

**FEDERAL RESERVE BANK  
OF NEW YORK**

[ Circular No. 10831  
January 29, 1996 ]

**PROPOSED AMENDMENTS TO REGULATION H**

*Comments Invited by February 28*

*To All State Member Banks in the Second Federal  
Reserve District, and Others Concerned:*

Printed on the following pages is the text of a proposal by the Board of Governors of the Federal Reserve System to amend its Regulation H, "Membership of State Banking Institutions in the Federal Reserve System," pertaining to the recordkeeping and confirmation of certain securities transactions, which has been published in the *Federal Register*.

Comments on the proposal should be submitted by February 28, and may be sent to the Board of Governors, as specified in the Board's notice, or to Brian L. Peters, Examining Officer, Advisory and Technical Services Function.

**WILLIAM J. McDONOUGH,**  
*President.*

# Proposed Rules

Federal Register

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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.

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 208

[Regulation H; Docket No. R-0909]

#### Membership of State Banking Institutions in the Federal Reserve System; Recordkeeping and Confirmation of Certain Securities Transactions Effected by State Member Banks

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed rule; request for public comments.

**SUMMARY:** The Board of Governors of the Federal Reserve System is proposing amendments to Regulation H pertaining to the recordkeeping and confirmation of certain securities transactions. The amendments would accommodate developments in the securities markets by adding certain yield-related confirmation disclosure requirements for transactions involving debt and asset-backed securities effected by State member banks for customers, and providing for three day settlement of those transactions. The proposed amendments also would clarify that State member banks that effect *de minimis* government securities brokerage transactions and are exempt from registration under Department of the Treasury regulations, also are exempt from Regulation H. Finally, the proposed amendments address the minimum recordkeeping requirements for State member banks exempt from the paragraph, and include several new definitions and various language edits.

**DATES:** Comments must be submitted on or before February 28, 1996.

**ADDRESSES:** Comments should refer to Docket No. R-0909, and may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and

5:15 p.m. weekdays, and to the guard station in the Eccles Building courtyard on 20th Street, NW (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8(a) of the Board's rules regarding availability of information.

**FOR FURTHER INFORMATION CONTACT:** Angela Desmond, Senior Counsel, or Susan Meyers, Senior Securities Analyst, (202) 452-2781. For users of Telecommunications Device for the Deaf (TTD), please contact Dorothea Thompson, (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

**SUPPLEMENTARY INFORMATION:** Section 208.8(k) of Regulation H, 12 CFR part 208, was adopted in 1979 to ensure that banks effecting securities transactions for customers conform to securities industry practices with respect to the maintenance of records, and the content and timing of confirmations and account statements.<sup>1</sup> Since that time, a number of market and regulatory changes have occurred that have relevance to these provisions. As a result, the Board has determined that the recordkeeping and notification requirements of Regulation H should be amended to ensure that procedures followed by State member banks continue to conform with SEC and Department of the Treasury regulations, and are consistent with principles of safe and sound banking practices. For purposes of organization, the contents of § 208.8(k) would be moved into a new § 208.24.

Comments are requested on the proposed amendments as described in more detail below. The proposed amendments are limited to new § 208.24 (current § 208.8(k)) of Regulation H and are not meant to obviate the need for the general review of the whole regulation scheduled for the latter part of 1996.<sup>2</sup> Accordingly, comments pertaining to other provisions of Regulation H should

<sup>1</sup> 44 FR 43258 (July 24, 1979).

<sup>2</sup> The OCC and the FDIC are considering similar amendments to their versions of the regulation, 12 CFR Part 12, 44 FR 43252 (July 24, 1979) and 12 CFR Part 344, 44 FR 43261 (July 24, 1979) respectively. Consideration of the amendments now will ensure continued consistency among the three regulations and obtain parity with securities industry practices.

be withheld until notice of a general review is announced.

#### Summary of Proposed Amendments

The provisions of § 208.8(k) would be moved to a new section (§ 208.24) at the end of subpart A of Regulation H and paragraph (k) of § 208.8 would be reserved.

#### § 208.24(a) Definitions.

The draft amendments would add definitions of: asset-backed security, completion of the transaction, crossing of buy and sell orders, debt security, government security and municipal security. In general, the new definitions are based on definitions contained in the Securities Exchange Act, 15 U.S.C. 78a *et seq.*, or in the SEC's confirmation rule 10b-10, 17 CFR 240.10b-10, and are necessary for applying the proposed confirmation disclosure and the three day settlement requirements. Finally, the term *dealer bank* in the definition of *customer* would be replaced with the term *municipal securities broker or dealer* to clarify that a bank acting as a municipal securities broker is not a customer for purposes of § 208.24 of Regulation H.

#### § 208.24(b) Recordkeeping.

New language would be added to clarify that § 208.24 applies to government securities transactions effected for customers by State member banks and to municipal securities transactions effected by State member banks that are not registered as municipal securities dealers. The amendments also would relocate all confirmation recordkeeping requirements into this section. Explanatory language at the end of the section would be moved to the first paragraph to simplify the section.

#### § 208.24(c) Content and Time of Notification.

The amendments would rename the section to clarify its subject matter. Substantively, the amendments would delete the old five business day requirement for confirmation delivery in former § 208.8 (k)(3) and (k)(4) and provide that confirmations be given or sent to customers "at or by completion of the transaction," defined as the payment and delivery of the securities in § 208.24(a).

In addition, the proposed amendments would require

confirmations to: (i) contain a legend when the security is callable prior to maturity indicating that an early redemption could affect the yield stated on the confirmation and offering additional information on request (proposed § 208.24(c)(2)(viii)); (ii) disclose the yield and/or resulting dollar price of transactions involving debt securities and asset-backed securities (proposed § 208.24(c)(2)(ix) and (x)); and, (iii) indicate when a debt security, other than a government security, is unrated by a nationally recognized statistical rating organization (proposed § 208.24(c)(2)(xi)). The proposed disclosures would conform bank confirmations with disclosures now required of broker dealers under SEC rule 10b-10. They also conform to longstanding practice in the municipal securities industry.

In proposing amendments to this section, the Board is mindful of the securities regulators' determinations that these confirmation disclosures constitute material information necessary to describe the securities or to identify the transaction. Comment is requested concerning the extent to which banks already are making the proposed confirmation disclosures to customers. Comment also is requested whether it would be preferable to incorporate SEC rules 10b-10, 17a-3 and 17a-4 by reference for State member banks to refer to, rather than specify discrete items of confirmation disclosure in the regulation. Finally, § 208.24 (c)(v)-(c)(vii) require State member banks to disclose in agency transactions the name of any broker dealer utilized, the amount of such broker dealer's commission, and the amount of commission or other remuneration being received by the bank. Some have argued that these requirements have an anticompetitive effect. Comment is requested whether this provision is inappropriately anticompetitive, and, if so, how a bank should disclose its remuneration and the remuneration going to other parties on agency transactions.

**§ 208.24(d) Notification by agreement; alternative forms and times.**

Section 208.24(d)(current section 208.8(k)(4)) would be renamed to indicate that it deals with alternative arrangements under which customers receive notifications of securities transactions effected by State member banks. Other than conforming language edits, a substantive change would be made to § 208.24(d)(v), pertaining to notifications of transactions in periodic plans, to require that notification be provided to customers "not less than

every three months" rather than the current requirement of "as soon as possible after each transaction." This would conform the section with SEC rule 10b-10 (notifications required at least quarterly) while creating flexibility in scheduling notifications in periodic plans.

**§ 208.24(e) Securities Trading Policies and Procedures.**

A new § 208.24(e)(1)(iii) would be added to require State member banks to establish supervisory procedures and reporting lines for back office personnel that are separate from those established to oversee personnel accepting orders and effecting transactions under § 208.24 (e)(1)(i) and (e)(1)(ii).

**§ 208.24(f) Settlement of Securities Transactions.**

Proposed § 208.24(f), on settlement of securities transactions, would require State member banks to provide for three day (T+3) settlement for securities transactions effected for customers unless the parties agree to a different settlement date at the time of the transaction. The requirement would apply to transactions in securities that fall under SEC rule 15c6-1, 17 CFR 240.15c6-1, for broker dealers.<sup>3</sup>

The Board requests comment whether the proposed section is needed for banks to meet T+3 settlement, where appropriate, of transactions effected for customers. Finally, if the Board determines to adopt the new section, comment is requested whether banks prefer that Regulation H incorporate SEC rule 15c6-1 by reference rather than the proposed language.

**§ 208.24(g) Exceptions.**

The exceptions previously found in current § 208.8(k)(6) would be contained in § 208.24(g). A new § 208.24(g)(2) would clarify that State member banks that effect up to 500 government securities brokerage transactions and are exempt from registration under Department of the Treasury regulation 401.3(a)(2)(i), 17 CFR 401.3(a)(2), also are exempt from § 208.24. This exemption would not be available if a bank has filed notice or is required to file notice indicating that it acts as a government securities broker or dealer. Staff at the Bureau of Public Debt, which is the organization within the Department of the Treasury that is responsible for administering 17 CFR 404.4(a), on recordkeeping by

<sup>3</sup> Exceptions or other relief, and changes in the standard settlement cycle adopted by the SEC under rule 15c6-1 also would apply to State member banks. MSRB rules require bank dealers to settle municipal securities transactions by T+3.

government securities brokers and dealers that are financial institutions, has advised that they are considering amending this regulation to clarify any ambiguity with respect to the recordkeeping requirements for financial institutions that conduct government securities transactions resulting from the interplay of the regulation with the recordkeeping requirements of Regulation H.

**§ 208.24(h) Safe and Sound Operations.**

Finally, a new § 208.24(h), on safe and sound operations, would be added stating that principles of safety and soundness require a bank to maintain effective systems of records and controls regarding customer securities transactions that reflect accurate information and are sufficient to provide an adequate basis for an audit of the information. This provision is consistent with the longstanding interpretation and would clarify what is expected of banks that qualify for an exception from § 208.24(h).

**Regulatory Flexibility Act**

The Board believes there will be no significant economic impact on a substantial number of small entities if this proposal is adopted. Comments are invited on this statement.

**Paperwork Reduction Act**

In accordance with § 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0196), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed regulation are found in 12 CFR 208.8(k). This information is required to evidence compliance with the requirements of section 208.8(k) of Regulation H. The respondents are for-profit financial institutions. Records must be retained for three years.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100-0196.

The proposed amendments would provide for only a minor addition in disclosure practices of state member banks, would not increase the banks' reporting requirements to the Federal Reserve, and would have a negligible effect on respondent burden. The estimated burden is 3 minutes per response. There are 1,214 respondents and the number of their recordkeeping and notification occurrences varies with the amount and type of securities transactions. The total annual recordkeeping and disclosure burden for these respondents is estimated to be 165,520 hours. Based on an hourly cost of \$20, the annual cost to the public is estimated to be \$3,310,400.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

#### List of Subjects in 12 CFR Part 208

Accounting, Agriculture, Banks, banking, State member banks, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Securities.

For reasons set out in the preamble, the Board proposes to amend 12 CFR Part 208 as set forth below:

#### PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for Part 208 continues to read as follows:

**Authority:** 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351 and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 781(i), 78o–4(c)(5), 78q, 78q–1 and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4101a, 4104b, 4106 and 4128.

#### § 208.8 [Amended]

2. In § 208.8 paragraph (k) is removed and reserved.

3. A new § 208.24 is added at the end of subpart A to read as follows:

#### § 208.24 Recordkeeping and confirmation of certain securities transactions effected by State member banks.

(a) *Definitions.* For purposes of this § 208.24:

*Asset-backed security* shall mean a security that is serviced primarily by the cash flows 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.

*Collective investment fund* shall mean funds held by a State member bank as fiduciary and, consistent with local law, invested collectively as follows:

(1) In a common trust fund maintained by such bank exclusively for the collective investment and reinvestment of monies contributed thereto by the bank in its capacity as trustee, executor, administrator, guardian, or custodian under the Uniform Gifts to Minors Act; or

(2) In a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or similar trusts which are exempt from Federal income taxation under the Internal Revenue Code (Title 26).

*Completion of the transaction effected by or through a state member bank* shall mean:

(1) For purchase transactions, the time when the customer pays the bank any part of the purchase price (or the time when the bank makes the book-entry for any part of the purchase price if applicable), however, if the customer pays for the security prior to the time payment is requested or becomes due, then the transaction shall be completed when the bank transfers the security into the account of the customer; and

(2) For sale transactions, the time when the bank transfers the security out of the account of the customer or, if the security is not in the bank's custody, then the time when the security is delivered to the bank, however, if the customer delivers the security to the bank prior to the time delivery is requested or becomes due then the transaction shall be completed when the bank makes payment into the account of the customer.

*Crossing of buy and sell orders* shall mean a security transaction in which

the same bank acts as agent for both the buyer and the seller.

*Customer* shall mean any person or account, including any agency, trust, estate, guardianship, committee or other fiduciary account, for which a State member bank effects or participates in effecting the purchase or sale of securities, but shall not include a broker, dealer, bank acting as a broker or dealer bank or issuer of the securities which are the subject of the transactions.

*Debt security* as used in paragraph (c) of this section shall mean any security, such as a bond, debenture, note or any other similar instrument which evidences a liability of the issuer (including any security of this type that is convertible into stock or similar security) and fractional or participation interests in one or more of any of the foregoing; provided, however, that securities issued by an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a–1 et seq., shall not be included in this definition.

*Exercise investment discretion* with respect to an account shall mean if the State member bank, directly or indirectly, is authorized to determine what securities or other property shall be purchased or sold by or for the account, or makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions.

*Government security* shall mean:

(1) A security that is a direct obligation of, or obligation guaranteed as to principal and interest by, the United States;

(2) A security that is issued or guaranteed by a corporation in which the United States has a direct or indirect interest and which is designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors;

(3) A security issued or guaranteed as to principal and interest by any corporation whose securities are designated, by statute specifically naming the corporation, to constitute exempt securities within the meaning of the laws administered by the Securities Exchange Commission; or

(4) Any put, call, straddle, option, or privilege on a security as described in paragraph (1), (2), or (3) of this definition other than a put, call, straddle, option, or privilege that is traded on one or more national securities exchanges, or for which quotations are disseminated though an

automated quotation system operated by a registered securities association.

**Municipal security** shall mean a security which is a direct obligation of, or obligation guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, or any security which is an industrial development bond (as defined in § 103(c)(2) of the Internal Revenue Code of 1954) the interest on which is excludable from gross income under § 103(a)(1) of such Code if, by reason of the application of paragraph (4) or (6) of § 103(c) of such Code (determined as if paragraphs (4)(A), (5) and (7) were not included in such § 103(c), paragraph (1) of such § 103(c) does not apply to such security.

**Periodic plan** (including dividend reinvestment plans, automatic investment plans and employee stock purchase plans) means any written authorization for a State member bank acting as agent to purchase or sell for a customer a specific security or securities, in specific amounts (calculated in security units or dollars) or to the extent of dividends and funds available, at specific time intervals and setting forth the commission or charges to be paid by the customer in connection therewith or the manner of calculating them.

**Security** means any interest or instrument commonly known as a security, whether in the nature of debt or equity, including any stock, bond, note, debenture, evidence of indebtedness or any participation in or right to subscribe to or purchase any of the foregoing. The term security does not include:

- (1) A deposit or share account in a federally or state insured depository institution;
- (2) A loan participation;
- (3) A letter of credit or other form of bank indebtedness incurred in the ordinary course of business;
- (4) Currency;
- (5) Any note, draft, bill of exchange, or bankers acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited;
- (6) Units of a collective investment fund;
- (7) Interests in a variable amount (master) note of a borrower of prime credit; or
- (8) U.S. Savings Bonds.

(b) **Recordkeeping.** Except as provided in paragraph (g) of this section, every State member bank effecting securities

transactions for customers, including transactions in government securities, and municipal securities transactions by banks not subject to registration as a municipal securities dealers shall maintain the following records with respect to such transactions for at least three years. Nothing contained in this section shall require a bank to maintain the records required by this paragraph rule in any given manner, provided that the information required to be shown is clearly and accurately reflected and provides an adequate basis for the audit of such information.

(1) Chronological records of original entry containing an itemized daily record of all purchases and sales of securities. The records of original entry shall show the account or customer for which each such transaction was effected, the description of the securities, the unit and aggregate purchase or sale price (if any), the trade date and the name or other designation of the broker/dealer or other person from whom purchased or to whom sold;

(2) Account records for each customer which shall reflect all purchases and sales of securities, all receipts and deliveries of securities, and all receipts and disbursements of cash with respect to transactions in securities for such account and all other debits and credits pertaining to transactions in securities;

(3) A separate memorandum (or for ticket) of each order to purchase or sell securities (whether executed or cancelled), which shall include:

- (i) The account(s) for which the transaction was effected;
- (ii) Whether the transaction was a market order, limit order, or subject to special instructions;
- (iii) The time the order was received by the trader or other bank employee responsible for effecting the transaction;
- (iv) The time the order was placed with the broker/dealer, or if there was no broker/dealer, the time the order was executed or canceled;
- (v) The price at which the order was executed; and
- (vi) The broker/dealer utilized;

(4) A record of all broker/dealers selected by the bank to effect securities transactions and the amount of commissions paid or allocated to each such broker during the calendar year; and

(5) A copy of the written notification required by paragraphs (c) and (d) of this section.

(c) **Content and time of notification.** Every State member bank effecting a securities transaction for a customer at or before completion of the transaction shall give or send to such customer

either of the following types of notifications:

(1) A copy of the confirmation of a broker/dealer relating to the securities transaction; and if the bank is to receive remuneration from the customer or any other source in connection with the transaction, and the remuneration is not determined pursuant to a prior written agreement between the bank and the customer, a statement of the source and the amount of any remuneration to be received; or

(2) A written notification disclosing:

- (i) The name of the bank;
- (ii) The name of the customer;
- (iii) Whether the bank is acting as agent for such customer, as agent for both such customer and some other person, as principal for its own account, or in any other capacity;
- (iv) The date of execution and a statement that the time of execution will be furnished within a reasonable time upon written request of such customer, and the identity, price and number of shares or units (or principal amount in the case of debt securities) of such security purchased or sold by such a customer;

(v) The amount of any remuneration received or to be received, directly or indirectly, by any broker/dealer from such customer in connection with the transaction;

(vi) The amount of any remuneration received or to be received by the bank from the customer and the source and amount of any other remuneration to be received by the bank in connection with the transaction, unless remuneration is determined pursuant to a written agreement between the bank and the customer, provided, however, in the case of Government securities and municipal securities, this paragraph (c)(2)(vi) shall apply only with respect to remuneration received by the bank in an agency transaction;

(vii) The 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 it was sold, or the fact that such information will be furnished within a reasonable time upon written request;

(viii) In the case of a 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 that additional information is available on request;

(ix) In the case of a transaction in a debt security effected exclusively on the basis of a dollar price:

(A) The dollar price at which the transaction was effected; and

(B) The yield to maturity calculated from the dollar price; provided, however, that this paragraph (c)(2)(ix)(B) shall not apply to a transaction in a debt security that either has a maturity date that may be extended by the issuer with a variable interest payable thereon, or 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 to continuous prepayment;

(x) In the case of a transaction in a debt security effected on the basis of yield:

(A) 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 the call price; and

(B) The dollar price calculated from the yield at which the transaction was effected; and

(C) 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 (c)(2)(x)(C) shall not apply to a transaction in a debt security that either has a maturity date that may be extended by the issuer with a variable interest rate payable thereon, or 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 to continuous prepayment;

(xi) 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, the estimated yield, weighted average life, and the prepayment assumptions underlying yield) will be furnished upon written request of the customer; and

(xii) 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.

(d) *Notification by agreement; alternative forms and times of notification.* A State member bank may elect to use the following alternative procedures if a transaction is effected for:

(1) Accounts (except periodic plans) where the bank does not exercise investment discretion and the bank and the customer agree in writing to a different arrangement as to the time and content of the notification; provided, however, that such agreement makes clear the customer's right to receive the written notification pursuant to paragraph (c) of this section at no additional cost to the customer;

(2) Accounts (except collective investment funds) where the bank exercises investment discretion in other than an agency capacity, in which instance the bank shall, upon request of the person having the power to terminate the account or, if there is no such person, upon the request of any person holding a vested beneficial interest in such account, give or send to such person the written notification within a reasonable time. The bank may charge such person a reasonable fee for providing this information;

(3) Accounts, where the bank exercises investment discretion in an agency capacity, in which instance:

(i) The bank shall give or send to each customer not less frequently than once every three months an itemized statement which shall specify the funds and securities in the custody or possession of the bank at the end of such period and all debits, credits and transactions in the customer's accounts during such period; and

(ii) If requested by the customer, the bank shall give or send to each customer within a reasonable time the written notification described in paragraph (c) of this section. The bank may charge a reasonable fee for providing the information described in paragraph (c) of this section;

(4) A collective investment fund, in which instance the bank shall at least annually furnish a copy of a financial report of the fund, or provide notice that a copy of such report is available and will be furnished upon request, to each person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account. This report shall be based upon an audit made by independent public accountants or internal auditors responsible only to the board of directors of the bank;

(5) A periodic plan, in which instance the bank shall give or send to the customer not less than every three months a written statement showing the funds and securities in the custody or possession of the bank, all service charges and commissions paid by the customer in connection with the transaction, and all other debits and credits of the customer's account

involved in the transaction; provided that upon the written request of the customer the bank shall furnish the information described in paragraph (c) of this section, except that any such information relating to remuneration paid in connection with the transaction need not be provided to the customer when paid by a source other than the customer. The bank may charge a reasonable fee for providing the information described in paragraph (c) of this section.

(e) Securities trading policies and procedures. Every State member bank effecting securities transactions for customers shall establish written policies and procedures providing:

(1) Assignment of responsibility for supervision of all officers or employees who:

(i) Transmit orders to or place orders with broker/dealers;

(ii) Execute transactions in securities for customers; or

(iii) Process orders for notification and/or settlement purposes, or perform other back office functions with respect to securities transactions effected for customers; provided that procedures established under this paragraph (e)(1)(iii) should provide for supervision and reporting lines that are separate from supervision of personnel under paragraphs (e)(1)(i) and (e)(1)(ii) of this section;

(2) For the fair and equitable allocation of securities and prices to accounts when orders for the same security are received at approximately the same time and are placed for execution either individually or in combination;

(3) Where applicable and where permissible under local law, for the crossing of buy and sell orders on a fair and equitable basis to the parties to the transaction; and

(4) That bank officers and employees who make investment recommendations or decisions for the accounts of customers, who participate in the determination of such recommendations or decisions, or who, in connection with their duties, obtain information concerning which securities are being purchased or sold or recommended for such action, must report to the bank, within ten days after the end of the calendar quarter, all transactions in securities made by them or on their behalf, either at the bank or elsewhere in which they have a beneficial interest. The report shall identify the securities purchased or sold and indicate the dates of the transactions and whether the transactions were purchases or sales. Excluded from this requirement are transactions for the benefit of the officer

or employee over which the officer or employee has no direct or indirect influence or control, transactions in mutual fund shares, and all transactions involving in the aggregate \$10,000 or less during the calendar quarter. For purposes of this paragraph (e)(4), the term securities does not include government securities.

(f) *Settlement of securities transactions.* All contracts for the purchase or sale of a security shall provide for completion of the transaction within the number of business days in the standard settlement cycle for the security followed by registered broker dealers in the United States unless otherwise agreed to by the parties at the time of the transaction.

(g) *Exceptions.* (1) *De minimis Transactions.* The requirements of paragraphs (b)(2)(ii) through (b)(2)(iv) and paragraphs (e)(1) through (e)(3) of this section shall not apply to banks having an average of less than 200 securities transactions per year for customers over the prior three calendar year period, exclusive of transactions in government securities;

(2) *Government Securities.* The recordkeeping requirements of paragraph (b) of this section shall not apply to banks effecting fewer than 500 government securities brokerage transactions per year; provided that this exception shall not apply to government securities transactions by a state member bank that has filed a written notice, or is required to file notice, with the Federal Reserve that it acts as a government securities broker or a government securities dealer;

(3) *Municipal Securities.* The municipal securities activities of a state member bank that are subject to regulations promulgated by the Municipal Securities Rulemaking Board shall not be subject to the requirements of this section; and

(4) *Foreign Branches.* The requirements of this section shall not apply to the activities of foreign branches of a state member bank.

(h) *Safe and sound operations.* Every State member bank qualifying for an exemption under paragraph (g) of this section that conducts securities transactions for customers shall, to ensure safe and sound operations, maintain effective systems of records and controls regarding their customer securities transactions that clearly and accurately reflect appropriate information and provide an adequate basis for an audit of the information.

By order of the Board of Governors of the Federal Reserve System, December, 19, 1995.

**William W. Wiles,**

*Secretary of the Board.*

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