

AL 96-5

Subject: Forward Repurchase Agreement Transactions

TO: Chief Executive Officers of all National Banks, Department  
and Division Heads, and all Examining Personnel

This advisory is being sent to inform national banks that the Department of the Treasury's Bureau of the Public Debt has issued the attached interpretive letter to clarify the requirements under the Government Securities Act for forward repurchase agreement transactions (forward repos). In the Department's view, repurchase agreements that settle in a next-day or longer time frame are regarded as forward repos. The interpretive letter also addresses the recordkeeping requirements and guidelines that the Public Securities Association (PSA) adopted for confirming forward repos. National banks and examiners should note that, although the PSA suggests sending an additional confirmation on trade date, this is not required under 12 CFR 12, Recordkeeping and Confirmation Requirements for Securities Transactions, but simply reflects an industry practice.

At the request of the Bureau of the Public Debt, the OCC is forwarding the Bureau's interpretive letter to all national banks and examining personnel. For further information contact Joseph W. Malott, national bank examiner, Capital Markets, (202) 874-5070. If your bank has questions or needs an interpretation of the GSA regulations, you may call or write the Bureau of the Public Debt, Government Securities Regulations Staff, Washington, DC, 20239, (202) 219-3632.

Jimmy F. Barton  
Chief National Bank Examiner  
Date: July 19, 1996

Attachment



DEPARTMENT OF THE TREASURY  
BUREAU OF THE PUBLIC DEBT  
WASHINGTON, D.C. 20239-0001

April 19, 1996

Ms. Julie Olson  
Assistant Chief National Bank Examiner  
for Capital Markets  
Office of the Comptroller of the Currency  
250 E Street, S.W.  
Washington, DC 20219

Dear Ms. Olson:

The Government Securities Act of 1986 (the "GSA"), as amended,<sup>1</sup> authorized the Department of the Treasury (the "Department") to adopt rules requiring, among other things, that government securities brokers or dealers make and keep current records relating to the operation of their business. Based on discussions with, and inquiries from, market participants, the Department understands that there may be some uncertainty regarding the applicability of the federal securities recordkeeping requirements, including the GSA recordkeeping regulations (17 CFR Part 404) with respect to certain transactions -- forward repurchase agreement transactions ("forward repos" or "forward repo transactions") -- being conducted by government securities brokers or dealers. Further, we understand that government securities brokers or dealers may not be following consistent recordkeeping practices in recording forward repos on their books and records.

This interpretative letter is intended to clarify the GSA recordkeeping requirements and foster consistent application of the recordkeeping rules with respect to forward repo transactions that are conducted, or effected, by financial institutions that have filed, or are required to file, notice as government securities brokers or dealers ("bank broker-dealers").

Forward repos are repurchase and reverse repurchase agreements that settle in the future (i.e., these transactions settle in a longer timeframe than same-day settlement).<sup>2</sup>

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<sup>1</sup> 15 U.S.C. 78o-5.

<sup>2</sup> It is the Department's understanding that most repos are settled on a same-day basis. Accordingly, the Department views repos that settle in a next-day or longer timeframe as forward repos.

Typically involving when-issued trades, forward repos are treated as off-balance sheet items since there is usually no exchange of funds or securities until the settlement date. This interpretative letter addresses the two primary types of forward repo transactions, generally referred to as specials and general collateral trades.<sup>3</sup>

### Recordkeeping

The Department views the timely recording of all government securities transactions, including the recording of any unsettled future transactions, such as forward repos, as important in meeting the purposes of the GSA and as an appropriate and prudent business practice. The maintenance of current books and records for forward repo transactions facilitates a bank broker-dealer's ability to conduct effective risk management. As a result, bank broker-dealers are in a better position to anticipate and fulfill their obligations and responsibilities to other entities or to customers with whom they transact business.

Pursuant to the Department's interpretative authority under 15 U.S.C. 78o-5(b), we view forward repo transactions whose underlying instruments are government securities as transactions in government securities. Therefore, such transactions fall within the provisions of the GSA and its implementing regulations, including the recordkeeping rules. The GSA regulations at 17 CFR 404.4(a) provide that, for bank broker-dealers, compliance with the recordkeeping rules of the appropriate regulatory agencies for banks ("ARAs"),<sup>4</sup> together

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<sup>3</sup> With specials, details that are set on trade date include the following: the identification of a specific security as collateral, the par amount of the security collateral, and the repo interest rate. On settlement date, the counterparties agree on a price for the security and then exchange funds and securities. With general collateral and mortgage repos, details that are set on trade date include: an agreement to use a range of possible securities as collateral, either the amount of funds to be borrowed or the par amount of the collateral, and the repo interest rate. On settlement date, the specific securities collateral and either the par amount of securities or the amount of funds to be borrowed are identified, and the counterparties exchange funds and securities.

<sup>4</sup> 12 CFR Part 12 for banks supervised by the Office of the Comptroller of the Currency, 12 CFR Part 208 for banks supervised by the Board of Governors of the Federal Reserve System, and 12 CFR Part 344 for banks supervised by the Federal Deposit Insurance Corporation.

with additional GSA recordkeeping provisions,<sup>5</sup> constitutes compliance with the GSA recordkeeping rules. The ARAs have adopted recordkeeping rules that are similar to the Securities and Exchange Commission's ("SEC") requirements in Rule 17a-3 (17 CFR 240.17a-3).

Specifically, under 12 CFR 12.3(a), 12 CFR 208.8(k)(2)(i), and 12 CFR 344.3(a), bank broker-dealers that conduct securities transactions for customers must maintain, among other things, chronological records of original entry containing an itemized daily record of all purchases or sales of securities (e.g., blotters). Further, under 12 CFR 12.3(c), 12 CFR 208.8(k)(2)(iii), and 12 CFR 344.3(c), bank broker-dealers must maintain a separate memorandum of each order to purchase or sell securities (e.g., order tickets).

The Department views the prompt preparation of blotters and order tickets as essential in enhancing customer protection and meeting the purposes of the GSA. Accordingly, the Department strongly recommends that bank broker-dealers reflect forward repo transactions on blotters as of the trade date and prepare such blotters no later than one business day after trade date. Similarly, the Department strongly recommends that bank broker-dealers prepare order tickets at the initiation of the forward repo transaction (i.e., on trade date).

Separately, the Department has also, in consultation and coordination with the staffs of the SEC and certain self-regulatory organizations, taken action on this issue to ensure that the same recordkeeping requirements apply to all classes of government securities brokers and dealers.

#### Confirmations

The Department views the timely issuance of confirmations as a fundamental instrument for strengthening customer protection and a prudent business practice for all government securities brokers or dealers conducting any type of government securities transaction, including forward repos. A confirmation has significant value to investors in identifying the specific securities that may be the subject of the transaction and verifying that the appropriate terms of the transaction have been recorded. Confirmations also enable investors to initiate a claim for their securities in cases of dispute or insolvency. Bank broker-dealers are referred to their respective ARAs' regulations pertaining to the requirement to issue confirmations.<sup>6</sup> Any questions regarding these confirmation requirements should be directed to the respective bank ARA.

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<sup>5</sup> 17 CFR 404.4(a)(2) and (3).

<sup>6</sup> 12 CFR 12.5, 12 CFR 208.8(k)(4), and 12 CFR 344.5.

The Department notes that the Public Securities Association ("PSA") recently adopted guidelines for confirmations of forward repo transactions and supports sending a confirmation for all forward repo transactions on trade date. PSA's Repo Trading Practices Bulletin No. 9, which became effective September 1, 1995 (copy of the provision relating to forward repos is enclosed), states that confirmations of forward repos should be sent on the trade date of the transaction and specifies information to be included on the confirmations. The Department views the issuance of confirmations on trade date for forward repo transactions in government securities as especially important since these transactions usually settle in a longer timeframe than normal settlement.

We have consulted with the staffs of the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency in considering the issues in this letter. This letter is being sent to each of these agencies as guidance. Your assistance in disseminating this letter and advising the banks that your organization supervises of this information is appreciated. A similar interpretative letter has been sent to the SEC, the New York Stock Exchange, and the National Association of Securities Dealers.

Any questions regarding this letter or questions pertaining to interpretations of the GSA regulations should be directed to the Government Securities Regulations Staff at (202) 219-3632.

Pursuant to 17 CFR 400.2(c)(7)(i), this letter will be made immediately available to the public.

Sincerely,



Richard L. Gregg  
Commissioner

Enclosure

Public Securities Association  
40 Broad Street  
New York, NY 10004-2373  
(212) 809-7000 or (212) 440-9400  
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(212) 440-5261



## REPO TRADING PRACTICES BULLETIN NO. 9

The following guidelines were adopted at the Funding Division meeting of July 20, 1995:

### *A. Confirmations of Forward Repos<sup>1</sup>*

1. Confirmations should be sent on forward repos on the day on which the trade takes place. In addition to any applicable regulatory requirements, the confirmation should specify at a minimum: the money or the par amount, as appropriate;<sup>2</sup> the start date; the end date; the rate of interest; the type of collateral; and whether there are any rights of substitutions.
2. A forward repo is a trade that settles in a longer time frame than next day settlement.

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<sup>1</sup> Additional recommendations with respect to confirmations of forward repos may result from a review of this issue by the PSA Government Operations Committee.

<sup>2</sup> It is generally understood that the money amount will be specified for general collateral and mortgage repo trades and the par amount for specials. If parties have agreed not to follow this convention, it particularly important to indicate the specific agreement on the confirmation.