

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 Parts 1 and 7

[Docket No. 95-34]

RIN 1557-AB37

Investment Securities

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 clarify and update its rules that prescribe the standards under which national banks may purchase, sell, deal in, and underwrite securities. This proposal is part of the OCC's Regulation Review Program, a project designed to review comprehensively, modernize and simplify OCC regulations and reduce unnecessary regulatory burdens. The proposed revisions reorganize the regulation by placing related subjects together, clarify areas where the rules are unclear and confusing, and update various provisions to address market developments and to incorporate significant OCC interpretations, judicial decisions and statutory amendments.

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

ADDRESSES: Comments should be directed to: Communications Division, 250 E Street, SW., Washington, DC 20219, Attention: Docket No. 95-34. Comments will be available for public inspection and photocopying at the same location. In addition, comments may be sent by facsimile transmission to FAX number 202/874-5274 or by electronic mail to REG.COMMENTS@OCC.TREAS.GOV.

FOR FURTHER INFORMATION CONTACT: Kay Bondehagen, Special Assistant to the Deputy Chief Counsel (202) 874-5200; Stuart Feldstein, Senior Attorney, Legislative and Regulatory Activities Division (202) 874-5090; Lee Walzer, Senior Attorney, Securities and

Corporate Practices Division, (202) 874-5210; Lisa Lintecum, Director, Fiduciary Activities, (202) 874-5419.

SUPPLEMENTARY INFORMATION:

Background

OCC Regulation Review Program

The OCC is proposing to revise 12 CFR part 1 pursuant to 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, rules will be examined to determine if they achieve their purpose at the least possible cost. The OCC also 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.

Investment Securities Limitations

Most of the limitations on the ability of national banks to purchase, sell, deal in, and underwrite securities trace to the Banking Act of 1933, Section 16, Public Law 73-66, 48 Stat. 184 (codified as amended at 12 U.S.C. 24 (Seventh) (1933)). More recently, the Secondary Mortgage Market Enhancement Act of 1984 (SMMEA)¹ and the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRI Act)² removed quantitative limits on national banks' purchases of certain types of mortgage- and small business-related securities, subject to any regulations prescribed by the OCC.

Although the OCC has revised part 1 a number of times since the early 1960s, the current version still contains many provisions dating from 1963. See 28 FR 9916 (1963). The OCC revised part 1 in 1971, adding the distinctions among "Type I security," "Type II security"

and "Type III security." See 36 FR 6737 (1971). Guidelines were added to the part in 1982. See 47 FR 5701 (1982). The OCC revised part 1 again in 1989 principally to reflect amendments to 12 U.S.C. 24 (Seventh) by adding obligations of the African Development Bank and Inter-American Investment Corporation to the description of Type II securities. See 54 FR 1333 (1989). To reduce regulatory burden, the OCC also amended part 1 in 1993 to eliminate a requirement that a national bank maintain certain information for a specified period of time to demonstrate prudence in making determinations and carrying out securities transactions. See 58 FR 27443 (1993). The OCC tended to graft these changes onto the previous regulatory framework, resulting in a sometimes confusing combination of definitions and restrictions.

The OCC did not amend part 1 to reflect the statutory change resulting from the enactment of SMMEA in 1984. Nor have changes been made to the rule to reflect significant judicial decisions and interpretations of the OCC.

Proposal

This proposal modernizes the rules in part 1 and furthers the goals of the OCC's Regulation Review Program. In order to make part 1 more accessible and comprehensive, the proposal restructures many sections of the rule. The proposal also updates the rule to incorporate statutory changes to 12 U.S.C. 24 (Seventh), judicial decisions and long-standing OCC interpretations. The following discussion identifies and explains the significant proposed changes. The OCC requests comments on all aspects of this proposal, and, in addition, requests specific comments on certain changes that are highlighted. The OCC also welcomes any additional comments relevant to this proposal. A table summarizing the areas where changes are proposed is set forth at the end of this preamble.

Authority, purpose, and scope (section 1.1)

The proposal consolidates the current "Scope and application" section (§ 1.2) with the "Authority" section (§ 1.1). The sections are substantially condensed to eliminate redundant and unnecessary language.

The limitations set forth in part 1 apply to national banks, Federal branches of foreign banks, District of

¹ Sec. 105(c), Pub. L. 98-440, Title I, 98 Stat. 1691 (codified as amended at 12 U.S.C. 24 (Seventh) (1984)).

² Pub. L. 103-325, 108 Stat. 2160 (1994).