

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

Safe and Sound Operations

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

Definitions (§ 12.2)

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

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

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

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

Recordkeeping (§ 12.3)

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

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

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

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

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

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

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

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

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

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

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