

August 7, 2013

TO: The Board of Directors

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SUBJECT: Review of Regulations Transferred from the Former Office of Thrift Supervision:
Part 390, Subpart K – Recordkeeping and Confirmation Requirements for
Securities Transactions

Summary of Recommendation

Staff recommends that the FDIC Board of Directors (“Board”) approve and authorize for publication in the *Federal Register* a notice of proposed rulemaking (“NPR”) to rescind and remove 12 C.F.R. Part 390, Subpart K, entitled *Recordkeeping and Confirmation Requirements for Securities Transactions*, and to amend 12 C.F.R. Part 344 of FDIC’s existing Rules and Regulations (“FDIC’s Part 344”), entitled *Recordkeeping and Confirmation Requirements for Securities Transactions*, as described below. Rescinding Part 390, Subpart K will serve to streamline the FDIC’s rules and eliminate unnecessary regulations.

The proposed rescission of Part 390, Subpart K, completes the FDIC’s review of this subpart of the former Office of Thrift Supervision (“OTS”) rules for rescission, amendment, or adoption. This subpart was included in the regulations that were transferred to the FDIC from the OTS on July 21, 2011, in connection with the implementation of applicable provisions of Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).¹ Upon removal of 12 C.F.R. Part 390, Subpart K, the recordkeeping and confirmation of securities transactions regulations applicable for all insured depository institutions for which the FDIC is the appropriate Federal banking agency will be found at FDIC’s Part 344.

The proposed rescission and amendments fulfill the FDIC’s review of the sections of the FDIC rules and regulations impacted by the abolishment of the OTS and the transfer of supervisory responsibilities for state savings associations to the FDIC.

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

Further, staff recommends that the action taken on this rulemaking be included as part of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (“EGRPRA”) review currently underway.

Background

Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act,² the powers, duties, and functions formerly performed by the OTS were divided among the FDIC, as to state savings associations, the Office of Comptroller of the Currency (“OCC”), as to federal savings associations, and the Board of Governors of the Federal Reserve System (“FRB”), as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act³ provides the manner of treatment for all orders, resolutions, determinations, regulations, and other advisory materials, that were issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such regulatory materials were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Section 316(c) of the Dodd-Frank Act⁴ further directed the FDIC and the OCC to consult with one another and to publish a list of the continued OTS regulations that would be enforced by the FDIC and the OCC, respectively. On June 14, 2011, the Board approved for issuance in the *Federal Register* a “List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.”⁵

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act,⁶ granted the OCC rulemaking authority relating to both state and federal savings associations, nothing in the Dodd-Frank Act affected the FDIC’s existing authority to issue regulations under the Federal Deposit Insurance Act⁷ (“FDI Act”) and other laws as the “appropriate Federal banking agency” or under similar statutory authority. Section 312(c) of the Dodd-Frank Act amended section 3(q) of the FDI Act⁸ and designated the FDIC as the “appropriate Federal banking agency” for state savings associations. As a result, when the FDIC acts as the designated “appropriate Federal banking agency” (or under similar authority) for state savings associations, the FDIC is authorized to issue, modify and rescind regulations involving such associations.

On June 14, 2011, operating pursuant to this authority, the Board reissued and re-designated certain transferring regulations of the former OTS as new FDIC regulations.⁹ In the preamble to this interim rule, the FDIC specifically noted that its staff would evaluate the transferred OTS rules and might later recommend incorporating the transferred OTS regulations into FDIC rules that existed before the transfer, amending them, or rescinding them, as appropriate.

² 12 U.S.C. § 5411.

³ 12 U.S.C. § 5414(b).

⁴ 12 U.S.C. § 5414(c).

⁵ 76 Fed. Reg. 39247 (July 6, 2011).

⁶ 12 U.S.C. § 5412(b)(2)(B)(i)(II).

⁷ 12 U.S.C. § 1811 *et seq.*

⁸ 12 U.S.C. § 1813(q).

⁹ 76 Fed. Reg. 47652 (Aug. 5, 2011).

Part 390, Subpart K – Recordkeeping and Confirmation Requirements for Securities Transactions

One of the regulations transferred to the FDIC governs recordkeeping and confirmation requirements for state savings associations that effect securities transactions for customers. The OTS's regulation, formerly found at 12 C.F.R. Part 551, was transferred to the FDIC with only nominal changes and is now found in the FDIC's rules at 12 C.F.R. Part 390, Subpart K. Since 1979, the FDIC's Part 344 has governed recordkeeping and confirmation requirements for state nonmember banks and insured branches of foreign banks that effect securities transactions for customers.

The FDIC's Part 344 was adopted in 1979 in response to recommendations contained in the Securities and Exchange Commission's ("SEC") *Final Report of the Securities and Exchange Commission on Bank Securities Activities* (June 1977).¹⁰ At that time, the OCC and FRB, respectively, issued substantially similar rules.¹¹ For example, each of the agencies recordkeeping and confirmation rule included an exception from certain requirements related to maintaining account records, order tickets, and broker/dealer records, and written securities trading policies and procedures for banks effecting an average of fewer than 200 securities transactions for customers per calendar year over the prior three calendar year period (hereinafter referred to as "FDIC's Small Transaction Exception"). Over the course of time, the agencies amended their rules, respectively, to improve efficiency and reflect market developments. Today, the agencies' rules remain substantially similar although not identical.

In 2002, the OTS issued its recordkeeping and confirmation rules based on the other Federal banking agencies' recordkeeping and confirmation regulations.¹² However, the OTS made modifications to reflect SEC requirements for registered broker-dealers, investment companies and investment advisors. The main substantive difference from the other Federal banking agencies' rules was that OTS's rule contained a small transaction exception from the general recordkeeping and confirmation requirements for savings associations that effected an average of 500 or fewer transactions for customers per year over the three prior calendar years.¹³ In publishing its final rule, the OTS noted that it based the 500-transaction threshold on the de minimis exception for banks from being deemed a "broker" under the SEC's definition in section 3(a)(4) of the Securities Exchange Act of 1934 ("Exchange Act"),¹⁴ as amended by Section 201 of the Gramm-Leach-Bliley Act of 1999¹⁵ (the "GLB Act").¹⁶ The GLB Act amended the definition of "broker" in the Exchange Act to exclude specified bank securities activities from such definition.¹⁷ It also added a de minimis exception that permits banks to effect not more than 500 securities transactions for customers in any calendar year without being considered a broker under the Exchange Act.¹⁸

¹⁰ 44 FR 43260, 43261 (July 24, 1979).

¹¹ See 44 FR 43252 (July 24, 1979) (OCC's rule); 44 FR 43256 (July 24, 1979) (FRB's rule).

¹² 67 FR 76293, 76299 (Dec. 12, 2002); see 67 FR 39886 (June 11, 2002).

¹³ 12 C.F.R. § 551.20(b)(1).

¹⁴ 15 U.S.C. § 78c(a)(4)(B)(xi).

¹⁵ Pub. L. 106-102, 113 Stat. 1338, 1385 (1999).

¹⁶ 67 FR 39886, 39887 (June 11, 2002).

¹⁷ 15 U.S.C. § 78c(a)(4)(B)(i)-(xi). Under the Exchange Act, state savings associations are included in the definition of "bank." See 15 U.S.C. § 78c(a)(6).

¹⁸ 15 U.S.C. § 78c(a)(4)(B)(xi). The 500 transaction limit of the de minimis exception applies to the combined total number of bank broker transactions and dealer riskless principal transactions. See 17 C.F.R. § 240.3a5-1.

After comparing the FDIC's Part 344 with the transferred OTS rule, the staff has concluded that the FDIC's Part 344, with the two amendments addressed below, will continue to provide appropriate recordkeeping and confirmation requirements for all insured depository institutions for which the FDIC is the appropriate Federal banking agency. Further, the transferred OTS rules found at 12 C.F.R. Part 390, Subpart K are redundant and it is desirable to have all insured depository institutions for which the FDIC is the appropriate federal banking agency be subject to the same substantive rules governing recordkeeping and confirmation requirements for securities transactions.

After reviewing the rules currently found in 12 C.F.R. Part 390, Subpart K, staff recommends that the FDIC, as the appropriate Federal banking regulator for state savings associations, propose rescinding these regulations in their entirety, as described in the attached NPR. Rescinding Part 390, Subpart K will also serve to streamline the FDIC's rules and eliminate unnecessary regulations. If the proposal is adopted in final form with amendment to Part 344 to include State savings associations within its scope, all of the banks and state savings associations supervised by the FDIC would be subject to the FDIC's Part 344.

Part 344—Recordkeeping and Confirmation Requirements for Securities Transactions

FDIC's Small Transaction Exception

Section 344.2(a)(1) provides the FDIC's Small Transaction Exception that, as discussed above, exempts banks effecting less than an average of 200 transactions per year over a three-year period from certain of the recordkeeping and written policy requirements. The transaction threshold has been limited to 200 securities transactions since 1979, even though bank securities activities have increased over the past three decades. In 1999, Congress recognized the increase in bank securities activities when it enacted Title II of the GLB Act to carve out certain bank securities activities from the Exchange Act's definition of "broker," including the de minimis exception for banks effecting not more than 500 transactions in a calendar year.

Accordingly, staff recommends that the FDIC propose increasing from 200 transactions to 500 transactions the threshold of the FDIC's Small Transaction Exception in FDIC's Part 344 for all FDIC-supervised institutions, as described in the attached NPR. If adopted in final form, this amendment would create parity for recordkeeping and confirmation purposes for state savings associations and all other FDIC-supervised institutions bound by FDIC's Part 344.

Other Technical Amendments

FDIC's Part 344 contains a section defining pertinent words used throughout the rule. In order to clarify that FDIC's Part 344 applies to all insured depository institutions for which the FDIC is the appropriate Federal banking agency, staff recommends that the FDIC propose removing "bank" from the list of defined terms in section 344.3 and adding the definition of "FDIC-supervised institution," as described in the attached NPR. "FDIC-supervised institution" would mean any insured depository institution for which the FDIC is the appropriate Federal banking agency pursuant to section 3(q) of the FDI Act. As a result, the term "FDIC-supervised institution" and its plural form would replace "bank," "banks," "state nonmember bank (except a District bank)" and "foreign bank(s) having an insured branch" throughout Part 344. If adopted in final form, this aspect of the proposal would simplify Part 344.

EGRPRA

Under section 2222 of the EGRPRA, the FDIC is required to review all of its regulations, at least once every 10 years, in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions.¹⁹ The FDIC's review is ongoing and must be completed by 2016. As such, the attached NPR solicits comments on whether the proposed rescission of Part 390, Subpart K and amendments to Part 344 would impose any outdated or unnecessary regulatory requirements on any insured depository institutions.

Recommendation

Based on the foregoing, staff recommends that the Board approve the attached Resolution to adopt and authorize the publication in the *Federal Register* of the referenced NPR for public comment. Further, staff recommends that the action taken on this rulemaking be included as part of the EGRPRA review that is currently underway.

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[Attachment: Part 344, entitled *Recordkeeping and Confirmation Requirements for Securities Transactions*, as proposed to be modified herein.]

¹⁹ Pub.L.104-208 (Sept. 30, 1996).

PART 344—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR
SECURITIES TRANSACTIONS

344.1 Purpose and scope.

344.2 Exceptions.

344.3 Definitions.

344.4 Recordkeeping.

344.5 Content and time of notification.

344.6 Notification by agreement; alternative forms and times of notification.

344.7 Settlement of securities transactions.

344.8 Securities trading policies and procedures.

344.9 Personal securities trading reporting by ~~bank~~ officers and employees of FDIC-supervised institutions.

344.10 Waivers.

Authority: 12 U.S.C. 1817, 1818 and 1819.

§ 344.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to ensure that purchasers of securities in transactions effected by a ~~state nonmember insured bank (except a District bank) or a foreign bank having an insured branch~~ FDIC-supervised institutions are provided adequate information regarding transactions. This part is also designed to ensure that ~~banks~~ FDIC-supervised institutions subject to this part maintain adequate records and controls with respect to the securities transactions they effect.

(b) *Scope; general.* Any security transaction effected for a customer by a ~~bank~~ FDIC-supervised institution is subject to this part unless excepted by § 344.2. A ~~bank~~ An FDIC-supervised institution effecting transactions in government securities is subject to the notification, recordkeeping, and policies and procedures requirements of this part. This part also applies to municipal securities transactions by a ~~bank~~ FDIC-supervised institution 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.

§ 344.2 Exceptions.

(a) ~~A bank~~ (a) An FDIC-supervised institution effecting securities transactions for customers is not subject to all or part of this part 344 to the extent that they qualify for one or more of the following exceptions:

(1) *Small number of transactions.* The requirements of §§ 344.4(a)(2) through (4) and 344.8(a)(1) through (3) do not apply to a ~~bank~~ FDIC-supervised institution effecting an average of fewer than ~~200~~500 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.

(2) *Government securities.* The recordkeeping requirements of § 344.4 do not apply to ~~banks~~ FDIC-supervised institutions effecting fewer than 500 government securities brokerage transactions per year. This exemption does not apply to government securities dealer transactions by ~~banks~~ FDIC-supervised institutions.

(3) *Municipal securities.* This part does not apply to transactions in municipal securities effected by a ~~bank~~ FDIC-supervised institution 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.

(4) *Foreign branches.* Activities of foreign branches of a ~~bank~~ FDIC-supervised institutions shall not be subject to the requirements of this part.

(5) *Transactions effected by registered broker/dealers.* (i) This part does not apply to securities transactions effected for a ~~bank~~ an FDIC-supervised institution's customer by a registered broker/dealer if:

(A) The broker/dealer is fully disclosed to the ~~bank~~ customer; and

(B) The ~~bank~~ customer has a direct contractual agreement with the broker/dealer.

(ii) This exemption extends to ~~bank~~ arrangements with broker/dealers which involve ~~bank~~ FDIC-supervised institution employees when acting as employees of, and subject to the supervision of, the registered broker/dealer when soliciting, recommending, or effecting securities transactions.

(b) *Safe and sound operations.* Notwithstanding this section, every ~~bank~~ FDIC-supervised institution effecting securities transactions for customers shall maintain, directly or indirectly, effective systems of records and controls regarding their customer securities transactions to ensure safe and sound operations. The records and systems maintained must clearly and accurately reflect the information required under this part and provide an adequate basis for an audit.

§ 344.3 Definitions.

(a) *Asset-backed security* means 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.

~~(b)~~ *Bank* means a state nonmember insured bank (except a District bank) or a foreign bank having an insured branch.

~~(e)~~ (b) *Cash management sweep account* means a prearranged, automatic transfer of funds above a certain dollar level from a deposit account to purchase a security or securities, or any prearranged, automatic redemption or sale of a security or securities when a deposit account drops below a certain level with the proceeds being transferred into a deposit account.

~~(d)~~ (c) *Collective investment fund* means funds held by a ~~bank~~ FDIC-supervised institution as fiduciary and, consistent with local law, invested collectively:

(1) In a common trust fund maintained by such ~~bank~~ FDIC-supervised institution exclusively for the collective investment and reinvestment of monies contributed thereto by the ~~bank~~ FDIC-supervised institution 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 (26 U.S.C.).

~~(e)~~ (d) *Completion of the transaction* means:

(1) For purchase transactions, the time when the customer pays the ~~bank~~ FDIC-supervised institution any part of the purchase price (or the time when the ~~bank~~ FDIC-supervised institution 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~~ FDIC-supervised institution transfers the security into the account of the customer; and

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

~~(f)~~e) *Crossing of buy and sell orders* means a security transaction in which the same ~~bank~~FDIC-supervised institution acts as agent for both the buyer and the seller.

~~(g)~~f) *Customer* means any person or account, including any agency, trust, estate, guardianship, or other fiduciary account for which a ~~bank~~an FDIC-supervised institution effects or participates in effecting the purchase or sale of securities, but does not include a broker, dealer, ~~bank~~insured depository institution acting as a broker or a dealer, issuer of the securities that are the subject of the transaction or a person or account having a direct, contractual agreement with a fully disclosed broker/dealer.

~~(h)~~g) *Debt security* means any security, such as a bond, debenture, note, or any other similar instrument that evidences a liability of the issuer (including any security of this type that is convertible into stock or a 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.

~~(h)~~h) *FDIC-supervised institution* means any insured depository institution for which the Federal Deposit Insurance Corporation is the appropriate Federal banking agency pursuant to section 3(q) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(q).

(i) *Government security* means:

(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 and Exchange Commission; or

(4) Any put, call, straddle, option, or privilege on a security described in paragraph (i)(1), (2), or (3) of this section 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 through an automated quotation system operated by a registered securities association.

(j) *Investment discretion* means that, with respect to an account, ~~a bank~~ an FDIC-supervised institution directly or indirectly:

(1) Is authorized to determine what securities or other property shall be purchased or sold by or for the account; or

(2) 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 these investment decisions.

(k) *Municipal security* means a security which is a direct obligation of, or an obligation guaranteed as to principal or interest by, a State or any political subdivision, or any agency or

instrumentality of a State or any political subdivision, or any municipal corporate instrumentality of one or more States or any security which is an industrial development bond (as defined in 26 U.S.C. 103(c)(2)) the interest on which is excludable from gross income under 26 U.S.C.

103(a)(1) if, by reason of the application of paragraph (4) or (6) of 26 U.S.C. 103(c) (determined as if paragraphs (4)(A), (5) and (7) were not included in 26 U.S.C. 103(c), paragraph (1) of 26 U.S.C. 103(c) does not apply to such security. See 15. U.S.C. 78c(a)(29).

(l) *Periodic plan* means any written authorization for a ~~bank~~ FDIC-supervised institution to act as agent to purchase or sell for a customer a specific security or securities, in a specific amount (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 or the manner of calculating them. Periodic plans include dividend reinvestment plans, automatic investment plans, and employee stock purchase plans.

(m) *Security* means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, and any put, call, straddle, option, or privilege on any security or group or index of securities (including any interest therein or based on the value thereof), or, in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant 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~~insured depository institution 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.

§ 344.4 Recordkeeping.

- (a) *General rule.* ~~A bank~~ An FDIC-supervised institution effecting securities transactions for customers shall maintain the following records for at least three years:
 - (1) *Chronological records.* An itemized daily record of each purchase and sale of securities maintained in chronological order, and including:
 - (i) Account or customer name for which each transaction was effected;
 - (ii) Description of the securities;
 - (iii) Unit and aggregate purchase or sale price;
 - (iv) Trade date; and
 - (v) Name or other designation of the broker/dealer or other person from whom the securities were purchased or to whom the securities were sold;
 - (2) *Account records.* Account records for each customer, reflecting:
 - (i) Purchases and sales of securities;

- (ii) Receipts and deliveries of securities;
 - (iii) Receipts and disbursements of cash; and
 - (iv) Other debits and credits pertaining to transactions in securities;
- (3) *A separate memorandum (order ticket)* of each order to purchase or sell securities (whether executed or canceled), which shall include:
- (i) The accounts 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~~FDIC-supervised institution employee responsible for effecting the transaction;
 - (iv) The time the order was placed with the broker/dealer, or if there was no broker/dealer, time the order was executed or canceled;
 - (v) The price at which the order was executed; and
 - (vi) The broker/dealer utilized;
- (4) *Record of broker/dealers.* A record of all broker/dealers selected by the ~~bank~~FDIC-supervised institution to effect securities transactions and the amount of commissions paid or allocated to each broker during the calendar year; and
- (5) *Notifications.* A copy of the written notification required by §§ 344.5 and 344.6.
- (b) *Manner of maintenance.* Records may be maintained in whatever manner, form or format a ~~bank~~an FDIC-supervised institution deems appropriate, provided however, the records required by this section must clearly and accurately reflect the information required and provide an adequate basis for the audit of the information. Records may be maintained in hard copy, automated or electronic form provided the records are easily retrievable, readily available for inspection, and capable of being reproduced in a hard copy. A ~~bank~~An FDIC-supervised

institution may contract with third party service providers, including broker/dealers, to maintain records required under this part.

§ 344.5 Content and time of notification.

Every ~~bank~~ FDIC-supervised institution effecting a securities transaction for a customer shall give or send, by mail, facsimile or other means of electronic transmission, to the customer at or before completion of the transaction one of the types of written notification identified below:

(a) *Broker/dealer's confirmations.* (1) A copy of the confirmation of a broker/dealer relating to the securities transaction. ~~A bank~~ An FDIC-supervised institution may either have the broker/dealer send the confirmation directly to the ~~bank's~~ FDIC-supervised institution's customer or send a copy of the broker/dealer's confirmation to the customer upon receipt of the

confirmation by the ~~bank~~. ~~If a bank~~ FDIC-supervised institution. If an FDIC-supervised institution chooses to send a copy of the broker/dealer's confirmation, it must be sent within one business day from the ~~bank's~~ institution's receipt of the broker/dealer's confirmation; and

(2) If the ~~bank~~ FDIC-supervised institution is to receive remuneration from the customer or any other source in connection with the transaction, a statement of the source and amount of any remuneration to be received if such would be required under paragraph (b)(6) of this section; or

(b) *Written notification.* A written notification disclosing:

(1) Name of the ~~bank~~; FDIC-supervised institution;

(2) Name of the customer;

(3) Whether the ~~bank~~ FDIC-supervised institution 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;

(4) The date and time of execution, or the fact that the time of execution will be furnished 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) 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;

(6)(i) The amount of any remuneration received or to be received by the ~~bank~~FDIC-supervised institution from the customer, and the source and amount of any other remuneration received or to be received by the ~~bank~~FDIC-supervised institution in connection with the transaction, unless:

(A) Remuneration is determined pursuant to a prior written agreement between the ~~bank~~FDIC-supervised institution and the customer; or

(B) In the case of government securities and municipal securities, the ~~bank~~FDIC-supervised institution received the remuneration in other than an agency transaction; or

(C) In the case of open end investment company securities, the ~~bank~~FDIC-supervised institution has provided the customer with a current prospectus which discloses all current fees, loads and expenses at or before completion of the transaction;

(ii) If the ~~bank~~FDIC-supervised institution elects not to disclose the source and amount of remuneration it has or will receive from a party other than the customer pursuant to paragraph

(b)(6)(i)(A), (B), or (C) of this section, the written notification must disclose whether the

~~bank~~FDIC-supervised institution has received or will receive remuneration from a party other than the customer, and that the ~~bank~~FDIC-supervised institution will furnish within a reasonable time the source and amount of this remuneration upon written request of the customer. This

election is not available, however, if, with respect to a purchase, the ~~bank~~FDIC-supervised

institution was participating in a distribution of that security; or, with respect to a sale, the bankFDIC-supervised institution was participating in a tender offer for that security;

(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 bankFDIC-supervised institution will furnish this information within a reasonable time upon written request;

(8) 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 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 shall not apply to a transaction in a debt security that either has a maturity date that may be extended by the issuer thereof, 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 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;

(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) 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 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.

§ 344.6 Notification by agreement; alternative forms and times of notification.

~~A bank~~An FDIC-supervised institution may elect to use the following alternative notification procedures if the transaction is effected for:

(a) *Notification by agreement.* Accounts (except periodic plans) where the ~~bank~~FDIC-supervised institution does not exercise investment discretion and the ~~bank~~FDIC-supervised institution and the customer agree in writing to a different arrangement as to the time and content of the written

notification; provided however, that such agreement makes clear the customer's right to receive the written notification pursuant to § 344.5 (a) or (b) at no additional cost to the customer.

(b) *Trust accounts.* Accounts (except collective investment funds) where the ~~bank~~FDIC-supervised institution exercises investment discretion in other than in an agency capacity, in which instance ~~the bank~~it 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~~FDIC-supervised institution may charge such person a reasonable fee for providing this information.

(c) *Agency accounts.* Accounts where the ~~bank~~FDIC-supervised institution exercises investment discretion in an agency capacity, in which instance:

(1) The ~~bank~~FDIC-supervised institution 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~~FDIC-supervised institution at the end of such period and all debits, credits and transactions in the customer's accounts during such period; and

(2) If requested by the customer, the ~~bank~~FDIC-supervised institution shall give or send to each customer within a reasonable time the written notification described in § 344.5. The ~~bank~~FDIC-supervised institution may charge a reasonable fee for providing the information described in § 344.5.

(d) *Cash management sweep accounts.* ~~A bank~~ An FDIC-supervised institution effecting a securities transaction for a cash management sweep account shall give or send its customer a written statement, in the same form as required under paragraph (f) of this section, for each month in which a purchase or sale of a security takes place in the account and not less than once

every three months if there are no securities transactions in the account. Notwithstanding the provisions of this paragraph (d), ~~banks~~FDIC-supervised institutions that retain custody of government securities that are the subject of a hold-in-custody repurchase agreement are subject to the requirements of ~~17 CFR 403.5~~(17 CFR 403.5(d)).

(e) *Collective investment fund accounts.* The ~~bank~~FDIC-supervised institution shall at least annually give or send to the customer 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~~FDIC-supervised institution.

(f) *Periodic plan accounts.* The ~~bank~~FDIC-supervised institution shall give or send to the customer not less than once every three months a written statement showing:

(1) The funds and securities in the custody or possession of the ~~bank~~FDIC-supervised institution;

(2) All service charges and commissions paid by the customer in connection with the transaction; and

(3) All other debits and credits of the customer's account involved in the transaction; provided that upon written request of the customer, the ~~bank~~FDIC-supervised institution shall give or send the information described in § 344.5, except that any such information relating to remuneration paid in connection with the transaction need not be provided to the customer when the remuneration is paid by a source other than the customer. The ~~bank~~FDIC-supervised institution may charge a reasonable fee for providing information described in § 344.5.

§ 344.7 Settlement of securities transactions.

(a) ~~A bank~~(a) An FDIC-supervised institution shall not effect or enter into a contract for the purchase or sale of a security (other than an exempted security as defined in 15 U.S.C.

78c(a)(12), government security, municipal security, commercial paper, bankers' acceptances, or commercial bills) that provides for payment of funds and delivery of securities later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(b) Paragraphs (a) and (c) of this section shall not apply to contracts:

(1) For the purchase or sale of limited partnership interests that are not listed on an exchange or for which quotations are not disseminated through an automated quotation system of a registered securities association; or

(2) For the purchase or sale of securities that the Securities and Exchange Commission (SEC) may from time to time, taking into account then existing market practices, exempt by order from the requirements of paragraph (a) of SEC Rule 15c6--1, 17 CFR 240.15c6--1(a), either unconditionally or on specified terms and conditions, if the SEC determines that an exemption is consistent with the public interest and the protection of investors.

(c) Paragraph (a) of this section shall not apply to contracts for the sale for cash of securities that are priced after 4:30 p.m. Eastern time on the date the securities are priced and that are sold by an issuer to an underwriter pursuant to a firm commitment underwritten offering registered under the Securities Act of 1933, 15 U.S.C. 77a et seq., or sold to an initial purchaser by ~~a bank~~an FDIC-supervised institution participating in the offering. ~~A bank~~ An FDIC-supervised institution shall not effect or enter into a contract for the purchase or sale of the securities that

provides for payment of funds and delivery of securities later than the fourth business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(d) For the purposes of paragraphs (a) and (c) of this section, the parties to a contract shall be deemed to have expressly agreed to an alternate date for payment of funds and delivery of securities at the time of the transaction for a contract for the sale for cash of securities pursuant to a firm commitment offering if the managing underwriter and the issuer have agreed to the date for all securities sold pursuant to the offering and the parties to the contract have not expressly agreed to another date for payment of funds and delivery of securities at the time of the transaction.

§ 344.8 Securities trading policies and procedures.

(a) *Policies and procedures.* Every ~~bank~~ FDIC-supervised institution 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; or

(ii) Execute transactions in securities for customers;

(2) Assignment of responsibility for supervision and reporting, separate from those in paragraph

(a)(1) of this section, with respect to all officers or employees who process orders for notification or settlement purposes, or perform other back office functions with respect to securities transactions effected for customers;

(3) 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; and

(4) 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.

§ 344.9 Personal securities trading reporting by bank officers and employees.

(a) *Officers and employees subject to reporting.* ~~Bank~~ FDIC-supervised institution officers and employees who:

- (1) Make investment recommendations or decisions for the accounts of customers;
- (2) Participate in the determination of such recommendations or decisions; or
- (3) In connection with their duties, obtain information concerning which securities are being purchased or sold or recommend such action, must report to the ~~bank~~ FDIC-supervised institution, within 30-calendar days after the end of the calendar quarter, all transactions in securities made by them or on their behalf, either at the ~~bank~~ FDIC-supervised institution 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.

(b) *Exempt transactions.* Excluded from this reporting requirement are:

- (1) Transactions for the benefit of the officer or employee over which the officer or employee has no direct or indirect influence or control;
- (2) Transactions in registered investment company shares;
- (3) Transactions in government securities; and

(4) All transactions involving in the aggregate \$10,000 or less during the calendar quarter.

(c) *Alternative report.* Where a ~~bank~~ an FDIC-supervised institution acts as an investment adviser to an investment company registered under the Investment Company Act of 1940, the ~~bank's~~ FDIC-supervised institution's officers and employees may fulfill their reporting requirement under paragraph (a) of this section by filing with the ~~bank~~ FDIC-supervised institution the "access persons" personal securities trading report required by SEC Rule 17j--1, 17 CFR 270.17j-1.

§ 344.10 Waivers.

The Board of Directors of the FDIC, in its discretion, may waive for good cause all or any part of this part 344.