

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

Estimated total annual recordkeeping burden: 56,019 hours.

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

Estimated number of recordkeepers: 1,047.

List of Subjects in 12 CFR Part 12

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

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

PART 12—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

Sec.

- 12.1 Authority, purpose, scope, and OMB control number.
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Interpretations

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

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

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

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

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

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

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

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

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

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

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

information and provide an adequate basis for an audit.

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

§ 12.2 Definitions.

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

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

(c) *Completion of the transaction* means:

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

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

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

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

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

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