § 344.5(a) or (b) at no additional cost to the customer.
- (b) **Trust accounts.** Accounts (except collective investment funds) where the FDIC-supervised institution exercises investment discretion in other than in an agency capacity, in which instance it shall, upon 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 such account, give or send to such person the written notification within a reasonable time. The FDIC-supervised institution may charge such person a reasonable fee for providing this information.
- (c) **Agency accounts.** Accounts where the FDIC-supervised institution exercises investment discretion in an agency capacity, in which instance:
- (1) The FDIC-supervised institution shall give or send to each customer not less frequently than once every three months an itemized statement which shall specify the funds and securities in the custody or possession of the FDIC-supervised institution at the end of such period and all debits, credits and transactions in the customer's accounts during such period; and
- (2) If requested by the customer, the FDIC-supervised institution shall give or send to each customer within a reasonable time the written notification described in § 344.5. The FDIC-supervised institution may charge a reasonable fee for providing the information described in § 344.5.
- (d) **Cash management sweep accounts.** An FDIC-supervised institution effecting a securities transaction for a cash management sweep account shall give or send its customer a written statement, in the same form as required under paragraph (f) of this section, for each month in which a purchase or sale of a security takes place in the account and not less than once every three months if there are no securities transactions in the account. Notwithstanding the provisions of this paragraph (d), FDIC-supervised institutions that retain custody of government securities that are the subject of a hold-in-custody repurchase agreement are subject to the requirements of 17 CFR 403.5(d).
- (e) **Collective investment fund accounts.** The FDIC-supervised institution shall at least annually give or send to the customer a copy of a financial report of the fund, or provide notice that a copy of such report is available and will be furnished upon request to each person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account. This report shall be based upon an audit made by independent public accountants or internal auditors responsible only to the board of directors of the FDIC-supervised institution.
- (f) **Periodic plan accounts.** The FDIC-supervised institution shall give or send to the customer not less than once every three months a written statement showing:
- (1) The funds and securities in the custody or possession of the FDIC-supervised institution;

- (2) All service charges and commissions paid by the customer in connection with the transaction; and
- (3) All other debits and credits of the customer's account involved in the transaction; provided that upon written request of the customer, the FDIC-supervised institution shall give or send the information described in § 344.5, except that any such information relating to remuneration paid in connection with the transaction need not be provided to the customer when the remuneration is paid by a source other than the customer. The FDIC-supervised institution may charge a reasonable fee for providing information described in § 344.5.

§ 344.7 Settlement of securities transactions.

- (a) All contracts effected or entered into by an FDIC-supervised institution that provide 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) shall provide for completion of the transaction within the number of business days in the standard settlement cycle followed by registered broker dealers in the United States, unless otherwise agreed to by the parties at the time of the transaction. The number of business days in the standard settlement cycle shall be determined by reference to paragraph (a) of SEC Rule 15c6-1, 17 CFR 240.15c6-1(a).
- (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; or
 - (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(a), 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 an FDIC-supervised institution participating in the offering. An FDIC-supervised institution 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 the 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.

[78 FR 76723, Dec. 19, 2013, as amended at 83 FR 26349, June 7, 2018]

§ 344.8 Securities trading policies and procedures.

- (a) **Policies and procedures.** Every FDIC-supervised institution effecting securities transactions for customers shall establish written policies and procedures providing:
 - (1) Assignment of 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) Assignment of responsibility for supervision and reporting, separate from those in paragraph (a)(1) of this section, with respect to all officers or employees who process orders for notification or settlement purposes, or perform other back office functions with respect to securities transactions effected for customers;
 - (3) For the fair and equitable allocation of securities and prices to accounts when orders for the same security are received at approximately the same time and are placed for execution either individually or in combination; and
 - (4) Where applicable, and where permissible under local law, for the crossing of buy and sell orders on a fair and equitable basis to the parties to the transaction.

§ 344.9 Personal securities trading reporting by officers and employees of FDIC-supervised institutions.

- (a) **Officers and employees subject to reporting.** FDIC-supervised institution officers and employees who:
 - (1) Make investment recommendations or decisions for the accounts of customers;
 - (2) Participate in the determination of such recommendations or decisions; or
 - (3) In connection with their duties, obtain information concerning which securities are being purchased or sold or recommend such action, must report to the FDIC-supervised institution, within 30-calendar days after the end of the calendar quarter, all transactions in securities made by them or on their behalf, either at the FDIC-supervised institution or elsewhere in which they have a beneficial interest. The report shall identify the securities purchased or sold and indicate the dates of the transactions and whether the transactions were purchases or sales.
- (b) **Exempt transactions.** Excluded from this reporting requirement are:
 - (1) Transactions for the benefit of the officer or employee over which the officer or employee has no direct or indirect influence or control;
 - (2) Transactions in registered investment company shares;
 - (3) Transactions in government securities; and
 - (4) All transactions involving in the aggregate \$10,000 or less during the calendar quarter.
- (c) **Alternative report.** Where an FDIC-supervised institution acts as an investment adviser to an investment company registered under the Investment Company Act of 1940, the FDIC-supervised institution's officers and employees may fulfill their reporting requirement under paragraph (a) of this section by filing with the FDIC-supervised institution the "access persons" personal securities trading report required by SEC Rule 17j-1, 17 CFR 270.17j-1.

§ 344.10 Waivers.

The Board of Directors of the FDIC, in its discretion, may waive for good cause all or any part of this part 344.

This content is from the eCFR and is authoritative but unofficial.

Title 12 - Banks and Banking

Chapter I - Comptroller of the Currency, Department of the Treasury

Part 12 Recordkeeping and Confirmation Requirements for Securities

Transactions

§ 12.1 Authority, purpose, and scope.

§ 12.2 Definitions.

§ 12.3 Recordkeeping.

§ 12.4 Content and time of notification.

§ 12.5 Notification by agreement; alternative forms and times of notification.

§ 12.6 Fees.

§ 12.7 Securities trading policies and procedures.

§ 12.8 Waivers.

§ 12.9 Settlement of securities transactions.

PART 12 - RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

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

Source: 61 FR 63965, Dec. 2, 1996, unless otherwise noted.

§ 12.1 Authority, purpose, and scope.

(a) **Authority.** This part is issued pursuant to 12 U.S.C. 24, 92a, and 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, except as provided by paragraph (c)(2) of this section. This part applies to a national bank effecting transactions in government securities. 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 (SEC). See 15 U.S.C. 78c(a)(30) and 78o-4. This part, as well as 12 CFR part 9, applies to securities transactions effected by a national bank as fiduciary.

(2) **Exceptions -**

- (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 exception does not apply to government securities dealer transactions by national banks. See 17 CFR 404.4(a).
 - (iii) **Municipal securities.** This part does not apply to transactions in municipal securities conducted by a national bank registered with the SEC 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.
 - (v) **Transactions effected by registered broker/dealers.** This part does not apply to securities transactions effected by a broker or dealer registered with the SEC where the SEC-registered broker or dealer directly provides the customer a confirmation; including, transactions effected by a national bank employee when acting as an employee of an SEC-registered broker/dealer.
- (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.

[61 FR 63965, Dec. 2, 1996, as amended at 82 FR 8106, Jan. 23, 2017]

§ 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 fund established pursuant to 12 CFR 9.18.
- (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, 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, bank acting as the fiduciary of an account, bank as trustee acting as shareholder of record for the purchase or sale of securities, or issuer of securities that are the subject of the transaction.
- (f) **Debt security** means any security, such as a bond, debenture, note, or any other similar instrument that 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. This definition does not include securities issued by an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 *et seq.*
- (g) **Government security** means:
- (1) A security that is a direct obligation of, or obligation guaranteed as to principal and interest by, the United States;
 - (2) A security that 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 SEC; or
 - (4) Any put, call, straddle, option, or privilege on a security 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 that 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 that 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 that is an industrial development bond.

(j) **Periodic plan** means:

- (1) 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. These plans include dividend reinvestment plans, automatic investment plans, and employee stock purchase plans.
- (2) Any prearranged, automatic transfer or "sweep" of funds from a deposit account to purchase a security, or any prearranged, automatic redemption or sale of a security with the funds being transferred into a deposit account (including cash management sweep services).

(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, and 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 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; a letter of credit or other form of bank indebtedness incurred in the ordinary course of business; units of a collective investment fund; interests in a variable amount note in accordance with [12 CFR 9.18](#); U.S. Savings Bonds; or any other instrument the OCC determines does not constitute a security for purposes of this part.

[[61 FR 63965](#), Dec. 2, 1996, as amended at [82 FR 8106](#), Jan. 23, 2017]

§ 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.** An itemized daily record of each purchase and sale of securities maintained in chronological order, and 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;
- (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; 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 canceled), 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 canceled;
- (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. Record maintenance may include the use of automated or electronic records provided the records are easily retrievable, readily available for inspection, and capable of being reproduced in a hard copy. A national bank may contract with a third-party service provider to maintain the records, provided that the bank maintains effective oversight of the third-party service provider to ensure the records meet the requirements of this section.

[61 FR 63965, Dec. 2, 1996, as amended at 82 FR 8106, Jan. 23, 2017]

§ 12.4 Content and time of notification.

Unless a national bank elects to provide notification by one of the means specified in § 12.5, a national bank effecting a securities transaction for a customer shall give or send to the customer either of the following types of notifications at or before completion of the transaction or, if the bank uses a registered broker/dealer's confirmation, within one business day from the bank's receipt of the registered broker/dealer's confirmation:

- (a) **Written notification.** A written notification disclosing:

- (1) Name of the bank;
- (2) Name of the customer;
- (3) Capacity in which the bank acts (i.e., 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 and time of execution, or 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)
 - (i) 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; unless:
 - (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) If the bank elects not to disclose the source and amount of remuneration it has or will receive from a party other than the customer pursuant to paragraph (a)(6)(i) of this section, the written notification must disclose whether the bank has received or will receive remuneration from a party other than the customer, and that the bank will furnish within a reasonable time the source and amount of this remuneration upon written request of the customer. This election is not available, however, if, with respect to a purchase, the bank was participating in a distribution of that security; or, with respect to a sale, the bank was participating in a tender offer for that security;
- (7) Name of the registered broker/dealer utilized; or where there is no registered 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 within a reasonable time upon written request from the customer;
- (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 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, unless the transaction is for 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 continuously are subject 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;
 - (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, unless the transaction is for 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 continuously are subject 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 continuously are subject 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 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; or
- (b) **Copy of the registered broker/dealer's confirmation.** A copy of the confirmation of a registered broker/dealer relating to the securities transaction, which the bank may direct the registered broker/dealer to send directly to the customer; and, 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.

[61 FR 63965, Dec. 2, 1996, as amended at 82 FR 8106, Jan. 23, 2017]

§ 12.5 Notification by agreement; alternative forms and times of notification.

A national bank may elect to use the following notification procedures as an alternative to complying with § 12.4:

- (a) **Notification by agreement.** A national bank effecting a securities transaction for an account in which the bank does not exercise investment discretion shall give or send written 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 § 12.4 (a) or (b) at no additional cost to the customer.

- (b) **Trust transactions.** A national bank effecting a securities transaction for an account in which the bank exercises investment discretion other than in an agency capacity shall give or send written 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.
- (c) **Agency transactions.**
 - (1) 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.
 - (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.
- (d) **Collective investment fund transactions.** A national bank effecting a securities transaction for a collective investment fund shall follow 12 CFR 9.18.
- (e) **Periodic plan transactions.**
 - (1) A national bank effecting a securities transaction for a periodic plan (except for a cash management sweep service) 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) A national bank effecting a securities transaction for a cash management sweep service or other periodic plan as defined in § 12.2(j)(2) shall give or send its customer a written statement, in the same form as under paragraph (e)(1) of this section, for each month in which a purchase or sale of a security takes place in a deposit account and not less than once every three months if there are no securities transactions in the account, subject to any other applicable laws and regulations.
 - (3) 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 national bank may charge a reasonable fee for providing notification pursuant to § 12.5(b), (c), and (e). A national bank may not charge a fee for providing notification pursuant to § 12.4 or § 12.5 (a) and (d).

§ 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 registered broker/dealers;
 - (ii) Execute transactions in securities for customers; or
 - (iii) Process orders for notification or settlement purposes, or perform other back office functions with respect to securities transactions effected for customers. Policies and procedures for personnel described in this paragraph (a)(1)(iii) must provide for supervision and reporting lines that are separate from supervision and reporting lines for personnel described in paragraphs (a)(1) (i) and (ii) of this section;
- (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 permissible under applicable law; and
- (4) Require bank officers and employees to report to the bank, within the deadline specified in SEC rule 17j-1 (17 CFR 270.17j-1) for quarterly transaction reports, all personal transactions in securities made by them or on their behalf 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 by the bank.
- (b) **Required information.** The report required under paragraph (a)(4) of this section must contain 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 registered broker, registered dealer, or bank with or through whom the transaction was effected.
- (c) **Report not required.** This section does not require a bank officer or employee to report transactions 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 SEC Rule 17j-1 (17 CFR 270.17j-1) issued under the Investment Company Act of 1940. SEC Rule 17j-1 requires an "access person" of the investment adviser to report certain personal securities transactions to the investment adviser for review by the Securities and

Exchange Commission. "Access person" includes directors, officers, and certain employees of the investment adviser. The reporting requirement under paragraph (a)(4) of this section is a separate requirement from any applicable requirements under SEC Rule 17j-1. However, an "access person" required to file a report with a national bank pursuant to SEC Rule 17j-1 need not file a separate report under paragraph (a)(4) of this section if the required information is the same.

[61 FR 63965, Dec. 2, 1996, as amended at 73 FR 22243, Apr. 24, 2008; 82 FR 8107, Jan. 23, 2017]

§ 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 a specific transaction or a specific class of transactions.

§ 12.9 Settlement of securities transactions.

- (a) All contracts effected or entered into by a national bank 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) shall provide for completion of the transaction within the number of business days in the standard settlement cycle followed by registered broker dealers in the United States, unless otherwise agreed to by the parties at the time of the transaction. The number of business days in the standard settlement cycle shall be determined by reference to paragraph (a) of SEC Rule 15c6-1, 17 CFR 240.15c6-1(a).
- (b) Paragraphs (a) and (c) of this section do 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 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(a), 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 does 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. 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 are 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.

[61 FR 63965, Dec. 2, 1996, as amended at 82 FR 8107, Jan. 23, 2017; 83 FR 26349, June 7, 2018]

This content is from the eCFR and is authoritative but unofficial.

Title 12 - Banks and Banking

Chapter II - Federal Reserve System

Subchapter A - Board of Governors of the Federal Reserve System

Part 208 - Membership of State Banking Institutions in the Federal Reserve System (Regulation H)

Subpart C - Bank Securities and Securities-Related Activities

Source: 63 FR 37646, July 13, 1998, unless otherwise noted.

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321-338a, 371d, 461, 481-486, 601, 611, 1814, 1816, 1817(a)(3), 1817(a)(12), 1818, 1820(d)(9), 1833(j), 1828(o), 1831, 1831o, 1831p-1, 1831r-1, 1831w, 1831x, 1835a, 1882, 2901-2907, 3105, 3310, 3331-3351, 3905-3909, 5371, and 5371 note; 15 U.S.C. 78b, 78l(b), 78l(i), 780-4(c)(5), 78q, 78q-1, 78w, 1681s, 1681w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

Source: Reg. H, 17 FR 8006, Sept. 4, 1952, unless otherwise noted.

§ 208.34 Recordkeeping and confirmation of certain securities transactions effected by State member banks.

(a) **Exceptions and safe and sound operations.**

- (1) A State member bank may be excepted from one or more of the requirements of this section if it meets one of the following conditions of paragraphs (a)(1)(i) through (a)(1)(iv) of this section:
 - (i) **De minimis transactions.** The requirements of paragraphs (c)(2) through (c)(4) and paragraphs (e)(1) through (e)(3) of this section shall not apply to banks having an average of less than 200 securities transactions per year for customers over the prior three calendar year period, exclusive of transactions in government securities;
 - (ii) **Government securities.** The recordkeeping requirements of paragraph (c) of this section shall not apply to banks effecting fewer than 500 government securities brokerage transactions per year; provided that this exception shall not apply to government securities transactions by a State member bank that has filed a written notice, or is required to file notice, with the Federal Reserve Board that it acts as a government securities broker or a government securities dealer;
 - (iii) **Municipal securities.** The municipal securities activities of a State member bank that are subject to regulations promulgated by the Municipal Securities Rulemaking Board shall not be subject to the requirements of this section; and
 - (iv) **Foreign branches.** The requirements of this section shall not apply to the activities of foreign branches of a State member bank.
- (2) Every State member bank qualifying for an exemption under paragraph (a)(1) of this section that conducts securities transactions for customers shall, to ensure safe and sound operations, maintain effective systems of records and controls regarding its customer securities transactions that clearly and accurately reflect appropriate information and provide an adequate basis for an audit of the information.

(b) **Definitions.** For purposes of this section:

- (1) **Asset-backed security** shall mean a security that is serviced primarily by the cash flows 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.
- (2) **Collective investment fund** shall mean funds held by a State member bank as fiduciary and, consistent with local law, invested collectively as follows:
 - (i) In a common trust fund maintained by such bank exclusively for the collective investment and reinvestment of monies contributed thereto by the bank in its capacity as trustee, executor, administrator, guardian, or custodian under the Uniform Gifts to Minors Act; or
 - (ii) In a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or similar trusts which are exempt from Federal income taxation under the Internal Revenue Code (26 U.S.C.).
- (3) **Completion of the transaction** effected by or through a state member bank shall mean:
 - (i) For purchase transactions, the time when the customer pays the bank any part of the purchase price (or the time when the bank makes the book-entry for any part of the purchase price if applicable); however, if the customer pays for the security prior to the time payment is requested or becomes due, then the transaction shall be completed when the bank transfers the security into the account of the customer; and
 - (ii) For sale transactions, the time when the bank transfers the security out of the account of the customer or, if the security is not in the bank's custody, then the time when the security is delivered to the bank; however, if the customer delivers the security to the bank prior to the time delivery is requested or becomes due then the transaction shall be completed when the banks makes payment into the account of the customer.
- (4) **Crossing of buy and sell orders** shall mean a security transaction in which the same bank acts as agent for both the buyer and the seller.
- (5) **Customer** shall mean any person or account, including any agency, trust, estate, guardianship, or other fiduciary account, for which a State member bank effects or participates in effecting the purchase or sale of securities, but shall not include a broker, dealer, bank acting as a broker or dealer, municipal securities broker or dealer, or issuer of the securities which are the subject of the transactions.
- (6) **Debt security** as used in paragraph (c) of this section shall mean 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 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.
- (7) **Government security** shall mean:
 - (i) A security that is a direct obligation of, or obligation guaranteed as to principal and interest by, the United States;
 - (ii) A security that 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;

- (iii) 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
 - (iv) Any put, call, straddle, option, or privilege on a security as described in paragraphs (b)(7) (i), (ii), or (iii) of this section other than a put, call, straddle, option, or privilege that is traded on one or more national securities exchanges, or for which quotations are disseminated through an automated quotation system operated by a registered securities association.
- (8) **Investment discretion** with respect to an account shall mean if the State member bank, directly or indirectly, is authorized to determine what securities or other property shall be purchased or sold by or for the account, or 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 such investment decisions.
- (9) **Municipal security** shall mean a security which is a direct obligation of, or obligation guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, or any security which is an industrial development bond (as defined in 26 U.S.C. 103(c)(2) the interest on which is excludable from gross income under 26 U.S.C. 103(a)(1), by reason of the application of paragraph (4) or (6) of 26 U.S.C. 103(c) (determined as if paragraphs (4)(A), (5) and (7) were not included in 26 U.S.C. 103(c)), paragraph (1) of 26 U.S.C. 103(c) does not apply to such security.
- (10) **Periodic plan** shall mean:
- (i) A written authorization for a State member 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 (including dividend reinvestment plans, automatic investment plans, and employee stock purchase plans); or
 - (ii) Any prearranged, automatic transfer or sweep of funds from a deposit account to purchase a security, or any prearranged, automatic redemption or sale of a security with the funds being transferred into a deposit account (including cash management sweep services).
- (11) **Security** shall mean:
- (i) 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), 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.
 - (ii) But does not include a deposit or share account in a federally or state insured depository institution, a loan participation, a letter of credit or other form of bank indebtedness incurred in the ordinary course of business, currency, any note, draft, bill of exchange, or bankers 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, units of a collective investment fund, interests in a variable amount (master) note of a borrower of prime credit, or U.S. Savings Bonds.

- (c) **Recordkeeping.** Except as provided in paragraph (a) of this section, every State member bank effecting securities transactions for customers, including transactions in government securities, and municipal securities transactions by banks not subject to registration as municipal securities dealers, shall maintain the following records with respect to such transactions for at least three years. Nothing contained in this section shall require a bank to maintain the records required by this paragraph in any given manner, provided that the information required to be shown is clearly and accurately reflected and provides an adequate basis for the audit of such information. Records may be maintained in hard copy, automated, or electronic form provided the records are easily retrievable, readily available for inspection, and capable of being reproduced in a hard copy. A bank may contract with third party service providers, including broker/dealers, to maintain records required under this part.
- (1) Chronological records of original entry containing an itemized daily record of all purchases and sales of securities. The records of original entry shall show the account or customer for which each such transaction was effected, the description of the securities, the unit and aggregate purchase or sale price (if any), the trade date and the name or other designation of the broker/dealer or other person from whom purchased or to whom sold;
 - (2) Account records for each customer which shall reflect all purchases and sales of securities, all receipts and deliveries of securities, and all receipts and disbursements of cash with respect to transactions in securities for such account and all other debits and credits pertaining to transactions in securities;
 - (3) A separate memorandum (order ticket) of each order to purchase or sell securities (whether executed or canceled), which shall include:
 - (i) The account(s) for which the transaction was effected;
 - (ii) Whether the transaction was a market order, limit order, or subject to special instructions;
 - (iii) The time the order was received by the trader or other bank employee responsible for effecting the transaction;
 - (iv) The time the order was placed with the broker/dealer, or if there was no broker/dealer, the time the order was executed or canceled;
 - (v) The price at which the order was executed; and
 - (vi) The broker/dealer utilized;
 - (4) A record of all broker/dealers selected by the bank to effect securities transactions and the amount of commissions paid or allocated to each such broker during the calendar year; and
 - (5) A copy of the written notification required by paragraphs (d) and (e) of this section.
- (d) **Content and time of notification.** Every State member bank effecting a securities transaction for a customer shall give or send to such customer either of the following types of notifications at or before completion of the transaction or; if the bank uses a broker/dealer's confirmation, within one business day from the bank's receipt of the broker/dealer's confirmation:

- (1) A copy of the confirmation of a broker/dealer relating to the securities transaction; and if the bank is to receive remuneration from the customer or any other source in connection with the transaction, and the remuneration is not determined pursuant to a prior written agreement between the bank and the customer, a statement of the source and the amount of any remuneration to be received; or
- (2) A written notification disclosing:
 - (i) The name of the bank;
 - (ii) The name of the customer;
 - (iii) Whether the bank is acting as agent for such customer, as agent for both such customer and some other person, as principal for its own account, or in any other capacity;
 - (iv) The date of execution and a statement that the time of execution will be furnished within a reasonable time upon written request of such customer specifying the identity, price and number of shares or units (or principal amount in the case of debt securities) of such security purchased or sold by such customer;
 - (v) The amount of any remuneration received or to be received, directly or indirectly, by any broker/dealer from such customer in connection with the transaction;
 - (vi) The amount of any remuneration received or to be received by the bank from the customer and the source and amount of any other remuneration to be received by the bank in connection with the transaction, unless remuneration is determined pursuant to a written agreement between the bank and the customer, provided, however, in the case of Government securities and municipal securities, this paragraph (d)(2)(vi) shall apply only with respect to remuneration received by the bank in an agency transaction. If the bank elects not to disclose the source and amount of remuneration it has or will receive from a party other than the customer pursuant to this paragraph (d)(2)(vi), the written notification must disclose whether the bank has received or will receive remuneration from a party other than the customer, and that the bank will furnish within a reasonable time the source and amount of this remuneration upon written request of the customer. This election is not available, however, if, with respect to a purchase, the bank was participating in a distribution of that security; or with respect to a sale, the bank was participating in a tender offer for that security;
 - (vii) The 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 it was sold, or the fact that such information will be furnished within a reasonable time upon written request;
 - (viii) In the case of a 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 that additional information is available on request;
 - (ix) In the case of a transaction in a debt security effected exclusively on the basis of a dollar price:
 - (A) The dollar price at which the transaction was effected;
 - (B) The yield to maturity calculated from the dollar price; provided, however, that this paragraph (c)(2)(ix)(B) shall not apply to a transaction in a debt security that either has a maturity date that may be extended by the issuer with a variable interest payable thereon, or 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 to continuous prepayment;

- (x) In the case of a transaction in a debt security effected on the basis of yield:
 - (A) 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 the call price; and
 - (B) The dollar price calculated from the yield at which the transaction was effected; and
 - (C) 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 (c)(2)(x)(C) shall not apply to a transaction in a debt security that either has a maturity date that may be extended by the issuer with a variable interest rate payable thereon, or 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 to continuous prepayment;
 - (xi) 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 such 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, the estimated yield, weighted average life, and the prepayment assumptions underlying yield) will be furnished upon written request of such customer; and
 - (xii) 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.
- (e) **Notification by agreement; alternative forms and times of notification.** A State member bank may elect to use the following alternative procedures if a transaction is effected for:
- (1) Accounts (except periodic plans) where the bank does not exercise investment discretion and the bank and the customer agree in writing to a different arrangement as to the time and content of the notification; provided, however, that such agreement makes clear the customer's right to receive the written notification pursuant to paragraph (c) of this section at no additional cost to the customer;
 - (2) Accounts (except collective investment funds) where the bank exercises investment discretion in other than an agency capacity, in which instance the bank shall, upon 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 such account, give or send to such person the written notification within a reasonable time. The bank may charge such person a reasonable fee for providing this information;
 - (3) Accounts, where the bank exercises investment discretion in an agency capacity, in which instance:
 - (i) The bank shall give or send to each customer not less frequently than once every three months an itemized statement which shall specify the funds and securities in the custody or possession of the bank at the end of such period and all debits, credits and transactions in the customer's accounts during such period; and
 - (ii) If requested by the customer, the bank shall give or send to each customer within a reasonable time the written notification described in paragraph (c) of this section. The bank may charge a reasonable fee for providing the information described in paragraph (c) of this section;

- (4) A collective investment fund, in which instance the bank shall at least annually furnish a copy of a financial report of the fund, or provide notice that a copy of such report is available and will be furnished upon request, to each person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account. This report shall be based upon an audit made by independent public accountants or internal auditors responsible only to the board of directors of the bank;
- (5) A periodic plan, in which instance the bank:
 - (i) Shall (except for a cash management sweep service) give or send to the customer a written statement not less than every three months if there are no securities transactions in the account, showing the customer's funds and securities in the custody or possession of the bank; all service charges and commissions paid by the customer in connection with the transaction; and all other debits and credits of the customer's account involved in the transaction; or
 - (ii) Shall for a cash management sweep service or similar periodic plan as defined in § 208.34(b)(10)(ii) give or send its customer a written statement in the same form as prescribed in paragraph (e)(3) above for each month in which a purchase or sale of a security takes place in a deposit account and not less than once every three months if there are no securities transactions in the account subject to any other applicable laws or regulations;
- (6) Upon the written request of the customer the bank shall furnish the information described in paragraph (d) of this section, except that any such information relating to remuneration paid in connection with the transaction need not be provided to the customer when paid by a source other than the customer. The bank may charge a reasonable fee for providing the information described in paragraph (d) of this section.
- (f) **Settlement of securities transactions.** All contracts for the purchase or sale of a security shall provide for completion of the transaction within the number of business days in the standard settlement cycle for the security followed by registered broker dealers in the United States unless otherwise agreed to by the parties at the time of the transaction.
- (g) **Securities trading policies and procedures.** Every State member bank effecting securities transactions for customers shall establish written policies and procedures providing:
 - (1) Assignment of responsibility for supervision of all officers or employees who:
 - (i) Transmit orders to or place orders with broker/dealers;
 - (ii) Execute transactions in securities for customers; or
 - (iii) Process orders for notification and/or settlement purposes, or perform other back office functions with respect to securities transactions effected for customers; provided that procedures established under this paragraph (g)(1)(iii) should provide for supervision and reporting lines that are separate from supervision of personnel under paragraphs (g)(1)(i) and (g)(1)(ii) of this section;
 - (2) For the fair and equitable allocation of securities and prices to accounts when orders for the same security are received at approximately the same time and are placed for execution either individually or in combination;
 - (3) Where applicable and where permissible under local law, for the crossing of buy and sell orders on a fair and equitable basis to the parties to the transaction; and

- (4) That bank officers and employees who make investment recommendations or decisions for the accounts of customers, who participate in the determination of such recommendations or decisions, or who, in connection with their duties, obtain information concerning which securities are being purchased or sold or recommended for such action, must 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. The report shall identify the securities purchased or sold and indicate the dates of the transactions and whether the transactions were purchases or sales. Excluded from this requirement are transactions for the benefit of the officer or employee over which the officer or employee has no direct or indirect influence or control, transactions in mutual fund shares, and all transactions involving in the aggregate \$10,000 or less during the calendar quarter. For purposes of this paragraph (g)(4), the term securities does not include government securities.