

RESCINDED

OCC 1999-40

Subject: Year 2000 Standards for Safety and Soundness for Bank Transfer Agents and Broker-Dealers

To: Chief Executive Officers of All National Banks, Department and Division Heads, and All Examining Personnel

Date: October 15, 1999

Description: Interim Guidelines

This rescission does not change the status of the transmitted document. To determine the current status of the transmitted document, refer to the Code of Federal Regulations, www.occ.gov, or the original issuer of the document.

The OCC has previously issued Y2K safety and soundness standards that national banks are expected to meet to achieve Y2K readiness in their "mission-critical" systems. The attached guidelines supplement the earlier standards by addressing transfer agent and broker dealer activities where Y2K readiness is important, even if the activity is not mission-critical in a particular bank. The "Supplemental Guidelines" impose only two requirements. First, no later than November 1, 1999, each bank transfer agent and broker or dealer must identify all transfer agent and broker or dealer systems that are not Y2K ready. Second, by November 15, 1999, the bank transfer agent and bank broker or dealer must develop and implement an effective written business-resumption contingency plan for each system that is not Y2K ready.

The "Supplemental Guidelines" apply only to the following: (1) registered transfer agents that are national banks, national bank operating subsidiaries, and federal branches subject to the safety and soundness provisions of section 39 of the Federal Deposit Insurance Act; and (2) national banks and federal branches subject to the provisions of section 39 that effect more than a specified de minimis number of securities brokerage or dealer transactions.

For more information, contact Karl Betz, attorney, Legislative and Regulatory Activities Division, (202) 874-5090; Stuart Feldstein, assistant director, Legislative and Regulatory Activities Division, (202) 874-5090; Vaughn Folks, national bank examiner, (202) 874-4270; or Joe Malott, national bank examiner, (202) 874-4967.

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

Related Links

- [64 FR 52638](#)

September 30, 1999

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency (OCC)

12 CFR Part 30

[Docket No. 99-12]

RIN 1557-AA73

Guidelines Establishing Year 2000 Standards for Safety and Soundness for National Bank Transfer Agents and Broker-Dealers

ACTION: Interim rule with request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is issuing interim guidelines (Supplemental Guidelines) establishing Year 2000 standards for safety and soundness for national bank transfer agents and brokers or dealers pursuant to section 39 of the Federal Deposit Insurance Act (FDI Act). Last year, the OCC, together with the other member agencies of the Federal Financial Institutions Examination Council (FFIEC), published joint Guidelines (Year 2000 Guidelines) establishing standards for safety and soundness that insured depository institutions must follow to ensure the Year 2000 readiness of their mission-critical systems. These Supplemental Guidelines complement the Year 2000 Guidelines by describing two essential steps that national banks and, in certain cases, national bank operating subsidiaries, and Federal branches that are subject to the provisions of section 39 of the FDI Act must take to ensure the Year 2000 readiness of their transfer agent and broker or dealer automated systems.

DATES: This interim rule is effective on September 30, 1999. Comments must be received by November 29, 1999.

ADDRESSES: Direct comments to the Office of the Comptroller of the Currency, Communications Division, 250 E Street, SW, Washington, DC 20219, Attention: Docket No. 99-12. Comments may be inspected and photocopied at the same location. In addition, comments may be sent by fax to (202) 874-5274 or by electronic mail to regs.comments@occ.treas.gov.

FOR FURTHER INFORMATION CONTACT: Karll Betz, Attorney, Legislative and Regulatory Activities (202) 874-5090; Stuart E. Feldstein, Assistant Director, Legislative and Regulatory Activities (202) 874-5090; Joe Malott, National Bank Examiner (202) 874-4967; or Vaughn Folks, National Bank Examiner (202) 874-4270.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 39 of the FDI Act (12 U.S.C. 1831p-1), the OCC is issuing Supplemental Guidelines establishing Year 2000 standards for safety and soundness for the following: (1) Registered transfer agents that are national banks, national bank operating subsidiaries, and Federal branches subject to the provisions of section 39 of the FDI Act (bank transfer agents); and (2) national banks and Federal branches subject to the provisions of section 39 of the FDI Act that effect securities brokerage or dealer transactions (bank brokers or dealers). These standards apply to transfer agent and broker or dealer systems that have not been designated as mission-critical and, therefore, are not covered under the Year 2000 Guidelines jointly issued by the OCC and the other member agencies of the FFIEC (collectively, the Agencies), which also implement section 39 of the FDI Act. The Securities and Exchange Commission (SEC) recently approved a rule for non-bank transfer agents and broker-dealers that further highlights these risks. See Year 2000 Operational Capability

Requirements for Registered Broker-Dealers and Transfer Agents, 64 FR 42012 (August 3, 1999) (imposing Year 2000 readiness requirements on non-bank transfer agents and broker-dealers). -----

\1\ Section 39 requires each appropriate Federal banking agency to establish operational and managerial standards relating to, among other things, internal controls, information systems, and internal audit systems, or such other standards as each agency determines to be appropriate.

\2\ The OCC, the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) jointly issued the Year 2000 Guidelines.

\3\ The SEC's rule requires broker-dealers and non-bank transfer agents to file a notice regarding any Year 2000 problems with the SEC by August 31, 1999, but allows firms that have Year 2000 problems to continue to operate if they certify that they will complete their Year 2000 efforts no later than November 15, 1999. Firms that are not Year 2000 compliant on November 15 will be required to cease operations by December 1, 1999. -----

On October 15, 1998, the Agencies issued joint interim final guidelines (Year 2000 Guidelines) establishing Year 2000 standards for safety and

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soundness pursuant to section 39 of the FDI Act. 63 FR 55480 (Oct. 15, 1998). The Year 2000 Guidelines describe certain essential steps that each insured depository institution must take in order to achieve Year 2000 readiness of its mission-critical systems.

The Supplemental Guidelines complement but do not supersede the existing Year 2000 Guidelines. Therefore, if a national bank has designated or should have designated a transfer agent or broker-dealer system as mission-critical, the standards contained in the Year 2000 Guidelines continue to apply to these systems, including the renovation, testing, and contingency planning deadlines that are earlier than the deadlines contained in the Supplemental Guidelines.

The FFIEC has also issued Guidance Concerning Fiduciary Services and Year 2000 Readiness (September 2, 1998). This issuance instructed financial institutions that offer transfer agent services to clients to ensure that they address any Year 2000 concerns, particularly those associated with the use of automated transfer agent systems. The Supplemental Guidelines complement this guidance by providing specific instructions on the steps national banks, and where applicable, their operating subsidiaries, or Federal branches that are subject to section 39 of the FDI Act must take at a minimum to ensure that their automated transfer agent and broker or dealer systems are Year 2000 ready.

The OCC anticipates that most bank transfer agents and bank brokers or dealers will already have satisfied the safety and soundness standards set forth in the Supplemental Guidelines. Plans or procedures that a national bank has already adopted may suffice for purposes of complying with the Supplemental Guidelines if they have been deemed acceptable by the OCC. However, the Supplemental Guidelines will help ensure that non-mission-critical transfer agent and broker or dealer systems are Year 2000 ready.

Description of Supplemental Guidelines

Definitions (Section C.)

The Supplemental Guidelines define certain key terms to help clarify the types of actions national banks and, where applicable, national bank operating subsidiaries, and Federal branches that are subject to the provisions of section 39 of the FDI Act, are expected to undertake. In addition to those terms previously defined in the Year 2000 Guidelines, these Supplemental Guidelines define the terms "bank transfer agent," "bank broker or dealer," and "system."

For example, the term "bank transfer agent" covers a national bank that provides transfer agent services directly or through an operating subsidiary, or a Federal branch that is subject to the provisions of section 39 of the FDI Act, and either

the national bank, operating subsidiary or Federal branch is a registered transfer agent whose appropriate regulatory agency, as that term is defined in 15 U.S.C. 78c(a)(34), is the OCC. For purposes of these Supplemental Guidelines, the term "bank transfer agent" does not cover a transfer agent that qualifies as an issuer or small transfer agent as these terms are defined under SEC rules. 17 CFR 240.17Ad- 13(d)(1) and (2). -----

\4\ The OCC is the appropriate regulatory agency for operating subsidiaries of national banks that are registered transfer agents. The Securities Exchange Act of 1934 defines "appropriate regulatory agency," when used with respect to transfer agents, as "the Comptroller of the Currency, in the case of a national bank or a bank operating under the Code of Law for the District of Columbia, or a subsidiary of any such bank." 15 U.S.C. 78(c)(a)(34)(B)(i) (emphasis added). -----

The term "bank broker or dealer" means a national bank or a Federal branch that is subject to the provisions of section 39 of the FDI Act, that effects securities brokerage or dealer transactions for customers. This definition does not include operating subsidiaries of national banks because national bank operating subsidiaries are subject to the SEC's regulations. For purposes of these Supplemental Guidelines, the term "bank broker or dealer" does not cover a national bank effecting fewer than 500 securities brokerage transactions per year for customers over the prior three calendar year period. -----

\5\ This exception is drawn from existing OCC provisions in 12 CFR Part 12 exempting national banks that do not engage in extensive securities transactions from the specific recordkeeping and securities policies and procedures set forth in that part. -----

Year 2000 Standards for Safety and Soundness (Section D.)

The Supplemental Guidelines impose two requirements. First, no later than November 1, 1999, each bank transfer agent and broker or dealer must identify all transfer agent or broker or dealer systems that are not Year 2000 ready. Second, for each non-Year 2000 ready transfer agent or broker or dealer system the bank transfer agent or bank broker or dealer must develop and implement an effective written business resumption contingency plan by November 15, 1999. Among other things, this contingency plan must describe how the bank transfer agent or bank broker or dealer will mitigate the risks associated with the failure of the transfer agent and broker or dealer systems.

As noted earlier, plans and procedures already adopted may suffice if the OCC has deemed them acceptable. Nevertheless, contingency planning is a dynamic process. A contingency plan may become inadequate at a later date if it is not revised to address current needs. Accordingly, each bank transfer agent and bank broker or dealer must continue to update the contingency plans they have developed and implemented, as needed, to ensure the plans remain effective.

This interim rule also updates 12 CFR part 30 pertaining to safety and soundness standards issued under section 39 of the FDI Act. The Supplemental Guidelines published today will appear as appendix C to part 30. This interim rule makes minor conforming amendments to part 30 to incorporate appropriate references to the Supplemental Guidelines.

This interim rule makes no substantive change to part 30.

Request for Comment

The OCC invites comment on all aspects of the Supplemental Guidelines.

Request for Comments on Plain Language

On June 1, 1998, the President issued a Memorandum directing each agency in the Executive branch to write its rules in plain language. This directive is effective for all new proposed and final rulemaking documents issued on or after January 1, 1999. The OCC invites comments on how to make this interim rule clearer. For example, you may wish to discuss: (1) Whether we have organized the material to suit your needs; (2) whether the requirements of this interim rule are clear; or (3) whether there is something else we could do to make this rule easier to understand.

Request for Comment on Impact of Guidelines on Community Banks

The OCC also seeks comments on the impact of this interim rule on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comments on the impact of this interim rule on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the interim rule could be achieved, for community banks, through an alternative approach.

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Effective Date

The OCC finds good cause for issuing this interim rule effective immediately, without prior notice and comment. (*Cf.* 5 U.S.C. 553(b)(B) (Administrative Procedure Act (APA) provision permitting an agency to issue a rule without prior notice and comment when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest); 5 U.S.C. 553(d) (good cause exception to APA requirement for a 30-day delayed effective date for interim rule); 12 U.S.C. 4802(b)(1) (good cause exception to the CDRIA requirement that the Federal banking agencies make rules effective on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form). Making this interim rule effective immediately is essential for ensuring that the OCC can properly and timely address the Year 2000 problem and that insured depository institutions can achieve Year 2000 readiness in the relatively short time remaining before Year 2000 problems may begin to occur. The OCC notes that Congress recently underscored the importance and urgency of ensuring Year 2000 readiness in the financial services sector by passing the Examination Parity and Year 2000 Readiness for Financial Institutions Act, Public Law 105-164, sec. 2, 112 Stat. 32, 32 (1998). Congress expressly found that the Year 2000 problem poses a serious challenge to the American economy, including the Nation's banking and financial services industries, and that Federal financial regulatory agencies must have sufficient examination authority to ensure that the safety and soundness of the Nation's financial institutions will not be at risk. See also the Y2K Act, Pub. L. 106-37, 113 Stat. 185 (July 20, 1999) (addressing the economic threat posed by Year 2000 problems). Under these circumstances, the OCC concludes that it has good cause for issuing this interim rule with an immediate effective date, without prior notice and comment. Nevertheless, the OCC is inviting comment and will consider the comments received before finalizing the rule.

Regulatory Flexibility Act Analysis

An initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) is required when an agency is required to publish a general notice of proposed rulemaking. 5 U.S.C. 603. As noted above, the OCC concluded, for good cause, that this interim rule should take immediate effect and, therefore, that a notice of proposed rulemaking is not required. Accordingly, the RFA does not require an initial regulatory flexibility analysis of this interim rule.

Nonetheless, the OCC has considered the likely impact of this interim rule on small entities and believes that this interim rule will not have a significant economic impact on a substantial number of small entities. The potential inability of computers to correctly recognize certain dates in 1999, and on and after January 1, 2000, compels all national banks, including small national banks, to formulate appropriate and timely management responses. The interim rule provides a procedural framework for formulating that response and reiterates the OCC's expectations regarding appropriate business practices for achieving Year 2000 readiness. For example, as indicated earlier in this preamble, plans and procedures that bank transfer agents and bank broker or dealers have already developed to achieve Year 2000 readiness can satisfy the Supplemental Guidelines if they have been deemed acceptable by the OCC.

The OCC invites interested persons to submit comments on the impact of the interim rule on small entities for consideration in the development of the final rule.

Paperwork Reduction Act

The OCC invites comment on:

(1) Whether the proposed collection of information contained in the Supplemental Guidelines are necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(2) The accuracy of the OCC's estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, minutes, and purchase of services to provide information.

The collection of information requirement contained in this interim rule has been submitted to and approved by the OMB under its emergency procedures and in accordance with the Paperwork Reduction Act of 1995. 44 U.S.C. 3507. Since OMB clearance is for a six-month period, OCC will use any comments received to develop its renewed request if appropriate. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1557-0214), Washington, DC 20503, with a copy to the Communications Division (1557-0214), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Respondents and recordkeepers are not required to respond to this collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB Control Number for this collection is 1557-0214.

In addition to the paperwork usually maintained by a national bank in the regular course of business, the Supplemental Guidelines impose some additional paperwork burden. This burden is found in appendix C, section D to part 30. The OCC needs this information to assess a national bank's compliance with the Supplemental Guidelines set forth in appendix C. The likely respondents are national banks.

Estimated number of respondents: 98.

Estimated average annual burden hours per respondent: 1.6 hours. -----

\6\ Consistent with guidance provided by the Office of Management and Budget, the burden hour estimate is presented as an average for all national banks subject to the Supplemental Guidelines. Most of the paperwork burden associated with this interim rule results from the requirement to prepare a contingency plan. The OCC expects that only a small percentage of the national banks covered by these guidelines will be required to prepare a contingency plan. -----

Estimated total annual recordkeeping burden: 161 hours.

Executive Order 12866

The OCC has determined that this interim rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act Analysis

The Unfunded Mandates Reform Act of 1995 (UMA), Public Law 104-4, applies only when an agency is required to issue a general notice of proposed rulemaking or a final rule for which a general notice of proposed rulemaking was published. 2 U.S.C. 1532. As noted earlier, the OCC has concluded, for good cause, that a notice of proposed rulemaking is not required. Accordingly, the OCC has concluded that the UMA does not require an unfunded mandates analysis of this interim rule.

Moreover, the OCC believes that the interim rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than \$100 million in any one year.

Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 30

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Safety and soundness.

Authority and Issuance

For the reasons set out in the preamble, part 30 of chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 30--SAFETY AND SOUNDNESS STANDARDS

1. The authority citation for part 30 is revised to read as follows:

Authority: 12 U.S.C. 93a, 1818, 1831p-1, 3102(b).

2. In Sec. 30.2, the last sentence is revised to read as follows:

Sec. 30.2 Purpose.

* * * The Interagency Guidelines Establishing Standards for Safety and Soundness are set forth in appendix A to this part, the Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness are set forth in appendix B to this part, and the Supplemental Guidelines Establishing Year 2000 Standards for Safety and Soundness for National Bank Transfer Agents and Brokers or Dealers are set forth in appendix C to this part.

3. In Sec. 30.3, paragraph (a) is revised to read as follows:

Sec. 30.3 Determination and notification of failure to meet safety and soundness standard and request for compliance plan.

(a) Determination. The OCC may, based upon an examination, inspection, or any other information that becomes available to the OCC, determine that a bank has failed to satisfy the safety and soundness standards contained in the Interagency Guidelines Establishing Standards for Safety and Soundness set forth in appendix A to this part, the Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness set forth in appendix B to this part, or the Guidelines Establishing Year 2000 Standards for Safety and Soundness for National Bank Transfer Agents and Brokers or Dealers are set forth in appendix C to this part.

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4. A new appendix C is added to part 30 to read as follows:

Appendix C to Part 30--Supplemental Guidelines Establishing Year 2000 Standards for Safety and Soundness for National Bank Transfer Agents and Brokers or Dealers

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A. Introduction.

B. Preservation of existing authority.

C. Definitions.

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A. Introduction

These Supplemental Guidelines are issued pursuant to section 39 of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831p-1) and apply to transfer agent and broker or dealer systems that a national bank has not designated as mission-critical. These Supplemental Guidelines are in addition to, but do not supersede, the Year 2000 Guidelines previously adopted as Appendix B to 12 CFR Part 30. The Guidelines in Appendix B continue to apply to efforts of national banks to achieve Year 2000 readiness of their mission-critical systems.

B. Preservation of existing authority

Neither section 39 nor these Supplemental Guidelines in any way limits the authority of the OCC to address unsafe or unsound practices, violations of law, unsafe or unsound conditions, or other practices of bank transfer agents and brokers or dealers. For example, failure to complete any of the standards set forth in the Supplemental Guidelines may constitute an unsafe or unsound practice under 12 U.S.C. 1818(b). Action under section 39 and the Supplemental Guidelines may be taken independently of, in conjunction with, or in addition to any other remedy, including enforcement action, available to the OCC.

C. Definitions

1. In general. For purposes of the Supplemental Guidelines the following definitions apply:

a. *Bank transfer agent* means a national bank that provides transfer agent services directly or through an operating subsidiary, or a Federal branch that is subject to the provisions of section 39 of the FDI Act (12 U.S.C. 1831p-1), if the national bank, operating subsidiary or Federal branch is a registered transfer agent whose appropriate regulatory agency, as that term is defined in 15 U.S.C. 78c(a)(34), is the Office of the Comptroller of the Currency. The term bank transfer agent does not include a transfer agent that qualifies as an issuer or small transfer agent, as these terms are defined in 17 CFR 240.17Ad-13(d) (1) and (2).

b. *Bank broker or dealer* means a national bank that effects securities brokerage or dealer transactions for customers, or a Federal branch that is subject to the provisions of section 39 of the FDI Act (12 U.S.C. 1831p-1). The term bank broker or dealer does not include operating subsidiaries of national banks. The term bank broker or dealer does not include a national bank effecting fewer than 500 securities brokerage transactions per year for customers during the prior three calendar year period.

c. *System* means an automated system and related applications necessary to ensure the prompt and accurate processing of securities transactions, including order entry, transfer execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, the delivery of funds and securities, or the production or retention of required records.

d. *Business resumption contingency plan* means a plan that describes how a bank transfer agent or bank broker or dealer will continue to perform transfer agent or broker or dealer functions, respectively, in the event transfer agent or broker or dealer systems fail to function because of Year 2000 readiness.

e. *Year 2000 ready or readiness with respect to a system* means the system accurately processes, calculates, compares, or sequences date or time data from, into, or between the 20th and 21st centuries; and the years 1999 and 2000; and with regard to leap year calculations.

D. Year 2000 standards for safety and soundness

1. No later than November 1, 1999, each bank transfer agent and bank broker or dealer shall identify all transfer agent and broker or dealer systems that are not Year 2000 ready.

2. For each system identified pursuant to section D.1., each bank transfer agent and bank broker or dealer shall develop

and implement an effective written business resumption contingency plan by November 15, 1999, that, at a minimum:

- a. Defines scenarios for transfer agent and broker or dealer systems failing to achieve Year 2000 readiness;
- b. Evaluates options and selects a reasonable contingency strategy for those systems; and
- c. Provides for independent testing of the business resumption contingency plan by an objective independent party (such as an auditor, consultant, or qualified individual from another area of the insured depository institution who is independent of the plan under review).

Dated: September 17, 1999.

John D. Hawke, Jr.,
Comptroller of the Currency.

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