

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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