

Supporting Statement
Recordkeeping Requirements for Securities Transactions – 12 CFR 12 and 151
OMB Control Number 1557-0142

A. Justification.

1. Circumstances that make the collection necessary:

12 CFR parts 12 and 151¹ were issued by the Office of the Comptroller of the Currency (OCC) subsequent to the Securities and Exchange Commission's (SEC) Final Report on Bank Securities Activities, and its provisions in part reflect the recommendations of the SEC in their report. Similar requirements were adopted simultaneously by the Board of Governors of the Federal Reserve System (the Board) and the Federal Deposit Insurance Corporation (FDIC).

The SEC study was conducted and reports prepared pursuant to the mandate of section 11A(e) of the Securities Exchange Act of 1934 (Pub. L. 94-29). Section 11A(e) provides in part:

The Commission is authorized and directed to make a study of the extent to which persons excluded from the definitions of “broker” and “dealer” maintain accounts on behalf of public customers for buying and selling securities registered under Section 12 of this title and whether such exclusions are consistent with the protection of the investors and the other purposes of this title.

As a result of its mandated study, the SEC concluded that there were differences in the regulatory approach between broker-dealers, and banks that effect securities transactions for customers, but are exempt from the definition of broker-dealer under the provisions of the Exchange Act.

It was to address these differences that parts 12 and 151 were prepared and adopted. The regulations ensure national bank and Federal savings association compliance with securities laws and improves the protection afforded persons who purchase and sell securities through banks. Prior to the enactment of parts 12, 151, and their counterpart regulations, no uniform system existed for the handling of customer security transactions by banks and Federal savings associations (institutions). Some institutions had no established procedures. Information provided to customers regarding transactions varied widely from institution to institution. Recordkeeping practices also varied widely. In many institutions, the audit trail was inadequate or non-existent. The situation raised two major concerns:

- *Inadequate disclosure of information to customers* – Customers had to rely on the expertise of the institution and had to trust that it was acting in their best interest.
- *Potential for fraudulent practices* – In many institutions, no controls existed to discourage or detect such practices, and if fraudulent practices were suspected, no audit trail and, therefore, no evidence existed to prove or disprove the suspicions.

¹ Originally issued as 12 CFR part 551 by the Office of Thrift Supervision.

The conduct of broker-dealers is governed by the various statutes administered by the SEC, principally the Exchange Act of 1934, and by SEC rules, regulations, and reporting and inspection requirements. The general effect of this regulatory pattern is to require broker-dealers to adhere to specific requirements and procedures designed to promote the protection of investors and the maintenance of fair and efficient markets. In consideration of the inequality in regulatory requirements between broker-dealers and banks which effect securities transactions for customers, parts 12, 151 and their counterpart regulations were adopted to bring the banking industry into conformity with the standards of the securities industry for effecting securities transactions. (See generally the confirmation requirements of the Exchange Act and Exchange Act Rules 17a and 17a-4 on recordkeeping requirements).

Under 12 U.S.C. 92a and 1464(n), the OCC is granted supervisory responsibility for national bank and savings association trust activities. Further, under 12 U.S.C. 93a and 1462a, the OCC is granted authority to prescribe rules and regulations to carry out its responsibilities. The requirements of parts 12 and 151 are necessary for the OCC to effectively carry out its statutory responsibilities with regard to trust activities.

2. Use of the information:

These recordkeeping requirements serve to establish an audit trail. That audit trail is used by the OCC in its regulatory examinations as a tool to evaluate a institution's compliance with the anti-fraud provisions of the Federal securities laws. Further, the records provide a basis for adequate disclosure to customers who effect securities transactions through national banks.

3. Consideration of the use of improved information technology:

An institution may use any software or hardware that allows for the creation of an adequate audit trail. While some institutions have very high volumes of activity and others have significantly less volume, most are automated to a significant extent.

4. Efforts to identify duplication:

This recordkeeping requirement is not duplicative of any other requirement imposed on institutions.

5. Methods used to minimize burden on small entities:

Parts 12 and 151 impose the minimum burden possible in keeping with the OCC's supervisory and public protection responsibilities.

6. Consequences to the Federal program if the collection were conducted less frequently:

Less frequent collection would not comply with applicable statutes, would be inadequate for OCC purposes, and could impair the OCC's supervisory program.

7. Special circumstances that would cause an information collection to be conducted in a manner inconsistent with 5 CFR Part 1320:

None. The information collection is conducted in accordance with the requirements of 5 CFR Part 1320.

8. Efforts to consult with persons outside the agency:

On January 20, 2012, the OCC issued a 60-Day Federal Register notice regarding the collection, 77 FR 3034. No comments were received.

9. Payment or gift to respondents:

None.

10. Any assurance of confidentiality:

No information is reported to the OCC. Any information reviewed is treated in the same confidential manner that other examination-related information is treated.

11. Justification for questions of a sensitive nature:

There are no questions of a sensitive nature.

12. Burden estimate:

The OCC estimates that 1,326 national banks and savings associations will be subject to the requirements of parts 12 and 151. All of these banks have trust departments. The burden is estimated as follows:

Cite and Burden Type	Information Collection Requirements in 12 CFR Parts 12 and 151	Number of Respondents	Average Hours Per Response	Estimated Burden Hours
12 CFR 2.3, 151.50 and 151.90 Recordkeeping (usual and customary)	<p>Recordkeeping. – Record maintenance may include the use of automated or electronic records provided the records are easily retrievable, readily available for inspection and capable of being reproduced in hard copy. A national bank or savings association effecting securities transactions for customers shall maintain the following records for at least three years:</p> <ul style="list-style-type: none"> • Chronological records. An itemized daily record of each purchase and sale of securities maintained in chronological order, and including 1) account or customer name, 2) description of the securities, 3) unit and aggregate purchase or sale price, 4) trade date, and 5) name or other 	1,326	1 hour	1,326 hours

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	<p>designation of the broker/dealer from whom the securities were purchased or to whom the securities were sold.</p> <ul style="list-style-type: none"> • Account records. Account records for each customer reflecting: 1) purchases and sales of securities, 2) receipts and deliveries of securities, 3) receipts and disbursements of cash, and 4) other debits and credits pertaining to securities transactions. • Memorandum order. A separate memorandum (order ticket) of each order to purchase or sell securities (whether executed or canceled) including: 1) account or customer name, 2) type of order (market order, limit order, or subject to special instructions), 3) time the trader or other bank employee received the order, 4) time the trader placed the order with the broker/dealer, or if there was no broker/dealer, time the order was executed or canceled, 5) price at which the order was executed, and 6) name of broker/dealer. • Record of broker/dealers. A record of all broker/dealers selected by the bank or savings association to effect securities transactions and the amount of commissions paid or allocated to each broker during the calendar year. • Notifications. A copy of the written notification required by §§ 12.4, 12.5 and 151.90. 			
<p>12 CFR 12.4, 12.5, 151.70, and 151.100 Disclosure (usual and customary)</p>	<p>Content and time of notification – Unless a national bank elects to provide notification by one of the means specified in § 12.5 and 151.70, a national bank/savings association effecting a securities transaction for a customer shall give or send to the customer either of the following types of notifications at or before completion of the transaction, or if the bank uses a registered broker/dealer’s confirmation, within one business day from the bank’s receipt of the registered broker/dealer’s confirmation:</p> <ul style="list-style-type: none"> • Written notification disclosing information in §§ 12.4(a)(1) through (a)(12) • Copy of the registered broker/dealer’s confirmation <p>Notification by agreement; alternative forms</p>	<p>1,326</p>	<p>1 hour</p>	<p>1,326 hours</p>

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	<p>and times of notification – A national bank/savings association may elect to use the following notification procedures as an alternative to complying with §§ 12.4 and 151.100 (see chart):</p> <ul style="list-style-type: none"> • Notification by agreement – A national bank effecting a securities transaction for an account in which the bank does not exercise investment discretion shall give or send written 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 §12.4(a) or (b) at no additional cost to the customer. • Trust transactions – A national bank effecting a securities transaction for an account in which the bank exercises investment discretion other than in an agency capacity shall give or send written notification within a reasonable time if a person having the power to terminate the account, or, if there is no such person, any person holding a vested beneficial interest in the account, requests written notification pursuant to § 12.4(a) or (b). Otherwise, notification is not required. • Agency transactions – A national bank effecting a securities transaction for an account in which the bank exercises investment discretion in an agency capacity shall give or send, not less than once every three months, an itemized statement to each customer that specifies the funds and securities in the custody or possession of the bank at the end of the period and all debits, credits and transactions in the customer’s account during the period. If requested by the customer, the bank shall give or send written notification to the customer pursuant to § 12.4(a) or (b) within a reasonable time. • Periodic plan transactions – A national bank effecting a securities transaction for a periodic plan (except 			

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	<p>for a cash management sweep service) shall give or send to its customer not less than once every three months a written statement showing 1) the customer's funds and securities in the custody or possession of the bank; 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. A national bank effecting a securities transaction for a cash management sweep service or other periodic plan shall give or send its customer a written statement for each month in which a purchase or sale of a security takes place in a deposit account and not less than once every three months if there are no securities transactions in the account, subject to any other applicable laws and regulations.</p>			
<p>12 CFR 12.7(a)(1)-(3) and 151.140 Recordkeeping</p> <p>12 CFR 151.40</p>	<p>Securities trading policies and procedures – A national bank effecting securities transactions for customers is required to maintain and adhere to policies and procedures that assign responsibility for supervision of employees who perform securities trading functions; provide for the fair and equitable allocation of securities prices to accounts; and provide for the crossing of buy and sell orders on a fair and equitable basis. New written policies and procedures for savings associations.</p>	<p>13</p> <p>1,326</p> <p>9</p>	<p>8 hours</p> <p>2 hours</p> <p>10 hours</p>	<p>104 hours</p> <p>2,652 hours</p> <p>90 hours</p>
<p>12 CFR 12.7(a)(4), 12.7(b) and 151.150 Reporting (usual and customary)</p>	<p>Securities trading policies and procedures – A national bank effecting securities transactions for customers shall require bank officers and employees to report to the bank, within ten business days after the end of the calendar quarter, all personal transactions in securities made by them or on their behalf in which they have a beneficial interest, if the officers and employees: 1) make investment recommendations or decisions for the accounts of customers; 2) participate in the determination of the recommendations or decisions; or 3) in connection with their duties, obtain information concerning which securities are purchased, sold, or recommended for purchase or sale by the bank. The report must</p>	<p>1,326</p>	<p>1 hour</p>	<p>1,326 hours</p>

Cite and Burden Type	Information Collection Requirements in 12 CFR Parts 12 and 151	Number of Respondents	Average Hours Per Response	Estimated Burden Hours
	contain: 1) the date of the transaction, the title and number of shares, and the principal amount of each security; 2) the nature of the transaction (i.e., purchase, sale, or other type of acquisition or disposition); 3) the price at which the transaction was effected; and 4) the name of the registered broker, registered dealer, or bank with or through whom the transaction was effected.			
12 CFR 12.8 Reporting	Waivers – A national bank may file a written request with the OCC for waiver of one or more of the requirements set forth in §§ 12.2 through 12.7, either in whole or in part.	3	40 hour	120 hours
Total		1,326 respondents		6,944 hours

Cost of Hour Burden to Respondents:

The OCC estimates the cost of the hour burden to respondents (by wage rate categories) as follows

Clerical (\$20/hour):	80% x 6,944 hours = 5,555.20 hours @ \$20 = \$ 111,104
Managerial/technical (\$40/hour):	20% x 6,944 hours = 1,388.80 hours @ \$40 = \$ 55,552
Senior Management (\$80/hour):	not applicable
Legal Counsel (\$100/hour):	not applicable
Total cost of hour burden to respondents:	\$ 166,656

13. Estimate of total annual costs to respondents (excluding cost of hour burden in Item #12):

None.

14. Estimate of annualized costs to the Federal government:

None.

15. Change in burden:

The OCC is citing a reduction of (2) hours due to a mathematical error in the burden calculation for the previously approved collection.

16. Information regarding collections whose results are to be published for statistical use:

The OCC has no plans to publish the information for statistical purposes.

17. Reasons for not displaying OMB approval expiration date:

Not applicable.

18. Exceptions to the certification statement in Item 19 of OMB Form 83-I:

None.

B. Collections of Information Employing Statistical Methods.

Not applicable.

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