



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

May 23, 2005

Interpretive Letter #1029
June 2005
12 CFR 12

Subject: () (“**Bank**”)

Dear ():

I. Introduction

This relates to your various written submissions and our telephone conversations, concerning (**Bank**). Pursuant to 12 C.F.R. § 12.8, (**Bank**) requests that the Office of the Comptroller of the Currency (“OCC”) waive certain transaction notification requirements of Part 12 as they relate to its administration of various stock purchase and sale plans. The OCC grants (**Bank**)’s waiver request as described below.

II. Background

(**Bank**) is a limited-purpose trust company chartered under the National Bank Act and registered with the OCC as a transfer agent under section 17A of the Securities Exchange Act of 1934 (“Exchange Act”). Its activities include effecting transactions and performing a variety of other services for dividend reinvestment, stock purchase and employee stock purchase plans of companies for which it acts as transfer agent (“Plans”).

In effecting purchase and sales transactions for Plans, (**Bank**) routinely aggregates orders for many customers into a single order, and sends the order to a broker for execution. The broker, in turn, may execute the order as a single transaction in the market, or may execute the order in a number of trades, sometimes over multiple days. In light of these procedures, (**Bank**) is proposing several variations in content and timing from the standard notification of 12 C.F.R. § 12.4(a). The OCC has considered (**Bank**)’s request and decided to allow certain variations

from the standard transaction notification requirements of Part 12 requested by (**Bank**), as discussed below.¹

III. Standard Notification Procedure

The standard notification procedure of 12 C.F.R. § 12.4(a) requires (**Bank**) to give or send to the customer a notification, at or before completion of a purchase or sale transaction, containing (1) the name of the bank ((**Bank**)); (2) the name of the customer (the employee/account holder); (3) the capacity in which the bank acts; (4) the date and time of execution and the identity, price and number of shares or units of the security purchased or sold by the customer; (5) remuneration (direct or indirect) of the customer to the broker/dealer; (6) remuneration of the customer to the bank, and other remuneration the bank has received or will receive in connection with the transaction; (7) the name of the registered broker/dealer utilized or person from whom or to whom the security was purchased or sold; and (8) certain disclosures in the case of certain types of debt securities (not at issue in this request).

IV. Specifics of the Confirmation Request Proposed by (**Bank**) and OCC Response

(A) Name of Bank and Customer and Capacity in which Bank Acts

(**Bank**) proposes to give or send to a customer a notification containing the name of the bank ((**Bank**)), the name of the customer and the capacity in which the bank acts, which are required by 12 C.F.R. § 12.4(a)(1)-(3).

(B) Date and Time of Execution and Identity, Price and Number of Shares Purchased or Sold

Section 12.4(a)(4) requires the notification to disclose the date and time of execution and the identity, price and number of shares or units of the security purchased or sold by the customer. (**Bank**) proposes that where a broker fills an aggregate order for many customers by executing multiple trades, it will not disclose the time of execution because the rules do not specify how to disclose time of execution where multiple trades are executed for a single aggregate order. (**Bank**) also explains that all customers whose transactions are so aggregated will be accorded the weighted average price for all shares sold or purchased by the broker in executing that order. (**Bank**) proposes that the weighted average price be the price disclosed in the notification.

To facilitate cost-effective and efficient transactions, the OCC will waive the requirement for (**Bank**) to disclose the time of the transaction pursuant to 12 C.F.R. § 12.4(a)(4) where multiple trades are executed for a single aggregate order, and permit (**Bank**) to disclose the weighted average price in the notifications.

¹ The OCC's confirmation regulations at 12 C.F.R. Part 12 are modeled closely on the SEC's confirmation rules under Exchange Act Rule 10b-10 (17 C.F.R. § 240.10b-10). The OCC intends to administer Part 12 in a fashion consistent with the SEC's rules in order to facilitate comparable investor protection. Accordingly, the OCC consulted closely with SEC staff in processing this waiver request.

(C) Remuneration of the Customer to the Broker/Dealer

(**Bank**) proposes that the transaction notification not disclose brokerage fees paid by (**Bank**) even though such amounts might constitute indirect remuneration from the customer to the broker under 12 C.F.R. § 12.4(a)(5). OCC will not require (**Bank**) to disclose the brokerage fees paid by (**Bank**). The remuneration of the customer to (**Bank**) disclosed in the Plan materials, see subsection (D) below, is the important disclosure for customers under the circumstances.

(D) Remuneration of the Customer to the Bank and Other Remuneration to the Bank

Section 12.4(a)(6) requires the notification to disclose remuneration of the customer to the bank, and other remuneration the bank has received or will receive in connection with the transaction. (**Bank**) proposes that the aggregate amount of fees a customer will pay to (**Bank**) in connection with a transaction will be disclosed in Plan materials. However, the notification might not identify remuneration received by (**Bank**) from the issuer with respect to maintaining the Plan and providing various related services thereunder.

The OCC is granting (**Bank**)'s request not to disclose remuneration (**Bank**) receives from issuers for maintaining and providing various services for Plans. OCC believes that (**Bank**) should continue to inform Plan participants that it will disclose its remuneration from other third parties upon the written request of Plan participants, as required by 12 C.F.R. § 12.4(a)(6)(ii).²

(E) Name of Broker/Dealer

Section 12.4(a)(7) requires the notification to disclose the name of the registered broker/dealer utilized or person from whom or to whom the security was purchased or sold or to state that the bank will provide this information within a reasonable time upon written request. (**Bank**) states that the notification might not disclose the name of the broker used in executing the transaction.

The OCC is waiving the requirement of 12 C.F.R. § 12.4(a)(7) that (**Bank**) name the executing broker/dealer. However, (**Bank**) must notify Plan participants that it will provide the name of the broker/dealer, or the name of the counterparty if there is no broker/dealer, upon request.

² 12 C.F.R. § 12.4(a)(6)(ii) provides in part: "If the bank elects not to disclose the source and amount of remuneration it has [sic] or will receive from a party other than the customer pursuant to paragraph (a)(6)(i) of this section, the written notification must disclose whether the bank has received or will receive remuneration from a party other than the customer, and that the bank will furnish within a reasonable time the source and amount of this remuneration upon written request of the customer."

(F) Timing of Notification

(*Bank*) proposes to send a confirmation containing specified details "promptly" after the transaction is executed, rather than "at or before completion of the transaction" as specified in 12 C.F.R. § 12.4. (*Bank*) claims sending the confirmation at or before completion of the transaction can be burdensome and impracticable for a sizable plan administrator when many customers are involved in a market transaction, because the administrator must subdivide the transaction into individual participant components before notifications can be prepared.

The OCC will allow notifications to be sent "promptly" after transactions, rather than at or before completion of each transaction as specified in 12 C.F.R. § 12.4. However, such notifications shall be sent no later than four trading days after the last transaction effected in the aggregated batch.

(G) Telephone Enrollments

(*Bank*) asks that participants who enroll by telephone not be required to sign a subsequent agreement in writing prior to receiving Plan services, and be allowed to receive the modified standard notifications as discussed above. (*Bank*) notes that customers who enroll by telephone will receive written Plan materials in addition to the written confirmation statements. OCC will permit customers who enroll by telephone to receive the modified standard notifications and written materials as discussed above pursuant to 12 C.F.R. § 12.8, and will not require such participants to sign a subsequent agreement in writing prior to receiving Plan services.

I hope that this letter is responsive to your request. Please note that the relief granted herein is based on our understanding of the facts as discussed above, and that OCC reserves the right to change its position if different facts come to our attention, or as may be necessary in the interests of customer protection. If you have further questions or concerns, please contact Michael Dugas, Senior Attorney, Securities and Corporate Practices Division, at 202-874-4497.

Sincerely,

/s/ Daniel P. Stipano

Daniel P. Stipano
Acting Chief Counsel