

clearly and accurately reflect the information required and provide an adequate basis for the audit of the information.

§ 12.4 Form and time of customer notification.

A national bank effecting a securities transaction for its customer shall give or send to the customer a notification. This section and § 12.5 describe the form and time of permissible types of notifications. A bank may elect to provide notification through a copy of a broker/dealer confirmation and statement regarding remuneration as provided in § 12.4(a), written notification as provided in § 12.4(b), notification by agreement as provided in § 12.4(c), or an alternative form of notification applicable to a specific type of transaction as provided in § 12.5.

(a) *Confirmation of a broker/dealer.* A national bank effecting a securities transaction for a customer shall give or send to its customer at or before the completion of the transaction a written notification that includes:

(1) A copy of the confirmation of a broker/dealer relating to the securities transaction; and
(2) 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.

(b) *Written notification.* A national bank effecting a securities transaction for its customer that does not provide notification pursuant to paragraph (a) of this section, shall give or send to its customer at or before the completion of the transaction a written notification that includes:

(1) Name of the bank;
(2) Name of the customer;
(3) Capacity in which the bank acts (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 of execution, 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) 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;

(i) A bank need not provide the information in paragraph (b)(6) of this section if:

(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) Unless the bank follows paragraph (b)(6) of this section, the written notification must state whether the bank has received or will receive any other remuneration and that the bank will furnish the source and amount of the other remuneration upon written request of the customer. A bank may not follow this paragraph (b)(6)(ii), if, in the case of a purchase, the bank was participating in a distribution, or, in the case of a sale, the bank was participating in a tender offer;

(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 bank will furnish this information upon written request from the customer. The bank shall furnish this information within a reasonable time after receipt of a written request;

(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 the fact 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 paragraph (b)(9)(ii) shall not apply to a transaction in 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 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; and

(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)(iii) shall not apply to a transaction in 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 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.

(c) *Notification by agreement.* Unless the bank follows paragraphs (a) or (b) of this section, a national bank effecting a securities transaction for an account in which the bank does not exercise investment discretion (except for periodic plans) shall give or send the 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 paragraphs (a) or (b) of this section at no additional cost to the customer.

§ 12.5 Alternative forms and times of customer notification.

(a) *Trust transactions.* Unless the bank follows § 12.4(a) or (b), a national bank effecting a securities transaction